BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

APPEAL NO. 17 OF 2021

(Under Section 16 (h) of the National Green Tribunal Act, 2010)

IN THE MATTER OF:

UNIVERSITY OF DELHI …APPELLANT

VERSUS

MINISTRY OF ENVIRONMENT, FOREST

AND CLIMATE CHANGE & ORS. …RESPONDENTS

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NDoH: 15.03.2022

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Place: New Delhi
Date: 13.03.2022

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REJOINDER AFFIDAVIT ON BEHALF OF THE APPELLANT IN RESPONSE TO THE COUNTER AFFIDAVIT FILED BY THE RESPONDENT NO. 2 (M/S YOUNG BUILDER PVT. LTD).

PARA-WISE REJOINDER TO THE PRELIMINARY SUBMISSIONS:

1. That in response to Para 1 of the Reply Affidavit it is submitted that the allegations made by the Appellant herein are Bonafide and the Respondent No. 2 has failed to justify as to why the project in question would be sustainable in the area proposed.

2. That the content of Para 2 of the Reply Affidavit requires no response as the same is just reiteration of facts. It must be added however that the second

Environmental Clearance was withdrawn by the Respondent No. 1 themselves after being unable to justify its merit. The same was recorded in the order dated 20.01.2021 of this Hon'ble Tribunal in the case titled University of Delhi Vs MoEF&CC & Ors. (O.A. No. 112/2018)

PARA-WISE REJOINDER TO INTRODUCTORY PARAGRAPHS:

3. That in response to Para 3 it is submitted that the Respondent No. 2 is resorting to false allegations of portraying the cause as a motivated litigation whereas it has failed to prove as to how such a massive project can be sustainable in the site where it is proposed which is already not able to cater to the needs of the existing population. The case was heard on merits and it is the then Respondent No. 4 in the case of University of Delhi Vs MoEF&CC & Ors. (O.A. No. 112/2018) which withdrew the EC and which was recorded as mentioned above.

4. That in response to Para 4 it is submitted that the project in question falls within subzone C-13 named Delhi University Area/North Delhi Campus/University Area which is part of the Zonal Development Plan for Zone C (Civil Lines Zone) which is evident from the map on the Zonal Development Plan for Zone C (Civil Lines Zone). That under the said Sub-zone there is a restriction on tall buildings which is evident from clause 11.3 of the Master Plan of Delhi 2021 (MPD 2021), read with clause 1.3.4 of Zonal Development Plan 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). That under the Zonal Development Plan of Zone C (Civil Lines) the Delhi University Campus has been categorized as Sub-zone C-13 (Page 596 of the Appeal). Further, under the said plan, Sub-Zone C-13 has also been referred as "University Area" (Page

599 of the Appeal). That under the said Zonal Development Plan 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. That under the Zonal Development Plan 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. That 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. That the collective reading of the above facts shows 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. That from the above mentioned it is also clear that there is a restriction in tall buildings in Sub-Zone C-13. That therefore the project in question is violative of the Master Plan 2021 and the Zonal Development Plan of Zone C as the project land falls under Sub-Zone C-13. That the said fact is evident from the Map of the Zonal development Plan 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. Further, the order dated 27.04.2015 of the Hon'ble High Court of Delhi or the order dated 17.12.2019 of the Apex Court provides no finding of its own on the issue of violation of MPD 2021. In other words, there is no finding on merits. The said orders dated 27.04.2015 of the Hon'ble High Court and 17.12.2019 of the Hon'ble Supreme Court had simply dismissed the cases due to latches and delays and not on merits and therefore the same has no bearing on the present issues raised. That further, the violation of MPD 2021 is a direct violation of EIA Notification 2006 as under Form 1 A under clause 1.1 it has been laid down that proposed land use must conform with the Master

Plan/Development Plan of the area. That the information provided by the Respondent No. 2 in this regard under Form 1A is that the land use is as per Zonal Development Plan and in accordance with MPD 2021 and that there is no legal restriction of height is a wrong information (Page 371 of the Appeal). That contrary to the submissions made, the proposed tall building is restricted in the area which is within the Sub-Zone C-13 where tall buildings are restricted under the MPD 2021 and the Zonal Development Plan of Zone C. That therefore the EC granted has been without application of mind and based on wrong information and should be quashed on this ground alone.

5. That in response to Para 5 is it submitted that 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 which is evident from the Appeal No. 112/2018, the finding of this Hon'ble Tribunal and the present Appeal No. 17/2021. That under the order dated 27.02.2020 of this Hon'ble 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 this Hon'ble Tribunal for independent evaluation to ascertain the viability of the project vis-a-vis its environmental impact. Further, the 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 the said report by the Appellant herein and therefore detailed objections to the same were filed before this Hon'ble Tribunal on 15.01.2021. The same has been appended as ANNEXURE A/11 of the Appeal dated 20.08.2021. However, due to the fact that the Project Proponent had decided to withdraw the impugned EC dated 23.03.2018, the matter had become infructuous and hence was disposed by this

Hon’ble Tribunal on 20.01.2021 while noting down various contentions raised by the Appellant but not providing any finding on the merit of the report or the objections raised against the report. Subsequently, Application for fresh EC was made by the Respondent No. 2 herein and the same was processed by the Expert Appraisal Committee (EAC) and Ministry of Environment, Forest & Climate Change (MoEF&CC) again without due application of mind and without comprehensive consideration of various points raised by the Appellant herein and the observations raised by this Hon’ble Tribunal in order dated 27.02.2020 or the contentions noted under order dated 20.01.2021. That, therefore, even though the project may have been appraised on a few occasions, there are many crucial facts which have been raised by the Appellant herein from time to time which have not been considered till date and the project has been granted environmental clearance without due consideration of its impact towards the environment. That all such points have been consolidated and presented under the Appeal no. 17/2021 dated 20.08.2021 which are under consideration of this Hon’ble Tribunal.

6. That in response to Para 6 it is reiterated that the project being examined by multiple number of committees does not prove that the project has become environmentally viable till the time all aspects of environment have been addressed appropriately. That the present project poses various environmental questions on its viability as already detailed under the Appeal which have not been considered adequately by the Committees and Authorities which have appraised the project till now and the same requires intervention by this Hon’ble Tribunal which has earlier found the said project to be not viable from the environmental stand point.

7. That in response to Para 7 it is submitted that the Respondent is not a victim of the process and have instead acted in complete disregard of its obligation to act responsibly. That the Respondent No. 2 has concealed various facts which have a bearing on the environmental viability of the project and has also misled this Hon'ble Tribunal on various occasions. That the information provided has been contradictory to earlier data, the reliance made on the data are redundant, there has been non-adherence to the recommendations of the Committee constituted by this Hon'ble Tribunal vide order dated 27.02.2020, violation of MPD 2021, non-consideration of increase in air pollution, noise pollution, ground water exploitation among others. Infact, if this project is given a go ahead it will be the environment which will be the victim which unfortunately has the least voice. It is established law that the amount of investment made can be no ground to evaluate the adverse impact on environment. Moreover, this Hon'ble Tribunal in the case of *Indian Council for Enviro-Legal Action v National Ganga River Basin Authority* (OA No 10 /2015) vide its judgment dated 10.12.2015 has highlighted that economic benefit shall not be given more importance than environment which will result in violation of principles of sustainable development. The relevant paragraph of the case is reproduced hereunder.

"40. Despite issuance of the Notification of such a vast ramification, nothing has been done either by the State or by MoEF to ensure compliance to the terms of Notification. The Notification was issued on 18th December, 2012 and we are 3 years hence, without any improvement in the environment and ecology of the area. On the contrary, there has been indiscriminate development, encroachment on the river bed and carrying on of the non-forest activity in the forest area. The object appears to be economic benefit at the cost of degradation of environment and ecology which to a large extent is irreversible, and therefore opposed to the Principle of Sustainable Development…"

That in the case of Intellectuals Forum, Tirupati Vs State of A.P. & Ors. vide judgment dated 23.02.2006, this Hon'ble Supreme Court has held decision cannot be based by the Hon'ble Supreme Court solely upon the investments committed by any party. Further, in the case of *Supertech Ltd Vs Emerald Court Owner Resident Welfare Association & Ors* (C.A. 5041/2021) and in the case of *Kerala State Coastal Zone Management Authority Vs State of Kerala Maradu Municipality & Ors.* [2019 SCC Online SC 758] this Hon'ble Supreme Court had held compliance of law and environmental compliances over and above the investments made on the respective projects.

8. That in response to Para 8 it is submitted that the case filed before the Hon'ble High Court was with regards permission granted by DDA for construction of the project which was dismissed on the ground of latches and delay without any observation on the merits of the case. Nonetheless the same has no bearing in the present case under which the environmental viability of the project has been challenged to which the impugned EC under EIA Notification, 2006 has been challenged in accordance with law and under the provisions of the NGT Act 2010. That it is a wrong submission that the same objections have been raised from time to time whereas the facts related to the adverse impact of the project has been raised related to the impact of Air, Water, Ground water, social-economic impact, Noise, increase in traffic, violation of provision of laws among others have been raised as and when discovered over the time which has bearing on the environment of the proposed project. There have also been a prima facie finding of this Hon'ble Tribunal that the said project is not environmentally viable in its order dated 27.02.2020 in the Appeal No 112/2018

9. That the content of Para 9 is a reiteration of fact and requires no response. Sufficient to say that there has been no application of mind on each issue that has been raised and the regulatory authority has glossed over the issues in granting the impugned EC.

10. That the content of Para 10 is denied, and it is reiterated that there has been no application of mind by the SEAC/SEIAA which had processed the earlier EC application as was observed by this Hon'ble Tribunal under its order dated 27.02.2020 and there has been no application of mind by the EAC/MoEF&CC either while processing the application for impugned EC challenged herein which is evident from various contentions raised under the present Appeal.

11. That in response to Para 11 it is submitted that even though a detailed representation was provided to EAC on 02.03.2021 however no opportunity of oral representation was provided to the Appellant and the EC process was simply advanced in view of the reply dated 22.03.2021 made by the Respondent No. 2 towards the points raised under the said representation. That the said responses of the objection do not provide the complete picture towards the issues raised therefore accepting the same without further scrutiny shows the non-application of mind by the authorities. For instance, no response was provided to the observation that the Chhatra Marg lane is an accident-prone area and the increase in the traffic in the area due to the project will increase the hardship of the differently abled community accessing the said lane. Further, due attention was not given to the fact that the project is 500 meters from the Northern Ridge and therefore consultation from the Ridge Board was required. Further, the order dated 27.02.2020 and 20.08.2021 of this Hon'ble Tribunal were not considered by the EAC and MoEF&CC while processing the EC Application which has provided or noted down various observations towards the non-viability of the

project. That due to failure of the EAC/MoEF&CC to grant opportunity to the Appellant, the points raised against the project have not been given its due consideration thus making the impugned EC unreliable and liable to be quashed. Infact the Environmental Clearance granted noted that the earlier Appeal was dismissed by this Hon'ble Tribunal (Page 72 of the Appeal) giving an impression that the case of in the favour of the Project Proponent whereas the reality of the detailed order was completely the opposite where the case was held to be *prima facie* unviable and it is only then that a new Committee was appointed whose reports where vehemently objected by the present Appellant and realizing the shortcomings of their project, the Project Proponent had withdrawn the said EC.

12. That in response to Para 12 it is provided that the contentions have not been the same all through and various new contentions have been pointed out as discovered overtime. However, due to the reason that the contentions raised by the Appellant till date have not been given the due regard on merits by the concerned authorities, which has a direct bearing on the viability of the project and applicability of mind on processing the EC, therefore the objections of the Appellant are bona fide. The Project Proponent has so far failed to satisfy on the environmental questions not only raised by the present Appellant but also by the Hon'ble Tribunal. Moreover, the data submitted has been dated and continues to be so. The only visible difference that is evident is that with each Application the project size has been increasing without any fresh assessment on its environmental impacts on merits. So the allegation on bonafide is clearly unwarranted.

Further it is pertinent to mention that the Hon'ble Supreme Court has taken great caution while dealing with such cases wherein construction have been executed in violation of environmental norms as in the case of *Kerala State Coastal Zone*

Management Authority Vs State of Kerala Maradu Municipality & Ors. [2019 SCC Online SC 758].

13. That in response to Para 13 it is submitted at the outset that Building & Construction Projects are not category B2 projects where Public Consultation is exempted, but are B1 category Projects where Public Consultation has been exempted. That the impugned EC dated 21.05.2021 itself records the project as Category B Project and not as category B2 Project (Page 69 of the Appeal). Be that as it may, the reason for seeking comments of Appellant from the EAC herein is not part of public consultation process but is a part of appraisal process for which power has been granted to the EAC under the EIA Notification. Moreover, 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 the Project Proponent is unaware of this distinction itself shows that they themselves need to introspect on their bonafide. In any case, it is the right of any affected party to approach this Hon'ble Tribunal in accordance with law in its Appellate jurisdiction.

14. That in response to Para 14 it is submitted that the order of the Hon'ble Supreme Court quoted provides that once expert committee has duly applied its mind to an application of EC, any challenge to its decision has to be based on concrete material which reveals total absence of mind. That in the present case there are various concrete materials which have not been considered and therefore shows the non-application of mind by the EAC/MoEF&CC in processing the application of impugned EC as is detailed out in the Appeal. For instance, the fact that 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 the Appeal.

15. That in response to Para 15 of the Appeal, it is submitted that the said contentions pointed out under the corresponding paragraphs falls as a part of the EIA process under the EIA Notification. That the aspect related to Master Plan and Zonal Development Plan forms part of Clause 1 of Form 1A of the EIA Notification 2006; the aspect related to parking falls under Clause 1.2 of Form 1A of the EIA Notification 2006; the aspect related to Girls Hostel form the part of socio-economic impact as required to be looked into as per Office Memorandum (OM) dated 10.11.2015 of MoEF&CC issued for EIA notification 2006. That therefore the contention that non-environmental issues have been raised by the Appellant is frivolous and demonstrates the nonchalant conduct of the Project Proponent.

16. That in response to Para 16 it is submitted that the submission of the Respondent that they will be constructing an almost equal number of EWS apartments is false as the number of EWS apartments under the earlier project was 152 dwelling units and now it is 224 as was provided under the Conceptual Plan dated February 2018 at Table No 3(b). That the present project has extended in all aspects apart from the number of EWS Apartments. It has extended built up area of 1,37,879 m2 from the earlier 1,17,733.81 sqm, extended floors of 2 basement + 43 floors from earlier proposal of constructing S+G+37 Floors, extended 446 dwelling units from the earlier 410 dwelling units, extended total population of 2302 persons from the earlier 1785 persons and extended total height of the building of 145.3 meters from the earlier 139.6 meters.

17. That in response to Para 17 it is submitted that the Respondent No. 2 has relied on the parts of MPD 2021 which are generally applicable but has failed to follow the provisions of MPD 2021which are directly applicable to their project site. That as per Clause 11.3 of the MPD 2021, no tall building is allowed on the site in question as already explained above and in the Appeal.

18. That the content of Para 18 is denied and it is submitted that the proposed project will certainly cause sever harm to the environment as the area does not have the carrying capacity to sustain such a massive group housing project and in face of shortage of the availability of water supply, adversely impacting ground water source, width of adjacent lanes, adversely impacting the nature of the area being an educational hub, will adversely affect characteristic of the area including the restriction of tall buildings, area being a silent zone among others. That it is denied that the project is a onetime construction and there will be no continuous pollution. That the increase in demand of water consumption, emissions due to cooking, plying of vehicles, generator sets, generation of wastes among others causes continuous pollution and therefore the said submission made in the corresponding para is wrong and therefore denied.

19. That in response to Para 19 it is submitted that the approvals from various authorities listed under the corresponding para has no bearing on the question of grant of EC issued under the EIA Notification which is an independent statutory process. That the impugned EC dated 21.05.2021 has been granted without due application of mind and without through consideration of the contentions raised by the Appellant herein and it is independently assailable under the provisions of the NGT Act 2010.

20. That in response to Para 20 it is submitted that the present Appeal has been filed against a fresh EC dated 21.05.2021 under Section 16(h) of the NGT Act 2010 which is an independent provision under law and the same is not dependent on any other permission or clearance granted under other laws in force. The Hon’ble NGT therefore has total jurisdiction to do a merit review of the Clearance given as per a catena of judgments passed by the Hon’ble Supreme Court. That in is regard it is further submitted that the Hon’ble Supreme Court

in the judgment dated 10.12.2019 passed in the matter titled *Rajendra Diwan Vs Pradeep Kumar Ranibala and Anr.* (C.A. 3613/2016) [(2019) 20 SCC 143] has laid down that Article 136 of the Constitution (which is special leave to appeal by the Supreme Court) is not to be confused with the Appellate power ordinarily exercised by the Appellate Courts and Tribunal under specific statutes. It is stated that Article 136 does not confer right of appeal on any party but confers a discretionary power on the Supreme Court to interfere in appropriate cases. It is further stated that an Appeal, on the other hand is a continuation of the original proceedings where the Appellate Court is obliged to rehear case, re-appreciate and re-analyse the evidence on record, adjudicate the correctness of the order impugned and correct errors both of fact and of law.

21. That in response to Para 21 it is submitted that the Appellant has time and again found various discrepancies on the submission of the Respondent No. 2 on the criteria provided under OM dated 10.11.2015. That the said discrepancies were highlighted under the Representation dated 07.07.2020 provided to CPCB in pursuance to order dated 27.02.2020 of this Hon'ble Tribunal and Order dated 10.06.2020 of Hon'ble Supreme Court in C.A. No. 2485/2020 (Page 241 of the Appeal). Further various discrepancies on the said criteria of surroundings of the project; Potential Groundwater Impact; Socio Economic Impact among others have been challenged under the present appeal also which is under consideration of this Hon'ble Tribunal. That, therefore, even the said OM mandates to examine various criteria, however there are various discrepancies which have been found and raised by the Appellant herein which proves that the grant of EC has been granted without due application of mind.

22. That in response to Para 22 it is submitted that the project in question will have grave harm to the environment of the area and the students residing in various

schools and colleges of the area and in consideration of the same has raised the present Appeal. That the contention of the Respondent that there 6 other large-scale project which are within the same zone is denied as wrong. However, the Appellant is concerned with the project of Respondent no. 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. Therefore, aggrieved by the grant of EC, the present Appeal has been filed objecting to the project. The allegation of malafide and non-concern of environment is at best imaginative and without merit.

23. That the content of Para 23 requires no response.

24. That in response to Para 24 it is submitted that no material has been supressed by the Appellant and that the materials mentioned under the corresponding paragraphs have already been a part of record before the earlier Appeal no. 112/2018 and has been considered by this Hon'ble Tribunal. The same is evident from the observations made in the order dated 27.02.2020 passed by this Hon'ble Tribunal noting that submission of Respondent No. 2 herein that a copy of report dated 09.02.2012 has been relied upon (See Page 173 of the Appeal). Further the Report dated March 2010 was also part of the record of earlier Appeal No. 112/2018.

25. That in response to Para 25 it is submitted that the Report of March 2010 has already been part of the record before this Hon'ble Tribunal in Appeal No. 112/2018 as is evident from the Report dated 10.12.2020 of the Committee constituted under order dated 27.02.2020 of this Hon'ble Tribunal which lists the said report as part of record (Page 264 of the Appeal). Further the Report of SEAC dated 09.02.2012 has also been part of the record of the Appeal No. 112/2018 and has also been considered by this Hon'ble Tribunal as is evident

from the order dated 27.02.2020 of this Hon'ble Tribunal recording the same (Page 173 of the Appeal). Further the orders of the Single bench, Division Bench and the Hon'ble Supreme Court referred in the corresponding paragraphs too have been part of the record before this Hon'ble Tribunal in Appeal No. 112/2018 and also the description of the same is present in various documents annexed to the Appeal (Page 71, 108, 163, 265, 354 of the Appeal). That therefore the said information has not been concealed by the Appellant herein however, the Appellant herein has not provided any submission which are related to these documents and therefore a specific reference was not required and accordingly the same were not made part of the submission of the Appeal. Further, it is reiterated that the observations made by the Single Bench under order dated 27.04.2015 in WP(C) No. 2743/2012 which are quoted under the corresponding paragraph are just reiteration of the submissions made by the Respondent and no conclusion on the merit on the same was provided under the said order. That the Respondent herein is trying to mislead by selectively extracting the part of the order to portray it as a finding of the Hon'ble Court which is not the case.

26. That in response to Para B (@ page 764) it is submitted that the said proceedings referred in the corresponding paragraph dealt with the issue of legality of decision of DDA to allow construction of the project in question in violation of MPD 2021 and Zonal Plan of Zone C and the same were dismissed on the ground of delays and latches on part of the Appellant and not on the merit of the case and therefore the same bear no consequence to the issued raised in the present Appeal. In any case a statutory Appeal against a prior environmental clearance stands on its own legs under the provisions of the NGT Act 2010 and any prior proceedings has no bearing on the question of the process of granting an Environmental Clearance and the right to appeal against the same if there are

grounds to show that there has been non-application of mind by the regulatory authority which is exactly what the present Appeal is.

27. In response to Para 26, the contents of Para 4 are reiterated as a part of the response to this Para and is not being repeated for the sake of brevity.

28. That in response to Para 27 to 32, the contents of Para 26 as well as Para 4 mentioned above are reiterated.

29. That in response to Para 33-34 with regards to the interference to the privacy of Girls Hostel it is reiterated that the proposed project with unknown residents and their visitors with hitherto unknown social mores and values will seriously compromise the safety and security of the girl students and women employees. Further, the 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. That the project in 2010 was proposed to have only 8 floors; whereas now the project is proposed to have more than 40 floors. In other words, the entire context, both physical and otherwise has changed and therefore needs to be appraised afresh which has not been done in the present project as it stands today.

30. That in response to Para 35-37 it is provided that the reports dated March 2010 and February 2012 relied upon by the Appellant to show that the projected traffic will not cause any traffic problem in the area are redundant due to the fact that the size of the project has since increased from build-up area of 70,265.90 sq.m to with 324 Dwelling units to 1,37,879 m2 with 446 dwelling units. Further there has been various reports and facts which have been reported which shows that the project in question will have severe impact of the traffic flow of the area. That it has been raised continuously that the adjacent lanes which are Cavalry Lane and Chhatra Marg are narrower (width of 8.5m and 10.80m respectively)

than what has been reported by the Respondent No. 2 and considered by the concerned authorities. Further the reliance on the 2018 Traffic Report has been objected to which again is based on older data having no relevance for the present project which is of increased size. Further, the report of Prof. Geetam Tiwari, IIT Delhi has been provided which states that the roads surrounding the project are already running to its capacity and an addition to it by the project in question will be unsustainable (Page 604 of the Appeal). Further, the reliance of the Respondent No. 2 on the observation of Hon'ble Supreme Court in the case of Central Vista proves no limitation of jurisdiction on this Hon'ble Tribunal to look into the aspect of increase in traffic load and traffic congestion as the same falls a part of EC process under the EIA Notification and is therefore directly an environmental matter as it has an adverse impact on the quality of air. The fact that in the last one decade there has been a surge of vehicles in the entire region of Delhi NCR, the proportionate increase in the area in question cannot be ignored and the SEAC ought to have examined this aspect of increase in traffic and consequent air pollution in the area.

That the said fact is evident from the 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. The Truecopy of the news article dated 09.03.2021 published by Mint reporting the same is annexed as **ANNEXURE A/1**

Further, as per the table provided on the website of Planning Department of Government of NCT Delhi, the 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. That the

true copy of the table available on the website of the Planning Department, Government of NCT Delhi is annexed **ANNEXURE A/2.**

31. That in response to Para 38 it is denied that the data, reports, scientific studies based upon by the EAC for the grant of EC were fresh, further it is denied that there has been rigorous application of mind by the authorities on each environmental issue. Thus, for instance the Traffic analysis report of 2018 and the Soil Investigation Report of 2018 are the same which were relied upon for the processing of the last EC dated 23.03.2018 which was granted to the Respondent No. 2. Further there have been various shortcomings on the part of EAC/MoEF&CC on processing the impugned EC which have been highlighted under the Appeal. For instance, the water requirement estimated for construction phase is an underestimation in consideration to the report referred by the committee constituted under order dated 27.02.2020 of this Hon'ble Tribunal. That as per the said report the water quantity requirement will be 27.6 KL per sq.m of build-up area whereas the 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 aspect have been considered by the EAC. There is also no equivalence assessment between the alleged embodied water quantity requirement and water requirement during construction phase. Likewise, the 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 the 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.

32. That in response to Para 39 it is submitted that neither the objections of the Appellant have been thoroughly examined nor the Orders dated 27.02.2020 and 20.01.2021 of this Hon'ble Tribunal were examined by the EAC which lays down further observations/contentions against the viability of the project. Further, the content of Para 11 mentioned above is reiterated in response to the corresponding para of Respondent No. 2.

33. That in response to Para 40 it is submitted that simply imposing conditions without thorough understanding of the problem is not the purpose of the EIA process laid down under EIA Notification 2006. It has been the contention of the Appellant that the area in question does not have the capacity for providing the housing of 2302 number of people and does not have the carrying capacity to cater to the 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. However, in view of the various contentions raised by the Appellant under the 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 the Project Proponent which shows the non-application of mind by the EAC/MoEF&CC.

34. That in response to Para 41 it is submitted that the Report of the said committee had various anomalies and discrepancies against which the objections dated 15.01.2021 were filed. However due to the fact that the Appeal was disposed of on 20.01.2021 as the same becoming infructuous, no findings on the objections raised could be provided. However, more importantly the Respondent No .2 is not revealing the exact reason why despite a go ahead by the export Committee,

why did they choose to withdraw the EC and apply afresh. This is because the conditions imposed by the Committee was so stringent that the project would be unviable. It is to overcome the stringent conditions that the EC was withdrawn and a fresh EC was applied for and this itself shows the malafide intention and the conduct of the Project Proponent for abundant clarity the specific recommendation of the said Committee reads as follows:

"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."

However, in the new appraisal, this condition has been removed by design and without an adequate explanation which itself shows the non-application of mind by the Respondent No. 1.

35. That in response to Para 42 it is submitted that there are various concrete materials which shows the total absence of mind by the EAC which has been listed out in the Appeal and therefore a Judicial Review for the said project by this Hon'ble Tribunal is as per the procedure of law and the same has not been barred by the Hon'ble Supreme Court in the case referred under the corresponding Paragraph. The said case has also not limited the scope of Section 16 of the NGT Act 2010 i.e. provision to appeal against a statutory order in any manner.

36. That in response to Para 43-46 the content of para 22 mentioned above is reiterated. Further, with regards to the limitation of basement, it is pointed out that the same was recommended by the Expert Committee constituted by this Hon'ble Tribunal under order dated 27.02.2020 and not by the Appellant and the same was recommended due to the fact that the project site was identified to be a ground water discharge zone and it was observed that the construction of

double basement may disturb/obstruct natural flow line of ground water. That therefore there is no comparison that could be drawn with other project which are being constructed or have been constructed in nearby areas as contended by the Respondent No. 2 as each project involves its own location with varying geography, location and ecological sensitivity.

PARA-WISE REJOINDER TO PARA-WISE REPLY:

37. That Para 47 requires no response.

38. That in response to Para 48-50 it is submitted that the assumption of the Respondent No. 2 that the project is a B2 project is wrong. That the impugned EC dated 21.05.2021 itself records the project as Category B Project and not as category B2 Project (Page 69 of the Appeal). Further, under the Form 1 of the Respondent No. 1 itself the project has been categorized as category B and not B2 (Page 351 of the Appeal). Further, even under the EIA Notification or the OMs issued thereunder, Building and Construction Project listed under item 8(a) of the Schedule has not been categorized as category B2. That under Para 7(i)(I)(A) of the EIA Notification 2006 it has been provided that MoEF&CC shall issue appropriate guidelines for categorization of projects into category B1 and B2. That in this regard, various OMs dated 24.06.2013, 24.12.2013, 13.02.2018, 13.04.2020, 28.01.2021 among others have been issued with regards to categorization of projects into category B2. However, none of the said OMs classifies Building and Construction project as category B2. Further the part of the EIA Notification 2006 extracted under the corresponding para 49 further quotes Appendix V of the EIA Notification 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."

The above makes it clear that while a public consultation is not mandatory for B1 projects the appraisal is made on the basis on Form 1, EIA Report other than in Item 8 of the Schedule and except if the project activity falls under category B2. The said exception is further states that in case of projects of Item 8(a) and 8(b) the 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 the EIA Notification 2006 dated 17.02.2020 read with Para 7(i)(III)(i) of the EIA Notification 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 the amendment of the EIA Notification dated 17.02.2020 applies to the Project Proponent. Further, it is denied that the amendment dated 17.02.2020 is only applicable to expansion proposal of existing projects having prior EC. That the said amendment is applicable to new projects as provided under para 7(i)(II)(v) of the EIA Notification 2006. Therefore, a ToR was required to be issued to the Respondent

No. 2 by the EAC which was not done before granting the impugned EC thus acting in contravention to the EIA Notification 2006.

39. That in response to Para 51 it is submitted that the term dismissed should not have been used by the EAC when the matter was infact disposed of. That the language used in the impugned EC as quoted in the correspondent Para does not show that the matter was dealt with by this Hon'ble Tribunal in detail and only due to the reason that Respondent No. 2 sought to withdraw the EC the case was disposed of.

40. (i) That in response to Para 52-54 regarding the recommendation of the committee for limiting the 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 in 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. That the Respondent No. 2 has provided various measures that it will take to ensure that the 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. That given the fact that the permission from the District Advisory Committee has not been approved and further, no permission from the Central Ground water Authority has been taken till date, it becomes important to study whether the area could sustain such a project in view of the Groundwater impact it will cause.

(ii) That further, it is pointed out that under the 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 ResearchGate the apprehension of adverse environmental impact of the project on the local groundwater regime has been highlighted which are as follows:

a. The foundation of the high rise building needs to be up to 12 to 13 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 the 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 the groundwater level in the neighbouring areas. Further, putting this extracted water to a desired use will be a challenge.

b. It has been highlighted that in context of the local hydrogeology, in long run the proposed building along with the adjacent sub surface metro tunnel "will be addition of further barriers in groundwater flow regime and is likely to further raise the groundwater levels locally. Which in turn, may lead to uncontrolled dampness in the foundation and ground floor units of nearby buildings like Gandhi Bhawan, residence of the Vice Chancellor of the University, Meghdoot hostel for women, building of the 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 fact in mind.

That the True Copy of the said Article dated April 2021 of Mr. Shashank Shekhar is annexed as **ANNEXURE A/3.**

(iii) That, therefore, initially on account of massive dewatering during the construction phase of the building, there might be lowering of the local water levels which may affect any drinking water tube wells in the neighbourhood. However, after the construction is over, in long run this water level is likely to recover and massive subsurface barrier is the area with limited depth to bed rock would lead to rise in the groundwater levels locally, which may hamper the structural safety of the buildings which were never designed to withstand uncontrolled dampness of the foundation. That this poses the question that when such drastic changes in the groundwater environment have been foreseen, how can EC be granted without understanding the holistic impact of these changes on the ambient environment? Has the Environment Assessment Report, considered the impact of dewatering induced initial local decline in the groundwater levels on the soil moisture availability to the green cover of the University of Delhi. Will the trees in the close vicinity of the project die because of lowering of the water level? What will be the area, up to which the local groundwater regime will be affected on account of heavy concentrated pumping from a very small area in local groundwater discharge zone receiving continuous inflow of groundwater. 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.

(iv) That further, it is pointed out that EIA study which is a part of processing EC includes evaluating the impact if the project on groundwater, however, it seems that the MOEF&CC has taken care of the situation simply by

laying down the conditions that that the “the project proponent shall obtain the necessary permission for dewatering of groundwater from CGWA”. That the said fact shows that the Appraisal committee has failed to look into the impact of the project which it will have on the ground water and has simply made itself dependent on the permission of CGWA. That the given condition shows the non-application of mind by the SEAC in examining the project in question. That the given fact is made more evident from the condition made in the impugned EC that “Project Proponent shall adopt suitable measures for controlling groundwater backing up around the basement as committed”. That the given condition is very vague and lacks application of mind. That it poses the question as to whether impact of such groundwater backing up around the basement on foundation of other buildings in close neighbourhood of the project?

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

41. That in response to Para 55-62 the contents of Para 31 above is reiterated and is not being repeated for the sake of brevity. Further, the Respondent has failed to give the details of the quantity of tankers and the volume of water which will be used for the said construction irrespective of the concept of embodied water requirement. It is obvious that hundreds and thousands of tankers will be used, as experiences shows normally extracted illegally from groundwater sources which will have a huge bearing on the groundwater availability in the said area. It is also ordinarily seen that to meet the construction phase water requirement builder across the NCR use groundwater directly or indirectly making huge impacts on availability of groundwater.

42. That in response to Para 63-67 it is submitted that the EAC has a statutory mandate to appraise the project so as to find out whether the project is environmentally viable. That for the purpose of the same, the EAC ought to have looked into the source of water supply thoroughly so as to evaluate whether the water demand is being met in a sustainable manner. Therefore, it was imperative that the details of provider of treated water be looked into by EAC as recommended by the Committee constituted under order dated 27.02.2020 of this Hon'ble Tribunal. Further, no response has been given to the fact that the Committee under its report dated 10.12.2020 had submitted that huge quantity of fresh water will be required whereas Respondent No. 2 has proposed to use treated water. These facts shows that the plan for meeting the demand of water is not concrete however, the same has still be moved forward by the EAC without examining the status on ground.

43. That in response to Para 68-70 it is submitted that even though the specific conditions provide that no ground water shall be used during construction phase or operation phase (Para 7(A)(i) of the 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 the impugned EC). That this shows a contradiction. Further it has been provided that the dewatered ground water shall be properly managed and shall conform to the approvals and guidelines of CGWA. This again creates an ambiguity on how the dewatered ground water will be used. That the 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 the treatment of Groundwater.

44. That in response to Para 71 it is submitted that even though it is informed that water for operation phase will be provided by DJB, however, as per the water clearance dated 07.10.2015 provided by DJB to Respondent No. 2, it is provided that in case DJB water is not available, the applicant may be advised to make its own arrangement for supply of water. That the said fact suggests that DJB has not taken a committed responsibility of providing water for which other arrangements has been availed to Project Proponent. That it is further submitted that DJB is unable to fulfil the water requirements of the 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 the carrying capacity study is taken up before any such project is granted an EC. That in the given situation there is a imminent possibility that the entire burden for supply of water will be shifted to Ground Water for which the option of abstraction and dewatering has been left unclear under the contradictory conditions provided under the impugned EC, as mentioned above.

45. That in response to Para 72-73 it is submitted that a mere correction on the contradictory submissions made in two parts of the Application does not prove

that the EAC has examined the aspect of water requirement comprehensively. That the above mentioned submissions read with the submissions in the Appeal shows the EAC while considering the proposal has not comprehensively dealt with the issue of water requirement which will be needed by the project at construction and operation phase. That it is reiterated that it is unclear whether the ground water abstracted or dewatered will be used in the project or not, whether the DJB will be able to provide the water supply to the project during construction phase or operation phase, whether fresh water will be used for used for construction or treated water, whether the pressure for meeting the water demand will ultimately shift to groundwater, whether the project will consume more water than what has been submitted before the EAC, whether the area has the carrying capacity to cater to the such a multi-storeyed housing project among others.

46. That in response to Para 74 it is submitted that even though it is being stated that the Respondent No. 2 has relied on the "Manual On Norms And Standards For Environment Clearance Of Large Construction Projects" published by the MoEF & CC for calculating the water requirement, however, no reliance on the same was submitted before EAC while applying for the EC during processing of the EC. Further, it has not been provided as to why the said Manual was not relied on for the earlier EC dated 23.03.2018.

47. (i) That in response to Para 75-87 it is stated that the National Building Code lays down that for communities with population above 100000 together with full flushing system the rates per head per day (lphd) may be considered minimum to be 150-200 lphd which may be reduced to 135 lphd for houses for Lower Income Groups (LIG) and Economically Weaker Section of Society (EWS), depending upon prevailing conditions. That the said provision is reiterated under

the guidelines to regulate and control groundwater extraction dated 24.09.2020 of the Ministry of Jal Shakti (ANNEXURE R8 of Reply of Respondent dated 27.09.2021). That therefore the 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, the Respondent No. 2 has stated that SEAC had suggested not to follow the requirement as per National Building Code but to follow Delhi Jal Board Guidelines, however no such observation has been recorded in the minutes of the meeting held on 24.02.2018. Further the 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. That the fact the SEAC had suggested to follow National Building Code or the DJB Guidelines shows that the demand of water will be high than what is estimated. It is unknown as to why the Manual on norms and standards for environment clearance of large construction projects of MoEF&CC has been adopted now when the same could have been adopted earlier also.

(ii) Further the said manual suggests for monitoring of water consumption which is reiterated as follows:

"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. "

That given the fact that even though measures may be taken to reduce water usage as per the Manual of MoEF&CC, it is not known whether the said quantity will really be consumed. That there is an absence of provision for monitoring

mentioned above which has not been adopted by the Respondent No. 2 and the same has been ignored by the EAC and MoEF&CC while granting the impugned EC.

48. That the contents of Para 88, 89, 90 and 91 are severally and categorically denied and it is submitted that no undertaking, seems to has been given by the answering Respondent to the effect that the project proponent will not use the ground water. Furthermore, dewatering for basement construction will diminish the 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 the vegetation of Northern Ridge and North Campus of the University and 500 mtrs. is a very short distance for the issue of ground water.

49. That the contents of para 92 are denied and it is submitted that by project proponent own admission the factum of dewatering for basement is conceded, thus, it cannot be said that the ground water will not be extracted. It must not be forgotten that the subject land falls in water deficient zone. The very nature of the construction would prejudice the status of ground water in water deficient zone, and it must be avoided in the interest of environment.

50. That the contents of para 93 are denied in its entirety except the matter of record and it is submitted that due to issuance of impugned EC without consideration of the instant issue new cause of action arises. It is further submitted that 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 the environment in that area and will cause grave sound pollution in the University premises among other things.

51. That the contents of para 94 are denied and it is submitted that the contents of para 4 herein above are reiterated in response to the same.

52. That the contents of para 95 and 96 are denied and it is submitted as regards to Prof. Geetam Tiwari's evaluation of the report submitted qua the earlier EC granted, was due to the fact that the Respondent had only submitted the previous traffic analysis report of 2011. However, the principles enunciated would not change. Moreover, if the situation in 2020, based on the 2011 report, clearly 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, the objections dated 15.01.2021 of the Appellant were also not considered.

53. That the contents of para 97 are denied and it is submitted that the roads surrounding the subject land is already running out of its capacity due to University and metro conveyances. Hundreds of E-Riksha, hundreds of 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 even if the load would increase by 615 cars will be increased due to the project, the same will create heavy traffic that too at the entry of the University. It should also be presumed that the traffic will increase further with visitor, service providers and their vehicles many folds causing a much greater pressure on the already saturated roads in the region.

54. That the contents of para 98 is false and misleading. Without prejudice and admission, it is submitted that if the submission of the answering respondent is taken at its face value, its repercussions would be that the 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, the 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. The reliance of data stated in paragraph under reply fails to account the said facts, furthermore, 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 the project proponent has proffered stale data and studies and official Respondent have acted thereon, despite there being clear prohibition in law to do so. Reference in this connection may be made to instructive opinion of Chandachud, J. in *Banglore Development Authority vs Sudhkar Hedge*.

55. That the contents of para 99 are denied in its entirety. It is clear from the bare reading of the para that the EC dated 21.05.2021 does not discuss about the traffic created due to the University students, hostels residents, staffs and professors. The EC has been granted during the Covid-19 pandemic when the actual traffic in the area or for that matter at any public place, was almost absent.

56. That the contents of para 100, 101 and 102 are denied and it is submitted that the Respondent's averments in para under Reply are misleading. The width of roads in question with regards to its carrying capacity to the traffic estimation proportionate to the "capacity which the existing infrastructure and the proposed project would carry", is improper and thus, the burden on existing approach roads would be "disproportionately" high and runs contrary to environmental parameters. The averments qua the same in the Appeal are reiterated. What is legally unsustainable is the manner with which the 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. The grant of EC thus, stands vitiated. Respondent's cannot be allowed to make good the deficiency in decision making process committed by the environmental agencies, by resort to forensic arguments *sans* substratum.

57. That the contents of para 103, 104 are denied and it is submitted that while issuance of impugned EC, the 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 the EAC has, without its application of mind on above aspects, has granted EC to the Respondent and thus, the same is legally vulnerable.

58. That the contents of para 105 are out of context and the same being irrelevant qua facts in issue, deserves to be ignored in the pre setting in which averments in appeal are made. Further, there is no information on the said action plan and whether it has been submitted to any regulatory authority or not. General observations cannot be relied upon where issue under examination is legally and scientifically vexed to determine the "impact quotient" of proposed project on particular segment, *i.e.* traffic, from the perspective of decadence of environment and carrying capacity.

59. That the contents of Para 106 and 107 are denied and it is submitted that the whole EC has been challenged in the 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 the 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.

60. That the contents of para 108, 109, 110, 111 and 112 are denied in its entirety and it is submitted that while considering traffic congestion EAC has also failed to observe that "statutory increase in number of seats" in the University e.g. No. of seats in University has been increased in almost every course, only in LLB course of Law faculty total no of seats has been increased from 2658 in 2018-2019 session to 3320 in 2021-2022 session. Therefore, almost 20% increase in no of seats is a part of existing heavy traffic and the same has been ignored while granting the 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 studies so far examine this aspect of the matter. Thus, grant of EC is without "evidence" on this aspect.

61. That in response to the contents of para 113 it is submitted that the present EC has been issued for 2302 persons against the earlier EC issued for 1785 persons and the height of the building has been extended from 139.6 meters to 145.3 meters. Therefore, it is totally irrelevant to even consider the 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.

62. That the contents of para 114 and 115 are denied and it is submitted that the fact cannot be ignored that the population of 2302 persons along with ancillary and incidental impact on environment is impermissible in law. 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 the population conceded by the Respondent. This is apart from the people who render service to the said apartments which are huge in number.

63. That the contents of para 116, 117, 118, 119 and 120 are denied. Moreover, the project proponent states to create parking space at basement and for that lower and upper basements have been planned to be constructed. For construction of basement, the project proponent states that it will extract ground water which will diminish the ground water level in that area which is already in water deficient zone. The assertion that parking space is underestimated is not responded, the norm based on area may be at best indicative. 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.

64. That the contents of para 121, 122 and 123 are denied except the matter of record. It is submitted that vide Order dated 20.01.2021, the answering

respondent had withdrawn the EC dated 23.03.2018 and therefore, the matter was disposed of on becoming infructuous. It is further submitted that reading of judicial order in manner present by Respondent, is impermissible in fitness of things.

65. That the contents of para 124 qua facts of constitution of committee is conceded, but the manner with which its finding are to be dealt with, is matter of argument. The EC granting authority on the set of data provided by project proponent, 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.

66. That the contents of para 125 and 126 are denied except the matters of record and averments stated in appeal are reiterated.

67. That the contents of para 127 are denied in its entirety and it is submitted that the said study was conducted in December 2020 when the University campus was closed due to the covid-19 pandemic and therefore, recorded traffic pollution is less than usual. Even if that is so the data on PM2.5. and PM 10 is way above the permissible levels and therefore proves the point that the ambient air quality will be further deteriorated. The contributory pollution will be increased. The deteriorating air quality has been only attributed to stubble

burning which is a very narrow perspective of the understanding of the air pollution itself.

68. That the contents of para 128 and 129 is also misleading for the reasons stated in paragraphs 127 (Supra). Scientific studies are designed to "anticipate the actual impact", thus, the study has to be conducted when "ordinary state of affairs" exists. Consciously chosen time of outburst of pandemic when ordinary state of affairs were suspended cannot furnish basis for acceptance of alleged studies. Further, the studies did not consider properly the proportionate variation in its conclusion in normal circumstances. The manner of alleged studies reflect grossly perverse outcome which are sufficient to discard its "worth".

69. That in response to para 130 it is submitted that averment under consideration lies in sole realm of Respondent, however, fact of the matter is that the EAC has not applied its mind while granting impugned EC to the project proponent.

70. That the contents of para 131 are denied and it is submitted that the Central Vista case is distinguishable from the present set of facts. Two dissimilar set of cases cannot be treated in like manner.

71. That the contents of para 132 and 133 are denied and it is denied that the dust particles cannot travel 460 meters. The 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 the height of the proposed building is 145.3 meters the wind breakers at the project boundary will lose the relevance.

72. That the contents of para 134, 135 and 136 are denied in its entirety except the matters of record and it is submitted that the subject land is itself situated adjacent to the premises of the University. The Faculty of Education, Super

speciality Hospital, Schools for children from class I to class VIII are at throwaway distance from the subject land.

73. That the contents of para 137 are specifically denied and it is submitted that the answering respondent is consciously concealing facts and showing the 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.

74. As to para 138 and 139 it is submitted that the said rules has been violated by the answering respondent as the subject land is within the University premises and the Faculty of education is less than 100 meters from the boundary of subject land.

75. That the contents of para 140 are denied and it is submitted that the samples were taken in December 2020 i.e. during covid-19 pandemic when the university was closed, even then the permissible limits were violated for residential area. It is pertinent to note that the University is not a residential area but an Educational institute and falls under the head of silence zone. Hence it requires more cautious approach by the EAC.

76. That the contents of para 141 and 142 are denied being misleading. Pleadings asserted in appeal is reiterated. The issue of "mitigating circumstances" fundamentally pales in to insignificance when the impact of project as a whole cumulatively makes it environmentally unsustainable.

77. That the contents of para 143 and para 144 are denied and it is submitted that the Order dated 20.01.2016 passed by the Hon'ble High Court of Delhi as mentioned in para 25(gg) of the Appeal states that the Delhi Fire Service lacks requisite equipment to combat fire incident, therefore, approval from the departments for the project will not equip the fire department to deal against the fire incidents. Furthermore, only one or two fire check floors for such a high rise building are

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

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

78. That the contents of para 145 are denied and it is submitted that the answering respondent is stating about a situation which is absolutely non-pragmatic. Only NOC from the 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.

79. That the contents of para 146 are denied and 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 the Northern Ridge had also taken the 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.

80. That the contents of para 147, 148, 149, 150, 151 and 152 are denied in its entirety and it is submitted that the contents of para 147 are without any such averment providing the details of safety measures taken under the said guidelines to resist the earthquakes. The Appellant reiterates the submissions made in the Appeal.

81. That the contents of para 153 are denied. Averments in corresponding paragraph (para 25(kk and others)) are reiterated.

82. That the contents of para 154 and 155 are denied and it is submitted that the answering respondents is repeating its own submission and no details has been provided regarding the measures taken. It is pertinent to note that the avoiding such heavy construction can reduce the risk of liquefaction. The fact that the said report by M/s Ind Research and Development house Pvt. Ltd. is not part of the record, no comments ca be made on its veracity or its findings. The same may be produced so that a fair analysis can be done and the experts available with the apparent may give their comments or rebuttals as the case may be.

83. That the contents of para 156 and 157 are denied and it is submitted that the answering respondent has not provided any detail of effluent which the answering respondent claims to treat within the project site. It is thus, clear that the project in question would, if allowed to operate, add more miseries to already critically polluted zone.

84. That the contents of para 158 are denied in its entirety. When the whole Delhi has become polluted and schools are being closed due to this pollution, the answering respondent is claiming that the subject land does not fall within the critically polluted area. Furthermore, the answering respondent is relying upon the old data which was notified in 2010 and things have been critically changed in recent times and pollution has increased aggressively.

85. That the contents of para 159 are denied except the matters of record and it is submitted that 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 the project proponent 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.

86. That the contents of para 160, 161, 162, 163, 164, 165 and 166 are denied except the matters of record and it is submitted that after the issuance of impugned EC fresh cause of action has arisen against the respondents. In the impugned EC, the height of the building has been increased which will give view of larger area. It is submitted that the 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 *malafide* 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. The dismissal of legal recourse based on delay or laches, cannot permit Respondent/project proponent, 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 the Respondent. It is regrettable that answering Respondent on one hand asserts this Tribunal's lacks of jurisdiction qua those aspect 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.

87. The contents of Paras 167 and 168 are wrong and denied. It is denied that there has been honest/full/candid/bona fide/complete disclosure by the Project Proponent in the Form 1. It is denied there has not been any deliberate concealment of fact/information from the EAC and/or supply of any misinformation. It is denied that there has not been any deliberate concealment and/or submission of false and/or misleading information material to the steps involved in the grant of the EC and/or for the purpose of decision making by the EAC. It is denied that the supplemental information provided by the Project Proponent responded to the queries sought by the EAC and/or contained all the information to aid and/or assist the EAC in reaching a proper conclusion and/or taking the correct decision. It is submitted that material information has not been disclosed in the Form 1, for instance the details of Civil Appeals take up before the Hon'ble Supreme Court by the Respondent No. 2, and the subsequent orders by this Hon'ble Tribunal, the details of adjoining properties, the illegal felling of trees, and other such details as described in the said Appeal specifically in Para 25(nn) which makes the application liable for rejection and/or cancellation of EC.

88. The contents of Paras 169 and 170 are wrong and denied. It is denied that the Project Proponent made the correct disclosure regarding the litigation concerning the project. The legal submissions contained in Para 170 are denied and disputed. It is most humbly submitted that the disclosure regarding the Civil Appeals filed before the Hon'ble Supreme Court was crucial for the determination of the EC. Both the appeals were from interim orders passed by this Hon'ble Tribunal, wherein this Hon'ble Tribunal was pleased to form committees to assess the environmental viability of the project in question. Thus, the same shows the reluctance of the Project Proponent to subject itself to independent scrutiny. Furthermore, the order-dated 10.06.2020 of the Hon'ble Supreme Court in Civil Appeal 2485 of 2020 was crucial to understand the nature of the proceedings before the committee, the objection of the Appellant in the way the proceedings were conducted and ultimately whether the report of the committee could be relied upon. By failing to disclose the entire gamut of the litigation, the Project Proponent misled the EAC.

89. The contents of Para 171 are wrong and denied. A bare perusal of S. No. 9 under Clause III – Environmental Sensitivity section shows that several areas occupied by sensitive manmade land uses have not been disclosed by the Project Proponent. The Project Proponent has *inter alia* failed to disclose the Patel Chest Institute (hospital) and all colleges located in the North Campus; which are all adjacent to the project site and certainly within 2km radius of the project site. The Project Proponent'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.

90. The contents of Paras 172 and 173 are wrong and denied. It is denied that the Project Proponent has made the correct disclosure and/or has not concealed/misled the EAC. It is denied that the information sought under S. No. 3.4 in Form I does not require disclosure regarding women hostels in the vicinity of the project. 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, the 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 the Patel Chest Institute. Similarly, S No. 7.3 in Form IA mandates that the adverse effects on local communities must be disclosed. Given that the project is being proposed within the Delhi University area, university students would be the relevant local community and adverse effects on them must be disclosed. Furthermore, the various centers of learning within the North Campus form sites with cultural values.

91. The contents of Paras 174, 175 and 176 are wrong and denied. It is denied that the information sought in S. No. 1.2 and/or Clause 3.2 of the 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 the 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 the Project Proponent has complied with all the conditions laid down by the Forest Department in reference to felling

of trees. A perusal of Para 176 itself shows that that the Project Proponent has not planted 50% of the required saplings even after 10 years of felling the trees

92. The contents of Para 177 and 178 are wrong and denied. It is denied 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. The reliance by the Project Proponent 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 the Appeal is reiterated.

93. The contents of Para 179 to 182 are wrong and denied. The Project Proponent's reliance on the Report constituted by the Hon'ble 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. The Appellant is not reagitating any settled issues in this appeal.

94. The contents of Para 183 are wrong and denied. The Project Proponent has not provided correct/detailed responses to the queries raised. It is denied that there would not be any adverse effect on the hospitals in the vicinity and/or the patients therein. The Appellant has given numerous details and data regarding the adverse effect of the project on the local populace and the safety of the students which is reiterated here.

95. The contents of Para 184 are wrong and denied. It is denied that the 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

Zonal Development Plan for Zone-C states that the 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 the various heritage sites as per the surveys of DDA and INTACH. The 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 the Project Proponent. It is also denied that DRDO Bhawan and/or the Officers' enclave are not defence related installations.

96. The contents of Paras 185 and 186 are wrong and denied. It is denied that the concerns raised by the dissenting members of the SEAC have been dealt with. The impugned EC and/or the minutes do not mention/discuss the dissents of the SEAC members and/or the grave concerns raised by them.

97. The contents of Paras 187 to 191 are wrong and denied. It is denied that the Appellant is raising any allegations which have attained finality. As stated above, the 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 apprised by the said committee and hence these conclusions cannot be utilized to support the present project. It

is most humbly submitted that concerns regarding the environment are dynamic in nature and hence there cannot be any finality with respect to objections concerning the 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, the requirement of fresh appraisal, which has never been done by the said Committee.

98. With respect to the contents of Paras 192 and 193, it is most humbly submitted that the EC was granted in violation of principles of natural justice. The EAC sought and received a response from the Project Proponent regarding the objections raised by the Appellant. However, neither was the Appellant given an opportunity of personal hearing nor was supplied any copy of the responses filed by the Project Proponent. Thus, the EC was granted only through a one-sided explanation given by the Project Proponent without any opportunity to the Appellant to explain its objections and/or respond to the stand of the Project Proponent. Thus, the response sought from the Project Proponent cannot be relied upon as a gospel truth.

99. The contents of Paras 194 to 198 are wrong and denied. That in this regard it is submitted that the view of the one member who had shown his dissent should have been taken into consideration by the EAC and a fresh application of mind should have been demonstrated while appraising the project even though the collective decision of the sub-committee provided favorable conclusion.

100. The contents of Paras 199 to 201 are wrong and denied. It is denied that EAC has evaluated all the aspects related to the environment before recommending grant of EC. The portion of the 62nd Minutes of Meeting of the EAC as reproduced in Para 200 do not reveal that the EAC has considered/evaluated carrying capacity of the area before granting the EC. The Appellant's

objection/representation has not been considered/evaluated by the EAC. No independent study regarding the carrying capacity of the area has been conducted by the EAC or any other competent authority. Only an explanation by the Project Proponent cannot satisfy the rigors of a carrying capacity study conducted by expert agencies, which admittedly has not been carried out in case.

101. In respect of Para 202, it is submitted that the Project Proponent's reliance on the judgment in ***Central Vista*** (2021) SC OnLine SC 7 is misplaced. Firstly, the observations of the Hon'ble Apex Court (that have been reproduced in Para 202) do not discuss the jurisdiction of this Hon'ble Tribunal in an appeal under Section 16 of the NGT Act, 2010. On the contrary, Para 370 of the aforesaid judgment states that this Hon'ble Tribunal must scrutinize the merits of the decision. Secondly, the judgment itself states that the presumption that all the relevant material has been perused/analysis carried out is rebuttable where a demonstrable infirmity is shown. In the instant case, there are multiple demonstrable infirmities and that there is complete non-application of mind. Thus, the judgment in ***Central Vista*** (2021) SC OnLine SC 7 is not applicable to the facts of the instant case.

102. The contents of Paras 203 and 204 are wrong and denied. With respect to the report of the 9-member expert committee set up by this Hon'ble Tribunal, it is most humbly submitted that the Appellant and the Project Proponent themselves had challenged the findings of the said committee before this Hon'ble Tribunal. Before this Hon'ble Tribunal could adjudicate the merits of the said report, the Project Proponent stated that it would apply for the EC afresh and accordingly the previous Appeal was disposed of. However, it later turned, that the Project Proponent sought to rely on the very same committee report before the EAC and precluded the Appellant and this Hon'ble Tribunal from assessing the merits of

the report. Before the EAC, the Project Proponent conveniently relied on the portions of the report that suited it and impugned the portions of the report that did not. By doing this, the Project Proponent sought review of the expert committee's report (which had been appointed by this Hon'ble Tribunal) before the EAC; all the time without the participation of the Appellant. Particularly, the Appellant had impugned the committee report's findings on carrying capacity before this Hon'ble Tribunal. As stated before, the Appellant's objections were considered by the EAC without the Appellant's participation and the same are hit by principles of natural justice. The EAC, by relying on the committee report, failed to correctly appreciate the carrying capacity of the area. With respect to the conditions mentioned in the EC, it is submitted that the said conditions do not mitigate the environmental damage that would be caused by the proposed project; as the area does not have any capacity to hold such a large project. More importantly, it is the non-compliance of Committee report, especially with regard to the conclusion that two basements cannot be allowed in the said project that the Project Proponent immediately withdrew the earlier EC and applied afresh by to overcome the unviability of the project in case only one basement is allowed.

103. The contents of Paras 205 to 211 are wrong and denied. With respect to the proceedings of the 9-member expert committee appointed by this Hon'ble Tribunal, the Appellant had already challenged the composition, proceedings, and findings of the said committee before this Hon'ble Tribunal. Therefore, it is incorrect to state that the proceedings were conducted in a transparent manner and/or that the committee's findings are unimpeachable. The Project Proponent's stand that the said committee has conducted a thorough evaluation is contradictory, as the Project Proponent had itself challenged certain findings of the expert committee. The Project Proponent did not want to abide by the

conditions laid down by the expert committee and thus sought a revaluation of only those conditions through the EAC by applying for a fresh EC. With respect to the legal submissions made in Para 207, it is stated that the impugned EC is bereft of any reasons in respect of the objections raised by the Appellant. With respect to the expert committee's analysis on population density, the same had been impugned by the Appellant before this Hon'ble Tribunal. The Appellant's objections on the population density analysis have not been considered by the EAC; pertinently regarding the non-consideration of other densely populated areas near the project site such as GTB Nagar, Kamla Nagar etc. Thus, the Project Proponent's reliance on the said analysis is completely misplaced. As stated in the Appellant's objections filed before this Hon'ble Tribunal, the population density analysis does not consider the impact on other wards falling within the 2km X 2km grid and that the 2km grid is, in itself, a reduced area. The minutes of the EAC are completely silent on the correctness of the analysis done by the expert committee, which had been impugned by the Appellant. It is denied that the increment in population density is 11%. In any event, even 11% is statistically significant and neither the EC nor the expert committee report provides for any mitigating conditions to reduce this impact. The Appellant has provided cogent reasons and analysis to show that the approach followed by the expert committee was incorrect.

104. The contents of Paras 212 to 214 are wrong and denied. A perusal of the said paragraphs show that neither the expert committee nor the Project Proponent have provided any logical reason for selecting a 2km grid for analysing the impact of population density. The Project Proponent 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 the Appellant before this Hon'ble Tribunal to

impugn the analysis of the expert committee and the same remains unresolved till date.

105. The contents of Paras 215 to 217 are wrong and denied. It is vehemently denied that the 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 the 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 the Project Proponent has provided correct and complete primary and/or secondary data with its Form-1.

106. The contents of Para 218 are wrong and denied. The submissions made hereinabove may be read here in reply

107. The contents of Paras 219 to 222 are wrong and denied. The said paragraphs merely reproduce the contents of the impugned EC and/or the 9-member committee report, both of which have been challenged by the Appellant. The corresponding paragraphs of the Appeal may be read here in reply.

108. The contents of Paras 223 to 225 are wrong and denied. Neither the Project Proponent's letter-dated 02.08.2021 nor the DPCC's letter-dated 27.08.2021 state that there is no requirement to obtain Consent to Establish for the current project. DPCC's letter-dated 27.08.2021 merely forwards the Project Proponent's query to the MoEF&CC for the latter's consideration. The Project Proponent is seeking to defy office memorandums and categorical conditions of the EC. It is also incorrect to State that Consent to Establish cannot be given independently and is consequential to the EC. The OM dated 20.09.2021issued

by the MOEF&CC is clear and categorical in this regard and therefore not a brick can be laid without a CTE in place.

109. The contents of Paras 226 – 227 are wrong and denied. With respect to the contents of these paragraphs, the submissions made hereinabove, as well as in the appeal may be read here in reply. Suffice to say that even after 10 years, the Project Proponent has not complied with the tree cutting permission that had been sought by it. The submissions made by the Appellant in respect of the same are not time barred.

110. The contents of Paras 228 to 231 are wrong and denied. It is denied that the 1943 letter does not have any legal sanctity. With respect to the construction of high rise buildings in the North Campus area, the submissions made hereinabove, as well as in the appeal may be read here in reply.

In view of the above, the prayers made in the Appeal before this Hon'ble Tribunal are reiterated.

Place: New Delhi

Date: 13.03.2022

DRAWN & FILED BY:

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IN THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

(UNDER SECTION 16(h) OF THE NATIONAL GREEN TRIBUNAL 2010)

APPEAL NO. 17 of 2021

IN THE MATTER OF:

University of Delhi .....Applicant

Versus

Ministry of Environment Forest

& Climate Change& Ors . .....Respondent

AFFIDAVIT

I, Dr. Vikas Gupta S/o Late Sh. I. J. Gupta, aged about 52 years, Registrar, University of Delhi – Delhi – 110007 do hereby solemnly state and affirm on oath as under:

1. That I am the Registrar, University of Delhi – the appellant herein am fully conversant of the facts and circumstances of the matter and am competent to swear this affidavit.

2. The contents of the accompanying rejoinder is true and correct to the best of my knowledge and have been drafted by the counsel on my instructions and nothing material has been concealed therefrom.

DEPONENT
कुलसचिव / Registrar
दिल्ली विश्वविद्यालय
University of D
दिल्ली-110007/Delhi-110007

Verification:

Verified at Delhi on this ____ day of _____ 2021 that the contents of the above affidavit are true and correct to my knowledge and belief and nothing material has been concealed there from.

DEPONENT
कुलसचिव / Registrar
दिल्ली विश्वविद्यालय
University of D
दिल्ली-110007/Delhi-110007

NOTARY A.N. SINGH Supreme Court of India Regn. No. 16959 Exp. Date: 31.01.2025 GOVT. OF INDIA

ATTESTED Notary Public Govt. of India, Delhi Mob.: 9718139591, 7982539115

14 DEC 2021

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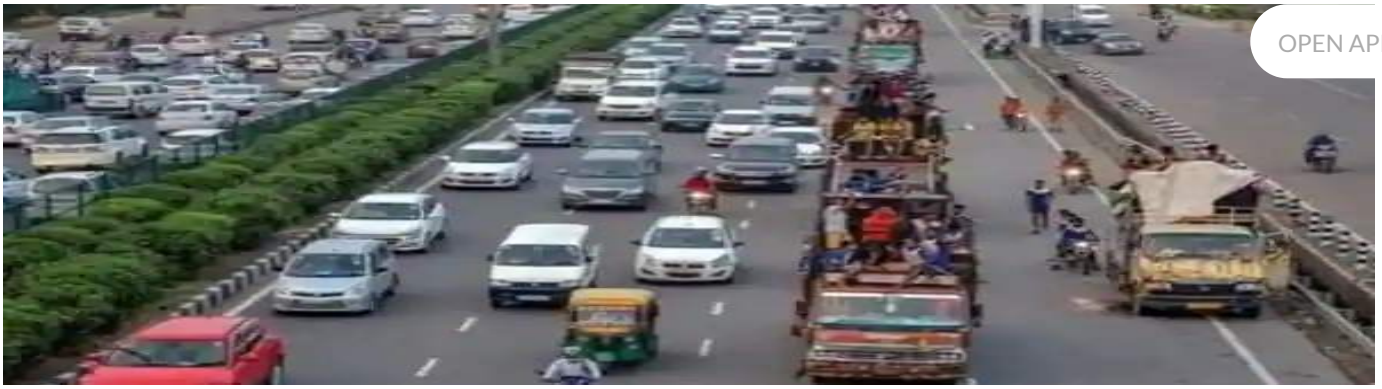
ANNEXURE A/1

Delhi has 1.18 lakh crore registered motorized vehicles on its roads: Eco Survey



Car and jeeps accounted for around 28 per cent of the total registered motorized vehicles (PTI)

1 min read . Updated: 09 Mar 2021, 09:20 AM IST

Staff Writer

The total motorized vehicles in Delhi rose to 1.18 lakh crore by March 31, 2020, it said.

The annual growth of vehicles in Delhi decreased from 8.13 per cent in 2005-06 to 4.40 per cent in 2019-20 while the number of vehicles per thousand population rose considerably from 317 to 643 during this period, according to the Delhi Economic Survey report.

The report was tabled during the budget session of Delhi Assembly on Monday.

Delhi is a hub for personal motorized vehicles in India. The total motorized vehicles in Delhi rose to 1.18 lakh crore by March 31, 2020, it said.

Car and jeeps accounted for around 28 per cent of the total registered motorized vehicles, whereas two-wheelers are about 67 per cent of the total registered vehicles in the city, it said.

There is a contradiction regarding the actual number of vehicles plying on Delhi's road as the large number of vehicles registered in the city are plying in NCR areas and those registered in NCR are plying here, the report said, adding that the transport department is making efforts to estimate the actual number of vehicles in the city by taking into account the vehicles, stated the report.

The report stated that under the free travel facility for women in DTC and Cluster buses started from October 29, 2019, 10.58 crore trips were made by women passengers in DTC and 8.74 crore in Cluster buses during 2019-20.

An amount of ₹70.17 crore was paid to DTC and ₹44.53 crore to Cluster buses as subsidy, it said.

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An amount of ₹312.00 crore was set aside towards subsidy for free travel of women in 2020-21, it said.

ANNEXURE A/2

Table 12.1
MOTOR VEHICLES IN DELHI

S. No	Years	Cars and Jeeps	Motor Cycles and Scooters	Ambulances	Auto Rickshaws	Taxies	Buses	Other Passenger Vehicles	Tractors	Goods Vehicles (All Types)	Others	Total
		1	2	3	4	5	6	7	8	9	10	11
1	2005-06	1471858	3078660	2088	74188	20646	25511	18378	4811	128193	5803	**4830136**
2	2006-07	1599463	3335763	2222	74200	25891	26491	19751	4859	137983	5803	**5232426**
3	2007-08	1729695	3578199	2226	75297	30704	26933	18967	4855	155871	4637	**5627384**
4	2008-09	1863574	3808503	2294	83965	4001	28453	19766	4970	170398	4637	**6026561**
5	2009-10	2017882	4065789	2392	86501	45169	30560	20371	5058	188353	4637	**6466713**
6	2010-11	2177525	4352963	2503	88200	57887	33067	21178	5148	204428	4637	**6947536**
7	2011-12	2347276	4654706	2589	88216	68965	34251	23214	5558	223534	4676	**7452985**
8	2012-13	2483886	4980227	1459	76603	71112	19942	11380	1638	139123	1738	**7785608**
9	2013-14	2625250	5296163	1519	78750	74758	19641	11289	1651	149147	106	**8258274**
10	2014-15	2790566	5681265	1527	81633	79606	19729	11284	1637	160156	28	**8827431**
11	2015-16	2986579	6104070	2990	198137	91073	34365	6368		281159		**9704741**
12	2016-17	3152710	6607879	3059	105399	118308	35206	59759		300437		**10382757**
13	2017-18	3246637	7078428	3220	113074	118060	35285	76231		315080		**10986015**
14	2018-19	3249670	7556002	2358	113240	109780	32218	81422		246861		**11391551**
15	2019-20	3311579	7959753	2287	114891	122476	33302	85477		263112		**11892877**

Source : Vahan 4.0 software of MoRTH, Govt. of India and supplied by the IT branch of the Transport Department, GNCTD

ANNEXURE A/3

The proposed tallest building of Delhi is a hydrological and landscape misfit

Preprint · April 2021

1 author:

Shashank Shekhar
University of Delhi
159 PUBLICATIONS **1,293** CITATIONS

SEE PROFILE

The proposed tallest building of Delhi is a hydrological and landscape misfit

Shashank Shekhar
Department of Geology, University of Delhi

The city of Delhi has already crossed its carrying capacity. It has high population resources imbalance and the population is still growing. This needs further augmentation in dwelling units. The Delhi Development Authority (DDA) takes up planned development and has been gradually urbanizing Delhi. In order to avoid further population pressure in the pre-existing localities, the agency has meticulously developed areas like Mayur Vihar, Patparganj, Dwarka, Rohini and many more. DDA has also endeavoured to preserve the rich cultural and architectural heritage of Delhi by way of proposing optimal land use in its master plans. The peopling endeavours of DDA has been suitably supplemented by the Delhi Metro Rail Corporation (DMRC), which facilitated a transport revolution in Delhi by providing a network of metro connectivity. The metro of Delhi has evolved as a life line for common commuters. I think that, this is one of the reasons for DMRC getting preferential treatment, when it comes to allocation of the resources for sustainable functioning of the metro network.

In this background, a plot of 3.05 hectare (30500 square meters) was originally acquired by DMRC from the Ministry of Defence for constructing Vishvavidyalaya Metro station. The metro station has been beautifully designed and its merges with the urban landscape of the area. This metro station complex only used about 1.05 hectares (10500 square meters) of the above mentioned plot. As per the land use categorization of the DDA, the remaining about 2 hectares (20000 square meters) of the land on Chhatra Marg behind the metro station was available to be used for additional 'Public and semi-public facility'. The intended use was perhaps additional parking space for the metro station. The DMRC found that the existing relatively small parking space for the Vishvavidyalaya Metro station was adequate. Hence in order to generate additional revenue, it requested DDA to change the land use for the unused part of the plot measuring 2 hectare (20000 square meters) from 'Public and semi-public facility' to 'Residential'. The DDA agreed to the proposal of DMRC and the unused plot of 2 hectare with its new land use categorization as ‘Residential’ was leased to a private developer at a handsome price for building the tallest 37 storeyed building of Delhi.

The first question which comes to my mind is, whether it was a real revenue generation? Given the fact that the land was purchased from a government agency at a very reasonable price, as intended use was for an infrastructure project integral to the process of nation building. Then by changing the land use of a portion of the plot, it was sold at a relatively much higher price

to a private company? Was there a proper application of mind in changing the land use for a 37 storeyed building in high population density areas of the University of Delhi? An area, having rich landscape dotted with heritage buildings showcasing architecture of pre independence modern India. The proposed tallest building of Delhi is adjacent to the Gandhi Bhawan, school of open learning and Vice Chancellor residence of the University of Delhi. It is in close proximity of the heritage buildings like the Vice Regal lodge, Gwyer Hall hostel etc. It appears to be a misfit in the urban landscape of the University. Today, from the ring road stretch near Vishvavidyalaya Metro station, if you look towards north campus, the skyline has relatively low rise buildings and a walk through showcases the rich architecture of the pre independence era, where some walls have imprints of Indian freedom struggle. What will happen when you construct a 37 storeyed building just by the side of main road through these heritage buildings at about 500 m distance from the Vice regal lodge, and about 300 m distance from the Gwyer hall, adjacent to Gandhi Bhawan and residence of the Vice Chancellor. It will camouflage the skyline and the sighting will mask the heritage architecture of modern pre independence India.

The hydrological considerations

A generation of scientist, social and environmental activists have spent their life arguing for conservation of Delhi ridge; as it is a natural recharge area from which groundwater flows away towards the adjacent plains. The underground metro tunnel of the yellow line passing through Delhi university metro station of the north campus is in between the ridge and River Yamuna. The north campus area of the University of Delhi has shallow water levels with the depth to water level in the range of 6 to 7 meters below ground level (mbgl). We have observed that the metro tunnel in this shallow water level area, behaves like a subsurface dyke obstructing the natural groundwater flow from the ridge towards River Yamuna. This locally raises the groundwater levels, leading to dampness of the walls, basements and foundation. It makes use of basement and ground floor units difficult and sometimes, may hamper structural safety of buildings.

We all know that for structural safety and to provide parking space, the high rise multi storeyed buildings have at least double basements, below which there is concrete foundation of considerable thickness along with pillars. In the area, near to the Delhi University metro station, the bed rock that is the quartzite of Delhi ridge occurs at shallow depth. So the foundation and basement of such high-rise buildings is likely to either rest on the basement

rocks or be much near to it. This will be addition of further barriers in groundwater flow regime and is likely to further raise the groundwater levels locally. Which in turn, may lead to uncontrolled dampness in the foundation and ground floor units of nearby buildings like Gandhi Bhawan, residence of the Vice Chancellor of the University, Meghdoot hostel for women, building of the 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 this fact in mind.

The foundation of a high rise 37 storeyed building needs to be up to 12 to 13 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 the 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 the groundwater level in the neighbouring areas. Further, putting this extracted water to a desired use will be a challenge.

Way forward

I write, this article after reading plenty of news on the issue and listening to the viewpoint of the stake holders from the University of Delhi. I have also come to know that there are many litigations, arguments and counter arguments on the issue. In perspective of sustainable development, I think a thoughtful discussions for harmonization of environmental and commercial interest amongst the stake holders and the concerned parties can always provide an out of court solution.

DMRC is primarily responsible for getting the land use changed and leasing it for revenue generation, while the DDA is responsible for allowing this to happen. It is suggested that DMRC in consultation with DDA should appropriately compensate the developer by offering an alternate site in a new upcoming suitable locality. This plot may be leased/transferred to the University of Delhi at a reasonable price for integrating it in to the north campus of the University. Further, the University may use due diligence for utilizing the land for welfare of society in an environmentally sustainable manner. In continuation of the heritage buildings and the local urban landscape, the University can utilize the plot for making low rise residence/

hostel/ marketing complex/ multi-speciality University Hospital/ faculty or Department building etc.

(The views expressed are author’s personal opinion)

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Service of Rejoinder of Appellant (University of Delhi) to Reply dated 29.09.2021 of Respondent No. 2 - M/s Young Builders Pvt Ltd.

S

Saumitra
Sun 3/13/2022 3:59 PM

To: adv.kumarrajeshsingh@gmail.com; mail@aglaw.in
Cc: Sanjay; Salik; ELDF <eldflegal@gmail.com>

REJOINDER OF DU TO YBPL.pdf
9 MB

Dear Sir,

I am writing on behalf and under the instructions of Mr. Sanjay Upadhyay, - the Counsel for the Appellant in Appeal No. 17 of 2021 titled - University of Delhi Vs MoEF&CC & Ors.

Please find attached the Rejoinder on behalf of Appellant (University of Delhi) to the Reply dated 29.09.2021 of Respondent No. 2 - M/s Young Builders Pvt Ltd. filed in Appeal No. 17 of 2021 - University of Delhi Vs MoEF&CC & Ors.

The said Rejoinder is accordingly hereby served.

Warm Regards,
Saumitra
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