

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN BENCH, PUNE

APPEAL NO.41 OF 2020(WZ)

IN THE MATTER OF:

Hiteshbhai Uttambhai Dhodi and Ors

....Appellants

Versus

Ministry of Environment, Forest, and Climate Change and Or.

.....Respondents

**ADDITIONAL WRITTEN SUBMISSIONS ON BEHALF OF THE
APPELLANTS PURSUANT TO ORDER DATED 27.03.2023**

1. The present appeal is against the Environment Clearance (EC) granted by Respondent No. 1/MoEF&CC vide order bearing no. F.No.J-11011/266/2018-IA-II(I) dated 18.05.2020 to the respondent no. 4/Madura Carbon (India) Ltd for setting up Carbon Black manufacturing unit of capacity 2,30,000 TPA and power generation unit of 45MW located at Village Fansa (Karajgam), Taluka Umbergaon, District Valsad, Gujarat.(P91)
2. Project Category is 5(e)- Petroleum products and petrochemical based processing such as production of carbon black and electrode grade graphite, (located outside the notified industrial area/estate) Category A and 1(d)- Captive Power Generation, Category B as per the classification under EIA, 2006.
3. Carbon black is used primarily as a reinforcing agent for rubber and is used largely in the manufacturing of automotive tires. It is also used as a colorant in inks, paints, plastics, and paper.(P24)

Dates	Particulars	Page Nos
2018	Application by R-4/Madura for manufacturing Carbon Black in Form 2 and along with the Pre-feasibility report for the project. The pre-feasibility report shows that the layout plan for the manufacturing unit was to be located over Survey No. 3705 to 3710,	P17 P 99

	3712, 3713, 3715, 3717, 3718, 3720,3722 to 3724, 3726, 3727, 3730, 3733 to 3740, 3742, 3743, 4049,4084 to 4090, 4095, 4105, 4107, 4108, 4110, 4112, 4133 to 4135,4301, 4317, 5134, 5220 to 5222, 5226, 5227, 5236, 5264, Village:Karanj, Taluka: Umbergaon, Dist.: Valsad, Gujarat. The Total plot area for proposed project was to be 235239 m2.	
19.09.2018	R-1/MoEF&CC raised EDS on the application for prior environment clearance submitted by R-4/Madura regards to details of land available for the project and its ownership, permission for conversion of land for the proposed activity for industrial activity in the land and details of wildlife areas/CRZ area within 10 km radius of the project site. The R-4/Madura Carbon (India) Ltd. submitted its reply along with the documents. As regards to the land it was stated that the carbon project was to come up on 235239 sq m i.e. 58.13 acres of land and the MoU for land ownership with the land owners was submitted as land conversion was under process.	P 109
05.03.2019	In response to this reply R-1/MoEF&CC again raised queries and communicated to the R-4/Madura to submit the proposal once land conversion was obtained for industrial activity. R-4/Madura Carbon (India) Ltd again submitted its reply to EDS generated on 29.09.2018 outlining the survey numbers over which the carbon project was to come up and the land area reduced to 94499 SQM i.e. 23.3 acres. Further, it would be seen that Survey No. 3719, 3725,4318, which were now sought to be included for carbon project,were not part of the application for prior environment clearance submitted earlier or	P 110

25-27 th feb, 2020	Expert Appraisal Committee (EAC) (Industry-2 Sector) considered the proposal of R-4/Madura Carbon India Ltd. in its 17 th Meeting held during 25 th -27 th February, 2020	454-459

The appeal challenges the EC granted to R-4/Madura as there is non-application of mind by EAC before grant of EC.

- Application for EC in Form-1 along with the first pre-feasibility report (10.08.2018) the layout of the plant was to be set up over 53 Survey numbers in Village:Karanj, Taluka: Umbergaon, Dist.: Valsad, Gujarat. The Total plot area for the proposed carbon black project was shown to be 235239 m². Pursuant to EDS, reduced to EDS query of R-1 reduced to 23.3 acres. A perusal of the revenue map (areas in yellow) it is evident that the land comprising of survey no. 3705, 3708, 3719, 3725, 3738, 4108,4110, 4318, Village: Karajgam is disjointed and not continuous. The areas marked in red in the revenue maps (**P 137**) is the area which is now excluded and the areas marked in yellow is the land now available with R-4/Madura Carbon (India) Ltd for the carbon black project. The yellow marked portion is the area composing of 94499 SQM i.e. 23.3 acres where the proposed carbon project is to be set up and red is the area which was originally shown to be part of the project area (235239 SQM i.e. 58.13 acres). It is the combined areas marked in red and yellow, which forms a contiguous area and relates to the layout of the plant. At the time of application of prior environmental clearance, the area required for carbon project was 235239 sq m i.e. 58.13 acres and then the area reduced to 94499 SQM i.e. 23.3 acres, though the layout remained the same and the capacity of the carbon project remained the same. As can be seen that the land acquired by R-4/Madura is less than half of the earlier proposed land. The unit for carbon black production of 230000 TPA quantity and Captive Power Generation of 45 MW capacity has to come up over the land in possession of R-4/Madura Carbon (India) Ltd and this has remained same in the first pre-feasibility report, revised pre-feasibility report, Draft EIA, FEIA (**P103, P138, P551**). The layout of the carbon project as shown in the draft EIA report as an area, which is contiguous having the different components of the plant, which includes a carbon black manufacturing unit, and

captive power generation plant. It has not been explained in any document how the present layout of the plant is going to be executed over reduced area and the reduction in land is from 58.13 acres to 23.3 acres presently with R-4/Madura Carbon (India) Ltd that is a substantial reduction. The R-1/MoEF&CC at the stage of granting ToR for the project did not examine this issue and neither EAC at the time of grant of impugned EC and R-4/Madura Carbon (India) Ltd has misled R-1/MoEF&CC as regards to the layout of the carbon black project. **(P164-Draft EIA)**

Name	Source	Means of transportation	Means of storage (No. of containers & size)	Storage Location	Max. Qty. to be stored at any given time i.e. storage capacity
Product					
Carbon Black		Trucks	Bulk Bag & Paper Bag	Ware House	3000 T
Raw Materials					
Carbon Black Feed Stock as raw material	Import & Indian Market	Tankers	6 x 5000 kL (Tanks) 6 x 1250 kL (Tanks)	Tank Farm	20000 kL
Molasses	Local	Tankers	60 kL (1 Tank)	Tank	60 kL
Potassium Nitrate	Local	Truck	50 kg Bags	In Store	3 T

- The TOR is not approved by EAC **(P 23,24)** and as such the stage of scoping provided under EIA, 2006 has not been adhered to and as such any appraisal process is vitiated.
- Difference in the quantity of raw-material: In the first pre-feasibility report, revised pre-feasibility report and Draft EIA the quantity of raw material is as follows:

Name of Product	Raw material	CAS No.	Requirement (T/T)	Requirement (T/Month)
Carbon Black	Feed Stock (Carbon Black Feed Stock/ Furnace Oil)	90640-86-1	1.71	32773.86
	Secondary Fuel(Furnace Oil)	90640-86-1	0.15	2874.90
	Molasses	68476-78-8	0.0045	86247.00
	Potassium Nitrate	7757-79-1	0.0002	3.83

The raw materials and quantity for the proposed range of products as shown in final EIA report is as follows:

Name of Product	Raw material	CAS No.	Requirement (T/T)	Requirement (T/Month)
Carbon Black	Feed Stock (Carbon Black Feed Stock/ Furnace Oil)	90640-86-1	1.58	29868.49
	Secondary Fuel(Furnace Oil)	90640-86-1	0.20	3870.82(increase)
	Molasses	68476-78-8	0.004	75.62
	Potassium Nitrate	7757-79-1	0.003	56.71(increase)

There is increase in the secondary Fuel and Potassium Nitrate and reduction of Feed Stock but there is no explanation for the same. **(P42)**. The quantity of raw materials required for the carbon black project shown in form-2 is different from the quantities shown in Draft EIA and FEIA. Therefore, there is inter-se discrepancy in the quantities of raw material required for the carbon black project, which has impacts over the anticipated impacts and proposed mitigation measures.

- False/misleading and deliberate suppression of material information, and non-consideration by EAC: Village Karajgam is tribal land a 'scheduled area' protected by the special provisions of Fifth schedule of the Constitution of India and application of PESA. **(P20,21,47)**. This has not been shown as Tribal Land in Form 1 **(P111)**, Final EIA or an acknowledgment of the villages being Tribal. **(P552, P598)** and as such application of Section 73 AA of Gujarat Land Revenue Code, 1879. Issue was raised in Public Hearing (PH)**(P644,P651, P902, P927, 930)**.
- Generation of VOC such a Benzene not taken into account at the time of preparation of Draft EIA or Final EIA report:-Carbon black is produced by the partial oxidation or thermal decomposition of hydrocarbon gases or liquids. Several processes have evolved over the years, yielding a variety of products that differ in particle size, structure, purity and method of manufacture, including furnace black, thermal black, lampblack, acetylene black and channel black. Emissions from carbon black manufacture include particulate matter, carbon monoxide (CO), organics, nitrogen oxides, sulphur compounds, polycyclic organic matter (POM), and trace elements. The raw material that is used for carbon black and the technology employed directly determines the emissions and in the EIA reports there is no analysis of the raw material or the technology to be adopted and there is deliberate underplaying of generation of VOCs such as benzene which is hazardous. A perusal of section on fugitive emission below would make it clear that there is no recognition of the anticipated impacts and mitigation measures as regards to VOCs and also in response to the TOR where a specific term of reference is with regard to details of VOCs.**(P169 (Draft EIA), P182 (Draft EIA), (P199 PH), P562, P742, P429,431(Annexure A/15)**

Probable Sources	Control Measures
Manufacturing activities	Entire process will be in closed system • Whole process plant will be DCS based closed system. • Proper interlocks will be programmed in the DCS to isolate any line or any section of

	the plant depending upon the location of the leak till the maintenance work will be completed. ▪ All dust producing areas will be well connected to dedusting system.
Emission from Carbonblack storage silo and packing	All storage silo will be closed. ▪ Dedusting System (with Polyester bags) will be provided as APCM with storage silo, packing area & bucket elevator.
Pump and compressor Emissions	Mechanical seals will be provided in pumps and agitators ▪ Standby arrangement will be provided for critical equipment for periodic maintenance
Valves, Flanges, plugs and instrument connections	Welded pipes will be used wherever feasible. ▪ Suitable gasket materials will be used. ▪ Suitable gland packing will be used in valves. ▪ Periodic inspection and maintenance of pipes and pipe fittings will be carried out. ▪ All equipment welding will be done as per approved procedure.
Fugitive emissions of VOCs are also likely to emit from the project activities	Closed storage tank to be provided. ▪ Ensure that sufficient space to be available in the storage area ▪ Providing Explosion Vents in spaces with possibility of air-vapour mixtures. ▪ Routine thorough check-up procedures. ▪ Proper housekeeping should be maintained ▪ Any leak will also be attended to immediately.

	Raw Materials are stored in properly designed storage are and under good storage conditionsto prevent any volatilities.

- Impact on Livelihood not considered by EAC: As per estimation exercise carried out by the villagers there are 10,293 trees in and around project area including fruit trees out of which are Mangotrees -3582, Chickoo-510 Coconut-749, Saag-826, Tamarind-689, Khajuri-561, Papda-459, Mahuda-216, Vagoli-201, Dhamna-165, Nilgiri-111, Kher-138, Limda-105, Guava-132. The carbon black powder emission from the unit is going to affect the productivity of these orchard thereby leading to livelihood crisis. The EAC has not considered that an industrial area of GIDC-Sarigam comes within 10 km radius and GIDC-Vapi one of the most critically polluted areas as per CEPI Index is at a n approx. distance of 20 km to the project site and in this cocktail of air pollutants, a carbon black unit is proposed to be set as per the impugned EC. In such scenarios a comprehensive environment impact assessment is warranted to address health and environmental impacts of operation of carbon black unit.on the ground that information provided by R-4/Madura in Form 1, Draft EIA, Final EIA. (**P586, P602**).
- Air Pollution impacts on account of Carbon Black unit: Within 200 m of the proposed carbon plant is Karajgam primary school, Karajgam primary school (Aagriwad),Anganwadis (Brahmin Faliya, Krishaniwad, Aagriwad, Rayfalia), Karajgam Government health centre, KarajgamSevaSahkari Mandal, Government grain stores and all of them will be affected by the air and noise pollution.
- No description of raw material linkages of FeedStock (Carbon Feed Stock)from local suppliers as it would determine the emission levels at the time of operation:- Final Environment Impact Assessment ('FEIA') report submitted by R-4/Madura

Carbon India Ltd. included a table as regards to the response received at the time of public hearing. In the Final EIA report only in the section where response to the points raised is given, it was mentioned at SI No. 15 that the basic raw material of Carbon Feed Stock would be sourced either from IOCL Vadodara or Reliance Jamnagar or other sources, though in the main EIA report under the heading of the source of raw material it is not stated so and neither concomitant raw material analysis to outline the types of emission is addressed in the Final EIA report which is the root cause of the air pollution and neither it is mentioned in the linkages of raw material. The FEIA submitted by R-4/Madura Carbon India Ltd. does not acknowledge and recognise that it's a tribal area neither in the description of the villages within the study area nor in the Form-2 submitted for prior environmental clearance. The anticipated impacts of the carbon black project are not described and as such, the concomitant environment management plan is not addressing those issues, which were raised at the time of public hearing. Another interesting aspect of is that the quantity of raw materials for the proposed range of products, is different from the one shown in the pre-feasibility report and Draft EIA report and there is also a mismatch in the quantity of raw materials required as shown in Form-2 by the R-4/Madura Carbon India Ltd.

- Non-consideration of an irrigation pipeline from the Damanganga Distributary traverses through the land over which the proposed carbon black project will come up and the same has not been shown in the Draft EIA or Final EIA report. It is source of water for irrigation. The Google image of the area also shows that the land is surrounded by reserved forests and the village road goes through the village for its approach to the land for the proposed carbon black project. **(P 231)**

- Cumulative impact assessment study and carrying capacity study have not been done considering its in a highly polluted area.

Response to the Points raised by PP/Madura Carbon in its Written Submissions

SI No.	Allegation of the Appellant	Response of "Madura Carbon (India) Ltd." Against Allegation	Reply to PP/Madura
1.	Page No. 15, Point - 4 That the environment clearance order was not advertised in terms of General Condition SI no. (xx) of the EC which states as " This shall be advertised within seven days from the date of issue of the clearance letter, at least in two local newspapers that are widely circulated in the region of which on shall be in the vernacular language of the locality concerned and a copy of the same shall be forwarded to the concerned Regional office of the Ministry". Neither was the copy of the environment clearance sent by the project proponent to the concerned Panchayat in	Reference: Newspaper Name: THE TIMES OF INDIA Published Date : 20th May 2020 Page no : 04 Newspaper Name: DAMANGANGA TIMES Published 20th date : May 2020 Page no : 07	Still not able to locate these publications

	terms of General Condition SI no. (xvii) of the EC. The appellants came to know about the grant of EC when an article was published qua the project proponent and it was mentioned in the article that EC has been granted to the project proponent. The appellants then accessed the EC from the website of R-I/MoEF&CC.		
2.	(Page no – 19) That in response to this reply R-I/MoEF&CC again raised queries and communicated to the R-4/Madura Carbon (India) Ltd. to submit the proposal once land conversion was obtained for industrial activity. The R-4/Madura Carbon (India) Ltd again submitted its reply to EDS generated on 29.09.2018 outlining the survey numbers over which the carbon project was to come up and the land area reduced to 94499 SQM i.e. 23.3 acres. Further, it would be seen that Survey No. 3719, 3725,	Initially, the survey no 3719, 3725 & 4318 were not in our project plan. But while revising the Application based on the availability of land the three survey numbers were included in our application. The land area was also reduced and	There is no information as regards the area of the survey numbers that were sought to be included at the time it was submitted in reply to EDS.

	4318, which were now sought to be included for carbon project, were not part of the application for prior environment clearance submitted earlier or the reply submitted by R-4/Madura Carbon (India) Ltd. to R-1/MoEF&CC dated 19.09.2018. The R-4/Madura Carbon (India) Ltd. vide its reply dated 05.03.2019 submitted the S.63AA permission for use of land for industrial purpose. The true copy of the Reply to EDS dated 05.03.2019 submitted by R-4/Madura Carbon (India) Ltd. to R-1/MoEF&CC is annexed herewith and marked as Annexure A/4.	The same was replied in the mentioned EDS and included in the revised PFR and application for ToR. Appeal Binder: EDS reply copy. Annexure-A/3, A/4, A/5 & A/6, Page 109, 110, 111, 120, 124.	
3.	(Page no – 20) That the R-4/Madura Carbon (India) Ltd. again submitted Form-1 for obtaining ToR for the carbon project. In this form the land over which the carbon project was to come up were Survey No. 3705, 3708, 3719, 3725, 3738, 4108, 4110, 4318 Village: Karanj, Taluka:	Yes, Madura Carbon has changed the area but Project capacity is same. We analysed the project setup based on the availability of land for which 63AA permission	The modifications undertaken are not minor but major ones and the same have not been shown in the layout plan at the time of obtaining the EC.

	Umbergaon, Dist.: Valsad, Gujarat. A revised pre-feasibility report was prepared wherein these survey numbers were shown and the land was reduced from 235239 SQM i.e. 58.13 acres to 94499 SQM i.e. 23.3 acres, though the capacity of the carbon project remained the same. The true copy of the form-1-appendix for carbon project submitted by R-4/Madura Carbon (India) Ltd. is annexed herewith and marked as Annexure A/5. The true copy of the revised prefeasibility report submitted by R-4/Madura Carbon (India) Ltd. along with the Form-1 is annexed herewith and marked as Annexure A/6.	was granted and we concluded that it was possible to setup the project in the revised land area. Accordingly, the revised layout was submitted in PFR. In fact, there were some minor modifications in the layout submitted in the FEIA as well	
4.	(Page no – 20) That as per the Constitutional provision under Article 244 (1) of the Constitution of India, the 'Scheduled Areas' are defined as 'such areas as the President may by order declare to be Scheduled Areas'- as per paragraph 6(1) of	Madura Carbon (India) Ltd. denies the said contentions. It is submitted that the land was finalized by the Collector and the GIDC for awarding it to Madura	The PP has not answered if the area comes within PESA or not. Submission of a self - serving declaration is of no consequence. The resolution

	the Fifth Schedule of the Constitution of India. The scheduled areas are predominately-tribal areas. The specification of "Scheduled Areas" in relation to a State is by a notified order of the President, after consultation with the Governor of that State. At present, Scheduled Areas have been declared in the States of Andhra Pradesh, Telangana, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan. As per Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977 (Constitution Order, 109) dated 31.12.1977 areas of Bansda, Dharampur, Chikhali, Pardi and Umbergaon talukas in Valsad district are scheduled areas in Gujarat which are constitutionally protected under the provisions of the Fifth schedule. The Village Karanj a tribal village comes under Taluka Umbergaon is a fifth	Carbon (India) LTD for setting of the manufacturing of CB. The said land was finalized after conducting due diligence on the part of the respective Authorities. Madura Carbon (India) LTD also vide its letter dated 20.02.2019 has given a declaration that, the land is not covered U/s 73 (aa) of the Panchayats (Extension To the Scheduled Areas) Act, 1996 and hence, Gram Panchayat Meeting Was held on 01.12.2018, wherein they have	of Gram Panchayat though denied even if in existence has no relevance to the issue of the land being tribal. The non-disclosure of this vital information in Form I is concealment of material fact and goes to the root of the scoping and appraisal process.

	schedule area and constitutional provisions of Fifth schedule apply to the area and to the land where the proposed Carbon Black manufacturing unit is proposed.	unanimously passed a resolution No i. 24(01) of Awarding the land to the Madura Carbon (India) LTD for setting up of the Manufacturing Unit The National Green Tribunal Is governed By the provisions of NGT Act, 2010. The provisions Of the tatute entioned in POINT 10 is not a part of Scheduled 1 of the NGT Act, hence, the Hon'ble Tribunal would have no jurisdiction to decide the issues falling within the Panchayats Extension to the Scheduled Areas) Act, 1996.	

5.	15. (Page no – 23) That R-4/Madura Carbon (India) Ltd. appointed Precitech Laboratories Pvt. Ltd. As EIA consultant for conducting EIA study as per the approved ToR.	After public hearing, the process has been improved by necessary changes in technology and process as a part of Cleaner Production Target. The process has been improved by necessary changes in technology by provision of APCM like FGD & SNCR to control SO ₂ & NO ₂ respectively. The change in process has resulted in higher product recovery rate leading to lower raw material consumption. This also ensures lower environmental impacts. Please note that	There is no mention of this in the Draft EIA and there is no description of this "technology" to adopted and neither it has been considered at appraisal and even before NGT no such information is forthcoming. On the aspect of raw quantities the composition of raw materials is important as it results in emissions that are harmful to the residents of the surrounding villages.

		raw material quantity in FEIA is on monthly basis & in Form-2 it is on annual basis. The daily consumption of raw material will be same.	
6.	Air pollution from proposed carbon black manufacturing plant especially given the location of the proposed unit as there are exist hills at a distance of 400 m and the existence of these hills has not been factored in the air modelling studies as this would affect dispersion of emissions from the unit. The emissions from the carbon black unit would be trapped thereby causing as pollution in the village that adjoins it.	This point was not raised during public hearing. dispersion The modelling study has been carried out for environmental impact due to the upcoming company considering the terrain of the 10km study area. The results derived from the same are mentioned in the report as well and it indicates the ambient air quality is predicted to be within the	The construction of the plant is underway and the photographs of the same would show that the Hills in the background are above the Stack height and the area is surrounded by land of the adjoining village. The Siting criteria of GPCB with habitation to be 500 m away has not been followed in the present case. The photographs are Annexure -A(Colly) .

		prescribed limit of National Ambient Air Quality Standards Parameters. Response Binder: Page I 831 to 847	
7.	The trees of surrounding area, land, farming land & vegetation of land will be affected by PM, SO ₂ and NO ₂ emission from the project. The land of the proposed carbon plant is on agricultural land and agricultural land of the residents of Karanj adjoin the proposed unit. There are orchards in the surrounding area which is the sole source of livelihood for the tribal residents of the village Karajgam.	The emission of SO ₂ and Particulate Matter will be under the rules and regulations Effect of the same on existing quality of ambient air will be within the stipulated limit after setting up of the plant. The land for the proposed project is owned by the company & according to statutory provision land has been converted to NA land.	There is no discussion on efficiency or efficacy of the DeSO _x & DeNO _x system that is being proposed. There is no description of the same in any document prior to FEIA and the same has been sneaked to offset the opposition that was faced at PH. A bald description without any material materials cannot be accepted especially given the track record of carbon black manufacturing processes and

		In additional Measures Proposed in FEIA after PH: DeSOx & DeNOx system will be installed to control SO2 & NO2 emissions. Also, the company ensure that adequate green cover in the area company will be implement plantation under its greenbelt development plan and green environment activity under CER. Response Binder: Page 644 & 651. Also, it is summarised at Page 1073, Annexure-R-7.	its effect on air quality in India.
8.	(Page no – 34) That the emissions from carbon black manufacture include particulate matter, carbon monoxide (CO), organics, nitrogen	The said research Are related With Occupational health and the level mentioned	There is no description as to which are these age old technologies and what is the technology that

	oxides, sulphur compounds, polycyclic organic matter (POM), and trace elements which are carcinogenic. The primary hazardous air pollutant emitted from carbon black manufacturing is benzene. The carbon black production facility operates emissions control systems that capture and control tailgases from their four CBUs. The VOC, in India is counted as mixture of organic chemicals including polycyclic organic matter (POM) and benzene etc Volatile organic compounds (VOCs) are organic chemical compounds that evaporate easily at room temperature. Gasoline, benzene, formaldehyde, toluene, xylene, styrene, and perchloroethylene are also rich sources of VOCs. Irritation to skin and eye, sensitization, central nervous system effects, carcinogenicity, and liver and kidney effects have been reported in experimental animals and humans. The true copy of the Literature	for the health hazards are for age old technologies. The proposed plant is based on latest technology with digital control system for fully enclosed and automated process unit. Hence, the level of emission of said chemicals /pollutants will be in trace level and such level will not have any threat of major health hazards. Over and above this, it is noteworthy that the proposed unit will have globally top ranked latest pollution control technology with highest efficiency.	is going to adopted by PP. There are no details of these technologies to be adopted and where is the certification or proven efficiency and gas utilization is in all such processes but despite that there are emissions problems.

	and research article on carbon black manufacturing and VOCs is annexed herewith and marked as Annexure A/15 (Colly). The emission of carbon black powder and VOCs comprising benzene are harmful for the health of the surrounding residents of village Karajgam. The anticipated impacts of VOCs has not been dealt with in the FEIA as can be first seen from the Draft EIA report under the compliance of ToR section where a specific ToR was "Details on VOCs emission control system from vents, stacks, fugitive emissions and flare management, etc." the response is "Details of air emission and control measures is furnished in Chapter 2, Section 2.6.2, Page No 2.10 to 2.12 of Draft EIA report. Detailed EMP for Air pollution and control is furnished in Chapter 10, Section 10.4, Page No 10.2 to 10.5 of Draft EIA report." A perusal of these sections shows that there are no details as to the types and	This will ensure that the project will not have Any major pollution and The level Of pollutant emissions will be well below prescribed norms. As per US-EPA AP42 of Carbon Black, benzene Is not emitted during manufacturing of Carbon Black as the tail gas is utilized for power generation. The copy of US-EPA AP-42, Carbon black is attached here for your reference.	

	characteristics of VOCs that would be emitted as the same is depended upon the type of technology adopted which is not specified in the Draft EIA or FEIA and the quality of the raw material used as it would determine the primary particle sizes and the emissions.		

The appellants wish to place reliance on following judgment.

- i. Hanuman Laxman Aroskar and Ors. Vs. Union of India (UOI) and Ors.((2019)15SC C 401), (MANU/SC/0444/2019)
- ii. University of Delhi Vs. Respondent: Ministry of Environment Forest and Climate Change and Ors. MANU/GT/0162/2022
- iii. Bengaluru Development Authority vs. Sudhakar Hegde & Others MANU/SC/0308/2020 : (2020) 15 SCC 63.
- iv. Intellectuals Forum, Tirupati vs. State of A.P. & Others MANU/SC/8047/2006 :(2006) 3 SCC 549
- v. Supertech Ltd. vs. Emerald Court Owner Resident Welfare Association & Others MANU/SC/0580/2021: (2021) 10 SCC 1

Place: Pune

Date: 22.05.2023

Filed By



(Shilpa Chohan, Shawahiq Siddiqui)
Advocates for the Appellant

For

Indian Environment Law Organization
B-22 (First Floor),
Jangpura Extension,
New Delhi 110014
(M) 9811391760, 9718647753
Email: shilpa.ielo@gmail.com

Annexure-A(Colly)

Photographs of the Carbon Black Plant under construction





F/2.8, SS 348.57, ISO 100, EV +0.7, DZOOM 1.000, GPS (72.8392,
20.3036, 25), D 209.19m, H 159.70m, H.S 8.66m/s, V.S 3.00m/s

MANU/SC/0444/2019

Equivalent Citation: 2019(2)ALT454, 2019 3 AWC2125SC, 2020(10)FLT56, 2019/INSC/434, 2019(2)KLT143, (2019)3MLJ712, 2019(5)SCALE484, (2019)15SCC401, [2019]5SCR916

IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 12251 of 2018 and 1053 of 2019

Decided On: 29.03.2019

Appellants: **Hanuman Laxman Aroskar and Ors.**
Vs.

Respondent: **Union of India (UOI) and Ors.**

Hon'ble Judges/Coram:

Dr. D.Y. Chandrachud and Hemant Gupta, JJ.

Counsels:

For Appearing Parties: K.K. Venugopal, AG, Atmaram N.S. Nadkarni, ASG, Datta Prasad Lawande, Adv. Gen., Parag P. Tripathi, Sr. Adv., Anitha Shenoy, Rashmi Nandakumar, Ritwick Dutta, K.V. Bharathi Upadhyaya, Kanika Sood, Sany Antony, Srishti Agnihotri, Pratap Venugopal, Surekha Raman, N. Prashant Kumar, Akhil Abraham Roy, Sahil Singh, Ashish Krishnanath Kuncoliencer, Chinmayee Chandra, Rajesh Shivolker, S. Salvador Rebello, N. Prashant Nair, Divya Prakash Pande, G.S. Makker, Niraj Kumar, S.S. Rebello, Suhasini Sen, Suchindran B.N., S.B. Narain, Sriram Srinivasan, Jai A. Dehadrai, Prashant Vaxish, Manisha Ambwani, Advs. for K.J. John and Co., Aastha Mehta, Mahesh Agarwal, M.S. Ananth, Vanshi Rao, E.C. Agrawala and Annam D.N. Rao, Advs.

Case Category:

APPEAL AGAINST ORDERS OF STATUTORY BODIES - TRIBUNALS

Case Note:

Environment - Environmental Clearance - Grant of - Articles 14 and 21 of the Constitution of India, 1950 - An appeal was filed before Principal Bench of National Green Tribunal challenging grant of an Environmental Clearance for development of a greenfield international airport at Mopa in Goa - NGT, by its judgment came to conclusion that, present case "was not a case where project compromises with environment" - While affirming EC, the NGT came to conclusion that "further safeguards for environmental protection need to be incorporated" - NGT, accordingly, proceeded to formulate additional conditions, while affirming grant of EC - Whether EAC shall revisit recommendations made by it for grant of an EC.

Facts:

On 1 May 2000, the Government of India communicated its approval for the setting up of an airport at Mopa and for the closure of the existing airport for civilian operations on the commissioning of the new airport. Subsequently, on 1 July 2010, the earlier decision was modified to allow for the continuation of civilian aircraft operations at Dabolim even after the commissioning of the new airport. The process of land acquisition commenced in 2008 under the Land Acquisition Act, 1894. Originally, the land area anticipated for the development of the project was pegged at 4,500 acres. During the pendency of project appraisals, the area required for the proposed airport stood reduced to 2,271 acres. A Miscellaneous Application was filed by the State of Goa before the NGT on 2 July 2018 seeking permission for the felling of trees. By its judgment, the NGT disposed of both the appeals and the Miscellaneous Application filed by the State of Goa, upholding the EC and imposing additional conditions to safeguard the environment. This Court has been informed that the felling of trees was initiated on 3 September 2018 and completed on 14 January 2019. Assailing the

judgment of the NGT, two appeals have been filed before this Court: one by Hanuman Laxman Aroskar and the other by the Federation of Rainbow Warriors. Learned Counsel appearing on behalf of the Appellants urged that the EIA report which is carried out under the terms of the 2006 notification is a tool to evaluate the environmental consequences of a proposed activity. The proposed international airport, being a Category 'A' project, is governed by the second, third and fourth stages of scoping, public consultation and appraisal respectively envisaged under the 2006 notification. In addition to the 2006 notification, the Guidance manual furnishes a significant sign post in the procedure envisaged prior to the grant of an EC. The project proponent is required to submit Form 1 complete with relevant details of the proposed project and the status of the environment. The ToR which is finalized by the EAC is founded on the disclosures which are made by the project proponent.

Held, while disposing of the appeal

1. EIA report prevaricated by recording that the area required for the proposed airport has only a few trees, mostly bushes. The EIA report states that vegetation and trees are sparse at the site. A photograph and a google map image are put forth as illustrations in figure 2.3 of Chapter II. To realise later that the project involved the felling of 54,676 trees is indicative of the cavalier approach to the issue and a process of fact finding which is parsimonious with the truth. Post facto explanations are inadequate to deal with a failure of due process in the field of environmental governance. Mathematical averages cannot displace factual data about the actual number of trees which were affected by the project. The EIA report ought to have scrutinized the number of trees, their nature and longevity. Issues such as the extent to which the trees or some of them were capable of being transplanted had to be considered in the EIA report. The location of the trees is also significant. In a given case, if the trees appear in clusters or in a dense formation in segments of the project site, it would be necessary to determine whether felling all of them was necessary for the project to be implemented.[97]

2. The Rule of law requires a regime which has effective, accountable and transparent institutions. Responsive, inclusive, participatory and representative decision making are key ingredients to the Rule of law. Public access to information is, in similar terms, fundamental to the preservation of the Rule of law. In a domestic context, environmental governance that is founded on the Rule of law emerges from the values of our Constitution. The health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the Constitution. Proper structures for environmental decision making finds expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution.[140]

3. Repeatedly, it has been urged on behalf of the State of Goa, MoEFCC and the concessionaire that the need for a new airport is paramount with an increasing volume of passengers and consequently the flaws in the EIA process should be disregarded. The need for setting up a new airport is a matter of policy. The role of the decision makers entrusted with authority over the EIA process is to ensure that every important facet of the environment is adequately studied and that the impact of the proposed activity is carefully assessed. This assessment is integral to the project design because it is on that basis that a considered decision can be arrived at as to whether necessary steps to mitigate adverse consequences to the environment can be strengthened.[142]

4. In the present case, there has been a failure of due process commencing from the non-disclosure of vital information by the project proponent in Form 1. Disclosures in Form 1 are the underpinning for the preparation of the ToR. The EIA report, based on incomplete information has suffered from deficiencies which have been noticed in the earlier part of this judgment including the failure to acknowledge that within the

study area contemplated by the Guidance manual, there is a presence of ESZs.[143]

5. The EAC, as an expert body abdicated its role and function by taking into account circumstances which were extraneous to the exercise of its power and failed to notice facets of the environment that were crucial to its decision making. The 2006 notification postulates that normally, the MoEFCC would accept the recommendation of the EAC. This makes the role of the EAC even more significant. The NGT is an adjudicatory body which is vested with appellate jurisdiction over the grant of an EC. The NGT dealt with the submissions which were urged before it in essentially one paragraph. It failed to comprehend the true nature of its role and power Under Section 16(h) and Section 20 of the NGT Act 2010. In failing to carry out a merits review, the NGT has not discharged an adjudicatory function which properly belongs to it.[144]

6. In this view of the matter, neither the process of decision making nor the decision itself can pass legal muster. Equally, as an area requiring balance between development of infrastructure and the environment, we are of the view that appropriate directions should be issued by this Court, which would ensure that while the need for a public project as significant as an international airport is duly factored into the decision making calculus, such development proceeds on a considered view of the importance of the prevailing state of the environment. Time bound directions should be issued.[145]

7. The EAC shall revisit the recommendations made by it for the grant of an EC, including the conditions which it has formulated, having regard to the specific concerns which have been highlighted in this judgment. The EAC shall carry out the exercise under (i) above within a period of one month of the receipt of a certified copy of this order. Until the EAC carries out the fresh exercise as directed above, the EC granted by the MoEFCC on 28 October 2015 shall remain suspended. Upon reconsidering the matter in terms of the present directions, the EAC, if it allows the construction to proceed will impose such additional conditions which in its expert view will adequately protect the concerns about the terrestrial eco systems noticed in this judgment. The EAC would be at liberty to lay down appropriate conditions concerning air, water, noise, land, biological and socio-economic environment;. The EAC shall have due regard to the assurance furnished by the concessionaire to this Court that it is willing to adopt and implement necessary safeguards bearing in mind international best practices governing greenfield airports.[147]

8. Matters concerning environmental governance concern not just the living, but generations to come. The protection of the environment, as an essential facet of human development, ensures sustainable development for today and tomorrow.[148]

9. The appeal is allowed.[150]

JUDGMENT

Dr. D.Y. Chandrachud, J.

Index

A Introduction

B Submissions

C Scheme of the 2006 notification and the Guidance manual for Airports

C. 1 EIA process

C. 2 Guidance manual for airports

D Forests

E Ecologically Sensitive Zones (ESZs)

F Sampling Points

F. 1 Air Quality

F. 2 Water Quality

F. 3 Noise Quality

F. 4 Flora and Fauna

F. 5 Felling of Trees

G Public Consultation

H Appraisal by the EAC

I The appellate jurisdiction of the NGT: the requirement of a merits review

J Environmental Rule of Law

K Directions

A Introduction

1. An appeal was filed before the Principal Bench of the National Green Tribunal¹ at New Delhi challenging the grant of an Environmental Clearance² for the development of a greenfield international airport at Mopa in Goa. The NGT, by its judgment dated 21 August 2018 came to the conclusion that the present case "is not a case where the project compromises with the environment". While affirming the EC, the NGT came to the conclusion that "further safeguards for environmental protection need to be incorporated". The NGT, accordingly, proceeded to formulate additional conditions, while affirming the grant of the EC.

2. Village Mopa is situated in North Goa, in close proximity to the inter-state boundary which the state shares with Maharashtra. The site of the proposed airport lies at a distance of 35 kilometres from Panaji, the capital of Goa. The village of Mopa is situated in Pernem taluka. The site for the development of the airport is situated on a tabletop plateau which rises to a height of 150 to 180 meters above mean sea level and is surrounded by steep slopes. The soil is predominantly of a laterite character. The airport which presently serves the region is situated at Dabolim, Goa.

3. Since the airport at Dabolim is saturated in terms of its capacity for annual air traffic, the state government initiated a process in 1997 to commission studies and project reports for a proposed international airport, which include the following:

- (i) A project report prepared by Engineers and Management Associates, Spain in 1997;
- (ii) A preliminary technical feasibility study prepared by the Airports Authority of India in May 1998;
- (iii) A final feasibility report for the proposed airport at Goa prepared by the International Civil Aviation Organisation, Montreal, Canada in August 2005;
- (iv) A Goa dual airport study prepared by the International Civil Aviation Organisation in August 2007;
- (v) A report of a Six Member Committee chaired by the Chief Minister of Goa in 2008 to

"look into all aspects relating to construction of an international airport at Mopa, Goa"; and

(vi) A document styled as the "Airport Master Plan" dated 10 February 2012, submitted to the Public Private Partnership³ cell of the Government of Goa by Ammann & Whitney, USA envisaging: "consultancy services for preparation of master plan, preliminary project report, tender document and project management services for the proposed greenfield airport and commercial/industrial and allied development near Mopa in the State of Goa".

4. On 1 May 2000, the Government of India communicated its approval for the setting up of an airport at Mopa and for the closure of the existing airport for civilian operations on the commissioning of the new airport. Subsequently, on 1 July 2010, the earlier decision was modified to allow for the continuation of civilian aircraft operations at Dabolim even after the commissioning of the new airport. The process of land acquisition commenced in 2008 under the Land Acquisition Act, 1894. Originally, the land area anticipated for the development of the project was pegged at 4,500 acres. During the pendency of project appraisals, the area required for the proposed airport stood reduced to 2,271 acres.

5. On 14 September 2006, the Government of India in the Ministry of Environment and Forests⁴ issued a notification⁵ mandating a prior EC for Category 'A' projects (specified in the Schedule) by the Union Government and for Category 'B' projects at the state level by the State Level Environment Impact Assessment Authority⁶. Following the 2006 notification, the MoEF placed an EIA Guidance Manual for Airports⁷ in the public domain in February 2010. The stages of scoping, public consultation and appraisal, leading up to the grant of the EC for the proposed airport are governed by the express terms of the 2006 notification.

6. In March 2011, the State of Goa, as the project proponent submitted Form 1 as stipulated in the 2006 notification to the MoEF. On 8 March 2011, the State of Goa applied for Terms of Reference⁸ to the MoEF. The ToR were finalized on 11 and 12 May 2011 by the Expert Appraisal Committee⁹ constituted under the 2006 notification. On 1 June 2011, the MoEF issued the ToR for the preparation of the Environmental Impact Assessment¹⁰ report. The ToR was valid for a period of two years until 31 May 2013. On 22 November 2012, the Government of Goa revised the project boundary by decreasing the project area from 4,500 acres to 2,271 acres. At its meetings on 28 and 29 January 2013, the EAC recommended an amendment to the ToR as requested by the state government and granted an extension to the validity of the ToR until 31 May 2014. On 19 June 2013, the MoEF communicated its approval for the amendment of the ToR and for the extension of its validity.

7. On 3 October 2014, the state government floated a tender for the development of a greenfield international airport project on a PPP basis. On 20 October 2014, the Directorate of Civil Aviation, Government of Goa submitted a draft EIA report to the Goa State Pollution Control Board, requesting it to initiate steps to conduct a public hearing. A public hearing was conducted at the project site on 1 February 2015. The EAC, at its meetings held on 9-11 March 2015, recommended an extension of the validity of the ToR for another year ending on 31 May 2015.

8. On 20 May 2015, the State of Goa submitted a final EIA report to the MoEFCC, seeking the grant of an EC for the project. On 29 May 2015, the MoEFCC communicated its approval for extending the validity of the ToR until 31 May 2015. Between 24 and 26 June 2015, the EAC, at its 149th meeting, deliberated on the EIA report and sought additional information from the project proponent, inter alia, on:

- 10 years data regarding rainfall in the area;
- Drawing of traffic circulation plan for smooth circulation of Traffic in the area;
- Minimum 20% energy conservation measures should be adopted in incorporating

provisions for use of LED, star rated AC's, and a revised energy conservation plan to be submitted;

- Measures taken to comply with the CPCB guidelines formulated for noise pollution control in Airport area to be submitted.

In the meantime, a representation was submitted by the Federation of Rainbow Warriors, one of the Appellants before this Court to the EAC. The EAC, at its 151st meeting held on 7-9 September 2015, deliberated upon the representation and sought a clarification from the project proponent on the issues raised. On 28 September 2015, the project proponent submitted its reply to the representation. The EAC, at its 152nd meeting on 20 October 2015, sought a further clarification from the project proponent on the reply submitted by the Federation of Rainbow Warriors. At that meeting, the EAC recommended the grant of an EC for the project.

9. On 28 October 2015, the MoEFCC, as the regulatory authority under the 2006 notification for Category 'A' projects, communicated its approval for the grant of an EC. Following the grant of the EC, the tender process which had been initiated on 3 October 2014 was concluded on 26 August 2016. Consequent to the opening of the final bids, a technical scrutiny, evaluation coupled with pre-bid meetings, deliberations on the draft concession agreement and other required steps, GMR Goa International Airport Limited¹¹ was awarded the contract on a revenue sharing of 36.99 percent to the State of Goa. On 8 November 2016, the concession agreement was executed between the Government of Goa and GGIAL for the development and operation of the airport with the concession period of 40 years. Upon financial closure, the three-year period for the construction of the airport commenced on 4 September 2017. The target date for the commissioning of the first phase of the project is 3 September 2020.

10. The grant of the EC was challenged before the Western Zonal Bench of the NGT¹² by the Federation of Rainbow Warriors. Hanuman Laxman Aroskar also filed an appeal¹³ before the Western Zonal Bench of the NGT. These appeals were subsequently renumbered¹⁴ before the Principal Bench of the NGT at New Delhi. On 7 November 2017, the NGT issued an ad-interim order restraining the cutting or felling of trees in the area designated as the site of the proposed airport. On 22 November 2017, the order of restraint was modified on the statement of the Advocate General of Goa that the state shall not cut or fell any trees, nor allow it to take place without valid permission from the lawful authority for a fortnight thereafter in order to enable the Appellants to pursue their remedies. On 6 February 2018, the Deputy Conservator of Forests granted permission for felling 21,703 trees at the airport site. The appellate authority under the Goa, Daman and Diu Preservation of Trees Act 1984¹⁵ dismissed the appeal on 7 March 2018.

11. On 8 March 2018, the High Court of Judicature at Bombay at its seat at Goa set aside the order of the Deputy Conservator of Forests and remanded the matter to be heard by the Principal Chief Conservator of Forests. On 2 April 2018, the Principal Chief Conservator of Forests stipulated several conditions for the cutting and the felling of trees at the site of the airport including: (i) enumeration of trees; and (ii) the plantation of ten times the number of trees felled. Upon being moved in a Public Interest Litigation¹⁶, the High Court by its order dated 25 April 2018 allowed the exercise of enumeration to be carried out. As a result, 54,676 trees were enumerated, including the 1,548 trees which had been felled earlier in terms of the order dated 6 February 2018 of the Deputy Conservator of Forests. On 13 January 2018, the High Court issued final directions in the PIL directing the State of Goa to approach the NGT seeking permission for felling and cutting trees. The state was directed to carry out the cutting and felling of trees only after prior permission was granted by the NGT.

12. A Miscellaneous Application¹⁷ was filed by the State of Goa before the NGT on 2 July 2018 seeking permission for the felling of trees. By its judgment dated 21 August 2018, the NGT disposed of both the appeals and the Miscellaneous Application filed by the State of Goa, upholding the EC and imposing additional conditions to safeguard the environment. This Court has been informed that the felling of trees was initiated on 3 September 2018 and completed on 14 January 2019. Assailing the judgment of the NGT, two appeals have been filed before this

Court: one by Hanuman Laxman Aroskar¹⁸ and the other by the Federation of Rainbow Warriors¹⁹.

13. On 18 January 2019, notice was issued in the appeals and an order of *status quo* was passed by this Court. The appeals were admitted for hearing and final disposal.

B Submissions

14. We have heard Ms. Anitha Shenoy, learned Counsel appearing on behalf of the Appellants. Mr. K.K. Venugopal, learned Attorney General²⁰ for India appeared on behalf of the State of Goa. Mr. Atmaram S Nadkarni, learned Additional Solicitor General²¹ of India appeared on behalf of the MoEFCC. Mr. Parag P Tripathi, learned Senior Counsel and Ms. Aastha Mehta, learned Counsel appeared on behalf of the Concessionaire.

15. Ms. Anitha Shenoy, learned Counsel appearing on behalf of the Appellants urged that the EIA report which is carried out under the terms of the 2006 notification is a tool to evaluate the environmental consequences of a proposed activity. The proposed international airport, being a Category 'A' project, is governed by the second, third and fourth stages of scoping, public consultation and appraisal respectively envisaged under the 2006 notification. In addition to the 2006 notification, the Guidance manual furnishes a significant sign post in the procedure envisaged prior to the grant of an EC. The project proponent is required to submit Form 1 complete with relevant details of the proposed project and the status of the environment. The ToR which is finalized by the EAC is founded on the disclosures which are made by the project proponent. In this backdrop, the principal submissions urged by the Appellants before the Court are as follows:

(i) There were material concealments by the project proponent in failing to disclose that as many as 54,676 trees were required to be felled. Form 1, which was submitted by the project proponent, was silent in regard to the number of trees required to be felled. The final EIA report, while dealing with the biological environment in Clause 2.1.5 contains the following statement:

2.1.5 Biological environment

Construction phase

Impacts (Significance-Medium)

The area acquired for proposed airport has only few trees, mainly bushes. These will be cleared during site preparation.

Contrary to the above assertion is the statement contained in the counter affidavit filed by the State of Goa:

... I say that the permissions which have been obtained for cutting of 54,676 trees have been granted by the concerned authorities in terms of the relevant statutory provisions and after laying down various conditions. I say that the context in which it was mentioned as sparse trees has to be seen from the huge area of the land. The land being 2133 acres, it would proportionally work out to about 25 trees in an area of 1 acre, i.e. 4000 sq. metres., which is one tree in an area of about 160 sq. metres.

The submission urged by the Appellants is that the purpose of the EIA report is to form an assessment of the state of environment as it exists in reality. The project proponent is duty bound to make a proper disclosure and the highest level of transparency is required. Accompanying Form 1 is a declaration of the project proponent that the EC will be liable to be rejected in the event of a suppression or mis-statement of material facts. The State of Goa filed a Miscellaneous Application before the NGT seeking permission to fell around 55,000 trees. This is a clear indicator that the original statement by the

project proponent in Form 1 as well as in Clause 2.1.5 of the EIA report that only a few trees were required to be felled is factually incorrect;

(ii) There was a concealment of Ecologically Sensitive Zones²² in the State of Maharashtra. In terms of the Guidance manual, primary data through measures and full surveys; and secondary data from secondary sources have to be collected. Primary data includes the study area within 10 kilometres radius from the Aerodrome Reference Point²³ and covers one season other than the monsoon. Secondary data includes data collected within an aerial distance of 15 kilometres for the parameters which are specifically mentioned in column 9 (III) of Form 1 of the 2006 notification and covers one full year. In the present case, while furnishing details of ESZs falling within an aerial distance of 15 kilometres, the EIA report stipulates that there were none in the State of Maharashtra. The State of Goa has also averred in its counter that there are no ESZs within a radius of 15 kilometres from the ARP and that there are no reserve forests in that radius. After hearings had begun before the NGT, a letter was addressed by the Principal Chief Conservator of Forests on 12 February 2018 to the Director of Civil Aviation stating that a list of reserved forests had been notified Under Section 20 of the Indian Forest Act 1927 in Sawantwadi Forest Division of Sindhudurg district in Maharashtra which was obtained from the working plan of Sawantwadi Forest Division (2014-15 to 2023-24). The letter stated that there was no reserved forest notified Under Section 20 of the Indian Forest Act 1927 in the Sawantwadi Forest Division, within a radius of 15 kilometres from the ARP. On this aspect, it was urged on behalf of the Appellants that restrictions come into force as soon as a notification Under Section 4 of the Indian Forest Act 1927 is issued. Under the Forest Conservation Act 1980, any use of forest land for non-forest purposes requires prior permission of the Union Government, as elaborated in the judgment of this Court in **TN Godavarman Thirumalpad v. Union of India** MANU/SC/0278/1997 : (1997) 2 SCC 267 ("Godavarman"). The purpose of elucidating forest areas which fall within an aerial distance of 15 kilometres from the project site is to enable an assessment to be made of the impact of the project on forested areas. Failure to mention forests in the State of Maharashtra was a significant omission in the EIA report;

(iii) Form 1 requires a disclosure of the details of ESZs within an aerial distance of 15 kilometres of the project boundary. The EIA report rests content in stating that Pernem taluka is not included in an ESZ by the High Level Working Group²⁴ constituted under the Chairmanship of Dr K Kasturirangan, Member (Science), Planning Commission²⁵. The project proponent, in response to the disclosures required for areas which are important or sensitive for ecological reasons - wet lands, water sources or other water bodies, costal zone, biospheres, mountains and forests, left the required details blank. In this context, it was urged by the Appellants that the purpose of the EIA report was not only to make an assessment of the project site but also of an area surrounding the project site within an aerial distance of 15 kilometres. The HLWG recognized that there were ESZs. In the present case, several villages are situated at a bare distance of 1.5 kilometres from the project site in Maharashtra. Yet, there was no disclosure of this fact and the EIA report merely recorded that Pernem taluka is not included in an ESZ;

(iv) The State of Maharashtra comprises nearly 40 per cent of the study area. Yet, there was no sampling of soil, air and water in Maharashtra. Sampling was carried out in 2011 and 2014-15 in Goa but no sampling site is situated in Maharashtra. In the absence of baseline data generated with regard to environmental parameters in the State of Maharashtra surrounding the project site, the EIA report suffers from a gross deficiency; and

(v) The EIA report is grossly deficient in failing to notice wildlife in the surrounding forests. On the contrary, the Appellants have relied on a rapid survey conducted to assess the presence of various mammals in the study area. Moreover, no avi-faunal study was done.

16. Apart from the above submissions, Ms. Shenoy has urged that the stages of public consultation and appraisal under the 2006 notification are crucial to the assessment process. As far as the public consultation is concerned, the draft EIA is given before the hearing. During the course of the public consultation, as many as 70 persons spoke, 1,150 representations were received and 1,586 persons are stated to have participated. The range of concerns expressed during the course of the public consultation covered a variety of environmental issues. Amongst them was the presence of perennial springs, the porous nature of the laterite plateau where permeation is a source of drainage for water collection and the existence of cashew plantations on which the livelihood of the local residents depends. Under the 2006 notification, the State Pollution Control Board²⁶ was required to collate the issues raised and the response of the project proponent, before submitting required documents to the EAC. Before the EAC, the project proponent in its presentation, indicated that the objections were only about employment opportunities. The project proponent clearly failed in its duty to appraise the EAC about serious environmental concerns which were raised during the course of the public consultation.

17. On the aspect of appraisal, it has been urged that the minutes of the EAC meeting recommending the grant of an EC contain, as learned Counsel for the Appellants submitted, "not a line on the EIA report". The EAC was required to state its reasons for recommending the grant of an EC in terms of the 2006 notification. The reasons must indicate that there was an appraisal by the EAC. In the present case, the recommendations of the EAC are based on vague considerations such as: (i) larger public interest; (ii) non-concealment of the facts by the project proponent; and (iii) the delay which had occurred in the process. The submission urged is that the EAC, as an expert body, has failed to furnish reasons; acted on the basis of considerations which are not germane to the exercise of its functions and failed to apply its mind to relevant considerations including the environmental consequences of the project.

18. Finally, it has been submitted that Under Section 16(h) of the National Green Tribunal Act 2010,²⁷ an appellate remedy is provided against the order granting EC. By virtue of the provisions of Section 20, the NGT is under a mandate to apply the principles of sustainable development, the precautionary principle and the polluter pays principle while passing any order, decision or making the award. An appeal lies before this Court Under Section 22 from an order, decision or award of the Tribunal on a substantial question of law as specified in Section 100 of the Code of Civil Procedure, 1908. The NGT, by virtue of its adjudicatory authority Under Section 16(h), is entrusted with a duty to conduct a merits review. The failure to consider materials on a vital issue constitutes a substantial question of law as does the failure to consider vital issues in the proceedings before it. In the present case, the Tribunal has merely relied on the process conducted by the EAC and its recommendations, abdicating its own jurisdiction to conduct a merits review.

19. Mr. ANS Nadkarni, learned ASG appearing on behalf of the MoEFCC urged that the EIA report, besides dealing with environmental concerns, addresses the impact of the project during both the phases of construction and operation. The EAC is sourced from experts from outside the government. The airport project was conceived in 1996; consultants were appointed and three sites were initially shortlisted. It was in 2011 that the ToR were sought by and given to the project proponent by the EAC. The draft EIA was placed for public consultation in 2014 and the final EIA report came to be submitted in 2015. The EAC deferred consideration of the EIA report on three occasions, including among them to consider the representation filed by the Federation of Rainbow Warriors.

20. Countering the submission of the Appellants on the non-disclosure of **reserved forests** in Form 1, the learned ASG urged the following submissions:

(i) The submission of the Appellants was not raised either in the public hearing or in the grounds urged before the NGT, but was addressed in the written submissions filed before the NGT and when a map of the Surveyor General of India was produced;

(ii) Table 2.1.5 of the EIA report states that there is no reserved forest in the State of Maharashtra while delineating ESZs within 15 kilometres from the project boundary. The

report proceeded on the plain meaning of the Indian Forest Act 1927 according to which it is only upon the issuance of a notification Under Section 20 that a reserved forest is declared;

(iii) As a matter of fact, within the area of 15 kilometres from the project boundary in the State of Maharashtra, no reserved forest stands declared Under Section 20(2) of the Indian Forest Act 1927;

(iv) The decision in **Godavarman** (supra) which adopts the ordinary meaning of the expression 'forest' is site specific: the MoEFCC follows it scrupulously even if there is a notification Under Section 4 while considering the diversion of forest land for non-forest uses. The decision in **Godavarman** (supra) has also been explained in the decision of this Court in **Construction of Park at Noida near Okhla Bird Sanctuary Anand Arya v. Union of India** MANU/SC/1026/2010 : 2011(1) SCC 744 ('Okhla Bird Sanctuary');

(v) The Guidance manual notices that environmental facets which have to be considered in relation to airport development are categorized into seven groups: (a) land use; (b) water quality; (c) air quality; (d) noise pollution; (e) biological environment; (f) socio-economic changes and occupational health; and (g) solid waste management. Baseline data of these environmental facets is ascertained through primary data extending to one season while secondary data extending to a year is gathered in terms of the Guidance manual and the distance specified in paragraph 4.1; and

(vi) The EIA report records that the surrounding land use of the airport site is predominantly forest land. Land use and land cover specifically for a 10 kilometre radius from the airport site in Maharashtra is also set out in Chapter II of the EIA report, which indicates a reference to the forest area. Annexure IX of the EIA report incorporates land use with land cover maps, both for Goa and Maharashtra in the 10 kilometre radius, which includes forested areas within the State of Maharashtra; Annexure X of the EIA report elucidates surface water bodies both in Maharashtra and in Goa in the radius of 10 kilometres while Annexure XI provides a hydro-geo-morphological map of Goa and Maharashtra. In other words, it was urged that: (i) a legally designated forest under the Indian Forest Act 1927 requires a notification Under Section 20; however, at the same time, (i)(sic) the EIA report contains a clear disclosure of the presence of forest areas in both the States of Goa and Maharashtra within a radius of 10 kilometres including areas of dense forest.

21. As regards the lack of **sampling points** in Maharashtra, the learned ASG urged that while all the six sampling points for ambient air quality within 10 kilometres of the study area were in Goa, the air quality which was being tracked was within the stipulated radius and was not confined to the State of Goa. Similarly, in studying the water environment, the ground water quality was measured at four locations in Goa within 10 kilometres of the study area. As regards the monitoring of noise, nine sampling points were chosen within the State of Goa in accordance with the Central Pollution Control Board²⁸ guidelines. The monitoring of noise environment, both at the construction and operational phases, has similarly been dealt with in the EIA report. The learned ASG urged that the choice of the sampling locations was not arbitrary: though the sampling points were not in Maharashtra, data required was tracked across a radius of 10 kilometres from the ARP which also included the State of Maharashtra.

22. Dealing with the submission that no avi-faunal study was carried out, it was urged that the EIA report specifically deals with this aspect in paragraph 4.6 of Chapter II which elucidates that 385 species of plants belonging to 88 plant families were documented and identified in the 10 kilometres radial distance of the proposed project site. The study similarly dealt with faunal diversity. As many as 86 species of birds were observed in the course of the avi-faunal study, which has been elucidated in table 4.17 of the EIA report.

23. On the issue of ESZs, the learned ASG urged that there is a specific reference to the Kasturirangan report, under the heading of 'Environmentally Sensitive Zones' in Chapter IV of the

EIA report. The EIA report notices that the proposed airport site falls in Pernem taluka of North Goa which has not been included in the ESZs mapped by the HLWG. Annexure XVI of the EIA report is a notification dated 13 November 2013²⁹ of the MoEF, which contains a list of villages (state, district and taluk-wise) identified by the HLWG. Paragraph 9 of the 2013 notification which has been issued Under Section 5 of the Environment (Protection) Act 1986 specifies the categories of new and expansion projects which are prohibited in the ESZ. The proposed airport project does not fall within the prohibited category. Moreover, since the site of the proposed airport was not included in an ESZ, the prohibition imposed by the 2013 notification had no application.

24. The learned ASG has also urged that the report of the HLWG on Western Ghats, submitted on 15 April 2013, stipulates certain development restrictions in ESZs which are as follows:

- (i) A complete ban on mining, quarrying and sand mining;
- (ii) A complete ban on thermal power projects while hydro power projects may be permitted subjected to conditions;
- (iii) A strict prohibition on 'red category' industries;
- (iv) A prohibition on building and construction projects of 20,000 square metres;
- (v) All other infrastructure and development projects/schemes would be subject to the grant of an EC as Category 'A' projects under the 2006 notification; and (vi) All development projects within 10 kilometres of the Western Ghats ESZ and requiring ECs shall be regulated in accordance with the 2006 notification.

Based on the above recommendation of the HLWG, it was submitted that the proposed airport project, which falls under Category 'A' projects as delineated by the 2006 notification, is regulated by it and does not attract a blanket prohibition.

25. The submission that the EAC had failed to apprise the environmental consequences of the project and should have applied its mind to environmental concerns has been countered by relying on the Minutes of the meetings conducted by the EAC:

- (i) At its 149th meeting held on 26 June 2015, the EAC sought additional information on six distinct aspects upon receiving the presentation by the project proponent;
- (ii) At its 151st meeting held on 7-9 September 2015, the EAC took note of a representation filed by the Federation of Rainbow Warriors and deferred further consideration of proposal for the grant of EC. The project proponent was called upon to submit a response to the issues raised in the representation; and
- (iii) At its 152nd meeting held on 20 October 2015, the EAC dealt with clarifications issued by the project proponent to the concerns raised by Rainbow Warriors and proceeded to recommend the project for the grant of an EC subject to the stipulated conditions.

On 28 October 2015, the EC was granted by the Union Government. On the basis of the procedure which was followed by the EAC, the following submissions have been urged:

- (i) The application of mind by the EAC can be inferred and seen from the record;
- (ii) Where considered necessary, the EAC sought information outside the EIA report;
- (iii) Having appraised the EIA report, the EAC imposed site specific conditions; and
- (iv) The EAC consists of experts in the field and once it has been shown that all relevant considerations were borne in mind, this Court must give due deference to their view.

26. Mr. K.K. Venugopal, learned Attorney General, appearing on behalf of the State of Goa, urged the following submissions:

(i) The proposed project for setting up an international airport at Mopa has been on the drawing board for nearly two decades. Successive studies were commissioned to assess the feasibility of the project from diverse sources, both within and outside government. This includes studies by private organisations as well as reports by the Airports Authority of India, the International Civil Aviation Organisation and the six member Committee constituted by the state government under the auspices of the Chief Minister;

(ii) The setting up of an airport is an imminent need, since the existing airport at Dabolim has reached a saturation point and is unable to cater to the growing volume of passenger traffic into Goa;

(iii) Tourism, it has been urged, is a major source of revenue for the state, with the banning of mining activities. A balance must be drawn between development and the environment. A distinction needs to be drawn between overwhelming environmental objections which are not reversible and incapable of amelioration, and cases such as the present where the environmental consequences of project are capable of being countered by suitable measures; and

(iv) Objections primarily based on a defect in procedure should not be sufficient to quash a project conceived in public interest with vast benefits for the development of the state and for the members of the travelling public. It was urged that there was no major environmental objection and the challenge to the EIA report is not substantial enough to overcome the interests of three million passengers. The expected inflow is anticipated to reach 30 million in 2030.

27. On the aspect of the **felling of trees**, the learned AG submitted that following the order of the Bombay High Court, the Principal Chief Conservator of Forests passed an order on 2 April 2018 providing for: (i) enumeration of all trees covered by the project site; (ii) issuance of tree felling permission by the Deputy Chief Conservator of Forests; and (iii) plantation of ten times the number of trees felled under the supervision of the forest department. Thereafter, when the High Court was moved in a PIL, an order was passed on 13 June 2018 that the grant of permission for felling trees and the actual felling of trees will be carried out only after the NGT granted permission in the pending proceedings. A Miscellaneous Application seeking permission for the felling of trees was instituted before the NGT. In its final order dated 21 August 2018, the NGT disposed of both the appeals as well as the Miscellaneous Application. Moreover, the NGT has specifically dealt with the felling of trees in the course of its distinction.

28. On behalf of the concessionaire, Mr. Parag P Tripathi, learned Senior Counsel and Ms. Astha Mehta, learned Counsel urged that upon the grant of an EC, a concession agreement was executed by it with the State of Goa on 8 November 2016. Possession of the project site was handed over on 4 September 2017 and work commenced on 3 March 2018. The indicative capital for Phase 1 of the development is Rs. 1,900 crores while the cost of the entire project is likely to be Rs. 3,000 crores. The State of Goa has incurred a total expenditure of Rs. 240 crores for land acquisition, rehabilitation, road widening, consultancy and other related aspects while the concessionaire has thus far incurred an expenditure of Rs. 230 crores as on 18 January 2019. 14.06 per cent of the project work has been completed and a manpower consisting of 1500 persons has been mobilized at the site together with plant and machinery.

29. The concessionaire has stated that it has tied up with a consortium of banks and the servicing of the loans is linked to project milestones. As on 18 January 2019, the major works in progress include: (i) site preparation and earth works such as excavation and filling up of runways, taxiways, aprons and parking bays; (ii) PTB-foundations and column works; and (iii) excavation of the foundations for the ATC building. The concessionaire has submitted that apart from the plantation of ten trees for every single tree which has been felled, the forest department identified about 500 trees for transplantation, which process is being carried out. In this background, it has been submitted that the project should not be interdicted. The concessionaire,

it has been urged, is committed to the completion of the project which accords with all the approvals that have been received.

30. The rival submissions now fall for our consideration.

C Scheme of the 2006 notification and the Guidance manual for Airports

C. 1 EIA Process

31. The objective of the EIA process is to ensure that environmental and developmental concerns are appropriately balanced on the basis of the most accurate information available.

32. The Constitution (Forty-second Amendment) Act 1976, which came into force with effect from 3 January 1977, inserted Article 48A to the Constitution which mandates that the State shall endeavor to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51A(g) of the Constitution places a corresponding duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. Following the decisions taken at the United Nations Conference on the Human Environment held at Stockholm³⁰ in June 1972 in which India participated, Parliament enacted the Environment Protection Act 1986 to protect and improve the environment and prevent hazards to human beings, other living creatures, plants and property.

33. On 27 January 1994, the MoEF, in exercise of the powers conferred by Sub-section (1) and Clause (v) of Sub-section (2) of Section 3 of the 1986 Act read with Clause (d) of Sub-rule 3 of Rule 5 of the Environment (Protection) Rules, 1986, issued a notification³¹ imposing restrictions and prohibitions on the expansion and modernisation of any activity or new project unless an EC was granted under the procedure stipulated in the notification. Under the notification, any person undertaking a new project or expanding and modernizing an existing project was required to submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.

34. The application, which was to be made in accordance with the Schedule provided in the notification was to be submitted with a project report which included with it an EIA Report, an Environment Management Plan³² and the details of a public hearing which had been carried out in accordance with guidelines issued by the Central Government from time to time. Limited exceptions to the public hearing process and the submission of an EIA were provided.

35. MoEF as the Impact Assessment Agency³³ would then evaluate the application and reports submitted. The IAA was empowered to constitute a committee of experts, if necessary, which would have a right of entry into and inspection of the site during or after the commencement of the preparations relating to the project. The IAA would prepare a set of recommendations based on the documents furnished by an applicant within 90 days from the receipt of the documents and a decision would be conveyed to the applicant within 30 days thereafter. The EC granted was valid for a period of five years and a successful applicant was required to submit half-yearly reports to the IAA. Concealing factual data or submitting false or misleading information would make the application liable for rejection and would lead to the cancellation of any EC³⁴ granted on that basis.

36. The 1994 notification was amended to reflect the growing protection accorded to the environment.

37. On 14 September 2006, MoEF released another notification³⁵ in supersession of the previous notification.

38. The 2006 notification directed thus:

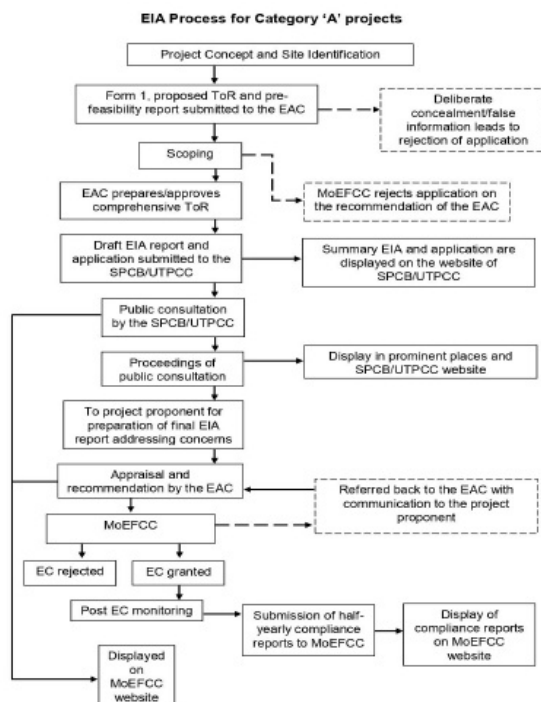
...on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in process and or

technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government Under Sub-section (3) of Section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification.

39. There are significant differences between the 1994 notification and the 2006 notification. They are:

- (i) The 2006 notification categorically states that an EC must be granted by the regulatory authority *prior* to the commencement of any construction work or preparation of land;
- (ii) The 2006 notification divides all projects into Category 'A' and Category 'B' projects. The MoEFCC continues to regulate projects of a large scale (Category 'A'), while the SEIAA regulate comparatively smaller projects (Category 'B');
- (iii) Under the 1994 notification, an applicant was required to submit an application along with all reports including the EIA report at the time of the application. Under the 2006 notification, prior to the preparation of the EIA report by the applicant, the concerned authority formulates comprehensive ToR on the basis of the information furnished by the applicant addressing all relevant environmental concerns. This forms the basis for the preparation of the EIA report. A pre-feasibility report must also be submitted with the application unless exempted in the notification. Under the 2006 notification, a draft EIA is first prepared and it is only after the public consultation process that a final EIA report must be prepared addressing all the concerns raised during public consultation;
- (iv) The 2006 notification stipulates the creation of a regulatory body at the state level-SEIAA comprising members with expertise in the field of environmental laws which is charged with granting ECs for Category 'B' projects;
- (v) Under the 1994 notification, the final approval was granted by the IAA. Under the 2006 notification, though the final regulatory approval is granted by the MoEFCC or the SEIAA, as the case may be, the approval is to be based on the recommendations of the EAC functioning in the MoEFCC or the State Expert Appraisal Committees³⁶ which are constituted for that specific purpose;
- (vi) Under the 2006 notification, the application can be rejected by the regulatory authority on the basis of the recommendation of the EAC or the SEAC, as the case may be, at the preliminary stage itself, prior to public consultation; and
- (vii) Under the 1994 notification, the public hearing process was overseen by the State Pollution Control Boards³⁷ which would constitute a public hearing panel for the purpose. Under the 2006 notification, the public consultation process is expanded to include the receipt of written comments from concerned persons. The public hearing component was to be overseen by the SPCBs or the Union Territory Pollution Control Committee³⁸.

40. The salient objective which underlies the 2006 notification is the protection, preservation and continued sustenance of the environment when the execution of new projects or the expansion or modernization of existing projects is envisaged. It imposes certain restrictions and prohibitions based on the potential environmental impact of projects unless prior EC has been granted by the concerned authority. The EC is required before any construction work, or preparation of land (except for securing the land) is started on the project or activity listed in the Schedule to the notification. The process stipulated under the 2006 notification is illustrated by the following flow-chart:



41. Based on the spatial extent of the potential impact and the potential impacts on human health and natural and man-made resources, the 2006 notification categorizes all projects into Category 'A' and Category 'B' projects. The MoEFCC in the Central Government and the SEIAA at the state level constitute the regulatory authorities for the purposes of the notification. Category 'A' projects require prior environmental clearance from the MoEFCC, based on the recommendation of the EAC constituted by the Central Government for this purpose. Category 'B' projects will require prior environmental clearance from the SEIAA, based on the recommendations of the SEAC. Where no SEIAA or SEAC has been constituted, Category 'B' projects are treated as Category 'A' projects.

42. Once a prospective site has been identified by the applicant for the proposed project, all applications seeking an EC shall be made in the prescribed Form 1 and Supplementary Form 1A³⁹, if applicable. The application must be submitted prior to the commencement of any construction activity, or preparation of the land at the site. A pre-feasibility report must also be submitted with the application except in the cases of construction projects in item 8 of the Schedule, for which a conceptual plan must be submitted. The significance of the information furnished by the applicant in Form 1 shall be explored shortly.

43. The process to obtain environmental clearance as stipulated by the notification for **new** projects⁴⁰ comprises a maximum of four stages, all of which may not apply depending on the specific case stipulated under the notification:

- 1) Screening;
- 2) Scoping;
- 3) Public Consultation; and
- 4) Appraisal.

44. Screening - This step is restricted only to Category 'B' projects. This stage entails an examination of whether the proposed project or activity requires further environmental studies for the preparation of an EIA for its appraisal prior to the grant of an EC. Those projects requiring an EIA are further categorized as Category 'B1' projects and remaining projects are categorized as Category 'B2' projects. Category 'B2' projects do not require an EIA. The

categorization is in accordance with the guidelines issued in this regard by the MoEFCC from time to time.

45. Scoping - At this stage, the EAC or the SEAC, as the case may be, formulates detailed and comprehensive Terms of Reference which address all relevant environmental concerns for the preparation of the EIA. Amongst other things, the information furnished by the applicant in Form 1/Form 1A along with the proposed ToR by the applicant form the basis for the preparation of the ToR. The ToR must be conveyed to the applicant within 60 days of the receipt of Form 1, failing which, the ToR proposed by the applicant shall be deemed as approved. Significantly, applications for EC may be rejected by the regulatory authority at this stage itself on the recommendation of the EAC or the SEAC, as the case may be, and the decision along with reasons is to be communicated to the applicant within 60 days of receipt of application.

46. Public Consultation - Prior to this stage, a Summary EIA is prepared in the format given in Appendix IIIA on the basis of the ToR furnished to the applicant. This stage involves the process "by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view of taking into account all the material concerns in the project or activity design as appropriate." The detailed procedure is stipulated in Appendix IV. Subject to the exceptions provided in the 2006 notification, all Category 'A' and Category 'B1' projects shall undertake the public consultation process. This stage comprises two components:

- (i) A public hearing at the site or in its close proximity - district-wise to be carried out in the manner prescribed in Appendix IV; and
- (ii) Procurement of written responses from concerned persons having a plausible stake in the environmental aspects surrounding the project.

47. The State Pollution Control Board⁴¹ or the Union Territory Pollution Control Committee⁴² is charged with conducting the public hearing in the manner stipulated in Appendix IV and forwarding the proceedings to the regulatory authority within 45 days of a request from the applicant. The regulatory authority is empowered to engage another public agency or authority to carry out the process within a further period of forty-five days in case the SPCB or the UTPCC does not adhere to the prescribed time period stipulated in the notification. The public hearing should be arranged in a "systematic, time bound and transparent manner" to ensure the "widest possible public participation at the project site(s) or in its close proximity District-wise". The public hearing proceeding is filmed and a copy of the video is submitted to the concerned regulatory authority.

48. Within seven days of receiving a written request to initiate the public consultation process, the SPCB or the UTPCC shall place the Summary EIA and the application on their website and invite responses. The concerned authority may also make use of other appropriate media in addition to publication on their website to ensure wide publicity of the project. On a written request from any concerned person, the authority will make available a hard copy of the Draft EIA for inspection at a notified place during office hours till the date of the public hearing. A duty is placed on the authority to forward all responses and comments received at this stage to the applicant through the quickest available means.

49. After the public consultation process, the applicant is duty bound to address all the material environmental concerns expressed during the process and make appropriate changes to the Draft EIA and EMP. The applicant shall then forward the final EIA report to the regulatory authority to initiate the next stage. Alternatively, the applicant may submit a supplementary report to the Summary EIA and EMP.

50. Appraisal-This stage involves detailed scrutiny by the EAC or the SEAC of all the documents submitted by the applicant for the grant of EC. The appraisal is carried out in a transparent manner in a process to which the applicant shall be invited for furnishing clarification in person or through an authorized representative. Appendix V stipulates that the following documents are also submitted to the regulatory authority:

- (i) Final EIA Report
- (ii) A copy of the video tape or CD of the public hearing proceedings
- (iii) A copy of the final layout plan
- (iv) A copy of the project feasibility report.

51. The regulatory authority must examine the documents "strictly with reference to the ToR" and communicate any inadequacy to the EAC or the SEAC, as the case may be, within 30 days of receipt of the documents. Within sixty days of the receipt of all the documents, the EAC or the SEAC, as the case may be, shall complete the appraisal process as prescribed in Appendix V. Within the next fifteen days, the EAC or the SEAC shall make categorical recommendations to the concerned regulatory authority to either grant the EC on the stipulated terms and conditions or reject the application, together with reasons. The appraisal of projects which are not required to undergo the public consultation process or the submission of an EIA is to be carried out on the basis of the prescribed application Form 1 or Form 1A, as applicable.

52. The MoEFCC or the SEIAA shall thereafter consider the recommendations of the EAC or the SEAC and convey its decision to the applicant within 45 days of receipt of the recommendations. The regulatory authorities shall *normally* accept the recommendations of the EAC or the SEAC, as the case may be. Where there is a disagreement, the regulatory authority shall ask for a reconsideration of the recommendation within 45 days of the receipt of the recommendations. This decision shall be conveyed to the applicant. The EAC or the SEAC shall then reconsider its recommendation within a further period of 60 days and make its recommendations to the regulatory authority. The regulatory authorities shall then take a decision after considering the views communicated to it and convey the decision to the applicant within the next 30 days.

53. If no decision is communicated to the applicant within the time prescribed, the applicant may proceed according to the recommendation of the EAC or the SEAC recommending either the grant or rejection of the EC. The decision of the regulatory authority and the final recommendations of the EAC or the SEAC shall be public documents on the expiry of the prescribed timelines. Deliberate concealment and/or the submission of false or misleading information material to the steps involved in the grant of an EC make the application liable for rejection and cancellation of any EC granted on that basis.

54. The 2006 notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. It serves as a balance between development and protection of the environment: there is no trade-off between the two. The protection of the environment is an essential facet of development. It cannot be reduced to a technical formula. The notification demonstrates an increasing awareness of the complexities of the environment and the heightened scrutiny required to ensure its continued sustenance, for today and for generations to come. It embodies a commitment to sustainable development. In laying down a detailed procedure for the grant of an EC, the 2006 notification attempts to bridge the perceived gap between the environment and development.

55. It is for this reason that the EAC and SEAC comprise experts in the field of environmental law. The Chairperson of the EAC shall be a person who is an "outstanding and experienced environmental policy expert or expert in management or public administration with wide experience in the relevant development sector". Appendix VI to the 2006 notification stipulates that the EAC and the SEAC comprise 15 members who are either 'experts' or 'professionals'. Experts must have at least 15 years of relevant experience in the field or an advanced degree (PhD) with 10 years of relevant experience. Where experts are not available, professionals may be appointed to the EAC.

56. The EAC and the SEAC are charged with evaluating the information submitted by the applicant in Form 1/Form 1A and preparing comprehensive ToR which guide the preparation of the EIA reports. Given that these bodies comprise experts in the field of environmental law, the

recommendation of the EAC or the SEAC to grant EC to an applicant or reject the application is *normally* accepted by the regulatory authority.

57. The regulatory authority at the state level (SEIAA) which is charged with the approval or rejection of an application for EC comprises three members who possess the qualifications in the field as prescribed in Appendix VI. Significantly, sub Clause (7) of paragraph 3 of the 2006 notification stipulates that all decisions of the SEIAA shall be unanimous and taken in a meeting. Given the environmental consequences of a proposed project, no difference of opinion is provided for in the grant of an EC at the state level. It is further mandated that the project management submit half-yearly compliance reports to the regulatory authority in respect of the EC and conditions.

58. Under the 2006 notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1A. Crucial information regarding the particulars of the proposed project is sought to enable the EAC or the SEAC to prepare comprehensive ToR which the applicant is required to address during the course of the preparation of the EIA. Some of the information sought is produced thus:

- (i) Construction, operation or decommissioning of the project involving actions, which will cause physical changes in the locality (topography, land use, changes in water bodies, etc.);
- (ii) Use of natural resources for construction or operation of the Project (such as land, water, materials or energy, especially any resources which are non-renewable or in short supply);
- (iii) Use, storage, transport, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about the actual or perceived risks to human health;
- (iv) Production of solid wastes during construction, operation or decommissioning;
- (v) Release of pollutants or any hazardous, toxic or noxious substances to air;
- (vi) Generation of noise and vibration, and emissions of light and heat;
- (vii) Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea;
- (viii) Risk of accidents during construction or operation of the project, which could affect human health or the environment; and
- (ix) Environment sensitivity which includes, amongst other things, the furnishing of the following details:
 - a. Areas protected under international and national legislation;
 - b. Ecologically sensitive areas; and
 - c. Areas used by protected, important or sensitive species of flora or fauna.

59. Under the 2006 notification, the EC process is based on the information provided by the applicant in Form 1. That the information provided in Form 1 is crucial can be borne from the following circumstances:

- (i) The EAC or the SEAC, as the case may be, formulates comprehensive ToRs on the basis of the information furnished in Form 1 which addresses all possible environmental concerns. It is on the basis of the ToR, that further studies and the EIA are carried out on the impact of the proposed project on the environment;
- (ii) At the appraisal stage, the regulatory authority examines the documents submitted

by the applicant "strictly with reference to the ToR" and communicates any inadequacy to the EAC or the SEAC;

(iii) Category B2 projects, which do not require scoping, are evaluated by the SEAC on the basis of the information furnished by the applicant in Form 1 alone;

(iv) The appraisal of all projects or activities which are not required to undergo public consultation, or submit an EIA report, shall be carried out on the basis of the prescribed application Form 1 and Form 1A as applicable; and

(v) An application for extension of the validity of the EC for certain projects is to be made by submitting a revised Form 1 within the validity period.

60. The information provided in Form 1 serves as a base upon which the process stipulated under the 2006 notification rests. An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable concerned persons to provide comments and representations at the public consultation stage. The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately. Clause (vi) of paragraph 8 of the notification provides thus:

Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice.

C. 2 Guidance manual for airports

61. In February 2010, the MoEF brought out its Guidance manual for airports. The need for a sector specific manual arose because the 2006 notification "re-engineered the entire EC process" under its earlier avatar of 1994 and new sectors were incorporated into the ambit of the EC process. The 2006 notification noted that as many as 39 developmental sectors require prior ECs. Sector specific manuals, it was hoped, would bring about standardisation in the quality of appraisal and obviate potential inconsistencies between the work performed by SEIAAs and SEACs. Chapter IV of the Guidance manual, which is titled 'Description of Environment', prescribes the study area for carrying out an EIA:

Primary data through measurements and field surveys; and secondary data from secondary sources are to be collected in the study area within 10 km radius from Aerodrome Reference Point (ARP). Primary data should cover one season other than monsoon and secondary data is to cover one full year. The basis for selection of these criteria is that the aircraft gains a height of 1000ft in this area below which noise and air pollution are generated maximum during its take off stage. Secondary data should be collected within 15 km aerial distance for the parameters as specifically mentioned at column 9 (III) of Form I of EIA Notification, 2006. Details of secondary data, the method of collection of secondary data, should be furnished. Similarly, the proposed locations of monitoring stations of water, air, soil and noise etc should be shown on the study area map.

62. Baseline data of environmental parameters which may be affected by airport activities is collected through primary monitoring in the study area and through secondary sources. The baseline data facilitates the evaluation of the predicted impact on environmental attributes in the study area by using scientific analysis and EIA methodologies. The object is to also aid in the

preparation of an EMP that would outline measures for improving environmental quality as well as retain the scope for future expansions in a sustainable manner. The Guidance manual specifically requires collection of baseline data on the following: (i) land environment; (ii) water environment; (iii) air environment; (iv) noise environment; (v) biological environment; (iv) socio-economic environment and (vii) solid waste.

The importance of collecting data on land environment is emphasised in the following extract:

The terrain and hill slope, general slope and elevation of the area, the flow direction of streams and rivers, the water bodies and wet lands and the vegetation which together describe the physiography of the land, will control the drainage pattern in the region. Land farms, terrain, may get affected due to construction of airport. It may require large scale quarrying, dredging and reclamation, which may cause changes in the topography. This in turn may affect the drainage pattern of the land/terrain. Baseline data pertaining to existing land at the proposed project area including the description of terrain hill slopes, terrain features, slope and elevation are to be collected. Study of land use pattern, habitation, cropping pattern, forest cover, environmentally sensitive places etc., is to be undertaken by employing remote sensing techniques and ground truthing. Ecological features of forest area; agricultural land; grazing land; wildlife sanctuary land & national parks; migratory routes of fauna; water bodies; and drainage pattern including the orders of the drain and water sheds are to be described. Settlements in the study area may be delineated with respect to ARP on the site map. High rise buildings, industrial areas and zones, slaughter houses and other features of flight safety importance may also be marked on the map. Secondary data from Central Water Board GOI; State ground water department, State Irrigation Department is to be obtained. Geomorphology of the region is to be clearly delineated. Study of land use patterns, habitation, cropping pattern, and forest cover data is undertaken. Information on the location of water bodies, drainage, forests, surface travel routes with respect to the project site is obtained within the study area and plotted on a map. This map will show the natural slopes and the drainage patterns, which give a guideline while planning the drains in the airport project. The drains help in discharge of storm water from the airport to avoid flooding and water logging in the project area.

The study of the water environment is necessitated for the following reasons:

Ground water quality is important, as change in its chemical parameters will affect the water quality. Airport activities during construction/operation may have impact on ground water quality. Due to airport construction existing low areas may be reclaimed with dredged spoil. The pollutants from dredged spoil are likely to enter into the ground water. This is likely to increase sedimentation of pollutants in airport area, which may migrate in time to the neighbouring ground water. Also runoff from solid waste if any, may percolate into the ground and may contaminate the ground water. Hence, they need to be studied through primary surveys and secondary sources. Monitoring locations are to be finalized as per CPCB norms which can represent the baseline conditions.

On the aspect of air environment, the Guidance manual emphasises that:

Aircraft engines produce emissions that are similar to other emissions resulting from any oil-based fuel combustion. These, like any exhaust emissions, can affect local air quality at ground level. It is emissions from aircraft below 1,000 ft. above the ground (typically around 3km from departure or, for arrivals, around 6km from touchdown) that are chiefly involved in influencing local air quality. These emissions disperse with the wind and blend with emissions from other sources such as emissions from domestic sources, emissions from industries and from surface transport.

Local emissions attributed to aircraft operations at airports include Oxides of Nitrogen⁴³, Carbon Monoxide⁴⁴, Hydrocarbons⁴⁵, Sulphur Dioxide⁴⁶, and particulate matter (PM 10 and PM 2.5).

63. The Guidance manual brings into focus the biological environment. It acknowledges that

airport operations may alter eco-systems, threaten endangered species and disturb the movement and breeding patterns of wildlife. In this context, the collection of baseline data on sensitive habitats and wild or endangered species in the project area is contemplated. The Guidance manual stipulates thus:

Airport operations may cause change in local ecosystems, threaten endangered species, and disturb movements and breeding patterns of local wildlife. Airports are located within a variety of settings (both urban and rural), which support habitats and species of their own, some of which will have direct interaction with those located on the airport and vice versa. Some local areas will also be designated for their nature conservation value. The biological environment of the airport should hence be seen as an integral component of the wider landscape scale ecological network. To accomplish this,

- Baseline data from field observations for various terrestrial and aquatic systems are to be generated.
- Comparison of the data with authentic past records to understand changes is undertaken.
- Environmental components like land, water, flora and fauna are characterized and,
- The impact of airport development on vegetation structure in and around project site is to be understood.

Data on sensitive habitats, wild or endangered species in the project area also is to be collected from Zoological Survey of India (ZSI), Botanical Survey of India (BSI), Wildlife Institute of India (WII) and Ministry of Earth Sciences. Wildlife symbolizes the functioning efficiency of the entire eco system. Just as wild flora needs special treatment for preservation and growth, wild fauna as well deserves specific conservatory pursuits for posterity. As per Wildlife Act (1972), the various wild animals are enlisted in the schedules of wildlife Act based on the intensity of threat to them as rare, endangered, threatened, vulnerable etc. Primary data on survey of the wild animals and birds in the study area is collected and identified with the classification into various schedules taken from secondary data.

64. It is in the backdrop of the 2006 notification and the Guidance manual that it becomes necessary to assess the process that was adopted in the present case and its outcome.

D Forests

65. The essence of the challenge to the EC is two-fold:

(i) Form 1, which was filed by the project proponent, did not contain any disclosure of the name or identity of forests within an aerial distance of 15 kilometres. Item 2 under the heading of 'Environmental Sensitivity' requires a clear disclosure of "areas which are important or sensitive for ecological reasons - wet lands, water sources or other water bodies, coastal zone, biospheres, mountains and forests"; and

(ii) Table 2.1 of Chapter II of the EIA report delineates ESZs within an aerial distance 15 kilometres from the project boundary. For the State of Goa, the table indicates the presence of forests but not of protected forests. For the State of Maharashtra, Table 2.1 indicates that there were neither reserved nor protected forests within 15 kilometres from the project boundary.

66. The learned ASG made an earnest effort to support this by urging that a reserved forest is one which is notified Under Section 20 of the Indian Forest Act 1927. The issuance of a notification Under Section 4, it was urged, is indicative only of an intent and a forest stands reserved Under Sub-section (2) of Section 20 only upon the issuance of a notification. The ASG

submitted that the reliance which the Appellants placed on the Survey of India map is misplaced as, in the absence of a notification Under Section 20, a forest cannot be regarded as being reserved.

In the alternative, it was urged that as a matter of fact, the EIA report (save and except Table 2.1) takes into account the forest cover surrounding the site and within the prescribed aerial distance. As regards Form 1, the learned ASG submitted that at that stage, the project proponent may not be expected to be aware of all the features of the environment and hence the omission to refer to forests and other areas which are sensitive ecologically should be discountenanced.

67. We cannot gloss over the patent and abject failure of the State of Goa as the project proponent in failing to disclose wet lands, water sources, water bodies, biospheres, mountains and forests within an aerial distance of 15 kilometres as required by Form 1. The disclosure in Form 1 constitutes the very foundation of the process which is initiated on the basis of the information supplied by the project proponent. Following the disclosure in Form 1, ToR are formulated, and this leads to the preparation of the EIA report. A duty is cast upon the project proponent to make a full, complete and candid disclosure of all aspects bearing upon the environment in the area of study. The project proponent cannot profess an ignorance about the environment in the study area. The project proponent is bound by the highest duty of transparency and rectitude in making the disclosures in Form 1.

68. There can be no manner of doubt that Form 1 is an important ingredient in the entire process envisaged under the 2006 notification. Hence, Clause (vi) of para 8 of the 2006 notification provides that deliberate concealment or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection and lead to the cancellation of a prior EC granted on that basis. The declaration which is required of the project proponent is to a similar effect.

69. We are unable to accept the submission that the disclosure required was of reserved forests comprehended within a notification Under Sub-section (2) of Section 20 of the Indian Forest Act 1927. Form 1 requires a disclosure of areas which are important or sensitive for ecological reasons, among them, being "forests". The expression "forests" is used without reference to a statutory or artificial definition and must hence incorporate a meaning which bears upon the ordinary description of the term. The expression "forests", means a forest as commonly understood, without reference to a notification under the Indian Forest Act 1927 or any other statutory enactment. Such an interpretation will subserve the purpose of an EIA. The purpose is to ensure that all relevant facets of the environment are noticed, that base-lines are documented, and that the potential impact of a project or activity on the environment is assessed. Forests are forests without reference to recognition in a statutory form devised for a specific purpose.

70. The need to construe the expression 'forests' in a broad and generic sense was emphasized in the decision of this Court in **Godavarman** (supra). This Court held:

4 . The Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word 'forest' must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest (Conservation) Act. The term 'forest land', occurring in Section 2, will not only include 'forest' as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership.

71. Subsequently, in **Okhla Bird Sanctuary** (supra), this Court explained the position:

Almost all the orders and judgments of this Court defining "forest" and "forest land" for the purpose of the FC Act were rendered in the context of mining or illegal felling of

trees for timber or illegal removal of other forest produce or the protection of national parks and wildlife sanctuaries.

In **Okhla Bird Sanctuary** (supra), trees had been planted with an intent to set up an urban park. This Court found it "inconceivable" that those trees would turn into a forest "within a span of ten to twelve years and the land, which was for agricultural use would be converted into forest land". Hence, the decision was based on a factually distinguishable situation. The decision emphasises that in construing the term forest, courts must have due regard both to text and to context.

72. In the context of the 2006 notification and the underlying purpose of facilitating an EIA report, the expression 'forests' must receive its ordinary and natural connotation. The effort must not be overlook and destroy forests but to notice and protect them.

73. Having said this, we must delve into the alternate submission that the EIA report does, as a matter of fact, consider the prevalence of forested areas both in Goa and in Maharashtra within the study area. In this context, para 2 of the Executive Summary introducing the EIA report acknowledges that the "surrounding land use of the airport site is predominantly forest land". In the context of land environment, the EIA report records that "forest is the predominant land use in the study area". The EIA report acknowledges that territories in Maharashtra fall within one kilometre from the proposed greenfield airport. Villages falling in Goa and Maharashtra within the 10 kilometre radius were considered for assessment. Para 2.3.1 of Chapter II deals with land use. Land use/land cover statistics for a 10 kilometre radius from the Mopa airport in the State of Maharashtra have been tabulated. Among them is the following:

Sr.No.	Description	Area (Sq.M.)	Area (Ha)
5	Forest-Tree Clad Area- Dense	66341913.84	6634.19

Similarly para 4.4 in Chapter IV, which is titled 'description of environment statistically', provides thus:

Surrounding land use of the airport site is predominantly forest land. The northern and eastern side of site is reserve forest areas, whereas western side is barren and village cultivated land. The existing land use plan is attached as Annexure IX.

74. The presence of a "diverse system set as dense and open forest, cultivated lands, sand dune vegetation, wet lands and human habitation" is noticed in para 4.6 dealing with the biological environment. Annexure IX to the EIA report provides land use/land cover maps for both Goa and Maharashtra in the study area. The maps in Annexure IX cover forested areas in Maharashtra and Goa within an aerial boundary of 10 kilometres from the project site. Annexure XI contains the hydro-geo-morphological maps for Goa and Maharashtra.

75. Though the EIA report adverts to the presence of forests within the study area in Goa and Maharashtra, we have to consider whether this by itself warrants the grant of an EC inspite of the fact that there has been a patent failure on part of the project proponent to make a transparent and candid disclosure of material facts in Form 1. Information furnished in Form 1 is crucial to the preparation of the ToR by the EAC. The EAC comprises of experts. It is constituted, among other reasons, for the specific purpose of assessing the information furnished in Form 1 and preparing comprehensive ToR. There is an intrinsic link between the disclosures in Form 1 which constitute the basis for formulating the ToR and between the ambit of the EIA report required by the ToR and the final EIA report. The ToR guide the preparation of the EIA report. A failure to disclose information in Form 1 impairs the functioning of the EAC in the preparation of the ToR and in consequence, leads to preparation of a deficient EIA report.

76. The submission that the EIA report deals with the prevalence of forested areas and warrants the grant of an EC cannot be accepted for yet another reason. EACs and SEACs are conferred with the authority to reject applications for the grant of an EC at the stage of scoping itself, prior to the preparation of the ToR. The application may be rejected on the basis of the information

furnished by the project proponent in Form 1. Claiming an EC as a matter of right merely because the EIA report has assessed parameters that were omitted in Form 1, bypasses the authority of the EAC and SEAC to reject an application at the preliminary stage and cannot be countenanced. The regulatory authority is required to assess the final documents submitted to it "strictly with reference to the ToR" and communicate to the EAC and SEAC any discrepancies between the EIA report and the ToR. A deficient ToR on the basis of the non-disclosure of material information in Form 1 impedes this process.

77. The failure on part of a project proponent to disclose material information in Form 1 as stipulated under the 2006 notification has a cascading effect on the salient objective which underlies the 2006 notification. The 2006 notification represents an independent code with the avowed objective of balancing the development agenda with the protection of the environment. An applicant cannot claim an EC, under the 2006 notification, based on substantial or proportionate compliance with the terms stipulated in the notification. The terms of the notification lay down strict standards that must be complied with by an applicant seeking an EC for a proposed project. The burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 notification, that must have consequences in law. There can be no gambles with the environment: a 'heads I win, tails you lose' approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the Rule of law.

E Ecologically Sensitive Zones (ESZs)

78. The substratum of the case of the Appellants is based on the following extract contained in the EIA report:

Ecologically Sensitive Zones Ministry of Environment and Forests had constituted a High Level Working Group (HLWG) under the Chairmanship of Dr. K. Kasturirangan, Member (Science), Planning Commission vide office order dated 17.08.2012 to study the preservation of the ecology, environmental integrity and holistic development of the Western Ghats in view of their rich and unique biodiversity. HLWG submitted its report to the MoEF on 15th April 2013. HLWG identified 37% of natural landscape having high biological richness, low forest fragmentation, low population density and containing Protected Areas, World Heritage Sites and Tiger and Elephant corridors as an Ecologically Sensitive Areas (ESA). The present proposed airport site is falling under Pernem taluka of North Goa district. The Pernem taluka has not been included in the Ecologically Sensitive Areas submitted by HLWG. The MoEF order on ESA is attached as Annexure XVI.

According to Ms. Shenoy, the EIA report notices the Kasturirangan report submitted on 15 April 2013. The submission is that the EIA report has conveniently glossed over the areas adverted to by the Kasturirangan report as an ESZ. This includes those areas which fall within the study area on the ground that Pernem taluka, where the project site is situated, has not been included as an ESZ. In this context, reliance is placed on a draft notification dated 3 October 2018 issued by MoEFCC under which the Union Government has proposed to notify 56,825 square metres spread across six states - Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu as the Western Ghats ESZ. The preamble to the draft notification adverts to the steps taken by the Union Government between 2013 and 2016 in pursuance of the report of the HLWG. This includes draft notifications issued on 10 March 2014 and 4 September 2015. The draft notification dated 3 October 2018 emphasises the importance of the Western Ghats as a global biodiversity hotspot:

WHEREAS, Western Ghats is an important geological landform on the fringe of the west coast of India and it is the origin of Godavari, Krishna, Cauvery and a number of other rivers and extends over a distance of approximately 1500 kilometres from Tapti river in the north to Kanyakumari in the south with an average elevation of more than 600 metres and traverses through six States namely, Gujarat, Maharashtra, Goa, Karnataka,

Kerala and Tamil Nadu;

AND WHEREAS, Western Ghats is a global biodiversity hotspot and a treasure trove of biological diversity and it harbours many endemic species of flowering plants, endemic fishes, amphibians, reptiles, birds, mammals and invertebrates and it is also an important center of evolution of economically important domesticated plant species such as pepper, cardamom, cinnamom, mango and jackfruit;

AND WHEREAS, Western Ghats has many unique habitats which are home to a variety of endemic species of flora and fauna such as Myristica swamps, the flat-topped lateritic plateaus, the Sholas and wetland and riverine Eco-systems;

AND WHEREAS, UNESCO has included certain identified parts of Western Ghats in the UNESCO World Natural Heritage List because Western Ghats is a Centre of origin of many species as also home for rich endemic biodiversity and hence a cradle for biological evolution;

79. Ms. Shenoy has emphasised that sixteen villages in the Taluka of Sawantwadi of the district of Sindhudurg which fall within the study area have been mapped as an ESZ in the annexure to the draft notification dated 3 October 2018. They are:

"State	District	Taluk	Village Name
Maharashtra	Sindhudurg	Sawantwadi	Tamboli
Maharashtra	Sindhudurg	Sawantwadi	Kumbhavade
Maharashtra	Sindhudurg	Sawantwadi	Degave
Maharashtra	Sindhudurg	Sawantwadi	Banda
Maharashtra	Sindhudurg	Sawantwadi	Padve Majgaon
Maharashtra	Sindhudurg	Sawantwadi	Ronapal
Maharashtra	Sindhudurg	Sawantwadi	Padve
Maharashtra	Sindhudurg	Sawantwadi	Dandeli
Maharashtra	Sindhudurg	Sawantwadi	Madura
Maharashtra	Sindhudurg	Sawantwadi	Dingne
Maharashtra	Sindhudurg	Sawantwadi	Aros
Maharashtra	Sindhudurg	Sawantwadi	Galel
Maharashtra	Sindhudurg	Sawantwadi	Kondure
Maharashtra	Sindhudurg	Sawantwadi	Satarda
Maharashtra	Sindhudurg	Sawantwadi	Dongarpal
Maharashtra	Sindhudurg	Sawantwadi	Sateli Tarf Soundal"

80. A comparison of the above villages with Annexure IX of the EIA report indicates that several of the above villages which have been mapped as ESZs in the draft notification fall within the 10 kilometre buffer from the project site. Hence, the submission of Ms. Shenoy merits a close analysis.

81. The EIA report has rested content with the observation that Pernem taluka, where the project site is situated, is not an ESZ. That is not sufficient or adequate, since the purpose of the EIA report is to make an assessment of ESZs which fall within the study area. Mr. Nadkarni's response to the above submission is that: (i) neither the Mopa plateau nor Pernem taluka constitute a part of the Western Ghats; (ii) the HLWG chaired by Dr Kasturirangan recommended a prohibition of specified activities while for other activities, the 2006 notification was required to be followed; (iii) the EIA report, while considering the project, has also adverted to the Kasturirangan report; and (iv) infrastructure projects except in the prohibited category are permissible, subject to an EIA.

82. The report of the HLWG dated 15 April 2013 recommends that there should be a complete

ban on mining, quarrying and sand mining activity in the ESZ. Similarly, it recommends that no thermal power project should be allowed in ESZs and that all 'red category' industries should be strictly banned. Building and construction projects of 20,000 square metres and above should not be allowed. However, all other infrastructure and development projects, which have been recommended, should be subject to the grant of ECs under Category 'A' projects of the 2006 notification.

83. The Union Government issued a notification on 13 November 2013 in pursuance of Section 5 of the Environment (Protection) Act 1986 to the effect that from the date of the issuance of those directions, no pending case or fresh case shall be considered by the EACs/MOEF or SEACs/SEIAAs covering the following industries:

- (a) Mining, quarrying and sand mining;
- (b) Thermal power plants;
- (c) Building and construction projects of 20,000 square metres area and above;
- (d) Township and area development projects with an area of 50 hectares and above and/or with a built-up area of 1,50,000 square metres and above; and
- (e) 'Red category' industries.

84. The submission of the ASG is that there is no prohibition on setting up a Category 'A' project in an ESZ. An infrastructure project such as an airport does not fall within the range of prohibited activities. What is necessary is that the project must be assessed in terms of the 2006 notification.

85. The glaring deficiency which emerges from the EIA report is its failure to notice the existence of ESZs within a buffer distance of 10 kilometres of the project site. On one hand, the EIA report takes note of the HLWG report dated 15 April 2013. But, on the other hand, the EIA report ignores the existence of ESZs within the study area on the ground that the **project site** is not situated in an ESZ. That, as we have seen, can never be accepted as an adequate response. The purpose and object of the EIA report is to map areas, understand their vulnerabilities, and conduct a study on a scientific basis of the impact of the proposed project on an ecologically sensitive terrain. The EIA report fails to meet a classical requirement of administrative law: to take into account a relevant consideration namely, that within the study area which has to be considered, there is the presence of ESZs.

86. In deducing the impact of a proposed activity on an ESZ, it is not sufficient to take recourse to a generic assessment of a proposed activity on the ecology of the study area. The EIA report must factor in those specific features which make an area ecologically sensitive. These would encompass all aspects of environmental concern which render the area ecologically sensitive. This would include wet lands, water sources, water bodies, costal zones, biospheres, mountains and forests. The vulnerabilities of each of them must be studied as distinctive components together with a holistic analysis of their existence in a chain of bio-diversity. Where an area is ecologically sensitive because of the presence of flora or fauna requiring protection, that must be specifically adverted to and studied. The deficiency of the EIA report emanates from its failure to notice that the purpose of the study was not only to determine whether the project site is ecologically sensitive. Confining itself to this aspect, the EIA report failed to consider a crucial and relevant consideration.

F Sampling Points

87. The submission of the Appellants is that the Guidance manual requires the collection of primary data through measures and field studies in the study area within 10 kilometres radius from the ARP. Secondary data has to be collected within a 15 kilometres aerial distance for the parameters mentioned in Culum 9(III) of Form 1 of the 2006 notification. In the present case, it was urged that not a single sampling station with reference to any of the parameters is situated in Maharashtra. As a result, no sampling sites for any of the parameters fall within 40% of the

study area. Consequently, no primary data collection was done despite the carrying out of two samples in 2011 and 2014 respectively. In response to this submission, it has been urged that all sampling points were based on para 4.1 of the Guidance manual. As a result, it was submitted that areas within Goa and Maharashtra were studied along with impact studies. In order to assess the submission, it is necessary to refer to relevant aspects of the EIA report:

F. 1 Air quality

88. In order to study the ambient air quality in terms of Suspended Particulate Matter, Respirable Particulate Matter, SO₂, NO_x, CO and HC, Ambient Air Quality monitoring stations were set up at six locations. They are at Sinechaadvin, Katwal, Mopa village, Pernem, Nagzor and Patradevi. All are in Goa. The location at Patradevi was on the border shared by Goa with Maharashtra. The study area extended to a radial distance of 10 kilometres from the ARP. We accept the submission of the ASG that they would hence cover areas falling within both Goa and Maharashtra. Para 4.1.2 of Chapter IV of the EIA report sets out the baseline data collected at the monitoring stations. Since the entire study area within a radius of 10 kilometres was considered for monitoring air quality, we accept the submission that the location of the sampling points within Goa did not preclude the monitoring of air quality within the study area.

F. 2 Water quality

89. Para 4.2 of the EIA report states that ground water quality was measured at four locations: Mopa village, Pernem, Dargal and Patradevi marked within 10 kilometres of the study area. The surface water quality was measured at three locations: Chapora river, Tiraikol river and Nala near Mopa village within 10 kilometres of the study area. The impact assessment is contained in the EIA report. The Mopa plateau is at a height of 155 metres above mean sea level and water from the plateau flows down to the rivers in the State of Goa. The laterite plateau is an important source of drainage by providing natural channels for water. The impact of a greenfield airport on the closing of natural channels which feed the water bodies has not been scientifically mapped or studied.

F. 3 Noise quality

90. While monitoring the noise quality, the EIA report covered a radius of 10 kilometres. In order to obtain baseline data of noise quality, nine monitoring stations were chosen in the study area. While it is true that all nine locations were situated in the State of Goa, one (Patriadevi) was situated on the border shared between Goa and Maharashtra. The EIA report contains an impact study and the study area covered includes both the states.

F. 4 Flora and fauna

91. The EIA report indicates that the area surrounding the site for the proposed airport has dense forests⁴⁷. These total up to nearly 6,634.19 hectares⁴⁸. Ms. Shenoy has urged that it is impossible that the fauna found by the project proponent through both primary sampling and secondary sources was only limited to animals such as: domestic dog, cat and cattle, common house mouse, rat and mongoose, jackal and the three striped palm squirrel. This, in her submission, is a clear indication that the EIA report is faulty and clearly incorrect.

92. While dealing with the above submissions, it is necessary to note that the Guidance manual contains a specific reference to the collection of data of sensitive habitats and wild/endangered species in the project area. The Guidance manual stipulates thus:

Data on sensitive habitats, wild or endangered species in the project area also is to be collected from Zoological Survey of India (ZSI), Botanical Survey of India (BSI), Wildlife Institute of India (WII) and Ministry of Earth Sciences. Wildlife symbolizes the functioning efficiency of the entire eco system. Just as wild flora needs special treatment for preservation and growth, wild fauna as well deserves specific conservatory pursuits for posterity.

93. The grievance is that no data has been collected from the State of Maharashtra and all secondary data collected by the project proponent related only to the State of Goa. There is substance in the submission which has been urged on behalf of the Appellant. A reading of the counter affidavit filed by the State of Goa would seem to support the Appellant's submission. It is stated:

I say that several recognised publications and research papers were referred to in order to verify and assess the data collected, to name a few of the publications:

- i. Birds of Goa by Heinz Lainer & Rahul Alvares;
- ii. The Goan Jungle Book by Nirmal Kulkarni;
- iii. A photographic guide to Butterflies of Goa by Parag Ragnekar;
- iv. Flora of Goa, Diu, Daman, Dadra and Nagarhaveli (Vol. 1) by RS Rao;
- v. Flora of Goa, Diu, Daman, Dadra and Nagarhaveli (Vol. 2) by RS Rao;
- vi. Red data book published by Botanical Survey of India;
- vii. Study materials published in Goa ENVIS Centre were also referred.

The Appellant, on the other hand, has sought to rely upon several independent studies including the following:

a. A rapid survey to assess mammal presence at Barazan Plateau, Mopa, Goa, India conducted by Girish Punjabi (Wildlife Biologist) and Atul S Borker (Full Member of IUCN/SSC Otter Specialist Group) that Schedule I species such as gaur, leopard and Indian Pangolin; Schedule II species such as giant squirrel, common palm civet; Schedule III species such as sambar, wild pig and Schedule IV species such as Indian hare, Indian porcupine.

The report also mentions the presence of the Sawantwadi - Dodamarg wildlife corridor within the 10 km proposed project site.

b. Report on one day survey conducted to find evidence of Otter presence at Mopa, Goa conducted by Atul Borker (Full Member of IUCN/SSC Otter Specialist Group) that found that a perennial stream on the plateau had presence of the smooth coated otter, that falls within Schedule II of the Wildlife (Protection) Act, 1972.

c. Report on two days survey to find evidence of plant and bird species at Mopa Plateau conducted by Aparna Watve (Ecologist) and Sanjay Thakur (Wildlife Biologist) that found Schedule I species such as the Indian peafowl and the Diphysa concolor which is critically endangered. The study clearly mentions that the EIA study is entire deficit as it does not accurately consider the flora and fauna of the area as well as the number of trees to be cut.

94. We find that the collection of both primary and secondary data of fauna in the EIA report was perfunctory. The primary study is not based on data collected from acknowledged sources such as the Zoological Survey of India, Wildlife Institute of India and Ministry of Earth Sciences as required under the Guidance manual. Similarly, as regard avi-faunal studies, the EIA report lists 385 plant species in table 4.15 of Chapter IV, titled 'Description on Environment'. It also states that 86 species of birds were observed during the survey in the 10 kilometre study area from the proposed site. Column 9 (III) of Form 1 refers to "areas" in the following terms:

areas which are used by protected, important or sensitive species of flora or fauna for breeding, foraging, nesting, resting, over wintering or migration.

The above column was left blank by the project proponent in Form 1. According to the Guidance

manual, secondary data has to be collected within an aerial distance of 15 kilometres for the parameters specifically specified in column 9(III) of Form 1 of the 2006 notification. This was evidently not done. A careful avi-faunal study was necessary, having due regard to the fact that the proposed project is an airport site. Bearing in mind the profile of airport operations, foraging or nesting by bird species in and around the airport must not be discarded. It must be accepted that in a project involving the setting up of an airport, the EIA report must deal with the impact of the airport on birds and likewise the impact of birds on aircraft operations.

F. 5 Felling of Trees

95. Para 2.1.5 of the executive summary to the EIA report deals with the biological environment. Para 2.1.5 stipulates thus:

The area required for proposed airport has only few trees, mainly bushes.
These will be cleared during site preparation.

Similarly, Chapter II which deals with project description specifies in para 2.3.1 that "**vegetation and trees are sparse at the site**". That the trees which were required to be felled were far from "few" is evident from the reply filed by the State of Goa in the present proceedings where it has been stated that permissions were granted for the **felling of 54,676 trees**. The EIA report ignored them. The submission in the EIA report that there were only sparse trees is sought to be explained by the state from the perspective of the large area of the land proposed for the project. It is sought to be explained that since the total area is 2,133 acres, the number of trees would proportionately work out to about 25 trees in an area of one acre (about one tree in an area of 160 square metres). In terms of the order passed by the Bombay High Court in the PIL, to which we have adverted earlier, the Principal Chief Conservator of Forests, Goa passed an order on 2 April 2018 providing for (i) the enumeration of all trees; (ii) exploring the possibility of transplanting existing trees which could be safely transplanted into ground areas; (iii) issuance of tree cutting permission by the Deputy Conservator of Forests; and (iv) planting of ten times the number of trees felled by the concessionaire under the supervision of the Forest Department.

96. On 6 February 2018, the Deputy Conservator of Forests had granted permission for felling of 21,703 trees. Following the dismissal of an appeal Under Section 15 of the Goa, Daman and Diu Preservation of Trees Act 1984 filed by the Federation of Rainbow Warriors, a Writ Petition was filed before the Bombay High Court⁴⁹. The High Court set aside the order of the Deputy Conservator of Forests and remanded the proceedings to the Principal Chief Conservator who passed the order which has been noted above. Following the order of the Principal Chief Conservator, 54,676 trees were enumerated. The competent authority granted permission for the felling of trees thereafter on the following dates: (i) 1,422 trees by an order dated 20 April 2018; (ii) 18,408 trees by an order dated 24 July 2018 and (iii) 33,298 trees by an order dated 1 October 2018. Following this exercise, the felling of trees was completed on 18 January 2019. The Bombay High Court having directed that the order of the Principal Chief Conservator of Forests shall be subject to the specific permission of the NGT in the pending proceedings, a Miscellaneous Application was moved before the NGT. While disposing of the main appeal, the NGT also disposed of the Miscellaneous Application and under the head of 'Biological Environment', the following directions have been issued:

E. Biological Environment

- 1.** Efforts be made to transplant the trees to other locations in the same vicinity by using appropriate mechanical devices which are available these days.
- 2.** Efforts be made to plant indigenous species which are tall in size rather than small saplings.
- 3.** Concerns have been raised by Appellants with regard to plant species 'Dipcadi concanense' which has been claimed to be a threatened plant. This claim of the Appellants have been negated by the Respondent by producing a documentation of

Botanical Survey of India, Western Regional Centre, Pune, Maharashtra titled as "A Note on Occurrence and Distribution of *Dipcadi concanense*". By invoking Precautionary Principle, we direct the Project Proponent to draw up a Conservancy by Plan/Scheme for '*Dipcadi concanense*' in collaboration with Forest Department, State of Goa and Botanical Survey of India and ensure its implementation.

97. We express our serious displeasure with the manner in which the EIA report made an attempt to gloss over the existence of trees. The EIA report prevaricated by recording that the area required for the proposed airport has only a few trees, mostly bushes. The EIA report states that vegetation and trees are sparse at the site. A photograph and a google map image are put forth as illustrations in figure 2.3 of Chapter II. To realise later that the project involved the felling of 54,676 trees is indicative of the cavalier approach to the issue and a process of fact finding which is parsimonious with the truth. *Post facto* explanations are inadequate to deal with a failure of due process in the field of environmental governance. The State of Goa would have us gloss over the felling of trees by submitting that 54,676 trees over a project area of 2,133 acres averages out to 25 trees per acre or one tree over an area of 160 square metres. This is a fallacious approach to the issue. Mathematical averages cannot displace factual data about the actual number of trees which were affected by the project. The EIA report ought to have scrutinized the number of trees, their nature and longevity. Issues such as the extent to which the trees or some of them were capable of being transplanted had to be considered in the EIA report. The location of the trees is also significant. In a given case, if the trees appear in clusters or in a dense formation in segments of the project site, it would be necessary to determine whether felling all of them was necessary for the project to be implemented.

98. In the written submissions which have been filed by the State of Goa, it has been submitted that of the 54,676 trees which were felled: (i) 32,193 trees representing 59% had a girth of 30 to 50 centimeters; (ii) 19,903 trees representing 36% had a girth of 50 to 100 centimeters; and (iii) 'only 2,580 trees' had a girth exceeding 100 centimeters. The Goa, Daman and Diu Preservation of Trees Act, 1984 defines the expression "tree" in Section 2(j) in the following terms:

Section 2(j) - "tree" means any woody plant whose branches spring from and are supported upon the trunk or the body and whose trunk or body is not less than ten centimeters in diameter at a height of one meter from the ground level and includes coconut palm.

This definition has been highlighted to indicate that it incorporates a stringent meaning of the expression 'trees'. The point, however, is simple: there was a glaring omission of the factual existence of as many as 54,676 trees in the EIA report. For project proponents, the environment may not possess a human voice. But the purpose of prescribing an EIA report is precisely to undertake a baseline study on all aspects of the environment and to anticipate the impact of a projected activity on the environment. Ignoring *any* component of the environment amounts to a serious dereliction of duty which detracts from the Rule of law in matters of environmental governance.

99. The order of the Principal Chief Conservator of Forests mandating transplantation, where possible, and the plantation of ten trees for every tree felled provides a measure of rectification. But there is a reason why issues pertaining to vegetational cover must be taken seriously in the EIA process. The formula of planting a set number of trees for every existing tree felled must be alive to the fact that the survival of new plantations is replete with uncertainty. The survival of transplanted trees is equally a matter of uncertainty. Though the development of infrastructure may necessitate the felling of trees, the process stipulated under the 2006 notification must be transparent, candid and robust. A regulatory regime for environmental governance is based on the hypothesis that all stakeholders will act with rectitude. Hiding significant components of the environment from scrutiny is not an acceptable modality to secure project approvals. There was a serious lacuna in regard to disclosures and appraisal on this aspect of the controversy.

G Public Consultation

100. 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.

101. Public consultation involves a process of confidence building by giving an important role to those who have a plausible stake. It also recognizes that apart from the knowledge which is provided by science and technology, local communities have an innate knowledge of the environment. The knowledge of local communities is transmitted by aural and visual traditions through generations. By recognizing that they are significant stakeholders, the consultation process seeks to preserve participation as an important facet of governance based on the Rule of law. Participation protects the intrinsic value of inclusion.

102. The 2006 notification postulates:

- (i) A public hearing at or in close proximity to the project site to ascertain the views of "locally affected persons";
- (ii) Obtaining written responses from "other concerned" individuals having a "plausible stake" in the environmental aspects of the project or the activity;
- (iii) The duty of the SPCB to conduct hearings and to forward the proceedings to the regulatory authority within the stipulated time;
- (iv) Placing on the website of the Pollution Control Board a summary of the EIA report in the prescribed format and the making available of the draft EIA report by the regulatory authority on a written request by any person concerned, for inspection;
- (v) The duty of the applicant to address all material concerns expressed during the process of public consultation;
- (vi) The making of appropriate changes in the draft EIA and EMP; and
- (vii) The submission of the final EIA report by the applicant to the regulatory authority for appraisal.

Each of these features is crucial to the success of a public consultation process. Public consultation cannot be reduced to a mere incantation or a procedural formality which has to be completed to move on to the next stage. 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.

103. 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. For this reason, the process of public consultation involves several important stages. The Pollution Control Board is under a mandate to forward the proceedings to the regulatory authority. The project proponent must address all material environmental concerns and make appropriate changes in the draft EIA and EMP. The project proponent may even submit a supplementary report to the draft EIA. Each of these elements is crucial to the design features of the 2006 notification. A breach will render the process vulnerable to challenge on the ground that: (i) significant environmental concerns have

not been taken into account; (ii) there was an absence of a full disclosure when the EIA report was put up for consultation; and (iii) concerns which have been expressed by persons affected by the project have not been adequately dealt with or analysed.

104. The public consultation was held on 1 February 2015 at Mopa. Nearly 70 persons spoke on the occasion and 1,586 persons signed the attendance sheet. 1,150 representations were received. Some of the environmental concerns expressed during the public hearing are catalogued below:

- (i) Mopa plateau has multiple water sheds and the discharge of water goes down to the rivers;
- (ii) Nearly forty springs would be affected along with flora and fauna;
- (iii) The public hearing had been conducted in an area where the land was barren and with no plantation;
- (iv) The impact on river Chapora, which is within a 10 kilometre radius from the project, has not been adequately analysed;
- (v) Mopa plateau has a natural mechanism for ground water recharge;
- (vi) Protection of the Western Ghats is necessary, particularly with the view to not disturb flora and fauna;
- (vii) The EIA report has not been made available to the affected areas and Gram Panchayats in the buffer zone;
- (viii) Local plantations would be affected;
- (ix) The number of trees to be felled by the project proponent has not been specified in the EIA report;
- (x) The Dodamarg Wildlife Sanctuary had been 'sanitized' by the High Court;
- (xi) Forest clearance had not been obtained;
- (xii) The sacred groves of the area have not been described, including the Barazan which will be lost;
- (xiii) The slopes sustain cashew plantations with nearly forty lakh cashew trees resulting in an annual income of Rs. Fifty crores; and
- (xiv) No study has been carried out in the 10 kilometre radius falling in Maharashtra.

105. These concerns are at the forefront of the debate in the present case. What is significant, is the manner in which they were projected before the EAC at its 149th meeting on 26 June 2015 where the project proponent made a presentation. The Minutes of the meeting recorded the following observations of the project proponent:

x. Public Hearing was conducted on 01.02.2015 at Simechen Adven, Mopa, Goa. **The major issues raised during public hearing and responses sought from the project proponent related to employment opportunities.**

On the basis of a factual analysis, Ms. Shenoy has submitted that only seven out of the 68 objections dealt with the issue of employment. Evidently, the project proponent failed to address the other significant concerns in the manner which is required by the 2006 notification.

106. In **Utkarsh Mandal v. Union of India** MANU/DE/3070/2009, the Delhi High Court has succinctly summarized the duty of the EAC to apply its mind to the objections raised in the course of public hearings:

It is that body that has to apply its collective mind to the objections and not merely the MoEF which has to consider such objections at the second stage. We therefore hold that in the context of the EIA Notification dated 14th September 2006 and the mandatory requirement of holding public hearings to invite objections it is the duty of the EAC, to whom the task of evaluating such objections has been delegated, to indicate in its decision the fact that such objections, and the response thereto of the project proponent, were considered and the reasons why any or all of such objections were accepted or negated. The failure to give such reasons would render the decision vulnerable to attack on the ground of being vitiated due to non-application of mind to relevant materials and therefore arbitrary.

107. Crucial objections and environmental concerns which were raised during the consultative process were reduced to a single issue by the project proponent before the EAC: the need for employment opportunities. The project proponent failed in its duty to inform the EAC. The record does not indicate a critical appraisal or analysis by the EAC. The EAC was duty bound to apply its mind to the environmental concerns raised by stakeholders. The duty of the project proponent to place fairly all the environmental concerns raised during the public hearing is the crucial link in the appraisal by the EAC. The Minutes of the meeting indicate that there was no fair and complete disclosure of the objections which were raised during the public hearing before the EAC. There is evidently a failure in the process of applying and implementing the norms laid down in the 2006 notification in this regard.

H Appraisal by the EAC

108. Appraisal by the EAC is structured and defined by the 2006 notification. The process of appraisal is defined to mean "a detailed scrutiny" by the EAC of the application and other documents like the EIA report and the outcome of the public consultation, including the public hearing proceedings, submitted by the applicant to the regulatory authority for the grant of an EC. The EAC is under a mandate to conduct the process of appraisal in "a transparent manner". On the conclusion of these proceedings, the EAC has to make "categorical recommendations" to the regulatory authority either for: (i) the grant of a prior environmental clearance on stipulated terms and conditions; or (ii) the rejection of the application. The recommendations made by the EAC to the regulatory authority must be based on "reasons".

109. The EAC, at its 149th meeting held on 26 June 2015, considered the EIA report and sought a clarification from the project proponent on the following six aspects:

- i. There is a need to superimpose the layout plan showing the drainage pattern including natural drainage, construction in the area on superimposed map showing clear topography of the region;
- ii. 10 year data regarding rain fall in the area;
- iii. Justification on sustainability of existing traffic and transportation arrangements especially at inter-section points of the approach road to the airport needs to be submitted;
- iv. A traffic circulation plan needs to be evolved for smooth running of traffic in the area;
- v. Measures taken to comply with the CPCB guidelines formulated for noise pollution control in airport areas to be submitted; and
- vi. Minimum 20% energy conservation measures should be adopted incorporating provisions for use of LED, star rated ACs etc. Revised Energy Conservation Plan to be submitted.

110. A representation was received from the Federation of Rainbow Warriors, consequent to which the consideration was deferred and the project proponent was requested to submit a

"point-wise reply to the issues raised" in the representation. The EAC, at its 152nd meeting held on 20 October 2015, observed that the project proponent had provided "pointwise clarifications to the concerns raised by the 'NGO'". The EAC noted thus:

- The EIA report has been updated by the PP after taking into account the issues raised in the public hearing and the same has been put in public domain.
- The project is outside the ESZ delineated by the Dr Kasturirangan Committee and TERI.
- The project envisages construction of rain water harvesting pits within the plot area, which would contribute to ground water recharge. Hence, the objection of NGO in this regard does not hold.
- The biological data in respect of flora and fauna was collected by the functional area experts of M/s. Engineers India Limited and not by M/s. Pragati Labs stationed at Goa during November, 2014 to January, 2015 for collection of ambient air quality, noise, water quality, soil, socio-economics.

Following the above statement, the EAC recommended the grant of an EC subject to certain conditions. Para 3.1.2 of the Minutes of the EAC is as follows:

The Committee noted the peculiar circumstances of the case and the difficulties in land acquisition which led to delay in preparation of the EIA report, and the larger public interest involved.

Keeping in view the fact that the project proponent has not concealed facts and circumstances of the case and the project is in the public interest, the Ministry may take an appropriate view on the objection that the public hearing could not have been held, in the absence of valid TOR, though the validity has been extended twice and regularized subsequently. The Committee also noted that the public hearing was attended by about 3000 people and hence there is substantive and active public participation as required under the law for public consultation.

The PP further provided their reply to the rebuttal by the said NGO on various issues.

The EAC, after deliberations, recommended the project for grant of EC subject to the above and the following:

- The project proponent shall ensure availability of adequate land at the junction of the Mopa Airport road and Mumbai/Goa NH 17 for traffic circulation/management and to provide for all the traffic interchanges and proposed clover.
- The approach and exit roads to the airport would be approved from the NHAI and should be according to IRC norms.
- A perusal of the Topo sheet superimposed on the runway area indicates that the extreme end of the runway is covering the drainage area partly. The drainage area which is under the runway needs to be channelized. The area between the parallel taxi way and run way needs to be handled carefully to drain the water from the area in the outfall.

111. The above explanation must be assessed with reference to the norm that the EAC is required to submit reasons for its recommendation. The above extract indicates that the EAC has adverted to the following circumstances:

- (i) The "peculiar circumstances" of the case;
- (ii) The difficulties in land acquisition which led to a delay in the preparation of the EIA

report;

(iii) The "larger public interest" involved;

(iv) The project proponent had not concealed facts and circumstances of the case;

(v) The project is in the public interest; and

(vi) The project proponent had provided a reply to the rebuttal by Rainbow Warriors on various issues.

This analysis of the EIA report is, to say the least, sketchy and perfunctory and discloses an abdication of its functions by the EAC. The requirement that the EAC must record reasons, besides being mandatory under the 2006 notification, is of significance for two reasons:

(i) The EAC makes a recommendation to the regulatory authority in terms of the 2006 notification. The regulatory authority has to consider the recommendation and convey its decision to the project proponent. The regulatory authority, as para 8(ii) provides, shall normally accept the recommendations of the EAC. Where it disagrees, it would request reconsideration, stating the reasons for its disagreement. In turn, the EAC will consider the observations of the regulatory authority and furnish its views within a stipulated period; and

(ii) The grant of an EC is subject to an appeal before the NGT Under Section 16 of the NGT Act 2010.

The reasons furnished by the EAC for its recommendation are a basic link in the ultimate decision of the regulatory authority. They constitute substantive material which will be considered by the Tribunal when it considers a challenge to the grant of an EC.

112. What, then, do the reasons which have been furnished by the EAC tell us? The EAC relies on the "peculiar circumstances of the case" as the basis of its recommendation. What the peculiar circumstances are, is left for pure guess work or surmise. The EAC refers to the delay in acquisition proceedings, a larger public interest and the fact that the project proponent "has not concealed facts and circumstances". Each one of the reasons which has weighed with the EAC betrays a lack of comprehension of the true nature of its function under the 2006 notification. The EAC has failed to consider relevant circumstances bearing on the environmental impact of the project and has instead considered circumstances extraneous to its function. That the project proponent, according to the EAC, has not concealed facts and circumstances is not reason enough to warrant a grant of an EC. Moreover, even this hypothesis (as we have seen earlier) is incorrect. There is no analysis of the EIA report. The EAC has failed to answer to the call to its expertise.

113. Clause (vi) of para 8 of the 2006 notification stipulates thus:

(vi) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice.

Deliberate concealment or the submission of false or misleading information or data material for screening, scoping, appraisal or decision on the application makes it liable for rejection. That the project proponent must submit all information and data without concealing relevant features is a basic hypothesis and expectation of the 2006 notification. The EAC has, in the brief reasons which are contained in para 3.1.2, not applied its mind at all to the environmental concerns raised in relation to the project nor do its reasons indicate an appraisal of those concerns by evaluating the impact of the project.

114. The EAC is an expert body. It must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment. It is not bound by the analysis which is conducted in the EIA report. It is duty bound to analyse the EIA report. Where it finds it deficient it can adopt such modalities which, in its expert decision-making capacity, are required. The reasons which are furnished by the EAC constitute a live link between its 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.

115. Mr. ANS Nadkarni, learned ASG urged that the EAC had, in its 149th meeting, sought additional information on six issues. Subsequently, at its 151st meeting, it deferred consideration upon the representation filed by the Federation of Rainbow Warriors and at its 152nd meeting, it analysed the response of the project proponent to the representation. Hence, the EAC must be deemed to have applied its mind. This approach is completely flawed. At its 149th meeting, the EAC specifically called for a clarification on six issues. The next meeting was deferred. The Minutes of the 152nd meeting contain no assessment of whether the clarifications which were sought by the EAC had been replied to its satisfaction by the project proponent. The objection to the modalities adopted by the EAC, however, are more fundamental. The Minutes of the 152nd meeting indicate that the EAC primarily, if not exclusively, dealt with the "pointwise clarifications" of the project proponent to the representation by the Federation of Rainbow Warriors. Dealing with a representation is not exhaustive of the function of the EAC. Arguably, if no representation was received, or if a representation submitted by an individual objector is found to be incorrect, that by itself is no ground to recommend an EC.

116. The EAC, as an expert body, has to scrutinize all relevant aspects of the project or activity proposed, including its impact on the environment. In taking that decision, the EIA report is an input for its analysis. The scrutiny and appraisal has to be undertaken by the EAC as an expert body and its reasons must reflect that this has been done. As the Minutes indicate, the non-application of mind by the EAC is evident with reference to the presence of 15 ESZs in the study area. The EAC notes that the project is outside the ESZ delineated by the Kasturirangan Committee. In the absence of a critical analysis, the EAC failed in discharging its duties under the 2006 notification. The recommendations of the EAC furnish a guide for the MoEFCC. 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.

I The appellate jurisdiction of the NGT: the requirement of a merits review

117. The NGT is entrusted with appellate jurisdiction Under Section 16 of the NGT Act 2010. Section 16(h) provides thus:

16. Tribunal to have appellate jurisdiction. - Any person aggrieved by,-

...

(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);

Section 20 mandates that the Tribunal shall, while passing any order, decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Several decisions of this Court have given meaning to these principles⁵⁰.

118. The decision of the NGT indicates that several significant submissions were urged before it. The entire analysis by the NGT is contained in one paragraph of its judgment dated 21 August 2018 which is extracted below:

27. We find that the Expert Appraisal Committee had before it point wise reply of the project proponent which we have already quoted above. Therein delay in land acquisition process and collection of fresh baseline data are mentioned. It is also mentioned that data for Maharashtra was also considered. Other issues duly explained are hydro-geological features and data with regard to flora and fauna, socio-economic profile, topography, vegetation, observance of due procedure in public hearing, relevance of study with regard to ecosensitive areas of Western Ghats, feasibility of proposed airport in terms of cost benefit analysis as well as environmental cost benefit analysis. EAC also considered the data compiled by various offices. Mere fact that different opinions have been expressed by other experts is not enough to hold that EAC did not apply its mind. The rehabilitation programme was also produced before the EAC.

The next paragraph contains a brief reference to the fact that the requirement of a study over a distance of 15 kilometres is in regard to the collection of secondary data. The above paragraph, in our view, does not fulfil the requirement of a merits review by an expert adjudicatory body vested with appellate jurisdiction.

119. The NGT Act provides for the constitution of a Tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment. In order to be eligible for appointment as an expert member, a person must fulfill the following qualifications prescribed in Section 5(2):

- (2) A person shall not be qualified for appointment as an Expert Member, unless he,
 - (a) has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experience in the field of environment and forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution; or
 - (b) has administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or a State Government or in a reputed National or State level institution.

The NGT is an expert adjudicatory body on the environment.

120. In two of its previous decisions, the NGT has shown the path along with which it must traverse in arriving at its decisions. In **Save Mon Region Federation v. Union of India** MANU/GT/0029/2013 : 2013 (1) All India NGT Reporter 1, the grant of an EC to a 780 Megawatts Hydroelectric Project in Tawang district of Arunachal Pradesh was challenged. The NGT framed the question before it in broad terms:

...the material issue, therefore, that needs to be answered in the present Appeal is as to whether the process of grant of prior EC to the project in question suffers from vice of faulty scoping process or not.

Having reviewed the information furnished in Form 1 by the project proponent as well as the multiple reports on record on the bird species involved in the site for the proposed project, the NGT held that facts material to the case were not present before the EAC and the consequent 'vacuum in the EIA report' lead to aberrations in the appraisal process conducted by it. Suspending the EC granted to the project, the NGT accepted the contention which was urged before it that the NGT has the 'authority to take an appropriate decision on the facts placed before it' and 'set aside or suspend the EC'.

Similarly, in **Shreeranganathan K.P. v. Union of India** 2014 ALL (I) NGT Reporter (1) (SZ)

1, the grant of an EC to the KGS Aranmula International Airport Project was challenged. The NGT found fault with the process leading to up to the grant of the EC since sector specific issues had not been dealt with. The NGT extensively reviewed the information submitted by the project proponent in Form 1, the deficiencies in the EIA report, the process of appraisal conducted by the EAC and the sector specific guidelines laid down with regard to the constructions of airports and held thus:

182. ... a duty is cast upon the EAC or SEAC as the case may be to apply the cardinal principle of Sustainable Development and Principle of Precaution while screening, scoping, and appraisal of the projects or activities. While so, it is evident in the instant case that the EAC has miserably failed in the performance of its duty not only as mandated by the EIA Notification, 2006, but has also disappointed the legal expectations from the same. For a huge project as the one in the instant case, the consideration for approval has been done in such a cursory and arbitrary manner without taking note of the implication and importance of environmental issues. ...Thus, the EAC has not conducted itself as mandated by the EIA Notification, 2006 since it has not made proper appraisal by considering the available materials and objections in order to make proper evaluation of the project before making a recommendation for grant of EC.

187. ...the Tribunal is of the considered opinion that there is no option but to scrap the impugned EC granted by the MoEF to the 3^d Respondent/project proponent for setting up the Aranmula airport.

121. The failure to consider materials on a vital issue and indeed the non-consideration of vital issues raises a substantial question of law leading to the invoking of the jurisdiction of this Court Under Section 22 of the NGT Act 2010. The failure of process in the present case has been compounded by the absence of a merits review by the NGT.

122. The learned ASG has placed reliance on the decision of this Court in **Lafarge Umiam Mining Private Limited v. Union of India** MANU/SC/0735/2011 : (2011) 7 SCC 338 ("Lafarge") to contend that the failure to disclose the presence of trees should not lead to the invalidation of the EC. In that case, an application was made under the 1994 notification for the grant of an EC to a proposed limestone mining project at Nongtraï Village, East Khasi Hills District, Meghalaya. EC was granted for the project in 2001. Pursuant to a letter by the Principal Chief Conservator of Forests to the MoEF drawing attention to the nondisclosure of forests, the project proponent applied for a revised EC and forest clearance under the Forest (Conservation) Act 1980. An ex post facto EC along with forest clearance was granted in 2010. Challenging the grant of the EC, it was urged that there was a failing on part of the project proponent to disclose the presence of forests on the proposed project site.

123. A three judge Bench of this Court rejected the challenge and upheld the grant of the EC to the proposed project. This Court relied, among other factors, on the following: (i) the mining of limestone in the Khasi Hills dates back to 1763 and is an integral part of the culture of the Nongtraï Village; (ii) the site was cleared after thorough consultation with the custodian of the land, who decided to lease the land for the mining project following the loss of revenue caused due to mining by the unorganized sector; (iii) the Headman of the Nongtraï and the village durbar, who participated at the public hearing and filed written submissions before this Court, supported the project and certified that no damage would be caused to adjacent lands; (iv) at the stage of site clearance, the MoEF had before it certificates by the Executive Committee, Khasi Hills Autonomous District Council and the DFO, Khasi Hill Division, Shillong, certifying that there were no forests in the proposed project site; (v) the DFO certified that that the proposed mining site was not a forest as defined in **Godavarman** (supra); (vi) the 2006 notification was not applicable; and (vii) the MoEF had, at multiple stages, sought clarifications from the project proponent and had undertaken requisite care and caution to protect the environment. Upholding the grant of the EC and the forest clearance, this Court held thus:

120. ...The word "development" is a relative term. One cannot assume that the tribals are not aware of principles of conservation of forest. **In the present case, we are**

satisfied that limestone mining has been going on for centuries in the area and that it is an activity which is intertwined with the culture and the unique landholding and tenure system of Nongtra Village. On the facts of this case, we are satisfied with the due diligence exercise undertaken by MoEF in the matter of forest diversion. **Thus, our order herein is confined to the facts of this case.**

124. The decision of this Court in **Lafarge** (supra), was based on the facts summarized above. Significantly, the standard of judicial review which must be applied in cases relating to the environment has been formulated by the three judge Bench in **Lafarge** (supra). Chief Justice S H Kapadia noted that the doctrine of proportionality must be applied to matters concerning the environment as part of judicial review. The principles of judicial review in environmental matters have been enunciated thus:

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.

125. In a recent three judge Bench decision of this Court in **Mantri Techzone Pvt. Ltd. v. Forward Foundation** MANU/SC/0315/2019 : (2019) 4 SCALE 218, this Court had the occasion to construe the provisions of Section 22 of the NGT Act 2010. Speaking for the Bench, Justice Abdul Nazeer held that the test to determine whether a substantial question of law arises (within the meaning of Section 100 of Code of Civil Procedure) was formulated in the decision of a Constitution Bench in **Sir Chunilal V. Mehta and Sons, Ltd. v. Century Spinning and Manufacturing** MANU/SC/0056/1962 : 1962 Supp. (3) SCR 549, where it was held thus:

The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.

Re-appreciation of the 'factual matrix' has been held to be distinct from a substantial question of law. In the present case, we have indicated the basis for the invocation of the jurisdiction of this Court Under Section 22. There was a failure to follow binding norms under the 2006 notification. There were serious flaws in the decision-making process. Relevant material has been excluded from consideration and extraneous circumstances were borne in mind. The EAC as an expert body abdicated its obligations to make an expert determination based on reasons. The NGT as an adjudicatory body failed to exercise the jurisdiction entrusted to it Under Section 16(h) read with Section 20 of the NGT Act 2010 by merely deferring to the decision to recommend and grant an EC. The parameters in regard to the existence of substantial questions of law have hence been established in the classical or conventional sense of that expression.

J Environmental Rule of Law

126. Fundamental to the outcome of this case is a quest for environmental governance within a Rule of law paradigm. Environmental governance is founded on the need to promote environmental sustainability as a crucial enabling factor which ensures the health of our eco system.

127. Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement - both in developed and developing countries alike.⁵¹ The environmental Rule of law seeks to address this gap.

128. The environmental Rule of law provides an essential platform underpinning the four pillars of sustainable development-- economic, social, environmental, and peace.⁵² It imbues environmental objectives with the essentials of Rule of law and underpins the reform of environmental law and governance.⁵² The environmental Rule of law becomes a priority particularly when we acknowledge that the benefits of environmental Rule of law extend far beyond the environmental sector. While the most direct effects are on protection of the environment, it also strengthens Rule of law more broadly, supports sustainable economic and social development, protects public health, contributes to peace and security by avoiding and defusing conflict, and protects human and constitutional rights.⁵² Similarly, the Rule of law in environmental matters is indispensable "for equity in terms of the advancement of the Sustainable Development Goals⁵³, the provision of fair access by assuring a rights-based approach, and the promotion and protection of environmental and other socio-economic rights."⁵⁴

129. Amartya Sen argues for a broadening of the notion of sustainable development which is the most dominant theme of environmental literature, from a need-based standard⁵⁵ to a standard based on freedoms.⁵⁶ Thus recharacterized, it encompasses the preservation, and when possible even the expansion of the substantive freedoms and capabilities of people today without compromising the capability of future generations to have similar-or more-freedoms. The intertwined concepts of environmental Rule of law thus further intragenerational as well as intergenerational equity.

130. Decision 27/9 which was adopted by the United Nations Environment Programme's⁵⁷ Governing Body at its first universal session in 2013 on 'Advancing Justice, Governance and Law for Environmental Sustainability' was the first internationally negotiated document to establish the term 'environmental Rule of law.' It declared that "the violation of environmental law has the potential to undermine sustainable development and the implementation of agreed environmental goals and objectives at all levels and that the Rule of law and good governance play an essential role in reducing such violations". It thus urged governments and organisations to reinforce cooperation to combat noncompliance with environmental laws towards achieving sustainable development. It also called upon the Executive Director to assist with the "development and implementation of environmental Rule of law with attention at all levels to mutually supporting governance features, including information disclosure, public participation, implementable and enforceable laws, and implementation and accountability mechanisms including coordination of roles as well as environmental auditing and criminal, civil and administrative enforcement with timely, impartial and independent dispute resolution." Similarly, the first United Nations Environment Assembly in 2014 adopted resolution 1/13, which calls upon countries "to work for the strengthening of environmental Rule of law at the international, regional and national levels."

131. In 2016, the First World Environmental Law Congress, cosponsored by the International Union for Conservation of Nature and UN Environment, adopted the IUCN World Declaration on the Environmental Rule of Law⁵⁸ which outlines 13 principles for developing and implementing solutions for ecologically sustainable development:

- (i) Obligation to Protect Nature
- (ii) Right to Nature and Rights of Nature
- (iii) Right to Environment.

- (iv) Ecological Sustainability and Resilience
- (v) In Dubio Pro Natura
- (vi) Ecological Functions of Property
- (vii) Intragenerational Equity
- (viii) Intergenerational Equity
- (ix) Gender Equality
- (x) Participation of Minority and Vulnerable Groups
- (xi) Indigenous and Tribal Peoples
- (xii) Non-regression
- (xiii) Progression

132. Dhvani Mehta's doctoral thesis⁵⁹ explores this idea of environmental Rule of law in the Indian context by analysing the functioning of the three institutions of the government with regard to environmental law. It develops a framework to assess whether the environmental Rule of law in India is being strengthened or weakened, through an analysis of the legal instruments of each of the institutions of government--statutes, executive orders, and judicial decisions. The indicators on the basis of which this is done are: a) the capacity of statutes to guide behaviour (one of the organising principles of the Rule of law) by clearly articulating goals or balancing competing interests; b) the ability of the executive to take flexible but reasoned decisions grounded in primary legislation; and c) the ability of the judiciary to apply statutory interpretation and consistent standards of judicial review to give effect to environmental rights and principles.

133. In 2015, the International community adopted the 2030 Agenda for Sustainable Development and its 17 SDGs⁶⁰. These 17 goals are:

- (i) Eradication of poverty;
- (ii) Eradication of hunger;
- (iii) Good health and well-being;
- (iv) Quality education;
- (v) Gender equality;
- (vi) Clean water and sanitation;
- (vii) Affordable and clean energy;
- (viii) Decent work and economic growth;
- (ix) Industry, innovation and infrastructure;
- (x) Reduced inequalities;
- (xi) Sustainable cities and communities;
- (xii) Sustainable consumption and production;
- (xiii) Climate action;
- (xiv) Protecting life below water;

- (xv) Life on land;
- (xvi) Peace, justice and strong institutions; and
- (xvii) Partnerships to achieve the goals.

134. Each of these goals has a vital connection to the others. Together, they provide an agenda for human development: development in a manner which accords adequate protection to the environment. The UNEP recognises that the natural environment - forests, soils and wet lands - contributes to the management and Regulation of water availability and water quality, strengthening the resilience of water sheds and complements investments in physical infrastructure and institutional and regulatory arrangements for water access and disaster preparedness.

135. SDG 13 emphasises the urgent action required to combat climate change and its impacts. This is based on the recognition that extreme weather events such as heat waves, droughts, floods and tropical cyclones have aggravated the need for water management, pose a threat to food security, increase health risks, damage critical infrastructure and interrupt the provision of basic civil services.

136. The statistics on climate change indicate that:

- (i) Between 1880 and 2012, average global temperatures have increased by 0.85 degrees Celsius;
- (ii) Between 1901 and 2010, as ocean expanded, the global average sea level has risen by 19 centimeters;
- (iii) Since 1990, global emissions of CO₂ increased by almost 50 per cent; and
- (iv) Between 2000 and 2010, emissions grew at a more rapid rate than each of the three decades preceding it.

137. In this backdrop, SDG 16 emphasises the need to protect, restore and promote sustainable use and management of terrestrial eco systems and forests, combat desertification of river lands, prevent land degradation and halt the loss of biodiversity. Terrestrial eco systems provide a range of eco system services including the capture of carbon, maintenance of soil quality, provision of habitat for biodiversity, maintenance of water quality and Regulation of water flow together with control over erosion. Maintenance of eco systems is hence crucial to efforts to combat climate change, mitigate and reduce the risks of natural disasters including floods and landslides. In this backdrop, promoting environmental justice and ensuring strong institutions is quintessential to promoting peaceful and inclusive societies for sustainable development. SDG 16 therefore construes the promotion of the Rule of law as intrinsic towards implementing multilateral environmental agreements and progressing towards internationally agreed environmental goals.

138. On 2 October 2016, India ratified the Paris Agreement⁶¹ on climate change which reaffirmed the goal of 'limiting global temperature increase to well below 2 degrees Celsius, while pursuing efforts to limit the increase to 1.5 degrees above pre-industrial levels'. Article 5 of the Agreement encourages parties to conserve and enhance sinks and reservoirs of greenhouse gases, which includes forests. Under its Nationally Determined Contributions under the Paris Agreement, India made the following three commitments⁶²:

- (i) Greenhouse gas emission intensity of its Gross Domestic Product will be reduced by 33-35% below 2005 levels by 2030;
- (ii) 40% of India's power capacity would be based on non-fossil fuel sources; and
- (iii) An additional 'carbon sink' of 2.5 to 3 billion tonnes of CO₂ equivalent through

additional forest and tree cover will be created by 2030.

139. In March 2019, UNEP released the Global Environment Outlook themed 'Healthy Planet, Healthy People'.⁶³ Noting clear 'links between human health and the state of the environment', the report concludes that clean-up and efficiency improvements are not adequate to pursue the 2030 Agenda and the SDGs and achieve the internationally agreed environmental goals on pollution control. Instead, 'transformative change' which reconfigures basic social and production systems and structures is needed. This includes well-designed policies on institutional frameworks, social practices, cultural norms and values along with their implementation, compliance and enforcement. In this view, a systemic and integrated policy action⁶³ would ensure that a "healthy environment is a prerequisite and foundation for economic prosperity, human health and well-being"⁵²

140. The Rule of law requires a regime which has effective, accountable and transparent institutions. Responsive, inclusive, participatory and representative decision making are key ingredients to the Rule of law. Public access to information is, in similar terms, fundamental to the preservation of the Rule of law. In a domestic context, environmental governance that is founded on the Rule of law emerges from the values of our Constitution. The health of the environment is key to preserving the right to life as a constitutionally recognized value Under Article 21 of the Constitution. Proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment Under Article 14 of the Constitution.

141. The 2006 notification must hence be construed as a significant link in India's quest to pursue the SDGs. Many of those goals, besides being accepted by the international community of which India is a part, constitute a basic expression of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the aspirations of our own Constitution. The fundamental principle which emerges from our interpretation of the 2006 notification is that in the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive.

142. Repeatedly, it has been urged on behalf of the State of Goa, MoEFCC and the concessionaire that the need for a new airport is paramount with an increasing volume of passengers and consequently the flaws in the EIA process should be disregarded. The need for setting up a new airport is a matter of policy. The role of the decision makers entrusted with authority over the EIA process is to ensure that every important facet of the environment is adequately studied and that the impact of the proposed activity is carefully assessed. This assessment is integral to the project design because it is on that basis that a considered decision can be arrived at as to whether necessary steps to mitigate adverse consequences to the environment can be strengthened.

143. In the present case, as our analysis has indicated, there has been a failure of due process commencing from the non-disclosure of vital information by the project proponent in Form 1. Disclosures in Form 1 are the underpinning for the preparation of the ToR. The EIA report, based on incomplete information has suffered from deficiencies which have been noticed in the earlier part of this judgment including the failure to acknowledge that within the study area contemplated by the Guidance manual, there is a presence of ESZs.

144. The EAC, as an expert body abdicated its role and function by taking into account circumstances which were extraneous to the exercise of its power and failed to notice facets of the environment that were crucial to its decision making. The 2006 notification postulates that normally, the MoEFCC would accept the recommendation of the EAC. This makes the role of the EAC even more significant. The NGT is an adjudicatory body which is vested with appellate

jurisdiction over the grant of an EC. The NGT dealt with the submissions which were urged before it in essentially one paragraph. It failed to comprehend the true nature of its role and power Under Section 16(h) and Section 20 of the NGT Act 2010. In failing to carry out a merits review, the NGT has not discharged an adjudicatory function which properly belongs to it.

145. In this view of the matter, neither the process of decision making nor the decision itself can pass legal muster. Equally, as an area requiring balance between development of infrastructure and the environment, we are of the view that appropriate directions should be issued by this Court, which would ensure that while the need for a public project as significant as an international airport is duly factored into the decision making calculus, such development proceeds on a considered view of the importance of the prevailing state of the environment. Bearing in mind the need to bring about a wholesome balance between the development of infrastructure of an airport and the preservation of the environment, we have come to the conclusion that time bound directions should be issued.

146. Bearing in view the necessity to maintain a balance between the need for an airport and environmental concerns, we are of the view that it would be appropriate if the EAC is directed to revisit the conditions subject to which it granted its EC on the basis of the specific concerns which have been highlighted in this judgment. Such an exercise primarily is for the EAC to carry out in its expert decision making capacity. The EAC is entrusted with that function as an expert body. The role of judicial review is to ensure that the Rule of law is observed. Hence, we propose by the directions which we will issue Under Article 142 of the Constitution, to direct the EAC to revisit the conditions for the grant of an EC. While doing so, it would be open to the EAC to have due regard to the conditions which were incorporated in the order of the NGT and to suitably modulate those conditions in pursuance of the liberty which we have preserved to it. To facilitate an expeditious decision, we propose to direct the EAC to carry out this exercise in a prescribed time Schedule during which period, the EC shall remain suspended. We propose to direct that after the EAC has formulated its views, they shall be placed before this Court in a Miscellaneous Application in the present proceedings, so as to enable the Court to pass final orders. The Miscellaneous Application may be filed either by the State of Goa as the project proponent or by the MoEFCC. We clarify that no other Court or Tribunal shall entertain any challenge to the ultimate decision of the EAC and final orders thereon shall be passed by this Court in the present proceedings.

K Directions

147. We accordingly issue the following directions:

- (i) The EAC shall revisit the recommendations made by it for the grant of an EC, including the conditions which it has formulated, having regard to the specific concerns which have been highlighted in this judgment;
- (ii) The EAC shall carry out the exercise under (i) above within a period of one month of the receipt of a certified copy of this order;
- (iii) Until the EAC carries out the fresh exercise as directed above, the EC granted by the MoEFCC on 28 October 2015 shall remain suspended;
- (iv) Upon reconsidering the matter in terms of the present directions, the EAC, if it allows the construction to proceed will impose such additional conditions which in its expert view will adequately protect the concerns about the terrestrial eco systems noticed in this judgment. The EAC would be at liberty to lay down appropriate conditions concerning air, water, noise, land, biological and socio-economic environment;
- (v) The EAC shall have due regard to the assurance furnished by the concessionaire to this Court that it is willing to adopt and implement necessary safeguards bearing in mind international best practices governing greenfield airports;
- (vi) We grant liberty to the State of Goa as the project proponent and the MoEFCC, as

the case may be, to file the report of the EAC before this Court in the form of a Miscellaneous Application so as to facilitate the passing of appropriate orders in the proceedings; and

(vii) No other Court or Tribunal shall entertain any challenge to the report that is to be submitted before this Court by the EAC in compliance with the present order.

148. Before we part with the present case, we consider it appropriate to record a finding on the *bona fides* of the Appellants before this Court. It was briefly urged by the Respondents that the Appellants have invoked the jurisdiction of this Court based on a personal agenda and consequently, the present appeal is liable to be dismissed. This argument cannot be accepted. We accept the submission of Ms. Shenoy, learned Counsel appearing on behalf of the Appellants, that the non-consideration of vital issues by the EAC has led to the invocation of the statutory remedy available to them Under Section 22 of the NGT Act 2010. Vague aspersions on the intention of public-spirited individuals does not constitute an adequate response to those interested in the protection of the environment. If a court comes to the finding that the appeal before it was lacking *bona fides*, it may issue directions which it thinks appropriate in that case. In cases concerning environmental governance, it is a duty of courts to assess the case on its merits based on the materials present before it. Matters concerning environmental governance concern not just the living, but generations to come. The protection of the environment, as an essential facet of human development, ensures sustainable development for today and tomorrow.

149. The learned Attorney General for India has presented the submissions before this Court with his characteristic sense of objectivity and candour. We wish to record our appreciation for the able assistance rendered to this Court by Ms. Anitha Shenoy, learned Counsel for the Petitioner, Mr. ANS Nadkarni, learned Additional Solicitor General for the MoEF, Mr. Parag P Tripathi, learned senior Counsel and Ms. Aastha Mehta, learned Counsel for the concessionaire.

150. The appeal is allowed in the above terms. There shall be no order as to costs.

Civil Appeal No. 1053 of 2019

151. This appeal is also disposed of in the same terms, conditions, directions and observations as in Civil Appeal No. 12251 of 2018.

¹NGT

²EC

³PPP

⁴MoEF, later renamed as MoEFCC in 2014

⁵S.O. 1533 ('2006 notification')

⁶SEIAA

⁷Guidance manual

⁸ToR

⁹EAC

¹⁰EIA

¹¹GGIAL

¹²Appeal No. 61 of 2015

¹³Appeal No. 1 of 2016

¹⁴Appeal Nos. 5 and 6 of 2018

¹⁵Act 6 of 1984

¹⁶PIL

¹⁷MA No. 975 of 2018

¹⁸Civil Appeal No. 12251 of 2018

¹⁹Civil Appeal No. 1053 of 2019

²⁰AG

²¹ASG

²²ESZ

²³ARP

²⁴HLWG

²⁵Kasturirangan report

²⁶SPCB

²⁷NGT Act 2010

²⁸CPCB

²⁹2013 notification

³⁰Stockholm Conference

³¹S.O. 60(E) ('1994 notification')

³²EMP

³³IAA

³⁴EC

³⁵S.O. 1533 ('2006 notification')

³⁶SEAC

³⁷SPCB

³⁸UTPCC

³⁹Only for construction projects listed under item 8 of the Schedule

⁴⁰Applications for EC for expansions or modernization of existing units as stipulated under the notification are made in Form 1 and shall be considered by the EAC or the SEAC within 60 days, which will decide on the due diligence necessary including the preparation of the EIA and public consultations and the application shall be appraised accordingly for the grant of environmental clearance.

⁴¹SPCB

⁴²UTPCC

⁴³NO_x

⁴⁴CO

⁴⁵HC

⁴⁶SO₂

⁴⁷See for instance para 2.0 of the executive summary and para 2.3.1 of Chapter I

⁴⁸See Para 2.3.1, Chapter II

⁴⁹WP No. 1 of 2018

⁵⁰**Vellore Citizens Welfare Forum v. Union of India**, MANU/SC/0686/1996 : (1996) 5 SCC 647; **M.C. Mehta v. Kamal Nath**, MANU/SC/1007/1997 : (1997) 1 SCC 388; **M.C. Mehta v. Union of India**, MANU/SC/0175/1997 : (1997) 2 SCC 353; **A.P. Pollution Control Board v. Prof M.V. Nayudu (Retd.)**, MANU/SC/0032/1999 : (1999) 2 SCC 718; **Narmada Bachao Andolan v. Union of India**, MANU/SC/0640/2000 : (2000) 10 SCC 664; **Indian Council for Enviro Legal Action v. Union of India**, MANU/SC/0837/2011 : (2011) 8 SCC 161

⁵¹United Nations Environment Programme, First Environmental Rule of Law Report. Available at https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y

⁵²Ibid

⁵³SDGs

⁵⁴UN Environment, Environmental Rule of Law. Available at <https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we->

do/promoting-environmental-rule-law-0

⁵⁵Brundtland definition of Sustainable Development

⁵⁶Amartya Sen, Sustainable Development and our responsibilities. Available at <http://www.comitatoscientifico.org/temi%20SD/documents/SEN%20Responsibility&SD%2010.pdf>

⁵⁷UNEP

⁵⁸IUCN, Environmental Rule of Law. Available at: <http://www.iucn.org/commissions/world-commission-environmental-law/wcel-resources/environmental-rule-law>

⁵⁹Dhvani Mehta, The Environmental Rule of Law in India, University of Oxford, 2017. Available at <https://ora.ox.ac.uk/objects/uuid:730202ce-f2c4-4d2f-9575-938a728fe82a>

⁶⁰SDGs

⁶¹Entered into force on 4 November 2016

⁶²India's Intended Nationally Determined Contribution: Working Towards Climate Justice at P. 29, submitted to the UNFCCC secretariat

⁶³Global Environment Outlook 6, UNEP, 4 March 2019

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MANU/GT/0162/2022

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Appeal No. 17/2021 (I.A. No. 240/2021 and I.A. No. 21/2022)

Decided On: 31.05.2022

Appellants: **University of Delhi**
Vs.Respondent: **Ministry of Environment Forest and Climate Change and Ors.****Hon'ble Judges/Coram:***Adarsh Kumar Goel, J. (Chairperson), Sudhir Agarwal, J. (Member (J)), A. Senthil Vel and Dr. Afroz Ahmad, Members (E)***Counsels:***For Appellant/Petitioner/Plaintiff: Sanjay Upadhayay, Advocate**For Respondents/Defendant: Atmaram N.S. Nandkarni, Senior Advocate, Mahesh Agarwal and Kumar Rajesh Singh, Advocates***JUDGMENT****Sudhir Agarwal, J. (Member (J))**

1. University of Delhi through its Registrar, North Campus, Delhi has filed this appeal under Section 16(h) of National Green Tribunal Act, 2010 (hereinafter referred to as 'NGT Act 2010') assailing Environmental Clearance (hereinafter referred to as 'EC') dated 21.05.2021 issued by Ministry of Environment, Forest & Climate Change (hereinafter referred to as 'MoEF&CC') in favour of M/s. Young Builder Private Limited (respondent 11) (hereinafter referred to as 'PP') for construction of group housing project with built up area as 1,37,879.64 m² at 1, 3 Cavalry Lane and 4 Chhatra Marg, Near Vishwavidhyalaya Metro Station, New Delhi. The project comprises 5 number buildings/blocks. Total 446 flats shall be developed. Maximum height of the building permitted by the above EC is 145.3 meter. Details of the buildings, given in para 4(iv) of EC dated 21.05.2021, are as under:

S. No.	Buildings Blocks	Max. No. of Floors
1	Block-A	2 Podium + Stilt + 2 Fire Check Floors + 38
2	Block-B	2 Podium + Stilt + 2 Fire Check Floors + 38
3	Block-C	2 Podium + Stilt + 2 Fire Check Floors + 38
4	EWS	Ground + 1 Fire Check Floors + 28
5	Community Block	Lv. 1 & 2
6	No. of Basement	02

2. Facts in brief giving rise to the present appeal, pleaded in memo of appeal are as under:

3. University of Delhi (hereinafter referred to as 'DU') was established in 1924 pursuant to Delhi University Act, 1922 (hereinafter referred to as 'DU Act 1922'). Presently, DU comprises 16 faculties, 82 post-graduate department, 85 colleges and 20 advanced research centers, with around 1,82,000 regular students and more than 7,00,000 students in the distance learning stream. The principal seat of DU, together with many

colleges, departments and research centers is located in North Delhi, commonly called as North Campus. There are large number of old historical buildings, Viceroy's Lodges, colleges which belong to colonial period, etc. Persistent efforts have been made to preserve unique characteristics of DU's North Campus under Master Plan of Delhi (hereinafter referred to as 'MPD') and zonal plan of Zone 'C'.

4. The land in question belonged to Ministry of Defense. For the purpose of Delhi Metro Rail Corporation (hereinafter referred to as 'DMRC'), a parcel of land, admeasuring 3.05 hectares, situated at Mall Road, Cavalry Lane and Chhatra Marg, falling in zone C (Civil Line zone) of MPD-2021, was acquired and handed over to DMRC. Mutation also took place entering name of DMRC in municipal record. Land use, categorized under MPD 2021, was "Public and Semi-public facility". On 13.08.2008, DMRC transferred two hectares of land to PP for development of a group housing project. Agreement between DMRC and PP was executed on 15.12.2008. Possession of land was handed over to PP by DMRC on 23.01.2009.

5. State Environment Impact Assessment Authority (hereinafter referred to as 'SEIAA') granted EC to PP on 13.08.2012 under Environment Impact Assessment Notification 2006 (hereinafter referred to as 'EIA 2006'). PP submitted application dated 09.02.2018 to SEIAA for amendment of EC dated 13.08.2012 which SEIAA granted on 23.03.2018 permitting construction of 'group housing project' on an area of 20,000 m² with built up area, 1,17,733.81 m² having A+G+37 floors with 410 dwelling units. This EC dated 23.03.2018 permitting amendment in the initial EC dated 13.08.2012 was challenged by applicant in Appeal No. 112/2018, University of Delhi vs. MoEF & CC & Others on various grounds. Memo of Appeal 112/2018 is annexure A/4 (page 96) which shows grounds raised in the said appeal, inter-alia as under:

(i) project is in category A and SEIAA has no authority to grant EC;

(ii) there is suppression of material of facts;

(iii) non-consideration of relevant aspects namely ambient air quality standards in terms of noise, air pollution vis-à-vis traffic congestion, water requirement and environmental concerns, waste management, fire safety standards, impact of the proposed project on the northern ridge, violation of the approved Master Plan/Development Plan etc.

6. Tribunal vide order dated 08.01.2020 constituted a Joint Committee comprising CPCB, MoEF&CC and IIT, Delhi requiring evaluation of relevant data and not the old data base. Tribunal also directed Committee to undertake carrying capacity study of the area with reference to the project in question based on the relevant data. An interim order was also passed directing that no further construction activity would be undertaken and status quo would be maintained. Operative part of order dated 08.01.2020, in para 4 and 5, read as under:

"4. Applying the 'Precautionary Principle' of environmental law, we consider it necessary to require an evaluation of relevant data and not the old database by a joint Committee comprising representatives of the CPCB, MoEF & CC and IIT Delhi. The CPCB will be the nodal agency for coordination and compliance. The Committee may also undertake carrying capacity study of the area with reference to the project in question based on the relevant data. The study may be completed preferably within two months. The report may be furnished to this Tribunal before the next date by e-mail at judicialngt@gov.in.

5. In the meanwhile, no further construction activity may be undertaken and status quo as on today may be maintained. It will be permissible for the applicant as well as to the project proponent to furnish their viewpoint to the Member Secretary, CPCB for consideration by the Committee within two weeks from today."

7. PP preferred Civil Appeal No. 341/2020, M/s. Young Builders Pvt. Ltd. vs. University of Delhi & Others. The principal ground raised before Supreme Court was that counter affidavit filed by PP was not taken into consideration while passing interim order/status-quo. Upholding the contention that Counter affidavit along with documents, since available when order was passed, ought to have been considered before passing the order, Supreme Court allowed appeal vide judgment dated 28.01.2020, set aside order dated 08.01.2020 and directed Tribunal to take note of the counter affidavit, consider the matter on merit and pass order in accordance with law, expeditiously.

8. Tribunal, thereafter, considered various issues in detail in its order dated 27.02.2020 and found that the project does not appear to be viable and require an independent evaluation in the interest of environment and public health. Consequently, Tribunal constituted an independent Committee to make assessment on various aspects to ascertain viability of the project having regard to the existing environmental status and realistic impact of project on the recipient environment, including, in terms of the ambient air quality. Tribunal also continued the restraint order against PP from proceedings with any further activity, and matter was directed to be listed on 09.07.2020. Operative part of the order dated 27.02.2020, contained in para 62, said as under:

"62. While prima facie the project does not appear to be viable for the reasons already mentioned, we are of the view that least which ought to be done is to suspend the EC, consequential Consent to Establish and further activities of the project proponent and have an independent evaluation conducted in the interest of environment and public health.

We have already noted the stand taken by the DPCC that SEIAA is not functional and DPCC is only a secretariat for SEIAA without any SEIAA member available. Thus, the evaluation will now have to be done by an independent Committee to ascertain viability of the project having regard to the existing environmental status and realistic impact of the project on the recipient environment, including in terms of the ambient air quality.

The assessment may be made independent of the observations made herein above within two months from today.

The Committee will comprise a senior representative of MOEF&CC; a senior scientist from the Indian Council of Forestry Research and Education, Dehradun; a scientist/engineer from the Central Ground Water Board, New Delhi; a senior scientist/engineer from the Central Pollution Control Board; a representative of National Disaster Management Authority, Govt. of India; representative of School of Planning and Architecture, New Delhi, senior scientists on each from Wadia Institute of Himalayan Geology, Dehradun, G.B. Pant Institute, Almora and IIT Kanpur. The Nodal Agency for compliance and coordination will be Member Secretary, CPCB. First meeting of the Committee may be held preferably within two weeks from today. The Registry may furnish a copy of complete set of paper book to the Member Secretary, CPCB forthwith.

Interim order dated 03.02.2020 restraining the project proponent from proceeding with any further activity will continue till the next date.

A copy of this order be sent to Secretary, MOEF&CC; Director General, Indian Council of Forestry Research and Education, Dehradun; the Central Ground Water Board, New Delhi; the Central Pollution Control Board; National Disaster Management Authority, Govt. of India; School of Planning and Architecture, New Delhi, Wadia Institute of Himalayan Geology, Dehradun, G.B. Pant Institute, Almora and IIT Kanpur by e-mail so that their representatives are nominated immediately."

9. PP preferred Civil Appeal 2485/2020, M/s. Young Builders Pvt. Ltd. vs. University of Delhi & Others in Supreme Court against order dated 27.02.2020 passed by Tribunal. Appeal was disposed of affirming the order of Tribunal for constitution of independent Committee comprising various experts as also representatives of Statutory Regulators. Supreme Court, however, made it clear that Committee shall examine various aspects including viability of project without being influenced by any of the opinion expressed by Tribunal in the order dated 27.02.2020 and respective parties shall also be at liberty to submit their representations and be given opportunity before final report is submitted to Tribunal. The relevant extract of Supreme Court's order dated 10.06.2020 reads as under:

"3. Dr. Shayam Diwan, learned senior counsel appearing for the appellant, inter alia raised various contentions that the appellant earlier obtained environmental clearance on 13.08.2012 which was challenged by University of Delhi which was rejected up to the Supreme Court. Therefore because of change of laws, a fresh environmental clearance was obtained on 23.03.2018 which is the subject matter of the present appeal. He has further contended that the National Green Tribunal was not justified in constituting a Committee de hors the rules, and the appellant is therefore aggrieved by the impugned order.

4. Mr. K.V. Vishwanathan, learned senior counsel appearing for respondent No. 1-University of Delhi, has submitted that the earlier clearance dated 13.08.2012 does not survive on account of change of law, and the appellant has obtained a fresh clearance on 23.03.2018 which is the subject-matter of challenge by the University of Delhi. The National Green Tribunal has rightly constituted the Committee to examine the various aspects of the project.

5 . By the impugned order the National Green Tribunal has constituted a Committee comprising of various experts and also representatives of the Ministry of Environment Forest and (MoEF) and Climate Change (CC) and other experts.

6. We direct the Committee to examine various aspects including the viability of the Project without being influenced by any of the opinions expressed by the being by any National Green Tribunal in the impugned order. The appellant, University of Delhi and Delhi Metro Rail Corporation are at liberty to file their respective representation along with requisite documents before the Committee within the period of two weeks. The Committee before it starts its first deliberation shall afford an opportunity of preliminary hearing to the appellant, University of Delhi and Delhi Metro Rail Corporation. Likewise, the Committee shall also afford a further opportunity of hearing to the appellant, University of Delhi and Delhi Metro Rail Corporation before it submits its final report before

the Tribunal 1.

7. The Committee shall complete the deliberation and submit its final report within two months from the date of the representation being filed by the appellant and University of Delhi and Delhi Metro Rail Corporation. The Member Secretary, Central Pollution Control 1 Board, shall coordinate and take necessary steps for convening the meeting of the Committee. The meeting of the Committee shall be conducted by virtual hearing, or video conferencing, and afford an opportunity of hearing to the representatives of the parties, mentioned above.

8. After submission of the final report by the said Committee, the appellant, University of Delhi and Delhi Metro Rail Corporation are at liberty to raise all the contentions/points before the National Green Tribunal 1.

9. Since we have directed the Committee to examine the issue without being influenced by any of the opinions expressed by the National Green Tribunal, it is not by necessary to pass any further direction. The civil appeal is accordingly disposed of with the above direction and observation."

10. Appellant filed objection/representation dated 07.07.2020 before Committee through Member Secretary, CPCB who was the nodal agency, copy whereof is annexure A/9 (page 224).

11. Committee filed its report dated 10.12.2020 titled "Rapid Indicative Environment Assessment". Appellant filed objections on 15.01.2021. PP also filed written submissions on 18.01.2021. Thereafter, matter was taken up by Tribunal on 20.01.2021 but during the course of arguments, learned Senior Counsel appearing on behalf of PP made a statement that he has to apply for fresh EC to MoEF & CC and impugned EC will not be acted upon, hence, matter does not require disposal on merits. Recording above statement, Tribunal disposed of appeal as infructuous. Relevant extract of order dated 20.01.2021, in para 12 to 14, read as under:

"12. When we took up the matter for final consideration, learned Senior Counsel for the project proponent made a statement that as per his instructions, the project proponent has to apply for fresh EC to the MoEF & CC and the impugned EC will not be acted upon. Learned Counsel for the appellant states that if the impugned EC is not to be acted upon and the matter is to be considered afresh by the MoEF & CC on merits the appeal may be disposed of as infructuous, without prejudice to the rights to challenge the fresh EC which may be granted.

13. In view of above stand of the parties, it is no longer necessary for this Tribunal to go into the merits and express any final view about viability of the project or otherwise.

14. Accordingly, the appeal is disposed of as infructuous, without prejudice to the rights and remedies of the parties in accordance with law."

12. PP, thereafter, applied for fresh EC vide application dated 06.02.2021, submitted to MoEF&CC, proposing construction of 4 towers on an area of 20,000 m², built up area 1,37,879 m² comprising two basements+43 floors and 446 dwelling units and 145.3 meters height of the building. Evidently, proposal/application submitted by PP was a substantial extension/expansion of earlier project which comprised built up area

1,17,733.81 m²; S+G+ 37 floors and 410 dwelling units and 139.6 meters building height. Application was considered by Environmental Assessment Committee (hereinafter referred to as 'EAC') in its 62nd meeting held on 01.03.2021. Minutes of the meeting were uploaded on 12.03.2021. EAC sought following clarifications/information:

- "i. Clarification for the proposal of 2 basements with reference to recommendation of the committee constituted by NGT and Supreme Court Order.
- ii. Analyse the discrepancies and resubmit the conceptual plan after making the necessary revisions. Water balance flowchart needs to be revised.
- iii. Air pollution management in the context of Graded Action Plan for Delhi & NCR.
- iv. Point-wise replies to representation made by Delhi University."

13. In the meantime, after consideration of application by EAC on 01.03.2021 but before forwarding recommendations on 12.03.2021, appellant filed representation dated 02.03.2021 (annexure A/14, page 447) before EAC/MoEF & CC. PP submitted response dated 22.03.2021 in respect of clarification sought by EC. EAC then considered matter in 64th meeting on 13.04.2021 and recommended for grant of EC. The minutes of EAC dated 13.04.2021 are on record as annexure A/17, Page 540. MoEF & CC consequently, issued impugned EC dated 21.05.2021 to PP. Challenging above EC dated 21.05.2021, appellant has taken a number of grounds, which in brief, are:

- (i) Term of reference was not provided as per EIA 2006 as amended by notification dated 17.02.2020.
- (ii) EAC wrongly made observation that Appeal No. 112/2018 was dismissed.
- (iii) Suggestions made by the independent Committee constituted by Tribunal vide order dated 27.02.2020 of limiting basement to one due to impact on natural flow of ground water not considered.
- (iv) Water requirement for construction phase and operation phase is underestimated.
- (v) No clarity was provided by PP on the use of ground water yet EC was granted without considering this aspect.
- (vi) Office memorandum dated 23.05.2019 issued by MoEF & CC (IA Division) pursuant to Tribunal's order passed in OA 176/2015 was not considered.
- (vii) Status of area with regard to scarcity of ground water and its effect on northern ridge was not considered.
- (viii) Carrying capacity study of the area with regard to available water resource not conducted as per the direction of Tribunal.
- (ix) Site in question falls under sub-zone C 13 (University area) where tall buildings are restricted under MPD 2021 and Zonal Development Plan (hereinafter referred to as 'ZDP') of Zone C.
- (x) Department of Health, Education and Land, Government of India through its

letter dated 25.10.1943 issued by the Joint Secretary has said that no unseemly buildings shall be erected in the neighbourhood of Delhi University and regulatory body should consult University of Delhi before buildings plans are approved but no heed was paid to the said direction.

(xi) Issue to traffic congestion has not been considered properly.

(xii) Traffic analysis report of 2018 was relied by EAC though grant of EC was considered in 2021, hence old data was relied which was impermissible.

(xiii) Carrying capacity of the area particularly AAQ being beyond prescribed national standards was not appreciated and considered.

(xiv) Impact of dust pollution as also nearby hospitals, science labs etc. we're not considered.

(xv) Area in question was not considered to be a silence zone though area is an education hub.

(xvi) Fire safety aspect was not properly considered.

(xvii) Particular capacity of fire department to deal with fire incident in high rise buildings in the light of observations made by Delhi High Court in order dated 20.01.2016 W.P.(C) 1476/2014, Vikas Singh vs. Lt. Governor & Others not considered.

(xviii) The impact on northern ridge was not considered.

(xix) K.S. Rao report with regard to seismicity of the area not given due attention.

(xx) Soil investigation report of 2018 was considered for the project in 2021.

(xxi) Several material facts were concealed/withheld/falsely stated by PP.

(xxii) Dissent of two members of SEAC who had earlier apprised EC dated 23.03.2018 has not been considered.

(xxiii) Committee constituted by Lt. General gave adverse report on traffic load and ambience of University but has not been given due weight particularly dissenting view recorded by one of the members.

(xxiv) Tribunal's order dated 10.02.2020 has not been complied with.

(xxv) Impact on population density not given due attention.

(xxvi) Waste management steps are neither detained nor specific steps were mentioned and considered.

(xxvii) Consent to establish was not obtained.

(xxviii) Cutting of trees is erroneous/misleading/suspicious.

14. Appeal was considered by Tribunal on 27.08.2021. Noticing contentions advanced on behalf of appellant, Tribunal issued notices to MoEF&CC who has granted EC and also PP, the beneficiary i.e., the person in whose favour EC was granted. In fact, PP

appeared through Counsel and, therefore, as prayed, time was allowed to file response. Statement of Senior Counsel Shri Atmaram N.S. Nandkarni, appearing for PP was also recorded that no further steps for construction/development of project will be taken except seeking clearances from the authorities, if any. Relevant extract of the order, in para 3 and 4, reads as under:

"3. We have heard learned Counsel for the appellant and perused the record. Since this Tribunal has to conduct merit review of the decision granting EC, it is necessary to put the affected parties to notice and call for the record.

4. Issue Notice to Respondents - MoEF & CC and the PP. Shri Atmaram N.S. Nadkarni, Senior Advocate alongwith Mr. Mahesh Agarwal has entered appearance for Respondent No. 11. He seeks time and granted time to file response, if any, within one month. Notice may be served on MoEF&CC by e-mail by the registry as well as by the appellant. The appellant may file affidavit of service within one week. Response, if any, by MoEF&CC may be filed within one month. A photo copy of the record may be either filed with the registry or kept ready at the time of hearing."

Affidavit-in-Reply dated 27.09.2021 filed on behalf of respondent 11 (wrongly mentioned as respondent 2 in present appeal) i.e., Young Builders Pvt. Ltd. (PP)

15. A very detailed reply running in 231 paragraphs and 135 pages (excluding annexures) has been filed raising preliminary objections, other legal objections as also response on merits.

16. PP has pleaded that DMRC conducted a public auction in 2008 for construction of a residential group housing project wherein PP was successful bidder offering Rs. 218.2 Crores auction price which was accepted; the amount was paid in full; vacant possession was handed over in January 2009 and Lease Deed was executed by DMRC in favour of PP on 19.02.2013 for a period of 90 years.

17. Preliminary submissions raised by PP included the allegation that appellant is guilty of abuse of process; appeal is motivated to somehow prevent a legitimate, legal group housing society to raise construction on the plot in question for residential use in a planned residential development zone; project site is not located in North Campus area of University of Delhi and impression given by appellant to this extent is misleading; similar argument was raised by appellant in WP filed before Delhi High Court in WP(C) No. 2743/2012, dismissed by a Learned Single Judge of Delhi High Court vide judgment dated 27.04.2015 (Annexure R4 at page 904 of paper book), where against LPA 89/20018 was dismissed by Division Bench vide judgment dated 29.10.2018 (Annexure R5 at page 948 of paper book) and the said orders were upheld by Supreme Court vide order dated 17.12.2019 [MANU/SC/1761/2019 : (2020) 13 SCC 745] while dismissing SLP(C) No. 5581-82/2019; these orders have not been disclosed by appellant, hence is guilty of concealment of material facts and suppression which are adequate reasons for dismissal of the appeal; issues have already attained finality in the above judgments, the same cannot be re-agitated and are barred by principles of res judicata; issues relating to high-rise buildings, threat to privacy of nearby Girls' Hostel and parking problem are all concluded by the above judgments and cannot be permitted to be reagitated by appellant.

18. Relying on Supreme Court's judgment in Rajeev Suri v. Delhi Development Authority & Others ("Central Vista case"), PP has said that the issues unrelated with environment cannot be examined by Tribunal since NGT is not a plenary body with

inherent powers to address concerns of residuary character; it is a statutory body with limited mandate over environmental matters as and when they arise for its consideration; it cannot directly enquire into and adjudicate the concerns of violation of fundamental rights and Tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute.

19. Commenting on merits, PP has pleaded that all the contentions and allegations leveled by appellant are baseless, frivolous and deserve to be dismissed; EC was granted to PP after due consideration by several Expert Members from time to time and wherever they have found it necessary, various conditions have been imposed upon PP; once a decision has been taken by an Expert Committee comprising subject experts covering all relevant aspects including carrying capacity with a focus on the Ambient Air Quality and noise level of the area, proximity to environmentally sensitive areas such as northern ridge, fresh traffic study and groundwater situation etc., Tribunal must keep away its hand from interfering with such expert's opinion. Again, reliance is placed on the observations made by Supreme Court in paras 380, 492, 494, 495, 515 of the judgment in Central Vista (supra).

20. The next objection is selectivity on the part of appellant to challenge the chosen project of PP while similar other projects, coming in the surrounding area, have neither been objected nor challenged. Details of such projects are given in para 46 of reply as under:

S. No.	Project	EC Date	Built-up (Sqm)	DU/ EWS (Nos.)	Height (Mtr)	Base-ment	Parking (ECS)	Distance Yamuna (Mtr)	Distance Ridge (Mtr)
1	Northern India Paint, Canal Road	29.06.21	32,133	DUs-64 EWS-38	81.0	1	298		
2	Godrej Ashok Vihar	17.06.21	347,102	DUs-1200 EWS-622	100.0	2	3308	--	--
3	Negolice India (M2K)	13.01.21 16.05.07	1,72,855	DUs-488 EWS-287	235.0	3	1,801	5310	4200
4	Parsvnath Landmark	14.07.20 02.07.07	2,55,562	DUs-505 EWS-390	125.6	3	3,256	613	425
5	North Delhi Metro Mall	15.11.19 12.04.16	1,60,375	Not applicable	44.1	4	1,894	784	76
6	DLF Home Developers	11.10.19	10,00,726	DUs-2900 EWS-1862	179.2	4	8,836	--	--
7	Delhi Floor Mills Co. Ltd.	17.09.19	1,32,987	DUs-346 EWS-276	165.0	3	1,143	2920	558
8	DCM Ltd.	19.09.17	10,05,604	Not applicable	180.0	3	9,858	--	--
9	Young Builder (P) Ltd.	22.05.21	1,37,879	DUs 222 EWS-224	157.8	2	860	1800	500

21. PP has pleaded that SEIAA has granted EC to at least 8 large scale buildings and construction projects in Delhi which are currently under execution, of which 06 are in the same zone, i.e., Civil Lines/North Delhi. Appellant has not raised any objection in respect thereof.

22. Comparing the project in question, it is pleaded that there are certain other construction projects closer to environmentally sensitive zones such as northern ridge, river Yamuna and have more basement floors than PP's project but it is only the project in question which has been objected and challenged in the appeal. In the vicinity of PP's project, there are three projects with three or more basements in contrast to the project of PP which has only two basements. The questioned project is located next to underground station of Delhi Metro which has excavated land much deeper than the questioned project. Another project, namely, Parsvnath Landmark is 425 meters from northern ridge and 613 meters from river Yamuna, whereas the questioned project is 500 meters away from the northern ridge and 1800 meters away from the river Yamuna but no objection has been raised in respect of other projects and this approach of appellant shows its mala fide and vindictive conduct.

23. Then coming to the merits of the grounds taken by appellant in appeal, PP has responded each aspect in paras 47 to 231. At this stage, we may refer the stand of PP in brief, and consider the same in detail later, while adjudicating issues on merits.

24. Response of PP with reference to the points of objections, is as under:

A. Non-preparation of Term of Reference (ToR):

25. PP has pleaded that the built-up area of project is 1,37,879.64 m² and it is under Item 8(a) of the Schedule to EIA 2006, comes in 'Category B2'. As per para 7 (II) of EIA 2006, only 'Category A' or 'Category B1' projects require preparation of ToR. Relying on the Notification dated 17.02.2020 amending para 7 of EIA 2006, it is said that the projects under 'Category B2' also does not require Scoping. Further as per new amendment, expansion proposals of existing projects having earlier prior EC required ToR but project in question is new one for which fresh EC has been obtained. Therefore, even the said provision does not apply.

B. Wrongful observation about dismissal of Appeal 112/2018.

26. It is said that the objection is nothing but a cherry-picked reading of EC. A complete reading of EC shows that it refers to dismissal of Appeal as infructuous and not on merits. The objections, therefore, is misleading and a patent wrong also.

C. Limiting of basement to only one due to impact on natural flow of ground water:

27. The objection of appellant that the above aspect was not considered, has been denied. PP has pleaded that Expert Committee appointed by Tribunal in Appeal 112/2018 recommended that the project be limited to one basement. However, the said suggestion was never put forth to PP while it made presentation before Committee, otherwise, it could have been properly replied by PP. EAC while apprising project in the meeting dated 01.03.2021 sought information from PP regarding number of basements in the light of recommendations of above Expert Committee and also sought point-wise reply to the objections raised by appellant. PP submitted detailed reply giving clarifications on the points raised by appellant including the number of basements and said:

"(i) Ground water backing up around the basements and impacting neighboring areas is a general consequence of basement construction below ground water levels. However, there are measures widely implemented in such situations and, if correctly designed and constructed, there will not be any significant ground water back up around the basement.

(ii) The basement design in such cases provides for adequate groundwater drainage systems to prevent groundwater backing up around the basement. Whether water is moving across the land surface or through the sub surface, it moves due to gravity. Water moves from an area of high head (or elevation) potential towards an area of low head (or elevation) potential. Installation of soil drains such as a French are also employed to reduce the buildup of moisture in flat areas. After construction of the basement the Ground water would return to its original level.

(iii) Drained cavity systems are also effective; they work by trapping any water that penetrates the structure and channeling it by gravity into a collection sump. The water is then removed by being pumped, out of the basement. The

system can be drained by gravity also.

(iv) In general, basements usually have some form of drainage systems built around them. Foundation drainage systems generally include weeping tiles around the outside of the home, which drain to a sewer or a sump pump. These systems are designed to keep the ground water around the foundation lower than the basement floor.

(v) Further, since dewatering is also employed in the construction of Sub water level structures, prior permission for dewatering is a regulatory prerequisite. Accordingly, the answering Respondent has applied for permission for dewatering to the District Advisory Committee on Ground Water of the Govt. of NCT Delhi on 06.08.2020. The answering Respondent undertakes to comply with the decision and/or conditions imposed by the Central Ground Water Authority for two basements.

(vi) It is submitted that the said NOC is granted as per the "Guidelines to regulate and control ground water extraction in India" ("the Guidelines") dated 24.09.2020 issued by the Ministry of Jal Shakti, Union of India pursuant to the Orders of this Hon'ble Tribunal and the Hon'ble Supreme Court. The Guidelines contain a detailed list of measures to be adopted by the Applicant for monitoring ground water. Further, specific conditions are mandatorily to be followed by the Applicant such as regular monitoring of dewatering discharge, installation of a STP and payment of abstraction charges/ground water restoration charges depending on the level of ground water in the area. Further, the Applicant must submit an impact assessment report prepared by an accredited consultant on the ground water situation in the area giving detailed plan of pumping, proposed usage of pumped water and comprehensive impact assessment of the same on the ground water regime. Therefore, the entire process enshrined under the Guidelines ensures that environmental risks are considered and management strategies to overcome any significant environmental issues such as ground water level decline, land subsidence are proposed and implemented.

A Copy of the "Guidelines to regulate and control ground water extraction in India" dated 24.09.2020 issued by the Ministry of Jal Shakti, Union of India are annexed herewith and marked as ANNEXURE R-8. (From Pg. 988 to 1016)

(vii) Further, the answering Respondent has already planned to take suitable measures for controlling basement backup and ensuring that there is no hindrance caused to the natural flow of ground water in the area. The following measures will be undertaken in this regard:

- a. The excavation is kept dry.
- b. The basement design includes protection against ground water ingress to the finished development. Designs, to the satisfaction of the competent Authority, will afford sufficient protection in the event of ground water flooding.
- c. The basement design includes ground water drainage systems/French Drains to prevent ground water backing up around the development and thereby protect neighbouring properties from impact.

d. Footing drains, sloping away from the basement and discharging into recharge structures or land, as necessary, are also be provided with the concurrence of the competent authority, completely around the basement along with drains beneath the basement floor. The basement floor will rest on a bed of gravel, and the gravel will have perforated drain pipes laid in to prevent any water from accumulating beneath the basement floor. The drains will be perforated pipes, usually PVC or some other type of thermoplastic and laid on several inches of gravel at the base of the footings and covered by gravel. The gravel, being much more permeable than the soils, allows water to rapidly drain into the perforated pipes and channelled away before it can even contact the basement wall.

e. Coil drains such as a French drain are installed, if necessary, to reduce the build-up of moisture in areas upstream of the basement.

f. All basement construction projects follow the requirements of the British standard BS 8102:2009 code of practice for the protection of below ground structures against water from the ground.

g. The Basement construction follows IS:3067 (1988). Code of practice for general design details and preparatory work for damp proofing of building.

h. The basement construction follows IS:12251 (1987). Code of practice for drainage of building basements.

i. The basement construction follows the guidelines given in IS 1742-1983 regarding disposal of Surface and subsoil waters.

j. All necessary conditions in the permissions for dewatering for basement construction are complied with."

D. Underestimation of water requirement for construction and operation of phases

28. PP stated before EAC that during construction phase water requirement would be about 280 million litre, i.e., 2 KL/sqm of built up area and it will be met by treated water through tankers supplied by Delhi Jal Board ('DJB'). The submission of appellant that project would require embodied water quantity of 27.6 KL/sqm of built-up area is misleading, in as much as, embodied water quantity of a multistoried apartment is the amount of water to be used by PP during construction phase. Embodied water quantity is different from water required for construction. 'Embodied water' is generally regarded as the amount of water which goes into making something embodied and is defined as an amount of water required to manufacture products including extracting raw materials, transporting those materials and processing them into final products. Embodied water includes water used in the manufacture of all raw materials required in the construction industry including water used in the production of cement and steel and other raw materials and is different from water used in the premises for construction.

29. In the study entitled "Assessment of water resources consumption in building construction in India" by S. Bardhan, Department of Architecture, Jadavpur University, India, 2011, it is indicated that water consumption during actual construction process would be only 8% of total embodied water of the materials together which is the water consumption within respective industries at the material production stage. Table 1 of

the said paper providing Assessment of Embodied water in the materials of case study is reproduced in para 61 as under:

S. No.	Materials	Quantity used	Unit	EWC efficient (KL/Unit)	Total embodied water in material (KL)	Embodied water per unit floor area (KL/Sq.m)
1	Cement	154,858	Ton	1	154858	0.5
2	Bricks	42849.37	Cum	0.71	30423	0.1
3	Steel	38906	Ton	200-250	7781200	25
4	Aluminum	15143	Kg	0.088	1332.584	0.004
					Total embodied water of major materials	25.604

30. As per own admission of the appellant, the estimated requirement of water for construction is at the rate of 2KL/sqm which is in accordance with the observations made in the referred study and this is what has been calculated by PP in respect of project in question.

E. Source of treated water used in construction phase.

31. EAC was informed by PP that water requirement of 280 million liters will be met by treated water from tankers for which permission and clearances would be taken after grant of EC and this subsequent requirement of clearance is in accordance with para 8(v) of EIA, 2006. PP has also said that it has entered into an agreement for supply of treated water for construction purposes.

F. Use of Ground water in construction

32. PP said that it will not use ground water during construction and it was made clear to EAC also.

G. Estimation of water requirement during operation phase

33. PP has stated in Form-I and submitted to EAC that during operation phase, water requirement for project would be met by water supplied by DJB. Total quantity of water requirement would be about 222 KLD, out of which 158 KLD of fresh water will be met by supply of DJB, while 64KLD water will be recycled water as treated in the situ STP of the project. Copy of the letter dated 05.06.2021, issued by DJB has been filed as annexure R-10 (page 1026).

34. In the meeting dated 01.03.2021, EAC sought clarification regarding water balance chart which was replied by PP. The total water requirement for project is based upon the figures as provided in manual on norms and standards for EC for large construction projects published by MoEF&CC. The allegation of underestimation is incorrect. Project was planned to cater water requirement as per National Building Code norms of 135 liters per capita per day (hereinafter referred to as 'lpcd'). During the hearing on 24.02.2018, before SEAC Delhi, PP was required to revise figures to conform to DJB Guidelines, suggesting 200 lpcd of water which was complied by PP vide letter dated 09.03.2018 (annexure R-11 at page 1040) submitted to SEAC revising water requirement to 200 lpcd.

35. While submitting application for prior EC, PP was advised on the need to minimize water consumption by recycle, harvesting and re-use. Accordingly, project has been conceptualized and designed. Conservation of water can be achieved by reduction of per capita consumption of water from 135 litre lpcd to 86 litre lpcd. PP was also advised to follow water quantity norms as provided in the manual published by MoEF&CC.

36. Manual states at para 2.3.1.1 that as per BIS standards for residential buildings with a population of 20000-100000, per capita consumption is 100-150 lpcd and for those with population above 100000, consumption is 150-200 lpcd out of which 45 lpcd may be taken for flushing requirements and remaining for other domestic purposes. It has also stated that for other buildings this may vary from 30 lpcd to 240 lpcd. Manual has also suggested measures to reduce this demand through the use of water saving devices, low flow flushing systems, sensor-based fixtures, automated flushing urinals, use of low flow faucets, use of low flow shower heads, use of tap aerators and other water efficient appliances. Dual pipe plumbing is also recommended for reuse of recycled water for flushing. Manual has suggested that the water consumption can be brought down from 135 lpcd to 86 lpcd if suitable measures for recycle, reuse and low flow symptoms are practiced. Table 2.4 from the manual quantifying reduction is being reproduced below:

Category	Consumption	Reduced Consumption (lpcd)	Reduction %
Human Consumption	7	7	Nil
Bathing	20	20	Nil
Flushing	45	21	53%
Washing	40	15	62%
Miscellaneous	23	23	Nil
Total	135	86	36%

37. Appellant has wrongly pleaded that per capita water consumption would be 96.4 liters per day per person. On the contrary, as per table 2.4 of the manual, MoEF takes into consideration 86 lpcd as reduced water consumption for residential purposes and includes water for human consumption, bathing, flushing, washing and miscellaneous purposes. Apart from this, there is water requirements for visitors, non-residential population, swimming pool water make up and also landscape water requirement. Chart of water consumption details submitted before EAC by PP is as under:

WATER REQUIREMENT				
Purposes	Population/ Area	Rate of Consumption	Quantity kld	Source
Domestic	2302 heads	65 lpcd	150	Fresh (DJB supply)
Flushing	2302 heads	21 lpcd	49	Recycled Water
Non-Residential				
Domestic	30 heads	25 lpcd	0.75	Fresh (DJB supply)
Flushing	30 heads	20 lpcd	0.6	Recycled Water
Visitors				
Domestic	230 heads	5 lpcd	1.15	Fresh (DJB supply)
Flushing	230 heads	10 lpcd	2.3	Recycled Water
Swimming Pool Water Makeup	270 sqm	20 mm/sqm loss	5.4	Fresh (DJB supply)
Landscape Water Requirement	6113 sqm	21/sqm	12	Recycled Water
Total Water Requirement			221.2~222 kld	

The Water consumption details as already given are as follows:

1	Domestic and Flushing (Residential, 2302 Heads)	199 KLD	@86 lpcd
2	Domestic and Flushing (Non-residential) 30 Heads	1.35 KLD	@25 lpcd domestic and 20 lpcd flushing
3	Domestic and Flushing (Visitors) 230 Heads	3.45 KLD	@5 lpcd domestic and 10 lpcd flushing
4	Swimming Pool make up	5.4 KLD	
5	Landscape requirement	12 KLD	
	Total	222 KLD	

38. Appellant's contention that in case DJB is not able to meet water requirement, PP would avail groundwater for making any deficit ignoring that PP has already given undertaking that it would not use any groundwater during construction or operational phase and it is one of the special conditions in EC. EC also contains safeguards imposing various conditions which are reproduced in para 87 of reply as under:

"(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 should be designed to follow the natural topography, as much as possible. Minimum cutting and filling should be done.

(iii) The quantity of fresh water usage, water recycling and rainwater harvesting shall be measures to protect 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.

(iv) 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.

(v) 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.

(vi) 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.

(vii) 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.

(viii) 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.

(ix) Water demand during construction should be reduced by use of pre-mixed concrete, curing agents and other best practices referred.

(x) Rain water harvesting recharge pits/storage tanks shall be provided for ground water recharging as per the CGWB norms.

(xi) 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.

(xii) All recharge should be limited to shallow aquifer.

(xiii) No ground water shall be used during construction phase of the project.

(xiv) 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.

(xv) 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.

(xvi) Sewage shall be treated in the STP with tertiary treatment.

(xvii) No sewage or untreated effluent water would be discharged through storm water drains.

(xviii) 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.

(xix) Periodical monitoring of water quality of treated sewage shall be conducted. Necessary measures should be made to mitigate the odour problem from STP.

(xx) 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."

H. EC granted without clarity provided by PP on the use of groundwater

39. This argument has no basis once PP has already said that it will not use groundwater for construction or operational phase.

I. OM dated 23.05.2019 not followed

40. PP has said that OM is not applicable, since it is not using groundwater for the project.

J. Status of area with regard to scarcity of groundwater and impact on Northern Ridge

41. Here also, the objection is baseless as PP is not going to use any groundwater and further Northern Ridge is about 500 mtrs. from project and there is no question of exacerbating pressure on the groundwater in the area or its detrimental impact on the

vegetation in the Northern Ridge or the campus of university.

K. Carrying Capacity study with regard to water resources not conducted

42. The objection is denied by stating that this aspect has been considered and findings are recorded with regard to carrying capacity assessment qua availability of water and the same read as under:

"It is understood that no ground water will be extracted during construction & occupancy phase of the project. The water requirement during construction will be met through private tankers and during occupancy by Delhi Jal Board for which necessary permission have been obtained. Further, 0.003% increase in water requirement in the grid is anticipated.[...]

Water Demand and Solid waste: An increase of 0.003% (of water demand in the grid) in the freshwater requirement, 0.002% in discharge of treated sewage into the municipal sewer, an increase of 1.27% in solid waste generation from the current generation in the grid was considered nominal."

L. Objection with regard to MPD-2021 and ZDP of Zone C relating to height of the building.

43. PP has said that this issue cannot be permitted since already decided in WP(C) No. 2743/2012 which proceedings have finalized up to Supreme Court and appeal was dismissed vide order dated 17.12.2019.

M. Lack of Traffic analysis

44. PP has replied on this aspect stating that evaluation made by Prof. Geetam Tiwari in January 2020 was based on a traffic survey prepared by PP in 2011 and fails to take into consideration assessments carried out by PP thereafter. Traffic survey was conducted in 2018 with regard to use of cars and width of road etc. PP has said that the objections raised by Appellant to the Committee were recorded, including Appellant's main points of disagreement, being inter alia the width of the surrounding roads (Chhatra Marg and Cavalry Lane) being contrary to the data submitted by PP, and that atleast 900 vehicles will be added to the current load, causing appreciable increase in vehicular pollution in the area.

45. Application of mind of Expert Committee is clear insofar as Committee has estimated that number of cars owned by the residents of the Project shall be 410 — 2, and in its expert opinion, daily usage on average shall be of 1.5 cars, therefore, the daily traffic load will increase by 615 cars. On the contrary, Prof. Geetam Tiwari's report is based on an estimated traffic of 320 Passenger Car Units ('PCU'), and suggested that since the Project is for High Income Group ('HIG') residents, daily usage shall be of 2 cars, therefore, increasing traffic load by 640 cars. However, Committee, after considering both reports, in its expert opinion, came to the above-said conclusion of 1.5 cars per day per household.

46. Appellant has also not disclosed the specific finding in the 2018 Survey, which inter-alia concludes that a substantial proportion of personal trips will be made by Delhi Metro, especially due to Project's nearness to the Vishwavidyalaya Metro Station, being at walking distance. Further, Appellant has not disclosed the finding that existing volume by capacity ratio ('v/c ratio') shall increase from 0.56 (considering a local, two-lane, two-way carriageway) to 0.857 as per Indian Roads Congress Report No. 106

('IRC 106'). Report, therefore, concluded that an estimated v/c ratio of 0.85 would not create congested conditions on Cavalry Lane. PP has also relied on Specific Condition No. A(x), B (VIII)(iii) of EC.

N. Width of approach roads narrower

47. This objection has been denied by PP by stating as under:

"...As per the Layout Plan dt. 18.09.2020, as approved by the North MCD, i.e. the municipal authority, the width of Cavalry Road is 24mtrs and that of Chhatra Marg is 18mtrs. The Committee constituted by this Hon'ble Tribunal has suggested an acceptable level of service even during peak traffic hours...

...as per Engineering Principles, the capacity of a road is calculated by the Formula-" $C = 1,000 \frac{V}{S}$ ", where C is the Capacity, V is the Speed and S is the centre-to-centre spacing between vehicles. Therefore, the formulated/theoretical capacity of a road is not a function of its length or width, but in fact of the speed of the vehicles and the spacing between them, being directly proportionate to the speed and inversely proportionate to the spacing, meaning thereby that faster average speed would increase the capacity and higher spacing would reduce the capacity...

...for Chhatra Marg, the average speed being 22 kmph, and a centre-to-centre spacing of 9.07m, the formula works out to " $C = 1000 \frac{22}{9.07}$ " which is equal to 2425.57, rounded off to 2426. For Cavalry Marg, the average speed is 22.5 kmph and the spacing is 9.17m, therefore, the capacity is " $C = 1000 \frac{22.5}{9.17}$ " which comes out to 2453.65, rounded off to 2454..."

O. Chhatra Marg is an accident-prone area and impact on increasing the risk especially for disabled community

48. As per PP, this issue is also covered by judgments of Delhi High Court and Supreme Court in earlier proceedings hence cannot be allowed to be raised in this appeal. Further, it is said that the issue has also been considered by EAC in its meeting held on 02.03.2021 and EAC has considered action plan submitted by PP, as under:

"The Supreme Court Committee studied the impact of additional cars on roads during the occupancy phase of the project on Chaatra Marg, Vishwavidyalaya to Vidhan Sabha Road, Vidhan Sabha to Vishwa Vidyalaya, G.C. Narang Road and Cavalry Road and a traffic count undertaken by the CPCB on 12-10-2020. The Supreme Court Committee has noted that 'Based on analysis, it is inferred that the inclusion of 615 passenger cars on the road from the project will result in marginal increase in volume to capacity ratio (range in from 0.04 to 0.16). For the various sections of the roads, it is also observed that increase in volume to capacity ratio during the moving peak hours (0.04 to 0.16) and evening peak hours (0.05-0.08) is less, as compared to the ratio during the afternoon time (0.09-0.016). The Supreme Court committee has only suggested a marginal degradation and an acceptable level of service even during peak traffic hours. Further the proximity to the metro station will reduce the use of personal vehicles. In order to further improve the traffic situation, the project proponents would:

A. If this Honourable Committee feels so, coordinate with the local authorities to catalyse the widening of the Cavalry Road and the

Chaatra Marg to their designed capacities. Both roads are wide but not being currently used as per their desired width.

B. Ensure that no vehicles are parked outside the project premises.

C. Allow app-based taxis/other pick-up fixed time dedicated parking slots with in campus/access to client to prevent waiting outside premises.

D. Evolve an incentive-based system of subsidizing residents and encouraging them to use Public mode of Transport. Develop an exclusive network for Green Modes or NMT (non-motorized transit system) to enhance multi-modal connectivity to the metro station entry and exit points. The envisaged loop is anticipated as one-way loop in anti-clockwise direction without any right turning movement. This green route will be interfaced with external road network system and will include Pedestrians, Pedal Cycles and environment friendly state-of-the art para transit technology. This will ensure Walk and ride to work/nodal point through exclusive routes for pedestrians (and cycles), public/para transit modes."

P. Traffic analysis report of 2018 was relied while granting EC in 2021

49. Denying this objection, it is said that EAC has considered updated facts and figures and not 2011 report. It has based its assessment on equivalent car space of 854 as per norms (including visitor parking) and usage of 615 cars daily.

Q. Comparison of population as in 2018 and 2021

50. Denying above objection, PP has said:

"...in 2018, the answering Respondent applied for an EC for 1,785 persons, as per the population norms laid out in the MPD-2021. In the answering Respondent's 2018 EC, the Project provided for 258 residential apartments and 152 units of housing for the Economically Weaker Section ("EWS") population (@ Internal Pg. 86, Conceptual Plan for 2018 EC). The MPD norms provide that the EC ought to be for 4.5 persons, on average, in a residential apartment, and 2.5 persons, on average, in an EWS apartment. The same is based on the MoUD Norms set out in its notification dated 13.05.2013, as per which the Density (Upper Limit) is set at 900 persons per hectare or 200 Dwelling Units per Hectare, therefore, setting the limit at 900 persons per hectare automatically. Pertinently, the Appellant University itself follows the norm for 900PPH, therefore, cannot now deny that the answering Respondent is following the same Norms. Accordingly, the 2018 EC provided for the following Population Break-Up:

S. No.	Category	No. of Units	Persons Per Unit	Total
1	Residential Apartment	258	4.5	1,161
2	EWS Apartment	152	2.5	380
3	Staff		@5% of Residential Population	58
4	Visitors		@10% of Residential Population	116
5	Shops	15	2	30
6	Community	1	40	40
TOTAL				1,785

... the answering Respondent has applied for an EC for 2,302 persons, as per the norms for population set out in the National Building Code, 2016 ("NBC, 2016"). In the EC under challenge, the answering Respondent has also changed the break-up of the dwelling units, as compared to the 2018 EC. Pertinently, in the subject EC, the answering Respondent's project provides for 222 apartments and 224 units for the EWS population. In contrast to the MPD-2021 population norms, as set out in the previous paragraph, the NBC 2016 provides that, for each 1-bedroom dwelling unit, there shall be a population requirement of 4 persons, for each 3 bedroom dwelling unit, the requirement shall be of 6 persons, and for each 4 bedroom dwelling unit, the requirement shall be of 7 persons. Thus, the norms prescribed under the NBC are higher than the MPD-2021 which has led to the increase in the number of persons in the subject EC. Therefore, the subject EC has provided for the following population break-up:

S. No.	Category	No. of Units	Persons Per Unit	Total
RESIDENTIAL APARTMENTS				
1.	4-Bedroom Dwelling Unit	74	7	518
2.	3-Bedroom Dwelling Unit	148	6	888
EWS APARTMENTS				
3.	1-Bedroom Dwelling Unit	224	4	896
TOTAL				2,302

...the project provides for resources and space upto 2302 persons, in compliance with NBC norms. Further, it is crucial to note that under prevailing conditions of nuclear families, the number of persons in the household would be lesser than the estimated upper limit that has been set out in the NBC norms. For instance, NBC provides for a population of 7 persons in a 4-bedroom apartment, however, most nuclear families contain 4 persons at an average."

R. Criteria for parking

51. Denying above objection, it is said that as per norms of Ministry of Urban Development, criteria for parking is on the basis of area and not on the basis of number of residents. As per MOUD Notification dated 23.09.2013, which is also subsumed fully in MPD 2021, specifically Table 17.2 at Section 8(4) in Chapter 17, Permissible Minimum Parking for Residential Apartments is 2 ECS/100m² of floor area. Further, as per clause 4.4.3(B) of MPD-2021, the Permissible Parking for EWS Apartments is 0.5 ECS/100m² of floor area. Therefore, parking provision in the subject EC is on this basis, and not the basis of population that is residing at the project, which is an irrelevant correlation attempted to be drawn by appellant.

52. The project sought to cover 40,500m² FAR for residential apartments and 9,478m² FAR for EWS apartments. Break-up of parking requirement would be as follows:

S. No.	Category	FAR	ECS/100m ²	Total
1	Residential Apartment	40,500	2	810
2	EWS Apartment	9,478	0.5	48(47.39)
TOTAL				858

53. PP has said that against the above requirement, parking provided in the project are as under:

S. No.	Parking Provided	ECS
1	Podium 1 (Single Car Parks)	101
2	Podium 1 (Stack Car Parks)	124
3	Podium 1 (Accessible Car Parks)	10
4	Podium 2 (Single Car Parks)	56
5	Podium 2 (Stack Car Parks)	190
6	Stilt Above Podium 2 (Stack Car Parks)	12
7	Upper Basement (Single Car Parks)	174
8	Upper Basement (Accessible Car Parks)	13
9	Lower Basement (Single Car Parks)	180
	TOTAL	860

54. Therefore, the norms as per parking requirements are fulfilled by PP. Further, additional parking is adequate to cover additional persons that will be added to the project as per NPB norms as set out in the following chart:

S. No.	Category	No. of Units	Persons Per Unit	Total	Parking Provided
	2018 EC				
1.	Residential Apartment	258	4.5	1,161	854
2.	EWS Apartment	152	2.5	380	
TOTAL				1,541	
2021 EC					
3.	Residential Apartment	222	4.5	999	860
4.	EWS Apartment	224	2.5	560	
TOTAL				1,559	

55. It is said that for additional 18 persons an additional 6 parking have been provided. MPD-2021 norms are statutory in nature and uniformly followed while granting EC. PP has also relied on the report of Expert Committee constituted by Tribunal in Appeal No. 112/2018, to carry out Environmental Impact Assessment (hereinafter referred to as 'EIA') and with reference to the said report, has stated in para 125 and 126, as under:

"125. This Committee of renowned experts has based its assessment on a movement of 615 PCU on the roads which has been extensively described in the report and is self-explanatory and as per norms. In doing so they have also rightly assumed that all cars are BS-IV compliant or based on CNG. It is humbly submitted that that BS-IV compliant engines were made mandatory from 2010. The ARAI-TERI, 2018 Report relied upon by the Committee (@ Page 21 of the Report, Pg. 273, Vol.II, Appeal) states that the BS-IV engines do not generate Particulate Matter. It is pertinent to note that BS-IV is a standard for automobile engines which also includes diesel engines. As per BS-IV norms, which are mandatory across the country since April 2017, the pollutants from petrol-powered passenger vehicles were restricted to a Carbon Monoxide emission of 1.0 g/km, Hydro carbons+Nitrogen Oxides discharge of 0.18 g/km, and Respirable suspended particulate matter discharge of 0.025. The diesel models emitted a peak carbon monoxide of 0.50 g/km, a nitrous oxide of 0.25 g/km, and Hydro carbons+Nitrogen Oxides discharge of 0.30 g/km. Also, the Sulphur content in the Bharat Stage IV-compliant fuels was restricted to 50 PPM. Therefore, it is incorrect to state that BS-IV norms do not account for diesel vehicles and it is also wrong to challenge the veracity of the Report of the Expert Committee on this basis.

A Copy of the Notification dated 19.08.2015 introducing BS-IV norms is annexed herewith and marked as ANNEXURE R-15. (From Pg.1146 to 1149)

A Copy of the Emission Standards Booklet issued by ARAI is annexed herewith and marked as ANNEXURE R-16. (From Pg. 1150 to 1211)

126. In fact, the data used in the 2020 Expert Committee Report is from 2016, wherein most of the vehicles were complying to norms prior to BS-IV norms, wherein the emission was higher. Furthermore, from 01.04.2020, the Central Government has mandated that vehicle makers must manufacture, sell and register only BS-VI (BS6) vehicles, which are even more environmentally friendly. The Project is for high income group and if construction is commenced as on date, the operational phase will happen after 4 years, i.e., 2025, and the cars used will be with latest technology registered after 2010 or 2020 (not prior to 2010 as cars after 15 years are banned in Delhi) which, if not BS VI, will be at-least, BS IV compliant."

S. Carrying capacity study of the area in respect of AAQ which is already beyond prescribed national standards:

56. On this aspect, PP has relied on the study conducted by NABA accredited and MoEF&CC recognized laboratory recording findings as under:

"The background ambient air quality at the project site was observed that SO₂, NO₂ and CO concentrations are within the prescribed limit. The PM₁₀ and PM_{2.5} exceeding the permissible limit.

PM₁₀: The concentration of PM₁₀ was found ranging between 155.00 $\mu\text{g}/\text{m}^3$ to 376.00 $\mu\text{g}/\text{m}^3$.

The 98th percentile value of PM₁₀ was found to be 374.46 $\mu\text{g}/\text{m}^3$ and average value of PM₁₀ is 297.00 $\mu\text{g}/\text{m}^3$ during the month of December 2020. The background PM₁₀ is well above the permissible limit. It is found generally that the PM₁₀ level in the region of Delhi and NCR is more than the permissible limit and also maximum during the month of December and January. One of the important reasons for high level of PM₁₀ is due to the burning of Paralli (agricultural left over in the field) in the region of Punjab and Haryana. However, in some years the concentration of PM₁₀ is even higher than what is observed in this year.

PM_{2.5}: The concentration of PM_{2.5} was found ranging between 87.00 $\mu\text{g}/\text{m}^3$ to 195.00 $\mu\text{g}/\text{m}^3$.

The 98th percentile value of PM_{2.5} was found to be 194.16 $\mu\text{g}/\text{m}^3$ and average value of PM_{2.5} is 155.38 $\mu\text{g}/\text{m}^3$ during the month of December 2020. The background PM₁₀ is well above the permissible limit. It is found generally that the PM₁₀ level in the region of Delhi and NCR is more than the permissible limit and also maximum during the month of December and January. One of the important reasons for high level of PM₁₀ is due to the burning of Paralli (agricultural left over in the field) in the region of Punjab and Haryana. However, in some years the concentration of PM₁₀ is even higher than what is observed in this year.

SO₂: The concentration of SO₂ was found ranging between 8.9 $\mu\text{g}/\text{m}^3$ to 12.2 $\mu\text{g}/\text{m}^3$. The 98th percentile value of SO₂ was found to be 12.12 $\mu\text{g}/\text{m}^3$ and average value of SO₂ is 10.43 $\mu\text{g}/\text{m}^3$ during the month of December 2020. The background level of SO₂ is found to be well within the permissible limit.

The main source of SO₂ is due to vehicular movement as the project site is adjacent to Mall Road.

NO₂: The concentration of NO₂ was found ranging between 22.8 Åµg/m to 38.4 Åµg/m. The 98th percentile value of NO₂ was found to be 38.15 Åµg/m³ and average value of NO₂ is 30.35 Åµg/m³ during the month of December 2020. The background level of NO₂ is found to be well within the permissible limit. The main source of NO₂ is due to vehicular movement as the project site is adjacent to Mall Road.

CO: The concentration of CO was found ranging between 1.18 mg/m to 1.36 mg/m. The 98th percentile value of CO was found to be 1.36 mg/m³ and average value of CO is 1.29 mg/m³ during the month of December 2020. The background level of CO is found to be well within the permissible limit. The main source of CO is due to vehicular movement as the project site is adjacent to Mall Road."

57. PP has also relied on Expert Committee appointed by Tribunal in the earlier Appeal and its finding on this aspect stating that there having been two scientific studies conducted on the issue, it cannot be said there is no data in respect of carrying capacity of the area. Information on this aspect, required by EAC was submitted by PP on 22.03.2021 placing Air Pollution Management Plan in terms of Graded Action Plan for Delhi and NCR, as per MoEF&CC Notification dated 25.01.2018. Therefore, EAC has considered closely monitored air pollution in the area while granting EC. Tribunal's judgment in Utkarsh Panwer vs. CPCB & Others, OA 1016/2019, relied by applicant is not applicable since that relates to brick kiln units functioning in NCR region, for the reason that construction project is a onetime project and not a perpetual on-going polluting industry like brick kiln. PP has referred to the observations of Supreme Court in para 514 of Central Vista (supra), which read as under:

"514. In the present case, the subject project is an independent building and construction project wherein one-time construction activity is to be carried out. It is not a perpetual or continuous activity like a running industry. It is absolutely incomprehensible to accept that a project of this nature would be unsustainable with the needs and aspirations of future generations.[...]."

T. In Re: Impact of dust pollution will affect nearby Hospital and Science labs

58. Denying above objection, PP has said that during construction phase, any disturbance through dust pollution will be mitigated by use of wind breakers all along the project boundary, compact storage of loose soil and C&D waste and water sprinkling on roads and vulnerable areas of the construction site will be carried out for dust suppression. PP also relied on Specific Condition (iii) in the EC which said that, "Ready-mix concrete shall be used to the larger extent to minimize dust emissions at site."

59. PP has further said that Vallabhbhai Patel Chest Institute is at an aerial distance of 460 mtrs. and there is no basis to show that dust would travel for such a long distance.

U. In Re: Area in question not considered to be a silence zone even though the said area is an education hub

60. Denying this objection PP has relied on Government of NCT of Delhi (Department of Environment) Notification No. F.12(1)N.P./Env/2005/32 dated 03.04.2008 which has declared certain areas as "Silence Areas/Zones" for the purpose of applicability of Noise Pollution (Regulation and Control) Rules, 2000 (hereinafter referred to as 'Noise Pollution Rules, 2000') in National Capital Territory of Delhi which are as under:-

- "a. An area of 100 meters around all Educational Institutions having more than one thousand students;
- b. An area of 100 meters around all Courts;
- c. An area of 100 meters around all Government Office Complexes;
- d. An area of 100 meters around all 100-bedded and above hospitals."

61. On the basis of distance, it is said that the project in question does not come within 'Silence Zone' and no educational institution having more than 1000 students, Courts, Government Offices, hospitals with more than 100 beds are within 100 meters of project site. Even Faculty of Education, Delhi University, is more than 200 meters away from the project site. Relying on Expert Committee appointed by Tribunal in earlier Appeal No. 112/2018, it is said that "miniscule impact on noise environment during occupancy phase is anticipated, except during intermittent operation of the DG sets as backup power."

62. PP has further said that this aspect has also been considered by EAC and allegation of non-application of mind on this aspect is incorrect. Further, PP would provide most modern and technological mitigation measures in the project to minimize noise.

63. PP has also relied on Specific Conditions of EC relating to noise pollution and said that EC has already taken care of this aspect and there is no presumption of violation thereof.

V. In Re: Fire Safety of the project cannot be ensured as Fire Department does not have requisite equipment to deal with fire in high construction in narrow roads.

64. Denying this objection, it is said that Delhi Fire Service has accorded fresh approval for project on 12.07.2021, simultaneously imposing various conditions which shows application of mind on the part of concerned authorities.

65. It is pointed out that earlier application was rejected by Delhi Fire Service officials on 04.06.2021 pointing out certain shortcoming which were rectified and, thereafter only clearance/NOC has been issued. Referring to the judgment dated 20.01.2016 of High Court in Vikas Singh vs. Lt. Governor and Ors. W.P.(C) 1476/2014, it is said that the said judgment has no application to the present case. It is pointed out that the project is not located inside a congested residential colony.

W. No consideration given on impact of project on the Northern Ridge:

66. PP has said that Northern Ridge is 500 mtrs. away from the project and there is no legal restriction on developing the project in question. Referring to Supreme Court's judgment in DDA vs. Kenneth Builders, MANU/SC/0688/2016 : 2016 (13) SCC 561, it is pointed out that therein Supreme Court said that approval of Ridge Management Board would be necessary when project site falls in the Ridge area, morphologically similar to and adjacent to the Northern Ridge. In the present case, project site is not only beyond 500 mtrs. from Northern Ridge but has no tangible or direct impact, environmental or

otherwise on the Northern Ridge area in North Delhi and neither it is being constructed on land morphologically similar to the Northern Ridge nor any other statutory provision is being violated.

X. In Re: KS Rao's Report with regard to Seismicity of the area not given due attention:

67. Denying above objection, it is said that as per macro seismic zoning map of India, Bureau of Indian Standards has classified entire country into four major groups. Most of the area in Delhi and NCR falls under seismic zone IV i.e., high seismic risk. Accordingly, guidelines for safety against earthquakes and tremors have been provided by National Building Code and IS codes and the present project would be designed as per the said guidelines so as to safely resist all loading as applicable to Seismic Zone IV. This objection was specifically examined and found without any basis. PP has relied on specific condition No. (ii) whereunder PP has to objection requisite approval from Competent Authority in respect of structural of building due to earthquakes etc.

Y. In Re: The Soil investigation report of 2018 cannot be applied to the present project in question where the capacity has increased:

68. It is pointed out that subsequent soil analysis was also conducted on 21.12.2020 by M/s. Ind Research and Development House Pvt. Ltd. which is a recognized NABL Accredited Laboratory by MoEF&CC and the said report has been considered by EAC.

Z. In Re: No consideration given to the fact that the area may be within Critically polluted area and is atleast in close proximity with critically polluted area(s):

69. PP has denied this objection stating that the project site area is not located in critically polluted area and this has been observed by EAC in the meeting dated 01.03.2021. Office memorandums dated 25.08.2009, 13.01.2010, 15.03.2010, 28.04.2011, 24.05.2011, 12.06.2019, 24.10.2019, 31.10.2019 and 30.12.2019 issued under EIA 2006 relied by applicant are also denied on the ground that the same are not applicable to the project in question.

AA. In Re: No heed given to the privacy of women student residing in adjacent areas:

70. On this aspect, PP has relied on the earlier judgment of Delhi High Court and Supreme Court and said that the issue cannot be re-opened.

BB. Concealment of facts under Form I by PP:

71. PP has denied the above objection stating that no specific concealment has been pointed out by PP and the ground has been taken with vague allegations. There is no deliberate concealment and/or submissions of false or misleading information, material to the steps involved in grant of EC which may attract the penal clause in the application making it liable for rejection or cancellation of EC.

CC. Dissent to two members of SEAC has not been considered:

72. Once the appraisal reports have been considered, it cannot be said that dissenting opinion expressed by minority members should have been paid more attention or discussing in detail.

DD. Report of Committee constituted by L.G. Delhi:

73. This objection is denied by PP stating that this aspect is already covered by

judgment of Delhi High Court and Supreme Court referred above. Further, it is said that EAC examined all the relevant material and, therefore, on one or other document, the ultimate inference drawn by EAC, based on material available, cannot be assailed.

EE. One member of Sub-committee constituted by SEAC during grant of previous EC had found that the project will affect general environment:

74. The allegation is denied stating that view expressed by a minority part of committee will not make it mandatory to final approval authority to consider such minority opinion or discuss the same or record its findings in respect thereof particularly, when view in the report concurred by majority of the members has been considered. It is also pointed out that in any case, even the said single member has ultimately agreed to the finding that PP has satisfied all the legal requirements.

FF. Carrying capacity of the area has not been ensured for evaluating the project:

75. Denying it, it is said that EAC has considered every aspect including carrying capacity of the area and reliance is placed on the extract of 62nd minutes of meeting of EAC resolving to seek clarification on four aspects.

76. Further, some observations made by Supreme Court in Central Vista (supra) contained in para 181, 380, 494 and 495 are also relied by PP.

GG. Attention not given to impact on Population density:

77. On this aspect, PP has relied on the findings of the report of earlier Committee appointed by Tribunal in Appeal No. 112/2018 and it is said that once expert opinion has been given on a particular aspect, no interference is called for by Tribunal, if detailed reasons have not been given and to support this submission, reliance is placed on Supreme Court's judgment in S.N. Mukherjee vs. Union of India MANU/SC/0346/1990 : 1990 (4) SCC 594.

HH. No specific details considered on Waste management of the project

78. Denying this objection, it is said that this object has also been considered by EAC and the extract of the finding of EAC in para 219 is as under:

"Solid Waste:

Construction Phase:

Construction and demolition waste generated from the project site is expected to be 6900 T in three years period. The waste will be disposed at C&D waste management facility through authorized C&D waste collectors. There are four C&D waste disposal facility available in Delhi viz. Burari, Jahangirpuri, East Kidwai Nagar and Shastri Park.

Operation phase:

Solid waste generated from project will be about 1.4 TPD. Solid wastes generated will be segregated into biodegradable (0.85 TPD) and non-biodegradable waste (0.55 TPD) and collected in separate bins. The biodegradable wastes will be composted in an on-site composting unit and the manure will be used for landscaping. The non-biodegradable/recyclable wastes will be disposed through North DMC.

Liquid Effluent:

During Construction Phase, Wastewater generated from will be 18 kld. Toilet waste water, which will be disposed in mobile toilets/ecosan toilets/septic tank & soak pits. In operation phase, the sewage (175 kld) will be treated up to tertiary level in an on-site STP of 210 kld capacity. The treated waste water will be used for flushing (52 kld) and for landscaping (12 kld). Surplus treated water of 96 kld will be disposed in public sewer.

Further, regarding Hazardous Wastes, the answering Respondent has provided the following facilities:

Construction phase:

Hazardous waste generated are expected in the form of paint, varnish, solvents, adhesives carrying containers and spent oil from DG set used in construction purpose.

Operation Phase:

Hazardous wastes in the project will be used/spent oil from backup DG sets, which is classified as Hazardous Waste Category 5.1 as per Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.

Spent Oil from backup DG sets will be carefully stored in HDPE drums in isolated covered facility provided with garland drains. This spent oil will be sold to authorized recyclers. Suitable care will be taken so that spills/leaks of spent oil from storage could be avoided."

II. Consent to establish has not been obtained or considered:

79. Disputing this objection, reliance is placed by PP on a Delhi High Court judgment dated 23.01.2012 in LPA No. 895/2010, Delhi Pollution Control Committee vs. Splendor Landbase Ltd. and the extract of judgment contained in para 27 and 34 is as under:

"27. To summarize the position under the Water Act the position may be summarized thus: Section 25(1) of the Water Act would apply where a building is proposed to be constructed to set up an industry or any on an operation or a process as explained in para 21 above and this would mean that the Water Act would not apply to buildings housing residential apartments/units. It would apply to all other buildings where effluent or trade effluent is discharged, be they were manufacturing activity is carried on, sale or purchase of goods is carried on or services are provided.

[...]

34. For our reasoning herein above pertaining to the Water Act, the said reasoning of the learned Single Judge pertaining to the Air Act is overruled, but would make no difference to the final conclusion arrived at by us pertaining to the applicability of the Air Act when construction activity Commences in respect of shopping malls and commercial shopping Complexes for the reason, prior consent to establish the same is required on the language of Section 21 of the Air Act in view of the expanded definition of the expression industrial plant. But, for residential complexes, we hold that neither to establish nor to operate, (in fact the concept of to operate is not even applicable to a residential

complex), any permission is required under the Air Act."

80. PP has said that in view of the above judgment, DPCC is not issuing consent to establish for building housing residential apartments units. However, it is pointed out that against the above judgment of Delhi High Court, appeal has been filed in Supreme Court which is pending.

JJ. Information on cutting of trees concealed and information on planting of saplings is suspicious:

81. Denying the above objection, it is said that PP had a valid permission dated 25.05.2011 issued by Department of Forest and Wildlife under Section 9(3) of Delhi Preservation of Trees Act, 1994. Permission was granted to cut 156 trees with direction to deposit Rs. 43,68,000/- as security deposit with refundable/non-refundable component of Rs. 14000 per tree for ensuring compensatory plantation of 1560 saplings (ten times). As per above permission, 780 trees were to be planted by Department of Forest and Wildlife while remaining 780 were to be planted by PP. department of Forest and Wildlife has already planted 780 samplings at I.T.O. Chungi. So far as PP is concerned, it has applied for extension of time since plantation of trees could not be materialized due to delay in the construction processes owing to litigation initiated by appellant. However, the condition with regard to payment of requisite fees has already been complied by PP.

KK. Setting precedent for other high-rise projects to be constructed in the area even though tall buildings area restricted:

82. Denying this objection, it is said that unless there is obstruction by any institute etc. this objection has no basis and liable to be rejected.

Reply dated 17.01.2022 filed on behalf of respondent 1, i.e., MoEF&CC on 18.01.2022

83. The affidavit has been sworn by Dr. Dharmendra Kumar Gupta, Scientist "F", MoEF&CC. It is said that respondent 1 is not replying averments made in the memo of appeal, para-wise, but crave leave to file detailed affidavit as and when found necessary and required by Tribunal.

84. EIA 2006, it is said, was issued to regulate developmental projects provided in the Schedule which covers 39 projects/activities including different types of infrastructure projects like Airports, Ports, Highways, Building & Construction Projects etc. EIA 2006 provides a prior EC to the projects/activities mentioned in the Schedule to EIA 2006 which is to be issued by concerned Regulatory Authorities, i.e., MoEF&CC or SEIAA, as the case may be. Building & Construction Projects and Township and Area Development Projects for prior EC is given in entry 8(a) and 8(b) to the Schedule to EIA 2006. The projects under entry (a) and (b), both comes in Category 'B', hence require prior approval from SEIAA after appraisal by State Level Expert Appraisal Committee (hereinafter referred to as 'SEAC'). If SEIAA/SEAC is not present/constituted in particular, in any State or Union Territory, Category 'B' projects shall be considered at Central Level as Category 'B' Project. In Delhi, there is no SEIAA, therefore, appraisal of project is to be conducted by SEAC at Central Level.

85. Earlier, appellant filed Appeal No. 112/2018, assailing EC dated 23.02.2018 issued by SEIAA Delhi to PP (M/s. Young Builders Private Limited). Tribunal by order dated 27.02.2020 constituted a Committee for independent evaluation to ascertain viability of the project vis-a-vis its environmental impact. Committee submitted report titled as

'Rapid Indicative Environment' and suggested following measures for implementation:

- "• The project proponent must ensure that all necessary approvals have been obtained and are valid.
- It is noted that the project proponent has calculated the proposed STP capacity as 200 KLD based on the assumption of @ 4 persons per household. However, based on Census data, 2011, Delhi's average population density is @ 4.75 persons per household (range 4.6 4.9). Thus, the corresponding sewage generation of 225 KLD during the occupancy phase will exceed the proposed STP capacity. Therefore, the project proponent is advised to upgrade STP capacity to 225 KLD or restrict water supply so that peak sewage generation must not exceed 200 KLD.
- Considering that the project area is part of groundwater discharge zone, it is advised to restrict construction to only one underground basement and one stilt parking, instead of the proposed two. The parking plan may accordingly be revised and necessary approvals obtained.
- An undertaking may be submitted that no groundwater will be extracted during the construction phase.
- NOC may be obtained from the District Advisory Committee on Ground Water of Govt. of NCT Delhi before de-watering during construction.
- An inlet digital flow meter shall be installed at DJB fresh water supply line.
- All environmental norms should be strictly adhered to during construction and occupancy phase of the project."

86. As per impact analysis, project was found viable including impact on traffic congestion, environmental and urban infrastructure/services would be minimal/nominal. However, Appeal was disposed of on 20.01.2021, having become infructuous due to withdrawal of EC dated 23.03.2018.

87. PP, i.e., M/s. Young Builders Private Limited, 43, Babar Road, Near Bengali Market, New Delhi-110001 applied afresh vide proposal No. IA/DL/MIS/197084/2021 dated 15.02.2021, for grant of EC to MoEF&CC. Proposal was discussed and appraised by EAC (Infrastructure II) in 62nd meeting held on 01.03.2021. EAC recommended deferment on the decision, requiring certain information from PP. Later, matter was again considered by EAC in 64th meeting held on 12-13.04.2021 and the information furnished by PP were considered by EAC as shown in the tabular chart, as under:

Rapid Indicative Environment Assessment	On 64th Meeting held on 12-13 April, 2021 the queries asked to PP
1. The project proponent must ensure that all necessary approvals have been obtained and are valid.	The EAC found the response to the queries as satisfactory.
2. It is noted that the project proponent has calculated the proposed STP capacity as 200 KLD based on the assumption of @4 persons per household. However, based on Census data, 2011, Delhi's average population density is @4.75 persons per household (range 4.6-4.9). Thus, the corresponding sewage generation phase will exceed the proposed STP capacity. Therefore, the project proponent is advised to upgrade STP capacity to 225 KLD or restrict water supply so that peak sewage generation must not exceed 200 KLD.	As proposed, waste water shall be treated in an onsite STP of total 210 shall be recycled and re-used for flushing (52 KLD), gardening (12 KLD, etc. PP shall reuse of excess treated water for horticulture use in nearby areas of HVAC cooling etc. No wastewater shall be discharged into the sewer line, common online monitoring system shall be installed in the STP and data for its quality and quantity shall be shared and linked with DPCC.
3. Considering that the project area is part of groundwater discharge zone, it is advised to restrict construction to only one underground basement and one stilt parking, instead of the proposed two. The parking plan may accordingly be revised and necessary approvals obtained.	The project proponent shall obtain suitable measures for controlling ground water backing up around the basements as committed.
4. An undertaking may be submitted that no groundwater will be extracted during the construction phase. 5. NOC may be obtained from the District Advisory Committee on Ground Water of Govt. of NCT Delhi before dewatering during construction.	The Project Proponent shall obtain the necessary permission for dewatering of ground water from Central Ground Water Authority (CGWA).
6. An inlet digital flow meter shall be installed at DJB freshwater supply line.	Fresh water requirement from DJB shall not exceed 158 KLD during operational phase.
7. All environmental norms should be strictly adhered to during construction and occupancy phase of the project.	The Environmental Clearance to the project is issued under the provisions of EIA Notification, 2006. The Project Proponent is under obligation to obtain approvals/clearances under any other Acts/Regulations or Statutes as applicable to the project.
8. In view of the impact analysis, the project seems viable as environmental impacts, including impact on traffic congestion and urban infrastructure/services, are minimal/nominal.	A detailed Traffic Management and Traffic decongestion plan shall be drawn and implemented to ensure that service of the roads near project site may not get adversely impacted after the implementation of the project. The plan should stipulate, inter-alia, the path and appropriate time for the movement of vehicles to and from site. The plan shall be vetted by concerned Agency in the State Government.

88. Respondent 1 has further said that EAC recommended the project for grant of EC with specific and general conditions and consequently, respondent 1 granted EC vide letter dated 21.05.2021 subject to stipulation of various environmental safeguards; PP is obliged to comply with specific conditions, which are to be monitored/evaluated/assessed by concerned authorities at State and Central level; PP has to submit status of compliance report every six months, which will be published on the website and monitored by MoEF&CC; if there is any non-compliance of EC conditions, effective action in accordance with law would be taken by Competent

Authorities against PP; and EC dated 21.05.2021 has been issued by MoEF&CC in accordance with law and due procedure for appraisal of project as prescribed under EIA 2006 has been followed.

Reply dated 15.02.2022 filed by MoEF&CC with letter dated 16.02.2022:

89. We find that it is almost copy of the earlier reply dated 18.01.2022. We could not understand as to why respondent 1 has filed again the same reply though interestingly, the affidavit is sworn by the same officer i.e., Dr. Dharmendra Kumar Gupta on both the occasions.

Rejoinder affidavit filed by appellant in reference to the counter affidavit filed by PP i.e. respondent 11 (wrongly mentioned as respondent 2 in present appeal):

90. It is said that PP has failed to justify as to why project in question is sustainable in the questioned area and earlier EC was withdrawn when respondent 1 found itself unable to justify the said EC on merits. Apparent flaws were recorded in Tribunal's order dated 20.01.2021, found in the earlier EC.

91. Replying averments made by PP in para 3 and onwards, applicant in the rejoinder affidavit has said, briefly, as under:

(i) PP has to show as to how such a massive project is sustainable at the questioned site, which is already unable to cater to the needs of the existing population.

(ii) Project in question falls within Sub-zone C-13 named Delhi University Area/North Delhi Campus/University area, which is part of ZDP for Zone C (Civil Lines Zone) which is evident from map on ZDP for Zone C (Civil Lines Zone).

(iii) Under the said Sub-zone, there is a restriction on tall buildings, which is evident from clause 11.3 of MPD-2021, read with clause 1.3.4 of ZDP for Zone C where there is a restriction on tall buildings in important areas such as Lutyen's Bungalow Zone, Civil Lines and North Delhi Campus (Page 589 of the appeal).

(iv) Under ZDP of Zone C (Civil Lines), Delhi University Campus has been categorized as Sub-zone C-13 (Page 596 of the appeal).

(v) Under the said ZDP, under clause 1.3.4, it is provided that under MPD 2021, restriction has been imposed for this sub-zone/area which is Delhi University Campus (Page 594-596 of the appeal) and which is Sub-Zone C-13 as mentioned above.

(vi) Under ZDP, under clause 2.7 (Page 597-598 of the appeal), it is reiterated that as per MPD 2021, restriction on tall building shall be necessary in important areas like North Delhi Campus among others.

(vii) Under this clause, it is provided that an Urban Design study shall be done for Delhi University Campus and under Clause 1.3.4, it is provided that Urban Design study shall be taken up for this sub-zone.

(viii) Collective reading of the above facts show that 'Delhi University Area' is same as 'North Delhi Campus' or 'University Area' and all these nomenclatures are the names given to Sub-Zone C-13.

(ix) The said fact is evident from the Map of ZDP for Zone-C (Civil Lines Zone) (Page 601 of the appeal), which shows that border of Sub-Zone C-13 covers the land being used for the project in question.

(x) It is clear that there is restriction upon tall buildings in Sub-Zone C-13 and project in question is violative of Master Plan 2021 and ZDP of Zone C since project land falls under Sub-Zone C-13.

(xi) Delhi High Court's judgment dated 27.04.2015 as also Supreme Court's order dated 17.12.2019 have not considered the issue of violation of MPD-2021 and there is no finding on merits on the said issue.

(xii) Violation of MPD-2021 is a direct violation of EIA 2006 in as much as Form IA under clause 1.1 requires that proposed land must conform with the Master Plan/Development Plan of the area.

(xiii) Information provided by PP in Form IA is that land used is as per ZDP and MPD-2021. The information that there is no legal restriction of height is wrong information.

(xiv) EC has been granted without consideration and application of mind on the above aspects as also wrong information and deserves to be cancelled.

(xv) Even though, the project has been appraised four times, however, there has been no application of mind while examining the project by the respective authorities at various stages of appraisal.

(xvi) Under order dated 27.02.2020 of Tribunal passed in Appeal No. 112/2018, it was found that EC has been granted without application of mind and prima-facie found the project to be not viable based on the submissions of the parties. Accordingly, a new Committee was constituted by Tribunal for independent evaluation to ascertain the viability of the project vis-a-vis its environmental impact.

(xvii) Further, said Committee filed its report on 10.12.2020, providing various recommendations for the project in order to continue. However, there were various discrepancies and anomalies which were found in said report by appellant herein and, therefore, detailed objections to the same were filed before Tribunal on 15.01.2021.

(xviii) However, due to the fact that PP had decided to withdraw impugned EC dated 23.03.2018, the matter had become infructuous and hence, was disposed by Tribunal on 20.01.2021 while noting down various contentions raised by appellant but not providing any finding on the merit of report or objections raised against the report.

(xix) Application for fresh EC was made by respondent 2 herein and the same was processed by EAC and MoEF&CC again without due application of mind and without comprehensive consideration of various points raised by appellant

(xx) Even though the project may have been appraised on a few occasions, there are many crucial facts which have been raised by appellant herein from time to time which have not been considered till date and project has been granted EC without due consideration of its impact towards the environment.

(xxi) The mere fact that project has been examined by multiple Committees does not mean that the project has become environmentally viable unless all aspects of environment have been addressed appropriately.

(xxii) PP is not the victim of process and instead violator of environmental norms and is attempting to carry out the project which is environmentally unsustainable and will cause serious adverse impact upon environment.

(xxiii) In Indian Council for Enviro-Legal Action vs. National Ganga River Basin Authority, OA 10/2015, Tribunal in its judgment dated 10.12.2015 has observed that economic benefit shall not be given more importance than environment. In Intellectuals Forum, Tirupati vs. State of A.P. & Others MANU/SC/8047/2006 : (2006) 3 SCC 549 vide judgment dated 23.02.2006, Supreme Court has held that in the matter of environment, cases cannot be decided solely on the consideration of investments committed by any party. In Supertech Ltd. vs. Emerald Court Owner Resident Welfare Association & Others MANU/SC/0580/2021 : (2021) 10 SCC 1 (C.A. 5041/2021) decided on 31.08.2021 and Kerala State Coastal Zone Management Authority Vs. State of Kerala Maradu Municipality & Others, it has been held by Supreme Court that compliance of law and environmental compliances over and above the investments made on the respective projects are obligatory and necessary.

(xxiv) Writ petition was filed in Delhi High Court, assailing permission granted by DDA for construction of the project which was dismissed on the ground of latches and delay and not on merits.

(xxv) In any case, in the judgment of Delhi High Court in writ petition filed by appellant, issue relating to EC under EIA 2006 was not under challenge which has been raised by means of the present appeal in the appropriate statutory form. There is no application of mind on various aspects by the concerned regulatory authorities. It has granted EC impugned in this appeal.

(xxvi) No opportunity of hearing was granted by EAC/MoEF&CC though appellant has filed representation dated 02.03.2021 to EAC and instead the process of EC was advanced considering PP's reply dated 22.03.2021.

(xxvii) No response was given to area being accident-prone, traffic impact, closeness of Northern Ridge etc.

(xxviii) Authorities have proceeded under the impression that earlier appeal was dismissed clearing way on various aspects, to grant EC in favour of PP, ignoring that the appeal was dismissed since EC impugned in that appeal was withdrawn by MoEF&CC and Tribunal was not allowed to record its findings on various shortcomings noted in the order dated 27.02.2021.

(xxix) Building & Construction Projects are not category B2 projects where public consultation is exempted, but are B1 category Projects where public consultation has been exempted. Impugned EC dated 21.05.2021 itself records the project as Category B Project and not as category B2 Project (Page 69 of appeal).

(xxx) The reason for seeking comments of appellant from EAC herein is not part of public consultation process but is a part of appraisal process for which power has been granted to EAC under EIA 2006.

(xxxi) There is a vast difference a B1 Project and a B2 project in terms of the rigour that is applied to such projects. The fact that PP is unaware of this distinction itself shows that they themselves needed to introspect on their bona-fide.

(xxxii) There are various concrete materials, which have not been considered and, therefore, show non-application of mind by EAC/MoEF&CC in processing application of impugned EC as is detailed out in appeal.

(xxxiii) A ToR itself has not been issued as mandated for the project after amendment dated 17.02.2020, shows the proof of non-application of mind in the present case, among other evidences listed out in appeal.

(xxxiv) Referring to the averments made in para 15 of reply of PP, it is said that corresponding paragraphs are part of EIA process under EIA 2006. Aspects relating to Master Plan and ZDP form part of Clause 1 of Form 1A of the EIA Notification 2006. Similarly, the issue relating to parking comes under clause 1.2 of Form IA of EIA 2006 and the issue relating to Girls Hostel is part of socio-economic impact as required by OM dated 10.11.2015 issued by MoEF&CC issued for EIA 2006.

(xxxv) It is wrongly stated in para 16 by PP that it would construct an almost equal number of EWS apartments in as much as under earlier project, 152 dwelling units were contemplated and now under Conceptual Plan dated February 2018 at Table No. 3(b), number of dwelling units was mentioned as 224.

(xxxvi) The project has extended in all aspects apart from EWS apartments in as much as built up area has extended from 1,17,733.81 m² to 1,37,879 m²; number of floors have gone up from S+G+37 to 2 basement + 43 floors and dwelling units have also increased from 410 to 446. The extended total population has gone up from 1785 persons to 2302 person. Even height of the building has gone up from 139.6 meters to 145.3 meters.

(xxxvii) Project would cause harm to environment; carrying capacity to sustain massive group housing project is lacking, particularly considering shortage of availability of water supply; it would adversely impact upon ground water source; width of adjacent length and also adversely impact the nature of area being an education hub. It will disturb the area on the issue on noise pollution.

(xxxviii) The project will result in increase of demand of water consumption, emissions due to cooking, plying of vehicles, generator sets, generation of wastes among others etc. which would cause continuous pollution in the area and hence, it cannot be said that it is one time construction activity and, thereafter, there would be no pollution.

(xxxix) Jurisdiction of Tribunal in appeal is co-extensive with the original jurisdiction of the authority which passed the appealed order. Appellate Authority/Court can re-appreciate and re-analyse the evidence, adjudicate correctness of the order on facts as well as law both.

(xl) Contention of respondent that there 6 other largescale projects within the same zone is denied as wrong. However, appellant is concerned with the project of respondent 2 as the same will cause grave environmental difficulties

to the people of the area and will have direct impact on the lives of the students residing and studying in the campus of appellant.

(xli) Proposed project with unknown residents and their visitors with hitherto unknown social mores and values will seriously compromise safety and security of the girl students and women employees. Further, reliance on a report dated March 2010 on the findings of the project on privacy of nearby Girls Hostel will not be valid for the project which has expanded in scale and impact. The project in 2010 was proposed to have only 8 floors; whereas now project is proposed to have more than 40 floors. The entire context, both physical and otherwise has changed and, therefore, needs to be appraised afresh.

(xlii) Reliance placed on reports dated March 2010 and February 2012 show that the project would not cause any traffic problem in the area is misconceived is as much as size of the project has increased considerably, hence, there would be severe impact on the traffic flow of the area. This fact has not been properly examined. Traffic report 2018 also is redundant for scrutiny of the project in 2021 in the light of the size and magnitude of the project.

(xliii) Reliance on Supreme Court's observation in Central Vista (supra) are misconceived since the same relates to different context and relevant facts not applicable to the appeal in question.

(xliv) Delhi Economic Survey Report which has found that the number of vehicles in Delhi has increased significantly, doubling from 317 per thousand back in 2005-2006 to 643 thousand in 2019-2020 not considered.

(xlv) As per the table provided on the website of Planning Department of Government of NCT Delhi, total number of vehicles in Delhi in the year 2005-2006 were 48,30,136 which increased to 74,52,985 in the year 2011-2012 and which has further increased to 1,18,92,877 in the year 2019-2020.

(xlvi) It is denied that the data, reports, scientific studies based upon by EAC for grant of EC were fresh. Further, it is denied that there has been rigorous application of mind by authorities on each environmental issue. For instance, Traffic analysis report of 2018 and Soil Investigation Report of 2018 are the same which were relied upon for processing of last EC dated 23.03.2018 which was granted to respondent 2.

(xlvii) Further, there have been various shortcomings on the part of EAC/MoEF&CC in processing impugned EC which have been highlighted under appeal. For instance, water requirement estimated for construction phase is an underestimation in consideration to report referred by Committee constituted under order dated 27.02.2020. As per the said report, water quantity requirement will be 27.6 KL per sqm of build-up area whereas proposed water quantity utilization is 2 KL/sqm. Although, there is an attempted explanation distinguishing embodied water quantity and water requirement during construction phase, it is unclear whether these aspects have been considered by EAC. There is also no equivalence assessment between the alleged embodied water quantity requirement and water requirement during construction phase. Likewise, water requirement estimated of operation phase has many discrepancies such as water requirement submitted is 222 KLD for more number of people being 2302 in number, which is lesser than what was submitted for during for grant of last EC dated 23.03.2018 which was 332 KLD for 1785

person. No explanation has been given for this amazing feat of reduction in water requirement for more number of people.

(xlvi) Simply imposing conditions without thorough understanding of the problem is not the purpose of EIA process laid down under EIA 2006.

(xlix) The contention of is appellant that the area in question does not have capacity for providing housing of 2302 number of people and does not have carrying capacity to cater to increase in traffic and surface water and ground water utilization which will be caused due to the proposed project. Therefore, before imposing conditions related to these aspects it was supposed to be studied whether area can handle the demand of the proposed project.

(l) In view of the various contentions raised by appellant under Appeal, it is evident that the same was not done appropriately and instead specific conditions have been laid down and not pre-conditions to assess whether the specific conditions are feasible or have been done in any of the previous projects by PP which shows non-application of mind by EAC/MoEF&CC.

(li) Respondent 2 is not revealing the exact reason why despite a go ahead by the Expert Committee, it chose to withdraw EC and apply afresh. This is because the conditions imposed by Committee were so stringent that the project would be unviable. It is to overcome the stringent conditions that EC was withdrawn and a fresh EC was applied for and this itself shows mala-fide intention and conduct of PP. It is said by the Committee:

"Considering that the project area is part of groundwater discharge zone, it is advised to restrict construction to only one underground basement and one stilt parking, instead of the proposed two."

(lii) However, in the new appraisal, this condition has been removed by design and without an adequate explanation which itself shows non-application of mind by respondent 1.

(liii) There was specific recommendation by Committee that considering project area being para of ground water discharge zone, it is advised to restrict construction to only one underground basement and one stilt parking instead of the proposed two. However, in the new appraisal, this aspect has been omitted without any adequate explanation.

(liv) Limitation of basement was recommended by Expert Committee constituted by Tribunal by order dated 27.02.2020 and the same has been omitted in the impugned EC without any justification or explanation, ignoring the fact that the recommendation was made looking to the specific nature of the area being the ground water discharge zone. This specificity of the questioned site makes project in question vis-a-vis other projects which have been referred to by PP, ignoring that different projects involves individual locations with varying geography, location and ecological sensitivity.

(lv) Assumption of respondent 2 that project is a B2 project is wrong. Impugned EC dated 21.05.2021 itself records the project as Category B Project and not as category B2 Project. Under Form I of respondent 1, project has been categorized as Category B and not B2 (Page 351 of Appeal). Even under EIA 2006 or OM's issued thereunder, Building and Construction Project listed under

item 8(a) of the Schedule has not been categorized as category B2. Under Para 7(i)(I)(A) of the EIA 2006, it has been provided that MoEF&CC shall issue appropriate guidelines for categorization of projects into category B1 and B2. Various OMs dated 24.06.2013, 24.12.2013, 13.02.2018, 13.04.2020, 28.01.2021 among others have been issued with regard to categorization of projects into category B2.

(lvi) Part of EIA 2006 extracted under corresponding para 49 further quotes Appendix V of EIA 2006 where it is stated that

"Where a public consultation is not mandatory, the appraisal shall be made on the basis of the prescribed application in Form 1 and environment impact assessment report, in the case of all projects and activities (other than item 8 of the Schedule), except in the said project activity falls under category 'B2', and in the case of items 8(a) and 8(b) of the Schedule, considering their unique project cycle, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall appraise projects or activities on the basis of Form-1, Form-1-A, conceptual plan and the environmental impact assessment report [required only for projects under 8(b)] and make recommendations on the project regarding grant of environmental clearance or otherwise and also stipulate the conditions for environmental clearance."

(lvii) The above makes it clear that while a public consultation is not mandatory for B1 projects, appraisal is made on the basis of Form I, EIA Report other than in Item 8 of the Schedule and except if the project activity falls under category B2. The said exception further states that in case of projects of Item 8(a) and 8(b), Appraisal Committee shall appraise on the basis of Form 1, Form IA, Conceptual Plan and EIA Report [required only for projects under 8(b)]. Further, the amendment to EIA 2006 dated 17.02.2020 read with Para 7(i)(III) (i) of EIA 2006 also makes it categorical that building and construction project and B2 projects are distinct and does not require Public Consultation. The above makes it clear that amendment of EIA Notification dated 17.02.2020 applies to PP. Further, it is denied that amendment dated 17.02.2020 is only applicable to expansion proposal of existing projects having prior EC. Said amendment is applicable to new projects as provided under para 7(i)(II)(v) of the EIA 2006. Therefore, a ToR was required to be issued to respondent 2 by EAC which was not done before granting impugned EC, thus, it acted in contravention to EIA 2006.

(lviii) In response to Para 52-54 regarding recommendation of Committee for limiting basement to one due to impact on natural flow of ground water, it is submitted that the same has been provided as the area in question has been recognized as a Ground Water Discharge Zone and is not at par with other areas where such projects may come up. This could have serious long-term impact and would, therefore, affect hydrograph of areas beyond the premises of the site.

(lix) Respondent 2 has provided various measures that it will take to ensure that ground water does not back up and no hindrance is caused to its natural flow. However, it has failed to take into account that the area in question is geologically located at a place which is sensitive as it is a Ground Water

Recharge Zone. Therefore, the measures being listed down in the corresponding paragraph may not be enough to meet the concerns towards Ground water flow and, therefore, an independent view of experts should be taken.

(Ix) Permission from District Advisory Committee has not been approved and further, no permission from Central Ground Water Authority (hereinafter referred to as 'CGWA') has been taken till date. It becomes important to study whether the area could sustain such a project in view of ground water impact it will cause.

(Ixi) Under article titled "The proposed tallest building of Delhi is a hydrological and landscape misfit" written by Mr. Shashank Shekhar, Department of Geology, University of Delhi dated April 2021 published on Research Gate the apprehension of adverse environmental impact of the project on local ground water regime has been highlighted, as follows:

a. The foundation of the high rise building needs to be up to 12 to 13 meter below ground level (hereinafter referred to as 'mbgl'), so for any construction to begin, the groundwater level will need to be lowered to about 14 mbgl from the present level in the range of 6 to 7 mbgl. This will require local desaturation of about 7 to 8 meters of the aquifer and desaturation needs to be maintained, till the time, the basement is suitably constructed. As the site is in a local discharge zone, hardly 500 m away from the natural recharge zone (Delhi ridge), dewatering for such desaturation will be a mammoth task. Huge amount of groundwater will be continuously extracted, lowering groundwater level in the neighbouring areas. Further, putting this extracted water to a desired use will be a challenge.

b. In the context of local hydrogeology, in long run, proposed building along with adjacent sub surface metro tunnel will be addition of further barriers in ground water flow regime and is likely to further raise ground water levels locally which in turn, may lead to uncontrolled dampness in foundation and ground floor units of nearby buildings like Gandhi Bhawan, residence of Vice Chancellor of the University, Meghdoot hostel for women, building of campus of open learning, nearby staff quarters of the University and private houses. This may hamper structural safety of these buildings, as they were never designed keeping these facts in mind.

(Ixi) Initially on account of massive dewatering during construction phase of building, there might be lowering of local water levels which may affect drinking water tube wells in the neighbourhood. However, after construction is over, in long run this water level is likely to recover and massive sub-surface barrier is the area with limited depth to bed rock would lead to rise in ground water levels locally, which may hamper structural safety of buildings which were never designed to withstand uncontrolled dampness of the foundation. This poses the question that when such drastic changes in ground water environment have been foreseen, how can EC be granted without understanding the holistic impact of these changes on the ambient environment? Has Environment Assessment Report, considered impact of dewatering induced initial local decline in ground water levels on soil moisture availability to green cover of the University of Delhi. Will trees in the close vicinity of project die

because of lowering of water level? What will be the area, up to which local ground water regime will be affected on account of heavy concentrated pumping from a very small area in local ground water discharge zone receiving continuous inflow of ground water. Further, post construction, will the areas in close vicinity of the project get waterlogged? How will this water logging affect the structural safety of the buildings and the local vegetation? Any EC without such consideration would always be questioned.

(Ixiii) EIA study which is a part of processing EC includes evaluating impact of the project on ground water. However, it seems that MoEF&CC has felt satisfied simply by laying down conditions that the "the project proponent shall obtain necessary permission for dewatering of groundwater from CGWA". Said fact shows that Appraisal Committee has failed to look into the impact of the project which it will have on ground water and has simply made itself dependent on permission of CGWA. Given condition shows non-application of mind by SEAC in examining the project in question. Given fact is made more evident from the condition made in impugned EC that "Project Proponent shall adopt suitable measures for controlling ground water backing up around basement as committed". Given condition is very vague and lacks application of mind. It poses the question about impact of such ground water backing up around basement on foundation of other buildings in close neighbourhood of the project?

(Ixiv) The given condition misses a valid point that environmental impact assessment is holistic process which assesses the impact of project in question towards various elements of environment. CGWA mandated NOC for ground water withdrawal only focuses on ground water aspects while an Environment Assessment Report is desired to be a holistic document which should incorporate CGWA's detailed study mandated under Section 4.3 of Notification dated 24.09.2020 of CGWA. In a situation, where NOC for ground water abstraction reduces ground water use or suggests structural changes for protection of ground water environment, environmental variable with which EIA was done has changed and as such Environment Assessment Report based on which EC was granted is no more valid. In that situation, it warrants a new EIA in the context of EP Act 1986. EC with a condition "Subject to CGWA approval", is against the spirit of law and the principle of holistic environmental management.

(Ixv) Respondent has failed to give details of quantity of tankers and volume of water which will be used for construction irrespective of the concept of 'embodied water' requirement. It is obvious that hundreds and thousands of tankers will be used. Experience shows that normally developer go to exploit ground water sources, which will have a huge bearing on ground water availability in the area. It is also ordinarily seen that to meet construction phase water requirement, builder across the NCR, use ground water directly or indirectly, making huge impacts on availability of ground water.

(Ixvi) EAC has a statutory mandate to appraise the project so as to find out whether project is environmentally viable. For the purpose of the same, EAC ought to have looked into the source of water supply thoroughly so as to evaluate whether water demand is being met in a sustainable manner. It was imperative that details of provider of treated water be looked into by EAC as recommended by the Committee constituted under Tribunal's order dated

27.02.2020. Further, no response has been given to the fact that Committee under its report dated 10.12.2020 had submitted that huge quantity of fresh water will be required whereas respondent 2 has proposed to use treated water. These facts show that the plan for meeting demand of water is not concrete, however, the same has still been allowed to move forward by EAC without examining status on the ground.

(Ixvii) Though specific conditions provide that no ground water shall be used during construction phase or operation phase (Para 7(A)(i) of impugned EC), however, it has also been provided that formal approval from CGWA shall be taken for ground water abstraction or dewatering (Para 7(B)(iii)(xiv) of impugned EC). This shows a contradiction.

(Ixviii) Further, it has been provided that dewatered ground water shall be properly managed and shall conform to approvals and guidelines of CGWA. This again creates an ambiguity on how dewatered ground water will be used. Given the fact that there is no clear picture on the use of ground water which has been made dependent on the approval which is obtained from CGWA, there has been no clarity at the stage of appraisal of the project on treatment of ground water.

(Ixi) Even though, it is informed that water for operation phase will be provided by DJB, however, as per Water Clearance dated 07.10.2015, provided by DJB to respondent 2, it is provided that in case, DJB water is not available, applicant may be advised to make its own arrangement for supply of water. The said fact suggests that DJB has not taken a committed responsibility of providing water for which other arrangements has been availed to PP.

(Ixx) It is further submitted that DJB is unable to fulfill water requirements of University of Delhi fully which has resulted in frequent student protests and protests from the university staff. In such a situation, it was imperative that carrying capacity study is taken up before any such project is granted an EC.

(Ixxi) In the given situation, there is an imminent possibility that entire burden for supply of water will be shifted to ground water for which option of abstraction and dewatering has been left unclear under contradictory conditions provided under impugned EC, as mentioned above.

(Ixxii) A mere correction on the contradictory submissions made in two parts of application does not prove that EAC has examined the aspect of water requirement comprehensively. The above mentioned submissions read with the submissions in appeal show that EAC, while considering proposal, has not comprehensively dealt with the issue of water requirement which will be needed by the project at construction and operation phase.

(Ixxiii) It is reiterated that it is unclear whether ground water abstracted or dewatered will be used in the project or not, whether DJB will be able to provide water supply to project during construction phase or operation phase, whether fresh water or treated water will be used for construction, whether pressure for meeting water demand will ultimately shift to ground water, whether project will consume more water than what has been submitted before EAC, whether the area has carrying capacity to cater to such a multi-storeyed housing project among others.

(lxxiv) Respondent 2 has relied on the "Manual On Norms And Standards for Environment Clearance of Large Construction Projects" published by MoEF&CC for calculating water requirement, however, no reliance on the same was submitted before EAC while applying for EC during processing of EC. Further, it has not been provided as to why the said Manual was not relied on for earlier EC dated 23.3.2018 or treated water.

(lxxv) National Building Code lays down that for communities with population above 1,00,000 together with full flushing system, rates litres per head per day (hereinafter referred to as 'lphd') may be considered minimum to be 150-200 lphd which may be reduced to 135 lphd for houses for Lower Income Groups (hereinafter referred to as 'LIG') and Economically Weaker Section of Society (hereinafter referred to as 'EWS') depending upon prevailing conditions. Said provision is reiterated under the guidelines to regulate and control ground water extraction, dated 24.09.2020, of Ministry of Jal Shakti (annexure R8 of reply of respondent dated 27.09.2021). Therefore, norm of 135 lphd is for EWS and LIGs and not for all other sections. Given the fact that only a small percentage of flats proposed under the project is under EWS category, the rest will be consuming more than 135 lphd, that is between 150-200 lphd. Further, respondent 2 has stated that SEAC had suggested not to follow the requirement as per National Building Code but to follow DJB Guidelines, however, no such observation has been recorded in the minutes of the meeting held on 24.02.2018. Further, respondent has not explained as to why subsequently, it has further increased its water requirements to 332 KLD under its letter dated 13.03.2018 submitted to SEAC.

(lxxvi) SEAC had suggested to follow National Building Code or DJB Guidelines shows that demand of water will be higher than what is estimated. It is unknown as to why Manual on norms and standards for EC of large construction projects of MoEF&CC has been adopted now when the same could have been adopted earlier also.

(lxxvii) Said manual suggests for monitoring of water consumption and says:

"1. Monitoring water use: Use of water meter conforming to ISO standards should be installed at the inlet point of water uptake and at the discharge point to monitor the daily water consumption. This would also enable the user to identify if there are any points of leakages."

(lxxviii) Even though measures may be taken to reduce water usage as per Manual of MoEF&CC, it is not known whether the said quantity will really be consumed. There is an absence of provision for monitoring mentioned above which has not been adopted by respondent 2 and the same has been ignored by EAC and MoEF&CC, while granting impugned EC.

(lxxix) No undertaking, seems to have been given by PP to the effect that it will not use ground water.

(lxxx) Dewatering for basement construction will diminish water level of that area and can cause environmental degradation. Dewatering for basement will cause extraction of ground water and the same shall be detrimental to vegetation of Northern Ridge and North Campus of the University and 500 m is a very short distance for the issue of ground water.

(lxxxi) Factum of dewatering for basement is conceded by PP, thus, it cannot be said that ground water will not be extracted. It must not be forgotten that the subject land falls in water deficient zone. The very nature of construction would prejudice status of ground water in water deficient zone, and it must be avoided in the interest of environment.

(lxxxii) It cannot be said that the issue of tall building does not relate to environment. Tall Building will have more residential flats, offices and the same will create vehicular pollution, traffic, garbage, plastic pollution and thereby, will cause higher pressure on environment in that area and will cause grave sound pollution in the University premises among other things.

(lxxxiii) Prof. Geetam Tiwari's evaluation report submitted qua earlier EC granted, was due to the fact that respondent had only submitted previous traffic analysis report of 2011. However, the principles enunciated would not change. Moreover, if situation in 2020, based on 2011 report, shows a saturated traffic area, any further assessment based on later data would only make the situation worse. Further, any traffic analysis during Covid-19, will never give the exact average of the vehicular pressure in the area in question. Furthermore, objections dated 15.01.2021 of appellant were also not considered.

(lxxxiv) Roads surrounding the subject land is already running out of its capacity due to University and metro conveyances. Hundreds of E-riksha, autos, buses, thousands of cars of Professors, students and University staffs, thousands of bikes, cycles, etc. already runs in that area. Without admitting, even if, it is assumed that if the load would increase by 615 cars due to the project, the same will create heavy traffic that too at the entry of the University. It should also be presumed that traffic will increase further with visitor, service providers and their vehicles many folds causing much greater pressure on already saturated roads in the region.

(lxxxv) If the submission of PP is taken at its face value, its repercussions would be that DMRC, specially runs metros from and to Vishwavidyalaya Metro Station on Yellow Line, due to significance of University, is bound to be crowded by 2300 more people. Furthermore, Vishwavidyalaya Metro Station is usually crowded during peak hours i.e., from 1 pm to 6 pm when students and University staffs leave the university for their home, and hundreds of students wait in queue for entry in Vishwavidyalaya Metro Station.

(lxxxvi) It is settled law that old data cannot be relied upon for grant of EC. Added with other manifest infirmities of law, it is one of crucial incurable error in whole decision-making process under challenge in this case, is that PP has proffered stale data and studies and official respondent have acted thereon, despite there being clear prohibition in law to do so.

(lxxxvii) Appellant has also referred to the observations made by Supreme Court in Bengaluru Development Authority vs. Sudhakar Hegde & Others MANU/SC/0308/2020 : (2020) 15 SCC 63.

(lxxxviii) EC dated 21.05.2021 does not discuss about traffic created due to the University students, hostels residents, staffs and professors.

(lxxxix) EC has been granted during COVID-19 pandemic when actual traffic in the area or for that matter at any public place, was almost absent.

(xc) The width of roads in question with regards to its carrying capacity to traffic estimation proportionate to "capacity which the existing infrastructure and the proposed project would carry", is improper and thus, burden on existing approach roads would be "disproportionately" high and runs contrary to environmental parameters. The averments qua the same in Appeal are reiterated.

(xci) What is legally unsustainable is the manner with which EC granting authority has dealt with this "relevant aspect" of the matter. In fact, no consideration on such vital aspect was proffered despite appellant's representations to said effect. Grant of EC, thus, stands vitiated. Respondent cannot be allowed to make good the deficiency in decision making process committed by environmental agencies, by resort to forensic arguments sans substratum.

(xcii) While issuing impugned EC, official respondent has not considered the present issue of accident-prone area. This non-consideration culminating in EC, furnishes fresh cause of action for appellant. It is de hors records to suggest that the issue of affrontation of rights of persons with disability owing to project in question, has been subjected to any judicial finding, describing the same as "concluded" is misleading. The level of judicial scrutiny to safeguard a constitutionally protected class (i.e., persons with disability) due to appreciable adverse impact on environment which impedes their right to "reasonable accommodation" as described in Rights of Persons with Disability Act 2016, has to be strict to give effect to constitutional statutes. It is further submitted that EAC, without application of mind on above aspects, has granted EC to respondent and thus, the same is legally vulnerable.

(xciii) Whole EC has been challenged in Appeal. The condition mentioned in para 106 is also without application of mind, without consideration of representation dated 02.03.2021 and augmentation of road has been referred to different department without any conclusive order or notification of concerned department. The action plan stated to be drawn/proposed by Respondent cannot extend carrying capacity of area in question by such cosmetic stimulations. The existing infrastructure is grossly deficient in holding the current flux, disproportionate influx due to project would only add irreparable burden of environment.

(xciv) While considering traffic congestion EAC has also failed to observe that "statutory increase in number of seats" in the University for example, number of seats in University has been increased in almost every course. Only in LLB course of Law faculty, total number of seats has been increased from 2658 in 2018-2019 session to 3320 in 2021-2022 session. Therefore, almost 20% increase in number of seats is a part of existing heavy traffic and the same has been ignored while granting impugned EC. Unless the study is conjured by holistic estimation of existing burden and natural probable increments, the "added miseries" which project in question is bound to bring and its deleterious impact cannot be anticipated. None of the studies conducted so far, have examined this aspect of the matter. Thus, grant of EC is without "evidence" on this aspect.

(xcv) Present EC has been issued for 2302 persons against earlier EC issued for 1785 persons and height of the building has been extended from 139.6 meters

to 145.3 meters. Therefore, it is totally irrelevant to even consider non-existent 2018 EC. When the severity of environmental hazard is catalysed by increasing the units, heights, and occupancy, it is clear that what was bad in law earlier, has been made "worst" now.

(xcvi) The fact cannot be ignored that the population of 2302 persons along with ancillary and incidental variation would impact on environment. The fact asserted qua trend of nuclear families to the effect that it would add less burden, is misplaced. The actual working of project, may have serious repercussion. It is very likely that the said project would become a place akin to "paying guest", lodge etc. infusing much more population than conceded by respondent-PP. This is apart from the people who render service to the said apartments which are huge in number.

(xcvii) PP states to create parking space at basement and for those lower and upper basements have been planned to be constructed. For construction of basement, PP states that it will extract ground water, which will diminish ground water level in that area which is already in water deficient zone.

(xcviii) The assertion that parking space is underestimated is not responded, the norm based on area may be at best indicative.

(xcix) Likewise, respondent's arguments of "nuclear families", judicial notice may be taken to the fact that in present set up where adults member of family are working, there is trend to keep private vehicle per adult person, in such circumstances actual impact on "environment" properly measured, would make the project environmentally unsustainable.

(c) EC granting authority on the set of data provided by PP, is required to carry out its independent examination and it cannot foreclose its jurisdiction on the basis of some material which pre dates its constitution or application seeking fresh EC. Two different proceedings cannot be clubbed to reach a conclusion, which would indict the statutory body of "effacement and abdication of its jurisdiction". EC cannot be granted on the basis of "fettering of expert purpose by some other authorities performance of collateral function"- application of independent mind, enquiry and satisfaction are the bedrocks for proper jurisdictional attribute; the same cannot be guided "by dictation" either of subject matter or exercise of power in granting EC.

(ci) Said study was conducted in December 2020 when University campus was closed due to COVID-19 pandemic and, therefore, recorded traffic pollution is less than usual. Even if, that is so, the data on PM_{2.5} and PM₁₀ is way above the permissible levels and, therefore, proves the point that ambient air quality will be further deteriorated. Contributory pollution will be increased. Deteriorating air quality has been only attributed to stubble burning, which is a very narrow perspective of the understanding of air pollution itself.

(cii) Scientific studies are designed to "anticipate the actual impact", thus, study has to be conducted when "ordinary state of affairs" exists. Consciously chosen time of outburst of pandemic when ordinary state of affairs was suspended cannot furnish basis for acceptance of alleged studies. Further, studies did not consider properly proportionate variation in its conclusion in normal circumstances. The manner of alleged studies reflect grossly perverse

outcome, which are sufficient to discard its "worth".

(ciii) It is denied that dust particles cannot travel 460 meters. Dust particles travel hundreds of kilo meters through wind. Science labs of the University are just behind the project area i.e., around 200 meters from the subject land. Furthermore, when height of the proposed building is 145.3 meters, wind breakers at the project boundary will lose the relevance.

(civ) The subject land is itself situated adjacent to the premises of the University. The Faculty of Education, Super Specialty Hospital, Schools for children from class I to class VIII are at throwaway distance from the subject land.

(cv) PP is consciously concealing facts and showing distance of faculty of education from another corner of the subject land. The faculty of education is less than 100 meters from the boundary of subject land.

(cvi) Order dated 20.01.2016 passed by Delhi High Court as mentioned in para 25(gg) of Appeal states that Delhi Fire Service lacks requisite equipment to combat fire incident, therefore, approval from departments for the project will not equip Fire Department to deal against fire incidents. Furthermore, only one or two fire check floors for such a high-rise building are insufficient to combat fire incidents.

(cvii) While granting EC, duty incumbent upon of official respondent was to scrutinise viability from perspective of all environmental indicators. The alleged no objection by Fire Services, would not make environmentally vulnerable project, permissible. Appellant reserves liberty to assail No Objection, if granted, in appropriate proceedings, if necessary.

(cviii) Proposed building is just in the back yard of Vishwavidyalaya Metro station. It is unknown whether any assessment has been done on safety and operation of nearby metro station and sub-surface metro line in case of any fire mishap. It is pertinent to note that said metro station is one of the busiest metro stations and in case of any fire mishap, the fire can enter the subsurface metro station and smoke can enter the tunnel, which can choke the life of hundreds and thousands commuters.

(cix) Only NOC from Fire Department will not be helpful when any unfortunate fire incident occurs. It becomes more vital when such fire incident occurs in high rise buildings and lack of firefighting equipment is an admitted fact which is relevant for everyone in Delhi.

(cx) It is submitted that the project area is less than 500 meters from the Ridge. Vishwavidyalaya Metro Station, which is comparatively farther than the project area from Northern Ridge, had also taken permission of the Ridge Management Board for the metro project. Pollution, environmental degradation will also be caused due to increase in population of the area.

(cxi) Replying to the contents of para 147 to 152 of reply of PP, appellant has said that details of safety measures to resist earthquakes has not been given. It is difficult to reply specifically, hence appellant reiterate its submissions made in the memo of appeal.

(cxii) Denying averments made in para 154 and 155 of reply of PP, appellant has said that no details have been given regarding the measures taken and the report of M/s. Ind Research and Development house Pvt. Ltd. be not part of record, no comment can be offered thereof.

(cxiii) Replying the averments made in para 158 of the reply of PP, appellant while denying the same, said that whole Delhi has become polluted and schools are being closed due to this pollution. PP is claiming that the subject land does not fall within the critically polluted area. PP is relying on the old data which was notified in 2010 and things have been critically changed in recent times and pollution has increased aggressively.

(cxiv) The official respondent has not examined the impact of project which is located within threshold limits of 'critically polluted area', from the perspective of its sustainability. Subsequent exemption notification, without prejudice to right to assail its validity, cannot allow the official respondent to ignore this vital aspect for the incidental purposes. Hitherto existing complete prohibition based on objective indicator might have been lifted but empirical and subjective decadence on environment was relevant aspect of the matter, necessarily to be gone into. To keep the record straight, it is worth noting that PP have procured EC during the period when there was a complete lockdown and all environmental parameters were unreal as demonstrated throughout the world, giving a clear indication that in this case "misrepresentation" and "non-application of mind" for this project proponent has been a reality. Any real time data relied upon would be incorrect and out of the ordinary.

(cxv) Denying averments made in paras 160 to 166 of the reply of PP, appellant in rejoinder has said that after issuance of impugned EC, fresh cause of action has arisen against respondents. In impugned EC, height of the building has been increased which will give view of larger area. It is submitted that women hostels are 200 to 300 meters away from the subject land and hence the same is of significant concern. The allegation of appellant's mala-fide and alleged "concluded determination qua privacy aspect" is factually misplaced. The issues before different proceedings have been, at best, put to rest and not the grievance. Dismissal of legal recourse based on delay or laches, cannot permit respondent/PP, to carry out the acts of breach of other legal entitlements. Issue of privacy etc., are continuous causes which would be impaired all the times when fresh action contemplating its abridgment is at fore. Furthermore, no finding on said aspect has been produced in the changed circumstances in any of the proceedings referred to by respondent. It is regrettable that PP, on one hand asserts Tribunal's lacks of jurisdiction qua those aspects and at the same time, seeks to justify its stand on technical grounds. Notwithstanding the limited permissibility of "mutually destructive pleadings", such approach on the aspect of "non-negotiable constitutional rights" is impermissible in law.

(cxvi) The averments made in paras 167 and 168 of reply of PP are denied and it is said that neither there is complete disclosure of current correct and full information nor it can be said that EC can be obtained by submitting misleading information.

(cxvii) Appellant has given certain illustrations as under:

- a. Details of Civil Appeals take up before Supreme Court by respondent

2 and subsequent orders passed by Tribunal, the details of adjoining properties, illegal felling of trees, and other such details as described in said Appeal specifically in Para 25(nn), which makes the application liable for rejection and/or cancellation of EC.

b. Disclosure regarding Civil Appeals filed before Supreme Court was crucial for determination of EC. Both the appeals were from interim orders passed by Tribunal, wherein Tribunal was pleased to form Committees to assess environmental viability of the project in question. Thus, the same shows reluctance of PP to subject itself to independent scrutiny. Furthermore, order dated 10.06.2020 Supreme Court in Civil Appeal 2485 of 2020 was crucial to understand the nature of the proceedings before Committee, the objection of appellant in the way, proceedings were conducted and ultimately, whether the report of Committee could be relied upon. By failing to disclose the entire gamut of the litigation, PP misled EAC.

c. A bare perusal of Serial No. 9 under Clause III - Environmental Sensitivity section shows that several areas occupied by sensitive manmade land uses have not been disclosed by PP. PP has inter-alia failed to disclose Patel Chest Institute (hospital) and all colleges located in North Campus, which are all adjacent to the project site and certainly within 2 km radius of the project site. PP's reliance on 'Adjacent Feature of the Project Site' section of Appendix II to Form I A is also misplaced. The said section also fails to disclose that several colleges and Patel Chest Institute (hospital) are within the vicinity of the project site.

d. The term 'vulnerable groups' in the Form is expansive in nature and would take colour from the nature of development proposed and the location of the development. In the instant case, development of high-rise towers next to women's hostel, would make women residing within the said hostel as vulnerable groups. In any event, no disclosure has been made regarding hospital patients in Patel Chest Institute.

e. Serial No. 7.3 in Form IA mandates that adverse effects on local communities must be disclosed. Given that the project is being proposed within Delhi University area, university students would be the relevant local community and adverse effects on them must be disclosed. Furthermore, various centers of learning within the North Campus form sites with cultural values.

f. Denying the averments made in para 174 to 176 of reply of PP, it is said that information sought in Serial No. 1.2 and/or Clause 3.2 of Form I do not include information concerning felling of trees on the same land in reference to the same project. The purpose for seeking this information is to evaluate environmental impact of the project. Given that trees had been previously felled for construction purposes of this very same project, the said disclosure was important and relevant to evaluate the impact of the project. Thus, even past information, which may relate to an earlier stage of construction would be relevant to the determination of the environmental viability of the project and hence, must be disclosed. It is denied that PP has complied with all the

conditions laid down by Forest Department in reference to felling of trees. A perusal of Para 176 itself shows that PP has not planted 50% of the required saplings even after 10 years of felling trees.

g. Denying the averments made in para 177 and 178 of reply of PP, appellant in rejoinder has said that there is no protected area of North Delhi Campus. It is denied that the project site is outside the boundaries of bungalow zone and/or North Delhi campus. It is denied that there is no bar for construction of tall buildings in the area. Reliance by PP on clearance granted to other projects/high-rise buildings is completely misplaced. None of the said projects fall within the bungalow zone and/or North Delhi campus; unlike the instant project. The content of Appeal is reiterated.

(cxviii) PP's reliance on the report constituted by LG to support the present project is misplaced. The said report was from 2010, when the project had a completely different scope and did not have nearly 40 floors. Thus, the said report cannot be relied upon. Appellant is not re-agitating any settled issues in this Appeal.

(cxix) Denying the averments made in para 184 of the reply of PP, it is said that Principal's Residence (Delhi University) and Delhi University Office do not fall within the areas protected under international conventions, national or local legislation for their ecological, landscape, cultural or other related value. Clause 1.3.4 of the 48 ZDP for Zone-C states that Viceroy's lodge is a historical building and efforts should be made to preserve its character. Furthermore, Clause 2.8.1 read with annexure 9-A of the said plan lists out various heritage sites as per surveys of DDA and INTACH. Said annexure mentions various buildings in the vicinity of the project such as Chapel, St. Stephens College, Principal's Residence (Delhi University), Delhi University Office, Faculty of Arts, Stephen's College etc. All of these are within the vicinity of the project and have deliberately been suppressed by PP. It is also denied that DRDO Bhawan and/or the Officers' enclave are not defence related installations.

(cxx) Denying the facts made in paras 187 to 191 of reply of PP, it is said that joint inspection report of 19.02.2010 cannot be relied upon to support the present project, as in 2010, the project was proposed to have only 8 floors; whereas now the project is proposed to have nearly 40 floors. Thus, there has been a total change in the scope and size of the project. The report of the Engineer Member (dated 27.04.2010) shows that even a construction of 8 floors was going to have an adverse effect of the local surroundings/area and thus a construction of nearly 40 floors is going to have an even worse effect. A perusal of the observations/conclusions of the joint committee (as enumerated in para 190) itself shows that a much smaller project was appraised by the said committee and hence these conclusions cannot be utilized to support the present project. Concerns regarding environment are dynamic in nature and hence there cannot be any finality with respect to objections concerning environment. In any event, since the scope of the project has widely changed over the years, the same amounts to a fresh cause of action and thus, requirement of fresh appraisal, which has never been done by the said Committee.

(cxxi) EC has been granted in violation of principles of natural justice by simply

relying on one sided information supplied by PP and without properly considering objections of appellant submitted to EAC. Minutes of proceedings of EAC do not reveal any applicator of mind on various aspects including carrying capacity of the area.

(cxxii) EAC has also not considered other densely populated areas near the project site namely GTB Nagar, Kamla Nagar etc.

(cxxiii) Neither Expert Committee nor PP have provided any logical reason for selecting a 2km grid for analysing impact of population density. PP admits that the standard grid size is 5km and that the present analysis was a deviation from the same. This very objection was raised by appellant before Tribunal to impugn analysis of Expert Committee and the same remains unresolved till date.

(cxxiv) It is vehemently denied that environmental impact of the project is restricted to construction phase and/or is site specific. The proposed project provides for residential accommodation to more than 1000 persons, in an already densely populated area. The project will permanently alter the character of the area and will have a long lasting and continuing impact on environment of the area. With respect to the categorization of the instant project, the submissions made hereinabove may be read here in reply. It is denied that PP has provided correct and complete primary and/or secondary data with its Form-1.

(cxxv) Denying the content in para 223 to 225 of reply of PP, appellant has said that neither PP's letter dated 02.08.2021 nor the DPCC letter dated 27.08.2021 state that there is no requirement to obtain Consent to Establish for the current project. DPCC letter dated 27.08.2021 merely forwards PP's query to MoEF&CC for the letter's consideration. PP is seeking to defy office memorandums and categorical conditions of EC. It is also incorrect to State that Consent to Establish cannot be given independently and is consequential to EC. OM dated 20.09.2021 issued by MoEF&CC is clear and categorical in this regard and, therefore, not a brick can be laid without a CTE in place.

(cxxvi) It is denied that the appeal or the issues raised by appellant are barred by limitation that even after 10 years, PP has not complied with the tree cutting permission that had been sought by it.

Rejoinder affidavit dated 14.03.2022 to the response of MoEF&CC (respondent 1):

92. Reiterating in general the averments made in appeal, it is said that while granting EC, relevant aspects have not been considered; there is complete lack of application of mind and impact of the project in question and environment has not been appreciated/properly appraised. Since reply in rejoinder is repetition, so we are refraining details. Appellant vide letter dated 15.03.2022 has placed on record copies of Office Memorandums dated 24.12.2013, 24.06.2013, 13.02.2018 and 28.01.2021 issued by MoEF&CC.

93. Since there was an interim order, PP moved IA Nos. 240/2021 and 21/2022, seeking early hearing of the Appeal or to permit construction of the project in question. No party sought to submit any further pleadings or documents except that appellant sought permission to place on record copies of OMs which have been referred in the memo of Appeal issued by MoEF&CC relating to consideration of grant of prior EC,

which we permitted.

ARGUMENTS:

94. With the consent of the parties, we heard the matter finally on 15.03.2022 and 22.03.2022. Learned counsel Shri Sanjay Upadhayay appearing on behalf of appellant and learned senior Counsel Shri Atmaram N.S. Nadkarni appearing on behalf of PP have advanced their submissions. Shri Kumar Rajesh Singh, Advocate, appearing on behalf of MoEF&CC has referred to the stand of respondent 1 i.e., MoEF&CC in its reply and reiterated that EC has been validly granted.

95. On behalf of Appellant, grounds taken in Appeal have been elaborated and reiterated by learned Counsel Shri Sanjay Upadhayay and it is said that EC has been granted in utter violation of environmental laws and the procedure prescribed in EIA 2006 as also ignoring law laid down by Hanuman Laxman Aroskar vs. UOI & Others MANU/SC/0444/2019 : (2019) 1 SCC 401 and Bengaluru Development Authority vs. Sudhakar Hegde & Others MANU/SC/0308/2020 : (2020) 15 SCC 63.

96. On behalf of PP, written submissions have also been filed. Oral arguments are reiteration of the stand taken by PP in its reply. Since arguments advanced on behalf of PP, have also been placed on record in writing, we find it appropriate to reproduce written submissions of PP as under:

"Key:

(i) Young Builders Pvt. Ltd. (Respondent No. 2)-"YBPL"; (ii) Environmental Clearance dated 21.05.2021-" EC"; (iii) Environmental Clearance dated 22.03.2018-"2018 EC"; (iv) Environmental Clearance dated 13.08.2012-"2012 EC" (v) Counter Affidavit of Young Builders/Respondent No. 2-"CA"

Project Description - 1, 3 Cavalry Lane and 4 Chhatra Marg, New Delhi - 2.0 Ha of land. 1, 37, 879.64 m² of Built Up Area (EC @ Pg. 69, Appeal)

- 2 Podiums+Stilt+2 Fire Floors+38 floors-145.3 mtrs [Details of Buildings in EC @ Pg, 70, Appeal]

I. ENVIRONMENTAL CLEARANCES AND EXPERT COMMITTEE REPORTS IN RELATION TO THE SUBJECT PROJECT

Multiple statutory authorities and expert committees have examined the project threadbare and granted clearances, which are listed hereinbelow,

(i) The State Level Expert Appraisal Committee ("SEAC"), after conducting a detailed examination of the Project, recommended the grant of EC for the Project to the State Level Expert Environmental Impact Assessment Authority ("SEIAA"), which in turn granted the first (1st) EC on 13.08.2012. Since the Project could not be constructed due to the litigation initiated by the Appellant before the Hon'ble High Court of Delhi at New Delhi ("Hon'ble Delhi HC") (delineated below), the EC expired with efflux of time.

(ii) The Project was re-examined by the SEAC, which after detailed presentations and examination recommended the grant of another EC for the Project to the SEIAA, Delhi, which then granted the second

(2nd) EC to YBPL on 22.03.2018

(iii) The Expert Committee appointed by this Hon'ble Tribunal in Appeal No. 112 of 2018, comprising of 9 expert representatives from 9 different independent institutions conducted an independent carrying capacity assessment of the Project, and submitted its Rapid Indicative Environment Assessment Report before this Hon'ble Tribunal on 10.12.2020. After analysing the population density, ground water, ambient air and noise quality, traffic management and parking, the Committee found that the Project was environmentally viable.

(iv) Subsequently, the Project was yet again presented in detail and closely examined by the Sectoral Expert Appraisal Committee ("EAC") of the MoEF which recommended the grant of the subject EC to YBPL on 13.04.2021. The subject, third (3rd) EC was granted on 21.05.2021 by the MoEF, which is challenged in the present proceedings.

II. SUBJECT PLOT SOLD BY DMRC IN AN OPEN AUCTION IN JUNE 2008 THROUGH A COMPETITIVE BIDDING PROCESS TO YBPL FOR AN AMOUNT OF RS. 218.20 CRORES

A) The Subject Plot was acquired by DMRC under the provisions of the Land Acquisition Act, 1894.

1. The plot of land on which the subject property is located was initially owned by the Ministry of Defence. However, for the purposes of constructing a Metro Station, the land was acquired by the Delhi Metro Rail Corporation ("DMRC") following the due process under the Land Acquisition Act, 1894. The Award finalising the acquisition process was passed by the Collector on 11.09.2001.

2. It is pertinent to note that the DMRC has the mandate to undertake property development for augmenting its revenue and subsidizing the fare of its consumers. On 17.06.1996, The Union Ministry of Urban Development, Government of India authorized that the project cost for the Delhi Metro will be raised inter-alia by way of revenue from property development. The same is noted with approval by the Hon'ble Supreme Court as well in its Order dated 17.12.2019 in the case of University of Delhi v. Union of India wherein the same challenge had been raised qua height restrictions, flouting municipal norms etc. [@ Pg. 986, CA, Vol. II] In addition to the present project, the DMRC has utilised 4 other land parcels in Delhi adjacent to or adjoining metro stations for a residential purpose. The other 4 parcels of land are Kyber Pass, Rithala, Subash Nagar and Dwarka Mod.

B) Since the Terminal Station of the Yellow Line was extended from Vishwavidyala to Jahangirpuri, the land allotted for parking became vacant

3. In December 2004, the Vishwavidyalaya Station became operational. As per the initial plans, the Vishwavidyala Metro Station was terminal station on the Yellow Line of the Delhi Metro and thereby certain land was used for parking space on the subject land as commuters park vehicles on the terminal station of the Metro Line. However, in 2006, it was decided that the Terminal Station on the Yellow-Line of the Metro will be extended from Vishwavidyala Station to Jahangir Puri Station. Therefore, the land which was initially used by the DMRC for large parking space, i.e. the land admeasuring 2.0 ha adjoining the Metro

Station, was no longer required for parking and stood as surplus land.

4 . Subsequently, on 23.09.2005, a Gazette Notification was issued by the Ministry of Housing and Urban Development, Respondent No. 1, revising land use of 3.05 Ha. Plot from "Public and Semi-Public Facility" to "Residential".

C) The land earlier used for parking was sold to YBPL in a public auction

5 . On 23.06.2008, DMRC issued a Request for Proposal for property development at Vishwavidyalaya to auction the subject 2.0 hectares of land on a 90-year lease for a Group Housing Project. A Public auction was conducted on 28.07.2008 by DMRC for the 2.0 Ha of land. Thereafter, on 13.08.2008, the DMRC issued a Letter of Acceptance to YBPL stating that its bid price of Rs. 218.20 Crores has been accepted for the said project. Hence, way back on 15.12.2008, YBPL paid the amount of Rs. 218.20 Crores to DMRC and executed a lease agreement for a 90-year period.

III. THE PROJECT HAS BEEN APPRAISED WITH COMPLETE APPLICATION OF MIND AND IN LINE WITH THE PRECAUTIONARY PRINCIPLE

A) The subject Project has been appraised on three separate occasions by the SEAC-Delhi, SEIAA and the EAC of the MoEF & CC as well as a 9-member expert committee appointed by this Hon'ble Tribunal

6 . It is submitted that the Project has been appraised on three separate occasions. Firstly, by the SEAC and SEIAA in 2012, culminating in the 2012 EC. It is pertinent to note that the 2012 EC provided for Ground + Stilt + 35 floors. This EC was not objected to by the Appellant. Thereafter, on 22.03.2018, the Project was again appraised by the SEAC, which after detailed presentations and examination recommended the grant of another EC for the Project to the SEIAA, Delhi, which then granted the second (2nd) EC to the answering Respondent for Ground + Stilt + 37 floors. Thereafter, the Expert Committee appointed by this Hon'ble Tribunal in Appeal No. 112 of 2018, comprising of 9 expert representatives from 9 different independent institutions conducted an independent carrying capacity assessment of the Project, and submitted its Rapid Indicative Environment Assessment Report before this Hon'ble Tribunal on 10.12.2020. ("Expert Committee") After analysing the population density, ground water, ambient air and noise quality, traffic management and parking, the Committee found that the Project was environmentally viable. Yet again, the Project was presented in detail and closely examined by the Sectoral Expert Appraisal Committee ("EAC") of the MoEF comprising of 14 expert members which recommended the grant of EC to the Project on 13.04.2021. The subject, third (3rd) EC was granted on 21.05.2021 by the MoEF, which is challenged in the present proceedings. The present EC is for buildings with 2 Podiums+Stilt+2 Fire Floors+38 floors.

7 . In addition to the above, the Appellant also approached the SEAC with its objections in 2012. The SEAC further constituted a sub-committee to look into the said objections, granted an opportunity of personal hearing to the Appellants which was availed by them. On 09.02.2012, the Report of the SEAC Sub-Committee was published which inter alia reported that, the apprehensions of the Appellant University regarding the parking blockade and projected traffic are not correct as there is no traffic problem in Cavalry Lane, and neither will the movement and inflow of students be hampered as a result of the project of

the answering Respondent and further that YBPL has received the requisite tree cutting permission and therefore the contentions of the Appellant University are mere apprehensions. [@ Pg.895-903, CA, Vol. I]

B) The Minutes of Meeting of the EAC and the specific conditions imposed in the EC display thorough scrutiny and application of mind

8. The subject EC was applied for on 08.02.2021, after which the EAC directed YBPL to send point-wise responses to each and every ground raised by the Appellant which is clear from the minutes of meeting of the 62nd EAC Meeting dt. 01.03.2021 [Pg. 458, Appeal, Vol. III]. It is pertinent to note that the same grounds have been taken in the present Appeal. In response to the objections raised by the Appellant before the EAC, YBPL submitted its reply on 22.03.2021 detailing the various measures being taken with respect to seismicity, air quality, ground water management, noise etc. [Reply of YBPL @ Pg 523-529] A bare perusal of the minutes of the 62nd Meeting of the EAC dated 01.03.2021 display the close scrutiny and application of mind by the EAC wherein it is noted that, [@ Pg. 458-459, Appeal]

"3. The EAC observed that the PP has earlier obtained EC twice for the same project vide letter No. DPCC/SEAC/50/SEIAA/1/2012 dated 13/08/2012 and vide letter No. SEIAA-D/C-353/EC-350/2018 dated 23/03/2018 due to increase in FAR area of the project and revision in the project planning. Now, the PP has re-applied for EC in connection with order passed by Hon'ble NGT, Principle Bench, Delhi on 20.01.2021 on Appeal No. 112/2018 in the matter of University of Delhi vs. MoEF&CC.

4 . The EAC noted certain discrepancies in the Conceptual plan submitted by the PP regarding the disposal of treated water. In the Conceptual plan, as per the section on Environmental Management Plan, the PP has proposed that entire treated sewage will be reused for toilet flushing and horticulture, while as per the water balance diagram and table on water requirement, it has been stated that about 96 KLD will be disposed in to municipal drain. Also, the PP has not provided any information on the dewatering required for basement construction in the Conceptual Plan.

5 . The EAC also noted that a Committee was appointed in terms of order of NGT dated 27.2.2020 and the Hon'ble Supreme Court vide its order dated 10.06.2020, and has given its report dated 10.12.2020. One of the suggestions of the Committee was that, 'considering that the project area is part of groundwater discharge zone, it is advised to restrict construction to only one underground basement and one stilt parking, instead of the proposed two. The parking plan may accordingly be revised and necessary approvals obtained.' However, the PP has still proposed 2 basements in the current proposal.

6 . During processing, Ministry is in receipt representation dated 02.03.2021 from the Pro-Vice-Chancellor, University of Delhi expressing concerns on the construction of building in DU area. Representation, however, could not be discussed in the meeting of EAC. The EAC was of the opinion to take point-wise replies from PP to

the representation so that the same could be discussed in forthcoming meeting.

7 . The EAC (Infra-2), based on the information submitted and clarifications provided by the Project Proponent and detailed discussions held that the submissions made by the PP require certain revisions as mentioned above. In view of the foregoing, the EAC recommended to defer the decision on the project and asked the PP to provide the following information:

- i. Clarification for the proposal of 2 basements with reference to recommendation of the committee constituted by NGT and Supreme Court Order.
- ii. Analyse the discrepancies and resubmit the conceptual plan after making the necessary revisions. Water balance flowchart needs to be revised.
- iii. Air pollution management in the context of Graded Action Plan for Delhi & NCR.
- iv. Point-wise replies to representation made by Delhi University"

9. The above queries were duly responded to by YBPL by way of a detailed reply on 22.03.2021 [@ Pg. 345-443, Appeal]. Further, YBPL made two detailed presentations on 01.03.2021 and 13.04.2021 before the EAC concerning each and every concern and query raised by the EAC. [Presentations @ Pg. 1230-1323, CA, Vol. III] Hence, the EAC had a wealth of material to assess and appraise the project.

10. In the Reply filed by the MoEF & CC (Respondent No. 1), it has been stated that YBPL's Response dated 22.03.2021, was closely checked in the 64th Meeting of the EAC held on 12-13 April, 2021 and found to be in accordance with environmental parameters.

11. It was on the above basis that the EC was granted, with several specific conditions on all aspects of the project including conservation of ground water, source of water for operational phase, area for green belt, preparation of a traffic management plan etc. The very fact that the EAC has laid down 18 specific conditions, in addition to the general conditions, proper and judicious application of mind to the project in question. Thus, the EAC by proper application of its mind has taken into consideration all the environmental issues and thereafter issued the EC by incorporating the conditions and special conditions to be complied with by the project proponent/project developer.

12. This is further cemented by reading the Reply filed by the MoEF wherein it is stated that,

"14. It is submitted that the project proponent is obligated to comply with the specific conditions. The compliance of these conditions is strictly assessed/evaluated/monitored by the concerned authorities at the State and Central level. The project proponent has to submit status of compliance report every six months which will be published on the

website and monitored by the Ministry. If there is any non-compliance of the Environmental Clearance conditions, effective action in accordance with law is taken by the Competent Authorities against the project proponent.

15. It is submitted that the Environmental Clearance dated 21.05.2021 for the projects in question has been granted by the Ministry in accordance with law and this Answering Respondent has followed the procedure for appraisal of the Project as prescribed under the EIA Notification, 2006 and subsequent amendments and subject to stipulation of various environmental safeguards"

C) The Project has been assessed in conformity with the OM of 10.11.2015 which lists out the environmental parameters to be considered for assessing Building and Construction Projects

13. It is submitted that all item 8(a) projects with built-up area below 1,50,000 sq mrs. are appraised in the identical manner as has been done in the present case. In fact, in the Appendixes - I, II and V to EIA 2006 and OM dated 19.06.2013 and 10.11.2015, the MoEF has prescribed the forms, procedure and a time line as well as the precise environmental parameters basis which a building and construction project is to be assessed. This was done to introduce uniformity in the appraisal process for building and construction projects. [OM dated 10.11.2015 - Annexed as Annexure - 1] [Appendixes I, II and V to EIA Notification, 2006 - Annexure-2 (colly.)] As per the OM issued by the MoEF on 10.11.2015, only the following parameters are to be assessed by the EAC,

"a. Brief Description of the Project in terms of location and surroundings.

b. Environmental Impacts on Project Land and its surrounding developments and vice-versa.

c. Water Balance Chart with a view to promote waste water treatment, recycle, reuse and water conservation.

d. Waste Water Treatment and its details including target standards.

e. Alterations in the natural slope and drainage pattern and their environmental impacts on the surroundings.

f. Ground water potential of the site and likely impacts of the project.

g. Solid Waste Management during construction and post construction phases.

h. Air Quality and Noise Levels; likely impacts of the project during construction and operational phases.

i. Energy requirements with a view to minimize power consumption and promote use of renewal energy sources.

j. Traffic Circulation System and connectivity with a view to ensure adequate parking, conflict free movements, Energy efficient Public Transport.

- k. Green Belt/Green cover and the Landscape Plan.
- l. Disaster/Risk Assessment and Management Plan.
- m. Socio Economic Impacts of the project and CSR.
- n. EMP during construction and operational phases.
- o. Any other related parameter of the project which may have any other specific impact on environmental sustainability and ecology."

Further, it is also provided that, "The SEIAA/SEAC need not focus on the other issues which are normally looked after by the concerned local bodies/State Government Departments/SPCBs."

All the parameters listed above were closely monitored in the appraisal process which is clear from a reading of the Form-I, I-A, Conceptual Plan and EMP. Detailed discussions were held during presentation on 01.03.2021 and specific queries were raised w.r.t. (i) environmental issues on project parameters (ii) DU's objections (iii) Nine-member committee report appointed by Hon'ble NGT. Thereafter, YBPL submitted a detailed reply dated 22.03.21 covering all the queries to the EAC. For instance, in light of point(c) above, the EAC specifically sought a revised water balance chart to ensure there is no ecological discrepancy in the Project. Further, even the specific conditions imposed in the EC are in line with the above listed parameters. For instance, conditions for managing the ground water level, traffic circulation etc. have been imposed on the Project Proponent.

14. The above information shows that an appraisal of the Project has been done by three different SEACs/SEIAA and MoEF in 2012, 2018 and 2021. In addition, there were 2 Expert Committees which have assessed and affirmed the environmental viability and sustainability of the Project. It is important to bear in mind that the Appraisal contemplated under the EIA Notification 2006, for a project under item 8(a), i.e. a building a construction project with built up area lesser than 1,50,000 sq mtrs, is based on Form-I, Form I-A, Conceptual Plan, Environment Management Plan and information submitted thereon. However, in the present case, the appraisal has been done over and above the legal requirement and in line with the principle of sustainable development not only by the EAC but by several expert committees.

15. On the contrary, in the present case, there was the advantage of the Report of the 9-member Expert Committee. Even the EAC appraised the Project with complete application of mind. The EAC comprises of various experts from various fields, who have looked into the matter in great detail and have even considered the representation of the Appellant. Only after the detailed deliberations of various stakeholders, and after a multiple layered decision making process, the subject EC was granted.

D) The views of an Expert Body like the EAC cannot be substituted by the Court/Tribunal, if all relevant material was considered by the Committee

16. On the issue of reviewing a finding rendered by an Expert Committee/EAC, the Hon'ble Supreme Court in the Central Vista Judgment categorically held that,

"494. [...]EAC is an expert body and it is amply clear that it has been made aware of all relevant information relating to the project and it has applied its mind to the proposal. Even on settled principles of judicial review, it is clear that relevant material has been considered by the committee and no reliance has been pointed out on any irrelevant material. The specific recommendations given by the committee do indicate that the committee was aware of the need for precautionary measures in environmental matters and accordingly, it suggested requirement of further permissions on certain counts.

495. Once an expert committee has duly applied its mind to an application for EC, any challenge to its decision has to be based on concrete material which reveals total absence of mind. Absent that material, due deference must be shown to the decisions of experts.

515. We, therefore, upon a thorough examination, decline to interfere in the grant of EC. The expertise developed by the EAC cannot be undermined in a light manner and as noted above, due deference must be accorded to expert agencies when their decisions do not attract the taint of legal unjustness."

17. It is trite law that the nature of reasoning in the Report/Order of a quasi-judicial body or an Expert Committee is different from that rendered in a Judicial Order. Since an Expert Committee is not a Judicial Body, it is not required to give elaborate reasons qua each of the point raised by the parties, however, its Report must be in the nature of a speaking Order and contain adequate and tangible reasons for arriving at its conclusions. In light thereof, the Minutes of the EAC Meeting need not be in the nature of a speaking Order/Judgment. In *S.N. Mukherjee v. Union of India* reported at MANU/SC/0346/1990 : (1990) 4 SCC 594 (Reproduced @ Pg. 871, CA, Vol. I), the Hon'ble Supreme Court summarised the above proposition and held that,

"36. [...] In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy."

18. It is further submitted that a Building and Construction Project has to be assessed as per the terms of the EIA Notification, 2006 and in light of the potential environmental footprint. It cannot be scrutinised in a manner which traverses beyond the EIA Notification and akin to a Category A/B1 Project requiring preparation of EIA Report. In the *Central Vista Judgment*, which also dealt with a Building and Construction Project under item 8(a) of the EIA Notification, the Hon'ble Supreme Court held that,

"514. In the present case, the subject project is an independent building and construction project wherein one-time construction

activity is to be carried out. It is not a perpetual or continuous activity like a running industry. It is absolutely incomprehensible to accept that a project of this nature would be unsustainable with the needs and aspirations of future generations.[....]."

IV. THE PROJECT HAS BEEN APPRAISED BY A 9-MEMBER EXPERT COMMITTEE APPOINTED BY THIS HON'BLE TRIBUNAL, ON THE BASIS OF THE CARRYING CAPACITY OF THE AREA

19. A 9-member Expert Committee was appointed by this Hon'ble Court to assess the Carrying Capacity of the Area in the previous challenge to the EC in Appeal No. 112 of 2018, vide Order dated 27.02.2020. The said Committee comprised independent experts from 9 different and eminent institutions across the Country. The Committee published its Rapid Indicative Environment Assessment Report before this Hon'ble Tribunal on 10.12.2020 ("Expert Committee Report") [Pg. 252-302, Appeal, Vol. II] After analysing the population density, ground water, ambient air and noise quality, traffic management and parking, the Committee found that the Project was environmentally viable. It is crucial to note that the assessment undertaken by the Committee was based on fresh data as gathered by the Committee.

20. A bare perusal of the Report of the Expert Committee would show that it has applied its mind independently to each and every ecological danger that could potentially arise from the subject Project. The methodology adopted by the Committee was based on the precautionary principle and the Committee took a holistic view of the situation. The methodology adopted is stated herein under,

"For rapid indicative environment assessment of the site, a 2 km by 2 km area was examined for likely impact during construction and operational activities of the project. As the project is a group housing scheme, the likely environmental impacts are anticipated on air quality primarily due to additional vehicular movement, additional water requirement, wastewater disposal, solid waste generation, noise generation and traffic congestion.

To assess the incremental changes in environmental media, an assessment of scale of activities and their potential impacts was undertaken. Based on the incremental changes and extent of impacts, environmental viability of the project is evaluated. Status and validity of various clearances obtained by the project proponent is also presented."

A) Findings of the Report of the 9-Member Expert Committee

i. The increase in population due to the Project will not impact the urban infrastructure/services

"The grid falls in 6 wards. Of these wards, most of the area lies in the Timarpur ward (59.7%), followed by GTB Nagar (23.9%) and Majnu ka Tilla (14.2%) as shown in Table 3.2. The ward boundaries are shown in Figure 3.3 and as evident most of the grid area falls under Timarpur ward (No. 10). The ward wise land use distribution is shown in Figure 3.4. [....]

Timarpur ward is the largest ward in the grid and an incremental increase in the population was estimated in this ward. The estimated increase in the population density in the Timarpur ward will be 6777 persons per sq. km. The percentage increment in the ward will be 14%. This increase is significant; however, tall residential buildings do give higher population density. This increase in density is not likely to impact the urban infrastructure/services, as noted above.

INFERENCE

An increment of 1947 persons per sq. km. is anticipated in ward area due to proposed project, i.e. an increment of 14% in the existing population density in the ward, which is statistically significant and likely to result in alteration in present conditions."

ii. Incremental Air Pollution Load From The Project is statistically insignificant

"Present Ambient air quality

The nearest ambient air quality station to the project site is located at North Campus. The annual average concentration for the years 2018 and 2019 for SO₂, NO₂, NH₃, Benzene, PM_{2.5}, PM₁₀ and CO was analysed and it is noted that while NO₂ was within stipulated norms, PM_{2.5} and PM₁₀ were exceeding standards during 2018 and 2019. The details are as tabulated below. [....]

INFERENCE

Being a high-income group residential project, the likely source of air pollution is vehicular emissions from estimated additional 615 cars on road during occupancy phase. During assessment, it was assumed that these additional cars would be BS IV compliant and driven by petrol or CNG.

The applicable emission limits for CO, HC and NO_x were used to estimate additional pollution load. The BS IV 4 wheelers do not generate particulate matter and thus no likely addition to existing PM levels is expected.

Further, the annual pollution load data from ARAI-TERI, 2018 study for Delhi was used to estimate additional pollution load in Timarpur ward due to additional 615 cars on road due to proposed project, using area as proportionating factor. Statistically insignificant increment is noted in CO (0.25%), HC (0.09%) and NO_x (0.1%) emissions due to proposed project."

iii. The additional Water Requirement for the project, during the construction phase as well as the operational phase will lead to a mere 0.003% increase in the grid

"(a) Construction Phase

As per Form 1A submitted by project proponent, water requirement

during construction phase will be met through private water tankers and no ground water will be extracted. It is opined that the construction of 37 floors and four towers along with basements will require huge quantity of fresh water for material preparation, mixing, curing, etc. The proponent has not provided information on quantity of water to be used during construction phase.

As per a study, the embodied water quantity of a multi-storied apartment building of steel and RC construction is 27.6 KL per sq.m. of built-up area (Assessment of water resource consumption in building construction in India S. Bardhan Dept. of Architecture, Jadavpur University, India, 2011).

(b) Occupancy Phase.

The water requirement during occupancy phase is presented in Table 3.8.

[...]

At present, the estimated water usage in the grid is as follows,
Estimated water usage in the grid = Population (38,475) x 135 LPCD = 5194125 LPCD = 5194 KLD
Additional fresh water requirement due to project during occupancy = 182 KLD

A percentage increase of about 0.003% in fresh water requirement is anticipated in the grid.

Hence, proponent is advised to estimate total water requirement during the construction phase and submit an agreement with private water tanker provided for supplying the calculated quantity of water during construction phase. Further, an undertaking may be submitted by proponent that no ground water will be extracted during construction phase.

[....]

INFERENCE

It is understood that no ground water will be extracted during construction & occupancy phase of the project. The water requirement during construction will be met through private tankers and during occupancy by Delhi Jal Board for which necessary permission have been obtained. Further, 0.003% increase in water requirement in the grid is anticipated."

iv. The proposed STP capacity is adequate for Waste Water Generation

"As total 34% of daily water requirement is proposed to be met through recycling (flushing & horticulture) the daily fresh water demand is lower. Further, a 0.002% percentage increase in existing load of municipal sewer is anticipated due to discharge of treated wastewater from the project.

The proposed STP capacity is adequate with wastewater estimation

based on @ 4 persons per household as indicated by the project proponent. However, it will be inadequate to suitably treat daily wastewater generated when quantity is estimated @ 4.75 persons per household."

v. A mere 1.27% increase in generation of Solid Waste is anticipated due to the project

"An increase of 1.27% from the present generation of solid waste in the grid is estimated due to the project."

vi. Miniscule impact is anticipated on the existing Noise Levels.

"One of the point of contention is whether the project falls under 'Silence zone', it is defined as area less than 100 metres around hospitals, educational institutions, courts, religious places or any other area which is declared as such by the competent authority.

The nearest hospital to project site is Patel Chest Hospital, which is located at an aerial distance of around 600 m and thus silence zone standards are not applicable.

The nearest noise quality monitoring station is Civil Lines which falls under commercial zone with standards 65 dB(A) daytime and 55 dB(A) night time. The annual data was analysed and it is noted that annual average values during 2018 was 61 dB(A) daytime and 59 dB(A) night time. Further, the annual average value during 2019 was 62 dB(A) daytime and 58 dB(A) night time.

It is noted that daytime annual average value is within stipulated standards and slight exceedance is noted in night time values mainly due to plying of trucks towards Delhi Border.

INFERENCE

As it is a group housing project, miniscule impact on noise environment during occupancy phase is anticipated, except during intermittent operation of the DG sets as backup power."

vii. Only a marginal Impact on Traffic Congestion is anticipated due to additional 615 cars

"The impact of additional cars on road during occupancy phase of the project was assessed on five road sections namely, Chatra Marg, Vishwavidyalaya to Vidhansabha Road, Vidhansabha to Vishwavidyalaya, GC Narang Road and Cavalry Road. A traffic count survey was done by CPCB on October 12, 2020.

The assessment is as presented below,

[....]

Using,

Avg. vehicle length = Car 3.5m, LCV = 4.5 m, HCV = 6 m PCU = Car =

1, LCV = 2, HCV = 3

INFERENCE

Volume to capacity ratio (V/C) and speed are two main parameters to assess the Level of Service (LoS), provided by the road. When the v/c ratio value equals 'one', it signifies the complete saturation of capacity of the road, resulting in congestion. Whereas, value towards '0', implies free flow condition.

Based on analysis, it is inferred that the inclusion of additional 615 passenger cars on the road from the project will result in marginal increase in volume to capacity ratio (ranging 0.04 to 0.16). For the various section of roads, it is also observed that increase in volume to capacity ratio during the morning peak hours (0.04-0.06) and evening peak hours (0.05-0.08) is less, as compared to the ratio during afternoon time (0.09-0.16). Overall, there will a marginal degradation in level of service."

viii. Adequate safeguards and permissions have been taken to show the Stability of Structure with respect to Earth Quake

"University of Delhi's north campus falls under the 'high hazard zone' having worst category of "very high" risk index. Thus, seismic stability of 37 storeyed project was taken into consideration during project assessment and the structural stability certificates were verified. It is noted that following approvals have been obtained from concerned authorities, it is noted that following approvals have been obtained from concerned authorities,

- 1) FORM 07 (Structural Stability Certificate) dated 04.07.2017-This certificate was submitted to North DMC along with building plan approval application
- 2) STR certificate dated 10.01.2018 - This is the detailed structural stability certificate issued by structural engineer.
- 3) A detailed foundation recommendation report of Prof. Vs. Raju, Ex. Director, IIT, Delhi dated 17.04.2018 - In order to keep building structure safe with respect to earthquake."

V. NO HEIGHT RESTRICTIONS ARE APPLICABLE ON THE PROJECT SINCE IT DOES NOT FALL IN THE NORTH CAMPUS AREA OR THE LUTYENS BUNGALOW ZONE

A) The DDA, in its Resolution dated 12.05.2011 has clarified that group housing norms with no height restrictions apply to the subject Project

21. On 29.03.2007, the DMRC sought a clarification from the DDA about the development control norms which would be applicable for the subject plot. In response to the request, the DDA answered vide letter dated 29.03.2007 stating that all statutory provisions related to Group Housing as per MPD-2021 are to be followed for the concerned land, i.e. FAR of 200 and maximum ground coverage of 33.3% with no height restrictions.

22. On 19.08.2009, the DDA changed its earlier stance and the DDA replied to the MCD vide letter dated 19.08.2009 stating that Development Control Norms applicable to the subject plot shall be as per the Notification dated 20.01.2005 prescribing Development Control Norms for Metro Stations, i.e. 25% ground coverage and 100 FAR with no height restrictions. [Note: the said standards are merely an enabling provision in the MPD-2021, and are applicable to plots up to a maximum area of 3.0 Ha in size. The present plot, inclusive of the metro station, was 3.05 Ha]

23. The matter was further examined by DDA in its meeting held on 17.02.2010, whereby the Lt. Governor constituted a Committee under the Chairmanship of Engineer Member, DDA with Chief Town Planner, MCD and Chief Engineer, DMRC as members to survey the entire area and examine the implications on the proposed high-rise buildings on the privacy and integrity of the Delhi University environment. The committee members undertook the joint inspection of the site on 19.02.2010 and submitted their report in March wherein it was concluded that the proposed high-rise property development on 2.0 Ha. plot will not affect the privacy of the girls' hostel nearby as these are either far (e.g. Miranda House) or interspersed by other buildings (Meghdoot Hostel), the high-rise construction is not debarred as per MPD-2021, it will not add to any parking problem and will also not affect the serenity/tranquility of University area. [@ Pg.886-894, CA, Vol. I]

24. Despite the above Report, the DDA was not reconsidering its stance. Hence, YBPL was constrained to file a Writ Petition before the Hon'ble High Court of Delhi bearing Writ Petition (C) No. 3135/2010. On 23.11.2010, the Hon'ble High Court passed an Order directing DDA to deliberate on its position in light of the Report of the LG's Committee as well as the fact that it had earlier taken a different stand qua the same plot. Thereafter, on 21.01.2011, a meeting was held by the DDA. Further, on 07.03.2011, the DDA issued a communication stating that norms of residential group housing as given in MPD-2021 shall be applicable in this case excepting the height factor which has been recommended by the authority on dt. 21.01.11 to restrict it to 8 storeys. The High Court subsequently passed an Order on 07.03.2011 directing DDA to consider the matter on height restriction and the authority shall invite the highest officer of the DMRC to remain personally present and to participate inasmuch as the DMRC has put the land into auction for Rs. 218.20 - crores.

25. It was during the pendency of the above Writ Petition that the DDA passed a Resolution on 12.05.2011 resolving that its earlier stance communicated vide letter dated 29.03.2007 was the correct one and stated that 2.0 Hectare plot leased out to the answering Respondent shall be considered as a 'separate entity' and the Development Control Norms for Group Housing with no height restriction shall apply. This was taken note of by the Hon'ble High Court which stated in its Order dated 18.05.2011 that nothing further remains to be adjudicated.

B) The Hon'ble High Court of Delhi has held that there are no height restrictions on the Project since the subject Land does not fall within North Campus Area or Lutyens Bungalow Zone

26. Thereafter, the Appellant University filed a Writ Petition on the premise that the aforesaid resolution passed by DDA was in violation of the provisions of

MPD-2021 and the subject Plot falls within the North Campus area wherein there is a restriction on tall buildings as per clause 11.3 of the MPD-2021, read with the zonal development plan for Zone-C. The stand of the University was clearly rejected by the Hon'ble High Court vide its Order dated 27.4.2015 in WP(C) No. 2473 of 2015 wherein the Hon'ble High Court issued a finding in fact and in law to the effect that, [Order @ Pg. 904, relevant para 58 @ Pg. 943, CA Vol. I]

"58. The claim of the petitioner is that the 3.05 Hectare land falls in the 'controlled zone' of Delhi University and that a height restriction ought to have been imposed on the Project otherwise it will be in direct conflict with MPD 2021. However, as submitted by Ld. Counsel for respondents that there is nothing called "controlled zone" of Delhi University under MPD 2021 or Zonal Development Plan for Zone-"C". However, MPD 2021, Chapter 11-Urban Design, Para 11.3 provides that restriction on tall buildings would be necessary in important areas like Lutyen's Bungalow Zone, Civil Lines Bungalow Zone and North Delhi Campus. The plot in question does not fall within any of these restricted areas. In any case, the same was also established by respondent No. 12 during arguments by showing the Zonal Development Plan for Zone-C (Civil Lines Zone) that the land in question does not fall within any restricted area in Zone-"C" i.e. the Civil Lines Bungalow Zone or the North Delhi Campus. In fact that land does not fall within Delhi University North Campus which is established from the information obtained by respondent No. 12 under RTI wherein it is stated that the 3.05 Hectare plot is not a part of Delhi University."

27. The said Judgment was appealed before the Division Bench of the Hon'ble High Court as well as the Hon'ble Supreme Court both of which rejected the Appeals vide Orders dated 29.10.2018 and 17.12.2019 [SC Order @ Pg. 970-986, CA, Vol. II]. Even before the Hon'ble Supreme Court, the Appellants had repeatedly raised the issue of height restrictions and the location of the project qua the MPD-2021 [Refer Para 3.3, 8.419., 27, 31]. However, the Hon'ble Supreme Court dismissed the Appeal of the Appellant and upheld the Orders of the Hon'ble High Court. Hence, the issue qua applicability of height restrictions under the MPD-2021 have been put to rest by concurrent findings of two Hon'ble Courts. Thus, it is completely mala fide on the part of the Appellant to re-agitate an issue which has been considered and decided by two Constitutional Courts.

C) The Hon'ble NGT cannot address matters which are not environmental in nature, such as municipal norms for height [Rajeev Suri v. DDA & Ors. - Central Vista Judgment]

28. In any case, it is submitted that in the Judgment of Rajeev Suri v. DDA & Ors. ("Central Vista Judgment") (Reproduced @ Pg. 770, CA, Vol.I), the Hon'ble Supreme Court explained that this Hon'ble Tribunal, being a creature of a statute, i.e. the NGT Act, 2010 cannot traverse beyond the jurisdiction conferred by the Act and deal with matters which are not environmental in nature or those which are not enumerated in the NGT Act, 2010. The Schedule-I to the NGT Act lists the enactments in relation to which this Hon'ble Tribunal could exercise its jurisdiction. The MPD-2021 or municipal norms are not a part of the Schedule-I. In the Central Vista Judgment, it was held that,

"503. NGT is not a plenary body with inherent powers to address concerns of a residuary character. It is a statutory body with limited mandate over environmental matters as and when they arise for its consideration. In a cause before it, NGT cannot directly go on to adjudicate on concerns of violation of fundamental rights and once the contours of a subject matter traverse the scope of appeal from a grant of EC, the merits review by tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute."

Note: An SLP filed against the said Order was dismissed on 14.02.2014.

29. In addition, it maybe pertinent to note that the acquisition proceedings and the auction in favour of YBPL was also challenged by the erstwhile lessees of the Plot in W.P.(C) 6624-6625/2012 before the Hon'ble High Court of Delhi. The Writ Petition was dismissed by the Hon'ble High Court of Delhi stating that there is no question or colourable exercise of power and the plot used by DMRC for commercial purpose is being done as per the settled principles of law. In order dated 10.09.2013 the Hon'ble High Court in W.P.(C) 6624-6625/2012 observed that,

"17. Insofar as, the question of colourable exercise of power is concerned that does not arise in the present case. There is no dispute, in view of the counter affidavit filed on behalf of the DMRC, that initially the entire 30,500 sq. mtrs. of land was required for the purpose of the Vishwa-Vidyalaya Metro Station. This was so as per the plan envisioned under Phase-I. However, subsequently, during the execution of the project, in 2006, when Phase-II was envisioned, the Vishwa-Vidyalaya Metro Station was no longer the terminal station and that the line from Central Secretariat to Vishwa-Vidyalaya had been extended to Jahangirpuri. It is because of the fact that the Vishwa-Vidyalaya Station was no longer the terminal station that the requirement for parking space was reduced and that is why there was a surplus available with the DMRC"

Note: An SLP filed against the said Order was dismissed on 14.02.2014.

Lastly, it may also be pertinent to note that one Metro Commuters Association also challenged the auction by DMRC in W.P.(C) 8675/2011 before the Hon'ble High Court of Delhi on the ground that it will affect commuters parking at the Vishwavidyalaya Metro Station. The same was dismissed on 14.12.2011 against which no appeal was preferred in the Supreme Court.

VI. NOT THE TALLEST BUILDING IN DELHI

A) There are several other buildings, even in the vicinity of the Delhi University which are taller with more built-up area and basements

30. The University of Delhi has made a claim that the Project will be the tallest building in Delhi. This could not be further from the truth. In fact, the following buildings, which are in the vicinity of the University of Delhi, are taller, and/or have more built up area and/or more basements, (A detailed chart of high rise buildings-Annexure-3)

S No.	Name	Location	Height	Floors
1	Negolice India (M2K)	Azadpur, Delhi	235 meters	65
2	The Leela Sky villas	Kirti Nagar, Delhi	190 metres	61
3	DCM Ltd. (Residential Project)	Delhi, Kishanganj	180 meters	
4	DLF Home Developers Ltd.	Motinagar, Delhi	179.2 meters	
5	Unity the Amaryllis- Iconic Tower	Karol Bagh, Delhi	171 metres	48
6	Delhi Floor Mills Co. Ltd. (Group housing)	Civil Lines, Delhi	165 meters	46
7	Young Builders Private Limited	Civil Lines, Delhi	145.3 meters	43
8	Parsunath-La Tropicana	Khyber Pass, Delhi	125.6 meters	40
9	Risland Sky Mansion	Chhatarpur, Delhi	105 metres	25
10	Godrej South Estate	Okhla, Delhi	105 metres	29
11	Unity Amaryllis- Phase 2	Kirti Nagar, Delhi	100 metres	31
12	Northern India Paint Colour & Varnish Co LLP	1, Canal Road, Vijay Nagar	81 Meters.	21
13	North Delhi Metro Mall	Civil Lines, Delhi	44.1 meters	

B) The same baseline environmental indicators are applicable to all projects, hence, the project of YBPL cannot be singled out

31. It is also submitted that it would be wholly iniquitous and unjust if the project of YBPL is singled out, while there are several other building projects with a far greater built-up area and height which have been given the green signal. In fact, the other projects have not been assessed even close to how seriously and rigorously YBPL's project was appraised and reviewed several times over.

32. If the Appellant is really seeking to protect the environment and the environs of Delhi University, its selective attack on the subject Project reeks of mala fides and ulterior motives since there are several other projects in the very neighbourhood of the university which have gone unchallenged.

33. The baseline environmental indicators such as the air pollution in Delhi must be equally applicable to all developmental activities and not solely the project of YBPL. The ambient air quality of Delhi cannot be different for two projects in the same vicinity. Further, even the lack of availability of fresh water is applicable to each of the Buildings and Construction Projects. Hence, even if it is assumed, without admitting that the carrying capacity in Delhi is not sufficient for large scale building projects, the same yardstick has to be applied to all projects, and not only that of YBPL. The materials regarding the EC and appraisal process for the other projects is readily available on the public website of the MoEF and YBPL craves liberty to refer to the same, if required.

VII. THE PRINCIPLE OF SUSTAINABLE DEVELOPMENT MUST BE ADHERED TO

A) The Supreme Court has held that developmental activities must be permitted in an environmentally sustainable manner

34. In a catena of Judgments, this Hon'ble Tribunal and the Hon'ble Supreme Court have observed that developmental activities and the environment are not sworn enemies. That development should be permitted, albeit strictly in line with environmental safeguards and mitigating measures to offset any ecological

damage. It is in that spirit that YBPL has obtained the present EC and will continue to monitor its Project. In the Judgment of Karnataka Industrial Areas Development Board v. C. Kenchappa, reported at MANU/SC/8159/2006 : (2006) 6 SCC 371, the Hon'ble Supreme Court stressed on the fact that a balance must be maintained between development and the environment and it was held that,

61. The priority of developing nations is urgent industrialisation and development. We have reached at a point where it is necessary to strike a golden balance between development and ecology.

62. The development should be such as it can be sustained by ecology. All this has given rise to the concept of sustainable development.

[....]

Sustainable development: Contribution of the judiciary and others

66. This Court, in Vellore Citizens' Welfare Forum v. Union of India [MANU/SC/0686/1996 : (1996) 5 SCC 647], acknowledged that the traditional concept that development and ecology are opposed to each other, is no longer acceptable. Sustainable development is the answer. Some of the salient principles of "sustainable development" as culled out from Brundtland Report and other international documents are intergenerational equity. This Court observed that "the precautionary principle" and "the polluter-pays principle" are essential features of "sustainable development".

67. A nation's progress largely depends on development, therefore, the development cannot be stopped, but we need to control it rationally. No Government can cope with the problem of environmental repair by itself alone; people's voluntary participation in environmental management is a must for sustainable development. There is a need to create environmental awareness which may be propagated through formal and informal education. We must scientifically assess the ecological impact of various developmental schemes. To meet the challenge of current environmental issues, the entire globe should be considered the proper arena for environmental adjustment. Unity of mankind is not just a dream of the enlightenment but a biophysical fact.

[...]

99. In the Rio Conference of 1992 great concern had been shown about sustainable development. "Sustainable development" means "a development which can be sustained by nature with or without mitigation". In other words, it is to maintain delicate balance between industrialisation and ecology. While development of industry is essential for the growth of economy, at the same time, the environment and the ecosystem are required to be protected. The pollution created as a consequence of development must not exceed the carrying capacity of the ecosystem. The courts in various judgments have developed the basic and essential features of sustainable development. In order to protect sustainable development, it is necessary to implement and enforce some of its main components and ingredients

such as precautionary principle, polluter-pays and public trust doctrine. We can trace the foundation of these ingredients in a number of judgments delivered by this Court and the High Courts after the Rio Conference, 1992.

100. The importance and awareness of environment and ecology is becoming so vital and important that we, in our judgment, want the appellant to insist on the conditions emanating from the principle of "Sustainable Development":

B) If the EC is quashed on the basis that the baseline environmental indicators such as air pollution do not permit additional construction, it would lead to stoppage of all developmental activities

35. In case the present EC is quashed on the ground that the baseline environmental indicators in Delhi, such as air, water, noise etc. do not permit additional construction, it would result in a complete halt of all developmental activities and be in complete opposition to the principle of sustainable development.

VIII. LIST OF STATUROY APPROVALS GRANTED FOR THE PROJECT

S. No.	Authority/Department	Approval Date
1	Airport Authority of India (AAI)	16.04.2009, 28.06.2011
2	Archaeological Survey of India (ASI)	08.05.2009
3	Department of Forest & Wild Life	25.05.2011
4	North DMC - 'Layout Scrutiny Committee' (LOSC)	16/24.02.2012, 27.11/15.12.2014, 01/02.06.2017, 19.02/05.03.2020
5	Delhi Fire Service (DFS)	13.03.2012, 06.02.2013, 13.01.2015, 15.01.2016, 08.09.2017, 12.07.2019, 12.07.2021
6	Delhi Urban Art Commission (DUAC)	19.12.2012/28.01.2013, 13.02/05.03.2015 (Layout), 11.02/02.03.2016 (BP), 16.08.2017, 11/16.07.2019, 08/17.07.2021
7	National Monument Authority (NMA)	26.12.2012
8	Delhi Pollution Control Committee	15.01.2013
9	North DMC - 'Standing Committee' (SC)	22.03/11.04.2013, 08.07.2015, 17.11.2017, 19.08/18.09.2020
10	Tata Power Delhi Distribution Ltd. (TPDPL)	14.08.2013
11	Delhi Jal Board (DJB)	07.10.2015, 11.01.2016, 09.07.2019, 05.06.2021
12	North DMC - Storm Water	24.11.2015
13	North DMC - Building Plan (BP)	26/31.07.2019, 23/24.07.2021

97. Further, in the form of chart, different issues raised by appellant, have been replied and we find the same already referred and repetition of the stand taken in the reply submitted by PP, hence not repeating here at but may refer at a later stage, if so required.

ISSUES:

98. In view of the rival submissions advanced before us, we find following issues have arisen in Appeal, which require our adjudication:

I. Whether Appeal as a whole in respect to all the issues or some of the issues is barred by the principle of res-judicata as contended on behalf of PP?

II. Whether PP has failed to disclose full, correct and complete information in Form I, Conceptual Plan or has withheld some information or disclosed wrong or incorrect information and is liable to face consequences as per provisions of EIA 2006?

III. Whether EAC/MoEF&CC have failed to consider relevant aspects/factors and failed to appraise project/activity of PP before grant of prior EC and it is vitiated on the ground of non-application of mind?

IV. Whether EC in question is unsustainable and has been issued, without taking into consideration all relevant principles provided in law?

V. What relief/order/direction, if any, need be passed in this Appeal?

Prefatory Discussion:

99. Before coming to the merits of the above issues, we find that in general, basic issue raised in this matter is that EC has been granted by the Competent Authority without appropriate application of mind and by ignoring to consider the relevant factors which it was under obligation to examine before grant of prior EC under EIA 2006. To examine it, we find it appropriate to recapitulate relevant statutory provisions, binding judicial precedents interpreting the said provisions and then examine whether various relevant factors have been properly examined or not and whether grant of EC is vitiated.

Statutory Provisions:

100. The requirement of prior EC is with reference to the provisions made under EP Act 1986 that is Environment Impact Assessment Notification dated 27.01.1994 (hereinafter referred to as 'EIA 1994') and EIA 2006.

EP Act, 1986:

101. Section 3(1) of EP Act, 1986 read with Section 2(v), confer power upon Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving quality of environment and preventing, controlling and abating environmental pollution. Sub-section (2) of Section 3 refers to certain specific subject matters in addition to general power conferred by sub-section 1.

102. Central Government has issued various orders and directions in exercise of powers under Section 3. In *M.C. Mehta vs. Union of India*, (2002) 4 SCC 356, it has been held that such directions are binding on all persons concerned.

103. EP Rules, 1986 have been framed in exercise of power under Sections 6 and 25 of EP Act, 1986. Rule 4 thereof, states that any direction issued under Section 5 shall be in writing. Rule 5 contemplates certain factors to be taken into consideration by Central Government while exercising power for prohibition/restriction on the location of industries and/or carrying on processes and operations in different areas and these factors are detailed in clause (i) to (x) of Section 5(1). Procedure for issuing such directions imposing prohibition, restriction etc. is given in sub-section (2) of Section 5.

EIA 1994:

104. Process for making provisions, imposing restrictions and prohibition on expansion and modernization of any activity or a new project unless EC has been accorded, was initiated by the Government of India by publishing notification dated 28.01.1993 under Section 5(3)(a) of EP Rules 1986, inviting objections from the public within 60 days from the date of publication of the said notification in respect to the matters detailed therein.

105. After considering objections, MoEF, exercising powers under Section 3(1)(2)(v) of EP Act, 1986, read with Rule 5(3)(d) of EP Rules 1986, issued notification dated 27.01.1994 on Environmental Impact Assessment of Development Projects (hereinafter referred to as 'EIA 1994'). It provided that expansion and modernization of any activity (if pollution load is to exceed the existing one) or a new project, listed in Schedule I of the said notification, shall not be undertaken in any part of India unless it has been accorded EC by Central Government in accordance with the procedure specified in the said Notification.

106. Initially, in the Schedule I to EIA 1994, there were 30 projects/activities, which were required to obtain EC under EIA 1994.

107. In W.P.(C) No. 725/1994 with IA No. 20, 21, 1207, 1183, 1216 and 1251 in WP (C) No. 4677/1995, Supreme Court considered a news item published in Hindustan Times titled "And Quit Flows the Maily Yamuna Vs. Central Pollution Control Board and Other" and vide order dated 12.12.2003, Supreme Court observed that building constructions cause damage to environment and, therefore, such construction projects may be considered to be brought under EIA regime so that all such projects must take all the mitigating steps so as to safe environment of the area in which such a project was being constructed by the proponent. Consequently, MoEF issued notification dated 07.07.2004, making amendment in EIA 1994 and 'new construction projects' were placed at item 32 in the Schedule. The amendment notification says that new construction projects which were undertaken without obtaining clearance required under EIA 1994 and where construction work has not come up to the plinth level, shall require clearance under EIA 1994 w.e.f. 07.07.2004.

108. In order to complete the evolution of EIA 1994, we may mention here that it was amended by several notifications i.e., dated 04.05.1994, 10.04.1997, 27.01.2000, 13.12.2000, 01.08.2001, 21.11.2001, 13.06.2002, 28.02.2003, 07.05.2003, 04.08.2003, 22.09.2003 and 07.07.2004.

109. Para 2 of EIA 1994 talks of requirements and procedure for seeking EC of projects and reads as under:

"2) Requirements and procedure for seeking environmental clearance of projects:

I.(a) Any person who desires to undertake any new project in any part of India or the expansion or modernization of any existing industry or project listed in the Schedule-I shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.

The application shall be made in the proforma specified in Schedule-II of this notification and shall be accompanied by a project report which shall, inter alia, include an Environmental Impact Assessment Report, Environment Management Plan and details of public hearing as specified in Schedule-IV prepared in accordance with the guidelines

issued by the Central Government in the Ministry of Environment and Forests from time to time. However, Public Hearing is not required in respect of

- (i) small scale industrial undertakings located in (a) notified/designated industrial areas/industrial estates or (b) areas earmarked for industries under the jurisdiction of industrial development authorities;
- (ii) widening and strengthening of highways;
- (iii) mining projects (major minerals) with lease area up to 25 hectares,
- (iv) units located in Export Processing Zones, Special Economic Zones
- (v) modernisation of existing irrigation projects.
- (vi) offshore exploration activities, beyond 10 kilometres from the nearest habituated village boundary, gaothans and ecologically sensitive areas such as, mangroves (with a minimum area of 1000 sq.m), corals, coral reefs, national parks, sanctuaries, reserve forests and breeding and spawning grounds of fish and other marine life;.

Provided further, that for pipeline projects, Environmental Impact Assessment report will not be required:

Provided further, that for pipeline and highway projects, public hearing shall be conducted in each district through which the pipeline or highway passes through:

(b) Cases rejected due to submission of insufficient or inadequate data and Plans may be reviewed as and when submitted with complete data and Plans. Submission of incomplete data or plans for the second time would itself be a sufficient reason for the Impact assessment Agency to reject the case summarily.

II. In case of the following site specific projects:

- (a) mining;
- (b) pit-head thermal power stations;
- (c) hydro-power, major irrigation projects and/or their combination including flood control;
- (d) ports and harbours (excluding minor ports);
- (e) prospecting and exploration of major minerals in areas above 500 hectares;
- (f) greenfield airports, petrochemical complexes and refineries.

The project authorities will intimate the location of the project site to the Central Government in the Ministry of Environment and Forests while initiating any investigation and surveys. The Central Government in the Ministry of Environment and Forests will convey a decision regarding suitability or otherwise of the proposed site within a maximum period of thirty days. The said site clearance shall be granted for a sanctioned capacity and shall be valid for a period of five years for commencing the construction, operation or mining

III. (a) The reports submitted with the application shall be evaluated and assessed by the Impact Assessment Agency, and if deemed necessary it may consult a committee of Experts, having a composition as specified in Schedule-III of this Notification. The Impact Assessment Agency (IAA) would be the Union Ministry of Environment and Forests. The Committee of Experts mentioned above shall be constituted by the Impact Assessment Agency or such other body under the Central Government authorised by the Impact Assessment Agency in this regard.

(b) The said Committee of Experts shall have full right of entry and inspection of the site or, as the case may be, factory premises at any time prior to, during or after the commencement of the operations relating to the project.

(c) The Impact Assessment Agency shall prepare a set of recommendations based on technical assessment of documents and data, furnished by the project authorities supplemented by data collected during visits to sites or factories, if undertaken and details of the public hearing.

The assessment shall be completed within a period of ninety days from receipt of the requisite documents and data from the project authorities and completion of public hearing and decision conveyed within thirty days thereafter.

The clearance granted shall be valid for a period of five years for commencement of the construction or operation of the project.

No construction work, preliminary or otherwise, relating to the setting up of the project may be undertaken till the environmental and site clearance is obtained.

IV. In order to enable the Impact Assessment Agency to monitor effectively the implementation of the recommendations and conditions subject to which the environmental clearance has been given, the project authorities concerned shall submit a half yearly report to the Impact Assessment Agency. Subject to the public interest, the Impact Assessment Agency shall make compliance reports publicly available.

V. If no comments from the Impact Assessment Agency are received within the time limit, the project would be deemed to have been approved as proposed by project authorities."

110. In Schedule I, which contains list of projects requiring EC from Central

Government, Item 32 relates to 'new construction projects'. Para 3 provides the cases in which EIA 1994 provisions would not apply and reads as under:

"3. Nothing contained in this Notification shall apply to:

- (a) any item falling under entry Nos. 3*18*20*31* and 32* of the Schedule-I to be located or proposed to be located in the areas covered by the Notifications S.O. No. 102(E) dated 1st February, 1989, S.O. 114(E) dated 20th February, 1991; *S.O. No. 416(E) dated 20th June, 1991* and S.O. No. 319(E) dated 7th May, 1992.
- (b) any item falling under entry Nos. 1, 2, 3, 4, 5, 7, 9, 10, 13, 14, 16, 17, 19, *21*, 25 and 27 of Schedule-I if the investment is less than Rs. 100 crores for new projects and less than Rs. 50 crores for expansion/modernization projects;
- (c) any item reserved for Small Scale Industrial Sector with investment less than Rs. 1 crore.
- (d) defence related road construction projects in border areas.
- (e) any item falling under entry No. 8 of Schedule I, if that product is covered by the notification G.S.R. 1037(E) dated 5th December 1989.
- (f) Modernisation projects in irrigation sector if additional command area is less than 10,000 hectares or project cost is less than Rs. 100 crores.:
- (g) any construction project falling under entry 31 of Schedule-I including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1000 (one thousand) persons or below or with an investment of Rs. 50,00,00,000/- (Rupees fifty crores) or below.
- (h) any industrial estate falling under entry 32 of Schedule-I including industrial estates accommodating industrial units in an area of 50 hectares or below but excluding the industrial estates irrespective of area if their pollution potential is high.

Explanation.-

- (i) New construction projects which were undertaken without obtaining the clearance required under this notification and where construction work has not come up to the plinth level shall require clearance under this notification with effect from the 7th day of July, 2004.
- (ii) In the case of new Industrial Estates which were undertaken without obtaining the clearance required under this notification, and where the construction work has not commenced or the expenditure does not exceed 25% of the total sanctioned cost, shall require clearance under this notification with effect from the 7th day of July, 2004.
- (iii) Any project proponent intending to implement the proposed project under sub-paras (g) and (h) in a phased manner or in modules,

shall be required to submit the details of the entire project covering all phases or modules for appraisal under this notification."

111. Para 4 says that if any information is found false etc., the decision or recommendation if any, would be rejected and if approval granted, would be revoked.

EIA 2006, Notification dated 14.09.2006

112. MoEF felt that EIA 1994 needs a complete overhauling. Consequently, in exercise of powers under Rule 5(3) of EP Rules, 1986, a draft notification was published in the Gazette of India (Extraordinary) dated 15.09.2005, inviting objections and suggestions from all persons likely to be affected thereby, within a period of 60 days from the date on which copies of gazette containing draft notifications were made available to the public. The said draft notification contains provisions for imposing certain restrictions and prohibition on new projects or activities or on the expansion or modernization of existing projects or activities based on their potential environmental impacts as indicated in the schedule to the draft notification, being undertaken in any part of India, unless prior EC has been accorded.

113. Copies of draft notification were made available to the public on 15.09.2005. After considering objections and suggestions received in response to the above draft notification, by the Government of India, notification dated 14.09.2006 was issued in exercise of powers conferred by Section 3(1) and 2(v) of EP Act, 1986 read with rule 5(3)(d) of EP Rules, 1986, in supersession of EIA 1994, except in respect of things done or omitted to be done before such supersession.

114. Preamble of notification dated 14.09.2006 says that Central Government hereby directs that on and from the date of publication of the notification, the required construction of any projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the notification dated 14.09.2006 entailing capacity addition with change in process and or technology, shall be undertaken in any part of India only after obtaining prior EC from Central Government or as the case may be, by State Level Environment Impact Assessment Authority, duly constituted by Central Government under section 3(3) of EP Act, 1986, in accordance with the procedure specified in the notification dated 14.09.2006. There were some typing mistakes in EIA 2006, as initially published, hence a corrigendum was issued vide notification dated 13.11.2006 and we have read EIA 2006, here at, as corrected by the said corrigendum.

115. Para 2 of EIA 2006 imposes condition of requirement of prior EC and reads as under:

"2. Requirements of prior Environmental Clearance (EC):-The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this notification;

(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified range."

116. Para 3 talks of constitution of State Level Environment Impact Assessment Authority (SEIAA).

117. Para 4 of EIA 2006 categorizes projects and activities and reads as under:

"4. Categorization of projects and activities:

(i) All projects and activities are broadly categorized in to two categories-Category A and Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and manmade resources.

(ii) All projects or activities included as Category 'A' in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF) on the recommendations of an Expert Appraisal Committee (EAC) to be constituted by the Central Government for the purposes of this notification;

(iii) All projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. In the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be treated as a Category 'A' project;"

118. Paras 5, 6 and 7 concerned with the procedure of grant of prior EC and read as under:

"5. Screening, Scoping and Appraisal Committees:

The same Expert Appraisal Committees (EACs) at the Central Government and SEACs (hereinafter referred to as the (EAC) and (SEAC) at the State or the Union territory level shall screen, scope and appraise projects or activities in Category 'A' and Category 'B' respectively. EAC and SEAC's shall meet at least once every month.

(a) The composition of the EAC shall be as given in Appendix

VI. The SEAC at the State or the Union territory level shall be constituted by the Central Government in consultation with the concerned State Government or the Union territory Administration with identical composition;

(b) The Central Government may, with the prior concurrence of the concerned State Governments or the Union territory Administrations, constitutes one SEAC for more than one State or Union territory for reasons of administrative convenience and cost;

(c) The EAC and SEAC shall be reconstituted after every three years;

(d) The authorised members of the EAC and SEAC, concerned, may inspect any site(s) connected with the project or activity in respect of which the prior environmental clearance is sought, for the purposes of screening or scoping or appraisal, with prior notice of at least seven days to the applicant, who shall provide necessary facilities for the inspection;

(e) The EAC and SEACs shall function on the principle of collective responsibility. The Chairperson shall endeavour to reach a consensus in each case, and if consensus cannot be reached, the view of the majority shall prevail.

6. Application for Prior Environmental Clearance (EC):

An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report.

7. Stages in the Prior Environmental Clearance (EC) Process for New Projects:

7(i) The environmental clearance process for new projects will comprise of a maximum of four stages, all of which may not apply to particular cases as set forth below in this notification. These four stages in sequential order are:

- Stage (1) Screening (Only for Category 'B' projects and activities)
- Stage (2) Scoping
- Stage (3) Public Consultation
- Stage (4) Appraisal

I. Stage (1)-Screening:

In case of Category 'B' projects or activities, this stage will entail the scrutiny of an application seeking prior environmental clearance made in Form 1 by the concerned State level Expert Appraisal Committee (SEAC) for determining whether or not the project or activity requires further environmental studies for preparation of an Environmental Impact Assessment (EIA) for its appraisal prior to the grant of environmental clearance depending up on the nature and location specificity of the project. The projects requiring an Environmental Impact Assessment report shall be termed Category 'B1' and remaining projects shall be termed Category 'B2' and will not require an Environment Impact Assessment report. For categorization of projects into B1 or B2 except item 8(b), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time.

II. Stage (2)-Scoping:

(i) "Scoping": refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects or activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought. The Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the Terms of Reference on the basis of the information furnished in the prescribed application Form 1/Form 1A including Terms of Reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, Terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. All projects and activities listed as Category 'B' in Item 8 of the Schedule (Construction/Township/Commercial Complexes/Housing) shall not require Scoping and will be appraised on the basis of Form 1/Form 1A and the conceptual plan.

(ii) The Terms of Reference (TOR) shall be conveyed to the applicant by the Expert Appraisal Committee or State Level Expert Appraisal Committee as concerned within sixty days of the receipt of Form 1. In the case of Category, A Hydroelectric projects Item 1(c)(i) of the Schedule the Terms of Reference shall be conveyed along with the clearance for preconstruction activities. If the Terms of Reference are not finalized and conveyed to the applicant within sixty days of the receipt of Form 1, the Terms of Reference suggested by the applicant shall be deemed as the final Terms of Reference approved for the EIA studies. The approved Terms of Reference shall be displayed on the website of the Ministry of Environment and Forests and the concerned

State Level Environment Impact Assessment Authority.

(iii) Applications for prior environmental clearance may be rejected by the regulatory authority concerned on the recommendation of the EAC or SEAC concerned at this stage itself. In case of such rejection, the decision together with reasons for the same shall be communicated to the applicant in writing within sixty days of the receipt of the application.

III. Stage (3)-Public Consultation:

(i) "Public Consultation" refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate. All Category 'A' and Category B1 projects or activities shall undertake Public Consultation, except the following:

(a) modernization of irrigation projects (item 1(c) (ii) of the Schedule)

(b) all projects or activities located within industrial estates or parks (item 7(c) of the Schedule) approved by the concerned authorities, and which are not disallowed in such approvals.

(c) expansion of Roads and Highways (item 7(f) of the Schedule) which do not involve any further acquisition of land.

(d) all Building/Construction projects/Area Development projects and Townships (item 8).

e) all Category 'B2' projects and activities.

f) all projects or activities concerning national defence and security or involving other strategic considerations as determined by the Central Government.

(ii) The Public Consultation shall ordinarily have two components comprising of:

(a) a public hearing at the site or in its close proximity-district wise, to be carried out in the manner prescribed in Appendix IV, for ascertaining concerns of local affected persons;

(b) obtain responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity.

(iii) the public hearing at, or in close proximity to, the site(s) in all cases shall be conducted by the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) concerned in the specified manner and forward the proceedings to the regulatory authority concerned within 45 (forty five) of a request to the effect from the applicant.

(iv) in case the State Pollution Control Board or the Union territory Pollution Control Committee concerned does not undertake and complete the public hearing within the specified period, and/or does not convey the proceedings of the public hearing within the prescribed period directly to the regulatory authority concerned as above, the regulatory authority shall engage another public agency or authority which is not subordinate to the regulatory authority, to complete the process within a further period of forty five days,.

(v) If the public agency or authority nominated under the sub paragraph (iii) above reports to the regulatory authority concerned that owing to the local situation, it is not possible to conduct the public hearing in a manner which will enable the views of the concerned local persons to be freely expressed, it shall report the facts in detail to the concerned regulatory authority, which may, after due consideration of the report and other reliable information that it may have, decide that the public consultation in the case need not include the public hearing.

(vi) For obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity, the concerned regulatory authority and the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) shall invite responses from such concerned persons by placing on their website the Summary EIA report prepared in the format given in Appendix IIIA by the applicant along with a copy of the application in the prescribed form, within seven days of the receipt of a written request for arranging the public hearing. Confidential information including non-disclosable or legally privileged information involving Intellectual Property Right, source specified in the application shall not be placed on the web site. The regulatory authority concerned may also use other appropriate media for ensuring wide publicity about the project or activity. The regulatory authority shall, however, make available on a written request from any concerned person the Draft EIA report for inspection at a notified place during normal office hours till the date of the public hearing. All the responses received as part of this public consultation process shall be forwarded to the applicant through the quickest available means.

(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.

IV. Stage (4)-Appraisal:

(i) Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of

environmental clearance. This appraisal shall be made by Expert Appraisal Committee or State Level Expert Appraisal Committee concerned in a transparent manner in a proceeding to which the applicant shall be invited for furnishing necessary clarifications in person or through an authorized representative. On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same.

(ii) The appraisal of all projects or activities which are not required to undergo public consultation, or submit an Environment Impact Assessment report, shall be carried out on the basis of the prescribed application Form 1 and Form 1A as applicable, any other relevant validated information available and the site visit wherever the same is considered as necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.

(iii) The appraisal of an application shall be completed by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within sixty days of the receipt of the final Environment Impact Assessment report and other documents or the receipt of Form 1 and Form 1A, where public consultation is not necessary and the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee shall be placed before the competent authority for a final decision within the next fifteen days. The prescribed procedure for appraisal is given in Appendix V;

7(ii). Prior Environmental Clearance (EC) process for Expansion or Modernization or Change of product mix in existing projects:

All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernization of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product-mix shall be made in Form I and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultations and the application shall be appraised accordingly for grant of environmental clearance."

119. Para 8 talks of the final stage of grant or rejection of prior EC and reads as under:

"8. Grant or Rejection of Prior Environmental Clearance (EC):

(i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within

forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.

(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be final and conveyed to the applicant by the regulatory authority concerned within the next thirty days.

(iii) In the event that the decision of the regulatory authority is not communicated to the applicant within the period specified in subparagraphs (i) or (ii) above, as applicable, the applicant may proceed as if the environment clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.

(iv) On expiry of the period specified for decision by the regulatory authority under paragraph (i) and (ii) above, as applicable, the decision of the regulatory authority, and the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be public documents.

(v) Clearances from other regulatory bodies or authorities shall not be required prior to receipt of applications for prior environmental clearance of projects or activities, or screening, or scoping, or appraisal, or decision by the regulatory authority concerned, unless any of these is sequentially dependent on such clearance either due to a requirement of law, or for necessary technical reasons.

(vi) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a

prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

120. Para 9 deals with the validity of EC, i.e., the tenure etc. and reads as under:

"9. Validity of Environmental Clearance (EC):

The "Validity of Environmental Clearance" is meant the period from which a prior environmental clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub paragraph (iv) of paragraph 7 above, to the start of production operations by the project or activity, or completion of all construction operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers. The prior environmental clearance granted for a project or activity shall be valid for a period of ten years in the case of River Valley projects (item 1(c) of the Schedule), project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects and five years in the case of all other projects and activities. However, in the case of Area Development projects and Townships [item 8(b)], the validity period shall be limited only to such activities as may be the responsibility of the applicant as a developer. This period of validity may be extended by the regulatory authority concerned by a maximum period of five years provided an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form 1, and Supplementary Form 1A, for Construction projects or activities (item 8 of the Schedule). In this regard the regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee as the case may be."

121. Para 10 talks of monitoring of post EC stages and says:

"10. Post Environmental Clearance Monitoring:

(i) It shall be mandatory for the project management to submit half-yearly compliance reports in respect of the stipulated prior environmental clearance terms and conditions in hard and soft copies to the regulatory authority concerned, on 1st June and 1st December of each calendar year.

(ii) All such compliance reports submitted by the project management shall be public documents. Copies of the same shall be given to any person on application to the concerned regulatory authority. The latest such compliance report shall also be displayed on the web site of the concerned regulatory authority."

122. A prior EC granted to a project or activity is transferable, subject to certain conditions. This aspect is dealt with in para 11 as under:

"11. Transferability of Environmental Clearance (EC):

A prior environmental clearance granted for a specific project or activity

to an applicant may be transferred during its validity to another legal person entitled to undertake the project or activity on application by the transferor, or by the transferee with a written "no objection" by the transferor, to, and by the regulatory authority concerned, on the same terms and conditions under which the prior environmental clearance was initially granted, and for the same validity period. No reference to the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned is necessary in such cases."

123. Para 12 is a transitional provision dealing with the pending cases under EIA 1994 and said:

"12. Operation of EIA Notification, 1994, till disposal of pending cases:

From the date of final publication of this notification the Environment Impact Assessment (EIA) notification number S.O. 60(E) dated 27th January, 1994 is hereby superseded, except in supersession of the things done or omitted to be done before such supersession to the extent that in case of all or some types of applications made for prior environmental clearance and pending on the date of final publication of this notification, the Central Government may relax any one or all provisions of this notification except the list of the projects or activities requiring prior environmental clearance in Schedule, or continue operation of some or all provisions of the said notification, for a period not exceeding one year from the date of issue of this notification."

124. EIA 2006 further contains a Schedule and six Appendixes. Appendix I is a format of Form-1 and Appendix II is a format of Form-1A which are referred in para 6 of EIA 2006. These are the formats of application to be submitted by a proponent for grant of prior EC. Appendix III contains a chart giving generic structure of environmental impact assessment document with reference to para 7 and Appendix III A provides contents of summary environmental impact assessment and it is also in reference to para 7 of EIA 2006. Appendix III has 12 items comprising EIA structure and the contents thereof are also separately detailed as under:

"GENERIC STRUCTURE OF ENVIRONMENTAL IMPACT ASSESSMENT DOCUMENT

S. NO.	EIA STRUCTURE	CONTENTS
1	Introduction	• Purpose of the report • Identification of project & project proponent • Brief description of nature, size, location of the project and its importance to the country, region • Scope of the study – details of regulatory scoping carried out (As per Terms of Reference)
2	Project Description	• Condensed description of those aspects of the project (based on project feasibility study), likely to cause environmental effects. Details should be provided to give clear picture of the following: • Type of project • Need for the project • Location (maps showing general location, specific location, project boundary & project site layout) • Size or magnitude of operation (incl. Associated activities required by or for the project) • Proposed schedule for approval and implementation • Technology and process description • Project description. Including drawings showing project layout, components of project etc. Schematic representations of the feasibility drawings which give information important for EIA purpose • Description of mitigation measures incorporated into the project to meet environmental standards, environmental operating conditions, or other EIA requirements (as required by the scope) • Assessment of New & untested technology for the risk of technological failure
3	Description of the Environment	• Study area, period, components & methodology • Establishment of baseline for valued environmental components, as identified in the scope • Base maps of all environmental components
4	Anticipated Environmental Impacts & Mitigation Measures	• Details of Investigated Environmental impacts due to project location, possible accidents, project design, project construction, regular operations, final

		decommissioning or rehabilitation of a completed project • Measures for minimizing and/or offsetting adverse impacts identified • Irreversible and Irretrievable commitments of environmental components • Assessment of significance of impacts (Criteria for determining significance, Assigning significance) • Mitigation measures
5	Analysis of Alternatives (Technology & Site)	• In case, the scoping exercise results in need for alternatives: • Description of each alternative • Summary of adverse impacts of each alternative • Mitigation measures proposed for each alternative and • Selection of alternative
6	Environmental Monitoring Program	• Technical aspects of monitoring the effectiveness of mitigation measures (incl. Measurement methodologies, frequency, location, data analysis, reporting schedules, emergency procedures, detailed budget & procurement schedules)
7	Additional Studies	• Public Consultation • Risk assessment • Social Impact Assessment. R&R Action Plans
8	Project Benefits	• Improvements in the physical infrastructure • Improvements in the social infrastructure • Employment potential –skilled; semi-skilled and unskilled • Other tangible benefits
9	Environmental Cost Benefit Analysis	• If recommended at the Scoping stage
10	EMP	• Description of the administrative aspects of ensuring that mitigative measures are implemented and their effectiveness monitored, after approval of the EIA
11	Summary & Conclusion (This will constitute the summary of the EIA Report)	• Overall justification for implementation of the project • Explanation of how, adverse effects have been mitigated
12	Disclosure of Consultants engaged	• The names of the Consultants engaged with their brief resume and nature of Consultancy rendered

125. Summary of environmental impact assessment should contain details given in Appendix III A of EIA report, on seven aspects, as under:

"1. Project Description

2. Description of the Environment

3. Anticipated Environmental impacts and mitigation measures

4. Environmental Monitoring Programme

5. Additional Studies

6. Project Benefits

7. Environment Management Plan"

126. Appendix IV, also with reference of para 7, provides procedure for conduct of public hearing.

127. Appendix V, again with reference to para 7, provides procedure for appraisal of Environment Impact Assessment Report and other documents and talks of following steps:

"PROCEDURE PRESCRIBED FOR APPRAISAL

1 . The applicant shall apply to the concerned regulatory authority through a simple communication enclosing the following documents where public consultations are mandatory:

- Final Environment Impact Assessment Report [20(twenty) hard copies and 1 (one) soft copy)]
- A copy of the video tape or CD of the public hearing proceedings
- A copy of final layout plan (20 copies)
- A copy of the project feasibility report (1 copy)

2. The Final EIA Report and the other relevant documents submitted by the applicant shall be scrutinized in office within 30 days from the date of its receipt by the concerned Regulatory Authority strictly with reference to the TOR and the inadequacies noted shall be communicated electronically or otherwise in a single set to the Members of the EAC/SEAC enclosing a copy each of the Final EIA Report including the public hearing proceedings and other public responses received along with a copy of Form-1 or Form 1A and scheduled date of the EAC/SEAC meeting for considering the proposal.

3 . Where a public consultation is not mandatory, and therefore a formal EIA study is not required, the appraisal shall be made on the basis of the prescribed application Form 1 and a pre-feasibility report in the case of all projects and activities other than Item 8 of the Schedule. In the case of Item 8 of the Schedule, considering its unique project cycle, the EAC or SEAC concerned shall appraise all Category B projects or activities on the basis of Form 1, Form 1A and the conceptual plan and stipulate the conditions for environmental clearance. As and when the applicant submits the approved scheme/building plans complying with the stipulated environmental clearance conditions with all other necessary statutory approvals, the EAC/SEAC shall recommend the grant of environmental clearance to the competent authority."

4. Every application shall be placed before the EAC/SEAC and its appraisal completed within 60 days of its receipt with requisite documents/details in the prescribed manner.

5. The applicant shall be informed at least 15 (fifteen) days prior to the scheduled date of the EAC/SEAC meeting for considering the project proposal.

6. The minutes of the EAC/SEAC meeting shall be finalised within 5 working days of the meeting and displayed on the website of the concerned regulatory authority. In case the project or activity is recommended for grant of EC, then the minutes shall clearly list out the specific environmental safeguards and conditions. In case the recommendations are for rejection, the reasons for the same shall also be explicitly stated."

128. Appendix VI with reference to paragraph 5 of EIA 2006 gives composition of sector/project specific Expert Appraisal Committee for category A projects and the State/UT Level Expert Appraisal Committees for category B projects to be constituted by Central Government. Schedule gives the list of projects or activities which would require prior EC and covers the following projects/activities:

"1. Mining, extraction of natural resources and power generation (for a specified production capacity)

1(a) Mining of minerals

1(b) Offshore and onshore oil and gas exploration, development & production

1(c) River Valley projects

1(d) Thermal Power Plants

1(e) Nuclear power projects and processing of nuclear fuel

2. Primary processing

2(a) Coal washeries

2(b) Mineral beneficiation

3. Materials Production

3(a) Metallurgical industries (ferrous & non-ferrous)

3(b) Cement plants

4. Materials Processing

4(a) Petroleum refining industry

4(b) Coke oven plants

4(c) Asbestos milling and asbestos based products

4(d) Chlor-alkali industry

4(e) Soda ash industry

4(f) Leather/skin/hide processing industry

5. Manufacturing/Fabrication

5(a) Chemical fertilizers

5(b) Pesticides industry and pesticide specific intermediates (excluding formulations)

5(c) Petro-chemical complexes (industries based on processing of petroleum fractions & natural gas and/or reforming to aromatics)

5(d) Manmade fibres manufacturing

5(e) Petrochemical based processing (processes other than cracking & reformation and not covered under the complexes)

5(f) Synthetic organic chemicals industry (dyes & dye intermediates; bulk drugs and intermediates excluding drug formulations; synthetic rubbers; basic organic chemicals, other synthetic organic chemicals and chemical intermediates)

5(g) Distilleries

5(h) Integrated paint industry

5(i) Pulp & paper industry excluding manufacturing of paper from waste paper and manufacture of paper from ready pulp without bleaching

5(j) Sugar industry

5(k) Induction/arc furnaces/cupola furnaces 5TPH or more

6. Service Sectors

6(a) Oil & gas transportation pipeline (crude and refinery/petrochemical products), passing through national parks/sanctuaries/coral reefs/ecologically sensitive areas including LNG Terminal.

6(b) Isolated storage & handling of hazardous chemicals (As per threshold planning quantity indicated in column 3 of schedule 2 & 3 of MSIHC Rules 1989 amended 2000)

7. Physical Infrastructure including Environmental Services

7(a) Air ports

7(b) All ship breaking yards including ship breaking units

7(c) Industrial estate/parks/complexes/areas, export processing Zones

(EPZs), Special Economic Zones (SEZs), Biotech Parks, Leather Complexes.

7(d) Common hazardous waste treatment, storage and disposal facilities (TSDFs)

7(e) Forts, Harbours

7(f) Highways

7(g) Aerial ropeways

7(h) Common Effluent Treatment Plants (CETPs)

7(i) Common Municipal Solid Waste Management Facility (CMSWMF)"

129. For the purpose of present case, we are concerned with item 8 which deals with building construction projects/area development projects and townships and it has two categories which we reproduce as under:

(1)	(2)	(3)	(4)	(5)
8		<i>Building Construction projects/Area Development projects and Townships</i>		
8(a)	<i>Building and Construction projects</i>	<i>≥20000 sq.mtrs and <1,50,000 sq. mtrs. of built-up area#</i>	<i>*(built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)</i>	
8(b)	<i>Townships and Area Development projects</i>	<i>Covering an area ≥ 50 ha and or built up Area ≥1,50,000 sq. mtrs ++</i>	<i>**All projects under Item 8(b) shall be appraised as Category B1</i>	

130. At the end of the schedule there is a note containing certain conditions as General Condition (GC) and Specific Condition (SC) but column (5) shows that these conditions have not been made applicable to the projects/activities covered under items 8(a) and 8(b). However, to make study of EIA Notification, 2006, complete, we may reproduce these conditions as under:

"Note:

General Condition (GC):

Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as identified by the Central Pollution Control Board from time to time, (iii) Notified Eco-sensitive areas, (iv) inter-State boundaries and international boundaries:

Specific Condition (SC):

If any Industrial Estate/Complex/Export processing Zones/Special Economic Zones/Biotech Parks/Leather Complex with homogeneous type of industries such as Items 4(d), 4(f), 5(e), 5(f), or those Industrial estates with pre-defined set of activities (not necessarily homogeneous, obtains prior environmental clearance, individual industries including proposed industrial housing within such

estates/complexes will not be required to take prior environmental clearance, so long as the Terms and Conditions for the industrial estate/complex are complied with (Such estates/complexes must have a clearly identified management with the legal responsibility of ensuring adherence to the Terms and Conditions of prior environmental clearance, who may be held responsible for violation of the same throughout the life of the complex/estate)."

131. EIA 2006 as initially notified, qualified projects/activities covered under item 8(a) and 8(b) as category 'B' projects. The projects/activities under item 8(b) were clearly categorized as B1. The application for prior EC, if submitted for a project/activity under item 8 of Schedule of EIA 2006, para 6 of EIA 2006 requires that in addition to form 1 and supplementary form 1A, the proponent shall also submit a copy of conceptual plan instead of pre-feasibility report. Para 7(I) Stage (1)-Screening says that in category B projects/activities, environment Impact Assessment Report shall be prepared only for the projects/activities come under category B1 and category B2 projects will not require EIA report. Para 7(II) Stage (2)-Scoping (i) further says that scoping shall not be required for the projects/activities listed in category B in item 8 of the schedule of EIA 2006. In such cases, appraisal shall be on the basis of form 1/form 1A and conceptual plan. Para 7(III) Stage (3)-Public Consultation (i) also provides that public consultation shall not be required in respect to projects/activities under item 8 of the Schedule. Thus, in respect of the projects/activities under item 8 of the Schedule I to EIA 2006, a modified/simpler procedure was prescribed for consideration of application for grant of prior EC.

132. EIA 2006 has been amended up to July 2021 by more than 55 amendment notifications but all are not relating to project/activities referable to item 8 of the Schedule of EIA 2006 and since we are concerned only to project/activities fall under item 8 of the Schedule of EIA 2006, we would be referring hereunder only such amendments which are relatable to item 8 of the Schedule or procedure of appraisal of the project/activities under item 8.

A. Notification dated 01.12.2009 published in Gazette of India extraordinary of the same date.

a) In para 3 of EIA 2006 sub-para (7) was substituted as under:

"(7) All decisions of the SEIAA shall be taken in a meeting and shall ordinarily be unanimous:

Provided that, in case a decision is taken by majority, the details of views, for and against it, shall be clearly recorded in the minutes and a copy thereof sent to MoEF."

b) In para 4, sub-para (iii) certain words and letters were changed and the amended provision reads as under:

"4(iii) All projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union

territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. In the absence of a duly constituted SEIAA and SEAC, a Category 'B' project shall be considered at the Central Level as a Category 'B' project."

c) In para 7(i) (III) relating to Stage (3) after sub-clause (c), the following was inserted:

"(cc) maintenance dredging provided the dredged material shall be disposed within port limits."

d) In para 7(i) (III) relating to Stage (3) sub-clause (d) was substituted as under:

"(d) All Building or Construction projects or Area Development projects (which do not contain any category 'A' projects and activities) and Townships (item 8(a) and 8(b) in the Schedule to the notification)."

e) In para 10 clause (i) was renumbered as (ii) and before such renumbered (ii), a sub-para (i)(a) and (b) was inserted as under:

"(i) (a) In respect of Category 'A' projects, it shall be mandatory for the project proponent to 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 where the project is located and in addition, this shall also be displayed in the project proponent's website permanently. (b) In respect of Category 'B' projects, irrespective of its clearance by MoEF/SEIAA, the project proponent shall prominently advertise in the newspapers indicating that the project has been accorded environment clearance and the details of MoEF website where it is displayed. (c) The Ministry of Environment and Forests and the State/Union Territory Level Environmental Impact Assessment Authorities (SEIAAs), as the case may be, shall also place the environmental clearance in the public domain on Government portal. (d) 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.";

(b) existing sub-para (ii) shall be renumbered as sub-para (iii)."

f) In the Schedule, General Condition was substituted as under:

"General Condition (GC):

Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected areas notified under the Wild Life (Protection) Act, 1972; (ii) Critically polluted areas as identified by the Central Pollution Control Board from time to time; (iii) Eco-sensitive areas as notified under section 3 of the Environment (Protection) Act, 1986, such as, Mahabaleshwar Panchgani, Matheran, Pachmarhi, Dahanu, Doon Valley, and (iv) inter-State boundaries and international boundaries:

Provided that the requirement regarding distance of 10 km of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective States or U.T.s sharing the common boundary in case the activity does not fall within 10 kilometres of the areas mentioned at item (i), (ii) and (iii) above."

g) Amendment was also made in Appendix I whereby in Form-1 item (I) relating to Basic Information, was substituted by a new format and in Appendix IV the procedure for conduct of public hearing was completely substituted.

h) In Appendix V, para 3 was substituted as under:

"3. Where a public consultation is not mandatory, the appraisal shall be made on the basis of the prescribed application Form 1 and EIA report, in the case of all projects and activities other than Item 8 of the Schedule. In the case of Item 8 of the Schedule, considering its unique project cycle, the EAC or SEAC concerned shall appraise all Category B projects or activities on the basis of Form 1, Form 1A and the conceptual plan and make recommendations on the project regarding grant of environmental clearance or otherwise and also stipulate the conditions for environmental clearance."

B. Notification dated 04.04.2011 published in Gazette of India extraordinary dated 06.04.2011:

a) Para 6 was amended by substituting certain words and amended para 6 reads as under:

"6. Application for Prior Environmental Clearance (EC):

An application seeking prior environmental clearance in all cases shall be made by the project proponent in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of

the conceptual plan shall be provided, instead of the pre-feasibility report."

b) In para 7, sub-para II, Stage (2), clause (i) was amended by substituting certain words as under:

(i) "Scoping": refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects or activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought. The Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the Terms of Reference on the basis of the information furnished in the prescribed application Form 1/Form 1A including Terms of Reference proposed by the applicant, a site visit by a subgroup of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, Terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. All projects and activities listed as Category 'B' in item 8(a) of the schedule (building and construction projects) shall not require Scoping and will be appraised on the basis of Form 1/Form 1A and the conceptual plan."

c) In the schedule, item 8(a) column (5) the existing entry was substituted by the following:

"The built up area for the purpose of this Notification is defined as "the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects."

d) In Appendix V, para 3 was also substituted as under:

"3. Where a public consultation is not mandatory, the appraisal shall be made on the basis of prescribed application Form-1 and EIA report, in the case of all projects and activities other than item 8 of the schedule. In the case of item 8 of the schedule, considering its unique project cycle, the EAC or SEAC concerned shall appraise projects or activities on the basis of Form-1, Form-1A, conceptual plan and the EIA report [required only for projects listed under 8(b)] and make recommendations on the project regarding grant of environmental clearance or

otherwise and also stipulate the conditions for environmental clearance."

C. Notification dated 22.08.2013 published in Gazette of India Extraordinary of the same date:

a) In para 7 sub-paragraph II, item (i) of EIA 2006 was substituted as under:

"(i) "Scoping" refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion or modernization or change in product mix of existing projects or activities, determine detailed and comprehensive Terms of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought and the Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the terms of reference on the basis of the information furnished in the prescribed application Form 1 or Form 1A including terms of reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned:

Provided that the following shall not require Scoping-

(i) all projects and activities listed as Category 'B' in item 8 of the Schedule (Construction or Township or Commercial Complexes or Housing);

(ii) all Highway expansion projects covered under entry (ii) of column (3) and column (4) under sub-item (f) of item 7 of the Schedule:

Provided further that-

A. the projects and activities referred to in clause (i) shall be appraised on the basis of Form I or Form IA and the conceptual plan;

B. The projects referred to in clause (ii) shall prepare EIA and EMP report on the basis of model TOR specified by Ministry of Environment and Forests;"

D. Notification dated 26.02.2014 published in Gazette of India Extraordinary of

the same date:

a) Here in paragraph 7(II) item (i) which was already substituted vide the notification dated 22.08.2013, was again substituted as under:

"(i) all projects or activities listed under Category, 'B' against item 8(a) of the Schedule;"

E. Notification dated 22.12.2014 published in Gazette of India Extraordinary of the same date:

a) Item 8 in the Schedule as existing in entirety was substituted as under:

(1)	(2)	(3)	(4)	(5)
"8"		Building or Construction projects or Area Development projects and Townships		
8(a)	Building and Construction projects		>20,000 sq. mtrs and <1,50,000 sq. mtrs of built up area	The term "built up area" for the purpose of this notification the built up or covered area on all floors put together, including its basement and other service areas, which are proposed in the building or construction projects. Note 1.- The projects or activities shall not include industrial shed, school, college, hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled materials such as fly ash bricks. Note 2.- "General Conditions" shall not apply.
8	Townships and Area Development Projects		Covering an area >50 ha and or built up area >1,50,000 sq. mtrs	A project of Township and Area Development Projects covered under this item shall require an Environment Assessment report and be appraised as Category 'B1' Project. Note.- "General Conditions" shall not apply.

b) Substantial amendment came to be made in EIA 2006 in the Schedule item 8 by the above notification whereby the term "built up area" was explained as built up or covered area on all floors put up together, including its basement and other service areas, which are proposed in the buildings or construction projects. However, it was clarified by note one that projects/activities shall not include industrial shed, school, college, hostel for educational institution but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled material such as fly ash bricks. Inapplicability of "general conditions" was maintained in respect of item 8 of the Schedule of EIA 2006.

F. Notification dated 29.04.2015 published in Gazette of India Extraordinary on 30.04.2015:

a) Hereby existing paragraph 9 was renumbered as sub-paragraph (i) with certain amendments of the words therein and the amended sub-paragraph (i) reads as under:

"(i) Validity of Environmental Clearance (EC):

*The **"Validity of Environmental Clearance" is meant the period** from which a prior environmental clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub paragraph (iv) of paragraph 7 above, to the start of production operations by the project or activity, **or completion of all construction operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers.** The prior environmental clearance granted for a project or activity shall be valid for a period of ten years in the case of River Valley projects (item 1(c) of the Schedule), project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects **and seven years in the case of all other projects and activities.***

(Emphasis added)

b) Further, sub-paragraph (ii) was inserted as under:

"(ii) In the case of Area Development projects and Townships item 8(b), the validity period shall be limited only to such activities as may be the responsibility of the applicant as a developer:

Provided that this period of validity may be extended by the regulatory authority concerned by a maximum period of seven years if an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form I, and Supplementary Form IA, for Construction projects or activities (item 8 of the Schedule):

Provided further that the regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee, as the case may be, for grant of such extension.

(iii) Where the application for extension under sub-paragraph (ii) has been filed-

(a) within one month after the validity period of EC, such cases shall be referred to concerned Expert Appraisal Committee (EAC) or State Level Expert Appraisal committee (SEAC) and based on their recommendations, the delay shall be condoned at the level of the Joint Secretary in the Ministry of Environment, Forest and Climate Change or Member Secretary, SEIAA, as the case may be;

(b) more than one month after the validity period of EC but less than three months after such validity period, then, based on the recommendations of the EAC or the SEAC, the delay shall be condoned with the approval of the Minister in charge

of Environment Forest and Climate Change or Chairman, as the case may be:"

G. Notification dated 09.12.2016 published in Gazette of India Extraordinary of the same date:

a) Hereby after paragraph 13 of EIA 2006, paragraph 14 was inserted as under:

"14. Integration of environmental condition in building bye-laws.-

(1) The integrated environmental conditions with the building permission being granted by the local authorities and the construction of buildings as per the size shall adhere to the objectives and monitorable environmental conditions as given at Appendix-XIV.

(2) The States adopting the objectives and monitorable environmental conditions referred to in subparagraph (1), in the building bye-laws and relevant State laws and incorporating these conditions in the approvals given for building construction making it legally enforceable shall not require a separate environmental clearance from the Ministry of Environment, Forest and Climate Change for individual buildings.

(3) The States may forward the proposed changes in their bye-laws and rules to the Ministry of Environment, Forest and Climate Change, who in turn will examine the said draft bye-laws and rules and convey the concurrence to the State Governments.

(4) When the State Governments notifies the bye-laws and rules concurred by the Ministry of Environment, Forest and Climate Change, the Central Government may issue an order stating that no separate environmental clearance is required for buildings to be constructed in the States or local authority areas.

(5) The local authorities like Development Authorities, Municipal Corporations, may certify the compliance of the environmental conditions prior to issuance of Completion Certificate, as applicable as per the requirements stipulated for such buildings based on the recommendation of the Environmental Cell constituted in the local authority.

(6) The State Governments where bye-laws or rules are not framed may continue to follow the existing procedure of appraisal for individual projects and grant of Environmental Clearance for buildings and constructions as per the provisions laid down in this notification.

(7) For the purpose of certification regarding incorporation of

environmental conditions in buildings, the Ministry of Environment, Forest and Climate Change may empanel through competent agencies, the Qualified Building Environment Auditors (QBEAs) to assess and certify the building projects, as per the requirements of this notification and the procedure for accreditation of Qualified Building Auditors and their role as given at Appendix-XV.

(8) In order to implement the integration of environmental condition in building bye-laws, the State Governments or Local Authorities may constitute the Environment Cell (herein after called as Cell), for compliance and monitoring and to ensure environmental planning within their jurisdiction.

(9) The Cell shall monitor the implementation of the bye-laws and rules framed for Integration of environmental conditions for construction of building and the Cell may also allow the third part auditing process for oversight, if any.

(10) The Cell shall function under the administrative control of the Local Authorities.

(11) The composition and functions of the Cell are given at Appendix-XVI.

(12) The Local Authorities while integrating the environmental concerns in the building bye-laws, as per their size of the project, shall follow the procedure, as given below:

BUILDINGS CATEGORY '1' (5,000 to < 20,000 Square meters)

A Self declaration Form to comply with the environmental conditions (Appendix XIV) along with Form 1A and certification by the Qualified Building Environment Auditor to be submitted online by the project proponent besides application for building permission to the local authority along with the specified fee in separate accounts. Thereafter, the local authority may issue the building permission incorporating the environmental conditions in it and allow the project to start based on the self declaration and certification along with the application. After completion of the construction of the building, the project proponent may update Form 1A online based on audit done by the Qualified Building Environment Auditor and shall furnish the revised compliance undertaking to the local authority. Any non-compliance issues in buildings less than 20,000 square meters shall be dealt at the level of local body and the State through existing mechanism.

OTHER BUILDINGS CATEGORIES (< 20,000 Square meters)

The project proponent may submit online application in Form 1A alongwith specified fee for environmental appraisal and additional fee for building permission. The fee for environmental appraisal will be deposited in a separate account. The Environment Cell will process the application and present it in the meeting of the Committee headed by the

authority competent to give building permission in that local authority. The Committee will appraise the project and stipulate the environmental conditions to be integrated in the building permission. After recommendations of the Committee, the building permission and environmental clearance will be issued in an integrated format by the local authority.

The project proponent shall submit Performance Data and Certificate of Continued Compliance of the project for the environmental conditions parameters applicable after completion of construction from Qualified Building Environment Auditors every five years to the Environment Cell with special focus on the following parameters:-

- (a) Energy Use (including all energy sources).
- (b) Energy generated on site from onsite Renewable energy sources.
- (c) Water use and waste water generated, treated and reused on site.
- (d) Waste Segregated and Treated on site.
- (e) Tree plantation and maintenance.

After completion of the project, the Cell shall randomly check the projects compliance status including the five years audit report. The State Governments may enact the suitable law for imposing penalties for non-compliances of the environmental conditions and parameters. The Cell shall recommend financial penalty, as applicable under relevant State laws for non-compliance of conditions or parameters to the local authority. On the basis of the recommendation of the Cell, the local authority may impose the penalty under relevant State laws. The cases of false declaration or certification shall be reported to the accreditation body and to the local body for blacklisting of Qualified Building Environment Auditors and financial penalty on the owner and Qualified Building Environment Auditors.

No Consent to Establish and Operate under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 will be required from the State Pollution Control Boards for residential buildings up to 1,50,000 square meters.";"

- b) Further in the schedule item 8 entries were substituted as under:

(1)	(2)	(3)	(4)	(5)
"8		<i>Building/Construction projects/Area Development projects and Townships</i>		
8(a)	<i>Building and Construction projects</i>		$\geq 20,000$ sq. mtrs and $< 1,50,000$ sq. mtrs of built up area	The term "built up area" for the purpose of this notification is the built up or covered area on all floors put together including its basement and other service areas, which are proposed in the buildings and construction projects. Note 1. The projects or activities shall not include industrial shed, universities, college, hostel for educational institutions, but such buildings shall ensure sustainable environmental management, solid and liquid and implement environmental conditions given at Appendix-XIV. Note 2.-General Condition shall not apply. Note 3.-The exemptions granted at Note 1 will be available only for industrial shed after integration of environmental norms with building permissions at the level of local authority.
8 (b)	<i>Townships and Area Development projects</i>	$\geq 3,00,000$ sq. mtrs of built up area or Covering an area ≥ 150 ha	$\geq 1,50,000$ sq. mtrs and $< 3,00,000$ sq. mtrs built up area or covering an area ≥ 50 ha and < 150 ha	Note.- General Condition shall not apply".

c) This notification also inserted three Appendixes i.e. XIV, XV and XVI and we find the same to be relevant since all relates to environmental conditions for building and construction.

APPENDIX-XIV ENVIRONMENTAL CONDITIONS FOR BUILDINGS AND CONSTRUCTIONS (CATEGORY 1: 5,000 to less than 20,000 Square meters)

MEDIUM	S.N.	ENVIRONMENTAL CONDITIONS
Topography and Natural Drainage	1	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. No construction is allowed on wetland and water bodies. Check dams, bioswales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water.
Water Conservation, Rain Water Harvesting, and Ground Water Recharge	2	Use of water efficient appliances shall be promoted. 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 Bye-Laws, 2016. A rain water harvesting plan needs to be designed where the recharge bores (minimum one recharge bore per 5,000 square meters of built up area) is recommended. Storage and reuse of the rain water harvested should be promoted. 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. All recharge should be limited to shallow aquifer.
	2(a)	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.
Waste Management	3	Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste. Sewage: In areas where there is no municipal sewage network, onsite treatment systems should be installed. Natural treatment systems which integrate with the landscape shall be promoted. As far as possible treated effluent should be reused. The excess treated effluent shall be discharged following the CPCB norms. 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 Organisation (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013. The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.
Energy	4	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. Outdoor and common area lighting shall be Light Emitting Diode (LED). 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. 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. 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.
Air Quality and Noise	5	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, murram and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site. Sand, murram, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution. Wet jet shall be provided for grinding and stone cutting. Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust. 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 Rules 2016. All workers

		working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask. For indoor air quality the ventilation provisions as per National Building Code of India shall be made.
	5 (a)	The location of the DG set and exhaust pipe height shall be as per the provisions of the CPCB norms.
Green Cover	6	A minimum of 1 tree for every 80 square meters of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species.
	6 (a)	Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees for every 1 tree that is cut) shall be done and maintained.

(Category '2': 20,000 to less than 50,000 Square meters)

MEDIUM	S.N.	ENVIRONMENTAL CONDITIONS
Topography and Natural Drainage	1	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. No construction is allowed on wetland and water bodies. Check dams, bio-swailes, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water. Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.
Water Conservation, Rain Water Harvesting, and Ground Water Recharge	2	A complete plan for rain water harvesting, water efficiency and conservation should be prepared. Use of water efficient appliances should be promoted with low flow fixtures or sensors. 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. 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. All recharge should be limited to shallow aquifer.

	2(a)	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.
Waste Management	3	Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste. Sewage: Onsite sewage treatment of capacity of treating 100% waste water to be installed. 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 CPCB norms. Natural treatment systems shall be promoted. 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 Organisation (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013. The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.
	3 (a)	All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.
	3(b)	Organic waste compost/Vermiculture pit with a minimum capacity of 0.3 kg/person/day must be installed.
Energy	4	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. Outdoor and common area lighting shall be LED. 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.
	4 (a)	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.

	4 (b)	<i>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.</i>
	4 (c)	<i>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 flyash bricks, hollow bricks, AACs, Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials.</i> <i>Fly ash should be used as building material in the construction as per the provisions of the Fly Ash Notification of September, 1999 as amended from time to time.</i>
Air Quality and Noise	5	<i>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, murram and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site.</i> <i>Sand, murram, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution.</i> <i>Wet jet shall be provided for grinding and stone cutting. Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust.</i> <i>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 Rules 2016.</i> <i>All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask.</i> <i>For indoor air quality the ventilation provisions as per National Building Code of India.</i>
	5 (a)	<i>The location of the DG set and exhaust pipe height shall be as per the provisions of the CPCB norms.</i>
Green Cover	6	<i>A minimum of 1 tree for every 80 sq.mt. of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species.</i>
	6 (a)	<i>Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees</i>

		for every 1 tree that is cut) shall be done and maintained.
Top Soil preservation and reuse	7	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
Transport	8	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. 1. Hierarchy of roads with proper segregation of vehicular and pedestrian traffic. 2. Traffic calming measures. 3. Proper design of entry and exit points. 4. Parking norms as per local regulation.

(Category '3': 50000 to 150000 m2)

MEDIUM	S.N.	ENVIRONMENTAL CONDITIONS
Topography and Natural Drainage	1	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. No construction is allowed on wetland and water bodies. Check dams, bio-swailes, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water. Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.
Water conservation-Rain Water Harvesting, and Ground Water Recharge	2	A complete plan for rain water harvesting, water efficiency and conservation should be prepared. The local bye-law provisions on rain water harvesting should be followed. If local bye-law provisions are not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Byelaws, 2016. 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. All recharge should be limited to shallow aquifer.

	2(a)	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.
	2(b)	Use of water efficient appliances should be promoted. Low flow fixtures or sensors be used to promote water conservation.
	2(c)	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.
Solid Waste Management	3	Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste. The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.
	3(a)	All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.
	3(b)	Organic waste composter/Vermiculture pit with a minimum capacity of 0.3 kg/person/day must be installed.
Sewage Treatment Plant		Onsite sewage treatment of capacity of treating 100% waste water to be installed. 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 CPCB norms. Natural treatment systems shall be promoted. 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 Organisation (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013.
Energy	5	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. Outdoor and common area lighting shall be LED. 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.
	5 (a)	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.
	5 (b)	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.
	5 (c)	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 flyash bricks, hollow bricks, AACs, Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials. Fly ash should be used as building material in the construction as per the provisions of the Fly Ash Notification of September, 1999 as amended from time to time.
Air Quality and Noise	6	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, murram and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site. Wheel washing for the vehicles used be done. Sand, murram, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution. Wet jet shall be provided for grinding and stone cutting. Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust. 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 Rules 2016. All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask.

		For indoor air quality the ventilation provisions as per National Building Code of India.
	6 (a)	The location of the DG set and exhaust pipe height shall be as per the provisions of the CPCB norms.
Green Cover	7	A minimum of 1 tree for every 80 sq.mt. of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species.
	7(a)	Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees for every 1 tree that is cut) shall be done and maintained.
Top Soil Preservation and Reuse	8	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.
Transport	9	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. 1. Hierarchy of roads with proper segregation of vehicular and pedestrian traffic. 2. Traffic calming measures. 3. Proper design of entry and exit points. 4. Parking norms as per local regulation.
Environment Management Plan	10	An environmental management plan (EMP) shall be prepared and implemented to ensure compliance with the environmental conditions specified in item number 1 to 9 above. A dedicated Environment Monitoring Cell with defined functions and responsibility shall be put in place to implement the EMP. The environmental cell shall ensure that the environment infrastructure like Sewage Treatment Plant, Landscaping, Rain Water Harvesting, Energy efficiency and conservation, water efficiency and conservation, solid waste management, renewable energy etc. are kept operational and meet the required standards. The environmental cell shall also keep the record of environment monitoring and those related to the environment infrastructure.

APPENDIX-XV

Accreditation of Environmental Auditors (Qualified Building Auditors)

The Ministry of Environment, Forest and Climate Change (MoEFCC), through qualified agencies shall accredit the Qualified Building Environment Auditors (QBEAs). The Qualified Building Environment Auditors could be a firm/organization or an individual expert, who fulfils the requirements. The Ministry will implement this process of accreditation through Quality Council of India (QCI), National Productivity Council or any other organization identified by the Government. The organizations like Indian Green Building Council, Bureau of Energy Efficiency etc. can also be associated in the process of accreditation, training, and renewal. The environmental consultants accredited by the QCI for building sector will be qualified as QBEAs. The QBEAs will meet the following criteria. The accrediting agency can

improvise on these criteria.

Qualifications of the Auditor:

- a. Education: Architect (Degree or Diploma), Town Planners (Degree), Civil Engineer/Mechanical Engineer (Degree or Diploma), PG in Environmental Science or any other qualification as per the scheme of the accreditation.

Training:

- b. Mandatory training to be given by the accreditation body or their approved training providers. This will be as per the scheme of the accreditation.

Experience:

- c. At least 3 years of work experience in the related field or building sector Environment Impact Assessment consultants accredited by QCI or any other experience criteria as per the scheme of the accreditation.

Infrastructure and equipment:

- d. As per the scheme of the accreditation

Renewal:

- e. The accreditation will be valid for 5 years and will be renewed as per the process developed under the accreditation scheme.

Accountability/Complaint redressal mechanism: Any complaints regarding the quality of the work of QBEAs shall be made to the accreditation body. The accreditation body shall evaluate the complaint and take appropriate action including black listing or cancellation of the accreditation with wide public notice. This will be in addition to the action at the level of local authority for penalty and blacklisting. The Ministry can also take such action in case of specific complaint or feedback.

APPENDIX-XVI

Environmental Cell at the level of Local Authority:

An Environmental Cell shall be setup at the local authority level to support compliance and monitoring of environmental conditions in buildings. The Cell shall also provide assistance in environmental planning and capacity building within their jurisdiction. The responsibility of this cell would be monitoring the implementation of this notification and providing an oversight to the Third-Party Auditing process. The cell will operate under the local authority.

Constitution of the cell:

The cell will comprise of at least 3 dedicated experts in following fields:

- a. Waste management (solid and liquid)
- b. Water conservation and management
- c. Resource efficiency including Building materials
- d. Energy Efficiency and renewable energy
- e. Environmental planning including air quality management.
- f. Transport planning and management.

The Cell shall induct at least two outside experts as per the requirements and background of dedicated experts. Existing environmental cells at the level of local authority can be co-opted and trained for this Cell.

Financial Support:

An additional fee may be charged along with processing fee for building permission for integrating environmental conditions and its monitoring. The local authority can fix and revise this additional fee from time to time. The amount of this fee shall be deposited in a separate bank account, and used for meeting the requirement of salary/emoluments of experts and running the system of online application, verifications and the Environmental Cell.

Functions of the Cell:

1. The cell shall be responsible for assessing and appraising the environmental concerns of the area under their jurisdiction where building activities are proposed. The Cell can evolve and propose additional environmental conditions as per requirements. These conditions may be area specific and shall be notified in advance from time to time. These additional conditions shall be approved following a due consultation process. These environmental conditions will be integrated in building permissions by the sanctioning authority.

2. Develop and maintain an online system for application and payment of fees. The Cell shall maintain an online database of all applications received, projects approved, the compliance audit report, random inspections made. The Cell shall maintain a portal for public disclosure of project details including self certification and compliance audit reports filed by the Qualified Building Environment Auditors for public scrutiny of compliance of environmental conditions by the project.

3. Monitoring the work of Environmental Audit process carried by the Qualified Building Auditors.

4. The Cell shall review the applications; finalize the additional environmental conditions if required within 30 days of the submission of the application to the local authority.

5. The Cell shall adopt risk based random selection of projects for verifying on site for certification of QBA, compliance of environmental conditions and five yearly audit report.

6. The Cell shall recommend to the local authority for financial penalty for non-compliance of environmental conditions by the project proponent.

7. The Cell shall recommend to the accrediting body and the local authority against any Qualified Building Environment Auditor, if any lapse is found in their work."

d) This amendment notification sought to decentralize regulation of building projects, by authorizing urban local bodies to grant approval for building permission by providing integrated environmental conditions examined by environmental cell constituted in the said local bodies and this was required to be processed after making requisite changing/amendments in the by-laws and the relevant rules to be notified by State Governments after having concurrence from MoEF & CC and where such by-laws and rules are amended and, thereafter, on the recommendation of the environmental cell, constituted under urban local bodies, building permissions are granted. It was provided that Central Government may issue an order exempting requirement of separate EC for such projects. Different provisions were provided for the buildings having size of the projects between $5,000 \text{ m}^2 < 20,000 \text{ m}^2$; more than $20,000 \text{ m}^2$ but lesser than $50,000 \text{ m}^2$ and more than $50,000 \text{ m}^2$ but upto $1,50,000 \text{ m}^2$.

e) This amendment notification was challenged before Tribunal in OA 677/2016, Society for Protection of Environment & Biodiversity vs. Union of India; OA 01/2017, Pushp Jain vs. Union of India; OA 7/2017, Ajay Kumar Singh vs. MoEF & CC; OA 55/2017, Mahendra Pandey vs. UoI and OA 67/2017, R. Shreedhar vs. UoI along with MA Nos. 148/2017, 03/2017, 445/2017, 879/2017 and 620/2017. The above OAs were disposed of by Principal Bench of Tribunal vide judgment dated 08.12.2017 and striking out provisions of clause 14(8) as amended by the above notification, Tribunal directed MoEF & CC to re-examine the notification dated 09.12.2016 and take appropriate steps to delete, amend and rectify the clauses in the light of the observations made in the judgment. In the meantime, since bye-laws were also amended by Delhi Development Authority (hereinafter referred to as 'DDA') by notification dated 22.03.2016, Tribunal held that the said notification also shall not be given effect to unless the amendment notification dated 09.12.2016 is re-considered and amended as per the directions continued in the judgment. Tribunal also restrained MoEF & CC from giving effect to amendment dated 09.12.2016 till the above judgment is complied with. However, Tribunal also said that as per the earlier existing provisions of EIA 2006, the applications for grant of prior EC may be considered.

f) This Tribunal gave a categorical and clear message to MoEF & CC that laudable social cause of providing houses to poor, does not get defeated by business, economic profitability with reference to ease of doing business while particularly protecting environment.

g) The above judgment was challenged in Supreme Court in Civil Appeal No. 2522/2018, Union of India vs. Society for Protection of Environment & Biodiversity which is pending.

H. Notification dated 14.11.2018 published in Gazette of India Extraordinary of the same date:

a) By this notification, certain conditions were imposed upon Municipalities, Development Authorities, District Panchayats by delegating them power to ensure compliance of environmental conditions as specified in the Appendix in respect of building and construction projects with built up area < 20,000 sq. mtrs. to 50,000 sq. mtrs. and industrial sheds, educational institutions, hospitals and hostels for educational institution < 20,000 sqm upto 1,50,000 sqm along with building permission and to ensure that the conditions specified in Appendix are complied with, before granting the occupation certificate/completion certificate. The Appendix given in this notification is as under:

"APPENDIX

Environmental Conditions for Buildings and Constructions

(Category: Building or Construction projects or Area Development projects and Townships < 20,000 to < 50,000 Square meters as well as for industrial sheds, educational institutions, hospitals and hostels for educational institutions from 20,000 sq.m to < 1,50,000 sq.m)

S.N	MEDIUM	ENVIRONMENTAL CONDITIONS
(1)	(2)	(3)
1	Topography and Natural Drainage	The natural drain system shall be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site. No construction is allowed 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. Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.
2	Water Conservation, Rain Water Harvesting and Ground Water Recharge	A complete plan for rain water harvesting, water efficiency and conservation should be prepared and implemented. Use of water efficient appliances should be promoted with low flow fixtures or sensors. 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 Bye-laws, 2016. 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. All recharge should be limited to shallow aquifer.

2(a)		At least 20 per cent of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks, landscape etc. with at least 50 per cent opening in paving which would be considered as pervious surface.
3	Waste Management	Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste. Sewage: Onsite sewage treatment of capacity of treating 100 per cent waste water to be installed. 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. Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development, Central PublicHealth and Environmental Engineering Organisation (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013. The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.
3 (a)		All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.

3(b)		Organic waste compost/Vermiculture pit with a minimum capacity of 0.3 kg per person per day must be installed.
4	Energy	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. Outdoor and common area lighting shall be Light Emitting Diode (LED). 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.
4 (a)		Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1 per cent of the demand load or as per the state level/ local building bye-laws requirement, whichever is higher.
4(b)		Solar water heating shall be provided to meet 20 per cent 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.
4(c)		Use of environment friendly materials in bricks, blocks and other construction materials, shall be required for at least 20 per cent of the construction material quantity. These include flyash bricks, hollow bricks, Autoclaved Aerated Concrete (AAC), Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials. Fly ash should be used as building material in the construction as per the provisions of the Fly Ash Notification S.O. 763(E) dated 14th September, 1999 as amended from time to time.

5	Air Quality and Noise	Roads leading to or at construction sites must be paved and blacktopped (i.e. metallic roads). No excavation of soil shall be carried out without adequate dust mitigation measures in place. No loose soil or sand or Construction & Demolition Waste or any other construction material that causes dust shall be left uncovered. Wind-breaker of appropriate height i.e. 1/3rd of the building height and maximum up to 10 meters shall be provided. Water sprinkling system shall be put in place. Dust mitigation measures shall be displayed prominently at the construction site for easy public viewing. Grinding and cutting of building materials in open area shall be prohibited. Construction material and waste should be stored only within earmarked area and road side storage of construction material and waste shall be prohibited. No uncovered vehicles carrying construction material and waste shall be permitted. Construction and Demolition Waste processing and disposal site shall be identified and required dust mitigation measures be notified at the site. Dust, smoke and other air pollution prevention measures shall be provided for the building as well as the site. Wet jet shall be provided for grinding and stone cutting. Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust. All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Rules 2016. All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask.

		For indoor air quality the ventilation provisions as per National Building Code of India.
5(a)		The location of the Genset and exhaust pipe height shall be as per the provisions of the statutory norms notified by Ministry of Environment, Forest and Climate Change. The Genset installed for the project shall follow the emission limits, noise limits and general conditions notified by Ministry of Environment, Forest and Climate Change vide GSR 281(E) dated 7th March 2016 as amended from time to time.
6	Green Cover	A minimum of 1 tree for every 80 sq.mt. of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species.
6 (a)		Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees for every 1 tree that is cut) shall be done and maintained.
7	Top Soil Preservation and reuse	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.
8	Transport	The building plan shall be aligned with the approved comprehensive mobility plan (as per Ministry of Housing and Urban Affairs best practices guidelines (URDPFI)).

I. Notification dated 15.11.2018 published in Gazette of India Extraordinary of the same date:

a) Paragraph 14 of EIA 2006 and entries in the item 8 in the schedule were substituted as under:

"14. Local bodies such as Municipalities, Development Authorities and District Panchayats, shall stipulate environmental conditions while granting building permission, for the Building or Construction projects with built-up area < 20,000 sq. mtrs and < 50,000 sq. mtrs and industrial sheds, educational institutions, hospitals and hostels for educational institutions from built-up area < 20,000 sqm to < 1,50,000 sq.m as specified in Notification S.O. 5733(E) dated 14th November, 2018."

(ii) in the Schedule, for item 8 and the entries relating thereto, the following item and entries shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)
"8"	<i>Building or Construction projects or Area Development projects and Townships as well as for industrial sheds, educational institutions, hospitals and hostels for educational institutions</i>			
8(a)	Building and Construction projects		≥50,000 mtrs. sq. and <1,50,000 sq. mtrs. of built-up area	Note-1: The term "built-up area" for the purpose of this notification is the built-up or covered area on all the floors put together including its basement and other service areas, which are proposed in the buildings or construction projects. Note 2: The projects or activities shall not include industrial sheds, educational institutions, hospitals and hostels for educational institutions. Note 3: General Conditions shall not apply.
8 (b)	Townships and Area Development projects as well as industrial sheds educational institutions, hospitals and hostels for educational institutions		≥1,50,000 sq. mtrs. of built-up area and or covering an area ≥ 50 ha.	A project of Township and Area Development Projects covered under this item shall require an Environment Assessment Report and be appraised as Category 'B1' Project. Note: - General Conditions shall not apply.

b) Notifications dated 14.11.2018 and 15.11.2018 were issued in complete disregard of directions contained in the judgment dated 08.12.2017. MoEF & CC insisted to delegate power to local bodies ignoring that these local bodies have any expert in the matter and no study was conducted whether expert infrastructure is available to such bodies. It is also true that though appeal was filed in Supreme Court but the same was pending and judgment of Tribunal has its legal consequences so long it is not otherwise ordered by appellate Court i.e., Supreme Court.

c) The notifications dated 14.11.2018 and 15.11.2018 were challenged in Delhi High Court in various writ petitions wherein interim orders were passed. These writ petitions are 12571/2018, Social Action for Forest and Environment vs. UoI and No. 12570/2018, Society for Protection of Environment & Biodiversity (SPENBIO) vs. UOI. The same issue was raised before this Tribunal also in OA 1017/2018, Shashikant Vitthal Kamble vs. UOI but referring to the matter pending in Delhi High Court, Tribunal had deferred the matter sine-die vide order dated 22.01.2019.

133. A perusal of EIA 2006 and its amendments made from time to time particularly, in respect of projects/activities covered by entry 8 in Schedule I of the said notification shows that the activities relating to building construction and development would require EC from Competent Authority, if the built up area is more than 20,000 m². Item 8(a) says that in respect of building and construction projects, if built up area is more

than 20,000 m² and less than 1,50,000 m², the project would be treated as 'B2' category project. Item 8(b) covers another category of township and area development activities/projects where land is more than 50 ha or built-up area is more than 1,50,000 m² and under this item, the category would be 'B1'. However, under item 8, the projects whether under item 8(a) or 8(b), the same would be 'B category' projects. The difference in categorization of the projects is in respect to process of consideration of application for prior EC and appreciation by the concerned Environmental Assessment Committee.

Analysis of EIA 2006 by Courts:

134. Provisions of EIA 2006 and the process thereunder have been considered in detail, by Supreme Court in *Hanuman Laxman Aroskar vs. Union of India*, MANU/SC/0444/2019 : (2019) 15 SCC 401. It was an appeal taken to Supreme Court, from a judgment/order dated 21.08.2018 passed by this Tribunal in Appeal No. 5/2018 (earlier Appeal No. 61/2015/WZ), *Federation of Rainbow Warriors vs. Union of India & Ors.* and Appeal No. 6/2018, *Hanuman Laxman Aroskar vs. Union of India*, wherein grant of EC for development of green field International Airport at Mopa, Goa, was challenged. Project was in category 'A' hence as per EIA 2006 'Prior EC' was to be granted by MoEF. EC was granted on 28.10.2015. It was challenged by M/s. Federation of Rainbow Warriors in Appeal No. 61/2015 at Tribunal's Western Zonal Bench, Pune. Another Appeal No. 1/2016 was filed by Hanuman Laxman Aroskar at NGT, Western Zonal Bench, Pune. Both these appeals were transferred to Principal Bench at New Delhi and numbered as Appeal No. 5 and 6 of 2018 respectively. One of the issues raised before Supreme Court was; PP did not give complete information in Form I submitted to the Competent Authority for grant of EC; PP is duty bound to make a proper disclosure and highest level of transparency is required; and there was concealment of certain facts by leaving certain columns blank or by not giving required details. It was contended that for these reasons, application for EC ought to have been rejected.

135. Supreme Court considered scheme of EIA 2006 in detail. Going into historical backdrop of EIA 2006, Court said that by Constitution (Forty-second Amendment) Act 1976 w.e.f. 03.01.1977, Article 48A was inserted to the Constitution which mandates that State shall endeavor to protect and improve environment and safeguard forests and wildlife of the country; Article 51A(g) of Constitution places a corresponding duty on every citizen to protect and improve natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures; following decisions taken at United Nations Conference on Human Environment held at Stockholm (Stockholm Conference) in June 1972, in which India also participated, Parliament enacted EP Act, 1986 to protect and improve environment and prevent hazards to human beings, other living creatures, plants and property; on 27.01.1994, MoEF & CC, in exercise of powers under Section 3(1) read with (2)(v) of EP Act, 1986 and Rule 5(3)(d) of EP Rules, 1986, issued notification, S.O. 60(E), 1974, imposing restrictions and prohibitions on the expansion and modernization of any activity or new project unless an EC was granted under the procedure stipulated in the notification; Notification contemplated that any person undertaking a new project or expanding and modernizing an existing project, would submit an application to the Secretary, MoEF; application to be made in accordance with Schedule, also provided that, it shall accompany project report including EIA Report, an Environment Management Plan (hereinafter referred to as 'EMP') and other details as per the Guidelines issued by Government from time to time; Competent Impact Assessment Agency would then evaluate application and submit report; and if necessary, it is also empowered to constitute a Committee of Experts which would have a right of entry into and inspection of the site during or after the

commencement of the preparations relating to the project; concealment of any factual data or submitting false or misleading information would make the application liable for rejection and would lead to cancellation of any EC already granted on that basis; EIA 1994 was superseded by EIA 2006; real distinction between EIA 1994 and EIA 2006 is that in the later EC must be granted by Regulatory Authority prior to commencement of any construction work or preparation of land; EIA 2006 divides all projects in Category A and Category B projects; under EIA 1994, PP was required to submit application along with all reports including EIA report but under EIA 2006 prior to preparation of EIA report by PP, the authority concerned would formulate comprehensive Terms of Reference (hereinafter referred to as 'ToR') on the basis of information furnished by PP addressing all relevant environmental concerns; this would form the basis for preparation of EIA Report; a pre-feasibility Report is also required to submit with the application unless exempted in the Notification; under EIA 1994, final approval was granted by Impact Assessment Authority but under Notification of 2006, final regulatory approval is granted by MoEF & CC or SEIAA, as the case may be; but approval is to be based on recommendations of EAC functioning in MoEF & CC or State Expert Appraisal Committees (SEACs) which are constituted for that specific purpose; thus the salient objective which underlies EIA 2006 is protection, preservation and continued sustenance of environment when the execution of new projects or the expansion or modernization of existing projects is envisaged; it imposes certain restrictions and prohibitions based on the potential environmental impact of projects unless 'Prior EC' has been granted by the authority concerned.

136. Supreme Court said that an application must be submitted prior to the commencement of any construction activity or preparation of the land at the site. The process to obtain EC comprised broadly 4 stages i.e. (i) Screening, (ii) Scoping, (iii) Public Consultation and (iv) Appraisal. The step of screening is restricted to Category B projects. It entails an examination of whether the proposed project or activity requires further environmental studies for preparation of an EIA for its appraisal prior to grant of EC. The projects requiring an EIA are further categorized as Category B1 projects and remaining projects are categorized as Category B2 projects. Category B2 projects do not require an EIA. The categorization is in accordance with the guidelines issued by MoEF & CC in this regard from time to time. The stage of scoping requires formulation of comprehensive ToR so as to address all relevant environmental concerns for the preparation of EIA. Amongst other things, information furnished by applicant in Form 1 and Form 1A along with the proposed ToR forms the basis for preparation of ToR. Public consultation at the third stage is attracted in all Category A and Category B1 projects. Summary of EIA is prepared in the format given in Appendix IIIA on the basis of ToR furnished to the applicant. This stage involves the process by which concerns of local affected persons and others who have plausible stake in the environmental impact of the project or activity are ascertained with a view of taking into account all the material concerns in the project or activity design as appropriate. The stage of appraisal involves detailed scrutiny by EAC or SEAC of all documents submitted by applicant for the grant of EC. The appraisal is carried out in a transparent manner in a process to which PP is also invited for furnishing clarification in person or through an authorized representative. The scheme requires Regulatory Authority to examine documents strictly with reference to ToR and if there is any inadequacy to communicate to EAC or SEAC within 30 days of receipt of the documents; recommendations made by EAC or SEAC are then required to be considered by MoEF & CC or concerned SEIAA who are supposed to communicate their decision to PP within 45 days of receipt of the recommendations. Ordinarily Regulatory Authorities are supposed to accept recommendations of EAC or SEAC. In case of disagreement, Regulatory Authority is required to seek a reconsideration of recommendations by the concerned recommending body. Importance

of provisions of EIA 2006 in reference to protection of environment has been stressed upon by Supreme Court in para 56 of the report (SCC) as under:

"The 2006 notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. It serves as a balance between development and protection of the environment: there is no trade-off between the two. The protection of the environment is an essential facet of development. It cannot be reduced to a technical formula. The notification demonstrates an increasing awareness of the complexities of the environment and the heightened scrutiny required to ensure its continued sustenance, for today and for generations to come. It embodies a commitment to sustainable development. In laying down a detailed procedure for the grant of an EC, the 2006 notification attempts to bridge the perceived gap between the environment and development."

137. Court also observed that under EIA 2006, process of obtaining an EC commences from the production of information stipulated in Form 1/Form 1A; crucial information regarding particulars of proposed project is sought to enable EAC or SEAC to prepare comprehensive ToR which applicant is required to address during the course of preparation of EIA. Relevant observations in para 60 of judgment are as under:

"60. Under the 2006 Notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1A.

.....

.....

Some of the information sought is produced thus:

60.1. Construction, operation or decommissioning of the project involving actions, which **will cause physical changes in the locality (topography, land use, changes in water bodies, etc.).**

60.2. Use of natural resources for construction or operation of the project (such as land, **water**, materials or energy, especially any resources which are non-renewable or in short supply).

60.3. Use, storage, transport, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about the actual or perceived risks to human health.

60.4 Production of solid wastes during construction, operation or decommissioning.

60.5. Release of pollutants or any hazardous, toxic or noxious substances to air.

60.6. Generation of noise and vibration, and emissions of light and heat.

60.7. Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea.

60.8. Risk of accidents during construction or operation of the project, which could affect human health or the environment.

60.9. **Environment sensitivity which includes, amongst other things, the furnishing of the following details:**

60.9.1. **Areas protected under international and national legislation.**

60.9.2. **Ecologically sensitive areas**

60.9.33 **Areas used by protected, important or sensitive species of flora or fauna."**

(Emphasis added)

138. The importance of correctness and transparency of the information and that any false statement or concealment of the same would be fatal, was particularly stressed by Court in para 62 of judgment, observing:

"62. The information provided in Form 1 serves as a base upon which the process stipulated under the 2006 notification rests. An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable persons concerned to provide comments and representations at the public consultation stage. The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately. Clause (vi) of paragraph 8 of the notification provides thus:

"Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

(Emphasis added)

139. Supreme Court also referred and approved two judgments of this Tribunal in Save Mon Region Federation vs. Union of India, MANU/GT/0029/2013 : 2013 (1) All India NGT Reporter 1 and Shreeranganathan K.P. vs. Union of India wherein, on the basis of information furnished in Form 1, the deficiencies in EIA Report, process of appraisal etc., were considered in detail to find out whether EC was granted in accordance with law or not. Court distinguished an earlier judgment in Lafarge Umiam Mining Private Limited vs. Union of India MANU/SC/0735/2011 : 2011 (7) SCC 338 observing that it was the case under EIA 1994 when provisions of EIA 2006 were not applicable. Court said that decision was based on facts of that case, summarized by Court in Hanuman

Laxman Aroskar (supra) in para 138 of judgment. It was also held that, relevant material, if has been excluded for consideration or extraneous circumstances were brought in mind, there was a failure to observe binding norms under EIA 2006 and consequential serious flaw in the decision-making process, would amount to an illegal exercise and failure of statutory duty, so as to vitiate EC. In para 157 of judgment, importance of the correct and complete disclosure of information by PP in his application, Form 1 and Form 1A, and further consideration by Competent Authority has been discussed, as under:

*"The 2006 Notification must hence be construed as a significant link in India's quest to pursue the SDGs. Many of those goals, besides being accepted by the international community of which India is a part, constitute a basic expression of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the aspirations of our own Constitution. **The fundamental principle which emerges from our interpretation of the 2006 Notification is that in the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive.**"*

(Emphasis Added)

140. Further, in para 158 of judgment, in Hanuman Laxman Aroskar (supra), Court observed:

*"Repeatedly, it has been urged on behalf of the State of Goa, MoEFCC and the concessionaire that the **need for a new airport** is paramount with an increasing volume of passengers and **consequently the flaws in the EIA process should be disregarded.** The need for setting up a new airport is a matter of policy. The role of the decision-makers entrusted with authority over the EIA process is to ensure that every important facet of the environment is adequately studied and that the impact of the proposed activity is carefully assessed. **This assessment is integral to the project design because it is on that basis that a considered decision can be arrived at as to whether necessary steps to mitigate adverse consequences to the environment can be strengthened.**"*

(Emphasis Added)

141. Supreme Court ultimately held that report of EIA based on incomplete information supplied by PP is vitiated. In para 159, it is said:

*"In the present case, as our analysis has indicated, **there has been a failure of due process commencing from the nondisclosure of vital information by the project proponent in Form 1. Disclosures in Form 1 are the underpinning for the preparation of the ToR. The EIA report, based on incomplete information has suffered from deficiencies which have been noticed in the earlier part of this judgment including the failure to acknowledge that within the study area contemplated by the Guidance***

manual, there is a presence of ESZs."

(Emphasis Added)

142. Manner in which application submitted for grant of EC has to be dealt with by SEIAA or MoEF, has been considered in *Bengaluru Development Authority v. Sudhakar Hegde & Ors.*; MANU/SC/0308/2020 : (2020) 15 SCC 63. Supreme Court had an appeal arising from NGT's judgment dated 08.02.2019, whereby EC granted to appellant (BDA) for development of an eight lane Peripheral Ring Road connecting Tumkur Road to Hosur Road, a length of 65 kilometers was quashed, on the ground that report was based on primary data collected more than three years prior to submission to SEIAA. Tribunal directed that PP will not proceed on the basis of EC, which was quashed. Three issues were raised before Supreme Court. For our purpose, relevant question is, "whether EIA 2006 was followed or not". In para 87 of judgment, Court said that

*"appraisal by SEAC is structured and defined by EIA Notification, 2006. At this stage, **SEAC is required to conduct "a detailed scrutiny" of the application and other documents including EIA report submitted by applicant for grant of an EC.** Court also said that upon completion of appraisal processes, SEAC makes "categorical recommendations" to SEIAA either for grant of a 'Prior EC' on stipulated terms and conditions or rejection of the application. The **recommendations made by the SEAC for the grant of EC, are normally accepted by the SEIAA and must be based on "reasons".**"*

(Emphasis Added)

143. Court further said that reasons furnished by SEAC must be assessed with reference to the norm that it is required to submit reasons for its recommendations. Court found that SEAC, in that case, analyzed the matter perfunctory and fails to disclose reasons upon which it made recommendation to SEIAA for grant of EC. It merely proceeds on the reply submitted by PP. In para 89 of judgment, Court said:

*"**SEAC is under an obligation to record the specific reasons upon which it recommends the grant of an EC.** The requirement that the SEAC must record reasons, besides being mandatory under the 2006 Notification, is of significance for two reasons: (i) The SEAC makes a recommendation to the SEIAA in terms of the 2006 Notification. The regulatory authority has to consider the recommendation and convey its decision to the project proponent. The regulatory authority, as para 8(ii) of the 2006 Notification provides, shall normally accept the recommendations of the EAC. Thus, **the role of the SEAC in the grant of the EC for a proposed project is crucial;** and (ii) The grant of an EC is subject to an appeal before the NGT under Section 16 of the NGT Act 2010. **The reasons furnished by the SEAC constitute the link upon which the SEIAA either grants or rejects the EC** The reasons form the material which will be considered by the NGT when it considers a challenge to the grant of an EC".*

(Emphasis added)

144. Approving judgment of this Tribunal in *Shreeranganathan K P vs. Union of India*; Supreme Court said:

*"**EAC had not conducted a proper appraisal given its failure to consider the available material and objections before it.** The EAC had thus failed to conduct a proper evaluation of the project prior to forwarding to the regulatory*

authority its recommendation".

(Emphasis added)

145. In para 92 of the judgment, Supreme Court said:

"SEAC, as an expert body, must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment and scrutinize the document submitted to it. The SEAC is duty bound to analyze the EIA report. The SEAC is not required to accept either the EIA report or any clarification sent to it by the project proponent. In the absence of cogent reasons by the SEAC for the recommendation of the grant of EC, the process by its very nature, together with the outcome, stands vitiated."

(Emphasis added)

146. The above authorities make it clear that Tribunal would proceed with a merit review in exercise of appellate power with regard to validity of grant of EC and to examine whether the entire relevant information was furnished by PP. The authority is under statutory obligation to examine impact of such information on the environment, has to discharge its functions effectively and after due application of mind appraising environmental sustainability of the project. Environment is essential facade of development. For construction project/activities covered under item 8 of the Schedule of EIA 2006, simpler procedure has been prescribed. EAC and/or any other Competent Authority namely SEAC/SEIAA has to evaluate the information available in Form I and IA as also conceptual plan submitted by PP, which is crucial and serves as base on which process of evaluation rests. Any deliberate concealment/false/inadequate and misleading information is bound to result in rejection of applications submitted by PP, for grant of prior EC.

Consideration of Issues on Merits:

147. In the light of above discussion, the relevant statutory provisions and law laid down interpreting the relevant provisions, we proceed to consider the issues formulated above.

148. Issue I (relating to res-judicata)-PP has taken the defence in respect of various issues that the present appeal is barred by res-judicata since the issues raised by appellant were already subject matter of consideration before Delhi High Court and decided against appellant, hence cannot be re-agitated in this appeal. This takes us to the judgments of Delhi High Court and Supreme Court relied by PP.

149. WP(C) No. 2743/2012 was filed by Registrar, University of Delhi i.e., DU impleaded Union of India, DDA, DMRC and others. PP was impleaded as respondent 12 in the said writ petition. Challenge was to the decision taken by DDA in the meeting dated 12.05.2011 whereby DDA allowed PP to construct a high multi-story group housing society in control zone of Zone C, contrary to mandate of MPD-2021 and Development Control Norms for metro station as stipulated under chapter 12 of MPD-2021. DDA by the said decision has allowed construction without any height restriction and to treat the plot leased out to PP by DMRC, admeasuring 2 ha, as a separate entity from the total plot acquired for metro station developed by DMRC admeasuring 3.05 ha. A writ of mandamus was sought by DU directing respondents to follow mandate of MPD-2021 particularly, Development Control Norms contained in Gazette notification dated 20.01.2005 (incorporated under chapter 12 of MPD-2021) relating to Zone-C.

This writ petition was decided by Learned Single Judge (Hon'ble Suresh Kait, J. of Delhi High Court) vide judgment dated 27.04.2015 whereby writ petition was dismissed. The judgment is on record at page 904 of paper book.

150. The facts borne out from the said judgment, placed before High Court in the above writ petition are that DMRC desired acquisition of land for metro station i.e. Vishwavidyalaya Metro Station falling under Zone-C of MPD-2021 and identified land comprising some bungalows etc. and sought its acquisition. Ministry of Urban Development on 02.05.2000 granted NOC for acquisition of bungalows. The land use of proposed land to be acquired was changed from 'residential' to 'public and semi public purpose'. Acquisition proceedings commenced with notification dated 15.12.2000 issued under Section 4(1) of Land Acquisition Act, 1894 (hereinafter referred to as 'LA Act 1894') and declaration under Section 6 was issued on 14.02.2001. Land Acquisition Collector passed award under section 11 on 11.09.2001. Land measuring 3.05 ha, situated in Zone-C (Civil Lines Zone) at Mall Road was handed over to DMRC. Mutation in the revenue records in favour of DMRC was also given effect. On 21/23.07.2003, Ministry of Urban Development and Poverty Alleviation granted approval to DMRC to generate resources through property development within the period of 6 to 20 years. DDA issued notification dated 16.04.2004 in accordance with the provisions of Section 44 of Delhi Development Act, 1946 (hereinafter referred to as 'DD Act 1946') inviting objections and/or suggestions on the modification proposed by Central Government with a view to modify MPD-2021. By notification dated 20.01.2005, land use provisions of "Master Plan Zonal Development Metro Stations" along with "Property Development with Control Norms" was notified. On 23.09.2005, Government of India notified change in land use of 2 ha out of 3.05 ha of land taken over by DMRC from 'public and semi-public' to 'residential'. DDA, vide letter dated 12.02.2007, informed DMRC that in view of the change of land use, MPD and ZDP of Zone-C, providing detailed guidelines for development, be followed. On 07.02.2007, MPD 2021, stipulating "Development Controls for Metro Stations" was notified. On 29.03.2007 and 14.09.2007, DDA confirmed to DMRC that all statutory provisions relating to group housing as per MPD-2021 were to be followed. In June 2008, DMRC issued 'Request for Proposal' for residential development at Vishwavidyalaya Metro Station, indicating that norms of residential plot group housing as per MPD-2021 were to be followed, i.e., FAR of 200, ground coverage of 33.3% and also its intention to transfer leasehold rights to the developer for a period of 90 years.

151. The auction proceedings commenced and PP's bid was accepted in respect of 2 ha of land of DMRC out of 3.05 ha which it had acquired. After execution of lease deed and possession handed over to PP by DMRC, an application along with proposed layout plan for approval of Group Housing Scheme was submitted by PP to Municipal Corporation of Delhi (hereinafter referred to as 'MCD').

152. DU, at this stage, submitted representation to Delhi Urban Arts Commission (hereinafter referred to as 'DUAC'), raising concerns about the above project. Chairman, DUAC, vide letter dated 05.08.2009 requested DDA to reconsider project in the light of representation of DU. DDA, vide letter dated 19.08.2009, withdrew its earlier letters dated 29.03.2007 and 14.09.2007, wherein it was stated that Development Control Norms of property development for Metro Station dated 20.01.2005 would be applicable.

153. Challenging order dated 19.08.2009, PP filed WP(C) 3135/2010 in Delhi High Court. The writ petition was not decided on merits, instead, DDA informed that a decision was taken in the meeting held on 12.05.2011 to allow FAR of 200 without any

height restriction to the project. On the said statement, writ petition was disposed of on 18.05.2011. Consequently, decision taken in the meeting dated 12.05.2011 by DDA, became subject matter of challenge in WP(C) No. 2743/2012, filed by DU.

154. The rival submissions advanced by the counsels appearing for the petitioner and respondents before Delhi High Court are mentioned in para 7 to 45 of the judgment, which inter-alia show that DU, besides others, also sought to raise dispute about bona-fide of auction of the land by DMRC for development of group housing on the part of the land acquired for construction of metro railway station. Court noticing the entire facts, in para 47 observed that permission given by DDA in the meeting dated 21.05.2011 was completely in line with the amended provisions of MPD-2021. The observations made in para 47 of judgment of Learned Single Judge of Delhi High Court reads as under:

"47. Respondent No. 10 DMRC had constructed Vishwavidyalaya Metro Station, where 2 Hectares of land remained surplus and was to be used for development in order to generate revenue. Accordingly, the respondent No. 10 applied to DDA for change of land use from 'Public and Semi Public' to 'Residential', which was approved by the Ministry of Urban Development as per its notification No. 1383(E) : MANU/URBN/0017/2005 dated 23.09.2005. The auction of the land in favour of the Respondent No. 12 was granted only after receipt of letters dated 29.03.2007 & 14.09.2007 issued by the DDA, wherein it was specifically informed that the FAR for the Plot in question would be as per the norms of the MPD-2021 for Group Housing and FAR of 200 with 33% ground coverage would be permissible. Moreover, the Ministry of Urban Development vide its Notification dated 18.04.2011 had amended Clause 3.3.1.1(vii) of the MPD 2021, wherein the words, 'Property Development by DMRC' was deleted. Thus, the restriction on enhancement of FAR for property development by DMRC as provided under the MPD-2021 stood modified to the effect that the FAR for projects of property development by the DMRC can be enhanced in accordance with the provisions of the MPD-2021. Moreover, in the Minutes of Meeting dated 21.05.2011, in respect of the Plot in question, DDA allowed the development control norms as available to any Group Housing Society under MPD-2021, including 200 FAR without restriction of height, on the residential plot leased out to respondent No. 12 by DMRC near Vishwavidyalaya Metro Station. Therefore, the permission given by the DDA in the minutes of meeting dated 21.05.2011 was completely in line with the amended provisions of the MPD-2021."

155. Court also found justification on the part of DMRC to lease out 2 ha of plot to PP and said in para 49 as under:

"49. It is also pertinent to mention here that the situation in question arose for the reason that earlier under Phase-I, the Vishwavidyalaya Metro Station used to be a terminal station. In 2006, when Phase-II was envisioned, the aforesaid Metro Station remained no longer a terminal station and the line from Central Secretariat to Vishwavidyalaya was extended to Jahangirpuri, resultantly, the requirement for parking space was reduced, and consequently there was a surplus land available with the DMRC. Accordingly, DMRC invited bids for residential development on 2.0 Hectare plot representing that the norms of Residential Plot-Group Housing as per MPD 2021 would be applicable which permit 200 FAR with 33% ground coverage. Accordingly, respondent No. 12 participated and turned out to be the highest bidder at Rs. 218.20 crores."

156. It also noted that WP(C) No. 8675/2011 was filed by Association of Metro Commuters, challenging allocation of the said land for residential development, which was dismissed by Division Bench of Delhi High Court vide judgment dated 14.12.2011 observing that no irregularity in the auction conducted by DMRC could be shown. Further, Court also said that proceeding for residential development commenced in 2007 and lease agreement was executed on 15.12.2008; Land was also transferred; hence Court said that it do not any justification for interference in writ petition filed in 2011 without bringing any illegality in the process to the notice of Court and instead seeking roving and fishing inquiry.

157. Another WP(C) 6624-6625/2012, Sanjay Khanna (HUF) vs. UOI and Others, filed by erstwhile lessees of the land in question challenging acquisition was also referred in the judgment. These writ petitions were also dismissed vide judgment dated 10.09.2013 and SLP No. 5014/2014 was dismissed by Supreme Court on 14.02.2014. In para 55 and 56 of the judgment dated 15.04.2015, High Court also noticed that the process of change of "land use" commenced long back, at least in December 2004, and that has been accomplished following due process of law, by issue of notification dated 23.09.2005, changing "land use" from "public and semi-public purposes" to "residential".

158. Rejecting argument with regard to height restriction on the ground that 3.05 ha of land falls in control zone of DU, Court observed in para 58 that restrictions are applicable in important areas like Lutyen's Bungalow Zone, Civil Lines Bungalow Zone and North Delhi Campus but the plot in question does not fall within any of these restricted areas. In fact, questioned land neither comes within Delhi University North Campus nor part of DU. Twice change of "land use" i.e. from residential to public purpose to public and semi-public and then again residential was also upheld by Learned Single Judge while observing in para 63 that once land is acquired in a lawful manner and vested in the acquiring authority, a portion of the acquired land, if left unused, after achieving the public purpose, unused portion can be used for a purpose other than it was acquired. For taking the above view, Court relied on its earlier judgment in Adil Singh vs. UoI and Ors., WP(C) No. 2948 of 2007 decided on 09.08.2010. Having said so, Court observed that a policy decision was taken by DDA and unless it is shown to be illegal, mala-fide or otherwise vitiated in law, no interference would be justified. Court observed in para 64 of the judgment as under:

"64. As per the settled law, the Court should not interfere with any policy decision taken by a Government body unless there appears to be some illegality, impropriety, mala fide or unreasonableness on part of such decision making body. However, the petitioner has failed to establish the same."

159. Thus, the issues of genuinity of auction of surplus land (2 ha) by DMRC; height restriction due to control zone of DU and change of land use were decided by Delhi High court in favour of PP and against DU. Thereafter, Court also found that DU in challenging the basic issue of change of land use was guilty of laches in as much as something, which had happened 7 to 8 years back, could not have been allowed to be agitated in a writ petition filed in 2012. Writ petition accordingly was dismissed as Court did not find any merit and also on the ground of delay and laches and said in para 67 and 68 as under:

"67. In view of the above discussion, I find no merit in the instant petition and the same is also hit by delay and laches."

68. Accordingly, instant petition is dismissed with no order as to costs."

160. Thereafter, DU filed LPA 89/2018 before Division Bench. The appeal was filed after expiry of period of limitation and with a huge delay of 916 days, hence it accompanied a delay condonation application also. The Division Bench considered delay condonation application i.e., Civil Misc. Application No. 8654/2018 and said in para 18, 22 and 27 of the judgment dated 29.10.2018, as under:

18. So the plea that in the absence of Vice Chancellor the decision to file appeal could not have been taken cannot be accepted.

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22. The aforesaid has not been denied by the appellant University in its rejoinder which suggest that the plea of non availability of Vice Chancellor because of which decision could not been taken for filing an appeal is an incorrect stand taken by the appellant University. So the reasons given by the University being not bona fide and do not inspire confidence, the same cannot be accepted.

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27. In view of above discussion, we do not see any reason to condone the delay of 916 days in filing the appeal. The application is dismissed. Resultantly, the appeal as well as connected applications are also dismissed."

161. Thus, it is evident that appeal was dismissed by Division Bench by order dated 29.10.2018 on the ground of limitation. Delay condonation application itself was rejected as Division bench did not find any ground, any satisfactory explanation for filing appeal with a delay of 916 days.

162. Aggrieved by the above judgment of Division Bench, DU filed Civil Appeal Nos. 9488-9489 of 2019 before Supreme Court and vide judgment dated 17.12.2019, in University of Delhi vs. Union of India & Ors. MANU/SC/1761/2019 : (2020) 13 SCC 745, Supreme Court upheld dismissal of writ petition as well as LPA on the ground of delay and laches and found that there was no justification to condone delay of 916 days in filing appeal. Para 32 of the judgment of Supreme Court reads as under:

32. Therefore, taking into consideration all these aspects of the matter, we are of the opinion that not only the learned Single Judge was justified in holding that the writ petition inter alia is hit by delay and laches but the decision of the Division Bench in dismissing the LPA on the ground of delay of 916 days is also justified and the orders do not call for interference."

163. The above judgment shows that the issue raised before Delhi High Court was decision of DDA whereby it permitted development of group housing on the land in question with FAR 200 without any restriction of height and applicability of certain provisions of MPD-2021 on the ground that the plot in question was within the special category like Lutyen's Bungalow Zone, Civil Lines Bungalow Zone and North Delhi Campus where height restrictions ought to have been observed or part of Delhi University. The objections raised by DU were not found correct.

164. Decision of DDA permitting development of land in question in a particular manner is neither assailed before this Tribunal nor we have jurisdiction to look into that

aspect of the matter even otherwise. The appropriate forum was availed by DU and it had failed. Therefore, issue of restriction of height and permissible FAR in the light of MPD-2021 as permitted by DDA is neither being examined nor can be examined by this Tribunal. It is also not being disputed before us that the plot in question neither comes within the restricted area like Lutyen's Bungalow Zone, Civil Lines Bungalow Zone and North Delhi Campus nor it is a part of DU and DU North Campus. To this extent, on the issues notified above, findings of Delhi High Court are final. However, a challenge on different aspects, particularly arising from a different cause of action, involving different grounds and statutes, in our view would not come within the objection based on the principle of res-judicata.

165. Further application of the principle of res-judicata has also to be seen in the backdrop of the fact that this Tribunal has been constituted under NGT Act, 2010 and it is not a 'Court' as defined under Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'). Section 19 clearly says that Tribunal is not bound by the procedure laid down by CPC but shall be guided by the "principles of natural justice" and subject to NGT Act 2010, Tribunal shall have power to regulate its own procedure. Sub-section 4 of Section 19 of NGT Act 2010, says that Tribunal shall have, for the purpose of discharging its functions under NGT Act 2010, same powers as are vested in civil court under CPC while trying a suit, in respect of the matters enumerated in clauses (a) to (k). The provision of 'res-judicata' prescribed under Section 11 CPC, as such is not applicable to NGT but it is also true that it is a principle of well accepted doctrine that no one shall be vexed twice for the same cause or that it is for the public good that there be an end of litigation, hence, if on an issue between the parties, there is already an adjudication, the principle of constructive res-judicata, even in the matter before Tribunal shall apply. This is a well-recognized principle applied since ancient time so as to quite to a dispute and not to allow the same party to litigate over the same matter again and again.

166. Res-judicata is a principle or doctrine or concept which is well recognized since ancient times. It is a principle of universal application treated to be a fundamental and basic idea in every developed jural society. The very objective of adjudication of a dispute by an adjudicatory forum, whatever name it is called, is to bring to an end dispute or lis between the parties. The seed of justice, thus, aims to have every matter fairly tried once and, thereafter, further litigation should be barred treating to be concluded for all times to come between the parties. So far as the dispute which has already been adjudicated, it is a rule common to all, well defined in a civilized system of jurisprudence, that, the solemn and deliberate sentence of law upon a disputed fact pronounced, after a proper trial, by its appointed organ should be regarded as final and conclusive determination of the question litigated and should set at rest, forever, the controversy. This rule which treats the final decision of a competent Tribunal as "irrefragable truth" was well known to Hindu and Mohammadan lawyers and jurists since long as the system is recognized in Hindu as well as Muslim laws also.

167. So far as Europe is concerned, it is mainly influenced with the legal system of Roman jurisprudence. This principle is one of the great gains of Roman jurisprudence carried to modern jural system of Europe. In the Anglo saxon jurisprudence, this principle is formerly based on a maxim of Roman jurisprudence "interest reipublicae ut sit finis litium" (it concerns the state that there should be an end to law suits) and partly on the maxim "nemo debet bis vexari pro una at eadem cause" (no man should be vexed twice over for the same cause). The Act 8 of 1859 provided the principle of the res judicata in Section 2 which read as under:

"The civil court shall not take cognizance of any suit brought on or cause of

action which shall have been heard and determined by a court of competent jurisdiction in a former suit between the same parties, or between parties under whom they claim."

168. The principle of res-judicata was inserted vide Section 2 of C.P.C., i.e., Act 8 of 1859. This provision came to be considered before Privy Council in Soorjomonee Dayee vs. Suddanund Mahapatter MANU/PR/0005/1873 : (1873) 12 BLR 304, 315 (P.C.). Judicial Committee said "We are of the opinion that Section 2 of the Code of 1859 would by no means prevent operation of the general law relating to res judicata founded on the principle "nemo debet bis vexari pro eadem causa".

169. The principle of res-judicata has been discussed very elaborately by a full bench of Lahore High Court in Mussammatt Lachmi vs. Mussammatt Bhulli, MANU/LA/0295/1927 : 1927 ILR (VIII) 384, and the relevant extract thereof is as under:

"In the mitakshara (Book II, Chap. I, Section V, verse 5) one of the four kinds of effective answers to a suit is "a plea by former judgment" and in verse 10, Katyayana is quoted as laying down that "one against whom a judgment had formerly been given, if he bring forward the matter again, must be answered by a plea of Purva Nyaya or former judgment" (Macnaughten and Colebrooke's translation page 22). The doctrine, however, seems to have been recognized much earlier in Hindu Jurisprudence, judging from the fact that both the Smriti Chandrika (Mysore Edition, pages 9798) and the Virmitrodaya (Vidya Sagar Edition, page 77) base the defence of Prang Nyaya (=former decision) on the following text of the ancient lawgiver Harita, who is believed by some Orientalists to have flourished in the 9th Century B.C. and whose Smriti is now extant only in fragments:-

"The plaintiff should be non-suited if the defendants avers; 'In this very affair, there was litigation between him and myself previously,' and it is found that the plaintiff had lost his case".

There are texts of Parsara (Bengal Asiatic Society Edition, page 56) and of the Mayukha (Kane's Edition, page 15) to the same effect.

Among Muhammadan lawgivers similar effect was given to the plea of "Niza-I-munfasla" or "Amar Mania Taqir Mukhalif." Under Roman Law, as administered by the Proetors' Courts, a defendant could repel the plaintiff's claim by means of "exceptio rei judicata" or plea of former judgment. The subject received considerable attention at the hands of Roman jurists and as stated in Roby's Roman Private Law (Vol. II, page 338) the general principle recognized was that "one suit and one decision was enough for any single dispute" and that "a matter once brought to trial should not be tried except, of course, by way of appeal".

The spirit of the doctrine is succinctly expressed in the well known maxim "Nemo debet bis vexari pro eadem causa" (no one shall be twice vexed for the same cause). At times the rule worked harshly on individuals (E.g., when the former decision was obviously erroneous) but its working was justified on the great principle of public policy "Interest rei publicae sit finis litium" (it is for the public good that there be an end of litigation).

In some of these ancient systems, however, the operation of the rule was

confined to cases in which the plaintiff put forward his claim to "the same subject matter with regard to which his request had already been determined by a competent Court and had passed into judgment". In other words, it was what is described as the plea of "estoppel by judgment" or "estoppel by record", which was recognized and given effect to. In several European continental countries even now the rule is still subject to these qualifications, e.g., in the Civil Code of France, it is said "The authority of the thing adjudged (chose jugée) has place only in regard to that which has constituted the object of a judgment. It is necessary that the thing demanded be the same; that the demand be founded upon the same cause; that it be between the same parties and found by and against them in the same capacity."

In other countries, and notably in England, the doctrine has developed and expanded, and the bar is applied in a subsequent action not only to cases where claim is laid to the same property but also to the same matter (or issue) as was directly and substantially in dispute in the former litigation. In other words, it is the identity of the issue, which has already been "necessarily tried" between the parties and on which a finding has been given before, and not the identity of the subject matter which attracts the operation of the rule. Put briefly the plea is not limited to "estoppel by judgment" (or record), but is also extended to what is described as "estoppel by verdict". The earliest authoritative exposition of the law on the subject in England is by Chief Justice DeGrey in the *Duchess of Kingston Case* (1), which has formed the basis of all subsequent judicial pronouncements in England, America and other countries, the jural systems of which are based on or inspired by British Jurisprudence. In that case a number of propositions on the subject were laid down, the first of them being that "the judgment of a Court of concurrent jurisdiction, directly upon the point, is as a plea a bar, or as evidence conclusive, between the same parties upon the same matter, directly in question in another Court."

In British India the rule of *res judicata* seems to have been first introduced by section 16 of the Bengal Regulation III of 1793, which prohibited the Zilla and City Courts 'from entertaining any cause, which form the production of a former decree of the record of the Court, shall appear to have been heard and determined by any judge or any superintendent of a Court having competent jurisdiction'. The earliest legislative attempt at codification of the law on the subject was, however, made in 1859, when the first Civil Procedure Code was passed. Section 2 of the Code barred the cognizance by Courts of suits based on the same cause of action, which had been heard and determined before by Courts of competent jurisdiction. It will be seen that this was only a partial recognition of the English rule in so far as it embodied the principles relating to estoppel by judgment (or record) only and did not extend to estoppel by verdict. In 1877 when the Code was revised, the operation of the rule was extended in section 13 and the bar was no longer confined to the retrial of a dispute relating to the same cause of action but the prohibition equally applied against reagitating an issue, which had been heard and finally decided between the same parties in a former suit by a competent Court. The section has been amended and amplified twice again and has assumed its present form in section 11 of the Code of 1908, the principal amendments which have a bearing on the question before us, being (a) that the expression "former suit" was defined as meaning a suit which has been first decided and not one which was first instituted, and (b) that the competence of a Court is not regulated by the course of appeal of the former suit but by its capacity to try the subsequent suit

as an original Court.

But although the Indian Legislature has from 1859 onwards made several attempts to codify the law on the subject and the present section 11 is a largely modified and improved form of the original section 2 of Act VIII of 1859, it must be borne in mind that the section as even now enacted, is not exhaustive of the law on the subject, and the general principles of *res judicata* apply to matters on which the section is silent and also govern proceedings to which the section does not in terms apply."

170. In *Krishna Behary Ray vs. Bunwari Lal Ray*, (1875) 1 Cal. 144 (146), Privy Council while construing the expression "cause of action" held that it cannot be interpreted in its literal and restricted sense. If a material issue had been tried and determined between the same parties by a competent court, the same cannot be re-agitated again by the parties in a later suit who were also parties in the former suit.

171. In *Ram Kirpal vs. Rup Kuari* MANU/PR/0045/1883 : (1883) ILR 6 (Alld.) 269 (P.C.), it was held that Section 13 of 1877 Act would not apply to execution proceedings but upon general principles of law the decision of a matter once decided in those proceedings was a bar to the same matter being re-agitated at a subsequent stage thereof.

172. Act 5 of 1908 contains the provision of *res judicata* under Section 11 which substantially is same as it was in Act 14 of 1882, but includes certain explanations clarifying some aspects of the matter considered to be necessary in the light of some judgments of different High Courts. It underwent some amendments (including insertion of Explanation VII and VIII) in 1976, but has withstood the test of time, more than a century. Section 11 of Act 5 of 1908, as it stands today, reads as under:

"11. *Res judicata*.-No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I-The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.-For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III-The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV-Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V-Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been

refused.

Explanation VI-Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII-The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in as subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised."

173. The application of principle of res judicata is based on public policy and in the interest of the State as well. However, we would like to clarify here itself that it may not be understood that the principle of res judicata is confined to Section 11 of the Act 5 of 1908. The principle of res-judicata was well recognized in the ancient legal systems also and it has consistently been held as not limited to the specific words of the Code for its application.

174. One of the oldest cases which considered doctrine of res judicata vide Section 11, CPC, 1908 is Sheoparsan Singh and others vs. Ramnandan Prasad MANU/PR/0002/1916 : 43 IA 91(PC) : 20 C.W.N. 738 (P.C.) wherein their Lordships reminded the dictum in the words of Lord Coke in Priddle vs. Napper⁶ Coke IA 1777 which said "Interest reipublicae ut sit finis litium", otherwise great oppression might be done under colour and pretence of law. (See also Commissioner of Central Excise vs. Shree Baidyanath Ayurved Bhawan Ltd. MANU/SC/0565/2009 : JT 2009 (6) SC 29).

175. The statement of law as propounded in Sheoparsan Singh (supra) has been approved in Iftikhar Ahmed vs. Syed Meharban Ali MANU/SC/0009/1974 : 1974 (2) SCC 151.

176. In Hook vs. Administrator General of Bengal MANU/PR/0020/1921 : 1921 (ILR) 48 (Cal.) 499 (P.C.), it was said that Section 11 of the Code is not exhaustive of the circumstances in which an issue is res judicata. Even though the Section may not apply, the plea of res-judicata still would remain operative apart from the limited provisions of the Code and would bar a subsequent suit on the same issue unless is shown to be inapplicable by the defendants referring to pleading, parties and cause of action etc. It was reaffirmed by Lord Buckmaster in T.B. Ramachandra Rao and another vs. A.N.S. Ramchandra Rao and others, MANU/PR/0004/1922 : AIR 1922 PC 80 wherein the remarks were "that the principle which prevents the same case being twice litigated is of general application, and is not limited by the specific words of the Code in this respect."

177. In Kalipada De vs. Dwijapada Das, MANU/PR/0007/1929 : AIR 1930 PC 22, Privy Council held "the question as to what is considered to be res judicata is dealt with by Section 11 of CPC 1908. In that section many examples and circumstances in which the rule concerning res judicata applies are given; but it has often been explained by this

Board that the terms of Section 11 are not to be regarded as exhaustive".

178. The plea of res judicata is an inhibition against the Court and a finding in favour of a party on the plea of res judicata would oust the jurisdiction of the Court to try the subsequent suit or the suit in which such issue has been raised, which has been heard and finally decided in the former suit (see Pandurang Dhondi Chougule vs. Maruti Hari Jadhav MANU/SC/0033/1965 : AIR 1966 SC 153).

179. In Gulam Abbas vs. State of U.P. MANU/SC/0059/1981 : AIR 1981 SC 2199, it was held that Section 11 is not exhaustive of the general doctrine of res judicata. Though the rule of res judicata as enacted in Section 11 has some technical aspects, the general doctrine is founded on consideration of high public policy to achieve two objectives namely that there must be a finality to litigation and that individuals should not be harassed twice over the same kind of litigation.

180. It is thus clear that principle of res judicata is based on sound policy and not an arbitrary one. Henry Campell Black in his Treatise "for law of judgments" 2nd Edition Vol. I, para 242 has observed, "Where the court has jurisdiction of the parties and the subject matter in the particular case, its judgment unless reversed or annulled or impeachment by parties or privies, in any collateral action or proceeding whatever the Doctrine of this Court, and of all the courts of this country, is formerly established, that if the court in which the proceedings took place had jurisdiction to render the judgment which it did no error in its proceedings which did not affect the jurisdiction will render the proceedings void, nor can such errors be considered when the judgment is brought collaterally into question one. This principle is not merely an arbitrary rule or law but it is a doctrine which is founded upon reason and the soundest principle of public policy".

181. In Jenkins vs. Robertson, (1867) LRIHL 117, Lord Romily observed "res judicata by its very words means a matter upon which the court has exercised its judicial mind and has come to the conclusion that one side is right and has pronounced a decision accordingly. In my opinion res judicata signifies that the court has after argument and considerations come to a decision on a contested matter".

182. In Corpus Juris, Vol. 34, it is said that it is a rule of universal law providing every regulated system of jurisprudence and is put upon two grounds embodied in various maxims of common law, the one of public policy and necessity which makes it to the interest of the state that there should be an end of litigation, and, the other, hardship on the individual that he should not be vexed twice for the same cause.

183. In Smt. Raj Lakshmi Dasi and others vs. Banamali Sen and others MANU/SC/0063/1952 : AIR 1953 SC 33, Court remarked "When a plea of res judicata is founded on general principles of law, all that is necessary to establish is that the Court that heard and decided the former case was a Court of competent jurisdiction. It does not seem necessary in such cases to further prove that it has jurisdiction to hear the later suit. A plea of res judicata on general principle can be successfully taken in respect of judgments of Courts of exclusive jurisdiction, like revenue Courts, land acquisition Courts, administration Courts, etc. It is obvious that these Courts are not entitled to try a regular suit and they only exercise special jurisdiction conferred on them by the statute".

184. In Lal Chand vs. Radha Kishan, MANU/SC/0483/1976 : AIR 1977 SC 789 1977(2) SCC 88 the Court reiterated, "the principle of res judicata is conceived in the larger public interest which requires that all the litigation must sooner than later come to an end. The principle is also founded on equity, justice and good conscious which

require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving the same issue".

185. In *K. Ethirajan vs. Lakshmi and others*, MANU/SC/0764/2003 : AIR 2003 SC 4295 the Court referring to para 26 of its earlier judgment in *Hope Plantations Ltd. vs. Taluk Land Board, Peermade*, MANU/SC/0686/1998 : JT 1998 (7) SC 404, held, that, rule of res judicata prevents the parties to a judicial determination from litigating the same question over again. Where the proceedings have attained finality, parties are bound by the judgment and cannot litigate again on the same cause of action.

186. In *Sulochana Amma vs. Narayanan Nair*, MANU/SC/0047/1994 : AIR 1994 SC 152, the scope of Section 11 CPC was considered and it was said that Section 11 does not create any right or interest in the property but merely operates as a bar to try the same issue once over. It aims to prevent multiplicity of proceedings and accords finality to an issue which directly and substantially has arisen in the former suit between the same parties or their privies, decided and became final so that parties are not vexed twice over; vexatious litigation would be put to an end and the valuable time of the Court is saved. The above judgment also clarifies Explanation VIII that the decree of a Court of limited jurisdiction would also operate as res judicata in the subsequent suit though the subsequent suit was not triable by that Court.

187. In *Swamy Atmananda and Ors. vs. Sri Ramakrishna Tapovanam and Ors.*, MANU/SC/0287/2005 : 2005(10) SCC 51, it was said, that principle of res judicata is to uphold the rule of conclusiveness of judgment, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent suit between the same parties. Once the matter which was the subject matter of lis stood determined by a competent court, no party thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the statute book with a view to bring the litigation to an end so that the other side may not be put to harassment. Recently, the above view is reiterated in *Brij Narain Singh vs. Adya Prasad*, MANU/SC/1141/2008 : JT 2008 (3) SC 1.

188. In *Ramchandra Dagdu Sonavane (Dead) by L.Rs. and Others vs. Vithu Hira Mahar (Dead) by LRs. and Others* MANU/SC/1731/2009 : 2009 (10) SCC 273, Court observed that well known doctrine of res-judicata is codified in Section 11 of C.P.C. It generally comes into play in relation to civil suits.

189. Apart from the codified law, the doctrine of res-judicata or the principle of the res-judicata has been applied since long in various other kinds of proceedings and situations by courts in England, India and other countries. The rule of constructive res-judicata is engrafted in Explanation IV of Section 11 C.P.C. and in many other situations also principles not only of direct res-judicata but of constructive res-judicata are also applied, if by any judgment or order any matter in issue has been directly and explicitly decided, the decision operates as res-judicata and bars the trial of an identical issue in a subsequent proceeding between the same parties. The principle of res-judicata comes into play when by judgment and order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implications even then the principle of res-judicata on that issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it, is deemed to have been constructively in issue and, therefore, is taken as decided.

190. The doctrine of res judicata has been extended to public interest litigation also in

State of Karnataka and another vs. All India Manufacturers Organization and others, MANU/SC/2206/2006 : 2006(4) SCC 683 and the Court has said:

*"As a matter of fact, in a public interest litigation, the petitioner is not agitating his individual rights but represents the public at large. Hence the litigation is bona fide, **a judgment in previous public interest litigation would be a judgment in rem. It binds the public at large and bars any member of the public from coming forward before the court and raising any connected issue or an issue, which had been raised should have been raised on an earlier occasion by way of public interest litigation.**"*

(Emphasis added)

191. In Mathura Prasad Sarjoo Jaiswal and others vs. Dossibai MANU/SC/0420/1970 : AIR 1971 SC 2355, Court clarified that the doctrine of res judicata is in the domain of procedure and cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to interpretation of the enactment affecting the jurisdiction of the Court finally between them even though no question of fact or mixed question of law and fact and relating to the right in issue between the parties once determined thereby. It also said that a decision of a competent Court on a matter in issue may be res judicata in another proceeding between the same parties; the "matter in issue" may be an issue of fact, an issue of law or one of mixed law and fact. However, the Court said that the previous decision on a matter in issue alone is res judicata; the reasons for the decision are not res judicata, and said as under:

"The previous decision on a matter in issue alone is res judicata; the reasons for the decision are not res judicata."

192. Another aspect as to when the rule of res judicata would not be attracted has been dealt with in detail in para 10 of the judgment in Mathura Prasad Sarjoo Jaiswal (supra) which reads as under:

*"A mixed question of law and fact determined in the earlier, proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But **where the decision is on a question law, i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in S. 11, Code of Civil Procedure, means the right litigated between the parties, i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue.** Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of the order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land."*

(Emphasis added)

193. In other words, what we could discern from the above authorities is that the res judicata is a fundamental principle in a legal system to set at rest a dispute once settled so as not to trouble the parties again and again on the same matter. It operates on the principle that a question must be once fairly and finally tried by a competent Court and, thereafter, further litigation about it between the same parties must be deemed to have

concluded and should not be allowed to be re-agitated. The maxim to be attracted is "no one shall be vexed twice over the same matter". [See Commissioner of Central Excise vs. Shree Baidyanath Ayurved Bhawan Ltd. (supra)].

194. It is not that every matter decided in a former suit can be pleaded as res judicata in a subsequent suit. To attract the plea of res-judicata, the conditions precedent, which need be proved, are:

(i) The matter directly and substantially in issue in the subsequent suit must be the same matter, which was directly and substantially in issue, either actually or constructively, in the former suit.

(ii) The former suit must have the same parties or the parties under whom they or any of them claims.

(iii) The parties must have litigated under the same title in the former suit.

(iv) The Court, which decided the former suit must have been a Court competent to try the subsequent suit or the suit in which such issue has been subsequently raised.

(v) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the first suit.

195. Very recently, a constitution bench of Supreme Court in Civil Appeal No. 10866-10867 of 2010, M. Siddiq (D) Thr Lrs v. Mahant Suresh Das & Others, decided on 09.11.2019, (ayodhya verdict) has said that applicability of Section 11 is premised on certain governing principles which are:

(i) The matter directly and substantially in issue in the suit should have been directly and substantially in issue in a former suit;

(ii) The former suit should be either between the same parties as in the latter suit or between parties under whom they or any of them claim litigating under the same title;

(iii) The court which decided the former suit should have been competent to try the subsequent suit or the suit in which the issue has been subsequently raised; and

(iv) The issue should have been heard and finally decided by the court in the former suit."

196. In certain cases, the applicability of res judicata qua the aforementioned conditions precedent came to be considered with certain different angles, which may be useful to be referred hereat.

197. One such aspect came to be considered by Privy Council in Midnapur Zamindary Co. Ltd. vs. Kumar Naresh Narayan Roy and others, MANU/PR/0054/1920 : AIR 1924 P.C. 144. The plaintiff excluded certain question by the statement of his pleader and, therefore, the trial court did not decide the issue. In the first appeal the defendant urged that the Trial Judge was wrong in not deciding this question even though his action was based on the plaintiffs advisor's statement and the defendant asked the first appellate court expressly to decide the question. The court did so. The question was whether it can be argued that the point decided was not raised and, therefore, the court

did not consider it to be a necessary issue. On the contrary, when the first appellate court decided the issue and the same became final, it would operate as res judicata to the subsequent suit involving the same issue.

198. Another angle of the above aspect came to be considered by the Privy Council in Prem Narain vs. Ram Charan and others, MANU/PR/0011/1931 : AIR 1932 P.C. 51 where though the point was not properly raised in the plaint but both parties without protest chose to join issue upon that point and it was held that the decision on the point would operate as res judicata between the parties.

199. In Jagdeo Misir vs. Mahabir Tewari, MANU/UP/0281/1927 : AIR 1927 All. 803, a Division Bench held:

"We think that those two cases are authorities for the proposition that if a party raised an issue, however improperly, in a case which is accepted by the other side and if the Court itself accepts the issue to be one relevant to the enquiry and necessary for the determination of the case, and that issue is argued out by both parties and a judicial decision come to, it is not open subsequently for either of the parties or their successors-in-interest or the person claiming through them, to say that the issue does not constitute res judicata."

200. In Dhan Singh vs. Jt. Director of Consolidation, U.P. Lucknow and others, MANU/UP/0099/1973 : AIR 1973 All. 283 (supra), Court also held that res judicata may apply even though the parties against whom it is sought to enforce did not enter appearance and contest question in the previous suit. But in such a case it has to be shown that such a party had notice that the relevant question was in issue and would have to be decided for which the burden lie on the person who pleaded bar of res judicata. For above propositions, Court followed and relied on Chandu Lal vs. Khalilur Rahman, MANU/PR/0031/1949 : AIR 1950 P.C. 17.

201. Even if a judgment in a previous case is erroneous, it would be binding on the parties thereto and would operate as res judicata in subsequent case as held in Gorie Gouri Naidu (Minor) and another vs. Thandrothu Bodemma and others, MANU/SC/0186/1997 : AIR 1997 SC 808.

202. In short, it can be said that though in order to have the defence of res-judicata accepted, it is necessary to show not only that the cause of action was same, but also that the plaintiff had an opportunity of getting the relief in the former proceedings, which he is now seeking.

203. In Jaswant Singh vs. Custodian of Evacuee Property MANU/SC/0279/1985 : 1985 (3) SCC 648, it was pointed out that the test is whether the claim in the subsequent suit or proceeding is in fact founded upon the same cause of action, which was the foundation of the former suit or the proceeding. The cause of action for a proceeding has no relation, whatsoever, to the defence, which may be set up, nor does it depend upon the character of the relief prayed for by the plaintiff or the applicant. It refers entirely to the grounds set forth in the plaint or the application, as the case may be, as the cause of action or in other words, to the media upon which the plaintiff or the applicant ask the Court to arrive at a conclusion in his favour.

204. Sometimes res-judicata is misunderstood as estoppel. The fact is that in principle, both are different connotations and refers to different essential indices.

205. Both these principles are based on public policy and justice. Often, they are

treated as a branch of law having same traits but both differ in several aspects. Doctrine of res judicata sometimes is construed as a branch of doctrine of estoppel but as said earlier, both have different connotation. In Hope Plantations Ltd. (supra), in para 26 of the judgment, Court said:

"It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel through these two doctrines differ in some essential particulars"

206. The estoppel is part of the law of evidence and prevents a person from saying one thing at one time and opposite thing at another time while res judicata precludes a man from avowing the same thing in successive litigations. (Cassomally vs. Carrimbhoy (1911) 36 Bom. 214; Radharani vs. Binodamoyee MANU/WB/0129/1941 : AIR 1942 Cal. 92; Rajah of Venkatgiri vs. Provinces of Madras AIR (34) 1947 Madras 5. It would be useful to refer distinction elucidated by Hon'ble Mahmood J. in Sitaram vs. Amir Begum MANU/UP/0100/1886 : (1886) ILR 8 Alld. 324 "Perhaps shortest way to describe difference between the plea of res judicata and estoppel is to say that while the former prohibits the Court from entering into an inquiry at all as to a matter already adjudicated upon, the later prohibits a party after the inquiry has already been entered upon from proving anything which would contradict his own previous declaration or acts to the prejudice of another party who, relying upon those declaration or acts to the prejudice of another party, has altered his position. In other words, res judicata prohibits an inquiry in limine, whilst an estoppel is only a piece of evidence".

207. Res-judicata has been held to be a branch or specie of the rule of estoppel called "estoppel by record". In Guda Vijayalakshmi vs. Guda Ramchandra Sekhara Sastry, MANU/SC/0315/1981 : AIR 1981 SC 1143 in para 3, Court observed:

"Res judicata, after all, is a branch or specie of rule of estoppel called estoppel by record and though estoppel is often described as a rule of evidence, whole concept is more correctly viewed as a substantive rule of law."

208. A judgment operates as estoppel on all points considered and decided therein. It is the decision and not decree that creates bar of res judicata. Res judicata, therefore, is estoppel by judgment or record and not by decree. The judgment operates as estoppel in respect to all the findings which are essential to sustain the judgments. What has taken place, recorded and declared final, cannot be questioned subsequently by anyone which has already an opportunity to adjudicate and this is what is called as estoppel on record. The distinction between the doctrine of res-judicata and estoppel would lie with the estoppel results from the acts and conduct of the parties while the res judicata prohibits the Court from entering into an inquiry as to a matter already adjudicated upon. While in the case of estoppel, it prohibits a party after the inquiry has already been entered upon from proving anything which would contradict his own previous declaration or acts to the prejudice of another party who relying upon those declaration or acts has altered his position. Rule of res-judicata prevents the parties to a judicial determination from litigating the same question over and again even though the determination may even be demonstrably wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". It is held that these two terms are of common law origin.

209. One cannot correctly find whether *res judicata* will apply or not unless understand the import of words "suit"; "issue"; and, "directly and substantially in issue".

210. The term "issue" has also not been defined in CPC. Whartons "Law Lexicon" says that "issue" means "the point in question at the conclusion of the pleading between the contending parties in an action, when one side affirms and the other side denies". Order XIV of CPC deals with the settlement of "issues" and determination of suit on issues of law or on issues agreed upon. Rule 1 deals with the framing of issues as follows:

(i) Issues arise when a material proposition of fact or law is affirmed by the one party and deemed by the other.

(ii) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(iii) Every material proposition affirmed by one party and denied by the other, shall form the subject of a distinct issue.

(iv) Issues are of two kinds.

(a) Issues of fact

(b) Issues of law

211. Then comes as to what constitute "a matter directly and substantially in issue". One of the tests recognized is, if the issue was necessary to be decided for adjudicating on the principal issue, and, was decided.

212. A collateral or incidental issue is one i.e., ancillary to a direct and substantive issue; the former is an auxiliary issue and the later the principal issue. The expression collateral or incidental in issue implies that there is another matter which is directly and substantially in issue. (Mulla's C.P.C. 16th Edition, Vol. I, page 179).

213. Difficulty, however, in distinguishing whether a matter was directly in issue or collaterally in issue confronted various Courts in different Countries and certain test were laid down therein. Halsbury's Laws of England (Vol. 16, para 1538, 4th Edn.) says "difficulty arises in the application of the rule, in determining in each case what was the point decided and what was the matter incidentally cognizable, and the opinion of Judges seems to have undergone some fluctuations."

214. In "The Doctrine of Res Judicata" (2nd Edn., 1969, p. 181), "Spencer Bower and Turner", quoted Dixon, J. of the Australian High Court in *Blair vs. Churran* (1939) 62 CLR 464 at page 553; "The difficulty in the actual application of these conceptions is to distinguish the matters fundamental or cardinal to the prior decision on judgment, or necessarily involved in it as its legal justification or foundation, from matters which, even though actually raised and decided as being in the circumstances of the case the determining considerations, yet are not in point of law the essential foundation of a groundwork of the judgment".

215. The aforesaid authorities opined, in order to understand this essential distinction, one has always to inquire with unrelenting severity is the determination upon which it is sought to find an estoppel so fundamental to the substantive decision that the latter cannot stand without the former. Nothing less than this will do. It is suggested by Dixon, J. that even where this inquiry is answered satisfactorily, there is still another

test to pass: viz. whether the determination is the "immediate foundation" of the decision as opposed to merely "a proposition collateral or subsidiary only, i.e., not more than part of the reasoning supporting the conclusion." It is well settled, say the above authors, "that a mere step in reasoning is insufficient. What is required is no less than the determination of law, or fact or both, fundamental to the substantive decision."

216. Corpus Juris Secundum (Vol. 50, para 725) noticed the above aspects and conceded, it is sometimes difficult to determine when particular issue determined is of sufficient dignity to be covered by the rule of estoppel. It is said that estoppel by judgment does not extend to any matter which was only incidentally cognizable or which came collaterally in question, although it may have arisen in the case and have been judicially passed on.

217. However, this rule did not prevent a judgment from constituting an estoppel with reference to incidental matters necessarily adjudicated in determining ultimate vital point.

218. American Jurisprudence (Vol. 46, Judgments, para 422) says; "Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties."

219. The word "substantially" means "of importance and value". When a matter is substantially in issue, when it is of importance and value for the decision of main proceeding. When parties go to a trial on a particular issue treating it as material and invites the Court to give a decision thereon, that will be an issue substantially and directly involved and would operate as res judicata. However, a mere expression of opinion on a question not in issue cannot operate as res judicata as held in Ragho Prasad Gupta vs. Krishna Poddar MANU/SC/0384/1968 : AIR 1969 SC 316.

220. In Sajjadanashin Sayed Md. B.E. Edr. (D) By LRS. vs. Musa Dadabhai Ummer and others MANU/SC/0122/2000 : 2000 (3) SCC 350, the term "directly and substantially in issue" qua the words "incidental and collateral" came up for consideration. The Edroos family in Gujarat claimed to be descendants of Hazarat Imam Ali, the son-in-law and cousin of Prophet Muhamed. One of the descendants of the said Hazrat came down to India in 1542 A.D. and founded his Gadi at Ahmedabad, Broach and Surat. The members of the Edroos family were Sajjadanashins or Mutavallis of the wakf throughout. The three Rozas at the three places as well as the villages which were granted-not only for the maintenance of these Rozas but also for the benefit of the Waquif's family, constituted the wakf. The holder was buried in the house and his Dargah is situated in this place. There is also a place for reciting prayers. In an earlier litigation in Sayed Abdula Edrus vs. Sayad Zain Sayad Hasan Edrus MANU/MH/0082/1888 : ILR (1889) 13 Bom. 555, a Division Bench of the Bombay High Court, traced the history of the wakf and held that the custom of primogeniture did not apply to the office of Sajjadanashin or Mutavalli of this wakf. In a later dispute in Saiyad Jaffar El Edroos vs. Saiyad Mahomed El Edroos MANU/MH/0142/1936 : AIR 1937 Bom 217 another Division Bench held after construing the royal grants relating to the villages Umrao and Orma that the grants were primarily for the Rozas and Dargas and they clearly constituted "wakf but that the Sajjadanashin or Mutavalli had, however, a right to the surplus income left over after discharge of the legal obligations regarding the wakf. It was thus held that the Sajjadanashin could provide for the needs of the indigent members of the family and this was a pious obligation which was only a moral obligation and not a legal obligation and hence the indigent members of the Edroos

family, as a right, could not claim maintenance out of the surplus income. Thereafter, Regular Suit No. 201 of 1928 was filed by three plaintiffs under Section 92 C.P.C. impleading father of Sayed Mohamed Baquir-E1-Edroos in 1928 after obtaining permission on 22.2.1928 from the Collector under Section 92 C.P.C. for filing the suit. The suit was dismissed on 6.10.1931, the first appeal was dismissed but cross objections were allowed on 21.11.1938 and the second appeal to the High Court was withdrawn. In the aforesaid suit, there were eight points whereof points No. 1 to 7 related to the validity of appointment of the defendant and the nature of the office and the right to the surplus etc. It was held that the appointment of defendant as Sajjadanashin was valid and that the grant of the property was both for the Rozas and for the maintenance, presumably of the Sajjadanashin and his family members. It was also held that the Sajjadanashin had complete power of disposal over the surplus as he was not in the position of an ordinary trustee. It was held that the Sajjadanashin had complete power of disposal over the surplus, hence the plea of plaintiffs complaint about mis-utilization of the income by Sajjadanashin was rejected. Another issue was framed whether the waqf was a private or a public and it was held that it was a private waqf. The District Court held that from 1746 A.D. onwards, the Sajjadanashin were using the revenue of these villages for their own maintenance and that of the members of their family and other dependents. This finding was consistent with the judgment of the Bombay High Court in Saiyad Jaffar El Edroos (*supra*) wherein this was held permissible. The District Court in view of the fact that Sajjadanashin was from the family and not a stranger or outside held it a private waqf. Thereafter another matter came before the Gujrat High Court in relation to Ahmedabad Rozas wherein also a Single Judge of Bombay High Court in Alimiya vs. Sayed Mohd. MANU/GJ/0095/1968 : AIR 1968 Guj. 257 rejected a similar plea. This judgment was confirmed by the Division Bench in Sayed Mohd. vs. Alimiya (1972) 13 Guj.LR 285. In the case before the Apex Court in respect to Rozas at all the three places, the Assistant Commissioner in enquiry No. 142 of 1967 passed an order dated 26.7.1968 accepting the preliminary objection of *res judicata* but the Joint Charity Commissioner, Gujrat in its order dated 17.12.1973, in appeal, did not accept the said plea which was pressed before him only in respect to the Rozas at Broach and Surat. He set aside the order of Assistant Commissioner and remanded the matter for enquiry. The Assistant Judge in Misc. Civil Application No. 32 of 1974 affirmed the order of Joint Commissioner on 3.9.1976 and it was further affirmed by a Division Bench of Gujrat High Court in First Appeal No. 985 of 1976 on 27.7.1985. Aggrieved by the aforesaid order, the appellant, Sajjadanashin Sayed took the matter to the Apex Court and raised the plea of *res judicata* in respect to Rozas at Broach and Surat. It is in the light of the above facts, the Apex Court considered the matter. In order to see whether the principle of *res judicata* is attracted, the Apex Court framed an issue as to what is the meaning of "collaterally and incidentally in issue" as distinguished from "directly and substantially in issue". In para 11, the Apex Court found that the matter collaterally and incidentally in issue are not ordinarily *res judicata* and this principle has been well accepted but certain exceptions to this principle have also been accepted. The Court also traced out the law on the subject in England, America, Australia and India. Referring to Halsbury's Laws of England (Vol. 16, para 1538, 4th Edn.), the Court observed that the fundamental rule is that a judgment is not conclusive if any matter came collaterally in question or if any matter is incidentally cognizable. The said judgment attained finality since the second appeal filed in the High Court was withdrawn.

221. In the light of the above facts and in this context, Supreme Court in Sajjadanashin (*supra*) in respect of India, affirmed the view of the learned Author Mulla in "C.P.C." as under:

".. a matter in respect of which relief is claimed in an earlier suit can be said to be generally a matter "directly and substantially" in issue but it does not mean that if the matter is one in respect of which no relief is sought it is not directly or substantially in issue. It may or may not be. It is possible that it was "directly and substantially" in issue and it may also be possible that it was only collaterally or incidentally in issue, depending upon the facts of the case. The question arises as to what is the test for deciding into which category a case falls? One test is that if the issue was "necessary" to be decided for adjudicating on the principle issue and was decided, it would have to be treated as "directly and substantially" in issue and if it is clear that the judgment was in fact based upon that decision, then it would be res judicata in a later case. One has to examine the plaint, the written statement, the issues and the judgment to find out if the matter was directly and substantially in issue (Ishwer Singh Vs. Sarwan Singh MANU/SC/0345/1964 : AIR 1965 SC 948 and Syed Mohd. Salie Labbai Vs. Mohd. Hanifa MANU/SC/0510/1976 : AIR 1976 SC 1569)."

222. It also referred to two judgments of the Privy Council in Run Bahadur Singh vs. Lucho Koer MANU/PR/0047/1884 : ILR (1885) 11 Cal 301 and Asrar Ahmed vs. Durgal Committee MANU/PR/0041/1946 : AIR 1947 PC 1 as well as its earlier decision in Pragdasji Guru Bhagwandasji vs. Ishwarlalbhai Narsibhai MANU/SC/0072/1952 : 1952 SCR 513 and found that inspite of a specific issue and adverse finding in the earlier suit, the finding was not treated as res judicata as it was purely incidental or auxiliary or collateral to the main issue in each of the three cases and was not necessary for the earlier case nor formed foundation. It also considered Sulochana Amma (supra) and a Madras High Court decision in Vanagiri Sri Selliamman Ayyanar Uthirasomasundareswarar Temple vs. Rajanga Asari MANU/TN/0271/1965 : Air 1965 Mad. 355 in respect where to it was pointed out that there was a direct conflict. Court, however, found that the said decisions are not contrary to each other but should be understood in the context of the tests referred to above. It held that in Sulochana Amma (supra) it is to be assumed that the tests above referred to were satisfied for holding that the finding as to position was substantially rested on title upon which a finding was felt necessary but in the case before the Madras High Court, it must be assumed that the tests were not satisfied. Supreme Court confirmed the observations of the learned author Mulla in "C.P.C. (supra)" and said that it all depend on the facts of each case and whether the finding as to title was treated as necessary for grant of an injunction in an earlier suit and was also substantive basis for grant of injunction or not.

223. Further, Court in Sajjadanashin (supra) quoted following from the "Corpus Juris Secundum" (Vol. 50, para 735, p. 229) where a similar aspect in regard to findings on possession and incidental findings on title were dealt with and held, "Where title to property is the basis of the right of possession, a decision on the question of possession is res judicata on the question of title to the extent that adjudication of title was essential to the judgment; but where the question of the right to possession was the only issue actually or necessary involved, the judgment is not conclusive on the question of ownership or title." Court observed that in the case before it there were certain changes in the statutory law with respect to definition of "public waqf" and in view thereof since now the "private waqf" was also included within the definition of "public waqf" in the Act, due to change in subject it held that the earlier decision would not operate as res judicata.

224. In Sharadchandra Ganesh Muley vs. State of Maharashtra and others MANU/SC/0004/1996 : AIR 1996 SC 61, Explanation IV Section 11A containing doctrine of 'might and ought' and application of doctrine of constructive res judicata came to be

considered. Court held that where in respect to land acquisition proceedings an earlier writ petition was filed without raising a plea which was available at that time, in the second writ petition such plea could not have been taken as the doctrine of 'might and ought' engrafted in Explanation IV to Section 11 of the C.P.C. would come into play and the incumbent would be precluded from raising the controversy once over. The Court held that the doctrine of constructive res judicata shall put an embargo on his right to raise a plea as barred by limitation under Section 11A.

225. However, the concept of "constructive res judicata" is necessary to be dealt with in view of Explanation-IV Section 11 CPC. A Matter, which might and ought to have been made a ground of attack or defence is a, matter which is constructively in issue. The principle underlying Explanation-IV is res judicata not confined to issues which the Courts are actually asked to decide but cover issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them. (State of U.P. vs. Nawab Hussain MANU/SC/0032/1977 : AIR 1977 SC 1680). The proposition of law expounded, as referred to above, in para 20 is also unexceptional. However, it would apply only where a plea was available at the time of the suit but not availed of. But there is no question of constructive res judicata where there is no adjudication in the earlier proceedings (Kewal Singh vs. Smt. Lajwanti MANU/SC/0491/1979 : 1980 (1) SCC 290). The effect of Explanation-IV is where a matter has been constructively in issue, it could not from the very nature of the case be heard and decided but will be deemed to have been heard and decided against the parties omitting to allege it except when an admission by the defendant obviates a decision (Sri Gopal vs. Pirthi Singh MANU/PR/0019/1902 : (1902) ILR 24 Alld. 425 (PC); Government of Province of Bombay vs. Peston Ji Ardeshir Wadia MANU/PR/0002/1949 : AIR 1949 PC 143).

226. There is an exception to this plea, i.e., where the evidence in support of one ground is such as might be destructive for the other ground, the two grounds need not be set up in the same suit. In Kanhiya Lal vs. Ashraf Khan MANU/UP/0566/1924 : AIR 1924 Alld. 355, it was observed that a person claiming property on the allegation that it is wakf property and that he is the Manager thereof is not bound to claim the same property in the same suit alternatively in his own rights in the event of its being held that the property was not wakf property. In Madhavan vs. Chathu MANU/TN/0054/1951 : AIR (38) 1951 Madras 285, a suit to recover possession of properties on a claim that they belong personally to the plaintiff was held not barred by reason of a decision in a previous suit, in which they were claimed as belonging to a Tarwad of which he was a member. Similarly, where the right claimed in the subsequent suit is different from that in the former suit; it is claimed under a different form that in the former suit; it is claimed under a different title, the subsequent suit would not be barred by res-judicata/constructive res judicata.

227. Next is the question about the "same parties" or "between parties under whom they or any of them claim". In order to find a person by res judicata it must be shown that he was in some way party to the earlier suit as the judgment binds only parties and privies. A person claiming under a party is known as privy. The ground of privity is property and not personal relations. If the plaintiff in subsequent suit claims independent right over the suit property the principle of res judicata would not apply. If the predecessor in interest was party to the suit/proceeding involving the same property then the decision binds his successor in interest. From the record it must be evident that the party sought to be bound was in some way a party to the suit. A person merely interested in the litigation cannot be said to be a party to the suit. Such a person is

neither to make himself a party nor can be bound by the result of the litigation as held in *Jujjuvarapu vs. Pappala*, MANU/AP/0138/1969 : AIR 1969 A.P. 76.

228. Where a person in the subsequent suit claims independent right over the suit property the principle of *res judicata* would not apply. (*Byathaiah (Kum) and others vs. Pentaiah (Kum) and others*, 2000 (9) SCC 191).

229. Similarly, the party must be litigating under the same title. The test is the identity of title in two litigations and not the identity of the actual property involved in two cases as held in *Rajalaxmi Dasi vs. Banamali Sen (supra)*; *Ram Gobinda Daw vs. Smt. H. Bhakta Bala Dassi*, MANU/SC/0586/1971 : AIR 1971 SC 664.

230. Same title means same capacity; the test being whether the party litigating is in law the same or a different person. If the same person is a party in different character, the decision in the former suit does not operate as *res judicata*. Similarly, if the rights claimed are different, the subsequent suit will not be *res judicata* simply because the property is identical. Title refers not to cause of action but to the interest or capacity of the party suing or being sued.

231. Lastly, but not the least, is the concern with respect to Explanation-VI, i.e., representative suit. It provides that where persons litigate bona fide in respect of a public right or a private right claimed in common for themselves and other persons interested in such right, shall, for the purpose of the Section, be deemed to have claimed under the persons so litigating. Explanation-VI apparently is not confined to the cases covered by Order 1 Rule 8 C.P.C., but would include any litigation in which, apart from the rule altogether, parties are entitled to represent interested persons other than themselves. It is a kind of exception to the ordinary rule of *res-judicata* which provide for the former litigation between the same parties or their privies. Even persons, who are not parties in the earlier proceeding, in certain contingencies, may be debarred from bringing a suit subsequently if the conditions contemplated under Explanation-VI Section 11 are satisfied. The conditions to attract Explanation-VI so as to constitute *res judicata*, which must exist, are:

- a. There must be a right claimed by one or more persons in common for themselves and others not expressly named in the suit,
- b. The parties not expressly named in the suit must be interested in such right.
- c. The litigation must have been conducted bona fide on behalf of all the parties interested.
- d. If the suit is one under Order 1 Rule 8, all the conditions of that Section must have been strictly complied with.

232. The essentials of representative suit vis-a-vis the principle of *res-judicata* with reference to Explanation VI Section 11 was considered by Privy Council in *Kumaravelu Chettiar and others vs. T.P. Ramaswami Ayyar and others*, MANU/PR/0030/1933 : AIR 1933 PC 183. Prior to the enactment of CPC of 1877 there was no express legislation on the subject of representative suit. In these circumstances, Courts assumed the task and followed the practice virtually obtained in the Court of Chancery in England. Existence of this practice was demonstrated by referring to a judgment of Madras High Court in *Srikanti vs. Indupuram* MANU/TN/0059/1866 : (1866) 3 M.H.C.R. 226. Court emphasized that convenience, where community of interest existed, required that a few out of a large number of persons should, under proper conditions, be allowed to

represent the whole body, so that in the result all might be bound by the decree, although only some of the persons concerned were parties named in the record. It observed that absence of any statutory provision on the subject, Courts in India, it would seem, prior to 1877 assumed the task and duty to determine in the particular case whether, without any real injustice to the plaintiffs in the later suit, the decree in the first could properly be regarded as an estoppel against further prosecution by them of the same claim. The first legislation was made vide Section 30 in CPC 1877 which is now found in Order I Rule 8 CPC of 1908. Privy Council held at page 186:

"It is an enabling rule of convenience prescribing the conditions upon which such persons when not made parties to a suit may still be bound by the proceedings therein. For the section to apply the absent persons must be numerous; they must have the same interest in the suit which, so far as it is representative, must be brought or prosecuted with the permission of the Court. On such permission being given it becomes the imperative duty of the Court to direct notice to be given to the absent parties in such of the ways prescribed as the Court in each case may require; while liberty is reserved to any represented person to apply to be made a party to the suit."

233. The Privy Council also approved a Calcutta High Court decision in Baiju Lal vs. Bulak Lal MANU/WB/0015/1897 : (1897) 24 Cal 385, where Ameer Ali, J. explaining the position under Section 30 said:

"The effect of S. 30 is that unless such permission is obtained by the person suing or defending the suit, his action has no binding effect on the persons he chooses to represent. If the course prescribed by S. 30 is not followed in the first case, the judgment does not bind those whose names are not on the record."

234. In Waqf Khudawand Taala Banam Masjid Mauza Chaul Shahabudinpur vs. Seth Mohan Lal 1956 ALJ 225 a suit for declaration of the property in dispute as a public mosque was filed. It appears that earlier a suit was filed against some Muslims claiming to be the proprietor and notice under Order 1 Rule 8 C.P.C. was also issued to other residents of that locality. Defence taken by Muslims was that property in dispute was a public mosque. The suit was decreed and the defence was not found proved. Thereafter, second suit was filed by Muslim parties of neighbouring village wherein the plea of res judicata was taken. Defending the said objection on behalf of plaintiffs it was contended that in earlier case notice under Order 1 Rule 8 was issued to the residents of Chaul Shahabuddinpur and not of the village to which the plaintiffs belonged which is a neighbouring village. However, the Court upholding the plea of res judicata observed that Explanation VI to Section 11 C.P.C. is attracted in the matter and once in respect of a public right the matter has been adjudicated, the decision is binding on all persons interested in that right and they will be deemed to claim under the persons who litigated in the earlier suit in respect of that public right.

235. The question of issue estoppel and constructive res judicata in regard to a judgment in a representative suit came to be considered in Shiromani Gurdwara Parbandhak Committee vs. Mahant Harnam Singh and others, MANU/SC/0715/2003 : AIR 2003 SC 3349. The facts, in brief, are necessary to understand the exposition of law laid down therein. Gurdial Singh and Ishwar Singh of Village Jhandawala obtain permission from the Advocate General under Section 92 CPC to institute a suit against one Harnam Singh for his removal from Mahantship. It was stated in the plaint that there was one Guru Granth Sahib at Village Jhandawala, Tehsil and District Bhatinda

which was managed by Mahant Harnam Singh as a Mahatmim and he was in possession of the Dera, and agricultural land belonging to Guru Granth Sahib which was a public religious place and was established by the residents of village; it was a public trust created by the residents of the village for the service of the public to provide food from hunger, to allow the people to fulfill religious beliefs and for worship etc. The two plaintiffs in their capacity as representatives of owners of land situated in the village and the residents thereof claim that they were entitled to file a suit under Section 92 CPC. Harnam Singh, Mahant in his written statement took the defence that there was no such interest in the public as to entitle the aforesaid plaintiffs to institute the suit. The trial court and the High Court recorded a concurrent finding that all Mahants of the institution from Bhai Saida Ram to Mahant Harnam Singh have been Nirmalas. However, the trial court held that such Nirmala Sadhus are not Sikhs and that the institution was not a Sikh institution. High Court disagreed with this conclusion and held that Sadhus Nirmalas are a sect of the Sikhs and consequently the Sikhs had interest in the institution as it was a Sikh Gurdwara and upheld the plaintiffs claim to file a representative suit under Section 92 CPC. In appeal the Apex Court, however, held (i) Nirmala Sadhus are not Sikhs; (ii) the mere fact that at some stage there was a Guru Granth Sahib in the Dera in dispute cannot lead to any conclusion that the institution was meant for or belonged to the followers of the Sikh religion. The Dera was maintained for entirely a distinct sect known as Nirmalas Sadhus who cannot be regarded as Sikhs; (iii) the institution was held to be not belonging to the followers of the Sikh religion; (iv) the plaintiffs in their mere capacity of followers of Sikh religion could not be held to have such interest as to entitle them to institute a suit under Section 92 CPC. This judgment dated 24.02.1967 of the Apex Court is reported as Mahant Harnam Singh vs. Gurdial Singh and another, MANU/SC/0007/1967 : AIR 1967 SC 1415. In the meantime, it appears that under Section 7(1) of Sikh Gurdwaras Act, 1925, 60 persons claiming to be worshippers made a petition for declaring the institution in question, i.e., Guru Granth Sahib situated in Village Jhandawala, District Bhatinda to be a Sikh Gurdwara. The Punjab Government by notification dated 23.01.1961 made such a declaration under Section 7(3) of the aforesaid Act. It may be pointed out that these 60 persons also included the two plaintiffs of earlier litigation, i.e., Gurdial Singh and Ishwar Singh. Mahant Harnam Singh with others filed counter petition under Section 8 of Sikh Gurdwaras Act, 1925 stating that the institution was not a Sikh Gurdwara but was a Dera Bhai Saida Ram. A similar petition under Section 8 was also moved by 58 persons of the Dera making a similar claim. Both these petitions were forwarded by the State Government to the Tribunal for disposal. The Tribunal formulated the following two questions: (i) what is the effect of the judgment of the Apex Court in Mahant Harnam Singh (supra); and (ii) whether the institution in dispute was a Sikh Gurdwara. The Tribunal decided issue No. 1 as a preliminary issue vide order dated 08.03.1977 and held that the decision in Mahant Harnam Singh (supra) would not bar the jurisdiction of the Tribunal to decide claim petition under Section 7 of the Act. The order of the Tribunal attained finality since challenge before the High Court and Apex Court was unsuccessful. Thereafter, issue No. 2 was taken up and the Tribunal held that the institution was a Sikh Gurdwara, originally established by Sikhs and the object of worship was Guru Granth Sahib because the majority of villagers were Sikhs and Nirmalas are Sikhs. This order of the Tribunal in respect to issue No. 2 was challenged before the High Court. It held that the Tribunal has lost sight of the decision in Mahant Harnam Singh (supra). It is this order of the High Court which was taken in appeal before Supreme Court, which held that once in a suit instituted under Section 92 CPC a categorical finding was recorded that (i) Nirmala Sadhus are not Sikhs; (ii) the Dera was maintained for entirely a distinct sect known as Nirmalas Sadhus who cannot be regarded as Sikhs; (iii) the mere fact that at some stage there was a Guru Granth

Sahib in the Dera cannot lead to any conclusion that the institution was meant for or belonged to the followers of Sikh religion, these findings were rendered in suit filed under Section 92 CPC, therefore, cannot be reagitated and any challenge thereto is precluded on the principle of issue estoppel. The nature of suit under Section 92 CPC was explained by Apex Court in para 19 of the judgment referring to its earlier decision in *R. Venugopala Naidu and others vs. Venkatarayulu Naidu Charities and others*, MANU/SC/0433/1989 : AIR 1990 SC 444 holding that a suit under Section 92 CPC is a suit of special nature for the protection of public rights in the public trust and charities. The suit is fundamentally on behalf of the entire body of persons who are interested in the trust. It is for vindication of public rights. The beneficiaries of the trust, which may consist of public at large, may choose two or more persons amongst themselves, for the purpose of filing a suit under Section 92 CPC and the suit-title in that event would show only their names as plaintiffs. In the circumstances, it cannot be said that the parties to the suit are only those persons whose names are mentioned in the suit-title. The named plaintiffs being the representatives of public at large, which is interested in the trust, of such interested persons, would be considered in the eyes of law to be parties to the suit. A suit under Section 92 CPC is thus a representative suit and as such binds not only the parties named in the suit-title but all those who share common interest and are interested in the trust. It is for that reason that Explanation 6 to Section 11 CPC constructively bars by res judicata the entire body of interested persons from reagitating the matter directly and substantially in issue in an earlier suit under Section 92 CPC.

236. It is well settled law that explanation to a section is not a substantive provision by itself. It is entitled to explain the meaning of the words contained in the Section or to clarify certain ambiguities or clear them up. It becomes a part and parcel of the enactment. Its meaning must depend upon its terms. Sometimes, it is for exclusion of something and sometimes exclude something from the ambit of the main provision or condition of some words existing therein. Therefore, an explanation should be read harmoniously so as to clear any ambiguity in the main section. A clash of interest in the parties would oust applicability of Explanation-VI.

237. In *Commissioner of Endowments and others vs. Vittal Rao and others* MANU/SC/1003/2004 : (2005) 4 SCC 120, it was held that even though an issue was not formerly framed but if it was material and essential for the decision of the case in the earlier proceeding and the issue has been decided, it shall operate as res judicata in the subsequent case.

238. In *Ishwar Dutt vs. Land Acquisition Collector and Anr.*, MANU/SC/0447/2005 : 2005 (7) SCC 190, Court has discussed the doctrine of "cause of action", "estoppel" and "issue estoppel". It says, if there is an issue between the parties that is decided, the same would operate as res judicata between the same parties in subsequent proceedings.

239. In *Ramchandra Dagdu Sonavane (supra)*, Court observed that a suit for injunction when title is in issue, for the purpose of granting injunction, the issue directly and substantially arises in that suit between the parties when the same is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit, the decree in injunction suit equally operates as a res-judicata.

240. In *Gram Panchayat of Village Naulakha vs. Ujagar Singh and Ors.*, MANU/SC/0628/2000 : AIR 2000 SC 3272, it was held that even in an earlier suit for injunction, if there is an incidental finding on title, the same will not be binding in a latter suit or proceeding where title is directly in question, unless it is established that it

was 'necessary' in the earlier suit to decide the question of title for granting or refusing injunction and that the relief for injunction was founded or based on the finding on title. Even the mere framing of an issue on title may not be sufficient.

241. Applying the law of res-judicata, as discussed above, we find that validity of EC issued under the provisions of EIA 2006 has been challenged in this Appeal primarily on the ground that provisions of EIA 2006 have been violated/not observed in grant of above EC. Earlier proceedings in Delhi High Court had no occasion to examine these issues. Therefore, we find it unacceptable to non-suit appellant on the ground of res-judicata.

242. We may note that initially stand of DDA was that Master Plan of Delhi did not allow more than 8 floors. PP filed W.P.(C) No. 3135/2010 before Delhi High Court where DDA repeated the said stand as noted in order of High Court dated 07.03.2011. However, High Court, considering argument of PP that PP will not be able to achieve adequate coverage which was permissible, directed DDA to consider representation of PP for relaxing the height. Thereafter, on 18.05.2011, DDA made a statement before High Court that there will be no restrictions on height of project. Environmental issues were however, not subject matter of consideration in the said proceedings. Even if, there is no legal restriction on height by development authority de hors environmental consideration, environmental sustainability issues, in this context which are presently the subject matter of these proceedings, cannot be ignored. Assessment of impact of such tall building on the environment has to be independently done which has not been done, rendering the impugned EC vulnerable on that ground.

243. Issues raised before us relate to environment and also the procedure to be observed by Competent Authority granting prior EC. We do not find that the above litigation will have any application, to the above issues. The questions/issues relating to environment, based on an order passed under EP Act, 1986 cannot be said to be barred by principle of res-judicata. Issue I, accordingly is answered in negative and against PP.

Issues II, III and IV:

244. All these three issues are over-lapping and can be considered collectively, hence we proceed to consider the same accordingly.

245. Before we proceed to consider the above issue, we may make certain observations about the approach to be adopted in dealing with such matter. A holistic approach is required in such matters instead of taking the impact of the project in isolation on standalone basis. Tribunal has to keep in mind crucial features of the project having bearing on the environment like size, height, location, background data of environment including air, water and noise and likely impact of the project on the environment, including the environmentally pristine area-the Northern Ridge which is in the nearby vicinity.

246. The project is said to be the tallest high rise building in city, comprising S+G+37 floors, containing 410 dwelling units in the vicinity of educational institutions, hospitals, Metro Station and Northern Ridge. We have to consider impact on recipient environment, including air quality, noise, traffic congestion, water requirement, waste management, fire safety, earthquake and liquefaction potential and compliance with Master Plan.

247. As already noted above, appellant has relied upon office memorandum dated 10.11.2015 issued by MoEF & CC laying down Guidelines for Appraisal of Building and

Construction Sector Projects mentioning following thrust areas of environmental sustainability:

- a. Brief description of the project in terms of location and surroundings.
- b. Environmental impacts on project land and its surrounding developments and vice-versa.
- c. Water balance chart with a view to promote waste water treatment, recycle, reuse and water conservation.
- d. Waste water treatment and its details including target standards.
- e. Alternations in the natural slope and drainage pattern and their environmental impacts on the surroundings.
- f. Ground water potential of the site and likely impacts of the project.
- g. Solid waste management during construction and post construction phases.
- h. Air quality and noise levels; likely impacts of the project during construction and operational phases.
- i. Energy requirements with a view to minimize power consumption and promote use of renewal energy sources.
- j. Traffic Circulation System and connectivity with a view to ensure adequate parking, conflict free movements, Energy efficient public transport.
- k. Green belt/green cover and the landscape plan.
- l. Disaster/risk assessment and management plan.
- m. Socio Economic Impacts and operational phases.
- n. EMP during construction and operational phases.
- o. Any other related parameter of the project which may have any other specific impact on environmental sustainability and ecology.

248. As laid down in Hanuman Laxman Aroskar vs. Union of India, all material information, must be furnished in Form I to enable evaluation of all possible impacts of the project. As required by guidelines issued by MoEF & CC, information must be given and evaluated on every aspects but particularly, with regard to issues covered under 'h', 'j' and 'o' above.

249. The notification itself mentions that concealment or misleading informations would render an application liable to rejection. SEIAA/MoEF & CC must factor in specific features of the area encompassing all environmental concerns including air quality, water quality, noise quality, traffic congestion, flora and fauna. Recommendation of SEAC/EAC must be based on reasons on every relevant aspect. Such reasons are live link between its process and outcome of adjudicative functions. Whole exercise must lead to environmental sustainability which is the basis of environmental rule of law.

250. The facts on record show that steps for development of land which was initially acquired and handed over to DMRC for construction of metro station and its ancillary

services, were taken in 2008 when 2 ha of land out of 3.05 ha, acquired for the purpose of metro station, was auctioned by DMRC, resulting in execution of lease agreement dated 15.12.2008 with PP for development of 'residential project'. Possession of land was taken by PP admittedly on 23.01.2009. The project/activity in question sought to be initiated by PP was within the provisions of EIA 2006, hence PP applied for grant of prior EC to Competent Authority.

251. We also find from record that in the present case thrice, PP applied for grant of prior EC and thrice prior EC has been granted. The substantial difference is that on each occasion, ambit of project/activity has widened and increased rendering a substantial change in the position as it was in the earlier EC.

252. First application for prior EC was submitted by PP on 21.08.2009 to SEIAA Delhi. Facts disclosed by PP were that plot area was 20,000 m², built up area 70,265.95 m², permissible height of the building 133.40 m and total number of dwelling units as 324 (EWS unit-100 ET and premium residential unit-144). PP proposed 4 blocks (2 residential, 1 commercial and 1 EWS). Maximum number of floors in each block were proposed as S+G+35 (Block A and Block B); S+G+40 (EWS plot, Block C) and G+1 (committee building plot). PP proposed FAR as 46,156.72 m² against permissible FAR of 46,600 m²; ground coverage was proposed as 2,130.64 m² against permissible ground coverage as 6,666 m²; proposed green area was 8,373.75 m² and proposes basement area was 23,522.92 m². Total estimated population as per PP was 1205 persons. Parking provision was proposed for 922 ECS and total water requirement for project was 203 KLD out of which fresh water requirement was 106 KLD. Power requirement was 1266 KW which was to be met by NDPL but for contingency requirement, DG sets of 1Ã—1010 KVA + 2Ã—500 KVA capacity were proposed. Proposed cost of the project was Rs. 324 Crores.

253. Proposal was considered by SEAC in the meetings held on 04.09.2009, 22.02.2010, 30.06.2011, 31.10.2011, 22.11.2011, 20.12.2011, 10.02.2012, 16.03.2012, 04.05.2012 and 25.05.2012. Ultimately, as per the decision taken in the meeting dated 20.07.2012 SEIAA accorded approval for grant of prior EC and the same was issued vide order dated 13.08.2012.

254. Second application for EC: Construction activities did not commence till February 2018 as claimed by PP. In February 2018, PP submitted Form I, IA and conceptual plan with a request for amendment in EC of group housing complex for which EC was already granted vide order dated 13.08.2012. The existing proposal as per EC dated 13.08.2012 and amendment sought by PP, in the form of a chart was given by PP along with letter dated 09.02.2018 and we reproduce the said chart itself (placed before Tribunal in Appeal No. 112/2018) as under:

	As per Previous EC (A)	As per Amended Application (B)	Total (A+B)
Total Plot Area	20,000 sqm	-	20,000 sqm
Total Site Area	20,000 sqm	-	20,000 sqm
Cost of the Project	Rs. 321 Cr.	-Rs. 63.72 Cr.	Rs. 257.28 Cr.
Total Built up Area (FAR + Non FAR)	70,265.95 sqm	47,467.86 sqm	1,17,733.81 sqm
Max permissible FAR	46,600 sqm (inc. EWS FAR)	-1004	6,500 sqm (inc. EWS FAR)
Far proposed	46,156.72 sqm (inc. EWS FAR)	2,648.39 (inc. EWS FAR)	48,805.11 sqm (inc. EWS FAR)
Built up Area (Non FAR)	24,109.33 sqm	44,819.38 sqm	68,928.71 sqm
Total no. of Units (Dwelling)	324 (inc. EWS)	86 (inc. EWS)	410 (inc. EWS)
Total Population	1,205 Persons	580 Persons	1,785 Persons
Minimum Green Area required	3340 sqm	-	3340 sqm
Total Green Area proposed	8,373.75 sqm	-4,961.78 sqm	3,411.97 sqm
Minimum no. of trees required	227-		227
No. of Trees proposed	268-		268
Max permissible Ground coverage	6,666 sqm	-	6,666 sqm
Total Ground coverage	2,130.64 sqm	-249.04 sqm	1,881.6 sqm
No. of Towers/Blocks	4-		4
No. of Floors	S+G+35+	2	S+G+37
Building Height	117m	22.6m	139.6m
Total parking required	922 ECS	-68 ECS	854 ECS
No. of Basements	2-		2
Area in Basements	23,522.92 sqm	8,217.34 sqm	31,740.26 sqm
Area & Parking proposed in Basement-I (Upper)	11,761.46 sqm (362 ECS)	1,858.67 sqm (-175 ECS)	13,620.13 sqm (187 ECS)
Area & Parking proposed in Basement-II (Lower)	11,761.46 sqm (354 ECS)	1,858.67 sqm (-168 ECS)	13,620.13 sqm (186 ECS)
Area & Parking proposed in Basement-III	NANA		NA
Source of Water during construction Phase	Private Water Tankers	Private Water Tankers	
Total water requirement during construction Phase	351 MLD	238 MLD	589 MLD
Source of Water during Operational Phase	Delhi Jal Board	Delhi Jal Board	
Total water requirement during Operational Phase	203 KLD	21 KLD	224 KLD
Fresh water requirement during Operational Phase	106 KLD	51 KLD	157 KLD
Reuse of treated water during Operational Phase	129 KLD	25 KLD	154 KLD
Total wastewater generation	129 KLD	63 KLD	192 KLD
Capacity of STP	55 KLD	155 KLD	200 KLD
Technology of STP	MMR MB	R	
Reuse of treated water in Flushing	61 KLD	6 KLD	67 KLD
Reuse of treated water in Cooling	NA	NA	NA
Reuse of treated water in Horticulture/Gardening	24-14		10 KLD
Reuse of treated water in other purposes (specify)	--		-
Total solid waste generation	504 KG	336 KG	840KG
Total number of RWH pits	33		6
Total power requirement	1,266 KW	1,542 KW	2,808 KW
Capacity of DG Sets proposed	2,010 kVA	2,490 kVA	4,500 kVA

255. The figures mentioned in bold in the above chart are addition/increase in the earlier proposal and show a massive expansion of earlier proposal in every respect.

256. Broad difference is increase in built up area from 70,265.95 m² to 1,17,733.81 m², increase of dwelling units from 324 to 410, reduction in proposed green area from 5,373.75 m² to 3,411.97 m² and in ECS. In Form I, PP stated in item (I) i.e., Basic Information at sl. No. 5 that construction has not started at the site. In Item III relating to 'Environmental Sensitivity', PP disclosed information as under:

“(III) Environmental Sensitivity

S. No.	Areas	Name/ Identity	Aerial distance (within 15 km) Proposed project location boundary
1	Areas protected under international conventions, national or local legislation for their ecological, landscape, cultural or other related value.	Parliament House Rashtrapati Bhavan Red Fort India Gate Jama Masjid Supreme Court Safdarjung Tomb Raj Ghat	Approx. 8.5 km. South Approx. 9.0 km. SSW Approx. 5.0 km SE Approx. 9.0 km SSE Approx. 5.0 km SSE Approx. 8.5 km. SSE Approx. 11.5 km South Approx. 7.0 km. SE
2	Areas which are important or sensitive for ecological reasons-Wetlands, watercourses or other water bodies, coastal zone, biospheres, mountains, forests	<u>Water Sources</u> Yamuna River Najafgarh Drain Bhalswa Lake <u>Forest</u> Northern Ridge Reserve Forest Central Ridge Reserved Forest	Approx 1.5 km East Approx 0.5 km West Approx 6.5 km NW Approx 0.5 km East Approx 6.0 km SSW
3	Areas used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting, over wintering, migration.	Yamuna Biodiversity Park	Approx 4.0 km North
4	Inland, coastal, marine or underground waters	None	--
5	State, National boundaries	State Boundary – Uttar Pradesh	Approx 6.5 km NE
6	Routes or facilities used by the public for access to recreation or other tourist, pilgrim areas	NH-1 Old Delhi Railway Station IGI Airport	Approx 35m North Approx 4.0 km SEE Approx 19.0 km SW
7	Defense installations	Delhi Cantt.	Approx 12.0 km SSW
8	Densely populated or built-up area	Kamla Nagar	Approx 1.5 km SSW

9	Area occupied by sensitive manmade land uses (hospitals, schools, places of worship, community facilities)	Sant Parmanand Hospital North DMC Medical College & Hindu Rao Hospital Mahavir Senior Model School Arya Samaj Mandir Post Office Delhi University Axis Bank	Approx. 2.0 km. SE Approx. 2.0 km. South Approx. 2.5 km WSW Approx. 1.0 km SE Approx. 0.5 km SSE Approx. 1.5 km. East
10	Areas containing important, high quality or scarce resources (ground water resources, surface resources, forestry, agriculture, fisheries, tourism, minerals)	<u>Tourism</u> Parliament House Rashtrapati Bhavan Red Fort India Gate Jama Masjid Supreme Court Safdarjung Tomb Raj Ghat <u>Forest</u> Northern Ridge Reserve Forest Central Ridge Reserved Forest	Approx. 8.5 km. South Approx. 9.0 km. SSW Approx. 5.0 km SE Approx. 9.0 km SSE Approx. 5.0 km SSE Approx. 8.5 km. SSE Approx. 11.5 km South Approx. 7.0 km. SE Approx 0.5 km East Approx 6.0 km SSW
11	Areas already subjected to pollution or environmental damage (those where existing legal environmental standards are exceeded)	None	--
12	Areas susceptible to natural hazard which would cause the project to present environmental problems (earthquakes, subsidence, landslides, erosion, flooding or extreme or adverse climatic conditions)	Earthquakes	The site falls under the zone IV as per the Seismic Zone Map of India and is thus prone to high damage risk zone. Adequate measures will be taken during the construction of the project.

257. PP though put the title, "amendment in EC" but vide letter dated 12.02.2018 requested that the proposal be considered as a fresh case.

258. SEIAA Delhi in its meeting dated 22.03.2018 decided to recommend withdrawal of EC dated 13.12.2012 and to treat the same as null and void and grant fresh EC to the project. Consequently, a fresh EC was granted to PP on 23.03.2018. Details of the proposals given in the EC dated 23.03.2018 are as under:

"1. Area detail: The total plot area of the project is 20,000 sqm. Proposed total built-up area is 1,17,733.81 sqm. The permissible FAR is 40500 sqm & total proposed FAR 40498.59 sqm exclusive of EWS area. The maximum permissible ground coverage is 6,666 sqm. and the total ground coverage proposed will be 1881.6 sqm. The total Nos. of dwelling units will be 410 Nos. inclusive of EWS units. The total numbers of Towers/Blocks are four. The total height of building will be 139.6 metre. The total number of floors will be S+G+37. The basement area 31,740.26 sqm. The number of basements proposed are two.

2. Water details: Total water required for entire construction is 238 MLD. Total

water requirement during operational phase will be 332 KLD with fresh water demand of 202 KLD. The source of water during operational phase will be Delhi Jal Board and water supply scheme has been approved by DJB vide letter dated 07.10.2015. The total waste water generation will be 249 KLD which will be treated at on site STP of 275 KLD. The total treated water generated from STP will be 199 KLD out of which reuse of treated water in flushing 87 KLD, in Horticulture/Gardening 43 KLD & rest will be utilized in sprinkling on road side plants. Numbers of RWH pits proposed are six.

3. Solid waste: About 840 kg/day of total solid waste will be generated from the complex. Organic waste convertor is proposed for composting of bio-degradable waste.

4. Power: The total power requirement is 2808 KV and will be met from TPDDL.

5. Parking facility: ECS will be 854 Nos.

6. Eco-Sensitive areas: The shortest aerial distance of the project from Asola Wildlife Sanctuary is 21.5 Km & from Okhla Bird Sanctuary is 16 Km respectively.

7. Plantation: The total green area proposed is 6079.88 sqm. Number of trees at site will be 268 Nos.

8. Cost of the project: The cost of the project as per earlier EC Rs. 321 Crores and proposed cost of the project 257.28 Crores.

9. Cost of EMP: Rs. 54 lakhs, recurring cost 13.5 lakh/year.

10. CSR cost: Rs. 96 lakhs: 2023 (32 lakhs), 2024 (32 lakhs), 2025 (32 lakhs)

11. Manpower in Environmental Monitoring Team: 4 Nos."

259. As usual, specific conditions were mentioned in the aforesaid EC in 5 parts, pre-construction phase, construction phase and operation phase, entire life and other specific conditions. Besides, general conditions were also involved.

260. As already noted, EC dated 23.03.2018 was challenged in Appeal No. 112/2018, wherein after hearing arguments of the parties, prima-facie Tribunal found that PP did not disclose correct information in Form I and IA, submitted for grant of prior EC and there was lack of application of mind on part of SEIAA but no final decision could be pronounced since PP made a statement that it is not going to proceed on EC dated 23.03.2018 and instead would apply for fresh EC. Hence, PP requested Tribunal to discuss appeal in terms of the said statement. Tribunal observed that since EC 2018 was itself withdrawn, hence appeal has become infructuous and disposed it accordingly.

261. Third application of EC: Then comes the present EC where proposed built up got increased to 1,37,879.64 m² (1,17,733.81 m² in EC dated February 2018 and 70,265 m² in EC dated 13.08.2012), dwelling units increased to 446 flats (410 in EC dated February 2018 and 324 in EC dated 13.08.2012). Application was submitted on 15.02.2021 and EC was granted on 21.05.2021 i.e., within less than three and a half months.

262. The above facts show that building project commenced in 2009 when first

application for EC was submitted by PP but proposed development underwent major alteration/change every time and in 2021 when third application for grant of prior EC was submitted, built up area got increased almost twice, and number of increased by about 33%.

263. We have highlighted these facts only to show that considerations whatever applicable and studies conducted when first application of PP was considered, had gone a sea change when second application in 2018 was submitted, and, against there is huge alteration/change when third application was submitted in February 2021. Therefore, studies if any, of the earlier exercise(s) would not have been relevant at all while considering applications submitted subsequently, particularly considering the time length of dates of submission of applications i.e. 21.08.2009, February 2018 and 06.02.2021.

Concealment/non-disclosure/wrong disclosure of facts if any in Form I, IA and Conceptual Plan submitted vide application dated 06.02.2021:

264. In the entire Form I, IA and Conceptual Plan dated 06.02.2021, there is no disclosure by PP that it is the third time, the application for grant of prior EC for project with different specifications of development at the same site was proposed by it. PP, in form IA has referred to earlier appraisals by SEIAA/Committee appointed by Tribunal in earlier appeal but deliberately has withheld information that earlier projects were of different specifications and in any case, such appraisal or report was not approved by Tribunal.

265. Under the Heading (I) Basic Information, Item 4-New/Expansion/Modernization, PP has mentioned the project as 'New' but not clarified that already, applications for prior EC were submitted twice for development of group housing complex with different specifications and a site office was already constructed on the plot. The fact that said office is constructed at the plot has been mentioned in the Joint Committee report though disputed by PP.

266. Under the Heading (II) Activity, item 1.4, pre-construction investigations for example bore houses, soil testing etc., PP has replied in affirmative and said, "Pre-construction geo-technical investigation has bene done in 2009 and further subsequently tower specific analysis was done in 2018 as per the report, the site is suitable for the proposed construction".

267. While giving this information, PP had not disclosed that when application for grant of prior EC was submitted in 2009, the proposed built-up area was almost half of the built-up area proposed in 2021. Number of blocks were also lesser. Number of dwelling units were less and even number of proposed basements were different. Therefore, the geo technical investigation conducted for the project in 2009 could not have been relevant for the purpose of the project in question particularly when SEIAA's order dated 22.03.2018 clearly declares EC dated 13.08.2012 as null and void and thereafter, recommended for grant of fresh EC which was issued on 23.03.2018.

268. Similarly, tower specific analysis conducted in 2018 also could not have been relevant for the project in question for the reason that built up area is almost 25% more in the proposal submitted on 15.02.2021, dwelling units are higher and number of towers including floors and basement structures are also different i.e., much more than what were in 2018.

269. These facts were within the knowledge of PP but it has disclosed information of

2009 and 2018, when investigation or analysis was conducted to claim sustainability of proposed projects of such time and the same were irrelevant for project proposed in 2021. Reference of earlier studies/reports in the context of 02/2021 was illegal, unfair and impertinent. Therefore, by disclosure of information in affirmative by saying 'Yes' in item 1.4, PP has submitted wrong information and/or withheld relevant information in this regard. For the purpose of current project proposed vide application dated 02.2021 (sic) there was no pre-construction investigation in regard to geo technical and tower specific analysis etc. Earlier study was irrelevant. No explanation on this aspect is given in the Conceptual Plan also.

270. Report of soil investigation is dated 16.07.2011. Report considered the proposal of multi-story building comprising ground+23-29 storey construction and not for a construction comprising two basements and 41 floors. This report was irreverent for the project proposed in 2021 since size of structure was different i.e. much bigger than what was proposed in 2009 and when investigation was conducted in 2011.

271. Further, in item 1.2, clearance of existing land, vegetation and buildings, PP has said, in respect to vegetation, that at present land parcel is devoid of any trees. PP has claimed project in question to be a new one after having land on lease from DMRC vide agreement dated 15.12.2008. Twice prior ECs were obtained in 2012 and 2018 but as per his own stand, no construction had commenced at the time of first grant of EC on 13.08.2012. Earlier record show that there were more than 200 trees on the land transferred to PP which had to be cut by PP.

272. The Forest Department granted permission to cut 156 trees on the plot in question vide letter dated 25.05.2011. Clearance was granted after PP had applied for prior EC in 2009 but not granted when forest clearance was given. Cutting of trees obviously was necessary for execution of the project, hence it cannot be said that no clearance of vegetation was required. Simply because PP applied for prior EC repeatedly, it could not have taken advantage of some activities earlier conducted during the process of first EC and this was a fact which ought to have been disclosed by PP but it has not. In our view, PP has failed to disclose correct information and submitted wrong information that no clearance of vegetation was required.

273. PP in its joint reply to the representation of DU submitted to SEIAA has admitted this fact that trees were cut after obtaining prior EC from Forest Department vide letter dated 25.05.2011. It is also mentioned that Forest Department granted permission subject to plantation but the same has not been done by PP as it would be done only after building plans are approved. The reply given by PP reads as under:

"Reply: It is submitted that the lease deed and lease agreement entered between DMRC and the project proponent does not make any mention of the requirement to retain minimum 50% number of trees. Tree cutting and transplantation have been done after obtaining permission from the forest department dated 25th May 2011. Regarding the compensatory plantation, a Sum of rupees 43,68,000/- have been deposited to the forest department as security with the condition that the same may be forfeited in case of default. Since a major part of replantation is proposed in the project site, the project proponents are waiting for the clearances before undertaking the said plantation. The security lies in trust with the forest department and has not been forfeited. Out of the 1560 saplings to be planted, 780 saplings have already been planted by the Forest and Wildlife Department, Govt. of Delhi at ITO Chungi Park. We are committed to plant the remaining 780 saplings within

our project site/other areas in Consultation with the forest department once the building plans are approved."

274. Thus, the land had vegetation which PP cleared by cutting trees but did not execute his part of obligation of plantation and more important is that all these facts were not disclosed in Form I, IA and Conceptual Plan submitted on 06.02.2021.

275. Under the Heading 'Activity', item 1.21, the information required was regarding "impoundment, damming culverting, realignment or other changes to the hydrology of water courses or aquifers". It has been replied in negative by PP and details given are under:

"No impoundment, damming, culverting, realignment is envisaged. However, a temporary backing up of ground water is anticipated in dewatering and basement construction. The ground water depth in the project site varies from 8.45 m to 10.20 m below ground level (as per soil test report by Ground Engineering Limited-March 2018). Construction of basement will lead to excavation up to a depth of 12.45 m below ground level. Dewatering will be required up to a depth of additional 1.0 m i.e. total depth 13.45 m BGL."

276. In Form IA, para 2.9, PP admits that the manner and effect of construction of two basements would affect discharge of ground water course but it also claims to take care thereof stating as under:

"2.9 What are the impacts of the proposal on the ground water? (Will there be tapping of ground water; give the details of ground water table, recharging capacity, and approvals obtained from competent authority.

The ground water in the project site varies from 8.45 m to 10.20m below ground level (as per soil test report by Ground Engineering Limited-March 2018). The project will require the construction of two basements. Construction of basements will lead to excavation up to a depth of 12.45 m below ground level. Dewatering will be required for additional 1 m from the depth of foundation which is up to a depth of 13.45 m BGL. Hence, there will be temporary impact in ground water level due to dewatering process. However, after construction of basement, dewatering will be stopped completely and ground water will take its own course in due course of time. Detailed impact of dewatering and dewatering management plan is being prepared. However, dewatering will only be done after obtaining necessary approval from the Delhi Jal Board.

Lowering the water table below the formation level of the basement allows construction within the dewatered area to be completed using standard construction methods. After completion of the basement the dewatering system is removed and the water table will return to its original level.

There is a potential for groundwater levels to back up around the finished basement. Backing up around the structure may lead to rise in water levels upstream. The basement design will include groundwater drainage systems to prevent groundwater backing up around the development, and thereby protect adjacent areas from impact. Backing up around the basements has not been recognized as an area of concern in the National Building Code or the guidelines of the Ministry of Housing and Urban Development. YBPL shall abide by any condition that the Delhi Jal Board imposes in this regard. A number of

high-rise projects with basements deeper than the two basements proposed by YBPL, are under construction in the area prominent being the North Delhi Metro Mall, Parsvnath Tropicana, Negolice India (M 2 K), Delhi Flour Mills, DCM Ltd., DLF Home Developers etc. which are having 03 to 04 basements, have been allowed by the regulatory Authorities including the MoEF&CC. Even the adjoining underground Vishwavidyalaya Metro Station is deeper (more than 16 m) than the foundation depth (12.45 m) of this project."

277. With respect to construction of two basements, EAC (Infrastructre-2) in the minutes of the meeting dated 01.03.2021 raised an objection that project area is part of "Ground Water Discharge Zone" and, therefore, it was advised to restrict construction only to one underground basement and one stilt parking instead of proposed two, and parking plan may accordingly be revised and necessary approvals obtained, but PP has proposed two basement in the proposal. Accordingly, PP was required to clarify on this aspect. The objection noted by EAC in (para 5 on page 1410 of paper book) its minutes are reproduced as under:

"5. The EAC also noted that a Committee was appointed in terms of order of NGT dated 27.2.2020 and the Hon'ble Supreme Court vide its order dated 10.06.2020, and has given its report dated 10.12.2020. One of the suggestions of the Committee was that, considering that the project area is part of groundwater discharge zone, it is advised to restrict construction to the only one underground basement and one stilt parking, instead of the proposed two. The parking plan' may accordingly be revised and necessary approvals obtained.' However, the PP has still proposed 2 basements in the current proposal."

278. The above observations show that it was in the knowledge of PP that plot in question falls in "Ground Water Discharge Zone" and it was an important fact. Therefore, it ought to have been disclosed in Form I. This information though was already on record and in earlier proceedings brought to the notice of PP, still it was not disclosed in Form I. This is a serious flaw, illegality and amounts to non-disclosure of an important information which has serious environmental impact.

279. "Ground water discharge" can be described as movement of ground water from the sub-surface to the surface. Under natural conditions, ground water moves along flow paths from areas of recharge to areas of discharge at springs or along streams, lakes and wetlands. Discharge also occurs as seepage to bays or the ocean in coastal areas and as transformation by plants whose roots extend near the water table. Ground water recharge involves downward movement and influx of ground water to aquifers while discharge involves upward movement and out flux of ground water from an aquifer. Importance of ground water discharge is that base flow of streams is provided by ground water discharge from springs. The term base flow refers to the flow in streams during dry periods. This ground water/surface water interaction allows water to flow in the stream. Base flow is critical for maintaining habitat and nutrients to aquatic eco-system. In short, it can be said that "ground water recharge" and "discharge" are important aspects of global hydrological cycle and critical to analysis of ground water flow systems and water tables. Recharger is replenishment of ground water by downward infiltration of respiration or by water that was temporarily stored on earth surface. Natural recharge occurs without influence or enhancement by humans while artificial recharge occurs as the result of deliberate or inadvertent human activity such as direct injunction of water into the sub-surface of irrigation. Discharge represents upward outflow of ground water from the surface that occurs naturally or as the result

of human activity notably well pumping.

280. The "Ground Water Discharge Zone" aspect, has not been given due consideration either by SEAC and/or MoEF & CC in recommending and granting EC to PP. It may be since complete information was not supplied by PP and/or Regulatory Authority did not find it necessary to examine the aspect in detail, may be due to lack of application of mind or for any other reason.

281. In Form I, PP has not at all mentioned that the land in dispute falls in the area where status of ground water is that of discharge zone, if it goes down digging the land for construction of two basements. It is admitted that construction of basements will leave excavation of 13.45 meters and the ground water depth, on the project site, varies from 8.45 m to 10.20 m below ground level. Meaning thereby excavation will go 3-5 meters below the availability of ground water. In the conceptual Plan, in para 2.9, PP has discussed the impact of proposal on ground water and there we find that stress is on the steps which it would take for protection of the project and there is nothing as to how and what manner the excavation below ground level upto 12.45 meters will have impact on ground water particularly, when it comes in "Ground Water Discharge Zone".

282. PP has mentioned that it will go for dewatering process even one meter below the required depth of 12.45 meters that will go to 13.45 meters below ground level. It admits that there will be an impact on ground water level due to dewatering but explained that it would be temporary. After construction of basement, PP said, dewatering will be stopped completely and ground water will take its own course in due course of time ignoring the fact that when basement level itself is 12.45 meters below ground level and 3-5 meters below ground water depth, ground water course is bound to change and, therefore, impact of such change on "Ground Water Discharge Zone" was necessary to be examined but nothing has been said in this regard in Form I, IA and Conceptual Plan. On the contrary, PP has tried to belittle this aspect by stating that some other high rise projects with basement with deeper than two basements proposed by PP are under construction in the area i.e. Delhi Metro Delhi Metro Mall, Parsvnath Tropicana, Negolice India (M 2 K), Delhi Flour Mills, DCM Ltd., DLF Home Developers etc. which are having 3-4 basement but it is not stated anywhere that all those projects will affect "Ground Water Table" and its discharge zone in the same manner or they are also in the "Ground Water Discharge Zone". The facts of those other projects neither given in detail in the information placed before EAC/MoEF & CC nor before us. Therefore, reference to those projects, in our view, is of no consequence and would not help PP at all. A project which comprises activities deep below ground level affecting ground water table/its flow direction/recharge or discharge zone, the impact of such disturbance on environment has to be seriously examined by Regulator before grant of prior EC under EIA 2006 and that is the concept of "Environment Impact Assessment" on account of execution of proposed project/activity and this is the statutory obligation of EAC but unfortunately, it has failed to discharge this obligation.

283. Hence, the project will have impact on the ground water flow as construction is cutting across the ground water stream. This may have serious impact on the people living downstream of the ground water stream who's water source could get seriously affected because of obstruction of the ground water. PP has given justification stating that similar construction has been carried out by Delhi Metro, Parsvnath Tropicana, Negolice India etc. who gave gone more the 60 m below. This justification is not acceptable.

284. Everybody knows about scarcity of drinking water in Delhi and NCR region. Most

of the areas are categorized as over-exploited/critical/semi-critical. Only a negligible part is in safe category. The area in question, as admitted by PP, is in semi-critical category. North Delhi, therefore, is ground water table stressed area, very sketchy information has been supplied by PP.

285. Under the Heading (II) 'Activity', item 1.8, PP says that impact of ground water will be minimized but simultaneously says that permission of dewatering will be taken. In item 1.9, under the same Heading, it is said that no underground work is envisaged but simultaneously said that construction of two levels of basements is proposed as per plan and it will obviously involve disturbance underground water Table. In item 1.8, it is also said that for construction of two basements, quantity of soil excavation would be about 1,90,000 m³. Again in item 1.21, while replying the information about "impoundment, damming culverting, realignment or other changes to the hydrology of water courses or aquifers", PP said that no impoundment, damming culverting, realignment is envisaged. But then said that there will be temporary backing up of water anticipated in dewatering and basement construction. Further information that ground water depth is about 8.45 m to 10.20 m below ground level and excavation will go upto 13.45 m means that there has to be a change in the flow course of ground water particularly, when it has been informed that it is the Ground Water Discharge Zone but all this information has not been given though it is bound to change hydrology of water course of ground water. Impact of such change on environment has neither been mentioned in the Conceptual Plan nor any other document and we also do not find any discussion in the record of EAC or MoEF & CC.

286. As we have already said that importance of ground water cannot be disputed. It is one of the most dynamic natural resource enriches human health, economic development and ecological diversities. Ground water is a vital natural resource for the reliable and economic provision of potable water supply in both urban and rural settlement. Conservative assessment shows that ground water contributes about 35% of annual water supply and is an important fresh water resource across the globe. Therefore, assessment of ground water resource is important for sustainable management and development of ground water system. This includes knowledge of ground water recharge and discharge. A sound land use planning and management approach involves analysis of ground water flow system connecting recharge and discharge areas as a vital factor. Ground water recharge and discharge are crucial aspects of hydrological cycle and critical for the analysis flow systems and water budgets. An expert in hydrology and ecology cannot ignore an in-depth study when construction activities are likely to penetrate ground water level and go below, disturbing ground water discharge area and this information is important which ought to have been disclosed by PP when submitting application in Form I and IA and should be a part of Conceptual Plan to discuss as to how this aspect shall be managed but this information is virtually missing in the application submitted by PP. Further, SEAC/MoEF were under a statutory obligation to examine impact of this aspect on environment being integral part of appraisal of project towards impact of environment but both were simply failed to scrutinize this important aspect and it shows total non-application of mind and a mechanical exercise of grant of EC.

287. In para 2-'Use of natural resources for construction or operation of the project', item 2.2, information regarding water during construction and operation phase, has been given as under:

S. No.	Information/Checklist confirmation	Yes/ No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
2.2	Water (expected source & competing users) unit: kld	Yes	During Construction phase: Construction water requirement is expected to be about 280 kld over a period of 3 years at the rate of 2 kl/sqm of BUA. Construction Water demand will be met from treated waste water from DJB common STP or other authorized STPs by tankers. The supply of treated waste water will be done through authorized supplier. If directed by the competent authority, water available during dewatering shall be used for construction purpose. During Operation Phase: Total water requirement is expected to be 222 kld, out of which 158 kld will be fresh water met through the DJB supply. Remaining 64 kld will be met through recycle of treated wastewater from the on-site STP. No ground water will be used.

288. PP has stated that during construction phase it will not use any ground water or fresh water. Requirement would be of 280 MLD in a period of 3 years. The said requirement shall be met from "Treated Waste Water" made available either by DJB, Common STP or other authorized STPs by tankers. It further said that if permitted by Competent Authority, ground water available during dewatering shall be used for construction purpose. No material has been placed before us to show that DJB has requisite quantity of treated waste water so as to supply the same to PP. In Form IA, under para 2-'Water Environment', it is said in para 2.1 that construction water requirement for the project estimated about 280 MLD will be procured by "Tankers Supply" through "DJB authorized suppliers" or "by water obtained after dewatering if allowed by Competent Authority". No details of any alleged authorized supplier has been given. Nothing has been examined or enquired by EAC also. It has simply gone on the bare assertion of PP that 280 MLD water estimated to be required in 3 years of construction period shall be met by treated waste water from tanker supplier. Before EAC, in its meeting dated 01.03.2021, specific explanation given by PP as noticed by EAC is as under:

"During construction phase, total water requirement is expected to be approx. 280 million litre which will be met by treated water from tanker supply. During the construction phase, soak pits and septic tanks will be provided for disposal of waste water. Temporary sanitary toilets will be provided during peak labour force.

289. 280 MLD treated waste water means a huge quantity of treated water. If supplied by Tankers of 5,000 or 10,000 liters capacity, it means 28,000 tankers and/or 56,000 tankers in 3 years i.e. 9333 or 18666 tankers per annum. This is a huge quantity as well as number. DJB is having huge deficit in treatment of effluent by almost 40%. In respect of private proponents, normally conditions prescribed in EC, wherever applicable, or consent issued under Water Act 1974, contains a condition that treated water shall be re-cycled and re-used by the same proponent. Water is not manufactured

by anybody. There are limited resources i.e. surface water or ground water. Availability of "treated waste water" is further limited. It would be available only with the proponents who are undergoing treatment of effluent and as we have already said mostly they re-use or re-cycle treated waste water in their own units. Therefore, it was incumbent upon PP to disclose as to wherefrom and in what manner such a huge quantity of treated waste water would be available to it or under the cover the "treated waste water", entire insistence is on the ground water sought to be dewatered by PP. Information in this regard is not complete and unfortunately, EAC has also not looked into this aspect at all. Further, if construction activities proceed for 300 days in a year, daily, more than 31 Tankers would visit the site. This is a very large number of vehicles coming to visit in respect of only one item i.e. treated waste water. It is found to cause huge air pollution also.

290. We also find that Forms I and IA do not mention closeness of the project to Delhi University, Viceroy Building (heritage site) and several educational institutions in the vicinity. Najafgarh drain nearby is highly polluted. No information has been given about the natural slope and drainage. No mention has been made that the area is semi critical as per Dynamic Ground Water Study of 2017 requiring clearance from Central Ground Water Authority (hereinafter referred to as 'CGWA'). PP has mentioned that there is no impact on ground water. What is mentioned is that source of water is municipal supply. There is no evaluation of the additive effect on air quality on account of such high rise building in the area which is already far beyond its carrying capacity.

291. As per standard terms of reference for EIA for project requiring EC the land use as per master plan should be 10 Kms. It is not clear if PP has studied 10 km as in most places it has mentioned as 500 m. The study area for the project as per MoEF & CC is 10 km is not clear if PP has studied the impact of the project within 10 Km. As per page 379, 500 m surrounding studies has been carried out. At item 5.3 at page 894 mentions only 146 number of saleable units. The area is education hub and a large number of colleges of repute are surrounding the area if study of 10 kms. is conducted. It was admitted during the course of arguments that number of educational institutions was long hence all institutions were not mentioned in form 1. Thus, it is clear that Committee was given incomplete information.

292. Most of the informations given by PP were in response to questions by EAC without the same being originally given in the Form I and IA. In Form I and IA, there is no mention of data on air quality or impacts of the project on air quality. In Form I, it is mentioned that air quality monitoring will be carried out during EIA/EMP studies (which would have happened if the project was treated as Category A as per EIA 2006. However, since the project was treated as B2 Category on account of notification dated 22.12.2014, no such study was conducted). It is said that contribution of vehicular emission will be marginal and within the ambient air quality standards. Green belt will be developed which will act as a barrier. Nothing is mentioned about the impact on air quality during construction and afterwards. Parking has been proposed for 860 vehicles. It is further stated that there will be no significant impact of noise due to provision of wide roads. The entire information lacks specific details. It is thus, difficult to conclude that requisite disclosure was made by PP. Since air quality is one of the most significant environmental aspects, even if we do not consider other aspects, it can certainly be said that no information was furnished on subject of air quality in Form I and IA and information furnished later was highly inadequate and not supportive of sustenance of high-rise project of such magnitude. PP has relied on earlier reports or EAC recommendation for granting EC in 2012 and 2018 though the same were wholly irrelevant for consideration of application filed in February 2021. There is no

consideration of initial non-disclosure and reliance on irrelevant in reports/studies by PP. Impugned order of EC granted by EAC/MoEF & CC would stand vitiated for non-consideration of above aspects.

Air Quality, Noise Level and Traffic Congestion etc.

293. Information regarding air pollution: Under para 5 of Form I-'Release of pollutants or any hazardous, toxic or noxious substances to air (Kg/hr)', PP has supplied information as under:

S. No.	Information/Checklist confirmation	Yes/ No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
5.1	Emissions from combustion of fossil fuels from stationary or mobile sources	Yes	Combustion of low sulphur HSD due to operation of two DG sets of 1500 kuA capacity Particulate Matter: ~0.8 kg/hr Sox: ~ 3 kg/hr NOx: ~ 12.4 kg/hr CO: ~ 3.4 kg/hr HC: ~ 1.2 kg/hr
5.2	Emissions from production processes	No	No production process is involved in this project
5.3	Emissions from materials handling including storage or transport	Yes	Dust emission is likely to be generated from material handling including storage or transport. However, all storage and transport shall be duly covered to minimize dust.
5.4	Emissions from construction activities including plant and equipment	No	Total Suspended Particulate Matters generated from the project site during construction is expected to be 5.9 ~ 6 Tons per month.
5.5	Dust or odors from handling of materials including construction materials, sewage and waste	Yes	Dust is expected to be generated from handling of materials during construction phase. However, 10 m high barricading has already been provided around the periphery of the project site in order to mitigate spreading of dust in nearby areas. Apart from this, regular sprinkling of water will be carried out to minimize generation of dust from the project site.
5.6	From lighting or cooling systems	No	No incinerator is proposed
5.7	From any other sources	No	Open burning of wastes (slash materials, construction debris) will strictly be prohibited during the entire construction and operation phase of the project.
5.8	Emissions from any other sources	No	Not envisaged

294. In Form IA, para 5-'Air Environment', PP in para 5.1 has given a chart containing background air quality based on the monitoring conducted between 02.12.2020 to 27.12.2020. Chart shows that in the above period of December 2020, SO₂, NO₂ and CO concentration were within prescribed limits but PM 10 and PM 2.5 exceeded permissible limit. The chart reads as under:

"PM 10: The concentration of PM10 was found ranging between 155.00 $\mu\text{g}/\text{m}^3$ to 376.00 $\mu\text{g}/\text{m}^3$. The 98th percentile value of PM 10 was found to be 374.46 $\mu\text{g}/\text{m}^3$ and average value of PM 10 is 297.00 $\mu\text{g}/\text{m}^3$ during the month of December 2020. The background PM 10 is well above the permissible limit. It is found generally that the PM 10 level in the region of Delhi and NCR is more than the permissible limit and also maximum during the month of December and January. One of the important reasons for high level of PM 10 is due to the burning of Paralli (agricultural left over in the field) in the region of Punjab and

Haryana. However, in some years the concentration of PM 10 is even higher than what is observed in this year.

PM 2.5: The concentration of PM 2.5 was found ranging between 87.00 $\mu\text{g}/\text{m}^3$ to 195.00 $\mu\text{g}/\text{m}^3$. The 98th percentile value of PM 2.5 was found to be 194.16 $\mu\text{g}/\text{m}^3$ and average value of PM 2.5 is 155.38 $\mu\text{g}/\text{m}^3$ during the month of December 2020. The background PM 10 is well above the permissible limit. It is found generally that the PM 10 level in the region of Delhi and NCR is more than the permissible limit and also maximum during the month of December and January. One of the important reasons for high level of PM 10 is due to the burning of Paralli (agricultural left over in the field) in the region of Punjab and Haryana. However, in some years the concentration of PM 10 is even higher than what is observed in this year."

295. In respect of SO_2 , NO_2 and CO also, PP has given explanation as under:

SO_2 : The concentration of SO_2 was found ranging between 8.9 $\mu\text{g}/\text{m}^3$ to 12.2 $\mu\text{g}/\text{m}^3$. The 98th percentile value of SO_2 was found to be 12.12 $\mu\text{g}/\text{m}^3$ and average value of SO_2 is 10.43 $\mu\text{g}/\text{m}^3$ during the month of December 2020. The background level of SO_2 is found to be well within the permissible limit. The main source of SO_2 is due to vehicular movement as the project site is adjacent to Mall Road.

NO_2 : The concentration of NO_2 was found ranging between 22.8 $\mu\text{g}/\text{m}^3$ to 38.4 $\mu\text{g}/\text{m}^3$. The 98th percentile value of NO_2 was found to be 38.15 $\mu\text{g}/\text{m}^3$ and average value of NO_2 is 30.35 $\mu\text{g}/\text{m}^3$ during the month of December 2020. The background level of NO_2 is found to be well within the permissible limit. The main source of NO_2 is due to vehicular movement as the project site is adjacent to Mall Road.

CO: The concentration of CO was found ranging between 1.18 mg/m^3 to 1.36 mg/m^3 . The 98th percentile value of CO was found to be 1.36 mg/m^3 and average value of CO is 1.29 mg/m^3 during the month of December 2020. The background level of CO is found to be well within the permissible limit. The main source of CO is due to vehicular movement as the project site is adjacent to Mall Road."

296. The admission of PP is that main source of SO_2 , NO_2 and CO is vehicular movement as site is adjacent to Mall Road. This is the situation when project has not started as claimed by PP. The large number of movement of commercial vehicles transporting raw material to the site is bound to increase level of SO_2 , NO_2 and CO. This impact however, has not been examined by EAC/MoEF & CC at all.

297. Impact of project due to traffic has been discussed in Form IA with reference to the report of Committee constituted by this Tribunal in Appeal No. 112/2018, University of Delhi vs. MoEF & CC and Ors. PP, however has not disclosed that the above report was not accepted by Tribunal.

298. PP has stated that it is proposing parking of 860 number of cars, to be owned by occupants of 446 units multiplied by 2 i.e. 892 (446×2). Expecting 1.5 car per household to be used daily, the number of cars likely to be used daily by the occupants or the project comes to 669. The usage of car has been estimated at 235 days per year and impact on environment has been discussed as under:

Estimated pollution load for BS IV-4W with Petrol or CNG engines

	BS IV limit (g/km)	Emission load for 8.5 km (g/car/day)	Total emission expected due to 669 cars on road daily in the grid		Based on annual emission inventory of pollutants ARAI-TERI, 2018		Percentage increase in pollution load in Timarpur ward due to additional cars
			Daily (kg/day)	Yearly (tons/yr)	Delhi (148400 Hac)	Estimated for Timarpur (239 hac)	
CO	2.0	17	11.37	2.67	598 kilotons/yr	963 tons/yr	0.27%
HC	0.55	4.67	3.12	0.73	427 kilotons/yr	687 tons/yr	0.1%
NOX	0.25	2.12	1.42	0.33	156 kilotons/yr	251 tons/yr	0.13%

299. Reliance placed on report of Committee appointed by Tribunal in Appeal No. 112/2018 is totally misconceived as the said report was not accepted by Tribunal in the above Appeal. On the contrary, Tribunal made observations against PP but could not form a final opinion since PP did not allow the appeal to be decided on merits but withdrew EC and stated that it shall apply afresh, hence caused in dismissal of appeal as infructuous.

300. Further, the above pollution load has been discussed assuming that the vehicles owned by occupants would be BS-IV category run by petrol or CNG. Further in para 5.2 and 5.3, impact on generation of dust, smoke etc. has been considered and PP has relied on a study conducted in 2018 as also the report of Committee constituted by Tribunal in Appeal No. 112/2018 (supra). We find that the information is clearly misleading and does not refer to any relevant study on the subject. As already said, in 2018 study may have been relevant at the time when EC of February 2018 was granted but in the present case, when application was submitted in February 2021, it was incumbent upon PP to inform Competent Authority that no study immediately prior to submission of the application was conducted.

301. Report of Committee in Appeal No. 112/2018 could not have been relied for the reason already discussed above. Further, volume of construction has also undergone material change and built up area as it was in 2018, was increased by almost 25% in the application dated February 2021, neither constructions proposed by PP was same nor the conditions relevant for the enquiry with regard to air pollution can be said to remain same in all these years. Further, period during which there were restrictions on various activities on account of COVID-19 pandemic, the impact would have been different and it would not give a proper information for the study required to be conducted in the matter like the present one. It is not stated anywhere by PP that any study was conducted for the project sought to be built up as per application dated February 2021 which is definitely different from the earlier two proposals. Therefore, study in every respect is bound to change but in a twisted manner, this information has been conveyed or relevant information was concealed or not correctly disclosed.

302. PP has blamed cause of air pollution, to the "burning of parali" in the region of

Punjab and Haryana. No study material on this aspect either has been appended to the Form submitted to Competent Authority, nor from the material examined by EAC/MoEF & CC, we find any material to support this explanation/assumption on the part of PP. Without expressing any final opinion, we find it appropriate to point out that territory of Delhi on three sides i.e. North, West and South is surrounded by the territory of State of Haryana, and on the East and a little bit on North side by State of UP. Punjab, we find is on the North West side of State of Haryana and infact broadly it is on the northern side. There is no direct connection of State of Punjab to Delhi. Even State of Haryana covers its extreme North, East and Southern boundary with Delhi. Therefore, the winds travelling from Punjab has to cross the entire State of Haryana to reach Delhi. Before making the so called burning of parali, responsible for air pollution in Delhi, it has to be examined whether there could have been South or North side wind, the velocity of wind, the capacity of the particulates of the smoke to travel with air and other relevant aspects. Burning of parali, hundreds of kilometers away from Delhi, without any further study material, by itself, may not be justified, to be blamed for something happening in Delhi. In any case, PP without placing any material in this respect, could not have been given any credit to blame air pollution to a factor not fortified by any material. On the contrary, issue of air pollution in Delhi, we find, has been considered in recent period, by various Courts including this Tribunal as also the Apex Court. The apparent glaring reasons are heavy load of vehicles, construction activities, burning of solid waste etc. by various local bodies and others.

303. We also find that there is no due application of mind by EAC/MoEF & CC in granting EC. Some aspects we have already pointed out. There is no consideration of ambient air quality status of the area for sustenance of the project in question. The sample test report of air quality submitted by PP itself and placed for consideration before EAC show that air quality is far beyond permissible limits both in terms of $PM_{2.5}$ and PM_{10} . Against prescribed National Ambient Air Quality Standards of $60 \mu g/m^3$ and $100 \mu g/m^3$ per day for $PM_{2.5}$ and PM_{10} respectively, data shows $PM_{2.5}$ in range of 87.00 to 195 and PM_{10} to be in range of 155 to 376.

304. A perusal of impugned order shows that decision to grant EC is based on recommendation of EAC. The minutes of EAC do not contain any discussion on the subject beyond mentioning that recommendation for granting EC was based on the information furnished, documents shown and submitted, presentation made by PP and appraisal done by Committee.

305. As already mentioned, PP has relied on the study conducted in 2018. The application did not give any data of ambient air quality. Vide subsequent letter dated 09.03.2018, in response to minutes of 95th meeting of SEAC dated 24.02.2018, PP gave point wise reply. Annexure IV thereto is pointwise response to MoEF & CC circular dated 25.10.2017. Appendix I thereto is test report dated 27.01.2018 for ambient air quality analysis as follows:

S. No	Date	Particulate matter (PM _{2.5} ; µg/m ³ GRC/LAB/STP/AIR /03, Gravimetric Method	Particulate matter (PM ₁₀ ; µg/m ³ IS 5182 (Part 23): 2006	Sulphur Dioxide (PM ₁₀ ; µg/m ³ IS 5182 (Part 23): 2001 Reaff.2006	Nitrogen Dioxide (PM ₁₀ ; µg/m ³ IS 5182 (Part 23): 2006	Carbon Monoxide (CO); µg/m ³ IS 5182 (Part 10): 1999 Reaff.2003
1.	03.01.2018	240.6	412.3	9.3	71.6	1580
2.	05.01.2018	237.4	396.2	17.7	74.1	2110
3.	08.01.2018	195.7	368.4	20.4	82.3	2060
4.	11.01.2018	146.2	324.5	18.9	63.4	1510
5.	14.01.2018	227.9	436.8	29.7	84.5	2470
6.	17.01.2018	210.5	419.4	11.4	89.5	2780
7.	20.01.2018	183.4	318.9	18.3	84.0	1050
8.	24.01.2018	134.6	242.7	15.9	77.6	1010

306. Ambient Noise level as per test report dated 12.01.2018 annexed thereto is as follows:

S. No.	Location	Zone	Limit for As per EP Act, 1986; Leq, DB (A)		Observed value Leq, dB (A)	
1.			Day Time	Night Time	Day Time	Night Time
	Project Site	Residential area	55	45	63.4	49.8
	* Day Time	6.00 a.m. to 10.00 p.m.				
	** Night Time	10.00 p.m. to 6.00 a.m.				

307. Another document which is part of letter is titled "Traffic Analysis for proposed group housing at DU Metro Station") and is as follows:

"EXISTING TRAFFIC CONDITIONS CAVALRY LANE:

According to recent traffic survey conducted in February 2018, traffic volume on Cavalry Lane is 423 pcu during AM peak hour. The ADT is recorded to be 3284 pcu comprising of 1087 two wheeler, 707 autos, 926 cars and 2 buses on Cavalry Lane. Over a day, 7 good vehicles, 198 cycles, 45 cycle rickshaws and 926 E-Rickshaws have been noted. In the afternoon peak hour (14:00-15:00 hrs, the recorded traffic volume is 208 pcu. The annexure-1 give the details of pedestrian and vehicular traffic volumes in tabular and graphic form for easy comprehension. It will be noted that the surrounding roads have adequate capacity to absorb traffic generated by the proposed development. Further the placement of access position on Cavalry Lane is not likely to cause any traffic concerns in the context.

CHHATRA MARG:

Similarly traffic survey conducted in February 2018, traffic volume on Chhatra marg is 1310 pcu during AM peak hour. The ADT is recorded to be 14801 pcu comprising of 4999 two wheeler, 1668 autos, 4092 cars and 19 buses.

Over a day, 44 good vehicles, 412 cycles, 1217 cycle rickshaws and 4376 E-Rickshaws have been noted. In the afternoon peak hour

(14:00-15:00hrs), the rerecorded traffic volume is 1167 pcu. The annexure 2 give the details of pedestrian and vehicular traffic volumes in tabular and graphic form for easy comprehension.

ESTIMATE OF GENERATED TRAFFIC

It is estimated that the housing scheme will generate some 320 pcu of vehicular traffic under a peak period of four to five hour duration. Critical peak hour traffic volume is estimated at 192 pcu egress and 25 pcu/h ingress traffic volume during AM period. The flow patter will reverse during PM peak period though the duration of PM peak period is generally longer than the AM peak period. It must be stated that considerable proportion of person trips will be made by Metro. Reliance on other modes of transport like cycle rickshaw is not expected to be high as the site offers by virtue of its location, excellent conditions for walking and nearness to the metro station. Cavalry Lane accordingly is envisaged to provide the access to motorized vehicles. On adding incremental traffic to the existing traffic on Cavalry Lane, the aggregate traffic works out to be 640 pcu per hour. The existing v/c ratio considering local two lane two-way carriageway configuration works out to be 0.56, and the emerging v/c ratio with project estimated to be 0.857 as per IRC 106. This v/c has built in facility of right turn traffic, parked vehicles and frontage access from the road under consideration. With v/c ratio of 0.85, congested conditions are not expected on Cavalry Lane. Further there is likely to be diversion from car to public transport especially to Metro for essential trips and this is likely to reduce the generated vehicular traffic volume from the proposed development. Walking to Metro Station for travel purposes is likely to find favour with the residential population."

308. On the basis of information noted above, even EC granted in 2018 could not been sustained. SEIAA based its decision dated 22.03.2018 on the recommendation of SEAC, while EAC based its decision on Form I, Form IA followed by letter and presentation by PP. There is hardly any tangible and substantive discussion either by EAC or by MoEF & CC analyzing various environmental aspects and impacts of the proposed project. Conditions have been laid down which are very generic without any analysis of issues which are patent. Thus, the whole exercise by EAC was based on non-application of mind, which vitiates EC. Mere imposition of general conditions that Air Act, 1981 and Water Act, 1974 norms will be followed is of no consequence when air quality norms are already exceeded and there is no carrying capacity assessment to sustain the project in question. That being so, the said study relied for grant of impugned EC also cannot be sustained.

309. It is undisputed that the land on which the project is proposed belonged to Ministry of Defence. The same was acquired for Metro Rail Project in 2001. The land use was characterized as "public and semi-public" as per MPD-2021 which was changed at the instance of DMRC in the year 2008 for group housing project. Proposal for grant of EC was moved initially on 21.08.2009 which was granted on 13.08.2012 for 324 dwelling units with total built up of area 70,265.90 m². The appellant University raised objections on 08.02.2012 which are said to have been considered by a sub-Committee constituted by SEAC. Amendment in the project was sought on 12.02.2018 for covering more area. Again in 2021, application was submitted for larger built up area, more dwelling units etc. Thus, earlier studies/reports, in any case, would not have been

relevant at all.

310. We find merit in the contention on behalf of the appellant that there was hardly any application of mind by EAC/MoEF & CC to available relevant data and to impact of the project on environment, before granting EC. To give effect to Sustainable Development and Precautionary principles, EC cannot be granted without such assessment and evaluation, which is also known as 'Carrying Capacity Assessment'. Such assessment becomes all the more necessary when available data shows that environmental norms are in excess of prescribed parameters. We may consider this aspect in the light of earlier orders of this Tribunal.

Carrying Capacity Assessment for the Project

311. Data furnished by appellant has been quoted above showing that norms of air quality as well as noise levels are already beyond the prescribed standards. There is, thus, no carrying capacity of the area to sustain any additive load in terms of air or noise levels which undisputedly will happen, even according to PP.

312. Tribunal has earlier considered the issue of carrying capacity on certain occasions. Reference may be made to the order dated 26.10.2018, in OA 568/2016, Ajay Khera vs. Container Corporation of India Limited & Others, as follows:

"15. Delhi is over polluted and figures quite high in the ranking of most polluted cities. There is no study about the capacity of the city in respect of the extent of population which can be accommodated and number of vehicles which can be handled by the roads of Delhi. The Master Plan for Delhi 2021 also does not assess the urban/physical carrying capacity of the NCT of Delhi despite noting a reduction in the carrying capacity of amenities such as drainage. However, no specific emphasis is laid on determination of carrying capacity of the city on the basis of factors such as availability of land, air and water resources for the increasing population in the light of principles of sustainable development and Intergeneration equity.

16. Conscious of the threat posed to limited natural resources due to their overuse, this Tribunal in Metro Transit Pvt. Ltd. Vs. South Delhi Municipal Corporation & Ors.¹ directed the Ministry of Transport to take initiative to assess the number of vehicles to be permitted proportionate to the capacity of the roads in the city in the larger interest of environment. This Tribunal has also directed in SPOKE Vs. M/s. Kasauli Glaxie Resorts and other connected matters² to frame guidelines with respect to carrying capacity assessment for similarly placed hill stations as Kasauli and Eco-Sensitive Zone (ESZ) notified by MoEF & CC to check hazards of unregulated development threatening the fragile ecology. In D.V. Girish v. Union of India & Ors.³ this Tribunal has directed the Ministry of Urban Development and MOEF&CC to conduct detailed carrying capacity study to assess the impact of factors such as construction of resorts, new civil structures, availability of water resources, power lines, soil erosion, extraction of ground water, waste generation and handling, road traffic and pollution and evolve a management plan for preservation of Chikkamangaluru district. Further, in Social Action for Forest and Environment (SAFE) & Ors. v. Union of India and Ors.⁴ it was observed that the relevance of the concept of carrying capacity to the concept of sustainability adds to its value for organizing the management framework. In the light of the current scenario, a similar assessment is necessitated in NCT Delhi.

17. As a yardstick of sustainability, urban carrying capacity is an important conceptual underpinning that must guide a welfare state in promoting sustainable urban development. The concept of "carrying capacity" addresses the question as to how many people can be permitted into any area without the risk of degrading the environment of the area. A dynamic city policy based on carrying capacity assessment is essential to ameliorate the conditions for urban development and residents living quality. Urban carrying capacity is needed to be developed to balance the demands on the resources on the one hand and the capacity of such resources consistent with the need for environment protection. This is the need for sustainable development. Severely straining and degrading the available natural resources of a particular area without regard to capacity assessment is causing irreversible damage to the ecology in terms of pollution of air, water and earth. What would happen to the traffic flow if all roads become parking? What happens to the road travelers, if there is no adequate oxygen in the air on account of excessive vehicles and congestion? How would unlimited housing be provided to people if the land resources are exhausted at particular place? How will water and waste disposal needs be met, if there is unplanned population density in a particular city? These questions require serious consideration. "Urban disease" frequently besetting the cities such as traffic congestion, housing shortage, lack of amenity, pose actual challenges and impediments to sustainable development. While emergency measures such as the odd-even scheme, limiting the flow of tourist vehicles and restraining the timing of fire crackers may help momentarily such as is contemplated under the 'Graded Response Action Plan', long term assessment of physical and environmental carrying capacity and devising measures to restrict overuse on reaching optimum capacity is inevitable to ensure sustainable development. Without such assessment and action, the very survival of people is threatened what to talk of working towards Sustainable Development Goals, 2030 to tackle climate change may remain only a dream. Sustainable development is essential policy and strategy for continued economic and social development without detriment to the environment and natural resources on the quality of which continued activity and further development depend⁵. Natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with realistic approach to capacity of a city or area so that environment may not be affected in any serious way; so that there may not be depletion of water resources. Long-term planning must be undertaken consistent with capacity assessment. It has always to be remembered that the air and water are not without limitation⁶.

18. Accordingly, we consider it necessary to direct assessment of carrying capacity for the NCT Delhi as well as other major cities particularly 102 "non-attainment cities" within reasonable time preferably in one year. Such study can be in phases depending on priority areas having pollution hot spots. Such assessment must specifically study capacity in terms of number of vehicles, extent of population, extent of different nature of activities-institutional, industrial, commercial etc.

19. The Ministry of Urban Development in coordination with the Central Pollution Control Board, Ministry of Transport and other concerned Ministries, the Authorities such as Planning Commission as well the States may carry out such study with the assistance of experts in the field. Methodology to do so may be worked out within two months.

20. As a result of such study, further policy decisions may be taken by concerned Authorities for comprehensive action for checking air pollution in the interest of public health. This may also result in regulation of logistics and infrastructure. The CPCB may act as nodal agency."

313. In the same matter i.e., Ajay Khara vs. Container Corporation of India Limited & Others (supra), further order dated 08.03.2019 is as follows:

"4. As per report of the WHO, Delhi is one of the 10 most polluted cities in the world. This called for a study about capacity of the city in respect of extent of population and number of vehicles to be permitted. Urban carrying capacity assessment was an essential part of urban planning for giving effect to the concept of sustainable development. It was observed:-

"Severely straining and degrading the available natural resources of a particular area without regard to capacity assessment is causing irreversible damage to the ecology in terms of pollution of air, water and earth. What would happen to the traffic flow if all roads become parking? What happens to the road travelers, if there is no adequate oxygen in the air on account of excessive vehicles and congestion? How would unlimited housing be provided to people if the land resources are exhausted at particular place? How will water and waste disposal needs be met, if there is unplanned population density in a particular city? These questions require serious consideration. "Urban disease" frequently besetting the cities such as traffic congestion, housing shortage, lack of amenity, pose actual challenges and impediments to sustainable development. While emergency measures such as the odd-even scheme, limiting the flow of tourist vehicles and restraining the timing of fire crackers may help momentarily such as is contemplated under the 'Graded Response Action Plan', long term assessment of physical and environmental carrying capacity and devising measures to restrict overuse on reaching optimum capacity is inevitable to ensure sustainable development. Without such assessment and action, the very survival of people is threatened what to talk of working towards Sustainable Development Goals, 2030 to tackle climate change may remain only a dream. Sustainable development is essential policy and strategy for continued economic and social development without detriment to the environment and natural resources on the quality of which continued activity and further development depend. Natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with realistic approach to capacity of a city or area so that environment may not be affected in any serious way; so that there may not be depletion of water resources. Long-term planning must be undertaken consistent with capacity assessment. It has always to be remembered that the air and water are not without limitation."

8. As regards the direction to prepare carrying capacity assessment report, we find from the interim report submitted by the CPCB that the Ministry of Housing and Urban Affairs is in the process of developing a methodology for the study. The study is to be carried out through Urban Mass Transit Company (UMTC) as a pilot study. Since the order of the Tribunal is more than four months old, the study had to be done in a time bound manner. The same cannot be delayed

beyond a point in view of urgency of the situation. Tackling air pollution cannot remain pending. Let Central Pollution Control Board furnish such study report, as far as possible, within one month from today."

314. Again, in *Anil Tharthare vs. Secretary Env't. Dept. Govt. of Maharashtra*, it was observed:

"25. Carrying capacity is integral to the principles of Sustainable Development and Polluter Pays principle. As a yardstick of sustainability, urban carrying capacity is an important conceptual underpinning that must guide a welfare state in promoting sustainable urban development. "Urban disease" frequently besetting the cities such as traffic congestion, housing shortage, lack of amenity, pose actual challenges and impediments to sustainable development. Severely straining and degrading the available natural resources of a particular area without regard to capacity assessment is causing irreversible damage to the ecology in terms of pollution of air, water and earth. In light of serious threat, this Tribunal in Original Application No. 568 of 2016, *Ajay Khera v. Container Corporation of India Limited* vide order dated 26.10.2018, posed the following questions:

- (a) What would happen to the traffic flow if all roads become parking?
- (b) What happens to the road travelers, if there is no adequate oxygen in the air on account of excessive vehicles and congestion?
- (c) How would unlimited housing be provided to people if the land resources are exhausted at particular place?
- (d) How will waste water and solid waste disposal needs be met, if there is unplanned population density in a particular city? These questions require serious consideration.

26. Natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with realistic approach to capacity of a city or area so that environment may not be affected in any serious way. It has always to be remembered that both the air and water as resource are not without limitation."

315. In appeal, against above order, Supreme Court in *Keystone Realtors Pvt. Ltd. v. Anil v. Tharthare*, said:

"21. The procedure set out under paragraph 7(ii) of the EIA Notification exists to ensure that where a project is expanded in size, the environmental impact on the surrounding area is evaluated holistically considering all the relevant factors including air and water availability and pollution, management of solid and wet waste and the urban carrying capacity of the area. This was not done in the case of the appellant's project. It was not open to the third respondent to grant an 'amendment' to the EC without following the procedure set out in paragraph 7(ii) of the EIA Notification."

316. This Tribunal got carrying capacity study conducted in respect of Manali and Mcleodganj in Himachal Pradesh by a Committee inter-alia representing G.B. Pant Institute, Almora; Chief Town Planner, Shimla/senior Architect (Planner); A senior Scientist from MOEF&CC; A senior Scientist from the Indian Council of Forestry

Research and Education, Dehradun; Senior Scientist from Wadia Institute of Himalayan Geology, Dehradun; Scientist/Senior official from the Central Ground Water Board, New Delhi; Scientist/Senior official from the Central Pollution Control Board, New Delhi; Representative of National Disaster Management Authority, Govt. of India and Representative of School of Planning and Architecture, New Delhi. Based on such study, the Tribunal directed restriction on constructions in order dated 29.07.2019 in OA No. 635/2017, Ramesh Chand vs. State of H.P. Tribunal observed:

"13. With regard to Manali, the report makes following recommendations on the subject whether any construction can be allowed at Manali:

"Whether construction in Manali be permitted or whether any restrictions need to be imposed, if so, the nature of restrictions which are to be laid down.

As per the findings of this study, Manali MC has no capacity left to accommodate or sustain additional population/tourist. Allowing any construction would mean Govt. is officially encouraging and making provisions for more population/tourists.

In view of above it is recommended to enforce a complete ban on construction activities in Manali MC except the construction of residential houses for their own uses/purpose and government buildings. The construction of other types should only be permitted unless and until adequate provisions for solid waste management and water supply are put in place."

15. With regard to McLeodganj, a separate report has been submitted. After examining various parameters, the Expert Committee recommended as follows:

"In view of above it is recommended to enforce a complete ban on construction activities in McLeodganj except the construction of residential houses for their own uses/pur 1 and government buildings. The construction of other types should only be perm unless and until adequate provisions for solid waste management is put in place."

20. The three templates of 'carrying capacity assessments'-two in the present case i.e. Manali and McLeodganj and one in case of Kasauli which was dealt with by order of this Tribunal vide order dated 05.10.2018 in Original Application No. 218/2017, Society for Preservation of Kasauli and its Environs (SPOKE) v. M/s. Kasauli Glaxie Resorts, may be taken into account by the MoEF & CC and CPCB while carrying out further carrying capacity assessments as required in terms of orders of this Tribunal".

317. In view of above, it is difficult to uphold sustainability of the project in terms of carrying capacity and permissibility of grant of EC without a proper assessment which has not been done.

318. Sustainability of the project has been questioned inter-alia having regard to deteriorated air and noise quality, underground water level, traffic congestion, location close to Northern Ridge, height of the building. In Form I, against the heading 'Environmental Sensitivity', distance from Yamuna is shown to 1.5 km, from Northern Ridge Reserve Forest (RF) 0.5 km., interstate boundary is mentioned as 6.5 km, densely polluted area is 1.5 km, sensitive man made uses are mentioned as 0.5 to 2.5 km. Area

already subject to pollution is mentioned to be none. It is mentioned that site is in Seismic Zone IV. In Form IA, against 'Air Environment', it is mentioned contribution of vehicle emission will be marginal. It is further stated that there will be no significant impact of noise.

319. It has been pointed out by PP that University and educational institutions having more than 1000 students is not within 100 m. However, the site map shows that the area is surrounded by a large number of colleges, various departments of DU and hospitals etc. Impact of such a huge project on existing institutions of importance ought to have been examined. These factors make the project to be environmentally vulnerable, sensitive and critical which aspects have not been duly evaluated. There is no serious consideration of these vital environmental issues.

320. As already mentioned, data furnished by PP itself shows that air quality in the area has no carrying capacity to permit any additive load in terms ambient air. In absence thereof, permitting a project adding to load of pollution will be against the Sustainable Development and Precautionary principles which are tenets of right to life. Similar is the position with regard to noise levels and traffic congestion. On this aspect there is no consideration whatsoever by EAC/MoEF & CC. EC has been granted mechanically, overlooking all the crucial aspects discussed above. There is no consideration of estimation of total existing PM load, estimation of assimilative capacity with respect of PM and estimation of supportive capacity with respect to PM by EAC/MoEF & CC.

Additional load of pollution on account of the project to already deteriorated air quality, noise level and traffic congestion

321. Coming to additional load of pollution on account of added traffic on account of the project, traffic report submitted by PP in the year 2011, mentioned estimated traffic data to be 320 Passenger Car Equivalent (PCU) during peak hour. Report of Prof. Geetam Tiwari, IIT Delhi relied upon by appellant is that since project is for high income premium group, there will be about 900 motorized trips. Project may be non-complaint of Transit Oriented Development Guidelines (TOD) prepared by DDA. Traffic Report 2011 filed by PP mentions volume to the capacity of 0.7 but the same will exceed 1. Since motorized and pedestrian traffic and road surrounding the project are running to capacity, any addition on account of the project will be un-sustainable.

322. Second report relied upon by PP of year 2018 mentions width of Cavalry Lane as 24 m. According to appellant, width of Cavalry Lane is 8.5 m. Similarly, width of Chhatra Marg is 10.5m and not 24m. 2018 report mentions number of cars to 925 against 1091 cars in 2011 report. Average Daily Traffic (ADT) as per 2003 report, is 3484 PCU as against 1844 PCU in 2011 report. 2018 Report is that traffic volume had dipped from 226 PCU to 208 PCU.

323. Now, in the present case, size of project has increased, but no fresh study is conducted and above reports which are obviously irrelevant for the present proposed project have been reported and relied. It shows a glaring non-application of mind on the part of EAC/MoEF & CC.

Air Pollution Levels in Delhi

324. Delhi is one of the 122 identified non-attainment cities, based on ambient air quality data compiled by Central Pollution Control Board with reference to air quality standards under Air Act, 1981 and EP Act, 1986. Tribunal has considered remedial action in OA 681/2018. After noting that the identified causes of air pollution include

vehicular pollution⁷, industrial and construction sector pollution⁸, reference was made to the Graded Response Action Plan (GRAP) notified by MoEF & CC on 12.01.2017 stipulating specific steps for different levels of air quality such as improvement in emission and fuel quality and other measures for vehicles, strategies to reduce vehicle numbers, non-motorised transport network, parking policy, traffic management, closure of polluting power plants and industries including brick kilns, control of generator sets, open burning, open eateries, road dust, construction dust, etc.⁹. Tribunal noted that on account of air pollution, India is ranked at 177 out of 180 countries in Environmental Performance Index.¹⁰ As per World Air Quality Report, 2019 prepared IQ Air, Delhi has been reported to be having the worst air quality amongst all the capital cities of the World for 2nd consecutive year.¹¹ It is also well known that air pollution contains greenhouse gases which have potential to lead to climate change having serious consequences on human existence. Tribunal noted that air pollution has enormous impact on public health particularly children, senior citizens and poor who are more vulnerable. We have already noted the data given by PP showing that air quality norms are exceeded at the location in question. Data is of the date of application. There is no improvement claimed till date. In fact, the situation is further deteriorating which is a well-known fact.

325. Tribunal also directed carrying capacity study of 102 non-attainment cities (which number went up to 122) vide order dated 08.10.2018 and evolving mechanism for review of Master Plans and shifting polluting activities identified in a study. Similar directions were issued for control of noise pollution. Tribunal, vide order dated 08.10.2018, directed steps for bringing air quality within prescribed norms by taking steps to prevent polluting activities. Tribunal directed that action plans be prepared indicating steps to be taken to check different sources of pollution having speedy, definite and specific timelines for execution. Action Plans should be consistent with the carrying capacity assessment of the non-attainment cities in terms of vehicular pollution, industrial emissions and population density, extent of construction and construction activities etc. Depending upon assessed carrying capacity and source apportionment, the authorities may consider the need for regulating number of vehicles and their parking and plying, population density, extent of construction and construction activities etc. Guidelines may accordingly be framed to regulate vehicles and industries in non-attainment cities in terms of carrying capacity assessment and source apportionment. The matter was last reviewed on 20.11.2019 and further directions were issued for installing sufficient number of air quality monitoring stations, completing carrying capacity study, reviewing Master Plans to give effect to such study, prepare action plans to bring the air pollution and noise pollution within norms, carry out afforestation drive, clear legacy waste dump sites and finalise emergency response systems etc. Matter is still pending further consideration as carrying capacity study reports are awaited. This fact is being mentioned to demonstrate that carrying capacity assessment is crucial for sustainable development which is integral part of right to life guaranteed under the Indian Constitution and any activity beyond such carrying capacity is not permissible. In the present case, it has already come on record that there is no carrying capacity in the area in terms of air quality to sustain the project in question.

326. Tribunal has also found that at times EC granted subject to general conditions of compliance of air, water and other environmental norms without effective monitoring mechanism has not been found to be effective mitigation of damage to the environment.¹²

High Rise Building

327. We may also consider grievance against height of building without considering its impact on environment especially on account of closeness to the Ridge. We are of view that restrictions on height of the buildings in such scenarios are inevitable to give effect to Sustainable Development and Precautionary principles. In an article titled 'The Sustainability of Tall Building Developments: A Conceptual Framework' by Kheir-Al-Kodmany, Department of Urban Planning and Policy, College of Urban Planning and Public Affairs, University of Illinois at Chicago, Chicago, IL 60612, USA, published on 05.01.2018, sustainability of tall buildings on account of potential for fire incidents, adverse impact on micro climate due to wind funneling and turbulence around their bases generation of carbon dioxide because of heavy machinery and equipment and waste management has been studied. It may be appropriate to refer to some of the observations:

"Fire Incidences

Tall buildings are prone to massive losses of lives and valuable properties caused by fire. High-rise buildings present several unique challenges not found in traditional low-rise buildings, including greater difficulties for a firefighter to access a smoldering high-rise building, longer egress times and distances, complex evacuation strategies, and smoke movement and fire control. Typical dangers at a fire incidence involve flame, smoke, heat, toxic gases, flashover, and backdraft explosions. However, the multiple floors of a high-rise building create the cumulative effect of needing greater numbers of firefighters to travel great vertical distances on stairs to evacuate the building.

Environmental Dimension

Further, tall buildings exert an adverse effect on the microclimate due to wind funneling and turbulence around their bases, causing discomfort to pedestrians. They cast a shadow on nearby buildings, streets, parks, and open spaces, and they may obstruct views, reduce access to natural light, and prevent natural ventilation.

Energy and Carbon Emission

Also, tall buildings' construction requires great energy and generates considerable carbon dioxide because of operating heavy machinery and equipment such as powerful cranes and pumps (e.g., pumping water and concrete to upper floors) and dump trucks. Transporting building materials from far distances (sometimes across the globe) also consumes energy and produces immense carbon dioxide.

Bird Collision

Bird-glass collisions are an unfortunate side effect of tall building developments throughout the world. Billions of birds perish from collisions with glass yearly, making it the second largest human-made hazard to birds after habitat loss. The U.S. alone is responsible for up to a billion birds yearly. To make matters worse, countless victim birds belong to already declining population species, including Canada Warbler (*Cardellina Canadensis*), Golden-winged Warbler (*Vermivora chrysoptera*), Kentucky Warbler (*Geothlypis Formosa*), Painted Bunting (*Passerina ciris*), Wood Thrush (*Hylocichla mustelina*) and Worm-eating Warbler (*Helmitheros vermivorum*). Clear and reflective glass result in killing birds because birds perceive clear glass as an unobstructed passageway; and

consequently, they attempt to fly through. On the other hand, reflective glass reflects the sky, clouds, and nearby vegetation reproducing a perceived habitat familiar and attractive to birds. Since the majority of modern tall buildings are clad in glass, tall buildings become a prime killer. Approximately 98% of flying vertebrates (birds and bats) migrate at heights below 500 m (1640 ft), and today, tallest buildings in the world reach or come close to the upper limits of bird migration paths. Although bird migration happens in fall and spring seasons, their collision into tall buildings occurs year-round [88]. At night, skyscrapers' lights lure birds in search of navigational cues. Birds usually use stars and the moon, and illuminated windows often divert them from their original flight paths. As such, birds can be attracted to artificially lit tall buildings resulting in collisions. This problem manifests on evenings of inclement weather, when the cloud's altitude is low, which forces birds to fly at lower heights. Attracted by the artificial light rays, some birds collide into the buildings' facades.

Waste Management

Tall buildings generate large volumes of waste because they house large population. On average, the disposal rate of an apartment unit is about one ton per year. While this amount of waste is not different from a low-rise residential unit, the method of waste collection in high-rises is more complicated than that in low-rises. One popular disposal method for tall buildings is the chute system, which consists of vertical shafts that transfer waste to a central location bin in a lower level of the building via gravity. Nevertheless, the large amount of waste accumulated on the ground floor poses a challenge to management systems."

Location of the Building - Closeness to Northern Ridge

328. As per data furnished by PP, distance of project from Norther Ridge is within 500 meters. Vide order dated 30.11.2011 Delhi High Court in WP(C) No. 3339 of 2011, Ashok Kumar Tanwar vs. Union of India, held that clearance of Ridge Management Board is required for construction in the Ridge area. This view was affirmed by Supreme Court in MANU/SC/0688/2016 : (2016) 13 SCC 561, DDA vs. Kenneth Builders & Developers Pvt. Ltd. No doubt, in the present case, project is said to be 500 meters away from Ridge and not in Ridge as such, impact of development of project of such magnitude close to Ridge, which is a Reserve Forest of immense importance and also ecological lifeline of Delhi, was required to be considered which has not been done. It was more important when site is in ground water discharge zone and form a path for recharge of ridge.

329. As already observed, object of requirement for environmental clearance is to ensure that no project adversely affecting environment comes up. Thus, EC can be granted only after ensuring that project will not have adverse impact on environment and not otherwise. This places responsibility on EAC/MoEF & CC to conduct meaningful appraisal of impact of the project on environment. Mitigation measures can be prescribed where project is otherwise viable. In the present case, EC has been granted without adequate appraisal. There are conditions for mitigation, including compliance of Water Act, 1974 and Air Act, 1981. However, once there is no carrying capacity in terms of air quality norms, merely laying down of such general conditions is merely a formality and not adequate safeguard.

330. Considering that carrying capacity of the area to sustain such high rise building has not been conducted and that air and noise levels are already beyond permissible limits, building is located very close to reserve forest, river Yamuna, premier educational institutions and hospitals and areas with high traffic density, we find it difficult to hold that there is application of mind in granting EC.

331. In the context of air pollution, we are of the view that sustainability of this project was required to be evaluated by undertaking carrying capacity assessment in terms of:

- Estimation of total Existing PM load (both PM_{2.5} and PM₁₀).
- Estimation of total Assimilative Capacity w.r.t. PM load (both PM_{2.5} and PM₁₀).
- Estimation of total Supportive Capacity w.r.t. PM load (both PM_{2.5} and PM₁₀).

332. As already observed above, EAC has not examined the above aspects and also Isopleth of predicted ground level concentration of pollutants because of additive effect of such high rise project, in terms of increased traffic load on recipient air has not been predicted which vitiates the impugned EC. We also do not find Windrose diagram of air pollution on record as apparently no pollution Windrose analysis has been conducted.

333. As noted earlier, the site in question was originally parking for Metro Station. Once the site becomes a group-housing complex, parking which was to be at this site will now be on public roads, causing further congestion and consequent pollution. Delhi is already grappling with the problem of parking and it is a matter of common knowledge that most of the public roads have been converted into parking lots on account of ever-increasing number of vehicles without adequate carrying capacity of road infrastructure. Present location is equally affected, if not more, as already discussed.

334. As already mentioned, it is well settled that Sustainable Development and Precautionary Principles are part of right to life. The same are also enforceable under Section 20 of NGT Act, 2010. Polluting activities have to be prevented for clean environment, particularly right to breathe fresh air. Citizens of Delhi are already facing threat to their health on account of air, noise and other pollution. No additive load thereto, can be permitted by such unviable mega project.

335. In the written arguments, PP has referred to the factum that project in question is high income premium building project and every floor has only two flats of 3 or 4 BHK. Obviously, it is to cater to upper echelon of society comprising sufficiently rich people. Contemplating just two vehicles of in such family is under mining the living standard of such class of people for whom the project in question is proposed. The actual number of vehicles are bound to be much more in as much as each family member may have separate vehicle and the exact load would be much more. In any case, when Delhi and NCR area residents are already living under heavy air pollution, without examining the actual impact on air pollution due to the above project, EAC could not have proceeded in a mechanical manner and it shows non-consideration of relevant material and also nondisclosure of complete material by PP.

336. Besides the operational phase, even construction phase is bound to cause huge pollution which aspect has not been mentioned in detail and discussed by EAC at all. We have examined pre-construction air pollution by the project in question. On account

of pre-construction, during construction and post construction activities including demolition would generate higher level of air pollution. At para 5.1 of Form IA (page 397), the baseline levels of PM₁₀ and PM_{2.5} are in very poor zone as is around 150 and above. PM₁₀ is 370 above parameter limits.

<u>Air Quality Index</u>	<u>Micro gm/m³</u>
Good	= 0 - 50
Satisfactory	= 51 - 100
Moderate	= 101 - 200
Poor	= 201 - 300
Very Poor	= 300 - 400
Severe	= 401 - 500

337. At item 5 (5.5 of Form I, page 365), PP has not disclosed any information with regard to construction phase and the pollutant to be released. Further, PP has not indicated the PM levels post construction which is the most critical information as far as Delhi is concern as the Vehicular movements and dust emission generations.

338. Dust generation at 5.3 of Form I, page 364, No quantitative estimation of dust emission due to loading and unloading of excavated earth, all loose construction material like sand, aggregates, cement etc. is made.

339. At para No. 5.4 of Form I, page 365, it is stated that the particulate matter generation is 6 tons per month.

6 tons per month	=6,000 kg/month
	=200 kg/day (@30 days/month)
	=10 kg/hour (@20 hours/day)
	=10,000 grams / 60 sec.
	=167 grams / sec.
	=167 million micro grams/sec.

340. PP in EMP at page 1309, has agreed to provide only Rs. 6.5 lakhs for the dust suppression system in terms of anti-smoke gun and dust mitigation measures. This amount is extremely meager considering the severity of ambient air quality levels of Delhi and NCR region. As reported by the PP, the PM₁₀ level is in the range over 300 micro gram/m³. This shows lack of application by the PP on such important aspect.

341. Noise pollution: In para 6-'Generation of Noise and Vibration and Emissions of Light and Heat', in Form I, PP has given following information:

S. No.	Information/Checklist confirmation	Yes/ No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
6.1	From operation of equipment e.g. engines, ventilation plant, crushers	Yes	Construction Phase: Source of noise generation will be from the crushers construction allied activities (pneumatic equipment, air compressors, machine mounted percussion drills, loaders, trucks and breaking equipment) and operation of DG sets used for construction purpose. DG set will be provided with acoustic enclosure. No noise generating activity likely to adversely affect the ambient noise quality will be carried out during the night. Operation Phase: Noise is likely to be generated from operation of DG sets. DG room will be provided with acoustic enclosure to have minimum 25 dB(A) insertion loss or for meeting the ambient noise standard, which ever is on the higher side under EP Act, GSR. 371(E) and its subsequent amendments. Therefore, no significant impact due to the machinery/equipment is anticipated.
6.2	From industrial or similar processes	No	Not applicable
6.3	From construction or demolition	Yes	Source of noise generation will be from the construction allied activities (pneumatic equipment, air compressors, machine mounted percussion drills, loaders, trucks and breaking equipment)
6.4	From blasting or piling	No	Blasting: No blasting shall be carried out. Piling: Mechanized pile foundation shall be done during the day time only. Piling will be carried out wet boring technology and hence no impact of noise is expected in the surrounding.
6.5	From construction or operational traffic	Yes	Noise generation is expected due to the traffic the movement of construction vehicles. The level of noise shall not cause any adverse impact outside the project site. However, 10 m high barricading has been provided to reduce the propagation of noise. During operation phase, noise generation is expected due to vehicular movement by the residents. Peripheral green belt has been proposed, which will act as barrier against propagation of noise from the project site. Measures like smooth movement of vehicles within the project site will be done.
6.6	From lighting or cooling systems	No	Noise generation from lighting or cooling system is not envisaged
6.7	From any other sources	No	Not envisaged

342. The aspect of noise pollution is divided in construction phase and operation

phase. The said project during construction phase would generate huge noise level on account of man made activities which are part of various construction activities starting from the clearance of the site, excavation and foundation, loading and unloading of materials, superstructure construction etc. and construction machinery movements, vehicular movement and D.G. set. These activities would further enhance the noise level in already exceeded noise levels of Delhi as per the National Ambient Noise standards. This is all the more relevant since there are sensitive receptors like hospitals, educational institutions, residential colonies with old age people and other vulnerable group of people in the immediate vicinity of the instant proposal.

343. In Form IA, item 6.1-6.5 (page 365-366) PP has not discussed noise levels that are anticipated and the mitigative measures that shall be adopted keeping in view the sensitivity of the surrounding area.

344. At Item No. II 6 (page 365, 366 of Form I) Item No. 6.5 of Form I, PP has stated there will be no significant increase traffic, noise and vibration. This statement is false as the project proponent has not based the above fact on any quantification or studies during construction phase, operation and decommissioning phases which is mandatory to be filled up in the said form by the PP. (Guideline Form I).

345. Following are some of the equipments that are used for construction and the noise level tend to generate:

(a) The list of major machinery used during construction phase is given below:

i.	Dumper	Shall be used for mud and material handling
ii.	Concrete mixer with hopper	For RCC work
iii.	JCB	Shall be used for digging and earth work
iv.	Concrete Batching Plant	Will be used for concrete mixing
v.	Cranes	For lifting and moving of materials
vi.	Road roller	For compacting the earth
vii.	Bulldozer	For dismantling

346. The expected noise levels from various activities are given hereunder which are sometimes more than the indicator levels (the ambient noise levels on already over the high level compare to the national noise level standards):

• From vehicles bringing materials to the site	70 dB(A)
• D.G. Set	85 dB(A)
• Excavation	80 dB(A)
• Concrete Mixtures	80 dB(A)
• Hammering	85 dB(A)

347. At page 496, details of noise and vibration has been solved. PP has not mentioned the noise levels and the vibrations that shall be caused during construction. But noise levels decibels that is anticipated should be given. As the project site is located close to Hospitals, Residence, Academic Institutions noise and vibrations have a serious impact on these infrastructures.

348. Noise levels and public nuisances also have not been elaborated at 8.2 at page 505.

349. PP in its reply and written submissions before Tribunal has relied on the standard set for commercial area in the vicinity of the project which will not apply since the area in question is surrounded by large number of educational institutions and, therefore, the standards for commercial area cannot be applied. Here also, proper and complete information has not been given.

350. In the 'Environmental Sensitivity' column page 368, at Item No. III(9). PP had to study areas occupied sensitive man-made land uses (hospitals, schools, places of worship, community facilities). PP has not studied the impact of the project on Delhi University, its departments and other educational institutions within 15 km radius.

351. The information was to be provided by PP in mandatory application form (Form I and IA) as per Manual on Norms and standards for environmental clearance of large construction projects issued by MoEF & CC which is also annexed as Annexure R12 as page 1045 to 1121 (incomplete guideline has been annexed by PP). At the format (expected criteria environmental grading given in the said guideline) PP has to grade each of the activities such as (i.) site plan (ii.) Management of water, (iii.) Building materials (iv.) Management of Energy (v.) Management of Storm water (vi.) Management of solid waste and (vii.) Management of Noise & odour).

352. The grading has to be done with 100 scale. Based on the grading the project is declared as platinum, gold, silver or bronze. Any project getting 40 or below will be graded as zero grading and hence liable for rejection. Further, it is also indicated that minimum grading for NCR project is for gold i.e., grading has to be between 80 to 89. PP has concealed the said grading part which is mandatory by the regulatory authority. Given the approach of the PP in addressing critical issues such as noise, air, ground water and Environmental Sensitivity, the project is unlikely to achieve the prescribed grading of gold. As per Supreme court in Civil Appeal No. 12251 of 2018, Hanuman Laxman Aroskar vs. Union of India and CA No. 1053 of 2019, para 60, it is very clear that defective application is likely rejected to immediately. Further, order at para 67 also states that PP is duty bound to make to full and complete candid disclosure of all aspects bearing upon environment in the study area. PP profess and ignorance about the environment of the study area. The project proponent is bound by the highest duty of transparency rectitude in the Form I.

353. No information with regard to decommissioning has been prescribed. Decommissioning of a project after its completion of life cycle required to supply following information which ought to have been given in Form I by PP.

- i. Quantification of demolition waste
- ii. Steps involved in demolition
 - a. Removal of Disposal of Asbestos items/Materials
 - b. Removal of the New and Unused Movable items/Materials
 - c. Removal of New and Unused Detachable items
 - d. New and Unused Assembled items
 - e. Old/Used Movable items/Detachable
 - f. Miscellaneous Items

iii. Management of the disposal of inert demolition waste.

354. At page 507, with regard to micro climate changes PP has not given proper justification with regard to heat which would be generated from such large construction including air conditioners that will be operational in high rise buildings. Instead, PP has just justified saying green cover will reduce the formation of heat island. It is to mention that the green cover of trees would take maximum cover up to one to two floors which is height of the tree but the buildings are more than 40 floors. Hence heat generation from these structures and mitigation measures are not mentioned. Further micro climatic conditions also include the vehicles that would be owned by the residents. Their movement and emission that would take in confined place has not been studied.

355. We may also note at this stage that the precarious condition of air and water pollution in Delhi has drawn attention of various institutions like Niti Ayog which has projected a dismal picture. Supreme Court has also taken note of the situation in its order dated 08.05.2018 passed in WP(s) (C) No(s). 4677/1985, M.C. Mehta vs. Union Of India & Others, wherein, referring to report submitted by CGWB in May 2018, Court has quoted from the said report and observed as under:

"Status of ground water levels has been filed by the Central Ground Water Board in compliance with the order dated 24.04.2018. The Report is of May, 2018.

A perusal of the Report, which needs to be studied in greater depth, indicates an extremely sad state of affairs.

The conclusion given is as follows:

"Analysis of long term water level data of May 2000 to present period of May 2017 reveals that over the period, in areas categorized as Over Exploited as per Ground Water Resources Estimation of 2013, mostly in South, South East, New Delhi, East, North, North East, and also parts of West & South West district of Delhi State, water level declined rate varied from 0.5 m/year to more than 2 m/year at places. There are some pockets, where change in water level is not significant or remained unchanged. Such pockets of shallow and rising water level areas are diminishing over the period. As such, major part of State is under Overexploited and Semi Critical category and in such areas water levels are showing persistent declining trend during last two decades."

It is quite clear that there is over-exploitation of ground water in South District, New Delhi District, South East District, East District, Shahadara, North East District and almost rest of Delhi is in a semi-critical state. There are only some pockets in West District and Central District which appear to be safe as of now.

We can only urge the concerned authorities dealing with governance of Delhi to look into the Report of the Central Ground Water Board to avoid a water crisis."

356. Further, in the written submission, PP has given a chart mentioning various dates on which project report or approvals by different authorities were granted. Here we find that all the dates are much anterior to the date when application in question was submitted by PP for prior EC i.e. February 2021. Any NOC/clearance/consent granted to an earlier project could not have been relied/referred/considered particularly in view of

the fact that in each subsequent proposal, built up area and the project composition/specifications have changed substantially so much so that the built up area which was about 70,000 m² when first EC in 2012 was granted, has gone to almost double i.e. 1,37,879 m² when application for grant of prior EC was submitted in February 2021. Therefore, the enquiry, investigation or approval if any, granted to an earlier project could not have been taken to be relevant for the subsequent project which was not same as the earlier one but a different project with different built-up area, number of floors, heights etc. i.e., a complete change of composition. The above redundant information relied by PP has been followed by EAC/MoEF & CC in granting of EC, though, ex-facie, such information was inadmissible and could not have been considered for the project in question which was totally different one and of much higher magnitude than as it was when they relied on approvals, clearance, reports etc. were issued or obtained by PP.

357. The discussion made above makes it clear that PP is guilty of concealment of material and information/non-disclosure of complete information/withholding of relevant information and EAC has also not applied its mind to various aspects as discussed above. MoEF & CC in a mechanical manner has granted EC following recommendation of EAC and, therefore, EC is vitiated in law. All the issues discussed above are answered in affirmative, in favour of appellant and against PP as also the statutory Regulators who have granted EC in question.

358. PP has also failed to disclose construction on about 100 m² of the land in question which according to him is a service structure temporary in nature and liable to be removed after completion of the project but it was incumbent upon PP to disclose information in Form I which it has failed.

359. EAC is a statutory body. It enjoins an onerous and cumbersome obligation when it is required to appraise a project/activity to assess its impact on environment. Any laxity on its part may cause serious degradation to environment. Thus, it has to appraise any proposed project/activity very meticulously so as to leave no scope of dereliction. While balancing development, it cannot compromise with its statutory obligation of consideration of all relevant aspects liable to impact environment. Similar is the responsibility of SEIAA/MoEF & CC who is the ultimate authority to grant EC. Unfortunately, both have miserably failed to observe their statutory obligations. In view of above, we conclude that EC granted is without application of mind.

360. We, therefore, answer issues II, III and IV holding that PP has failed to disclose correct and complete informations, withheld relevant informations and violated provisions of EIA 2006, hence is liable to face consequences as per the provisions of EIA 2006. Further, EAC in making recommendation for grant of EC has failed to consider relevant aspects/factors as also failed to appraise project/activity by studying the impact on environment on various factors discussed above. Hence, it is a case where recommendation is without any proper application of mind on the part of EAC and mechanical exercise of MoEF & CC in granting EC also vitiates EC. Further, in view of the answer to question II and III above, EC in question is unsustainable and has been issued without considering relevant aspects and principles obligatory to be examined before grant of EC. Hence, EC is vitiated in law.

361. We accordingly, answer issues II, III and IV in affirmative, i.e., in favour of appellant and against PP.

362. We may mention at this stage that PP has raised issue of bona fide of appellant,

targeting PP selectively, etc. However, for deciding this statutory appeal, and examining validity of EC, we do not any relevance of those allegations.

363. Issue V: In view of our conclusion that EC has been granted without proper evaluation, project cannot be allowed without such proper evaluation about its sustainability or otherwise in the light of available data, a case is made for interference by this Tribunal. As discussed above, existing air and noise levels do not permit any further additive load in the area, particularly a high-rise building having adverse impacts on environment, including potential for fire incidents, adverse impact on micro climate due to wind funneling and turbulence around their bases, generation of particulate matter because of heavy machinery and equipment and waste management. There will be unmanageable impact on traffic density and adverse impact on flora and fauna and groundwater regime of nearby pristine Ridge.

364. In view of our discussion, and answers to questions II, III and IV above, issue V has to be answered in affirmative i.e., in favour of appellant holding that appeal deserves to be allowed and EC in question is liable to be set aside.

365. We, therefore, answer issue V. against PP.

366. In the result, Appeal is allowed. EC dated 21.05.2021 is quashed. Respondent-proponent is restricted from proceeding ahead with any construction activities pursuant to EC in question.

¹Order dated 23.10.2018 in O.A. No. 773/2018

²Order dated 05.10.2018 in O.A. No. 218/2017

³Order dated 30.07.2018 in O.A. No. 462/2018

⁴Order dated 10.12.2015 in O.A. No. 87/2015

⁵MANU/SC/0960/2002 : (2002) 10 SCC 606 T.N. Godavarman Thirumulpad Vs. Union of India, dated 30.10.2002

⁶MANU/SC/0111/1986 : 1986 Supp (1) SCC 517 Rural Litigation & Entitlement Kendra, Dehradun Vs. Stat of UP (Doon Valley Case), AIR 1987 SC 359, dated 18.12.1986

⁷M.C. Mehta v. Union of India(1985) 2 SCC 431, M.C. Mehta v. Union of India MANU/SC/0195/2001 : (2001) 3 SCC 756, M.C. Mehta v. Union of India MANU/SC/0462/1998 : (1998) 6 SCC 63, M.C. Mehta v. Union of India(2002) 3 SCC 356, M.C. Mehta v. Union of India MANU/SC/0375/1998 : (1998) 6 SCC 60

⁸M.C. Mehta v. Union of India MANU/SC/0175/1997 : (1997) 2 SCC 353, M.C. Mehta v. Union of India and Shriram Foods and Fertilizer Industries and Anr.(1986) 2 SCC 235, Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P. MANU/SC/0043/1985 : (1985) 2SCC 431, Mohd. Haroon Ansari v. District Collector MANU/SC/0375/1998 : (1998) 6 SCC 60, Union of India v. Union Carbide Co. MANU/SC/0042/1990 : (1989) 1

SCC 674, M.C. Mehta v. Union of India MANU/SC/0686/1992 : (1992) 4 SCC 256
Sterlite Industries (India) Ltd. etc. v. Union of India & Ors. MANU/SC/0284/2013 :
(2013) 4SCC 575, M.C. Mehta v. Union of India MANU/SC/0488/2004 : (2004) 6 SCC
588, M.C. Mehta v. Kamal Nath MANU/SC/0416/2000 : (2000) 6 SCC 213

⁹S.O. 118(E), Notification, Ministry of Environment, Forest and Climate Change

¹⁰<https://www.thehindu.com/sci-tech/energy-and-environment/india-ranks-177-out-of-180-in-environmental-performance-index/article 22513016.ece>

¹¹World Air Quality Report, 2019 prepared by IQ Air Air Visual

¹² Order dated 22.11.2019 in O.A. No. 837/2018, Sandeep Mittal v. MoEF & CC & Ors.
Para 14. No satisfactory mechanism exists at present, as shown by the above affidavit
itself. It is stated that, at present, it takes 4.5 years for monitoring which means that for
such long period the non-compliance continues making mockery of law. There has to be
speedy monitoring and speedy action, wherever necessary. There has to be a robust
plan for the purpose which is the responsibility of the concerned Government
Departments. We place on record our disapproval for the present sorry state-of-affairs
and expect meaningful improvement.

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MANU/SC/0308/2020

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IN THE SUPREME COURT OF INDIA

Civil Appeal No. 2566 of 2019

Decided On: 17.03.2020

Appellants: **Bengaluru Development Authority**
Vs.

Respondent: **Sudhakar Hegde and Ors.**

Hon'ble Judges/Coram:

Dr. D.Y. Chandrachud and Hemant Gupta, JJ.

Case Category:

APPEAL AGAINST ORDERS OF STATUTORY BODIES - TRIBUNALS

Case Note:

Environment - Environmental clearance - Quashing of - Appellant, as project proponent, submitted application to State Environment Impact Assessment Authority (SEIAA) under EIA Notification seeking Environmental Clearance (EC) for PRR project - EC was granted by SEIAA - First and second Respondents filed appeal to National Green Tribunal (NGT) challenging grant of EC - NGT quashed Environmental Clearance granted to Appellant for development of eight lane Peripheral Ring Road - NGT directed Appellant to conduct a fresh rapid EIA and clarified that project proponent would not proceed on basis of impugned Environmental Clearance - Hence, present appeal - Whether NTF erred in quashing environmental clearance.

Facts:

The Appellant, as project proponent, submitted an application to the State Environment Impact Assessment Authority (SEIAA) under the EIA Notification seeking an EC for the PRR project. The Terms of Reference were prepared by the State Expert Appraisal Committee. The final EIA report was placed before the SEAC and the SEIAA. An EC was granted by the SEIAA. The first and second Respondents filed an appeal to the NGT challenging the grant of the EC. The National Green Tribunal quashing the Environmental Clearance granted to the Appellant for the development of an eight lane Peripheral Ring Road. The NGT was of the view that the primary data upon which the Environment Impact Assessment report was based was collected more than three years prior to its submission to the State Environment Impact Assessment Authority. The NGT was of the view that it was not necessary to adjudicate upon the other contentions that were urged in support of quashing the EC as there was a substantial delay in the preparation of the EIA report. Accordingly, the NGT directed the Appellant to conduct a fresh rapid EIA and clarified that the project proponent would not proceed on the basis of the impugned Environmental Clearance.

Held, while disposing off the appeal:

(i) The Deputy Conservator of Forests revealed that trees were proposed to be cut for the purpose of executing the PRR project. The abject failure of the project proponent in disclosing the number of trees required to be felled was also evident from the rejoinder filed by Appellant before this Court. The EIA report prevaricated by recording that the area required for the proposed PRR project had only a few trees. Though the development of infrastructure may necessitate the felling of trees, the process stipulated under the Notification must be transparent, candid and robust. Hiding significant components of the environment from scrutiny could not be an acceptable method of securing project approvals. There was a serious lacuna in regard to disclosures and appraisal on this aspect of the controversy. [68]

(ii) The SEAC, as an expert body, must speak in the manner of an expert. Its remit was to apply itself to every relevant aspect of the project bearing upon the environment and scrutinise the document submitted to it. The SEAC was duty bound to analyse the EIA report. Apart from its failure to repudiate a process conducted beyond the prescribed time period stipulated by the MoEF-CC, the SEAC failed to apply its mind to the abject failure of the Appellant in conducting the EIA process leading upto the submission of the EIA report for the grant of EC. The SEAC was not required to accept either the EIA report or any clarification sent to it by the project proponent. In the absence of cogent reasons by the SEAC for the recommendation of the grant of EC, the process by its very nature, together with the outcome, stands vitiated. [76]

(iii) There had been a failure of due process commencing from issuance of the ToR and leading to the grant of the EC for the PRR project. The Appellant, as project proponent sought to rely on an expired ToR and proceeded to prepare the final EIA report on the basis of outdated primary data. At the same time, the process leading to the grant of the EC was replete with contradictions on the existence of forest land to be diverted for the project as well as the number of trees required to be felled. [80]

(iv) The SEAC, as an expert body abdicated its role and function by relying solely on the responses submitted to it by the Appellant and failing to comply with its obligations under the OM's issued by the MoEF-CC from time to time. In failing to provide adequate reasons for its recommendation to the SEIAA for the grant of an EC, it failed in its fundamental duty of ensuring both the application of mind to the materials presented to it as well as the furnishing of reasons which it is mandated to do under the Notification. [81]

(v) Therefore, this court propose to issue the following directions under Article 142 of the Constitution:

(a) The Appellant was directed to conduct a fresh rapid EIA for the proposed PRR project.

(b) The Appellant shall, for the purpose of conducting the rapid EIA, hire a sector-specific accredited EIA consultant.

(c) The Appellant shall have due regard to the various deficiencies noted in the present judgment as well as ensure that additional precautions are taken to account for the prevailing state of the environment.

(d) The Appellant shall ensure that the requisite clearances under various enactments had been obtained and submitted to the SEAC prior to the consideration by it of the information submitted by the Appellant in accordance with the OMs issued by the MoEF-CC from time to time.

(e) The SEAC shall thereafter assess the rapid EIA report and other information submitted to it by the Appellant in accordance with the role assigned to it under the Notification. If it was of the opinion that the Appellant has complied with the Notification as well as the directions issued by this Court, only then shall it recommend to the SEIAA the grant of EC for the proposed project. The SEAC and the SEIAA would lay down appropriate conditions concerning air, water, noise, land, biological and socioeconomic environment and other conditions it deems fit.

(f) The Appellant shall consult the requisite authority to ensure that no potential damage was caused by the project to the petroleum pipelines over which the proposed road may be constructed. [83]

JUDGMENT

Dr. D.Y. Chandrachud, J.

Index

A	Introduction
B	Submissions
C	Issues
D	Date of commencement of the PRR project
E	Applicability of the EIA Notification 2006
F	Compliance with the procedure under the EIA Notification 2006
G	Deficiencies in the EIA report
	G.1 Accreditation of the EIA consultant
	G.2 Forest land
	G.3 Trees
	G.4 Pipeline
H	Appraisal by the SEAC
I	Courts and the environment
J	Directions

A Introduction

1. The present appeal arises from a judgment of the Principal Bench of the National Green Tribunal¹ dated 8 February 2019 quashing the Environmental Clearance² granted to the Appellant for the development of an eight lane Peripheral Ring Road³ connecting Tumkur Road to Hosur Road and totaling a length of 65 kilometers. The NGT was of the view that the primary data upon which the Environment Impact Assessment⁴ report was based was collected more than three years prior to its submission to the State Environment Impact Assessment Authority⁵. The NGT was of the view that it was not

necessary to adjudicate upon the other contentions that were urged in support of quashing the EC as there was a substantial delay in the preparation of the EIA report. Accordingly, the NGT directed the Appellant to conduct a fresh rapid EIA and clarified that the "project proponent will not proceed on the basis of the impugned Environmental Clearance." Assailing the order of the NGT, the Appellant, as project proponent, is in appeal before this Court.

2. In a bid to address the growing need for efficient commutation, address traffic congestion and connect the Bangalore-Mysore Infrastructure Corridor (NICE road) with more access points, the Appellant formulated the PRR project scheme in 2005. A preliminary notification was issued on 27 May 2005 Under Section 17(1) and (3) of the Bangalore Development Authority Act 1976⁶ to acquire certain land for the execution of the project. The stated purpose of the project was:

- 1) To decongest the traffic in Bangalore City;
- 2) To cater intercity connectivity and intercity traffic;
- 3) To reduce pollution in the city;
- 4) To reduce heavy vehicles traffic i.e., Lorry and Trucks; and
- 5) To decongest the traffic on outer ring road.

3. Another preliminary notification was issued on 23 September 2005 which concerned the realignment of the proposed road project. A final notification Under Section 19(1) of the BDA Act was issued on 29 June 2007 for the acquisition of the proposed land. The notifications were challenged before the High Court of Karnataka in Writ proceedings⁷ on the ground that the Appellant had no authority to issue the notifications and acquire land for the proposed PRR project. By a judgment dated 22 July 2014, the High Court dismissed the writ petition on the ground that the Appellant was authorised under the BDA Act to acquire the land for the project in question. The Writ Appeal against this was dismissed on the ground of default on 9 February 2017.

4. The Appellant, as project proponent, submitted an application⁸ to the SEIAA on 10 September 2009 under the EIA Notification 2006⁹ seeking an EC for the PRR. The Terms of Reference¹⁰ were prepared by the State Expert Appraisal Committee¹¹ on 21 November 2009. Primary data was collected between December 2009 and February 2010. The final EIA report was placed before the SEAC and the SEIAA in October 2014. An EC was granted by the SEIAA on 20 November 2014. The first and second Respondents filed an appeal to the NGT challenging the grant of the EC. The NGT, by an interim order dated 15 April 2015 granted an interim stay of the EC. The relevant portion of the order reads:

Pointing to the EIA report which was placed before the 1st Respondent, the counsel for the Appellant would submit that the first part of the report would clearly indicate that if the road was constructed, it would pass through the Reserve Forest and the later part it would submit that the Forest clearance is not necessary which by itself would suffice to reject the recommendation. The EIA report would clearly indicate that if the proposed road has got to be constructed approximately 200 trees were to be cut which is thoroughly inconsistent to the report given by the Horticulture and Forest Department. According to their report, it would require felling of 16,685 trees. Added further

by the counsel for the Appellant that if the proposed road is allowed to be constructed it would be above the underground pipe line already laid for transporting petroleum from Mangalore to Bangalore and if any leakages happens in future it would bring forth serious consequence...

There exists a prima facie case in favour of the Appellant for granting an interim order of stay...

The NGT noted the discrepancy between the submission of the Appellant and the existence of a reserved forest through which the proposed road was to pass. The NGT recorded that while the EIA report stated that only 200 trees would be cut for the proposed project, the report given by the Horticulture and Forest Department indicated that about 16,685 trees would be required to be felled for the proposed project. By its final order dated 8 February 2019, the NGT stayed the operation of the EC granted by the SEIAA. The relevant portion of the order reads:

The Environmental Clearance was granted on 20.11.2014. Thus, the primary data was more than three years prior to the EIA report. There are omissions in the EIA report with regard to data of forests land as well as the provisions of revised Master Plan, 2015 prepared by the BDA. Thippagondanahalli Reservoir (TGR) catchment area has been suppressed in the EIA report. Green cover particulars have been overlooked. Further objection is that there is proximity of the area to the petroleum pipelines and land earmarked for petroleum pipelines overlaps the project. According to the Appellant, Stage-I Forest Clearance was not obtained as required...

It is not necessary to adjudicate on the contentions raised, having regard to the patent fact that there was substantial delay in EIA and a period of almost five years passed even thereafter. This Tribunal, vide order dated 15.04.2015, considered the issue...It will, thus, be in the interest of justice that a fresh rapid EIA is conducted. If the project is found viable after incorporating due abatement measures, including the suggestions of the Appellant, the same can be taken up without further delay...

The NGT directed the Appellant to conduct a rapid EIA. It was further directed that if the project is found to be viable after incorporating abatement measures, "the same can be taken up without delay". Notice was issued by this Court on 15 March 2019.

B Submissions

5. Assailing the order of the NGT, Mr. Shyam Divan, learned Senior Counsel appearing on behalf of the Appellant contended that:

(i) The 2006 Notification obliges a project proponent to seek prior EC only for projects that are listed in the Schedule to the Notification. Para 7(f) of the Schedule includes only those projects that are either National or State Highways. The PRR project does not fall within the ambit of either the National Highways Act 1956 or the Karnataka Highways Act 1964. Consequently, the Appellant was under no obligation under the 2006 Notification to seek a prior EC for the PRR project;

(ii) The 2006 Notification came into effect from the date of its publication in the Official Gazette on 14 September 2006. It is prospective in its application. The PRR project commenced on 23 September 2005 upon the issuance of the

preliminary notification under the BDA Act and as such, on the date of the coming into force of the 2006 notification, no obligation existed on the Appellant to seek a prior EC for the PRR project;

(iii) The Appellant executed the EIA process and applied for the grant of an EC out of abundant caution;

(iv) The first Respondent has challenged the grant of the EC by the SEIAA only because his appeal before the Karnataka High Court challenging the acquisition of land for the PRR project was unsuccessful. The present proceedings are merely a method of delaying the acquisition proceedings;

(v) The SEAC acceded to the request of the Appellant to not forward to the SEIAA a recommendation for the closure of the proposal. The SEAC recommended to the SEIAA the grant of the EC to the project in question after due consideration of the EIA report in its 121st meeting between 11 and 18 November 2014; and

(vi) All objections raised by the first Respondent concerning forests, the cutting of trees and the protection of the reservoir were adequately addressed in the EIA report submitted in 2014, on which basis an EC was granted to the PRR project.

6. On the other hand, Mr. Nikhil Nayyar, learned Senior Counsel appearing on behalf of the first Respondent contended:

(i) The term 'highway' or 'expressway' used in the 2006 Notification must be given a wide interpretation and not be restricted to the issuance of a notification under central or state enactments;

(ii) Both the National Highway Act 1956 and the Karnataka State Highway Act 1964 concern the acquisition of land, its development and permissions concerning the collection of toll/fee. The statutory framework does not envisage the wide definition to be attributed to the term 'highway' in matters concerning the protection of the environment;

(iii) The Appellant itself admitted in its EIA report that the PRR project is a category 'B' project falling under the purview of para 7(f) of the Schedule under the 2006 Notification;

(iv) The primary data for the PRR project was collected between December 2009 and February 2010. The EAC conducted the appraisal process after a substantial delay of over four years in the year 2014. This defeats the purpose for which ToRs are issued as the state of the environment is constantly changing;

(v) An OM dated 22 March 2010 issued by the Ministry of Environment and Forests¹² stipulates that EIA reports for projects where the ToRs have been granted prior to the date of the coming into force of the OM must be based on primary data that is not older than three years. The OM further stipulates that a ToR is valid only for a period of four years. The EIA report was prepared after the expiry of the ToR and is legally unsustainable;

(vi) The SEIAA decided to close the file for the PRR project on 17 May 2013,

which decision was communicated to the Appellant on 25 July 2013. A party aggrieved by the action of the SEIAA may only file an appeal Under Section 16 of the NGT Act and the SEIAA was not authorised to reopen the file on the request of the Appellant;

(vii) There was no collection of additional data in the year 2014. The report which is styled as a rapid EIA report in the year 2014 is nothing but the final EIA report under the 2006 Notification which was prepared after the public consultation process was conducted in February 2014; and

(viii) There are significant omissions in the EIA report concerning forest land, green cover, number of trees required to be cut, the catchment area in the Thippagondanahalli Reservoir and proximity of the PRR project to the petroleum pipelines underneath. Material concealment by the project proponent invalidates the EC which was granted by the SEIAA.

7. The rival submissions fall for our consideration.

C Issues

8. Essentially this Court is required to decide:

(i) Whether the PRR project commenced prior to the coming into force of the 2006 Notification;

(ii) Whether the PRR project falls within the scope of para 7(f) of the Schedule to the 2006 Notification obliging the project proponent to seek a prior EC; and

(iii) Whether the Appellant has complied with the conditions stipulated in the 2006 Notification and the OMs issued by the MoEF-CC from time to time.

D Date of commencement of the PRR project

9. This Court is required to adjudicate whether it is the issuance of a preliminary notification Under Section 17 of the BDA Act or a final notification Under Section 19 of the BDA Act that constituted the identification of the proposed site for the project and marked its commencement for the purposes of the 2006 Notification.

10. On 27 January 1994, the MoEF, in exercise of the powers conferred by Sub-section (1) and Clause (v) of Sub-section (2) of Section 3 of the Environment (Protection) Act 1986 Act read with Clause (d) of Sub-rule 3 of Rule 5 of the Environment (Protection) Rules, 1986, issued a notification imposing restrictions and prohibitions on the expansion and modernisation of any activity or a new project unless a prior EC was granted in accordance with the procedure stipulated in the notification. On 14 September 2006, the MoEF released the 2006 Notification in supersession of the previous notification. The 2006 Notification directed that:

...on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities **listed in the Schedule to this notification** entailing capacity addition with change in process and or technology **shall be undertaken in any part of India only after the prior environmental clearance** from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government Under Sub-section (3) of Section 3 of the said Act, in accordance with the

procedure specified hereinafter in this notification.

(Emphasis supplied)

11. The 2006 Notification came into force on the date of its publication and obliges every project proponent to seek prior EC for the projects and activities which are listed in the Schedule to the Notification. According to para 2 of the 2006 Notification, all new projects or activities listed in the Schedule to the 2006 Notification shall require a prior EC from the concerned regulatory authority:

2. Application for Prior Environmental Clearance (EC): An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, **after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant.** The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report.

(Emphasis supplied)

Once a prospective site has been identified by the applicant for the proposed project, all applications seeking an EC shall be made in the prescribed Form 1 and Supplementary Form 1A, if applicable which contains a detailed list of the extent and potential impact of the proposed project. The application must be submitted after the identification of the prospective site and prior to the commencement of any construction activity, or preparation of the land. Thus, the action by the project proponent that is relevant to the obligation to seek a prior EC under the 2006 notification is the identification of the prospective site for the execution of the proposed project.

12. Section 2(a) of the BDA Act defines "authority" as the Bangalore Development Authority constituted Under Section 3 of the Act. Chapter III of the Act deals with development schemes and the procedures that must be complied with in the carrying out of a development scheme. Under Section 15, the Appellant may draw up a detailed development scheme for the development of the Bangalore metropolitan area. Section 16(1) mandates that the Appellant must also provide, in the formulation of the scheme, the details of the land proposed to be acquired for the development scheme. Section 17 contemplates the issuance of a preliminary notification. It reads:

17. Procedure on completion of scheme.- (1) When a development scheme has been prepared, the Authority shall draw up a notification stating the fact of a scheme having been made and the limits of the area comprised therein, and naming a place where particulars of the scheme, a map of the area comprised therein, a statement specifying the land which is proposed to be acquired and of the land in regard to which a betterment tax may be levied may be seen at all reasonable hours.

(2) A copy of the said notification shall be sent to the Corporation which shall, within thirty days from the date of receipt thereof, forward to the Authority for transmission to the Government as hereinafter provided, any representation which the Corporation may think fit to make with regard to the scheme.

(3) The Authority shall also cause a copy of the said notification to be published in [x x x] the official Gazette and affixed in some conspicuous part of its own office, the Deputy Commissioner's Office, the office of the Corporation and in such other places as the Authority may consider necessary.

(4) If no representation is received from the Corporation within the time specified in Sub-section (2), the concurrence of the Corporation to the scheme shall be deemed to have been given.

(5) During the thirty days next following the day on which such notification is published in the official Gazette the Authority shall serve a notice on every person whose name appears in the assessment list of the local authority or in the land revenue register as being primarily liable to pay the property tax or land revenue assessment on any building or land which is proposed to be acquired in executing the scheme or in regard to which the Authority proposes to recover betterment tax requiring such person to show cause within thirty days from the date of the receipt of the notice why such acquisition of the building or land and the recovery of betterment tax should not be made.

(6) The notice shall be signed by or by the order of the [Commissioner] and shall be served,-

(a) by personal delivery or if such person is absent or cannot be found, on his agent, or if no agent can be found, then by leaving the same on the land or the building; or (b) by leaving the same at the usual or last known place of abode or business of such person; or (c) by registered post addressed to the usual or last known place of abode or business of such person.

Section 17 stipulates that the Appellant shall, upon the preparation of a scheme Under Section 15, notify that a scheme has been prepared along with the specifications of the scheme, a map of the area comprised therein and the details of the land proposed to be acquired. The notification is forwarded to the Corporation of the City of Bangalore, which is granted thirty days to provide its comments to the Appellant authority for transmission to the government along with the scheme for sanction. Section 17(3) stipulates that a copy of the notification shall be published in the Official Gazette and affixed in conspicuous parts of the offices of the Appellant and the Corporation. Section 17(5) mandates that the Appellant shall serve on every person whose land is proposed to be acquired a notice to show-cause within thirty days on why the acquisition of the building or land must not take place.

13. Section 18 stipulates that where the procedure stipulated Under Section 17 is complete, the Appellant shall submit the scheme with any modifications, to the Government of Karnataka for sanction subject to the conditions stipulated therein. Section 18 reads:

18. Sanction of scheme.- (1) After publication of the scheme and service of notices as provided in Section 17 and after consideration of representations, if any, received in respect thereof, the Authority shall submit the scheme, making such modifications therein as it may think fit, to the Government for sanction, furnishing,-

(a) a description with full particulars of the scheme including the reasons for any modifications inserted therein;

- (b) complete plans and estimates of the cost of executing the scheme;
- (c) a statement specifying the land proposed to be acquired;
- (d) any representation received Under Sub-section (2) of Section 17;
- (e) a Schedule showing the rateable value, as entered in the municipal assessment book on the date of the publication of a notification relating to the land under the Section 17 or the land assessment of all land specified in the statement under clause(c); and
- (f) such other particulars, if any, as may be prescribed.

(2) Where any development scheme provides for the construction of houses, the Authority shall also submit to the Government plans and estimates for the construction of the houses.

(3) After considering the proposal submitted to it the Government may, by order, give sanction to the scheme.

Under this provision, the Appellant is required to furnish details of the land proposed to be acquired along with a Schedule showing the rateable value, as entered in the municipal assessment book on the date of the publication of the notification. The Appellant furnishes to the government a description with full particulars of the scheme including the reasons for any modifications inserted, plans and estimates of costs and a statement specifying the land proposed to be acquired. Significantly, if the government is satisfied with the proposed scheme, it may accord sanction to the scheme Under Section 18(3) of the Act. A scheme formulated Under Section 15 may only be carried out where sanction has been accorded to the scheme by the Government Under Section 18(3) of the Act.

14. Section 19 of the Act reads thus:

19. Upon sanction, declaration to be published giving particulars of land to be acquired.- (1) Upon sanction of the scheme, the Government shall publish in the official Gazette a declaration stating the fact of such sanction and that the land proposed to be acquired by the Authority for the purposes of the scheme is required for a public purpose.

(2) The declaration shall state the limits within which the land proposed to be acquired is situated, the purpose for which it is needed, its approximate area and the place where a plan of the land may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose and the Authority shall, upon the publication of the said declaration, proceed to execute the scheme.

(4) If at any time it appears to the Authority that an improvement can be made in any part of the scheme, the Authority may alter the scheme for the said purpose and shall subject to the provisions of Sub-sections (5) and (6), forthwith proceed to execute the scheme as altered.

(5) If the estimated cost of executing the scheme as altered exceeds, by a greater sum than five per cent the estimated cost of executing the scheme as sanctioned, the Authority shall not, without the previous sanction of the

Government, proceed to execute the scheme as altered.

(6) If the scheme as altered involves the acquisition otherwise than by agreement, of any land other than that specified in the Schedule referred to in Clause (e) of Sub-section (1) of Section 18, the provisions of Sections 17 and 18 and of Sub-section (1) of this Section shall apply to the part of the scheme so altered in the same manner as if such altered part were the scheme.

Under Section 19, once the Government sanctions the Appellant's scheme, a final notification is published by the government in the Official Gazette declaring that sanction has been received and that the land proposed to be acquired is required for a public purpose. The final notification specifies the limits within which the land proposed to be acquired is situated and specifies the place at which people may inspect the plan. The Appellant is authorised Under Section 19(4) to alter the scheme subject to the Sub-sections (5) and (6). Section 19(6) stipulates that if acquisition of additional land is required over and above the details that were furnished by the Appellant Under Section 18, and otherwise than by agreement with the person whose land is proposed to be acquired, the procedure stipulated in Section 17 and 18 shall be followed.

15. The BDA Act was enacted with the purpose of establishing a development authority for the development of the city of Bangalore and adjacent areas. Sections 17, 18 and 19 stipulate the mechanism that must be followed by the Appellant leading up to the grant of government sanction for a scheme formulated Under Section 15. The purpose underlying Section 17 is to grant to both the Corporation and the persons whose lands are proposed to be acquired an opportunity to file their objections to the proposed scheme and the acquisition of land required for the execution of the project. Though the land proposed to be acquired for the scheme is stipulated in the preliminary notification Under Section 17, the provision to forward to the Corporation a copy as well as serve notices to persons whose lands are proposed to be acquired sub-serves the principles of natural justice where an affected party is extended the right to object to a proposed scheme.

16. Upon the receipt of suggestions and objections, if any, the Appellant may modify the scheme in accordance with the suggestions received and thereafter forward to the Government the scheme for the grant of sanction. However, it is only upon the grant of sanction by the Government Under Section 18(3), that a final notification Under Section 19 is issued. It is only upon the grant of sanction by the Government that a proposed scheme is deemed to be finalized and carried into effect.

17. The 2006 Notification stipulates an obligation to commence the EIA process once a prospective site is identified and before the commencement of any construction or preparation of land. It may be possible that following the formulation of a scheme Under Section 15 and the issuance of a preliminary notification Under Section 17, government sanction is denied or the Appellant drops the proposed scheme prior to the grant of sanction or the issuance of the final notification. In such situations, if it were held that it is the issuance of the preliminary notification identifying the proposed site for the project that marked the commencement of the project for the purposes of the 2006 Notification, the Appellant would be under an obligation to carry out the EIA process for a proposed scheme which may not eventually materialize.

18. The EIA process under the 2006 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 EC, the 2006 notification

attempts to bridge the perceived gap between the protection of the environment and development. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive. While the BDA Act was enacted with the purpose of establishing a development authority for the development of the city of Bangalore and adjacent areas, the 2006 Notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. The BDA Act and the 2006 Notification operate in different fields. It cannot be said that a site is deemed identified for the purpose of triggering the obligations under the 2006 Notification upon the issuance of a preliminary notification Under Section 17 of the BDA Act. Adopting a contrary interpretation would lead to the absurd result where a project proponent is obligated to carry out the EIA process for a scheme even prior to the grant of government sanction and a final notification carrying into effect the proposed scheme. In this view of the matter, the prospective site is deemed to be identified only upon the issuance of the final notification Under Section 19 after the proposed scheme has received Government sanction Under Section 18(3).

19. The final notification Under Section 19(1) of the BDA Act was issued on 29 June 2007 following the grant of government sanction for the acquisition of the land. This being after the coming into force of the 2006 Notification, the contention urged by the Appellant that the project commenced prior to the coming into force of the 2006 Notification cannot be accepted.

E Applicability of the EIA Notification 2006

20. Essentially, this Court is required to address the contention urged by Mr. Shyam Divan, learned Senior Counsel appearing on behalf of the Appellant that the PRR project, being neither a project falling within Section 2 of the National Highways Act 1956 or Section 3 of the Karnataka Highways Act 1964, does not fall within the ambit of the Schedule to the 2006 Notification.

21. Para 2 of the 2006 Notification reads thus:

2. Requirements of prior Environmental Clearance (EC): The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter be referred to as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

- (i) All new projects or activities **listed in the Schedule to this notification;**
- (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified range.

(Emphasis supplied)

Para 2(1) of the 2006 Notification stipulates that only projects listed in the Schedule must be granted prior EC. Para 7(f) of the Schedule to the 2006 Notification, as originally enacted reads:

Project or Activity		Category with threshold limit		Conditions, if any
		A	B	
(1)	(2)	(3)	(4)	(5)
7(f)	Highways	i) New National Highways; and ii) Expansion of National Highways greater than 30 KM, involving additional right of way greater than 20m involving land acquisition and passing through more than one State.	i) New State Highways; and ii) Expansion of National / State Highways greater than 30 km involving additional right of way greater than 20m involving land acquisition.	General Condition shall apply

22. The Schedule to the 2006 Notification stipulates that projects listed in column 3 must be granted prior EC from the MoEF-CC while projects listed in column 4 must be granted prior EC from the SEIAA. The general conditions applicable are listed at the end of the Schedule.¹³ Column 3 of para 7(f) includes new national highways and the expansion of existing national highways while column 4 includes new state highways and the expansion of existing state highways. Admittedly, in the present case, no notification was issued under either the National Highways Act 1956 or the Karnataka Highways Act 1964 notifying the PRR project as a highway under those enactments. Initial discussions took place at the Government of Karnataka level regarding the transfer of the PRR project to the National Highways Authority of India¹⁴. On 10 January 2018, the Central Road Transport Ministry was informed that the Government of Karnataka had granted its consent to transfer the said project to the NHAI on an "as it is" basis. However, the Government of Karnataka, by its order dated 24 June 2008, withdrew the proposal to transfer the PRR project to the NHAI.

23. There is however another aspect of the matter that warrants the attention of this Court. Para 7(f) of the Schedule to the 2006 Notification has been amended¹⁵ since the coming into force of the 2006 Notification.

24. Prior to the issuance of the 2006 Notification, a draft notification was published in the official Gazette on 15 September 2005 stipulating that comments may be sent to the MoEF-CC within sixty days from the date on which the notification was published. Para 7(f) of the Schedule to the draft notification reads:

S. No.	Project or Activity	NIC code (2004)	ISIC code	Category			Conditions if any
				A	A/B	B	
(f)	Roads Highways	45203*		All new National Highways, Express ways and bypasses >= 30 Km length Or All National Highways, Express way expansion projects >= 30 km length and additional right of way of more than 20m	-	All State Highway projects >= 30 km length Or All State Highway expansion projects >= 30 km length and additional rights of way of more than 20 m	GC-1

In the draft notification, para 7(f) to the Schedule included the term 'expressway' under category 'A' projects. However, in the final 2006 Notification, the word 'expressway' was deleted. Absent any conclusive reason for the deletion from the draft notification prior to it coming into force, such deletion cannot be used to construe the terms of the 2006 Notification or subsequent amendments thereto.

25. In exercise of the powers conferred by Sub-section (1) and Clause (v) of Sub-section (2) of Section 3 of the Environment (Protection) Act 1986 read with Clause (d) of Sub-rule (3) of Rule 5 of the Environment (Protection) Act 1986, the Central Government issued a notification dated 1 December 2009 amending, inter alia, para 7(f) of the Schedule to the 2006 Notification. Para (xv) of the amending notification reads:

(xv) against item 7(f),

(a) In column (4), for the entry, the following entry shall be substituted namely:

i) All State Highway Projects; and

ii) State Highway expansion projects in hilly terrain (above 1,000 m AMSL) and or ecologically sensitive areas

(b) in column (5) for existing entry, the following entry shall be substituted, namely:

General Conditions shall apply.

Note: Highways include expressways.

Following the 2009 amendment, column 5 of para 7(f) to the Schedule which

read "General Condition shall apply" was substituted to stipulate that in addition to the application of the general conditions, highways include expressways.

26. Prior to the amendment, a draft notification was published on 19 January 2009 seeking comments and objections thereto. The MoEF-CC, by its order dated 3 July 2009 constituted a Committee under the Chairmanship of Shri J M Mauskar, Additional Secretary to consider the comments received on the draft notification, conduct meetings with the various stake holders and make recommendations for the finalization of the notification. The Committee held various meetings with concerned stakeholders. The MoEF-CC published the report of the Committee titled "Report of the Committee constituted under the Chairmanship of Shri J M Mauskar, Additional Secretary to examine the comments/suggestions on the Draft Amendments to EIA Notification, 2006" in October, 2009. Numerous comments were received by the Committee on various aspects of the draft notification including the proposed amendment to para 7(f) of the Schedule. The initial draft notification only sought to modify column 4 of para 7(f). However, comments were received by the Committee stating that a specific reference to expressways must be made. The Committee formulated its analysis in the following terms:

Analysis: The main suggestion relates to expansion of the scope of the notification by including expressways, bypasses, Major district roads, tunneling for roads within city limits, peripheral roads around municipal corporation limits. There is also a request for expanding the right of way limit from 20 metres to 60 metres. BRO has sought exemption of their projects up to 50 kilometres. **From the comments received, it is perceived that Expressways are different from Highways. However, keeping in view the objective of the Notification, it needs to be explicitly clarified in the Notification that Highways include Expressways.** In regard to other items these may be considered separately. In regard to the proposal for enhancing the right of way limit from 20 metres to 60 metres, this may not be accepted as it would involve significant changes in land use and issues of rehabilitation.

(Emphasis supplied)

27. The analysis of the Committee recorded that the main suggestions related to the expansion of the scope of the Notification by including within its ambit expressways, bypasses, major district roads, tunneling for roads within city limits and peripheral roads around municipal corporation limits. Significantly, the Committee took note of the perception that highways and expressways differed from each other. Though it appeared from the comments that an expansion was sought in the scope of the 2006 Notification, the Committee explicitly clarified that the term 'highways' includes 'expressways'. For other items, the Committee stated that they may be considered separately. The clarification issued for highways and expressways did not amount to an expansion in the scope of the 2006 Notification but only made clear that the term highways always included expressways.

28. Where an amendment is clarificatory in nature, such amendment is deemed to be retrospective in its application. In *State Bank of India v. V. Ramakrishnan* MANU/SC/0849/2018 : (2018) 17 SCC 394, the question before a two judge

Bench of this Court concerned whether Section 14 of the Insolvency and Bankruptcy Code, 2016 which provides for a moratorium for the limited period mentioned, on admission of an insolvency petition, would apply to a personal guarantor of a corporate debtor. In the judgment of National Company Law Appellate Tribunal which was under appeal, it was held that as a Resolution Plan binds personal guarantors as well Under Section 31, the moratorium Under Section 14 would apply to personal guarantors. Assailing this, the Appellant relied upon the Insolvency Committee Law proceedings to contend that an amendment to Section 14 which stipulated that the moratorium shall not apply to a surety in a contract of guarantee to a corporate debtor was clarificatory in nature and that personal guarantors were always intended to fall outside the operation of the moratorium. Accepting this contention, Justice RF Nariman, speaking for the Court held:

31. The Insolvency Law Committee, appointed by the Ministry of Corporate Affairs, by its Report dated 26-3-2018, made certain key recommendations, one of which was:

(iv) to clear the confusion regarding treatment of assets of guarantors of the corporate debtor vis-a-vis the moratorium on the assets of the corporate debtor, *it has been recommended to clarify by way of an explanation that all assets of such guarantors to the corporate debtor shall be outside scope of moratorium imposed under the Code;*

(Emphasis supplied)

...

The Committee concluded that Section 14 does not intend to bar actions against assets of guarantors to the debts of the corporate debtor and recommended that an explanation to clarify this may be inserted in Section 14 of the Code. The scope of the moratorium may be restricted to the assets of the corporate debtor only.

33. The Report of the said Committee makes it clear that the object of the amendment was to clarify and set at rest what the Committee thought was an overbroad interpretation of Section 14.

The Court noted that the Committee clarified that it was never intended that the moratorium Under Section 14 applied to personal guarantors of corporate debtors. Accordingly, an amendment was enacted to Section 14. The Court then proceeded to hold, relying on consistent precedent of this Court, that a clarificatory amendment has retrospective application. A similar position is expounded by G P Singh in his seminal work Principles of Statutory Interpretation. He states:

...An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, in the principal Act was existing law when the amendment came into force, the amending Act also will be part of the existing law.

29. An amending provision which clarifies the position of law which was considered to be implicit, is construed to have retrospective effect. The position of the retrospective application of clarificatory amendments to notifications is analogous to the position under statutory enactments. In the present case, the Committee appointed by the MoEF-CC clarified that the term highways included expressways and suggested that a suitable amendment be issued to that effect. Based on the report of the Committee, a clarificatory amendment was issued in column 5 of para 7(f) to stipulate that highways include expressways. This being the position, this Court is required to analyze whether the PRR project qualifies as an expressway falling within the ambit of para 7(f) of the Schedule.

30. Neither the National Highways Act 1956 nor the Karnataka Highways Act 1964 define the term 'highway'. The 2009 amendment to the 2006 Notification is silent on the definition of the term 'expressway'. It was submitted by the learned Senior Counsel appearing on behalf of the Respondents that the definition by the Indian Road Congress¹⁶ in the Manual of Specifications and Standards for Expressways in instructive is instructive.

31. The IRC was set up in 1934 on the recommendation of the Indian Road Development Committee constituted by the Government of India for the development of roads in the country. An expert group was constituted in 2013 to formulate a Manual of Specifications and Standards for Expressways. The report, which was released in the same year, defined an expressway in the following terms:

...For this purpose, the Expressway is defined as an arterial highway for motorized traffic, with divided carriageways for high speed travel, with full control of access and provided with grade separators at location of intersections. Generally, only fast-moving vehicles are allowed access on Expressways...

An expressway is defined as an arterial highway designed for high-speed travel with the objective of reducing traffic and generally involving control of access. Other indicators are the provision of toll booths, divided carriageways and grade separators located at intersections. The assessment of whether a road project is an expressway is to be determined on a case by case basis.

32. In the present case, the stated purpose of the PRR project is thus:

- 1) To decongest the traffic in Bangalore City;
- 2) To cater intercity connectivity and intercity traffic;
- 3) To reduce pollution in the city
- 4) To reduce heavy vehicles traffic i.e., Lorry and Trucks
- 5) To decongest the traffic on outer ring road.

The brief note submitted by the Appellant to this Court states that:

...the PRR proposed to be implemented by the BDA is an 8 lane divided road around Bangalore city is primarily **ease the vehicular traffic congestion on its city roads**. The proposed cross-section consists of

4 lane main road in each traffic direction and 3 lane service road on either side of the main road for local traffic. The main road and the service road will be **separated by access-controlled facility. The engineering designs will be carried out in accordance with Indian roads congress standards.**

(Emphasis supplied)

The primary purpose of the PRR project is to ease vehicular traffic congestion in the city. The main road and the service road are to be separated by access-controlled facilities. The engineering designs are to be carried out in accordance with the standards laid down by the IRC. The EIA report prepared by the Appellant describes the PRR project in the following terms:

The proposed Peripheral Ring Road (PRR) project alignment starts from - Tumkur Road as CH. 17a (distance of 16-20 Km from Bangalore city railway station) on NH4 & terminate at Hosur Road near Begur CH. 64.65 Km (65Km) for a smooth flow of traffic, to reduce the **traffic congestion, pollution intensity and travel time.**

...

Highway Design

The proposed Peripheral Ring Road (PRR) alignment has been designed for a **speed of 100 Kmph where ever possible.** However, at a few locations that designs have been carried out for 80 Kmph owing to restrictions at site. The vertical curves are designed as per the guidelines of IRC SP: 23.

...

Interchanges

An interchange is a **grade separated intersection with connecting roadways for turning traffic** between highway and approaches. The intersections are designed during the construction of Peripheral Ring Road (PRR) after contemplating the guidelines and schemes given in AASHTO and IRC: 92 guidelines.

...

Toll Plaza

...All the traffic passing through the toll plaza Section of road will have to pay toll. The public bus transport will be exempted from paying the toll.

Accessibility

The Peripheral Ring Road (PRR) is speculated as a toll road. Provisions are provided for toll booths for tolling the road system. **Accessibility to Peripheral Ring Road (PRR) is restricted** to the following categories of roads

National Highways;

State Highways;

Major District roads.

The proposed project being a new state highway having 65 Km length with Right of Way of 75m the project falls under category "b" in the Schedule of the EIA notification 2006 and requires environmental clearance from SEIAA

(Emphasis supplied)

33. The PRR project is expected to be an 8 lane main carriageway highway (4 + 4 bi-directional), along with a 6 lane road service road (3 + 3 bi-directional) having a right of way of 75 meters and total length of 63.5 kms. The EIA report stipulates that the PRR project was conceptualised with the salient purpose of decongesting the traffic in the city and catering to intercity connectivity and intercity traffic. This, it was stated, would significantly reduce pollution intensity and travel time. The EIA report clarifies that the project is designed to cater to high speed vehicular traffic with vehicles plying at speeds of 100 Kms/hr, where possible, and 80Kms/hr in other places.

34. Moreover, the report stipulates that the project also comprises of ten interchanges and sixteen toll booths. It is stated that access to the road is restricted only to national highways, state highways and major district roads. In this view of the matter, there is no doubt that the PRR project is an expressway falling within the ambit of para 7(f) of the Schedule to the 2006 Notification. The PRR project commenced on the issuance of the final notification Under Section 19(1) of the BDA Act on 29 June 2007. Having concluded that the PRR project is an expressway, the Appellant as project proponent was under an obligation under para 7(f) of the Schedule to the 2006 Notification to seek a prior EC to implement the project.

F Compliance with the procedure under the EIA Notification 2006

35. The next question to be analysed is whether the EIA process followed by the Appellant was in compliance with the procedure stipulated under the 2006 Notification. In the written submissions and the rejoinder filed by the Appellant before this Court, it was contended that the EIA process leading upto the preparation and submission of the EIA report to the SEAC was in compliance with the procedure stipulated under the 2006 Notification. It was contended that the NGT erred in concluding that there was a substantial delay in the preparation of the EIA report and in suspending the operation of the EC granted to the PRR project. On the other hand, in the written submissions filed by the Respondents, it was contended that the delay in the preparation of the EIA report was in contravention of the OM dated 22 March 2010 issued by the MoEF-CC prescribing a validity period of four years for ToRs from the date on which they are issued. In assessing the rival contentions, it becomes necessary to analyse the EIA process followed by the Appellant, leading up to the grant of the EC.

36. On 10 September 2009, the Appellant filed an application with the SEAC seeking a prior EC for the PRR project as a category 'B' project under the 2006

Notification. In accordance with the 2006 Notification, the SEAC at its 46th meeting held on 21 November 2009 formulated and issued the ToR for the PRR project on which basis the Appellant was required to carry out the EIA process. The final EIA report was placed before the SEAC and the SEIAA in November 2014. The SEAC held meetings on 5 April 2013, 9 June 2014, 11-12 August 2014 and 11-18 November 2014. At its final meeting between 11-18 November, the SEAC recommended the grant of an EC for the PRR project to the SEIAA. The EC was granted on 20 November 2014.

37. The SEAC, at its 101st meeting dated 5 April 2013 decided to recommend to the SEIAA the closure of the project file since the ToRs were issued over two years prior to the meeting and there was no correspondence by the Appellant indicating any progress on the EIA process. Acting upon the letter of the SEAC, the SEIAA, at its 66th meeting dated 17 May 2013 closed the file relating to the grant of EC for the PRR project and communicated its decision to the Appellant on 25 July 2013. By a letter dated 24 August 2013, the Appellant requested the SEIAA to re-open the file. The SEIAA, at its 71st meeting dated 3 September 2013 decided to re-open the file, subject to the payment of the requisite processing fee. A public hearing was conducted on 6 February 2014. The SEAC, at its 111th meeting dated 9 June 2014, decided to defer the consideration of the Appellant's proposal as the EIA report was not made available to the Committee members. By a letter dated 2 August 2014, the Appellant placed before the SEAC the EIA report which was prepared after the public hearing was conducted in February 2014. The SEAC, at its 115th meeting dated 11-12 August, 2014 noted numerous deficiencies in the information submitted by the Appellant and decided to obtain additional information which was communicated to the Appellant on 28 August 2014.

38. The Appellant provided to the SEAC a point-wise reply to the information sought along with additional samples on ground water, surface water and soil. A final EIA report was prepared by the Appellant in October 2014 and submitted to the SEAC. At its 121st meeting between 11th and 18th November 2014, the SEAC recommended to the SEIAA the grant of EC to the PRR project. The SEIAA issued the EC on 20 November 2014.

39. Under the 2006 Notification, the process to obtain an EC for new projects comprises a maximum of four stages, all of which may not apply depending on the specific case stipulated under the Notification: screening, scoping, public consultation and appraisal. At the scoping stage, the project proponent submits information in Form 1 to the EAC or the SEAC, as the case may be, for the preparation of a comprehensive ToR. Following this, the project proponent prepares a summary EIA for the purpose of the public consultation process. The summary EIA is presented at the public hearing to invite comments and objections, if any. Based on the comments received and after addressing the objections raised, a final EIA report is prepared and sent to the concerned regulatory authority. At this stage, the regulatory authority must examine the documents "strictly with reference to the ToR" and communicate any inadequacy to the EAC or the SEAC, as the case may be, within 30 days of the receipt of the documents. Within sixty days of the receipt of all the documents, the EAC or the SEAC, as the case may be, shall complete the appraisal process as prescribed in Appendix V. The appraisal stage involves detailed scrutiny by the EAC or the SEAC of all the documents submitted by the applicant for the grant of EC. The EAC and the SEAC are charged with evaluating the information

submitted by the applicant in Form 1/Form 1A with reference to the ToR which was issued for the preparation of the EIA report.

40. Significantly, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1A. Information submitted in Form 1 relies on data and information on an "as is" basis at the relevant time of submitting information. Material information regarding the particulars of the proposed project as well as the potential impact on the environment is sought to enable the EAC or the SEAC to prepare a comprehensive ToR on which basis the applicant proceeds to prepare the EIA report. As the information in Form 1 is submitted on the basis of prevailing environmental conditions as on the date of its preparation, it is necessary to ensure that the EIA process is contemporary to the submission of information in Form 1 and the issuance of the ToR. The MoEF-CC, noting situations where some EIA reports were prepared belatedly on the basis of outdated ToRs, issued a notification on 22 March 2010 prescribing a time limit for the validity of ToRs which stated thus:

Office Memorandum

Sub: Time limit for validity of Terms of Reference (TORs) prescribed under EIA Notification, 2006 for undertaking detailed EIA studies for developmental projects requiring environmental clearance - Regarding.

The EIA Notification, 2006 has prescribed a time limit for validity environmental clearance granted to a project. However, no time limit has been specifically provided under the EIA Notification for the TORs prescribed for undertaking detailed EIA studies. **As a result, the TORs once prescribed would continue to be valid indefinitely, which is definitely not desirable because the TORs are very much site specific and are dynamic to some extent depending upon the site features, its land use and the nature of development around it.** The matter has been considered in the Ministry of Environment & Forests.

It has been decided that from 1.4.2010, the prescribed TORs would be valid for a period of two years for submission of the EIA/EMP Reports, after public consultation where so required. This period will be extendable to the 3rd year, based on proper justification and approval of the EAC/SEAC, as the case may be. Thus, an outer limit of three years has been prescribed for the validity of the TORs with effect from 1.4.2010.

In case of the proposals which has been granted TORs prior to the issue of this O.M., the EIA/EMP reports should be submitted, after public consultation where so required, no later than four years from the date of the grant of the TORs, with primary data not older than three years.

(Emphasis supplied)

41. The MoEF-CC stated that it was clearly undesirable to indefinitely continue a ToR. The environment is, by its very nature, dynamic. Soil quality, air

characteristics and surrounding flora and fauna are among the characteristics of the environment which are constantly in a state of flux. A robust framework of environmental governance accounts for the dynamic nature of the environment. It is for this reason that project proponents are also required to ensure the submission of an Environmental Management Plan and compliance with the monitoring procedures envisaged under the 2006 Notification. An indefinite ToR defeats the very purpose which underlies the 2006 Notification for it may lead to situations where the state of the environment has changed drastically, yet the EIA process is carried out on the basis of outdated information. For this reason, the MoEF-CC prescribed a validity period of two years for TORs, which could be extended by the EAC or the SEAC only by another year. Furthermore, extension is to be granted only where the project proponent provides adequate justification in writing. Relevant to the present case, the notification dated 22 March 2010 stipulates that where ToRs were granted prior to the issue of the OM, the EIA report must be submitted within four years from the date on which the ToR was issued, with primary data not being older than three years.

42. By another notification dated 22 August 2014, the MoEF-CC clarified the validity of the ToRs prescribed under the 2006 Notification in the following terms:

...2(iv) Extension of validity of TORs beyond the outer limit of three years for all projects or activities and four years for River Valley and HEP projects **shall not be considered by the Regulatory Authority. In such cases, the project proponent will have to start the process *de novo* and obtain fresh TORs in case the proponent is still interested in pursuing the clearance for the project. Reuse of old baseline data (provided it is not more than 3 years old) for the purpose of preparation of fresh EIA and EMP report will be considered subject to due diligence by the EAC/SEAC which may make appropriate recommendations including the need for revalidation.** Baseline data older than 3 years will not be used for preparation of EIA/EMP report. In any case, the PH shall have to be considered afresh in such cases.

(Emphasis supplied)

The MoEF-CC clarified that where the time period prescribed for the ToR has expired, the regulatory authority "shall not" consider any further extension and a project proponent seeking to continue the project must initiate the EIA process *de novo*. This includes the submission of fresh information in Form 1 and the prescription of a new ToR to guide the preparation of the EIA report. The extraordinary prescription of conducting the EIA process afresh was in keeping with the commitment to a framework of environmental governance which accounts for the dynamic nature of the environment.

43. By another notification dated 7 November 2014, the MoEF-CC issued a notification clarifying the time limit prescribed for ToRs as well as the consideration of EIA reports by the SEAC which relied on primary data older than three years. The notification, in so far as it is relevant reads:

2. The matter has been further examined in the Ministry in the light of the decision taken as part of clearance reform and it is felt that it would not be logical to start the process of environment clearance *de novo*

including taking fresh Terms of Reference (TORs), **if the base line data collected for preparation of EIA/EMP report and/or public consultation are more than three years old.**

3. Thus, it has been decided to substitute para 2(v) of the above referred Office Memorandum No. J-110113/41/2006-IA. II(I) (part) dated 22.08.2014 with the following:

(v) (a) All the projects which have been recommended by the Expert Appraisal Committee (EAC) shall be considered by the Competent Authority even if data collected has become more than three years old **as the ToRs itself used to have three years validity and extendable by one more year.**

(b) All the projects where the project proponent have already submitted their EIA/EMP Report for consideration by the EAC though the cases have still not been placed before the EAC and meanwhile the data has become more than three years old, shall be considered for the same reasons as given in para (a) above....

(Emphasis supplied)

This notification stipulated that the 'concerned authority' shall consider EIA reports for the grant of EC even where the primary data relied upon was collected beyond three years from the preparation of the EIA report. This was because the ToR itself was extendable beyond three years by an additional year. Thus, where the EIA report is prepared within the prescribed time period for the validity of the ToR, the concerned authority may consider an EIA report which relies on primary data which was collected more than three years ago i.e. in the fourth year preceding the preparation of the EIA report. The effect of the notification was to prescribe a uniform validity period of four years for both ToRs and the primary data collected. However, the stipulation that a fresh EIA process must be undertaken where the ToR has expired was retained.

44. In the present case, the ToR was issued on 21 November 2009, prior to the issue of the OM dated 22 March 2010. Hence, by virtue of the notification, the Appellant was required to submit the EIA report within four years from the date of the issuance of the ToR i.e. before 21 November 2013. The SEAC was under a corresponding obligation to refuse the consideration of any EIA report prepared after the expiry of the ToR. Public hearing was conducted belatedly only on 6 February 2014 and the EIA report prepared thereafter was placed before the SEAC only on 2 August 2014, nearly a year after the ToR had expired. We cannot gloss over the failure of the project proponent to comply with the OMs issued by the MoEF-CC prescribing a time limit for the validity of the ToR. The decision of the SEAC to proceed with the EIA report as well as seek additional information from the project proponent despite the expiry of the ToR suffers from a non-application of mind and is unsustainable.

45. Moreover, primary data was collected in December 2009 and February 2010. The EIA report was prepared after the public hearing was conducted in February 2014, nearly a year after the primary data had expired in terms of the OMs issued by the MoEF-CC. In the final EIA report prepared in October 2014, it is stated:

1.8 Study Period

To prepare the Rapid Environmental Impact Assessment (REIA) report for the proposed project, **the data was collected from December to February (2009-2010)** in the study area. Micro Meteorological parameters were recorded such as wind speed, wind direction and relative humidity on hourly basis during the study period.

3.5 Monitoring period

Meteorological data was collected for the study area during **the months of winter (December, January and February (2009-2010))**, Wind Speed, Wind Direction, Temperature and Relative Humidity were recorded on hourly basis for the total study period

(Emphasis supplied)

46. Admittedly, the EIA reports prepared in August and October 2014 relied on primary data which was collected between the months of December 2009 and February 2010. The EIA report was prepared prior to the coming into force of the OM dated 7 November 2014 by which the MoEF-CC extended the validity of primary data collected from a period of three years to four years. Even if the benefit under the notification were extended to the Appellant, it was duty bound to collect fresh primary data upon the expiry of four years from the date of issuance of the ToR i.e. 21 November 2013. This was evidently not done. This being the case, there is no manner of doubt that the final EIA report prepared on the basis of an expired ToR and primary data was in contravention of the OMs dated 22 March 2010, 22 August 2014 and 7 November 2014 issued by the MoEF-CC and could not form the basis of a validly issued EC.

47. It is also pertinent to note that a Rapid EIA along with a socio-economic study was prepared by M/s. Ramky Enviro Engineers Ltd., the EIA consultant for the PRR project on behalf of the Appellant in November 2010. This EIA report relied on primary data collected between the months of December 2009 and February 2010 and analysed the impact of the proposed PRR project on the environment. A perusal of both the 2010 rapid EIA report and the EIA report prepared in October 2014 reveals that the data as well as the analysis of the impact of the proposed PRR project on the environment in the 2014 report is similar to that in the 2010 Rapid EIA report. It appears that the EIA consultant has reproduced verbatim, portions of the Rapid EIA report which was prepared in the year 2010. No effort was taken by the Appellant to ensure the fresh collection of data in compliance with its obligations under the OMs issued by the MoEF-CC. In this view of the matter, the contention urged on behalf of the Respondents that there was a substantial delay in the carrying out of the EIA process, vitiating the process commends itself for our acceptance.

48. In the rejoinder and brief note of submissions filed before this Court by the Appellant, it was contended that any delay in the collection of primary data was remedied by the collection of fresh samples in reply to the questions raised by the SEAC in its 115th meeting dated 11-12 August, 2014. The primary data furnished in reply, it was urged, dated to the year 2014 and not 2010. In assessing this contention, it is necessary to advert to the questions raised by the SEAC to the Appellant. The SEAC, at its 115th meeting noted shortfalls in the information submitted by the Appellant and decided to obtain additional

information. This was communicated to the Appellant on 28 August 2014. The SEAC sought additional information on the following:

- 1.** EIA accredited consultant for Highway projects was not present
- 2.** Declaration of experts involved in preparation of EIA report is not furnished in the report
- 3.** Accessibility to all villages on either sides of the proposed road has to be preferably through underpasses.
- 4.** Baseline data of hardness of borewell water furnished in the report is found to be wrongly analysed.
- 5.** Surface water analysis report is found to be with wrong results.
- 6.** All the parameters required to be tested as per NABET guidelines are to be analysed and furnished with lab reports.
- 7.** Sampling locations are to be marked on maps windrose diagram to be superimposed.
- 8.** In AAQ analysis, CO concentration is reported to be at dangerous level and this has to be checked again.
- 9.** EMP to be revised and has to be site specific.
- 10.** Sensitive location monitoring to be explicitly mentioned in EIA report with details of location.
- 11.** Regarding information on forest land in the EIA report there are contradicting information in the report.
- 12.** Trees to be planted are to be known in advance to grow samplings.
- 13.** Soil analysis to be revalidated.
- 14.** Borrow area of earth to be part of EIA report.
- 15.** Emergency relief operation to be included.
- 16.** As per the proposals submitted in page No. 10. "No forest land is involved in the proposed project. Hence forest clearance is not required" whereas in the same proposal page No. 21 "the total forest land to be diverted is estimated to be 1.5ha in the jarakabande kaval at Ch. 12.000" to 12.500. The contradictory information to be explained with documents.
- 17.** In the same proposal under the head 10.3 afforestation plan: "Species proposed for afforestation plan are Avicennia officinalis, Avicennia alba, Rhizophora mucronara & Rhizophora aciculate etc., they are mangrove-tropical tree growing in shoes i.e., they are endemic in sea shores (coastal area in the Kundapur coast) etc.
- 18.** PP is advised to consult the forest wing under BDA to design (1 to 2) rows depending on the availability of the area) the strip plantations

on either side of the proposed road with suitable native fruit yielding shade bearing & fast growing species (instead of this consultant), to improve the micro climate. Committee decide to obtain additional information sought above and to recall the proposal alter receipt of the information.

By its letter dated 12 November 2014, the Appellant provided to the SEAC a point-wise reply to the information sought along with additional samples on ground water, surface water and soil.

49. The questions framed by the SEAC and responses filed by the Appellant demonstrate that there existed serious deficiencies in the EIA report which was submitted to the SEAC. This included outdated data on the AAQ air analysis, soil quality, forest land and the number of trees to be planted. The SEAC noted certain shortfalls which concerned limited aspects of the EIA report including the baseline data of hardness of borewell water, soil analysis and forest land. In addition to this, the SEAC directed that certain samples collected were to be marked on the map submitted to the SEAC in the EIA Report. Significantly, the SEAC noted the discrepancy concerning the disclosure of the existence of forest land. This aspect shall be explored in the course of the judgment.

50. The SEAC framed questions and sought information which was clarificatory in nature and covered specific substantive aspects of the data submitted in the EIA report. The EIA report on the other hand covers a wide range of matters which include terrain, topography, land requirements, terrain classification, wind and noise pattern analysis, air quality analysis, surface and ground water analysis, soil environment analysis, impact of flora and fauna and environmental monitoring plans.

51. The submission of additional fresh data on a few points raised in the form of a query on behalf of the SEAC does not remedy the general obligation to ensure that the EIA report was prepared within a time period of four years from the date of the issuance of the ToR, relying on primary data that was no older than four years. Merely because some additional information was sought which required the furnishing of additional details and the collection of fresh samples, it cannot be said that such an exercise cures the defect arising from the preparation of an EIA report outside the time period prescribed by the MoEF-CC. Significantly, even at the relevant time when information was sought from the project proponent, both the ToR as well as the primary data upon which the EIA report was prepared was beyond the period of their validity. In such a case, the SEAC, by seeking additional information, has traversed beyond the power conferred upon it under the 2006 Notification.

52. The SEAC proceeded to recommend to the SEIAA the grant of the EC to the PRR project in contravention of the obligations stipulated under the OM's issued by the MoEF-CC. Significantly, the SEAC considered the final EIA report only at its 121st meeting between 11 - 18 November 2014 when the OM dated 22 August 2014 issued by the MoEF-CC was in force. The SEAC was under an obligation to direct the Appellant to conduct the EIA process de novo. The SEAC and the project proponent cannot circumvent the obligation to ensure reliance on contemporary data by seeking additional information beyond the prescribed validity of the ToR and primary data. The SEAC has clearly erred in recommending to the SEIAA the grant of EC despite the non-compliance by the

Appellant with the prescribed time limit for the preparation of the EIA report.

G Deficiencies in the EIA report

G. 1 Accreditation of the EIA consultant

53. In the written submissions submitted by the Appellant, it was contended that the EIA process was undertaken on behalf of the Appellant by M/s. Ramky Enviro Engineers Pvt. Ltd., a non-accredited EIA consultant. This, it was submitted, was in contravention of the OM dated 2 December 2009 issued by the MoEF-CC mandating that only sector-specific accredited EIA consultants should be engaged to carry out the EIA process.

54. The MoEF-CC, by its notification dated 2 December 2009, mandated the registration of EIA consultants under the scheme of Accreditation and Registration of the National Accreditation Board of Education and Training/Quality Council of India. The relevant portion of the notification reads:

...It has been felt in the Ministry that there is a need to enhance the quality of EIA reports as the Consultants generally, undertake preparation of EIA/EMP Reports in many sectors and in some instances without requisite expertise and supporting facilities like laboratories for testing of samples, qualified staff etc. The good quality EIA Reports are prerequisites for improved decision making.

3 . After detailed consideration of the issued relating to the accreditation of the Consultants, following decisions have been taken:

- **All the Consultants/Public Sector Undertaking (PSUs) working in the area of Environmental Impact Assessment would be required to get themselves registered under the scheme of Accreditation and Registration of the NABET/QCI.**

- **Consultant would be confined only to the accredited sectors and parameters for bringing in more specificity in the EIA document.**

4. It is decided, in the above factual matrix that no EIA/EMP Reports prepared by such Consultants who are not registered with NABET/QCI shall be considered by the Ministry after 30th June, 2010.

(Emphasis supplied)

55. The MoEF-CC prescribed that it is mandatory for every consultant or PSU acting as an EIA consultant to get themselves registered under the accreditation scheme of the NABET/QCI. Moreover, a consultant would be confined to the sector for which they receive accreditation to ensure expertise and specificity in the carrying out of the EIA process. This was also to ensure the availability of facilities like laboratories. It was stated that a good quality EIA report is a precondition for improved decision-making. In the written submissions before this Court, the Appellant urged that M/s. Ramky Enviro Engineers Pvt. Ltd. was hired in November 2009 upon the issuance of the ToRs prior to the coming into force of the OM dated 2 December 2009. Consequently, there was no obligation to engage an accredited consultant for the preparation of the EIA report. Be that as it may, Ramky Enviro Engineers Pvt. Ltd., Hyderabad was granted the status of a

'consultant with accreditation' vide OM dated 30 June 2011 issued by the MoEF-CC. At the time of the preparation of the EIA report which was submitted to the SEAC, the EIA consultant had received accreditation. However, the learned Counsel appearing on behalf of the Respondents has also placed on record a copy of the minutes of the 4th Accreditation Committee Meeting for Re-Accreditation held on 22 November 2013. The case of Ramky Enviro Engineers Pvt. Ltd., Hyderabad was considered in the following terms:

21. Ramky Enviro Engineers Pvt. Ltd., Hyderabad

The case of Ramky Enviro Engineers was discussed earlier in RAAC meeting dated Oct. 28 2013. Inadequacies with respect to a) Variation in names of candidate in list of experts/persons included in EIA b) Implementation of QMS and c) Quality of EIA were observed. Ramky Enviro was asked to explain the reasons for shortfalls to Accreditation Committee (AC)

...

Results of the Re-accreditation (RA) assessment are given below:

Ramky Enviro Engineers have scored more than 60% as an organization and therefore qualifies for Cat. A EIA projects. However, in respect of Completeness and quality of EIA, the marks are less than 60% indicating scope of improvement vide points mentioned below in relevant section.

2.1.1 Scope of accreditation

Sl. No.	Sector No. as NABET Scheme	Name of Sector	Cat.
1	1	Mining	A
2	40	Thermal Power plants	A
3	20	Petrochemical based processing	A
4	21	Synthetic organic processing	A
5	1	Industrial estate/parks/SEZ	A
6	32	TSDf	A
7	38	Building and Large construction	A
8	39	Area and Township projects	A

56. The Committee noted the deficiencies in the performance of M/s. Ramky Enviro Engineers Pvt. Ltd. as an EIA consultant and indicated a scope for improvement. The Committee then proceeded to record the sectors for which M/s. Ramky is granted accreditation. Conspicuous in its absence is the grant of accreditation for serving as an EIA consultant for highway projects. When the final EIA report for the PRR project was prepared in August/October 2014, M/s. Ramky lacked accreditation to serve as an EIA consultant for highway projects. This aspect shall be borne in mind in deciding the eventual directions which this Court seeks to issue.

G. 2 Forest land

57. Essentially, the contention urged on behalf of the Respondents in its written submissions before this Court is that there was a patent and abject failure on the part of the Appellant as project proponent, to disclose the diversion of forest land for the proposed PRR project. The Appellant, it was contended, concealed material information concerning the diversion of forest land and absent the requisite forest clearance, the EC granted for the PRR project stands vitiated.

58. In the draft EIA report prepared for the PRR project, it was stated:

The Forest (Conservation) Act, 1980

...No forest land is involved in the proposed project. Hence, Forest clearance is not required.

Despite an indication that the proposed PRR project did not involve the diversion of forest land, the draft EIA report stated:

...As per the proposed design, the total forest land to be diverted is estimated to be 1.5 Ha and the chainage wise details of the same are presented as:

Table 2.2 B. Details of Forest Area proposed to be diverted for the Project Road

Sl.No.	Proposed chainage	Length (Km)	Forest	Village	Survey No.	Area of the forest to be diverted in HA
1	Ch 12.000 to 12.500	763 M	Jarakabande kavalu	Yelahanka	59	1.5

The draft EIA report noted that 1.5 hectares of forest land in Jarakabande kavalu is proposed to be diverted between linkages Ch 12.000 and 12.500 for a portion of the proposed road totaling 763 meters. A similar contradiction is noted in the final EIA report prepared in October, 2014:

Initial portion of the Highway is along protected forest areas. From the site visits and discussion with officials, it is inferred that there are no noticeable habitats or wild or endangered animal habitats along close vicinity of the project road...

The EIA report affirms at numerous places that 1.5 hectares of forest land will be affected by a part of the project. Despite this, the EIA report proceeds to state:

Sl. No	Type of clearance	Statutory Authority	Applicability	Project stage	Responsibility
1	Prior Environmental Clearance under EIA Notification, 2006	SEIAA	Applicable	Pre construction	BDA
2	Forest Clearance under Forest Conservation Act, 1980	Karnataka State and Forest Dept & MoEF	Not applicable	Pre construction	BDA

59. The EIA report proceeds on the assumption that no forest clearance is required despite the diversion of 1.5 hectares of forest land. No explanation has been provided by the Appellant either in the EIA report or in the written submissions before this Court as to why it was exempt from seeking the requisite forest clearance. The only indication of remedying the loss of forest cover provided in the EIA report is thus:

10.4 Afforestation Plan

Affected Area - Around 1.50 Ha.

Area proposed to be afforested - 4.5 Ha (three times the affected area)

Afforestation Program will be implemented through the Forest Department, BDA and regular monitoring will be ensured.

Land will be identified in consultation with state Forest Department, Bangalore.

The contradictory stand by the Appellant on the forest cover proposed to be diverted for the proposed project was noted by the SEAC in its 115th meeting dated 11-12 August, 2014. The SEAC sought additional information from the Appellant on numerous grounds, of which one concerned the potential loss of forest cover. The SEAC, in its letter to the Appellant, noted the contradictory stand of the Appellant and stated:

...16. As per the proposals submitted in page No. 10. "No forest land is involved in the proposed project. Hence forest clearance is not required" whereas in the same proposal page No. 21 "the total forest land to be diverted is estimated to be 1.5ha in the Jarakabande kaval at Ch. 12.000" to 12.500. The contradictory information to be explained with documents.

The Appellant furnished a point wise reply to the question raised by the EAC. It replied to the question concerning forest land by stating:

As per the proposed design the total forest land to be diverted is estimated to be 1.5 ha in the Jarakabande Kaval at Sh. 12.000 to 12.500.

25 acres of land available in possession with BDA is proposed to be given to Forest Department in lieu of 25 acre of Forest Land (PRR Chainage between 12th and 13th Km in Survey No. 59 of Jarakabande Kaval approved vide by authority Subject No. 80/89 dated 17.03.2009.) needed to PRR.

The Appellant confirmed that 1.5 hectares of forest land is proposed to be diverted. It was stated that in lieu of the 25 acres of forest land required, the Appellant shall make available to the Forest Department 25 acres of land available with it.

60. We cannot gloss over the patent contradiction of the Appellant as the project proponent in disclosing the existence of forest land to be diverted for the purposes of the PRR project. Despite a clear indication that a total 1.5 hectares of forest land is to be diverted for the purpose of the PRR project, the Appellant sought to remedy its failure in seeking the requisite clearances in a post facto manner by stipulating that 25 acres of land available with it is to be given to the forest department in lieu of the forest cover proposed to be diverted for the project. Post facto explanations are inadequate to deal with a failure of due process in the field of environmental governance. While the Appellant submitted to the EAC that it had already obtained the consent of the forest department to divert the proposed forest land, a contradictory stance was taken in the written submissions filed by the Appellant:

It is stated herein that the PRR passes through 25 acres of forest land situated in Jarakabande Kaval Forest Area, Yelahanka Hobli, Bangalore North Taluk and since the alignment inevitably passed through this, the forest department was requested on 28.08.2018 to handover the forest land to the Appellant for the purpose of the PRR project. Thereafter, the forest department replied on 12.01.2019 requesting for alternate land of 25 acres.

It was stated by the Appellant that it was only on 28 August 2018 that it sought to remedy its failure in obtaining the requisite forest clearance by requesting the forest department to handover the forest area involved in the project. The Appellant, in its

rejoinder filed before this Court states:

...It is admitted that the PRR does indeed pass through the forest land in Jarakabande Kavalu forest area. It is also pertinent to point out here that the Appellant has also taken necessary steps to ensure that land measuring 25 acres have also been provided as alternate land for the afforestation plan due to the forests to be cleared in the Jarakabande Kavalu forest area as shown in pg. 238 of IA. No. 53243. **The contradictions mentioned in the EIA report have subsequently stood corrected and clarified before the EAC and the SEIAA.**

(Emphasis supplied)

In addition to the admission by the Appellant of the contradictions in the EIA report, it sought to substitute the requisite forest clearance with an agreement with the forest department to provide an alternative site for afforestation. This is not sustainable in law. Compliance with the 2006 Notification and other statutory enactments envisaged in the EIA process cannot be reduced to an ad-hoc mechanism where the project proponent seeks to remedy its abject failure to disclose material information and seek the requisites clearances at a belated stage.

61. The Karnataka SEIAA, in its affidavit before the NGT sought to contend that the EC was granted subject to the Appellant obtaining the required forest clearance. It was stated:

Forest Area

(b) Environmental Clearance has been provided by SEIAA is for the present alignment of the road as submitted to SEIAA and any change in the scope of the project requires fresh appraisal. In this regard, it may be noted that details of the forest land involved are covered in the Environment Impact Assessment Report. The proponent has decided to provide 25 acres of land available with them to the Forest Department.

It may also be noted that as per law, clearances from other statutory authorities is not mandatory for consideration of the application for Environment Clearance (hereafter, also referred to as "EC") as it is prior Environmental clearance. Nonetheless, specific conditions have been imposed in the EC that such permission shall be obtained by the project proponent.

...

It is also important to note that the EC is subject to compliance with the conditions requiring obtaining of required clearances from the competent authority in accordance with the applicable law such as prior clearances relating to forests and lakes. Any non-compliance will be construed as a violation of the EC conditions and will be dealt with in accordance with law.

In the view of the Karnataka SEIAA, there was no deficiency in the grant of the EC so long as specific conditions were imposed on the project proponent to seek the requisite clearance.

62. Prior to the notification, prior clearance from regulatory bodies or authorities was not required. The MoEF-CC, by a notification dated 31 March 2011, prescribed the procedure to be followed for projects which involve forest land in the grant of an EC.

The relevant portion reads:

...In this regard, reference is also invited to para 8(v) of the EIA notification, 2006 which reads as follows:

Clearances from other regulatory bodies or authorities shall not be required prior to receipt of applications or prior environmental clearance of projects or activities, or screening, or scoping, or appraisal, or decision by the regulatory authority concerned, unless any of these is sequentially dependent on such clearance either due to a requirement of law, or for necessary technical reasons.

...

However, in view of the complexity of the issues involved, the matter has been considered further in the Ministry and in suppression of the earlier instructions, it has now been decided to adopt the following procedure for consideration of such projects.

...

I. (B) Projects for which TORs have already been prescribed by the proposal for environmental clearance is yet to be submitted:

In case of the proposals, which involve forestland, in part or it full, and for which TORs have already been prescribed, the project proponents are advised to ensure that the requisite stage-I forestry clearance has been granted and its copy is submitted along with their application/proposal for environmental clearance. Alternatively, the proponent should delete from their land requirement, the forest land involved in the project and the proposal so amended without any forest land may be submitted for appraisal by the EAC.

In case of projects where forest diversion (Stage I clearance) has been approved for part of the total forest land involved in the project, the proposal will be considered only for the land for which forest diversion has been approved and the non forest land, if any...

63. The MoEF-CC stipulated that where ToRs have been issued and the EIA report for the grant of EC is yet to be submitted, project proponents must ensure that the requisite forest clearance has been granted. A copy of the grant should be submitted along with their application for the grant of EC. Alternatively, the project proponent may delete from the proposed project any forest land that may be affected by the project. The MoEF-CC clarified that where forest clearance has been obtained for only a part of the total forest land involved in the project, the proposal will be considered only to the extent of the land for which forest diversion has been approved.

64. By two subsequent notifications dated 9 September 2011 and 18 May 2012, the procedure concerning the grant of EC for projects involving forest land stood amended in the following terms:

...

(ii) At the stage of consideration of proposals for EC in respect of projects involving forestland, the project proponent would inform the respective EACs about the status of their application for forestry clearance along with necessary supporting documents from the concerned Forest Authorities. It will clearly be informed to the EAC whether the application is at the State level or at the Central level. The EAC will take cognizance of the involvement of forestland and its status in terms of forestry clearance and make their recommendations on the project on its merits. After the EAC has recommended the project for environmental clearance, it would be processed on file for obtaining decision of the Competent Authority for grant of environmental clearance. In the cases where the Competent Authority has approved the grant of environmental clearance, the proponent will be informed of the same and a time limit of 12 months, which may be extended in exceptional circumstances to 18 months, a decision on which will be taken by the Competent Authority, will be given to the proponent to submit the requisite stage-I forestry clearance. **The formal environmental clearance will be issued only after the stage-I forestry clearance has been submitted by the proponent.**

(iii) In the eventuality that the stage-I forestry clearance is not submitted by the project proponent within the prescribed time limit mentioned at para (ii) above, as and when the stage-I forestry clearance is submitted thereafter, such projects would be referred to EAC for having **a relook on the proposal on case by case basis depending on the environmental merits of the project and the site.** In such a situation the EAC may either reiterate its earlier recommendations or decide on the need for its reappraisal, as the case may be. In the eventuality, a reappraisal is asked for, the Committee will simultaneously decide on the requirement of documents/information for reappraisal as also the need for a fresh public hearing.

(Emphasis supplied)

65. Project proponents are duty bound to disclose the existence of forest land and inform the SEAC of the status of their application for forest clearance at the time of submitting the EIA report for the grant of the EC. Where the competent authority has granted the EC for a project, the project proponent is then duty bound to obtain and submit to the competent authority the requisite stage I forest clearance for the proposed project within 12 months or 18 months, as the case may be. Where the project proponent fails to submit the requisite forest clearance within the prescribed time, the EAC or the SEAC are authorised to reexamine the project and decide whether there is a need for the reappraisal of the project. The process envisaged for the disclosure of the forest clearance procedure as well as the submission of the grant of forest clearance sub-serves the purpose of ensuring timely and adequate protection of forest land. Where the EAC or the SEAC is of the opinion that additional documents are required upon the failure of the project proponent to submit the requisite forest clearance within the prescribed time, it may direct that a fresh public hearing be conducted.

66. The Appellant attempted to remedy its contradictory stand on the forest land proposed to be diverted and its failure to obtain the requisite forest clearance by submitting to the SEAC an undertaking to ensure afforestation in an alternate plot of land owned by it in collaboration with the forest department. Such a procedure is neither envisaged under the 2006 Notification nor is in compliance with the notifications issued by the MoEF-CC from time to time. Similarly, the SEAC was under an obligation to ensure that the project proponent had complied with the stipulated procedure for the

grant of forest clearance. Instead, the SEAC proceeded on the clarification issued by the Appellant in contravention of the OMs dated 31 March 2011, 9 September 2011 and 18 May 2012. Despite the numerous deficiencies that were noted in the minutes of the SEAC meeting, it proceeded to recommend to the SEIAA the grant of EC for the PRF project. The decision of the SEAC to recommend to the SEIAA the grant of the EC, despite the contradictory stand of the Appellant as well as its failure to furnish adequate reasons as to why it was exempt from seeking forest clearance, suffers from a non-application of mind.

G. 3 Trees

67. In the written submissions filed before this Court, it was contended by the Respondents that there was a material concealment by the project proponent of the number of trees proposed to be felled for the PRR project. While the Appellant stated that only 200 - 500 trees were required to be felled, the number was in fact as high as 16,000 trees. The Appellant, as project proponent, stated in the 2014 EIA report:

Around 519 plants are felled for the project; the minimum of three times the number of felled plant will be replanted in the nearby areas

The Deputy Conservator of Forests, BDA, in a reply dated 24 April 2009 to a right to information query stated:

With respect to the information sought under the Right to Information Act, 2005, the number of trees that will be cut for the formation of the Peripheral Ring Road - Part I have been provided below:

Sl. No.	Information sought for	Information provided
	Here is the information sought regarding cutting of trees for the formation of the Peripheral Ring Road Part - I	The below mentioned trees belong to the Horticulture & Forest Department will be cut for the formation of the peripheral ring road Part - I 1. Coconut trees: 3837 2. Mango trees: 3142 3. Guava trees: 1361 4. Sapota trees: 0818 5. Arecanut trees: 0287 6. Jamun trees: 0084 7. Jackfruit trees: 0059 8. Tamarind trees: 0040 9. Teak trees: 0201 10. Silver oak trees: 0028 11. Neem trees: 0028 12. Eucalyptus trees: 7000
	Total	16,785

68. The Deputy Conservator of Forests revealed that around 16,785 trees were proposed to be cut for the purpose of executing the PRR project. The abject failure of the project proponent in disclosing the number of trees required to be felled is also evident from the rejoinder filed by Appellant before this Court. It was submitted:

13. In reply to Para No. 6: As had been stated earlier, the clarifications regarding cutting of trees and the corrections have been made subsequently and additionally a further 25 acres of land has been provided for the purpose of afforestation in an alternate piece of land. The same has been shown in pg. 184 of I.A. No. 53243/2019.

The EIA report prevaricated by recording that the area required for the proposed PRR project has only a few trees. Though the development of infrastructure may necessitate the felling of trees, the process stipulated under the 2006 Notification must be transparent, candid and robust. Hiding significant components of the environment from scrutiny cannot be an acceptable method of securing project approvals. There was a serious lacuna in regard to disclosures and appraisal on this aspect of the controversy.

G. 4 Pipelines

69. The EIA process was challenged on the ground that by virtue of a notification dated 12 June 1999, the Central Government acquired certain lands for laying a petroleum pipeline between Mangalore and Bangalore. Petronet MHB Ltd., by its letters dated 7 November 2005 and 21 November 2007 sought to inform the Appellant of the potential crossover of the PRR project over the pipelines. The same was reiterated in its meeting with the Appellant dated 4 February 2008. Petronet MHB Ltd. was of the opinion that as the pipelines contain hazardous material which is highly inflammable, care should be taken to either relocate parts of the project or ensure that adequate safeguards were put in place.

70. The Respondents have placed on record the minutes of the meeting dated 2 February 2008 between the Appellant authority and the representatives of M/S. Petronet MHB Limited. It was noted that the proposed PRR project crosses the PETRONET pipeline at three locations - PRR CH 7600, PRR CH 29100 to 29500 and CH 31100 to 31800 and PRR CH 39500. It was agreed that a joint-inspection would take place for one crossing, while for the other two crossings it was agreed that the PRR project would be raised for clearance height. It was stated:

The MD, M/S. Petronet MHB Limited agreed that the PRR may be taken over at higher level with a clearance of minimum 5.20 m from the ground level and the crossing shall be preferably at right angles. He also insisted that no supports shall be constructed within their Right of user (ROU) of 18.00.

In this view of the matter, the Appellant sought to take adequate precautions to ensure that the proposed PRR project did not cross a pipeline and where it did, it was at a sufficient height without the use of support pillars. The Respondent contended that the Appellant was constrained to revert to the proposed alignment prior to the meeting by virtue of various orders passed by the High Court of Karnataka. This shall be dealt with in the directions which this Court seeks to issue.

H Appraisal by the SEAC

71. In addition to the finding that the SEAC erred in recommending to the SEIAA the grant of EC on the basis of an expired ToR and primary data, there is another aspect of the matter that warrants the attention of this Court. The SEAC, in its 121st meeting between 11 - 18 November 2014 proceeded to recommend to the SEIAA the grant of EC for the PRR project. Appraisal by the SEAC is structured and defined by the 2006 Notification. At this stage, the SEAC is required to conduct "a detailed scrutiny" of the application and other documents including the EIA report submitted by the applicant for the grant of an EC. Upon the completion of the appraisal process, the SEAC makes "categorical recommendations" to the SEIAA either for: (i) the grant of a prior EC on stipulated terms and conditions; or (ii) the rejection of the application. Significantly, the recommendations made by the SEAC for the grant of EC, are normally accepted by the SEIAA and must be based on "reasons". At its 121st meeting, the SEAC recorded the following reasons for its recommendations:

PP and environmental consultant were present in the meeting.

PP stated that the project was conceived and the consultant was engaged in 2003 prior to 2006 EIA Notification. Now JICA is insisting for EC.

PP have submitted the compliance for the above queries raised by the committee vide their letter dated 12.11.2014.

After due deliberations the committee decided to recommend the proposal to SEIAA for consideration to issue EC.

PP has submitted an undertaking on the day of the meeting on the following points:

1. To provide pedestrian crossings in the utility crossings facility taking all the precautions.
2. Adequate CD works
3. To maintain Raja Kalave
4. To take up afforestation work separately
5. Major crossings of NH/SH/MDR/VR
6. Accessibility to proposed road from all villages without charging toll.

Action to be taken: Secretary, SEAC to submit the proposal to SEIAA accordingly.

72. The reasons furnished by the SEAC must be assessed with reference to the norm that it is required to submit reasons for its recommendation. The analysis by the SEAC is, to say the least, both perfunctory and fails to disclose the reasons upon which it recommended to the SEIAA the grant of EC for the PRR project. The SEAC proceeded merely on the reply furnished by the Appellant to the queries raised by the SEAC at its 115th meeting dated 11-12 August, 2014. In this view, the procedure followed by the SEAC suffers from a non-application of mind.

73. The SEAC is under an obligation to record the specific reasons upon which it recommends the grant of an EC. The requirement that the SEAC must record reasons, besides being mandatory under the 2006 Notification, is of significance for two reasons: (i) The SEAC makes a recommendation to the SEIAA in terms of the 2006 Notification. The regulatory authority has to consider the recommendation and convey its decision to the project proponent. The regulatory authority, as para 8(ii) of the 2006 Notification provides¹⁷, shall normally accept the recommendations of the EAC. Thus, the role of the SEAC in the grant of the EC for a proposed project is crucial; and (ii) The grant of an EC is subject to an appeal before the NGT Under Section 16 of the NGT Act 2010. The reasons furnished by the SEAC constitute the link upon which the SEIAA either grants or rejects the EC. The reasons form the material which will be considered by the NGT when it considers a challenge to the grant of an EC.

74. In *Shreeranganathan K.P. v. Union of India* 2014 ALL (I) NGT Reporter (1) (SZ) 1 the grant of an EC to the KGS Aranmula International Airport Project was challenged. The NGT found fault with the process leading upto the grant of the EC since sector specific issues had not been dealt with. The NGT extensively reviewed the information

submitted with regard to the construction of the airport and held thus:

182. ... a duty is cast upon the EAC or SEAC as the case may be to apply the cardinal principle of Sustainable Development and Principle of Precaution while screening, scoping, and appraisal of the projects or activities. While so, it is evident in the instant case that the EAC has miserably failed in the performance of its duty not only as mandated by the EIA Notification, 2006, but has also disappointed the legal expectations from the same. For a huge project as the one in the instant case, the consideration for approval has been done in such a cursory and arbitrary manner without taking note of the implication and importance of environmental issues. ...Thus, the EAC has not conducted itself as mandated by the EIA Notification, 2006 since it has not made proper appraisal by considering the available materials and objections in order to make proper evaluation of the project before making a recommendation for grant of EC.

The Court held that the EAC had not conducted a proper appraisal given its failure to consider the available material and objections before it. The EAC had thus failed to conduct a proper evaluation of the project prior to forwarding to the regulatory authority its recommendation.

75. In *Lafarge Umiam Mining Private Limited v. Union of India* MANU/SC/0735/2011 : (2011) 7 SCC 338, an application was made under the 1994 notification for the grant of an EC to a proposed limestone mining project at Nongtra Village, East Khasi Hills District, Meghalaya. A three judge Bench of this Court rejected the challenge and upheld the grant of the EC to the proposed project. Chief Justice S H Kapadia noted that the doctrine of proportionality must be applied to matters concerning the environment as part of judicial review. The principles of judicial review in environmental matters have been enunciated thus:

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.

76. The SEAC, as an expert body, must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment and scrutinise the document submitted to it. The SEAC is duty bound to analyse the EIA report. Apart from its failure to repudiate a process conducted beyond the prescribed time period stipulated by the MoEF-CC, the SEAC failed to apply its mind to the abject failure of the Appellant in conducting the EIA process leading upto the submission of the EIA report for the grant of EC. The SEAC is not required to accept either the EIA report or any clarification sent to it by the project proponent. In the absence of cogent reasons by the SEAC for the recommendation of the grant of EC, the process by its very nature, together with the outcome, stands vitiated.

I Courts and the environment

77. Courts today are faced with increasing environmental litigation. A development project that was conceptualized as early as in the year 2005 has surfaced before this Court over 15 years later. The period that has led up to the present litigation has involved a myriad of decisions and processes, each contributing to the delay of a project that was outlined to sub-serve a salient development policy of de-congesting the city. Where project proponents and institutions envisaged under the 2006 Notification abdicate their duty, it is not only the environment that suffers a serious set-back, but also the development of the nation. In the eventual analysis, compliance with the deliberative and streamlined process envisaged for the protection of the environment ensures a symbiotic relationship between the development of the nation and the protection of the environment.

78. The adversarial system is, by its nature, rights based. In the quest for justice, it is not uncommon to postulate a winning side and a losing side. In matters of the environment and development however, there is no trade-off between the two. The protection of the environment is an inherent component of development and growth. Professor Charles E Corker of the University of Washington School of Law said in a speech titled "Litigating the Environment - are we overdoing it?"¹⁸:

My answer is yes. We are overdoing our litigation of the environment. I do not mean that there are necessarily too many lawsuits being filed on environmental issues, and that we should somehow cut back - I would not know how, in any case - the number of those suits by ten percent, twenty percent, or fifty percent. I do mean that a disproportionately large share of attention, effort and environmental concern is being focused on lawsuits. Lawsuits cannot accomplish, by themselves, solutions to the most pressing of our environmental problems. As a result, we are in some danger of leaving the most pressing environmental problems unsolved - or even made worse - because the commotion of litigation has persuaded us that something has been accomplished.

Professor Corker draws attention to the idea that the environmental protection goes beyond lawsuits. Where the state and statutory bodies fail in their duty to comply with the regulatory framework for the protection of the environment, the courts, acting on actions brought by public spirited individuals are called to invalidate such actions. Equally important however, is to be cautious that environmental litigation alone is not the panacea in the quest to ensure sustainable development.

79. The protection of the environment is premised not only on the active role of courts, but also on robust institutional frameworks within which every stakeholder complies with its duty to ensure sustainable development. A framework of environmental governance committed to the Rule of law requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, inclusive, participatory and representative decision making. Environmental governance is founded on the Rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognized value Under Article 21 of the Constitution, proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment Under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place.

80. In the present case, as our analysis has indicated, there has been a failure of due process commencing from issuance of the ToR and leading to the grant of the EC for the PRR project. The Appellant, as project proponent sought to rely on an expired ToR and proceeded to prepare the final EIA report on the basis of outdated primary data. At the same time, the process leading to the grant of the EC was replete with contradictions on the existence of forest land to be diverted for the project as well as the number of trees required to be felled.

81. The SEAC, as an expert body abdicated its role and function by relying solely on the responses submitted to it by the Appellant and failing to comply with its obligations under the OMs issued by the MoEF-CC from time to time. In failing to provide adequate reasons for its recommendation to the SEIAA for the grant of an EC, it failed in its fundamental duty of ensuring both the application of mind to the materials presented to it as well as the furnishing of reasons which it is mandated to do under the 2006 Notification.

82. In this view of the matter, neither the process of decision making nor the decision itself can pass legal muster. Equally, this Court must bear in mind the need to balance the development of infrastructure and the environment. We are of the view that while the need for a road project is factored into the decision-making calculus, equal emphasis should be placed on the prevailing state of the environment. The appeal which was filed before the NGT in 2015, was finally disposed of at a belated stage only in 2019.

J Directions

83. Bearing in mind the need to bring about a requisite balance, we propose to issue the following directions Under Article 142 of the Constitution:

(i) The Appellant is directed to conduct a fresh rapid EIA for the proposed PRR project;

(ii) The Appellant shall, for the purpose of conducting the rapid EIA, hire a sector-specific accredited EIA consultant;

(iii) The Appellant shall have due regard to the various deficiencies noted in the present judgment as well as ensure that additional precautions are taken to account for the prevailing state of the environment;

(iv) The Appellant shall ensure that the requisite clearances under various enactments have been obtained and submitted to the SEAC prior to the consideration by it of the information submitted by the Appellant in accordance with the OMs issued by the MoEF-CC from time to time;

(v) The SEAC shall thereafter assess the rapid EIA report and other information submitted to it by the Appellant in accordance with the role assigned to it under the 2006 Notification. If it is of the opinion that the Appellant has complied with the 2006 Notification as well as the directions issued by this Court, only then shall it recommend to the SEIAA the grant of EC for the proposed project. The SEAC and the SEIAA would lay down appropriate conditions concerning air, water, noise, land, biological and socioeconomic environment and other conditions it deems fit; and

(vi) The Appellant shall consult the requisite authority to ensure that no

potential damage is caused by the project to the petroleum pipelines over which the proposed road may be constructed.

84. In moulding the above directions, this Court has factored into its decision-making calculus the fact that the appeal from the judgment of the NGT was filed by the project proponent and no appeal was filed by the Respondents. The order of the NGT directing the Appellant to conduct a rapid EIA is upheld, though for the reasons which we have indicated above. We clarify that no other Court or Tribunal shall entertain any challenge to the ultimate decision of the SEAC or the SEIAA. Liberty is granted to the parties to approach this Court upon any grievance from the decision of the SEAC or the SEIAA pursuant to the order of this Court.

85. The appeal is disposed of in the above terms. There shall be no order as to costs.

Pending application(s), if any, shall stand disposed of.

¹NGT

²EC

³PRR

⁴EIA

⁵SEIAA

⁶BDA Act

⁷WP No. 4550/2008

⁸No. BDA/EM/TA3/PRR/EIA/T333/09-10

⁹2006 notification

¹⁰ToR

¹¹SEAC

¹²MoEF, later renamed as MoEFCC in 2014

¹³"Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as notified by the Central Pollution Control Board from time to time, (iii) Notified Eco-sensitive areas, (iv) inter-State boundaries and international boundaries."

¹⁴NHAI

¹⁵Notifications dated 11 November 2007, 1 December 2009, 4 April 2011 and 22 August 2013.

¹⁶IRC

¹⁷"(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned..."

¹⁸Speech to the Thirteenth Annual Meeting of the Interstate Conference on Water Problems, Portland, Oregon delivered on 29 October, 1970.

MANU/SC/8047/2006

Equivalent Citation: AIR2006SC1350, AIR2006SC1350, 2006(2)ALT67(SC), (2006)4CompLJ513(SC), (2006)4CompLJ513(SC), 2006(2)CTC71, JT2006(2)SC568, (2006)3MLJ201(SC), 2006(2)SCALE494, (2006)3SCC549

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 1251 of 2006 (Arising out of S.L.P. (Civil) Nos. 7196-7197 of 2001)

Decided On: 23.02.2006

Appellants:**Intellectuals Forum, Tirupathi**
Vs.

Respondent:**State of A.P. and Ors.**

Hon'ble Judges/Coram:

Ruma Pal and A.R. Lakshmanan, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: G. Ramakrishna Prasad, Mohd. W. Khan, K.P. Kyalasha Natha Pillai, Suyodhan Byrapaneni, Advs

For Respondents/Defendant: V.R. Reddy, P.P. Rao, Jaideep Gupta, Anoop G. Chaudhary, Sr. Advs., I. Madhavi, B. Sreedhar, Anjani Aiyagari, K. Ram Kumar, Suman Jyoti Khaitan, P.S. Sudheer, A. Mathew, D. Vijan, N.K. Verma, D. Rama Krishna Reddy, D. Bharathi Reddy, Ch.À Leela Sarveswar, Sudha Gupta, V. Sreedhar Reddy, R. Nedumaran, P.S. Narasimha, Avijeet Kumar Lala, Advs. for P.S.N. & Co., June Chaudhary, Manoj Saxena, Amit Meharia, Mohanprasad Meharia, S. Muralidhar, S. Potaraju, N. Rohit and John Mathew, Advs.

Case Note:

Environment - Sustainable development - competing interests of protecting the environment and social development - Petition for preservation of and restoration of status quo ante of two tanks which was sought to be converted for meeting requirements of shelter - Not considered in proper perspective by Division Bench of High Court and has given importance to economic growth - Held, intention for development will not be enough to sanction the destruction of local ecological resources - Balance has to be brought between requirements of shelter and preservation of two tanks - Since developmental activities were going on for long period natural resources of these lakes were lost and was irreparable - Hence, due to impossibility no order could be given to preserve water tanks - But ordered for stoppage of further construction in the area.

Environment - Public Trust - When the state holds a resource that is freely available for use of public then on its conversion high degree of judicial scrutiny was needed - For proper scrutinisation Courts must make a distinction between the government's general obligation to act for the public benefit, and special obligation which it may have as a trustee of certain public resources - Doctrines of public trust violated by government order to convert land.

Case Category:

LETTER PETITION AND PIL MATTER

JUDGMENT**A.R. Lakshmanan, J.****1.** Leave granted.

2. The present matter raises two kinds of questions. Firstly, at a jurisprudential level, it falls on this Court to lay down the law regarding the use of public lands or natural resources, which have a direct link to the environment of a particular area, by the Government. Secondly, this Court should decide, on the facts of the present case, the order to be passed with respect to two tanks in the Tirupathi area - Peruru, and Avilala.

3. The above two appeals were filed by a registered society called, the Intellectuals Forum, against the respondents herein. The contesting parties are the State of Andhra Pradesh represented by its Chief Secretary, Tirupathi Urban Development Authority represented by its Vice-Chairman and the A.P. Housing Board represented by its Vice-Chairman and Housing Commissioner.

4. The present case relates to the preservation of and restoration of status quo ante of two tanks, historical in nature being in existence since the time of Srikrishnadevaraya, 1500 A.D. The tanks are called 'Avilla Tank' and 'Peruru Tank' which are situated in suburbs of Tirupathi Town which is a world renowned popular pilgrim center having every day in-flow of tourists between one lakh to two lakhs.

GRIEVANCE:

5. Systematic destruction of percolation, irrigation and drinking water tanks in Tirupathi Town, namely, Avilala and Peruru Tank and alienation of the Avilala Tank bed land to Tirupathi Urban Development Authority (In short, TUDA) and A.P. Housing Board under G.O. Ms. No. 84 Rev. dated 28.1.1994 and Peruru Tank bed land to Tirumala Tirupathi Devasthanam (In short, TTD) for housing purposes under G.O. Ms. No. 181 Rev. dated 15.3.1991, which are impugned in Writ Petition Nos. 8650 of 1994 and 7955 of 1994 respectively.

6. According to the appellant, the cry of socially spirited citizens calling for judicial remedy was not considered in the right perspective by the Division Bench of the High Court of Andhra Pradesh despite there being over-whelming evidence of the tanks being in existence and were being put to use not only for irrigation purpose but also as lakes which were furthering percolation to improve the ground water table, thus serving the needs of the people in and around these tanks. It was submitted that the High Court has given precedence to the economic growth by completely ignoring the importance and primacy attached to the protection of environment and protection of valuable and most cherished fresh water resources. The Government without considering the well planned development of Tirupathi town alienated the Tank bed lands in favour of some governmental agencies for valuable consideration. It was further submitted that since Tirupathi is in the draught prone region called Rayala Seema, there is always shortage of water and the District machinery is constantly put on alert for devising schemes for the purpose of improving the existing water resources. An Engineering Team which is assigned such a task had visited in and around the foot-hills of Tirupathi and Tirumala for the purpose of identifying sources of fresh water and suggestions to be given for their improvement. Apart from suggestions, the team of Engineers, in the minutes of the meeting held on 26.5.1990, suggested that improvement of feeder channels (Vagus) for

Peruru tank and Avilala tank would improve the percolation of all the surrounding areas and that there is enough potential for the tanks to get enough water if the feeder channels are improved. It was also submitted by representation that the Commissioner of Land Revenue to retain Peruru tank and Avilala tank, since retention of water in the said tanks would improve the water table which is already very low in the surrounding wells and also to the east of the tanks before of gradients. In the meantime, the Government passed G.O. Ms. No. 181 - Revenue dated 15.3.1991 alienating an extent of 150 acres of land which belongs to the tank bed area of Peruru tank to Tirumala Tirupathi Devasthanam (In short, TTD). The members of the appellant's forum as also the various other socially spirited citizens have written letters to various authorities of the Government requesting the said authorities including the Chief Minister not to alienate the tank bed areas of both the tanks for housing or for any other activity except for the purpose for which it is meant. However, the Government issued G.O. Ms. No. 84 - Revenue dated 28.1.1994 authorizing the District Collector, Chittoor to alienate 90 acres of land belonging to Avilala tank bed area to A.P. Housing Board. This Government order further directed that the TUDA should provide a Master plan for the entire area of 170 acres so as to ensure integrated development of Avilala tank area.

7. Since, there was no response to the representations made, the appellant filed two writ petitions in the High Court challenging the Government Orders passed by the Government of Andhra Pradesh by which the District Collector, Chittoor was directed to hand over the tank bed areas of Avilala tank and Peruru tank to TTD and to A.P. Housing Board.

8. Writ Petition No. 7955 of 1994 was filed assailing G.O. Ms. No. 181 dated 15.3.1991, in respect of alienation of Peruru tank bed land to TTD and Writ Petition No. 8650 of 1994 was filed assailing G.O. Ms. No. 84 dated 28.1.1994 alienating Avilala tank bed area land to A.P. Housing Board. The respondents filed their counter affidavits opposing the writ petitions. The Indian Medical Association also made a similar plea that the Government should immediately withdraw its G.Os. alienating Avilala tank and Peruru tank and restore them urgently as percolation tanks, to improve the ground water table. This prayer was made by the Indian Medical Association due to alarming increase of the toxic contents like Fluorides and other salts in the underground water due to steep fall in the underground water table level. A feasibility report on Peruru tank was prepared by Sri Venkateswara University College of Engineering, Department of Civil Engineering, Tirupathi. Several other individuals filed affidavits supporting the cause of the appellant.

9. A counter affidavit was filed by the Government, Revenue Department, in Writ Petition No. 8650 of 1994 whereby the said respondent justified the issuance of G.O. Ms. No. 84-Revenue Dept. dated 28.1.1994 stating that the same was in public interest. A counter affidavit was also filed by respondent No. 3, the Law Officer of the Housing Board stating that the Housing Board has invested Rs. 88.43 lakhs towards development of land and thus the Board has invested in all a sum of Rs. 1,78,43,000/- and prayed for dismissal of the writ petition. An additional counter affidavit was also filed by respondent No. 3 stating that the area is fully developed. Likewise, Shri P. Krishnaiah, the Executive Officer of the TTD filed affidavit stating that a number of dwelling have come up in the entire area and the prayer in the writ petition could not be granted and prayed for dismissal of the writ petition.

10. By the impugned and common judgment dated 28.9.2000, the Division Bench of the High Court finding no illegality or irregularity in the action of the respondents dismissed both the writ petitions. Aggrieved by the dismissal of the writ petitions, the

appellant has filed these appeals by way of special leave petitions.

11. We heard Mr. G. Ramakrishna Prasad, learned Counsel appearing for the appellant-Forum, Mr. V.R. Reddy, learned senior counsel appearing for the TTD, Mr. P.P. Rao, learned senior counsel Mr. Jaideep Gupta, Mr. D. Ramakrishna Reddy, Mr. P. S. Narasimha, learned Counsel and Mr. Anoop G. Chaudhary, learned senior counsel for the respective parties. Elaborate arguments were advanced by the respective counsel appearing for the parties to this action. We have been taken through the entire pleadings, documents and annexures filed along with the appeals and also the report submitted by the Expert Committee and the objections filed by the parties to the said report.

12. Mr. G. Ramakrishna Prasad, learned Counsel appearing for the appellant made the following submissions:

1. The High Court has failed to appreciate that in the light of over-whelming evidence with regard to the Tank beds being put in use for irrigation, drinking purpose, and being used as percolation tanks to improve the groundwater table and quality of underground water in the neighbouring areas and many villages including Tirupathi town, the High Court committed error in holding that the water tanks in issue are now non- existent.

2. The High Court committed an error in coming to the conclusion that the urban development could be given primacy over and above the need to protect the environment and valuable fresh water resources.

3. The High Court is not correct in holding that if the Government is not permitted to use the lands in question properly it will ultimately go into the hands of land grabbers and anti-social elements and they will be converted into slums and that such lands will be used as dumping grounds.

4. The High Court has failed to notice the fact that the need for sustainable development cannot be ignored, could not do away with and could not cause harm to the environment in the name of urban development and that certain acts of omissions and commissions on the part of the respondents in not taking proper measures for the preservation of the Peruru tank, the flow of water into the tank is reduced every year as most of its feeder channels are either spoiled or closed by unauthorised encroachers.

5. The respondents have failed to take necessary measures to remove the encroachments and repair the feeder channels and as a result, the natural flow of water into the tank during the rainy season is reduced. On account of reduction in the water catchment area due to encroachments, the quantity of water collected in the tank is getting drastically depleted year by year and that the water table in the neighbouring area of the tank including a colony is going down and even the ground water available is becoming more and more saline with high fluoride content every year and becoming unfit for drinking purposes.

6. It was submitted that the respondents are under constitutional obligation to protect the environment. The tanks in question is a public property in which each and every ayacutdars has got a property right and this right cannot be taken away by the Government to their detriment and that the communal property cannot be diverted for the purpose of construction of houses to section of people.

13. Mr. V.R. Reddy, learned senior counsel, appearing for TTD submitted that TTD gave its own land to Sri Padmavathi Mahila Viswavidyalayam and in lieu of the land so given by it, the State Government under G.O. Ms. No. 181 - Revenue dated 15.3.1991 has given Ac.150 m Perur tank to TTD. TTD took possession of the said land on 19.3.1993. In 1984 itself, the tank bed became barren and there is no water supply to the tank. The agricultural lands which were dependent on the tank water which was used only for agricultural purposes, therefore, became housing colonies. There is no source of water now to the tank and it is not possible to store water in the tank. Tirupathi is a growing town whose population is going up constantly demanding more and more house sites and housing accommodation for the growing town population. The pilgrim inflow is also steadily growing requiring more facilities. An agricultural tank which has become dry by 1984 itself and which is no longer capable of being used for agricultural irrigation purposes as it gets no water any more being surrounded by the expanding town, roads and built up areas cannot anymore be maintained as a tank in its original form. There are other tanks and dams and water supply schemes being undertaken in Tirupathi having regard to their feasibility. The High Court has considered these aspects also, he submitted.

14. TTD is one of the well known Devasthanams in the country which is undertaking projects of general public welfare consistent with its policy. It is doing everything possible in Tirupathi and in Tirumala where the World famous Sri Venkateswara Swami Temple is situated, to preserve and improve the natural environment. The tank in question i.e. Peruru tank cannot be maintained as a tank in the present situation and it has ceased to be a tank long ago except in name. It has been obtained by it in lieu of its own land it has given for a public purpose of a women's university and requires it for its own optimum use. The objection sought to be taken by the appellant as a public interest objection is without any merit or substance as far as Peruru tank is concerned on the facts and circumstances of the case.

15. Mr. P.S. Narasimha, learned Counsel appearing for A.P. Housing Board, submitted that S. No. 18/1 of Avilala village is on the outskirts of Tirupathi town measuring about 187 acres was classified as Avilala tank Poramboke. The said tank was abandoned as far back as in the year 1992. The Tank area was bulldozed and the entire land was levelled. The cultivation particulars of the Ayacut in this tank reveals that no lands were being irrigated from the water derived from this tank right from the year 1395 F i.e. the year 1984 A.D. The feeder source for Avilala tank namely (i) Ramayapalli Kasarkaluwa (ii) Kasarkaluwa of Vedantpuram Agraharam and (iii) drainage water of Timlagunta wet fields (iv) Nadinvaka - all these sources got defaced and there has been no scope for accumulation of water in the tank. It was also observed that even after sinking that well to a depth of about 60 feet, the land was not receiving any water from any ground resources after construction of Kalyani Reservoir. Therefore, proposal for abandonment of tank was submitted by the Revenue Divisional Officer, Tirupathi to the District Collector in the years 1988 and 1992. Thereafter, public notices were issued inviting objections but no objections were filed by anyone. Thereafter a technical opinion was given by the Executive Engineer of the Irrigation Department in favour of the alienation of the said land to an extent of 98 acres. Even the Gram Panchayat had passed resolution on 14.8.1988 proposing to alienate 98 acres in S. No. 18/3 carved out S. No. 18/1 of Avilala Village in favour of A.P. Housing Board. The Government have issued orders in G.O. Ms. No. 691 dated 18.7.1989 alienating 98 acres of land for the purpose of constructions of house under the rental housing scheme for the Government employees. The said land has been levelled in the year 1992 after taking possession. The Housing Board has undertaken infrastructural facilities by laying of B.T. Roads, electrical lines, digging borewells apart from levelling and plotting the land and a sub-

station 33 K.V. capacity has been established by the A.P. Electricity Board.

16. It was submitted that the A.P. Housing Board paid Rs. 90 lakhs towards the cost of the land @ Rs. 1 lakh for each acre to the Government and also spent a sum of Rs. 88.43 lakhs towards development of the land so far. Thus, in all A.P. Housing Board has invested a sum of Rs. 1,78,43,000/- and the further development was stopped in view of the pendency of the writ petition.

17. The A.P. Dairy Development Corporation has established Balaji Dairy in a portion of the land under reference by spending over Rs. 8 crores. All these amounts were spent by the Government from its own expenditure from out of public funds. Apart from the above, the Land Acquisition proceedings were initiated for laying of approach road and compensation thereafter has been paid by the Revenue Department.

18. Mr. P.S. Narasimha further submitted that the laudable objective of maintenance of ecology, environment and preservation of water resources are subject to the vagaries of nature and in the realm of technical matter, there cannot be judicially manageable standard for granting any relief.

19. Arguing further, he submitted that there are many factors and reasons attributing to depletion of ground water table due to the expanding urbanization and increasing the non-agricultural activities. All such activities have not the sanction of the law supported by legislative mandate under the A.P. Urban Areas Development Act. The administration has been entrusted with the responsibility of ensuring equitable urban growth by balancing ecological and environmental interest and in the instant case, the administration has taken all the proceedings and attending precautions to act in larger public interest in general for which the appellant cannot have any grievance.

20. Mr. Jaideep Gupta, learned senior counsel, appearing for TUDA filed a detailed reply to the appeal. He invited our attention to the elaborate and detailed reply affidavit filed by them. It is seen from the affidavit that the proposals for abandonment of the erstwhile tank were submitted by the Revenue Divisional Officer, Tirupathi with reference to the Collector's letter No. B-1/7089/88 dated 17.9.1988. A notice for public response to the said proposal was published in the village but no objections were received. As the land was in the past classified as a tank poramboke, technical opinion had already been obtained and the Irrigation Department opined that there was no objection for alienation of the said land. As per the report of the Revenue Divisional Officer, Tirupathi submitted in his letter No. Roc. No. G/2016/88, dated 6.9.1988 that the Avilala Gram Panchayat in its resolution dated 14.8.1988 had resolved to alienate an extent of 90.00 acres in Sy. No. 18/3 (carved out from 18/1) of Avilala village in favour of A.P. Housing Board.

21. In the above circumstances, the Government have alienated 90 acres of land in Sy. No. 18/3 carved out from Sy. No. 18/1 in favour of A.P. Housing Board for construction of houses under rental housing scheme for Government employees vide G.O. Ms. No. 691 dated 10.7.1989 of the Revenue (Assn. IV) Department. The District Collector, Chittoor in his letter No. B1/15246/90 dated 14.7.1992 addressed to the Secretary to the Government, Revenue Department has informed that the Ayacutdars have also given their consent for abandonment of the erstwhile tank and to treat the Ayacut as dry land since the tank does not have any water source.

22. After the Government have alienated an extent of 90 acres of land to A.P. Housing Board and 1.12 acres to A.P.S.E.B. and 5 acres towards compensation for private lands acquired for approach road, there remains a balance of 96 acres of land. Accordingly

the Revenue Divisional Officer, Tirupathi in his letter G/5234/92 dated 16.9.1992 addressed the District Collector that the balance land available can be better utilized by handing it over to various agencies for developmental purposes, because of its proximity to Tirupathi town and adjoining residential colonies like Vaikuntapuram, Bairagipatteda etc. There has been a substantial growth in population of Tirupathi town coupled with physical expansion of the town and consequent conversion of agricultural lands into pucca residential area and layouts. The population of Tirupathi is growing day by day and to cater to the growing demand for housing this authority had requested the Government for alienation of 90 acres of land for sites and services programmes. Accordingly, the Government in G.O. Ms. No. 84 - Revenue (Assn.IV) Department, dated 28.1.1994 alienated 90 acres of land in Sy. No. 17/1 of Avilala in favour of this authority. Based on the Government Orders and proceedings of the District Collector, Chittoor in D.O. Toc. No. B/1/15246/92 dated 3.3.1994, the Mandal Revenue Officer, Tirupathi Rural Mandal has handed over the possession of 65.19 acres of land on 18.4.1994 to this authority.

23. Mr. Gupta further submitted that the Urban Development Authorities are bound to regulate the massive urban growth and migration of people with appropriate development plans to prevent formation of slums and consequent urban decay. Accordingly, the TUDA has taken up development of new Satellite townships around Tirupathi to relieve congestion of the existing township and one such satellite town is Rajiv Nagar being developed in the land many years back was under the then existing Avilala tank in Sy. No. 18/1.

24. As it is evident from the joint inspection of the Joint Collector, Chittoor, Superintending Engineer, Irrigation, Chittoor, etc. on dated 4.4.1992, there has been no source of the supply channel for maintenance of the Avilala tank and it has not been practicable either to restore it as irrigation tank or even as a percolation tank any longer. However, as a part of the development of a satellite township, it is proposed to provide lung spaces, water harvesting structures in an extent of 18 acres of land benefiting the people in Sy. No. 18/1 of Avilala village and Rajiv Nagar area by TUDA and A.P. Housing Board.

25. After obtaining approval from the State Government, TUDA announced the scheme to the public on 18.3.2001, 26.3.2001 and 30.3.2001 by giving wide publicity in the newspaper and inviting applications for participating in the auction. The plots were allotted to the public in a public auction as per the orders of the Government vide G.O. Ms. No. 84 Revenue (Assn.IV) Deptt. Dated 28.1.1994. The auction was conducted on 13th, 14th and 15th April, 2001 and plots were allotted to the successful bidders immediately i.e. before the issue of status quo order of this Court. TUDA has already taken up plans of action to provide in the new township partly with the amounts received from open auction.

26. It is also seen from the reply affidavit filed by TUDA that a comprehensive scheme name "HARITA" has been jointly promoted by Forest Department, TTD and TUDA at a cost of Rs. 24.83 crores to be implemented in five years from 2000 to 2005. The scheme had already commenced and massive plantation programme was taken up by planting 16 lakhs trees during the year 2000-2001 apart from other schemes that have been envisaged in the plan.

27. The National Remote Sensing Agency, Department of Space, Government of India in their report titled "Land use Land cover monitoring in TUDA area with special reference to Avilala tank and environs Tirupathi, Andhra Pradesh" has conducted detailed study

with the help of satellite imageries on Avilala tank over a period of time. In its report, it is stated that the tank in earlier days i.e. earlier to 1970 was drained mostly by natural springs located in the head of the region of the catchment. Over a period of time, the spring got dried up due to various geological factors with no source of surface flow. Also the small streams which were draining to the tank were disturbed and occupied, with the result the tank remained dry with part of it covered with scrub since 1976 onwards.

28. It is also stated in the report that as per the satellite image of February, 2001 there are about 232 tanks identified in TUDA area. Most of the tanks are located along the foot hills of Tirumala hills and plains of Swarnamukhi river. Kalyani reservoir is the major one in the area. Considering the location as well as distribution about 20 tanks are identified for conservation and future development to meet the urban water requirement. However, other existing tanks may also be fenced and preserved to meet the future requirement.

29. The TUDA along with the support of other Government Departments have been making conscious efforts for conserving and preserving potential tanks in TUDA region as per the recommendations of National Remote Sensing Agency and other experts in the field. In this direction, the TUDA has already initiated action in developing Tiruchanoor tank in Sy. No. 253 of Tiruchanoor at a cost of Rs. 30 lakhs under Phase I Scheme which includes desalting, strengthening of bunds, landscaping of bunds and tree plantation. However, there is no possibility at all of restoring the abandoned Avilala tank as per the scientific data available with TUDA which can be at best developed as a satellite township with all facilities thus contributing to the planned urban growth of Tirupathi and decongesting the main township.

30. Mr. Anoop G. Chaudhary, learned senior counsel appearing for the State of Andhra Pradesh drew our attention to the detailed counter affidavit filed by the State of A.P. through its Joint Secretary to the Government Revenue Department wherein the Government has explained to this Court as to how the impugned G.O.'s alienating the lands in favour of TTD, TUDA and Andhra Pradesh Housing Board for public purposes were issued. According to Mr. Anoop Chaudhary, there is nothing illegal in issuing in G.Os. It is not violating anybody's fundamental rights. An extent of 180 acres of land was tank bed land of Avilala tank. This tank was an abandoned tank ever since 1984 as the channel source of this tank was closed due to construction of Kalyani dam and because of lack of water this tank was no longer used for storage of water. As it was an abandoned tank and was no longer in existence and the land became plain and considering the matter and report of the District Collector, the Government issued orders in G.O. Ms. No. 691 - Revenue Department dated 10.7.1989 for alienating an extent of 90 acres of land to A.P. Housing Board for the purpose of rental Housing scheme for Government employees on payment of Rs. 1 lakh per acre by the Housing Board and before this land was alienated a notice was published in the village calling for objections by the Revenue authorities and no objections were received in pursuance of the said notice. The Ayacutdars have also consented for the alienation of the land. Thereafter, after obtaining the opinion of the concerned Executive Engineer of the Irrigation Department and the report of the District Collector, the above Government Order was issued.

31. Concluding his arguments, he submitted that there is ample material on record showing that these tanks were abandoned long back and they were no longer serving as water storage tanks more particularly, as their supply channels have been dried up. On 5.12.2003, this Court passed the following order:

The Secretary, Ministry of Water Resources, Government of India is directed to constitute a committee of experts for the purpose of submitting a report on the question whether the two tanks, namely, the Peruru and Avilala or either of them can be utilized for water harvesting. The report shall be submitted to this Court within a period of six weeks from the date of the communication of this order. The Registry is directed to forward a set of the documents, which have been filed before this Court to the Secretary for being placed before and considered by such Committee. The committee will hold local inspection. Before it does so it shall give notice to the concerned advocate-on-record. The State - respondent will provide such documents as may be required by the Committee for the purpose of submitting the report.

List the matter thereafter.

32. The Government of India constituted a Committee for the purpose of submitting its report to this Court:

The term of reference of the Committee was to submit a report on the question whether the two tanks namely, the Peruru and Avilala or either of them can be utilized for water harvesting. Pursuant to this, the Committee visited Tirupathi on 19th and 20th January, 2004 for local inspection and necessary investigations. During the visit, a detailed discussion was held with the representatives of TUDA, TTD and members of the Intellectual Forum. The Committee submitted its detailed inspection report on 21.1.2004. The appellants submitted its objections to the report of the Committee and the respondents supported the inspection report.

33. In the above background, the following questions of law arise for consideration by this Court:

- 1.** Whether the Urban Development could be given primacy over and above the need to protect the environment and valuable fresh water resources?
- 2.** Whether the action of the A.P. state in issuing the impugned G.Os could be permitted in derogation of Articles 14 and 21 of the Constitution of India as also the Directive Principles of State Policy and fundamental duties enshrined in the Constitution of India?
- 3.** Whether the need for sustainable development can be ignored, do away with and cause harm to the environment in the name of urban development? 4. Whether there are any competing public interests and if so how the conflict is to be adjudicated/reconciled?

34. We have already referred to the directions issued to the Government of India to constitute a Committee of Experts for the purpose of submitting a report on the question whether the two tanks namely, the Peruru and Avilala or either of them can be utilised for water harvesting. The Expert Committee took into account the factors that had led to the depletion of influx of water to Peruru Tank in the report and observed in paragraphs 3 & 4 of the Report.

35. According to the learned Counsel appearing for the TTD, Peruru tank as a water body had three main sources of influx of water which were as follows:

- 1.** Overflow of water through feeder channel from the combined Kalyani River -

Swarnamukhi river - The Kalyani river joins Swarnmukhi river near Agasteeswara Temple. At that point, the overflow of water in the combined rivers as going to peruru tank through a feeder channel of about 1.6 Km. Length. After the construction of the Kalyani Dam on Kalyani River in the year 1974, the flow of water from Kalyani river into Swarnamukhi river considerably reduced. As a result, there was no overflow of water going to the feeder channel, which over the years has become defunct due to its bed level being at a higher level than the riverbed. Since the feeder channel has become defunct and abandoned, a road has been constructed for the temple by filling up the channel. The Expert Committee, after observing the above, in paragraph 3 of its report under Peruru tank has opined as follows:

The revival of old feeder channel which involves deepening of the existing channel and restoring the channel in the initial reaches is not considered cost effective in view of the meagre quantity of river water availability for a very short period.

2 . Catchment area of 42.9 sq.Kms. TTD under "Neeru Meeru" programme, constructed 22 check dams, 9 percolation tanks, 437 rock fill dams and contour trench on a length of 1.22 km for improving the water table and water conservation and efficient use of rain water without wastage in the catchment area falling under S.V. Zoological Park.

The Expert Committee, after observing the above in para 4 of its report has stated that the inflow of water into Peruru tank has been reduced considerably due to the construction of check dams etc. While it is so, it is also to be noted in this context, that on account of Kalyani Dam a water body has come into existence in the form of Reservoir is spread over an area of 31065 acres and holds 910 mc. Ft. Water when filled to capacity. Similarly, Dalavai Tank, which is created in the Catchment area, is also a water body occupying 66.70 acres and holds 15.79 mc. Ft. of water when full.

It is pertinent to submit in this context that under the "Neeru Meeru" programme vigorously pursued by the Government in the entire State, construction of such check dams, percolation tanks etc. was conceived and executed for improving the water table and water conservation and efficient use of rain water without wastage at considerable cost.

3. Nakkalavanka and Bnodeddula Vanka : prior to the construction of Dalavai tank in the catchment area, water used to flow downstream to peruru tank through Nakkalavanka and Bnodeddula Vanka. After the construction of Dalavai Tank, the flow of water through Nakkalavanka and Bnodeddula Vanka has considerably reduced.

36. The Expert Committee after observing the above facts in paragraphs 4 & 5 of its report opined that the flow of water through Bnodeddula Vanka to the Peruru tank can be restored by removing a small check dam at Malapalli which it is submitted might be considered a retrograde step affecting other projects for water conservation. Learned Counsel further submitted that in view of the aforesaid recommendation of the Expert Committee that instead of 20 acres as presently assigned a minimum of 50 acres may be utilised for a water body in the tank area may not be a practicable proposal. However, the TTD would willingly and earnestly endeavour to implement the proposal if this Court accepts and approves the Report of the Expert Committee. In our opinion, the

Expert Committee's report should be accepted by TTD. Learned Counsel appearing for the TTD at the time of argument, has also brought to our notice some of the programmes launched by TTD for sustainable improvement of the living environment.

37. Mr. P.S. Narasimha, learned Counsel, submitted that no competing or conflicting public interests arise in this case inasmuch as the very subject of the environment issue has ceased to be a resource as it were. The enquiry is, therefore, upon the very basic question i.e. whether there exist at all a natural resource. The research is empirical and not adjudication or prioritization of conflicting public interest. A further question can also be raised i.e. even if the said resource has deteriorated, is it possible to revive its resource. The adjudication in both the appeals is confined to an empirical enquiry based on scientific data. The enquiry as indicated above has already been done in this case. It is in two stages.

STAGE ONE -Till the judgment of the High Court of Andhra Pradesh, which dismissed the writ petitions.

STAGE TWO -Enquiry at the instance of this Court pending disposal of the special leave petitions.

STAGE ONE -

Our attention was drawn to the counter affidavit dated 7.9.1994 of TUDA in W.P. No. 8650 of 1994 which reads as under:

The tank in question as could be seen from the permanent 'A' Register (Resettlement Registrar) was to be fed by (1) Ramayapalli Kasam Kalva (2) Kasam Kalva of Vedantpuram Agraharam (3) Drainage water of Thummalapetta wet fields and (4) by Nadim Kalva which are almost defaced and as such there is no scope for accumulation of water in the tank. It is also observed from a well about 60 feet depth located on South-West corner of the land that no water exists in the well. The foreshore of the tank is almost plain. It is an abandoned tank and the tank is also not receiving any supply of water due to closure of supply channels after the construction of Kalyani Dam Reservoir.

STAGE TWO

The Inspection report of the Committee constituted under the directions of this Court considered various issues. It is stated in the report as follows:

- 1.** There is no tank existing in the area at present. Remains of the original demolished bund were seen. The area upstream was plain with no indications of any water storage.
- 2.** reported feeder channels to the tank are in fact localized drainage lines which do not have any direct source of surface water from the nearby Tirumala hills. The tank might have receive water as over flow from Peruru tank located on west of Avilala tank.

38. As per the Respondents contention, the Tank in dispute has been shown in Resettlement Register 'A'. For the purpose of change of classification from tank poramboke to ayan, 'A' notice was published in the Avilala Village displaying the said notices at the conspicuous places which is statutory and no objections were received and as stated already, consent letters were given by the individual ayacutdars for the

abandonment of the tank.

39. Proposals for abandonment of the erstwhile tank were submitted by the Revenue Divisional Officer, Tirupathi with reference to the Collector's letter No. B- 1/7089/88 dated 17.9.1988. A notice for public response to the said proposal was published in the village but no objections were received. As the land was in the past classified as a tank poramboke, technical opinion had already been obtained and the Irrigation Department opined that there was no objection for alienation of the said land. The opinion is in Collectorate reference No. B-1/14157/85. As per the report of the Revenue Divisional Officer, Tirupathi submitted in his letter No. Roc. No. G/2016/88 dated 6.9.1988 that the Avilala Gram Panchayat in its Resolution dated 14.8.1988 had resolved to alienate an extent of 90 acres in Sy. No. 18/3 of Avilala village in favour of Andhra Pradesh Housing Board. The materials placed before us and the report of the Expert Committee and the stand taken by the public bodies and the rapid change in the demographic feature of the Tirupathi town and its surrounding suburbs have necessitated the process of urbanization.

40. The TUDA in its additional counter affidavit filed on 21.2.2002 stated that the Tirupathi urban agglomeration as notified consists of 849 sq. Kms. with one Municipality and 89 villages. The total population of TUDA area is 4,88,248 according to 2001 census and the projected population by 2021 is 9,60,000. 49% of the urban agglomeration is covered by Tirumala hills and forest area and the remaining area is going to be developed into a Metropolis over the next 20 years, according to the present decadal population growth of 32% for TUDA region, compared to 13% of A.P. population growth rate as per 2001 census. The growth of population of Tirupathi Municipal area was highest during the decades of 1971 (83.68%) and in 1981 (75.10%) but now stabilized at nearly 30% (2001). But in respect of the suburbs surroundings Tirupathi, which are fast growing recording very high population growth rates, are an indication that TUDA area is one of the very fast developing urban agglomerations in the country. Akkarampale (v) one of the suburbs with a population of 20,325 recorded 250% of decadal growth between 1991-2001. Similarly Avilala (v) another suburb of Tirupathi, where "Rajivnagar", the land in question in the present appeals, is situated, the decadal growth rate between 1991 and 2001 was above 150%. The population of Avilala (v) which was 1141 in 1971, has grown to 12,058 by the year 2001, while converting most of the agricultural lands into residential plots. According to the report of NRSA, Hyderabad in July 2001 on "Land Use-Land Cover Monitoring in TUDA area with special reference to Avilala Tank and Environs, Tirupathi, A.P." the Avilala (v) along with the tank area which has a total extent of 942.47 hectares of which residential area was 32.91 hectares in 1976-77 has now increased to 349.28 hectares in the year 2001, which also includes institutional and industrial areas. In respect of agricultural lands, which was 677.78 hectares in 1976-77 has been diminished into 204.22 hectares in 2001. The high population growth rates of Avilala (v) combined with increase in the residential area (961%) is a clear indication that the original purpose of Avilala tank as irrigation tank, is no more relevant in the present scenario of fast urban development in this area.

41. It has been further stated in the additional affidavit filed by TUDA on 21.2.2002 that the TUDA has taken up revision of its master plan with digitization of land use along with a comprehensive development plan of the urban agglomeration up to 2021, with public participation. According to the said Master plan prepared by TUDA in 1981, the said lands of Avilala (v) are earmarked under residential zone and development of satellite township to ease the congestion on the main city and the purpose of retaining irrigation tank in an extent of 150 acres at Avilala near Tirupathi is no longer useful to

the public under the circumstances explained.

42. In the counter affidavit filed by A.P. Housing Board on 26.6.2000, it is submitted that the A.P. Housing Board paid Rs. 90 lakhs towards the cost of the land @ Rs. 1 lakh for each acre to the Government and also spent a sum of Rs. 88.43 lakhs towards development of the land so far. Thus, in all APHB has invested a sum of Rs. 1,78,43,000/- and the further development was stopped in view of the pendency of the writ petition.

43. The area around the property in question is fully developed. There is a weaver's colony, PR Engineers Colony, Judicial Employees Plots and Colony and Balaji Dairy (in 10 acres of land - APDDCF). Thus, the area around the land in question is already developed and several colonies have come up and in any event the land cannot be used as reservoir.

44. As per the notification, APHB has proposed about 342 HIG design, 497 MIG-2 design and 283 MIG-1 design houses with the details mentioned therein totalling about 1126 houses in the said proposed colony. The details of number of houses to be allotted under different categories and modes like outright sale, allotment on payment of 50%, 30% amount etc., are also mentioned in the said notification. It also provided reservation for various categories like 5% of houses to Legislators, 5% to defence people, 14% for SC, 4% for ST, 9% for OBC, 10% for retired Government employees, 1% for physically handicapped, 1% for freedom fighters and 51% for other categories.

45. The applicants under the above-referred notifications are the persons having no plot or no house for their residence in Tirupathi or nearby places and as such they are in dire need of a place of residence which is sought to be fulfilled under the above scheme by the APHB. It is also seen from the additional counter affidavit dated 21.2.2002 filed by TUDA that they have taken up revision of its Master plan with digitization of land use along with a comprehensive development plan of the urban agglomeration up to 2021, with public participation. According to the Master plan prepared by TUDA in 1981, the said lands of Avilala (v) are earmarked under residential zone and development of satellite township to ease the congestion on the main city.

46. It was also submitted that subsequent to the filing of the present appeals, substantial developments have taken place which can be summed up here. As stated in the counter affidavit filed by TUDA on dt. 29.11.2001, after the dismissal of Writ Petition No. 8650 of 1994 by the High Court on dated 28.9.2000, TUDA submitted the entire scheme of sites and services to be taken up at Rajiv Nagar at a cost of Rs. 600 lakhs to the State Government for approval vide its letter No. 2148/G1/99 dated 3.12.1999. The State Government vide G. Rt. No. 124 M.A. dated 15.2.2001 had approved the proposal of TUDA.

47. Mr. Jaideep Gupta, learned senior counsel appearing for the TUDA, has placed before us a report on Land Use Land Cover Monitoring in TUDA area with special reference to Avilala Tank and Environs Tirupathi. The main objective of this study was:

- 1.** To map and estimate the water bodies and drainage pattern within the TUDA limits and to suggest the water conservation plan, on a scale of 1:50,000 using satellite and other collateral data.
- 2.** To monitor the changes in and around the Avilala Tank over a period from 1976- 2001 and carry out the change analysis.

The report contains all meticulous details about the study area, data base, advantages and limitations of satellite data, methodology, analysis and observations, water resources analysis of TUDA area, land use/land cover analysis of Avilala tank and its environs. The report has been prepared in a meticulous manner with reference to various plans. Another report was also submitted with regard to the Revitalization of Lakes in TUDA Region which also contains many details about the land use of TUDA Region and the conservation and preservation of water bodies and the identification of potential tanks for conservation and the salient proposals for Revitalization of identified tanks. The Salient proposals for Revitalization of tanks are as under:

On realizing the importance of restoration of tank basins towards conservation of water and recharging of ground water, increase the storage capacity of tanks, renovating the tank bunds as well as feeder channels, TUDA has taken over 30 tanks in its operational area for taking up the improvements. Proposals include removal or eviction of encroachments, desalting of tank basins, clearing of jungle, strengthening of tank bunds, excavation of boundary trenches, widening and excavation of feeder channels, construction of boundary pillars and compound walls along the tank boundary. Block plantation, programmes for development as landscaped parks and water based entertainment units for the benefit of the public in off shore areas of the tanks have been proposed wherever feasible and viable. Towards protection of environment, provision for treatment system is also made in the project to take care of entry of drainage/silage into the tank storages. Block plantation on all on-shore areas of tank have been taken up as a part of Neeru Meeru programme to prevent erosion of soils and entry of encroachments which will have long term positive environment results.

48. As per the estimates prepared, the total cost of the scheme works out to Rs. 993.64 lakhs for taking up the above programmes in 32 tanks spread over 32 settlements around Tirupathi town and in TUDA region. The abstract statement showing the details of tanks proposed for revitalization and the cost of development is given below:

S.N o.	Mandal	No. of tanks	Cost of development	Cost of greening/landscaping Programme	Total
1.	Tirupati(U) Mandal	10	387.84	82.50	470.34
2.	Tirupati(R)Mandal	10	203.10	64.90	268.00
3.	Reningunta Mandal	9	129.50	47.60	177.10
4.	Chandragir Mandal	3	71.70	6.50	78.20
Total		32	792.14	201.50	993.64

49. As already noticed, the Expert Committee in its Inspection Report, has gone into various technical details about the cause for gradual reduction of inflow of water to the Peruru tank, which is a rain-fed tank, over the last 50 years. The Committee has observed in its report that the reduction in the inflow of water to the tank was due to the construction of 22 check dams, 8 percolation tanks, 437 rock fill dams and contour trench on a length of 1.22 km for water conservation and efficient use of rain water without wastage. The Committee has also observed in its Report that the main supply channel to the Peruru tank was affected due to the revival of Dalavai Tank situated at a distance of about 2 Kms upstream in the catchment area.

50. The Expert Committee in its report has suggested some additional measures for rain water harvesting by providing for a percolation tank in an area of 50 acres instead of 20 acres already earmarked for the said purpose by the Revenue authorities with roof top rain water harvesting and artificial recharge

51. The Expert Committee has gone into various technical and cost aspects about the feasibility of reviving the Peruru tank. Only after the Committee found that the tank could not be revived in its original form, it suggested in its report for construction of percolation tank and roof top rain water harvesting and artificial recharge for increasing the ground water level.

52. A careful perusal of the report would clearly reveal that the Committee has given its suggestions only after taking into account various possibilities in recharging the ground water level. It is not proper in doubting the correctness of the Committee's report as contended by the appellants. The Committee, in our view, has gone into the details about the revival of the feeder channel to the Peruru tank from Swarnamukhi river and having regard to the impracticability of restoring the same as feeder channel had suggested an alternative which in their view, is feasible and beneficial.

53. It is evident from the report of the Expert Committee that the Members of the Expert Committee have taken technical aspects as contained therein and the objections of the appellant in this regard are untenable. The Government of Andhra Pradesh has also taken various steps pursuant to the directions given by this Court which could be seen from the additional affidavit dated 25.3.2005 filed by the State of Andhra Pradesh.

54. We have given our thoughtful and careful consideration to the sensitive issues raised in the appeals by the appellants and countered by the respective respondents with reference to the pleadings, the documents, annexures filed and judgment of the High Court. We have also carefully perused the report submitted by the Expert Committee and also considered the rival submissions made by the respective counsel. In our opinion, the nature of the question in this case is twofold. Firstly, the jurisprudential issues. In the event of conflict between the competing interests of protecting the environment and social development, this Court in the case of **M.C. Mehta v. Kamal Nath MANU/SC/1007/1997** : (1997)1SCC388 held as under:

The issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibility, who under the pressures of the changing needs of an increasingly complex society find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not for the Courts. If there is a law made by Parliament or the State Legislatures, the Courts can serve as an instrument for determining legislative intent in the exercise of powers of judicial review under the Constitution. But, in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resource and convert them into private ownership or commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the Courts find it necessary, in good faith, for the public and in public interest to encroach upon the said resources.

55. The responsibility of the state to protect the environment is now a well-accepted notion in all countries. It is this notion that, in international law, gave rise to the principle of "state responsibility" for pollution emanating within one's own territories [Corfu Channel Case, ICJ Reports (1949) 4]. This responsibility is clearly enunciated in the United Nations Conference on the Human Environment, Stockholm 1972 (Stockholm Convention), to which India was a party. The relevant Clause of this Declaration in the present context is Paragraph 2, which states:

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

Thus, there is no doubt about the fact that there is a responsibility bestowed upon the Government to protect and preserve the tanks, which are an important part of the environment of the area.

Sustainable Development

56. The respondents, however, have taken the plea that the actions taken by the Government were in pursuance of urgent needs of development. The debate between the developmental and economic needs and that of the environment is an enduring one, since if environment is destroyed for any purpose without a compelling developmental cause, it will most probably run foul of the executive and judicial safeguards. However, this Court has often faced situations where the needs of environmental protection have been pitched against the demands of economic development. In response to this difficulty, policy makers and judicial bodies across the world have produced the concept of "sustainable development". This concept, as defined in the 1987 report of the World Commission on Environment and Development (Brundtland Report) defines it as "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". Returning to the Stockholm Convention, a support of such a notion can be found in Paragraph 13, which states:

In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population.

Subsequently the *Rio Declaration on Environment and Development*, passed during the Earth Summit at 1992, to which also India is a party, adopts the notion of sustainable development. Principle 4 of the declaration states:

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

57. This Court in the case of **Essar Oil v. Halar Utkarsh Samiti MANU/SC/0037/2004** :AIR2004SC1834 was pleased to expound on this. Their Lordships held:

This, therefore, is the sole aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of

humanity and the rapid increase in population together with the consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, filling up of lakes and the pollution of water resources and the very air that we breathe. However there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other.

A similar view was taken by this Court in *Indian Council for Environ-Legal Action v. Union of India* **MANU/SC/1189/1996** : (1996)5SCC281 where their Lordships said:

While economic development should not be allowed to take place at the cost of ecology or by causing widespread environmental destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment should go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of the environment.

The concept of sustainable development also finds support in the decisions of this Court in the cases *M.C. Mehta v. Union of India (Taj Trapezium Case)* (1997) 2 SCC 653, *State of Himachal Pradesh v. Ganesh Wood Products* **MANU/SC/0038/1996** : AIR1996SC149 and *Narmada Bachao Andolan v. Union of India* **MANU/SC/0206/2005** : AIR2005SC2994 .

58. In light of the above discussions, it seems fit to hold that merely asserting an intention for development will not be enough to sanction the destruction of local ecological resources. What this Court should follow is a principle of sustainable development and find a balance between the developmental needs which the respondents assert, and the environmental degradation, that the appellants allege.

Public Trust Doctrine

59. Another legal doctrine that is relevant to this matter is the Doctrine of Public Trust. This doctrine, though in existence from Roman times, was enunciated in its modern form by the US Supreme Court in *Illinois Central Railroad Company v. People of the State of Illinois* (1892) 146 US 537 where the Court held:

The bed or soil of navigable waters is held by the people of the State in their character as sovereign, in trust for public uses for which they are adapted.

[...] the state holds the title to the bed of navigable waters upon a public trust, and no alienation or disposition of such property by the State, which does not recognize and is not in execution of this trust is permissible.

What this doctrine says therefore is that natural resources, which includes lakes, are held by the State as a "trustee" of the public, and can be disposed of only in a manner that is consistent with the nature of such a trust. Though this doctrine existed in the Roman and English Law, it related to specific types of resources. The US Courts have expanded and given the doctrine its contemporary shape whereby it encompasses the entire spectrum of the environment.

60. The doctrine, in its present form, was incorporated as a part of Indian law by this Court in the case of *M.C. Mehta v. Kamal Nath* (supra) and also in *M.I. Builders v.*

Radhey Shyam Sahu MANU/SC/0999/1999 :[1999]3SCR1066 . In **M.C. Mehta**, Kuldip Singh J., writing for the majority held:

[our legal system] includes the public trust doctrine as part of its jurisprudence. The state is the trustee of all natural resources which are by nature meant for public use and enjoyment. [...] The state as a trustee is under the legal duty to protect the natural resources. [Para 22]

The Supreme Court of California, in the case of **National Audubon Society v. Superior Court of Alpine Country** 33 Cal.419 also known as the Mono Lake case summed up the substance of the doctrine. The Court said:

Thus the public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands., surrendering the right only in those rare cases when the abandonment of the right is consistent with the purposes of the trust.

This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the state holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny upon any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinize such actions of the Government, the Courts must make a distinction between the government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources,

[Joseph L. Sax "The public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", Michigan Law Review, Vol.68 No. 3 (Jan.1970) PP 471- 566)]. According to Prof. Sax, whose article on this subject is considered to be an authority, three types of restrictions on governmental authority are often thought to imposed by the public trust doctrine [ibid]:

1. the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;
2. the property may not be sold, even for fair cash equivalent
- 3 . the property must be maintained for particular types of use. (i) either traditional uses, or (ii) some uses particular to that form of resources.

In the instant case, it seems, that the Government Orders, as they stand now, are violative of principles 1 and 3, even if we overlook principle 2 on the basis of the fact that the Government is itself developing it rather than transferring it to a third party for value.

Therefore, our order should try to rectify these defects along with following the principle of sustainable development as discussed above.

61. Further the principle of "Inter-Generational Equity" has also been adopted while determining cases involving environmental issues. This Court in the case of **A.P. Pollution Control Board v. Prof. M.V. Nayudu and Ors. MANU/SC/0032/1999** :

[1999]1SCR235 held as under:

The principle of inter-generational equity is of recent origin. The 1972 Stockholm Declaration refers to it in principles 1 and 2. In this context, the environment is viewed more as a resource basis for the survival of the present and future generations.

Principle 1 - Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations....

Principle 2 - The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management, as appropriate.

62. Several international conventions and treaties have recognized the above principles and, in fact, several imaginative proposals have been submitted including the locus standi of individuals or groups to take out actions as representatives of future generations, or appointing an ombudsman to take care of the rights of the future against the present (proposals of Sands and Brown Weiss referred to by Dr. Sreenivas Rao Permmaraju, Special Rapporteur, paras 97 and 98 of his report).

63. The principles mentioned above wholly apply for adjudicating matters concerning environment and ecology. These principles must, therefore, be applied in full force for protecting the natural resources of this country. Article 48A of the Constitution of India mandates that the State shall endeavour to protect and improve the environment to safeguard the forests and wild life of the country. Article 51A of the Constitution of India, enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve national environment including forests, lakes, rivers, wild life and to have compassion for living creatures. These two Articles are not only fundamental in the governance of the country but also it shall be the duty of the State to apply these principles in making laws and further these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution of India and also the various laws enacted by the Parliament and the State Legislature.

64. On the other hand, we cannot also shut our eyes that shelter is one of the basic human needs just next to food and clothing. Need for a National Housing and Habitat Policy emerges from the growing requirements of shelter and related infrastructure. These requirements are growing in the context of rapid pace of urbanization, increasing migration from rural to urban centers in search of livelihood, mis-match between demand and supply of sites and services at affordable cost and inability of most new and poorer urban settlers to access formal land markets in urban areas due to high costs and their own lower incomes, leading to a non-sustainable situation. This policy intends to promote sustainable development of habitat in the country, with a view to ensure equitable supply of land, shelter and services at affordable prices.

65. The World has reached a level of growth in the 21st Century as never before envisaged. While the crisis of economic growth is still on, the key question which often arises and the Courts are asked to adjudicate upon is whether economic growth can supersede the concern for environmental protection and whether sustainable development which can be achieved only by way of protecting the environment and

conserving the natural resources for the benefit of the humanity and future generations could be ignored in the garb of economic growth or compelling human necessity. The growth and development process are terms without any content, without an inkling as to the substance of their end results. This inevitably leaves us to the conception of growth and development which sustains from one generation to the next in order to secure 'our common future'. In pursuit of development, focus has to be on sustainability of development and policies towards that end have to be earnestly formulated and sincerely observed. As Prof. Weiss puts it, "conservation, however, always takes a back seat in times of economic stress." It is now an accepted social principle that all human beings have a fundamental right to a healthy environment, commensurate with their well being, coupled with a corresponding duty of ensuring that resources are conserved and preserved in such a way that present as well as the future generations are aware of them equally. The Parliament has considerably responded to the call of the Nations for conservation of environment and natural resources and enacted suitable laws.

66. The Judicial Wing of the country, more particularly, this Court has laid down a plethora of decisions asserting the need for environmental protection and conservation of natural resources. The environmental protection and conservation of natural resources has been given a status of a fundamental right and brought under Article 21 of the Constitution of India. This apart, the Directive Principles of State Policy as also the fundamental duties enshrined in Part IV and Part IVA of the Constitution of India respectively also stresses the need to protect and improve the natural environment including the forests, lakes, rivers and wild-life and to have compassion for living creatures.

67. This Court in **Dahanu Taluka Environmental Protection Group and Ors. v. Bombay Suburban Electricity Supply Co. Ltd. and Ors.** MANU/SC/0574/1991 : (1991)2SCC539 held that the concerned Government should "consider the importance of public projects for the betterment of the conditions of living people on one hand and the necessity for preservation of social and ecological balance and avoidance of deforestation and maintenance of purity of the atmosphere and water free from pollution on the other in the light of various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a balance between the two conflicting objectives."

68. However, some of the environmental activists, as noted in 'The Environmental Activities Hand Book' authored by Gayatri Singh, Kerban Ankleswaria and Colins Gonsalves, that the Judges are carried away by the money spent on projects and that mega projects, that harm the environment are not condemned. However, this criticism seems to be baseless since in *Virender Gaur and Ors. v. State of Haryana and Ors.* MANU/SC/0629/1995 : (1995)2SCC577, this Court insisted on the demolition of structure which have been constructed on the lands reserved for common purposes and that this Court did not allow its decision to be frustrated by the actions of a party. This Court followed the said decision in several cases issuing directions and ensuring its enforcement by nothing short of demolition or restoration of status quo ante. The fact that crores of rupees was spent already on development projects did not convince this Court while being in a zeal to jealously safeguarding the environment and in preventing the abuse of the environment by a group of humans or the authorities under the State for that matter.

69. The set of facts in the present case relates to the preservation of and restoration of status quo ante of two tanks, historical in nature being in existence since the time of Srikrishnadevaraya, The Great, 1500 A.D., where the cry of socially spirited citizens

calling for judicial remedy was not considered in the right perspective by the Division bench of the High Court of Andhra Pradesh despite there being overwhelming evidence of the tanks being in existence and were being put to use not only for irrigation purpose but also as lakes which were furthering percolation to improve the ground water table, thus serving the needs of the people in and around these tanks. The Division Bench of the High Court, in the impugned order, has given precedence to the economic growth by completely ignoring the importance and primacy attached to the protection of environment and protection of valuable and most cherished fresh water resources.

70. No doubt, the wishful thinking and the desire of the appellant- forum , that the Tanks should be there, and the old glory of the tanks should be continued, is laudable. But the ground realities are otherwise. We have already noticed the ground realities as pointed out by the Government of Andhra Pradesh, TUDA and TTD in their reply to the Civil appeals by furnishing details, data and particulars. Now a days because of the poverty and lack of employment avenues, migration of people from rural areas to urban areas is a common phenomenon. Because of the limited infrastructure of the towns, the towns are becoming slums. We, therefore, cannot countenance the submissions made by the appellant in regard to the complete restoration and revival of two tanks in the peculiar facts and circumstances of this case. We cannot, at the same time, prevent the Government from proceeding with the proper development of Tirupathi town. The two Government Orders which are impugned have been issued long before and pursuant to the issuance of the Government Orders, several other developments have taken place. Constructions and improvements have been made in a vast measure. Because of spending crores and crores of rupees by various authorities, the only option now left to the appellant and the respondents is to see that the report submitted by the Expert Committee is implemented in its letter and spirit and all the respondents shall cooperate in giving effect to the Committee's report.

71. It is true that the tank is a communal property and the State authorities are trustees to hold and manage such properties for the benefits of the community and they cannot be allowed to commit any act or omission which will infringe the right of the Community and alienate the property to any other person or body. Taking into account all these principles of law, and after considering the competing claims of environment and the need for housing, this Court holds the following as per the facts of this case.

72. The Respondents have claimed that the valuable right to shelter will be violated if the impugned Government Orders are revoked. On the facts of the present case, it seems that the respondents intend to build residential blocks of flat for High and Middle income families, institutions as well as infrastructure for the TTDS. If the proposed constructions are not carried on, it seems unlikely that anyone will be left homeless or without their basic need for shelter. Therefore, one feels that the right to shelter does not seem to be so pressing under the present circumstances so as to outweigh all environmental considerations.

73. Another plea repeatedly taken by the respondents correspond to the money already spent on developing the land. However, the decision of this case cannot be based solely upon the investments committed by any party. Since, otherwise, it would seem that once any party makes certain investment in a project, it would be a fait accompli and this Court will not have any option but to deem it legal.

74. Therefore, under the present circumstances, the Court should do the most it can to safeguard the two tanks in question. However, due to the persistent developmental activities over a long time, much of the natural resources of the lakes has been lost, and

considered irreparable. This, though regrettable, is beyond the power of this Court to rectify.

75. One particular feature of this case was the competing nature of claims by both the parties on the present state of the two tanks and the feasibility of their revival. We thought that it would be best, therefore, if we place reliance on the findings of the expert committee appointed by us which has considered the factual situation and the feasibility of revival of the two tanks. Thus in pursuance of a study of that committee, this Court passes the following orders.

76. The appeals are disposed of with the following directions:

With regard to Peruru tank:

- (i) No further constructions to be made.
- (ii) The supply channel of Bodeddula Vanka needs to be cleared and revitalized. A small check dam at Malapali to be removed to ensure the free flow and supply to the tank.
- (iii) Percolation tank to be constructed and artificial recharge to be done to ensure the revival of the tank, keeping in mind its advantage at being situated at the foot hills.
- (iv) The area allotted by Mandal Revenue Office for construction of the tank to be increased to a minimum of 50 acres. Percolation tank with sufficient number of recharge shafts to be developed to recharge the unsaturated horizons up to 20 m. The design of the shafts etc. to be prepared in consultation with the CGWB. The proposed percolation tank to be suitably located along the bund keeping in view the inlets, irrigation sluices and surplus water.
- (v) Feasibility and cost estimation for the revival of the old feeder channel for Swarnamukhi River should be carried and a report to be submitted to the Court.
- (vi) Each house already constructed by the TTD must provide for roof top rain water harvesting. Abstraction from ground water to be completely banned. No borewell tubewell for any purpose to be allowed in the area.
- (vii) Pyrometers to be set up at selected locations, in consultation with the CGWB to observe the impact of rain water harvesting in the area on ground water regime.

With regard to Avilala tank:

- (i) No further construction to be allowed in the area.
- (ii) Each house already constructed by the APHB/ TUDA must provide structure for roof top rain water harvesting. All the storm water in the already built colonies to be recharged to ground water. Structures for such purposes to be designed in consultation with the CGWB.
- (iii) No borewell tubewell for any purpose to be allowed in the area.
- (iv) An area of 40 acres presently reserved for the Government should not be developed in any way that may lead to concretization of the ground surface.

Recharge structures to be constructed for rainwater harvesting.

(v) Pyrometers to be set up at selected locations, in consultation with the CGWB to observe the impact of rain water harvesting in the area on ground water regime.

77. We place on record our deep appreciation for the valuable assistance rendered by all the counsel appearing in this case which made our job easier.

78. The appeals are disposed of accordingly - no costs.

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MANU/SC/0580/2021

Equivalent Citation: 2021 (149) ALR 140, 2021 5 AWC4969SC, 2021/INSC/427, (2021)10SCC1, 2021 (7-8) SCJ 26, [2021]13SCR976

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 5041 of 2021 (Arising out of SLP (C) No. 11959 of 2014), Civil Appeal No. 5042 of 2021 (Arising out of SLP (C) No. 14314 of 2014), Civil Appeal No. 5043 of 2021 (Arising out of SLP (C) No. 12470 of 2014), Civil Appeal No. 5044 of 2021 (Arising out of SLP (C) No. 14262 of 2014), Civil Appeal No. 5045 of 2021 (Arising out of SLP (C) No. 21035 of 2014), Civil Appeal No. 5046 of 2021 (Arising out of SLP (C) No. 31117 of 2014), Civil Appeal No. 5047 of 2021 (Arising out of SLP (C) No. 12427 of 2015), Civil Appeal No. 5048 of 2021 (Arising out of SLP (C) No. 12947 of 2015), Civil Appeal No. 5049 of 2021 (Arising out of SLP (C) No. 12948 of 2015), Civil Appeal No. 5050 of 2021 (Arising out of SLP (C) No. 12191 of 2021 (Diary No. 28571 of 2018)), Contempt Petition (C) No. 380 of 2021 in Special Leave Petition (C) No. 14314 of 2014, Contempt Petition (C) No. 381 of 2021 in Special Leave Petition (C) No. 14314 of 2014, Contempt Petition (C) No. 382 of 2021 in Special Leave Petition (C) No. 14314 of 2014, Contempt Petition (C) No. 383 of 2021 in Special Leave Petition (C) No. 14314 of 2014 and Contempt Petition (C) No. 384 of 2021 in Special Leave Petition (C) No. 14314 of 2014

Decided On: 31.08.2021

Appellants: **Supertech Limited**
Vs.

Respondent: **Emerald Court Owner Resident Welfare Association and Ors.**

Hon'ble Judges/Coram:

Dr. D.Y. Chandrachud and M.R. Shah, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: M. Shoeb Alam, AOR, Fauzia Shakil, Ujjwal Singh, Adv., Somiran Sharma, AOR, Ravindra Kumar, AOR, R. Chandrachud, AOR, T.V.S. Raghavendra Sreyas, AOR, Siddharth Vasudev, Adv., Ashish Rana, AOR, Faisal Sherwani, Adv., Shantanu Krishna, AOR, Shubham Saigal, Sarvindra Singh, Anurag Dubey, Adv., S.R. Setia, AOR, Gaurav Agrawal, AOR, Mahima Gupta, AOR, Abraham C. Mathews, Vivek Paul Oriel, Adv. and Nishe Rajen Shonker, AOR

For Respondents/Defendant: Pinky Behera, AOR, Umang Shankar, AOR, Rajeev Singh, AOR, Milind Kumar, AOR, Bina Gupta, AOR, Vishwa Pal Singh, AOR, Jayant Bhushan, Sr. Adv., Anish Agarwal, AOR, Vanshika Gupta, Kunal Ravi, Ketan Paul, Tushar Bhushan, Amartya Bhushan, Adv., Gaurav Kejriwal, AOR, Ravi Prakash Mehrotra, AOR, Bhakti Vardhan Singh, AOR, Ravindra Raizada, Sr. Adv., Saurav Singh Chauhan, Rajeev Kumar Dubey, Ashiwan Mishra, Pratik Som, Vaidruti Mishra, Adv., Kamendra Mishra, AOR, R. Chandrachud, AOR, Ravindra Kumar, AOR, Tarun Gupta, AOR, Dania Nayyar, Adv., Krishnamohan K., AOR, Party-in-person, Unuc Legal LLP, Aparna Bhat, AOR, Sumit R. Sharma, AOR, Gopal Jha, AOR, P.S. Gosain, Adv., Mohammed Sadique T.A., AOR, Nitish Massey, AOR, Prachi Mishra, Chaitanya Bansal, Adv., Arjun Garg, AOR, M.C. Dhingra, AOR, Ajay Bhargava, Vanita Bhargava, Trishala Trivedi, Adv., Khaitan & Co., J.B. Mudgil, Adv., Sweta Rani, AOR, Abhijeet Sinha, AOR, Nishe Rajen Shonker, AOR, Mullapudi Rambabu, M.K. Maroria, Arun Adlakha, Naman Gupta and Dharmendra Kumar Sinha, Adv.

Case Note:

Property - Demolition of Building towers - Emerald Project - Construction carried out by Supertech Builders (Appellant) - Resident Welfare Association (R1) alleged Appellant of violating regulations and statutory norms and acting in collusion with authorities concerned - Writ filed before High Court allowed vide impugned judgment - Hence, the present appeal - Appellant denied breaching regulations and statutory provisions - Whether High Court rightly directed demolition of concerned building towers besides directing action against erring officials?

Facts:

The present appeals came up against the judgment passed by the Division Bench of Allahabad High Court directing demolition of Towers by R3, New Okhla Industrial Development Authority. The building towers were situated in Emerald Court, Noida, constructed by the Appellant. The petition was filed by the Residents' Welfare Association of Emerald Court Group Housing Society (R1). Appellant was alleged of violating regulations and misrepresenting facts to buyers in respect of Tower 16 and 17 of the project. High Court allowed the writ petition and directed the demolition of T-16 and T-17, with the expenses of the demolition to be borne by the Appellant. It further directed the Competent Authority to grant sanction for the prosecution of NOIDA's officials. The High Court also directed the Appellant to refund the consideration received from flat purchasers who had booked apartments in T-16 and T-17, with fourteen per cent interest compounded annually. While allowing the writ petition, the High Court made the several observations as well.

Held, while dismissing the Appeals:

NOIDA made no effort to ensure compliance of the UP Apartments Act 2010, as a result of which the rights of the flat purchasers have been brazenly violated. This cannot point to any conclusion, other than the collusion between NOIDA and the Appellant to avoid complying with the provisions of the applicable statutes and Regulations for monetary gain, at the cost of the rights of the flat purchasers.[145]

The rampant increase in unauthorized constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities.[146]

The land allotted to Appellant under the original lease agreement and the supplementary lease deed constitute one plot. The land which was allotted through the supplementary lease deed forms a part of original Plot No. 4, and would be governed by the same terms and conditions as the original lease deed. The sanction given by NOIDA on 26 November 2009 and 2 March 2012 for the construction of T-16 and T-17 is violative of the minimum distance requirement under the NBR 2006, NBR 2010 and NBC 2005. An effort was made to get around the violation of the minimum distance requirement by representing that T-1 together with T-16 and T-17 form one cluster of

buildings in the same block. This representation was sought to be bolstered by providing a space frame between T-1 and T-17. The case that T-1, T-16 and T-17 are part of one block is directly contrary to the Appellant's stated position in its representations to the flat buyers as well as in the counter affidavit before the High Court. The suggestion that T-1, T-16 and T-17 are part of one block is an after-thought and contrary to the record. The sides of T-1 and T-17 facing each other are not dead end sides since both the sides have vents/egresses facing the other building. By constructing T-16 and T-17 without complying with the Building Regulations, the fire safety norms have also been violated. The first revised plan of 29 December 2006 contained a clear provision for a garden area adjacent to T-1. In the second revised plan of 26 November 2009, the provision for garden area was obliterated to make way for the construction of Apex and Ceyane (T- 16 and T - 17). The common garden area in front of T-1 was eliminated by the construction of T-16 and T-17. This is violative of the UP Apartments Act 2010 since the consent of the flat owners was not sought before modifying the plan promised to the flat owners. T-16 and T-17 are not part of a separate and distinct phase (Phase-II) with separate amenities and infrastructure. The supplementary lease deed stipulates that they are part of the original project. Hence, the consent of the individual flat owners of the original fifteen towers, individually or through the RWA, was a necessary requirement under the UP Apartments Act 2010 and UP 1975 Act before T-16 and T-17 could have been constructed, since they necessarily reduced the undivided interest of the individual flat owners in the common area by adding new flats and increasing the number from 650 to 1500. The illegal construction of T-16 and T-17 has been achieved through acts of collusion between the officers of NOIDA and the Appellant and its management.[156]

The order passed by the High Court for the demolition of Apex and Ceyane (T-16 and T-17) does not warrant interference and the direction for demolition issued by the High Court is affirmed. The work of demolition shall be carried out within a period of three months from the date of this judgment. The work of demolition shall be carried out by the Appellant at its own cost under the supervision of the officials of NOIDA. In order to ensure that the work of demolition is carried out in a safe manner without affecting the existing pleadings, NOIDA shall consult its own experts and experts from Central Building Research Institute Roorkee. The work of demolition shall be carried out under the overall supervision of CBRI. In the event that CBRI expresses its inability to do so, another expert agency shall be nominated by NOIDA. The cost of demolition and all incidental expenses including the fees payable to the experts shall be borne by the Appellant. The Appellant shall within a period of two months refund to all existing flat purchasers in Apex and Ceyane (T-16 and T -17), other than those to whom refunds have already been made, all the amounts invested for the allotted flats together with interest at the rate of twelve per cent per annum payable with effect from the date of the respective deposits until the date of refund in terms of Part H of this judgment. The Appellant shall pay to the RWA costs quantified at Rs. 2 crore, to be paid in one month from the receipt of this judgment.[157]

JUDGMENT

Dr. D.Y. Chandrachud, J.

INDEX

A.	Factual and procedural history
A.1	The appeals
A.2	The Emerald Court project
A.3	First Revised Plan
A.4	Second Revised Plan
A.5	Third Revised Plan
A.6	Complaints against the Revised Plans
A.7	Proceedings before the Allahabad High Court
A.8	Proceedings before this Court
B.	Submissions by Counsel
C.	Prefatory observations
D.	Violation of distance requirement under Building Regulations
D.1	Violation of NBR 2006 and 2010
	D.1.1 Interpretation of "building blocks"
	D.1.2 Interpretation of "dead end sides of buildings"
D.2	Violation of NBC 2005
D.3	Violation of Fire Safety Norms
E.	Consent of the RWA
E.1	Applicability of UP 1975 Act
E.2	Applicability of the UP Apartments Act 2010
E.3	Requirement of RWA's Consent
F.	Collusion and Illegal Construction
G.	Conclusion
H.	Interlocutory Applications

1. Leave granted.

A. Factual and procedural history

A.1 The appeals

2. These appeals have arisen from a judgment of a Division Bench of the High Court of Judicature at Allahabad dated 11 April 2014, upon a writ petition¹ instituted by the first Respondent, the Residents' Welfare Association² of Emerald Court Group Housing Society³.

3. By its judgment, the High Court directed:

(i) The demolition of Towers -16⁴ and 17⁵ by the third Respondent, New Okhla Industrial Development Authority⁶, in Emerald Court situated on Plot No. 4, Sector 93A, NOIDA constructed by the Appellant, Supertech Limited⁷;

(ii) The cost of demolition and removal would be borne by the Appellant, failing which NOIDA shall recover it as arrears of land revenue;

(iii) Sanction for prosecution Under Section 49 of the Uttar Pradesh Urban Development Act 1973⁸, as incorporated by Section 12 of the Uttar Pradesh Industrial Area Development Act 1976⁹, shall be granted for the prosecution of

the officials of the Appellant and the officers of NOIDA for possible violations of the UPIAD Act 1976 and Uttar Pradesh Apartment (Promotion of Construction, Ownership & Maintenance) Act 2010¹⁰; and

(iv) Refund by the Appellant of amounts invested by purchasers who had booked apartments in T-16 and T-17, with interest at fourteen per cent, compounded annually.

4. The correctness of these directions is challenged before this Court in the present appeals.

A.2 The Emerald Court project

5. On 23 November 2004, NOIDA allotted to the Appellant a plot of land admeasuring 48,263 sq. mtrs., which was a part of Plot No. 4 situated in Sector 93A. This plot of land was allotted for the development of a group housing society, by the name of Emerald Court.

6. The first deed of lease was executed on 16 March 2005 between the Appellant and NOIDA. A possession certificate was issued on 17 March 2005.

7. On 20 June 2005, NOIDA sanctioned the building plan for the construction of Emerald Court consisting of fourteen towers, each with ground and nine floors (G+9). This sanction was granted under the New Okhla Industrial Development Area Building Regulations and Directions 1986¹¹. The construction commenced for these fourteen towers.

A.3 First Revised Plan

8. On 21 June 2006, a supplementary lease deed was executed by NOIDA in favour of the Appellant for an additional land area of 6556.51 sq. mtrs. in the same plot of land in Plot No. 4. Adding to the existing holding allotted under the first lease deed, the total leased area allotted to the Appellant increased to 54,819.51 sq. mtrs. The supplementary lease deed noted that:

(i) The demised premises shall be deemed to be part of Plot No. 4, Sector 93A, NOIDA as already leased to the Appellant;

(ii) All other conditions of the original lease deed and allotment shall remain unchanged and would be applicable to the newly demised premises, and bind the Appellant;

(iii) The period of lease shall commence from 16 March 2005; and

(iv) The total area of Plot No. 4, Sector 93A, NOIDA is 54,819.51 sq. mtrs.

The possession certificate in respect of the additional land was issued to the Appellant on 23 June 2006.

9. On 5 December 2006, the New Okhla Industrial Development Area Building Regulations and Directions 2006¹² were notified. Under the NBR 2006, the Floor-Area-Ratio¹³ was increased from 1.5 to 2 for new allottees after 2006. Regulation 33.2.3(i) provided as follows:

33. 'Floor area ratio' Floor Area Ratio. Ground coverage and height limitations.

[...]

33.2.3 Any other utilities as decided by Chief Executive Officer depending on its requirement.

i. Distance between two adjacent building blocks shall not be less than half of the height of the tallest building.

10. On 29 December 2006, NOIDA sanctioned the first revised plan for Emerald Court under the NBR 2006, by which two additional floors were envisaged in addition to the already sanctioned G+9 floors in the original fourteen towers, thereby bringing all of them to ground and eleven floors (G+11). Furthermore, additional buildings were also sanctioned, namely: (i) Tower-15 (comprising of ground and eleven floors (G+11)); (ii) T-16 (comprising of a cluster of wings including 1 wing of ground and eleven floors (G+11) and 3 wings of ground and four floors (G+4)); and (iii) a shopping complex (comprising of ground and first floor (G+1)). As a consequence, under the first revised plan, NOIDA permitted a total of sixteen towers (G+11) (which would each be 37 mtrs. in height) and one shopping complex (G+1). It is important to note that the Appellant was able to have this additional construction due to the area that was made available to it under the supplementary lease deed, and further, when the Appellant had allotted flats to the purchasers, only a small building on the additional leased area was sanctioned. Pertinently, it is also necessary to highlight that the first revised plan contemplated a green area in front of Tower- 1¹⁴. According to the purchasers, when the flats were sold, the brochure of the Appellant contained information in accordance with the first revised plan dated 29 December 2006, which shows the area in front of T-1 as a green area.

11. On 10 April 2008, a completion certificate was granted in relation to the first eight towers (G+11). Thereafter, various owners of flats were granted possession by the Appellant. Crucially, the completion map also indicated a green area in front of T-1, where currently T-16 and T-17 are being constructed.

A.4 Second Revised Plan

12. On 28 February 2009, a notification was issued by the State of Uttar Pradesh enhancing the FAR from 2 (as provided under the NBR 2006) to 2.75 for new allottees. Further, the notification also provided for "purchasable FAR", according to which old allottees (such as the Appellant) could purchase FAR to the maximum extent of thirty-three per cent of their base existing FAR of 1.5.

13. On 3 July 2009, NOIDA decided that the stipulation to purchase thirty-three per cent FAR of the existing base FAR for old allottees under the notification dated 28 February 2009, should be brought at par with other allottees. As a consequence, the purchasable FAR for old allottees would be enhanced to 2.75. However, the notification by the State of Uttar Pradesh in this regard was still awaited. The Appellant states that, in any case, based on the decision of NOIDA, it planned the construction of T-16 and T-17 in a way that catered to the additional FAR which may be available for purchase at a later date.

14. On 19 November 2009, relying on the notification dated 28 February 2009, the Appellant purchased thirty-three per cent of its existing base 1.5 FAR at the cost of Rs. eight crores, increasing its available FAR to 1.995.

15. However, it appears from the record that the Appellant had already started construction of the disputed towers - Apex and Ceyane - prior to the grant of this sanction by NOIDA. On 16 July 2009, the Appellant informed the flat owners that:

1. That we have bought two separate plots measuring approximately 48000 square meter and 6500 square meter and got them registered separately in March 2005 & May 2006 respectively.

2. That the new towers which are being constructed will have altogether separate entry, exit, swimming pool, club & basic infrastructure. We will also construct boundary wall separating two structure i.e. existing 15 towers & Apex Ceyane.

16. The above communication of the Appellant indicates that:

(i) The construction of T-16 and T-17 had already commenced on 16 July 2009;
(ii) According to the Appellant, these new towers would have separate entry-exit, amenities and infrastructure; and

(iii) The new towers would be separated from the existing fifteen towers by the construction of a boundary wall.

The Appellant represented to the flat-owners that a revised building plan for replacing the existing T-16 (G+11) and the shopping complex (G+1) was sanctioned, with twin towers T-16 and T-17, each of G+24 floors and a height of 73 mtrs., replacing them.

17. On 11 September 2009, the Chief Fire Officer of Gautam Budh Naga¹⁵, the fourth Respondent, issued a report to the In-charge (Building Cell) NOIDA, Sector 6 for the grant of the provisional Non-Objection Certificate¹⁶ for T-16 and T-17. The provisional Fire NOC was made subject to compliance with the requirements of the National Building Code, 2005¹⁷.

18. On 16 September 2009, a completion certification was granted in relation to another six towers (G+11). The completion map accompanying this certificate again showed the green area in front of T-1, where presently T-16 and T-17 are being constructed.

19. On 26 November 2009, NOIDA sanctioned the second revised plan for Emerald Court under the NBR 2006. In this plan, the earlier T-16 (G+11) was replaced with a T-16 consisting of ground and twenty-four floors (G+24). Similarly, the shopping complex (G+1) was replaced with T-17 consisting of ground and twenty-four floors (G+24). T-16 and T-17 would each be of a height of 73 mtrs. According to the plan, T-17 was to be at a distance of 9 mtrs. from T-1, and there was a provision for their connection through a space-frame at the upper level. This plan was sanctioned by NOIDA on the basis of the Appellant having purchased thirty-three per cent of the purchasable FAR (27,135.657 sq. mtrs.), in addition to the permissible 1.5 FAR (82,229.265 sq. mtrs.), totalling to 1.995 FAR (1,09,364.922 sq. mtrs.). The second revised plan expressly provided for the following, among other conditions:

2. Due to this sanction of the building plan, the right and ownership of any government authority like (municipality, NOIDA) any other person will not get affected.

[...]

8. A set of sanctioned building plan shall be kept at the construction site so that it can be checked at the site at any time and the construction work shall be done as per the sanctioned building plans specifications as per the Rules of Noida Building Rules. The allottee shall start the construction work of the ground floor only after getting the inspection of the basement done upon completion of the work of basement from building Section department, Noida. Otherwise sanctioned map deemed to be cancelled.

(emphasis supplied)

A.5 Third Revised Plan

20. On 20 February 2010, a notification was issued by the State of Uttar Pradesh enabling old allottees to purchase FAR of up to 2.75 and, as a consequence, the limit of a maximum purchasable FAR of thirty-three per cent of the existing base FAR was removed. The notification contemplated that "the purchasable FAR shall be allowed up to the maximum limit of applicable FAR". The notification also amended the NBR 2006, which expressly provided that:

Purchasable FAR is an enabling provision. It shall not be allowed to any allottee as a matter of right.

21. On 19 March 2010, the UP Apartments Act 2010 came into force. Section 4(4) and Section 5 of this Act provide for the consent of the owners of flats before any change in the sanctioned plans is effected and also envisage that the percentage of undivided common interest of the owners of the flats cannot be changed without their consent.

22. On 30 November 2010, the New Okhla Industrial Development Area Building Regulations 2010¹⁸ came into force. Regulation 24.2.1.(6) contains the following stipulations:

(6). Distance between two adjacent building blocks

Distance between two adjacent building blocks shall be minimum 6 mtrs. to 16 mtrs, depending on the height of blocks. For building height up to 18 mtrs., the spacing shall be increased by 1 metre for every addition of 3 mtrs. as per National Building Code 2005. If the blocks have dead-end sides facing each other, than the spacing shall be maximum 9 mtrs. instead of 16 mtrs. Moreover, the allottee may provide or propose more than 16 mtrs space between two blocks.

23. On 18 August 2011, the CFO granted a temporary NOC in respect of T-16 and T-17, for a height of 121.5 mtrs. with proposed ground and thirty-eight floors (G+38). It was noted that once the buildings were constructed and proper fire safety equipment was installed, they would be inspected in order to assess whether a permanent NOC should be granted.

24. On 25 October 2011, in view of the notification dated 20 February 2010, the Appellant purchased an additional FAR at a cost of Rs. 15 crores, so as to enhance the available FAR from 1.995 to 2.75 (1,50,753.652 sq. mtrs.). On the same date, NOIDA issued a letter to the Appellant in relation to the purchase of the FAR, imposing several requirements, including compliance with the provisions of the UP Apartments Act 2010.

25. On 2 March 2012, the third revised plan was sanctioned by NOIDA for Emerald

Court. Through this sanction, the height of T-16 and T-17 was permitted to be raised from 24 floors to 40 floors (i.e., G+40), resulting in the building's height being 121 mtrs. Further, T-16 and T-17 would also consist, inter alia, of two basements and open space for parking beneath the towers. The third revised plan also contained a requirement of compliance with the UP Apartments Act 2010, along with similar requirements which were present in the second revised plan.

A.6 Complaints against the Revised Plans

26. On 9 March 2012, the Appellant addressed a communication to the first Respondent intimating that the flat purchasers of T-16 and T-17, which were under construction, would have altogether separate entry-exit, amenities and infrastructure.

27. On 29 March 2012, the office of the CFO, on the basis of a complaint by the first Respondent, issued a notice to the Appellant in regard to certain deficiencies and violations in complying with fire safety requirements.

28. On 24 April 2012, the CFO, on the basis of another complaint by the first Respondent, addressed a communication to NOIDA in regards the violation of the minimum distance between T-1 and T-17. The letter, inter alia, states:

When record was perused in respect of the above, it was found that:

[...]

2. There should be a minimum distance of half of the height of building in between two building blocks as per Clause No. 33.2.3. of Building Construction Regulations, 2006 and there should be a distance of 16 meters in between the buildings whose height is more than 50 meters as per Noida Regulations, 2010.

3. There should be a distance of 16 meter in between two buildings situated side by side as per National building Code of India - 2005.

Therefore, you are requested that in the light of above kindly inform that license was granted for construction of building after providing relaxation to the building in question in Special Category or construction is being carried out by the concerned is contrary to the standards.

29. On 3 May 2012 and 22 May 2012, the first Respondent filed an RTI application with NOIDA for obtaining the sanctioned plans in relation to Plot No. 4 of Sector 93A. Though under the terms of the sanctioned plans the Appellant was required to display the sanctioned map at its site, NOIDA still wrote to the Appellant to verify whether the sanctioned plans and maps could be made available to the first Respondent. The Appellant in response refused to grant its consent to release sanctioned plans and maps to the first Respondent. Hence, NOIDA refused to provide the sanctioned plans to the first Respondent.

30. On 19 June 2012, a show cause notice was issued by NOIDA to the Appellant stating that: (i) the construction was not in accordance with the third revised plan since, inter alia, T-1 and T-16/17 were not joined by a space frame; and (ii) a copy of the plan had not been exhibited at the site office. The Appellant replied to the show cause notice on 26 June 2012 stating that T-16 and T-17 were still under construction and the space frame would be built at the time of construction.

31. On 26 June 2012, NOIDA issued a completion certificate to the Appellant in respect

of Tower-15 (G+11).

32. On 28 June 2012, the first Respondent addressed a communication to NOIDA complaining of violations and misrepresentations made to the owners by the Appellant, and sought cancellation of the layout plan of the two new towers, T-16 and T-17. The first Respondent followed up its earlier communication with letters dated 9 and 29 August 2012 demanding information, and intimating that the construction was being carried out by the Appellant in violation of the norms.

A.7 Proceedings before the Allahabad High Court

33. On 10 December 2012, the first Respondent filed a writ petition Under Article 226 of the Constitution before the High Court seeking inter alia the following reliefs:

- i. Issue a writ, order or direction quashing the revised plan approved by Respondent 2 for construction of new towers namely Tower 'APEX' and 'CEYANE' in plot No. 4, Sector 93-A, and issue further directions for demolishing of aforesaid towers, the approval and construction being in complete violation of provisions of U.P. Apartments Act of 2010.
- ii. Issue a writ, order or direction directing the Respondent 2 not to sanction amendments to any further building plans in respect of the Group Housing Society being developed by Respondent 5 without obtaining consent of all the residents.
- iii. Issue a writ, order or direction quashing the permission granted to Respondent 5 to link Tower T-1 and T 'APEX'/'CEYANCE' through space frame.
- iv. Issue a writ, order or direction directing Respondents 2 and 3 to ensure that fire safety equipment and infrastructure is installed at the expenses of Respondent 5 within a specified period.
- v. Issue a writ, order or direction directing Respondent 2 to demolish illegal construction made in the basement and setback area as per notice dated 19.06.2012 and 17.07.2012.
- vi. Issue a writ or direction directing Respondent No. 2 and 5 to provide car parking spaces (both aboveground and in the basement) as per the provisions of the NBC 2005 to all the legal allottees/residents of Supertech Emerald Court Complex, plot 4, Sector 93-A NOIDA.

34. The first Respondent only pressed reliefs i and iii, seeking a direction to quash the revised plan which approved the construction of T-16 and T-17, and to demolish them. The first Respondent also sought the quashing of the permission granted to link T-1 and T-16/T-17 through a space frame. During the pendency of the writ proceedings, in pursuance of a specific order of the High Court, the RWA was provided with the sanctioned maps together with related information and documents in respect of the construction at the site. Pleadings were subsequently exchanged between the parties.

35. The Appellant filed a counter affidavit on 27 January 2013 submitting that:

- (i) The first Respondent is not recognised by the Appellant under the UP Apartments Act 2010;
- (ii) The first Respondent should have first approached the Chief Executive

Officer of NOIDA, who is the competent authority under the UP Apartments Act 2010, and then the State Government, before approaching the High Court under the writ jurisdiction;

(iii) Construction of T-16 and T-17 was approved on 26 November 2009, but the writ petition had been filed after three years in December 2012, when the building is in an advanced stage of construction. Hence, the writ petition is barred by delay and laches; and

(iv) T-16 and T-17 were sanctioned in 2009 under the NBR 2006. The final sanction given on 2 March 2012 only increased the height of the towers from twenty-four floors to forty floors, after the Appellant purchased the additional FAR. Under the NBR 2006, there is no provision with regard to the minimum distance between two "building blocks". Since the NBR 2006 did not incorporate the NBC 2005, the mandatory requirement of 16 mtrs. between two building blocks for buildings higher than 55 mtrs. need not be followed. The distance requirement between two building blocks was only mandated by NBR 2010, which is not applicable since the initial sanction for T-16 and T-17 was given under NBR 2006.

36. NOIDA in its counter affidavit dated 7 February 2013 stated that:

(i) It allotted the plot to the Appellant by complying with the NBR 2010. The sanction was also given with the specific condition that the UP Apartments Act 2010 must be complied with;

(ii) Plot No. 4 is not divided into two projects. It is unified and belongs to a single project; and

(iii) The permission for the construction of a space frame connecting T-1 with T-16/T-17 was granted only after the design was approved by IIT Roorkee.

37. The High Court allowed the writ petition on 11 April 2014 and directed the demolition of T-16 and T-17, with the expenses of the demolition being borne by the Appellant. It further directed the Competent Authority to grant sanction for the prosecution of NOIDA's officials as required under the UPUD Act 1973, within a period of three months. The High Court also directed the Appellant to refund the consideration received from flat purchasers who had booked apartments in T-16 and T-17, with fourteen per cent interest compounded annually. While allowing the writ petition, the High Court made the following observations:

(i) The first Respondent had the locus to institute proceedings Under Article 226 of the Constitution. The flats were handed over to the purchasers by September 2009. The RWA was formed and registered with the Registrar of Societies in the same year. The Model Bye-Laws under the UP Apartments Act 2010 were notified by the Government on 16 November 2011. However, the Deputy Registrar Firms, Societies and Chits, Meerut, Uttar Pradesh issued a letter on 14 December 2012 stating that pending instructions from the Registrar, no decision could be taken in respect of the Model Bye-Laws and registration. The Registrar by a circular dated 5 December 2013 issued instructions for registration of the first Respondent under the UP Apartments Act 2010. On 20 October 2013, the first Respondent by its resolution adopted the Model Bye-Laws and conducted its elections. Further, in any case, the Appellant had recognized the first Respondent since its inception and had corresponded with it

continuously. The Appellant had never raised objections on its competence to represent the flat purchasers. The grant of sanction by NOIDA in violation of the relevant building Regulations affects the rights of every apartment owner, who is represented through the first Respondent. Hence, the first Respondent is a 'person aggrieved' and was entitled to initiate the writ proceedings;

(ii) The first Respondent Under Article 226 was not barred by the available remedy of approaching either the CFO, NOIDA under the UP Apartments Act 2010 or the State Under Section 27 of the UPIAD Act 1976. Though the first Respondent raised its grievance before NOIDA, no notices were issued and there was no follow up. Only if NOIDA had issued an order, could the first Respondent have approached the State Government Under Section 27 of the UPIAD Act 1976. Thus, there was no other alternative remedy that was available to first Respondent but to initiate writ proceedings;

(iii) The Appellant must have submitted a declaration in the office of the competent authority with regard to the construction of the building under the UP Apartments Act 2010. Rule 4 of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Rules 2011 states that when the competent authority receives an application for amendment of the declaration, it shall issue a written notice to the association of the building owners and an order shall be passed by the competent authority only after the association is given the opportunity of being heard. Since no such notice was given to the association, it is an 'aggrieved person' and thus has the locus to initiate writ proceedings;

(iv) The original building plan was sanctioned when NBR 2006 was in force. However, the approval for purchase of additional FAR was made in 2011. It is a settled principle of law that the Rules and Regulations applicable on the date of the sanction would determine the rights of the parties. The sanction given on 2 March 2012 further imposed a condition of applicability of the UP Apartments Act 2010. Therefore, both the NBR 2010 (and NBC 2005, since NBR 2010 makes it applicable) and the UP Apartments Act 2010 shall be applicable;

(v) The contention of Appellant that the project was in two phases is not borne out from the record since NOIDA has permitted the purchase of additional FAR and granted the subsequent sanction treating the project as a single project. The plans submitted and sanctioned were for a single project, and an attempt has been made by the Appellant to mislead the court;

(vi) Regulation 24.2.1(6) of the NBR 2010 states that for buildings up to the height of 18 mtrs., the spacing between two adjacent building blocks shall be 6 mtrs. and the spacing shall be increased by 1 mtr. for every 3 mtrs. above 18 mtrs., but subject to a maximum distance of 16 mtrs. Para 8.2.3.1 of the NBC 2005 states that for buildings higher than 55 mtrs., 16 mtrs. open space must be left in the sides and rear. Since the height of T-17 is 121 mtrs., the distance between the building blocks must at least be 16 mtrs. However, the distance is only 9 mtrs. and is deficient by 7 mtrs.;

(vii) The Appellant, in collusion with NOIDA, obtained sanctions for the layout map in violation of the mandatory requirement for space to be maintained between building blocks and clear space;

(viii) The provisions of the UP Fire Prevention and Fire Safety Act 2005¹⁹ were required to be complied with, according to which the minimum distance of 7.5 mtrs. between building blocks and a clear space must be provided, which has been violated in the third revised plan of 2012;

(ix) The submission of the Appellant that the expression 'building blocks' having not been defined in the NBR 2010, would mean the entire set of buildings on Plot No. 4 is contrary to the NBR 2006 and NBR 2010. The sanctioned plans show that the Appellant got the layout approved, consisting of separate blocks. The nomenclature of the blocks was subsequently changed in each successive plan, and finally the buildings were numbered as T-1 to T-17. The sanctioned plans clearly show that T-1 and T-16/17 are separate building blocks; and

(x) The plan sanctioned by NOIDA was contrary to: (a) the building Regulations; (b) the mandatory distance between building blocks; and (c) the movement space required, as a result of which the rights of the apartment owners and the safety of their apartment blocks have been seriously affected.

A.8 Proceedings before this Court

38. The Appellant filed a Special Leave Petition Under Article 136 of the Constitution on 28 April 2014 assailing the judgment of the High Court. On 5 May 2014, this Court directed the maintenance of status quo in respect of T-16 and T-17, directing that neither the builder nor the purchaser shall alienate the property or create third party rights. During the course of the hearings on 19 July 2016 and 27 July 2016, the Appellant and NOIDA submitted that the Court may have the view of an expert agency on the issue and engage an expert for this purpose. On the submission of the Additional Solicitor General, the National Buildings Construction Corporation Limited²⁰, a government owned enterprise, was appointed to examine various facts in relation to the dispute, particularly those having a bearing on whether the two towers (T-1 and T-17) have dead-end sides facing each other. By its report dated 13 October 2016, the NBCC concluded that the two towers are not compliant with Regulation 24.2.1.6 of the NBR 2010. Apart from the report which has been submitted by the NBCC, the first Respondent had commissioned IIT Delhi and IIT Roorkee to report on the disputed issue of 'dead ends'. Reports by them have been placed on the record.

39. By its interim orders dated 6 September 2016 and 11 January 2017, this Court directed that a group of applicants be given ten per cent per month towards return of investment²¹. On 22 September 2017, this Court directed Mr. Gaurav Agarwal, Amicus Curiae, to create a portal link to coordinate with the Appellant and the flat purchasers on issues relating to refund. Further, this Court directed that the principal amount along with interest of fourteen per cent shall be provided to the flat purchasers who have opted not to wait for the decision of this Court in the present Special Leave Petition.

40. By an order dated 30 July 2018, this Court with the assistance of the Amicus Curiae classified the home buyers into the following groups, based on the refund option chosen by them:

- (i) Refund of principal amount along with twelve per cent simple interest per annum (one hundred and one home buyers);
- (ii) Home buyers who still insist on getting interest at the rate of fourteen per

cent (twenty-four home buyers) - since a substantial number of home purchasers have agreed to twelve per cent interest, these twenty-four purchasers were also directed to accept the twelve per cent interest rate;

(iii) Home buyers through the Subvention Scheme - in such cases, the EMIs shall be paid by the Appellant until the possession is handed over; and

(iv) Disputed cases-Mr. Sanjeev Agrawal and Ms Rashmi Arora have paid Rs. 38,51,009 and Rs. 17,43,162 respectively by cheque. The said amount shall be refunded with a simple interest at twelve per cent per annum.

B. Submissions by Counsel

41. Mr. Vikas Singh, learned Senior Counsel appearing on behalf of the Appellant urged the following submissions:

(i) The sanction and construction of T-16 and T-17 is not violative of the distance Rule under NBR 2010:

a. NBR 2010 does not apply to T-16 and T-17, since they were first sanctioned in the second revised plan issued under the NBR 2006. Under the NBR 2006, the distance provision in Regulation 33.2.3(i) was not mandatory and it was open to the CEO to stipulate the distance requirement depending upon the exigencies of a lay out plan. In any case, the Regulation applies to the distance between two building blocks and does not govern the distance between the T-1 and T-17, which form a part of the same block. Further, if this provision was mandatorily applied, then it would also affect the first revised plan, in which the heights of the fifteen other towers is 37.5 mtrs. while the distance with the adjacent blocks was less than half the height, i.e., less than 18.75 mtrs.;

b. Even if NBR 2010 was to apply, T-16 and T-17 are part of the same building block consisting of T-1, Tower-2, Tower-3 and T-17, which is connected by a space frame to T-1. Hence, Regulation 24.1.2(6) of the NBR 2010, which provides for a distance to be maintained between "adjacent building blocks" ("Bhawan Samuh"/cluster of buildings), is not applicable in respect of the distance between T-17 and T-1;

c. The concept of a building block has been explained in a note submitted by NOIDA to the High Court. While using the FAR, the only requirement is to maintain a certain percentage as an open/green area. Instead of scattering the buildings over the total project area, group housing projects can envisage adjacent towers or even a block of towers so as to ensure a large open green space rather than scattered small spaces all over the project;

d. In the alternative, even if they are not part of the same building block, T-17 being a "tower like structure", para 8.2.3.2 of the NBC 2005 is attracted in terms of Regulation 24.2.1(6). In accordance with para 8.2.3.2, the minimum distance for buildings of a height of less than 37.5 mtrs. is 9 mtrs., while for buildings of a greater height, it is 12 mtrs. Further, in accordance with para 8.2.3.2(d), the deficiency of this distance at the ground level can be made good at the upper levels.

Hence, maintaining a minimum distance of 16 mtrs. between "tower like structures" is not an inviolable requirement;

e. In the present case, the minimum distance between T-1 and T-17 varies from 9.88 mtrs (at the ground level) to 25.75 mtrs (at the upper level), since the total height of T-1 is 27.61 mtrs. while that of T-17 is 84.5 mtrs. As such, it is in compliance with NBC 2005; and

f. The Model Bye-Laws 2016 issued by the Ministry of Urban Development, Government of India prescribe a 9 mtrs. space around any building irrespective of the height beyond 40 mtrs.;

(ii) The sanction to construct T-16 and T-17 is not violative of the UP Apartments Act 2010:

a. T-16 and T-17 were sanctioned on 26 November 2009, and hence the requirement of prior consent did not arise, since the Act was not in force then;

b. The flat owners of T-1 to T-15 who already had possession of their flats would not be "intended purchasers" under the proviso to Section 4(4) of UP Apartments Act 2010, and their consent was not required for the construction of additional floors in T-16 and T-17;

c. The consent of all flat owners would be impractical, and at best the consent of the RWA would suffice. On 2 March 2012, when the third revised plan was sanctioned, the RWA was not functional and it was only on 20 October 2013 that the RWA adopted the Model Bye-Laws under the UP Apartments Act 2010;

d. There has been no violation of the common area facilities of the flat owners of T-1 to T-15 by the creation of T-16 and T-17, since they have been planned with separate entries and exit facilities together with infrastructure; and

e. A majority of the flat owners of T-1 to T-15 was fully aware of the sanction to construct T-16 and T-17 since: (i) 245 flats were booked till the first revised plan in 2006; (ii) between 2006 and until the second revised plan in 2009, 141 flats were booked; (iii) after the second revised plan and until the third revised plan in 2012, 114 flats were booked; and (iv) after the third revised plan in 2012 till 2 August 2021, 159 flats have been purchased;

(iii) There has been no violation of fire safety norms:

a. A provisional Fire NOC was received on 11 September 2009, prior to the sanction on 26 November 2009. The fire department thereafter granted another temporary NOC for T-16 and T-17 on 18 August 2012, prior to the sanction dated 2 March 2012; and

b. Under NBR 1986 and NBR 2006, buildings were required to be compliant with fire safety norms prescribed in Part-IV of the NBC 2005. Para 4.6(b) of the NBC 2005 provides that for high rise buildings, open spaces on all sides up to a width of 6 mtrs. shall be available for free

movement of fire tenders. In the present case, there is a clear space of 9 mtrs. between T-1 and T-17, which allows a free movement of fire tenders;

(iv) The Uttar Pradesh Ownership of Flats Act 1975²² is not applicable:

a. Under Section 2, the Act applies only to properties, the owners of which submit to the provisions of the Act by executing a declaration. As such, the Act does not automatically apply to all properties and none of the flat owners have made executed any such declaration presently;

b. Clause II(h) of the lease deed dated 26 March 2005 deals with maintenance, and cannot be construed to incorporate the application of the UP 1975 Act; and

c. If the contention of the first Respondent is accepted, the changes made by the first revised plan in T-1 to T-15, involving an increase in the height of all towers from nine to eleven floors, would also to be illegal;

(v) There is no green area violation in the sanctioning of T-16 and T-17:

a. A triangular green space in the first revised plan was planned for the newly proposed T-16 (G+11) and shopping complex (G+1). This area was over and above the mandatory green area (soft landscape) required to be maintained on the plots under the NBR 2006;

b. The central green area was sanctioned in the original plan of 2005. The required green area Under Regulation 38 of the NBR 2006 was twenty-five per cent of the open area, which would be 11,538,02 sq. mtrs. whereas the Appellant had provided a green area of 12,064.91 sq. mtrs. in the form of a central park;

c. T-1 was not sold on the promise of a green space area in front of it and none of the buyers were charged preferential location charges; and

d. Only eleven flats in T-1, out of a total of 44, were booked after the sanctioning of first revised plan and before the second revised plan. Out of these eleven, only seven flats were facing towards T-17. Even in these seven, there were no windows/balconies facing T-17, but only small bathroom windows;

(vi) The sanction of T-16 and T-17 is based on a valid certificate as regards the structural design of the towers;

(vii) The Appellant has not collected the entire lease rent payable to NOIDA only from the flat owners of T-1 to T-15. It has only collected around Rs. 7.5 crores, while it itself has paid around Rs. 14 crores; and

(viii) The order for demolition of T-16 and T-17 is liable to be set aside on ground of equity:

a. The construction was carried out with the sanction of the authorities;

b. 600 persons had purchased flats in these towers;

- c. Construction began in December of 2009, and third-party rights in favour of the purchasers have been crystalized;
- d. The petition was filed before the High Court in December 2012; and
- e. 28 floors in T-17 and 26 floors in T-16 were constructed as on 20 December 2013 when arguments were concluded before the High Court, and by the time that the judgment was delivered, 32 floors had been constructed.

Hence, the order of demolition would be harsh and inequitable.

42. Supplementing the submissions of Mr. Vikas Singh, Mr. Ravindra Kumar, learned Counsel appearing on behalf of NOIDA, made the following submissions:

- (i) Para 8.2.3.2 of NBC 2005 provides that for buildings of heights between 24 mtrs. to 37.5 mtrs. with one setback, the open space at the ground level shall not be less than 9 mtrs. Since the height of the existing tower Aster-2 (T-1) is less than 37.5 mtrs., the minimum space required between this tower and T-17 is only 9 mtrs. Further, the deficiency of open space can be made good through set-backs at the upper level. However, since the height of T-1 is not proposed to be increased and the tower is open from all three sides, this requirement need not be fulfilled;
- (ii) The various NOIDA Building Regulations have not been violated as they do not prescribe the minimum distance between two towers. It only refers to the distance between 'building blocks', with reference to the NBC 2005;
- (iii) If building blocks have dead end sides facing each other, then the space between two building blocks shall be a maximum of 9 mtrs. as per the NBR 2010. Similar provisions are found in other building bye-laws such as Delhi Building Bye Laws, Bhubaneswar Development Authority Building Byelaws, and Model Building Byelaws prepared by the Ministry of Urban Development;
- (iv) The Fire Safety Act has also been adhered to, as it requires a minimum distance of 6 mtrs. between two towers to provide space for movement of fire tenders;
- (v) The construction of the buildings was not stayed by the High Court, which has now jeopardized the rights of third-parties, who will now be aggrieved by the order of demolition;
- (vi) At the time of sanction of the second revised plan dated 26 November 2009, the UP Apartments Act 2010 had not been enacted. With respect to grant of sanction to the third revised plan, the power to sanction the plans or revisions vests with NOIDA and is not curtailed by the UP Apartments Act 2010;
- (vii) UP Apartments Act 2010 does not mandate the taking of any consent or NOC from the RWA prior to sanction of plans. In spite of this, an obligation was placed on the Appellant to abide by the provisions of UP Apartments Act 2010, while sanctioning the third revised plan dated 2 March 2012;
- (viii) While sanctioning the third revised plan, there was no change in the ground coverage area of T-16 and T-17 and only their proposed heights were increased; and

(ix) There is no factual foundation to conclude that there had been any collusion between the Appellant and NOIDA.

43. Mr. Jayant Bhushan, learned Senior Counsel appearing on behalf of RWA urged that the members of the RWA purchased their flats after being shown a layout which included a limited number of flats and gardens, including a garden in front of T-1. Many of the allottees are retired persons who have suffered as a result of the unilateral changes made by the Appellant, which resulted in an increase in the number of flats from 689 to 1573. The garden area in front of T-1 has been completely removed and instead of a complex of 11 storeyed buildings, two long and tall structures have been sanctioned without the consent of the existing allottees obliterating their right to light, air, view and garden area, thereby endangering their safety. Mr. Bhushan submitted that:

(i) The sanctions of 2009 and 2012 are in violation of the minimum distance criteria required to be maintained between two buildings. Under Regulation 32.3.1(i) of the NBR 2006, the distance required is half the height of the tallest building. The tallest building, T-17, under the second revised plan of 2009 is 73 mtrs. and hence, the minimum distance of 36.5 mtrs. was required between T-1 and T-17. Even the existing T-1 is of 37 mtrs. height and therefore, even a building smaller than T-1 could come up only at a distance of at least 18.5 mtrs from T-1;

(ii) Regulation 24.2.1(6) of the NBR 2010 requires a minimum distance of 16 mtrs. between T-1 and T-17, as opposed to 9 mtrs. at the side;

(iii) Under para 8.2.3.1 of NBC 2005, the distance required between buildings would be 16 mtrs. plus ten per cent of the building length minus 4 mtrs. The length of the proposed tower is 84.5 mtrs., and hence the distance required would be $(16 + (10 \text{ per cent of } 84.5) - 4)$, which is equal to 20.45 mtrs.;

(iv) The requirement of complying with NBC 2005 is prescribed by NBR 2010 and the NOC issued by the CFO in 2009. In this regard, on 24 April 2012, the CFO inquired from NOIDA how the new buildings were sanctioned in violation of the distance criteria prescribed in NBR 2006 and 2010, and NBC 2005, which was not responded to by NOIDA;

(v) NBCC, which was appointed by this Court at the request of the Appellant, has stated in its report that the distance requirement has been violated;

(vi) In response to the argument of the Appellant that T-1, T-16 and T-17 form part of one building block, obviating the requirement of minimum distance, it was submitted that:

a. NBC 2005 refers to the distance between buildings and not building blocks;

b. The expression "building block" though used in NBR 2006 and 2010, has not been defined in either of the Regulations. The rationale for the distance between building blocks is to ensure fire safety evacuation, light and ventilation. It cannot be left to the builder to designate groups of buildings as one building block since the purpose of maintaining the minimum distance would be seriously compromised. The expression must take its colour from NBC 2005 and every building

must be a building block; and

c. The reports submitted by the IITs of Delhi and Roorkee specify functional requirements of distance between buildings including:

- i. fire separation to avoid transmission between buildings;
- ii. safe escape and rescue during fire;
- iii. ventilation; and
- iv. daylight access.

These requirements have been severely compromised due to the lack of the minimum distance between T-1 and T-17;

d. Regulation 24.2.1(6) of NBR 2010 refers to NBC 2005 as the source of the distance requirement. The interpretation of the phrase 'building block' in NBR 2010 and 2006 must be consistent with NBC 2005;

e. The first revised plan of 2006 shows that each building was intended to be a separate block;

f. The initial argument of the Appellant was that T-1 and T-17 are on separate plots and were never intended as the same block. Subsequently, the Appellant claimed that they were constructed in separate phases and were to have separate facilities. Later, it introduced a false and unapproved map showing T-1, T-2, T-3, T-16 and T-17 as one block;

g. The affidavit of the Appellant dated 4 August 2021 before this Court states that T-16 and T-17 will have separate facilities including entry and exit;

h. T-1, T-16 and the shopping complex as sanctioned in the first revised plan of 2006 were distanced and were different blocks altogether;

i. The construction of T-1 was completed in April 2008 and possession was granted to allottees. It was not legally possible to construct T-17 in 2008 since it was first sanctioned only in November 2009;

j. The road between T-1 and T-17 is the main road for the society and leads into the basement and parking;

k. The basement of T-1 has one level while T-17 has two levels;

l. The foundation of T-1 is made to bear a load of only eleven floors. The Appellant has claimed that though the foundation of T-17 was laid in 2009, when only twenty-four floors were sanctioned, it was meant to bear a load of forty floors, which were sanctioned only in 2012;

m. The connection of two building blocks with the space frame would not make it one building block; and

n. The Appellant itself was unconvinced by the building block argument and raised the 'dead end' side issue, which led to the appointment of NBCC by this Court to verify the facts. After a negative report from NBCC, the Appellant has once again fallen back on the building block argument to assert that blocks can be defined at the discretion of the developer;

(vii) In response to the submission of the Appellant that the buildings are "tower like structures" under the NBC 2005 and thus, meet the minimum distance mandated, it was submitted that:

a. Requirements of NBR 2006 and 2010 and NBC 2005 are independent and hence, the defence of a tower like structure under the NBC 2005 cannot cure violations of the NBRs;

b. T-17 does not have any set-backs and has the same width throughout;

c. At least 12 mtrs. distance is required at the ground level even for tower like structures; and

d. The deficiency of the mandated open space of 16 mtrs. under the NBC 2005 in tower-like structures can be cured by set-backs on upper levels. However, the distance of 12 mtrs. at the ground level is still mandatory;

(viii) Possession of flats in T-1 was given to purchasers in 2008. The second and third revised plans of 2009 and 2012 respectively proposed a space frame connecting T-1 and T-17 when the residents had already started living in T-1. This is illegal and a safety hazard;

(ix) Under the lease, the undivided interest in common areas stood transferred to the respective allottees. The owners of the existing flats had paid the entire lease amount and more. While the Appellant paid Rs. 13 crores as onetime lease rent, the buyers of existing flats (other than those in T-16 and T-17) were charged over Rs. 16 crores;

(x) Consent of flat owners was required under UP Apartments Act 2010 before an alteration in the sanctioned plan:

a. Sections 4(4) and Section 5(3) of the UP Apartments Act 2010 requires the consent of all allottees before a change in the sanctioned plan/undivided interest in the common area is made. The removal of the green area reduced the common areas and, with an increase in the flats from 689 to 1573, the proportionate undivided interest in the common areas has been reduced substantially;

b. The UP Apartments Act 2010 is applicable irrespective of whether or not a society is formed. The rights are vested with the apartment owners and not the association; and

c. Gardens as well as land are included in the definition of common areas over which all residents have rights;

(xi) Consent of flat owners ought to have been obtained before obtaining an

alteration of the sanctioned plan, under UP 1975 Act:

- a. Under Sections 5(2) and 5(3), undivided interest cannot be altered without the consent of all owners of flats;
- b. Clause II(h) of the lease deed stipulates the applicability of the UP 1975 Act. This is not confined only to maintenance. The tripartite sub-lease between NOIDA, the Appellant and the allottees also mandates the applicability of the UP 1975 Act; and
- c. The Appellant was responsible to ensure that the declaration under the UP 1975 Act was made. It cannot take advantage of its own wrong in failing to submit a declaration;

(xii) The Appellant and NOIDA have colluded to by-pass the Building Regulations:

- a. Despite the revised plans violating the distance criteria, NOIDA granted sanction to the said revisions. The plans were not cancelled despite repeated reminders from the RWA;
- b. Despite the letter of the CFO dated 24 April 2012 highlighting the violation of the distance criteria, NOIDA did not take any action;
- c. The Appellant was aware in advance that its plan would be sanctioned in the future, and hence built a stronger foundation in 2009 to support forty storey buildings for T-16 and T-17, which received sanction only in 2012;
- d. Under the terms of approval, the sanctioned plan had to be kept at the site for display. In spite of this, there was a failure of the Appellant to display the plans. When a request was made by the RWA to NOIDA to provide a copy of the plans, NOIDA asked the Appellant whether it could supply the plans. Upon the refusal by the Appellant, NOIDA declined to provide the plans; and
- e. No action was taken by NOIDA after issuing a show cause notice for violation of the minimum distance requirement to the Appellant based on a complaint by the flat owners;

(xiii) No part of the second revised plan of 2009 can be saved as it is in violation of the distance criteria contained in the NBR 2006, and is also contrary to the UP 1975 Act;

(xiv) The Appellant cannot make any further constructions without the consent of the existing flat owners under the UP Apartments Act 2010 and the Real Estate Regulation and Development Act 2016;

(xv) There is no equity in favour of the flat buyers in the new buildings (T-16 and T-17) who have decided to retain their flats, particularly when this Court had through several orders granted an opportunity to the purchasers to seek refund;

(xvi) T-16 and T-17 can safely be demolished; and

(xvii) False and misleading statements have been made by the Appellant in the course of its pleadings before the High Court and this Court.

C. Prefatory observations

44. At the outset, it must be noted that:

(i) The area which was originally leased to the Appellant admeasured 48,263 sq. mtrs.; and

(ii) As a result of the supplementary lease, the area stood increased to 54,816 sq. mtrs.

In order to bring clarity to the issues raised, the dates of sanction and details of the construction are tabulated below:

Title	Date of Sanction	Buildings	Details
Original Plan	20 June 2005	Towers 1-14	G+9 floors
First Revised Plan	29 December 2006	Towers 1-15	G+11 floors, height of each tower is 37 mtrs.
		Tower 16	T-16 was to comprise of a cluster of wings comprising of 1 (G+11 floors) and 3 (G+4 floors) with a height of 37 mtrs.
		Shopping Complex	G+1 floor
Second Revised Plan	26 November 2009	Towers 1-15	G+11 floors, height of each tower is 37 mtrs.
		Towers 16-17*	G+24 floors, height of each tower increased to 73 mtrs.
		Towers 1-15	G+11 floors, height of each tower is 37 mtrs.
Third Revised Plan	2 March 2012	Towers 16-17Φ	G+40 floors, height of each tower is increased to 121 mtrs.

The plan for the construction was originally sanctioned on 20 June 2005. Thereafter, three revisions were sanctioned on 29 December 2006, 26 November 2009 and 2 March 2012.

45. The sanctioning of the revised plans and the construction of T- 16 and T- 17 have been challenged on the ground of a violation of:

- (i) NBR 2006;
- (ii) NBR 2010;
- (iii) NBC 2005;
- (iv) UP 1975 Act;
- (v) UP Apartments Act 2010; and
- (vi) Fire safety norms.

The Appellant disputes the applicability of the UP 1975 Act. This will be considered in the course of the judgment.

46. It becomes necessary to clear the ground in regard to the reliefs which were sought before the High Court. The reliefs sought before the High Court in the petition were for:

- (i) Quashing the revised plan for the construction of T-16 (Ceyane) and T-17 (Apex) and the demolition of the structures constructed pursuant to the plan;
- (ii) Directing NOIDA to not sanction any further building plans in respect of Emerald Court without obtaining the consent of all residents;
- (iii) Quashing the permission granted to link T-1 with T-16/T-17;
- (iv) Directing the installation of fire safety equipment and infrastructure;
- (v) Directing the demolition of the illegal construction in the basement and the setback area; and
- (vi) Directing NOIDA and the Appellant to provide car parking spaces in accordance with NBC 2005.

Of the above reliefs, the High Court recorded that only prayers (i) and (iii) were pressed.

47. The above narration establishes that there was a challenge to the revised plans by which the construction and increase in the height of T-17 (Apex) and T-16 (Ceyane) were envisaged. As the tabulation set out above indicates, in the first revised plan of 29 December 2006, T-16 was to partially comprise of G+11, the rest being G+4. A shopping complex was envisaged comprising of G+1 floors. A triangular green area is indicated in the first revised plan of 29 December 2006 in front of T-1. In the second revised plan of 26 November 2009, T-17 (Apex) and T-16 (Ceyane) came to be envisaged with twenty-four floors and of a height of 73 mtrs. each. In the third revised plan of 2 March 2012, the number of floors of T-16 and T-17 was increased further from twenty-four to forty floors (for T-16) and thirty-nine floors (for T-17), and the height of each of the towers was increased from 73 mtrs. to 121 mtrs. In this backdrop, the relief which was sought in prayer (i) was for quashing the revised plan for the construction of the two new towers - T-17 (Apex) and T-16 (Ceyane). This clearly implicates a challenge both to the second revised plan of 26 November 2009 as well as the third revised plan of 2 March 2012.

48. A brazen attempt at stonewalling the first Respondent was made by the Appellant and NOIDA before the High Court. The sanctioned plans incorporate the condition that a

copy of each plan would be made available at the site. Despite this, when the first Respondent sought copies of the sanctioned plans and other information, NOIDA wrote to the Appellant asking for their consent to provide the plans to the first Respondent. When the Appellant refused, NOIDA's refusal to the RWA followed suit. It was only pursuant to the interim directions of the High Court that the sanctioned plans and documents were provided to the first Respondent. The reliefs which have been sought encompass a challenge to the validity of the second and third revised plans, under which the two towers, T- 17 (Apex) and T-16 (Ceyane), were being constructed.

D. Violation of distance requirement under Building Regulations

49. The first issue we shall address is whether the sanction for the construction of T-16 and T-17 by NOIDA is in violation of the distance requirement under applicable building Regulations.

Original sanction dated 20 June 2005

50. When the plan was originally sanctioned on 20 June 2005, the NBR 2006 was yet to come into force. The sanction of 20 June 2005 was under the regime of the NBR 1986. NBR 1986 envisaged a 15 mtrs. set back from the front and 9 mtrs. on all sides. Since the original plan did not envisage construction of T-16 and T-17, the said plan is not under challenge for violation of the relevant building Regulations.

First revised sanction dated 29 December 2006

51. NBR 2006 came into force on 16 December 2006. The sanctioned plan for the project was first revised on 29 December 2006, and it covered a total area of 54,819 sq. mtrs., leased to the Appellant under the Lease Deed and the Supplementary Lease Deed. The first revised plan provided for the construction of two additional towers (T-15 and T-16) and one shopping complex (G+1 floors). All 16 towers were to comprise of G+11 floors and were to be 37 mtrs. in height.

52. The first revised plan was governed by the NBR 2006. Regulation 33 provided for permissible FAR, ground coverage and height of buildings. Regulation 33.2 dealt with the group housing. The table appended to it is as follows:

33.2 Group Housing

GROUP HOUSING				
		Max Ground Coverage	FAR	Height
1	Coverage	30	200	No limit
2	Density	As mentioned in the section layout plan or scheme		

Regulation 32 deals with set-backs, which is defined as the line parallel to the plot boundaries, beyond which nothing can be constructed towards the plot boundaries. Regulation 32.3 stipulates that where a plot size exceeds 40,000 sq. mtrs., there has to be a front setback of 25 mtrs., while setbacks on the rear and on all sides will be 9 mtrs. Regulation 33.2.3 is relevant for the dispute in the present case and it stipulates as follows, insofar as is relevant:

i. Distance between two adjacent building blocks shall not be less than half of the height of tallest building.

(emphasis supplied)

Second revised sanction dated 26 November 2009

53. The second revision to the original plan was sanctioned on 26 November 2009, under the NBR 2006. The second revised plan envisaged that instead of the construction of T-16 (comprising of G + 11 floors and G+4 floors), and a shopping complex (G + 1 floor), two towers, T- 16 and T-17, would be constructed, each comprising of G+24 floors and of 73 mtrs. height. According to the revision, a 9 mtrs. distance was to be maintained between T-17 and T-1 at the ground level, and T-1 and T-17 were to be connected through a space frame at the upper level. The second revised plan provided that a front set back of 15 mtrs., and a rear and side set-back of 9 mtrs. each was approved.

54. The issue is whether the second revised plan for construction of T-16 and T-17 each of a height of 73 mtrs. and at a distance of 9 mtrs. from T-1, is in compliance with the applicable Regulation at the time, that is NBR 2006. We shall advert to this in the next section.

Third revised sanction dated 2 March 2012

55. The third revision to the plan was sanctioned on 2 March 2012, by which the height of T-16 and T-17 was increased from 73 mtrs. to 121 mtrs., and the number of floors in T-16 and T-17 was increased from twenty-four to forty floors.

56. At the time of the sanction of the third revised plan, the NBR 2010 had come into force. Regulations 1.6 and 1.7 of the NBR 2010 are in the following terms:

1.6 The plot on which map has already been sanctioned and construction has already started or completed, **the allottee may be allowed to revise the same building plan or submit the new plan as per the prevailing Regulations for that part of the building where construction has not started** or any new addition is required in the building.

1.7 F.A.R., Ground coverage, setbacks and density as indicated in the Regulations shall not be applicable in respect of those plots which were allotted on auction or tender basis and group housing prior to the coming into operation of these Regulations. **However, the calculation of FAR and Ground Coverage in the new buildings in such plots shall be done as per these Regulations.** The purchasable F.A.R. and Ground coverage as per applicability may be allowed.

(emphasis supplied)

57. Under Regulation 24.2, the following stipulations have been provided for Group Housing:

(II) Maximum permissible-	
(i) Ground coverage	35 per cent to 40000 sq. mtrs and 40% above 40000 sq. mtrs
(ii) Floor Area Ratio	2.75
(iii) Height	No limit. For buildings above 30 metres in height, clearance from Airport Authority shall have to be taken.
(iv) Density (Family size 4.5)	As mentioned in the sector Layout Plan or decided by the Authority for a particular scheme.

Table No. 2 of the NBR 2010 prescribes the set-back requirement in relation to Regulation 24. For all plots measuring above 40,000 sq. mtrs., the set-backs in the front are 16 mtrs. and at the rear and on the sides are 12 mtrs.

58. Regulation 24.2.1(1)(vi) provides that a distance of 6 mtrs. is to be left open for fire tenders. The said Regulation is extracted below:

The following features shall be permitted after leaving minimum 6 mtrs. open corridor for fire tenders.

- (a) Meter room as per norms of Electricity Authority.
- (b) Open transformers without any permanent enclosure keeping in view the necessary safety requirements.
- (c) Other features as mentioned in Table 3.
- (d) Rockery, well and well structures, water pool, swimming pool (if uncovered), uncovered platform around tree, tank, fountain, bench, chabutra With open top and unenclosed by side walls, compound-wall, gate, slide-swing, culverts on drains.
- (e) Any other feature, primarily ornamental in nature, not enclosing or covering space of commercial use may be permitted by the Chief Executive Officer on case to case basis.
- (f) Open generator set, filtration plant, Electrical distribution equipment, feeder pillars, telephone distribution equipments may be permitted in open setback as a service utility provided after leaving clear space for fire tender.

With respect to the distance between two adjacent building blocks, Regulation 24.2.1.6 provides:

Distance between two adjacent building blocks

Distance between two adjacent building blocks shall be minimum 6 mtrs. to 16 mtrs. depending on the height of blocks. For building height up to 18 mtrs, the spacing shall be 6 mtrs and thereafter the spacing shall be increased by 1 metre for every addition of 3 mtrs in height of building subject to a maximum spacing of 16 mtrs as per National Building Code - 2005. If the blocks have dead-end sides facing each other, then the spacing shall be maximum 9 mtrs. instead of

16 mtrs. Moreover, the allottee may provide or propose more than 16 mtrs. space between two blocks.

59. The above Regulation indicates that:

- (i) The distance between two "adjacent building blocks" is to be a minimum of 6 mtrs. going up to 16 mtrs., depending upon the height of the blocks;
- (ii) For a building height upto 18 mtrs., the spacing would be 6 mtrs., to be increased by 1 mtr. for every addition of 3 mtrs. to the height of the building (subject to a maximum spacing of 16 mtrs. under the NBC 2005);
- (iii) If the blocks have dead-end sides facing each other, the spacing shall be a maximum of 9 mtrs. instead of 16 mtrs.; and
- (iv) The allottee may, however, propose more than a 16 mtrs. space between two blocks.

60. Regulation 24.2.1.6 of NBR 2010 refers to the NBC 2005 for the minimum distance requirement. The NBC 2005 contains the following stipulations in para 8.2.3.1:

8.2.3.1 For buildings of height above 10 m, the open spaces (side and rear) shall be as given in Table 2. The front open spaces for increasing heights of buildings shall be governed by 9.4.1(a).

Table 2 Side and Rear Open Spaces for Different Heights of Buildings

(Clause 8.2.3.1)

Sl No.	Height of Buildings	Side and Rear Open Spaces to be Left Around the Building
(1)	m (2)	m (3)
i)	10	3
ii)	15	5
iii)	18	6
iv)	21	7
v)	24	8
vi)	27	9
vii)	30	10
viii)	35	11
ix)	40	12
x)	45	13
xi)	50	14
xii)	55 and above	16

NOTES

1. For buildings above 24 m in height, there shall be a minimum front open space of 6 m.

2. Where rooms do not derive light and ventilation from the exterior open space, the width of such exterior open space as given in col 3 may be reduced

by 1 m subject to a minimum of 3 m and a maximum of 8 m. No further projections shall be permitted.

3. If the length or depth of the building exceeds 40 m, add to col (3) 10 percent of length or depth of building minus 4.0 m.

(emphasis supplied)

Para 8.2.3.2 provides as follows:

8.2.3.2 For tower like structures, as an alternative to 8.2.3.1, open spaces shall be as below:

(a) Up to a height of 24 m, with one set-back, the open spaces at the ground level shall be not less than 6 m;

(b) For heights between 24 m and 37.5 m with one set-back, the open spaces at the ground level, shall be not less than 9 m.

(c) For heights above 37.5m with two set-backs, the open spaces at the ground level, shall be not less than 12m; and

(d) The deficiency in the open spaces shall be made good to satisfy 8.2.3.1 through the set-backs at the upper level;: these set-backs shall not be accessible from individual rooms/flats at these levels.

(emphasis supplied)

61. Para 8.2.3.1 of NBC 2005 indicates that where the height of the building is 55 mtrs. and above, the side and rear open spaces to be left around the building must be 16 mtrs. Note 3 indicates that if the length or the depth of the building exceeds 40 mtrs., in addition to the height which is specified in column 3, ten per cent of the length and the depth of the building minus 4 mtrs. has to be added to the distance required. Thus, in the case of a height (as in the present case) of 55 mtrs. and above, an additional 8.45 mtrs. (10 per cent of 84.5 mtrs.) is added to the 16 mtrs. and 4 mtrs is to be deducted, arriving at a 20.45 mtrs. distance requirement. However, an alternative is provided by para 8.2.3.2 for "tower like structures". For heights above 37.5 mtrs., open spaces at the ground level shall not be less than 12 mtrs. Further, deficiencies in open space as required under Para 8.3.2.1, can be met through set-backs at the upper levels, subject to the condition that the set-back shall not be accessible from the individual rooms/flats at these levels.

D.1 Violation of NBR 2006 and 2010

D.1.1 Interpretation of "building blocks"

62. The first aspect which needs to be considered is whether T-17 and T-1 are two adjacent building blocks or form part of a single building block as claimed by the Appellant. Regulation 33.2.3 of the NBR 2006 stipulates that the distance between the two adjacent building blocks shall not be less than half of the height of the tallest building.

63. The submission of Mr. Vikas Singh, learned Senior Counsel, as well as of Mr. Ravindra Kumar, appearing on behalf of NOIDA, is that Regulation 33.2.3 of the NBR

2006, which was in force when the second revised plan was sanctioned on 26 November 2009 (contemplating the construction of T-16 and T-17), stipulates a distance between "two adjacent building blocks". Mr. Vikas Singh submitted that it is entirely the discretion of the developer to determine as to whether one or more buildings should be treated as a building block, there being no definition of the expression "building blocks" in NBR 2006. It has been urged that the Appellant is entitled to assert that the sanctioned plan consists of building blocks, and that T-16 and 17 are part of a building block along with T-1, T-2, and T-3. Thus, it has been submitted that all these towers (T-1, T-2, T-3, T-16 and T-17) constitute one single building block. To buttress this submission, the space frame connecting T-1 and T-17 is referred to. It has been urged that there is no necessity of maintaining the minimum distance provided by Regulation 33.2.3, which applies only to the distance between two adjacent building blocks, and since T-1 was to be connected to T-17 by a space-frame, the two new towers (T-17 and T-16) would constitute a part of the same building block, thus obviating the need of maintaining a minimum distance between them. This argument was sought to be supported by adverting to the original Hindi version of Regulation 33.2.3, which uses the expression "दो भवन समूहों के बीच की दूरी". In this context, it has been submitted that after the NBR 2010 came into force, there was an increase in the height of T-16 and T-17 from twenty-four to forty floors. Regulation 24.2.1.(6) of the NBR 2010 has also used the expression "two adjacent building blocks". Thus, based on both the NBR 2006 and 2010, it has been urged that the Appellant was entitled to treat T-16 and T-17 as forming a part of a cluster which would include T-1. Therefore, the submission is that since all of them constitute a single building block, the minimum distance requirement need not be maintained.

64. The submission which has been urged on behalf of the Appellant finds support in the arguments of Mr. Ravinder Kumar, learned Counsel appearing on behalf of NOIDA. The submissions which have been made on behalf of NOIDA highlight the following features:

- (i) Apart from the English version of Regulation 24.2.1.(6) of the NBR 2010, which uses the expression building blocks, the Hindi version uses the terms "भवन समूह", which emphasises the concept of a cluster of buildings;
- (ii) When the Regulations speak of a "भवन समूह", it is not the distance between the towers but the distance between blocks which is implicated;
- (iii) T-1, T-16 and T-17 form part of one cluster or block and hence there is no need of maintaining a distance between buildings forming part of a block;
- (iv) The absence of a minimum distance between the T-1 and T-7 would be of no consequence;
- (v) Apart from the alleged breach of the minimum distance requirement, all parameters have been maintained, in terms of:
 - a. Ground coverage;
 - b. FAR;
 - c. Open area; and
 - d. Green area; and

(vi) An explanatory note was submitted by NOIDA before the High Court, concerning the issue of building blocks, and is extracted below:

Building Block in a Group Housing Project

Main Points:

1 . Noida Building Regulations, 2010: A "Bhavan Samuh" which is translated in English as a "Building block" is the combination or a group of buildings in any given area/Plot.

2 . The Section 3(g) of The Uttar Pradesh Apartment (Promotion of Construction, Ownership, Maintenance) Act, 2010 defines building. As per the Act, "building" means a building constructed on any land, containing four or more apartments, or two or more buildings in any area designated as a block, each containing two or more apartments with a total of four or more apartments in all such buildings; Provided that an independent house constructed in a row with independent entry and exit, whether or not adjoining to other independent houses, shall not constitute a building.

Therefore, it is clear that the Block is designated as "two or more buildings in any area" and the building is defined as "four or more apartments on any land".

3 . As per Zoning Glossary of New York City Planning; "A Block" is defined as a tract of land bounded on all sides by streets by a combination of streets, public parks, railroad rights of way, pierhead lines or airport boundaries. Building is defined as a structure that has one or more floors and a roof, is permanently affixed to the land and is bounded by open areas or the lot lines of a zoning lot.

4 . The buildings in a block may not be connected, may be partially connected or may be fully connected, as is clear from the aforesaid provisions.

5 . It is a common practice in all the metropolitan cities of India and all over the world to construct high rise buildings for different purposes to make optimum utilization of land. In any given area, more open & green space can be provided only with a provision of high rise buildings which enable to accommodate high density comparatively with less ground coverage and more open space. Large size projects generally have many buildings which are planned, arranged & designed, keeping in view the requirement of common space, common facility & amenities, natural light, ventilation, open space and maximum possible exit routes for early evacuation in event of any emergency. In view of all these considerations generally different building blocks or groups of buildings having interconnected accessibility, facilities and services are designed, which give better living environment than having a system of all buildings situated in isolation within the project area. It is common practice in all the metropolitan cities of India and over world to construct high-rise building for different purpose to make optimum utilization of land. In any given area more open & green space can be provided only within a provision of high-rise building

which enable to accommodate high density comparatively within less ground coverage and more open space. Large size projects generally have many building which are planned, arranged & designed, keeping in view the requirement of common space, common facility & amenities, natural light, ventilation, open space and maximum possible exit routes for early evacuation in the event of any emergency. In view of all these considerations generally different building blocks or cluster of building having inter connected accessibilities & facilities are decided, which give better living environment than having a system of all building situated in isolation within the project area.

6. Isolated buildings are more prone to safety, security, provision and maintenance of common services related problems. In case of a fire accident in any isolated building having no extra exit routes, chances of danger to human lives is more.

7. Generally, a group of buildings in a project is constructed with the provision of common basement i.e. One basement for all the buildings. This is done for better accessibility and movement and provision of common facilities. It is also a very common practice in India and abroad to connect the high rise buildings by way of space frame bridges giving additional exit routes for early evacuation in the event of emergency. This practice has increased after the occurrence of incident of fire in Gopal tower in Connaught Place, New Delhi and the temporary space frame was made connecting the said tower at the Height with nearby tower for evacuation of cornered persons saving many lives.

8. NBC OF INDIA OF 2005: Side and rear open space for different height of building is governed as per Para 8.2.3.1 of NBC 2005 which states that for height of building.

Height	Side and Rear Open Space
35 Mtr	11 Mtr
40 Mtr	12 Mtr
55 Mtr & above	16 Mtr

But as per Para 8.2.3, tower like structures as an alternative to Para 8.2.3.1 open space as below:

For height between 24 Mtr and 37.50 Mtr with one set back the open space

At the ground level, shall not be less than 9 Mtr.

9. It is stated that NOIDA Building Regulations intends to provide the distance between two adjacent building blocks to be between 6 meter to 16 meter depending upon the height of the building blocks. It does not provide any specific requirement of distance between two buildings. The concept of minimum distance required between two High Rise building of a block may not necessarily be the same as required between the two building blocks. For Example a building block may have three or four stories for the entire block area and few towers of

different height and different upper stories designed at different places in the same block.

10. The concept of minimum distance between the two building blocks is for the purpose of free fire tender movement (Minimum 6 meters setback as per Regulation), air ventilation, sunlight etc. The minimum distance requirement is in no way connected with the structural safety of the building.

11. It is stated here that the new building under construction is having perimeter of approx. 230 meter the entire building is surrounding by enough open area i.e. more than 16 meter except at one place where the building is made a part of block of adjoining building by way off a proposed connecting bridge to provide an extra exit route for the purpose of emergency evacuation. Here also the minimum gap between old building and new building is 9 meter for 6.80 meter length with satisfies the requirements of fire safety provisions. It does not violate any provision with regards to fire safety and air circulation.

65. Essentially, the plea both on behalf of the Appellant and NOIDA is that the requirement of maintaining a minimum distance applies only to adjacent building blocks, which is not equivalent to adjacent buildings. To put it differently, the arguments proceed on the basis that where there is a cluster of buildings the requirement of a minimum distance cannot be observed as between buildings forming part of the cluster, but only as between two adjacent building blocks/clusters. Each building block in this line of argument may consist of a collection of buildings, and it is argued that neither NBR 2006 nor NBR 2010 mandates the maintenance of a minimum distance as between buildings in a cluster.

66. The expression 'building block' has not been defined either in NBR 2006 or in NBR 2010. The construction which is placed upon the content of the expression must advance the object and purpose of the said Regulations. The purpose of stipulating a minimum distance is a matter of public interest in planned development. The residents who occupy constructed areas in a housing project are entitled to ventilation, light and air and adherence to fire safety norms. The purpose of stipulating a minimum distance comprehends several concerns. These include safeguarding the privacy of occupants and their enjoyment of basic civic amenities including access to well-ventilated areas where air and light are not blocked by the presence of close towering constructions. Access to these amenities is becoming a luxury instead of a necessity. The prescription of a minimum distance also has a bearing on fire safety. In the event of a fire, there is a danger that the flames would rapidly spread from one structure to adjoining ones. Moreover, the presence of structures in close proximity poses serious hurdles to fire-fighting machinery which has to be deployed by the civic body.

67. If a developer is left with the unbridled discretion to define the content of the expression "building block", this will defeat the purpose of prescribing minimum distances, leaving the health, safety and quality of life of flat buyers at the mercy of developers. Before this Court, an argument has been advanced that four towers out of the seventeen towers in the plot are a part of one "building block" and do not require maintenance of a minimum distance. Before the High Court, the Appellant attempted to argue that all the buildings (that is all seventeen towers) on Plot No. 4 of Sector 93A NOIDA would comprise of one "building block". The inconsistency of the Appellant's argument on building blocks before the High Court and this Court points out the

obvious flaw in it - that the designation of how many buildings constitute a "building block" by the developer would undermine the requirements prescribed by Building Regulations. As a matter of first principle, we are not inclined to adopt the construction proposed by the Appellant. It will deprive the residents of urban areas of the amenities of light, air and ventilation which are essential to maintaining a basic quality of life. It will also have serious ramifications on fire safety. The developer cannot be allowed to subvert the requirement of maintaining minimum distances prescribed in the Building Regulations by unilaterally designating independent towers as building blocks, in the manner which the Appellant has suggested before this Court. Setting up a space frame or providing for a common entry or exit would not make two otherwise separate buildings as one consolidated block.

68. Regulations 33.2.3 of the NBR 2006 refers to the distances between adjacent 'building blocks' which shall not be less than half of the height of the tallest building. The purpose of this Regulation is not to apply it only as between building blocks as distinguished from buildings within a block. Clause (1) of Regulation 33.2.3 has used the expression 'building blocks' and 'height of tallest building' in the same sentence. These expressions must be given a meaning which accords with common sense and in furtherance with the object and the purpose of the said Regulation. The plain meaning of the expression is that when there are two adjacent blocks, the height of the tallest building will determine the distance required to be observed, with the distance being not less than half the height of the tallest building. Consequently, when two or more buildings exist in proximity together, they comprise of a building block within the meaning of Clause (1) of Regulation 33.2.3. In such an eventuality, the distance between each of the buildings comprised in the block shall also not be less than half of the height of the tallest building. The reference to the height of the tallest building is evidently made because this kind of a building will likely overshadow the buildings of a lesser height in a cluster of proximate construction. Therefore, the Regulation has defined the minimum distance required with reference to half the height of the tallest building. Any other construction will defeat the purpose of Regulation 33.2.3 and cannot be accepted.

69. Applying the NBR 2006 to the facts of the present case, the construction of T-16 and T-17 was envisaged in the second revised plan dated 26 November 2009. The height of the said towers was to be 73 mtrs., while the height of other towers, including T-1, was to be 37 mtrs. Thus, as per Regulation 33.2.3 of the NBR 2006, the minimum distance between T-17 and T-1, should be half of the height of the tallest building, that is, half of the height of T-17 which is 36.5 mtrs. It is evident from the record that the distance between T-1 and T-17 is 9 mtrs. only. Thus, clearly the second revised plan was violative of the NBR 2006.

70. We shall now come to the NBR 2010. Regulation 24.2.1(6) has prescribed the requirement of maintaining varying distances between two adjacent blocks from a minimum of 6 mtrs. extending up to 16 mtrs., depending on the height of blocks. The content to the first sentence of this Regulation is further amplified by what follows it. The next part of the Regulation stipulates that for a building of height up to 18 mtrs., "spacing" shall be 6 mtrs. The expression "spacing" in its plain terms means the observance of a stipulated distance. Where the height of the building is up to 18 mtrs., "the spacing" shall be 6 mtrs. Thereafter, for a height above 18 mtrs., the minimum distance has to be increased by one meter for an additional height of three mtrs. subject to a maximum distance or spacing of 16 mtrs. "as per National Building Code - 2005".

71. Mr. Ravindra Kumar, learned Counsel appearing on behalf of NOIDA, has

particularly laid emphasis on the Hindi version of the NBR 2010 to argue that it used the term "भवन समूह", which must mean that a separate meaning is accorded to it than the term "भवन". The Hindi text of Regulation 24.2.1.(6) (Regulation 24.2.1 (V) in the Hindi version) is as follows:

(V) दो अलग बगल के भवन खंडों के बीच की दूरी

दो अलग बगल के भवन खंडों के बीच की दूरी न्यूनतम 6.00 मीटर से 16.00 मीटर तक रखी जाएगी, जो भवन समूह की ऊँचाई पर निर्भर होगी। 18.00 मीटर ऊँचे भवनों की बीच की दूरी 6.00 मीटर रखी जाएगी तथा हर तीन मीटर की ऊँचाई पर भवनों की दूरी 1.00 मीटर रखी जाएगी। तथापि अधिकतम दूरी नेशनल बिल्डिंग कोड-2005 के अनुसार 16.00 मीटर रखी जाएगी। यदि भवन खंडों के बन्द हिस्से वाले भाग आमने सामने हों तो भवन खंडों के बीच की दूरी अधिकतम 16.00 मीटर के स्थान पर 9.00 मीटर रखी जाएगी। तथापि आबंटी द्वारा दो भवन खंडों के बीच की दूरी 16.00 मीटर से अधिक रखी जा सकती है।

As is evident, the Hindi version of the NBR 2010, uses three different terms "भवन खंडों", "भवन समूह", and "भवन". A purely textual interpretation, as is suggested by Mr. Ravindra Kumar, would lead us to ascribe three different meanings to each of these terms. Extending this argument would then imply that the first sentence, which states that two adjacent building blocks require a minimum distance of 6 mtrs. to a maximum distance of 16 mtrs., will depend on the height of the blocks. The second sentence, which in English simply reads, "for building height upto 18 mtrs, the spacing shall be 6 mtrs...", does not clarify what the term "spacing" denotes-does it imply spacing between buildings inter se the block, or spacing between adjacent 'building blocks'. Mr. Ravindra Kumar suggests that it implies the latter. However, looking at the Hindi version of the Regulations from a purely textual standpoint, it would appear that it states that the spacing between the buildings of height 18 mtrs. should be 6 mtrs., that is, "18.00 मीटर ऊँचे भवनों की बीच की दूरी 6.00 मीटर रखी जाएगी". The term used here is "भवनों" and not "भवन खंडों" or "भवन समूह". Thus, overemphasis on the text of the NBR 2010, while losing sight of the context and the purpose of the Regulation, would lead to an absurd interpretation. Where the initial part of Regulation 24.2.1.6 provides for distance between building blocks, the latter part stipulates the distance between buildings of height above 18 mtrs. Accordingly, we reject the argument of Mr. Ravindra Kumar that Regulation 24.2.1.6 only provides for the distance between 'building blocks' and not buildings within the blocks.

72. The latter part of Regulation 24.2.1.6 of the NBR 2010 provides that the maximum spacing between buildings of a height above 18 mtrs. shall be 16 mtrs. as per the NBC 2005. In the third revised plan dated 2 March 2012, the height of T-16 and T-17 was increased to 121 mtrs. In accordance with Regulation 24.2.1.6, the spacing between a building of height 121 mtrs. and another building would be 16 mtrs. (the maximum limit as per NBC 2005). Thus, the distance between T-1 and T-17 should have been 16 mtrs., as opposed to 9 mtrs. Consequently, we find that the third revised plan dated 2 March 2012 was in violation of NBR 2010.

73. NOIDA, before it granted sanction for enhancing the height of T-16 and T-17 from G+24 to G+40 (or 39, as the case may be), was duty bound to apply its mind to whether there was a compliance with the provisions of Regulation 24.2.1.6. The third revised plan which was sanctioned on 2 March 2012 has evidently glossed over the clear deficiency of open space with reference to the NBR 2010, the consequence of which would have been to reject the proposal for a further increase in the height of the towers from twenty-four floors to forty floors. Yet NOIDA has chosen to lend its support to the Appellant in clear defiance of the provisions of law.

74. The issue as to whether T-1, together with T-16 and T-17, form one cluster can be looked from another perspective to test the hypothesis of Mr. Vikas Singh. The original

sanctioned plan dated 20 June 2005 provided that:

"Total area of plot : 48263.00 Sq. mt
 Permissible coverage 35 % : 16892.05 Sq. mt
 Sanctioned coverage 14.03% : 6773.25 sq. mt
 Permissible FAR 1.50 : 72394.50 Sq. mt
 Sanctioned FAR 134.28 : 64810.04 Sq. mt.
 Sanctioned height of building : 30.00 meter

SET BACK

SET BACK OF BUILDING

	Permissible	Sanctioned
Front	9.66 Mt	15.00 Mt
Back	9.66 Mt	09.70 Mt.
Side	9.66 Mt	09.70 Mt.
Side	9.69 Mt	09.70 Mt."

75. The original sanctioned plan covered a total plot area of 48,263 sq. mtrs. Subsequently, an additional area of 6556.61 sq mtrs. was leased out to the Appellant by a Supplementary Lease Deed dated 21 June 2006, so as to enhance the total area of the plot to 54,819.51 sq. mtrs. As a consequence, the first revised plan was sanctioned on 29 December 2006, where the sanctioned area was enhanced from 64,810.04 sq. mtrs. to 81,943.216 sq. mtrs., the calculations being as follows:

"Sanctioned area

Total area of plot : 54819 Sq. Mt

Floor	Existing	Addition	Total
Ground Floor	6773.25 Sq. Mt.	1025.313 Sq Mt	7798.563 Sq. Mt
First Floor	6672.17 Sq. Mt	1010.673 Sq Mt	7682.843 Sq. Mt
Second Floor	6672.17 Sq. Mt	1010.673 Sq Mt	7682.843 Sq. Mt
Third Floor	6672.17 Sq. Mt	1010.673 Sq Mt	7682.843 Sq. Mt
Fourth Floor	6672.17 Sq. Mt	778.737 Sq Mt	7450.907 Sq. Mt.
Fifth Floor	6672.17 Sq. Mt	- 177.574 Sq Mt	6494.596 Sq. Mt
Sixth Floor	6672.17 Sq. Mt	- 177.574 Sq Mt	6494.596 Sq. Mt
Seventh Floor	6672.17 Sq. Mt	- 177.574 Sq Mt	6494.596 Sq. Mt
Eighth Floor	6522.89 Sq. Mt	- 28.294 Sq Mt	6494.596 Sq. Mt
Ninth Floor	4808.71 Sq. Mt	1685.886 Sq Mt	6494.596 Sq. Mt
Tenth Floor		6312.410 Sq Mt	6312.410 Sq. Mt.
Eleventh Floor		4448.677 Sq Mt	4448.677 Sq Mt
Commercial		411.15 Sq Mt.	411.15 Sq Mt.
Total	64810.04	17133.176	81943.216
Basement	: 32352.71 + 8189.67 = 40542.38		
Total	97162.75	25528.41	122485.60

76. The first revised plan dated 29 December 2006 relating to 6556.61 sq. mtrs. indicates that in the south-west corner of the plot, an additional construction comprising of one tower and a shopping facility would be put up and directly opposite T-1 was a green area, which has been depicted on the sanctioned plan.

77. On 26 November 2009, there was a second revised sanction, consequent upon the acquisition of purchasable FAR of thirty-three per cent of the permissible 1.5 FAR. The area calculations of the second revised sanction were indicated as follows:

*Area of plot : 54819.510 Sq. Mt.
 Permissible FAR 1.50% : 82229.265 Sq. Mt.
 Purchasable FAR 33% : 27135.657 Sq. Mt.
 Total FAR 82229.265 + 27135.657 = 109364.922 Sq. Mt.
 Area of utilization issued earlier: 78019.956 Sq. Mt.

Area of upper basement issued earlier:

40542.380 sq Mt. (3397.0990 with demolished upper basement)

Floor	Permissible area (Sq. Mt.)	Proposed Area (Sq. Mt.)
Ground Floor	19186.82	1751.320
First Floor	Rest FAR	228.230
Second Floor		2249.220
Third Floor		2249.220
Fourth Floor	.....	2249.220
Fifth Floor	.....	2249.220
Sixth Floor	.....	2249.220
Seventh Floor	.....	2249.220
Eighth Floor	.....	2249.220
Ninth Floor	.....	2249.220
Tenth Floor	.....	1358.786
Eleventh Floor	.....	1186.914
Twelfth Floor	.....	740.162
Thirteenth Floor	.....	740.162
Fourteenth Floor	.....	740.162
Fifteenth Floor	.....	740.162
Sixteenth Floor	.....	447.955
Seventeenth Floor	.....	447.955
Eighteenth Floor	.....	447.955
Nineteenth Floor	.....	447.955
Twentieth Floor	.....	447.955
Twenty first Floor	.....	383.168
Twenty second Floor	.....	383.168
Twenty third Floor	.....	383.168
Twenty fourth Floor	.....	383.168
TOTAL FAR	.....	31312.081
Upper basement	.....	3397.090
Lower basement	40542.38	3397.090
Total Area		43939.470

Set back	Permissible	Sanctioned
Front	15.00 Mt	15.00 Mt
Back	9.00 Mt	9.00 Mt
Side	9.00 Mt	9.00 Mt
Side	9.00 Mt	9.00 Mt

78. As the second revised plan indicates, the existing towers now envisaged twenty-four floors instead of eleven floors. The third revised plan of 2 March 2012 further envisaged an enhancement in the constructed area consequent upon a purchasable FAR,

together with the sanctioned FAR of 2.75. The number of floors was further increased to forty floors in T-16 and T-17, the relevant calculations being as follows:

Total area of plot : 54819.510 Sq. mt
 Permissible coverage 35% : 19186.828 Sq. mt
 Sanctioned coverage 14.03% : 6773.25 sq. mt
 Permissible FAR @ 1.5% : 82229.265 Sq. mt
 at the time of allotment
 Purchasable FAR on 25.10.10: 150753.652 Sq. mt
 With Sanctioned FAR @ 2.75

Floor wise Description of Proposed area of different floors are as under

Floor	Permissible area (Sq. Mt.)	Built up area (tower 1 to 14) on 16.10.09 utility certificate issued. Sq. Mt	Previous sanctioned area tower 15, 16 & 17 date 26.11.09	Proposed FAR tower 15, 16 & 17 (Sq. Mt.)	Revised area tower 15, 16 & 17 (Sq. Mt.) (3 + 4)	Total area (Sq. Mt.) (2 + 5)
	1	2	3	4	5	
Space frame	--	--	--	24.00	24.00	24.00
Podium (T-1 to T-14)	--	288.983	--	--	--	--
Ground Floor	19186.825	6823.429	1751.320	1125.302	2876.622	9700.051
1 st Floor	Rest FAR	6722.349	2288.230	78.075	2366.305	9088.654
2 nd Floor	--	6722.349	2249.220	58.555	2307.775	9030.124
3 rd Floor	--	6722.349	2249.220	58.555	2307.775	9030.124
4 th Floor	--	6722.349	2249.220	38.400	2287.620	9009.969
5 th Floor	--	6722.349	2249.220	38.400	2287.620	9009.969
6 th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
7 th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
8 th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
9 th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
10 th Floor		6423.737	1358.786	878.037	2236.823	8660.560
11 th Floor		3982.669	1186.94	910.301	2097.215	6079.884
12 th Floor			740.162	851.205	1591.367	1591.367
13 th Floor			740.162	851.205	1591.367	1591.367
14 th Floor			740.162	851.205	1591.367	1591.367
15 th Floor			740.162	851.205	1591.367	1591.367
16 th Floor			447.995	1162.568	1610.523	1610.523
18 th Floor			447.995	1162.568	1610.523	1610.523
19 th Floor			447.995	1162.568	1610.523	1610.523
20 th Floor			447.995	1165.568	1610.523	1610.523
21 st Floor			383.168	1610.523	1610.523	1610.523
22 nd Floor			383.168	1610.523	1610.523	1610.523
23 rd Floor			383.168	1610.523	1610.523	1610.523
24 th Floor			383.168		1610.523	1610.523
25 th Floor				1610.523	1610.523	1610.523
26 th Floor				1610.523	1610.523	1610.523
27 th Floor				1610.523	1610.523	1610.523
28 th Floor				1610.523	1610.523	1610.523
29 th Floor				1610.523	1610.523	1610.523
30 th Floor				1610.523	1610.523	1610.523
31 st Floor				1610.523	1610.523	1610.523
32 nd Floor				1610.523	1610.523	1610.523
33 rd Floor				1610.523	1610.523	1610.523
34 th Floor				1610.523	1610.523	1610.523
35 th Floor				1610.523	1610.523	1610.523
36 th Floor				1610.523	1610.523	1610.523
37 th Floor				1610.523	1610.523	1610.523
38 th Floor				1610.523	1610.523	1610.523
39 th Floor				859.055	859.055	859.055
40 th Floor				439.106	439.106	439.106
Total FAR	150753.652	78019.956	31312.105	41132.600	72444.705	150464.664
Basement		After leaving set				

		back, rest area (for parking, services)				
Upper basement		40542.38		1511.144		42053.524
Lower basement		40542.38	3397.09	41.680		3438.770
Total area			3397.09	1552.824		45942.294
Services	15% services	Zero	Zero	6396.896		6396.896
Total area (including basement and services)		118562.336	34709.195	49082.32	83791.515	202353.854

Proposed land coverage area = 10648.503 Sq. Mt. (19.425%)

Revised FAR (Built + Revised) = 150464.664 Sq Mt.

79. On 24 April 2012, the CFO drew the attention of the In-Charge of the Building Cell, NOIDA to the violation of the minimum distance which was required to be maintained in the construction which was being carried out by the Appellant. The subject of the letter reads thus:

Regarding distance between the under construction (Tower No. 17) situated at Plot No. 4, Sector-93A NOIDA being constructed by M/s. Supertech Limited and old constructed buildings

The letter (which has been extracted above para 28 of Part A.5) has a crucial bearing on these proceedings. The CFO made a clear reference to the distance requirements which were to be observed in terms of NBR 2006, NBR 2010 and NBC 2005. The CFO queried NOIDA as to whether the license for construction was granted after granting a relaxation to the builder in a "special category" or whether the construction was being carried out contrary to the standards. This letter evinced no response from NOIDA.

80. When the construction of two towers in the newly acquired leasehold area commenced in July 2009, a communication dated 16 July 2009 was addressed on behalf of the Appellant (by its Director) to the Group Co-coordinator of Emerald Court (the letter has been extracted in para 15 of Part A.4). Evidently, the residents were concerned about the construction of the new towers. The said letter clearly demonstrates that in 2009, the Appellant was of the view that the new towers which were being constructed would have separate entries and exits, amenities and infrastructure and that the developer would construct a boundary wall separating the existing 15 towers from Apex and Ceyane. This representation was reiterated in a letter dated 9 March 2012 from the Appellant to the President of the RWA.

81. The first paragraph of the above letter indicates that the Appellant had obtained two separate plots admeasuring approximately 48,650 sq. mtrs. and 6556.61 sq mtrs., and had got them registered separately in March 2005 and May 2006. The representation to the residents that these were separate plots which were leased out to the developer was clearly contrary to the provisions of the supplementary lease deed which stipulated that the newly demised area of 6556.61 sq. mtrs would form a part of the original plot which had been allotted to the Appellant. The supplementary lease deed contains the following covenants:

[...]

That the Lessor has agreed to demise on lease in additional place of land measuring 6556.61 Sq. mtrs. Against consideration of Rs.14,48,98,871/- (Rupees Fourteen Crores forty eight lacs ninety eight thousand eight hundred seventy one only) which has been already been paid by the lessee to the lessor and also in consideration of the yearly lease rent @1% of the total premium per year Rs. 1,59,38,876 for enhanced area has been paid by the Lessee to the Lessors as one time lease rent (equal to 11 year's lease rent). That the demised premises shall be deemed to be part of the Plot No. 04, Sector 93-A, Noida already leased to the lessee.

That all other conditions of the original lease deed and allotment shall remain unchanged and shall be equally applicable to this demised premises and binding upon the lessee.

That the period of 90 years lease shall commence from 16.03.2005.

That the demised premises shall be part of the original allotted Plot No. 04 Sector Noida. Necessary addition or alterations in the structure can be subject to the building byelaws of the lessor and terms of the transfer lease deed.

That total area of Plot No. 94, Sector 93-A, Noida is 54819.51 Sq. mtrs.

That the total premium of Plot No. 04, Sector 93-A is Rs. 1,21,15,11,171/- (Rupees One hundred Twenty one crores fifteen lacs eleven thousand and one hundred and seventy one only) instead of Rs. 1,06,66,12,000/- (Rupees One hundred six crores sixty six lacs twelve thousand and three hundred).

The lessee shall construct the building on the demised premises according to the building bye laws of the Lessor.

Despite the clear terms of the supplementary lease deed in terms of which the additional land allotted under it is to form a part of the original plot, the communication addressed to the flat buyers of the existing towers was that the new towers were completely disconnected from and independent of the earlier developed fifteen towers. This letter cannot be glossed over because a similar position was affirmed before the High Court in paragraph 32 of the counter affidavit filed by the Appellant, which reads as follows:

32. That the contents of para 12 so far it relates to matter of record are need no reply and other contents are wrong and denied. The letter dated 16.07.2009 and 09.03.2012 given by Respondent No. 5 contains the same stand, that "Apex and Ceyane" is Phase II of the project as in the present counter affidavit. Similarly, letter dated 31.01.2012 and 13.02.2012 filed by Respondent No. 5 before police authorities can be relied upon in support of the stand of Respondent No. 5.

82. The only reasonable hypothesis which emerges from the above disclosures is that the argument which has now sought to be advanced - that Towers 1, 16 and 17 are part of a cluster of buildings comprised within a block, thus obviating the need to maintain the minimum distance between them - is an afterthought. It is contrary to the stated position which has been adopted by the Appellant in its affidavit before the High Court. The record before this Court also indicates that the Appellant has taken liberties with

the truth in making the submission that a cluster of towers in the project constitutes a block which allows the Appellant to subvert the minimum distance requirement.

83. The above conclusion is clearly evident from the record from IA No. 54807 of 2021 for the production of additional documents. Annexures A-1, A-2, A-3 and A-4 are:

- (i) A true copy of the first revised plan dated 29 December 2006 showing various blocks as sanctioned by NOIDA;
- (ii) A true copy of an allotment letter dated 17 March 2007 issued by the Appellant in favour of a flat purchaser;
- (iii) A true copy of the completion map dated 10 April 2008 in relation to T- 1 to 8; and
- (iv) A true copy of the completion map dated 16 September 2009 in relation to T-9 to 14.

84. Annexure A1 above, which is part of the first revised plan of 2006, clearly indicates that each block comprises of a cluster of two buildings. Annexure A2, which is the letter of allotment, makes it clear that what is meant by a block was the Tower comprised of Aster II. Moreover, the letter also indicates the recovery of lease rent at Rs. 190 per sq. foot. Annexure A-3, the completion drawing of 2008, indicates that each tower is depicted to have four wings. In other words, the tower itself is a block comprising of four wings and the towers have been specified distinctly with reference to numbers. During the course of the proceedings before the High Court, the Appellant filed a document purported to be the second revised plan of 2009 where a depiction of several blocks was made. The plan which was filed before the High Court bears no signature of the competent officer of NOIDA. In the counter affidavit filed by the Appellant in the High Court, it was stated that:

3 . That Noida Building Bye-laws talks about building blocks. Even the mandatory distance is provided only between the two building blocks in the said bye-laws. It is stated that Cluster of buildings from one building block, provided these buildings are connected with each other to form one building block. Further number of buildings within one building block depends upon various factors like the theme of the project its Architecture features surrounding, plot dimensions etc.

4. The Emerald Court (phase I) has five building block each comprising of three buildings. After acquisition of additional land, admeasuring 6556 sq.mt. Apex & Ceyane (phase II) was envisaged and the same was sanctioned by NOIDA. With the provision of space frame between tower Apex and Aster-2 as per sanction plan dated 26.11.2009 by NOIDA, the Apex & Ceyane were connected within the existing building block comprising of towers Aster-2, Aspire-1 and Aster-1 as per Architecture feature of the project. The sanction dated 26.11.2009 was granted by NOIDA only after structural safety certificate was issued by the IIT-Roorkee.

Copy of the sanctioned plan showing the Building block is annexed herewith as ANNEXURE SCA-1.

(emphasis supplied)

85. In the rejoinder filed to the above affidavit on behalf of the RWA, the contents of

the above plan were seriously disputed and it was averred:

5. That the contents of paragraph 4 of the supplementary counter affidavit are incorrect as Aster Type-A was already envisaged on the additional land measuring 6556 sq. mtrs. along with certain green area as is evident in the plan approved by NOIDA in Dec. 2006 (Annexures 2 of WP) on total area of the plot viz. 54800sq. mt.

The Respondent has submitted a document marked as SCA-1 which is called the sanctioned building plan. This is altogether a new document submitted by Respondent 5 and is a shocking surprise to the Petitioner as this has never ever been disclosed nor advertised in the past. The documents has glaring deviations as compared to the document shared and submitted in the past. For the first time Respondent 5 has submitted a plan which contains reference to "BLOCKS". In the past such a document was never shared. Also now each tower is given only a tower number and the nomenclature used in title documents and popular usage has been deleted viz. Aspire/Aster/Emperor etc. This is an alarming misnomer being created by Respondent 5. Also, nowhere this bears the sanctioning endorsement by NOIDA (Respondent No. 2) terming as BLOCK 1 to 5. It is amply clear that Respondent 5 is using false representation and documents and trying to create confusions on flimsy ground. They are trying to buy time and attention of this Court and using these as delaying tactics, which is against the interest of petition. With the delaying tactics Respondent 5 is rapidly proceeding with unauthorized construction of APEX and CYNE towers day and night, especially after filing of writ petition by the Petitioners, as no injunction has been issued so far. Respondent 5 has been and will be using the public interest plea of investors and financial institutions/banks to cover up illegal and unauthorized construction as is evident from Para 19 of the supplementary counter affidavit.

(emphasis supplied)

86. Significantly, it must be noted that the second revised plan of 2009, which has been placed on record, does not show the existence of blocks and is duly endorsed by NOIDA. Similarly, the third revised plan of 2012, which is also on the record, does not embody any description of blocks. Therefore, we have no manner of doubt in finding that the argument sought to be developed in the course of these proceedings that there were separate blocks in the plan is an afterthought. It is contrary to the stated position which has been adopted by the Appellant on affidavit before the High Court. It is contrary to the sanctioned plans. What is worse is that an effort was made to place on the record before the High Court a purported plan of dubious origin by seeking to pass it off as the second revised plan of 2009.

87. In its affidavit before the High Court, the Appellant stated that:

9. That it is pertinent to mention here that the Phase II of the project by the name of "Apex and Ceyane" has been planned to have provision of altogether separate facilities like swimming pool, gymnasium, separate power backup, separate L.T. Panels and separate entry and exits gates etc. Therefore the members of Petitioner society of Emerald Court (Phase I) does not have any locus to challenge any issue relating to the towers of "Apex and Ceyane" (Phase II).

(emphasis supplied)

88. The above averments would belie the submission sought to be advanced before this Court that Apex and Ceyane are parts of a cluster of buildings comprised within one block. The High Court, while rejecting the submission, observed:

Learned Counsel for the Respondent-company finally made an attempt to argue that the phrase "building blocks" is not defined under the byelaws and according to the learned senior advocate building blocks would mean the entire building on plot No. 4 of Sector 93A NOIDA. The said argument is farfetched and against the provisions of the Building Regulation of 2006 as well as 2010. Building blocks means group of building on the plot/site. The sanctioned maps clearly shows that the Respondent company has got the layout approved consisting of separate blocks. The nomenclature of the blocks was subsequently changed by the Respondent company, in each successive plan and finally the buildings were numbered as towers (1-17). The maps sanctioned clearly shows that the buildings in dispute Aster II (tower 1) and Apex and Ceyane (tower 16 and 17) are separate building blocks. The argument has been advanced without there being any foundation in the pleadings. Without pleadings argument cannot be advanced.

89. Based on the interpretation of 'building blocks' in the Building Regulations as discussed above, and the inconsistency in fact and in the argument of the Appellant, we affirm the above conclusion of the High Court.

D.1.2 Interpretation of "dead end sides of buildings"

90. An alternative argument has been advanced by Mr. Ravindra Kumar, counsel for NOIDA, that Regulation 24.2.1.6 of the NBR 2010 provides for an exception to the 16 mtrs. minimum distance requirement if the building blocks have dead-end sides facing each other. It stipulates that if the blocks have dead-end sides facing each other, then the spacing shall be a minimum of 9 mtrs. instead of 16 mtrs. Mr. Ravindra Kumar submitted that T-1 and T-17 have dead-end sides facing each other and thus, the distance requirement of 16 mtrs. was not applicable. The "dead-end" argument has met a dead-end in the submissions of the Appellant as during the proceedings. Mr. Vikas Singh, learned Senior Counsel for the Appellant, has specifically clarified that he is not pressing the submission. We will however deal with it as the counsel appearing for NOIDA has raised it before this Court.

91. Regulation 24.2.6 of the NBR 2010 stipulates that if the blocks have dead-end sides facing each other, then the spacing shall be a maximum of 9 mtrs. instead of 16 mtrs. The question of dead-end sides arises only between blocks, in which case the minimum distance required is 9 mtrs.

92. This Court on 27 July 2016 directed the NBCC to ascertain if the dead-end sides of T-1 and T-17 are facing each other, in order to decide if the towers can be brought within the exception in Regulation 24.2.1(6) of NBR 2010. The terms of reference were as follows:

To ascertain whether the two towers-Tower-1 (Aster 2) and Tower-17 have dead end sides facing each other for the purpose of Reg. 24.2.1(6) of Noida Building Regulations 2010.

NBCC was tasked with the job of determining the meaning of the phrase 'dead end sides

facing each other', and whether T-1 and T-17 could be brought within the exception. This Court also specifically directed that NBCC shall not travel beyond the issue that was referred to it.

93. The Appellant filed its submissions before NBCC on the meaning of the phrase 'dead end side of a building'. It was submitted that:

(i) Model Bye-Laws 2004, Model Bye-Laws 2016 and the Delhi Development Authority Building Byelaws 2016 have relaxed the 16 mtrs. distance Rule to 9 mtrs. if there are 'no habitable rooms in the front', irrespective of the height of the building. A similar provision has been incorporated in NBR 2010 as well. However, instead of using the phrase "no habitable rooms in the front", the phrase "dead end" has been used. Therefore, the phrase "dead end" must take color from the bye-laws and will have to be interpreted to mean absence of 'habitable rooms'; and

(ii) Clause 3.46 of NBR 2006 defines 'habitable room' as "a room occupied or designed for occupation by one or more persons for study, living, sleeping, eating, kitchen if it is used as a living room but not including bathrooms, water closet, compartments laundries, serving and storage pantries, corridors, cellars, attics and spaces that are not used frequently or during extended periods.

94. The term 'dead-end sides of a building' has not been defined in NBR 2006, NBR 2010, and NBC 2005. Regulation 3 of NBR 2010 states that words that are not defined in the Regulations shall have the meanings assigned to them in the UPIAD 1976. If no meaning is assigned to the word in UPIAD 1976, then the meaning assigned to the word in the Master Plan/Development Plan, Development Plan, National Building Code, Indian Standard Institution Code shall be referred to. However, none of the above mentioned authorities define the phrase 'dead end sides of a building'. Though, NBC 2005 uses the phrase in reference to dead end situation of road, corridor, water supply etc., no reference with respect to 'dead end sides of a building' is made.

95. Therefore, NBCC wrote to the Bureau of Indian Standards²³ and NOIDA on 3 September 2016 and 30 August 2016 respectively, seeking a clarification on the meaning of the phrase 'dead end sides of a building'. BIS through a letter dated 9 September 2016 stated that the phrase was only used in NBR 2010 and not the NBC 2005 that was brought by BIS, and therefore, it was not best suited to provide an interpretation on the phrase. NOIDA vide a letter dated 30 August 2016 stated that it refers to "[a]n area/side of a building or a residence having no access/entrance or exit becomes a dead end area/side of the building, though it may have openings for ventilation".

96. NBCC submitted its report on 13 October 2016. The report discusses the structure of T-1 and T-17, the meaning of the phrase 'dead end side of a building' and concludes that the sides of T-1 and T-17 facing each other are not dead end sides of the buildings. NBCC made the following observations on the structure of T-1 and T-17 after site verification:

(i) The ground floor of T-17 is allocated for commercial shops. The remaining floors in T-17 will have residential flats with windows/balconies/ventilators on all sides. Except for one opening for a fire exit, there will be no opening on the ground floor on the side that faces T-1. However, all other floors (i.e., except the ground floor) will have an opening on the side that faces T-1;

- (ii) The entry to T-17 is on the side that is perpendicular to the side that is facing T-1;
- (iii) The entry to the residential flats of T-1 is from the side facing T-17;
- (iv) T-1 has offsets. Therefore, the space between T-1 and T-17 varies from 9.3 mtrs. to 25 mtrs.;
- (v) The habitable rooms with balconies in T-1 and T-17 face each other; and
- (vi) T-1 and T-17 do not taper at the higher floor. None of the tower wings have different heights.

97. Since there is no clarity on the meaning of 'dead end side of a building', NBCC interpreted the phrase by referring to the use of the phrase 'dead end' in NBC 2005 in the context of roads, water supply network etc. where the passage is limited. The report stated that "a dead end exists in the corridor or passageway where there is only one direction to travel to an exit". Using this meaning as a reference, NBCC interpreted the phrase of 'dead end side of building' to hold that T-1 and T-17 do not have dead end sides facing each other. Further, NBCC also observed that the distance between T-1 and T-17 does not comply with the distance Rule specified in NBC 2005:

6. The dead end sides, as per Regulation 24.2.1 (6) of NBR 2010 **would mean where habitable rooms of the building do not face each other** and the distance between two adjacent building blocks shall be 9 mtrs and otherwise it shall be 16 mtrs as per NBC 2005. **In the present case both the buildings i.e. T-1 & T-17 have habitable rooms (with balconies) facing each other so these are not dead ends.**

7. Whether the side of T-17 which is facing T-1 is its dead-end side:

(a) The T-17 has entry & exit routes on the sides perpendicular to the side facing T-1. Therefore, the side of tower T-17 which faces T-1 is not the front-side, and therefore, the 'Building Separation' between T-1 & T-17 should be guided by those clause(s) in NBC 2005 that guide(s) open spaces to the sides of a building.

(b) On the ground floor, tower T-17 has commercial space/shops which would be always busy/occupied with people for most of the time during a normal date.

(c) On higher floors it has balconies & terraces anchored to habitable rooms on all sides.

Inference: From (i), (ii) & (iii) above, the side of T-17 which faces T-1 would naturally have frequent human use & activity both during daytime and nighttime, every day of the year, for however short the durations, both on ground and on higher floors (balconies & terraces anchored to habitable rooms) on any normal day. Therefore, it may be safe to conclude it is not a dead-end side of T-17.

8. Whether the side of T-1 which faces T-17 is its dead-end side: The side of T-1 facing T-17 has three sections, and its middle Section is offset further away from Tower T-17 while the two Sections at the ends are in the same line. However, that Section is the main entry/exist to the Tower. **The remaining**

portion of the side facing Tower T-17 is also not inactive since it has balconies & terraces anchored to habitable rooms and/or toilets.

Inference: **The entry to tower T-1 is from the side facing Tower-17.** This the side of tower 1 facing tower-17 cannot be treated as dead end side of tower-1.

(emphasis supplied)

98. The Appellant filed its objections to the report of NBCC, contending the following:

(i) The scope of enquiry was restricted by this Court to the issue whether T-1 and T-17 have dead end sides facing each other for the purpose of Regulation 24.2.1(6) of the NBR 2010. However, NBCC has widened the scope of enquiry and determined if the sanction is in compliance with the distance Rule in NBC 2005;

(ii) The entry to the ground floor of T-17 is provided on both sides. For the commercial shops, the entry is on the side perpendicular to the side facing T-1, and for the other facilities it is on the other side opening towards the side of T-16 and the open space;

(iii) The passage between T-1 and T-17 is used only to enter into the parking space allotted for the houses in T-1 to T-15. To enter the parking space of T-17, another passage is used;

(iv) Four out of the five external sides of the apartments in T-1 facing T-17 are dead ends (two plumbing shafts, toilet dead wall, bedroom dead wall). Only the fifth external side of T-1, which is a balcony attached to the living room, faces towards T-17;

(v) Though the entry in T-1 is facing T-17, the entry is 20 mtrs. away from T-17;

(vi) NBCC has failed to consider the different line positions with respect to T-1 and T-17. There are sixteen line positions of the sides of T-1 and T-17 that are facing each other and they are predominantly dead end sides. Of the sixteen line positions:

- a. Eleven line positions have dead walls facing each other;
- b. Two line positions have dead walls of T1 facing windows of T-17. However, there is a 16 mtrs. open space between them;
- c. Two line positions have the railings of common lift lobbies of T-1 facing the bed room window of T-17. However, there is a 3 mtrs. open space between them; and
- d. One line position where the dead wall of shaft of T-1 faces the railing of balcony in T-17, there is 9.30 mtrs. of open space between them. The open space between the walls of both the buildings in this line space is 10.80 mtrs.

99. The first Respondent also sought an expert opinion on whether T-1 and T-17 have dead end sides facing each other from IIT Delhi. The report was submitted on 6

September 2016 to this Court, and concluded that the sides of T-1 and T-17 that face each other cannot be considered as 'dead end sides of the building'. It was observed that when balconies and windows (or any other egress) are provided, the functional performance will be compromised if the minimum distance as prescribed is not adhered to. Elaborating further, it was stated that the minimum distance can be reduced when there is no egress on the concerned side of the building because then there would be no possibility of a functional compromise. The reasoning in the report is summarized below:

(i) The dictionary meaning of 'dead end' is "no exit", i.e., no egress or without openings. Therefore, the presence of any opening in the form of windows or balconies renders the building side not a dead end;

(ii) The purpose of prescribing a minimum distance requirement between two buildings is to prevent transmission of fire for safe escape during calamities, minimum ventilation, and to receive natural day light. In case the minimum distance requirement between buildings with egress facing another building is not complied with, then the function of the egress (through window or balcony) will be compromised due to the following reasons:

a. To avoid transmission of fire: According to NBC 2005, fire separation is defined as the distance from the 'external wall' of a building to the 'external wall' of another building. There is an increased possibility for fire to be transmitted to the adjacent building through windows. However, if the walls have no openings, then the distance between the buildings can be less since there is a lesser chance for transmission of fire;

b. Safe escape and rescue: As the height of the building increases, there is an increased difficulty to rescue residents in case of emergency situations. In such cases, open balconies can be used to facilitate rescue operations provided that the street has sufficient width. As the height of the building increases, for maximum safe inclination of the ladder, the street has to be wider;

c. Minimum ventilation: Minimum natural ventilation is required for hygienic ventilation (i.e., the removal of CO₂, body odour, etc.), for heat exchange and cooling of the building; and

d. Natural day light: When the distance between two buildings is high, the building receives direct sunlight;

(iii) The main entry/exit of T-1 is facing T-17. This entry is the only one that abuts the road and will in all probability be used for rescue operations if the need arises. The balconies of habitable rooms in T-1 and T-17 also face each other. Therefore, the concerned building sides (of T-1 facing T-17 and vice versa) cannot be considered as dead ends since the sides have egress. Moreover, a reduction in the minimum distance requirement would severely compromise the purpose of providing such egress.

100. The first Respondent by a letter dated 6 October 2016 also sought an expert opinion from IIT Roorkee on whether T-1 and T-17 have dead end sides facing each other. A report was submitted in October 2016 to this Court holding that the building sides of T-1 and T-17 facing each other cannot be termed as 'dead ends' for the

following reasons:

- (i) The scientific basis of providing the distance requirement is to enhance fire safety, provide sufficient day light and ventilation, visual privacy and air flow;
- (ii) The Merriam Webster Dictionary defines 'Dead End' as a street that ends instead of joining with another street so that there is only one way in and out of it. 'Dead wall' is defined as a wall without openings such as doors, windows and ventilators. Therefore, evidently, openings for fenestration and the presence of balconies and windows would mean that the 'side' is not a dead end side;
- (iii) When the side of the building facing another building has egress, the minimum distance specified under the Regulations must be complied with. Otherwise, the functional performances of the egress (i.e., balcony, window, etc.) will be compromised; and
- (iv) The main entry, the doors, windows, and balconies of T-1 face T-17. Since the side of T-1 facing T-17 has egress, it is not a 'dead end side'.

101. The Appellant approached Design Forum International²⁴, an architectural and design firm, requesting their assistance in the ongoing case. DFI through its report made the following observations on NBCC's report regarding the dead end issue:

- (i) T-1 and T-17 vary in design. T-17 has nearly three times the length when compared to T-1. Moreover, the portion of T-17 that overlaps T-1 is not constant along the whole length. Therefore, it is necessary that the sides of the towers facing each other are examined in a more detailed manner;
- (ii) The entry of T-1 and T-17 is perpendicular to each other;
- (iii) The sides of T-1 and T-17 can be classified into the following three categories: (a) dead end facing dead end (i.e., a wall facing a wall); (b) dead end facing a non-dead end (i.e., a wall facing a window); and (c) non-dead end facing a non-dead end (i.e., a window facing a window);
- (iv) The position is clear Under Regulation 24.2.1(6) of NBR 2010 that for cases falling under (a), the distance between the buildings must be 9 mtrs. and for cases falling under (c), the distance must be 16 mtrs. However, for cases that fall under (b), there is no clarity on the distance that must be maintained between the buildings;
- (v) There are thirteen unique line positions between T-1 and T-17. Of the thirteen line positions, in six line positions the dead end side of T-1 faces the dead end side of T-17 (Type (a)); in four line positions, the dead end side of T1/T-17 faces the non-dead end side of the other (Type (b)); in three line positions, the non-dead end side of T-1 and T-17 face each other (Type (c));
- (vi) For the line positions falling under type (a), the distance varies from 9.88 mtrs. to 15.11 mtrs. complying with the 9 mtrs. requirement; for the line positions falling under type (b), the distance varies from 10.8 mtrs. to 15.3 mtrs.; for the line positions falling under type (c), the distance varies between 14.62 mtrs. to 15.5 mtrs., which is 'very slightly lesser' than the required 16 mtrs.;

(vii) Since the distance between the sides of T-1 and T-17 facing each other differ widely and is not uniform, this Court will have to undertake an in depth analysis of the issue keeping in mind the unique situation; and

(viii) The minute deficiency in case of type (c) and type (b) (if this Court declares the distance to be deficient) can be rectified by making structural alterations in the buildings by shifting the position of the egresses.

102. The NBR 2010 does not provide any definition of the phrase 'the dead end side of the block.' NBR 2006, NBC 2005 and the UPIAD Act 1976 also do not define the phrase. The Court while interpreting the expression will have to attribute a contextual meaning to the phrase 'dead end side of the block'. The above reports adopt two different meanings of the phrase. The NBCC report and the Appellant in its objections before the NBCC state that the dead end sides of the building would mean where 'habitable rooms' of a building do not face each other. Though it is not specified that only habitable rooms with 'windows/balconies' will not be considered as dead ends, it is evident that the argument is that it is only if a habitable room with egress faces the side of the adjacent building, that it should not be considered as a dead end side. The corollary is that if the store room or the bathroom or corridor with a window/vent faces the side of the adjacent building it must still be considered as a dead end. Whereas, the reports by IIT Delhi and IIT Roorkee take another approach by defining a dead end side of a building as a side with egress (i.e., windows, balconies or vents) without any reference to 'habitable rooms'.

103. Two other contentions on the interpretation of the phrase have also been raised. It is contended that the phrase is ambiguous to the extent that it does not provide clarity on whether an egress of a building facing a dead wall of the adjacent building would fall within the exception. It is also contended that since the height of T-1 and T-17 is not the same, two egresses in adjacent buildings face each other only in a few line positions, and the requirement of minimum distance between the adjacent buildings must differ with each line position depending upon whether those specific line positions are dead ends.

104. We are therefore faced with three questions while interpreting the phrase 'dead end sides of the buildings':

(i) whether only habitable rooms with egress in any part of the building must be excluded from the ambit of the phrase 'dead end sides of the buildings';

(ii) whether both sides of the buildings must be dead end sides, or whether it is sufficient if one side of the building is a dead end side; and

(iii) whether the direct line position must be used for the determination of 'dead end sides of the building' and the distance between two adjacent buildings.

105. We are unable to accept the contention that only habitable rooms with egress (that is, windows or balconies) will fall outside the ambit of 'dead end side of the buildings'. 'Dead end' in common parlance means no exit or absence of access. NBR 2010 does not provide any indication to classify between habitable and non-habitable rooms in the context of the phrase 'dead end side'. The argument that the classification between habitable and non-habitable rooms has been made in the Model Bye-Laws with specific reference to the distance requirement and therefore, it must be imported for the interpretation of the phrase 'dead end sides of the building' is unsatisfactory. It is a settled principle of statutory interpretation that words must be given their plain and

ordinary meaning unless such an interpretation leads to an ambiguity or absurdity or when the object of the statute indicates otherwise. The use of the phrase 'dead end side of the building' in NBR 2010, in spite of the other bye laws using the phrase 'habitable rooms', makes it evident that the intent was to restrict the ambit of the exception. Interpreting the phrase in the context of the ordinary meaning of the word 'dead end' does not lead to any ambiguity; rather it is in pursuance of the intent and purpose behind the provision. As stated by the reports submitted by IIT Delhi and IIT Roorkee, the purpose of prescribing a higher minimum distance between adjacent buildings in case the side of the building facing another has egress is so that the functional utility of the egress (either a window or balcony) is not diminished. Windows/balconies, irrespective of whether they are attached to a habitable or a non-habitable room, perform functions which will be greatly diminished if the adjacent building is closer and thereby restricting the air flow and increasing the chance of transmissibility in the event of a fire. Moreover, the privacy of the flat dwellers would be severely compromised. The expansion of the meaning of the phrase 'dead end side of the building' to include non-habitable rooms with windows would thus amount to rewriting the Regulation, when no such indication can be construed from NBR 2006 or NBR 2010.

106. The contention that the dead end exception will be applicable, even if one side of the two adjacent buildings has a dead end is erroneous. Regulation 24.2.1(6) of NBR 2010 states "If the blocks have dead end sides facing each other, then the spacing shall be maximum 9 meters instead of 16 meters". The words 'blocks' and 'sides' in the plural form find place in Regulation 24.2.1(6) of NBR 2010. The Regulation does not state 'if the block having a dead end side'. When the phrases or words are free from ambiguity and when there is only one meaning that the phrase would take when fairly construed, it will have to be literally construed, and courts must not resort to a liberal interpretation which will defeat the intent, purpose and object of a provision in a planning Regulation.

107. The report submitted by DFI refers to the variant heights of T-1 and T-17. The contention is that since the structure of T-1 and T-17 are different, and since the towers horizontally overlap with each other only to the extent of the height of the shorter tower (T-1), the distance between T-1 and T-17 must be measured in the direct line positions. These direct line positions are then classified into three categories (Category (a) - dead end facing dead end; Category (b) - dead end facing a non-dead end; Category (c) - a non-dead end facing a non-dead end). The distances between T-1 and T-17 with respect to each of these types have been measured to argue that for lines falling in category (a), it is enough if the distance is 9 mtrs; for those falling under category (b), there is no clarity on the distance required; and for lines in category (c), a minimum distance of 16 mtrs. is required. This argument rests on two premises: (i) the minimum distance requirement prescribed Under Regulation 24.2.1(6) of NBR 2010 is not the distance between two buildings but is rather the distance between the different direct line positions between two adjacent buildings; and (ii) it is necessary for the entire adjacent blocks to have non-dead end sides facing each other for the 16 mtrs. distance Rule to be applied uniformly.

108. The phrase which is used in Regulation 24.2.1(6) of NBR 2010 is 'block' and not 'flat'/'unit'. The unit of consideration is thus not individual 'units' in the block but the entire block itself. The side of the block would not be a dead end side if there are even few egresses. If the direct line position argument is accepted, then the intent behind providing the minimum distance requirement would become nugatory. The purpose of imposing the minimum distance requirement as stated in the reports of IIT Delhi and IIT Roorkee is to provide ventilation, direct sun light, means of rescue and prevent the

spread of fire. If particular 'flats'/'units' in the block have a vent according to the construction plan, the minimum distance would have to be complied with, not just with respect to the direct line but with respect to the 'entire block'.

109. The reports of IIT Delhi and IIT Roorkee clearly elucidate the difficulty in evacuation of occupants in high rise buildings. The report states that the distance between adjacent buildings needs to be greater for taller buildings since the street has to be wider for the maximum safe inclination of the ladder. The reports also mention the reduction in ventilation, sunlight and privacy in case the distance between the buildings is less. Therefore, irrespective of whether all or some of the units in the block have an egress facing the adjacent building, the minimum distance of 16 mtrs. will have to be complied with, otherwise the purpose of providing the vent would be functionally compromised.

110. In view of the above discussion, the principles that would guide the interpretation of the phrase 'dead end sides of the blocks' are as follows:

- (i) The phrase 'dead end side of the block' would mean that any building does not have an egress;
- (ii) An egress in a non-habitable room like the bathroom or the storeroom will be considered as a non-dead end side;
- (iii) For the 'dead end' exception to be applicable, it is necessary that the sides of both the buildings facing each other must not have any egress;
- (iv) It is not necessary that all the units in the building facing the other building must have an egress. Even if some of the units have an egress, that side of the block will not be considered as a 'dead end side'; and
- (v) The minimum distance required between two adjacent blocks must not be measured through direct line positions of the units but along the ground.

111. On application of the principles deduced above on the interpretation of the expression 'dead end side of the building', the sides of T-1 and T-17 facing each other are held not to be dead end sides for the following reasons:

- (i) The windows/corridors of T-17 on all floors except the ground floor have an opening on the side that faces T-1. Though this is contested by the Appellant, it has been conceded that there are at least a few windows/balconies in T-1 facing T-17 and vice versa;
- (ii) The entries of T-1 and T-17 do not face each other but are perpendicular to each other. However, the entry to T-1 is from the side facing T-17;
- (iii) Four out of five external sides of T-1 that face T-17 are dead end sides. However, the fifth side is a balcony of the living room facing T-17. The distance between points of the buildings cannot be selectively measured to argue its compliance with the distance rule; and
- (iv) Even though the entry of T-1 facing T-17 is 20 mtrs. away, the distance Rule is not complied with since a selective measurement from the dead end points cannot be undertaken. The distance must be measured along the ground.

Thus, we find that the revised plans were in violation of NBR 2010 and do not fall under

the exception provided in Regulation 24.2.1.6 for blocks having dead end sides.

D.2 Violation of NBC 2005

112. We shall now address the question of whether the third revised plans violated the NBC 2005. As we have seen above, NBC 2005 is referenced in Regulations 24.2.1.6 of the NBR 2010. NBC 2005 has two parts in regard to the maintenance of open spaces - para 8.2.3.1 and para 8.2.3.2. Para 8.2.3.1 provides for open spaces for buildings above the height of 10 mtrs., which are specified in Table 2. Table 2 indicates that the side and rear open spaces correspond to the height of the building and increase accordingly, beginning with 3 mtrs. for a building of a height of 10 mtrs. and up to 16 mtrs., where the height of the building is 55 mtrs. and above. In addition, Note 3 clarifies that where either the length and depth of the building exceeds 40 mtrs., the minimum distance which is prescribed must be further increased by ten percent of the length and depth of the building minus 4 mtrs. Thus, the calculation for the side and rear open spaces to be left around the building would be as follows:

	(third revision)	(second revision)
Height of the Building	84.5 m ²⁵	73 m
Minimum distance prescribed in Col 3 of Table 22 (for buildings above 55mtrs) Distance to be maintained as per Note 3:	16 m	16 m
Distance in col (3) + 10% of the length or depth of building - 4.0mtrs	16 + 10% (84.5) - 4 = 20.45mtrs	16 + 10% (73) - 4 = 19.3mtrs

Thus, according to the NBC 2005, the spacing between T-1 and T-17 should be 20.45 mtrs. Evidently then, the second and third revised plans were not in accordance with the NBC 2005. This conclusion is fortified by the report of the NBCC, which in para 5 reaches the conclusion that the minimum open space around T-17 is to be 20.45 mtrs. and thus, the distance between T-1 and T-17 does not comply with para 8.2.3.1 of the NBC 2005.

113. An alternative to para 8.2.3.1 has been provided in para 8.2.3.2 for 'tower like structures'. Para 8.2.3.2 stipulates that for a structure of a height up to 24 mtrs. with one set-back, the open spaces at the ground level should not be less than 6 mtrs.; if the height is between 24 mtrs. and 37.5 mtrs. with one set-back, the open space at the ground level must be not less than 9 mtrs.; and for heights above 37.5 mtrs. with two set-backs, the open space at the ground level should not be less than 12 mtrs. Additionally, under (d) of para 8.2.3.1, the deficiency in open spaces of tower like structures (as compared to all building of height above 10 mtrs. in para 8.2.3.1) can be made good by providing set-backs at the upper levels, so long as the set-backs are not accessible from individual rooms or flats at these levels.

114. A reading of para 8.2.3.2 indicates that this exception is only applicable if the deficiency in open spaces can be made good by set-backs at the upper level. Clause (d) of para 8.2.3.2 of the NBC 2005 is ex facie not attracted for the reason that there are no

set-backs at the upper levels within the contemplation of the disputed constructions. In any case, even para 8.2.3.2 provides that for tower like structures higher than 37.5 mtrs. with two setbacks, the open space should be not less than 12 mtrs. Thus, the exception is of no aid to the Appellant and NOIDA which has issued the third revised plan envisaging a distance of 9 mtrs. between T-1 and T-17.

D.3 Violation of Fire Safety Norms

115. The Appellant requested for a fire NOC for the construction of T-16 and T-17. On 11 September 2009, a report was submitted to the CFO observing that the road is wide enough for vehicles of the Fire Brigade Department to reach the spot in case of emergency situations. However, Clause 10 of the report states that Part III and Part IV of NBC 2005 will have to be complied with during the construction of the building and in case of non-compliance, the NOC shall stand cancelled. Para 8.2.3.1 of NBC 2005 prescribes a minimum of 16 mtrs. for the side and rear open spaces of buildings which are 55 mtrs. high and above.

116. On 18 August 2011, the CFO issued a temporary fire NOC for the construction of T-16 and T-17. This letter also stated that the applicant will have make arrangements for fire safety compliant with the NBC 2005. On 29 March 2012, the CFO issued a notice to the Appellant highlighting various shortcomings in fire security provisions. On 24 April 2012, the CFO wrote to NOIDA stating that the distance between T-1 and T-17 is only 9 mtrs. which is violative of NBR 2006, NBR 2010 and NBC 2005 and asking if NOIDA had provided any exemption to the distance Rule to Appellant. The CFO issued a show cause notice to the Appellant on 17 July 2012 directing that T-16 and T-17 that are under construction be physically separated from the 'old towers'.

117. A complaint was made by the first Respondent to the CFO on the non-compliance of the conditions stipulated for the grant of the NOC for the complex (for T1 to T-15). A committee was constituted to look into the complaint and the following observations were made by the committee:

- (i) A show cause notice was issued for the construction of a second staircase. The stair case has still not been built;
- (ii) People are living in quarters constructed in the basement which is not in accordance with the NBC 2005 provisions;
- (iii) Set back is used as a parking, so the effective set back in certain places is reduced by 2 mtrs. and is thus less than the required 9 mtrs.;
- (iv) On the rear side of the tower, 6 mtrs. set back is not available.

118. These suggestions given by the committee were required to be complied with within six months. Since they were not complied with, a show cause notice was issued on 30 May 2014 for not remedying the deficiencies.

119. Regulation 76 of NBR 2006 states that the building must be planned and constructed in accordance with Part IV of National Building Code 1970, amended as of that day. Para 4.6 of NBC 2005 states that the approach to the building and the open spaces on all the sides of a high rise building shall be 6 mtrs. and that the layout of the building must be made in consultation with the CFO. However, para 8.2.3.1 of NBC 2005 prescribes a minimum of 16 mtrs. side and rear spaces for buildings that are higher than 55 mtrs. Therefore, on reading NBC 2005 as a whole, the side and rear

space around the building must be 16 mtrs. The distance between T-1 and T-17 is only 9 mtrs., which is less than the required 16 mtrs.

120. The temporary NOC that was given by the CFO clearly states that the NBC 2005 must be complied with. However, as shown above, the provisions of NBC 2005 have not been complied with. Therefore, given that the rear distance requirement under NBC 2005 has not been complied with, the NOC given by the CFO stands automatically cancelled in terms of the report dated 11 September 2009 and letter dated 18 August 2011.

E. Consent of the RWA

121. Having held above that the sanction for the construction of T-16 and T-17 were given by NOIDA in contravention of the minimum distance requirement provided by the Building Regulations, we will advert to the next issue. It has been contended by RWA that the sanction could not have been revised without the consent of the flat purchasers in the original fifteen towers. While analyzing this issue, it is first important to consider the Appellant's preliminary objection that the UP 1975 Act is not applicable to the present case. After addressing the preliminary objection, we shall analyze whether the consent was actually required under the UP 1975 Act and UP Apartments Act 2010.

E.1 Applicability of UP 1975 Act

122. The UP 1975 Act has been described in its long title as "an Act to provide for matters connected with the ownership and use of individual flats in buildings consisting of four or more flats". Section 2 of the Act states that the Act shall apply only to owners who submit to the provisions of the Act by executing a declaration. Section 2 reads as follows:

2. Application of the Act. -- This Act applies only to property, the sole owner or all the owners of which submit the same to the provisions of this Act by duly executing and registering a Declaration setting out the particulars referred to in Section 10:

Provided that no property shall be submitted to the provisions of this Act, unless it is actually used or is proposed to be used for residential purposes:

Provided further that the sole owner or all the owners of the land on which building is situated may submit such land to the provisions of this Act with a condition that he or they shall grant a lease of such land to the owners of the flats, the terms and conditions of the lease being disclosed in the declaration either by annexing a copy of the instrument of lease to be executed to the declaration or otherwise.

123. Section 3(d)²⁶ contains the definition of common area and facilities. Section 4²⁷ stipulates that a flat shall be transferable and heritable property. Each owner of a flat is entitled to exclusive ownership and possession of their flat in accordance with the declaration. Moreover, a flat together with its undivided interest in the common areas and facilities shall be heritable and transferable immoveable property. Further, a flat together with its undivided interest in the common areas and facilities shall not be partitioned or sub-divided for any purpose.

124. Section 5 provides for common areas and facilities in the following terms:

5. Common areas and facilities. -- (1) Each owner of a flat shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration.

(2) The percentage of the undivided interest of each owner of a flat in the common areas and facilities as expressed in the Declaration shall not be altered without the consent of all the owners of the flats expressed in an amended Declaration duly executed and registered as required by this Act.

(3) The percentage of the undivided interest in the common areas and facilities shall not be separated from the flat to which it appertains, and shall be deemed to be conveyed or encumbered with the flat even though such interest is not expressly mentioned in the conveyance or other instrument.

(4) The common areas and facilities shall remain undivided, and no suit shall lie at the instance of any owner of the flat or other person for partition or division of any part thereof, unless the property have been withdrawn from the provisions of this Act.

(5) Each owner of a flat may use the common areas and facilities for the purpose for which they are intended without hindering or encroaching upon the lawful rights of the owners of other flats.

(6) The work relating to the maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvement thereto shall be carried out in accordance with the provisions of this Act and the bye-laws.

(7) The Association of Owners of flats shall have irrevocable right to be exercised by the Manager or the Board of Managers on behalf of the Association with such assistance as the Manager or the Board of Managers, as the case may be, considers necessary to have access to each flat from time to time during reasonable hours, for the maintenance, repair and replacement of any of the common areas and facilities therein or accessible therefrom or for making emergency repairs therein to prevent any damage to the common areas and facilities or to other flats.

(emphasis supplied)

Under Sub-section (2) of Section 5, the percentage of the undivided interest of each owner of a flat in the common areas and facilities, as expressed in the Declaration, shall not be altered without the consent of all the owners of the flats expressed through an amended Declaration which shall be executed and registered under the Act. Section 10²⁸ provides for the contents of such a Declaration. Further, Section 11²⁹ envisages that all the owners of flats may withdraw a property from the provisions of the Act by an instrument executed to that effect, following which it shall be deemed to be owned in common by the owners of flats wherein the share of each such owner shall be the percentage of undivided interest previously owned in the common areas and facilities.

125. The submission urged on behalf of the Appellant is that the UP 1975 Act has no application to the present case, in view of the provisions of Section 2. Section 2, as we have seen, specifies that the Act applies only to a property, the sole owner or all the owners of which, submit it to the provisions of the Act by duly executing and registering

a Declaration setting out the particulars as contained in Section 10.

126. Undoubtedly, in this case there was no declaration in terms of Section 2. However, significantly, the lease deed which was executed by NOIDA in favour of the Appellant on 16 March 2005, contains a stipulation in Clause II(h) in the following terms:

II) AND THE LESSEE DOTH HEREBY DECLARE AND COVENANTS WITH THE LESSOR IN THE MANNER FOLLOWING:

[...]

h) The Lessee/sub-lessee shall make such arrangement as are necessary for maintenance of the building and common services and if the building is not maintained properly the Chief Executive Officer, Noida or any officer authorized by him will have the power to get the maintenance done through the Authority and recover the amount so spent from the Lessee/Sub-Lessee. The Lessee/Sub-Lessee will be individually and severally liable for payment of the maintenance amount. **The rule/Regulation of U.P. Flat Ownership Act, 1975 shall be applicable on the lessee/sub-lessee.**

(emphasis supplied)

127. Mr. Ravindra Kumar, learned Counsel appearing on behalf of NOIDA, advanced a submission that the last sentence of Clause II(h) must be read together with the entirety of the clause, which relates to the maintenance of the building and common services. Clause II(h) states that in the event the building or common services are not maintained properly, NOIDA would be entitled to ensure the maintenance and recover the amount from the lessee/sub-lessee.

128. However, the application of Clause II(h) cannot be brushed away on this basis, particularly since the sentence imposing the application of the UP 1975 Act on the lessee/sub-lessee must bear some meaning and content. In this context, during the course of his submissions, Mr. Jayant Bhushan, learned Senior Counsel appearing on behalf of the RWA, has placed on the record a copy of the registered sub-lease executed on a tripartite basis by NOIDA, with the Appellant as the lessee and the flat buyer as the sub-lessee. Some important provisions of this deed of sublease are:

- (i) Clause 16 contemplates that the occupant of the ground floor would be entitled to use a "sit-out area but the right of user shall be subject to the provisions of the UP Ownership Flat Act 1975";
- (ii) Clause 17 recognizes the right to user of the occupant of the dwelling unit on the top floor, subject to the provisions of the same enactment; and
- (iii) Clause 27 envisages that all clauses of the lease executed by NOIDA in favour of the Appellant on 16 March 2005 shall be applicable to the sub-lease deed as well.

129. In the backdrop of this provision, more particularly, Clause II(h) of the lease deed which was executed by NOIDA in favour of the Appellant on 16 March 2005, the Appellant was duty bound to comply with the provisions of the UP 1975 Act. By submitting before this Court that it is not bound by the terms of its agreement or the Act for want of a declaration Under Section 2, the Appellant is evidently attempting to take advantage of its own wrong.

E.2 Applicability of the UP Apartments Act 2010

130. In 2010, the State legislature enacted the UP Apartments Act 2010. The long title describes the legislation as:

An Act to provide for the ownership of an individual apartment in a building of an undivided interest in the common areas and facilities appurtenant to such apartment and to make such apartment and interest heritable and transferable and for matters connected therewith or incidental thereto.

131. Section 2 of the Act is in the following terms:

2. Application.- The provisions of this Act shall apply to all buildings having four or more apartments in any building constructed or converted into apartment and land attached to the apartment, where freehold, or held on lease excluding shopping malls and multiplexes.

Thus, in contrast with Section 2 of the UP 1975 Act, the corresponding provision of the UP Apartments Act 2010 stipulates that the Act shall apply to all buildings with four or more apartments in any building and land attached to the apartment whether freehold or held on lease. Further, unlike Section 2 of the UP 1975 under which the Act was to apply only when a declaration in terms of Section 10 was submitted, this Act does not require a declaration for it to apply.

132. The expression 'apartment owner' is defined by Section 3(d) of the Act as follows:

(d) "apartment owner" means the person or persons owning an apartment or the promoter or his nominee in case of unsold apartments to and an undivided interest in the common areas and facilities appurtenant to such apartment in the percentage specified in the Deed of Apartment and includes the lessee of the land on which the building containing such apartment has been constructed, where the lease of such land is for a period of thirty years or more;

133. The Act contains a definition of common areas in Section 3(i) and of limited common areas in Section 3(s):

(i) "common area and facilities" means--

(i) the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building;

(ii) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire-escapes and entrances and exits of the building;

(iii) the basements, cellars, yards, parks, gardens, community centers and parking areas of common use;

(iv) the premises for the lodging of janitors or persons employed for the management of the property;

(v) installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, incinerating and sewerage;

(vi) the elevators, tanks, pumps, motors, fans, cable pipe line (TV, gas,

electricity etc.) rain water harvesting system, compressors, ducts and in general all apparatus and installations existing for common use;

(vii) such other community and commercial facilities as may be specified in the bye-laws; and

(viii) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;

[...]

(s) "limited common areas and facilities" means those common areas and facilities which are designated in writing by the promoter before the allotment, sale or other transfer of any apartment as reserved for use of certain apartment or apartments to the exclusion of the other apartments;

134. The general liabilities which have been cast upon promoters intending to sell an apartment are set out in Section 4(1), which reads as follows:

4. General liabilities of promoter.-- (1) Any promoter who intends to sell an apartment, shall make a full and true disclosure in writing of following to an intending purchaser and the Competent Authority:

(a) rights and his title to the land and the building in which the apartments have been or proposed to be constructed;

(b) all encumbrances, if any, on such land or building, and any right, title, interest or claim of any person in or, over such land or building;

(c) the plans and specifications approved by or submitted for approval to the local authority of the entire building of which such apartment forms part;

(d) detail of all common areas and facilities as per the approved layout plan or building plan;

(dd) built-up area and common area of an apartment.

(e) the nature of fixtures, fittings, and amenities, which have been or proposed to be provided;

(f) the details of the design and specifications of works or and standards of the material which have been or are proposed to be used in the construction of the building, together with the details of all structural, architectural drawings, layout plans, no objection certificate from Fire Department, external and internal services plan of electricity, sewage, drainage and water supply system etc. to be made available with the Association;

(g) all outgoings, including ground rent, municipal or other local taxes, water and electricity charges, revenue assessments, maintenance and other charges, interest on any mortgage or other encumbrance, if any, in respect of such land, building and apartments;

(h) such other information and documents as may be prescribed.

Sub-section (4) of Section 4 contains the following stipulations:

(4) After plans, specifications and other particulars specified in this Section as sanctioned by the prescribed sanctioning authority are disclosed to the intending purchaser and a written agreement of sale is entered into and registered with the office of concerned registering authorities. The promoter may make such minor additions or alterations as may be required by the owner or owners, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by authorized Architect or Engineer after proper declaration and intimation to the owner:

Provided that the promoter shall not make any alterations in the plans, specifications and other particulars without the previous consent of the intending purchaser, project Architect, project Engineer and obtaining the required permission of the prescribed sanctioning authority, and in no case he shall make such alterations as are not permissible in the building bye-laws.

Under Clause (c) of Sub-section (1) of Section 4, a promoter who intends to sell an apartment is required to make a full disclosure in writing to an intending purchaser and to the competent authority of the plans and specifications approved or submitted for approval to the local authority, of the building of which the apartment is a part. Similarly, under Clause (d), a disclosure has to be made in regard to the common areas and facilities in accordance with the approved lay-out plan or building plan. Once such a disclosure has been made, Sub-section (4) stipulates that upon the execution of a written agreement to sell, the promoter may make minor additions or alterations as may be required or necessary due to architectural and structural reasons duly authorized and verified by authorized Architects or Engineers. Apart from these minor additions or alterations which are contemplated by Sub-section (4), the proviso stipulates that the promoter shall not make any alterations in the plans, specifications and other particulars "without the previous consent of the intending purchaser". Mr. Vikas Singh's submission, that this provision will apply to intending purchasers of Apex and Ceyane and not to the persons who had purchased apartments in the existing fifteen towers, cannot be accepted. The above proviso is evidently intended to protect persons to whom the plans and specifications were disclosed when they were the "intending purchasers". Further, a construction to the contrary will run against the grain of the intent and purpose of the statute as well its express provisions.

135. Section 5 of the Act provides for the rights of apartment owners in the following terms, insofar as is relevant:

5. Rights of Apartment Owners.-- (1) Every person to whom any apartment is sold or otherwise transferred by the promoter shall be subject to the other provisions of this Act, be entitled to the exclusive ownership and possession of the apartment so sold or otherwise transferred to him.

(2) Every person who becomes entitled to the exclusive ownership and possession of an apartment shall be entitled to such percentage of undivided interest in the common areas and facilities as may be specified in the Deed of Apartment and such percentage shall be computed by taking, as a basis, the area of the apartment in relation to the aggregate area of all apartments of the building.

(3)(a) The percentage of the undivided interest of each apartment owner in the common areas and facilities shall have a permanent character, and shall not be altered without the written consent of all the apartment owners and approval of the competent authority.

(b) The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with apartment, even though such interest is not expressly mentioned in the conveyance or other instrument.

136. It is important to clarify at this stage that the UP Apartments Act 2010 will not apply with retrospective effect to the second revised plan, which was sanctioned on 26 November 2009. However, the legislation, which came into force upon publication in the UP Gazette on 19 March 2010, will have consequences for the third revised plan sanctioned on 2 March 2012, as analysed below.

E.3 Requirement of RWA's Consent

137. In terms of the third revised plan which was sanctioned on 2 March 2012, the height of T-16 and T-17 was sought to be increased from twenty-four to forty (or thirty-nine, as the case may be) floors. As a result, the total number of flat purchasers would increase from 650 to 1500. The clear implication of this would be a reduction of the undivided interest of the existing purchasers in the common areas. As a matter of fact, it has also been submitted on behalf of the first Respondent that the additional lease rent paid to NOIDA was also sought to be collected from the existing flat purchasers at the rate of Rs. 190 per sq. foot. A statement to that effect was also contained in an affidavit filed before the High Court on behalf of the first Respondent. The purchase of additional FAR by the Appellant cannot be used to trample over the rights of the existing purchasers.

138. Flats were sold on the representation that there would be a garden area adjacent to T-1. The garden adjacent to T-1 is clearly depicted in the first revised plan of 29 December 2006. It is this garden area which was encroached upon when the second revised plan was sanctioned on 26 November 2009.

139. However, according to the Appellant, T-16 and T-17 form part of Phase II of Emerald Court, which had not encroached on any part of the common areas of Phase I, under which all the other towers fell. In this context, it would be material to note a letter dated 13 February 2012 addressed to the Circle Officer, City 3rd NOIDA, Gautam Buddh Nagar, by the Director of the Appellant, in which it has been stated that:

Kindly, refer to your Letter Dt. 10.02.2012, received by us on 11.02.2012, regarding which written statement on behalf of M/s. Supertech Limited is presented as under:

1. That, [A]pex and [Ceyane] multi storey residential tower is being constructed over plot measuring nearly 6500 sq. meter which was acquired by the Company M/s. Supertech Limited from NOIDA Development Authority in the year 2006, regarding which its supplementary lease deed was registered in the office of Sub-Registrar, Second, Gautam Buddh Nagar...

2 . That, right from the beginning there was a pan for constructing separate complex viz. Apex and [Ceyane] and

provisions have been separately made in both towers viz. swimming pool, car, club, parking and gym etc. The facilities of other old towers as shown in the brochure have been published by mistake, but concerned amendment was made in the brochure upon the company being informed by the residents residing in old towers...

[...]

4. That, company has erected wall for the expansion of basement and above wall was erected by the company over its land and this basement area was not sold to any resident of old tower over which company has complete ownership. No adverse effect is there on the interests of any resident in erecting above wall, rather the residents of old tower have been removed from the allotted basement area by it. Company has full right to make construction over its land.

5. That, construction carried out earlier or being carried out by the company is completely legal and in accordance with Rules and company has not affected the interest of anybody and no fraud was committed by the company with anybody.

Therefore, it appears that the complainant having presented this false complaint inspired by mala fides wants to harass the company and wants to earn undue advantage by not making payment of an amount which is payable to the company. Therefore, it is requested that complaint presented by the complainant is liable to be dismissed. In addition, it is also requested that any personal name be not used in any correspondence or inquiry, rather name of company through its Director be used.

(emphasis supplied)

The above letter puts forth the case that T-16 and T-17 have been constructed as a separate project over the area which was obtained under the supplementary lease deed, and that it has separate provisions for all amenities and infrastructure. In fact, it indicates that the facilities of the older buyers were shown in the brochure but that representation was 'clarified' to be a 'mistake', which had been amended.

140. As such, it becomes important to refer to the supplementary lease deed, which was granted in favour of the Appellant on 21 June 2006. The supplementary lease deed makes it clear that the demised premises admeasuring 6556.51 sq. mtrs. would form a part of the originally allotted plot. In the course of its affidavit before the High Court, the Appellant contended that:

7. The Office bearers/members of the Petitioners society has the right title & interest only in its flat and undivided interest in the common areas of the Emerald Court (phase I). He has the right to challenge if somebody is trying to encroach in his flat or in the Common area are intended to be used for the purpose of the residents. However, here this is not the case. It is stated that the "Apex & Ceyane" (Phase II) comprising of two towers has not encroached any area of the common of the Emerald Court (Phase I). Therefore the Petitioner society does not have the locus to challenge the issues related with "Apex & Ceyane" (Phase-II).

In other words, the case which was sought to be set up was that the flat purchasers had an undivided interest in the common areas of Phase I of the Emerald Court, but since T-16 and T-17 formed a part of Phase II, it did not affect the rights of the original flat purchasers of T-1 to T-15. This contention is expressly contrary to the clear terms governing the supplementary lease deed, which indicates that the area comprising of the demised premises would form part of the original plot. Furthermore, the Appellant having utilized the FAR of the entire plot, including the area which forms the subject matter of the original lease and the supplementary lease, cannot be allowed to assert to the contrary.

141. Hence, it is abundantly clear that the construction of T-16 and T-17 in accordance with the second revised plan and the third revised plan reduced the value of the undivided interest held by each individual flat owner in the common areas and facilities, thereby violating Section 5 of the UP 1975 Act and Section 5 of the UP Apartments Act 2010, since the flat owners' consent was not sought. Further, the third revised plan encroached upon the garden area in front of T-1, thereby resiling from the representation that had been made to the flat owners at the time when they purchased the apartments in T-1, without their consent. Therefore, it constituted a violation of Section 4(1) read with the proviso to Section 4(4) of the UP Apartments Act 2010.

142. Finally, the Appellant has also tried to argue that: (i) the consent of each individual flat owner could not be taken and it had to be taken from the RWA, as a collective body; (ii) the RWA only came into existence on 20 October 2013, when it adopted the Model Bye-Laws under the UP Apartments Act 2010; (iii) that this was after the third revised plan was sanctioned; and (iv) hence, there existed no association to take consent from. The High Court has dealt with this argument in the impugned judgment by observing:

As per the averments of the Respondent/company, the flats were handed over to the apartment owners by September 2009. The owners immediately formed Resident Welfare Association (RWA) and got it registered with the Registrar Societies, in the very same year. Adopting the model bye-laws, did not arise, as it was not enforced until 2011. After notification of Model bye-laws, the Deputy Registrar Firm, Societies and Chits, Meerut vide letter dated 14.12.2012 informed, that pending instructions from the Registrar Firm Societies and Chits Uttar Pradesh, no decision in the matter can be taken in respect of Model bye-laws and its registration. The Registrar Firm, Societies and Chits Uttar Pradesh vide circular dated 5.2.2013 addressed to all Deputy Registrars/District Registrars issued instructions for registration under Apartment Act, 2010 and directed that bye laws of existing RAW be accordingly amended. The Petitioner/society vide resolution dated 20.10.2013 adopted the Model bye-laws and conducted elections and thereafter informed the Deputy Registrar.

The Respondent/company has recognized the Petitioners society as RWA of the Apartment owners since inception and has continuously corresponded with the Petitioner society as RWA. Letter dated 9.10.2012, 27.9.2012, 4.9.2012 and January, 2013 addressed to the Petitioner society regarding redressal of their grievance is on record...

Therefore, it is clear that: (i) the RWA came into existence in 2009 itself, when the first lot of apartment owners moved in; (ii) the Appellant was communicating with the RWA ever since; and (iii) the RWA adopted the Model Bye-Laws under the UP Apartments Act 2010, as soon as it was practicable. These averments have not been challenged before

this Court during the oral submissions by the Appellant, and hence, it will be held bound by its own conduct. In any case, rights under the UP 1975 Act and UP Apartments Act 2010 have been provided to individual flat owners, and not to collective bodies like the RWA. Hence, even the non-constitution of the RWA will not extinguish the rights of individual flat owners. Indeed, however, when such RWAs do exist, developers may use them to seek a common consent from all the flat owners instead of approaching them all individually.

F. Collusion and Illegal Construction

143. The record of this case is replete with instances which highlight the collusion between the officers of NOIDA with the Appellant and its management. The case has revealed a nefarious complicity of the planning authority in the violation by the developer of the provisions of law. The complicity of NOIDA has emerged, inter alia, from the following instances:

- (i) The sanctioning of the second revised plan on 26 November 2009 in clear breach of the NBR 2006;
- (ii) The refusal by NOIDA to disclose the building plans to the first Respondent, in spite of a clear stipulation consistently in all the sanctioned plans that the plan would have to be displayed at the construction site of the Appellant;
- (iii) NOIDA's referral of RWA's request to access the sanctioned plans to the Appellant to seek its consent and upon the refusal of the latter, a continuous failure to disclose them to the RWA;
- (iv) Even when the CFO addressed a communication to NOIDA in regard to the violation of the minimum distance requirements in Emerald Court, it evinced no response and no investigation from them;
- (v) In pursuance of the second revised plan of 26 September 2009, the Appellant would appear to have built a foundation to support two buildings of forty and thirty-nine floors, while the sanction for the extension from twenty-four to forty or thirty-nine floors came about only on 2 March 2012 through the third revised plan; and
- (vi) The construction for T-16 and T-17 commenced in July 2009 by the Appellant, five months before the sanction was received for the second revised plan on 26 November 2009, in spite of which NOIDA chose to take no action.

144. The High Court has dealt with the collusion between the officials of NOIDA and the Appellant. This is writ large from the facts as they have emerged before this Court as well. The High Court has in these circumstances correctly come to the conclusion that there was collusion between the developer and the planning authority.

145. Condition 15 of the third revised plan dated 2 March 2012 stipulated that:

15. Compliance of provisions of Uttar Pradesh Apartment (promotion of construction, ownership & maintenance) Act 2010, and directions issued thereunder shall be ascertained.

Sanctioned site plan/map is enclosed with this letter. Application for utility certificate would be made after completion of building work within validity of map/site plan, and without permission and certification building shall not be

used...

In spite of this condition, NOIDA made no effort to ensure compliance of the UP Apartments Act 2010, as a result of which the rights of the flat purchasers have been brazenly violated. This cannot point to any conclusion, other than the collusion between NOIDA and the Appellant to avoid complying with the provisions of the applicable statutes and Regulations for monetary gain, at the cost of the rights of the flat purchasers.

146. The rampant increase in unauthorized constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities.

147. From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, Regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations - the protection of the environment and the well-being and safety of those who occupy these constructions. The Regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these Regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. Hence, illegal construction has to be dealt with strictly to ensure compliance with the Rule of law.

148. The judgments of this Court spanning the last four decades emphasize the duty of planning bodies, while sanctioning building plans and enforcing building Regulations and bye-laws to conform to the norms by which they are governed. A breach by the planning authority of its obligation to ensure compliance with building Regulations is actionable at the instance of residents whose rights are infringed by the violation of law. Their quality of life is directly affected by the failure of the planning authority to enforce compliance. Unfortunately, the diverse and unseen group of flat buyers suffers the impact of the unholy nexus between builders and planners. Their quality of life is affected the most. Yet, confronted with the economic might of developers and the might of legal authority wielded by planning bodies, the few who raise their voices have to pursue a long and expensive battle for rights with little certainty of outcomes. As this case demonstrates, they are denied access to information and are victims of misinformation. Hence, the law must step in to protect their legitimate concerns.

149. In *K. Ramadas Shenoy v. Chief Officer, Town Municipal Council* MANU/SC/0082/1974 : (1974) 2 SCC 506, Chief Justice AN Ray speaking for a two judge Bench of this Court observed that the municipality functions for public benefit and when it "acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess".

This Court also held:

27...The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the courts. If sanction is given to build by contravening a bye-law the jurisdiction of the courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative. (See *Yabbicom v. King* [(1899) 1 QB 444]).

This Court held that an unregulated construction materially affects the right of enjoyment of property by persons residing in a residential area, and hence, it is the duty of the municipal authority to ensure that the area is not adversely affected by unauthorized construction.

150. These principles were re-affirmed by a two judge Bench in *Dr. G.N. Khajuria v. Delhi Development Authority* MANU/SC/0064/1996 : (1995) 5 SCC 762 where this Court held that it was not open to the Delhi Development Authority to carve out a space, which was meant for a park for a nursery school. Justice BL Hansaria, speaking for the Court, observed:

10. Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of courts, the illegality is not taken care of fully inasmuch as the officers of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot free. This should not, however, have happened for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the citizen concerned, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who made the hay when the sun shined (sic), retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite.

1 5 1 . In *Friends Colony Development Committee v. State of Orissa* MANU/SC/0933/2004 : (2004) 8 SCC 733, this Court dealt with a case where the builder had exceeded the permissible construction under the sanctioned plan and had constructed an additional floor on the building, which was unauthorized. Chief Justice RC Lahoti, speaking for a two judge Bench, observed:

24. Structural and lot area Regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and

structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and Regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building.

Noting that the private interest of land owners stands subordinate to the public good while enforcing building and municipal Regulations, the Court issued a caution against the tendency to compound violations of building Regulations:

25...The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions.

152. In *Priyanka Estates International (P) Ltd. v. State of Assam* MANU/SC/1860/2009 : (2010) 2 SCC 27, Justice Deepak Verma, speaking for a two judge Bench, observed:

5 5 . It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multistoreyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.

The Court lamented that the earlier decisions on the subject had not resulted in enhancing compliance by developers with building Regulations. Further, the Court noted that if unauthorized constructions were allowed to stand or are "given a seal of approval by Court", it was bound to affect the public at large. It also noted that the jurisdiction and power of Courts to indemnify citizens who are affected by an unauthorized construction erected by a developer could be utilized to compensate ordinary citizens.

153. In *Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corporation of Mumbai* MANU/SC/0198/2013 : (2013) 5 SCC 357, Justice GS Singhvi, writing for a two judge Bench, reiterated the earlier decisions on this subject and observed:

8 . At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow

unscrupulous developers/builders to take law into their hands and get away with it.

The Court further observed that an unauthorized construction destroys the concept of planned development, and places an unbearable burden on basic amenities provided by public authorities. The Court held that it was imperative for the public authority to not only demolish such constructions but also to impose a penalty on the wrongdoers involved. This lament of this Court, over the brazen violation of building Regulations by developers acting in collusion with planning bodies, was brought to the fore-front when the Court prefaced its judgment with the following observations:

1. In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal constructions by way of compounding and otherwise.

Finally, the Court also observed that no case has been made out for directing the municipal corporation to regularize a construction which has been made in violation of the sanctioned plan and cautioned against doing so. In that context, it held:

56...We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas.

154. These concerns have been reiterated in the more recent decisions of this Court in Kerala State Coastal Zone Management Authority v. State of Kerala MANU/SC/0808/2019 : (2019) 7 SCC 248, Kerala State Coastal Zone Management Authority v. Maradu Municipality, Maradu and Bikram Chatterji v. Union of India MANU/SC/0947/2019 : (2019) 19 SCC 161.

155. In the present case, once this Court has determined that the sanctioned plan for Apex and Ceyane (T-16 and T-17) breached the NBR 2006, NBR 2010, NBC 2005, UP 1975 Act and the UP Apartments Act 2010, it becomes its duty to take stock of the violations committed by the Appellant in collusion with NOIDA. The Appellant has raised false pleas and attempted to mislead this Court, while the officials of NOIDA have not acted bona fide in the discharge of their duties. The Appellant has stooped to the point of producing a fabricated sanctioned plan. Therefore, we confirm the directions of the High Court including the order of demolition and for sanctioning prosecution Under Section 49 of the UPUD Act, as incorporated by Section 12 of the UPIAD Act 1976, against the officials of the Appellant and the officers of NOIDA for violations of the UPIAD Act 1976 and UP Apartments Act 2010.

G. Conclusion

156. To summarize our findings, the documentary materials referred to and analyzed in this judgment indicate that:

- (i) The land allotted to Appellant under the original lease agreement and the supplementary lease deed constitute one plot;
- (ii) The land which was allotted through the supplementary lease deed forms a part of original Plot No. 4, and would be governed by the same terms and conditions as the original lease deed;
- (iii) The sanction given by NOIDA on 26 November 2009 and 2 March 2012 for the construction of T-16 and T-17 is violative of the minimum distance requirement under the NBR 2006, NBR 2010 and NBC 2005;
- (iv) An effort was made to get around the violation of the minimum distance requirement by representing that T-1 together with T-16 and T-17 form one cluster of buildings in the same block. This representation was sought to be bolstered by providing a space frame between T-1 and T-17. The case that T-1, T-16 and T-17 are part of one block is directly contrary to the Appellant's stated position in its representations to the flat buyers as well as in the counter affidavit before the High Court. The suggestion that T-1, T-16 and T-17 are part of one block is an after-thought and contrary to the record;
- (v) After realizing that the building block argument would not pass muster, another false case was sought to be set up with the argument that T-1 and T-17 are dead end sides, thereby obviating the need to comply with the minimum distance requirements. This argument is belied by the comprehensive report submitted by NBCC. The sides of T-1 and T-17 facing each other are not dead end sides since both the sides have vents/egresses facing the other building;
- (vi) By constructing T-16 and T-17 without complying with the Building Regulations, the fire safety norms have also been violated;
- (vii) The first revised plan of 29 December 2006 contained a clear provision for a garden area adjacent to T-1. In the second revised plan of 26 November 2009, the provision for garden area was obliterated to make way for the construction of Apex and Ceyane (T- 16 and T - 17). The common garden area in front of T-1 was eliminated by the construction of T-16 and T-17. This is violative of the UP Apartments Act 2010 since the consent of the flat owners was not sought before modifying the plan promised to the flat owners; and
- (viii) T-16 and T-17 are not part of a separate and distinct phase (Phase-II) with separate amenities and infrastructure. The supplementary lease deed stipulates that the they are part of the original project. Hence, the consent of the individual flat owners of the original fifteen towers, individually or through the RWA, was a necessary requirement under the UP Apartments Act 2010 and UP 1975 Act before T-16 and T-17 could have been constructed, since they necessarily reduced the undivided interest of the individual flat owners in the common area by adding new flats and increasing the number from 650 to 1500; and
- (ix) The illegal construction of T-16 and T-17 has been achieved through acts of collusion between the officers of NOIDA and the Appellant and its management.

157. For the reasons which we have indicated above, we have come to the conclusion that:

(i) The order passed by the High Court for the demolition of Apex and Ceyane (T-16 and T-17) does not warrant interference and the direction for demolition issued by the High Court is affirmed;

(ii) The work of demolition shall be carried out within a period of three months from the date of this judgment;

(iii) The work of demolition shall be carried out by the Appellant at its own cost under the supervision of the officials of NOIDA. In order to ensure that the work of demolition is carried out in a safe manner without affecting the existing pleadings, NOIDA shall consult its own experts and experts from Central Building Research Institute Roorkee³⁰;

(iv) The work of demolition shall be carried out under the overall supervision of CBRI. In the event that CBRI expresses its inability to do so, another expert agency shall be nominated by NOIDA;

(v) The cost of demolition and all incidental expenses including the fees payable to the experts shall be borne by the Appellant;

(vi) The Appellant shall within a period of two months refund to all existing flat purchasers in Apex and Ceyane (T-16 and T -17), other than those to whom refunds have already been made, all the amounts invested for the allotted flats together with interest at the rate of twelve per cent per annum payable with effect from the date of the respective deposits until the date of refund in terms of Part H of this judgment; and

(vii) The Appellant shall pay to the RWA costs quantified at Rs.2 crore, to be paid in one month from the receipt of this judgment.

H. Interlocutory Applications

158. Mr. Vikas Singh, learned Senior Counsel, has during the course of the hearing tendered an additional affidavit to indicate the following position:

(i) The contention of RWA that the Appellant has collected the onetime lease rent at the rate of Rs. 190 per sq. foot from all the flat owners in T-1 to T-15 and that though an amount of Rs. 16.75 crores was collected, only Rs. 13.32 crores was payable to NOIDA is incorrect;

(ii) The Appellant did not collect the lease rent payable to NOIDA from all allottees of T-1 to T-15. An amount of Rs. 7.54 crores was received from some allottees;

(iii) The lease rent paid to NOIDA was in the amount of Rs. 14.49 crores;

(iv) A total of 659 units were booked in T-1 to T-14; and

(v) Of these units 245 flats were booked till 28 December 2006; 141 flats were booked between 29 December 2006 and 25 November 2009, 114 flats were booked between 26 November 2009 and 1 March 2012, while 159 units were booked after 2 March 2012.

On this basis, it has been submitted that 518 units were booked either before 28 December 2006 (before the first revised plan) or after 26 November 2009 (after the

second revised plan). The figures which have been indicated by the Appellant demonstrate that between the first revised plan on 29 December 2006 and the second revised plan on 25 November 2009, 141 flat purchasers had booked flats. They did so on the clear representation contained in the sanctioned plans.

159. During the pendency of these proceedings, two interim orders were passed by this Court on 6 September 2016 and 22 September 2017. By the order dated 6 September 2016, this Court directed the Appellant to pay a return of ten per cent to those flat purchasers who continue to stay in the project. By the order dated 22 September 2017, an exit option was granted to those who sought refunds to take the amounts invested with interest at the rate of twelve per cent per annum.

160. The position as indicated to this Court by Mr. Ravindra Kumar, learned Counsel, in respect of flats in Apex and Ceyane (T-16 and 17) is as follows:

- (i) Number of flats: 915;
- (ii) Number of shops: 21
- (iii) Number of bookings: 633;
- (iv) Persons who have reinvested in other projects of the developer: 133;
- (v) Purchasers to whom refund has been granted: 248; and (vi) Remaining purchasers: 252.

161. The above position indicates that following the opt-out which was provided in terms of the order of this Court, 248 purchasers have opted for refunds while 252 purchasers in T-16 and T-17 remain committed to the project.

162. Mr. Gaurav Agarwal, learned Amicus Curiae has rendered comprehensive assistance to the Court. Apart from urging his submissions in an objective and dispassionate manner, the Amicus Curiae has painstakingly complied the pleadings, documents and statutory provisions to facilitate the convenience of arguing Counsel and the Court. We record our appreciation for the assistance which has been rendered by the Amicus Curiae. The Amicus Curiae has also prepared a note for the purpose of segregating the applications which have been filed by home buyers into distinct categories, and suggesting reliefs to each category based on the outcome of the proceedings. These categories are:

Category I

163. Buyers who have received ROI payments:

- (i) By its orders dated 6 September 2016 and 11 January 2017, this Court directed that those home buyers who have chosen to stay on with the project and do not desire refund should be paid ROI at ten per cent per annum; and
- (ii) Thirteen persons filed applications before this Court claiming that ROI payments were not made by the Appellant. The Appellant has intimated the payments which are due till July 2021. Though, the home buyers claim higher amounts, the Amicus Curiae has proceeded on the figures furnished by the Appellant which are tabulated as follows:

Sr. No.	Name	IA no.	Interest due till 1 st July, 2021 as per email received from Supertech	Name of AOR
1	Aarti Puri	55556/2021	Rs. 16,78,720	Nishe Rajen Shonker
2	Divay Puri	80599/2021	Rs. 16,78,548	Do
3	Jatin Vardi	55562/2021	Rs. 11,65,686	Do
4	Amit Khanna	56228/2021	Rs. 11,65,686	Do
5	Narinder Thakur	55550/2021	Rs. 10,41,578	Do
6	Manju Kohli	142969/2014	Rs. 6,78,524	Do
7	Namrata Tuli	142975/2018	Rs. 8,26,616	do
8	Mahesh Jaura	80916/2019	Rs. 1,11,160	do
9	Kavita Jaura	80875/2019	Rs. 2,01,299	do
10	Hemendra Varshney	80879/2019	Rs. 1,33,980	do
11	Shachi Varshney	80881/2019	Rs. 1,31,988	do
12	Bandana Kedia	80918/2019	Rs. 1,31,700	do
13	Sapna Ahluwalia	43555/2021	Rs. 19,87,020	do

164. The submission of the Amicus Curiae is that if the buildings were to stand, the home buyers may be paid the above ROI. On the other hand, if the buildings are to be demolished, the home buyers should receive refund with interest and the amounts would be subsumed in the interest to be paid. Since this Court has come to the conclusion that the buildings are to be demolished, the general directions in regard to refund together with interest will subsume the claims of the above home buyers.

Category 2

165. Homebuyers to whom principal has been paid but interest payments have remained:

(i) By an order dated 30 July 2018, this Court directed that homebuyers who had registered on the portal and were willing to take twelve per cent simple interest per annum from the date of deposit till the date of payment towards full and final payment would be refunded the principal sum together with interest at the above rate on filing affidavits to that effect; and

(ii) The registry has refunded the principal sum to thirteen homebuyers but since their affidavits were not received by the Amicus Curiae within time, interest remained to be paid. The details have been tabulated by the Amicus Curiae as follows:

Sr. No.	Name	Interest payable	IA no.	Name of AOR
1	Anuj Goyal	Rs. 31,40,704	69916-69917 of 2019	Abhijeet Sinha
2	Sumit Goel	Rs. 28,97,199		
3	Priya Goel	Rs. 28,97,199		
4	Mukta Jain	Rs. 30,10,253		
5	Subhash Chand Jain	Rs. 29,05,957		
6	Abhishek Jain	Rs. 30,42,129		
7	Abhishek Jain	Rs. 30,22,785		
8	Herbinder Singh	Rs. 32,84,789		
9	Vineet Kapoor	Rs. 28,90,491		
10	Vishal Maheshwari	Rs. 22,45,399	24823/2020	Nishe Rajen Shonker
11	Shipli Maheshwari	Rs. 15,30,585	24834/2020	do
12	Poonam Lata Kushwaha	Rs. 29,22,513	120666/2019 & 120669/2019	Sweta Rani
13	Paramita Ray	Rs. 40,65,228		In-person

166. The Amicus Curiae has submitted that irrespective of the fate of the pleadings, the Appellant should be directed to refund the interest as computed above since the above homebuyers have exited from the project. We accept the submission and direct the Appellant to refund interest payments to the thirteen homebuyers as tabulated above

within two months.

Category 3

167. Home buyers under a 'subvention scheme':

(i) Under the subvention scheme, a home loan is taken in the name of the homebuyer but EMIs are to be paid by Appellant till possession is granted. Certain homebuyers are governed by the subvention scheme. There is a default by the Appellant in paying the EMIs;

(ii) By an order dated 30 July 2018, this Court directed the Appellant to continue paying the EMIs. Sixteen homebuyers have moved this Court for a direction for payment of the balance EMIs due;

(iii) The Amicus Curiae has tabulated the interest payable to the homebuyers (as computed by them and by the Appellant separately):

Sr. No.	Name	Interest indicated by homebuyer	Interest indicated by Supertech	IA no.	Name of AOR
1	Parvinder Singh	Rs. 11,71,110	Rs. 8,81,847	24814, 24825, 24839, 24848, 24972, 24973, 24974, 24978, 24984, 24985, 24989, 24992, 24996,	Khaitan & Co.
2	Amit Mangla	Rs. 12,09,052	Rs. 12,09,052		
3	Binod Kumar	Rs. 11,73,902	Rs. 8,43,073		
4	Shailesh Kr Singh	Rs. 11,69,640	Rs. 8,51,310		
5	Dev Verma	Rs. 11,73,919	Rs. 8,58,311		
6	Naveen Kumar	Rs. 16,08,467	Rs. 11,07,792		
7	Vaibhav Mishra	Rs. 11,66,778	Rs. 8,37,666		
8	Mandar Hastekar	Rs. 11,66,826	Rs. 8,53,381		
9	Ashish Sharma	Rs. 11,73,092	Rs. 8,25,030	24997, 29374 & 29386/2020	
10	Hrisikesh-Kshitiza Bawa	Rs. 11,73,919	Rs. 8,39,984		
11	Babneet Singh	Rs. 11,74,308	Rs. 8,40,383		
12	Romit Agarwal	Rs. 11,66,182	Rs. 8,59,768		
13	Bhupinder-Puran Das Pruthi	Rs. 11,51,855	Rs. 9,43,782		
14	Nilay Ashmi	Rs. 11,67,529	Rs. 8,29,579		
15	Manoj Kr Pamneja (*)	Rs. 8,10,866	Nil	25950/18	Krishnamohan K
16	Sandeep Jain (*)	Rs. 8,10,866	nil	67854 & 67856/2020	Arjun Garg

The Amicus Curiae submits that the amounts calculated above be paid.

168. The Amicus Curiae submitted that if the buildings are ordered to be demolished, the Appellant may close the home loans and refund the amounts contributed by the homebuyers with such interest as this Court may determine. On the other hand, if the buildings stand, the Appellant may be directed to clear the outstanding EMIs and continue paying them until possession. Since the buildings have been ordered to be demolished under the directions of this Court in the present judgment, the Appellant shall close the home loans and refund the amounts contributed by each of the above home buyers with interest at the rate of twelve per cent per annum within two months.

Category 4

169. There are two IAs in which the homebuyers have a dispute with the Appellant

relating to the amounts due to the homebuyers:

(i) In IA No. 56187/2021, Mr. DP Tripathi was allotted Flat No. 1105 in Apex. A total amount of Rs. 31,70,410 was paid for the flat. Out of this amount, Rs. 14,25,000 was funded by loan. The Appellant paid the loan pursuant to an order of this Court. However, the applicant has paid the balance amount of Rs. 17,45,410 out of his own funds towards the flat, and Rs. 6,58,700 as loan repayments before it was ultimately settled by the Appellant. ROI payments for 27 months amounting to Rs. 5,20,315 have been received from the Appellant. Thus, the case of the applicant is that a sum of Rs. 18,83,795 remains invested by the applicant, which may be ordered to be refunded. In contrast, the Appellant has stated that this dispute has been settled by the Debt Recovery Tribunal and nothing is payable; and

(ii) In IA No. 67028/2017, Mr. Raj Kishore had purchased Flat No. 3507, in respect of which the amount has been refunded along with interest. A cheque of Rs. 67,319 bearing No. 213233 for the last payment remained to be encashed due to oversight. The Amicus Curiae has suggested that the Appellant may be directed to issue a fresh cheque pertaining to this payment.

170. With regards to IA No. 56187/2021, since the underlying dispute regarding payment is pending in this IA, it is de-linked and will be heard separately. In IA No 67028/2017, the Appellant is directed to provide a fresh cheque for an amount of Rs. 67,319 to the applicant within one month.

Category 5

171. Application of homebuyers which have been rendered infructuous. The Amicus Curiae has tabulated applications which have been rendered infructuous, indicating the reasons for the same:

Applications of home buyers which are rendered infructuous

Sr. No.	Name of homebuyers	IA no.	Name of AOR	Reasons
1	Leo VIII Films Pvt. Ltd.	18211/2018 18217/2018	Nilish Massey	Refund received with interest
2	Raj Kishore	67028/2017	Mahima Gupta	Refund received with interest
3	Sajeev Katarya	24785/2017	Rajeev Singh	Refund received with interest
4	Girish Arun Singpote	175122 & 175124 of 2018	UNUC Legal LLP	Applicants have not applied in portal
5	Darpan Bhargav	137549/2018	Gopal Jha	Applicant has not applied in portal
6	1)Arvind Kaur Sodhi 2) Amarjit Singh Rana & Jasjit Kaur	18064-18066/2020	Gopal Jha	Applicants have not applied in portal
7	Poonam Kulbir Krishnan	6919/2018	Aparna Bhat	This does not relate to this project, but it relates to the project in Gurgaon
8	Sanjay Bahl	24785/17	Rajeev Singh	Refund already paid @12%
9	Mini Kohli & Ors.	68049/17	PK Jain	Refund already paid with interest
10	Vibhav Bindal	96289/17	Pinky Behera	Refund already paid with interest
11	Sayed Asad Ahmad	11/15 in SLP 14314/14	Shantanu Krishna	Applicant has not applied in portal
12	Vivek Sharma & others	12/2015 in SLP 14314/14	Rajeev Singh	Applicant has not applied in portal
13	Usha Rani & others	14/16 in SLP 14314/14	Rajeev Singh	There are number of applicants in this application. Some of them got refund with interest. Others did not apply.
14	Vishal Raj Singh	IA 15/2016 in SLP 14314/14	Rajeev Singh	Applicant has not applied in portal
15	Ishwar Kumar Singh	IA 16/2016	Amit Anand Tiwari	Refund already paid with interest
16	Sanjeev Katariya	IA 17/2016 in SLP 14314/14	Rajeev Singh	Refund already paid with interest
17	Ms. Raj Kishore & another	IA 18/2016 in SLP 14314/14	Mahima Gupta	One applicant has already paid refund with interest and other did not apply in portal
18	Mini Kohli & others	IA 21/17 in SLP 14314/14	PK Jain	Some applicants have already paid refund with interest and other did not apply in port.
19	Rashmi Arora	121826,121828/17	MC Dhingra	Refund already paid with interest
20	Jitendra Kumar Sabharwal & others	IA 121085/17	Rajeev Singh	Some applicants have already paid refund with interest and other did not apply in port.
21	Poonam Kulbir Krishan	14898/18	Aparna Bhat	This does not relate to present project.
22	Usha Rani & others	35845/21	Avjit Mani Tripathi	Most of the applicants have get refund of with 12%. Now they want 14% interest.
23	Manprit Kaur	IA 20/18 & 95793/16 in SLP 14314/14	Anupam Lal Das	Refund already paid with interest
24	Sajeev Aggrawal	IA 121841/17 & 121842/17	MC Dhingra	Refund already paid with interest

172. The above applications are disposed of as infructuous.

173. The appeals shall stand disposed of in the above terms. The contempt petitions are disposed of accordingly.

174. Pending application(s), if any, stand disposed of.

¹Writ Petition (Civil) No. 65085 of 2012

²"RWA"

³"Emerald Court"

⁴"T-16"/"Ceyane "

⁵"T-17"/"Apex"

⁶"NOIDA"

⁷"Supertech"

⁸"UPUD Act 1973"

⁹"UPIAD Act 1976"

¹⁰"UP Apartments Act 2010"

¹¹"NBR 1986"

¹²"NBR 2006"

¹³"FAR"

¹⁴"T-1"/"Aster 2"

¹⁵"CFO"

¹⁶"NOC"

¹⁷"NBC 2005"

¹⁸"NBR 2010"

¹⁹"Fire Safety Act"

²⁰"NBCC"

²¹"ROI"

²²"UP 1975 Act"

*The earlier G+1 shopping complex is numbered as T-16, while the original T-16 is numbered as T-17. Further, T-1 and T-17 were to be connected by a space frame at the upper level.

ΦAs per the third revised plan dated 2 March 2012, the proposed floors for T-16 and T-17 were G+40. We note however, that in the details of sanctioned plans submitted by Mr. Vikas Singh, learned Senior Counsel, the number of floors envisaged for T-17 were G+39 and T-16 were G+40. Further, as per the provisional Fire NOC dated 18 August 2011, the proposed construction for T-16 and T-17 was for G+38 floors.

²³"BIS"

²⁴"DFI"

²⁵The total actual length of T-17 as noted in the NBCC Report is 84.5 m as against the envisaged 121 m.

²⁶(d) "common areas and facilities" includes--

(1) the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building;

(2) the foundations, columns, girders, beams, supports, main wall, roofs, halls, corridors, lobbies, stairs, stair-way, fire-escapes and entrances and exits of the

building;

- (3) the basements, cellars, yards, gardens, parking areas and storage spaces;
- (4) the premises for the lodging of janitors or persons employed for the management of the property;
- (5) installations of common services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and sewerage;
- (6) the elevators, tanks, pumps, motors, expressors, pipes and ducts and in general all apparatus and installations existing for common use;
- (7) such other common facilities as may be specially provided for in the Declaration;
- (8) all other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use;"

²⁷"4. Flat to be transferable and heritable property.--(1) Each owner of a flat shall be entitled to the exclusive ownership and possession of his flat in accordance with the Declaration.

(2) Subject to the provisions of the second proviso to Section 2, a flat, together with its undivided interest in the common areas and facilities, shall constitute heritable and transferable immovable property within the meaning of any law for the time being in force:

Provided that no flat and the percentage of undivided interest in the common areas and facilities appurtenant to such flat shall be partitioned or sub-divided for any purpose whatsoever."

²⁸"10. Contents of Declaration.--(1) The declaration referred to in Section 2 shall be submitted in such form and in such manner as may be prescribed and shall contain the following particulars, namely:

- (a) description of the property, namely the description of the land on which the building is or is to be located, whether the land is freehold or leasehold and whether any lease of the land is to be granted in accordance with the second proviso to Section 2, and description of the building or proposed building stating the number of storeys and basements and the number of flats;
- (b) nature of interest of the owner or owners in the property;
- (c) existing encumbrance, if any, affecting the property;
- (d) description of each flat containing its location, approximate area, number of rooms, immediate common area to which it has access, and any other data necessary for its proper identification;
- (e) description of the common areas and facilities;
- (f) description of the limited common areas and facilities, if any, stating to which flats their use is reserved;
- (g) value of the property and of each flat, and the percentage of undivided interest in the common areas and facilities appertaining to each flat and its owner for all purposes, including voting."

²⁹"11. Withdrawal from the provisions of the Act.-- (1) All the owners of flats may withdraw a property from the provisions of this Act by an instrument executed to that effect.

(2) Upon the property being withdrawn from the provisions of this Act, it shall be deemed to be owned in common by the owners of flats and the share of each such owner in the property shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

(3) Any encumbrance affecting any of the flats shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of the owner of the flat in the property as provided therein.

(4) The withdrawal provided for in Sub-section (1) shall in no way bar the subsequent resubmission of the property to the provisions of this Act."

30"CBRI"

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