

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONE, CHENNAI

[NGT-SZ]

ORIGINAL APPLICATION NO. 52/2024 (SZ)
&
I.A. NO. 22/2024 (2024)
WITH
ORIGINAL APPLICATION NO. 154 OF 2024
WITH
ORIGINAL APPLICATION NO. 195 OF 2024

IN THE MATTER OF:

NATIONAL ENVIRONMENT CARE

FOUNDATION ... APPLICANT

VERSUS:

MANGALURU SMART CITY

LIMITED & ORS. ... RESPONDENTS

REPORT SUBMITTED ON BEHALF OF MANGALURU SMART
CITY LIMITED

The Respondent No. 1 respectfully submits as under:

1. This Report is submitted to this Hon'ble Tribunal in supplementation of the earlier report submitted by this Respondent on 30/05/2024 in O.A. No. 195/2024 (*earlier O.A. No. 387/2024*) ["MSCL Compliance Response"/ "Compliance Report"].
2. The earlier Compliance Report specifically dealt with detailing the list of clearances and permissions obtained in respect of the "Waterfront Promenade Project" at the Nethravathi Riverfront ["Project"] from all relevant authorities.
3. This Report encapsulates MSCL's response to the findings rendered by various bodies in a succession of reports concerning the Project, and the unfounded allegations made by Applicant in its responses dated 05/09/2024 as well as the Petition.

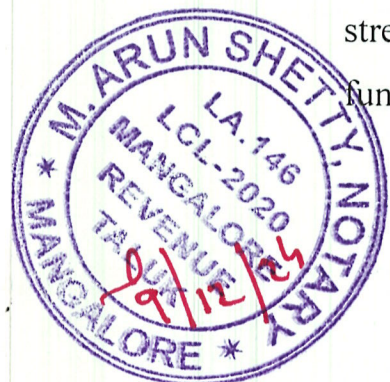
Errors./Corrections Etc **Nil**




Managing Director
Mangaluru Smart City Limited
Mangaluru

4. The city of Mangaluru is naturally endowed with rivers almost encircling it and the Nethravathi River as well as the Gurupura River are its main rivers. The Mangaluru Smart City Limited (MSCL) is implementing Waterfront projects as an effort to reclaim the water edge of the city which is not currently accessible to the citizens of Mangaluru. The city enjoys a continuous waterfront and the promenade is planned in such a way that while it is on the river edge or most of the portion, in certain small and significant stretches, it is routed away from the river edge to create experiential and educative zones.
5. The Waterfront Promenade being developed is a 2.1 KM long stretch from Nethravathi Bridge to Bolar Sea Face. This is a pilot stretch, and will be a continuous and contiguous development. The Promenade stretch among other things will have Bio-diversity Park, OAT Plaza, Boat building yard, Ticketing counters, Shop/cafe area, Toilets, Cycle track, Pedestrian Pathway, Flea/weekly markets, Hawkers Plaza, Bolar Cultural Marker, Rain Shelters, Outdoor Gym, Pet Park, Pet Store/Grooming Kiosk, etc.
6. The project is conceived very carefully and with utmost care while dealing with the environs and in fact is an honest attempt to restore clean and a well-defined river edge to the city. MSCL has taken utmost care while planning the project and has been exercising great care and commitment in executing the project.
7. MSCL has taken ground reality into consideration while conceiving and conceptualizing the project. The historic visual data available with MSCL and other Government departments provide enough evidence on existence of boat building / repair yards in the 2.1 KM stretch of Promenade. MSCL has already held consultations with the functional yard and has aligned the Promenade accordingly.

Errors./Corrections Etc. **NIL**



PROCEEDINGS BEFORE THIS HON'BLE TRIBUNAL:

8. One among the instant proceedings, i.e., O.A. No. 52 of 2024 is instituted by the Applicant alleging that MSCL has violated the conditions/undertakings provided in the NOC/CRZ clearance granted to it by the Karnataka State Coastal Zone Management Authority ["KSCZMA"] and has undertaken work in CRZ-IB area or within the intertidal zone demarcated as per the Coastal Zone Management Plan Map, causing damage to the Nethravati riverbank and its mangroves. This Hon'ble Tribunal has also taken *suo-motu* cognisance of the Waterfront Promenade project.
9. Through the course of these proceedings, there were a succession of authorities that have carried out inspections and reports have been filed by them concerning the alleged violation of CRZ clearance. The various reports placed on record before this Hon'ble Tribunal is tabulated as under:

SL. NO.	DATE	AUTHORITY
1.	03/04/2023	Spot Inspection and Mahazar conducted by the Regional Director (Environment) – Forest, Environment & Ecology Dept., Mangaluru – [Annexure – 14 – Pg 74 to 83]
2.	15/12/2023	Joint Inspection carried out by Karnataka State CZMA, Forest Department & NECF (NGO)
3.	01/02/2024	Spot Inspection carried out by Karnataka State CZMA
4.	13/03/2024	Report by the Regional Director (Environment), Mangalore & Karnataka State CZMA
5.	31/05/2024	Report submitted by the Karnataka State CZMA
6.	20/06/2024	Joint Committee Report
7.	05/09/2024	Report by the Central Pollution Control Board in O.A. No. 195 of 2024
	19/11/2024	Deputy Commissioner & District Coastal Zone Management Authority Report

Errors./Corrections Etc. NIL

Managing Director



RESPONSE TO ALLEGATIONS IN PETITION REGARDING VIOLATION WITH CRZ NOC/COMPLIANCE:

10. After multiple rounds of scrutiny and re-presentation, the Karnataka State CZMA granted MSCL the NOC (No-Objection) to proceed with the Project as per Para 8(a) II CRZ II (i) & (ii) of the CRZ Notification, 2011 on 07/10/2022 [“NOC”].

11. Under the NOC, permission was granted under the following conditions:

- 1) No permanent/concrete structure should be constructed;
- 2) No sewage should be let in to nearby body;
- 3) No dumping of solid wastes in to the water bodies and shall dispose of wastes in a scientific manner;
- 4) The work should be taken up as per the provisions of CRZ, 2011.

12. The Petition goes to allege that there is widespread destruction of mangroves, that there is dumping of debris and earth into the Nethravati River by earth movers and other heavy machineries causing irreversible damage to the Nethravati river bank and intertidal zone.

13. There is no supporting material placed on record by the Petitioner to substantiate its allegation. The only material placed on record in the Petition are the various complaints issued by the Petitioner itself concerning allegations of ‘widespread’ environmental destruction, and thereafter certain notices that were issued by the authorities such as Karnataka State CZMA, MOEF etc. regarding inspections conducted and calling upon MSCL to remain in compliance with the NOC Conditions, pursuant to the Petitioner’s own complaints.

However, there is no *prima facie* evidence to establish violations with CRZ NOC.



Errors./Corrections Etc. Nil


Managing Director
Mangaluru Smart City Limited
Mangaluru

14. Be that as it may, during the course of these proceedings, a succession of reports have been filed by various authorities after conducting inspection, as detailed above. Now in terms thereon, it must be seen as to whether the findings of any of the reports point towards any non-compliance with the CZ NOC conditions, and also whether the allegations in the Petition are made out or not.

15. The allegations of the Petitioner, conditions of CZ NOC and the findings of the various reports are tabulated separately as under:

Sl. No.	CRZ NOC Conditions	Allegations in Petition	Findings of the various Reports
1.	No Permanent/Concrete Structures to be constructed	Undertaken Construction within the inter-tidal area of the Nethravati River classified as CRZ IB Area; Undertaking construction by filing of debris and stones for construction of walkway/roads leading to change in seasonal flow of river.	i) 03/04/2023 – Site Inspection & Mahazar – Pitching work is executed and stones piled up. Construction of new retaining wall over the old retaining wall is underway along the drain to the west. ii) 01/02/2024 – Spot Inspection by KSCZMA – Work is executed in CRZ 1B area at the Commonwealth Tile Factory area near Nethravati Railway Bridge by constructing new retaining wall done over the old retaining wall, which is not mentioned in the clearance. This was mistakenly done and is



Errors./Corrections Etc. **NIL**

being removed by MSCL.

- iii) **31/05/2024 – Report by KSCZMA** – The Retaining Wall constructed in CRZ 1B area is being dismantled and removed. In remaining stretches, the new retaining wall is constructed on CRZ II areas and towards the landward side.
- iv) **20/06/2024 – Joint Committee Report** – Project Proponent has cleared all the debris dumped in the river and utilized for backfilling.
- v) **19/11/2024 – DC Report** – Project proponent has increased the height of the existing old boulder revetment by 600m above HFL as per the Environmental Impact Assessment Report. The DC advances the view that the construction of the retaining wall above the old structure is intended to prevent erosion, stabilize the bank and protect the surrounding environment. This structure will help to manage water flow and



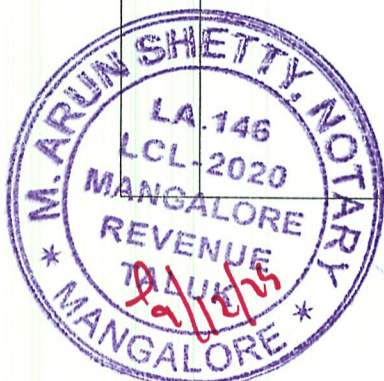
Errors./Corrections Etc. **NIL**

			reduce the risk of flooding, contributing to long-term stability.
2.	No sewage to be let in to nearby waterbody	-	<p>i) 31/05/2024 – Report by KSCZMA – The Retaining wall seen to be constructed in CRZ II Area. The toilet blocks are being constructed on the landward side of old structures.</p> <p>ii) 19/11/2024 – DC Report – Currently the project is under construction and the toilet blocks are not operational, hence at present there is no entry of sewage into the waterbody.</p>
3.	No dumping of solid waste into waterbody and scientific disposal of waste	-	<p>i) 31/05/2024 – Report by KSCZMA – Near the premises of Udupi District Fish Marking Association, Concrete storm water drain has been constructed.</p> <p>ii) 19/11/2024 – DC Report – On the day of inspection, it was noted that no solid waste had been dumped into waterbodies. Additionally, an existing open storm water drain at one location had been converted into a</p>



Errors./Corrections Etc. **NIL**

			fully covered drain using concrete.
4.	Work to be taken up as per the CRZ Notification, 2011	Operation of bulldozer within ecologically sensitive riverbank of Nethravati, having mangroves; Removal of Trees and dumping of soil in intertidal area; Violation of CRZ NOC including dumping of construction debris; Loss of Mangroves as per Google Maps;	<p>i) 03/04/2023 – Spot Inspection & Mahazar – There is an old dilapidated retaining wall at various locations. Construction of new retaining wall is underway along the drain to the West. Few trees are present in the landward side.</p> <p>ii) 01/02/2024 – Spot Inspection by Karnataka CZMA – Regarding construction of new retaining wall, MSCL replied stating place was used to mistakenly store materials required for construction, but it would be forthwith removed.</p> <p>iii) 31/05/2024 – Report by KSCZMA – As per the NGT Order, it was observed that the removal of soil and retaining wall were in progress. Otherwise, work under progress in stable CRZ II Area.</p> <p>iv) 20/06/2024: Joint Commission Report: Alleged removal of trees: The Forest Department</p>



Errors./Corrections Etc. **NIL**

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has carried out a census and found a total of 133 trees.

Alleged dumping and violation of CRZ clearance: To construct a bird watching area, land filing outside the boundary of pre-existing revetment has taken place. However, project proponent has dismantled the structures along a 42m stretch which are in violation of CRZ clearance area.

v) **19/11/2024: DC Report:**
Re Alleged Loss of Mangroves – The project is falling within CRZ-II area and there were only a few sporadic mangroves in few patches near to project area. No large patches of mangroves meeting the CRZ requirement. No significant damage was noted w.r.t. mangroves during physical observation.

EIA has been conducted and local level CRZ Map is also prepared. In both reports, it is mentioned



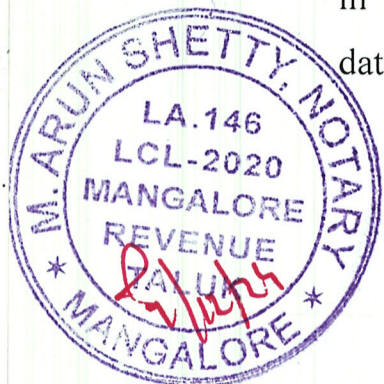
Errors./Corrections Etc. NIL

			<p>that there are no mangroves in the vicinity of project site.</p> <p>Even as per Google Maps, it is evident that from approved CZMP Map and EIA Report dated August 2022 wherein no such large mangrove patches (including 1000 sq. meters.) or more were recorded. No significant damage was noted with respect to mangroves during physical observation.</p>
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16. Therefore, it can be seen that while there were sporadic instances of violations, which have been quickly rectified by the project proponent, there are no large scale of serious violations of the CRZ NOC, especially concerning the two main allegations of (i) construction & dumping into the inter-tidal area and (ii) Loss and destruction of mangrove forest.

PRESENT STATUS OF THE PROJECT AND MSCL RESPONSE TO ALLEGATIONS IN APPLICANT’S RESPONSE DATED 05/09/2024:

17. At present, MSCL has completed 1.6 kms stretch out of the total 2.1 kms stretch. The work has been carried out only in the landward side in line with the NOC Condition and also as per the interim order dated 31/05/2024 passed by this Hon’ble Tribunal.



Errors./Corrections Etc. **nil**


Managing Director
Mangaluru Smart City Limited
Mangaluru

18. In so far as the remaining 500 meters is concerned, it is submitted that the land in question belongs to the Port Authority which has leased the said land to certain tile factories. Those tile factories have stopped their operations and certain actors were also mis-utilizing their license and were carrying on private operations. The Port Authority has initiated action under the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and proceedings are ongoing. In the meanwhile, steps are being undertaken to handover the land encumbrance free to the project proponent to enable it to carry on with the works. These proceedings have been highlighted in MSCL's Compliance Report dated 30/05/2024.

19. As stated, through the various reports that have been filed by the Authorities, none mention that the MSCL is carrying on with the Waterfront Promenade project in gross violation of the CRZ Notification. While it is an admitted position that there were certain violations, these were on account of genuine mistakes by the Contractors working at site, which have since been rectified.

20. The reason for certain of these violations is because the boundaries from time immemorial in the riverfront area were not fixed earlier. Further, due to erosion, it became extremely challenging to determine where the High Tide Line ended and where the Inter-Tidal Zone commenced. Therefore, after conducting a detailed study through an Environmental Impact Assessment and preparing a CZMP Map, the area boundaries through survey on the riverside was determined. The Project Proponent has now carried on with the project by adhering to the boundaries framed in the CZMP Map only.

21. Further, in answer to the construction in CRZ-1B area due to the placement of the retaining wall, it was because the earlier retaining wall was in a dilapidated and broken-down condition due to soil erosion – *Refer Spot Inspection dated 01/02/2024 by Karnataka CZMA*. Therefore, to control the erosion and for maintenance of the

Errors./Corrections Etc. NIL



retaining walls which are necessary to prevent flooding, the new retaining wall was constructed over the old wall as a fortification. Notwithstanding this, under the CRZ Rules, 2011, the construction activity for the purpose of control of erosion and maintenance of waterways come within the scope of permissible activities under the CRZ 1B area.

Counter to Allegations of bias in Applicant's Response dated 05/09/2024:

22. The allegations of bias levelled by the Applicant in its Response dated 05/09/2024 [**“Response”**] to the Joint Committee's Report on account of the presence of the Deputy Commissioner heading the same is belated, motivated and the entire Response is frivolous with a view to continue this vexatious proceeding.
23. In so far as the allegation of bias is concerned, it may be noted that the constitution of the Joint Committee was decided by the Hon'ble Principal Bench of the NGT in erstwhile O.A. No. 191/2024 *vide* order dated 05/03/2024. The concern that the Deputy Commissioner is also holding a position of Chairman in the Project Proponent is because it is an *ex-officio* post that comes within the wider scope of duties under the Deputy Commissioner.
24. The Applicant has had several instances to point out thereafter in various dates of hearing, and also to seek recall of the order/modification of the order passed by the Hon'ble Principal Bench before this Hon'ble Bench by way of review. The Applicant has not filed a single application, and has conveniently waited till the release of the Joint Committee report to 'see which way the wind would blow'.

25. Therefore, it is clear that the Applicant has no material to continue these vexatious proceedings and is only doing trying to generate material through the continuance of these proceedings. On each

Errors./Corrections Etc. **NIL**



instance when a new authority carries out an inspection, the same findings are put out by all the authorities, for which the Project Proponent has already furnished sufficient reasons and shown cause.

26. In answer to Mangroves Destruction: From the material on record, including the Reports and the Environmental Impact Assessment Report prepared prior to the Project, it is clearly seen that the presence of mangroves was only sporadic and the Project Proponent has received strict directions to take care of mangroves. Thus, the allegation that there were widespread mangroves in the project area prior to its commencement is baseless and unfounded. The Spot Inspection dated 03/04/2023 relied upon by the Applicant (Page 80) itself states that few trees are present in the landward side. All reports unanimously also concur that prior to the commencement of project, there were no large-scale mangroves, and it was only sporadic.

27. Re Increase in Retaining Wall Height: As explained earlier, activity within the CRZ 1B area is permissible when it is necessary to prevent soil erosion and for ensuring the structural integrity and maintenance of waterways as per the CRZ Rules, 2011 – **Clause 5.1.2(i)(d) & Clause 5.1.2(i)(e)**. The Joint Committee and Deputy Commissioner report both concur that the reason for increasing the height of old retaining wall is to prevent erosion, stabilize the bank and prevent inundation.

28. Re Unauthorised Dumping: The Applicant has twisted the separate findings given by the Joint Committee regarding dumping and the issue of dismantling structures at the Nethravati Railway bridge. The issue regarding dismantling of structures and dumping thereto was raised because there was a portion of the birdwatching area at the Nethravati Railway bridge abetted into the river portion.

29. In so far as alleged unauthorised dumping is concerned, the findings of the Reports on 20/06/2024 clearly record that the debris which

Errors./Corrections Etc. **NIL**



were dumped in the river have been collected and utilized for backfilling. It was further noted that there was no solid waste which had been dumped into the waterbodies.

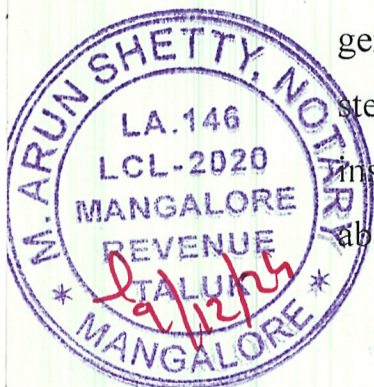
30. In so far as reference to locations are concerned, it is submitted that there was no dumping by the Project Proponent. While construction materials may be placed in certain locations for continuing and future use, it was always done on the landward side. The allegations raised by the Petitioner/Applicant are baseless.

CONCLUSION:

31. On a conspectus of the above, it is clear that the Applicant's motive in filing the Response dated 05/09/2024 is vexatious and made with a view to drag on the present proceedings. There are no large-scale mangrove forests, nor were there any during any time even prior to the execution of the Project. There is clear documentation as to the number of trees and their nature by the Forest Department.

32. The Project Proponent is carrying on with the project in line with the CZMP Map and the conditions laid down by the State CZMA when sanctioning the NOC License for the Promenade Project. However, the continuance of these proceedings and the order of interim stay dated 31/05/2024 casts a cloud on the Project, which is being undertaken in compliance with the NOC norms. Hence, it is sought that the order of interim stay also be vacated.

33. In light of the above, it is submitted that the Respondent No. 3 is in compliance with the necessary clearances having all been obtained in a specific and stage-wise manner. At each and every stage, the Respondent No. 3 has acted in tandem with the authorities and the general public to ensure that all stakeholders are heard and future steps planned in accordance with the consensus that is built. Mere insistence that MSCL is indulging in mis-representation does not absolve the alleging party from producing hard evidence that MSCL



Errors./Corrections Etc NIL

has cut mangroves. MSCL has taken utmost care to retain all trees in the project area and MSCL has evidence that there were no mangroves in the proposed promenade. The allegation that MSCL has misrepresented facts to project the project area to be in CRZ II also is patently wrong, and is unfounded.

34. It must be noted that the Promenade project will not only be beneficial in protection against any erosion on the river banks but also will reclaim large stretches of Government owned land. As a government owned SPV, the Respondent No. 3's purpose is to subserve the needs of the public.

35. As such, the instant response may be taken on record, and it is prayed that this Hon'ble Tribunal may consider vacating the interim stay dated 31/05/2024, and closing these vexatious proceedings in light of the various reports filed, in the interests of justice and equity.

Errors./Corrections Etc. *NIL*

Place: Mangaluru

Date: 09/12/2024


Managing Director
Managing Director,
Mangaluru Smart City Limited
Mangaluru Smart City Limited

Through

Mr. Harish Jayakumar
Advocate for the Respondent No. 1 –
Mangaluru Smart City Limited

Sworn and signed before me
this *9th* day of *Dec* 202*4* at
Mangaluru
N. Shetty
9/12/2024
Notary, Mangalore

NOTARY
MANGALORE

NOTARIAL REGISTER No. *1406/2024*
9/12/2024

Notary Stamp not available in
Karnataka State since 1/4/2003
hence not affixed
9/12/24
Notary, Mangalore



M Arun Shetty
ADVOCATE & NOTARY
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