BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN BENCH, PUNE

APPEAL NO.27 OF 2022(WZ)

IN THE MATTER OF:

Thakorbhai Vallabhbhai Khalasi .....Appellant

Vs

Ministry of Environment, Forest and Climate Change and Ors

....Respondents

INDEX

Place: Pune
Date: 19.09.2024

Filed By

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WRITTEN SUBMISSIONS ON BEHALF OF THE APPELLANT

1. The present appeal challenges the Environment Clearance ('EC') **(Page 67-78)** bearing no. EC22A008GJ153411 (File No. J-11011/44/2004-IA II (I)) Dated 02.03.2022 MoEF&CC to Arcelor Mittal Nippon Steel India Ltd ("ANMS") under EIA, 2006 for " *Proposed Modification in Existing Plant by installing Auxiliary Facilities without increasing Plant Capacity*" without increasing plant capacity at the 770 ha. 9.6 million TPA Integrated Iron and Steel Plant located at Hazira Notified Industrial Area at Village Hazira, Taluka Choryasi, District Surat, Gujarat.
2. Project Category is Sl No. 3 (a) – Metallurgical Industries (ferrous and non-ferrous) Category "A" of Schedule of EIA, 2006 and appraised by Expert Appraisal Committee (EAC) and EC granted by R-1/MoEF&CC.
3. The proposed modification is for construction of auxiliary facilities within the premises of the existing plant, the details are as follows **(Page 843) (Final EIA report)**:

Sl No.	Auxiliary Facility	
1.	Coal briquetting Plant - (1000 TPD)	
2.	BF – PCI Project- Pulverized coal	
3.	Lime Kiln (500 TPD) - Lime and Dolime	
4.	Rotary Kiln (200 TPD) - Calcined Lime	
5.	Blast Furnace Dust Catcher /Dust separation unit-150 TPD	
6.	Acid Regeneration Plant - 100 KL & Pickling Line-3	
7.	BF slag grinding mill (BOO) - 50 TPD	
8.	New Cooling towers for	Mod-1 and 2
		Mod-3 and 4
		Mod-5 and 6

9.	Slag Conditioning & Metal Recovery plant	
10.	Thick Plate Normalizing Furnace	
11.	Shot blasting machine	
12.	VD Cooling Tower	
13.	RHD Cooling Tower	
14.	Water Treatment Plant for 500 MW CCPP	
15.	CRM-2	Hot Rolled Pickled Coils/Sheets
		CR Coils/Sheet
		Galvanized Coils/Sheets
		Annealing coils/Sheets
16.	Ladle furnace - Existing Liquid Steel 4.6 MTPA (Standby LF-5 for Special grades)	
17.	SMP-1 Fume Extraction System upgradation	
18.	Mod 4 additional VPSA to utilize Corex gas and going forward Coke oven gas	
19.	Hot metal Pre treatment Station Outside Shop (KR Technology)	
20.	Tank Farm-2 with interconnection between PKL-3 & ARP-2	
21.	Additional Ladle Furnace (LF7) – Standby for Special grades	

4. That some of the relevant facts are as follows:

Relevant date	**Particulars**	**Page nos**
1992	EC granted to R-5 for setting up Steel Plant comprising of Hot Briquetted Iron (2 MMTPA), Hot Rolled Coil (2.5 MMTPA) (J-11011/4/92-IA-II(I)	
2005	EC granted to R-5 for setting up Hot Briquetted Iron (2 MMTPA), Hot Rolled Coil (0.5 MMTPA), Hot metal (0.735 MMTPA) (J-11011/45/2004-IA-II(I)	
2006	EC granted to R-5 for setting up 525 MW Gas Based Captive Power Plant (CPP) (J-13011/7/2006-IA.II(T)	
06.09.2007	EC for establishing Deep Draught CSS Extension of Jetty from 456 meter to 734 meter i.e berthing capacity 1190 meter(11-65/2005-IA-III)	79-83
29.05.2008	EC granted to R-5 for expansion of Steel Plant for setting up Hot Rolled Coil (1.5 MMTPA), Air Separation Unit (1,405 TPD), WHRB based CPP 48 MW, Gas Based CPP 525 MW (J-11011/74-III/2006-IAII(I)	84-87
2008	EC granted to R-5 for setting up Hot Briquetted Iron (1.98 MMTPA) J-11011/327-I/2006-IA. II(I)	

2008	EC granted to R-5 for setting up Hot Rolled Plates (1.5 MMTPA J-11011/74-II/2006-IA. II(I))	
2009	EC granted to R-5 for setting up WHRB based CPP 25 MW J-13011/90/2006-IA. II(T)	
05.07.2010	EC granted to R-5 for transfer of already existing EC Pellets Plant (4 MMTPA), HBI/DRI (1.85 MMTPA), COREX Plant (1.7 MMTPA), Blast Furnace (2.04 MMTPA), Steel Melting Shop (5 MMTPA), Lime Plant (0.45 MMTPA), Caster Shop (Slab Caster 4.9 MMTPA, Billet Caster 2.37 MMTPA), CSP (Rebar 1.6 MMTPA, Wire Road 0.7 MMTPA, HRC 3.5 MMTPA), Air Separation Unit (5,100 TPD) J-11011/714-A/2008-IAII(I) • Not to discharge any treated waste water outside the premises and adopt 'Zero' effluent discharge. An effort recycle and reuse the maximum treated wastewater in the process itself to reduce quantity of water consumption and effluent discharge into Tapi estuary. Only excess treated waste water after meeting the norms of Gujarat Pollution Control Board or as mentioned in E(P) Act, whichever are more stringent, shall be discharged to Tapi Estuary through RCC Pucca Channels. (Specific Condition No. (viii) • Proper handling, storage, utilization and disposal of all the solid waste shall be ensured and regular report regarding toxic metal content in the waste material and its composition, end use of solid / hazardous waste shall be submitted to the Ministry's Regional Office, SPCB and CPCB [Specific Condition No. (x)]	88-94
28.07.2010	EC granted to R-5 for setting up Expansion of Steel Plant by installation of Coke Oven Plant (1.2 MMTPA, Recovery Type) J-11011/313/2009-IAII(I) • To control air pollution two stacks of 125 m height will be provided. Waste gas recirculation system to mitigate NOx emission • Modified wet quenching system using treated water will be adopted in the proposed coke oven plant	95-100

	• Zero discharge will be adopted in the proposed plant. • Efforts to reduce particulate emissions in the ambient air and a time bound action plan shall be submitted. Online ambient air quality monitoring and continuous stack monitoring facilities for all the stacks and sufficient air pollution control devices viz Bag filter, spark arrester etc • All standards for coke oven plants to be followed • National Ambient air quality standards to be followed • Gaseous emission levels including secondary fugitive emissions from all the sources shall be controlled within permissible limits • Proper arrangement to control dust emissions • Continuous monitoring of TOC in wastewater • Greenbelt to be developed in 33% area of plant area • No further expansion or modification without prior approval • Gaseous emissions from various processes to conform to standards of R-1/MoEF&CC	
2013	EC granted to R-5 for setting up 220 KV M/C Transmission Tower Line F. No. 11-1/2011-IA-III	
25.04.2013	Complaints by the residents of the nearby village Hazira to R-3/GPCB about air pollution regarding dusting in and around the plant. The R-3/GPCB conducted inspection on 25.04.2013 on account of complaint by Hazira Gram Panchayat Sarpanch Dusting around SMP Plant and Sinter Plant.	145-151
09.07.2013	On inspection by GPCB, coal dusting issues were found and the plant was asked to prepare an action plan to deal with air pollution issues.	152-160
06.05.2014	EC and CRZ clearance granted to R-5 for Expansion of existing Port facility of the Essar Bulk Terminals Limited (EBTL) F.No. 11-46/2011-IA.III • <u>Existence of mangroves</u> • Sl No.6 (iii)m (xii) ensure proper flushing for mangroves • Sl No. 6 (iv) Submit report of satellite to MoEF to ensure mangroves are intact • Sl No. 6 (vi)No encroachment of project activities in mangrove area	101-108

	• Sl No. 6(vii)-Stock yard pm northern side (Hazira side) provided with bund • Sl No. 6 (ix) green belt • Sl No. 6 (xxiii) study to determine the reasons for increase in cancer patients in the vicinity to be carried out *(Ref: to Health Data at P 2426-2428 to rejoinder)* (recognition to increased incidence of cancer patients)	
20.09.2014	GPCB conducted inspection on 20.09.2014 and found fugitive emission from within the plant premises is noticed and also on account of vehicle movement	168-175 at 173
27.01.2015	GPCB conducted inspection and found the following issues • Dusting in and around Sinter Plant • Particle emission during the de-sulphuration process from the furnace of steel melting plant • Particle emission from heaps dumped around Sinter Plant. • Particles have accumulation on account of Iron mineral spillage and from the Sinter Plant at the jetty Emission of brownish dust from ventilation openings of the shed • Housekeeping around the Sinter Plant is not in a good condition • Emission of brownish dust from ventilation openings of the shed • Housekeeping around the Sinter Plant is not in a good condition	176-182
09.03.2016	EC granted to R-5 for replacement of Hot Briquetted Iron (HBI)/DRI (Direct Reduced Iron Modules with Blast Furnace (EAF) facility for Re configuration of 9.6 million TPA (J-11011/381/2014-IA II (I) • Sl No. A (i) Install 24×7 air monitoring devices to monitor air emissions • Sl No A (ii) continuous monitoring facilities for all the stacks • Sl No. A (v) all internal road shall be black topped • Sl No. A (vii) National ambient air quality emission standards • Sl No. A(viii) Gaseous emission levels including secondary fugitive emissions from all the sources shall be controlled within permissible limits • Sl No. A (ix)- Vehicular pollution to be controlled	109-118

	• Sl No. (x) "Zero" discharge shall be strictly followed and no wastewater shall be discharged outside the premises • Sl No. A(xvi)Greenbelt to be developed in 33% area of plant area • Sl No. B (ii)- No further expansion or modification without prior approval • Sl No. B (viii) strictly comply with all the environmental protection measures as per EIA/EMP report	
11.01.2018	GPCB conducted inspection on a complaint regarding air pollution and found the following issues at the plant • Corrective measures to prevent dusting of Hot metal into furnace, as heabvy fugitive emission is observed prior to FES (Fume Extraction System) • Check out the efficiency of Bag Filters (APCM) in FES • Take required precautionary measures to prevent fugitive emission in Slag • Heavy dust deposition on the factory shed of production plants like SMP&Sinter Plant. • Expedite upgradation of APCM in Sintern and FES plant • Instal CAAQMS	205-213 at 208
16.01.2018	GPCB conducted inspection on a complaint of illegal disposal of HW material powder and found that Storm water drain contamination needs to be stopped and necessary action to be taken for dusting/fugitive emission	214-220 at 216,218
03.09.2019	On inspection by GPCB the following was found • 500 MT of Gypsum and iron mix stored in open • ETP sludge dumped in open • ETP waste water into storm water drain • Based upon IR and ARS application maybe rejected	242-253
05.09.2019	Complaint of Hazira villagers regarding iron slag dumping on the land of Samshan Bhoomi	235-241 at 238
07.04.2020	CCA AWH- 107719 dated 7/4/2020 (HRC Division) CCA Amendment order H-114 725 dated 15/09/2021 • Sl. No. 6.2- Authorization chemical sludge • Sl. No. 1,2,3,4: Comply with EC of 13/06/2006 and CRZ Clearance dated 18/09/2006	448

	EC dated: 7/11/2005 EC dated: 23/07/1992 EC dated: 20/04/2007 EC dated: 4/07/2005 Integrated Steel Plant consists of 4 Divisions i. Conarc Division ii. HRC (Hot Rolled Coil) Division iii. Plate Mill Division iv. Pipe Mill Division	
07.04.2020	CCA AWH- 107721 dated 7/4/2020(Amended) (Plate Mill Division) • Sl No. 1: zero discharge of wastewater	436, 438
07.04.2020	CCA AWH- 107720 dated 7/4/2020 (Pipe Mill Division) • No discharge of WW in environment • Sl. No. A (viii) not to discharge outside the premises and adopt "zero" effluent discharge only excess treated wastewater after meeting the norms of GPCB shall be discharged into Tapi Estuary.	442
20.05.2020	CCA AWH- 108150 dated 20/05/2020 (Conarc division) • Sl. No.: 3.7- Final treated effluent plant comprising to the above standards shall be reused in the plant and not discharged into the surrounding environment • Sl. No. 4.8- Parameters for ambient air quality PM 10 60 (annual) – 100 (24 hours) PM 2.5 40 (annual)- 60 (24 hours) So_2 50 (annual)- 80 (24 hours) No_2 40 (annual)- 80 (24 hours) • Sl. No. 4.4 process emission through stacks/vent • Sl No. 6.2 Hazardous waste • Sl. No. 6.5: Operate a facility for collection, storage within factory premises, transportation and disposal as above • Sl. No. 7.15 Records of waste generation, its management of annual return submitted to GPCB Form-U by 30/6 of every year • Sl. No. 9.1 Authorized actual user of HW and other wastes shall maintain record of HW and other wastes purchased in a passbook issued by GPCB.	460 462

	• Sl. No. 9.2 Handling over the HW to authorized user shall be only after making entry in the passbook. • Sl. No. 9.7- Not store HW and other wastes more than 90 days	
23.09.2020	GPCB conducted inspection and its observations were as follows:- • 500 MT of Gypsum and iron mx still stored in open • Storage of 300 MT of ETP sludge near SMP II -to transfer to safe storage • Details as to disposal of slag • Acidic waste water discharge into storm water drains.ETP sludge dumped near Conarc plant • Submit 3 month of HW disposal, generation details Pursuant to these inspections GPCB issued notice of directions and show cause notice under section 33A Water Act and section 31-A Air Act to the plant.	254-265 at 258, 259
24.10.2020	R-5/ANMS applied in prescribed format (Form -I) copy of pre-feasibility report and proposed ToR for undertaking EIA to carry out modification in the existing plant and "proposed" 21 projects as being auxiliary to the existing plant to R-1/MoEF&CC	2429
04.11.2020	Notice of Direction to R-5 • Waste water discharge; • ETP Sludge, HW • Brownish fugitive emission • exceeding the permissible limit for air standards so violation of EC of 2010, 2016	317-319
08.02.2021	R-1/MoEF&CC approved the Terms of Reference vide order dated 08.02.2021	
September 2021	ATIRA report (Schedule I Environmental Auditor under the Environmental Audit Scheme of GPCB (being followed under a Hon'ble High Court of Gujarat order) conducted sampling and analysis of effluents coming out of the Steel Plant, going unhindered into the fragile estuarine ecosystem of the river Tapi. The values of COD, BOD, TSS, TDS and all other parameters relevant to industrial effluents (Sample-1) are very high, which indicates that the effluent is being disposed without any treatment, and the ETPs claimed to be operated by R-5/ANMS are non-functional. Violation of EC and CCA.	420

21.09.2021	Public Hearing was held on 21/09/2021 Participation of 550 persons and there was widespread opposition to the "proposed" modification on account of the fact that the persistent issue of air pollution which has affected the lives of residents of Village Hazira, including their health wherein there have been increasing incidences of cancer amongst the villagers.	
13.12.2021	Hazira Kantha Vistar Odhyogik Pradushan Nivaran Samiti an organization of the affected Hazira villagers and the appellant made a representation/complaint dated 13.12.2021 to all the respondent authorities raising the following issues that arise post public hearing. • Untreated/half-treated 27.5 MLD effluent is being disposed by the R-5/ANMS in the fragile estuary ecosystem of the Tapi river in violation to "zero discharge" condition of EC of 2016. • Indiscriminate dumping of hazardous waste and other solid waste in all over the plant and in the area where plantation was carried out • There is violation of EC condition of 33% plantation within the plant. • Operation of plant has caused serious and continuous air pollution in the entire Hazira area. • Notices have been issued to the company by GPCB but there is no concrete action taken • There is no cumulative impact assessment study done for the entire plant premises as required by the TOR. • No action plan is submitted to stop fugitive emission separately in Final EIA, only generic measures proposed • Increased incidences of cancer in the area • Google Images- Auxiliary units are already in existence • Photos of Air pollution • Slag dumped inside the plant • Illegal encroachment	628-632 672 677 699,700 702
15.12.2021	Representation by Appellant	587 at 612
December, 2021	Final EIA submitted by R-5 • TOR compliance • Table 1.3: Details of proposed auxiliary facilities • Project location- Village Hazira	 830 843 845 849

	• List of show cause notices last year List of directions(NOD)- Last year •	
07.01.2022	Compliance status of the EC conditions of previous clearances points towards the non-compliance of the conditions by R-5/ANMS.	509,510,513,515,517, 521,
10/11.02.2022	53rd meeting of re-constituted EAC (REAC) considered the proposal and application of R-5 in its meeting held on 10-11th February, 2022 and without considering all the objections raised recommended grant of EC to R-5	714, 732,733
02.03.2022	Grant of EC	

5. The appeal challenges the EC granted to R-5 as it is a case of ex-post facto clearance which is not countenanced in environmental jurisprudence and especially in the scheme of "prior" environmental clearance as envisaged under EIA, 2006. In the present case, the 21 "proposed" auxiliary projects stood constructed and were operational on the day of grant of EC as has been specifically highlighted by the appellant by way of Google Images at the time of Public Hearing and also by way of representation to EAC after the public hearing, but the same has not been adverted to by EAC in its meeting to appraise the present project. The present being a "violation case" ought to be appraised as per notification SO 804 (E) Dated 14.3.2017 (Annexed), wherein but this aspect has not been considered by EAC. Even the compliance report submitted by Regional office is silent on this aspect. (Google Images **Page 677-698**) (Form 1 at **Page 2430**)(**Page 757**). *(Refer Alembic Pharmaceuticals Ltd vs. Rohit Prajapati & Ors).*

6. R-1/EAC has erred in accepting the Compliance Report of EC and CCA even though there were 13 EC conditions that were partly complied for 2016 EC and 12 conditions 'partly complied' for 2010 EC so in such a scenario cannot be granted as it can be seen that the EC conditions transcend from one EC to another without compliance. **(Page 751-757)**.

7. EAC has failed to assess and appreciate that the notice of directions and show cause notice based upon the inspections conducted by R-3/GPCB revealed that the issue of air pollution emanating from the plant is persistent and is in focus since 2011 and all measures proposed in the subsequent EC of 2014 and 2016 have not led to any

improvement so it required a thorough study and overall assessment of the operation of the plant from an agency to suggest measures to tackle the problem of air pollution. Any subsequent improvement post issuance of EC is of no consequence and is irrelevant so all the documents **(Page 2573-2622, Page 2623-2731)** submitted by R-5 cannot be taken into consideration. In the similar manner current status report of GOCB **(Pages 2249-2407)** and GPCB Compliance Inspection and Verification Report **(Page 2869-2925**) cannot be taken into consideration. The operation of R-5 prior to issuance as given below is only to be considered.

Date of the Inspection	Observations	Proposed Action to R-5	Pages nos
25.04.2013	Unit inspected on account of complaint by Hazira Gram Panchayat Sarpanch Dusting in and around the plant Dusting around SMP Plant and Sinter Plant	Preparation of Action Plan to control dusting especially dusting from fine coal	145-151
09.07.2013	Coal Dusting Issues	Action plan preparation	152-160
27.03.2014	Heavy emission from plant Emission from Sinter plant Dusting from SMP-I Plant Dusting from Chimney of Sinter Plant	Undertake air pollution control measures to prevent dusting	161-167
20.09.2014	Fugitive emission from within the plant premises is noticed and also on account of vehicle movement	Partial compliance of instruction of necessary measures to control large amount of dusting from SMP-I plant and fugitive emission from FES SMP-I of the electric arc furnace 1 and 2. Measures to clean the dust on the internal roads of the plant to prevent dusting during transportation	168-175 at 173
27.01.2015	• Dusting in and around Sinter Plant	• Measures for controlling particle	176-182

	• Particle emission during the de-sulphuration process from the furnace of steel melting plant • Particle emission from heaps dumped around Sinter Plant. • Particles have accumulation on account of Iron mineral spillage and from the Sinter Plant at the jetty	emission from sinter plant • Immediate action to control particle emission from de-sulphuration process • Immediate measures to control iron mineral spillage	
27.01.2015	• Emission of brownish dust from ventilation openings of the shed • Housekeeping around the Sinter Plant is not in a good condition	• Control emissions • To improve the housekeeping around the shed	183-189 at 186,187
30.08.2017	• PH is found alkaline in storm water drain near SMP-I plant	• To stop contamination of storm water drain by treating wastewater in ETP •	198-204
11.01.2018	• Complaint regarding air pollution	• Corrective measures to prevent dusting of Hot metal into furnace, as heabvy fugitive emission is observed prior to FES (Fume Extraction System) • Check out the efficiency of Bag Filters (APCM) in FES • Take required precautionary measures to prevent fugitive emission in Slag coolong year • Heavy dust deposition on the factory shed of production plants like SMP&Sinter Plant. • Expedite upgradation of APCM in Sinternand FES plant • Instal CAAQMS •	205-213 at 208

16.01.2018	• Complaint in illegal disposal of HW material powder	• Storm water drain contamination to be stopped • Necessary action to be taken for dusting/fugitive emission	214-220 at 216,218
03.09.2019	• CTE amendment application	• 500 MT of Gypsum and iron mix stored in open • ETP sludge dumped in open • ETP waste water into storm water drain • Based upon IR and ARS application maybe rejected	242-253
05.09.2019	• Complaint of Hazira villagers regarding iron slag dumping on the land of Smashan Bhoomi	• To provide details of waste generation and disposal	235-241 at 238
23.09.2020	• To check up on fly ash storage	• 500 MT of Gypsum and iron mx still stored in open • Storage of 300 MT of ETP sludge near SMP II -to transfer to safe storage • Details as to disposal of slag • Acidic waste water discharge into storm water drains.ETP sludge dumped near Conarc plant • Submit 3 month of HW disposal, generation details	254-265 at 258, 259

The Air and water Analysis report of GPCB would highlight that the CCA parameters were not being met.

- Water/Waste Analysis by GPCB dated 16.09.2020 (**Page 266**)- TDS: 6854, COD: 330 (**Page 437** CCA parameter is 100), BOD: 70 (**Page 437** parameter 30 mg/l)

- Water/Waste Analysis by GPCB dated 17.04.2018 (**Page 268**) - Treated wastewater sampling point , COD: 154
- Air Analysis by GPCB dated 20.05.2020, PM- Stack: 371 mg/NM3 **(Page 270) (Page 465** CCA parameter is 150 mg/NM3).

8. The impugned EC is vitiated as EAC has not considered that the ToR have not been complied by R-5 . The R-1/MoEF&CC approved the Terms of Reference vide order dated 08.02.2021. In addition to generic ToR, R-1/MoEF&CC prescribed specific terms of reference such as follows:
    - No construction activity/infringement will take place in flood plain of Tapi river situated in the vicinity of the project site. The flood plain corresponding to HFL of Tapi river shall be depicted and same may be verified by an authority not below the rank of District Magistrate/Executive Engineer of the State Government
    - The PP will raise green belt in 33% of the total project area. This will include 50 m wide green belt along the boundary of the plant situated towards the Tapi river- Not compiled (Page
    - HW generated in CRM shall be disposed of in TSDF 100 % Solid waste generated shall recycled/reused or Sold- dumping of waste within premises.
    - Cumulative impact assessment shall be carried out for the entire facility within the boundary of the plant complex- Response in Final EIA- preparation of Table of impact identification matrix and not cumulative **(Page 1049)**
    - Action plan to reduce the fugitive emissions from the plant shall be furnished- refer Action Plan to reduce emission **(Page 1029),** Show cause notice of 2020 **(Page 319, 320)** outlines the Air environment, all units already in existence.

9. EAC has not considered that the issues raised at the public hearing have not been addressed in the final EIA or EMP proposed by R-5 or even considered at its meeting. In the PH proceedings the following issues were raised for response from the R-5/ANMS which have not been addressed: -

- Non-compliance of earlier EC and CRZ clearance conditions such as zero discharge, disposal of untreated waste water into Tapi Estuary resulting in reduction of fishes and livelihood of fishermen community. It is an admitted fact that 27 mld water is released in to estuary by R-5. This untreated water is having acid as per ATIRA

report thereby affecting the CRZIA areas and severely impacting the coastal ecology.

- Violation of EC and CCA issued to the Company it has obtained Environmental Clearance from the Ministry of Environment and Forests on 9th March, 2016 (Copy enclosed as Annexure-1). Condition No. x of A. Specific Condition mandated the Company to 'strictly' follow "Zero effluent discharge". The same condition has also been mandated in the CCA. There is non-compliance of this EC condition resulting in disposal of untreated effluent flowing into Tapi Estuary affecting the coastal ecology and habitats.
- Green Belt development over 33% of plant area and presently this condition is not enforced at the time of granting of fresh EC. There is violation of EC condition of 33% plantation within the plant. Total area of plant is 770 ha and green belt was to be developed in 33% of the area and admittedly it is only over 170 ha i.e. 21% and green belt has to be developed over 254 ha, so there is violation of EC condition.
- Construction of the "proposed" auxiliary facilities before grant of EC
- No action plan to tackle problem of fugitive emissions and air pollution as the same continues unabated.
- There is non-compliance of the conditions of previous EC and in absence of their compliance fresh EC is being granted without ensuring compliance of earlier conditions of EC and CRZ clearances. Upon perusal of the "Certificate of Compliance" issued to R-5/ANMS by R-1/Ministry of Environment, Forest and Climate Change, Integrated Regional Office, Gandhinagar (as in Annexure – 24 of the EIA Report,). The Report states the matter of above referred condition on "Zero Effluent Discharge" – Non-Compliant. General condition no. (xii)- EC (09.03.2016) – on uploading of the compliance status of EC conditions and monitored data on R-5 website- it was found to be "Not complied". In all for the EC of 2010 and 2016 whose conditions were assessed by R-1, 13 conditions were "partly complied" for EC of 2016 and 12 conditions were "partly complied" for EC of 2010 and 2 conditions "not compiled" for both EC of 2010 and 2016.
- Encroachment on the forest land
- No respite from air pollution – measures not adopted to address this issue

- There is unauthorised dumping of ETP sludge and Slag within the premises and also outside the premises. Google Images and photographs of the area show that there has been indiscriminate dumping of ETP sludge, Slag etc. in and around the plant area. There is no plan for dealing with Slag and Hazardous waste management.
- R-5/ANMS has made another EC application for expansion of the plant capacity from 9.5 MMTPA to 15 MMTPA, though this information is not disclosed in the Form I where information is sought for interlinking project- no response from R-5 and also not considered by EAC)
- As per EIA, 2006 provisions, information as regards the EIA report etc. have to be made available on the website of R-5/ANMS, but the same is not available and this fact is admitted in their reply to EDS queries that the website is being prepared so it is a violation of the provisions of EIA, 2006
- Perusal of the Google Images and its comparison with the proposed auxiliary facilities would show that it is already constructed and in operation.
- ATIRA report shows that the water being discharged from the plant is not meeting the CCA norms. This aspect has not been considered by EAC.
- Despite EC 2016 having a condition of zero discharge, there is 27 MLS wastewater being released into Tapi estuary.
- Operation of plant has caused serious and continuous air pollution in the entire Hazira area. There have been several protests against the plant for air pollution, yet no measures have been taken in this regard. Thick plumes of hazardous dust and smoke is still seen emanating from the plant on a daily basis, in the day and more in the night time is settling over village and black dusting even inside the houses is felt. The Gundardi habitation area is inside the plant and people of the area are bearing the brunt of air pollution and inhaling carbon instead of air leading to carbon dusting inside their lungs.
- Notices have been issued to the company by GPCB but there is no concrete action taken to stop the air pollution emitting from the steel plant from a long time and objected by villages people.
- In the south of village there was a big mangrove patch. The AMNS steel plant has disposed of the slag and other steel plant waste inside the sea. There was haphazard disposal of such waste which is having toxic characteristics, and which is

prohibited in CRZ and this has led to destruction of mangroves. The EC conditions of 2007 have specific condition as regards to protection of mangroves but the perusal of the later EC would show that there is no condition imposed and neither these conditions adhered to.

- As per TOR 50-meter green belt towards Tapi river is not at all possible due to the plant construction and local obstacle and this submitted by R-5 in PH
- There is no cumulative impact assessment study done for the entire plant premises as required by the TOR.

In view of the above, the EC is required to be quashed.
The appellants wish to place reliance on following judgment.

i. Alembic Pharmaceuticals Ltd. Vs. Rohit Prajapati and Ors.MANU/SC/0353/2020
ii. Hanuman Laxman Aroskar and Ors. Vs. Union of India (UOI) and Ors.((2019)15SC C 401), (MANU/SC/0444/2019)
iii. University of Delhi Vs. Respondent: Ministry of Environment Forest and Climate Change and Ors. MANU/GT/0162/2022
iv. Bengaluru Development Authority vs. Sudhakar Hegde & Others MANU/SC/0308/2020 : (2020) 15 SCC 63.
v. Piedade Filomena Gonslves **Vs.** State of Goa and Ors.(MANU/SC/0239/2004)

Place: Pune
Date: 19.09.2024 Filed By

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MANU/SC/0353/2020

IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 1526, 3175, 6604-6605 of 2016 and 1555 of 2017

Decided On: 01.04.2020

Appellants: **Alembic Pharmaceuticals Ltd.**
Vs.
Respondent: **Rohit Prajapati and Ors.**

Hon'ble Judges/Coram:
Dr. D.Y. Chandrachud and Ajay Rastogi, JJ.

Counsels:
For Appearing Parties: A.N.S. Nadkarni, ASG, Kapil Sibal, Huzefa Ahmadi, Devang Nanavati, C.U. Singh, Abhishek M. Singhvi, Parag P. Tripathi, Sr. Advs., Ruby Singh Ahuja, Deepti Sarin, Kritika Sachdeva, Ashutosh P. Shukla, Advs. for Karanjawala & Co., Sandeep Narain, Ankit Virmani, M. Chandra Shekhar, Joyti Prakash Sahu, Advs. for S. Narain & Co., Mahesh Agarwal, Rishi Agrawala, Ankur Saigal, Anirudha Bhatia, Rohan Talwar, E.C. Agrawala, D.L. Chidanand, S.S. Rebello, Arzu Paul, Neeleshwar Pavani, Riya Soni, Gurmeet Singh Makker, Siddharth Seem, Satya Mitra, Hetvi Patel, A.P. Mayee, A. Rajarajan, Sanjeev Kumar Choudhary, Hemantika Wahi, Jesal Wahi, Puja Singh, Ruchi Kohli, Nidhi Jaswal, Manyaa Chandok and Ajay Marwah, Advs.

Case Category:
APPEAL AGAINST ORDERS OF STATUTORY BODIES - TRIBUNALS

Case Note:
Environment - Environmental clearance - Ex post facto - Environmental Impact Assessment notification mandated prior Environmental Clearances (EC) for setting up and expansion of industrial projects - By circular, deadline for obtaining EC under EIA notification was extended for those industrial units which had gone into production without obtaining EC under EIA notification to apply for and obtain ex post facto EC - First and second Respondents challenged circular before High Court which was transferred to National Green Tribunal (NGT) - NGT held that law did not permit grant of ex post facto clearances and that circular was internal communication and did not override provisions of EIA notification - Hence, present appeal - Whether in view of requirement of prior EC under EIA notification, provision for ex post facto EC to industrial units could be validly made by means of circular.

Facts:

The Environmental Impact Assessment notification mandated prior Environmental Clearances for setting up and expansion of industrial projects falling within thirty categories. The deadline for obtaining an EC under the EIA notification was extended by various circulars. By the circular, MoEF extended the period for those industrial units which had gone into production without obtaining an EC under the EIA notification to apply for and obtain an ex post facto EC. The circular allowed for ex post facto ECs, subject to a graded contribution into an earmarked fund based on the investment cost of the project. The first and the second Respondents challenged the circular

before the High Court. The proceedings were subsequently transferred to the NGT. The NGT held that the law did not permit the grant of an ex post facto clearances and that the circular was an internal communication and did not override the provisions of the EIA notification which had been issued in exercise of statutory powers conferred by Section 3 of the Environment (Protection) Act 1986.

Held, while disposing off the appeal:

(i) From the material placed on the record by the industries, it becomes evident that there had been a gross abdication of responsibility by all the three industries in terms of obtaining timely consents and authorisations from the GPCB. There exists a distinction between obtaining relevant clearances and consents from the State Pollution Control Board and obtaining an environmental clearance in accordance with the procedure laid down under the EIA notification of 1994. A consent order issued by the State Pollution Control Board allows an industry to operate within the prescribed emission norms. However, the consent orders do not account for the social cost and impact of undertaking an industrial activity on the environment and its surroundings. A holistic analysis of the environmental impact of an industrial activity is only accounted for once all the steps listed out in EIA notification of 1994 were followed. The purpose of setting in place specific requirements such as public hearing, screening, scoping and appraisal is to foster deliberative decisions and protect environmental concerns. The detailed process listed out in the EIA notification of 1994 for obtaining an EC allows for minimising the adverse environmental impact of any industrial activity and improving the quality of the environment. One must adopt an ecologically rational outlook towards development. Given the social and environmental impacts of an industrial activity, environment compliance must not be seen as an obstacle to development but as a measure towards achieving sustainable development and inter-generational equity. [33]

(ii) Therefore none of the three industries were entitled to the benefit of the exemption contained in Clause 8 of the explanatory note to the EIA notification of 1994. [34]

(iii) This Court must take a balanced approach which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord with the principle of proportionality. At the same time, the Court could not be oblivious to the environmental degradation caused by all three industries units that operated without valid ECs. The three industries have evaded the legally binding regime of obtaining ECs. They cannot escape the liability incurred on account of such non-compliance. Penalties must be imposed for the disobedience with a binding legal regime. The breach by the industries cannot be left unattended by legal consequences. The amount should be used for the purpose of restitution and restoration of the environment. Instead and in place of the directions issued by the NGT, it would be in the interests of justice to direct the three industries to deposit compensation. The amount shall be deposited with GPCB and it shall be duly utilised for restoration and remedial measures to improve the quality of the environment in the industrial

area in which the industries operate. [39]

JUDGMENT

Dr. D.Y. Chandrachud, J.

1. By a judgment dated 8 January 2016, the Bench of the National Green Tribunal[1] for the Western Zone held that a circular issued by the Union Ministry of Environment and Forests[2] on 14 May 2002 is contrary to law. The circular envisaged the grant of *ex post facto* environmental clearances. The NGT issued a slew of directions including the revocation of environmental clearances and for closing down industrial units operating without valid consents. On 17 May 2016, the NGT dismissed an application for review filed by one of the affected industrial units. The industrial units and MoEF are in appeal[3].

2. The Environmental Impact Assessment[4] notification of 27 January 1994 mandated prior Environmental Clearances[5] for setting up and expansion of industrial projects falling within thirty categories. The deadline for obtaining an EC under the EIA notification of 1994 was extended by various circulars to 31 March 1999 and thereafter to 30 June 2001. By the circular of 14 May 2002, which was quashed by the NGT, MoEF extended the period till 31 March 2003 for those industrial units which had gone into production without obtaining an EC under the EIA notification of 1994 to apply for and obtain an *ex post facto* EC. The circular indicated that it had been decided:

> ... to extend the deadline upto 31 March 2003 so that defaulting units could avail of this last and final opportunity to obtain ex-post-facto environmental clearance...

3. The circular of 14 May 2002, allowed for *ex post facto* ECs, subject to a graded contribution into an earmarked fund based on the investment cost of the project. The first and the second Respondents challenged the circular of 14 May 2002 before the High Court of Gujarat. The proceedings were subsequently transferred to the NGT. The NGT by its decision dated 8 January 2016 held that the law did not permit the grant of an *ex post facto* clearances and that the circular of 14 May 2002 was an internal communication and did not override the provisions of the EIA notification dated 27 January 1994 which had been issued in exercise of statutory powers conferred by Section 3 of the Environment (Protection) Act 1986[6].

4. Having held that the concept of an "ex post facto environmental clearance" was not sustainable with reference to any provision of law, the NGT issued the following directions:

> (i) The authorities of the Union of India, including the MoEF, State of Gujarat, Gujarat Pollution Control Board[7] and District Collectors shall not grant consent for an industrial activity covered by the EIA notification of 1994 without the steps mandated by the notification such as screening, scoping, public hearing and decision being fulfilled;
>
> (ii) The ECs granted to the industrial units of the sixth to ninth Respondents shall be revoked;
>
> (iii) All the industrial activities which were being operated without a valid EC

and consent to operate shall be closed down within one month;

(iv) Each of the units shall deposit a compensation of ' 10 lakhs for having caused environmental degradation; and

(v) The amount deposited shall be used for the restoration of the environment in and around the industrial area of Ankleshwar in the State of Gujarat.

5. The private Respondents before the NGT who were affected by the above directions are:

(i) United Phosphorous Ltd. - the sixth Respondent;

(ii) Unique Chemicals-the seventh Respondent;

(iii) Darshak Private Limited-the eight Respondent; and

(iv) Nirayu Private Limited-the ninth Respondent.

The private Respondents are engaged in the manufacture of pharmaceuticals and bulk drugs at the industrial area of Ankleshwar in the State of Gujarat. Alembic Pharmaceuticals Limited is the Appellant in the lead appeal before this Court. Darshak Private Limited merged with the Appellant in 2002 pursuant to a scheme of amalgamation sanctioned by the High Court of Gujarat. Nirayu Private Limited was acquired by the Appellant under a slump sale on 1 January 2008. Following this exercise, the manufacturing units of erstwhile Darshak Private Limited and Nirayu Private Limited have come to be known as API - I and API - II, respectively.

EIA Notification of 1994

6. The EIA notification was issued by the MoEF on 27 January 1994, in exercise of its powers Under Section 3(1) and Clause (v) of Section 3(2) of the Environment Protection Act 1986 read with Rule 5(3)(d) of the Environment (Protection) Rules 1986[8]. The EIA notification stipulated that:

...on and form the date of publication of this notification in the Official Gazette, expansion or modernization of any activity (if pollution load is to exceed the existing one) or new project listed in Schedule I to this notification, shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure hereinafter specified in this notification.

7. The EIA notification stipulated that any person who desired to undertake a new project, or the expansion or modernisation of an existing industry, listed in Schedule-I shall submit an application to the Secretary, MoEF. Entry 8 of Schedule-I includes industries engaged in manufacturing bulk drugs and pharmaceuticals. The application had to be accompanied by a project report including, *inter alia*, an EIA report and an environmental management plan prepared in accordance with the guidelines issued by the Union Government through the MoEF from time to time. The notification spelt out the procedure to be followed upon the submission of the application including an evaluation and assessment by a stipulated agency. Clause 3(a)[9] provided that:

...no construction work primarily or otherwise relating to the setting up of the project may be undertaken till the environmental and site clearances is

obtained.

8. On 10 April 1997, the EIA notification of 1994 was amended by making a public hearing mandatory for thirty categories of activities which required an EC. On 5 November 1998, the MoEF issued a circular recording that though the EIAnotification of 1994 was in effect since 27 January 1994, units covered by the notification had been set up without obtaining prior ECs. The GPCB had despite the advice of the MoEF allowed units to operate without valid ECs. In this backdrop, the circular of 5 November 1998 provided that:

> Since number of such proposals are large in number and many of the units have not applied for environmental clearance genuinely out of ignorance it has been decided to consider their case for environmental clearance on merits. This will apply only to those proposals which are received in the Ministry till 31st March 1999. Simultaneously State Pollution Control Boards have also been advised to issue requisite notices to the units to apply for environmental clearance. In case of those units which have already started production, we may consider the proposals on merits and if necessary suggest additional mitigative measures. A formal environmental clearance will be issued in these cases after approval by the competent authority.

9. By a circular dated 27 December 2000, the MoEF directed all state pollution control boards to issue fresh notices to all defaulting units and extended the deadline to obtain ECs from 31 March 1999 to 30 June 2001. Inspite of this, there were delinquent units which had either failed to apply for an EC or had failed to complete the requirement of a public hearing before the extended date. By the circular of 14 May 2002, the deadline was extended to 31 March 2003. The circular stated that:

> Keeping the foregoing in view, it has been decided to extend the deadline upto 31 March 2003 so that defaulting units could avail of this last and final opportunity to obtain ex-post-facto environmental clearance. This would apply to all such units, which had commenced construction activities/operations without obtaining prior environmental clearance in violation of the EIA Notification of 27 January 1994.

10. In terms of the circular, those defaulting units seeking an expansion were to earmark a separate fund for "eco-development measures including community development measures in Indian projects areas" on a graded scale linked to the investment in the project. This was indicated in a tabulated form which read thus:

A	Projects with investment upto ₹ 100 crores	1 % of the project cost with a minimum of ₹ 50,000
B	Projects with investment beyond ₹ 100 crores and upto ₹ 1,000 crores	0.5% of the project cost subject to a minimum of ₹ 1 crore and a maximum of ₹ 2.5 crores
C	Projects with investment exceeding ₹ 1000 crores	0.25 % of the project cost subject to a maximum of ₹ 5 crores

Units which failed to comply with the extended deadline were to be proceeded against.

The challenge to the *ex post facto* circular dated 14 May 2002

11. A petition was instituted Under Article 226 of the Constitution by the first and second Respondents in the present lead appeal before the High Court of Gujarat

challenging the circular dated 14 May 2002 and seeking the revocation of the clearances which were granted to the industrial units in question. The case was transferred to the Western Zonal Bench of the NGT by the High Court of Gujarat on 21 April 2015. The NGT by its judgment dated 8 January 2016 set aside the circular dated 14 May 2002 and issued consequential directions which have been noted in the earlier part of this judgment. Unique Chemicals Limited, the seventh Respondent before the NGT, preferred a review petition against the judgment of the NGT which was dismissed. The affected industrial units and the MoEF are in appeal before this Court.

12. The issue to be adjudicated is whether in view of the requirement of a prior EC under the EIA notification of 1994, a provision for an *ex post facto* EC to industrial units could be validly made by means of the circular dated 14 May 2002.

13. During the course of the submissions, Mr. Kapil Sibal, learned Senior Counsel appearing on behalf of Alembic Pharmaceuticals Limited has urged the following submissions:

(i) The issue is academic as both the units of the Appellant have been granted an EC for subsequent expansion to a much higher capacity after conducting a public hearing and upon consideration of all material factors.

The relevant details in support of the submission are thus:

Darshak Private Limited (API-I)

(a) An EC was granted on 14 May 2003 for a capacity of 15 MT per month;

(b) An EC was granted on 16 April 2008 for expansion of capacity from 15 MT per month to 25 MT per month; and

(c) An EC was granted on 31 January 2017 for a further expansion of capacity from 25 to 75 MT per month.

Nirayu Private Limited (API - II)

(a) An EC was granted on 14 May 2003 for a capacity of 47 MT per month; and

(b) An EC was granted on 20 December 2016 for an expanded capacity of 300 MT per month.

(ii) The EIA notification of 1994 omits the expression "prior". This is contrasted with the EIA notification dated 14 September 2006 which stipulates the requirement of a "prior" EC. While a prior EC is mandatory under the notification dated 14 September 2006, it was not under the earlier notification dated 27 January 1994;

(iii) Once an EC has been granted for a much larger capacity after conducting a prior public hearing, the question as to whether the first EC for a lesser capacity was valid, is of no significance. Since both the units have an EC for a larger capacity, the satisfaction for granting an EC for a lesser capacity would be subsumed;

(iv) The EIA notification of 1994 did not apply to the two units of the Appellant

(API - I and API - II). Clause 8 of the explanatory note to the EIA notification of 1994 provides that where a no objection certificate[10] from GPCB has been obtained before 27 January 1994, an EC is not required.

In this context it has been submitted that:

(a) On 17 July 1992, GPCB granted an NOC to establish and manufacture to the manufacturing unit of API-I;

(b) On 29 May 1997 and 27 July 1998, GPCB granted an authorisation to operate under the Air (Prevention and Control of Pollution) Act 1981[11] to API-I;

(c) On 11 October 1999, GPCB granted API - I an authorisation to operate under the Water (Prevention & Control of Pollution) Act 1974[12];

(d) On 24 May 1985, GPCB granted API-II a consent order under the Water Act;

(e) On 9 October 1991, GPCB granted a site clearance certificate to API-II;

(f) On 12 May 1993, GPCB granted an NOC to API-II to establish and for the manufacture drugs;

(g) On 23 September 1993 and 13 November 1999, GPCB granted a consent under the Water Act to API-II;

(h) On 14 December 2001, GPCB granted an authorisation to API-II to operate under the Hazardous Waste (Management and Handling) Rules 1989[13]; and

(i) On 1 September 1999, 14 December 2001 and 7 March 2008, GPCB granted a consolidated consent and authorisation to API-II.

(v) A public hearing was not mandatory under the EIA notification of 1994. Clause 4 of the explanatory note confers a discretion to call for a hearing in case of projects that may cause large scale displacement or with severe environmental ramifications;

(vi) If the order of the NGT prevails, the Appellant would be prejudiced and suffer an irreparable loss. The Appellant has made an investment of over ' 293 crores and employed a labour force of over 1000 workers; and

(vii) The first Respondent who was the Petitioner before the NGT chose to target only the Appellant and two others out of over ninety different entities which were granted similar clearances. This cherry picking of certain select units demonstrates the *mala fide* nature of the proceedings.

14. During the course of his submissions, Mr. C U Singh, learned Senior Counsel appearing on behalf of United Phosphorus Limited has urged the following submissions:

(i) The circular dated 5 November 1998, by which the deadline for obtaining

ECs under the EIA notification of 1994 was extended to 30 June 2001 was not challenged. The circular dated 5 November 1998 specifically noted that the State Pollution Control Board had despite the advice of the MoEF allowed units to operate without valid ECs;

(ii) United Phosphorus Limited had all requisite ECs that were granted by GPCB for the existing and expanded capacity. In this context it has been submitted:

(a) An EC was granted on 17 July 2003 for manufacturing Phorate and Terbuphose (300 MT per month combined) and Acephate (80 MT per month);

(b) An EC was granted on 15 April 2008 for the expansion of capacity for manufacturing pesticides and intermediate products. Production of Phorate and Terbuphose was increased from 300 MT per month to 500 MT per month, and production of Acephate was increased to 1000 MT per month;

(c) An EC was granted on 10 January 2020 for an enhanced capacity of 9546 MT per month;

(iii) The complainant, the first Respondent in the lead appeal, attended the public hearing held on 16 January 2002 prior to the grant of an EC on 17 July 2003 and raised no objections;

(iv) If the order of the NGT prevails, the Appellant would be prejudiced and suffer an irreparable loss. The Appellant has employed approximately 400 permanent and contract workers at its manufacturing unit; and

(v) The challenge by the first and second Respondents was to the EIA notification 1994 which did not apply to the manufacturing unit of the Appellant. At the relevant time, the Appellant was exempted from obtaining an EC since it had all requisite permissions. In this context it has been submitted:

(a) On 3 October 1992, GPCB granted an NOC to the Appellant for setting up a manufacturing unit;

(b) On 17 November 1995 and 2 April 1996, GPCB granted NOCs for expansion and manufacturing additional products;

(c) On 27 August 2009, GPCB granted a consolidated consent and authorisation to the Appellant's manufacturing unit;

(d) On 25 July 2012, GPCB issued an NOC for the expansion of the Appellant's manufacturing unit; and

(e) On 11 May 2015 and 27 May 2017, GPCB granted a consolidated consent and authorisation for expanded operations.

15. Appearing for Unique Chemicals Limited, Dr Abhishek Singhvi, learned Senior Counsel urged the following submissions:

(i) The NGT did not have the jurisdiction to entertain the petition filed by the first and second Respondents in view of the decision of this Court in Techi **Tagi Tara** v. **Rajendra Singh Bhandari and Ors.** MANU/SC/1217/2017 : 2018

(11) SCC 734;

(ii) The EC granted in 2007 superseded the earlier EC granted in 2002. Therefore, the question of validity of the earlier EC does not arise. In this context it has been submitted:

(a) An EC was granted on 23 December 2002 for a capacity of 78.02 MT per month for manufacturing bulk drugs and intermediates;

(b) An EC was granted on 8 August 2007 for an increase in manufacturing capacity from 78.02 MT per month to 116.12 MT per month; and

(c) An EC was granted on 30 June 2018 for an increase in the manufacturing capacity to 290 MT per month. On 10 April 2019, the above EC was amended allowing an increase in the number of products permitted to be manufactured by the Appellant.

(iii) The *ex post facto* clearance granted to the Appellant cannot be set aside by the order of the NGT in terms of the decision of this Court in **Goa Foundation** v. **Union of India** MANU/SC/0140/2005 : (2005) 11 SCC 559, where 95 industrial projects were accorded *ex post facto* clearances in terms of the circular dated 14 May 2002. Accordingly, no question of closing down the manufacturing units of the Appellants can arise;

(iv) The requirement of an *ex post facto* public hearing was introduced by an amendment in 1997 to the EIA notification of 1994. The legality of an *ex post facto* public hearing has been upheld by this Court in **Lafarge Umiam Mining Pvt. Ltd.** v. **Union of India** MANU/SC/0735/2011 : (2011) 7 SCC 338;

(v) In various cases where there has been a violation of law, this Court has not ordered the closure considering the significant investment and expansion undertaken by the industry. In **Electrotherm Ltd.** v. **Patel** MANU/SC/0850/2016 : (2016) 9 SCC 300, this Court did not order closure of the plant since a significant expansion had already taken place and the industry was functioning;

(vi) If the order of the NGT prevails, the Appellant would be prejudiced and suffer an irreparable loss. The Appellant has employed approximately 400 employees at its manufacturing unit;

(vii) The EIA notification 1994 did not apply to the manufacturing unit of the Appellant. The manufacturing unit of the Appellant was exempt from obtaining an EC as it had all the requisite permissions. In this context it has been submitted:

(a) On 30 September 1995, GPCB issued an 'air consent order' under the Air Act;

(b) On 9 January 1996 GPCB issued an authorisation under the Hazardous Waste Rules;

(c) On 16 April 1996 GPCB issued a 'water consent order' under the Water Act;

(d) On 15 April 2009 GPCB granted a consolidated consent and authorisation to the manufacturing unit of the Appellant;

(e) On 11 June 2010 and 26 June 2012, GPCB amended the consolidated consent and authorisation granted to the Appellant on 13 April 2009;

(f) On 30 May 2011, GPCB granted consent to set up a gas-based power generation plant having a capacity of 400 KW at the manufacturing unit of the Appellant;

(g) On 2 November 2013, GPCB granted a fresh consolidated consent and authorisation to the manufacturing unit of the Appellant; and

(h) On 25 January 2019 and 25 October 2019, GPCB granted a fresh and revised consolidated consent and authorisation, respectively for an increase in the number of products permitted to be manufactured at the manufacturing unit of the Appellant.

16. Appearing for the first and second Respondents, Mr. Siddharth Seem, learned Counsel has urged the following submissions before this Court:

(i) The circular dated 14 May 2002 is illegal because environmental jurisprudence does not recognise any concept of *ex post facto* clearances. Any *ex post facto* approval is void and the benefit of the circular cannot be given to such an industry. In this regard, reliance was placed upon the decision of this Court in **Common Cause** v. **Union of India** MANU/SC/0930/2017 : (2017) 9 SCC 499;

(ii) The circular dated 14 May 2002 does not mention its source or authority of law. The source of the circular is not traceable to Section 3 of the Environment Protection Act 1986 because the circular does not protect or improve the quality of the environment. The circular allows defaulters to get *ex post facto* clearances and does not encourage compliance with the law;

(iii) The Comprehensive Environmental Pollution Index report by the Central Pollution Control Board indicates that the air, water and soil parameters in and around the industrial area of Ankleshwar in the State of Gujarat, where the three industrial units are located, are among the most critical in India: and

(iv) Even if this Court were to hold that the closure of the industries should not be ordered, compensation should be directed to be paid by them for restoration of the environment. These industries have brazenly operated for years without environmental clearances.

17. The rival submissions fall for our consideration.

18. We first address the challenge to the jurisdiction of the NGT to strike down Rules or Regulations made under the Environment Protection Act 1986. In **Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd.**[14] ("Sterlite") this Court analysed the adjudicatory functions which have been entrusted to the NGT under the National Green Tribunal Act 2010[15]. Justice R F Nariman, speaking for a two judge Bench held that while exercising its jurisdiction Under Section 16, the NGT cannot strike down Rules or Regulations made under the Environment Protection Act 1986. In coming

to this conclusion, the Court relied on the decision in **Bharat Sanchar Nigam Limited v. Telecom Regulatory Authority of India** MANU/SC/1264/2013 : (2014) 3 SCC 222, where the appellate power contained in Section 14 of the Telecom Regulatory Authority of India Act[16] 1997 was interpreted. After adverting to this decision, Justice R F Nariman concluded that:

> **53.**..the NGT has no general power of judicial review akin to that vested Under Article 226 of the Constitution of India possessed by the High Courts of this country.

19. While placing reliance on the above decision, Mr. ANS Nadkarni, learned Additional Solicitor General made an attempt to demonstrate that the power to issue the circular dated 14 May 2002 that extended the deadline for defaulting units to avail of an *ex post facto* clearance until 30 March 2003 could well be traceable to Section 3 of the Environment Protection Act 1986. Section 3, to the extent relevant, provides thus:

> Section 3. Power of central government to take measures to protect and improve environment.- (1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.

20. Section 3(1) is an enabling provision for the Central Government to undertake all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. This limb of the submission of the Additional Solicitor General is crucial to the issue as to whether the NGT has exceeded its jurisdiction since the decision in **Sterlite** holds that the NGT, while exercising its appellate jurisdiction, "cannot strike down Rules or Regulations made **under this Act**". In the present case, to demonstrate that the NGT did not have the jurisdiction to strike down the circular dated 14 May 2002, it was urged that the circular was issued by the MoEF pursuant to its powers Under Section 3 of the Environment Protection Act 1986. There is an inherent difficulty in accepting the submission. Before this Court, the Union of India has not pleaded the case that the circular dated 14 May 2002 is a measure which is traceable to the provisions of Section 3. On the contrary, in its pleadings the Union of India construed it as a "purely administrative decision". Ground (iii) in paragraph 3 of the memo of appeal states the position of the Union government:

> Because the Hon'ble Tribunal failed to appreciate that after the EIA, Notification 1994 the opportunity to seek ex-post facto environmental clearance was given to industries in background of far reaching impact in terms of direct loss of livelihood in the employees working in the units which also supply inputs to other units and their indirect employment. **It was submitted to the Hon'ble High Court of Gujarat that issuance of circular dated 14/05/2002, based on which environmental clearance was given, was purely an administrative decision before taking stringent action.**

21. The omission in the appeal to make any attempt to sustain the circular dated 14 May 2002 with reference to the provisions of Section 3 of the Environment Protection Act 1986 is significant. For an action of the Central government to be treated as a measure referable to Section 3 it must satisfy the statutory requirement of being necessary or expedient "for the purpose of protecting and improving the quality of the

environment and preventing, controlling and abating environment pollution". The circular dated 14 May 2002 in fact does quite the contrary. It purported to allow an extension of time for industrial units to comply with the requirement of an EC. The EIA notification dated 27 January 1994 mandated that an EC has to be obtained before embarking on a new project or expanding or modernising an existing one. The EIA notification of 1994 has been issued under the provisions of the Environment Protection Act 1986 and the Environment Protection Rules 1986, with the object of imposing restrictions and prohibitions on setting up of new projects or expansion or modernisation of existing project. The measures are based on the precautionary principle and aim to protect the interests of the environment. The circular dated 14 May 2002 allowed defaulting industrial units who had commenced activities without an EC to cure the default by an *ex post facto* clearance. Being an administrative decision, it is beyond the scope of Section 3 and cannot be said to be a measure for the purpose of protecting and improving the quality of the environment. The circular notes that there were defaulting units which had failed to comply with the requirement of obtaining an EC as mandated. The circular provided for an extension of time and inexplicably introduced the notion of an *ex post facto* clearance. In effect, it impacted the obligation of the industrial units to be in compliance with the law. The concept of *ex post facto* clearance is fundamentally at odds with the EIA notification dated 27 January 1994. The EIA notification of 1994 contained a stipulation that any expansion or modernisation of an activity or setting up of a new project listed in Schedule - I "shall not be undertaken in any part of India unless it has been accorded environmental clearance". The language of the notification is as clear as it can be to indicate that the requirement is of a prior EC. A mandatory provision requires complete compliance. The words "shall not be undertaken" read in conjunction with the expression "unless" can only have one meaning: before undertaking a new project or expanding or modernising an existing one, an EC must be obtained. When the EIA notification of 1994 mandates a prior EC, it proscribes a post activity approval or an *ex post facto* permission. What is sought to be achieved by the administrative circular dated 14 May 2002 is contrary to the statutory notification dated 27 January 1994. The circular dated 14 May 2002 does not stipulate how the detrimental effects on the environment would be taken care of if the project proponent is granted an *ex post facto* EC. The EIA notification of 1994 mandates a prior environmental clearance. The circular substantially amends or alters the application of the EIA notification of 1994. The mandate of not commencing a new project or expanding or modernising an existing one unless an environmental clearance has been obtained stands diluted and is rendered ineffective by the issuance of the administrative circular dated 14 May 2002. This discussion leads us to the conclusion that the administrative circular is not a measure protected by Section 3. Hence there was no jurisdictional bar on the NGT to enquire into its legitimacy or vires. Moreover, the administrative circular is contrary to the EIA Notification 1994 which has a statutory character. The circular is unsustainable in law.

22. Mr. Kapil Sibal, learned Senior Counsel appearing on behalf of Alembic Pharmaceuticals Limited sought to urge that the EIA notification dated 27 January 1994 contains an omission of the expression "prior" and contrasted this with the EIA notification dated 14 September 2006 which stipulates the requirement of a "prior" EC. This, in his submission is an indicator that a prior EC is mandatory under the notification dated 14 September 2006 but was not so under the earlier notification dated 27 January 1994. This interpretation was not supported by Mr. ANS Nadkarni, learned Additional Solicitor General who categorically submitted that the requirement under the notification dated 27 January 1994 was of a prior EC. We are unable to accept the submission of Mr. Kapil Sibal. The terms of the EIA notification dated 27 January 1994 leave no manner of doubt that a prior EC was mandated before a new project was

commenced or before undertaking any expansion or modernisation of an existing project. The absence of the expression "prior" in the EIA notification dated 27 January 1994 makes no difference since the words "shall not be undertaken...unless" postulate the requirement of a prior EC. Speaking for a two judge Bench of this Court in **Common Cause** v. **Union of India** MANU/SC/0930/2017 : (2017) 9 SCC 499 (**"Common Cause"**), Justice Madan B Lokur rejected the submission which was urged on behalf of mining leaseholders that:

> **108.**.. the possibility of getting an *ex post facto* EC was a signal to the mining leaseholders that obtaining an EC was not mandatory or that it if was not obtained, the default was retrospectively condonable.

Disagreeing with the submission, the Court held:

> **125.** We are not in agreement with the learned Counsel for the mining leaseholders. **There is no doubt that the grant of an EC cannot be taken as a mechanical exercise. It can only be granted after due diligence and reasonable care since damage to the environment can have a long-term impact. EIA 1994 is therefore very clear that if expansion or modernisation of any mining activity exceeds the existing pollution load, a prior EC is necessary and as already held by this Court in *M.C. Mehta* [*M.C. Mehta* v. *Union of India*,** MANU/SC/0247/2004 : (2004) 12 SCC 118**] even for the renewal of a mining lease where there is no expansion or modernisation of any activity, a prior EC is necessary. Such importance having been given to an EC, the grant of an *ex post facto* environmental clearance would be detrimental to the environment and could lead to irreparable degradation of the environment. The concept of an *ex post facto* or a retrospective EC is completely alien to environmental jurisprudence including EIA 1994 and EIA 2006**. We make it clear that an EC will come into force not earlier than the date of its grant.

23. The concept of an *ex post facto* EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994. It is, as the judgment in **Common Cause** holds, detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an *ex post facto* clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC can be issued only after various stages of the decision-making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an *ex post facto* clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an *ex post facto* clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development.

24. In order to enable the Court to assess the status of compliance, the material which has been produced on the record by (i) Alembic Pharmaceuticals Limited; (ii) United

Phosphorous Limited; and (iii) Unique Chemicals Limited has been compiled in a tabulated form for each of the three industries. For Alembic Pharmaceuticals Limited, the data for its two industrial units-Darshak Private Limited (API - I) and Nirayu Private Limited (API - II) - has been analysed separately. For each of the three industries, Table A below consists of the list of permissions, consents and authorisations obtained by the industry from various authorities. Table B contains a list of ECs which were granted from time to time to each industrial unit. The position as tabulated below is based on the material which has been disclosed on the record of these proceedings:

Table A: List of permissions, consents and authorisations granted to Alembic Pharmaceuticals Limited	
Darshak (API–I)	
Date	**Permission/Consent/Authorisation Granted**
17 July 1992	GPCB issued a no objection certificate to establish an industrial unit for the manufacture of the following items at API–I: (i) Ciprofloxacin (1.25 MT pm); and (ii) Norfloxacin (2.5 MT pm)
11June 1997	GPCB granted no objection certificate for manufacturing additional items at API–I
29 May 1997	GPCB issued air consent order authorising to operate API–I
11 July 1997, 12 July 1997 and 27 July 1998	GPCB granted no objection certificate for manufacturing of additional items at API–I
31 March 1999	GPCB issued air consent order authorising to operate API–I
11 October 1999	GPCB issued water consent order authorising to operate AP–I
Between 27 September 2002 – 23 December 2011	GPCB issued various consents under the Air Act, Water Act and Hazardous Waste Rules.
Nirayu Private Limited (API–II)	
Date	**Permission/Consent/Authorisation Granted**
12 July 1984	Factory license was issued in favour of Nirayu Private Limited
24 May 1985	GPCB issued water consent order authorising to operate API–II
9 October 1991	GPCB issued a site clearance certificate to establish an industrial unit and manufacture the following items at API–II: (i) CIMC chloride (2000 kgs pm); and (ii) Cloxacillin sodium (500 kgs pm)
12 May 1993	GPCB granted a no objection certificate to establish an industrial unit and manufacture the following items: (i) Acetone thiosemicarbazone (2 MT pm); (ii) 2 Mercapta (5 MT pm); (iii) Methoxy orthoxymethyl chloride (0.3 MT pm); and (iv) Solvent ether (7 MT pm)
1 September 1993	GPCB issued authorisation to operate API–II under the Hazardous Waste Rules
23 September 1993	GPCB issued water consent order authorising to operate API–II
4 December 1995	GPCB granted no objection certificate for manufacturing additional items at API–II
4 October 1996 and 17 April 1998	GPCB issued air consent order to operate API–II
1 September 1999	GPCB granted consolidated consent and authorisation to operate API–II
12 November 1999	GPCB issued water consent order to operate API–II
14 December 2001	GPCB issued authorisation to operate API–II under the Hazardous Waste Rules
Between 27 September 2002 – 6 January 2015	GPCB issued various consents under the Air Act, Water Act and Hazardous Waste Rules.

Table B: List of environmental clearances granted to Alembic Pharmaceuticals Limited			
Darshak (API–I)			
Date of Application	**Date of Public Hearing**	**EC for Expansion (Quantity)**	**Date EC Granted**
21 July 2001	30 January 2002	Manufacturing of various bulk drugs and intermediate products with a total capacity of 15 MT pm	14 May 2003 as per the 1994 EIA notification
8 December 2006	9 October 2007	Expansion of total capacity of bulk drugs from 15 to 25 MT pm	16 April 2008 as per the 2006 EIA notification
16 September 2015	12 June 2015	Expansion of total capacity of active pharmaceutical ingredients from 25 to 75 MT pm	31 January 2017 as per the 2006 EIA notification
Nirayu Private Limited (API–II)			
Date of Application	**Date of Public Hearing**	**EC for Expansion (Quantity)**	**Date EC Granted**
20 July 2001	30 January 2002	Manufacturing of various bulk drugs and intermediate products with a total capacity of 47 MT pm	14 May 2003 as per the 1994 EIA notification
28 March 2016	12 June 2015	Expansion of total capacity of active pharmaceutical ingredients and intermediates from 47 to 300 MT pm	20 December 2016 as per the 2006 EIA notification

Table A: List of permissions, consents and authorisations granted to United Phosphorus Limited	
Unit no 2 - Plot no 3405 and 3406	
Date	**Permission/Consent/Authorisation Granted**
31 January 1992	Gujarat Industrial Development Corporation granted land to the appellant to establish and run unit no 2
9 March 1992	GPCB issued no objection certificate for operation of unit no 2 in relation to manufacturing of various products
3 October 1992	GPCB issued no objection certificate to set up a unit to manufacture the following items at unit no 2: (i) Carbendazim; (ii) Quinalphos; and (iii) Paraquat
1993	Unit no 2 commenced manufacturing activities
17 November 1995	GPCB granted no objection certificate for expansion of unit no 2 for manufacturing of two additional products – Phorate and Terbuphose (300 MT pm combined)
2 April 1996	GPCB granted no objection certificate for expansion of unit no 2 for the manufacture of Acephate (80 MT per month)
27 August 2009	GPCB granted a consolidated consent and authorisation to unit no 2
25 July 2012	GPCB issued consent to establish (NOC) for expansion of unit no 2
11 May 2015 and 27 April 2017	GPCB granted a consolidated consent and authorisation for the expanded operations

Table B: List of environmental clearances granted to United Phosphorus Limited Unit no 2 - Plot no 3405 and 3406			
Date of Application	**Date of Public Hearing**	**EC for Expansion (Quantity)**	**Date EC Granted**
21 August 2002	16 January 2002	Manufacturing of Phorate and Terbuphose (300 MT pm combined) and Acephate (80 MT per month)	17 July 2003 as per EIA notification of 1994
20 October 2007	-	Expansion of pesticides and intermediate products. - Production of Phorate and Terbuphose to be increased to 500 MT pm combined - Production of Acephate to be increased to 1000 MT pm	April 15 2008 as per EIA notification of 2006
-	-	Enhanced capacity of 9546 MT per month (as per written submissions)	10 January 2020 as per EIA notification of 2006

Table A: List of permissions, consents and authorisations granted to Unique Chemicals Limited Unit at plot no 5	
Date	**Permission/Consent/Authorisation Granted**
14 August 1995	GPCB issued a no objection certificate to establish and run a unit (site clearance) at plot no 5
30 September 1995	GPCB issued air consent order authorising to operate unit at plot no 5
25 December 1995	GPCB issued a no objection certificate to set up and manufacture the following items at the unit at plot no 5: (i) Dichlotofenance sodium (6 MT pm); (ii) Nifedipine (2 MT pm); (iii) Indolinone (6.9 MT pm); and (iv) Pefloxacin (3 MT pm)
9 January 1996	GPCB issued authorisation under the Hazardous Waste Rules
16 April 1996	GPCB issued water consent order authorising to operate unit at plot no 5
24 April 1996	Unit at plot no 5 commenced manufacturing activities
15 April 2009	GPCB granted a consolidated consent and authorisation to the unit at plot no 5
11 June 2010 and 26 June 2012	GPCB amended the consolidated consent and authorisation to the unit at plot no 5 granted on 15 April 2009
30 May 2011	GPCB granted no objection certificate to set up a gas-based power generation plant of a capacity of 400 KW at the unit at plot no 5
2 November 2013	GPCB granted a fresh consolidated consent and authorisation to the unit at plot no 5 for manufacturing of bulk drugs and intermediates
1 July 2016	The appellant was certified as a zero liquid discharge unit
25 January 2019	GPCB granted a new consolidated consent and authorisation to the unit at plot no 5
25 October 2019	GPCB issued a revised consolidated consent and authorisation for increase in the number of products that were permitted to be manufactured at the unit at plot no 5

Table B: List of environmental clearances granted to Unique Chemicals Limited Unit at plot no 5			
Date of Application	**Date of Public Hearing**	**EC for Expansion (Quantity)**	**Date EC Granted**
30 June 2001	25 January 2002	Total capacity 78.02 MT pm of bulk drugs and intermediates. Manufacturing of (i) Diclofenac sodium intermediates and derivates (40 MT pm); (ii) Nifedipine and its intermediates (2 MT pm); (iii) Indelinone (7 MT pm); (iv) Pefloxacin and its intermediates (3 MT pm); (v) 2 methyl imldazole (15 MT pm); (vi) Phentolamine HCL (10 MT pm); (vii) Diltazem HCL (1 MT pm); and (viii) other co-products	23 December 2002 as per EIA notification 1994
12 January 2007	Exempt – proposed project located in notified industrial area	For an increase in manufacturing of bulk drugs and intermediates from a total capacity from 78.02 MT pm to 116.12 MT pm For an increase in manufacturing of co-products from a total capacity of 103 MT pm to 297 MT pm For setting up a captive power plant with 1.3 MW capacity	8 August 2007 as per EIA notification 2006
16 March 2018	Exempt – proposed project located in notified industrial area	For an increase in manufacturing of bulk drugs and intermediates from a total capacity from 78.02 MT pm to 290 MT pm by setting up of synthetic organic chemicals manufacturing plant	30 June 2018 as per EIA notification 2006
		Amendment to the EC dated 30 June 2018 increasing the number of products permitted to be manufactured by the appellant at the unit at plot no 5	10 April 2019 as per the 2006 EIA notification

25. The position that emerges from the record is that in the case of all the three industries, ECs were applied for nearly a decade after the introduction of the EIA notification 1994. In the meantime, the industries had been set up and had commenced production. GPCB issued a notice to United Phosphorus Limited on 30 April 2001 directing them to apply for an EC. On 9 December 2000, GPCB issued a notice to Darshak Private Limited (API - I) and Nirayu Private Limited (API - II) directing them to apply for and obtain an EC in accordance with the EIA notification of 1994. Darshak Private Limited (API - I) of Alembic Pharmaceuticals Limited, applied for an EC on 21 July 2001 which it was granted on 14 May 2003. Subsequent applications for expansion of capacity were submitted on 8 December 2006 and 16 September 2015 for which ECs were granted on 16 April 2008 and 31 January 2017, respectively. Nirayu Private Limited (API - II), initially applied for an EC on 20 July 2001 and the EC was granted on 14 May 2003. The application for the grant of an EC for an extended capacity was submitted on 28 March 2016 and the EC was granted on 20 December 2016. In the case of United Phosphorous Limited, the initial EC was sought on 21 August 2002 and it was granted on 17 July 2003. An application for expansion of capacity was submitted on 20 October 2007 and it was granted on 15 April 2008. An EC for the further expansion of capacity was granted on 10 January 2020. In the case of Unique Chemicals Limited, the initial application for an EC was submitted on 30 June 2001 and it was granted on 23 December 2002. Subsequent applications for expansion in capacity were submitted on 12 January 2007 and 16 March 2018 for which ECs were granted on 8 August 2017 and

30 June 2018, respectively. An amendment to the EC dated 30 June 2018 was granted on 10 April 2019. The documents disclosed by the three industries demonstrate that no ECs as mandated by the EIA notification of 1994 were sought before the commencement or expansion of operations. The terms of the EIA notification of 1994 envisage that expansion or modernisation of any activity (if the pollution load is to exceed the existing one) or a new project listed in Schedule - I shall not be undertaken unless it has been granted an EC. In the present case, all the three industries continued to operate in the teeth of the EIA notification 1994.

26. Learned Counsel appearing for the three industries have relied on a range of additional measures adopted, such as the installation of latest pollution capturing technologies, recent consents from GPCB and certification of "zero discharge" units. These measures adopted subsequently will not cure the failure to obtain ECs before the projects commenced operation. These measures are simply to ensure compliance with the pollution standards and requirements of law that exist as of date. These submissions have no bearing on determining whether the industrial units were in the past operating in compliance with the requisite environmental standards. These measures cannot act as correctives for historical wrongs and cannot compensate for the damage already caused to the environment as a result of manufacturing activities which were carried on without ECs.

27. Learned Counsel for the three industries urged that the EIA notification of 1994 did not apply to their manufacturing units as they were covered by the exemption in terms of Clause 8 of the explanatory note. The issue which needs to be considered is whether the industries were covered by the exemption and were not required to obtain ECs. Clause 8 to the explanatory note to the EIA notification of 1994 states thus:

> **8.** Exemption for projects already initiated
>
> For projects listed in Schedule - I to the notification in respect of which the required land has been acquired and all relevant clearances of the State Government including NOC from the respective State Pollution Control Board have been obtained before 27th January 1994, a project proponent will not be required to seek environmental clearance from the IAA. However, those units who have not as yet commenced production will inform the IAA

28. Before the exemption contained in Clause 8 applies, it was necessary for projects listed in Schedule-I to obtain all relevant clearances from the State government including an NOC from the State Pollution Control Board. It was in other words not sufficient to merely obtain an NOC from the State Pollution Control Board. The exemption which was carved out in the explanatory note was to ensure that activities which had received all required clearances at the state level, following the acquisition of land should be protected. In fact, many of them would also involve the commencement of production prior to 27 January 1994. The explanatory note stated that where production had not yet commenced, the IAA would have to be intimated. In order to be covered within the scope of the exemption, the burden is on the industry to demonstrate before this Court that they fulfilled conditions spelt out in Clause 8 of the explanatory note. The EIA notification 1994 is a significant instrument in effectuating the implementation of the precautionary principle. The burden lies on the project proponent who seeks to alter the state of the environment or to impact on the environment to demonstrate that the terms on which an exemption has been granted have been fulfilled. An exemption must be construed in its strict sense according to its plain terms. None of the three industries before the Court have furnished an exhaustive

catalogue of what were the "relevant clearances from the State government" that had to be obtained under the provisions of the law as it then stood.

29. With this background, we will now assess individually whether the industries in question qualified for the exemption provided by Clause 8 to the explanatory note.

30. Alembic Pharmaceuticals Limited

(i) Darshak Private Limited (API-I)

The material produced on the record indicates that on 17 July 1992, GPCB had issued an NOC to establish an industrial unit and manufacture two pharmaceuticals products. However, the NOC for manufacturing additional items was issued only on 11 June 1997 subsequent to the EIA notification dated 27 January 1994. The NOC dated 17 July 1992 issued by GPCB clearly states:

> We would like to inform you that the proposed location for this industrial plant is acceptable to us **provided that you will implement the following measure for the prevention and control of environmental pollution:**
>
> (A)
>
> (B)
>
> (C)
>
> (D) Adequate arrangement for the management and handling of hazardous waste shall be made:
>
> **IMPORTANT NOTE**
>
> (1)
>
> (2)
>
> (3) The applicant/entrepreneur **shall be required to obtain the following from the Board prior to commencement of production:**
>
> (a) Consent under the Water (Prevention and Control of Pollution) Act 1974.
>
> (b) Consent under the Air (Prevention and Control of Pollution) Act 1981.
>
> (c) Authorisation under the Hazardous Waste (Management and Handling) Rules 1989 under the Environment (Protection) Act 1986.

GPCB while granting the NOC to establish an industrial unit required the project proponent to undertake certain measures for the prevention and control of environmental pollution including installation of treatment plants, discharge of effluents within prescribed limits and the creation of a green belt around the industrial unit. One of the points under the "Important Note" states that the project proponent "shall be required to obtain" from the board "prior to commencement of production" requisite

consents and authorisations under the Air Act, Water Act and Hazardous Waste Rules. The language used in the NOC makes it clear that obtaining consents and authorisations under various environment related legislations was a mandatory pre-condition and not merely directory. In the present case, the authorisation under the Air Act was issued only on 29 May 1997 and 31 March 1999. The authorisation under the Water Act was issued on 11 October 1999. Clause 8 of the explanatory note states that for the exemption to apply, it was necessary for projects listed in Schedule-I to have obtained all relevant clearances from the State government including an NOC from the State Pollution Control Board. The evidence produced on the record by Darshak Private Limited indicates that it did not have the requisite consents and authorisations under the Air Act, Water Act and Hazardous Waste Rules prior to the EIA notification 1994. Many of the consents and permissions were obtained subsequently and not prior to the EIA notification of 1994. Accordingly, the manufacturing unit of Darshak Private Limited (API - I) is not covered under the exemption under Clause 8 to the explanatory note of the EIA notification of 1994.

(ii) Nirayu Private Limited (API - II)

A factory license was issued on 12 July 1984 to API - II. On 24 May 1985, GPCB issuec a water consent order under the Water Act. This was valid only for the manufacture of anaesthetic Ether. GPCB issued a site clearance certificate on 9 October 1991 for the manufacture of CIMC Chloride and Cloxacillin Sodium. An NOC to establish an industrial unit and to manufacture products was issued on 12 May 1993 and one for expansion on 4 December 1995. It is relevant to note that the NOC dated 12 May 1993 issued by GPCB to Nirayu Private Limited (API - II) is worded in exactly the same manner as the NOC dated 17 July 1992 issued to Darshak Private Limited (API - I). The NOC dated 12 May 1993 issued to Nirayu Private Limited (API - II) also mandates that the project proponent "shall be required to obtain" from the board "prior to commencement of production" requisite consents and authorisations under the Air Act, Water Act and Hazardous Waste Rules from GPCB. In the case of Nirayu Private Limited (API - II), authorisation under the Hazardous Waste Rules was issued on 1 September 1993. Consent to operate API - II under the Water Act was issued on12 November 1999. GPCB issued consolidate consent and authorisation to operate API - II on 14 December 2010. From the above narration which is based on the disclosures made by Nirayu Private Limited, it is evident that all consents and permissions had not been obtained prior to the EIA notification of 1994. Accordingly, the manufacturing unit of Nirayu Private Limited (API - II) is not covered under the exemption under Clause 8 to the explanatory note of the EIA notification of 1994.

31. United Phosphorous Limited

On 31 January 1992, Gujarat Industrial Development Corporation granted land to the Appellant to establish and run its unit. On 9 March 1992 and 3 October 1992, GPCB issued an NOC for the operation of the unit. The unit commenced manufacturing in 1993. It is relevant to note that the NOC dated 3 October 1993 also mandates that the project proponent "shall be required to obtain" from the GPCB "prior to commencement of production" requisite consents and authorisations under the Air Act, Water Act and Hazardous Waste Rules. United Phosphorous Limited has not disclosed the dates on which it received authorisations under the relevant environmental legislation. It has placed on record a consolidated consent and authorisation that was issued much later on 27 August 2009 under the Air Act, Water Act and Hazardous Waste (Management, Handling and Trans boundary Movement) Rules 2008. The disclosures which have been made are patently incomplete. No material has been produced to indicate that all

relevant clearances from the State government including the NOC from GPCB had been obtained prior to the EIA notification 1994. Accordingly, they cannot be granted the benefit of the exemption under Clause 8 to the explanatory note of the EIA notification of 1994.

32. Unique Chemicals Limited

The material produced on the record indicates that GPCB issued an NOC to establish and run the manufacturing unit on 14 August 1995. It is evident from the table enlisting the list of relevant permissions, consents and authorisations that all permissions were received after the EIA notification 1994 was issued. Clearly, Unique Chemicals Limited is not entitled to the benefit of the exemption contained in Clause 8 of the explanatory note to the EIA notification 1994.

33. From the material placed on the record by the industries, it becomes evident that there has been a gross abdication of responsibility by all the three industries in terms of obtaining timely consents and authorisations from the GPCB. There exists a distinction between obtaining relevant clearances and consents from the State Pollution Control Board and obtaining an environmental clearance in accordance with the procedure laid down under the EIA notification of 1994. A consent order issued by the State Pollution Control Board allows an industry to operate within the prescribed emission norms. However, the consent orders do not account for the social cost and impact of undertaking an industrial activity on the environment and its surroundings. A holistic analysis of the environmental impact of an industrial activity is only accounted for once all the steps listed out in EIA notification of 1994 are followed. The purpose of setting in place specific requirements such as public hearing, screening, scoping and appraisal is to foster deliberative decisions and protect environmental concerns. The detailed process listed out in the EIA notification of 1994 for obtaining an EC allows for minimising the adverse environmental impact of any industrial activity and improving the quality of the environment. One must adopt an ecologically rational outlook towards development. Given the social and environmental impacts of an industrial activity, environment compliance must not be seen as an obstacle to development but as a measure towards achieving sustainable development and inter-generational equity.

34. We have therefore come to the conclusion that none of the three industries were entitled to the benefit of the exemption contained in Clause 8 of the explanatory note to the EIA notification of 1994.

35. The issue which must now concern the Court is the consequence which will emanate from the failure of the three industries to obtain their ECs until 14 May 2003 in the case of Alembic Pharmaceuticals Limited, 17 July 2003 in the case of United Phosphorous Limited, and 23 December 2002 in the case of Unique Chemicals Limited. The functioning of the factories of all three industries without a valid EC would have had an adverse impact on the environment, ecology and biodiversity in the area where they are located. The Comprehensive Environmental Pollution Index[17] report issued by the Central Pollution Control Board for 2009-2010 describes the environmental quality at 88 locations across the country. Ankleshwar in the State of Gujarat, where the three industries are located showed critical levels of pollution[18]. In the Interim Assessment of CEPI for 2011, the report indicates similar critical figures[19] of pollution in the Ankleshwar area. The CEPI scores for 2013[20] and 2018[21] were also significantly high. This is an indication that industrial units have been operating in an unregulated manner and in defiance of the law. Some of the environmental damage caused by the operation

of the industrial units would be irreversible. However, to the extent possible some of the damage can be corrected by undertaking measures to protect and conserve the environment.

36. Even though it is not possible to individually determine the exact extent of the damage caused to the environment by the three industries, several circumstances must weigh with the Court in determining the appropriate measure of restitution. First, it is not in dispute that all the three industries did obtain ECs, though this was several years after the EIA notification of 1994 and the commencement of production. Second, subsequent to the grant of the ECs, the manufacturing units of all the three industries have also obtained ECs for an expansion of capacity from time to time. Third, the MoEF had issued a circular on 5 November 1998 permitting applications for ECs to be filed by 31 March 1999, which was extended subsequently to 30 June 2001. On 14 May 2002, the deadline was extended until 31 March 2003 subject to a deposit commensurate to the investment made. The circulars issued by the MoEF extending time for obtaining ECs came to the notice of this Court in **Goa Foundation (I)** v. **Union of India** MANU/SC/0140/2005 : (2005) 11 SCC 559. Fourth, though in the context of the facts of the case, this Court in **Lafarge Umiam Mining Private Limited** v. **Union of India** MANU/SC/0735/2011 : (2011) 7 SCC 338 ("**Lafarge**") has upheld the decision to grant *ex post facto* clearances with respect to limestone mining projects in the State of Meghalaya. In **Lafarge**, the Court dealt with the question of whether *ex post facto* clearances stood vitiated by alleged suppression of the nature of the land by the project proponent and whether there was non-application of mind by the MoEF while granting the clearances. While upholding the *ex post facto* clearances, the Court held that the native tribals were involved in the decision-making process and that the MoEF had adopted a due diligence approach in reassuring itself through reports regarding the environmental impact of the project. Chief Justice SH Kapadia speaking for the three judge Bench observed:

> **119. The time has come for us to apply the constitutional "doctrine of proportionality" to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices.** In the circumstances, barring exceptions, decisions relating to utilization of natural resources have to be tested on the anvil of the well-recognized principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of "margin of appreciation" in favour of the decision-maker would come into play.

37. After adverting to the decision in **Lafarge**, another Bench of three learned judges of this Court in **Electrotherm (India) Limited** v. **Patel Vipulkumar Ramjibhai** MANU/SC/0850/2016 : (2016) 9 SCC 300, dealt with the issue of whether an EC granted for expansion to the Appellant without holding a public hearing was valid in

law. Justice Uday Umesh Lalit speaking for the Bench held thus:

> **19.**..the decision-making process in doing away with or in granting exemption from public consultation/public hearing, was not based on correct principles and as such the decision was invalid and improper.

The Court while deciding the consequence of granting an EC without public hearing did not direct closure of the Appellant's unit and instead held thus:

> **20.** At the same time, we cannot lose sight of the fact that in pursuance of environmental clearance dated 27-1-2010, the expansion of the project has been undertaken and as reported by Code of Civil Procedure B in its affidavit filed on 7-7-2014, most of the recommendations made by Code of Civil Procedure B are complied with. In our considered view, the interest of justice would be subserved if that part of the decision exempting public consultation/public hearing is set aside and the matter is relegated back to the authorities concerned to effectuate public consultation/public hearing. **However, since the expansion has been undertaken and the industry has been functioning, we do not deem it appropriate to order closure of the entire plant as directed by the High Court.** If the public consultation/public hearing results in a negative mandate against the expansion of the project, the authorities would do well to direct and ensure scaling down of the activities to the level that was permitted by environmental clearance dated 20-2-2008. If public consultation/public hearing reflects in favour of the expansion of the project, environmental clearance dated 27-1-2010 would hold good and be fully operative. **In other words, at this length of time when the expansion has already been undertaken, in the peculiar facts of this case and in order to meet ends of justice, we deem it appropriate to change the nature of requirement of public consultation/public hearing from pre-decisional to post-decisional. The public consultation/public hearing shall be organised by the authorities concerned in three months from today.**

38. Guided by the precepts that emerge from the above decisions, this Court has taken note of the fact that though the three industries operated without an EC for several years after the EIA notification of 1994, each of them had subsequently received ECs including amended ECs for expansion of existing capacities. These ECs have been operational since 14 May 2003 (in the case of Alembic Pharmaceuticals Limited), 17 July 2003 (in the case of United Phosphorous Limited), and 23 December 2002 (in the case of Unique Chemicals Limited). In addition, all the three units have made infrastructural investments and employed significant numbers of workers in their industrial units.

39. In this backdrop, this Court must take a balanced approach which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord with the principle of proportionality. At the same time, the Court cannot be oblivious to the environmental degradation caused by all three industries units that operated without valid ECs. The three industries have evaded the legally binding regime of obtaining ECs. They cannot escape the liability incurred on account of such non-compliance. Penalties must be imposed for the disobedience with a binding legal regime. The breach by the industries cannot be left unattended by legal consequences. The amount should be used for the purpose of restitution and restoration of the environment. Instead and in place of the directions

issued by the NGT, we are of the view that it would be in the interests of justice to direct the three industries to deposit compensation quantified at ' 10 crores each. The amount shall be deposited with GPCB and it shall be duly utilised for restoration and remedial measures to improve the quality of the environment in the industrial area in which the industries operate. Though we have come to the conclusion, for the reasons indicated, that the direction for the revocation of the ECs and the closure of the industries was not warranted, we have issued the order for payment of compensation as a facet of preserving the environment in accordance with the precautionary principle. These directions are issued Under Article 142 of the Constitution. Alembic Pharmaceuticals Limited, United Phosphorous Limited and Unique Chemicals Limited shall deposit the amount of compensation with GPCB within a period of four months from the date of receipt of the certified copy of this judgment. This deposit shall be in addition to the amount directed by the NGT. Subject to the deposit of the aforesaid amount and for the reasons indicated, we allow the appeals and set aside the impugned judgment of the NGT dated 8 January 2016 in so far as it directed the revocation of the ECs and closure of the industries as well as the order in review dated 17 May 2016.

Pending application(s), if any, shall stand disposed of.

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[1]"NGT"

[2]"MoEF"

[3]Civil Appeal No. 1526 of 2016 (Alembic Pharmaceuticals Limited); Civil Appeal No. 3175 of 2016 (United Phosphorus Limited); Civil Appeal Nos. 6604-6605 of 2016 (Unique Chemicals); and Civil Appeal No. 42756 of 2016 (Union of India)

[4]"EIA"

[5]"EC"

[6]"Environment Protection Act 1986"

[7]"GPCB"

[8]"Environment Protection Rules"

[9]Which was (substituted on 4 May 1994)

[10]"NOC"

[11]"Air Act"

[12]"Water Act"

[13]"Hazardous Waste Rules"

[14]2019 SCC Online SC 221/Civil Appeal Nos. 4763-4764 of 2013

[15]"NGT Act"

[16]"TRAI Act"

[17]"CEPI"

[18]CEPI score - 88.50

[19]CEPI score - 85.75

[20]CEPI score - 80.93

[21]CEPI score - 80.21

MANU/SC/0444/2019

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IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 12251 of 2018 and 1053 of 2019

Decided On: 29.03.2019

Appellants: **Hanuman Laxman Aroskar and Ors.**
Vs.
Respondent: **Union of India (UOI) and Ors.**

Hon'ble Judges/Coram:
Dr. D.Y. Chandrachud and Hemant Gupta, JJ.

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

Case Category:
APPEAL AGAINST ORDERS OF STATUTORY BODIES - TRIBUNALS

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

Facts:

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

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

Held, while disposing of the appeal

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

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

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

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

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

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

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

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

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

9. The appeal is allowed.[150]

JUDGMENT

Dr. D.Y. Chandrachud, J.

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A Introduction

1. An appeal was filed before the Principal Bench of the National Green Tribunal[1] at New Delhi challenging the grant of an Environmental Clearance[2] for the development of a greenfield international airport at Mopa in Goa. The NGT, by its judgment dated 21 August 2018 came to the conclusion that the present case "is not a case where the project compromises with the environment". While affirming the EC, the NGT came to the conclusion that "further safeguards for environmental protection need to be incorporated". The NGT, accordingly, proceeded to formulate additional conditions, while affirming the grant of the EC.

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

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

(i) A project report prepared by Engineers and Management Associates, Spain in 1997;

(ii) A preliminary technical feasibility study prepared by the Airports Authority of India in May 1998;

(iii) A final feasibility report for the proposed airport at Goa prepared by the International Civil Aviation Organisation, Montreal, Canada in August 2005;

(iv) A Goa dual airport study prepared by the International Civil Aviation Organisation in August 2007;

(v) A report of a Six Member Committee chaired by the Chief Minister of Goa in 2008 to

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

(vi) A document styled as the "Airport Master Plan" dated 10 February 2012, submitted to the Public Private Partnership[3] cell of the Government of Goa by Ammann & Whitney, USA envisaging: "consultancy services for preparation of master plan, preliminary project report, tender document and project management services for the proposed greenfield airport and commercial/industrial and allied development near Mopa in the State of Goa".

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

5. On 14 September 2006, the Government of India in the Ministry of Environment and Forests[4] issued a notification[5] mandating a prior EC for Category 'A' projects (specified in the Schedule) by the Union Government and for Category 'B' projects at the state level by the State Level Environment Impact Assessment Authority[6]. Following the 2006 notification, the MoEF placed an EIA Guidance Manual for Airports[7] in the public domain in February 2010. The stages of scoping, public consultation and appraisal, leading up to the grant of the EC for the proposed airport are governed by the express terms of the 2006 notification.

6. In March 2011, the State of Goa, as the project proponent submitted Form 1 as stipulated in the 2006 notification to the MoEF. On 8 March 2011, the State of Goa applied for Terms of Reference[8] to the MoEF. The ToR were finalized on 11 and 12 May 2011 by the Expert Appraisal Committee[9] constituted under the 2006 notification. On 1 June 2011, the MoEF issued the ToR for the preparation of the Environmental Impact Assessment[10] report. The ToR was valid for a period of two years until 31 May 2013. On 22 November 2012, the Government of Goa revised the project boundary by decreasing the project area from 4,500 acres to 2,271 acres. At its meetings on 28 and 29 January 2013, the EAC recommended an amendment to the ToR as requested by the state government and granted an extension to the validity of the ToR until 31 May 2014. On 19 June 2013, the MoEF communicated its approval for the amendment of the ToR and for the extension of its validity.

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

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

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

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

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

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

9. On 28 October 2015, the MoEFCC, as the regulatory authority under the 2006 notification for Category 'A' projects, communicated its approval for the grant of an EC. Following the grant of the EC, the tender process which had been initiated on 3 October 2014 was concluded on 26 August 2016. Consequent to the opening of the final bids, a technical scrutiny, evaluation coupled with pre-bid meetings, deliberations on the draft concession agreement and other required steps, GMR Goa International Airport Limited[11] was awarded the contract on a revenue sharing of 36.99 percent to the State of Goa. On 8 November 2016, the concession agreement was executed between the Government of Goa and GGIAL for the development and operation of the airport with the concession period of 40 years. Upon financial closure, the three-year period for the construction of the airport commenced on 4 September 2017. The target date for the commissioning of the first phase of the project is 3 September 2020.

10. The grant of the EC was challenged before the Western Zonal Bench of the NGT[12] by the Federation of Rainbow Warriors. Hanuman Laxman Aroskar also filed an appeal[13] before the Western Zonal Bench of the NGT. These appeals were subsequently renumbered[14] before the Principal Bench of the NGT at New Delhi. On 7 November 2017, the NGT issued an ad-interim order restraining the cutting or felling of trees in the area designated as the site of the proposed airport. On 22 November 2017, the order of restraint was modified on the statement of the Advocate General of Goa that the state shall not cut or fell any trees, nor allow it to take place without valid permission from the lawful authority for a fortnight thereafter in order to enable the Appellants to pursue their remedies. On 6 February 2018, the Deputy Conservator of Forests granted permission for felling 21,703 trees at the airport site. The appellate authority under the Goa, Daman and Diu Preservation of Trees Act 1984[15] dismissed the appeal on 7 March 2018.

11. On 8 March 2018, the High Court of Judicature at Bombay at its seat at Goa set aside the order of the Deputy Conservator of Forests and remanded the matter to be heard by the Principal Chief Conservator of Forests. On 2 April 2018, the Principal Chief Conservator of Forests stipulated several conditions for the cutting and the felling of trees at the site of the airport including: (i) enumeration of trees; and (ii) the plantation of ten times the number of trees felled. Upon being moved in a Public Interest Litigation[16], the High Court by its order dated 25 April 2018 allowed the exercise of enumeration to be carried out. As a result, 54,676 trees were enumerated, including the 1,548 trees which had been felled earlier in terms of the order dated 6 February 2018 of the Deputy Conservator of Forests. On 13 January 2018, the High Court issued final directions in the PIL directing the State of Goa to approach the NGT seeking permission for felling and cutting trees. The state was directed to carry out the cutting and felling of trees only after prior permission was granted by the NGT.

12. A Miscellaneous Application[17] was filed by the State of Goa before the NGT on 2 July 2018 seeking permission for the felling of trees. By its judgment dated 21 August 2018, the NGT disposed of both the appeals and the Miscellaneous Application filed by the State of Goa, upholding the EC and imposing additional conditions to safeguard the environment. This Court has been informed that the felling of trees was initiated on 3 September 2018 and completed on 14 January 2019. Assailing the judgment of the NGT, two appeals have been filed before this

Court: one by Hanuman Laxman Aroskar[18] and the other by the Federation of Rainbow Warriors[19].

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

B Submissions

14. We have heard Ms. Anitha Shenoy, learned Counsel appearing on behalf of the Appellants. Mr. K.K. Venugopal, learned Attorney General[20] for India appeared on behalf of the State of Goa. Mr. Atmaram S Nadkarni, learned Additional Solicitor General[21] of India appeared on behalf of the MoEFCC. Mr. Parag P Tripathi, learned Senior Counsel and Ms. Aastha Mehta, learned Counsel appeared on behalf of the Concessionaire.

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

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

> **2.1**.5 Biological environment
>
> Construction phase
>
> Impacts (Significance-Medium)
>
> The area acquired for proposed airport has only few trees, mainly bushes. These will be cleared during site preparation.

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

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

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

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

(ii) There was a concealment of Ecologically Sensitive Zones[22] in the State of Maharashtra. In terms of the Guidance manual, primary data through measures and full surveys; and secondary data from secondary sources have to be collected. Primary data includes the study area within 10 kilometres radius from the Aerodrome Reference Point[23] and covers one season other than the monsoon. Secondary data includes data collected within an aerial distance of 15 kilometres for the parameters which are specifically mentioned in column 9 (III) of Form 1 of the 2006 notification and covers one full year. In the present case, while furnishing details of ESZs falling within an aerial distance of 15 kilometres, the EIA report stipulates that there were none in the State of Maharashtra. The State of Goa has also averred in its counter that there are no ESZs within a radius of 15 kilometres from the ARP and that there are no reserve forests in that radius. After hearings had begun before the NGT, a letter was addressed by the Principal Chief Conservator of Forests on 12 February 2018 to the Director of Civil Aviation stating that a list of reserved forests had been notified Under Section 20 of the Indian Forest Act 1927 in Sawantwadi Forest Division of Sindhudurg district in Maharashtra which was obtained from the working plan of Sawantwadi Forest Division (2014-15 to 2023-24). The letter stated that there was no reserved forest notified Under Section 20 of the Indian Forest Act 1927 in the Sawantwadi Forest Division, within a radius of 15 kilometres from the ARP. On this aspect, it was urged on behalf of the Appellants that restrictions come into force as soon as a notification Under Section 4 of the Indian Forest Act 1927 is issued. Under the Forest Conservation Act 1980, any use of forest land for non-forest purposes requires prior permission of the Union Government, as elaborated in the judgment of this Court in **TN Godavarman Thirumalpad** v. **Union of India** MANU/SC/0278/1997 : (1997) 2 SCC 267 ("Godavarman"). The purpose of elucidating forest areas which fall within an aerial distance of 15 kilometres from the project site is to enable an assessment to be made of the impact of the project on forested areas. Failure to mention forests in the State of Maharashtra was a significant omission in the EIA report;

(iii) Form 1 requires a disclosure of the details of ESZs within an aerial distance of 15 kilometres of the project boundary. The EIA report rests content in stating that Pernem taluka is not included in an ESZ by the High Level Working Group[24] constituted under the Chairmanship of Dr K Kasturirangan, Member (Science), Planning Commission[25]. The project proponent, in response to the disclosures required for areas which are important or sensitive for ecological reasons - wet lands, water sources or other water bodies, costal zone, biospheres, mountains and forests, left the required details blank. In this context, it was urged by the Appellants that the purpose of the EIA report was not only to make an assessment of the project site but also of an area surrounding the project site within an aerial distance of 15 kilometres. The HLWG recognized that there were ESZs. In the present case, several villages are situated at a bare distance of 1.5 kilometres from the project site in Maharashtra. Yet, there was no disclosure of this fact and the EIA report merely recorded that Pernem taluka is not included in an ESZ;

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

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

16. Apart from the above submissions, Ms. Shenoy has urged that the stages of public consultation and appraisal under the 2006 notification are crucial to the assessment process. As far as the public consultation is concerned, the draft EIA is given before the hearing. During the course of the public consultation, as many as 70 persons spoke, 1,150 representations were received and 1,586 persons are stated to have participated. The range of concerns expressed during the course of the public consultation covered a variety of environmental issues. Amongst them was the presence of perennial springs, the porous nature of the laterite plateau where permeation is a source of drainage for water collection and the existence of cashew plantations on which the livelihood of the local residents depends. Under the 2006 notification, the State Pollution Control Board[26] was required to collate the issues raised and the response of the project proponent, before submitting required documents to the EAC. Before the EAC, the project proponent in its presentation, indicated that the objections were only about employment opportunities. The project proponent clearly failed in its duty to appraise the EAC about serious environmental concerns which were raised during the course of the public consultation.

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

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

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

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

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

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

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

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

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

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

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

21. As regards the lack of **sampling points** in Maharashtra, the learned ASG urged that while all the six sampling points for ambient air quality within 10 kilometres of the study area were in Goa, the air quality which was being tracked was within the stipulated radius and was not confined to the State of Goa. Similarly, in studying the water environment, the ground water quality was measured at four locations in Goa within 10 kilometres of the study area. As regards the monitoring of noise, nine sampling points were chosen within the State of Goa in accordance with the Central Pollution Control Board[28] guidelines. The monitoring of noise environment, both at the construction and operational phases, has similarly been dealt with in the EIA report. The learned ASG urged that the choice of the sampling locations was not arbitrary: though the sampling points were not in Maharashtra, data required was tracked across a radius of 10 kilometres from the ARP which also included the State of Maharashtra.

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

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

EIA report. The EIA report notices that the proposed airport site falls in Pernem taluka of North Goa which has not been included in the ESZs mapped by the HLWG. Annexure XVI of the EIA report is a notification dated 13 November 2013[29] of the MoEF, which contains a list of villages (state, district and taluk-wise) identified by the HLWG. Paragraph 9 of the 2013 notification which has been issued Under Section 5 of the Environment (Protection) Act 1986 specifies the categories of new and expansion projects which are prohibited in the ESZ. The proposed airport project does not fall within the prohibited category. Moreover, since the site of the proposed airport was not included in an ESZ, the prohibition imposed by the 2013 notification had no application.

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

(i) A complete ban on mining, quarrying and sand mining;

(ii) A complete ban on thermal power projects while hydro power projects may be permitted subjected to conditions;

(iii) A strict prohibition on 'red category' industries;

(iv) A prohibition on building and construction projects of 20,000 square metres;

(v) All other infrastructure and development projects/schemes would be subject to the grant of an EC as Category 'A' projects under the 2006 notification; and (vi) All development projects within 10 kilometres of the Western Ghats ESZ and requiring ECs shall be regulated in accordance with the 2006 notification.

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

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

(i) At its 149th meeting held on 26 June 2015, the EAC sought additional information on six distinct aspects upon receiving the presentation by the project proponent;

(ii) At its 151st meeting held on 7-9 September 2015, the EAC took note of a representation filed by the Federation of Rainbow Warriors and deferred further consideration of proposal for the grant of EC. The project proponent was called upon to submit a response to the issues raised in the representation; and

(iii) At its 152nd meeting held on 20 October 2015, the EAC dealt with clarifications issued by the project proponent to the concerns raised by Rainbow Warriors and proceeded to recommend the project for the grant of an EC subject to the stipulated conditions.

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

(i) The application of mind by the EAC can be inferred and seen from the record;

(ii) Where considered necessary, the EAC sought information outside the EIA report;

(iii) Having appraised the EIA report, the EAC imposed site specific conditions; and

(iv) The EAC consists of experts in the field and once it has been shown that all relevant considerations were borne in mind, this Court must give due deference to their view.

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

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

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

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

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

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

28. On behalf of the concessionaire, Mr. Parag P Tripathi, learned Senior Counsel and Ms. Astha Mehta, learned Counsel urged that upon the grant of an EC, a concession agreement was executed by it with the State of Goa on 8 November 2016. Possession of the project site was handed over on 4 September 2017 and work commenced on 3 March 2018. The indicative capital for Phase 1 of the development is Rs. 1,900 crores while the cost of the entire project is likely to be Rs. 3,000 crores. The State of Goa has incurred a total expenditure of Rs. 240 crores for land acquisition, rehabilitation, road widening, consultancy and other related aspects while the concessionaire has thus far incurred an expenditure of Rs. 230 crores as on 18 January 2019.14.06 per cent of the project work has been completed and a manpower consisting of 1500 persons has been mobilized at the site together with plant and machinery.

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

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

30. The rival submissions now fall for our consideration.

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

C. 1 EIA Process

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

32. The Constitution (Forty-second Amendment) Act 1976, which came into force with effect from 3 January 1977, inserted Article 48A to the Constitution which mandates that the State shall endeavor to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51A(g) of the Constitution places a corresponding duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. Following the decisions taken at the United Nations Conference on the Human Environment held at Stockholm[30] in June 1972 in which India participated, Parliament enacted the Environment Protection Act 1986 to protect and improve the environment and prevent hazards to human beings, other living creatures, plants and property.

33. On 27 January 1994, the MoEF, in exercise of the powers conferred by Sub-section (1) and Clause (v) of Sub-section (2) of Section 3 of the 1986 Act read with Clause (d) of Sub-rule 3 of Rule 5 of the Environment (Protection) Rules, 1986, issued a notification[31] imposing restrictions and prohibitions on the expansion and modernisation of any activity or new project unless an EC was granted under the procedure stipulated in the notification. Under the notification, any person undertaking a new project or expanding and modernizing an existing project was required to submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.

34. The application, which was to be made in accordance with the Schedule provided in the notification was to be submitted with a project report which included with it an EIA Report, an Environment Management Plan[32] and the details of a public hearing which had been carried out in accordance with guidelines issued by the Central Government from time to time. Limited exceptions to the public hearing process and the submission of an EIA were provided.

35. MoEF as the Impact Assessment Agency[33] would then evaluate the application and reports submitted. The IAA was empowered to constitute a committee of experts, if necessary, which would have a right of entry into and inspection of the site during or after the commencement of the preparations relating to the project. The IAA would prepare a set of recommendations based on the documents furnished by an applicant within 90 days from the receipt of the documents and a decision would be conveyed to the applicant within 30 days thereafter. The EC granted was valid for a period of five years and a successful applicant was required to submit half-yearly reports to the IAA. Concealing factual data or submitting false or misleading information would make the application liable for rejection and would lead to the cancellation of any EC[34] granted on that basis.

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

37. On 14 September 2006, MoEF released another notification[35] in supersession of the previous notification.

38. The 2006 notification directed thus:

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

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

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

(i) The 2006 notification categorically states that an EC must be granted by the regulatory authority *prior* to the commencement of any construction work or preparation of land;

(ii) The 2006 notification divides all projects into Category 'A' and Category 'B' projects. The MoEFCC continues to regulate projects of a large scale (Category 'A'), while the SEIAA regulate comparatively smaller projects (Category 'B');

(iii) Under the 1994 notification, an applicant was required to submit an application along with all reports including the EIA report at the time of the application. Under the 2006 notification, prior to the preparation of the EIA report by the applicant, the concerned authority formulates comprehensive ToR on the basis of the information furnished by the applicant addressing all relevant environmental concerns. This forms the basis for the preparation of the EIA report. A pre-feasibility report must also be submitted with the application unless exempted in the notification. Under the 2006 notification, a draft EIA is first prepared and it is only after the public consultation process that a final EIA report must be prepared addressing all the concerns raised during public consultation;

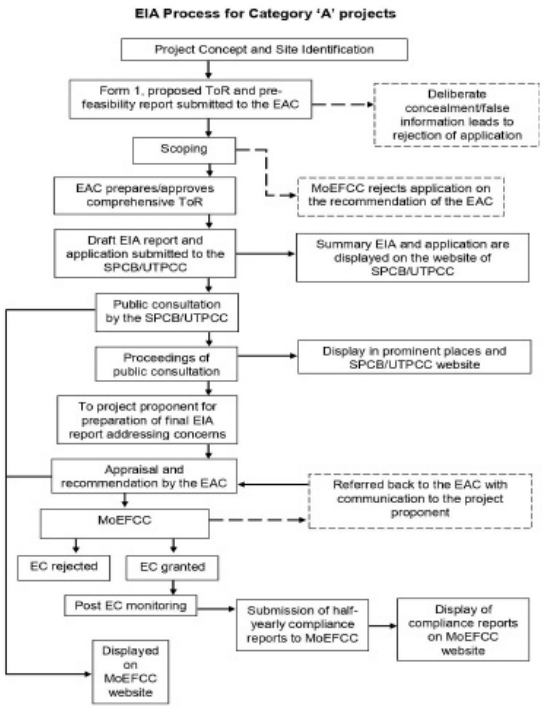
(iv) The 2006 notification stipulates the creation of a regulatory body at the state level- SEIAA comprising members with expertise in the field of environmental laws which is charged with granting ECs for Category 'B' projects;

(v) Under the 1994 notification, the final approval was granted by the IAA. Under the 2006 notification, though the final regulatory approval is granted by the MoEFCC or the SEIAA, as the case may be, the approval is to be based on the recommendations of the EAC functioning in the MoEFCC or the State Expert Appraisal Committees[36] which are constituted for that specific purpose;

(vi) Under the 2006 notification, the application can be rejected by the regulatory authority on the basis of the recommendation of the EAC or the SEAC, as the case may be, at the preliminary stage itself, prior to public consultation; and

(vii) Under the 1994 notification, the public hearing process was overseen by the State Pollution Control Boards[37] which would constitute a public hearing panel for the purpose. Under the 2006 notification, the public consultation process is expanded to include the receipt of written comments from concerned persons. The public hearing component was to be overseen by the SPCBs or the Union Territory Pollution Control Committee[38].

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



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

42. Once a prospective site has been identified by the applicant for the proposed project, all applications seeking an EC shall be made in the prescribed Form 1 and Supplementary Form 1A[39], if applicable. The application must be submitted prior to the commencement of any construction activity, or preparation of the land at the site. A pre-feasibility report must also be submitted with the application except in the cases of construction projects in item 8 of the Schedule, for which a conceptual plan must be submitted. The significance of the information furnished by the applicant in Form 1 shall be explored shortly.

43. The process to obtain environmental clearance as stipulated by the notification for **new** projects[40] comprises a maximum of four stages, all of which may not apply depending on the specific case stipulated under the notification:

1) Screening;

2) Scoping;

3) Public Consultation; and

4) Appraisal.

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

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

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

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

(i) A public hearing at the site or in its close proximity - district-wise to be carried out in the manner prescribed in Appendix IV; and

(ii) Procurement of written responses from concerned persons having a plausible stake in the environmental aspects surrounding the project.

47. The State Pollution Control Board[41] or the Union Territory Pollution Control Committee[42] is charged with conducting the public hearing in the manner stipulated in Appendix IV and forwarding the proceedings to the regulatory authority within 45 days of a request from the applicant. The regulatory authority is empowered to engage another public agency or authority to carry out the process within a further period of forty-five days in case the SPCB or the UTPCC does not adhere to the prescribed time period stipulated in the notification. The public hearing should be arranged in a "systematic, time bound and transparent manner" to ensure the "widest possible public participation at the project site(s) or in its close proximity District-wise". The public hearing proceeding is filmed and a copy of the video is submitted to the concerned regulatory authority.

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

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

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

(i) Final EIA Report

(ii) A copy of the video tape or CD of the public hearing proceedings

(iii) A copy of the final layout plan

(iv) A copy of the project feasibility report.

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

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

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

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

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

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

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

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

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

(i) Construction, operation or decommissioning of the project involving actions, which will cause physical changes in the locality (topography, land use, changes in water bodies, etc.);

(ii) Use of natural resources for construction or operation of the Project (such as land, water, materials or energy, especially any resources which are non-renewable or in short supply);

(iii) Use, storage, transport, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about the actual or perceived risks to human health;

(iv) Production of solid wastes during construction, operation or decommissioning;

(v) Release of pollutants or any hazardous, toxic or noxious substances to air;

(vi) Generation of noise and vibration, and emissions of light and heat;

(vii) Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea;

(viii) Risk of accidents during construction or operation of the project, which could affect human health or the environment; and

(ix) Environment sensitivity which includes, amongst other things, the furnishing of the following details:

a. Areas protected under international and national legislation;

b. Ecologically sensitive areas; and

c. Areas used by protected, important or sensitive species of flora or fauna.

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

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

(ii) At the appraisal stage, the regulatory authority examines the documents submitted

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

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

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

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

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

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

C. 2 Guidance manual for airports

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

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

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

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

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

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

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

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

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

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

Local emissions attributed to aircraft operations at airports include Oxides of Nitrogen[43], Carbon Monoxide[44], Hydrocarbons[45], Sulphur Dioxide[46], and particulate matter (PM 10 and PM 2.5).

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

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

> Airport operations may cause change in local ecosystems, threaten endangered species, and disturb movements and breeding patterns of local wildlife. Airports are located within a variety of settings (both urban and rural), which support habitats and species of their own, some of which will have direct interaction with those located on the airport and vice versa. Some local areas will also be designated for their nature conservation value. The biological environment of the airport should hence be seen as an integral component of the wider landscape scale ecological network. To accomplish this,
>
> • Baseline data from field observations for various terrestrial and aquatic systems are to be generated.
>
> • Comparison of the data with authentic past records to understand changes is undertaken.
>
> • Environmental components like land, water, flora and fauna are characterized and,
>
> • The impact of airport development on vegetation structure in and around project site is to be understood.
>
> Data on sensitive habitats, wild or endangered species in the project area also is to be collected from Zoological Survey of India (ZSI), Botanical Survey of India (BSI), Wildlife Institute of India (WII) and Ministry of Earth Sciences. Wildlife symbolizes the functioning efficiency of the entire eco system. Just as wild flora needs special treatment for preservation and growth, wild fauna as well deserves specific conservatory pursuits for posterity. As per Wildlife Act (1972), the various wild animals are enlisted in the schedules of wildlife Act based on the intensity of threat to them as rare, endangered, threatened, vulnerable etc. Primary data on survey of the wild animals and birds in the study area is collected and identified with the classification into various schedules taken from secondary data.

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

D Forests

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

> (i) Form 1, which was filed by the project proponent, did not contain any disclosure of the name or identity of forests within an aerial distance of 15 kilometres. Item 2 under the heading of 'Environmental Sensitivity' requires a clear disclosure of "areas which are important or sensitive for ecological reasons - wet lands, water sources or other water bodies, coastal zone, biospheres, mountains and forests"; and
>
> (ii) Table 2.1 of Chapter II of the EIA report delineates ESZs within an aerial distance 15 kilometres from the project boundary. For the State of Goa, the table indicates the presence of forests but not of protected forests. For the State of Maharashtra, Table 2.1 indicates that there were neither reserved nor protected forests within 15 kilometres from the project boundary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E Ecologically Sensitive Zones (ESZs)

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

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

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

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

Kerala and Tamil Nadu;

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

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

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

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

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

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

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

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

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

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

(a) Mining, quarrying and sand mining;

(b) Thermal power plants;

(c) Building and construction projects of 20,000 square metres area and above;

(d) Township and area development projects with an area of 50 hectares and above and/or with a built-up area of 1,50,000 square metres and above; and

(e) 'Red category' industries.

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

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

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

F Sampling Points

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

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

F. 1 Air quality

88. In order to study the ambient air quality in terms of Suspended Particulate Matter, Respirable Particulate Matter, SO_2, NO_x, CO and HC, Ambient Air Quality monitoring stations were set up at six locations. They are at Sinechaadvin, Katwal, Mopa village, Pernem, Nagzor and Patradevi. All are in Goa. The location at Patradevi was on the border shared by Goa with Maharashtra. The study area extended to a radial distance of 10 kilometres from the ARP. We accept the submission of the ASG that they would hence cover areas falling within both Goa and Maharashtra. Para 4.1.2 of Chapter IV of the EIA report sets out the baseline data collected at the monitoring stations. Since the entire study area within a radius of 10 kilometres was considered for monitoring air quality, we accept the submission that the location of the sampling points within Goa did not preclude the monitoring of air quality within the study area.

F. 2 Water quality

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

F. 3 Noise quality

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

F. 4 Flora and fauna

91. The EIA report indicates that the area surrounding the site for the proposed airport has dense forests[47]. These total up to nearly 6,634.19 hectares[48]. Ms. Shenoy has urged that it is impossible that the fauna found by the project proponent through both primary sampling and secondary sources was only limited to animals such as: domestic dog, cat and cattle, common house mouse, rat and mongoose, jackal and the three striped palm squirrel. This, in her submission, is a clear indication that the EIA report is faulty and clearly incorrect.

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

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

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

> I say that several recognised publications and research papers were referred to in order to verify and assess the data collected, to name a few of the publications:
>
> i. Birds of Goa by Heinz Lainer & Rahul Alvares;
>
> ii. The Goan Jungle Book by Nirmal Kulkarni;
>
> iii. A photographic guide to Butterflies of Goa by Parag Ragnekar;
>
> iv. Flora of Goa, Diu, Daman, Dadra and Nagarhaveli (Vol. 1) by RS Rao;
>
> v. Flora of Goa, Diu, Daman, Dadra and Nagarhaveli (Vol. 2) by RS Rao;
>
> vi. Red data book published by Botanical Survey of India;
>
> vii. Study materials published in Goa ENVIS Centre were also referred.

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

> a. A rapid survey to assess mammal presence at Barazan Plateau, Mopa, Goa, India conducted by Girish Punjabi (Wildlife Biologist) and Atul S Borker (Full Member of IUCN/SSC Otter Specialist Group) that Schedule I species such as gaur, leopard and Indian Pangolin; Schedule II species such as giant squirrel, common palm civet; Schedule III species such as sambar, wild pig and Schedule IV species such as Indian hare, Indian porcupine.
>
> The report also mentions the presence of the Sawantwadi - Dodamarg wildlife corridor within the 10 km proposed project site.
>
> b. Report on one day survey conducted to find evidence of Otter presence at Mopa, Goa conducted by Atul Borker (Full Member of IUCN/SSC Otter Specialist Group) that found that a perennial stream on the plateau had presence of the smooth coated otter, that falls within Schedule II of the Wildlife (Protection) Act, 1972.
>
> c. Report on two days survey to find evidence of plant and bird species at Mopa Plateau conducted by Aparna Watve (Ecologist) and Sanjay Thakur (Wildlife Biologist) that found Schedule I species such as the Indian peafowl and the Dipcadi concanese which is critically endangered. The study clearly mentions that the EIA study is entire deficit as it does not accurately consider the flora and fauna of the area as well as the number of trees to be cut.

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

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

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

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

F. 5 Felling of Trees

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

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

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

96. On 6 February 2018, the Deputy Conservator of Forests had granted permission for felling of 21,703 trees. Following the dismissal of an appeal Under Section 15 of the Goa, Daman and Diu Preservation of Trees Act 1984 filed by the Federation of Rainbow Warriors, a Writ Petition was filed before the Bombay High Court[49]. The High Court set aside the order of the Deputy Conservator of Forests and remanded the proceedings to the Principal Chief Conservator who passed the order which has been noted above. Following the order of the Principal Chief Conservator, 54,676 trees were enumerated. The competent authority granted permission for the felling of trees thereafter on the following dates: (i) 1,422 trees by an order dated 20 April 2018; (ii) 18,408 trees by an order dated 24 July 2018 and (iii) 33,298 trees by an order dated 1 October 2018. Following this exercise, the felling of trees was completed on 18 January 2019. The Bombay High Court having directed that the order of the Principal Chief Conservator of Forests shall be subject to the specific permission of the NGT in the pending proceedings, a Miscellaneous Application was moved before the NGT. While disposing of the main appeal, the NGT also disposed of the Miscellaneous Application and under the head of 'Biological Environment', the following directions have been issued:

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

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

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

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

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

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

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

G Public Consultation

100. The importance of public consultation is underscored by the 2006 notification. Public consultation, as it states, is "the process by which the concerns of local affected persons and others who have a plausible stake in the environmental impacts of the project or activity are ascertained with a view to take into account all the material concerns in the project or activity design as appropriate". This postulates two elements. They have both, an intrinsic and an instrumental character. The intrinsic character of public consultation is that there is a value in seeking the views of those in the local area as well as beyond, who have a plausible stake in the project or activity. Public consultation is a process which is designed to hear the voices of those communities which would be affected by the activity. They may be affected in terms of the air which they breathe, the water which they drink or use to irrigate their lands, the disruption of local habitats, and the denudation of environmental eco-systems which define their existence and sustain their livelihoods.

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

102. The 2006 notification postulates:

(i) A public hearing at or in close proximity to the project site to ascertain the views of "locally affected persons";

(ii) Obtaining written responses from "other concerned" individuals having a "plausible stake" in the environmental aspects of the project or the activity;

(iii) The duty of the SPCB to conduct hearings and to forward the proceedings to the regulatory authority within the stipulated time;

(iv) Placing on the website of the Pollution Control Board a summary of the EIA report in the prescribed format and the making available of the draft EIA report by the regulatory authority on a written request by any person concerned, for inspection;

(v) The duty of the applicant to address all material concerns expressed during the process of public consultation;

(vi) The making of appropriate changes in the draft EIA and EMP; and

(vii) The submission of the final EIA report by the applicant to the regulatory authority for appraisal.

Each of these features is crucial to the success of a public consultation process. Public consultation cannot be reduced to a mere incantation or a procedural formality which has to be completed to move on to the next stage. Underlying public consultation is the important constitutional value that decisions which affect the lives of individuals must, in a system of democratic governance, factor in their concerns which have been expressed after obtaining full knowledge of a project and its potential environmental effects.

103. Apart from the intrinsic value of public consultation, it serves an instrumental function as well. The purpose of ascertaining the views of stakeholders, is to account for all the material concerns in the design of the proposed project or activity. For this reason, the process of public consultation involves several important stages. The Pollution Control Board is under a mandate to forward the proceedings to the regulatory authority. The project proponent must address all material environmental concerns and make appropriate changes in the draft EIA and EMP. The project proponent may even submit a supplementary report to the draft EIA. Each of these elements is crucial to the design features of the 2006 notification. A breach will render the process vulnerable to challenge on the ground that: (i) significant environmental concerns have

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

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

(i) Mopa plateau has multiple water sheds and the discharge of water goes down to the rivers;

(ii) Nearly forty springs would be affected along with flora and fauna;

(iii) The public hearing had been conducted in an area where the land was barren and with no plantation;

(iv) The impact on river Chapora, which is within a 10 kilometre radius from the project, has not been adequately analysed;

(v) Mopa plateau has a natural mechanism for ground water recharge;

(vi) Protection of the Western Ghats is necessary, particularly with the view to not disturb flora and fauna;

(vii) The EIA report has not been made available to the affected areas and Gram Panchayats in the buffer zone;

(viii) Local plantations would be affected;

(ix) The number of trees to be felled by the project proponent has not been specified in the EIA report;

(x) The Dodamarg Wildlife Sanctuary had been 'sanitized' by the High Court;

(xi) Forest clearance had not been obtained;

(xii) The sacred groves of the area have not been described, including the Barazan which will be lost;

(xiii) The slopes sustain cashew plantations with nearly forty lakh cashew trees resulting in an annual income of Rs. Fifty crores; and

(xiv) No study has been carried out in the 10 kilometre radius falling in Maharashtra.

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

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

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

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

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

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

H Appraisal by the EAC

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

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

i. There is a need to superimpose the layout plan showing the drainage pattern including natural drainage, construction in the area on superimposed map showing clear topography of the region;

ii. 10 year data regarding rain fall in the area;

iii. Justification on sustainability of existing traffic and transportation arrangements especially at inter-section points of the approach road to the airport needs to be submitted;

iv. A traffic circulation plan needs to be evolved for smooth running of traffic in the area;

v. Measures taken to comply with the CPCB guidelines formulated for noise pollution control in airport areas to be submitted; and

vi. Minimum 20% energy conservation measures should be adopted incorporating provisions for use of LED, star rated ACs etc. Revised Energy Conservation Plan to be submitted.

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

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

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

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

> The Committee noted the peculiar circumstances of the case and the difficulties in land acquisition which led to delay in preparation of the EIA report, and the larger public interest involved.
>
> Keeping in view the fact that the project proponent has not concealed facts and circumstances of the case and the project is in the public interest, the Ministry may take an appropriate view on the objection that the public hearing could not have been held, in the absence of valid TOR, though the validity has been extended twice and regularized subsequently. The Committee also noted that the public hearing was attended by about 3000 people and hence there is substantive and active public participation as required under the law for public consultation.
>
> The PP further provided their reply to the rebuttal by the said NGO on various issues.
>
> The EAC, after deliberations, recommended the project for grant of EC subject to the above and the following:
>
> > • The project proponent shall ensure availability of adequate land at the junction of the Mopa Airport road and Mumbai/Goa NH 17 for traffic circulation/management and to provide for all the traffic interchanges and proposed clover.
> >
> > • The approach and exit roads to the airport would be approved from the NHAI and should be according to IRC norms.
> >
> > • A perusal of the Topo sheet superimposed on the runway area indicates that the extreme end of the runway is covering the drainage area partly. The drainage area which is under the runway needs to be channelized. The area between the parallel taxi way and run way needs to be handled carefully to drain the water from the area in the outfall.

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

(i) The "peculiar circumstances" of the case;

(ii) The difficulties in land acquisition which led to a delay in the preparation of the EIA

report;

(iii) The "larger public interest" involved;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> **16.** Tribunal to have appellate jurisdiction. - Any person aggrieved by,-
>
> ...
>
> (h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);

Section 20 mandates that the Tribunal shall, while passing any order, decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Several decisions of this Court have given meaning to these principles[50].

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

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

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

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

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

The NGT is an expert adjudicatory body on the environment.

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

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

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

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

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

> **182.** ... a duty is cast upon the EAC or SEAC as the case may be to apply the cardinal principle of Sustainable Development and Principle of Precaution while screening, scoping, and appraisal of the projects or activities. While so, it is evident in the instant case that the EAC has miserably failed in the performance of its duty not only as mandated by the EIA Notification, 2006, but has also disappointed the legal expectations from the same. For a huge project as the one in the instant case, the consideration for approval has been done in such a cursory and arbitrary manner without taking note of the implication and importance of environmental issues. ...Thus, the EAC has not conducted itself as mandated by the EIA Notification, 2006 since it has not made proper appraisal by considering the available materials and objections in order to make proper evaluation of the project before making a recommendation for grant of EC.
>
> **187.** ...the Tribunal is of the considered opinion that there is no option but to scrap the impugned EC granted by the MoEF to the 3rd Respondent/project proponent for setting up the Aranmula airport.

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

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

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

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

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

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

> In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognised principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint.

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

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

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

J Environmental Rule of Law

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

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

128. The environmental Rule of law provides an essential platform underpinning the four pillars of sustainable development-- economic, social, environmental, and peace.[52] It imbues environmental objectives with the essentials of Rule of law and underpins the reform of environmental law and governance.[52] The environmental Rule of law becomes a priority particularly when we acknowledge that the benefits of environmental Rule of law extend far beyond the environmental sector. While the most direct effects are on protection of the environment, it also strengthens Rule of law more broadly, supports sustainable economic and social development, protects public health, contributes to peace and security by avoiding and defusing conflict, and protects human and constitutional rights.[52] Similarly, the Rule of law in environmental matters is indispensable "for equity in terms of the advancement of the Sustainable Development Goals[53], the provision of fair access by assuring a rights-based approach, and the promotion and protection of environmental and other socio-economic rights."[54]

129. Amartya Sen argues for a broadening of the notion of sustainable development which is the most dominant theme of environmental literature, from a need-based standard[55] to a standard based on freedoms.[56] Thus recharacterized, it encompasses the preservation, and when possible even the expansion of the substantive freedoms and capabilities of people today without compromising the capability of future generations to have similar-or more-freedoms. The intertwined concepts of environmental Rule of law thus further intragenerational as well as intergenerational equity.

130. Decision 27/9 which was adopted by the United Nations Environment Programme's[57] Governing Body at its first universal session in 2013 on 'Advancing Justice, Governance and Law for Environmental Sustainability' was the first internationally negotiated document to establish the term 'environmental Rule of law.' It declared that "the violation of environmental law has the potential to undermine sustainable development and the implementation of agreed environmental goals and objectives at all levels and that the Rule of law and good governance play an essential role in reducing such violations". It thus urged governments and organisations to reinforce cooperation to combat noncompliance with environmental laws towards achieving sustainable development. It also called upon the Executive Director to assist with the "development and implementation of environmental Rule of law with attention at all levels to mutually supporting governance features, including information disclosure, public participation, implementable and enforceable laws, and implementation and accountability mechanisms including coordination of roles as well as environmental auditing and criminal, civil and administrative enforcement with timely, impartial and independent dispute resolution." Similarly, the first United Nations Environment Assembly in 2014 adopted resolution 1/13, which calls upon countries "to work for the strengthening of environmental Rule of law at the international, regional and national levels."

131. In 2016, the First World Environmental Law Congress, cosponsored by the International Union for Conservation of Nature and UN Environment, adopted the IUCN World Declaration on the Environmental Rule of Law[58] which outlines 13 principles for developing and implementing solutions for ecologically sustainable development:

(i) Obligation to Protect Nature

(ii) Right to Nature and Rights of Nature

(iii) Right to Environment.

(iv) Ecological Sustainability and Resilience

(v) In Dubio Pro Natura

(vi) Ecological Functions of Property

(vii) Intragenerational Equity

(viii) Intergenerational Equity

(ix) Gender Equality

(x) Participation of Minority and Vulnerable Groups

(xi) Indigenous and Tribal Peoples

(xii) Non-regression

(xiii) Progression

132. Dhvani Mehta's doctoral thesis[59] explores this idea of environmental Rule of law in the Indian context by analysing the functioning of the three institutions of the government with regard to environmental law. It develops a framework to assess whether the environmental Rule of law in India is being strengthened or weakened, through an analysis of the legal instruments of each of the institutions of government--statutes, executive orders, and judicial decisions. The indicators on the basis of which this is done are: a) the capacity of statutes to guide behaviour (one of the organising principles of the Rule of law) by clearly articulating goals or balancing competing interests; b) the ability of the executive to take flexible but reasoned decisions grounded in primary legislation; and c) the ability of the judiciary to apply statutory interpretation and consistent standards of judicial review to give effect to environmental rights and principles.

133. In 2015, the International community adopted the 2030 Agenda for Sustainable Development and its 17 SDGs[60]. These 17 goals are:

(i) Eradication of poverty;

(ii) Eradication of hunger;

(iii) Good health and well-being;

(iv) Quality education;

(v) Gender equality;

(vi) Clean water and sanitation;

(vii) Affordable and clean energy;

(viii) Decent work and economic growth;

(ix) Industry, innovation and infrastructure;

(x) Reduced inequalities;

(xi) Sustainable cities and communities;

(xii) Sustainable consumption and production;

(xiii) Climate action;

(xiv) Protecting life below water;

(xv) Life on land;

(xvi) Peace, justice and strong institutions; and

(xvii) Partnerships to achieve the goals.

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

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

136. The statistics on climate change indicate that:

(i) Between 1880 and 2012, average global temperatures have increased by 0.85 degrees Celsius;

(ii) Between 1901 and 2010, as ocean expanded, the global average sea level has risen by 19 centimeters;

(iii) Since 1990, global emissions of CO_2 increased by almost 50 per cent; and

(iv) Between 2000 and 2010, emissions grew at a more rapid rate than each of the three decades preceding it.

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

138. On 2 October 2016, India ratified the Paris Agreement[61] on climate change which reaffirmed the goal of 'limiting global temperature increase to well below 2 degrees Celsius, while pursuing efforts to limit the increase to 1.5 degrees above pre-industrial levels'. Article 5 of the Agreement encourages parties to conserve and enhance sinks and reservoirs of greenhouse gases, which includes forests. Under its Nationally Determined Contributions under the Paris Agreement, India made the following three commitments[62]:

(i) Greenhouse gas emission intensity of its Gross Domestic Product will be reduced by 33-35% below 2005 levels by 2030;

(ii) 40% of India's power capacity would be based on non-fossil fuel sources; and

(iii) An additional 'carbon sink' of 2.5 to 3 billion tonnes of CO_2 equivalent through

additional forest and tree cover will be created by 2030.

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

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

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

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

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

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

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

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

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

K Directions

147. We accordingly issue the following directions:

(i) The EAC shall revisit the recommendations made by it for the grant of an EC, including the conditions which it has formulated, having regard to the specific concerns which have been highlighted in this judgment;

(ii) The EAC shall carry out the exercise under (i) above within a period of one month of the receipt of a certified copy of this order;

(iii) Until the EAC carries out the fresh exercise as directed above, the EC granted by the MoEFCC on 28 October 2015 shall remain suspended;

(iv) Upon reconsidering the matter in terms of the present directions, the EAC, if it allows the construction to proceed will impose such additional conditions which in its expert view will adequately protect the concerns about the terrestrial eco systems noticed in this judgment. The EAC would be at liberty to lay down appropriate conditions concerning air, water, noise, land, biological and socio-economic environment;

(v) The EAC shall have due regard to the assurance furnished by the concessionaire to this Court that it is willing to adopt and implement necessary safeguards bearing in mind international best practices governing greenfield airports;

(vi) We grant liberty to the State of Goa as the project proponent and the MoEFCC, as

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

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

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

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

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

Civil Appeal No. 1053 of 2019

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

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[1]NGT
[2]EC
[3]PPP
[4]MoEF, later renamed as MoEFCC in 2014
[5]S.O. 1533 ('2006 notification')
[6]SEIAA
[7]Guidance manual
[8]ToR
[9]EAC
[10]EIA
[11]GGIAL
[12]Appeal No. 61 of 2015
[13]Appeal No. 1 of 2016
[14]Appeal Nos. 5 and 6 of 2018
[15]Act 6 of 1984
[16]PIL
[17]MA No. 975 of 2018

[18]Civil Appeal No. 12251 of 2018
[19]Civil Appeal No. 1053 of 2019
[20]AG
[21]ASG
[22]ESZ
[23]ARP
[24]HLWG
[25]Kasturirangan report
[26]SPCB
[27]NGT Act 2010
[28]CPCB
[29]2013 notification
[30]Stockholm Conference
[31]S.O. 60(E) ('1994 notification')
[32]EMP
[33]IAA
[34]EC
[35]S.O. 1533 ('2006 notification')
[36]SEAC
[37]SPCB
[38]UTPCC
[39]Only for construction projects listed under item 8 of the Schedule
[40]Applications for EC for expansions or modernization of existing units as stipulated under the notification are made in Form 1 and shall be considered by the EAC or the SEAC within 60 days, which will decide on the due diligence necessary including the preparation of the EIA and public consultations and the application shall be appraised accordingly for the grant of environmental clearance.
[41]SPCB
[42]UTPCC
[43]NO_x
[44]CO
[45]HC
[46]SO_2
[47]See for instance para 2.0 of the executive summary and para 2.3.1 of Chapter I
[48]See Para 2.3.1, Chapter II
[49]WP No. 1 of 2018
[50]**Vellore Citizens Welfare Forum v. Union of India**, MANU/SC/0686/1996 : (1996) 5 SCC 647; **M.C. Mehta v. Kamal Nath**, MANU/SC/1007/1997 : (1997) 1 SCC 388;**M.C. Mehta v. Union of India**, MANU/SC/0175/1997 : (1997) 2 SCC 353;**A.P. Pollution Control Board v. Prof M.V. Nayudu (Retd.)**, MANU/SC/0032/1999 : (1999) 2 SCC 718;**Narmada Bachao Andolan v. Union of India**, MANU/SC/0640/2000 : (2000) 10 SCC 664;**Indian Council for Enviro Legal Action v. Union of India**, MANU/SC/0837/2011 : (2011) 8 SCC 161
[51]United Nations Environment Programme, First Environmental Rule of Law Report. Available at https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y
[52]Ibid
[53]SDGs
[54]UN Environment, Environmental Rule of Law. Available at https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-

do/promoting-environmental-rule-law-0

[55]Bruntdland definition of Sustainable Development

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

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

[60]SDGs

[61]Entered into force on 4 November 2016

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

[63]Global Environment Outlook 6, UNEP, 4 March 2019

MANU/GT/0162/2022

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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

Decided On: 31.05.2022

Appellants: **University of Delhi**
Vs.
Respondent: **Ministry of Environment Forest and Climate Change and Ors.**

Hon'ble Judges/Coram:
Adarsh Kumar Goel, J. (Chairperson), Sudhir Agarwal, J. (Member (J)), A. Senthil Vel and Dr. Afroz Ahmad, Members (E)

Counsels:
For Appellant/Petitioner/Plaintiff: Sanjay Upadhayay, Advocate

For Respondents/Defendant: Atmaram N.S. Nandkarni, Senior Advocate, Mahesh Agarwal and Kumar Rajesh Singh, Advocates

JUDGMENT

Sudhir Agarwal, J. (Member (J))

1. University of Delhi through its Registrar, North Campus, Delhi has filed this appeal under Section 16(h) of National Green Tribunal Act, 2010 (hereinafter referred to as 'NGT Act 2010') assailing Environmental Clearance (hereinafter referred to as 'EC') dated 21.05.2021 issued by Ministry of Environment, Forest & Climate Change (hereinafter referred to as 'MoEF&CC') in favour of M/s. Young Builder Private Limited (respondent 11) (hereinafter referred to as 'PP') for construction of group housing project with built up area as 1,37,879.64 m^2 at 1, 3 Cavalry Lane and 4 Chhatra Marg, Near Vishwavidhyalaya Metro Station, New Delhi. The project comprises 5 number buildings/blocks. Total 446 flats shall be developed. Maximum height of the building permitted by the above EC is 145.3 meter. Details of the buildings, given in para 4(iv) of EC dated 21.05.2021, are as under:

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

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

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

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

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

5. State Environment Impact Assessment Authority (hereinafter referred to as 'SEIAA') granted EC to PP on 13.08.2012 under Environment Impact Assessment Notification 2006 (hereinafter referred to as 'EIA 2006'). PP submitted application dated 09.02.2018 to SEIAA for amendment of EC dated 13.08.2012 which SEIAA granted on 23.03.2018 permitting construction of 'group housing project' on an area of 20,000 m^2 with built up area, 1,17,733.81 m^2 having A+G+37 floors with 410 dwelling units. This EC dated 23.03.2018 permitting amendment in the initial EC dated 13.08.2012 was challenged by applicant in Appeal No. 112/2018, University of Delhi vs. MoEF & CC & Others on various grounds. Memo of Appeal 112/2018 is annexure A/4 (page 96) which shows grounds raised in the said appeal, inter-alia as under:

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

(ii) there is suppression of material of facts;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the Tribunal 1.

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

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

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

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

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

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

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

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

12. PP, thereafter, applied for fresh EC vide application dated 06.02.2021, submitted to MoEF&CC, proposing construction of 4 towers on an area of 20,000 m^2, built up area 1,37,879 m^2 comprising two basements+43 floors and 446 dwelling units and 145.3 meters height of the building. Evidently, proposal/application submitted by PP was a substantial extension/expansion of earlier project which comprised built up area

1,17,733.81 m^2; S+G+ 37 floors and 410 dwelling units and 139.6 meters building height. Application was considered by Environmental Assessment Committee (hereinafter referred to as 'EAC') in its 62nd meeting held on 01.03.2021. Minutes of the meeting were uploaded on 12.03.2021. EAC sought following clarifications/information:

"i. Clarification for the proposal of 2 basements with reference to recommendation of the committee constituted by NGT and Supreme Court Order.

ii. Analyse the discrepancies and resubmit the conceptual plan after making the necessary revisions. Water balance flowchart needs to be revised.

iii. Air pollution management in the context of Graded Action Plan for Delhi & NCR.

iv. Point-wise replies to representation made by Delhi University."

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

(i) Term of reference was not provided as per EIA 2006 as amended by notification dated 17.02.2020.

(ii) EAC wrongly made observation that Appeal No. 112/2018 was dismissed.

(iii) Suggestions made by the independent Committee constituted by Tribunal vide order dated 27.02.2020 of limiting basement to one due to impact on natural flow of ground water not considered.

(iv) Water requirement for construction phase and operation phase is under-estimated.

(v) No clarity was provided by PP on the use of ground water yet EC was granted without considering this aspect.

(vi) Office memorandum dated 23.05.2019 issued by MoEF & CC (IA Division) pursuant to Tribunal's order passed in OA 176/2015 was not considered.

(vii) Status of area with regard to scarcity of ground water and its effect on northern ridge was not considered.

(viii) Carrying capacity study of the area with regard to available water resource not conducted as per the direction of Tribunal.

(ix) Site in question falls under sub-zone C 13 (University area) where tall buildings are restricted under MPD 2021 and Zonal Development Plan (hereinafter referred to as 'ZDP') of Zone C.

(x) Department of Health, Education and Land, Government of India through its

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

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

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

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

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

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

(xvi) Fire safety aspect was not properly considered.

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

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

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

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

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

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

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

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

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

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

(xxvii) Consent to establish was not obtained.

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

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

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

> "3. We have heard learned Counsel for the appellant and perused the record. Since this Tribunal has to conduct merit review of the decision granting EC, it is necessary to put the affected parties to notice and call for the record.
>
> **4.** Issue Notice to Respondents - MoEF & CC and the PP. Shri Atmaram N.S. Nadkarni, Senior Advocate alongwith Mr. Mahesh Agarwal has entered appearance for Respondent No. 11. He seeks time and granted time to file response, if any, within one month. Notice may be served on MoEF&CC by e-mail by the registry as well as by the appellant. The appellant may file affidavit of service within one week. Response, if any, by MoEF&CC may be filed within one month. A photo copy of the record may be either filed with the registry or kept ready at the time of hearing."

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

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

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

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

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

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

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

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

S. No.	Project	EC Date	Built-up (Sqm)	DU/ EWS (Nos.)	Height (Mtr)	Base-ment	Parking (ECS)	Distance Yamuna (Mtr)	Distance Ridge (Mtr)
1	Northern India Paint, Canal Road	29.06.21	32,133	DUs-64 EWS-38	81.0	1	298		
2	Godrej Ashok Vihar	17.06.21	347,102	DUs-1200 EWS-622	100.0	2	3308	--	--
3	Negolice India (M2K)	13.01.21 16.05.07	1,72,855	DUs-488 EWS-287	235.0	3	1,801	5310	4200
4	Parsvnath Landmark	14.07.20 02.07.07	2,55,562	DUs-505 EWS-390	125.6	3	3,256	613	425
5	North Delhi Metro Mall	15.11.19 12.04.16	1,60,375	Not applicable	44.1	4	1,894	784	76
6	DLF Home Developers	11.10.19	10,00,726	DUs-2900 EWS-1862	179.2	4	8,836	--	--
7	Delhi Floor Mills Co. Ltd.	17.09.19	1,32,957	DUs-346 EWS-276	165.0	3	1,143	2920	558
8	DCM Ltd.	19.09.17	10,05,604	Not applicable	180.0	3	9,858	--	--
9	Young Builder (P) Ltd.	22.05.21	1,37,879	DUs 222 EWS-224	157.8	2	860	1800	500

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

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

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

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

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

25. PP has pleaded that the built-up area of project is 1,37,879.64 m^2 and it is under Item 8(a) of the Schedule to EIA 2006, comes in 'Category B2'. As per para 7 (II) of EIA 2006, only 'Category A' or 'Category B1' projects require preparation of ToR. Relying on the Notification dated 17.02.2020 amending para 7 of EIA 2006, it is said that the projects under 'Category B2' also does not require Scoping. Further as per new amendment, expansion proposals of existing projects having earlier prior EC required ToR but project in question is new one for which fresh EC has been obtained. Therefore, even the said provision does not apply.

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

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

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

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

> "(i) Ground water backing up around the basements and impacting neighboring areas is a general consequence of basement construction below ground water levels. However, there are measures widely implemented in such situations and, if correctly designed and constructed, there will not be any significant ground water back up around the basement.
>
> (ii) The basement design in such cases provides for adequate groundwater drainage systems to prevent groundwater backing up around the basement. Whether water is moving across the land surface or through the sub surface, it moves due to gravity. Water moves from an area of high head (or elevation) potential towards an area of low head (or elevation) potential. Installation of soil drains such as a French are also employed to reduce the buildup of moisture in flat areas. After construction of the basement the Ground water would return to its original level.
>
> (iii) Drained cavity systems are also effective; they work by trapping any water that penetrates the structure and channeling it by gravity into a collection sump. The water is then removed by being pumped, out of the basement. The

system can be drained by gravity also.

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

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

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

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

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

a. The excavation is kept dry.

b. The basement design includes protection against ground water ingress to the finished development. Designs, to the satisfaction of the competent Authority, will afford sufficient protection in the event of ground water flooding.

c. The basement design includes ground water drainage systems/French Drains to prevent ground water backing up around the development and thereby protect neighbouring properties from impact.

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Source of treated water used in construction phase.

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

F. Use of Ground water in construction

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

G. Estimation of water requirement during operation phase

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

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

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

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

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

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

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

The Water consumption details as already given are as follows:

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

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

> "(i) The natural drain system should be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site, on wetland and water bodies. Check dams, bio-swales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water.
>
> (ii) Buildings should be designed to follow the natural topography, as much as possible. Minimum cutting and filling should be done.
>
> (iii) The quantity of fresh water usage, water recycling and rainwater harvesting shall be measures to protect the water balance as projected by the Project Proponent. The record shall be submitted to the Regional Office, MoEF&CC along with six monthly Monitoring reports.
>
> (iv) A certificate shall be obtained from the local body supplying water, specifying the total annual water availability with the local authority, the quantity of water already committed, the quantity of water allotted to the project under consideration and the balance water available. This should be specified separately for ground water and surface water sources, ensuring that there is no impact on other users.
>
> (v) At least 20% of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks with at least 50% opening, landscape etc. would be considered as pervious surface.
>
> (vi) Installation of dual pipe plumbing for supplying fresh water for drinking, cooking and bathing etc. and other for supply of recycled water for flushing, landscape irrigation, car washing, thermal cooling, conditioning etc. shall be done.
>
> (vii) Use of water saving devices/fixtures (viz. low flow flushing systems; use of low flow faucets tap aerators etc.) for water conservation shall be incorporated in the building plan.
>
> (viii) Separation of grey and black water should be done by the use of dual plumbing system. In case of single stack system separate recirculation lines for flushing by giving dual plumbing system be done.
>
> (ix) Water demand during construction should be reduced by use of pre-mixed concrete, curing agents and other best practices referred.
>
> (x) Rain water harvesting recharge pits/storage tanks shall be provided for ground water recharging as per the CGWB norms.
>
> (xi) A rain water harvesting plan needs to be designed where the recharge bores of minimum one recharge bore per 5,000 square meters of built-up area and storage capacity of minimum one day of total fresh water requirement shall be provided. In areas where ground water recharge is not feasible, the rain

water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority.

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

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

(xiv) Any ground water dewatering should be properly managed and shall conform to the approvals and the guidelines of the CGWA in the matter. Formal approval shall be taken from the CGWA for any ground water abstraction or dewatering.

(xv) The quantity of fresh water usage, water recycling and rainwater harvesting shall be measured and recorded to monitor the water balance as projected by the project proponent. The record shall be submitted to the Regional Office, MoEF&CC along with six monthly Monitoring reports.

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

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

(xviii) Onsite sewage treatment of capacity of treating 100% waste water to be installed. The installation of the Sewage Treatment Plant (STP) shall be certified by an independent expert and a report in this regard shall be submitted to the Ministry before the project is commissioned for operation. Treated waste water shall be reused on site for landscape, flushing, cooling tower, and other end-uses. Excess treated water shall be discharged as per statutory norms notified by Ministry of Environment, Forest and Climate Change. Natural treatment systems shall be promoted.

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

(xx) Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development, Central Public Health and Environmental Engineering Organization (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013."

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

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

I. OM dated 23.05.2019 not followed

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

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

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

vegetation in the Northern Ridge or the campus of university.

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

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

> "It is understood that no ground water will be extracted during construction & occupancy phase of the project. The water requirement during construction will be met through private tankers and during occupancy by Delhi Jal Board for which necessary permission have been obtained. Further, 0.003% increase in water requirement in the grid is anticipated.[...]
>
> Water Demand and Solid waste: An increase of 0.003% (of water demand in the grid) in the freshwater requirement, 0.002% in discharge of treated sewage into the municipal sewer, an increase of 1.27% in solid waste generation from the current generation in the grid was considered nominal."

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

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

M. Lack of Traffic analysis

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

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

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

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

N. Width of approach roads narrower

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

> "...As per the Layout Plan dt. 18.09.2020, as approved by the North MCD, i.e. the municipal authority, the width of Cavalry Road is 24mtrs and that of Chhatra Marg is 18mtrs. The Committee constituted by this Hon'ble Tribunal has suggested an acceptable level of service even during peak traffic hours...
>
> **..**.as per Engineering Principles, the capacity of a road is calculated by the Formula-"C = 1,000 Ã— V/S", where C is the Capacity, V is the Speed and S is the centre-to-centre spacing between vehicles. Therefore, the formulated/theoretical capacity of a road is not a function of its length or width, but in fact of the speed of the vehicles and the spacing between them, being directly proportionate to the speed and inversely proportionate to the spacing, meaning thereby that faster average speed would increase the capacity and higher spacing would reduce the capacity...
>
> **..**.for Chhatra Marg, the average speed being 22 kmph, and a centre-to-centre spacing of 9.07m, the formula works out to "C = 1000 Ã— 22/9.07" which is equal to 2425.57, rounded off to 2426. For Cavalry Marg, the average speed is 22.5 kmph and the spacing is 9.17m, therefore, the capacity is "C = 1000 Ã— 22.5/9.17" which comes out to 2453.65, rounded off to 2454..."

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

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

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

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

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

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

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

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

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

Q. Comparison of population as in 2018 and 2021

50. Denying above objection, PP has said:

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

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

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

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

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

R. Criteria for parking

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

52. The project sought to cover 40,500m^2 FAR for residential apartments and 9,478m^2 FAR for EWS apartments. Break-up of parking requirement would be as follows:

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

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

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

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

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

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

> "125. This Committee of renowned experts has based its assessment on a movement of 615 PCU on the roads which has been extensively described in the report and is self-explanatory and as per norms. In doing so they have also rightly assumed that all cars are BS-IV compliant or based on CNG. It is humbly submitted that that BS-IV compliant engines were made mandatory from 2010. The ARAI-TERI, 2018 Report relied upon by the Committee (@ Page 21 of the Report, Pg. 273, Vol.II, Appeal) states that the BS-IV engines do not generate Particulate Matter. It is pertinent to note that BS-IV is a standard for automobile engines which also includes diesel engines. As per BS-IV norms, which are mandatory across the country since April 2017, the pollutants from petrol-powered passenger vehicles were restricted to a Carbon Monoxide emission of 1.0 g/km, Hydro carbons+Nitrogen Oxides discharge of 0.18 g/km, and Respirable suspended particulate matter discharge of 0.025. The diesel models emitted a peak carbon monoxide of 0.50 g/km, a nitrous oxide of 0.25 g/km, and Hydro carbons+Nitrogen Oxides discharge of 0.30 g/km. Also, the Sulphur content in the Bharat Stage IV-compliant fuels was restricted to 50 PPM. Therefore, it is incorrect to state that BS-IV norms do not account for diesel vehicles and it is also wrong to challenge the veracity of the Report of the Expert Committee on this basis.
>
> A Copy of the Notification dated 19.08.2015 introducing BS-IV norms is annexed herewith and marked as ANNEXURE R-15. (From Pg.1146 to 1149)
>
> A Copy of the Emission Standards Booklet issued by ARAI is annexed herewith and marked as ANNEXURE R-16. (From Pg. 1150 to 1211)

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

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

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

"The background ambient air quality at the project site was observed that SO_2, NO_2 and CO concentrations are within the prescribed limit. The PM10 and PM 2.5 exceeding the permissible limit.

PM10: The concentration of PM10 was found ranging between 155.00 Âµg/m to 376.00 Âµg/m.

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

PM 2.5: The concentration of PM2.5 was found ranging between 87.00 Âµg/m to 195.00 Âµg/m.

The 98th percentile value of PM2.5 was found to be 194.16 Âµg/m^3 and average value of PM2.5 is 155.38 Âµg/m^3 during the month of December 2020. The background PM10 is well above the permissible limit. It is found generally that the PM10 level in the region of Delhi and NCR is more than the permissible limit and also maximum during the month of December and January. One of the important reasons for high level of PM10 is due to the burning of Paralli (agricultural left over in the field) in the region of Punjab and Haryana. However, in some years the concentration of PM10 is even higher than what is observed in this year.

SO_2: The concentration of SO_2 was found ranging between 8.9 Âµg/m to 12.2 Âµg/m. The 98th percentile value of SO_2 was found to be 12.12 Âµg/m^3 and average value of SO_2 is 10.43 Âµg/m^3 during the month of December 2020. The background level of SO_2 is found to be well within the permissible limit.

The main source of SO_2 is due to vehicular movement as the project site is adjacent to Mall Road.

NO_2: The concentration of NO_2 was found ranging between 22.8 Âµg/m to 38.4 Âµg/m. The 98th percentile value of NO_2 was found to be 38.15 Âµg/m^3 and average value of NO_2 is 30.35 Âµg/m^3 during the month of December 2020. The background level of NO_2 is found to be well within the permissible limit. The main source of NO_2 is due to vehicular movement as the project site is adjacent to Mall Road.

CO: The concentration of CO was found ranging between 1.18 mg/m to 1.36 mg/m. The 98th percentile value of CO was found to be 1.36 mg/m^3 and average value of CO is 1.29 mg/m^3 during the month of December 2020. The background level of CO is found to be well within the permissible limit. The main source of CO is due to vehicular movement as the project site is adjacent to Mall Road."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BB. Concealment of facts under Form I by PP:

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

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

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

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

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

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

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

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

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

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

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

GG. Attention not given to impact on Population density:

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

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

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

> "Solid Waste:
>
> Construction Phase:
>
> Construction and demolition waste generated from the project site is expected to be 6900 T in three years period. The waste will be disposed at C&D waste management facility through authorized C&D waste collectors. There are four C&D waste disposal facility available in Delhi viz. Burari, Jahangirpuri, East Kidwai Nagar and Shastri Park.
>
> Operation phase:
>
> Solid waste generated from project will be about 1.4 TPD. Solid wastes generated will be segregated into biodegradable (0.85 TPD) and non-biodegradable waste (0.55 TPD) and collected in separate bins. The biodegradable wastes will be composted in an on-site composting unit and the manure will be used for landscaping. The non-biodegradable/recyclable wastes will be disposed through North DMC.

Liquid Effluent:

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

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

Construction phase:

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

Operation Phase:

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

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

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

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

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

[...]

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

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

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

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

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

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

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

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

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

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

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

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

"• The project proponent must ensure that all necessary approvals have been obtained and are valid.

• It is noted that the project proponent has calculated the proposed STP capacity as 200 KLD based on the assumption of @ 4 persons per household. However, based on Census data, 2011, Delhi's average population density is @ 4.75 persons per household (range 4.6 4.9). Thus, the corresponding sewage generation of 225 KLD during the occupancy phase will exceed the proposed STP capacity. Therefore, the project proponent is advised to upgrade STP capacity to 225 KID or restrict water supply so that peak sewage generation must not exceed 200 KLD.

• Considering that the project area is part of groundwater discharge zone, it is advised to restrict construction to only one underground basement and one stilt parking, instead of the proposed two. The parking plan may accordingly be revised and necessary approvals obtained.

• An undertaking may be submitted that no groundwater will be extracted during the construction phase.

• NOC may be obtained from the District Advisory Committee on Ground Water of Govt. of NCT Delhi before de-watering during construction.

• An inlet digital flow meter shall be installed at DJB fresh water supply line.

• All environmental norms should be strictly adhered to during construction and occupancy phase of the project."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> a. The foundation of the high rise building needs to be up to 12 to 13 meter below ground level (hereinafter referred to as 'mbgl'), so for any construction to begin, the groundwater level will need to be lowered to about 14 mbgl from the present level in the range of 6 to 7 mbgl. This will require local desaturation of about 7 to 8 meters of the aquifer and desaturation needs to be maintained, till the time, the basement is suitably constructed. As the site is in a local discharge zone, hardly 500 m away from the natural recharge zone (Delhi ridge), dewatering for such desaturation will be a mammoth task. Huge amount of groundwater will be continuously extracted, lowering groundwater level in the neighbouring areas. Further, putting this extracted water to a desired use will be a challenge.
>
> b. In the context of local hydrogeology, in long run, proposed building along with adjacent sub surface metro tunnel will be addition of further barriers in ground water flow regime and is likely to further raise ground water levels locally which in turn, may lead to uncontrolled dampness in foundation and ground floor units of nearby buildings like Gandhi Bhawan, residence of Vice Chancellor of the University, Meghdoot hostel for women, building of campus of open learning, nearby staff quarters of the University and private houses. This may hamper structural safety of these buildings, as they were never designed keeping these facts in mind.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ci) Said study was conducted in December 2020 when University campus was closed due to COVID-19 pandemic and, therefore, recorded traffic pollution is less than usual. Even if, that is so, the data on PM2.5 and PM_{10} is way above the permissible levels and, therefore, proves the point that ambient air quality will be further deteriorated. Contributory pollution will be increased. Deteriorating air quality has been only attributed to stubble burning, which is a very narrow perspective of the understanding of air pollution itself.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(cxvii) Appellant has given certain illustrations as under:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

which we permitted.

ARGUMENTS:

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

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

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

> "Key:
>
> (i) Young Builders Pvt. Ltd. (Respondent No. 2)-"YBPL"; (ii) Environmental Clearance dated 21.05.2021-" EC"; (iii) Environmental Clearance dated 22.03.2018-"2018 EC"; (iv) Environmental Clearance dated 13.08.2012-"2012 EC" (v) Counter Affidavit of Young Builders/Respondent No. 2-"CA"
>
> Project Description - 1, 3 Cavalry Lane and 4 Chhatra Marg, New Delhi - 2.0 Ha of land. 1, 37, 879.64 m^2 of Built Up Area (EC @ Pg. 69, Appeal)
>
> - 2 Podiums+Stilt+2 Fire Floors+38 floors-145.3 mtrs [Details of Buildings in EC @ Pg, 70, Appeal]
>
> I. ENVIRONMENTAL CLEARANCES AND EXPERT COMMITTEE REPORTS IN RELATION TO THE SUBJECT PROJECT
>
> Multiple statutory authorities and expert committees have examined the project threadbare and granted clearances, which are listed hereinbelow,
>
> > (i) The State Level Expert Appraisal Committee ("SEAC"), after conducting a detailed examination of the Project, recommended the grant of EC for the Project to the State Level Expert Environmental Impact Assessment Authority ("SEIAA"), which in turn granted the first (1st) EC on 13.08.2012. Since the Project could not be constructed due to the litigation initiated by the Appellant before the Hon'ble High Court of Delhi at New Delhi ("Hon'ble Delhi HC") (delineated below), the EC expired with efflux of time.
> >
> > (ii) The Project was re-examined by the SEAC, which after detailed presentations and examination recommended the grant of another EC for the Project to the SEIAA, Delhi, which then granted the second

(2nd) EC to YBPL on 22.03.2018

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the answering Respondent and further that YBPL has received the requisite tree cutting permission and therefore the contentions of the Appellant University are mere apprehensions. [@ Pg.895-903, CA, Vol. I]

B) The Minutes of Meeting of the EAC and the specific conditions imposed in the EC display thorough scrutiny and application of mind

8. The subject EC was applied for on 08.02.2021, after which the EAC directed YBPL to send point-wise responses to each and every ground raised by the Appellant which is clear from the minutes of meeting of the 62nd EAC Meeting dt. 01.03.2021 [Pg. 458, Appeal, Vol. III]. It is pertinent to note that the same grounds have been taken in the present Appeal. In response to the objections raised by the Appellant before the EAC, YBPL submitted its reply on 22.03.2021 detailing the various measures being taken with respect to seismicity, air quality, ground water management, noise etc. [Reply of YBPL @ Pg 523-529] A bare perusal of the minutes of the 62nd Meeting of the EAC dated 01.03.2021 display the close scrutiny and application of mind by the EAC wherein it is noted that, [@ Pg. 458-459, Appeal]

> "3. The EAC observed that the PP has earlier obtained EC twice for the same project vide letter No. DPCC/SEAC/50/SEIAA/1/2012 dated 13/08/2012 and vide letter No. SEIAA-D/C-353/EC-350/2018 dated 23/03/2018 due to increase in FAR area of the project and revision in the project planning. Now, the PP has re-applied for EC in connection with order passed by Hon'ble NGT, Principle Bench, Delhi on 20.01.2021 on Appeal No. 112/2018 in the matter of University of Delhi vs. MoEF&CC.
>
> **4 .** The EAC noted certain discrepancies in the Conceptual plan submitted by the PP regarding the disposal of treated water. In the Conceptual plan, as per the section on Environmental Management Plan, the PP has proposed that entire treated sewage will be reused for toilet flushing and horticulture, while as per the water balance diagram and table on water requirement, it has been stated that about 96 KLD will be disposed in to municipal drain. Also, the PP has not provided any information on the dewatering required for basement construction in the Conceptual Plan.
>
> **5 .** The EAC also noted that a Committee was appointed in terms of order of NGT dated 27.2.2020 and the Hon'ble Supreme Court vide its order dated 10.06.2020, and has given its report dated 10.12.2020. One of the suggestions of the Committee was that, 'considering that the project area is part of groundwater discharge zone, it is advised to restrict construction to only one underground basement and one stilt parking, instead of the proposed two. The parking plan may accordingly be revised and necessary approvals obtained.' However, the PP has still proposed 2 basements in the current proposal.
>
> **6 .** During processing, Ministry is in receipt representation dated 02.03.2021 from the Pro-Vice-Chancellor, University of Delhi expressing concerns on the construction of building in DU area. Representation, however, could not be discussed in the meeting of EAC. The EAC was of the opinion to take point-wise replies from PP to

the representation so that the same could be discussed in forthcoming meeting.

7 . The EAC (Infra-2), based on the information submitted and clarifications provided by the Project Proponent and detailed discussions held that the submissions made by the PP require certain revisions as mentioned above. In view of the foregoing, the EAC recommended to defer the decision on the project and asked the PP to provide the following information:

i. Clarification for the proposal of 2 basements with reference to recommendation of the committee constituted by NGT and Supreme Court Order.

ii. Analyse the discrepancies and resubmit the conceptual plan after making the necessary revisions. Water balance flowchart needs to be revised.

iii. Air pollution management in the context of Graded Action Plan for Delhi & NCR.

iv. Point-wise replies to representation made by Delhi University"

9. The above queries were duly responded to by YBPL by way of a detailed reply on 22.03.2021 [@ Pg. 345-443, Appeal]. Further, YBPL made two detailed presentations on 01.03.2021 and 13.04.2021 before the EAC concerning each and every concern and query raised by the EAC. [Presentations @ Pg. 1230-1323, CA, Vol. III] Hence, the EAC had a wealth of material to assess and appraise the project.

10. In the Reply filed by the MoEF & CC (Respondent No. 1), it has been stated that YBPL's Response dated 22.03.2021, was closely checked in the 64th Meeting of the EAC held on 12-13 April, 2021 and found to be in accordance with environmental parameters.

11. It was on the above basis that the EC was granted, with several specific conditions on all aspects of the project including conservation of ground water, source of water for operational phase, area for green belt, preparation of a traffic management plan etc. The very fact that the EAC has laid down 18 specific conditions, in addition to the general conditions, proper and judicious application of mind to the project in question. Thus, the EAC by proper application of its mind has taken into consideration all the environmental issues and thereafter issued the EC by incorporating the conditions and special conditions to be complied with by the project proponent/project developer.

12. This is further cemented by reading the Reply filed by the MoEF wherein it is stated that,

"14. It is submitted that the project proponent is obligated to comply with the specific conditions. The compliance of these conditions is strictly assessed/evaluated/monitored by the concerned authorities at the State and Central level. The project proponent has to submit status of compliance report every six months which will be published on the

website and monitored by the Ministry. If there is any non-compliance of the Environmental Clearance conditions, effective action in accordance with law is taken by the Competent Authorities against the project proponent.

15. It is submitted that the Environmental Clearance dated 21.05.2021 for the projects in question has been granted by the Ministry in accordance with law and this Answering Respondent has followed the procedure for appraisal of the Project as prescribed under the EIA Notification, 2006 and subsequent amendments and subject to stipulation of various environmental safeguards"

C) The Project has been assessed in conformity with the OM of 10.11.2015 which lists out the environmental parameters to be considered for assessing Building and Construction Projects

13. It is submitted that all item 8(a) projects with built-up area below 1,50,000 sq mrs. are appraised in the identical manner as has been done in the present case. In fact, in the Appendixes - I, II and V to EIA 2006 and OM dated 19.06.2013 and 10.11.2015, the MoEF has prescribed the forms, procedure and a time line as well as the precise environmental parameters basis which a building and construction project is to be assessed. This was done to introduce uniformity in the appraisal process for building and construction projects. [OM dated 10.11.2015 - Annexed as Annexure - 1] [Appendixes I, II and V to EIA Notification, 2006 - Annexure-2 (colly.)] As per the OM issued by the MoEF on 10.11.2015, only the following parameters are to be assessed by the EAC,

"a. Brief Description of the Project in terms of location and surroundings.

b. Environmental Impacts on Project Land and its surrounding developments and vice-versa.

c. Water Balance Chart with a view to promote waste water treatment, recycle, reuse and water conservation.

d. Waste Water Treatment and its details including target standards.

e. Alterations in the natural slope and drainage pattern and their environmental impacts on the surroundings.

f. Ground water potential of the site and likely impacts of the project.

g. Solid Waste Management during construction and post construction phases.

h. Air Quality and Noise Levels; likely impacts of the project during construction and operational phases.

i. Energy requirements with a view to minimize power consumption and promote use of renewal energy sources.

j. Traffic Circulation System and connectivity with a view to ensure adequate parking, conflict free movements, Energy efficient Public Transport.

k. Green Belt/Green cover and the Landscape Plan.

l. Disaster/Risk Assessment and Management Plan.

m. Socio Economic Impacts of the project and CSR.

n. EMP during construction and operational phases.

o. Any other related parameter of the project which may have any other specific impact on environmental sustainability and ecology."

Further, it is also provided that, "The SEIAA/SEAC need not focus on the other issues which are normally looked after by the concerned local bodies/State Government Departments/SPCBs."

All the parameters listed above were closely monitored in the appraisal process which is clear from a reading of the Form-I, I-A, Conceptual Plan and EMP. Detailed discussions were held during presentation on 01.03.2021 and specific queries were raised w.r.t. (i) environmental issues on project parameters (ii) DU's objections (iii) Nine-member committee report appointed by Hon'ble NGT. Thereafter, YBPL submitted a detailed reply dated 22.03.21 covering all the queries to the EAC. For instance, in light of point(c) above, the EAC specifically sought a revised water balance chart to ensure there is no ecological discrepancy in the Project. Further, even the specific conditions imposed in the EC are in line with the above listed parameters. For instance, conditions for managing the ground water level, traffic circulation etc. have been imposed on the Project Proponent.

14. The above information shows that an appraisal of the Project has been done by three different SEACs/SEIAA and MoEF in 2012, 2018 and 2021. In addition, there were 2 Expert Committees which have assessed and affirmed the environmental viability and sustainability of the Project. It is important to bear in mind that the Appraisal contemplated under the EIA Notification 2006, for a project under item 8(a), i.e. a building a construction project with built up area lesser than 1,50,000 sq mtrs, is based on Form-I, Form I-A, Conceptual Plan, Environment Management Plan and information submitted thereon. However, in the present case, the appraisal has been done over and above the legal requirement and in line with the principle of sustainable development not only by the EAC but by several expert committees.

15. On the contrary, in the present case, there was the advantage of the Report of the 9-member Expert Committee. Even the EAC appraised the Project with complete application of mind. The EAC comprises of various experts from various fields, who have looked into the matter in great detail and have even considered the representation of the Appellant. Only after the detailed deliberations of various stakeholders, and after a multiple layered decision making process, the subject EC was granted.

D) The views of an Expert Body like the EAC cannot be substituted by the Court/Tribunal, if all relevant material was considered by the Committee

16. On the issue of reviewing a finding rendered by an Expert Committee/EAC, the Hon'ble Supreme Court in the Central Vista Judgment categorically held that,

> "494. [...]EAC is an expert body and it is amply clear that it has been made aware of all relevant information relating to the project and it has applied its mind to the proposal. Even on settled principles of judicial review, it is clear that relevant material has been considered by the committee and no reliance has been pointed out on any irrelevant material. The specific recommendations given by the committee do indicate that the committee was aware of the need for precautionary measures in environmental matters and accordingly, it suggested requirement of further permissions on certain counts.
>
> **495.** Once an expert committee has duly applied its mind to an application for EC, any challenge to its decision has to be based on concrete material which reveals total absence of mind. Absent that material, due deference must be shown to the decisions of experts.
>
> **515.** We, therefore, upon a thorough examination, decline to interfere in the grant of EC. The expertise developed by the EAC cannot be undermined in a light manner and as noted above, due deference must be accorded to expert agencies when their decisions do not attract the taint of legal unjustness."

17. It is trite law that the nature of reasoning in the Report/Order of a quasi-judicial body or an Expert Committee is different from that rendered in a Judicial Order. Since an Expert Committee is not a Judicial Body, it is not required to give elaborate reasons qua each of the point raised by the parties, however, its Report must be in the nature of a speaking Order and contain adequate and tangible reasons for arriving at its conclusions. In light thereof, the Minutes of the EAC Meeting need not be in the nature of a speaking Order/Judgment. In S.N. Mukherjee v. Union of India reported at MANU/SC/0346/1990 : (1990) 4 SCC 594 (Reproduced @ Pg. 871, CA, Vol. I), the Hon'ble Supreme Court summarised the above proposition and held that,

> "36. [....] In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy."

18. It is further submitted that a Building and Construction Project has to be assessed as per the terms of the EIA Notification, 2006 and in light of the potential environmental footprint. It cannot be scrutinised in a manner which traverses beyond the EIA Notification and akin to a Category A/B1 Project requiring preparation of EIA Report. In the Central Vista Judgment, which also dealt with a Building and Construction Project under item 8(a) of the EIA Notification, the Hon'ble Supreme Court held that,

> "514. In the present case, the subject project is an independent building and construction project wherein one-time construction

activity is to be carried out. It is not a perpetual or continuous activity like a running industry. It is absolutely incomprehensible to accept that a project of this nature would be unsustainable with the needs and aspirations of future generations.[....]."

IV. THE PROJECT HAS BEEN APPRAISED BY A 9-MEMBER EXPERT COMMITTEE APPOINTED BY THIS HON'BLE TRIBUNAL, ON THE BASIS OF THE CARRYING CAPACITY OF THE AREA

19. A 9-member Expert Committee was appointed by this Hon'ble Court to assess the Carrying Capacity of the Area in the previous challenge to the EC in Appeal No. 112 of 2018, vide Order dated 27.02.2020. The said Committee comprised independent experts from 9 different and eminent institutions across the Country. The Committee published its Rapid Indicative Environment Assessment Report before this Hon'ble Tribunal on 10.12.2020 ("Expert Committee Report") [Pg. 252-302, Appeal, Vol. II] After analysing the population density, ground water, ambient air and noise quality, traffic management and parking, the Committee found that the Project was environmentally viable. It is crucial to note that the assessment undertaken by the Committee was based on fresh data as gathered by the Committee.

20. A bare perusal of the Report of the Expert Committee would show that it has applied its mind independently to each and every ecological danger that could potentially arise from the subject Project. The methodology adopted by the Committee was based on the precautionary principle and the Committee took a holistic view of the situation. The methodology adopted is stated herein under,

> "For rapid indicative environment assessment of the site, a 2 km by 2 km area was examined for likely impact during construction and operational activities of the project. As the project is a group housing scheme, the likely environmental impacts are anticipated on air quality primarily due to additional vehicular movement, additional water requirement, wastewater disposal, solid waste generation, noise generation and traffic congestion.
>
> To assess the incremental changes in environmental media, an assessment of scale of activities and their potential impacts was undertaken. Based on the incremental changes and extent of impacts, environmental viability of the project is evaluated. Status and validity of various clearances obtained by the project proponent is also presented."

A) Findings of the Report of the 9-Member Expert Committee

> i. The increase in population due to the Project will not impact the urban infrastructure/services
>
> "The grid falls in 6 wards. Of these wards, most of the area lies in the Timarpur ward (59.7%), followed by GTB Nagar (23.9%) and Majnu ka Tilla (14.2%) as shown in Table 3.2. The ward boundaries are shown in Figure 3.3 and as evident most of the grid area falls under Timarpur ward (No. 10). The ward wise land use distribution is shown in Figure 3.4. [....]

Timarpur ward is the largest ward in the grid and an incremental increase in the population was estimated in this ward. The estimated increase in the population density in the Timarpur ward will be 6777 persons per sq. km. The percentage increment in the ward will be 14%. This increase is significant; however, tall residential buildings do give higher population density. This increase in density is not likely to impact the urban infrastructure/services, as noted above.

INFERENCE

An increment of 1947 persons per sq. km. is anticipated in ward area due to proposed project, i.e. an increment of 14% in the existing population density in the ward, which is statistically significant and likely to result in alteration in present conditions."

ii. Incremental Air Pollution Load From The Project is statistically insignificant

"Present Ambient air quality

The nearest ambient air quality station to the project site is located at North Campus. The annual average concentration for the years 2018 and 2019 for SO_2, NO_2, NH_3, Benzene, PM2.5, PM10 and CO was analysed and it is noted that while NO_2 was within stipulated norms, PM2.5 and PM10 were exceeding standards during 2018 and 2019. The details are as tabulated below. [....]

INFERENCE

Being a high-income group residential project, the likely source of air pollution is vehicular emissions from estimated additional 615 cars on road during occupancy phase. During assessment, it was assumed that these additional cars would be BS IV compliant and driven by petrol or CNG.

The applicable emission limits for CO, HC and NOx were used to estimate additional pollution load. The BS IV 4 wheelers do not generate particulate matter and thus no likely addition to existing PM levels is expected.

Further, the annual pollution load data from ARAI-TERI, 2018 study for Delhi was used to estimate additional pollution load in Timarpur ward due to additional 615 cars on road due to proposed project, using area as proportionating factor. Statistically insignificant increment is noted in CO (0.25%), HC (0.09%) and NOx (0.1%) emissions due to proposed project."

iii. The additional Water Requirement for the project, during the construction phase as well as the operational phase will lead to a mere 0.003% increase in the grid

"(a) Construction Phase

As per Form 1A submitted by project proponent, water requirement

during construction phase will be met through private water tankers and no ground water will be extracted. It is opined that the construction of 37 floors and four towers along with basements will require huge quantity of fresh water for material preparation, mixing, curing, etc. The proponent has not provided information on quantity of water to be used during construction phase.

As per a study, the embodied water quantity of a multi-storied apartment building of steel and RC construction is 27.6 KL per sq.m. of built-up area (Assessment of water resource consumption in building construction in India S. Bardhan Dept. of Architecture, Jadavpur University, India, 2011).

(b) Occupancy Phase.

The water requirement during occupancy phase is presented in Table 3.8.

[...]

At present, the estimated water usage in the grid is as follows, Estimated water usage in the grid = Population (38,475) x 135 LPCD = 5194125 LPCD = 5194 KLD Additional fresh water requirement due to project during occupancy = 182 KLD

A percentage increase of about 0.003% in fresh water requirement is anticipated in the grid.

Hence, proponent is advised to estimate total water requirement during the construction phase and submit an agreement with private water tanker provided for supplying the calculated quantity of water during construction phase. Further, an undertaking may be submitted by proponent that no ground water will be extracted during construction phase.

[....]

INFERENCE

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

iv. The proposed STP capacity is adequate for Waste Water Generation

"As total 34% of daily water requirement is proposed to be met through recycling (flushing & horticulture) the daily fresh water demand is lower. Further, a 0.002% percentage increase in existing load of municipal sewer is anticipated due to discharge of treated wastewater from the project.

The proposed STP capacity is adequate with wastewater estimation

based on @ 4 persons per household as indicated by the project proponent. However, it will be inadequate to suitably treat daily wastewater generated when quantity is estimated @ 4.75 persons per household."

v. A mere 1.27% increase in generation of Solid Waste is anticipated due to the project

"An increase of 1.27% from the present generation of solid waste in the grid is estimated due to the project."

vi. Miniscule impact is anticipated on the existing Noise Levels.

"One of the point of contention is whether the project falls under 'Silence zone', it is defined as area less than 100 metres around hospitals, educational institutions, courts, religious places or any other area which is declared as such by the competent authority.

The nearest hospital to project site is Patel Chest Hospital, which is located at an aerial distance of around 600 m and thus silence zone standards are not applicable.

The nearest noise quality monitoring station is Civil Lines which falls under commercial zone with standards 65 dB(A) daytime and 55 dB(A) night time. The annual data was analysed and it is noted that annual average values during 2018 was 61 dB(A) daytime and 59 dB(A) nigh time. Further, the annual average value during 2019 was 62 dB(A) daytime and 58 dB(A) nigh time.

It is noted that daytime annual average value is within stipulated standards and slight exceedance is noted in night time values mainly due to plying of trucks towards Delhi Border.

INFERENCE

As it is a group housing project, miniscule impact on noise environment during occupancy phase is anticipated, except during intermittent operation of the DG sets as backup power."

vii. Only a marginal Impact on Traffic Congestion is anticipated due to additional 615 cars

"The impact of additional cars on road during occupancy phase of the project was assessed on five road sections namely, Chatra Marg, Vishwavidyalaya to Vidhansabha Road, Vidhansabha to Vishwavidyalaya, GC Narang Road and Cavalary Road. A traffic count survey was done by CPCB on October 12, 2020.

The assessment is as presented below,

[....]

Using,

Avg. vehicle length = Car 3.5m, LCV = 4.5 m, HCV = 6 m PCU = Car =

1, LCV = 2, HCV = 3

INFERENCE

Volume to capacity ratio (V/C) and speed are two main parameters to assess the Level of Service (LoS), provided by the road. When the v/c ratio value equals 'one', it signifies the complete saturation of capacity of the road, resulting in congestion. Whereas, value towards '0', implies free flow condition.

Based on analysis, it is inferred that the inclusion of additional 615 passenger cars on the road from the project will result in marginal increase in volume to capacity ratio (ranging 0.04 to 0.16). For the various section of roads, it is also observed that increase in volume to capacity ratio during the morning peak hours (0.04-0.06) and evening peak hours (0.05-0.08) is less, as compared to the ratio during afternoon time (0.09-0.16). Overall, there will a marginal degradation in level of service."

viii. Adequate safeguards and permissions have been taken to show the Stability of Structure with respect to Earth Quake

"University of Delhi's north campus falls under the 'high hazard zone' having worst category of "very high" risk index. Thus, seismic stability of 37 storeyed project was taken into consideration during project assessment and the structural stability certificates were verified. It is noted that following approvals have been obtained from concerned authorities, it is noted that following approvals have been obtained from concerned authorities,

1) FORM 07 (Structural Stability Certificate) dated 04.07.2017-This certificate was submitted to North DMC along with building plan approval application

2) STR certificate dated 10.01.2018 - This is the detailed structural stability certificate issued by structural engineer.

3) A detailed foundation recommendation report of Prof. Vs. Raju, Ex. Director, IIT, Delhi dated 17.04.2018 - In order to keep building structure safe with respect to earthquake."

V. NO HEIGHT RESTRICTIONS ARE APPLICABLE ON THE PROJECT SINCE IT DOES NOT FALL IN THE NORTH CAMPUS AREA OR THE LUTYENS BUNGALOW ZONE

A) The DDA, in its Resolution dated 12.05.2011 has clarified that group housing norms with no height restrictions apply to the subject Project

21. On 29.03.2007, the DMRC sought a clarification from the DDA about the development control norms which would be applicable for the subject plot. In response to the request, the DDA answered vide letter dated 29.03.2007 stating that all statutory provisions related to Group Housing as per MPD-2021 are to be followed for the concerned land, i.e. FAR of 200 and maximum ground coverage of 33.3% with no height restrictions.

22. On 19.08.2009, the DDA changed its earlier stance and the DDA replied to the MCD vide letter dated 19.08.2009 stating that Development Control Norms applicable to the subject plot shall be as per the Notification dated 20.01.2005 prescribing Development Control Norms for Metro Stations, i.e. 25% ground coverage and 100 FAR with no height restrictions. [Note: the said standards are merely an enabling provision in the MPD-2021, and are applicable to plots up to a maximum area of 3.0 Ha in size. The present plot, inclusive of the metro station, was 3.05 Ha]

23. The matter was further examined by DDA in its meeting held on 17.02.2010, whereby the Lt. Governor constituted a Committee under the Chairmanship of Engineer Member, DDA with Chief Town Planner, MCD and Chief Engineer, DMRC as members to survey the entire area and examine the implications on the proposed high-rise buildings on the privacy and integrity of the Delhi University environment. The committee members undertook the joint inspection of the site on 19.02.2010 and submitted their report in March wherein it was concluded that the proposed high-rise property development on 2.0 Ha. plot will not affect the privacy of the girls' hostel nearby as these are either far (e.g. Miranda House) or interspersed by other buildings (Meghdoot Hostel), the high-rise construction is not debarred as per MPD-2021, it will not add to any parking problem and will also not affect the serenity/tranquility of University area. [@ Pg.886-894, CA, Vol. I]

24. Despite the above Report, the DDA was not reconsidering its stance. Hence, YBPL was constrained to file a Writ Petition before the Hon'ble High Court of Delhi bearing Writ Petition (C) No. 3135/2010. On 23.11.2010, the Hon'ble High Court passed an Order directing DDA to deliberate on its position in light of the Report of the LG's Committee as well as the fact that it had earlier taken a different stand qua the same plot. Thereafter, on 21.01.2011, a meeting was held by the DDA. Further, on 07.03.2011, the DDA issued a communication stating that norms of residential group housing as given in MPD-2021 shall be applicable in this case excepting the height factor which has been recommended by the authority on dt. 21.01.11 to restrict it to 8 storeys. The High Court subsequently passed an Order on 07.03.2011 directing DDA to consider the matter on height restriction and the authority shall invite the highest officer of the DMRC to remain personally present and to participate inasmuch as the DMRC has put the land into auction for Rs. 218.20 - crores.

25. It was during the pendency of the above Writ Petition that the DDA passed a Resolution on 12.05.2011 resolving that its earlier stance communicated vide letter dated 29.03.2007 was the correct one and stated that 2.0 Hectare plot leased out to the answering Respondent shall be considered as a 'separate entity' and the Development Control Norms for Group Housing with no height restriction shall apply. This was taken note of by the Hon'ble High Court which stated in its Order dated 18.05.2011 that nothing further remains to be adjudicated.

B) The Hon'ble High Court of Delhi has held that there are no height restrictions on the Project since the subject Land does not fall within North Campus Area or Lutyens Bungalow Zone

26. Thereafter, the Appellant University filed a Writ Petition on the premise that the aforesaid resolution passed by DDA was in violation of the provisions of

MPD-2021 and the subject Plot falls within the North Campus area wherein there is a restriction on tall buildings as per clause 11.3 of the MPD-2021, read with the zonal development plan for Zone-C. The stand of the University was clearly rejected by the Hon'ble High Court vide its Order dated 27.4.2015 in WP(C) No. 2473 of 2015 wherein the Hon'ble High Court issued a finding in fact and in law to the effect that, [Order @ Pg. 904, relevant para 58 @ Pg. 943, CA Vol. I]

> "58. The claim of the petitioner is that the 3.05 Hectare land falls in the 'controlled zone' of Delhi University and that a height restriction ought to have been imposed on the Project otherwise it will be in direct conflict with MPD 2021. However, as submitted by Ld. Counsel for respondents that there is nothing called "controlled zone" of Delhi University under MPD 2021 or Zonal Development Plan for Zone-"C". However, MPD 2021, Chapter 11-Urban Design, Para 11.3 provides that restriction on tall buildings would be necessary in important areas like Lutyen's Bungalow Zone, Civil Lines Bungalow Zone and North Delhi Campus. The plot in question does not fall within any of these restricted areas. In any case, the same was also established by respondent No. 12 during arguments by showing the Zonal Development Plan for Zone-C (Civil Lines Zone) that the land in question does not fall within any restricted area in Zone-"C" i.e. the Civil Lines Bungalow Zone or the North Delhi Campus. In fact that land does not fall within Delhi University North Campus which is established from the information obtained by respondent No. 12 under RTI wherein it is stated that the 3.05 Hectare plot is not a part of Delhi University."

27. The said Judgment was appealed before the Division Bench of the Hon'ble High Court as well as the Hon'ble Supreme Court both of which rejected the Appeals vide Orders dated 29.10.2018 and 17.12.2019 [SC Order @ Pg. 970-986, CA, Vol. II]. Even before the Hon'ble Supreme Court, the Appellants had repeatedly raised the issue of height restrictions and the location of the project qua the MPD-2021 [Refer Para 3.3, 8.419., 27, 31]. However, the Hon'ble Supreme Court dismissed the Appeal of the Appellant and upheld the Orders of the Hon'ble High Court. Hence, the issue qua applicability of height restrictions under the MPD-2021 have been put to rest by concurrent findings of two Hon'ble Courts. Thus, it is completely mala fide on the part of the Appellant to re-agitate an issue which has been considered and decided by two Constitutional Courts.

C) The Hon'ble NGT cannot address matters which are not environmental in nature, such as municipal norms for height [Rajeev Suri v. DDA & Ors. - Central Vista Judgment]

28. In any case, it is submitted that in the Judgment of Rajeev Suri v. DDA & Ors. ("Central Vista Judgment") (Reproduced @ Pg. 770, CA, Vol.I), the Hon'ble Supreme Court explained that this Hon'ble Tribunal, being a creature of a statute, i.e. the NGT Act, 2010 cannot traverse beyond the jurisdiction conferred by the Act and deal with matters which are not environmental in nature or those which are not enumerated in the NGT Act, 2010. The Schedule-I to the NGT Act lists the enactments in relation to which this Hon'ble Tribunal could exercise its jurisdiction. The MPD-2021 or municipal norms are not a part of the Schedule-I. In the Central Vista Judgment, it was held that,

> "503. NGT is not a plenary body with inherent powers to address concerns of a residuary character. It is a statutory body with limited mandate over environmental matters as and when they arise for its consideration. In a cause before it, NGT cannot directly go on to adjudicate on concerns of violation of fundamental rights and once the contours of a subject matter traverse the scope of appeal from a grant of EC, the merits review by tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute."

Note: An SLP filed against the said Order was dismissed on 14.02.2014.

29. In addition, it maybe pertinent to note that the acquisition proceedings and the auction in favour of YBPL was also challenged by the erstwhile lessees of the Plot in W.P.(C) 6624-6625/2012 before the Hon'ble High Court of Delhi. The Writ Petition was dismissed by the Hon'ble High Court of Delhi stating that there is no question or colourable exercise of power and the plot used by DMRC for commercial purpose is being done as per the settled principles of law. In order dated 10.09.2013 the Hon'ble High Court in W.P.(C) 6624-6625/2012 observed that,

> "17. Insofar as, the question of colourable exercise of power is concerned that does not arise in the present case. There is no dispute, in view of the counter affidavit filed on behalf of the DMRC, that initially the entire 30,500 sq. mtrs. of land was required for the purpose of the Vishwa-Vidyalaya Metro Station. This was so as per the plan envisioned under Phase-I. However, subsequently, during the execution of the project, in 2006, when Phase-II was envisioned, the Vishwa-Vidyalaya Metro Station was no longer the terminal station and that the line from Central Secretariat to Vishwa-Vidyalaya had been extended to Jahangirpuri. It is because of the fact that the Vishwa-Vidyalaya Station was no longer the terminal station that the requirement for parking space was reduced and that is why there was a surplus available with the DMRC"

Note: An SLP filed against the said Order was dismissed on 14.02.2014.

Lastly, it may also be pertinent to note that one Metro Commuters Association also challenged the auction by DMRC in W.P.(C) 8675/2011 before the Hon'ble High Court of Delhi on the ground that it will affect commuters parking at the Vishwavidyalaya Metro Station. The same was dismissed on 14.12.2011 against which no appeal was preferred in the Supreme Court.

VI. NOT THE TALLEST BUILDING IN DELHI

A) There are several other buildings, even in the vicinity of the Delhi University which are taller with more built-up area and basements

30. The University of Delhi has made a claim that the Project will be the tallest building in Delhi. This could not be further from the truth. In fact, the following buildings, which are in the vicinity of the University of Delhi, are taller, and/or have more built up area and/or more basements, (A detailed chart of high rise buildings-Annexure-3)

S No.	Name	Location	Height	Floors
1	Negolice India (M2K)	Azadpur, Delhi	235 meters	65
2	The Leela Sky villas	Kirti Nagar, Delhi	190 metres	61
3	DCM Ltd. (Residential Project)	Delhi, Kishanganj	180 meters	
4	DLF Home Developers Ltd.	Motinagar, Delhi	179.2 meters	
5	Unity the Amaryllis-Iconic Tower	Karol Bagh, Delhi	171 metres	48
6	Delhi Floor Mills Co. Ltd. (Group housing)	Civil Lines, Delhi	165 meters	46
7	**Young Builders Private Limited**	**Civil Lines, Delhi**	**145.3 meters**	**43**
8	Parsvnath-La Tropicana	Khyber Pass, Delhi	125.6 meters	40
9	Risland Sky Mansion	Chhatarpur, Delhi	105 metres	25
10	Godrej South Estate	Okhla, Delhi	105 metres	29
11	Unity Amaryllis-Phase 2	Kirti Nagar, Delhi	100 metres	31
12	Northern India Paint Colour & Varnish Co LLP	1, Canal Road, Vijay Nagar	81 Meters.	21
13	North Delhi Metro Mall	Civil Lines, Delhi	44.1 meters	

B) The same baseline environmental indicators are applicable to all projects, hence, the project of YBPL cannot be singled out

31. It is also submitted that it would be wholly iniquitous and unjust if the project of YBPL is singled out, while there are several other building projects with a far greater built-up area and height which have been given the green signal. In fact, the other projects have not been assessed even close to how seriously and rigorously YBPL's project was appraised and reviewed several times over.

32. If the Appellant is really seeking to protect the environment and the environs of Delhi University, its selective attack on the subject Project reeks of mala fides and ulterior motives since there are several other projects in the very neighbourhood of the university which have gone unchallenged.

33. The baseline environmental indicators such as the air pollution in Delhi must be equally applicable to all developmental activities and not solely the project of YBPL. The ambient air quality of Delhi cannot be different for two projects in the same vicinity. Further, even the lack of availability of fresh water is applicable to each of the Buildings and Construction Projects. Hence, even if it is assumed, without admitting that the carrying capacity in Delhi is not sufficient for large scale building projects, the same yardstick has to be applied to all projects, and not only that of YBPL. The materials regarding the EC and appraisal process for the other projects is readily available on the public website of the MoEF and YBPL craves liberty to refer to the same, if required.

VII. THE PRINCIPLE OF SUSTAINABLE DEVELOPMENT MUST BE ADHERED TO

A) The Supreme Court has held that developmental activities must be permitted in an environmentally sustainable manner

34. In a catena of Judgments, this Hon'ble Tribunal and the Hon'ble Supreme Court have observed that developmental activities and the environment are not sworn enemies. That development should be permitted, albeit strictly in line with environmental safeguards and mitigating measures to offset any ecological

damage. It is in that spirit that YBPL has obtained the present EC and will continue to monitor its Project. In the Judgment of Karnataka Industrial Areas Development Board v. C. Kenchappa, reported at MANU/SC/8159/2006 : (2006) 6 SCC 371, the Hon'ble Supreme Court stressed on the fact that a balance must be maintained between development and the environment and it was held that,

> **61.** The priority of developing nations is urgent industrialisation and development. We have reached at a point where it is necessary to strike a golden balance between development and ecology.
>
> **62.** The development should be such as it can be sustained by ecology. All this has given rise to the concept of sustainable development.
>
> [....]
>
> Sustainable development: Contribution of the judiciary and others
>
> **66.** This Court, in Vellore Citizens' Welfare Forum v. Union of India [MANU/SC/0686/1996 : (1996) 5 SCC 647], acknowledged that the traditional concept that development and ecology are opposed to each other, is no longer acceptable. Sustainable development is the answer. Some of the salient principles of "sustainable development" as culled out from Brundtland Report and other international documents are intergenerational equity. This Court observed that "the precautionary principle" and "the polluter-pays principle" are essential features of "sustainable development".
>
> **67.** A nation's progress largely depends on development, therefore, the development cannot be stopped, but we need to control it rationally. No Government can cope with the problem of environmental repair by itself alone; people's voluntary participation in environmental management is a must for sustainable development. There is a need to create environmental awareness which may be propagated through formal and informal education. We must scientifically assess the ecological impact of various developmental schemes. To meet the challenge of current environmental issues, the entire globe should be considered the proper arena for environmental adjustment. Unity of mankind is not just a dream of the enlightenment but a biophysical fact.
>
> [...]
>
> **99.** In the Rio Conference of 1992 great concern had been shown about sustainable development. "Sustainable development" means "a development which can be sustained by nature with or without mitigation". In other words, it is to maintain delicate balance between industrialisation and ecology. While development of industry is essential for the growth of economy, at the same time, the environment and the ecosystem are required to be protected. The pollution created as a consequence of development must not exceed the carrying capacity of the ecosystem. The courts in various judgments have developed the basic and essential features of sustainable development. In order to protect sustainable development, it is necessary to implement and enforce some of its main components and ingredients

such as precautionary principle, polluter-pays and public trust doctrine. We can trace the foundation of these ingredients in a number of judgments delivered by this Court and the High Courts after the Rio Conference, 1992.

100. The importance and awareness of environment and ecology is becoming so vital and important that we, in our judgment, want the appellant to insist on the conditions emanating from the principle of "Sustainable Development":"

B) If the EC is quashed on the basis that the baseline environmental indicators such as air pollution do not permit additional construction, it would lead to stoppage of all developmental activities

35. In case the present EC is quashed on the ground that the baseline environmental indicators in Delhi, such as air, water, noise etc. do not permit additional construction, it would result in a complete halt of all developmental activities and be in complete opposition to the principle of sustainable development.

VIII. LIST OF STATUROY APPROVALS GRANTED FOR THE PROJECT

S. No.	Authority/Department	Approval Date
1	Airport Authority of India (AAI)	16.04.2009, **28.06.2011**
2	Archaeological Survey of India (ASI)	**08.05.2009**
3	Department of Forest & Wild Life	**25.05.2011**
4	North DMC - 'Layout Scrutiny Committee' (LOSC)	16/24.02.2012, 27.11/15.12.2014, 01/02.06.2017, **19.02/05.03.2020**
5	Delhi Fire Service (DFS)	13.03.2012, 06.02.2013, 13.01.2015, 15.01.2016, 08.09.2017, 12.07.2019, **12.07.2021**
6	Delhi Urban Art Commission (DUAC)	19.12.2012/28.01.2013, 13.02/05.03.2015 (Layout), 11.02/02.03.2016 (BP), 16.08.2017, 11/16.07.2019, **08/17.07.2021**
7	National Monument Authority (NMA)	**26.12.2012**
8	Delhi Pollution Control Committee	**15.01.2013**
9	North DMC – 'Standing Committee' (SC)	22.03/11.04.2013, 08.07.2015, 17.11.2017, **19.08/18.09.2020**
10	Tata Power Delhi Distribution Ltd. (TPDPL)	**14.08.2013**
11	Delhi Jal Board (DJB)	07.10.2015, 11.01.2016, 09.07.2019, **05.06.2021**
12	North DMC – Storm Water	**24.11.2015**
13	North DMC - Building Plan (BP)	26/31.07.2019, **23/24.07.2021**

97. Further, in the form of chart, different issues raised by appellant, have been replied and we find the same already referred and repetition of the stand taken in the reply submitted by PP, hence not repeating here at but may refer at a later stage, if so required.

ISSUES:

98. In view of the rival submissions advanced before us, we find following issues have arisen in Appeal, which require our adjudication:

I. Whether Appeal as a whole in respect to all the issues or some of the issues is barred by the principle of res-judicata as contended on behalf of PP?

II. Whether PP has failed to disclose full, correct and complete information in Form I, Conceptual Plan or has withheld some information or disclosed wrong or incorrect information and is liable to face consequences as per provisions of EIA 2006?

III. Whether EAC/MoEF&CC have failed to consider relevant aspects/factors and failed to appraise project/activity of PP before grant of prior EC and it is vitiated on the ground of non-application of mind?

IV. Whether EC in question is unsustainable and has been issued, without taking into consideration all relevant principles provided in law?

V. What relief/order/direction, if any, need be passed in this Appeal?

Prefatory Discussion:

99. Before coming to the merits of the above issues, we find that in general, basic issue raised in this matter is that EC has been granted by the Competent Authority without appropriate application of mind and by ignoring to consider the relevant factors which it was under obligation to examine before grant of prior EC under EIA 2006. To examine it, we find it appropriate to recapitulate relevant statutory provisions, binding judicial precedents interpreting the said provisions and then examine whether various relevant factors have been properly examined or not and whether grant of EC is vitiated.

Statutory Provisions:

100. The requirement of prior EC is with reference to the provisions made under EP Act 1986 that is Environment Impact Assessment Notification dated 27.01.1994 (hereinafter referred to as 'EIA 1994') and EIA 2006.

EP Act, 1986:

101. Section 3(1) of EP Act, 1986 read with Section 2(v), confer power upon Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving quality of environment and preventing, controlling and abating environmental pollution. Sub-section (2) of Section 3 refers to certain specific subject matters in addition to general power conferred by sub-section 1.

102. Central Government has issued various orders and directions in exercise of powers under Section 3. In M.C. Mehta vs. Union of India,(2002) 4 SCC 356, it has been held that such directions are binding on all persons concerned.

103. EP Rules, 1986 have been framed in exercise of power under Sections 6 and 25 of EP Act, 1986. Rule 4 thereof, states that any direction issued under Section 5 shall be in writing. Rule 5 contemplates certain factors to be taken into consideration by Central Government while exercising power for prohibition/restriction on the location of industries and/or carrying on processes and operations in different areas and these factors are detailed in clause (i) to (x) of Section 5(1). Procedure for issuing such directions imposing prohibition, restriction etc. is given in sub-section (2) of Section 5.

EIA 1994:

104. Process for making provisions, imposing restrictions and prohibition on expansion and modernization of any activity or a new project unless EC has been accorded, was initiated by the Government of India by publishing notification dated 28.01.1993 under Section 5(3)(a) of EP Rules 1986, inviting objections from the public within 60 days from the date of publication of the said notification in respect to the matters detailed therein.

105. After considering objections, MoEF, exercising powers under Section 3(1)(2)(v) of EP Act, 1986, read with Rule 5(3)(d) of EP Rules 1986, issued notification dated 27.01.1994 on Environmental Impact Assessment of Development Projects (hereinafter referred to as 'EIA 1994'). It provided that expansion and modernization of any activity (if pollution load is to exceed the existing one) or a new project, listed in Schedule I of the said notification, shall not be undertaken in any part of India unless it has been accorded EC by Central Government in accordance with the procedure specified in the said Notification.

106. Initially, in the Schedule I to EIA 1994, there were 30 projects/activities, which were required to obtain EC under EIA 1994.

107. In W.P.(C) No. 725/1994 with IA No. 20, 21, 1207, 1183, 1216 and 1251 in WP (C) No. 4677/1995, Supreme Court considered a news item published in Hindustan Times titled "And Quit Flows the Maily Yamuna Vs. Central Pollution Control Board and Other" and vide order dated 12.12.2003, Supreme Court observed that building constructions cause damage to environment and, therefore, such construction projects may be considered to be brought under EIA regime so that all such projects must take all the mitigating steps so as to safe environment of the area in which such a project was being constructed by the proponent. Consequently, MoEF issued notification dated 07.07.2004, making amendment in EIA 1994 and 'new construction projects' were placed at item 32 in the Schedule. The amendment notification says that new construction projects which were undertaken without obtaining clearance required under EIA 1994 and where construction work has not come up to the plinth level, shall require clearance under EIA 1994 w.e.f. 07.07.2004.

108. In order to complete the evolution of EIA 1994, we may mention here that it was amended by several notifications i.e., dated 04.05.1994, 10.04.1997, 27.01.2000, 13.12.2000, 01.08.2001, 21.11.2001, 13.06.2002, 28.02.2003, 07.05.2003, 04.08.2003, 22.09.2003 and 07.07.2004.

109. Para 2 of EIA 1994 talks of requirements and procedure for seeking EC of projects and reads as under:

> "2) Requirements and procedure for seeking environmental clearance of projects:
>
> > I.(a) Any person who desires to undertake any new project in any part of India or the expansion or modernization of any existing industry or project listed in the Schedule-I shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.
> >
> > The application shall be made in the proforma specified in Schedule-II of this notification and shall be accompanied by a project report which shall, inter alia, include an Environmental Impact Assessment Report, Environment Management Plan and details of public hearing as specified in Schedule-IV prepared in accordance with the guidelines

issued by the Central Government in the Ministry of Environment and Forests from time to time. However, Public Hearing is not required in respect of

(i) small scale industrial undertakings located in (a) notified/designated industrial areas/industrial estates or (b) areas earmarked for industries under the jurisdiction of industrial development authorities;

(ii) widening and strengthening of highways;

(iii) mining projects (major minerals) with lease area up to 25 hectares,

(iv) units located in Export Processing Zones, Special Economic Zones

(v) modernisation of existing irrigation projects.

(vi) offshore exploration activities, beyond 10 kilometres from the nearest habituated village boundary, gaothans and ecologically sensitive areas such as, mangroves (with a minimum area of 1000 sq.m), corals, coral reefs, national parks, sanctuaries, reserve forests and breeding and spawning grounds of fish and other marine life;.

Provided further, that for pipeline projects, Environmental Impact Assessment report will not be required:

Provided further, that for pipeline and highway projects, public hearing shall be conducted in each district through which the pipeline or highway passes through:

(b) Cases rejected due to submission of insufficient or inadequate data and Plans may be reviewed as and when submitted with complete data and Plans. Submission of incomplete data or plans for the second time would itself be a sufficient reason for the Impact assessment Agency to reject the case summarily.

II. In case of the following site specific projects:

(a) mining;

(b) pit-head thermal power stations;

(c) hydro-power, major irrigation projects and/or their combination including flood control;

(d) ports and harbours (excluding minor ports);

(e) prospecting and exploration of major minerals in areas above 500 hectares;

(f) greenfield airports, petrochemical complexes and refineries.

The project authorities will intimate the location of the project site to the Central Government in the Ministry of Environment and Forests while initiating any investigation and surveys. The Central Government in the Ministry of Environment and Forests will convey a decision regarding suitability or otherwise of the proposed site within a maximum period of thirty days. The said site clearance shall be granted for a sanctioned capacity and shall be valid for a period of five years for commencing the construction, operation or mining

III. (a) The reports submitted with the application shall be evaluated and assessed by the Impact Assessment Agency, and if deemed necessary it may consult a committee of Experts, having a composition as specified in Schedule-III of this Notification. The Impact Assessment Agency (IAA) would be the Union Ministry of Environment and Forests. The Committee of Experts mentioned above shall be constituted by the Impact Assessment Agency or such other body under the Central Government authorised by the Impact Assessment Agency in this regard.

(b) The said Committee of Experts shall have full right of entry and inspection of the site or, as the case may be, factory premises at any time prior to, during or after the commencement of the operations relating to the project.

(c) The Impact Assessment Agency shall prepare a set of recommendations based on technical assessment of documents and data, furnished by the project authorities supplemented by data collected during visits to sites or factories, if undertaken and details of the public hearing.

The assessment shall be completed within a period of ninety days from receipt of the requisite documents and data from the project authorities and completion of public hearing and decision conveyed within thirty days thereafter.

The clearance granted shall be valid for a period of five years for commencement of the construction or operation of the project.

No construction work, preliminary or otherwise, relating to the setting up of the project may be undertaken till the environmental and site clearance is obtained.

IV. In order to enable the Impact Assessment Agency to monitor effectively the implementation of the recommendations and conditions subject to which the environmental clearance has been given, the project authorities concerned shall submit a half yearly report to the Impact Assessment Agency. Subject to the public interest, the Impact Assessment Agency shall make compliance reports publicly available.

V. If no comments from the Impact Assessment Agency are received within the time limit, the project would be deemed to have been approved as proposed by project authorities."

110. In Schedule I, which contains list of projects requiring EC from Central

Government, Item 32 relates to 'new construction projects'. Para 3 provides the cases in which EIA 1994 provisions would not apply and reads as under:

"3. Nothing contained in this Notification shall apply to:

(a) any item falling under entry Nos. 3*18*20*31* and 32* of the Schedule-I to be located or proposed to be located in the areas covered by the Notifications S.O. No. 102(E) dated 1st February, 1989, S.O. 114(E) dated 20th February, 1991; *S.O. No. 416(E) dated 20th June, 1991* and S.O. No. 319(E) dated 7th May, 1992.

(b) any item falling under entry Nos. 1, 2, 3, 4, 5, 7, 9, 10, 13, 14, 16, 17, 19, *21*, 25 and 27 of Schedule-I if the investment is less than Rs. 100 crores for new projects and less than Rs. 50 crores for expansion/modernization projects;

(c) any item reserved for Small Scale Industrial Sector with investment less than Rs. 1 crore.

(d) defence related road construction projects in border areas.

(e) any item falling under entry No. 8 of Schedule I, if that product is covered by the notification G.S.R. 1037(E) dated 5th December 1989.

(f) Modernisation projects in irrigation sector if additional command area is less than 10,000 hectares or project cost is less than Rs. 100 crores.:

(g) any construction project falling under entry 31 of Schedule-I including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1000 (one thousand) persons or below or with an investment of Rs. 50,00,00,000/- (Rupees fifty crores) or below.

(h) any industrial estate falling under entry 32 of Schedule-I including industrial estates accommodating industrial units in an area of 50 hectares or below but excluding the industrial estates irrespective of area if their pollution potential is high.

Explanation.-

(i) New construction projects which were undertaken without obtaining the clearance required under this notification and where construction work has not come up to the plinth level shall require clearance under this notification with effect from the 7th day of July, 2004.

(ii) In the case of new Industrial Estates which were undertaken without obtaining the clearance required under this notification, and where the construction work has not commenced or the expenditure does not exceed 25% of the total sanctioned cost, shall require clearance under this notification with effect from the 7th day of July, 2004.

(iii) Any project proponent intending to implement the proposed project under sub-paras (g) and (h) in a phased manner or in modules,

shall be required to submit the details of the entire project covering all phases or modules for appraisal under this notification."

111. Para 4 says that if any information is found false etc., the decision or recommendation if any, would be rejected and if approval granted, would be revoked.

EIA 2006, Notification dated 14.09.2006

112. MoEF felt that EIA 1994 needs a complete overhauling. Consequently, in exercise of powers under Rule 5(3) of EP Rules, 1986, a draft notification was published in the Gazette of India (Extraordinary) dated 15.09.2005, inviting objections and suggestions from all persons likely to be affected thereby, within a period of 60 days from the date on which copies of gazette containing draft notifications were made available to the public. The said draft notification contains provisions for imposing certain restrictions and prohibition on new projects or activities or on the expansion or modernization of existing projects or activities based on their potential environmental impacts as indicated in the schedule to the draft notification, being undertaken in any part of India, unless prior EC has been accorded.

113. Copies of draft notification were made available to the public on 15.09.2005. After considering objections and suggestions received in response to the above draft notification, by the Government of India, notification dated 14.09.2006 was issued in exercise of powers conferred by Section 3(1) and 2(v) of EP Act, 1986 read with rule 5(3)(d) of EP Rules, 1986, in supersession of EIA 1994, except in respect of things done or omitted to be done before such supersession.

114. Preamble of notification dated 14.09.2006 says that Central Government hereby directs that on and from the date of publication of the notification, the required construction of any projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the notification dated 14.09.2006 entailing capacity addition with change in process and or technology, shall be undertaken in any part of India only after obtaining prior EC from Central Government or as the case may be, by State Level Environment Impact Assessment Authority, duly constituted by Central Government under section 3(3) of EP Act, 1986, in accordance with the procedure specified in the notification dated 14.09.2006. There were some typing mistakes in EIA 2006, as initially published, hence a corrigendum was issued vide notification dated 13.11.2006 and we have read EIA 2006, here at, as corrected by the said corrigendum.

115. Para 2 of EIA 2006 imposes condition of requirement of prior EC and reads as under:

"2. Requirements of prior Environmental Clearance (EC):-The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this notification;

(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified range."

116. Para 3 talks of constitution of State Level Environment Impact Assessment Authority (SEIAA).

117. Para 4 of EIA 2006 categorizes projects and activities and reads as under:

"4. Categorization of projects and activities:

(i) All projects and activities are broadly categorized in to two categories-Category A and Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and manmade resources.

(ii) All projects or activities included as Category 'A' in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF) on the recommendations of an Expert Appraisal Committee (EAC) to be constituted by the Central Government for the purposes of this notification;

(iii) All projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. In the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be treated as a Category 'A' project;"

118. Paras 5, 6 and 7 concerned with the procedure of grant of prior EC and read as under:

"5. Screening, Scoping and Appraisal Committees:

The same Expert Appraisal Committees (EACs) at the Central Government and SEACs (hereinafter referred to as the (EAC) and (SEAC) at the State or the Union territory level shall screen, scope and appraise projects or activities in Category 'A' and Category 'B' respectively. EAC and SEAC's shall meet at least once every month.

(a) The composition of the EAC shall be as given in Appendix

VI. The SEAC at the State or the Union territory level shall be constituted by the Central Government in consultation with the concerned State Government or the Union territory Administration with identical composition;

(b) The Central Government may, with the prior concurrence of the concerned State Governments or the Union territory Administrations, constitutes one SEAC for more than one State or Union territory for reasons of administrative convenience and cost;

(c) The EAC and SEAC shall be reconstituted after every three years;

(d) The authorised members of the EAC and SEAC, concerned, may inspect any site(s) connected with the project or activity in respect of which the prior environmental clearance is sought, for the purposes of screening or scoping or appraisal, with prior notice of at least seven days to the applicant, who shall provide necessary facilities for the inspection;

(e) The EAC and SEACs shall function on the principle of collective responsibility. The Chairperson shall endeavour to reach a consensus in each case, and if consensus cannot be reached, the view of the majority shall prevail.

6. Application for Prior Environmental Clearance (EC):

An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report.

7. Stages in the Prior Environmental Clearance (EC) Process for New Projects:

7(i) The environmental clearance process for new projects will comprise of a maximum of four stages, all of which may not apply to particular cases as set forth below in this notification. These four stages in sequential order are:

- Stage (1) Screening (Only for Category 'B' projects and activities)
- Stage (2) Scoping
- Stage (3) Public Consultation
- Stage (4) Appraisal

I. Stage (1)-Screening:

In case of Category 'B' projects or activities, this stage will entail the scrutiny of an application seeking prior environmental clearance made in Form 1 by the concerned State level Expert Appraisal Committee (SEAC) for determining whether or not the project or activity requires further environmental studies for preparation of an Environmental Impact Assessment (EIA) for its appraisal prior to the grant of environmental clearance depending up on the nature and location specificity of the project. The projects requiring an Environmental Impact Assessment report shall be termed Category 'B1' and remaining projects shall be termed Category 'B2' and will not require an Environment Impact Assessment report. For categorization of projects into B1 or B2 except item 8(b), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time.

II. Stage (2)-Scoping:

(i) "Scoping": refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects or activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought. The Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the Terms of Reference on the basis of the information furnished in the prescribed application Form 1/Form 1A including Terms of Reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, Terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. All projects and activities listed as Category 'B' in Item 8 of the Schedule (Construction/Township/Commercial Complexes/Housing) shall not require Scoping and will be appraised on the basis of Form 1/Form 1A and the conceptual plan.

(ii) The Terms of Reference (TOR) shall be conveyed to the applicant by the Expert Appraisal Committee or State Level Expert Appraisal Committee as concerned within sixty days of the receipt of Form 1. In the case of Category, A Hydroelectric projects Item 1(c)(i) of the Schedule the Terms of Reference shall be conveyed along with the clearance for preconstruction activities. If the Terms of Reference are not finalized and conveyed to the applicant within sixty days of the receipt of Form 1, the Terms of Reference suggested by the applicant shall be deemed as the final Terms of Reference approved for the EIA studies. The approved Terms of Reference shall be displayed on the website of the Ministry of Environment and Forests and the concerned

State Level Environment Impact Assessment Authority.

(iii) Applications for prior environmental clearance may be rejected by the regulatory authority concerned on the recommendation of the EAC or SEAC concerned at this stage itself. In case of such rejection, the decision together with reasons for the same shall be communicated to the applicant in writing within sixty days of the receipt of the application.

III. Stage (3)-Public Consultation:

(i) "Public Consultation" refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate. All Category 'A' and Category B1 projects or activities shall undertake Public Consultation, except the following:

(a) modernization of irrigation projects (item 1(c) (ii) of the Schedule)

(b) all projects or activities located within industrial estates or parks (item 7(c) of the Schedule) approved by the concerned authorities, and which are not disallowed in such approvals.

(c) expansion of Roads and Highways (item 7(f) of the Schedule) which do not involve any further acquisition of land.

(d) all Building/Construction projects/Area Development projects and Townships (item 8).

e) all Category 'B2' projects and activities.

f) all projects or activities concerning national defence and security or involving other strategic considerations as determined by the Central Government.

(ii) The Public Consultation shall ordinarily have two components comprising of:

(a) a public hearing at the site or in its close proximity-district wise, to be carried out in the manner prescribed in Appendix IV, for ascertaining concerns of local affected persons;

(b) obtain responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity.

(iii) the public hearing at, or in close proximity to, the site(s) in all cases shall be conducted by the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) concerned in the specified manner and forward the proceedings to the regulatory authority concerned within 45 (forty five) of a request to the effect from the applicant.

(iv) in case the State Pollution Control Board or the Union territory Pollution Control Committee concerned does not undertake and complete the public hearing within the specified period, and/or does not convey the proceedings of the public hearing within the prescribed period directly to the regulatory authority concerned as above, the regulatory authority shall engage another public agency or authority which is not subordinate to the regulatory authority, to complete the process within a further period of forty five days,.

(v) If the public agency or authority nominated under the sub paragraph (iii) above reports to the regulatory authority concerned that owing to the local situation, it is not possible to conduct the public hearing in a manner which will enable the views of the concerned local persons to be freely expressed, it shall report the facts in detail to the concerned regulatory authority, which may, after due consideration of the report and other reliable information that it may have, decide that the public consultation in the case need not include the public hearing.

(vi) For obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity, the concerned regulatory authority and the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) shall invite responses from such concerned persons by placing on their website the Summary EIA report prepared in the format given in Appendix IIIA by the applicant along with a copy of the application in the prescribed form, within seven days of the receipt of a written request for arranging the public hearing. Confidential information including non-disclosable or legally privileged information involving Intellectual Property Right, source specified in the application shall not be placed on the web site. The regulatory authority concerned may also use other appropriate media for ensuring wide publicity about the project or activity. The regulatory authority shall, however, make available on a written request from any concerned person the Draft EIA report for inspection at a notified place during normal office hours till the date of the public hearing. All the responses received as part of this public consultation process shall be forwarded to the applicant through the quickest available means.

(vii) After completion of the public consultation, the applicant shall address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP. The final EIA report, so prepared, shall be submitted by the applicant to the concerned regulatory authority for appraisal. The applicant may alternatively submit a supplementary report to draft EIA and EMP addressing all the concerns expressed during the public consultation.

IV. Stage (4)-Appraisal:

(i) Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of

environmental clearance. This appraisal shall be made by Expert Appraisal Committee or State Level Expert Appraisal Committee concerned in a transparent manner in a proceeding to which the applicant shall be invited for furnishing necessary clarifications in person or through an authorized representative. On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same.

(ii) The appraisal of all projects or activities which are not required to undergo public consultation, or submit an Environment Impact Assessment report, shall be carried out on the basis of the prescribed application Form 1 and Form 1A as applicable, any other relevant validated information available and the site visit wherever the same is considered as necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.

(iii) The appraisal of an application shall be completed by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within sixty days of the receipt of the final Environment Impact Assessment report and other documents or the receipt of Form 1 and Form 1A, where public consultation is not necessary and the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee shall be placed before the competent authority for a final decision within the next fifteen days. The prescribed procedure for appraisal is given in Appendix V;

7(ii). Prior Environmental Clearance (EC) process for Expansion or Modernization or Change of product mix in existing projects:

All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernization of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product-mix shall be made in Form I and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultations and the application shall be appraised accordingly for grant of environmental clearance."

119. Para 8 talks of the final stage of grant or rejection of prior EC and reads as under:

"8. Grant or Rejection of Prior Environmental Clearance (EC):

(i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within

forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.

(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be final and conveyed to the applicant by the regulatory authority concerned within the next thirty days.

(iii) In the event that the decision of the regulatory authority is not communicated to the applicant within the period specified in sub-paragraphs (i) or (ii) above, as applicable, the applicant may proceed as if the environment clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.

(iv) On expiry of the period specified for decision by the regulatory authority under paragraph (i) and (ii) above, as applicable, the decision of the regulatory authority, and the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be public documents.

(v) Clearances from other regulatory bodies or authorities shall not be required prior to receipt of applications for prior environmental clearance of projects or activities, or screening, or scoping, or appraisal, or decision by the regulatory authority concerned, unless any of these is sequentially dependent on such clearance either due to a requirement of law, or for necessary technical reasons.

(vi) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a

prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

120. Para 9 deals with the validity of EC, i.e., the tenure etc. and reads as under:

"9. Validity of Environmental Clearance (EC):

The "Validity of Environmental Clearance" is meant the period from which a prior environmental clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub paragraph (iv) of paragraph 7 above, to the start of production operations by the project or activity, or completion of all construction operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers. The prior environmental clearance granted for a project or activity shall be valid for a period of ten years in the case of River Valley projects (item 1(c) of the Schedule), project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects and five years in the case of all other projects and activities. However, in the case of Area Development projects and Townships [item 8(b)], the validity period shall be limited only to such activities as may be the responsibility of the applicant as a developer. This period of validity may be extended by the regulatory authority concerned by a maximum period of five years provided an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form 1, and Supplementary Form 1A, for Construction projects or activities (item 8 of the Schedule). In this regard the regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee as the case may be."

121. Para 10 talks of monitoring of post EC stages and says:

"10. Post Environmental Clearance Monitoring:

(i) It shall be mandatory for the project management to submit half-yearly compliance reports in respect of the stipulated prior environmental clearance terms and conditions in hard and soft copies to the regulatory authority concerned, on 1st June and 1st December of each calendar year.

(ii) All such compliance reports submitted by the project management shall be public documents. Copies of the same shall be given to any person on application to the concerned regulatory authority. The latest such compliance report shall also be displayed on the web site of the concerned regulatory authority."

122. A prior EC granted to a project or activity is transferable, subject to certain conditions. This aspect is dealt with in para 11 as under:

"11. Transferability of Environmental Clearance (EC):

A prior environmental clearance granted for a specific project or activity

to an applicant may be transferred during its validity to another legal person entitled to undertake the project or activity on application by the transferor, or by the transferee with a written "no objection" by the transferor, to, and by the regulatory authority concerned, on the same terms and conditions under which the prior environmental clearance was initially granted, and for the same validity period. No reference to the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned is necessary in such cases."

123. Para 12 is a transitional provision dealing with the pending cases under EIA 1994 and said:

"12. Operation of EIA Notification, 1994, till disposal of pending cases:

From the date of final publication of this notification the Environment Impact Assessment (EIA) notification number S.O. 60(E) dated 27th January, 1994 is hereby superseded, except in supersession of the things done or omitted to be done before such supersession to the extent that in case of all or some types of applications made for prior environmental clearance and pending on the date of final publication of this notification, the Central Government may relax any one or all provisions of this notification except the list of the projects or activities requiring prior environmental clearance in Schedule, or continue operation of some or all provisions of the said notification, for a period not exceeding one year from the date of issue of this notification."

124. EIA 2006 further contains a Schedule and six Appendixes. Appendix I is a format of Form-1 and Appendix II is a format of Form-1A which are referred in para 6 of EIA 2006. These are the formats of application to be submitted by a proponent for grant of prior EC. Appendix III contains a chart giving generic structure of environmental impact assessment document with reference to para 7 and Appendix III A provides contents of summary environmental impact assessment and it is also in reference to para 7 of EIA 2006. Appendix III has 12 items comprising EIA structure and the contents thereof are also separately detailed as under:

"GENERIC STRUCTURE OF ENVIRONMENTAL IMPACT ASSESSMENT DOCUMENT

S. NO.	EIA STRUCTURE	CONTENTS
1	Introduction	• Purpose of the report • Identification of project & project proponent • Brief description of nature, size, location of the project and its importance to the country, region • Scope of the study – details of regulatory scoping carried out (As per Terms of Reference)
2	Project Description	• Condensed description of those aspects of the project (based on project feasibility study), likely to cause environmental effects. Details should be provided to give clear picture of the following: • Type of project • Need for the project • Location (maps showing general location, specific location, project boundary & project site layout) • Size or magnitude of operation (incl. Associated activities required by or for the project • Proposed schedule for approval and implementation • Technology and process description • Project description. Including drawings showing project layout, components of project etc. Schematic representations of the feasibility drawings which give information important for EIA purpose • Description of mitigation measures incorporated into the project to meet environmental standards, environmental operating conditions, or other EIA requirements (as required by the scope) • Assessment of New & untested technology for the risk of technological failure
3	Description of the Environment	• Study area, period, components & methodology • Establishment of baseline for valued environmental components, as identified in the scope • Base maps of all environmental components
4	Anticipated Environmental Impacts & Mitigation Measures	• Details of Investigated Environmental impacts due to project location, possible accidents, project design, project construction, regular operations, final

		decommissioning or rehabilitation of a completed project • *Measures for minimizing and/or offsetting adverse impacts identified* • *Irreversible and Irretrievable commitments of environmental components* • *Assessment of significance of impacts (Criteria for determining significance, Assigning significance)* • *Mitigation measures*
5	*Analysis of Alternatives (Technology & Site)*	• *In case, the scoping exercise results in need for alternatives:* • *Description of each alternative* • *Summary of adverse impacts of each alternative* • *Mitigation measures proposed for each alternative and* • *Selection of alternative*
6	*Environmental Monitoring Program*	• *Technical aspects of monitoring the effectiveness of mitigation measures (incl. Measurement methodologies, frequency, location, data analysis, reporting schedules, emergency procedures, detailed budget & procurement schedules)*
7	*Additional Studies*	• *Public Consultation* • *Risk assessment* • *Social Impact Assessment. R&R Action Plans*
8	*Project Benefits*	• *Improvements in the physical infrastructure* • *Improvements in the social infrastructure* • *Employment potential –skilled; semi-skilled and unskilled* • *Other tangible benefits*
9	*Environmental Cost Benefit Analysis*	• *If recommended at the Scoping stage*
10	*EMP*	• *Description of the administrative aspects of ensuring that mitigative measures are implemented and their effectiveness monitored, after approval of the EIA*
11	*Summary & Conclusion (This will constitute the summary of the EIA Report)*	• *Overall justification for implementation of the project* • *Explanation of how, adverse effects have been mitigated*
12	*Disclosure of Consultants engaged*	• *The names of the Consultants engaged with their brief resume and nature of Consultancy rendered*

125. Summary of environmental impact assessment should contain details given in Appendix III A of EIA report, on seven aspects, as under:

"1. Project Description

2. Description of the Environment

3. Anticipated Environmental impacts and mitigation measures

4. Environmental Monitoring Programme

5. Additional Studies

6. Project Benefits

7. Environment Management Plan"

126. Appendix IV, also with reference of para 7, provides procedure for conduct of public hearing.

127. Appendix V, again with reference to para 7, provides procedure for appraisal of Environment Impact Assessment Report and other documents and talks of following steps:

"PROCEDURE PRESCRIBED FOR APPRAISAL

1 . The applicant shall apply to the concerned regulatory authority through a simple communication enclosing the following documents where public consultations are mandatory:

- Final Environment Impact Assessment Report [20(twenty) hard copies and 1 (one) soft copy)]
- A copy of the video tape or CD of the public hearing proceedings
- A copy of final layout plan (20 copies)
- A copy of the project feasibility report (1 copy)

2. The Final EIA Report and the other relevant documents submitted by the applicant shall be scrutinized in office within 30 days from the date of its receipt by the concerned Regulatory Authority strictly with reference to the TOR and the inadequacies noted shall be communicated electronically or otherwise in a single set to the Members of the EAC/SEAC enclosing a copy each of the Final EIA Report including the public hearing proceedings and other public responses received along with a copy of Form-1 or Form 1A and scheduled date of the EAC/SEAC meeting for considering the proposal.

3 . Where a public consultation is not mandatory, and therefore a formal EIA study is not required, the appraisal shall be made on the basis of the prescribed application Form 1 and a pre-feasibility report in the case of all projects and activities other than Item 8 of the Schedule. In the case of Item 8 of the Schedule, considering its unique project cycle, the EAC or SEAC concerned shall appraise all Category B projects or activities on the basis of Form 1, Form 1A and the conceptual plan and stipulate the conditions for environmental clearance. As and when the applicant submits the approved scheme/building plans complying with the stipulated environmental clearance conditions with all other necessary statutory approvals, the EAC/SEAC shall recommend the grant of environmental clearance to the competent authority."

4. Every application shall be placed before the EAC/SEAC and its appraisal completed within 60 days of its receipt with requisite documents/details in the prescribed manner.

5. The applicant shall be informed at least 15 (fifteen) days prior to the scheduled date of the EAC/SEAC meeting for considering the project proposal.

6. The minutes of the EAC/SEAC meeting shall be finalised within 5 working days of the meeting and displayed on the website of the concerned regulatory authority. In case the project or activity is recommended for grant of EC, then the minutes shall clearly list out the specific environmental safeguards and conditions. In case the recommendations are for rejection, the reasons for the same shall also be explicitly stated."

128. Appendix VI with reference to paragraph 5 of EIA 2006 gives composition of sector/project specific Expert Appraisal Committee for category A projects and the State/UT Level Expert Appraisal Committees for category B projects to be constituted by Central Government. Schedule gives the list of projects or activities which would require prior EC and covers the following projects/activities:

"1. Mining, extraction of natural resources and power generation (for a specified production capacity)

1(a) Mining of minerals

1(b) Offshore and onshore oil and gas exploration, development & production

1(c) River Valley projects

1(d) Thermal Power Plants

1(e) Nuclear power projects and processing of nuclear fuel

2. Primary processing

2(a) Coal washeries

2(b) Mineral benefication

3. Materials Production

3(a) Metallurgical industries (ferrous & non-ferrous)

3(b) Cement plants

4. Materials Processing

4(a) Petroleum refining industry

4(b) Coke oven plants

4(c) Asbestos milling and asbestos based products

4(d) Chlor-alkali industry

4(e) Soda ash industry

4(f) Leather/skin/hide processing industry

5. Manufacturing/Fabrication

5(a) Chemical fertilizers

5(b) Pesticides industry and pesticide specific intermediates (excluding formulations)

5(c) Petro-chemical complexes (industries based on processing of petroleum fractions & natural gas and/or reforming to aromatics)

5(d) Manmade fibres manufacturing

5(e) Petrochemical based processing (processes other than cracking & reformation and not covered under the complexes)

5(f) Synthetic organic chemicals industry (dyes & dye intermediates; bulk drugs and intermediates excluding drug formulations; synthetic rubbers; basic organic chemicals, other synthetic organic chemicals and chemical intermediates)

5(g) Distilleries

5(h) Integrated paint industry

5(i) Pulp & paper industry excluding manufacturing of paper from waste paper and manufacture of paper from ready pulp without bleaching

5(j) Sugar industry

5(k) Induction/arc furnaces/cupola furnaces 5TPH or more

6. Service Sectors

6(a) Oil & gas transportation pipeline (crude and refinery/petrochemical products), passing through national parks/sanctuaries/coral reefs/ecologically sensitive areas including LNG Terminal.

6(b) Isolated storage & handling of hazardous chemicals (As per threshold planning quantity indicated in column 3 of schedule 2 & 3 of MSIHC Rules 1989 amended 2000)

7. Physical Infrastructure including Environmental Services

7(a) Air ports

7(b) All ship breaking yards including ship breaking units

7(c) Industrial estate/parks/complexes/areas, export processing Zones

(EPZs), Special Economic Zones (SEZs), Biotech Parks, Leather Complexes.

7(d) Common hazardous waste treatment, storage and disposal facilities (TSDFs)

7(e) Forts, Harbours

7(f) Highways

7(g) Aerial ropeways

7(h) Common Effluent Treatment Plants (CETPs)

7(i) Common Municipal Solid Waste Management Facility (CMSWMF)"

129. For the purpose of present case, we are concerned with item 8 which deals with building construction projects/area development projects and townships and it has two categories which we reproduce as under:

"

(1)	(2)	(3)	(4)	(5)
8		Building Construction projects/Area Development projects and Townships		
8(a)	Building and Construction projects		≥20000 sq.mtrs and <1,50,000 sq. mtrs. of built-up area#	*(built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development projects		Covering an area ≥ 50 ha and or built up Area ≥1,50,000 sq. mtrs ++	**All projects under Item 8(b) shall be appraised as Category B1

"

130. At the end of the schedule there is a note containing certain conditions as General Condition (GC) and Specific Condition (SC) but column (5) shows that these conditions have not been made applicable to the projects/activities covered under items 8(a) and 8(b). However, to make study of EIA Notification, 2006, complete, we may reproduce these conditions as under:

"Note:

General Condition (GC):

Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as identified by the Central Pollution Control Board from time to time, (iii) Notified Eco-sensitive areas, (iv) inter-State boundaries and international boundaries:

Specific Condition (SC):

If any Industrial Estate/Complex/Export processing Zones/Special Economic Zones/Biotech Parks/Leather Complex with homogeneous type of industries such as Items 4(d), 4(f), 5(e), 5(f), or those Industrial estates with pre-defined set of activities (not necessarily homogeneous, obtains prior environmental clearance, individual industries including proposed industrial housing within such

estates/complexes will not be required to take prior environmental clearance, so long as the Terms and Conditions for the industrial estate/complex are complied with (Such estates/complexes must have a clearly identified management with the legal responsibility of ensuring adherence to the Terms and Conditions of prior environmental clearance, who may be held responsible for violation of the same throughout the life of the complex/estate)."

131. EIA 2006 as initially notified, qualified projects/activities covered under item 8(a) and 8(b) as category 'B' projects. The projects/activities under item 8(b) were clearly categorized as B1. The application for prior EC, if submitted for a project/activity under item 8 of Schedule of EIA 2006, para 6 of EIA 2006 requires that in addition to form 1 and supplementary form 1A, the proponent shall also submit a copy of conceptual plan instead of pre-feasibility report. Para 7(I) Stage (1)-Screening says that in category B projects/activities, environment Impact Assessment Report shall be prepared only for the projects/activities come under category B1 and category B2 projects will not require EIA report. Para 7(II) Stage (2)-Scoping (i) further says that scoping shall not be required for the projects/activities listed in category B in item 8 of the schedule of EIA 2006. In such cases, appraisal shall be on the basis of form 1/form 1A and conceptual plan. Para 7(III) Stage (3)-Public Consultation (i) also provides that public consultation shall not be required in respect to projects/activities under item 8 of the Schedule. Thus, in respect of the projects/activities under item 8 of the Schedule I to EIA 2006, a modified/simpler procedure was prescribed for consideration of application for grant of prior EC.

132. EIA 2006 has been amended up to July 2021 by more than 55 amendment notifications but all are not relating to project/activities referable to item 8 of the Schedule of EIA 2006 and since we are concerned only to project/activities fall under item 8 of the Schedule of EIA 2006, we would be referring hereunder only such amendments which are relatable to item 8 of the Schedule or procedure of appraisal of the project/activities under item 8.

A. Notification dated 01.12.2009 published in Gazette of India extraordinary of the same date.

a) In para 3 of EIA 2006 sub-para (7) was substituted as under:

"(7) All decisions of the SEIAA shall be taken in a meeting and shall ordinarily be unanimous:

Provided that, in case a decision is taken by majority, the details of views, for and against it, shall be clearly recorded in the minutes and a copy thereof sent to MoEF."

b) In para 4, sub-para (iii) certain words and letters were changed and the amended provision reads as under:

"4(iii) All projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union

territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. In the absence of a duly constituted SEIAA and SEAC, a Category 'B' project shall be considered at the Central Level as a Category 'B' project."

c) In para 7(i) (III) relating to Stage (3) after sub-clause (c), the following was inserted:

"(cc) maintenance dredging provided the dredged material shall be disposed within port limits."

d) In para 7(i) (III) relating to Stage (3) sub-clause (d) was substituted as under:

"(d) All Building or Construction projects or Area Development projects (which do not contain any category 'A' projects and activities) and Townships (item 8(a) and 8(b) in the Schedule to the notification)."

e) In para 10 clause (i) was renumbered as (ii) and before such renumbered (ii), a sub-para (i)(a) and (b) was inserted as under:

"(i) (a) In respect of Category 'A' projects, it shall be mandatory for the project proponent to make public the environmental clearance granted for their project along with the environmental conditions and safeguards at their cost by prominently advertising it at least in two local newspapers of the district or State where the project is located and in addition, this shall also be displayed in the project proponent's website permanently. (b) In respect of Category 'B' projects, irrespective of its clearance by MoEF/SEIAA, the project proponent shall prominently advertise in the newspapers indicating that the project has been accorded environment clearance and the details of MoEF website where it is displayed. (c) The Ministry of Environment and Forests and the State/Union Territory Level Environmental Impact Assessment Authorities (SEIAAs), as the case may be, shall also place the environmental clearance in the public domain on Government portal. (d) The copies of the environmental clearance shall be submitted by the project proponents to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt.";

(b) existing sub-para (ii) shall be renumbered as sub-para (iii)."

f) In the Schedule, General Condition was substituted as under:

"General Condition (GC):

Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected areas notified under the Wild Life (Protection) Act, 1972; (ii) Critically polluted areas as identified by the Central Pollution Control Board from time to time; (iii) Eco-sensitive areas as notified under section 3 of the Environment (Protection) Act, 1986, such as, Mahabaleshwar Panchgani, Matheran, Pachmarhi, Dahanu, Doon Valley, and (iv) inter-State boundaries and international boundaries:

Provided that the requirement regarding distance of 10 km of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective States or U.T.s sharing the common boundary in case the activity does not fall within 10 kilometres of the areas mentioned at item (i), (ii) and (iii) above."

g) Amendment was also made in Appendix I whereby in Form-1 item (I) relating to Basic Information, was substituted by a new format and in Appendix IV the procedure for conduct of public hearing was completely substituted.

h) In Appendix V, para 3 was substituted as under:

"3. Where a public consultation is not mandatory, the appraisal shall be made on the basis of the prescribed application Form 1 and EIA report, in the case of all projects and activities other than Item 8 of the Schedule. In the case of Item 8 of the Schedule, considering its unique project cycle, the EAC or SEAC concerned shall appraise all Category B projects or activities on the basis of Form 1, Form 1A and the conceptual plan and make recommendations on the project regarding grant of environmental clearance or otherwise and also stipulate the conditions for environmental clearance."

B. Notification dated 04.04.2011 published in Gazette of India extraordinary dated 06.04.2011:

a) Para 6 was amended by substituting certain words and amended para 6 reads as under:

"6. Application for Prior Environmental Clearance (EC):

An application seeking prior environmental clearance in all cases shall be made by the project proponent in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of

the conceptual plan shall be provided, instead of the pre-feasibility report."

b) In para 7, sub-para II, Stage (2), clause (i) was amended by substituting certain words as under:

(i) "Scoping": refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects or activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought. The Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the Terms of Reference on the basis of the information furnished in the prescribed application Form 1/Form 1A including Terns of Reference proposed by the applicant, a site visit by a subgroup of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, Terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. All projects and activities listed as Category 'B' in item 8(a) of the schedule (building and construction projects) shall not require Scoping and will be appraised on the basis of Form 1/Form 1A and the conceptual plan."

c) In the schedule, item 8(a) column (5) the existing entry was substituted by the following:

"The built up area for the purpose of this Notification is defined as "the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects."

d) In Appendix V, para 3 was also substituted as under:

"3. Where a public consultation is not mandatory, the appraisal shall be made on the basis of prescribed application Form-1 and EIA report, in the case of all projects and activities other than item 8 of the schedule. In the case of item 8 of the schedule, considering its unique project cycle, the EAC or SEAC concerned shall appraise projects or activities on the basis of Form-1, Form-1A, conceptual plan and the EIA report [required only for projects listed under 8(b)] and make recommendations on the project regarding grant of environmental clearance or

otherwise and also stipulate the conditions for environmental clearance."

C. Notification dated 22.08.2013 published in Gazette of India Extraordinary of the same date:

a) In para 7 sub-paragraph II, item (i) of EIA 2006 was substituted as under:

"(i) "Scoping" refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion or modernization or change in product mix of existing projects or activities, determine detailed and comprehensive Terms of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought and the Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the terms of reference on the basis of the information furnished in the prescribed application Form 1 or Form 1A including terms of reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned:

Provided that the following shall not require Scoping-

(i) all projects and activities listed as Category 'B' in item 8 of the Schedule (Construction or Township or Commercial Complexes or Housing);

(ii) all Highway expansion projects covered under entry (ii) of column (3) and column (4) under sub-item (f) of item 7 of the Schedule:

Provided further that-

A. the projects and activities referred to in clause (i) shall be apprised on the basis of Form I or Form IA and the conceptual plan;

B. The projects referred to in clause (ii) shall prepare EIA and EMP report on the basis of model TOR specified by Ministry of Environment and Forests;"

D. Notification dated 26.02.2014 published in Gazette of India Extraordinary of

the same date:

a) Here in paragraph 7(II) item (i) which was already substituted vide the notification dated 22.08.2013, was again substituted as under:

"(i) all projects or activities listed under Category, 'B' against item 8(a) of the Schedule;"

E. Notification dated 22.12.2014 published in Gazette of India Extraordinary of the same date:

a) Item 8 in the Schedule as existing in entirety was substituted as under:

(1)	(2)	(3)	(4)	(5)
"8		Building or Construction projects or Area Development projects and Townships		
8(a)	Building and Construction projects		>20,000 sq. mtrs and <1,50,000 sq. mtrs of built up area	The term "built up area" for the purpose of this notification the built up or covered area on all floors put together, including its basement and other service areas, which are proposed in the building or construction projects. Note 1.- The projects or activities shall not include industrial shed, school, college, hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled materials such as fly ash bricks. Note 2.- "General Conditions" shall not apply.
8	Townships and Area Development Projects		Covering an area >50 ha and or built up area >1,50,000 sq. mrts	A project of Township and Area Development Projects covered under this item shall require an Environment Assessment report and be appraised as Category 'B1' Project. Note.- "General Conditions" shall not apply.

b) Substantial amendment came to be made in EIA 2006 in the Schedule item 8 by the above notification whereby the term "built up area" was explained as built up or covered area on all floors put up together, including its basement and other service areas, which are proposed in the buildings or construction projects. However, it was clarified by note one that projects/activities shall not include industrial shed, school, college, hostel for educational institution but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled material such as fly ash bricks. Inapplicability of "general conditions" was maintained in respect of item 8 of the Schedule of EIA 2006.

F. Notification dated 29.04.2015 published in Gazette of India Extraordinary on 30.04.2015:

a) Hereby existing paragraph 9 was renumbered as sub-paragraph (i) with certain amendments of the words therein and the amended sub-paragraph (i) reads as under:

"(i) Validity of Environmental Clearance (EC):

*The **"Validity of Environmental Clearance" is meant the period** from which a prior environmental clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub paragraph (iv) of paragraph 7 above, to the start of production operations by the project or activity, **or completion of all construction operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers.** The prior environmental clearance granted for a project or activity shall be valid for a period of ten years in the case of River Valley projects (item 1(c) of the Schedule), project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects **and seven years in the case of all other projects and activities.***

(Emphasis added)

b) Further, sub-paragraph (ii) was inserted as under:

"(ii) In the case of Area Development projects and Townships item 8(b), the validity period shall be limited only to such activities as may be the responsibility of the applicant as a developer:

Provided that this period of validity may be extended by the regulatory authority concerned by a maximum period of seven years if an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form I, and Supplementary Form IA, for Construction projects or activities (item 8 of the Schedule):

Provided further that the regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee, as the case may be, for grant of such extension.

(iii) Where the application for extension under sub-paragraph (ii) has been filed-

(a) within one month after the validity period of EC, such cases shall be referred to concerned Expert Appraisal Committee (EAC) or State Level Expert Appraisal committee (SEAC) and based on their recommendations, the delay shall be condoned at the level of the Joint Secretary in the Ministry of Environment, Forest and Climate Change or Member Secretary, SEIAA, as the case may be;

(b) more than one month after the validity period of EC but less than three months after such validity period, then, based on the recommendations of the EAC or the SEAC, the delay shall be condoned with the approval of the Minister in charge

of Environment Forest and Climate Change or Chairman, as the case may be:"

G. Notification dated 09.12.2016 published in Gazette of India Extraordinary of the same date:

a) Hereby after paragraph 13 of EIA 2006, paragraph 14 was inserted as under:

"14. Integration of environmental condition in building bye-laws.-

(1) The integrated environmental conditions with the building permission being granted by the local authorities and the construction of buildings as per the size shall adhere to the objectives and monitorable environmental conditions as given at Appendix-XIV.

(2) The States adopting the objectives and monitorable environmental conditions referred to in subparagraph (1), in the building bye-laws and relevant State laws and incorporating these conditions in the approvals given for building construction making it legally enforceable shall not require a separate environmental clearance from the Ministry of Environment, Forest and Climate Change for individual buildings.

(3) The States may forward the proposed changes in their bye-laws and rules to the Ministry of Environment, Forest and Climate Change, who in turn will examine the said draft bye-laws and rules and convey the concurrence to the State Governments.

(4) When the State Governments notifies the bye-laws and rules concurred by the Ministry of Environment, Forest and Climate Change, the Central Government may issue an order stating that no separate environmental clearance is required for buildings to be constructed in the States or local authority areas.

(5) The local authorities like Development Authorities, Municipal Corporations, may certify the compliance of the environmental conditions prior to issuance of Completion Certificate, as applicable as per the requirements stipulated for such buildings based on the recommendation of the Environmental Cell constituted in the local authority.

(6) The State Governments where bye-laws or rules are not framed may continue to follow the existing procedure of appraisal for individual projects and grant of Environmental Clearance for buildings and constructions as per the provisions laid down in this notification.

(7) For the purpose of certification regarding incorporation of

environmental conditions in buildings, the Ministry of Environment, Forest and Climate Change may empanel through competent agencies, the Qualified Building Environment Auditors (QBEAs) to assess and certify the building projects, as per the requirements of this notification and the procedure for accreditation of Qualified Building Auditors and their role as given at Appendix-XV.

(8) In order to implement the integration of environmental condition in building bye-laws, the State Governments or Local Authorities may constitute the Environment Cell (herein after called as Cell), for compliance and monitoring and to ensure environmental planning within their jurisdiction.

(9) The Cell shall monitor the implementation of the bye-laws and rules framed for Integration of environmental conditions for construction of building and the Cell may also allow the third part auditing process for oversight, if any.

(10) The Cell shall function under the administrative control of the Local Authorities.

(11) The composition and functions of the Cell are given at Appendix-XVI.

(12) The Local Authorities while integrating the environmental concerns in the building bye-laws, as per their size of the project, shall follow the procedure, as given below:

BUILDINGS CATEGORY '1' (5,000 to < 20,000 Square meters) A Self declaration Form to comply with the environmental conditions (Appendix XIV) along with Form 1A and certification by the Qualified Building Environment Auditor to be submitted online by the project proponent besides application for building permission to the local authority along with the specified fee in separate accounts. Thereafter, the local authority may issue the building permission incorporating the environmental conditions in it and allow the project to start based on the self declaration and certification along with the application. After completion of the construction of the building, the project proponent may update Form 1A online based on audit done by the Qualified Building Environment Auditor and shall furnish the revised compliance undertaking to the local authority. Any non-compliance issues in buildings less than 20,000 square meters shall be dealt at the level of local body and the State through existing mechanism.

OTHER BUILDINGS CATEGORIES (< 20,000 Square meters) The project proponent may submit online application in Form 1A alongwith specified fee for environmental appraisal and additional fee for building permission. The fee for environmental appraisal will be deposited in a separate account. The Environment Cell will process the application and present it in the meeting of the Committee headed by the

authority competent to give building permission in that local authority. The Committee will appraise the project and stipulate the environmental conditions to be integrated in the building permission. After recommendations of the Committee, the building permission and environmental clearance will be issued in an integrated format by the local authority.

The project proponent shall submit Performance Data and Certificate of Continued Compliance of the project for the environmental conditions parameters applicable after completion of construction from Qualified Building Environment Auditors every five years to the Environment Cell with special focus on the following parameters:-

(a) Energy Use (including all energy sources).

(b) Energy generated on site from onsite Renewable energy sources.

(c) Water use and waste water generated, treated and reused on site.

(d) Waste Segregated and Treated on site.

(e) Tree plantation and maintenance.

After completion of the project, the Cell shall randomly check the projects compliance status including the five years audit report. The State Governments may enact the suitable law for imposing penalties for non-compliances of the environmental conditions and parameters. The Cell shall recommend financial penalty, as applicable under relevant State laws for non-compliance of conditions or parameters to the local authority. On the basis of the recommendation of the Cell, the local authority may impose the penalty under relevant State laws. The cases of false declaration or certification shall be reported to the accreditation body and to the local body for blacklisting of Qualified Building Environment Auditors and financial penalty on the owner and Qualified Building Environment Auditors.

No Consent to Establish and Operate under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 will be required from the State Pollution Control Boards for residential buildings up to 1,50,000 square meters.";"

b) Further in the schedule item 8 entries were substituted as under:

(1)	(2)	(3)	(4)	(5)
"8		Building/ Construction projects/Area Development projects and Townships		
8(a)	Building and Construction projects		≥ 20,000 sq. mtrs and < 1,50,000 sq. mtrs of built up area	The term "built up area" for the purpose of this notification is the built up or covered area on all floors put together including its basement and other service areas, which are proposed in the buildings and construction projects. Note 1. The projects or activities shall not include industrial shed, universities, college, hostel for educational institutions, but such buildings shall ensure sustainable environmental management, solid and liquid and implement environmental conditions given at Appendix-XIV. Note 2.-General Condition shall not apply. Note 3.-The exemptions granted at Note 1 will be available only for industrial shed after integration of environmental norms with building permissions at the level of local authority.
8 (b)	Townships and Area Development projects	**≥ 3,00,000 sq. mtrs of built up area or Covering an area ≥ 150 ha**	**≥1,50,000 sq. mtrs and < 3,00,000 sq. mtrs built up area or covering an area ≥ 50 ha and < 150 ha**	Note.- General Condition shall not apply".

c) This notification also inserted three Appendixes i.e. XIV, XV and XVI and we find the same to be relevant since all relates to environmental conditions for building and construction.

APPENDIX-XIV
ENVIRONMENTAL CONDITIONS FOR BUILDINGS AND CONSTRUCTIONS
(CATEGORY 1: 5,000 to less than 20,000 Square meters)

MEDIUM	S.N.	ENVIRONMENTAL CONDITIONS
Topography and Natural Drainage	1	**The natural drain system should be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site.** No construction is allowed on wetland and water bodies. Check dams, bioswales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water.
Water Conservation, Rain Water Harvesting, and Ground Water Recharge	2	Use of water efficient appliances shall be promoted. The local bye-law provisions on rain water harvesting should be followed. If local bye-law provision is not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Bye-Laws, 2016. A rain water harvesting plan needs to be designed where the recharge bores (minimum one recharge bore per 5,000 square meters of built up area) is recommended. Storage and reuse of the rain water harvested should be promoted. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. **The ground water shall not be withdrawn without approval from the Competent Authority.** All recharge should be limited to shallow aquifer.
	2(a)	**At least 20% of the open spaces as required by the local building bye-laws shall be pervious.** Use of Grass pavers, paver blocks with at least 50% opening, landscape etc. would be considered as pervious surface.
Waste Management	3	Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste. Sewage: In areas where there is no municipal sewage network, onsite treatment systems should be installed. Natural treatment systems which integrate with the landscape shall be promoted. As far as possible treated effluent should be reused. The excess treated effluent shall be discharged following the CPCB norms. Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development,

		Central Public Health and Environmental Engineering Organisation (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013. *The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.*
Energy	*4*	*Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have notified their own ECBC, shall comply with the State ECBC.* *Outdoor and common area lighting shall be Light Emitting Diode (LED).* *Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1% of the demand load or as per the state level/ local building bye-laws requirement, whichever is higher.* *Solar water heating shall be provided to meet 20% of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.* *Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design.* *Wall, window, and roof u-values shall be as per ECBC specifications.*
Air Quality and Noise	*5*	*Dust, smoke & other air pollution prevention measures shall be provided for the building as well as the site. These measures shall include screens for the building under construction, continuous dust/ wind breaking walls all around the site (at least 3 meter height). Plastic/tarpaulin sheet covers shall be provided for vehicles bringing in sand, cement, murram and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site.* *Sand, murram, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution.* *Wet jet shall be provided for grinding and stone cutting. Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust.* *All construction and demolition debris shall be stored at the site (and not dumped on the roads or open spaces outside) before they are properly disposed. All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Rules 2016. All workers*

		working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask. *For indoor air quality the ventilation provisions as per National Building Code of India shall be made.*
	5 (a)	*The location of the DG set and exhaust pipe height shall be as per the provisions of the CPCB norms.*
Green Cover	*6*	***A minimum of 1 tree for every 80 square meters of land should be planted and maintained**. The existing trees will be counted for this purpose. Preference should be given to planting native species.*
	6 (a)	*Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees for every 1 tree that is cut) shall be done and maintained.*

(Category '2': 20,000 to less than 50,000 Square meters)

MEDIUM	***S.N.***	***ENVIRONMENTAL CONDITIONS***
Topography and Natural Drainage	*1*	***The natural drain system should be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site**. No construction is allowed on wetland and water bodies. Check dams, bio-swales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water.* *Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.*
Water Conservation, Rain Water Harvesting, and Ground Water Recharge	*2*	*A complete plan for rain water harvesting, water efficiency and conservation should be prepared.* *Use of water efficient appliances should be promoted with low flow fixtures or sensors.* *The local bye-law provisions on rain water harvesting should be followed. If local bye-law provision is not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Byelaws, 2016.* *A rain water harvesting plan needs to be designed where the recharge bores of minimum one recharge bore per 5,000 square meters of built up area and storage capacity of minimum one day of total fresh water requirement shall be provided. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority.* *All recharge should be limited to shallow aquifer.*

	2(a)	At least 20% of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks with at least 50% opening, landscape etc. would be considered as pervious surface.
Waste Management	3	Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste. Sewage: Onsite sewage treatment of capacity of treating 100% waste water to be installed. Treated waste water shall be reused on site for landscape, flushing, cooling tower, and other end-uses. Excess treated water shall be discharged as per CPCB norms. Natural treatment systems shall be promoted. Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development, Central Public Health and Environmental Engineering Organisation (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013. The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.
	3 (a)	All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.
	3(b)	Organic waste compost/Vermiculture pit with a minimum capacity of 0.3 kg/person/day must be installed.
Energy	4	Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have notified their own ECBC, shall comply with the State ECBC. Outdoor and common area lighting shall be LED. Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design. Wall, window, and roof u-values shall be as per ECBC specifications.
	4 (a)	Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1% of the demand load or as per the state level/ local building bye-laws requirement, whichever is higher.

	4 (b)	Solar water heating shall be provided to meet 20% of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.
	4 (c)	Use of environment friendly materials in bricks, blocks and other construction materials, shall be required for at least 20% of the construction material quantity. These include flyash bricks, hollow bricks, AACs, Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials. Fly ash should be used as building material in the construction as per the provisions of the Fly Ash Notification of September, 1999 as amended from time to time.
Air Quality and Noise	5	Dust, smoke & other air pollution prevention measures shall be provided for the building as well as the site. These measures shall include screens for the building under construction, continuous dust/ wind breaking walls all around the site (at least 3 meter height). Plastic/tarpaulin sheet covers shall be provided for vehicles bringing in sand, cement, murram and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site. Sand, murram, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution. Wet jet shall be provided for grinding and stone cutting. Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust. All construction and demolition debris shall be stored at the site (and not dumped on the roads or open spaces outside) before they are properly disposed. All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Rules 2016. All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask. For indoor air quality the ventilation provisions as per National Building Code of India.
	5 (a)	The location of the DG set and exhaust pipe height shall be as per the provisions of the CPCB norms.
Green Cover	6	A minimum of 1 tree for every 80 sq.mt. of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species.
	6 (a)	Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees

		for every 1 tree that is cut) shall be done and maintained.
Top Soil preservation and reuse	*7*	***Topsoil should be stripped to a depth of 20 cm from the areas proposed for buildings, roads, paved areas, and external services.*** *It should be stockpiled appropriately in designated areas and reapplied during plantation of the proposed vegetation on site*
Transport	*8*	*A comprehensive mobility plan, as per MoUD best practices guidelines (URDPFI), shall be prepared to include motorized, non-motorized, public, and private networks. Road should be designed with due consideration for environment, and safety of users. The road system can be designed with these basic criteria.* *1. Hierarchy of roads with proper segregation of vehicular and pedestrian traffic.* *2. Traffic calming measures.* *3. Proper design of entry and exit points.* *4. Parking norms as per local regulation.*

(Category '3': 50000 to 150000 m2)

MEDIUM	***S.N.***	***ENVIRONMENTAL CONDITIONS***
Topography and Natural Drainage	*1*	***The natural drain system should be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site****. No construction is allowed on wetland and water bodies. Check dams, bio-swales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water.* *Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.*
Water conservation- Rain Water Harvesting, and Ground Water Recharge	*2*	*A complete plan for rain water harvesting, water efficiency and conservation should be prepared.* *The local bye-law provisions on rain water harvesting should be followed. If local bye-law provisions are not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Byelaws, 2016.* *A rain water harvesting plan needs to be designed where the recharge bores of minimum one recharge bore per 5,000 square meters of built up area and storage capacity of minimum one day of total fresh water requirement shall be provided. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority.* *All recharge should be limited to shallow aquifer.*

	2(a)	At least 20% of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks with at least 50% opening, landscape etc. would be considered as pervious surface.
	2(b)	Use of water efficient appliances should be promoted. Low flow fixtures or sensors be used to promote water conservation.
	2(c)	Separation of grey and black water should be done by the use of dual plumbing system. In case of single stack system separate recirculation lines for flushing by giving dual plumbing system be done.
Solid Waste Management	3	Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste. The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.
	3(a)	All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.
	3(b)	Organic waste composter/Vermiculture pit with a minimum capacity of 0.3 kg/person/day must be installed.
Sewage Treatment Plant		Onsite sewage treatment of capacity of treating 100% waste water to be installed. Treated waste water shall be reused on site for landscape, flushing, cooling tower, and other end-uses. Excess treated water shall be discharged as per CPCB norms. Natural treatment systems shall be promoted. Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development, Central Public Health and Environmental Engineering Organisation (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013.
Energy	5	Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have notified their own ECBC, shall comply with the State ECBC. Outdoor and common area lighting shall be LED. Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design.

		Wall, window, and roof u-values shall be as per ECBC specifications.
	5 (a)	*Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1% of the demand load or as per the state level/local building bye-laws requirement, whichever is higher.*
	5 (b)	*Solar water heating shall be provided to meet 20% of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.*
	5 (c)	*Use of environment friendly materials in bricks, blocks and other construction materials, shall be required for at least 20% of the construction material quantity. These include flyash bricks, hollow bricks, AACs, Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials.* *Fly ash should be used as building material in the construction as per the provisions of the Fly Ash Notification of September, 1999 as amended from time to time.*
Air Quality and Noise	*6*	*Dust, smoke & other air pollution prevention measures shall be provided for the building as well as the site. These measures shall include screens for the building under construction, continuous dust/ wind breaking walls all around the site (at least 3 meter height). Plastic/tarpaulin sheet covers shall be provided for vehicles bringing in sand, cement, murram and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site. Wheel washing for the vehicles used be done.* *Sand, murram, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution.* *Wet jet shall be provided for grinding and stone cutting. Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust.* *All construction and demolition debris shall be stored at the site (and not dumped on the roads or open spaces outside) before they are properly disposed. All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Rules 2016.* *All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask.*

		For indoor air quality the ventilation provisions as per National Building Code of India.
	6 (a)	*The location of the DG set and exhaust pipe height shall be as per the provisions of the CPCB norms.*
Green Cover	*7*	*A minimum of 1 tree for every 80 sq.mt. of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species.*
	7(a)	*Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees for every 1 tree that is cut) shall be done and maintained.*
Top Soil Preservation and Reuse	*8*	*Topsoil should be stripped to a depth of 20 cm from the areas proposed for buildings, roads, paved areas, and external services. It should be stockpiled appropriately in designated areas and reapplied during plantation of the proposed vegetation on site.*
Transport	*9*	*A comprehensive mobility plan, as per MoUD best practices guidelines (URDPFI), shall be prepared to include motorized, non-motorized, public, and private networks.* *Road should be designed with due consideration for environment, and safety of users. The road system can be designed with these basic criteria.* *1. Hierarchy of roads with proper segregation of vehicular and pedestrian traffic.* *2. Traffic calming measures.* *3. Proper design of entry and exit points.* *4. Parking norms as per local regulation.*
Environment Management Plan	*10*	*An environmental management plan (EMP) shall be prepared and implemented to ensure compliance with the environmental conditions specified in item number 1 to 9 above. A dedicated Environment Monitoring Cell with defined functions and responsibility shall be put in place to implement the EMP. The environmental cell shall ensure that the environment infrastructure like Sewage Treatment Plant, Landscaping, Rain Water Harvesting, Energy efficiency and conservation, water efficiency and conservation, solid waste management, renewable energy etc. are kept operational and meet the required standards. The environmental cell shall also keep the record of environment monitoring and those related to the environment infrastructure.*

APPENDIX-XV
Accreditation of Environmental Auditors (Qualified Building Auditors)

The Ministry of Environment, Forest and Climate Change (MoEFCC), through qualified agencies shall accredit the Qualified Building Environment Auditors (QBEAs). The Qualified Building Environment Auditors could be a firm/organization or an individual expert, who fulfils the requirements. The Ministry will implement this process of accreditation through Quality Council of India (QCI), National Productivity Council or any other organization identified by the Government. The organizations like Indian Green Building Council, Bureau of Energy Efficiency etc. can also be associated in the process of accreditation, training, and renewal. The environmental consultants accredited by the QCI for building sector will be qualified as QBEAs. The QBEAs will meet the following criteria. The accrediting agency can

improvise on these criteria.

Qualifications of the Auditor:

a. Education: Architect (Degree or Diploma), Town Planners (Degree), Civil Engineer/Mechanical Engineer (Degree or Diploma), PG in Environmental Science or any other qualification as per the scheme of the accreditation.

Training:

b. Mandatory training to be given by the accreditation body or their approved training providers. This will be as per the scheme of the accreditation.

Experience:

c. At least 3 years of work experience in the related field or building sector Environment Impact Assessment consultants accredited by QCI or any other experience criteria as per the scheme of the accreditation.

Infrastructure and equipment:

d. As per the scheme of the accreditation

Renewal:

e. The accreditation will be valid for 5 years and will be renewed as per the process developed under the accreditation scheme.

Accountability/Complaint redressal mechanism: Any complaints regarding the quality of the work of QBEAs shall be made to the accreditation body. The accreditation body shall evaluate the complaint and take appropriate action including black listing or cancellation of the accreditation with wide public notice. This will be in addition to the action at the level of local authority for penalty and blacklisting. The Ministry can also take such action in case of specific complaint or feedback.

APPENDIX-XVI

Environmental Cell at the level of Local Authority:

An Environmental Cell shall be setup at the local authority level to support compliance and monitoring of environmental conditions in buildings. The Cell shall also provide assistance in environmental planning and capacity building within their jurisdiction. The responsibility of this cell would be monitoring the implementation of this notification and providing an oversight to the Third-Party Auditing process. The cell will operate under the local authority.

Constitution of the cell:

The cell will comprise of at least 3 dedicated experts in following fields:

a. Waste management (solid and liquid)

b. Water conservation and management

c. Resource efficiency including Building materials

d. Energy Efficiency and renewable energy

e. Environmental planning including air quality management.

f. Transport planning and management.

The Cell shall induct at least two outside experts as per the requirements and background of dedicated experts. Existing environmental cells at the level of local authority can be co-opted and trained for this Cell.

Financial Support:

An additional fee may be charged along with processing fee for building permission for integrating environmental conditions and it's monitoring. The local authority can fix and revise this additional fee from time to time. The amount of this fee shall be deposited in a separate bank account, and used for meeting the requirement of salary/emoluments of experts and running the system of online application, verifications and the Environmental Cell.

Functions of the Cell:

1. The cell shall be responsible for assessing and appraising the environmental concerns of the area under their jurisdiction where building activities are proposed. The Cell can evolve and propose additional environmental conditions as per requirements. These conditions may be area specific and shall be notified in advance from time to time. These additional conditions shall be approved following a due consultation process. These environmental conditions will be integrated in building permissions by the sanctioning authority.

2. Develop and maintain an online system for application and payment of fees. The Cell shall maintain an online database of all applications received, projects approved, the compliance audit report, random inspections made. The Cell shall maintain a portal for public disclosure of project details including self certification and compliance audit reports filed by the Qualified Building Environment Auditors for public scrutiny of compliance of environmental conditions by the project.

3. Monitoring the work of Environmental Audit process carried by the Qualified Building Auditors.

4. The Cell shall review the applications; finalize the additional environmental conditions if required within 30 days of the submission of the application to the local authority.

5. The Cell shall adopt risk based random selection of projects for verifying on site for certification of QBA, compliance of environmental conditions and five yearly audit report.

6. The Cell shall recommend to the local authority for financial penalty for non-compliance of environmental conditions by the project proponent.

7. The Cell shall recommend to the accrediting body and the local authority against any Qualified Building Environment Auditor, if any lapse is found in their work."

d) This amendment notification sought to decentralize regulation of building projects, by authorizing urban local bodies to grant approval for building permission by providing integrated environmental conditions examined by environmental cell constituted in the said local bodies and this was required to be processed after making requisite changing/amendments in the by-laws and the relevant rules to be notified by State Governments after having concurrence from MoEF & CC and where such by-laws and rules are amended and, thereafter, on the recommendation of the environmental cell, constituted under urban local bodies, building permissions are granted. It was provided that Central Government may issue an order exempting requirement of separate EC for such projects. Different provisions were provided for the buildings having size of the projects between 5,000 m^2 < 20,000 m2; more than 20,000 m^2 but lesser than 50,000 m^2 and more than 50,000 m^2 but upto 1,50,000 m^2.

e) This amendment notification was challenged before Tribunal in OA 677/2016, Society for Protection of Environment & Biodiversity vs. Union of India; OA 01/2017, Pushp Jain vs. Union of India; OA 7/2017, Ajay Kumar Singh vs. MoEF & CC; OA 55/2017, Mahendra Pandey vs. UoI and OA 67/2017, R. Shreedhar vs. UoI along with MA Nos. 148/2017, 03/2017, 445/2017, 879/2017 and 620/2017. The above OAs were disposed of by Principal Bench of Tribunal vide judgment dated 08.12.2017 and striking out provisions of clause 14(8) as amended by the above notification, Tribunal directed MoEF & CC to re-examine the notification dated 09.12.2016 and take appropriate steps to delete, amend and rectify the clauses in the light of the observations made in the judgment. In the meantime, since bye-laws were also amended by Delhi Development Authority (hereinafter referred to as 'DDA') by notification dated 22.03.2016, Tribunal held that the said notification also shall not be given effect to unless the amendment notification dated 09.12.2016 is re-considered and amended as per the directions continued in the judgment. Tribunal also restrained MoEF & CC from giving effect to amendment dated 09.12.2016 till the above judgment is complied with. However, Tribunal also said that as per the earlier existing provisions of EIA 2006, the applications for grant of prior EC may be considered.

f) This Tribunal gave a categorical and clear message to MoEF & CC that laudable social cause of providing houses to poor, does not get defeated by business, economic profitability with reference to ease of doing business while particularly protecting environment.

g) The above judgment was challenged in Supreme Court in Civil Appeal No. 2522/2018, Union of India vs. Society for Protection of Environment & Biodiversity which is pending.

H. Notification dated 14.11.2018 published in Gazette of India Extraordinary of the same date:

a) By this notification, certain conditions were imposed upon Municipalities, Development Authorities, District Panchayats by delegating them power to ensure compliance of environmental conditions as specified in the Appendix in respect of building and construction projects with built up area < 20,000 sq. mtrs. to 50,000 sq. mtrs. and industrial sheds, educational institutions, hospitals and hostels for educational institution < 20,000 sqm upto 1,50,000 sqm along with building permission and to ensure that the conditions specified in Appendix are complied with, before granting the occupation certificate/completion certificate. The Appendix given in this notification is as under:

"APPENDIX

Environmental Conditions for Buildings and Constructions

(Category: Building or Construction projects or Area Development projects and Townships < 20,000 to < 50,000 Square meters as well as for industrial sheds, educational institutions, hospitals and hostels for educational institutions from 20,000 sq.m to < 1,50,000 sq.m)

S.N	MEDIUM	ENVIRONMENTAL CONDITIONS
(1)	(2)	(3)
1	Topography and Natural Drainage	The natural drain system shall be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site. No construction is allowed on wetland and water bodies. Check dams, bio-swales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water. Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.
2	Water Conservation, Rain Water Harvesting and Ground Water Recharge	A complete plan for rain water harvesting, water efficiency and conservation should be prepared and implemented. Use of water efficient appliances should be promoted with low flow fixtures or sensors. The local bye-law provisions on rain water harvesting should be followed. If local bye-law provision is not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Bye-laws, 2016. A rain water harvesting plan needs to be designed where the recharge bores of minimum one recharge bore per 5,000 square meters of built-up area and storage capacity of minimum one day of total fresh water requirement shall be provided. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority. All recharge should be limited to shallow aquifer.

2(a)		*At least 20 per cent of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks, landscape etc. with at least 50 per cent opening in paving which would be considered as pervious surface.*
3	*Waste Management*	*Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste.* *Sewage: Onsite sewage treatment of capacity of treating 100 per cent waste water to be installed. Treated waste water shall be reused on site for landscape, flushing, cooling tower, and other end-uses. Excess treated water shall be discharged as per statutory norms notified by Ministry of Environment, Forest and Climate Change. Natural treatment systems shall be promoted.* *Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development, Central PublicHealth and Environmental Engineering Organisation (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013.* *The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.*
3 (a)		*All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.*

3(b)		Organic waste compost/Vermiculture pit with a minimum capacity of 0.3 kg per person per day must be installed.
4	Energy	Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have notified their own ECBC, shall comply with the State ECBC. Outdoor and common area lighting shall be Light Emitting Diode (LED). Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design. Wall, window, and roof u-values shall be as per ECBC specifications.
4 (a)		Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1 per cent of the demand load or as per the state level/ local building bye-laws requirement, whichever is higher.
4(b)		Solar water heating shall be provided to meet 20 per cent of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.
4(c)		Use of environment friendly materials in bricks, blocks and other construction materials, shall be required for at least 20 per cent of the construction material quantity. These include flyash bricks, hollow bricks, Autoclaved Aerated Concrete (AAC), Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials. Fly ash should be used as building material in the construction as per the provisions of the Fly Ash Notification S.O. 763(E) dated 14th September, 1999 as amended from time to time.

5	*Air Quality and Noise*	*Roads leading to or at construction sites must be paved and blacktopped (i.e. metallic roads).* *No excavation of soil shall be carried out without adequate dust mitigation measures in place.* *No loose soil or sand or Construction & Demolition Waste or any other construction material that causes dust shall be left uncovered.* *Wind-breaker of appropriate height i.e. 1/3rd of the building height and maximum up to 10 meters shall be provided.* *Water sprinkling system shall be put in place.* *Dust mitigation measures shall be displayed prominently at the construction site for easy public viewing.* *Grinding and cutting of building materials in open area shall be prohibited.* *Construction material and waste should be stored only within earmarked area and road side storage of construction material and waste shall be prohibited.* *No uncovered vehicles carrying construction material and waste shall be permitted.* *Construction and Demolition Waste processing and disposal site shall be identified and required dust mitigation measures be notified at the site.* *Dust, smoke and other air pollution prevention measures shall be provided for the building as well as the site.* *Wet jet shall be provided for grinding and stone cutting.* *Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust.* *All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Rules 2016.* *All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask.*

		For indoor air quality the ventilation provisions as per National Building Code of India.
5(a)		*The location of the Genset and exhaust pipe height shall be as per the provisions of the statutory norms notified by Ministry of Environment, Forest and Climate Change.* *The Genset installed for the project shall follow the emission limits, noise limits and general conditions notified by Ministry of Environment, Forest and Climate Change vide GSR 281(E) dated 7th March 2016 as amended from time to time.*
6	*Green Cover*	*A minimum of 1 tree for every 80 sq.mt. of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species.*
6 (a)		*Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees for every 1 tree that is cut) shall be done and maintained.*
7	*Top Soil Preservation and reuse*	*Topsoil should be stripped to a depth of 20 cm from the areas proposed for buildings, roads, paved areas, and external services.* *It should be stockpiled appropriately in designated areas and reapplied during plantation of the proposed vegetation on site.*
8	*Transport*	*The building plan shall be aligned with the approved comprehensive mobility plan (as per Ministry of Housing and Urban Affairs best practices guidelines (URDPFI)).*

I. Notification dated 15.11.2018 published in Gazette of India Extraordinary of the same date:

a) Paragraph 14 of EIA 2006 and entries in the item 8 in the schedule were substituted as under:

"14. Local bodies such as Municipalities, Development Authorities and District Panchayats, shall stipulate environmental conditions while granting building permission, for the Building or Construction projects with built-up area < 20,000 sq. mtrs and < 50,000 sq. mtrs and industrial sheds, educational institutions, hospitals and hostels for educational institutions from built-up area < 20,000 sqm to < 1,50,000 sq.m as specified in Notification S.O. 5733(E) dated 14th November, 2018."

(ii) in the Schedule, for item 8 and the entries relating thereto, the following item and entries shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)
"8	Building or Construction projects or Area Development projects and Townships as well as for industrial sheds, educational institutions, hospitals and hostels for educational institutions			
8(a)	Building and Construction projects		≥50,000 mtrs. sq. and <1,50,000 sq. mtrs. of built-up area	***Note-1**: The term "built-up area" for the purpose of this notification is the built-up or covered area on all the floors put together including its basement and other service areas, which are proposed in the buildings or construction projects.* ***Note 2**: The projects or activities shall not include industrial sheds, educational institutions, hospitals and hostels for educational institutions.* ***Note 3:** General Conditions shall not apply.*
8 (b)	Townships and Area Development projects as well as industrial sheds educational institutions, hospitals and hostels for educational institutions		≥1,50,000 sq. mtrs. of built-up area and or covering an area ≥ 50 ha.	***A project of Township and Area Development Projects covered under this item shall require an Environment Assessment Report and be appraised as Category 'B1' Project.*** *Note: - General Conditions shall not apply.*

b) Notifications dated 14.11.2018 and 15.11.2018 were issued in complete disregard of directions contained in the judgment dated 08.12.2017. MoEF & CC insisted to delegate power to local bodies ignoring that these local bodies have any expert in the matter and no study was conducted whether expert infrastructure is available to such bodies. It is also true that though appeal was filed in Supreme Court but the same was pending and judgment of Tribunal has its legal consequences so long it is not otherwise ordered by appellate Court i.e., Supreme Court.

c) The notifications dated 14.11.2018 and 15.11.2018 were challenged in Delhi High Court in various writ petitions wherein interim orders were passed. These writ petitions are 12571/2018, Social Action for Forest and Environment vs. UoI and No. 12570/2018, Society for Protection of Environment & Biodiversity (SPENBIO) vs. UOI. The same issue was raised before this Tribunal also in OA 1017/2018, Shashikant Vithal Kamble vs. UOI but referring to the matter pending in Delhi High Court, Tribunal had deferred the matter sine-die vide order dated 22.01.2019.

133. A perusal of EIA 2006 and its amendments made from time to time particularly, in respect of projects/activities covered by entry 8 in Schedule I of the said notification shows that the activities relating to building construction and development would require EC from Competent Authority, if the built up area is more than 20,000 m^2. Item 8(a) says that in respect of building and construction projects, if built up area is more

than 20,000 m^2 and less than 1,50,000 m^2, the project would be treated as 'B2' category project. Item 8(b) covers another category of township and area development activities/projects where land is more than 50 ha or built-up area is more than 1,50,000 m^2 and under this item, the category would be 'B1'. However, under item 8, the projects whether under item 8(a) or 8(b), the same would be 'B category' projects. The difference in categorization of the projects is in respect to process of consideration of application for prior EC and appreciation by the concerned Environmental Assessment Committee.

Analysis of EIA 2006 by Courts:

134. Provisions of EIA 2006 and the process thereunder have been considered in detail, by Supreme Court in Hanuman Laxman Aroskar vs. Union of India, MANU/SC/0444/2019 : (2019) 15 SCC 401. It was an appeal taken to Supreme Court, from a judgment/order dated 21.08.2018 passed by this Tribunal in Appeal No. 5/2018 (earlier Appeal No. 61/2015/WZ), Federation of Rainbow Warriors vs. Union of India & Ors. and Appeal No. 6/2018, Hanuman Laxman Aroskar vs. Union of India, wherein grant of EC for development of green field International Airport at Mopa, Goa, was challenged. Project was in category 'A' hence as per EIA 2006 'Prior EC' was to be granted by MoEF. EC was granted on 28.10.2015. It was challenged by M/s. Federation of Rainbow Warriors in Appeal No. 61/2015 at Tribunal's Western Zonal Bench, Pune. Another Appeal No. 1/2016 was filed by Hanuman Laxman Aroskar at NGT, Western Zonal Bench, Pune. Both these appeals were transferred to Principal Bench at New Delhi and numbered as Appeal No. 5 and 6 of 2018 respectively. One of the issues raised before Supreme Court was; PP did not give complete information in Form I submitted to the Competent Authority for grant of EC; PP is duty bound to make a proper disclosure and highest level of transparency is required; and there was concealment of certain facts by leaving certain columns blank or by not giving required details. It was contended that for these reasons, application for EC ought to have been rejected.

135. Supreme Court considered scheme of EIA 2006 in detail. Going into historical backdrop of EIA 2006, Court said that by Constitution (Forty-second Amendment) Act 1976 w.e.f. 03.01.1977, Article 48A was inserted to the Constitution which mandates that State shall endeavor to protect and improve environment and safeguard forests and wildlife of the country; Article 51A(g) of Constitution places a corresponding duty on every citizen to protect and improve natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures; following decisions taken at United Nations Conference on Human Environment held at Stockholm (Stockholm Conference) in June 1972, in which India also participated, Parliament enacted EP Act, 1986 to protect and improve environment and prevent hazards to human beings, other living creatures, plants and property; on 27.01.1994, MoEF & CC, in exercise of powers under Section 3(1) read with (2)(v) of EP Act, 1986 and Rule 5(3)(d) of EP Rules, 1986, issued notification, S.O. 60(E), 1974, imposing restrictions and prohibitions on the expansion and modernization of any activity or new project unless an EC was granted under the procedure stipulated in the notification; Notification contemplated that any person undertaking a new project or expanding and modernizing an existing project, would submit an application to the Secretary, MoEF; application to be made in accordance with Schedule, also provided that, it shall accompany project report including EIA Report, an Environment Management Plan (hereinafter referred to as 'EMP') and other details as per the Guidelines issued by Government from time to time; Competent Impact Assessment Agency would then evaluate application and submit report; and if necessary, it is also empowered to constitute a Committee of Experts which would have a right of entry into and inspection of the site during or after the

commencement of the preparations relating to the project; concealment of any factual data or submitting false or misleading information would make the application liable for rejection and would lead to cancellation of any EC already granted on that basis; EIA 1994 was superseded by EIA 2006; real distinction between EIA 1994 and EIA 2006 is that in the later EC must be granted by Regulatory Authority prior to commencement of any construction work or preparation of land; EIA 2006 divides all projects in Category A and Category B projects; under EIA 1994, PP was required to submit application along with all reports including EIA report but under EIA 2006 prior to preparation of EIA report by PP, the authority concerned would formulate comprehensive Terms of Reference (hereinafter referred to as 'ToR') on the basis of information furnished by PP addressing all relevant environmental concerns; this would form the basis for preparation of EIA Report; a pre-feasibility Report is also required to submit with the application unless exempted in the Notification; under EIA 1994, final approval was granted by Impact Assessment Authority but under Notification of 2006, final regulatory approval is granted by MoEF & CC or SEIAA, as the case may be; but approval is to be based on recommendations of EAC functioning in MoEF & CC or State Expert Appraisal Committees (SEACs) which are constituted for that specific purpose; thus the salient objective which underlies EIA 2006 is protection, preservation and continued sustenance of environment when the execution of new projects or the expansion or modernization of existing projects is envisaged; it imposes certain restrictions and prohibitions based on the potential environmental impact of projects unless 'Prior EC' has been granted by the authority concerned.

136. Supreme Court said that an application must be submitted prior to the commencement of any construction activity or preparation of the land at the site. The process to obtain EC comprised broadly 4 stages i.e. (i) Screening, (ii) Scoping, (iii) Public Consultation and (iv) Appraisal. The step of screening is restricted to Category B projects. It entails an examination of whether the proposed project or activity requires further environmental studies for preparation of an EIA for its appraisal prior to grant of EC. The projects requiring an EIA are further categorized as Category B1 projects and remaining projects are categorized as Category B2 projects. Category B2 projects do not require an EIA. The categorization is in accordance with the guidelines issued by MoEF & CC in this regard from time to time. The stage of scoping requires formulation of comprehensive ToR so as to address all relevant environmental concerns for the preparation of EIA. Amongst other things, information furnished by applicant in Form 1 and Form 1A along with the proposed ToR forms the basis for preparation of ToR. Public consultation at the third stage is attracted in all Category A and Category B1 projects. Summary of EIA is prepared in the format given in Appendix IIIA on the basis of ToR furnished to the applicant. This stage involves the process by which concerns of local affected persons and others who have plausible stake in the environmental impact of the project or activity are ascertained with a view of taking into account all the material concerns in the project or activity design as appropriate. The stage of appraisal involves detailed scrutiny by EAC or SEAC of all documents submitted by applicant for the grant of EC. The appraisal is carried out in a transparent manner in a process to which PP is also invited for furnishing clarification in person or through an authorized representative. The scheme requires Regulatory Authority to examine documents strictly with reference to ToR and if there is any inadequacy to communicate to EAC or SEAC within 30 days of receipt of the documents; recommendations made by EAC or SEAC are then required to be considered by MoEF & CC or concerned SEIAA who are supposed to communicate their decision to PP within 45 days of receipt of the recommendations. Ordinarily Regulatory Authorities are supposed to accept recommendations of EAC or SEAC. In case of disagreement, Regularity Authority is required to seek a reconsideration of recommendations by the concerned recommending body. Importance

of provisions of EIA 2006 in reference to protection of environment has been stressed upon by Supreme Court in para 56 of the report (SCC) as under:

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

137. Court also observed that under EIA 2006, process of obtaining an EC commences from the production of information stipulated in Form 1/Form 1A; crucial information regarding particulars of proposed project is sought to enable EAC or SEAC to prepare comprehensive ToR which applicant is required to address during the course of preparation of EIA. Relevant observations in para 60 of judgment are as under:

> *"60. Under the 2006 Notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1A.*
>
> .....
>
> .....
>
> *Some of the information sought is produced thus:*
>
> *60.1.* ***Construction, operation or decommissioning*** *of the project involving actions, which* ***will cause physical changes in the locality (topography, land use, changes in water bodies, etc.).***
>
> *60.2.* ***Use of natural resources*** *for construction or operation of the project (such as land,* ***water,*** *materials or energy, especially any resources which are non-renewable or in short supply).*
>
> *60.3. Use, storage, transport, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about the actual or perceived risks to human health.*
>
> *60.4* ***Production of solid wastes during construction, operation or decommissioning.***
>
> *60.5. Release of pollutants or any hazardous, toxic or noxious substances to air.*
>
> *60.6. Generation of noise and vibration, and emissions of light and heat.*
>
> *60.7.* ***Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea.***

60.8. Risk of accidents during construction or operation of the project, which could affect human health or the environment.

60.9. ***Environment sensitivity which includes,*** *amongst other things, the furnishing of the following details:*

60.9.1. ***Areas protected under*** *international and* ***national legislation.***

60.9.2. ***Ecologically sensitive areas***

60.9.33 ***Areas used by protected, important or sensitive species of flora or fauna."***

(Emphasis added)

138. The importance of correctness and transparency of the information and that any false statement or concealment of the same would be fatal, was particularly stressed by Court in para 62 of judgment, observing:

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

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

(Emphasis added)

139. Supreme Court also referred and approved two judgments of this Tribunal in Save Mon Region Federation vs. Union of India, MANU/GT/0029/2013 : 2013 (1) All India NGT Reporter 1 and Shreeranganathan K.P. vs. Union of India wherein, on the basis of information furnished in Form 1, the deficiencies in EIA Report, process of appraisal etc., were considered in detail to find out whether EC was granted in accordance with law or not. Court distinguished an earlier judgment in Lafarge Umiam Mining Private Limited vs. Union of India MANU/SC/0735/2011 : 2011 (7) SCC 338 observing that it was the case under EIA 1994 when provisions of EIA 2006 were not applicable. Court said that decision was based on facts of that case, summarized by Court in Hanuman

Laxman Aroskar (supra) in para 138 of judgment. It was also held that, relevant material, if has been excluded for consideration or extraneous circumstances were brought in mind, there was a failure to observe binding norms under EIA 2006 and consequential serious flaw in the decision-making process, would amount to an illegal exercise and failure of statutory duty, so as to vitiate EC. In para 157 of judgment, importance of the correct and complete disclosure of information by PP in his application, Form 1 and Form 1A, and further consideration by Competent Authority has been discussed, as under:

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

140. Further, in para 158 of judgment, in Hanuman Laxman Aroskar (supra), Court observed:

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

141. Supreme Court ultimately held that report of EIA based on incomplete information supplied by PP is vitiated. In para 159, it is said:

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

manual, there is a presence of ESZs."

(Emphasis Added)

142. Manner in which application submitted for grant of EC has to be dealt with by SEIAA or MoEF, has been considered in Bengaluru Development Authority v. Sudhakar Hegde & Ors.; MANU/SC/0308/2020 : (2020) 15 SCC 63. Supreme Court had an appea arising from NGT's judgment dated 08.02.2019, whereby EC granted to appellant (BDA) for development of an eight lane Peripheral Ring Road connecting Tumkur Road to Hosur Road, a length of 65 kilometers was quashed, on the ground that report was based on primary data collected more than three years prior to submission to SEIAA. Tribunal directed that PP will not proceed on the basis of EC, which was quashed. Three issues were raised before Supreme Court. For our purpose, relevant question is, "whether EIA 2006 was followed or not". In para 87 of judgment, Court said that

"appraisal by SEAC is structured and defined by EIA Notification, 2006. At this stage, ***SEAC is required to conduct "a detailed scrutiny" of the application and other documents including EIA report submitted by applicant for grant of an EC.*** *Court also said that upon completion of appraisal processes, SEAC makes "categorical recommendations" to SEIAA either for grant of a 'Prior EC' on stipulated terms and conditions or rejection of the application. The* ***recommendations made by the SEAC*** *for the grant of EC,* ***are normally accepted by the SEIAA and must be based on "reasons"."***

(Emphasis Added)

143. Court further said that reasons furnished by SEAC must be assessed with reference to the norm that it is required to submit reasons for its recommendations. Court found that SEAC, in that case, analyzed the matter perfunctory and fails to disclose reasons upon which it made recommendation to SEIAA for grant of EC. It merely proceeds on the reply submitted by PP. In para 89 of judgment, Court said:

"SEAC is under an obligation to record the specific reasons upon which it recommends the grant of an EC. *The requirement that the SEAC must record reasons, besides being mandatory under the 2006 Notification, is of significance for two reasons: (i) The SEAC makes a recommendation to the SEIAA in terms of the 2006 Notification. The regulatory authority has to consider the recommendation and convey its decision to the project proponent. The regulatory authority, as para 8(ii) of the 2006 Notification provides, shall normally accept the recommendations of the EAC. Thus,* ***the role of the SEAC in the grant of the EC for a proposed project is crucial;*** *and (ii) The grant of an EC is subject to an appeal before the NGT under Section 16 of the NGT Act 2010.* *The* ***reasons furnished by the SEAC constitute the link upon which the SEIAA either grants or rejects the EC****The reasons form the material which will be considered by the NGT when it considers a challenge to the grant of an EC".*

(Emphasis added)

144. Approving judgment of this Tribunal in Shreeranganathan K P vs. Union of India; Supreme Court said:

"EAC had not conducted a proper appraisal given its failure to consider the available material and objections before it. *The EAC had thus failed to conduct a proper evaluation of the project prior to forwarding to the regulatory*

authority its recommendation".

(Emphasis added)

145. In para 92 of the judgment, Supreme Court said:

> ***"SEAC, as an expert body, must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment and scrutinize the document submitted to it.*** *The* ***SEAC is duty bound to analyze the EIA report.*** *..... The SEAC is not required to accept either the EIA report or any clarification sent to it by the project proponent. In* ***the absence of cogent reasons by the SEAC for the recommendation of the grant of EC, the process by its very nature, together with the outcome, stands vitiated."***

(Emphasis added)

146. The above authorities make it clear that Tribunal would proceed with a merit review in exercise of appellate power with regard to validity of grant of EC and to examine whether the entire relevant information was furnished by PP. The authority is under statutory obligation to examine impact of such information on the environment, has to discharge its functions effectively and after due application of mind appraising environmental sustainability of the project. Environment is essential facade of development. For construction project/activities covered under item 8 of the Schedule of EIA 2006, simpler procedure has been prescribed. EAC and/or any other Competent Authority namely SEAC/SEIAA has to evaluate the information available in Form I and IA as also conceptual plan submitted by PP, which is crucial and serves as base on which process of evaluation rests. Any deliberate concealment/false/inadequate and misleading information is bound to result in rejection of applications submitted by PP, for grant of prior EC.

Consideration of Issues on Merits:

147. In the light of above discussion, the relevant statutory provisions and law laid down interpreting the relevant provisions, we proceed to consider the issues formulated above.

148. Issue I (relating to res-judicata)-PP has taken the defence in respect of various issues that the present appeal is barred by res-judicata since the issues raised by appellant were already subject matter of consideration before Delhi High Court and decided against appellant, hence cannot be re-agitated in this appeal. This takes us to the judgments of Delhi High Court and Supreme Court relied by PP.

149. WP(C) No. 2743/2012 was filed by Registrar, University of Delhi i.e., DU impleaded Union of India, DDA, DMRC and others. PP was impleaded as respondent 12 in the said writ petition. Challenge was to the decision taken by DDA in the meeting dated 12.05.2011 whereby DDA allowed PP to construct a high multi-story group housing society in control zone of Zone C, contrary to mandate of MPD-2021 and Development Control Norms for metro station as stipulated under chapter 12 of MPD-2021. DDA by the said decision has allowed construction without any height restriction and to treat the plot leased out to PP by DMRC, admeasuring 2 ha, as a separate entity from the total plot acquired for metro station developed by DMRC admeasuring 3.05 ha. A writ of mandamus was sought by DU directing respondents to follow mandate of MPD-2021 particularly, Development Control Norms contained in Gazette notification dated 20.01.2005 (incorporated under chapter 12 of MPD-2021) relating to Zone-C.

This writ petition was decided by Learned Single Judge (Hon'ble Suresh Kait, J. of Delhi High Court) vide judgment dated 27.04.2015 whereby writ petition was dismissed. The judgment is on record at page 904 of paper book.

150. The facts borne out from the said judgment, placed before High Court in the above writ petition are that DMRC desired acquisition of land for metro station i.e. Vishwavidyalaya Metro Station falling under Zone-C of MPD-2021 and identified land comprising some bungalows etc. and sought its acquisition. Ministry of Urban Development on 02.05.2000 granted NOC for acquisition of bungalows. The land use of proposed land to be acquired was changed from 'residential' to 'public and semi public purpose'. Acquisition proceedings commenced with notification dated 15.12.2000 issued under Section 4(1) of Land Acquisition Act, 1894 (hereinafter referred to as 'LA Act 1894') and declaration under Section 6 was issued on 14.02.2001. Land Acquisition Collector passed award under section 11 on 11.09.2001. Land measuring 3.05 ha, situated in Zone-C (Civil Lines Zone) at Mall Road was handed over to DMRC. Mutation in the revenue records in favour of DMRC was also given effect. On 21/23.07.2003, Ministry of Urban Development and Poverty Alleviation granted approval to DMRC to generate resources through property development within the period of 6 to 20 years. DDA issued notification dated 16.04.2004 in accordance with the provisions of Section 44 of Delhi Development Act, 1946 (hereinafter referred to as 'DD Act 1946') inviting objections and/or suggestions on the modification proposed by Central Government with a view to modify MPD-2021. By notification dated 20.01.2005, land use provisions of "Master Plan Zonal Development Metro Stations" along with "Property Development with Control Norms" was notified. On 23.09.2005, Government of India notified change in land use of 2 ha out of 3.05 ha of land taken over by DMRC from 'public and semi-public' to 'residential'. DDA, vide letter dated 12.02.2007, informed DMRC that in view of the change of land use, MPD and ZDP of Zone-C, providing detailed guidelines for development, be followed. On 07.02.2007, MPD 2021, stipulating "Development Controls for Metro Stations" was notified. On 29.03.2007 and 14.09.2007, DDA confirmed to DMRC that all statutory provisions relating to group housing as per MPD-2021 were to be followed. In June 2008, DMRC issued 'Request for Proposal' for residential development at Vishwavidyalaya Metro Station, indicating that norms of residential plot group housing as per MPD-2021 were to be followed, i.e., FAR of 200, ground coverage of 33.3% and also its intention to transfer leasehold rights to the developer for a period of 90 years.

151. The auction proceedings commenced and PP's bid was accepted in respect of 2 ha of land of DMRC out of 3.05 ha which it had acquired. After execution of lease deed and possession handed over to PP by DMRC, an application along with proposed layout plan for approval of Group Housing Scheme was submitted by PP to Municipal Corporation of Delhi (hereinafter referred to as 'MCD').

152. DU, at this stage, submitted representation to Delhi Urban Arts Commission (hereinafter referred to as 'DUAC'), raising concerns about the above project. Chairman, DUAC, vide letter dated 05.08.2009 requested DDA to reconsider project in the light of representation of DU. DDA, vide letter dated 19.08.2009, withdrew its earlier letters dated 29.03.2007 and 14.09.2007, wherein it was stated that Development Control Norms of property development for Metro Station dated 20.01.2005 would be applicable.

153. Challenging order dated 19.08.2009, PP filed WP(C) 3135/2010 in Delhi High Court. The writ petition was not decided on merits, instead, DDA informed that a decision was taken in the meeting held on 12.05.2011 to allow FAR of 200 without any

height restriction to the project. On the said statement, writ petition was disposed of on 18.05.2011. Consequently, decision taken in the meeting dated 12.05.2011 by DDA, became subject matter of challenge in WP(C) No. 2743/2012, filed by DU.

154. The rival submissions advanced by the counsels appearing for the petitioner and respondents before Delhi High Court are mentioned in para 7 to 45 of the judgment, which inter-alia show that DU, besides others, also sought to raise dispute about bona-fide of auction of the land by DMRC for development of group housing on the part of the land acquired for construction of metro railway station. Court noticing the entire facts, in para 47 observed that permission given by DDA in the meeting dated 21.05.2011 was completely in line with the amended provisions of MPD-2021. The observations made in para 47 of judgment of Learned Single Judge of Delhi High Court reads as under:

> "47. Respondent No. 10 DMRC had constructed Vishwavidyalaya Metro Station, where 2 Hectares of land remained surplus and was to be used for development in order to generate revenue. Accordingly, the respondent No. 10 applied to DDA for change of land use from 'Public and Semi Public' to 'Residential', which was approved by the Ministry of Urban Development as per its notification No. 1383(E) : MANU/URBN/0017/2005 dated 23.09.2005. The auction of the land in favour of the Respondent No. 12 was granted only after receipt of letters dated 29.03.2007 & 14.09.2007 issued by the DDA, wherein it was specifically informed that the FAR for the Plot in question would be as per the norms of the MPD-2021 for Group Housing and FAR of 200 with 33% ground coverage would be permissible. Moreover, the Ministry of Urban Development vide its Notification dated 18.04.2011 had amended Clause 3.3.1.1(vii) of the MPD 2021, wherein the words, 'Property Development by DMRC' was deleted. Thus, the restriction on enhancement of FAR for property development by DMRC as provided under the MPD-2021 stood modified to the effect that the FAR for projects of property development by the DMRC can be enhanced in accordance with the provisions of the MPD-2021. Moreover, in the Minutes of Meeting dated 21.05.2011, in respect of the Plot in question, DDA allowed the development control norms as available to any Group Housing Society under MPD-2021, including 200 FAR without restriction of height, on the residential plot leased out to respondent No. 12 by DMRC near Vishwavidyalaya Metro Station. Therefore, the permission given by the DDA in the minutes of meeting dated 21.05.2011 was completely in line with the amended provisions of the MPD-2021."

155. Court also found justification on the part of DMRC to lease out 2 ha of plot to PP and said in para 49 as under:

> "49. It is also pertinent to mention here that the situation in question arose for the reason that earlier under Phase-I, the Vishwavidyalaya Metro Station used to be a terminal station. In 2006, when Phase-II was envisioned, the aforesaid Metro Station remained no longer a terminal station and the line from Central Secretariat to Vishwavidyalaya was extended to Jahangirpuri, resultantly, the requirement for parking space was reduced, and consequently there was a surplus land available with the DMRC. Accordingly, DMRC invited bids for residential development on 2.0 Hectare plot representing that the norms of Residential Plot-Group Housing as per MPD 2021 would be applicable which permit 200 FAR with 33% ground coverage. Accordingly, respondent No. 12 participated and turned out to be the highest bidder at Rs. 218.20 crores."

156. It also noted that WP(C) No. 8675/2011 was filed by Association of Metro Commuters, challenging allocation of the said land for residential development, which was dismissed by Division Bench of Delhi High Court vide judgment dated 14.12.2011 observing that no irregularity in the auction conducted by DMRC could be shown. Further, Court also said that proceeding for residential development commenced in 2007 and lease agreement was executed on 15.12.2008; Land was also transferred; hence Court said that it do not any justification for interference in writ petition filed in 2011 without bringing any illegality in the process to the notice of Court and instead seeking roving and fishing inquiry.

157. Another WP(C) 6624-6625/2012, Sanjay Khanna (HUF) vs. UOI and Others, filed by erstwhile lessees of the land in question challenging acquisition was also referred in the judgment. These writ petitions were also dismissed vide judgment dated 10.09.2013 and SLP No. 5014/2014 was dismissed by Supreme Court on 14.02.2014. In para 55 and 56 of the judgment dated 15.04.2015, High Court also noticed that the process of change of "land use" commenced long back, at least in December 2004, and that has been accomplished following due process of law, by issue of notification dated 23.09.2005, changing "land use" from "public and semi-public purposes" to "residential".

158. Rejecting argument with regard to height restriction on the ground that 3.05 ha of land falls in control zone of DU, Court observed in para 58 that restrictions are applicable in important areas like Lutyen's Bungalow Zone, Civil Lines Bungalow Zone and North Delhi Campus but the plot in question does not fall within any of these restricted areas. In fact, questioned land neither comes within Delhi University North Campus nor part of DU. Twice change of "land use" i.e. from residential to public purpose to public and semi-public and then again residential was also upheld by Learned Single Judge while observing in para 63 that once land is acquired in a lawful manner and vested in the acquiring authority, a portion of the acquired land, if left unused, after achieving the public purpose, unused portion can be used for a purpose other than it was acquired. For taking the above view, Court relied on its earlier judgment in Adil Singh vs. UoI and Ors., WP(C) No. 2948 of 2007 decided on 09.08.2010. Having said so, Court observed that a policy decision was taken by DDA and unless it is shown to be illegal, mala-fide or otherwise vitiated in law, no interference would be justified. Court observed in para 64 of the judgment as under:

> "64. As per the settled law, the Court should not interfere with any policy decision taken by a Government body unless there appears to be some illegality, impropriety, mala fide or unreasonableness on part of such decision making body. However, the petitioner has failed to establish the same."

159. Thus, the issues of genuinity of auction of surplus land (2 ha) by DMRC; height restriction due to control zone of DU and change of land use were decided by Delhi High court in favour of PP and against DU. Thereafter, Court also found that DU in challenging the basic issue of change of land use was guilty of latches in as much as something, which had happened 7 to 8 years back, could not have been allowed to be agitated in a writ petition filed in 2012. Writ petition accordingly was dismissed as Court did not find any merit and also on the ground of delay and latches and said in para 67 and 68 as under:

> "67. In view of the above discussion, I find no merit in the instant petition and the same is also hit by delay and latches.

68. Accordingly, instant petition is dismissed with no order as to costs."

160. Thereafter, DU filed LPA 89/2018 before Division Bench. The appeal was filed after expiry of period of limitation and with a huge delay of 916 days, hence it accompanied a delay condonation application also. The Division Bench considered delay condonation application i.e., Civil Misc. Application No. 8654/2018 and said in para 18, 22 and 27 of the judgment dated 29.10.2018, as under:

18. So the plea that in the absence of Vice Chancellor the decision to file appeal could not have been taken cannot be accepted.

xxx ..... xxx xxx

22. The aforesaid has not been denied by the appellant University in its rejoinder which suggest that the plea of non availability of Vice Chancellor because of which decision could not been taken for filing an appeal is an incorrect stand taken by the appellant University. So the reasons given by the University being not bona fide and do not inspire confidence, the same cannot be accepted.

xxx ..... xxx xxx

27. In view of above discussion, we do not see any reason to condone the delay of 916 days in filing the appeal. The application is dismissed. Resultantly, the appeal as well as connected applications are also dismissed."

161. Thus, it is evident that appeal was dismissed by Division Bench by order dated 29.10.2018 on the ground of limitation. Delay condonation application itself was rejected as Division bench did not find any ground, any satisfactory explanation for filing appeal with a delay of 916 days.

162. Aggrieved by the above judgment of Division Bench, DU filed Civil Appeal Nos. 9488-9489 of 2019 before Supreme Court and vide judgment dated 17.12.2019, in University of Delhi vs. Union of India & Ors. MANU/SC/1761/2019 : (2020) 13 SCC 745, Supreme Court upheld dismissal of writ petition as well as LPA on the ground of delay and latches and found that there was no justification to condone delay of 916 days in filing appeal. Para 32 of the judgment of Supreme Court reads as under:

32. Therefore, taking into consideration all these aspects of the matter, we are of the opinion that not only the learned Single Judge was justified in holding that the writ petition inter alia is hit by delay and laches but the decision of the Division Bench in dismissing the LPA on the ground of delay of 916 days is also justified and the orders do not call for interference."

163. The above judgment shows that the issue raised before Delhi High Court was decision of DDA whereby it permitted development of group housing on the land in question with FAR 200 without any restriction of height and applicability of certain provisions of MPD-2021 on the ground that the plot in question was within the special category like Lutyen's Bungalow Zone, Civil Lines Bungalow Zone and North Delhi Campus where height restrictions ought to have been observed or part of Delhi University. The objections raised by DU were not found correct.

164. Decision of DDA permitting development of land in question in a particular manner is neither assailed before this Tribunal nor we have jurisdiction to look into that

aspect of the matter even otherwise. The appropriate forum was availed by DU and it had failed. Therefore, issue of restriction of height and permissible FAR in the light of MPD-2021 as permitted by DDA is neither being examined nor can be examined by this Tribunal. It is also not being disputed before us that the plot in question neither comes within the restricted area like Lutyen's Bungalow Zone, Civil Lines Bungalow Zone and North Delhi Campus nor it is a part of DU and DU North Campus. To this extent, on the issues notified above, findings of Delhi High Court are final. However, a challenge on different aspects, particularly arising from a different cause of action, involving different grounds and statutes, in our view would not come within the objection based on the principle of res-judicata.

165. Further application of the principle of res-judicata has also to be seen in the backdrop of the fact that this Tribunal has been constituted under NGT Act, 2010 and it is not a 'Court' as defined under Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'). Section 19 clearly says that Tribunal is not bound by the procedure laid down by CPC but shall be guided by the "principles of natural justice" and subject to NGT Act 2010, Tribunal shall have power to regulate its own procedure. Sub-section 4 of Section 19 of NGT Act 2010, says that Tribunal shall have, for the purpose of discharging its functions under NGT Act 2010, same powers as are vested in civil court under CPC while trying a suit, in respect of the matters enumerated in clauses (a) to (k). The provision of 'res-judicata' prescribed under Section 11 CPC, as such is not applicable to NGT but it is also true that it is a principle of well accepted doctrine that no one shall be vexed twice for the same cause or that it is for the public good that there be an end of litigation, hence, if on an issue between the parties, there is already an adjudication, the principle of constructive res-judicata, even in the matter before Tribunal shall apply. This is a well-recognized principle applied since ancient time so as to quite to a dispute and not to allow the same party to litigate over the same matter again and again.

166. Res-judicata is a principle or doctrine or concept which is well recognized since ancient times. It is a principle of universal application treated to be a fundamental and basic idea in every developed jural society. The very objective of adjudication of a dispute by an adjudicatory forum, whatever name it is called, is to bring to an end dispute or lis between the parties. The seed of justice, thus, aims to have every matter fairly tried once and, thereafter, further litigation should be barred treating to be concluded for all times to come between the parties. So far as the dispute which has already been adjudicated, it is a rule common to all, well defined in a civilized system of jurisprudence, that, the solemn and deliberate sentence of law upon a disputed fact pronounced, after a proper trial, by its appointed organ should be regarded as final and conclusive determination of the question litigated and should set at rest, forever, the controversy. This rule which treats the final decision of a competent Tribunal as "irrefragable truth" was well known to Hindu and Mohammadan lawyers and jurists since long as the system is recognized in Hindu as well as Muslim laws also.

167. So far as Europe is concerned, it is mainly influenced with the legal system of Roman jurisprudence. This principle is one of the great gains of Roman jurisprudence carried to modern jural system of Europe. In the Anglo saxon jurisprudence, this principle is formerly based on a maxim of Roman jurisprudence "interest reipublicae ut sit finis litium" (it concerns the state that there should be an end to law suits) and partly on the maxim "nemo debut bis vexari pro una at eadem cause" (no man should be vexed twice over for the same cause). The Act 8 of 1859 provided the principle of the res judicata in Section 2 which read as under:

"The civil court shall not take cognizance of any suit brought on or cause of

action which shall have been heard and determined by a court of competent jurisdiction in a former suit between the same parties, or between parties under whom they claim."

168. The principle of res-judicata was inserted vide Section 2 of C.P.C., i.e., Act 8 of 1859. This provision came to be considered before Privy Council in Soorjomonee Dayee vs. Suddanund Mahapatter MANU/PR/0005/1873 : (1873) 12 BLR 304, 315 (P.C.). Judicial Committee said "We are of the opinion that Section 2 of the Code of 1859 would by no means prevent operation of the general law relating to res judicata founded on the principle "nemo debet bis vexari pro eadem causa".

169. The principle of res-judicata has been discussed very elaborately by a full bench of Lahore High Court in Mussammat Lachhmi vs. Mussammat Bhulli, MANU/LA/0295/1927 : 1927 ILR (VIII) 384, and the relevant extract thereof is as under:

"In the mitakshara (Book II, Chap. I, Section V, verse 5) one of the four kinds of effective answers to a suit is "a plea by former judgment" and in verse 10, Katyayana is quoted as laying down that "one against whom a judgment had formerly been given, if he bring forward the matter again, must be answered by a plea of Purva Nyaya or former judgment" (Macnaughten and Colebrooke's translation page 22). The doctrine, however, seems to have been recognized much earlier in Hindu Jurisprudence, judging from the fact that both the Smriti Chandrika (Mysore Edition, pages 9798) and the Virmitrodaya (Vidya Sagar Edition, page 77) base the defence of Prang Nyaya (=former decision) on the following text of the ancient lawgiver Harita, who is believed by some Orientalists to have flourished in the 9th Century B.C. and whose Smriti is now extant only in fragments:-

> "The plaintiff should be non-suited if the defendants avers; 'In this very affair, there was litigation between him and myself previously,' and it is found that the plaintiff had lost his case".

There are texts of Parsara (Bengal Asiatic Society Edition, page 56) and of the Mayukha (Kane's Edition, page 15) to the same effect.

Among Muhammadan lawgivers similar effect was given to the plea of "Niza-I-munfasla" or "Amar Mania Taqrir Mukhalif." Under Roman Law, as administered by the Proetors' Courts, a defendant could repel the plaintiff's claim by means of "exceptio rei judicata" or plea of former judgment. The subject received considerable attention at the hands of Roman jurists and as stated in Roby's Roman Private Law (Vol. II, page 338) the general principle recognized was that "one suit and one decision was enough for any single dispute" and that "a matter once brought to trial should not be tried except, of course, by way of appeal".

The spirit of the doctrine is succinctly expressed in the well known maxim "Nemo debet bis vexari pro eadem causa" (no one shall be twice vexed for the same cause). At times the rule worked harshly on individuals (E.g., when the former decision was obviously erroneous) but its working was justified on the great principle of public policy "Interest rei publicant sit finis litium" (it is for the public good that there be an end of litigation).

In some of these ancient systems, however, the operation of the rule was

confined to cases in which the plaintiff put forward his claim to "the same subject matter with regard to which his request had already been determined by a competent Court and had passed into judgment". In other words, it was what is described as the plea of "estoppel by judgment" or "estoppel by record", which was recognized and given effect to. In several European continental countries even now the rule is still subject to these qualifications, e.g., in the Civil Code of France, it is said "The authority of the thing adjudged (chose judge) has place only in regard to that which has constituted the object of a judgment. It is necessary that the thing demanded be the same; that the demand be founded upon the same cause; that it be between the same parties and found by and against them in the same capacity."

In other countries, and notably in England, the doctrine has developed and expanded, and the bar is applied in a subsequent action not only to cases where claim is laid to the same property but also to the same matter (or issue) as was directly and substantially in dispute in the former litigation. In other words, it is the identity of the issue, which has already been "necessarily tried" between the parties and on which a finding has been given before, and not the identity of the subject matter which attracts the operation of the rule. Put briefly the plea is not limited to "estoppel by judgment" (or record), but is also extended to what is described as "estoppel by verdict". The earliest authoritative exposition of the law on the subject in England is by Chief Justice DeGrey in the Duchess of Kingston Case (1), which has formed the basis of all subsequent judicial pronouncements in England, America and other countries, the jural systems of which are based on or inspired by British Jurisprudence. In that case a number of propositions on the subject were laid down, the first of them being that "the judgment of a Court of concurrent jurisdiction, directly upon the point, is as a plea a bar, or as evidence conclusive, between the same parties upon the same matter, directly in question in another Court."

In British India the rule of res judicata seems to have been first introduced by section 16 of the Bengal Regulation III of 1793, which prohibited the Zilla and City Courts 'from entertaining any cause, which form the production of a former decree of the record of the Court, shall appear to have been heard and determined by any judge or any superintendent of a Court having competent jurisdiction". The earliest legislative attempt at codification of the law on the subject was, however, made in 1859, when the first Civil Procedure Code was passed. Section 2 of the Code barred the cognizance by Courts of suits based on the same cause of action, which had been heard and determined before by Courts of competent jurisdiction. It will be seen that this was only a partial recognition of the English rule in so far as it embodied the principles relating to estoppel by judgment (or record) only and did not extend to estoppel by verdict. In 1877 when the Code was revised, the operation of the rule was extended in section 13 and the bar was no longer confined to the retrial of a dispute relating to the same cause of action but the prohibition equally applied against reagitating an issue, which had been heard and finally decided between the same parties in a former suit by a competent Court. The section has been amended and amplified twice again and has assumed its present form in section 11 of the Code of 1908, the principal amendments which have a bearing on the question before us, being (a) that the expression former suit" was defined as meaning a suit which has been first decided and not one which was first instituted, and (b) that the competence of a Court is not regulated by the course of appeal of the former suit but by its capacity to try the subsequent suit

as an original Court.

But although the Indian Legislature has from 1859 onwards made several attempts to codify the law on the subject and the present section 11 is a largely modified and improved form of the original section 2 of Act VIII of 1859, it must be borne in mind that the section as even now enacted, is not exhaustive of the law on the subject, and the general principles of res judicata apply to matters on which the section is silent and also govern proceedings to which the section does not in terms apply."

170. In Krishna Behary Ray vs. Bunwari Lal Ray, (1875) 1 Cal. 144 (146), Privy Council while construing the expression "cause of action" held that it cannot be interpreted in its literal and restricted sense. If a material issue had been tried and determined between the same parties by a competent court, the same cannot be re-agitated again by the parties in a later suit who were also parties in the former suit.

171. In Ram Kirpal vs. Rup Kuari MANU/PR/0045/1883 : (1883) ILR 6 (Alld.) 269 (P.C.), it was held that Section 13 of 1877 Act would not apply to execution proceedings but upon general principles of law the decision of a matter once decided in those proceedings was a bar to the same matter being re-agitated at a subsequent stage thereof.

172. Act 5 of 1908 contains the provision of res judicata under Section 11 which substantially is same as it was in Act 14 of 1882, but includes certain explanations clarifying some aspects of the matter considered to be necessary in the light of some judgments of different High Courts. It underwent some amendments (including insertion of Explanation VII and VIII) in 1976, but has withstood the test of time, more than a century. Section 11 of Act 5 of 1908, as it stands today, reads as under:

"11. Res judicata.-No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I-The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.-For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III-The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV-Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V-Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been

refused.

Explanation VI-Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII-The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in as subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised."

173. The application of principle of res judicata is based on public policy and in the interest of the State as well. However, we would like to clarify here itself that it may not be understood that the principle of res judicata is confined to Section 11 of the Act 5 of 1908. The principle of res-judicata was well recognized in the ancient legal systems also and it has consistently been held as not limited to the specific words of the Code for its application.

174. One of the oldest cases which considered doctrine of res judicata vide Section 11, CPC, 1908 is Sheoparsan Singh and others vs. Ramnandan Prasad MANU/PR/0002/1916 : 43 IA 91(PC) : 20 C.W.N. 738 (P.C.) wherein their Lordships reminded the dictum in the words of Lord Coke in Priddle vs. Napper 6 Coke IA 1777 which said "Interest reipublicae ut sit finis litium", otherwise great oppression might be done under colour and pretence of law. (See also Commissioner of Central Excise vs. Shree Baidyanath Ayurved Bhawan Ltd. MANU/SC/0565/2009 : JT 2009 (6) SC 29).

175. The statement of law as propounded in Sheoparsan Singh (supra) has been approved in Iftikhar Ahmed vs. Syed Meharban Ali MANU/SC/0009/1974 : 1974 (2) SCC 151.

176. In Hook vs. Administrator General of Bengal MANU/PR/0020/1921 : 1921 (ILR) 48 (Cal.) 499 (P.C.), it was said that Section 11 of the Code is not exhaustive of the circumstances in which an issue is res judicata. Even though the Section may not apply, the plea of res-judicata still would remain operative apart from the limited provisions of the Code and would bar a subsequent suit on the same issue unless is shown to be inapplicable by the defendants referring to pleading, parties and cause of action etc. It was reaffirmed by Lord Buckmaster in T.B. Ramachandra Rao and another vs. A.N.S. Ramchandra Rao and others, MANU/PR/0004/1922 : AIR 1922 PC 80 wherein the remarks were "that the principle which prevents the same case being twice litigated is of general application, and is not limited by the specific words of the Code in this respect."

177. In Kalipada De vs. Dwijapada Das, MANU/PR/0007/1929 : AIR 1930 PC 22, Privy Council held "the question as to what is considered to be res judicata is dealt with by Section 11 of CPC 1908. In that section many examples and circumstances in which the rule concerning res judicata applies are given; but it has often been explained by this

Board that the terms of Section 11 are not to be regarded as exhaustive".

178. The plea of res judicata is an inhibition against the Court and a finding in favour of a party on the plea of res judicata would oust the jurisdiction of the Court to try the subsequent suit or the suit in which such issue has been raised, which has been heard and finally decided in the former suit (see Pandurang Dhondi Chougule vs. Maruti Hari Jadhav MANU/SC/0033/1965 : AIR 1966 SC 153).

179. In Gulam Abbas vs. State of U.P. MANU/SC/0059/1981 : AIR 1981 SC 2199, it was held that Section 11 is not exhaustive of the general doctrine of res judicata. Though the rule of res judicata as enacted in Section 11 has some technical aspects, the general doctrine is founded on consideration of high public policy to achieve two objectives namely that there must be a finality to litigation and that individuals should not be harassed twice over the same kind of litigation.

180. It is thus clear that principle of res judicata is based on sound policy and not an arbitrary one. Henry Campell Black in his Treatise "for law of judgments" 2nd Edition Vol. I, para 242 has observed, "Where the court has jurisdiction of the parties and the subject matter in the particular case, its judgment unless reversed or annulled or impeachment by parties or privies, in any collateral action or proceeding whatever the Doctrine of this Court, and of all the courts of this country, is formerly established, that if the court in which the proceedings took place had jurisdiction to render the judgment which it did no error in its proceedings which did not affect the jurisdiction will render the proceedings void, nor can such errors be considered when the judgment is brought collaterally into question one. This principle is not merely an arbitrary rule or law but it is a doctrine which is founded upon reason and the soundest principle of public policy".

181. In Jenkins vs. Robertson, (1867) LRIHL 117, Lord Romily observed "res judicata by its very words means a matter upon which the court has exercised its judicial mind and has come to the conclusion that one side is right and has pronounced a decision accordingly. In my opinion res judicata signifies that the court has after argument and considerations come to a decision on a contested matter".

182. In Corpus Juris, Vol. 34, it is said that it is a rule of universal law providing every regulated system of jurisprudence and is put upon two grounds embodied in various maxims of common law, the one of public policy and necessity which makes it to the interest of the state that there should be an end of litigation, and, the other, hardship on the individual that he should not be vexed twice for the same cause.

183. In Smt. Raj Lakshmi Dasi and others vs. Banamali Sen and others MANU/SC/0063/1952 : AIR 1953 SC 33, Court remarked "When a plea of res judicata is founded on general principles of law, all that is necessary to establish is that the Court that heard and decided the former case was a Court of competent jurisdiction. It does not seem necessary in such cases to further prove that it has jurisdiction to hear the later suit. A plea of res judicata on general principle can be successfully taken in respect of judgments of Courts of exclusive jurisdiction, like revenue Courts, land acquisition Courts, administration Courts, etc. It is obvious that these Courts are not entitled to try a regular suit and they only exercise special jurisdiction conferred on them by the statute".

184. In Lal Chand vs. Radha Kishan, MANU/SC/0483/1976 : AIR 1977 SC 789 1977(2) SCC 88 the Court reiterated, "the principle of res judicata is conceived in the larger public interest which requires that all the litigation must sooner than later come to an end. The principle is also founded on equity, justice and good conscious which

require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving the same issue".

185. In K. Ethirajan vs. Lakshmi and others, MANU/SC/0764/2003 : AIR 2003 SC 4295 the Court referring to para 26 of its earlier judgment in Hope Plantations Ltd. vs. Taluk Land Board, Peermade, MANU/SC/0686/1998 : JT 1998 (7) SC 404, held, that, rule of res judicata prevents the parties to a judicial determination from litigating the same question over again. Where the proceedings have attained finality, parties are bound by the judgment and cannot litigate again on the same cause of action.

186. In Sulochana Amma vs. Narayanan Nair, MANU/SC/0047/1994 : AIR 1994 SC 152, the scope of Section 11 CPC was considered and it was said that Section 11 does not create any right or interest in the property but merely operates as a bar to try the same issue once over. It aims to prevent multiplicity of proceedings and accords finality to an issue which directly and substantially has arisen in the former suit between the same parties or their privies, decided and became final so that parties are not vexed twice over; vexatious litigation would be put to an end and the valuable time of the Court is saved. The above judgment also clarifies Explanation VIII that the decree of a Court of limited jurisdiction would also operates as res judicata in the subsequent suit though the subsequent suit was not triable by that Court.

187. In Swamy Atmananda and Ors. vs. Sri Ramakrishna Tapovanam and Ors., MANU/SC/0287/2005 : 2005(10) SCC 51, it was said, that principle of res judicata is to uphold the rule of conclusiveness of judgment, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent suit between the same parties. Once the matter which was the subject matter of lis stood determined by a competent court, no party thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the statute hook with a view to bring the litigation to an end so that the other side may not be put to harassment. Recently, the above view is reiterated in Brij Narain Singh vs. Adya Prasad, MANU/SC/1141/2008 : JT 2008 (3) SC 1.

188. In Ramchandra Dagdu Sonavane (Dead) by L.Rs. and Others vs. Vithu Hira Mahar (Dead) by LRs. and Others MANU/SC/1731/2009 : 2009 (10) SCC 273, Court observed that well known doctrine of res-judicata is codified in Section 11 of C.P.C. It generally comes into play in relation to civil suits.

189. Apart from the codified law, the doctrine of res-judicata or the principle of the res-judicata has been applied since long in various other kinds of proceedings and situations by courts in England, India and other countries. The rule of constructive res-judicata is engrafted in Explanation IV of Section 11 C.P.C. and in many other situations also principles not only of direct res-judicata but of constructive res-judicata are also applied, if by any judgment or order any matter in issue has been directly and explicitly decided, the decision operates as res-judicata and bars the trial of an identical issue in a subsequent proceeding between the same parties. The principle of res-judicata comes into play when by judgment and order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implications even then the principle of res-judicata on that issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it, is deemed to have been constructively in issue and, therefore, is taken as decided.

190. The doctrine of res judicata has been extended to public interest litigation also in

State of Karnataka and another vs. All India Manufacturers Organization and others, MANU/SC/2206/2006 : 2006(4) SCC 683 and the Court has said:

> *"As a matter of fact, in a public interest litigation, the petitioner is not agitating his individual rights but represents the public at large. Hence the litigation is bona fide,* ***a judgment in previous public interest litigation would be a judgment in rem. It binds the public at large and bars any member of the public from coming forward before the court and raising any connected issue or an issue, which had been raised should have been raised on an earlier occasion by way of public interest litigation."***
>
> (Emphasis added)

191. In Mathura Prasad Sarjoo Jaiswal and others vs. Dossibai MANU/SC/0420/1970 : AIR 1971 SC 2355, Court clarified that the doctrine of res judicata is in the domain of procedure and cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to interpretation of the enactment affecting the jurisdiction of the Court finally between them even though no question of fact or mixed question of law and fact and relating to the right in issue between the parties once determined thereby. It also said that a decision of a competent Court on a matter in issue may be res judicata in another proceeding between the same parties; the "matter in issue" may be an issue of fact, an issue of law or one of mixed law and fact. However, the Court said that the previous decision on a matter in issue alone is res judicata; the reasons for the decision are not res judicata, and said as under:

> "The previous decision on a matter in issue alone is res judicata; the reasons for the decision are not res judicata."

192. Another aspect as to when the rule of res judicata would not be attracted has been dealt with in detail in para 10 of the judgment in Mathura Prasad Serjoo Jaiswal (supra) which reads as under:

> *"A mixed question of law and fact determined in the earlier, proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But* ***where the decision is on a question law, i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue"*** *in S. 11, Code of Civil Procedure, means the right litigated between the parties, i.e. the* ***facts on which the right is claimed or denied and the law applicable to the determination of that issue.*** *Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of the order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land."*
>
> (Emphasis added)

193. In other words, what we could discern from the above authorities is that the res judicata is a fundamental principle in a legal system to set at rest a dispute once settled so as not to trouble the parties again and again on the same matter. It operates on the principle that a question must be once fairly and finally tried by a competent Court and, thereafter, further litigation about it between the same parties must be deemed to have

concluded and should not be allowed to be re-agitated. The maxim to be attracted is "no one shall be vexed twice over the same matter". [See Commissioner of Central Excise vs. Shree Baidyanath Ayurved Bhawan Ltd. (supra)].

194. It is not that every matter decided in a former suit can be pleaded as res judicata in a subsequent suit. To attract the plea of res-judicata, the conditions precedent, which need be proved, are:

(i) The matter directly and substantially in issue in the subsequent suit must be the same matter, which was directly and substantially in issue, either actually or constructively, in the former suit.

(ii) The former suit must have the same parties or the parties under whom they or any of them claims.

(iii) The parties must have litigated under the same title in the former suit.

(iv) The Court, which decided the former suit must have been a Court competent to try the subsequent suit or the suit in which such issue has been subsequently raised.

(v) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the first suit.

195. Very recently, a constitution bench of Supreme Court in Civil Appeal No. 10866-10867 of 2010, M. Siddiq (D) Thr Lrs v. Mahant Suresh Das & Others, decided on 09.11.2019, (ayodhya verdict) has said that applicability of Section 11 is premised on certain governing principles which are:

(i) The matter directly and substantially in issue in the suit should have been directly and substantially in issue in a former suit;

(ii) The former suit should be either between the same parties as in the latter suit or between parties under whom they or any of them claim litigating under the same title;

(iii) The court which decided the former suit should have been competent to try the subsequent suit or the suit in which the issue has been subsequently raised; and

(iv) The issue should have been heard and finally decided by the court in the former suit."

196. In certain cases, the applicability of res judicata qua the aforementioned conditions precedent came to be considered with certain different angles, which may be useful to be referred hereat.

197. One such aspect came to be considered by Privy Council in Midnapur Zamindary Co. Ltd. vs. Kumar Naresh Narayan Roy and others, MANU/PR/0054/1920 : AIR 1924 P.C. 144. The plaintiff excluded certain question by the statement of his pleader and, therefore, the trial court did not decide the issue. In the first appeal the defendant urged that the Trial Judge was wrong in not deciding this question even though his action was based on the plaintiffs advisor's statement and the defendant asked the first appellate court expressly to decide the question. The court did so. The question was whether it can be argued that the point decided was not raised and, therefore, the court

did not consider it to be a necessary issue. On the contrary, when the first appellate court decided the issue and the same became final, it would operate as res judicata to the subsequent suit involving the same issue.

198. Another angle of the above aspect came to be considered by the Privy Council in Prem Narain vs. Ram Charan and others, MANU/PR/0011/1931 : AIR 1932 P.C. 51 where though the point was not properly raised in the plaint but both parties without protest chose to join issue upon that point and it was held that the decision on the point would operate as res judicata between the parties.

199. In Jagdeo Misir vs. Mahabir Tewari, MANU/UP/0281/1927 : AIR 1927 All. 803, a Division Bench held:

> "We think that those two cases are authorities for the proposition that if a party raised an issue, however improperly, in a case which is accepted by the other side and if the Court itself accepts the issue to be one relevant to the enquiry and necessary for the determination of the case, and that issue is argued out by both parties and a judicial decision come to, it is not open subsequently for either of the parties or their successors-in-interest or the person claiming through them, to say that the issue does not constitute res judicata."

200. In Dhan Singh vs. Jt. Director of Consolidation, U.P. Lucknow and others, MANU/UP/0099/1973 : AIR 1973 All. 283 (supra), Court also held that res judicata may apply even though the parties against whom it is sought to enforce did not enter appearance and contest question in the previous suit. But in such a case it has to be shown that such a party had notice that the relevant question was in issue and would have to be decided for which the burden lie on the person who pleaded bar of res judicata. For above propositions, Court followed and relied on Chandu Lal vs. Khalilur Rahman, MANU/PR/0031/1949 : AIR 1950 P.C. 17.

201. Even if a judgment in a previous case is erroneous, it would be binding on the parties thereto and would operate as res judicata in subsequent case as held in Gorie Gouri Naidu (Minor) and another vs. Thandrothu Bodemma and others, MANU/SC/0186/1997 : AIR 1997 SC 808.

202. In short, it can be said that though in order to have the defence of res-judicata accepted, it is necessary to show not only that the cause of action was same, but also that the plaintiff had an opportunity of getting the relief in the former proceedings, which he is now seeking.

203. In Jaswant Singh vs. Custodian of Evacuee Property MANU/SC/0279/1985 : 1985 (3) SCC 648, it was pointed out that the test is whether the claim in the subsequent suit or proceeding is in fact founded upon the same cause of action, which was the foundation of the former suit or the proceeding. The cause of action for a proceeding has no relation, whatsoever, to the defence, which may be set up, nor does it depend upon the character of the relief prayed for by the plaintiff or the applicant. It refers entirely to the grounds set forth in the plaint or the application, as the case may be, as the cause of action or in other words, to the media upon which the plaintiff or the applicant ask the Court to arrive at a conclusion in his favour.

204. Sometimes res-judicata is misunderstood as estoppel. The fact is that in principle, both are different connotations and refers to different essential indices.

205. Both these principles are based on public policy and justice. Often, they are

treated as a branch of law having same traits but both differ in several aspects. Doctrine of res judicata sometimes is construed as a branch of doctrine of estoppel but as said earlier, both have different connotation. In Hope Plantations Ltd. (supra), in para 26 of the judgment, Court said:

> "It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel through these two doctrines differ in some essential particulars"

206. The estoppel is part of the law of evidence and prevents a person from saying one thing at one time and opposite thing at another time while res judicata precludes a man from avowing the same thing in successive litigations. (Cassomally vs. Carrimbhoy (1911) 36 Bom. 214; Radharani vs. Binodamoyee MANU/WB/0129/1941 : AIR 1942 Cal. 92; Rajah of Venkatgiri vs. Provinces of Madras AIR (34) 1947 Madras 5. It would be useful to refer distinction elucidated by Hon'ble Mahmood J. in Sitaram vs. Amir Begum MANU/UP/0100/1886 : (1886) ILR 8 Alld. 324 "Perhaps shortest way to describe difference between the plea of res judicata and estoppel is to say that while the former prohibits the Court from entering into an inquiry at all as to a matter already adjudicated upon, the later prohibits a party after the inquiry has already been entered upon from proving anything which would contradict his own previous declaration or acts to the prejudice of another party who, relying upon those declaration or acts to the prejudice of another party, has altered his position. In other words, res judicata prohibits an inquiry in limine, whilst an estoppel is only a piece of evidence".

207. Res-judicata has been held to be a branch or specie of the rule of estoppel called "estoppel by record". In Guda Vijayalakshmi vs. Guda Ramchandra Sekhara Sastry, MANU/SC/0315/1981 : AIR 1981 SC 1143 in para 3, Court observed:

> "Res judicata, after all, is a branch or specie of rule of estoppel called estoppel by record and though estoppel is often described as a rule of evidence, whole concept is more correctly viewed as a substantive rule of law."

208. A judgment operates as estoppel on all points considered and decided therein. It is the decision and not decree that creates bar of res judicata. Res judicata, therefore, is estoppel by judgment or record and not by decree. The judgment operates as estoppel in respect to all the findings which are essential to sustain the judgments. What has taken place, recorded and declared final, cannot be questioned subsequently by anyone which has already an opportunity to adjudicate and this is what is called as estoppel on record. The distinction between the doctrine of res-judicata and estoppel would lie with the estoppel results from the acts and conduct of the parties while the res judicata prohibits the Court from entering into an inquiry as to a matter already adjudicated upon. While in the case of estoppel, it prohibits a party after the inquiry has already been entered upon from proving anything which would contradict his own previous declaration or acts to the prejudice of another party who relying upon those declaration or acts has altered his position. Rule of res-judicata prevents the parties to a judicial determination from litigating the same question over and again even though the determination may even be demonstrably wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". It is held that these two terms are of common law origin.

209. One cannot correctly find whether res judicata will apply or not unless understand the import of words "suit"; "issue"; and, "directly and substantially in issue".

210. The term "issue" has also not been defined in CPC. Whartons "Law Lexicon" says that "issue" means "the point in question at the conclusion of the pleading between the contending parties in an action, when one side affirms and the other side denies". Order XIV of CPC deals with the settlement of "issues" and determination of suit on issues of law or on issues agreed upon. Rule 1 deals with the framing of issues as follows:

(i) Issues arise when a material proposition of fact or law is affirmed by the one party and deemed by the other.

(ii) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(iii) Every material proposition affirmed by one party and denied by the other, shall form the subject of a distinct issue.

(iv) Issues are of two kinds.

(a) Issues of fact

(b) Issues of law

211. Then comes as to what constitute "a matter directly and substantially in issue". One of the tests recognized is, if the issue was necessary to be decided for adjudicating on the principal issue, and, was decided.

212. A collateral or incidental issue is one i.e., ancillary to a direct and substantive issue; the former is an auxiliary issue and the later the principal issue. The expression collateral or incidental in issue implies that there is another matter which is directly and substantially in issue. (Mulla's C.P.C. 16th Edition, Vol. I, page 179).

213. Difficulty, however, in distinguishing whether a matter was directly in issue or collaterally in issue confronted various Courts in different Countries and certain test were laid down therein. Halsbury's Laws of England (Vol. 16, para 1538, 4th Edn.) says "difficulty arises in the application of the rule, in determining in each case what was the point decided and what was the matter incidentally cognizable, and the opinion of Judges seems to have undergone some fluctuations."

214. In "The Doctrine of Res Judicata" (2nd Edn., 1969, p. 181), "Spencer Bower and Turner", quoted Dixon, J. of the Australian High Court in Blair vs. Churran(1939) 62 CLR 464 at page 553; "The difficulty in the actual application of these conceptions is to distinguish the matters fundamental or cardinal to the prior decision on judgment, or necessarily involved in it as its legal justification or foundation, from matters which, even though actually raised and decided as being in the circumstances of the case the determining considerations, yet are not in point of law the essential foundation of a groundwork of the judgment".

215. The aforesaid authorities opined, in order to understand this essential distinction, one has always to inquire with unrelenting severity is the determination upon which it is sought to find an estoppel so fundamental to the substantive decision that the latter cannot stand without the former. Nothing less than this will do. It is suggested by Dixon, J. that even where this inquiry is answered satisfactorily, there is still another

test to pass: viz. whether the determination is the "immediate foundation" of the decision as opposed to merely "a proposition collateral or subsidiary only, i.e., not more than part of the reasoning supporting the conclusion." It is well settled, say the above authors, "that a mere step in reasoning is insufficient. What is required is no less than the determination of law, or fact or both, fundamental to the substantive decision."

216. Corpus Juris Secundum (Vol. 50, para 725) noticed the above aspects and conceded, it is sometimes difficult to determine when particular issue determined is of sufficient dignity to be covered by the rule of estoppel. It is said that estoppel by judgment does not extend to any matter which was only incidentally cognizable or which came collaterally in question, although it may have arisen in the case and have been judicially passed on.

217. However, this rule did not prevent a judgment from constituting an estoppel with reference to incidental matters necessarily adjudicated in determining ultimate vital point.

218. American Jurisprudence (Vol. 46, Judgments, para 422) says; "Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties."

219. The word "substantially" means "of importance and value". When a matter is substantially in issue, when it is of importance and value for the decision of main proceeding. When parties go to a trial on a particular issue treating it as material and invites the Court to give a decision thereon, that will be an issue substantially and directly involved and would operate as res judicata. However, a mere expression of opinion on a question not in issue cannot operate as res judicata as held in Ragho Prasad Gupta vs. Krishna Poddar MANU/SC/0384/1968 : AIR 1969 SC 316.

220. In Sajjadanashin Sayed Md. B.E. Edr. (D) By LRS. vs. Musa Dadabhai Ummer and others MANU/SC/0122/2000 : 2000 (3) SCC 350, the term "directly and substantially in issue" qua the words "incidental and collateral" came up for consideration. The Edroos family in Gujarat claimed to be descendants of Hazarat Imam Ali, the sonin-law and cousin of Prophet Muhamed. One of the descendants of the said Hazrat came down to India in 1542 A.D. and founded his Gadi at Ahmedabad, Broach and Surat. The members of the Edroos family were Sajjadanashins or Mutavallis of the wakf throughout. The three Rozas at the three places as well as the villages which were granted-not only for the maintenance of these Rozas but also for the benefit of the Waquif's family, constituted the wakf. The holder was buried in the house and his Dargah is situated in this place. There is also a place for reciting prayers. In an earlier litigation in Sayed Abdula Edrus vs. Sayad Zain Sayad Hasan Edrus MANU/MH/0082/1888 : ILR (1889) 13 Bom. 555, a Division Bench of the Bombay High Court, traced the history of the wakf and held that the custom of primogeniture did not apply to the office of Sajjadanishin or Mutavalli of this wakf. In a later dispute in Saiyad Jaffar El Edroos vs. Saiyad Mahomed El Edroos MANU/MH/0142/1936 : AIR 1937 Bom 217 another Division Bench held after construing the royal grants relating to the villages Umrao and Orma that the grants were primarily for the Rozas and Dargas and they clearly constituted "wakf but that the Sajjadanashin or Mutavalli had, however, a right to the surplus income left over after discharge of the legal obligations regarding the wakf. It was thus held that the Sajjadanishin could provide for the needs of the indigent members of the family and this was a pious obligation which was only a moral obligation and not a legal obligation and hence the indigent members of the Edroos

family, as a right, could not claim maintenance out of the surplus income. Thereafter, Regular Suit No. 201 of 1928 was filed by three plaintiffs under Section 92 C.P.C. impleading father of Sayed Mohamed Baquir-E1-Edroos in 1928 after obtaining permission on 22.2.1928 from the Collector under Section 92 C.P.C. for filing the suit. The suit was dismissed on 6.10.1931, the first appeal was dismissed but cross objections were allowed on 21.11.1938 and the second appeal to the High Court was withdrawn. In the aforesaid suit, there were eight points whereof points No. 1 to 7 related to the validity of appointment of the defendant and the nature of the office and the right to the surplus etc. It was held that the appointment of defendant as Sajjadanashin was valid and that the grant of the property was both for the Rozas and for the maintenance, presumably of the Sajjadanashin and his family members. It was also held that the Sajjadanashin had complete power of disposal over the surplus as he was not in the position of an ordinary trustee. It was held that the Sajjadanashin had complete power of disposal over the surplus, hence the plea of plaintiffs complaint about mis-utilization of the income by Sajjadanashin was rejected. Another issue was framed whether the waqf was a private or a public and it was held that it was a private waqf. The District Court held that from 1746 A.D. onwards, the Sajjadanashin were using the revenue of these villages for their own maintenance and that of the members of their family and other dependents. This finding was consistent with the judgment of the Bombay High Court in Saiyad Jaffar El Edroos (supra) wherein this was held permissible. The District Court in view of the fact that Sajjadanashin was from the family and not a stranger or outside held it a private waqf. Thereafter another matter came before the Gujrat High Court in relation to Ahmedabad Rozas wherein also a Single Judge of Bombay High Court in Alimiya vs. Sayed Mohd. MANU/GJ/0095/1968 : AIR 1968 Guj. 257 rejected a similar plea. This judgment was confirmed by the Division Bench in Sayed Mohd. vs. Alimiya (1972) 13 Guj.LR 285. In the case before the Apex Court in respect to Rozas at all the three places, the Assistant Commissioner in enquiry No. 142 of 1967 passed an order dated 26.7.1968 accepting the preliminary objection of res judicata but the Joint Charity Commissioner, Gujrat in its order dated 17.12.1973, in appeal, did not accept the said plea which was pressed before him only in respect to the Rozas at Broach and Surat. He set aside the order of Assistant Commissioner and remanded the matter for enquiry. The Assistant Judge in Misc. Civil Application No. 32 of 1974 affirmed the order of Joint Commissioner on 3.9.1976 and it was further affirmed by a Division Bench of Gujrat High Court in First Appeal No. 985 of 1976 on 27.7.1985. Aggrieved by the aforesaid order, the appellant, Sajjadanashin Sayed took the matter to the Apex Court and raised the plea of res judicata in respect to Rozas at Broach and Surat. It is in the light of the above facts, the Apex Court considered the matter. In order to see whether the principle of res judicata is attracted, the Apex Court framed an issue as to what is the meaning of "collaterally and incidentally in issue" as distinguished from "directly and substantially in issue". In para 11, the Apex Court found that the matter collaterally and incidentally in issue are not ordinarily res judicata and this principle has been well accepted but certain exceptions to this principle have also been accepted. The Court also traced out the law on the subject in England, America, Australia and India. Referring to Halsbury's Laws of England (Vol. 16, para 1538, 4th Edn.), the Court observed that the fundamental rule is that a judgment is not conclusive if any matter came collaterally in question or if any matter is incidentally cognizable. The said judgment attained finality since the second appeal filed in the High Court was withdrawn.

221. In the light of the above facts and in this context, Supreme Court in Sajjadanashin (supra) in respect of India, affirmed the view of the learned Author Mulla in "C.P.C." as under:

".. a matter in respect of which relief is claimed in an earlier suit can be said to be generally a matter "directly and substantially" in issue but it does not mean that if the matter is one in respect of which no relief is sought it is not directly or substantially in issue. It may or may not be. It is possible that it was "directly and substantially" in issue and it may also be possible that it was only collaterally or incidentally in issue, depending upon the facts of the case. The question arises as to what is the test for deciding into which category a case falls? One test is that if the issue was "necessary" to be decided for adjudicating on the principle issue and was decided, it would have to be treated as "directly and substantially" in issue and if it is clear that the judgment was in fact based upon that decision, then it would be res judicata in a later case. One has to examine the plaint, the written statement, the issues and the judgment to find out if the matter was directly and substantially in issue (Ishwer Singh Vs. Sarwan Singh MANU/SC/0345/1964 : AIR 1965 SC 948 and Syed Mohd. Salie Labbai Vs. Mohd. Hanifa MANU/SC/0510/1976 : AIR 1976 SC 1569)."

222. It also referred to two judgments of the Privy Council in Run Bahadur Singh vs. Lucho Koer MANU/PR/0047/1884 : ILR (1885) 11 Cal 301 and Asrar Ahmed vs. Durgah Committee MANU/PR/0041/1946 : AIR 1947 PC 1 as well as its earlier decision in Pragdasji Guru Bhagwandasji vs. Ishwarlalbhai Narsibhai MANU/SC/0072/1952 : 1952 SCR 513 and found that inspite of a specific issue and adverse finding in the earlier suit, the finding was not treated as res judicata as it was purely incidental or auxiliary or collateral to the main issue in each of the three cases and was not necessary for the earlier case nor formed foundation. It also considered Sulochana Amma (supra) and a Madras High Court decision in Vanagiri Sri Selliamman Ayyanar Uthirasomasundareswarar Temple vs. Rajanga Asari MANU/TN/0271/1965 : Air 1965 Mad. 355 in respect whereto it was pointed out that there was a direct conflict. Court, however, found that the said decisions are not contrary to each other but should be understood in the context of the tests referred to above. It held that in Sulochana Amma (supra) it is to be assumed that the tests above referred to were satisfied for holding that the finding as to position was substantially rested on title upon which a finding was felt necessary but in the case before the Madras High Court, it must be assumed that the tests were not satisfied. Supreme Court confirmed the observations of the learned author Mulla in "C.P.C. (supra)" and said that it all depend on the facts of each case and whether the finding as to title was treated as necessary for grant of an injunction in an earlier suit and was also substantive basis for grant of injunction or not.

223. Further, Court in Sajjadanashin (supra) quoted following from the "Corpus Juris Secundum" (Vol. 50, para 735, p. 229) where a similar aspect in regard to findings on possession and incidental findings on title were dealt with and held, "Where title to property is the basis of the right of possession, a decision on the question of possession is res judicata on the question of title to the extent that adjudication of title was essential to the judgment; but where the question of the right to possession was the only issue actually or necessary involved, the judgment is not conclusive on the question of ownership or title." Court observed that in the case before it there were certain changes in the statutory law with respect to definition of "public waqf" and in view thereof since now the "private waqf" was also included within the definition of "public waqf" in the Act, due to change in subject it held that the earlier decision would not operate as res judicata.

224. In Sharadchandra Ganesh Muley vs. State of Maharashtra and others MANU/SC/0004/1996 : AIR 1996 SC 61, Explanation IV Section 11A containing doctrine of 'might and ought' and application of doctrine of constructive res judicata came to be

considered. Court held that where in respect to land acquisition proceedings an earlier writ petition was filed without raising a plea which was available at that time, in the second writ petition such plea could not have been taken as the doctrine of 'might and ought' engrafted in Explanation IV to Section 11 of the C.P.C. would come into play and the incumbent would be precluded from raising the controversy once over. The Court held that the doctrine of constructive res judicata shall put an embargo on his right to raise a plea as barred by limitation under Section 11A.

225. However, the concept of "constructive res judicata" is necessary to be dealt with in view of Explanation-IV Section 11 CPC. A Matter, which might and ought to have been made a ground of attack or defence is a, matter which is constructively in issue. The principle underlying Explanation-IV is res judicata not confined to issues which the Courts are actually asked to decide but cover issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them. (State of U.P. vs. Nawab Hussain MANU/SC/0032/1977 : AIR 1977 SC 1680). The proposition of law expounded, as referred to above, in para 20 is also unexceptional. However, it would apply only where a plea was available at the time of the suit but not availed of. But there is no question of constructive res judicata where there is no adjudication in the earlier proceedings (Kewal Singh vs. Smt. Lajwanti MANU/SC/0491/1979 : 1980 (1) SCC 290). The effect of Explanation-IV is where a matter has been constructively in issue, it could not from the very nature of the case be heard and decided but will be deemed to have been heard and decided against the parties omitting to allege it except when an admission by the defendant obviates a decision (Sri Gopal vs. Pirthi Singh MANU/PR/0019/1902 : (1902) ILR 24 Alld. 429 (PC); Government of Province of Bombay vs. Peston Ji Ardeshir Wadia MANU/PR/0002/1949 : AIR 1949 PC 143).

226. There is an exception to this plea, i.e., where the evidence in support of one ground is such as might be destructive for the other ground, the two grounds need not be set up in the same suit. In Kanhiya Lal vs. Ashraf Khan MANU/UP/0566/1924 : AIR 1924 Alld. 355, it was observed that a person claiming property on the allegation that it is wakf property and that he is the Manager thereof is not bound to claim the same property in the same suit alternatively in his own rights in the event of its being held that the property was not wakf property. In Madhavan vs. Chathu MANU/TN/0054/1951 : AIR (38) 1951 Madras 285, a suit to recover possession of properties on a claim that they belong personally to the plaintiff was held not barred by reason of a decision in a previous suit, in which they were claimed as belonging to a Tarwad of which he was a member. Similarly, where the right claimed in the subsequent suit is different from that in the former suit; it is claimed under a different form that in the former suit; it is claimed under a different title, the subsequent suit would not be barred by res-judicata/constructive res judicata.

227. Next is the question about the "same parties" or "between parties under whom they or any of them claim". In order to find a person by res judicata it must be shown that he was in some way party to the earlier suit as the judgment binds only parties and privies. A person claiming under a party is known as privy. The ground of privity is property and not personal relations. If the plaintiff in subsequent suit claims independent right over the suit property the principle of res judicata would not apply. If the predecessor in interest was party to the suit/proceeding involving the same property then the decision binds his successor in interest. From the record it must be evident that the party sought to be bound was in some way a party to the suit. A person merely interested in the litigation cannot be said to be a party to the suit. Such a person is

neither to make himself a party nor can be bound by the result of the litigation as held in Jujjuvarapu vs. Pappala, MANU/AP/0138/1969 : AIR 1969 A.P. 76.

228. Where a person in the subsequent suit claims independent right over the suit property the principle of res judicata would not apply. (Byathaiah (Kum) and others vs. Pentaiah (Kum) and others, 2000 (9) SCC 191).

229. Similarly, the party must be litigating under the same title. The test is the identity of title in two litigations and not the identity of the actual property involved in two cases as held in Rajalaxmi Dasi vs. Banamali Sen (supra); Ram Gobinda Daw vs. Smt. H. Bhakta Bala Dassi, MANU/SC/0586/1971 : AIR 1971 SC 664.

230. Same title means same capacity; the test being whether the party litigating is in law the same or a different person. If the same person is a party in different character, the decision in the former suit does not operate as res judicata. Similarly, if the rights claimed are different, the subsequent suit will not be res judicata simply because the property is identical. Title refers not to cause of action but to the interest or capacity of the party suing or being sued.

231. Lastly, but not the least, is the concern with respect to Explanation-VI, i.e., representative suit. It provides that where persons litigate bona fide in respect of a public right or a private right claimed in common for themselves and other persons interested in such right, shall, for the purpose of the Section, be deemed to have claimed under the persons so litigating. Explanation-VI apparently is not confined to the cases covered by Order 1 Rule 8 C.P.C., but would include any litigation in which, apart from the rule altogether, parties are entitled to represent interested persons other than themselves. It is a kind of exception to the ordinary rule of res-judicata which provide for the former litigation between the same parties or their privies. Even persons, who are not parties in the earlier proceeding, in certain contingencies, may be debarred from bringing a suit subsequently if the conditions contemplated under Explanation-VI Section 11 are satisfied. The conditions to attract Explanation-VI so as to constitute res judicata, which must exist, are:

a. There must be a right claimed by one or more persons in common for themselves and others not expressly named in the suit,

b. The parties not expressly named in the suit must be interested in such right.

c. The litigation must have been conducted bona fide on behalf of all the parties interested.

d. If the suit is one under Order 1 Rule 8, all the conditions of that Section must have been strictly complied with.

232. The essentials of representative suit vis-a-vis the principle of res-judicata with reference to Explanation VI Section 11 was considered by Privy Council in Kumaravelu Chettiar and others vs. T.P. Ramaswami Ayyar and others, MANU/PR/0030/1933 : AIR 1933 PC 183. Prior to the enactment of CPC of 1877 there was no express legislation on the subject of representative suit. In these circumstances, Courts assumed the task and followed the practice virtually obtained in the Court of Chancery in England. Existence of this practice was demonstrated by referring to a judgment of Madras High Court in Srikanti vs. Indupuram MANU/TN/0059/1866 : (1866) 3 M.H.C.R. 226. Court emphasized that convenience, where community of interest existed, required that a few out of a large number of persons should, under proper conditions, be allowed to

represent the whole body, so that in the result all might be bound by the decree, although only some of the persons concerned were parties named in the record. It observed that absence of any statutory provision on the subject, Courts in India, it would seem, prior to 1877 assumed the task and duty to determine in the particular case whether, without any real injustice to the plaintiffs in the later suit, the decree in the first could properly be regarded as an estoppel against further prosecution by them of the same claim. The first legislation was made vide Section 30 in CPC 1877 which is now found in Order I Rule 8 CPC of 1908. Privy Council held at page 186:

> "It is an enabling rule of convenience prescribing the conditions upon which such persons when not made parties to a suit may still be bound by the proceedings therein. For the section to apply the absent persons must be numerous; they must have the same interest in the suit which, so far as it is representative, must be brought or prosecuted with the permission of the Court. On such permission being given it becomes the imperative duty of the Court to direct notice to be given to the absent parties in such of the ways prescribed as the Court in each case may require; while liberty is reserved to any represented person to apply to be made a party to the suit."

233. The Privy Council also approved a Calcutta High Court decision in Baiju Lal vs. Bulak Lal MANU/WB/0015/1897 : (1897) 24 Cal 385, where Ameer Ali, J. explaining the position under Section 30 said:

> "The effect of S. 30 is that unless such permission is obtained by the person suing or defending the suit, his action has no binding effect on the persons he chooses to represent. If the course prescribed by S. 30 is not followed in the first case, the judgment does not bind those whose names are not on the record."

234. In Waqf Khudawand Taala Banam Masjid Mauza Chaul Shahabudinpur vs. Seth Mohan Lal 1956 ALJ 225 a suit for declaration of the property in dispute as a public mosque was filed. It appears that earlier a suit was filed against some Muslims claiming to be the proprietor and notice under Order 1 Rule 8 C.P.C. was also issued to other residents of that locality. Defence taken by Muslims was that property in dispute was a public mosque. The suit was decreed and the defence was not found proved. Thereafter, second suit was filed by Muslim parties of neighbouring village wherein the plea of res judicata was taken. Defending the said objection on behalf of plaintiffs it was contended that in earlier case notice under Order 1 Rule 8 was issued to the residents of Chaul Shahabuddinpur and not of the village to which the plaintiffs belonged which is a neighbouring village. However, the Court upholding the plea of res judicata observed that Explanation VI to Section 11 C.P.C. is attracted in the matter and once in respect of a public right the matter has been adjudicated, the decision is binding on all persons interested in that right and they will be deemed to claim under the persons who litigated in the earlier suit in respect of that public right.

235. The question of issue estoppel and constructive res judicata in regard to a judgment in a representative suit came to be considered in Shiromani Gurdwara Parbandhak Committee vs. Mahant Harnam Singh and others, MANU/SC/0715/2003 : AIR 2003 SC 3349. The facts, in brief, are necessary to understand the exposition of law laid down therein. Gurdial Singh and Ishwar Singh of Village Jhandawala obtain permission from the Advocate General under Section 92 CPC to institute a suit against one Harnam Singh for his removal from Mahantship. It was stated in the plaint that there was one Guru Granth Sahib at Village Jhandawala, Tehsil and District Bhatinda

which was managed by Mahant Harnam Singh as a Mahatmim and he was in possession of the Dera, and agricultural land belonging to Guru Granth Sahib which was a public religious place and was established by the residents of village; it was a public trust created by the residents of the village for the service of the public to provide food from lunger, to allow the people to fulfill religious beliefs and for worship etc. The two plaintiffs in their capacity as representatives of owners of land situated in the village and the residents thereof claim that they were entitled to file a suit under Section 92 CPC. Harnam Singh, Mahant in his written statement took the defence that there was no such interest in the public as to entitle the aforesaid plaintiffs to institute the suit. The trial court and the High Court recorded a concurrent finding that all Mahants of the institution from Bhai Saida Ram to Mahant Harnam Singh have been Nirmalas. However, the trial court held that such Nirmala Sadhus are not Sikhs and that the institution was not a Sikh institution. High Court disagreed with this conclusion and held that Sadhus Nirmalas are a sect of the Sikhs and consequently the Sikhs had interest in the institution as it was a Sikh Gurdwara and upheld the plaintiffs claim to file a representative suit under Section 92 CPC. In appeal the Apex Court, however, held (i) Nirmala Sadhus are not Sikhs; (ii) the mere fact that at some stage there was a Guru Granth Sahib in the Dera in dispute cannot lead to any conclusion that the institution was meant for or belonged to the followers of the Sikh religion. The Dera was maintained for entirely a distinct sect known as Nirmalas Sadhus who cannot be regarded as Sikhs; (iii) the institution was held to be not belonging to the followers of the Sikh religion; (iv) the plaintiffs in their mere capacity of followers of Sikh religion could not be held to have such interest as to entitle them to institute a suit under Section 92 CPC. This judgment dated 24.02.1967 of the Apex Court is reported as Mahant Harnam Singh vs. Gurdial Singh and another, MANU/SC/0007/1967 : AIR 1967 SC 1415. In the meantime, it appears that under Section 7(1) of Sikh Gurdwaras Act, 1925, 60 persons claiming to be worshippers made a petition for declaring the institution in question, i.e., Guru Granth Sahib situated in Village Jhandawala, District Bhatinda to be a Sikh Gurdwara. The Punjab Government by notification dated 23.01.1961 made such a declaration under Section 7(3) of the aforesaid Act. It may be pointed out that these 60 persons also included the two plaintiffs of earlier litigation, i.e., Gurdial Singh and Ishwar Singh. Mahant Harnam Singh with others filed counter petition under Section 8 of Sikh Gurdwaras Act, 1925 stating that the institution was not a Sikh Gurdwara but was a Dera Bhai Saida Ram. A similar petition under Section 8 was also moved by 58 persons of the Dera making a similar claim. Both these petitions were forwarded by the State Government to the Tribunal for disposal. The Tribunal formulated the following two questions: (i) what is the effect of the judgment of the Apex Court in Mahant Harnam Singh (supra); and (ii) whether the institution in dispute was a Sikh Gurdwara. The Tribunal decided issue No. 1 as a preliminary issue vide order dated 08.03.1977 and held that the decision in Mahant Harnam Singh (supra) would not bar the jurisdiction of the Tribunal to decide claim petition under Section 7 of the Act. The order of the Tribunal attained finality since challenge before the High Court and Apex Court was unsuccessful. Thereafter, issue No. 2 was taken up and the Tribunal held that the institution was a Sikh Gurdwara, originally established by Sikhs and the object of worship was Guru Granth Sahib because the majority of villagers were Sikhs and Nirmalas are Sikhs. This order of the Tribunal in respect to issue No. 2 was challenged before the High Court. It held that the Tribunal has lost sight of the decision in Mahant Harnam Singh (supra). It is this order of the High Court which was taken in appeal before Supreme Court, which held that once in a suit instituted under Section 92 CPC a categorical finding was recorded that (i) Nirmala Sadhus are not Sikhs; (ii) the Dera was maintained for entirely a distinct sect known as Nirmalas Sadhus who cannot be regarded as Sikhs; (iii) the mere fact that at some stage there was a Guru Granth

Sahib in the Dera cannot lead to any conclusion that the institution was meant for or belonged to the followers of Sikh religion, these findings were rendered in suit filed under Section 92 CPC, therefore, cannot be reagitated and any challenge thereto is precluded on the principle of issue estoppel. The nature of suit under Section 92 CPC was explained by Apex Court in para 19 of the judgment referring to its earlier decision in R. Venugopala Naidu and others vs. Venkatarayulu Naidu Charities and others, MANU/SC/0433/1989 : AIR 1990 SC 444 holding that a suit under Section 92 CPC is a suit of special nature for the protection of public rights in the public trust and charities. The suit is fundamentally on behalf of the entire body of persons who are interested in the trust. It is for vindication of public rights. The beneficiaries of the trust, which may consist of public at large, may choose two or more persons amongst themselves, for the purpose of filing a suit under Section 92 CPC and the suit-title in that event would show only their names as plaintiffs. In the circumstances, it cannot be said that the parties to the suit are only those persons whose names are mentioned in the suit-title. The named plaintiffs being the representatives of public at large, which is interested in the trust, of such interested persons, would be considered in the eyes of law to be parties to the suit. A suit under Section 92 CPC is thus a representative suit and as such binds not only the parties named in the suit-title but all those who share common interest and are interested in the trust. It is for that reason that Explanation 6 to Section 11 CPC constructively bars by res judicata the entire body of interested persons from reagitating the matter directly and substantially in issue in an earlier suit under Section 92 CPC.

236. It is well settled law that explanation to a section is not a substantive provision by itself. It is entitled to explain the meaning of the words contained in the Section or to clarify certain ambiguities or clear them up. It becomes a part and parcel of the enactment. Its meaning must depend upon its terms. Sometimes, it is for exclusion of something and sometimes exclude something from the ambit of the main provision or condition of some words existing therein. Therefore, an explanation should be read harmoniously so as to clear any ambiguity in the main section. A clash of interest in the parties would oust applicability of Explanation-VI.

237. In Commissioner of Endowments and others vs. Vittal Rao and others MANU/SC/1003/2004 : (2005) 4 SCC 120, it was held that even though an issue was not formerly framed but if it was material and essential for the decision of the case in the earlier proceeding and the issue has been decided, it shall operate as res judicata in the subsequent case.

238. In Ishwar Dutt vs. Land Acquisition Collector and Anr., MANU/SC/0447/2005 : 2005 (7) SCC 190, Court has discussed the doctrine of "cause of action", "estoppel" and "issue estoppel". It says, if there is an issue between the parties that is decided, the same would operate as res judicata between the same parties in subsequent proceedings.

239. In Ramchandra Dagdu Sonavane (supra), Court observed that a suit for injunction when title is in issue, for the purpose of granting injunction, the issue directly and substantially arises in that suit between the parties when the same is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit, the decree in injunction suit equally operates as a res-judicata.

240. In Gram Panchayat of Village Naulakha vs. Ujagar Singh and Ors., MANU/SC/0628/2000 : AIR 2000 SC 3272, it was held that even in an earlier suit for injunction, if there is an incidental finding on title, the same will not be binding in a latter suit or proceeding where title is directly in question, unless it is established that it

was 'necessary' in the earlier suit to decide the question of title for granting or refusing injunction and that the relief for injunction was founded or based on the finding on title. Even the mere framing of an issue on title may not be sufficient.

241. Applying the law of res-judicata, as discussed above, we find that validity of EC issued under the provisions of EIA 2006 has been challenged in this Appeal primarily on the ground that provisions of EIA 2006 have been violated/not observed in grant of above EC. Earlier proceedings in Delhi High Court had no occasion to examine these issues. Therefore, we find it unacceptable to non-suit appellant on the ground of res-judicata.

242. We may note that initially stand of DDA was that Master Plan of Delhi did not allow more than 8 floors. PP filed W.P.(C) No. 3135/2010 before Delhi High Court where DDA repeated the said stand as noted in order of High Court dated 07.03.2011. However, High Court, considering argument of PP that PP will not able to achieve adequate coverage which was permissible, directed DDA to consider representation of PP for relaxing the height. Thereafter, on 18.05.2011, DDA made a statement before High Court that there will be no restrictions on height of project. Environmental issues were however, not subject matter of consideration in the said proceedings. Even if, there is no legal restriction on height by development authority de hors environmental consideration, environmental sustainability issues, in this context which are presently the subject matter of these proceedings, cannot be ignored. Assessment of impact of such tall building on the environment has to be independently done which has not been done, rendering the impugned EC vulnerable on that ground.

243. Issues raised before us relate to environment and also the procedure to be observed by Competent Authority granting prior EC. We do not find that the above litigation will have any application, to the above issues. The questions/issues relating to environment, based on an order passed under EP Act, 1986 cannot be said to be barred by principle of res-judicata. Issue I, accordingly is answered in negative and against PP.

Issues II, III and IV:

244. All these three issues are over-lapping and can be considered collectively, hence we proceed to consider the same accordingly.

245. Before we proceed to consider the above issue, we may make certain observations about the approach to be adopted in dealing with such matter. A holistic approach is required in such matters instead of taking the impact of the project in isolation on standalone basis. Tribunal has to keep in mind crucial features of the project having bearing on the environment like size, height, location, background data of environment including air, water and noise and likely impact of the project on the environment, including the environmentally pristine area-the Northern Ridge which is in the nearby vicinity.

246. The project is said to be the tallest high rise building in city, comprising S+G+37 floors, containing 410 dwelling units in the vicinity of educational institutions, hospitals, Metro Station and Northern Ridge. We have to consider impact on recipient environment, including air quality, noise, traffic congestion, water requirement, waste management, fire safety, earthquake and liquefaction potential and compliance with Master Plan.

247. As already noted above, appellant has relied upon office memorandum dated 10.11.2015 issued by MoEF & CC laying down Guidelines for Appraisal of Building and

Construction Sector Projects mentioning following thrust areas of environmental sustainability:

a. Brief description of the project in terms of location and surroundings.

b. Environmental impacts on project land and its surrounding developments and vice-versa.

c. Water balance chart with a view to promote waste water treatment, recycle, reuse and water conservation.

d. Waste water treatment and its details including target standards.

e. Alternations in the natural slope and drainage pattern and their environmental impacts on the surroundings.

f. Ground water potential of the site and likely impacts of the project.

g. Solid waste management during construction and post construction phases.

h. Air quality and noise levels; likely impacts of the project during construction and operational phases.

i. Energy requirements with a view to minimize power consumption and promote use of renewal energy sources.

j. Traffic Circulation System and connectivity with a view to ensure adequate parking, conflict free movements, Energy efficient public transport.

k. Green belt/green cover and the landscape plan.

l. Disaster/risk assessment and management plan.

m. Socio Economic Impacts and operational phases.

n. EMP during construction and operational phases.

o. Any other related parameter of the project which may have any other specific impact on environmental sustainability and ecology.

248. As laid down in Hanuman Laxman Aroskar vs. Union of India, all material information, must be furnished in Form I to enable evaluation of all possible impacts of the project. As required by guidelines issued by MoEF & CC, information must be given and evaluated on every aspects but particularly, with regard to issues covered under 'h', 'j' and 'o' above.

249. The notification itself mentions that concealment or misleading informations would render an application liable to rejection. SEIAA/MoEF & CC must factor in specific features of the area encompassing all environmental concerns including air quality, water quality, noise quality, traffic congestion, flora and fauna. Recommendation of SEAC/EAC must be based on reasons on every relevant aspect. Such reasons are live link between its process and outcome of adjudicative functions. Whole exercise must lead to environmental sustainability which is the basis of environmental rule of law.

250. The facts on record show that steps for development of land which was initially acquired and handed over to DMRC for construction of metro station and its ancillary

services, were taken in 2008 when 2 ha of land out of 3.05 ha, acquired for the purpose of metro station, was auctioned by DMRC, resulting in execution of lease agreement dated 15.12.2008 with PP for development of 'residential project'. Possession of land was taken by PP admittedly on 23.01.2009. The project/activity in question sought to be initiated by PP was within the provisions of EIA 2006, hence PP applied for grant of prior EC to Competent Authority.

251. We also find from record that in the present case thrice, PP applied for grant of prior EC and thrice prior EC has been granted. The substantial difference is that on each occasion, ambit of project/activity has widened and increased rendering a substantial change in the position as it was in the earlier EC.

252. First application for prior EC was submitted by PP on 21.08.2009 to SEIAA Delhi. Facts disclosed by PP were that plot area was 20,000 m^2, built up area 70,265.95 m^2, permissible height of the building 133.40 m and total number of dwelling units as 324 (EWS unit-100 ET and premium residential unit-144). PP proposed 4 blocks (2 residential, 1 commercial and 1 EWS). Maximum number of floors in each block were proposed as S+G+35 (Block A and Block B); S+G+40 (EWS plot, Block C) and G+1 (committee building plot). PP proposed FAR as 46,156.72 m^2 against permissible FAR of 46,600 m^2; ground coverage was proposed as 2,130.64 m^2 against permissible ground coverage as 6,666 m^2; proposed green area was 8,373.75 m^2 and proposes basement area was 23,522.92 m^2. Total estimated population as per PP was 1205 persons. Parking provision was proposed for 922 ECS and total water requirement for project was 203 KLD out of which fresh water requirement was 106 KLD. Power requirement was 1266 KW which was to be met by NDPL but for contingency requirement, DG sets of 1Ã—1010 KVA + 2Ã—500 KVA capacity were proposed. Proposed cost of the project was Rs. 324 Crores.

253. Proposal was considered by SEAC in the meetings held on 04.09.2009, 22.02.2010, 30.06.2011, 31.10.2011, 22.11.2011, 20.12.2011, 10.02.2012, 16.03.2012, 04.05.2012 and 25.05.2012. Ultimately, as per the decision taken in the meeting dated 20.07.2012 SEIAA accorded approval for grant of prior EC and the same was issued vide order dated 13.08.2012.

254. Second application for EC: Construction activities did not commence till February 2018 as claimed by PP. In February 2018, PP submitted Form I, IA and conceptual plan with a request for amendment in EC of group housing complex for which EC was already granted vide order dated 13.08.2012. The existing proposal as per EC dated 13.08.2012 and amendment sought by PP, in the form of a chart was given by PP along with letter dated 09.02.2018 and we reproduce the said chart itself (placed before Tribunal in Appeal No. 112/2018) as under:

	As per Previous EC (A)	As per Amended Application (B)	Total (A+B)
Total Plot Area	20,000 sqm	-	20,000 sqm
Total Site Area	20,000 sqm	-	20,000 sqm
Cost of the Project	Rs. 321 Cr.	-Rs. 63.72 Cr.	Rs. 257.28 Cr.
Total Built up Area (FAR + Non FAR)	70,265.95 sqm	**47,467.86 sqm**	1,17,733.81 sqm
Max permissible FAR	46,600 sqm (inc. EWS FAR)	-1004	6,500 sqm (inc. EWS FAR)
Far proposed	46,156.72 sqm (inc. EWS FAR)	**2,648.39 (inc. EWS FAR)**	48,805.11 sqm (inc. EWS FAR)
Built up Area (Non FAR)	24,109.33 sqm	**44,819.38 sqm**	68,928.71 sqm
Total no. of Units (Dwelling)	324 (inc. EWS)	**86 (inc. EWS)**	410 (inc. EWS)
Total Population	1,205 Persons	**580 Persons**	1,785 Persons
Minimum Green Area required	3340 sqm	-	3340 sqm
Total Green Area proposed	8,373.75 sqm	-4,961.78 sqm	3,411.97 sqm
Minimum no. of trees required	227-		227
No. of Trees proposed	268-		268
Max permissible Ground coverage	6,666 sqm	-	6,666 sqm
Total Ground coverage	2,130.64 sqm	-249.04 sqm	1,881.6 sqm
No. of Towers/Blocks	4-		4
No. of Floors	S+G+35+	**2**	S+G+37
Building Height	117m	**22.6m**	139.6m
Total parking required	922 ECS	-68 ECS	854 ECS
No. of Basements	2-		2
Area in Basements	23,522.92 sqm	**8,217.34 sqm**	31,740.26 sqm
Area & Parking proposed in Basement-I (Upper)	11,761.46 sqm (362 ECS)	**1,858.67 sqm (-175 ECS)**	13,620.13 sqm (187 ECS)
Area & Parking proposed in Basement-II (Lower)	11,761.46 sqm (354 ECS)	**1,858.67 sqm (-168 ECS)**	13,620.13 sqm (186 ECS)
Area & Parking proposed in Basement-III	NANA		NA
Source of Water during construction Phase	**Private Water Tankers**	**Private Water Tankers**	
Total water requirement during construction Phase	351 MLD	**238 MLD**	589 MLD
Source of Water during Operational Phase	Delhi Jal Board	Delhi Jal Board	
Total water requirement during Operational Phase	203 KLD	**21 KLD**	224 KLD
Fresh water requirement during Operational Phase	106 KLD	**51 KLD**	157 KLD
Reuse of treated water during Operational Phase	129 KLD	**25 KLD**	154 KLD
Total wastewater generation	129 KLD	**63 KLD**	192 KLD
Capacity of STP	55 KLD	**155 KLD**	200 KLD
Technology of STP	MMR MB	**R**	
Reuse of treated water in Flushing	61 KLD	**6 KLD**	67 KLD
Reuse of treated water in Cooling	NA	**NA**	NA
Reuse of treated water in Horticulture/Gardening	24-14		10 KLD
Reuse of treated water in other purposes (specify)	--		-
Total solid waste generation	504 KG	**336 KG**	840KG
Total number of RWH pits	33		6
Total power requirement	1,266 KW	**1,542 KW**	2,808 KW
Capacity of DG Sets proposed	2,010 kVA	**2,490 kVA**	4,500 kVA

255. The figures mentioned in bold in the above chart are addition/increase in the earlier proposal and show a massive expansion of earlier proposal in every respect.

256. Broad difference is increase in built up area from 70,265.95 m^2 to 1,17,733.81 m^2, increase of dwelling units from 324 to 410, reduction in proposed green area from 5,373.75 m^2 to 3,411.97 m^2 and in ECS. In Form I, PP stated in item (I) i.e., Basic Information at sl. No. 5 that construction has not started at the site. In Item III relating to 'Environmental Sensitivity', PP disclosed information as under:

"(III) Environmental Sensitivity

S. No.	*Areas*	*Name/ Identity*	*Aerial distance (within 15 km) Proposed project location boundary*
1	*Areas protected under international conventions, national or local legislation for their ecological, landscape, cultural or other related value.*	*Parliament House*	*Approx. 8.5 km. South*
		Rashtrapati Bhavan	*Approx. 9.0 km. SSW*
		Red Fort	*Approx. 5.0 km SE*
		India Gate	*Approx. 9.0 km SSE*
		Jama Masjid	*Approx. 5.0 km SSE*
		Supreme Court	*Approx. 8.5 km. SSE*
		Safdarjung Tomb	*Approx. 11.5 km South*
		Raj Ghat	*Approx. 7.0 km. SE*
2	*Areas which are important or sensitive for ecological reasons-Wetlands, watercources or other water bodies, coastal zone, biospheres, mountains, forests*	***Water Sources***	
		Yamuna River	*Approx 1.5 km East*
		Najafgarh Drain	*Approx 0.5 km West*
		Bhalswa Lake	*Approx 6.5 km NW*
		Forest	
		Northern Ridge *Reserve Forest*	***Approx 0.5 km East***
		Central Ridge Reserved Forest	*Approx 6.0 km SSW*
3	*Areas used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting, over wintering, migration.*	*Yamuna Biodiversity Park*	*Approx 4.0 km North*
4	*Inland, coastal, marine or underground waters*	*None*	--
5	*State, National boundaries*	*State Boundary – Uttar Pradesh*	*Approx 6.5 km NE*
6	*Routes or facilities used by the public for access to recreation or other tourist, pilgrim areas*	*NH-1*	*Approx 35m North*
		Old Delhi Railway Station	*Approx 4.0 km SEE*
		IGI Airport	*Approx 19.0 km SW*
7	*Defense installations*	*Delhi Cantt.*	*Approx 12.0 km SSW*
8	*Densely populated or built-up area*	*Kamla Nagar*	*Approx 1.5 km SSW*

9	***Area occupied by sensitive manmade land uses (hospitals, schools, places of worship, community facilities)***	*Sant Parmanand Hospital* *North DMC Medical College & Hindu Rao Hospital* ***Mahavir Senior Model School*** *Arya Samaj Mandir* *Post Office Delhi University* *Axis Bank*	*Approx. 2.0 km. SE* *Approx. 2.0 km. South* *Approx. 2.5 km WSW* *Approx. 1.0 km SE* *Approx. 0.5 km SSE* *Approx. 1.5 km. East*
10	*Areas containing important, high quality or scarce resources (ground water resources, surface resources, forestry, agriculture, fisheries, tourism, minerals)*	***Tourism*** *Parliament House* *Rashtrapati Bhavan* *Red Fort* *India Gate* *Jama Masjid* *Supreme Court* *Safdarjung Tomb* *Raj Ghat* ***Forest*** *Northern Ridge Reserve Forest* *Central Ridge Reserved Forest*	 *Approx. 8.5 km. South* *Approx. 9.0 km. SSW* *Approx. 5.0 km SE* *Approx. 9.0 km SSE* *Approx. 5.0 km SSE* *Approx. 8.5 km. SSE* *Approx. 11.5 km South* *Approx. 7.0 km. SE* *Approx 0.5 km East* *Approx 6.0 km SSW*
11	*Areas already subjected to pollution or environmental damage (those where existing legal environmental standards are exceeded)*	*None*	--
12	*Areas susceptible to natural hazard which would cause the project to present environmental problems (earthquakes, subsidence, landslides, erosion, flooding or extreme or adverse climatic conditions)*	*Earthquakes*	*The site falls under the zone IV as per the Seismic Zone Map of India and is thus prone to high damage risk zone. Adequate measures will be taken during the construction of the project.*

257. PP though put the title, "amendment in EC" but vide letter dated 12.02.2018 requested that the proposal be considered as a fresh case.

258. SEIAA Delhi in its meeting dated 22.03.2018 decided to recommend withdrawal of EC dated 13.12.2012 and to treat the same as null and void and grant fresh EC to the project. Consequently, a fresh EC was granted to PP on 23.03.2018. Details of the proposals given in the EC dated 23.03.2018 are as under:

> "1. Area detail: The total plot area of the project is 20,000 sqm. Proposed total built-up area is 1,17,733.81 sqm. The permissible FAR is 40500 sqm & total proposed FAR 40498.59 sqm exclusive of EWS area. The maximum permissible ground coverage is 6,666 sqm. and the total ground coverage proposed will be 1881.6 sqm. The total Nos. of dwelling units will be 410 Nos. inclusive of EWS units. The total numbers of Towers/Blocks are four. The total height of building will be 139.6 metre. The total number of floors will be S+G+37. The basement area 31,740.26 sqm. The number of basements proposed are two.
>
> **2.** Water details: Total water required for entire construction is 238 MLD. Total

water requirement during operational phase will be 332 KLD with fresh water demand of 202 KLD. The source of water during operational phase will be Delhi Jal Board and water supply scheme has been approved by DJB vide letter dated 07.10.2015. The total waste water generation will be 249 KLD which will be treated at on site STP of 275 KLD. The total treated water generated from STP will be 199 KLD out of which reuse of treated water in flushing 87 KLD, in Horticulture/Gardening 43 KLD & rest will be utilized in sprinkling on road side plants. Numbers of RWH pits proposed are six.

3. Solid waste: About 840 kg/day of total solid waste will be generated from the complex. Organic waste convertor is proposed for composting of bio-degradable waste.

4. Power: The total power requirement is 2808 KV and will be met from TPDDL.

5. Parking facility: ECS will be 854 Nos.

6. Eco-Sensitive areas: The shortest aerial distance of the project from Asola Wildlife Sanctuary is 21.5 Km & from Okhla Bird Sanctuary is 16 Km respectively.

7. Plantation: The total green area proposed is 6079.88 sqm. Number of trees at site will be 268 Nos.

8. Cost of the project: The cost of the project as per earlier EC Rs. 321 Crores and proposed cost of the project 257.28 Crores.

9. Cost of EMP: Rs. 54 lakhs, recurring cost 13.5 lakh/year.

10. CSR cost: Rs. 96 lakhs: 2023 (32 lakhs), 2024 (32 lakhs), 2025 (32 lakhs)

11. Manpower in Environmental Monitoring Team: 4 Nos."

259. As usual, specific conditions were mentioned in the aforesaid EC in 5 parts, pre-construction phase, construction phase and operation phase, entire life and other specific conditions. Besides, general conditions were also involved.

260. As already noted, EC dated 23.03.2018 was challenged in Appeal No. 112/2018, wherein after hearing arguments of the parties, prima-facie Tribunal found that PP did not disclose correct information in Form I and IA, submitted for grant of prior EC and there was lack of application of mind on part of SEIAA but no final decision could be pronounced since PP made a statement that it is not going to proceed on EC dated 23.03.2018 and instead would apply for fresh EC. Hence, PP requested Tribunal to discuss appeal in terms of the said statement. Tribunal observed that since EC 2018 was itself withdrawn, hence appeal has become infructuous and disposed it accordingly.

261. Third application of EC: Then comes the present EC where proposed built up got increased to 1,37,879.64 m^2 (1,17,733.81 m^2 in EC dated February 2018 and 70,265 m^2 in EC dated 13.08.2012), dwelling units increased to 446 flats (410 in EC dated February 2018 and 324 in EC dated 13.08.2012). Application was submitted on 15.02.2021 and EC was granted on 21.05.2021 i.e., within less than three and a half months.

262. The above facts show that building project commenced in 2009 when first

application for EC was submitted by PP but proposed development underwent major alteration/change every time and in 2021 when third application for grant of prior EC was submitted, built up area got increased almost twice, and number of increased by about 33%.

263. We have highlighted these facts only to show that considerations whatever applicable and studies conducted when first application of PP was considered, had gone a sea change when second application in 2018 was submitted, and, against there is huge alteration/change when third application was submitted in February 2021. Therefore, studies if any, of the earlier exercise(s) would not have been relevant at all while considering applications submitted subsequently, particularly considering the time length of dates of submission of applications i.e. 21.08.2009, February 2018 and 06.02.2021.

Concealment/non-disclosure/wrong disclosure of facts if any in Form I, IA and Conceptual Plan submitted vide application dated 06.02.2021:

264. In the entire Form I, IA and Conceptual Plan dated 06.02.2021, there is no disclosure by PP that it is the third time, the application for grant of prior EC for project with different specifications of development at the same site was proposed by it. PP, in form IA has referred to earlier appraisals by SEIAA/Committee appointed by Tribunal in earlier appeal but deliberately has withheld information that earlier projects were of different specifications and in any case, such appraisal or report was not approved by Tribunal.

265. Under the Heading (I) Basic Information, Item 4-New/Expansion/Modernization, PP has mentioned the project as 'New' but not clarified that already, applications for prior EC were submitted twice for development of group housing complex with different specifications and a site office was already constructed on the plot. The fact that said office is constructed at the plot has been mentioned in the Joint Committee report though disputed by PP.

266. Under the Heading (II) Activity, item 1.4, pre-construction investigations for example bore houses, soil testing etc., PP has replied in affirmative and said, "Pre-construction geo-technical investigation has bene done in 2009 and further subsequently tower specific analysis was done in 2018 as per the report, the site is suitable for the proposed construction".

267. While giving this information, PP had not disclosed that when application for grant of prior EC was submitted in 2009, the proposed built-up area was almost half of the built-up area proposed in 2021. Number of blocks were also lesser. Number of dwelling units were less and even number of proposed basements were different. Therefore, the geo technical investigation conducted for the project in 2009 could not have been relevant for the purpose of the project in question particularly when SEIAA's order dated 22.03.2018 clearly declares EC dated 13.08.2012 as null and void and thereafter, recommended for grant of fresh EC which was issued on 23.03.2018.

268. Similarly, tower specific analysis conducted in 2018 also could not have been relevant for the project in question for the reason that built up area is almost 25% more in the proposal submitted on 15.02.2021, dwelling units are higher and number of towers including floors and basement structures are also different i.e., much more than what were in 2018.

269. These facts were within the knowledge of PP but it has disclosed information of

2009 and 2018, when investigation or analysis was conducted to claim sustainability of proposed projects of such time and the same were irrelevant for project proposed in 2021. Reference of earlier studies/reports in the context of 02/2021 was illegal, unfair and impertinent. Therefore, by disclosure of information in affirmative by saying 'Yes' in item 1.4, PP has submitted wrong information and/or withheld relevant information in this regard. For the purpose of current project proposed vide application dated 02.2021 (sic) there was no pre-construction investigation in regard to geo technical and tower specific analysis etc. Earlier study was irrelevant. No explanation on this aspect is given in the Conceptual Plan also.

270. Report of soil investigation is dated 16.07.2011. Report considered the proposal of multi-story building comprising ground+23-29 storey construction and not for a construction comprising two basements and 41 floors. This report was irreverent for the project proposed in 2021 since size of structure was different i.e. much bigger than what was proposed in 2009 and when investigation was conducted in 2011.

271. Further, in item 1.2, clearance of existing land, vegetation and buildings, PP has said, in respect to vegetation, that at present land parcel is devoid of any trees. PP has claimed project in question to be a new one after having land on lease from DMRC vide agreement dated 15.12.2008. Twice prior ECs were obtained in 2012 and 2018 but as per his own stand, no construction had commenced at the time of first grant of EC on 13.08.2012. Earlier record show that there were more than 200 tress on the land transferred to PP which had to be cut by PP.

272. The Forest Department granted permission to cut 156 trees on the plot in question vide letter dated 25.05.2011. Clearance was granted after PP had applied for prior EC in 2009 but not granted when forest clearance was given. Cutting of trees obviously was necessary for execution of the project, hence it cannot be said that no clearance of vegetation was required. Simply because PP applied for prior EC repeatedly, it could not have taken advantage of some activities earlier conducted during the process of first EC and this was a fact which ought to have been disclosed by PP but it has not. In our view, PP has failed to disclose correct information and submitted wrong information that no clearance of vegetation was required.

273. PP in its joint reply to the representation of DU submitted to SEIAA has admitted this fact that trees were cut after obtaining prior EC from Forest Department vide letter dated 25.05.2011. It is also mentioned that Forest Department granted permission subject to plantation but the same has not been done by PP as it would be done only after building plans are approved. The reply given by PP reads as under:

> "Reply: It is submitted that the lease deed and lease agreement entered between DMRC and the project proponent does not make any mention of the requirement to retain minimum 50% number of trees. Tree cutting and transplantation have been done after obtaining permission from the forest department dated 25th May 2011. Regarding the compensatory plantation, a Sum of rupees 43,68,000/- have been deposited to the forest department as security with the condition that the same may be forfeited in case of default. Since a major part of replantation is proposed in the project site, the project proponents are waiting for the clearances before undertaking the said plantation. The security lies in trust with the forest department and has not been forfeited. Out of the 1560 saplings to be planted, 780 saplings have already been planted by the Forest and Wildlife Department, Govt. of Delhi at ITO Chungi Park. We are committed to plant the remaining 780 saplings within

our project site/other areas in Consultation with the forest department once the building plans are approved."

274. Thus, the land had vegetation which PP cleared by cutting trees but did not execute his part of obligation of plantation and more important is that all these facts were not disclosed in Form I, IA and Conceptual Plan submitted on 06.02.2021.

275. Under the Heading 'Activity', item 1.21, the information required was regarding "impoundment, damming culverting, realignment or other changes to the hydrology of water courses or aquifers". It has been replied in negative by PP and details given are under:

"No impoundment, damming, culverting, realignment is envisaged. However, a temporary backing up of ground water is anticipated in dewatering and basement construction. The ground water depth in the project site varies from 8.45 m to 10.20 m below ground level (as per soil test report by Ground Engineering Limited-March 2018). Construction of basement will lead to excavation up to a depth of 12.45 m below ground level. Dewatering will be required up to a depth of additional 1.0 m i.e. total depth 13.45 m BGL."

276. In Form IA, para 2.9, PP admits that the manner and effect of construction of two basements would affect discharge of ground water course but it also claims to take care thereof stating as under:

"2.9 What are the impacts of the proposal on the ground water? (Will there be tapping of ground water; give the details of ground water table, recharging capacity, and approvals obtained from competent authority.

The ground water in the project site varies from 8.45 m to 10.20m below ground level (as per soil test report by Ground Engineering Limited-March 2018). The project will require the construction of two basements. Construction of basements will lead to excavation up to a depth of 12.45 m below ground level. Dewatering will be required for additional 1 m from the depth of foundation which is up to a depth of 13.45 m BGL. Hence, there will be temporary impact in ground water level due to dewatering process. However, after construction of basement, dewatering will be stopped completely and ground water will take its own course in due course of time. Detailed impact of dewatering and dewatering management plan is being prepared. However, dewatering will only be done after obtaining necessary approval from the Delhi Jal Board.

Lowering the water table below the formation level of the basement allows construction within the dewatered area to be completed using standard construction methods. After completion of the basement the dewatering system is removed and the water table will return to its original level.

There is a potential for groundwater levels to back up around the finished basement. Backing up around the structure may lead to rise in water levels upstream. The basement design will include groundwater drainage systems to prevent groundwater backing up around the development, and thereby protect adjacent areas from impact. Backing up around the basements has not been recognized as an area of concern in the National Building Code or the guidelines of the Ministry of Housing and Urban Development. YBPL shall abide by any condition that the Delhi Jal Board imposes in this regard. A number of

high-rise projects with basements deeper than the two basements proposed by YBPL, are under construction in the area prominent being the North Delhi Metro Mall, Parsvnath Tropicana, Negolice India (M 2 K), Delhi Flour Mills, DCM Ltd., DLF Home Developers etc. which are having 03 to 04 basements, have been allowed by the regulatory Authorities including the MoEF&CC. Even the adjoining underground Vishwavidyalaya Metro Station is deeper (more than 16 m) than the foundation depth (12.45 m) of this project."

277. With respect to construction of two basements, EAC (Infrastructre-2) in the minutes of the meeting dated 01.03.2021 raised an objection that project area is part of "Ground Water Discharge Zone" and, therefore, it was advised to restrict construction only to one underground basement and one stilt parking instead of proposed two, and parking plan may accordingly be revised and necessary approvals obtained, but PP has proposed two basement in the proposal. Accordingly, PP was required to clarify on this aspect. The objection noted by EAC in (para 5 on page 1410 of paper book) its minutes are reproduced as under:

"5. The EAC also noted that a Committee was appointed in terms of order of NGT dated 27.2.2020 and the Hon'ble Supreme Court vide its order dated 10.06.2020, and has given its report dated 10.12.2020. One of the suggestions of the Committee was that, considering that the project area is part of groundwater discharge zone, it is advised to restrict construction to the only one underground basement and one stilt parking, instead of the proposed two. The parking plan' may accordingly be revised and necessary approvals obtained.' However, the PP has still proposed 2 basements in the current proposal."

278. The above observations show that it was in the knowledge of PP that plot in question falls in "Ground Water Discharge Zone" and it was an important fact. Therefore, it ought to have been disclosed in Form I. This information though was already on record and in earlier proceedings brought to the notice of PP, still it was not disclosed in Form I. This is a serious flaw, illegality and amounts to non-disclosure of an important information which has serious environmental impact.

279. "Ground water discharge" can be described as movement of ground water from the sub-surface to the surface. Under natural conditions, ground water moves along flow paths from areas of recharge to areas of discharge at springs or along streams, lakes and wetlands. Discharge also occurs as seepage to bays or the ocean in coastal areas and as transformation by plants whose roots extend near the water table. Ground water recharge involves downward movement and influx of ground water to aquifers while discharge involves upward movement and out flux of ground water from an aquifer. Importance of ground water discharge is that base flow of streams is provided by ground water discharge from springs. The term base flow refers to the flow in streams during dry periods. This ground water/surface water interaction allows water to flow in the stream. Base flow is critical for maintaining habitat and nutrients to aquatic eco-system. In short, it can be said that "ground water recharge" and "discharge" are important aspects of global hydrological cycle and critical to analysis of ground water flow systems and water tables. Recharger is replenishment of ground water by downward infiltration of respiration or by water that was temporarily stored on earth surface. Natural recharge occurs without influence or enhancement by humans while artificial recharge occurs as the result of deliberate or inadvertent human activity such as direct injunction of water into the sub-surface of irrigation. Discharge represents upward outflow of ground water from the surface that occurs naturally or as the result

of human activity notably well pumping.

280. The "Ground Water Discharge Zone" aspect, has not been given due consideration either by SEAC and/or MoEF & CC in recommending and granting EC to PP. It may be since complete information was not supplied by PP and/or Regulatory Authority did not find it necessary to examine the aspect in detail, may be due to lack of application of mind or for any other reason.

281. In Form I, PP has not at all mentioned that the land in dispute falls in the area where status of ground water is that of discharge zone, if it goes down digging the land for construction of two basements. It is admitted that construction of basements will leave excavation of 13.45 meters and the ground water depth, on the project site, varies from 8.45 m to 10.20 m below ground level. Meaning thereby excavation will go 3-5 meters below the availability of ground water. In the conceptual Plan, in para 2.9, PP has discussed the impact of proposal on ground water and there we find that stress is on the steps which it would take for protection of the project and there is nothing as to how and what manner the excavation below ground level upto 12.45 meters will have impact on ground water particularly, when it comes in "Ground Water Discharge Zone".

282. PP has mentioned that it will go for dewatering process even one meter below the required depth of 12.45 meters that will go to 13.45 meters below ground level. It admits that there will be an impact on ground water level due to dewatering but explained that it would be temporary. After construction of basement, PP said, dewatering will be stopped completely and ground water will take its own course in due course of time ignoring the fact that when basement level itself is 12.45 meters below ground level and 3-5 meters below ground water depth, ground water course is bound to change and, therefore, impact of such change on "Ground Water Discharge Zone" was necessary to be examined but nothing has been said in this regard in Form I, IA and Conceptual Plan. On the contrary, PP has tried to belittle this aspect by stating that some other high rise projects with basement with deeper than two basements proposed by PP are under construction in the area i.e. Delhi Metro Delhi Metro Mall, Parsvnath Tropicana, Negolice India (M 2 K), Delhi Flour Mills, DCM Ltd., DLF Home Developers etc. which are having 3-4 basement but it is not stated anywhere that all those projects will affect "Ground Water Table" and its discharge zone in the same manner or they are also in the "Ground Water Discharge Zone". The facts of those other projects neither given in detail in the information placed before EAC/MoEF & CC nor before us. Therefore, reference to those projects, in our view, is of no consequence and would not help PP at all. A project which comprises activities deep below ground level affecting ground water table/its flow direction/recharge or discharge zone, the impact of such disturbance on environment has to be seriously examined by Regulator before grant of prior EC under EIA 2006 and that is the concept of "Environment Impact Assessment" on account of execution of proposed project/activity and this is the statutory obligation of EAC but unfortunately, it has failed to discharge this obligation.

283. Hence, the project will have impact on the ground water flow as construction is cutting across the ground water stream. This may have serious impact on the people living downstream of the ground water stream who's water source could get seriously affected because of obstruction of the ground water. PP has given justification stating that similar construction has been carried out by Delhi Metro, Parsvnath Tropicana, Negolice India etc. who gave gone more the 60 m below. This justification is not acceptable.

284. Everybody knows about scarcity of drinking water in Delhi and NCR region. Most

of the areas are categorized as over-exploited/critical/semi-critical. Only a negligible part is in safe category. The area in question, as admitted by PP, is in semi-critical category. North Delhi, therefore, is ground water table stressed area, very sketchy information has been supplied by PP.

285. Under the Heading (II) 'Activity', item 1.8, PP says that impact of ground water will be minimized but simultaneously says that permission of dewatering will be taken. In item 1.9, under the same Heading, it is said that no underground work is envisaged but simultaneously said that construction of two levels of basements is proposed as per plan and it will obviously involve disturbance underground water Table. In item 1.8, it is also said that for construction of two basements, quantity of soil excavation would be about 1,90,000 m^3. Again in item 1.21, while replying the information about "impoundment, damming culverting, realignment or other changes to the hydrology of water courses or aquifers", PP said that no impoundment, damming culverting, realignment is envisaged. But then said that there will be temporary backing up of water anticipated in dewatering and basement construction. Further information that ground water depth is about 8.45 m to 10.20 m below ground level and excavation will go upto 13.45 m means that there has to be a change in the flow course of ground water particularly, when it has been informed that it is the Ground Water Discharge Zone but all this information has not been given though it is bound to change hydrology of water course of ground water. Impact of such change on environment has neither been mentioned in the Conceptual Plan nor any other document and we also do not find any discussion in the record of EAC or MoEF & CC.

286. As we have already said that importance of ground water cannot be disputed. It is one of the most dynamic natural resource enriches human health, economic development and ecological diversities. Ground water is a vital natural resource for the reliable and economic provision of potable water supply in both urban and rural settlement. Conservative assessment shows that ground water contributes about 35% of annual water supply and is an important fresh water resource across the globe. Therefore, assessment of ground water resource is important for sustainable management and development of ground water system. This includes knowledge of ground water recharge and discharge. A sound land use planning and management approach involves analysis of ground water flow system connecting recharge and discharge areas as a vital factor. Ground water recharge and discharge are crucial aspects of hydrological cycle and critical for the analysis flow systems and water budgets. An expert in hydrology and ecology cannot ignore an in-depth study when construction activities are likely to penetrate ground water level and go below, disturbing ground water discharge area and this information is important which ought to have been disclosed by PP when submitting application in Form I and IA and should be a part of Conceptual Plan to discuss as to how this aspect shall be managed but this information is virtually missing in the application submitted by PP. Further, SEAC/MoEF were under a statutory obligation to examine impact of this aspect on environment being integral part of appraisal of project towards impact of environment but both were simply failed to scrutinize this important aspect and it shows total non-application of mind and a mechanical exercise of grant of EC.

287. In para 2-'Use of natural resources for construction or operation of the project', item 2.2, information regarding water during construction and operation phase, has been given as under:

S. No.	Information/Checklist confirmation	Yes/ No	Details thereof (with approximate quantitates/rates, wherever possible) with source of information data
2.2	Water (expected source & competing users) unit: kld	Yes	**During Construction phase:** Construction water requirement is expected to be about 280 kld over a period of 3 years at the rate of 2 kl/sqm of BUA. Construction Water demand will be met from treated waste water from DJB common STP or other authorized STPs by tankers. The supply of treated waste water will be done through authorized supplier. If directed by the competent authority, water available during dewatering shall be used for construction purpose. **During Operation Phase:** Total water requirement is expected to be **222 kld**, out of which **158 kld** will be fresh water met through the DJB supply. Remaining **64 kld** will be met through recycle of treated wastewater from the on-site STP. No ground water will be used.

288. PP has stated that during construction phase it will not use any ground water or fresh water. Requirement would be of 280 MLD in a period of 3 years. The said requirement shall be met from "Treated Waste Water" made available either by DJB, Common STP or other authorized STPs by tankers. It further said that if permitted by Competent Authority, ground water available during dewatering shall be used for construction purpose. No material has been placed before us to show that DJB has requisite quantity of treated waste water so as to supply the same to PP. In Form IA, under para 2-'Water Environment', it is said in para 2.1 that construction water requirement for the project estimated about 280 MLD will be procured by "Tankers Supply" through "DJB authorized suppliers" or "by water obtained after dewatering if allowed by Competent Authority". No details of any alleged authorized supplier has been given. Nothing has been examined or enquired by EAC also. It has simply gone on the bare assertion of PP that 280 MLD water estimated to be required in 3 years of construction period shall be met by treated waste water from tanker supplier. Before EAC, in its meeting dated 01.03.2021, specific explanation given by PP as noticed by EAC is as under:

> "During construction phase, total water requirement is expected to be approx. 280 million litre which will be met by treated water from tanker supply. During the construction phase, soak pits and septic tanks will be provided for disposal of waste water. Temporary sanitary toilets will be provided during peak labour force.

289. 280 MLD treated waste water means a huge quantity of treated water. If supplied by Tankers of 5,000 or 10,000 liters capacity, it means 28,000 tankers and/or 56,000 tankers in 3 years i.e. 9333 or 18666 tankers per annum. This is a huge quantity as well as number. DJB is having huge deficit in treatment of effluent by almost 40%. In respect of private proponents, normally conditions prescribed in EC, wherever applicable, or consent issued under Water Act 1974, contains a condition that treated water shall be re-cycled and re-used by the same proponent. Water is not manufactured

by anybody. There are limited resources i.e. surface water or ground water. Availability of "treated waste water" is further limited. It would be available only with the proponents who are undergoing treatment of effluent and as we have already said mostly they re-use or re-cycle treated waste water in their own units. Therefore, it was incumbent upon PP to disclose as to wherefrom and in what manner such a huge quantity of treated waste water would be available to it or under the cover the "treated waste water", entire insistence is on the ground water sought to be dewatered by PP. Information in this regard is not complete and unfortunately, EAC has also not looked into this aspect at all. Further, if construction activities proceed for 300 days in a year, daily, more than 31 Tankers would visit the site. This is a very large number of vehicles coming to visit in respect of only one item i.e. treated waste water. It is found to cause huge air pollution also.

290. We also find that Forms I and IA do not mention closeness of the project to Delhi University, Viceroy Building (heritage site) and several educational institutions in the vicinity. Najafgarh drain nearby is highly polluted. No information has been given about the natural slope and drainage. No mention has been made that the area is semi critical as per Dynamic Ground Water Study of 2017 requiring clearance from Central Ground Water Authority (hereinafter referred to as 'CGWA'). PP has mentioned that there is no impact on ground water. What is mentioned is that source of water is municipal supply. There is no evaluation of the additive effect on air quality on account of such high rise building in the area which is already far beyond its carrying capacity.

291. As per standard terms of reference for EIA for project requiring EC the land use as per master plan should be 10 Kms. It is not clear if PP has studied 10 km as in most places it has mentioned as 500 m. The study area for the project as per MoEF & CC is 10 km is not clear if PP has studied the impact of the project within 10 Km. As per page 379, 500 m surrounding studies has been carried out. At item 5.3 at page 894 mentions only 146 number of saleable units. The area is education hub and a large number of colleges of repute are surrounding the area if study of 10 kms. is conducted. It was admitted during the course of arguments that number of educational institutions was long hence all institutions were not mentioned in form 1. Thus, it is clear that Committee was given incomplete information.

292. Most of the informations given by PP were in response to questions by EAC without the same being originally given in the Form I and IA. In Form I and IA, there is no mention of data on air quality or impacts of the project on air quality. In Form I, it is mentioned that air quality monitoring will be carried out during EIA/EMP studies (which would have happened if the project was treated as Category A as per EIA 2006. However, since the project was treated as B2 Category on account of notification dated 22.12.2014, no such study was conducted). It is said that contribution of vehicular emission will be marginal and within the ambient air quality standards. Green belt will be developed which will act as a barrier. Nothing is mentioned about the impact on air quality during construction and afterwards. Parking has been proposed for 860 vehicles. It is further stated that there will be no significant impact of noise due to provision of wide roads. The entire information lacks specific details. It is thus, difficult to conclude that requisite disclosure was made by PP. Since air quality is one of the most significant environmental aspects, even if we do not consider other aspects, it can certainly be said that no information was furnished on subject of air quality in Form I and IA and information furnished later was highly inadequate and not supportive of sustenance of high-rise project of such magnitude. PP has relied on earlier reports or EAC recommendation for granting EC in 2012 and 2018 though the same were wholly irrelevant for consideration of application filed in February 2021. There is no

consideration of initial non-disclosure and reliance on irrelevant in reports/studies by PP. Impugned order of EC granted by EAC/MoEF & CC would stand vitiated for non-consideration of above aspects.

Air Quality, Noise Level and Traffic Congestion etc.

293. Information regarding air pollution: Under para 5 of Form I-'Release of pollutants or any hazardous, toxic or noxious substances to air (Kg/hr)', PP has supplied information as under:

S. No.	*Information/Checklist confirmation*	*Yes/ No*	*Details thereof (with approximate quantitates/rates, wherever possible) with source of information data*
5.1	Emissions from combustion of fossil fuels from stationary or mobile sources	Yes	Combustion of low sulphur HSD due to operation of two DG sets of 1500 kvA capacity Particulate Matter: ~0.8 kg/hr Sox: ~ 3 kg/hr NOx: ~ 12.4 kg/hr CO: ~ 3.4 kg/hr HC: ~ 1.2 kg/hr
5.2	Emissions from production processes	No	No production process is involved in this project
5.3	Emissions from materials handling including storage or transport	Yes	Dust emission is likely to be generated from material handling including storage or transport. However, all storage and transport shall be duty covered to minimize dust.
5.4	Emissions from construction activities including plant and equipment	No	Total Suspended Particulate Matters generated from the project site during construction is expected to be 5.9 ~ 6 Tons per month.
5.5	Dust or odors from handling of materials including construction materials, sewage and waste	Yes	Dust is expected to be generated from handling of materials during construction phase. However, 10 m high barricading has already been provided around the periphery of the project site in order to mitigate spreading of dust in nearby areas. Apart from this, regular sprinkling of water will be carried out to minimize generation of dust from the project site.
5.6	From lighting or cooling systems	No	No incinerator is proposed
5.7	From any other sources	No	Open burning of wastes (slash materials, construction debris) will strictly be prohibited during the entire construction and operation phase of the project.
5.8	Emissions from any other sources	No	Not envisaged

294. In Form IA, para 5-'Air Environment', PP in para 5.1 has given a chart containing background air quality based on the monitoring conducted between 02.12.2020 to 27.12.2020. Chart shows that in the above period of December 2020, SO_2, NO_2 and CO concentration were within prescribed limits but PM 10 and PM 2.5 exceeded permissible limit. The chart reads as under:

> "PM 10: The concentration of PM10 was found ranging between 155.00 Âµg/m^3 to 376.00 Âµg/m^3. The 98th percentile value of PM 10 was found to be 374.46 Âµg/m^3 and average value of PM 10 is 297.00 Âµg/m^3 during the month of December 2020. The background PM 10 is well above the permissible limit. It is found generally that the PM 10 level in the region of Delhi and NCR is more than the permissible limit and also maximum during the month of December and January. One of the important reasons for high level of PM 10 is due to the burning of Paralli (agricultural left over in the field) in the region of Punjab and

Haryana. However, in some years the concentration of PM 10 is even higher than what is observed in this year.

PM 2.5: The concentration of PM 2.5 was found ranging between 87.00 Âµg/m^3 to 195.00 Âµg/m^3. The 98th percentile value of PM 2.5 was found to be 194.16 Âµg/m^3 and average value of PM 2.5 is 155.38 Âµg/m^3 during the month of December 2020. The background PM 10 is well above the permissible limit. It is found generally that the PM 10 level in the region of Delhi and NCR is more than the permissible limit and also maximum during the month of December and January. One of the important reasons for high level of PM 10 is due to the burning of Paralli (agricultural left over in the field) in the region of Punjab and Haryana. However, in some years the concentration of PM 10 is even higher than what is observed in this year."

295. In respect of SO_2, NO_2 and CO also, PP has given explanation as under:

SO_2: The concentration of SO_2 was found ranging between 8.9 Âµg/m^3 to 12.2 Âµg/m^3. The 98th percentile value of SO_2 was found to be 12.12 Âµg/m^3 and average value of SO_2 is 10.43 Âµg/m^3 during the month of December 2020. The background level of S02 is found to be well within the permissible limit. The main source of SO_2 is due to vehicular movement as the project site is adjacent to Mall Road.

NO_2: The concentration of NO_2 was found ranging between 22.8 Âµg/m^3 to 38.4 Âµg/m3. The 98th percentile value of NO_2 was found to be 38.15 Âµg/m^3 and average value of NO_2 is 30.35 Âµg/m^3 during the month of December 2020. The background level of NO_2 is found to be well within the permissible limit. The main source of NO_2 is due to vehicular movement as the project site is adjacent to Mall Road.

CO: The concentration of CO was found ranging between 1.18 mg/m^3 to 1.36 mg/m^3. The 98th percentile value of CO was found to be 1.36 mg/m^3 and average value of CO is 1.29 mg/m^3 during the month of December 2020. The background level of CO is found to be well within the permissible limit. The main source of CO IS due to vehicular movement as the project site is adjacent to Mall Road."

296. The admission of PP is that main source of SO_2, $NO_2$and CO is vehicular movement as site is adjacent to Mall Road. This is the situation when project has not started as claimed by PP. The large number of movement of commercial vehicles transporting raw material to the site is bound to increase level of SO_2, $NO_2$and CO. This impact however, has not been examined by EAC/MoEF & CC at all.

297. Impact of project due to traffic has been discussed in Form IA with reference to the report of Committee constituted by this Tribunal in Appeal No. 112/2018, University of Delhi vs. MoEF & CC and Ors. PP, however has not disclosed that the above report was not accepted by Tribunal.

298. PP has stated that it is proposing parking of 860 number of cars, to be owned by occupants of 446 units multiplied by 2 i.e. 892 (446Ã—2). Expecting 1.5 car per household to be used daily, the number of cars likely to be used daily by the occupants or the project comes to 669. The usage of car has been estimated at 235 days per year and impact on environment has been discussed as under:

Estimated pollution load for BS IV-4W with Petrol or CNG engines

	BS IV limit (g/km)	*Emission load for 8.5 km (g/car/day)*	*Total emission expected due to 669 cars on road daily in the grid*		*Based on annual emission inventory of pollutants ARAI-TERI, 2018*		*Percentage increase in pollution load in Timarpur ward due to additional cars*
			Daily (kg/day)	*Yearly (tons/yr)*	*Delhi (148400 Hac)*	*Estimated for Timarpur (239 hac)*	
CO	*2.0*	*17*	*11.37*	*2.67*	*598 kilotons/yr*	*963 tons/yr*	*0.27%*
HC	*0.55*	*4.67*	*3.12*	*0.73*	*427 kilotons/yr*	*687 tons/yr*	*0.1%*
NOX	*0.25*	*2.12*	*1.42*	*0.33*	*156 kilotons/yr*	*251 tons/yr*	*0.13%*

299. Reliance placed on report of Committee appointed by Tribunal in Appeal No. 112/2018 is totally misconceived as the said report was not accepted by Tribunal in the above Appeal. On the contrary, Tribunal made observations against PP but could not form a final opinion since PP did not allow the appeal to be decided on merits but withdrew EC and stated that it shall apply afresh, hence caused in dismissal of appeal as infructuous.

300. Further, the above pollution load has been discussed assuming that the vehicles owned by occupants would be BS-IV category run by petrol or CNG. Further in para 5.2 and 5.3, impact on generation of dust, smoke etc. has been considered and PP has relied on a study conducted in 2018 as also the report of Committee constituted by Tribunal in Appeal No. 112/2018 (supra). We find that the information is clearly misleading and does not refer to any relevant study on the subject. As already said, in 2018 study may have been relevant at the time when EC of February 2018 was granted but in the present case, when application was submitted in February 2021, it was incumbent upon PP to inform Competent Authority that no study immediately prior to submission of the application was conducted.

301. Report of Committee in Appeal No. 112/2018 could not have been relied for the reason already discussed above. Further, volume of construction has also undergone material change and built up area as it was in 2018, was increased by almost 25% in the application dated February 2021, neither constructions proposed by PP was same nor the conditions relevant for the enquiry with regard to air pollution can be said to remain same in all these years. Further, period during which there were restrictions on various activities on account of COVID-19 pandemic, the impact would have been different and it would not give a proper information for the study required to be conducted in the matter like the present one. It is not stated anywhere by PP that any study was conducted for the project sought to be built up as per application dated February 2021 which as definitely different from the earlier two proposals. Therefore, study in every respect is bound to change but in a twisted manner, this information has been conveyed or relevant information was concealed or not correctly disclosed.

302. PP has blamed cause of air pollution, to the "burning of parali" in the region of

Punjab and Haryana. No study material on this aspect either has been appended to the Form submitted to Competent Authority, nor from the material examined by EAC/MoEF & CC, we find any material to support this explanation/assumption on the part of PP. Without expressing any final opinion, we find it appropriate to point out that territory of Delhi on three sides i.e. North, West and South is surrounded by the territory of State of Haryana, and on the East and a little bit on North side by State of UP. Punjab, we find is on the North West side of State of Haryana and infact broadly it is on the northern side. There is no direct connection of State of Punjab to Delhi. Even State of Haryana covers its extreme North, East and Southern boundary with Delhi. Therefore, the winds travelling from Punjab has to cross the entire State of Haryana to reach Delhi. Before making the so called burning of parali, responsible for air pollution in Delhi, it has to be examined whether there could have been South or North side wind, the velocity of wind, the capacity of the particulates of the smoke to travel with air and other relevant aspects. Burning of parali, hundreds of kilometers away from Delhi, without any further study material, by itself, may not be justified, to be blamed for something happening in Delhi. In any case, PP without placing any material in this respect, could not have been given any credit to blame air pollution to a factor not fortified by any material. On the contrary, issue of air pollution in Delhi, we find, has been considered in recent period, by various Courts including this Tribunal as also the Apex Court. The apparent glaring reasons are heavy load of vehicles, construction activities, burning of solid waste etc. by various local bodies and others.

303. We also find that there is no due application of mind by EAC/MoEF & CC in granting EC. Some aspects we have already pointed out. There is no consideration of ambient air quality status of the area for sustenance of the project in question. The sample test report of air quality submitted by PP itself and placed for consideration before EAC show that air quality is far beyond permissible limits both in terms of $PM_{2.5}$ and PM_{10}. Against prescribed National Ambient Air Quality Standards of 60 Âµg/m^3 and 100 Âµg/m^3 per day for $PM_{2.5}$ and PM_{10} respectively, data shows $PM_{2.5}$ in range of 87.00 to 195 and PM_{10} to be in range of 155 to 376.

304. A perusal of impugned order shows that decision to grant EC is based on recommendation of EAC. The minutes of EAC do not contain any discussion on the subject beyond mentioning that recommendation for granting EC was based on the information furnished, documents shown and submitted, presentation made by PP and appraisal done by Committee.

305. As already mentioned, PP has relied on the study conducted in 2018. The application did not give any data of ambient air quality. Vide subsequent letter dated 09.03.2018, in response to minutes of 95th meeting of SEAC dated 24.02.2018, PP gave point wise reply. Annexure IV thereto is pointwise response to MoEF & CC circular dated 25.10.2017. Appendix I thereto is test report dated 27.01.2018 for ambient air quality analysis as follows:

S. No	Date	Particulate matter ($PM_{2.5}$; $\mu g/m^3$ GRC/ LAB/STP/AIR /03, Gravimetric Method	Particulate matter (PM_{10}; $\mu g/m^3$ IS 5182 (Part 23): 2006	Sulphur Dioxide (PM_{10}; $\mu g/m^3$ IS 5182 (Part 23): 2001 Reaff.2006	Nitrogen Dioxide (PM_{10}; $\mu g/m^3$ IS 5182 (Part 23): 2006	Carbon Monoxide (CO); $\mu g/m^3$ IS 5182 (Part 10): 1999 Reaff.2003
1.	03.01.2018	240.6	412.3	9.3	71.6	1580
2.	05.01.2018	237.4	396.2	17.7	74.1	2110
3.	08.01.2018	195.7	368.4	20.4	82.3	2060
4.	11.01.2018	146.2	324.5	18.9	63.4	1510
5.	14.01.2018	227.9	436.8	29.7	84.5	2470
6.	17.01.2018	210.5	419.4	11.4	89.5	2780
7.	20.01.2018	183.4	318.9	18.3	84.0	1050
8.	24.01.2018	134.6	242.7	15.9	77.6	1010

306. Ambient Noise level as per test report dated 12.01.2018 annexed thereto is as follows:

S. No.	Location	Zone	Limit for As per EP Act, 1986; Leq, DB (A)		Observed value Ledq, dB (A)	
1.			Day Time	Night Time	Day Time	Night Time
	Project Site	Residential area	55	45	63.4	49.8
	* Day Time	6.00 a.m. to 10.00 p.m.				
	** Night Time	10.00 p.m. to 6.00 a.m.				

307. Another document which is part of letter is titled "Traffic Analysis for proposed group housing at DU Metro Station") and is as follows:

"EXISTING TRAFFIC CONDITIONS CAVALRY LANE:

According to recent traffic survey conducted in February 2018, traffic volume on Cavalry Lane is 423 pcu during AM peak hour. The ADT is recorded to be 3284 pcu comprising of 1087 two wheeler, 707 autos, 926 cars and 2 buses on Cavalry Lane. Over a day, 7 good vehicles, 198 cycles, 45 cycle rickshaws and 926 E-Rickshaws have been noted. In the afternoon peak hour (14:00-15:00 hrs, the recorded traffic volume is 208 pcu. The annexure-1 give the details of pedestrian and vehicular traffic volumes in tabular and graphic form for easy comprehension. It will be noted that the surrounding roads have adequate capacity to absorb traffic generated by the proposed development. Further the placement of access position on Cavalry Lane is not likely to cause any traffic concerns in the context.

CHHATRA MARG:

Similarly traffic survey conducted in February 2018, traffic volume on Chhatra marg is 1310 pcu during AM peak hour. The ADT is recorded to be 14801 pcu comprising of 4999 two wheeler, 1668 autos, 4092 cars and 19 buses.

Over a day, 44 good vehicles, 412 cycles, 1217 cycle rickshaws and 4376 E-Rickshaws have been noted. In the afternoon peak hour

(14:00-15:00hrs), the rerecorded traffic volume is 1167 pcu. The annexure 2 give the details of pedestrian and vehicular traffic volumes in tabular and graphic form for easy comprehension.

ESTIMATE OF GENERATED TRAFFIC

It is estimated that the housing scheme will generate some 320 pcu of vehicular traffic under a peak period of four to five hour duration. Critical peak hour traffic volume is estimated at 192 pcu egress and 25 pcu/h ingress traffic volume during AM period. The flow patter will reverse during PM peak period though the duration of PM peak period is generally longer than the AM peak period. It must be stated that considerable proportion of person trips will be made by Metro. Reliance on other modes of transport like cycle rickshaw is not expected to be high as the site offers by virtue of its location, excellent conditions for walking and nearness to the metro station. Cavalry Lane accordingly is envisaged to provide the access to motorized vehicles. On adding incremental traffic to the existing traffic on Cavalry Lane, the aggregate traffic works out to be 640 pcu per hour. The existing v/c ratio considering local two lane two-way carriageway configuration works out to be 0.56, and the emerging v/c ratio with project estimated to be 0.857 as per IRC 106. This v/c has built in facility of right turn traffic, parked vehicles and frontage access from the road under consideration. With v/c ratio of 0.85, congested conditions are not expected on Cavalry Lane. Further there is likely to be diversion from car to public transport especially to Metro for essential trips and this is likely to reduce the generated vehicular traffic volume from the proposed development. Walking to Metro Station for travel purposes is likely to find favour with the residential population."

308. On the basis of information noted above, even EC granted in 2018 could not been sustained. SEIAA based its decision dated 22.03.2018 on the recommendation of SEAC, while EAC based its decision on Form I, Form IA followed by letter and presentation by PP. There is hardly any tangible and substantive discussion either by EAC or by MoEF & CC analyzing various environmental aspects and impacts of the proposed project. Conditions have been laid down which are very generic without any analysis of issues which are patent. Thus, the whole exercise by EAC was based on non-application of mind, which vitiates EC. Mere imposition of general conditions that Air Act, 1981 and Water Act, 1974 norms will be followed is of no consequence when air quality norms are already exceeded and there is no carrying capacity assessment to sustain the project in question. That being so, the said study relied for grant of impugned EC also cannot be sustained.

309. It is undisputed that the land on which the project is proposed belonged to Ministry of Defence. The same was acquired for Metro Rail Project in 2001. The land use was characterized as "public and semi-public" as per MPD-2021 which was changed at the instance of DMRC in the year 2008 for group housing project. Proposal for grant of EC was moved initially on 21.08.2009 which was granted on 13.08.2012 for 324 dwelling units with total built up of area 70,265.90 m^2. The appellant University raised objections on 08.02.2012 which are said to have been considered by a sub-Committee constituted by SEAC. Amendment in the project was sought on 12.02.2018 for covering more area. Again in 2021, application was submitted for larger built up area, more dwelling units etc. Thus, earlier studies/reports, in any case, would not have been

relevant at all.

310. We find merit in the contention on behalf of the appellant that there was hardly any application of mind by EAC/MoEF & CC to available relevant data and to impact of the project on environment, before granting EC. To give effect to Sustainable Development and Precautionary principles, EC cannot be granted without such assessment and evaluation, which is also known as 'Carrying Capacity Assessment'. Such assessment becomes all the more necessary when available data shows that environmental norms are in excess of prescribed parameters. We may consider this aspect in the light of earlier orders of this Tribunal.

Carrying Capacity Assessment for the Project

311. Data furnished by appellant has been quoted above showing that norms of air quality as well as noise levels are already beyond the prescribed standards. There is, thus, no carrying capacity of the area to sustain any additive load in terms of air or noise levels which undisputedly will happen, even according to PP.

312. Tribunal has earlier considered the issue of carrying capacity on certain occasions. Reference may made to the order dated 26.10.2018, in OA 568/2016, Ajay Khera vs. Container Corporation of India Limited & Others, as follows:

> "15. Delhi is over polluted and figures quite high in the ranking of most polluted cities. There is no study about the capacity of the city in respect of the extent of population which can be accommodated and number of vehicles which can be handled by the roads of Delhi. The Master Plan for Delhi 2021 also does not assess the urban/physical carrying capacity of the NCT of Delhi despite noting a reduction in the carrying capacity of amenities such as drainage. However, no specific emphasis is laid on determination of carrying capacity of the city on the basis of factors such as availability of land, air and water resources for the increasing population in the light of principles of sustainable development and Intergeneration equity.
>
> **16.** Conscious of the threat posed to limited natural resources due to their overuse, this Tribunal in Metro Transit Pvt. Ltd. Vs. South Delhi Municipal Corporation & Ors.[1] directed the Ministry of Transport to take initiative to assess the number of vehicles to be permitted proportionate to the capacity of the roads in the city in the larger interest of environment. This Tribunal has also directed in SPOKE Vs. M/s. Kasauli Glaxie Resorts and other connected matters[2] to frame guidelines with respect to carrying capacity assessment for similarly placed hill stations as Kasauli and Eco-Sensitive Zone (ESZ) notified by MoEF & CC to check hazards of unregulated development threatening the fragile ecology. In D.V. Girish v. Union of India & Ors.[3] this Tribunal has directed the Ministry of Urban Development and MOEF&CC to conduct detailed carrying capacity study to assess the impact of factors such as construction of resorts, new civil structures, availability of water resources, power lines, soil erosion, extraction of ground water, waste generation and handling, road traffic and pollution and evolve a management plan for preservation of Chikkmangaluru district. Further, in Social Action for Forest and Environment (SAFE) & Ors. v. Union of India and Ors.[4] it was observed that the relevance of the concept of carrying capacity to the concept of sustainability adds to its value for organizing the management framework. In the light of the current scenario, a similar assessment is necessitated in NCT Delhi.

17. As a yardstick of sustainability, urban carrying capacity is an important conceptual underpinning that must guide a welfare state in promoting sustainable urban development. The concept of "carrying capacity" addresses the question as to how many people can be permitted into any area without the risk of degrading the environment of the area. A dynamic city policy based on carrying capacity assessment is essential to ameliorate the conditions for urban development and residents living quality. Urban carrying capacity is needed to be developed to balance the demands on the resources on the one hand and the capacity of such resources consistent with the need for environment protection. This is the need for sustainable development. Severely straining and degrading the available natural resources of a particular area without regard to capacity assessment is causing irreversible damage to the ecology in terms of pollution of air, water and earth. What would happen to the traffic flow if all roads become parking? What happens to the road travelers, if there is no adequate oxygen in the air on account of excessive vehicles and congestion? How would unlimited housing be provided to people if the land resources are exhausted at particular place? How will water and waste disposal needs be met, if there is unplanned population density in a particular city? These questions require serious consideration. "Urban disease" frequently besetting the cities such as traffic congestion, housing shortage, lack of amenity, pose actual challenges and impediments to sustainable development. While emergency measures such as the odd-even scheme, limiting the flow of tourist vehicles and restraining the timing of fire crackers may help momentarily such as is contemplated under the 'Graded Response Action Plan', long term assessment of physical and environmental carrying capacity and devising measures to restrict overuse on reaching optimum capacity is inevitable to ensure sustainable development. Without such assessment and action, the very survival of people is threatened what to talk of working towards Sustainable Development Goals, 2030 to tackle climate change may remain only a dream. Sustainable development is essential policy and strategy for continued economic and social development without detriment to the environment and natural resources on the quality of which continued activity and further development depend[5]. Natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with realistic approach to capacity of a city or area so that environment may not be affected in any serious way; so that there may not be depletion of water resources. Long-term planning must be undertaken consistent with capacity assessment. It has always to be remembered that the air and water are not without limitation[6].

18. Accordingly, we consider it necessary to direct assessment of carrying capacity for the NCT Delhi as well as other major cities particularly 102 "non-attainment cities" within reasonable time preferably in one year. Such study can be in phases depending on priority areas having pollution hot spots. Such assessment must specifically study capacity in terms of number of vehicles, extent of population, extent of different nature of activities-institutional, industrial, commercial etc.

19. The Ministry of Urban Development in coordination with the Central Pollution Control Board, Ministry of Transport and other concerned Ministries, the Authorities such as Planning Commission as well the States may carry out such study with the assistance of experts in the field. Methodology to do so may be worked out within two months.

20. As a result of such study, further policy decisions may be taken by concerned Authorities for comprehensive action for checking air pollution in the interest of public health. This may also result in regulation of logistics and infrastructure. The CPCB may act as nodal agency."

313. In the same matter i.e., Ajay Khera vs. Container Corporation of India Limited & Others (supra), further order dated 08.03.2019 is as follows:

"4. .... As per report of the WHO, Delhi is one of the 10 most polluted cities in the world. This called for a study about capacity of the city in respect of extent of population and number of vehicles to be permitted. Urban carrying capacity assessment was an essential part of urban planning for giving effect to the concept of sustainable development. It was observed:-

> "Severely straining and degrading the available natural resources of a particular area without regard to capacity assessment is causing irreversible damage to the ecology in terms of pollution of air, water and earth. What would happen to the traffic flow if all roads become parking? What happens to the road travelers, if there is no adequate oxygen in the air on account of excessive vehicles and congestion? How would unlimited housing be provided to people if the land resources are exhausted at particular place? How will water and waste disposal needs be met, if there is unplanned population density in a particular city? These questions require serious consideration. "Urban disease" frequently besetting the cities such as traffic congestion, housing shortage, lack of amenity, pose actual challenges and impediments to sustainable development. While emergency measures such as the odd-even scheme, limiting the flow of tourist vehicles and restraining the timing of fire crackers may help momentarily such as is contemplated under the 'Graded Response Action Plan', long term assessment of physical and environmental carrying capacity and devising measures to restrict overuse on reaching optimum capacity is inevitable to ensure sustainable development. Without such assessment and action, the very survival of people is threatened what to talk of working towards Sustainable Development Goals, 2030 to tackle climate change may remain only a dream. Sustainable development is essential policy and strategy for continued economic and social development without detriment to the environment and natural resources on the quality of which continued activity and further development depend. Natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with realistic approach to capacity of a city or area so that environment may not be affected in any serious way; so that there may not be depletion of water resources. Long-term planning must be undertaken consistent with capacity assessment. It has always to be remembered that the air and water are not without limitation."

8. As regards the direction to prepare carrying capacity assessment report, we find from the interim report submitted by the CPCB that the Ministry of Housing and Urban Affairs is in the process of developing a methodology for the study. The study is to be carried out through Urban Mass Transit Company (UMTC) as a pilot study. Since the order of the Tribunal is more than four months old, the study had to be done in a time bound manner. The same cannot be delayed

beyond a point in view of urgency of the situation. Tackling air pollution cannot remain pending. Let Central Pollution Control Board furnish such study report, as far as possible, within one month from today."

314. Again, in Anil Tharthare vs. Secretary Envt. Dept. Govt. of Maharashtra, it was observed:

"25. Carrying capacity is integral to the principles of Sustainable Development and Polluter Pays principle. As a yardstick of sustainability, urban carrying capacity is an important conceptual underpinning that must guide a welfare state in promoting sustainable urban development. "Urban disease" frequently besetting the cities such as traffic congestion, housing shortage, lack of amenity, pose actual challenges and impediments to sustainable development. Severely straining and degrading the available natural resources of a particular area without regard to capacity assessment is causing irreversible damage to the ecology in terms of pollution of air, water and earth. In light of serious threat, this Tribunal in Original Application No. 568 of 2016, Ajay Khera v. Container Corporation of India Limited vide order dated 26.10.2018, posed the following questions:

(a) What would happen to the traffic flow if all roads become parking?

(b) What happens to the road travelers, if there is no adequate oxygen in the air on account of excessive vehicles and congestion?

(c) How would unlimited housing be provided to people if the land resources are exhausted at particular place?

(d) How will waste water and solid waste disposal needs be met, if there is unplanned population density in a particular city? These questions require serious consideration.

26. Natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with realistic approach to capacity of a city or area so that environment may not be affected in any serious way. It has always to be remembered that both the air and water as resource are not without limitation."

315. In appeal, against above order, Supreme Court in Keystone Realtors Pvt. Ltd. v. Anil v. Tharthare, said:

"21. .....The procedure set out under paragraph 7(ii) of the EIA Notification exists to ensure that where a project is expanded in size, the environmental impact on the surrounding area is evaluated holistically considering all the relevant factors including air and water availability and pollution, management of solid and wet waste and the urban carrying capacity of the area. This was not done in the case of the appellant's project. It was not open to the third respondent to grant an 'amendment' to the EC without following the procedure set out in paragraph 7(ii) of the EIA Notification."

316. This Tribunal got carrying capacity study conducted in respect of Manali and Mcleodganj in Himachal Pradesh by a Committee inter-alia representing G.B. Pant Institute, Almora; Chief Town Planner, Shimla/senior Architect (Planner); A senior Scientist from MOEF&CC; A senior Scientist from the Indian Council of Forestry

Research and Education, Dehradun; Senior Scientist from Wadia Institute of Himalayan Geology, Dehradun; Scientist/Senior official from the Central Ground Water Board, New Delhi; Scientist/Senior official form the Central Pollution Control Board, New Delhi; Representative of National Disaster Management Authority, Govt. of India and Representative of School of Planning and Architecture, New Delhi. Based on such study, the Tribunal directed restriction on constructions in order dated 29.07.2019 in OA No. 635/2017, Ramesh Chand vs. State of H.P. Tribunal observed:

> "13. With regard to Manali, the report makes following recommendations on the subject whether any construction can be allowed at Manali:
>
> > "Whether construction in Manali be permitted or whether any restrictions need to be imposed, if so, the nature of restrictions which are to be laid down.
> >
> > As per the findings of this study, Manali MC has no capacity left to accommodate or sustain additional population/tourist. Allowing any construction would mean Govt. is officially encouraging and making provisions for more population/tourists.
> >
> > In view of above it is recommended to enforce a complete ban on construction activities in Manali MC except the construction of residential houses for their own uses/purpose and government buildings. The construction of other types should only be permitted unless and until adequate provisions for solid waste management and water supply are put in place."
>
> **15.** With regard to McLeodganj, a separate report has been submitted. After examining various parameters, the Expert Committee recommended as follows:
>
> > "In view of above it is recommended to enforce a complete ban on construction activities in McLeodganj except the construction of residential houses for their own uses/pur 1 and government buildings. The construction of other types should only be perm unless and until adequate provisions for solid waste management is put in place."
>
> **20.** The three templates of 'carrying capacity assessments'-two in the present case i.e. Manali and Mcleodganj and one in case of Kasauli which was dealt with by order of this Tribunal vide order dated 05.10.2018 in Original Application No. 218/2017, Society for Preservation of Kasauli and its Environs (SPOKE) v. M/s. Kasauli Glaxie Resorts, may be taken into account by the MoEF & CC and CPCB while carrying out further carrying capacity assessments as required in terms of orders of this Tribunal".

317. In view of above, it is difficult to uphold sustainability of the project in terms of carrying capacity and permissibility of grant of EC without a proper assessment which has not been done.

318. Sustainability of the project has been questioned inter-alia having regard to deteriorated air and noise quality, underground water level, traffic congestion, location close to Northern Ridge, height of the building. In Form I, against the heading 'Environmental Sensitivity', distance from Yamuna is shown to 1.5 km, from Northern Ridge Reserve Forest (RF) 0.5 km., interstate boundary is mentioned as 6.5 km, densely polluted area is 1.5 km, sensitive man made uses are mentioned as 0.5 to 2.5 km. Area

already subject to pollution is mentioned to be none. It is mentioned that site is in Seismic Zone IV. In Form IA, against 'Air Environment', it is mentioned contribution of vehicle emission will be marginal. It is further stated that there will be no significant impact of noise.

319. It has been pointed out by PP that University and educational institutions having more than 1000 students is not within 100 m. However, the site map shows that the area is surrounded by a large number of colleges, various departments of DU and hospitals etc. Impact of such a huge project on existing institutions of importance ought to have been examined. These factors make the project to be environmentally vulnerable, sensitive and critical which aspects have not been duly evaluated. There is no serious consideration of these vital environmental issues.

320. As already mentioned, data furnished by PP itself shows that air quality in the area has no carrying capacity to permit any additive load in terms ambient air. In absence thereof, permitting a project adding to load of pollution will be against the Sustainable Development and Precautionary principles which are tenets of right to life. Similar is the position with regard to noise levels and traffic congestion. On this aspect there is no consideration whatsoever by EAC/MoEF & CC. EC has been granted mechanically, overlooking all the crucial aspects discussed above. There is no consideration of estimation of total existing PM load, estimation of assimilative capacity with respect of PM and estimation of supportive capacity with respect to PM by EAC/MoEF & CC.

Additional load of pollution on account of the project to already deteriorated air quality, noise level and traffic congestion

321. Coming to additional load of pollution on account of added traffic on account of the project, traffic report submitted by PP in the year 2011, mentioned estimated traffic data to be 320 Passenger Car Equivalent (PCU) during peak hour. Report of Prof. Geetam Tiwari, IIT Delhi relied upon by appellant is that since project is for high income premium group, there will be about 900 motorized trips. Project may be non-complaint of Transit Oriented Development Guidelines (TOD) prepared by DDA. Traffic Report 2011 filed by PP mentions volume to the capacity of 0.7 but the same will exceed 1. Since motorized and pedestrian traffic and road surrounding the project are running to capacity, any addition on account of the project will be un-sustainable.

322. Second report relied upon by PP of year 2018 mentions width of Cavalry Lane as 24 m. According to appellant, width of Cavalry Lane is 8.5 m. Similarly, width of Chhatra Marg is 10.5m and not 24m. 2018 report mentions number of cars to 925 against 1091 cars in 2011 report. Average Daily Traffic (ADT) as per 2003 report, is 3484 PCU as against 1844 PCU in 2011 report. 2018 Report is that traffic volume had dipped from 226 PCU to 208 PCU.

323. Now, in the present case, size of project has increased, but no fresh study is conducted and above reports which are obviously irrelevant for the present proposed project have been reported and relied. It shows a glaring non-application of mind on the part of EAC/MoEF & CC.

Air Pollution Levels in Delhi

324. Delhi is one of the 122 identified non-attainment cities, based on ambient air quality data compiled by Central Pollution Control Board with reference to air quality standards under Air Act, 1981 and EP Act, 1986. Tribunal has considered remedial action in OA 681/2018. After noting that the identified causes of air pollution include

vehicular pollution[7], industrial and construction sector pollution[8], reference was made to the Graded Response Action Plan (GRAP) notified by MoEF & CC on 12.01.2017 stipulating specific steps for different levels of air quality such as improvement in emission and fuel quality and other measures for vehicles, strategies to reduce vehicle numbers, non-motorised transport network, parking policy, traffic management, closure of polluting power plants and industries including brick kilns, control of generator sets, open burning, open eateries, road dust, construction dust, etc.[9]. Tribunal noted that on account of air pollution, India is ranked at 177 out 180 countries in Environmental Performance Index.[10] As per World Air Quality Report, 2019 prepared IQ Air Air Visual, Delhi has been reported to be having the worst air quality amongst all the capital cities of the World for 2nd consecutive year. [11] It is also well known that air pollution contains greenhouse gases which have potential to lead to climate change having serious consequences on human existence. Tribunal noted that air pollution has enormous impact on public health particularly children, senior citizens and poor who are more vulnerable. We have already noted the data given by PP showing that air quality norms are exceeded at the location in question. Data is of the date of application. There is no improvement claimed till date. In fact, the situation is further deteriorating which is a well-known fact.

325. Tribunal also directed carrying capacity study of 102 non-attainment cities (which number went up to 122) vide order dated 08.10.2018 and evolving mechanism for review of Master Plans and shifting polluting activities identified in a study. Similar directions were issued for control of noise pollution. Tribunal, vide order dated 08.10.2018, directed steps for bringing air quality within prescribed norms by taking steps to prevent polluting activities. Tribunal directed that action plans be prepared indicating steps to be taken to check different sources of pollution having speedy, definite and specific timelines for execution. Action Plans should be consistent with the carrying capacity assessment of the non-attainment cities in terms of vehicular pollution, industrial emissions and population density, extent of construction and construction activities etc. Depending upon assessed carrying capacity and source apportionment, the authorities may consider the need for regulating number of vehicles and their parking and plying, population density, extent of construction and construction activities etc. Guidelines may accordingly be framed to regulate vehicles and industries in non-attainment cities in terms of carrying capacity assessment and source apportionment. The matter was last reviewed on 20.11.2019 and further directions were issued for installing sufficient number of air quality monitoring stations, completing carrying capacity study, reviewing Master Plans to give effect to such study, prepare action plans to bring the air pollution and noise pollution within norms, carry out afforestation drive, clear legacy waste dump sites and finalise emergency response systems etc. Matter is still pending further consideration as carrying capacity study reports are awaited. This fact is being mentioned to demonstrate that carrying capacity assessment is crucial for sustainable development which is integral part of right to life guaranteed under the Indian Constitution and any activity beyond such carrying capacity is not permissible. In the present case, it has already come on record that there is no carrying capacity in the area in terms of air quality to sustain the project in question.

326. Tribunal has also found that at times EC granted subject to general conditions of compliance of air, water and other environmental norms without effective monitoring mechanism has not been found to be effective mitigation of damage to the environment.[12]

High Rise Building

327. We may also consider grievance against height of building without considering its impact on environment especially on account of closeness to the Ridge. We are of view that restrictions on height of the buildings in such scenarios are inevitable to give effect to Sustainable Development and Precautionary principles. In an article titled 'The Sustainability of Tall Building Developments: A Conceptual Framework' by Kheir-Al-Kodmany, Department of Urban Planning and Policy, College of Urban Planning and Public Affairs, University of Illinois at Chicago, Chicago, IL 60612, USA, published on 05.01.2018, sustainability of tall buildings on account of potential for fire incidents, adverse impact on micro climate due to wind funneling and turbulence around their bases generation of carbon dioxide because of heavy machinery and equipment and waste management has been studied. It may be appropriate to refer to some of the observations:

"Fire Incidences

Tall buildings are prone to massive losses of lives and valuable properties caused by fire. High-rise buildings present several unique challenges not found in traditional low-rise buildings, including greater difficulties for a firefighter to access a smoldering high-rise building, longer egress times and distances, complex evacuation strategies, and smoke movement and fire control. Typical dangers at a fire incidence involve flame, smoke, heat, toxic gases, flashover, and backdraft explosions. However, the multiple floors of a high-rise building create the cumulative effect of needing greater numbers of firefighters to travel great vertical distances on stairs to evacuate the building.

Environmental Dimension

Further, tall buildings exert an adverse effect on the microclimate due to wind funneling and turbulence around their bases, causing discomfort to pedestrians. They cast a shadow on nearby buildings, streets, parks, and open spaces, and they may obstruct views, reduce access to natural light, and prevent natural ventilation.

Energy and Carbon Emission

Also, tall buildings' construction requires great energy and generates considerable carbon dioxide because of operating heavy machinery and equipment such as powerful cranes and pumps (e.g., pumping water and concrete to upper floors) and dump trucks. Transporting building materials from far distances (sometimes across the globe) also consumes energy and produces immense carbon dioxide.

Bird Collision

Bird-glass collisions are an unfortunate side effect of tall building developments throughout the world. Billions of birds perish from collisions with glass yearly, making it the second largest human-made hazard to birds after habitat loss. The U.S. alone is responsible for up to a billion birds yearly. To make matters worse, countless victim birds belong to already declining population species, including Canada Warbler (Cardellina Canadensis), Golden-winged Warbler (Vermivora chrysoptera), Kentucky Warbler (Geothlypis Formosa), Painted Bunting (Passerina ciris), Wood Thrush (Hylocichla mustelina) and Worm-eating Warbler (Helmitheros vermivorum). Clear and reflective glass result in killing birds because birds perceive clear glass as an unobstructed passageway; and

consequently, they attempt to fly through. On the other hand, reflective glass reflects the sky, clouds, and nearby vegetation reproducing a perceived habitat familiar and attractive to birds. Since the majority of modern tall buildings are clad in glass, tall buildings become a prime killer. Approximately 98% of flying vertebrates (birds and bats) migrate at heights below 500 m (1640 ft), and today, tallest buildings in the world reach or come close to the upper limits of bird migration paths. Although bird migration happens in fall and spring seasons, their collision into tall buildings occurs year-round [88]. At night, skyscrapers' lights lure birds in search of navigational cues. Birds usually use stars and the moon, and illuminated windows often divert them from their original flight paths. As such, birds can be attracted to artificially lit tall buildings resulting in collisions. This problem manifests on evenings of inclement weather, when the cloud's altitude is low, which forces birds to fly at lower heights. Attracted by the artificial light rays, some birds collide into the buildings' facades.

Waste Management

Tall buildings generate large volumes of waste because they house large population. On average, the disposal rate of an apartment unit is about one ton per year. While this amount of waste is not different from a low-rise residential unit, the method of waste collection in high-rises is more complicated than that in low-rises. One popular disposal method for tall buildings is the chute system, which consists of vertical shafts that transfer waste to a central location bin in a lower level of the building via gravity. Nevertheless, the large amount of waste accumulated on the ground floor poses a challenge to management systems."

Location of the Building - Closeness to Northern Ridge

328. As per data furnished by PP, distance of project from Norther Ridge is within 500 meters. Vide order dated 30.11.2011 Delhi High Court in WP(C) No. 3339 of 2011, Ashok Kumar Tanwar vs. Union of India, held that clearance of Ridge Management Board is required for construction in the Ridge area. This view was affirmed by Supreme Court in MANU/SC/0688/2016 : (2016) 13 SCC 561, DDA vs. Kenneth Builders & Developers Pvt. Ltd. No doubt, in the present case, project is said to be 500 meters away from Ridge and not in Ridge as such, impact of development of project of such magnitude close to Ridge, which is a Reserve Forest of immense importance and also ecological lifeline of Delhi, was required to be considered which has not been done. It was more important when site is in ground water discharge zone and form a path for recharge of ridge.

329. As already observed, object of requirement for environmental clearance is to ensure that no project adversely affecting environment comes up. Thus, EC can be granted only after ensuring that project will not have adverse impact on environment and not otherwise. This places responsibility on EAC/MoEF & CC to conduct meaningful appraisal of impact of the project on environment. Mitigation measures can be prescribed where project is otherwise viable. In the present case, EC has been granted without adequate appraisal. There are conditions for mitigation, including compliance of Water Act, 1974 and Air Act, 1981. However, once there is no carrying capacity in terms of air quality norms, merely laying down of such general conditions is merely a formality and not adequate safeguard.

330. Considering that carrying capacity of the area to sustain such high rise building has not been conducted and that air and noise levels are already beyond permissible limits, building is located very close to reserve forest, river Yamuna, premier educational institutions and hospitals and areas with high traffic density, we find it difficult to hold that there is application of mind in granting EC.

331. In the context of air pollution, we are of the view that sustainability of this project was required to be evaluated by undertaking carrying capacity assessment in terms of:

- Estimation of total Existing PM load (both $PM_{2.5}$ and PM_{10}).
- Estimation of total Assimilative Capacity w.r.t. PM load (both $PM_{2.5}$ and PM_{10}).
- Estimation of total Supportive Capacity w.r.t. PM load (both $PM_{2.5}$ and PM_{10}).

332. As already observed above, EAC has not examined the above aspects and also Isopleth of predicted ground level concentration of pollutants because of additive effect of such high rise project, in terms of increased traffic load on recipient air has not been predicted which vitiates the impugned EC. We also do not find Windrose diagram of air pollution on record as apparently no pollution Windrose analysis has been conducted.

333. As noted earlier, the site in question was originally parking for Metro Station. Once the site becomes a group-housing complex, parking which was to be at this site will now be on public roads, causing further congestion and consequent pollution. Delhi is already grappling with the problem of parking and it is a matter of common knowledge that most of the public roads have been converted into parking lots on account of ever-increasing number of vehicles without adequate carrying capacity of road infrastructure. Present location is equally affected, if not more, as already discussed.

334. As already mentioned, it is well settled that Sustainable Development and Precautionary Principles are part of right to life. The same are also enforceable under Section 20 of NGT Act, 2010. Polluting activities have to be prevented for clean environment, particularly right to breathe fresh air. Citizens of Delhi are already facing threat to their health on account of air, noise and other pollution. No additive load thereto, can be permitted by such unviable mega project.

335. In the written arguments, PP has referred to the factum that project in question is high income premium building project and every floor has only two flats of 3 or 4 BHK. Obviously, it is to cater to upper echelon of society comprising sufficiently rich people. Contemplating just two vehicles of in such family is under mining the living standard of such class of people for whom the project in question is proposed. The actual number of vehicles are bound to be much more in as much as each family member may have separate vehicle and the exact load would be much more. In any case, when Delhi and NCR area residents are already living under heavy air pollution, without examining the actual impact on air pollution due to the above project, EAC could not have proceeded in a mechanical manner and it shows non-consideration of relevant material and also nondisclosure of complete material by PP.

336. Besides the operational phase, even construction phase is bound to cause huge pollution which aspect has not been mentioned in detail and discussed by EAC at all. We have examined pre-construction air pollution by the project in question. On account

of pre-construction, during construction and post construction activities including demolition would generate higher level of air pollution. At para 5.1 of Form IA (page 397), the baseline levels of PM_{10} and $PM_{2.5}$ are in very poor zone as is around 150 and above. PM10 is 370 above parameter limits.

Air Quality Index	Micro gm/m³
Good	= 0 - 50
Satisfactory	= 51 - 100
Moderate	= 101 - 200
Poor	= 201 - 300
Very Poor	= 300 - 400
Severe	= 401 - 500

337. At item 5 (5.5 of Form I, page 365), PP has not disclosed any information with regard to construction phase and the pollutant to be released. Further, PP has not indicated the PM levels post construction which is the most critical information as far as Delhi is concern as the Vehicular movements and dust emission generations.

338. Dust generation at 5.3 of Form I, page 364, No quantitative estimation of dust emission due to loading and unloading of excavated earth, all loose construction material like sand, aggregates, cement etc. is made.

339. At para No. 5.4 of Form I, page 365, it is stated that the particulate matter generation is 6 tons per month.

6 tons per month	=6,000 kg/month =200 kg/day (@30 days/month) =10 kg/hour (@20 hours/day) =10,000 grams / 60 sec. =167 grams / sec. =167 million micro grams/sec.

340. PP in EMP at page 1309, has agreed to provide only Rs. 6.5 lakhs for the dust suppression system in terms of anti-smoke gun and dust mitigation measures. This amount is extremely meager considering the severity of ambient air quality levels of Delhi and NCR region. As reported by the PP, the PM_{10} level is in the range over 300 micro gram/m^3. This shows lack of application by the PP on such important aspect.

341. Noise pollution: In para 6-'Generation of Noise and Vibration and Emissions of Light and Heat', in Form I, PP has given following information:

S. No.	Information/Checklist confirmation	Yes/ No	Details thereof (with approximate quantitates/rates, wherever possible) with source of information data
6.1	From operation of equipment e.g. engines, ventilation plant, crushers	Yes	**Construction Phase**: Source of noise generation will be from the crushers construction allied activities (pneumatic equipment, air compressors, machine mounted percussion drills, loaders, trucks and breaking equipment) and operation of DG sets used for construction purpose. DG set will be provided with acoustic enclosure. No noise generating activity likely to adversely affect the ambient noise quality will be carried out during the night. **Operation Phase:** Noise is likely to be generated from operation of DG sets. DG room with be provided with acoustic enclosure to have minimum 25 dB(A) insertion loss or for meeting the ambient noise standard, which ever is on the higher side under EP Act, GSR. 371(E) and its subsequent amendments. Therefore, no significant impact due to the machinery/equipment is anticipated.
6.2	From industrial or similar processes	No	Not applicable
6.3	From construction or demolition	Yes	Source of noise generation will be from the construction allied activities (pneumatic equipment, air compressors, machine mounted percussion drills, loaders, trucks and breaking equipment)
6.4	From blasting or piling	No	Blasting: No blasting shall be carried out. Piling: Mechanized pile foundation shall be done during the day time only. Piling will be carried out wet boring technology and hence no impact of noise is expected in the surrounding.
6.5	From construction or operational traffic	Yes	Noise generation is expected due to the traffic the movement of construction vehicles. The level of noise shall not cause any adverse impact outside the project site. However, 10 m high barricading has been provided to reduce the propagation of noise. During operation phase, noise generation is expected due to vehicular movement by the residents. Peripheral green belt has been proposed, which will act as barrier against propagation of noise from the project site. Measures like smooth movement of vehicles within the project site will be done.
6.6	From lighting or cooling systems	No	Noise generation from lighting or cooling system is not envisaged
6.7	From any other sources	No	Not envisaged

342. The aspect of noise pollution is divided in construction phase and operation

phase. The said project during construction phase would generate huge noise level on account of man made activities which are part of various construction activities starting from the clearance of the site, excavation and foundation, loading and unloading of materials, superstructure construction etc. and construction machinery movements, vehicular movement and D.G. set. These activities would further enhance the noise level in already exceeded noise levels of Delhi as per the National Ambient Noise standards. This is all the more relevant since there are sensitive receptors like hospitals, educational institutions, residential colonies with old age people and other vulnerable group of people in the immediate vicinity of the instant proposal.

343. In Form IA, item 6.1-6.5 (page 365-366) PP has not discussed noise levels that are anticipated and the mitigative measures that shall be adopted keeping in view the sensitivity of the surrounding area.

344. At Item No. II 6 (page 365, 366 of Form I) Item No. 6.5 of Form I, PP has stated there will be no significant increase traffic, noise and vibration. This statement is false as the project proponent has not based the above fact on any quantification or studies during construction phase, operation and decommissioning phases which is mandatory to be filled up in the said form by the PP. (Guideline Form I).

345. Following are some of the equipments that are used for construction and the noise level tend to generate:

(a) The list of major machinery used during construction phase is given below:

i.	Dumper	Shall be used for mud and material handling
ii.	Concrete mixer with hopper	For RCC work
iii.	JCB	Shall be used for digging and earth work
iv.	Concrete Batching Plant	Will be used for concrete mixing
v.	Cranes	For lifting and moving of materials
vi.	Road roller	For compacting the earth
vii.	Bulldozer	For dismantling

346. The expected noise levels from various activities are given hereunder which are sometimes more than the indicator levels (the ambient noise levels on already over the high level compare to the national noise level standards):

- From vehicles bringing materials to the site 70 dB(A)
- D.G. Set 85 dB(A)
- Excavation 80 dB(A)
- Concrete Mixtures 80 dB(A)
- Hammering 85 dB(A)

347. At page 496, details of noise and vibration has been solved. PP has not mentioned the noise levels and the vibrations that shall be caused during construction. But noise levels decibels that is anticipated should be given. As the project site is located close to Hospitals, Residence, Academic Institutions noise and vibrations have a serious impact on these infrastructures.

348. Noise levels and public nuisances also have not been elaborated at 8.2 at page 505.

349. PP in its reply and written submissions before Tribunal has relied on the standard set for commercial area in the vicinity of the project which will not apply since the area in question is surrounded by large number of educational institutions and, therefore, the standards for commercial area cannot be applied. Here also, proper and complete information has not been given.

350. In the 'Environmental Sensitivity' column page 368, at Item No. III(9). PP had to study areas occupied sensitive man-made land uses (hospitals, schools, places of worship, community facilities). PP has not studied the impact of the project on Delhi University, its departments and other educational institutions within 15 km radius.

351. The information was to be provided by PP in mandatory application form (Form I and IA) as per Manual on Norms and standards for environmental clearance of large construction projects issued by MoEF & CC which is also annexed as Annexure R12 as page 1045 to 1121 (incomplete guideline has been annexed by PP). At the format (expected criteria environmental grading given in the said guideline) PP has to grade each of the activities such as (i.) site plan (ii.) Management of water, (iii.) Building materials (iv.) Management of Energy (v.) Management of Storm water (vi.) Management of solid waste and (vii.) Management of Noise & odour).

352. The grading has to be done with 100 scale. Based on the grading the project is declared as platinum, gold, silver or bronze. Any project getting 40 or below will be graded as zero grading and hence liable for rejection. Further, it is also indicated that minimum grading for NCR project is for gold i.e., grading has to be between 80 to 89. PP has concealed the said grading part which is mandatory by the regulatory authority. Given the approach of the PP in addressing critical issues such as noise, air, ground water and Environmental Sensitivity, the project is unlikely to achieve the prescribed grading of gold. As per Supreme court in Civil Appeal No. 12251 of 2018, Hanuman Laxman Aroskar vs. Union of India and CA No. 1053 of 2019, para 60, it is very clear that defective application is likely rejected to immediately. Further, order at para 67 also states that PP is duty bound to make to full and complete candid disclosure of all aspects bearing upon environment in the study area. PP profess and ignorance about the environment of the study area. The project proponent is bound by the highest duty of transparency rectitude in the Form I.

353. No information with regard to decommissioning has been prescribed. Decommissioning of a project after its completion of life cycle required to supply following information which ought to have been given in Form I by PP.

i. Quantification of demolition waste

ii. Steps involved in demolition

a. Removal of Disposal of Asbestos items/Materials

b. Removal of the New and Unused Movable items/Materials

c. Removal of New and Unused Detachable items

d. New and Unused Assembled items

e. Old/Used Movable items/Detachable

f. Miscellaneous Items

iii. Management of the disposal of inert demolition waste.

354. At page 507, with regard to micro climate changes PP has not given proper justification with regard to heat which would be generated from such large construction including air conditioners that will be operational in high rise buildings. Instead, PP has just justified saying green cover will reduce the formation of heat island. It is to mention that the green cover of trees would take maximum cover up to one to two floors which is height of the tree but the buildings are more than 40 floors. Hence heat generation from these structures and mitigation measures are not mentioned. Further micro climatic conditions also include the vehicles that would be owned by the residents. Their movement and emission that would take in confined place has not been studied.

355. We may also note at this stage that the precarious condition of air and water pollution in Delhi has drawn attention of various institutions like Niti Ayog which has projected a dismal picture. Supreme Court has also taken note of the situation in its order dated 08.05.2018 passed in WP(s) (C) No(s). 4677/1985, M.C. Mehta vs. Union Of India & Others, wherein, referring to report submitted by CGWB in May 2018, Court has quoted from the said report and observed as under:

> "Status of ground water levels has been filed by the Central Ground Water Board in compliance with the order dated 24.04.2018. The Report is of May, 2018.
>
> A perusal of the Report, which needs to be studied in greater depth, indicates an extremely sad state of affairs.
>
> The conclusion given is as follows:
>
> > "Analysis of long term water level data of May 2000 to present period of May 2017 reveals that over the period, in areas categorized as Over Exploited as per Ground Water Resources Estimation of 2013, mostly in South, South East, New Delhi, East, North, North East, and also parts of West & South West district of Delhi State, water level declined rate varied from 0.5 m/year to more than 2 m/year at places. There are some pockets, where change in water level is not significant or remained unchanged. Such pockets of shallow and rising water level areas are diminishing over the period. As such, major part of State is under Overexploited and Semi Critical category and in such areas water levels are showing persistent declining trend during last two decades."
>
> It is quite clear that there is over-exploitation of ground water in South District, New Delhi District, South East District, East District, Shahadara, North East District and almost rest of Delhi is in a semi-critical state. There are only some pockets in West District and Central District which appear to be safe as of now.
>
> We can only urge the concerned authorities dealing with governance of Delhi to look into the Report of the Central Ground Water Board to avoid a water crisis."

356. Further, in the written submission, PP has given a chart mentioning various dates on which project report or approvals by different authorities were granted. Here we find that all the dates are much anterior to the date when application in question was submitted by PP for prior EC i.e. February 2021. Any NOC/clearance/consent granted to an earlier project could not have been relied/referred/considered particularly in view of

the fact that in each subsequent proposal, built up area and the project composition/specifications have changed substantially so much so that the built up area which was about 70,000 m^2 when first EC in 2012 was granted, has gone to almost double i.e. 1,37,879 m^2 when application for grant of prior EC was submitted in February 2021. Therefore, the enquiry, investigation or approval if any, granted to an earlier project could not have been taken to be relevant for the subsequent project which was not same as the earlier one but a different project with different built-up area, number of floors, heights etc. i.e., a complete change of composition. The above redundant information relied by PP has been followed by EAC/MoEF & CC in granting of EC, though, ex-facie, such information was inadmissible and could not have been considered for the project in question which was totally different one and of much higher magnitude than as it was when they relied on approvals, clearance, reports etc. were issued or obtained by PP.

357. The discussion made above makes it clear that PP is guilty of concealment of material and information/non-disclosure of complete information/withholding of relevant information and EAC has also not applied it mind to various aspects as discussed above. MoEF & CC in a mechanical manner has granted EC following recommendation of EAC and, therefore, EC is vitiated in law. All the issues discussed above are answered in affirmative, in favour of appellant and against PP as also the statutory Regulators who have granted EC in question.

358. PP has also failed to disclose construction on about 100 m^2 of the land in question which according to him is a service structure temporary in nature and liable to be removed after completion of the project but it was incumbent upon PP to disclose information in Form I which it has failed.

359. EAC is a statutory body. It enjoins an onerous and cumbersome obligation when it is required to appraise a project/activity to assess its impact on environment. Any laxity on its part may cause serious degradation to environment. Thus, it has to appraise any proposed project/activity very meticulously so as to leave no scope of dereliction. While balancing development, it cannot compromise with its statutory obligation of consideration of all relevant aspects liable to impact environment. Similar is the responsibility of SEIAA/MoEF & CC who is the ultimate authority to grant EC. Unfortunately, both have miserably failed to observe their statutory obligations. In view of above, we conclude that EC granted is without application of mind.

360. We, therefore, answer issues II, III and IV holding that PP has failed to disclose correct and complete informations, withheld relevant informations and violated provisions of EIA 2006, hence is liable to face consequences as per the provisions of EIA 2006. Further, EAC in making recommendation for grant of EC has failed to consider relevant aspects/factors as also failed to appraise project/activity by studying the impact on environment on various factors discussed above. Hence, it is a case where recommendation is without any proper application of mind on the part of EAC and mechanical exercise of MoEF & CC in granting EC also vitiates EC. Further, in view of the answer to question II and III above, EC in question is unsustainable and has been issued without considering relevant aspects and principles obligatory to be examined before grant of EC. Hence, EC is vitiated in law.

361. We accordingly, answer issues II, III and IV in affirmative, i.e., in favour of appellant and against PP.

362. We may mention at this stage that PP has raised issue of bona fide of appellant,

targeting PP selectively, etc. However, for deciding this statutory appeal, and examining validity of EC, we do not any relevance of those allegations.

363. Issue V: In view of our conclusion that EC has been granted without proper evaluation, project cannot be allowed without such proper evaluation about its sustainability or otherwise in the light of available data, a case is made for interference by this Tribunal. As discussed above, existing air and noise levels do not permit any further additive load in the area, particularly a high-rise building having adverse impacts on environment, including potential for fire incidents, adverse impact on micro climate due to wind funneling and turbulence around their bases, generation of particulate matter because of heavy machinery and equipment and waste management. There will be unmanageable impact on traffic density and adverse impact on flora and fauna and groundwater regime of nearby pristine Ridge.

364. In view of our discussion, and answers to questions II, III and IV above, issue V has to be answered in affirmative i.e., in favour of appellant holding that appeal deserves to be allowed and EC in question is liable to be set aside.

365. We, therefore, answer issue V. against PP.

366. In the result, Appeal is allowed. EC dated 21.05.2021 is quashed. Respondent-proponent is restricted from proceeding ahead with any construction activities pursuant to EC in question.

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[1]Order dated 23.10.2018 in O.A. No. 773/2018

[2]Order dated 05.10.2018 in O.A. No. 218/2017

[3]Order dated 30.07.2018 in O.A. No. 462/2018

[4]Order dated 10.12.2015 in O.A. No. 87/2015

[5]MANU/SC/0960/2002 : (2002) 10 SCC 606 T.N. Godavarman Thirumulpad Vs. Union of India, dated 30.10.2002

[6]MANU/SC/0111/1986 : 1986 Supp (1) SCC 517 Rural Litigation & Entitlement Kendra, Dehradun Vs. Stat of UP (Doon Valley Case), AIR 1987 SC 359, dated 18.12.1986

[7]M.C. Mehta v. Union of India (1985) 2 SCC 431, M.C. Mehta v. Union of India MANU/SC/0195/2001 : (2001) 3 SCC 756, M.C. Mehta v. Union of India MANU/SC/0462/1998 : (1998) 6 SCC 63, M.C. Mehta v. Union of India (2002) 3 SCC 356, M.C. Mehta v. Union of India MANU/SC/0375/1998 : (1998) 6 SCC 60

[8]M.C. Mehta v. Union of India MANU/SC/0175/1997 : (1997) 2 SCC 353, M.C. Mehta v Union of India and Shriram Foods and Fertilizer Industries and Anr. (1986) 2 SCC 235, Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P. MANU/SC/0043/1985 : (1985) 2SCC 431, Mohd. Haroon Ansari v. District Collector MANU/SC/0375/1998 : (1998) 6 SCC 60, Union of India v. Union Carbide Co. MANU/SC/0042/1990 : (1989) 1

SCC 674, M.C. Mehta v. Union of India MANU/SC/0686/1992 : (1992) 4 SCC 256 Sterlite Industries (India) Ltd. etc. v. Union of India & Ors. MANU/SC/0284/2013 : (2013) 4SCC 575, M.C. Mehta v. Union of India MANU/SC/0488/2004 : (2004) 6 SCC 588, M.C. Mehta v. Kamal Nath MANU/SC/0416/2000 : (2000) 6 SCC 213

[9]S.O. 118(E), Notification, Ministry of Environment, Forest and Climate Change

[10]https://www.thehindu.com/sci-tech/energy-and-environment/india-ranks-177-out-of-180-in-environmental-performance-index/article 22513016.ece

[11]World Air Quality Report, 2019 prepared by IQ Air Air Visual

[12] Order dated 22.11.2019 in O.A. No. 837/2018, Sandeep Mittal v. MoEF & CC & Ors. Para 14. No satisfactory mechanism exists at present, as shown by the above affidavit itself. It is stated that, at present, it takes 4.5 years for monitoring which means that for such long period the non-compliance continues making mockery of law. There has to be speedy monitoring and speedy action, wherever necessary. There has to be a robust plan for the purpose which is the responsibility of the concerned Government Departments. We place on record our disapproval for the present sorry state-of-affairs and expect meaningful improvement.

MANU/SC/0308/2020

Equivalent Citation: 2021(11)FLT253, ILR2020(3)Kerala1, 2020/INSC/303, (2020)15SCC63, 2020 (5) SCJ 399, [2020]5SCR755

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 2566 of 2019

Decided On: 17.03.2020

Appellants: **Bengaluru Development Authority**
Vs.
Respondent: **Sudhakar Hegde and Ors.**

Hon'ble Judges/Coram:
Dr. D.Y. Chandrachud and Hemant Gupta, JJ.

Case Category:
APPEAL AGAINST ORDERS OF STATUTORY BODIES - TRIBUNALS

Case Note:
Environment - Environmental clearance - Quashing of - Appellant, as project proponent, submitted application to State Environment Impact Assessment Authority (SEIAA) under EIA Notification seeking Environmental Clearance (EC) for PRR project - EC was granted by SEIAA - First and second Respondents filed appeal to National Green Tribunal (NGT) challenging grant of EC - NGT quashed Environmental Clearance granted to Appellant for development of eight lane Peripheral Ring Road - NGT directed Appellant to conduct a fresh rapid EIA and clarified that project proponent would not proceed on basis of impugned Environmental Clearance - Hence, present appeal - Whether NFT erred in quashing environmental clearance.

Facts:

The Appellant, as project proponent, submitted an application to the State Environment Impact Assessment Authority (SEIAA) under the EIA Notification seeking an EC for the PRR project. The Terms of Reference were prepared by the State Expert Appraisal Committee. The final EIA report was placed before the SEAC and the SEIAA. An EC was granted by the SEIAA. The first and second Respondents filed an appeal to the NGT challenging the grant of the EC. The National Green Tribunal quashing the Environmental Clearance granted to the Appellant for the development of an eight lane Peripheral Ring Road. The NGT was of the view that the primary data upon which the Environment Impact Assessment report was based was collected more than three years prior to its submission to the State Environment Impact Assessment Authority. The NGT was of the view that it was not necessary to adjudicate upon the other contentions that were urged in support of quashing the EC as there was a substantial delay in the preparation of the EIA report. Accordingly, the NGT directed the Appellant to conduct a fresh rapid EIA and clarified that the project proponent would not proceed on the basis of the impugned Environmental Clearance.

Held, while disposing off the appeal:

(i) The Deputy Conservator of Forests revealed that trees were proposed to be cut for the purpose of executing the PRR project. The abject failure of the project proponent in disclosing the number of trees required to be felled was also evident from the rejoinder filed by Appellant before this Court. The EIA report prevaricated by recording that the area required for the proposed PRR project had only a few trees. Though the development of infrastructure may necessitate the felling of trees, the process stipulated under the Notification must be transparent, candid and robust. Hiding significant components of the environment from scrutiny could not be an acceptable method of securing project approvals. There was a serious lacuna in regard to disclosures and appraisal on this aspect of the controversy. [68]

(ii) The SEAC, as an expert body, must speak in the manner of an expert. Its remit was to apply itself to every relevant aspect of the project bearing upon the environment and scrutinise the document submitted to it. The SEAC was duty bound to analyse the EIA report. Apart from its failure to repudiate a process conducted beyond the prescribed time period stipulated by the MoEF-CC, the SEAC failed to apply its mind to the abject failure of the Appellant in conducting the EIA process leading upto the submission of the EIA report for the grant of EC. The SEAC was not required to accept either the EIA report or any clarification sent to it by the project proponent. In the absence of cogent reasons by the SEAC for the recommendation of the grant of EC, the process by its very nature, together with the outcome, stands vitiated. [76]

(iii) There had been a failure of due process commencing from issuance of the ToR and leading to the grant of the EC for the PRR project. The Appellant, as project proponent sought to rely on an expired ToR and proceeded to prepare the final EIA report on the basis of outdated primary data. At the same time, the process leading to the grant of the EC was replete with contradictions on the existence of forest land to be diverted for the project as well as the number of trees required to be felled. [80]

(iv) The SEAC, as an expert body abdicated its role and function by relying solely on the responses submitted to it by the Appellant and failing to comply with its obligations under the OMs issued by the MoEF-CC from time to time. In failing to provide adequate reasons for its recommendation to the SEIAA for the grant of an EC, it failed in its fundamental duty of ensuring both the application of mind to the materials presented to it as well as the furnishing of reasons which it is mandated to do under the Notification. [81]

(v) Therefore, this court propose to issue the following directions under Article 142 of the Constitution:

(a) The Appellant was directed to conduct a fresh rapid EIA for the proposed PRR project.

(b) The Appellant shall, for the purpose of conducting the rapid EIA, hire a sector-specific accredited EIA consultant.

(c) The Appellant shall have due regard to the various deficiencies noted in the present judgment as well as ensure that additional precautions are taken to account for the prevailing state of the environment.

(d) The Appellant shall ensure that the requisite clearances under various enactments had been obtained and submitted to the SEAC prior to the consideration by it of the information submitted by the Appellant in accordance with the OMs issued by the MoEF-CC from time to time.

(e) The SEAC shall thereafter assess the rapid EIA report and other information submitted to it by the Appellant in accordance with the role assigned to it under the Notification. If it was of the opinion that the Appellant has complied with the Notification as well as the directions issued by this Court, only then shall it recommend to the SEIAA the grant of EC for the proposed project. The SEAC and the SEIAA would lay down appropriate conditions concerning air, water, noise, land, biological and socioeconomic environment and other conditions it deems fit.

(f) The Appellant shall consult the requisite authority to ensure that no potential damage was caused by the project to the petroleum pipelines over which the proposed road may be constructed. [83]

JUDGMENT

Dr. D.Y. Chandrachud, J.

Index

A Introduction

1. The present appeal arises from a judgment of the Principal Bench of the National Green Tribunal[1] dated 8 February 2019 quashing the Environmental Clearance[2] granted to the Appellant for the development of an eight lane Peripheral Ring Road[3] connecting Tumkur Road to Hosur Road and totaling a length of 65 kilometers. The NGT was of the view that the primary data upon which the Environment Impact Assessment[4] report was based was collected more than three years prior to its submission to the State Environment Impact Assessment Authority[5]. The NGT was of the view that it was not

necessary to adjudicate upon the other contentions that were urged in support of quashing the EC as there was a substantial delay in the preparation of the EIA report. Accordingly, the NGT directed the Appellant to conduct a fresh rapid EIA and clarified that the "project proponent will not proceed on the basis of the impugned Environmental Clearance." Assailing the order of the NGT, the Appellant, as project proponent, is in appeal before this Court.

2. In a bid to address the growing need for efficient commutation, address traffic congestion and connect the Bangalore-Mysore Infrastructure Corridor (NICE road) with more access points, the Appellant formulated the PRR project scheme in 2005. A preliminary notification was issued on 27 May 2005 Under Section 17(1) and (3) of the Bangalore Development Authority Act 1976[6] to acquire certain land for the execution of the project. The stated purpose of the project was:

1) To decongest the traffic in Bangalore City;

2) To cater intercity connectivity and intercity traffic;

3) To reduce pollution in the city;

4) To reduce heavy vehicles traffic i.e., Lorry and Trucks; and

5) To decongest the traffic on outer ring road.

3. Another preliminary notification was issued on 23 September 2005 which concerned the realignment of the proposed road project. A final notification Under Section 19(1) of the BDA Act was issued on 29 June 2007 for the acquisition of the proposed land. The notifications were challenged before the High Court of Karnataka in Writ proceedings[7] on the ground that the Appellant had no authority to issue the notifications and acquire land for the proposed PRR project. By a judgment dated 22 July 2014, the High Court dismissed the writ petition on the ground that the Appellant was authorised under the BDA Act to acquire the land for the project in question. The Writ Appeal against this was dismissed on the ground of default on 9 February 2017.

4. The Appellant, as project proponent, submitted an application[8] to the SEIAA on 10 September 2009 under the EIA Notification 2006[9] seeking an EC for the PRR. The Terms of Reference[10] were prepared by the State Expert Appraisal Committee[11] on 21 November 2009. Primary data was collected between December 2009 and February 2010. The final EIA report was placed before the SEAC and the SEIAA in October 2014 An EC was granted by the SEIAA on 20 November 2014. The first and second Respondents filed an appeal to the NGT challenging the grant of the EC. The NGT, by an interim order dated 15 April 2015 granted an interim stay of the EC. The relevant portion of the order reads:

> Pointing to the EIA report which was placed before the 1st Respondent, the counsel for the Appellant would submit that the first part of the report would clearly indicate that if the road was constructed, it would pass through the Reserve Forest and the later part it would submit that the Forest clearance is not necessary which by itself would suffice to reject the recommendation. The EIA report would clearly indicate that if the proposed road has got to be constructed approximately 200 trees were to be cut which is thoroughly inconsistent to the report given by the Horticulture and Forest Department. According to their report, it would require felling of 16,685 trees. Added further

> by the counsel for the Appellant that if the proposed road is allowed to be constructed it would be above the underground pipe line already laid for transporting petroleum from Mangalore to Bangalore and if any leakages happens in future it would bring forth serious consequence...
>
> There exists a prima facie case in favour of the Appellant for granting an interim order of stay...

The NGT noted the discrepancy between the submission of the Appellant and the existence of a reserved forest through which the proposed road was to pass. The NGT recorded that while the EIA report stated that only 200 trees would be cut for the proposed project, the report given by the Horticulture and Forest Department indicated that about 16,685 trees would be required to be felled for the proposed project. By its final order dated 8 February 2019, the NGT stayed the operation of the EC granted by the SEIAA. The relevant portion of the order reads:

> The Environmental Clearance was granted on 20.11.2014. Thus, the primary data was more than three years prior to the EIA report. There are omissions in the EIA report with regard to data of forests land as well as the provisions of revised Master Plan, 2015 prepared by the BDA. Thippagondanahalli Reservoir (TGR) catchment area has been suppressed in the EIA report. Green cover particulars have been overlooked. Further objection is that there is proximity of the area to the petroleum pipelines and land earmarked for petroleum pipelines overlaps the project. According to the Appellant, Stage-I Forest Clearance was not obtained as required...
>
> It is not necessary to adjudicate on the contentions raised, having regard to the patent fact that there was substantial delay in EIA and a period of almost five years passed even thereafter. This Tribunal, vide order dated 15.04.2015, considered the issue...It will, thus, be in the interest of justice that a fresh rapid EIA is conducted. If the project is found viable after incorporating due abatement measures, including the suggestions of the Appellant, the same can be taken up without further delay...

The NGT directed the Appellant to conduct a rapid EIA. It was further directed that if the project is found to be viable after incorporating abatement measures, "the same can be taken up without delay". Notice was issued by this Court on 15 March 2019.

B Submissions

5. Assailing the order of the NGT, Mr. Shyam Divan, learned Senior Counsel appearing on behalf of the Appellant contended that:

> (i) The 2006 Notification obliges a project proponent to seek prior EC only for projects that are listed in the Schedule to the Notification. Para 7(f) of the Schedule includes only those projects that are either National or State Highways. The PRR project does not fall within the ambit of either the National Highways Act 1956 or the Karnataka Highways Act 1964. Consequently, the Appellant was under no obligation under the 2006 Notification to seek a prior EC for the PRR project;
>
> (ii) The 2006 Notification came into effect from the date of its publication in the Official Gazette on 14 September 2006. It is prospective in its application. The PRR project commenced on 23 September 2005 upon the issuance of the

preliminary notification under the BDA Act and as such, on the date of the coming into force of the 2006 notification, no obligation existed on the Appellant to seek a prior EC for the PRR project;

(iii) The Appellant executed the EIA process and applied for the grant of an EC out of abundant caution;

(iv) The first Respondent has challenged the grant of the EC by the SEIAA only because his appeal before the Karnataka High Court challenging the acquisition of land for the PRR project was unsuccessful. The present proceedings are merely a method of delaying the acquisition proceedings;

(v) The SEAC acceded to the request of the Appellant to not forward to the SEIAA a recommendation for the closure of the proposal. The SEAC recommended to the SEIAA the grant of the EC to the project in question after due consideration of the EIA report in its 121st meeting between 11 and 18 November 2014; and

(vi) All objections raised by the first Respondent concerning forests, the cutting of trees and the protection of the reservoir were adequately addressed in the EIA report submitted in 2014, on which basis an EC was granted to the PRR project.

6. On the other hand, Mr. Nikhil Nayyar, learned Senior Counsel appearing on behalf of the first Respondent contended:

(i) The term 'highway' or 'expressway' used in the 2006 Notification must be given a wide interpretation and not be restricted to the issuance of a notification under central or state enactments;

(ii) Both the National Highway Act 1956 and the Karnataka State Highway Act 1964 concern the acquisition of land, its development and permissions concerning the collection of toll/fee. The statutory framework does not envisage the wide definition to be attributed to the term 'highway' in matters concerning the protection of the environment;

(iii) The Appellant itself admitted in its EIA report that the PRR project is a category 'B' project falling under the purview of para 7(f) of the Schedule under the 2006 Notification;

(iv) The primary data for the PRR project was collected between December 2009 and February 2010. The EAC conducted the appraisal process after a substantial delay of over four years in the year 2014. This defeats the purpose for which ToRs are issued as the state of the environment is constantly changing;

(v) An OM dated 22 March 2010 issued by the Ministry of Environment and Forests[12] stipulates that EIA reports for projects where the ToRs have been granted prior to the date of the coming into force of the OM must be based on primary data that is not older than three years. The OM further stipulates that a ToR is valid only for a period of four years. The EIA report was prepared after the expiry of the ToR and is legally unsustainable;

(vi) The SEIAA decided to close the file for the PRR project on 17 May 2013,

which decision was communicated to the Appellant on 25 July 2013. A party aggrieved by the action of the SEIAA may only file an appeal Under Section 16 of the NGT Act and the SEIAA was not authorised to reopen the file on the request of the Appellant;

(vii) There was no collection of additional data in the year 2014. The report which is styled as a rapid EIA report in the year 2014 is nothing but the final EIA report under the 2006 Notification which was prepared after the public consultation process was conducted in February 2014; and

(viii) There are significant omissions in the EIA report concerning forest land, green cover, number of trees required to be cut, the catchment area in the Thippagondanahalli Reservoir and proximity of the PRR project to the petroleum pipelines underneath. Material concealment by the project proponent invalidates the EC which was granted by the SEIAA.

7. The rival submissions fall for our consideration.

C Issues

8. Essentially this Court is required to decide:

(i) Whether the PRR project commenced prior to the coming into force of the 2006 Notification;

(ii) Whether the PRR project falls within the scope of para 7(f) of the Schedule to the 2006 Notification obliging the project proponent to seek a prior EC; and

(iii) Whether the Appellant has complied with the conditions stipulated in the 2006 Notification and the OMs issued by the MoEF-CC from time to time.

D Date of commencement of the PRR project

9 . This Court is required to adjudicate whether it is the issuance of a preliminary notification Under Section 17 of the BDA Act or a final notification Under Section 19 of the BDA Act that constituted the identification of the proposed site for the project and marked its commencement for the purposes of the 2006 Notification.

10. On 27 January 1994, the MoEF, in exercise of the powers conferred by Sub-section (1) and Clause (v) of Sub-section (2) of Section 3 of the Environment (Protection) Act 1986 Act read with Clause (d) of Sub-rule 3 of Rule 5 of the Environment (Protection) Rules, 1986, issued a notification imposing restrictions and prohibitions on the expansion and modernisation of any activity or a new project unless a prior EC was granted in accordance with the procedure stipulated in the notification. On 14 September 2006, the MoEF released the 2006 Notification in supersession of the previous notification. The 2006 Notification directed that:

...**on and from the date of its publication** the required construction of new projects or activities or the expansion or modernization of existing projects or activities **listed in the Schedule to this notification** entailing capacity addition with change in process and or technology **shall be undertaken in any part of India only after the prior environmental clearance** from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government Under Sub-section (3) of Section 3 of the said Act, in accordance with the

procedure specified hereinafter in this notification.

(Emphasis supplied)

11. The 2006 Notification came into force on the date of its publication and obliges every project proponent to seek prior EC for the projects and activities which are listed in the Schedule to the Notification. According to para 2 of the 2006 Notification, all new projects or activities listed in the Schedule to the 2006 Notification shall require a prior EC from the concerned regulatory authority:

> **2.** Application for Prior Environmental Clearance (EC): An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, **after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant.** The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report.
>
> (Emphasis supplied)

Once a prospective site has been identified by the applicant for the proposed project, all applications seeking an EC shall be made in the prescribed Form 1 and Supplementary Form 1A, if applicable which contains a detailed list of the extent and potential impact of the proposed project. The application must be submitted after the identification of the prospective site and prior to the commencement of any construction activity, or preparation of the land. Thus, the action by the project proponent that is relevant to the obligation to seek a prior EC under the 2006 notification is the identification of the prospective site for the execution of the proposed project.

12. Section 2(a) of the BDA Act defines "authority" as the Bangalore Development Authority constituted Under Section 3 of the Act. Chapter III of the Act deals with development schemes and the procedures that must be complied with in the carrying out of a development scheme. Under Section 15, the Appellant may draw up a detailed development scheme for the development of the Bangalore metropolitan area. Section 16(1) mandates that the Appellant must also provide, in the formulation of the scheme, the details of the land proposed to be acquired for the development scheme. Section 17 contemplates the issuance of a preliminary notification. It reads:

> **17.** Procedure on completion of scheme.- (1) When a development scheme has been prepared, the Authority shall draw up a notification stating the fact of a scheme having been made and the limits of the area comprised therein, and naming a place where particulars of the scheme, a map of the area comprised therein, a statement specifying the land which is proposed to be acquired and of the land in regard to which a betterment tax may be levied may be seen at all reasonable hours.
>
> (2) A copy of the said notification shall be sent to the Corporation which shall, within thirty days from the date of receipt thereof, forward to the Authority for transmission to the Government as hereinafter provided, any representation which the Corporation may think fit to make with regard to the scheme.

(3) The Authority shall also cause a copy of the said notification to be published in [x x x] the official Gazette and affixed in some conspicuous part of its own office, the Deputy Commissioner's Office, the office of the Corporation and in such other places as the Authority may consider necessary.

(4) If no representation is received from the Corporation within the time specified in Sub-section (2), the concurrence of the Corporation to the scheme shall be deemed to have been given.

(5) During the thirty days next following the day on which such notification is published in the official Gazette the Authority shall serve a notice on every person whose name appears in the assessment list of the local authority or in the land revenue register as being primarily liable to pay the property tax or land revenue assessment on any building or land which is proposed to be acquired in executing the scheme or in regard to which the Authority proposes to recover betterment tax requiring such person to show cause within thirty days from the date of the receipt of the notice why such acquisition of the building or land and the recovery of betterment tax should not be made.

(6) The notice shall be signed by or by the order of the [Commissioner] and shall be served,-

(a) by personal delivery or if such person is absent or cannot be found, on his agent, or if no agent can be found, then by leaving the same on the land or the building; or (b) by leaving the same at the usual or last known place of abode or business of such person; or (c) by registered post addressed to the usual or last known place of abode or business of such person.

Section 17 stipulates that the Appellant shall, upon the preparation of a scheme Under Section 15, notify that a scheme has been prepared along with the specifications of the scheme, a map of the area comprised therein and the details of the land proposed to be acquired. The notification is forwarded to the Corporation of the City of Bangalore, which is granted thirty days to provide its comments to the Appellant authority for transmission to the government along with the scheme for sanction. Section 17(3) stipulates that a copy of the notification shall be published in the Official Gazette and affixed in conspicuous parts of the offices of the Appellant and the Corporation. Section 17(5) mandates that the Appellant shall serve on every person whose land is proposed to be acquired a notice to show-cause within thirty days on why the acquisition of the building or land must not take place.

13. Section 18 stipulates that where the procedure stipulated Under Section 17 is complete, the Appellant shall submit the scheme with any modifications, to the Government of Karnataka for sanction subject to the conditions stipulated therein. Section 18 reads:

18. Sanction of scheme.- (1) After publication of the scheme and service of notices as provided in Section 17 and after consideration of representations, if any, received in respect thereof, the Authority shall submit the scheme, making such modifications therein as it may think fit, to the Government for sanction, furnishing,-

(a) a description with full particulars of the scheme including the reasons for any modifications inserted therein;

(b) complete plans and estimates of the cost of executing the scheme;

(c) a statement specifying the land proposed to be acquired;

(d) any representation received Under Sub-section (2) of Section 17;

(e) a Schedule showing the rateable value, as entered in the municipal assessment book on the date of the publication of a notification relating to the land under the Section 17 or the land assessment of all land specified in the statement under clause(c); and

(f) such other particulars, if any, as may be prescribed.

(2) Where any development scheme provides for the construction of houses, the Authority shall also submit to the Government plans and estimates for the construction of the houses.

(3) After considering the proposal submitted to it the Government may, by order, give sanction to the scheme.

Under this provision, the Appellant is required to furnish details of the land proposed to be acquired along with a Schedule showing the rateable value, as entered in the municipal assessment book on the date of the publication of the notification. The Appellant furnishes to the government a description with full particulars of the scheme including the reasons for any modifications inserted, plans and estimates of costs and a statement specifying the land proposed to be acquired. Significantly, if the government is satisfied with the proposed scheme, it may accord sanction to the scheme Under Section 18(3) of the Act. A scheme formulated Under Section 15 may only be carried out where sanction has been accorded to the scheme by the Government Under Section 18(3) of the Act.

14. Section 19 of the Act reads thus:

19. Upon sanction, declaration to be published giving particulars of land to be acquired.- (1) Upon sanction of the scheme, the Government shall publish in the official Gazette a declaration stating the fact of such sanction and that the land proposed to be acquired by the Authority for the purposes of the scheme is required for a public purpose.

(2) The declaration shall state the limits within which the land proposed to be acquired is situated, the purpose for which it is needed, its approximate area and the place where a plan of the land may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose and the Authority shall, upon the publication of the said declaration, proceed to execute the scheme.

(4) If at any time it appears to the Authority that an improvement can be made in any part of the scheme, the Authority may alter the scheme for the said purpose and shall subject to the provisions of Sub-sections (5) and (6), forthwith proceed to execute the scheme as altered.

(5) If the estimated cost of executing the scheme as altered exceeds, by a greater sum than five per cent the estimated cost of executing the scheme as sanctioned, the Authority shall not, without the previous sanction of the

Government, proceed to execute the scheme as altered.

(6) If the scheme as altered involves the acquisition otherwise than by agreement, of any land other than that specified in the Schedule referred to in Clause (e) of Sub-section (1) of Section 18, the provisions of Sections 17 and 18 and of Sub-section (1) of this Section shall apply to the part of the scheme so altered in the same manner as if such altered part were the scheme.

Under Section 19, once the Government sanctions the Appellant's scheme, a final notification is published by the government in the Official Gazette declaring that sanction has been received and that the land proposed to be acquired is required for a public purpose. The final notification specifies the limits within which the land proposed to be acquired is situated and specifies the place at which people may inspect the plan. The Appellant is authorised Under Section 19(4) to alter the scheme subject to the Sub-sections (5) and (6). Section 19(6) stipulates that if acquisition of additional land is required over and above the details that were furnished by the Appellant Under Section 18, and otherwise than by agreement with the person whose land is proposed to be acquired, the procedure stipulated in Section 17 and 18 shall be followed.

15. The BDA Act was enacted with the purpose of establishing a development authority for the development of the city of Bangalore and adjacent areas. Sections 17, 18 and 19 stipulate the mechanism that must be followed by the Appellant leading up to the grant of government sanction for a scheme formulated Under Section 15. The purpose underlying Section 17 is to grant to both the Corporation and the persons whose lands are proposed to be acquired an opportunity to file their objections to the proposed scheme and the acquisition of land required for the execution of the project. Though the land proposed to be acquired for the scheme is stipulated in the preliminary notification Under Section 17, the provision to forward to the Corporation a copy as well as serve notices to persons whose lands are proposed to be acquired sub-serves the principles of natural justice where an affected party is extended the right to object to a proposed scheme.

16. Upon the receipt of suggestions and objections, if any, the Appellant may modify the scheme in accordance with the suggestions received and thereafter forward to the Government the scheme for the grant of sanction. However, it is only upon the grant of sanction by the Government Under Section 18(3), that a final notification Under Section 19 is issued. It is only upon the grant of sanction by the Government that a proposed scheme is deemed to be finalized and carried into effect.

17. The 2006 Notification stipulates an obligation to commence the EIA process once a prospective site is identified and before the commencement of any construction or preparation of land. It may be possible that following the formulation of a scheme Under Section 15 and the issuance of a preliminary notification Under Section 17, government sanction is denied or the Appellant drops the proposed scheme prior to the grant of sanction or the issuance of the final notification. In such situations, if it were held that it is the issuance of the preliminary notification identifying the proposed site for the project that marked the commencement of the project for the purposes of the 2006 Notification, the Appellant would be under an obligation to carry out the EIA process for a proposed scheme which may not eventually materialize.

18. The EIA process under the 2006 Notification serves as a balance between development and protection of the environment: there is no trade-off between the two. In laying down a detailed procedure for the grant of an EC, the 2006 notification

attempts to bridge the perceived gap between the protection of the environment and development. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive. While the BDA Act was enacted with the purpose of establishing a development authority for the development of the city of Bangalore and adjacent areas, the 2006 Notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. The BDA Act and the 2006 Notification operate in different fields. It cannot be said that a site is deemed identified for the purpose of triggering the obligations under the 2006 Notification upon the issuance of a preliminary notification Under Section 17 of the BDA Act. Adopting a contrary interpretation would lead to the absurd result where a project proponent is obligated to carry out the EIA process for a scheme even prior to the grant of government sanction and a final notification carrying into effect the proposed scheme. In this view of the matter, the prospective site is deemed to be identified only upon the issuance of the final notification Under Section 19 after the proposed scheme has received Government sanction Under Section 18(3).

19. The final notification Under Section 19(1) of the BDA Act was issued on 29 June 2007 following the grant of government sanction for the acquisition of the land. This being after the coming into force of the 2006 Notification, the contention urged by the Appellant that the project commenced prior to the coming into force of the 2006 Notification cannot be accepted.

E Applicability of the EIA Notification 2006

20. Essentially, this Court is required to address the contention urged by Mr. Shyam Divan, learned Senior Counsel appearing on behalf of the Appellant that the PRR project, being neither a project falling within Section 2 of the National Highways Act 1956 or Section 3 of the Karnataka Highways Act 1964, does not fall within the ambit of the Schedule to the 2006 Notification.

21. Para 2 of the 2006 Notification reads thus:

> **2.** Requirements of prior Environmental Clearance (EC):The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter be referred to as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:
>
> (i) All new projects or activities **listed in the Schedule to this notification**;
>
> (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified range.

(Emphasis supplied)

Para 2(1) of the 2006 Notification stipulates that only projects listed in the Schedule must be granted prior EC. Para 7(f) of the Schedule to the 2006 Notification, as originally enacted reads:

Project or Activity		Category with threshold limit		Conditions, if any
		A	B	
(1)	(2)	(3)	(4)	(5)
7(f)	Highways	i) New National Highways; and ii) Expansion of National High ways greater than 30 KM, involving additional right of way greater than 20m involving land acquisition and passing through more than one State.	i) New State Highways; and ii) Expansion of National / State Highways greater than 30 km involving additional right of way greater than 20m involving land acquisition.	General Condition shall apply

22. The Schedule to the 2006 Notification stipulates that projects listed in column 3 must be granted prior EC from the MoEF-CC while projects listed in column 4 must be granted prior EC from the SEIAA. The general conditions applicable are listed at the end of the Schedule.[13] Column 3 of para 7(f) includes new national highways and the expansion of existing national highways while column 4 includes new state highways and the expansion of existing state highways. Admittedly, in the present case, no notification was issued under either the National Highways Act 1956 or the Karnataka Highways Act 1964 notifying the PRR project as a highway under those enactments. Initial discussions took place at the Government of Karnataka level regarding the transfer of the PRR project to the National Highways Authority of India[14]. On 10 January 2018, the Central Road Transport Ministry was informed that the Government of Karnataka had granted its consent to transfer the said project to the NHAI on an "as it is" basis. However, the Government of Karnataka, by its order dated 24 June 2008, withdrew the proposal to transfer the PRR project to the NHAI.

23. There is however another aspect of the matter that warrants the attention of this Court. Para 7(f) of the Schedule to the 2006 Notification has been amended[15] since the coming into force of the 2006 Notification.

24. Prior to the issuance of the 2006 Notification, a draft notification was published in the official Gazette on 15 September 2005 stipulating that comments may be sent to the MoEF-CC within sixty days from the date on which the notification was published. Para 7(f) of the Schedule to the draft notification reads:

S. No.	Project or Activity	NIC code (2004)	ISIC code	Category			Conditions if any
				A	A/B	B	
(f)	Roads Highways	45203*		All new National Highways, Express ways and bypasses >= 30 Km length Or All National Highways, Express way expansion projects >= 30 km length and additional right of way of more than 20m	-	All State Highway projects >= 30 km length Or All State Highway expansion projects >= 30 km length and additional rights of way of more than 20 m	GC-1

In the draft notification, para 7(f) to the Schedule included the term 'expressway' under category 'A' projects. However, in the final 2006 Notification, the word 'expressway' was deleted. Absent any conclusive reason for the deletion from the draft notification prior to it coming into force, such deletion cannot be used to construe the terms of the 2006 Notification or subsequent amendments thereto.

25. In exercise of the powers conferred by Sub-section (1) and Clause (v) of Sub-section (2) of Section 3 of the Environment (Protection) Act 1986 read with Clause (d) of Sub-rule (3) of Rule 5 of the Environment (Protection) Act 1986, the Central Government issued a notification dated 1 December 2009 amending, inter alia, para 7(f) of the Schedule to the 2006 Notification. Para (xv) of the amending notification reads:

> (xv) against item 7(f),
>
> (a) In column (4), for the entry, the following entry shall be substituted namely:
>
> i) All State Highway Projects; and
>
> ii) State Highway expansion projects in hilly terrain (above 1,000 m AMSL) and or ecologically sensitive areas
>
> (b) in column (5) for existing entry, the following entry shall be substituted, namely:
>
> General Conditions shall apply.
>
> Note: Highways include expressways.

Following the 2009 amendment, column 5 of para 7(f) to the Schedule which

read "General Condition shall apply" was substituted to stipulate that in addition to the application of the general conditions, highways include expressways.

26. Prior to the amendment, a draft notification was published on 19 January 2009 seeking comments and objections thereto. The MoEF-CC, by its order dated 3 July 2009 constituted a Committee under the Chairmanship of Shri J M Mauskar, Additional Secretary to consider the comments received on the draft notification, conduct meetings with the various stake holders and make recommendations for the finalization of the notification. The Committee held various meetings with concerned stakeholders. The MoEF-CC published the report of the Committee titled "Report of the Committee constituted under the Chairmanship of Shri J M Mauskar, Additional Secretary to examine the comments/suggestions on the Draft Amendments to EIA Notification, 2006" in October, 2009. Numerous comments were received by the Committee on various aspects of the draft notification including the proposed amendment to para 7(f) of the Schedule. The initial draft notification only sought to modify column 4 of para 7(f). However, comments were received by the Committee stating that a specific reference to expressways must be made. The Committee formulated its analysis in the following terms:

> **Analysis:** The main suggestion relates to expansion of the scope of the notification by including expressways, bypasses, Major district roads, tunneling for roads within city limits, peripheral roads around municipal corporation limits. There is also a request for expanding the right of way limit from 20 metres to 60 metres. BRO has sought exemption of their projects up to 50 kilometres. **From the comments received, it is perceived that Expressways are different from Highways. However, keeping in view the objective of the Notification, it needs to be explicitly clarified in the Notification that Highways include Expressways.** In regard to other items these may be considered separately. In regard to the proposal for enhancing the right of way limit from 20 metres to 60 metres, this may not be accepted as it would involve significant changes in land use and issues of rehabilitation.
>
> (Emphasis supplied)

27. The analysis of the Committee recorded that the main suggestions related to the expansion of the scope of the Notification by including within its ambit expressways, bypasses, major district roads, tunneling for roads within city limits and peripheral roads around municipal corporation limits. Significantly, the Committee took note of the perception that highways and expressways differed from each other. Though it appeared from the comments that an expansion was sought in the scope of the 2006 Notification, the Committee explicitly clarified that the term 'highways' includes 'expressways'. For other items, the Committee stated that they may be considered separately. The clarification issued for highways and expressways did not amount to an expansion in the scope of the 2006 Notification but only made clear that the term highways always included expressways.

28. Where an amendment is clarificatory in nature, such amendment is deemed to be retrospective in its application. In State Bank of India v. V. Ramakrishnan MANU/SC/0849/2018 : (2018) 17 SCC 394, the question before a two judge

Bench of this Court concerned whether Section 14 of the Insolvency and Bankruptcy Code, 2016 which provides for a moratorium for the limited period mentioned, on admission of an insolvency petition, would apply to a personal guarantor of a corporate debtor. In the judgment of National Company Law Appellate Tribunal which was under appeal, it was held that as a Resolution Plan binds personal guarantors as well Under Section 31, the moratorium Under Section 14 would apply to personal guarantors. Assailing this, the Appellant relied upon the Insolvency Committee Law proceedings to contend that an amendment to Section 14 which stipulated that the moratorium shall not apply to a surety in a contract of guarantee to a corporate debtor was clarificatory in nature and that personal guarantors were always intended to fall outside the operation of the moratorium. Accepting this contention, Justice RF Nariman, speaking for the Court held:

> **31.** The Insolvency Law Committee, appointed by the Ministry of Corporate Affairs, by its Report dated 26-3-2018, made certain key recommendations, one of which was:
>
> > (iv) to clear the confusion regarding treatment of assets of guarantors of the corporate debtor vis-a-vis the moratorium on the assets of the corporate debtor, *it has been recommended to clarify by way of an explanation that all assets of such guarantors to the corporate debtor shall be outside scope of moratorium imposed under the Code;*
> >
> > (Emphasis supplied)
>
> ...
>
> The Committee concluded that Section 14 does not intend to bar actions against assets of guarantors to the debts of the corporate debtor and recommended that an explanation to clarify this may be inserted in Section 14 of the Code. The scope of the moratorium may be restricted to the assets of the corporate debtor only.
>
> **33.** The Report of the said Committee makes it clear that the object of the amendment was to clarify and set at rest what the Committee thought was an overbroad interpretation of Section 14.

The Court noted that the Committee clarified that it was never intended that the moratorium Under Section 14 applied to personal guarantors of corporate debtors. Accordingly, an amendment was enacted to Section 14. The Court then proceeded to hold, relying on consistent precedent of this Court, that a clarificatory amendment has retrospective application. A similar position is expounded by G P Singh in his seminal work Principles of Statutory Interpretation. He states:

> ...An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, in the principal Act was existing law when the amendment came into force, the amending Act also will be part of the existing law.

29. An amending provision which clarifies the position of law which was considered to be implicit, is construed to have retrospective effect. The position of the retrospective application of clarificatory amendments to notifications is analogous to the position under statutory enactments. In the present case, the Committee appointed by the MoEF-CC clarified that the term highways included expressways and suggested that a suitable amendment be issued to that effect. Based on the report of the Committee, a clarificatory amendment was issued in column 5 of para 7(f) to stipulate that highways include expressways. This being the position, this Court is required to analyze whether the PRR project qualifies as an expressway falling within the ambit of para 7(f) of the Schedule.

30. Neither the National Highways Act 1956 nor the Karnataka Highways Act 1964 define the term 'highway'. The 2009 amendment to the 2006 Notification is silent on the definition of the term 'expressway'. It was submitted by the learned Senior Counsel appearing on behalf of the Respondents that the definition by the Indian Road Congress[16] in the Manual of Specifications and Standards for Expressways in instructive is instructive.

31. The IRC was set up in 1934 on the recommendation of the Indian Road Development Committee constituted by the Government of India for the development of roads in the country. An expert group was constituted in 2013 to formulate a Manual of Specifications and Standards for Expressways. The report, which was released in the same year, defined an expressway in the following terms:

> **...**For this purpose, the Expressway is defined as an arterial highway for motorized traffic, with divided carriageways for high speed travel, with full control of access and provided with grade separators at location of intersections. Generally, only fast-moving vehicles are allowed access on Expressways...

An expressway is defined as an arterial highway designed for high-speed travel with the objective of reducing traffic and generally involving control of access. Other indicators are the provision of toll booths, divided carriageways and grade separators located at intersections. The assessment of whether a road project is an expressway is to be determined on a case by case basis.

32. In the present case, the stated purpose of the PRR project is thus:

1) To decongest the traffic in Bangalore City;

2) To cater intercity connectivity and intercity traffic;

3) To reduce pollution in the city

4) To reduce heavy vehicles traffic i.e., Lorry and Trucks

5) To decongest the traffic on outer ring road.

The brief note submitted by the Appellant to this Court states that:

> **...**the PRR proposed to be implemented by the BDA is an 8 lane divided road around Bangalore city is primarily **ease the vehicular traffic congestion on its city roads**. The proposed cross-section consists of

> 4 lane main road in each traffic direction and 3 lane service road on either side of the main road for local traffic. The main road and the service road will be **separated by access-controlled facility. The engineering designs will be carried out in accordance with Indian roads congress standards.**
>
> (Emphasis supplied)

The primary purpose of the PRR project is to ease vehicular traffic congestion in the city. The main road and the service road are to be separated by access-controlled facilities. The engineering designs are to be carried out in accordance with the standards laid down by the IRC. The EIA report prepared by the Appellant describes the PRR project in the following terms:

> The proposed Peripheral Ring Road (PRR) project alignment starts from - Tumkur Road as CH. 17a (distance of 16-20 Km from Bangalore city railway station) on NH4 & terminate at Hosur Road near Begur CH. 64.65 Km (65Km) for a smooth flow of traffic, to reduce the **traffic congestion, pollution intensity and travel time.**
>
> ...
>
> Highway Design
>
> The proposed Peripheral Ring Road (PRR) alignment has been designed for a **speed of 100 Kmph where ever possible.** However, at a few locations that designs have been carried out for 80 Kmph owing to restrictions at site. The vertical curves are designed as per the guidelines of IRC SP: 23.
>
> ...
>
> Interchanges
>
> An interchange is a **grade separated intersection with connecting roadways for turning traffic** between highway and approaches. The intersections are designed during the construction of Peripheral Ring Road (PRR) after contemplating the guidelines and schemes given in AASHTO and IRC: 92 guidelines.
>
> ...
>
> Toll Plaza
>
> ...All the traffic passing through the toll plaza Section of road will have to pay toll. The public bus transport will be exempted from paying the toll.
>
> Accessibility
>
> The Peripheral Ring Road (PRR) is speculated as a toll road. Provisions are provided for toll booths for tolling the road system. **Accessibility to Peripheral Ring Road (PRR) is restricted** to the following categories of roads

National Highways;

State Highways;

Major District roads.

The proposed project being a new state highway having 65 Km length with Right of Way of 75m the project falls under category "b" in the Schedule of the EIA notification 2006 and requires environmental clearance from SEIAA

(Emphasis supplied)

33. The PRR project is expected to be an 8 lane main carriageway highway (4 + 4 bi-directional), along with a 6 lane road service road (3 + 3 bi-directional) having a right of way of 75 meters and total length of 63.5 kms. The EIA report stipulates that the PRR project was conceptualised with the salient purpose of decongesting the traffic in the city and catering to intercity connectivity and intercity traffic. This, it was stated, would significantly reduce pollution intensity and travel time. The EIA report clarifies that the project is designed to cater to high speed vehicular traffic with vehicles plying at speeds of 100 Kms/hr, where possible, and 80Kms/hr in other places.

34. Moreover, the report stipulates that the project also comprises of ten interchanges and sixteen toll booths. It is stated that access to the road is restricted only to national highways, state highways and major district roads. In this view of the matter, there is no doubt that the PRR project is an expressway falling within the ambit of para 7(f) of the Schedule to the 2006 Notification. The PRR project commenced on the issuance of the final notification Under Section 19(1) of the BDA Act on 29 June 2007. Having concluded that the PRR project is an expressway, the Appellant as project proponent was under an obligation under para 7(f) of the Schedule to the 2006 Notification to seek a prior EC to implement the project.

F Compliance with the procedure under the EIA Notification 2006

35. The next question to be analysed is whether the EIA process followed by the Appellant was in compliance with the procedure stipulated under the 2006 Notification. In the written submissions and the rejoinder filed by the Appellant before this Court, it was contended that the EIA process leading upto the preparation and submission of the EIA report to the SEAC was in compliance with the procedure stipulated under the 2006 Notification. It was contended that the NGT erred in concluding that there was a substantial delay in the preparation of the EIA report and in suspending the operation of the EC granted to the PRR project. On the other hand, in the written submissions filed by the Respondents, it was contended that the delay in the preparation of the EIA report was in contravention of the OM dated 22 March 2010 issued by the MoEF-CC prescribing a validity period of four years for ToRs from the date on which they are issued. In assessing the rival contentions, it becomes necessary to analyse the EIA process followed by the Appellant, leading up to the grant of the EC.

36. On 10 September 2009, the Appellant filed an application with the SEAC seeking a prior EC for the PRR project as a category 'B' project under the 2006

Notification. In accordance with the 2006 Notification, the SEAC at its 46th meeting held on 21 November 2009 formulated and issued the ToR for the PRR project on which basis the Appellant was required to carry out the EIA process. The final EIA report was placed before the SEAC and the SEIAA in November 2014. The SEAC held meetings on 5 April 2013, 9 June 2014, 11-12 August 2014 and 11-18 November 2014. At its final meeting between 11-18 November, the SEAC recommended the grant of an EC for the PRR project to the SEIAA. The EC was granted on 20 November 2014.

37. The SEAC, at its 101st meeting dated 5 April 2013 decided to recommend to the SEIAA the closure of the project file since the ToRs were issued over two years prior to the meeting and there was no correspondence by the Appellant indicating any progress on the EIA process. Acting upon the letter of the SEAC, the SEIAA, at its 66th meeting dated 17 May 2013 closed the file relating to the grant of EC for the PRR project and communicated its decision to the Appellant on 25 July 2013. By a letter dated 24 August 2013, the Appellant requested the SEIAA to re-open the file. The SEIAA, at its 71st meeting dated 3 September 2013 decided to re-open the file, subject to the payment of the requisite processing fee. A public hearing was conducted on 6 February 2014. The SEAC, at its 111th meeting dated 9 June 2014, decided to defer the consideration of the Appellant's proposal as the EIA report was not made available to the Committee members. By a letter dated 2 August 2014, the Appellant placed before the SEAC the EIA report which was prepared after the public hearing was conducted in February 2014. The SEAC, at its 115th meeting dated 11-12 August, 2014 noted numerous deficiencies in the information submitted by the Appellant and decided to obtain additional information which was communicated to the Appellant on 28 August 2014.

38. The Appellant provided to the SEAC a point-wise reply to the information sought along with additional samples on ground water, surface water and soil. A final EIA report was prepared by the Appellant in October 2014 and submitted to the SEAC. At its 121st meeting between 11th and 18th November 2014, the SEAC recommended to the SEIAA the grant of EC to the PRR project. The SEIAA issued the EC on 20 November 2014.

39. Under the 2006 Notification, the process to obtain an EC for new projects comprises a maximum of four stages, all of which may not apply depending on the specific case stipulated under the Notification: screening, scoping, public consultation and appraisal. At the scoping stage, the project proponent submits information in Form 1 to the EAC or the SEAC, as the case may be, for the preparation of a comprehensive ToR. Following this, the project proponent prepares a summary EIA for the purpose of the public consultation process. The summary EIA is presented at the public hearing to invite comments and objections, if any. Based on the comments received and after addressing the objections raised, a final EIA report is prepared and sent to the concerned regulatory authority. At this stage, the regulatory authority must examine the documents "strictly with reference to the ToR" and communicate any inadequacy to the EAC or the SEAC, as the case may be, within 30 days of the receipt of the documents. Within sixty days of the receipt of all the documents, the EAC or the SEAC, as the case may be, shall complete the appraisal process as prescribed in Appendix V. The appraisal stage involves detailed scrutiny by the EAC or the SEAC of all the documents submitted by the applicant for the grant of EC. The EAC and the SEAC are charged with evaluating the information

submitted by the applicant in Form 1/Form 1A with reference to the ToR which was issued for the preparation of the EIA report.

40. Significantly, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1A. Information submitted in Form 1 relies on data and information on an "as is" basis at the relevant time of submitting information. Material information regarding the particulars of the proposed project as well as the potential impact on the environment is sought to enable the EAC or the SEAC to prepare a comprehensive ToR on which basis the applicant proceeds to prepare the EIA report. As the information in Form 1 is submitted on the basis of prevailing environmental conditions as on the date of its preparation, it is necessary to ensure that the EIA process is contemporary to the submission of information in Form 1 and the issuance of the ToR. The MoEF-CC, noting situations where some EIA reports were prepared belatedly on the basis of outdated ToRs, issued a notification on 22 March 2010 prescribing a time limit for the validity of ToRs which stated thus:

> Office Memorandum
>
> **Sub: Time limit for validity of Terms of Reference (TORs) prescribed under EIA Notification, 2006 for undertaking detailed EIA studies for developmental projects requiring environmental clearance - Regarding.**
>
> The EIA Notification, 2006 has prescribed a time limit for validity environmental clearance granted to a project. However, no time limit has been specifically provided under the EIA Notification for the TORs prescribed for undertaking detailed EIA studies. **As a result, the TORs once prescribed would continue to be valid indefinitely, which is definitely not desirable because the TORs are very much site specific and are dynamic to some extent depending upon the site features, its land use and the nature of development around it.** The matter has been considered in the Ministry of Environment & Forests.
>
> It has been decided that from 1.4.2010, the prescribed TORs would be valid for a period of two years for submission of the EIA/EMP Reports, after public consultation where so required. This period will be extendable to the 3rd year, based on proper justification and approval of the EAC/SEAC, as the case may be. Thus, an outer limit of three years has been prescribed for the validity of the TORs with effect from 1.4.2010.
>
> **In case of the proposals which has been granted TORs prior to the issue of this O.M., the EIA/EMP reports should be submitted, after public consultation where so required, no later that four years from the date of the grant of the TORs, with primary data not older that three years.**
>
> (Emphasis supplied)

41. The MoEF-CC stated that it was clearly undesirable to indefinitely continue a ToR. The environment is, by its very nature, dynamic. Soil quality, air

characteristics and surrounding flora and fauna are among the characteristics of the environment which are constantly in a state of flux. A robust framework of environmental governance accounts for the dynamic nature of the environment. It is for this reason that project proponents are also required to ensure the submission of an Environmental Management Plan and compliance with the monitoring procedures envisaged under the 2006 Notification. An indefinite ToR defeats the very purpose which underlies the 2006 Notification for it may lead to situations where the state of the environment has changed drastically, yet the EIA process is carried out on the basis of outdated information. For this reason, the MoEF-CC prescribed a validity period of two years for TORs, which could be extended by the EAC or the SEAC only by another year. Furthermore, extension is to be granted only where the project proponent provides adequate justification in writing. Relevant to the present case, the notification dated 22 March 2010 stipulates that where ToRs were granted prior to the issue of the OM, the EIA report must be submitted within four years from the date on which the ToR was issued, with primary data not being older than three years.

42. By another notification dated 22 August 2014, the MoEF-CC clarified the validity of the ToRs prescribed under the 2006 Notification in the following terms:

> **...**2(iv) Extension of validity of TORs beyond the outer limit of three years for all projects or activities and four years for River Valley and HEP projects **shall not be considered by the Regulatory Authority. In such cases, the project proponent will have to start the process *de novo* and obtain fresh TORs in case the proponent is still interested in pursuing the clearance for the project. Reuse of old baseline data (provided it is not more than 3 years old) for the purpose of preparation of fresh EIA and EMP report will be considered subject to due diligence by the EAC/SEAC which may make appropriate recommendations including the need for revalidation.** Baseline data older than 3 years will not be used for preparation of EIA/EMP report. In any case, the PH shall have to be considered afresh in such cases.
>
> (Emphasis supplied)

The MoEF-CC clarified that where the time period prescribed for the ToR has expired, the regulatory authority "shall not" consider any further extension and a project proponent seeking to continue the project must initiate the EIA process de novo. This includes the submission of fresh information in Form 1 and the prescription of a new ToR to guide the preparation of the EIA report. The extraordinary prescription of conducting the EIA process afresh was in keeping with the commitment to a framework of environmental governance which accounts for the dynamic nature of the environment.

43. By another notification dated 7 November 2014, the MoEF-CC issued a notification clarifying the time limit prescribed for ToRs as well as the consideration of EIA reports by the SEAC which relied on primary data older than three years. The notification, in so far as it is relevant reads:

> **2.** The matter has been further examined in the Ministry in the light of the decision taken as part of clearance reform and it is felt that it would not be logical to start the process of environment clearance *de novo*

including taking fresh Terms of Reference (TORs), **if the base line data collected for preparation of EIA/EMP report and/or public consultation are more than three years old.**

3. Thus, it has been decided to substitute para 2(v) of the above referred Office Memorandum No. J-110113/41/2006-IA. II(I) (part) dated 22.08.2014 with the following:

> (v) (a) All the projects which have been recommended by the Expert Appraisal Committee (EAC) shall be considered by the Competent Authority even if data collected has become more than three years old **as the ToRs itself used to have three years validity and extendable by one more year.**
>
> (b) All the projects where the project proponent have already submitted their EIA/EMP Report for consideration by the EAC though the cases have still not been placed before the EAC and meanwhile the data has become more than three years old, shall be considered for the same reasons as given in para (a) above....
>
> (Emphasis supplied)

This notification stipulated that the 'concerned authority' shall consider EIA reports for the grant of EC even where the primary data relied upon was collected beyond three years from the preparation of the EIA report. This was because the ToR itself was extendable beyond three years by an additional year. Thus, where the EIA report is prepared within the prescribed time period for the validity of the ToR, the concerned authority may consider an EIA report which relies on primary data which was collected more than three years ago i.e. in the fourth year preceding the preparation of the EIA report. The effect of the notification was to prescribe a uniform validity period of four years for both ToRs and the primary data collected. However, the stipulation that a fresh EIA process must be undertaken where the ToR has expired was retained.

44. In the present case, the ToR was issued on 21 November 2009, prior to the issue of the OM dated 22 March 2010. Hence, by virtue of the notification, the Appellant was required to submit the EIA report within four years from the date of the issuance of the ToR i.e. before 21 November 2013. The SEAC was under a corresponding obligation to refuse the consideration of any EIA report prepared after the expiry of the ToR. Public hearing was conducted belatedly only on 6 February 2014 and the EIA report prepared thereafter was placed before the SEAC only on 2 August 2014, nearly a year after the ToR had expired. We cannot gloss over the failure of the project proponent to comply with the OMs issued by the MoEF-CC prescribing a time limit for the validity of the ToR. The decision of the SEAC to proceed with the EIA report as well as seek additional information from the project proponent despite the expiry of the ToR suffers from a non-application of mind and is unsustainable.

45. Moreover, primary data was collected in December 2009 and February 2010. The EIA report was prepared after the public hearing was conducted in February 2014, nearly a year after the primary data had expired in terms of the OMs issued by the MoEF-CC. In the final EIA report prepared in October 2014, it is stated:

1.8 Study Period

To prepare the Rapid Environmental Impact Assessment (REIA) report for the proposed project, **the data was collected from December to February (2009-2010)** in the study area. Micro Meteorological parameters were recorded such as wind speed, wind direction and relative humidity on hourly basis during the study period.

3.5 Monitoring period

Meteorological data was collected for the study area during **the months of winter (December, January and February (2009-2010),** Wind Speed, Wind Direction, Temperature and Relative Humidity were recorded on hourly basis for the total study period

(Emphasis supplied)

46. Admittedly, the EIA reports prepared in August and October 2014 relied on primary data which was collected between the months of December 2009 and February 2010. The EIA report was prepared prior to the coming into force of the OM dated 7 November 2014 by which the MoEF-CC extended the validity of primary data collected from a period of three years to four years. Even if the benefit under the notification were extended to the Appellant, it was duty bound to collect fresh primary data upon the expiry of four years from the date of issuance of the ToR i.e. 21 November 2013. This was evidently not done. This being the case, there is no manner of doubt that the final EIA report prepared on the basis of an expired ToR and primary data was in contravention of the OMs dated 22 March 2010, 22 August 2014 and 7 November 2014 issued by the MoEF-CC and could not form the basis of a validly issued EC.

47. It is also pertinent to note that a Rapid EIA along with a socio-economic study was prepared by M/s. Ramky Enviro Engineers Ltd., the EIA consultant for the PRR project on behalf of the Appellant in November 2010. This EIA report relied on primary data collected between the months of December 2009 and February 2010 and analysed the impact of the proposed PRR project on the environment. A perusal of both the 2010 rapid EIA report and the EIA report prepared in October 2014 reveals that the data as well as the analysis of the impact of the proposed PRR project on the environment in the 2014 report is similar to that in the 2010 Rapid EIA report. It appears that the EIA consultant has reproduced verbatim, portions of the Rapid EIA report which was prepared in the year 2010. No effort was taken by the Appellant to ensure the fresh collection of data in compliance with its obligations under the OMs issued by the MoEF-CC. In this view of the matter, the contention urged on behalf of the Respondents that there was a substantial delay in the carrying out of the EIA process, vitiating the process commends itself for our acceptance.

48. In the rejoinder and brief note of submissions filed before this Court by the Appellant, it was contended that any delay in the collection of primary data was remedied by the collection of fresh samples in reply to the questions raised by the SEAC in its 115th meeting dated 11-12 August, 2014. The primary data furnished in reply, it was urged, dated to the year 2014 and not 2010. In assessing this contention, it is necessary to advert to the questions raised by the SEAC to the Appellant. The SEAC, at its 115th meeting noted shortfalls in the information submitted by the Appellant and decided to obtain additional

information. This was communicated to the Appellant on 28 August 2014. The SEAC sought additional information on the following:

1. EIA accredited consultant for Highway projects was not present

2. Declaration of experts involved in preparation of EIA report is not furnished in the report

3. Accessibility to all villages on either sides of the proposed road has to be preferably through underpasses.

4. Baseline data of hardness of borewell water furnished in the report is found to be wrongly analysed.

5. Surface water analysis report is found to be with wrong results.

6. All the parameters required to be tested as per NABET guidelines are to be analysed and furnished with lab reports.

7. Sampling locations are to be marked on maps windrose diagram to be superimposed.

8. In AAQ analysis, CO concentration is reported to be at dangerous level and this has to be checked again.

9. EMP to be revised and has to be site specific.

10. Sensitive location monitoring to be explicitly mentioned in EIA report with details of location.

11. Regarding information on forest land in the EIA report there are contradicting information in the report.

12. Trees to be planted are to be known in advance to grow samplings.

13. Soil analysis to be revalidated.

14. Borrow area of earth to be part of EIA report.

15. Emergency relief operation to be included.

16. As per the proposals submitted in page No. 10. "No forest land is involved in the proposed project. Hence forest clearance is not required" whereas in the same proposal page No. 21 "the total forest land to be diverted is estimated to be 1.5ha in the jarakabande kaval at Ch. 12.000" to 12.500. The contradictory information to be explained with documents.

17. In the same proposal under the head 10.3 afforestation plan: "Species proposed for afforestation plan are Avicennia officinalis, Avicennia alba, Rhizophora mucronara & Rhizophora aciculate etc., they are mangrove-tropical tree growing in shoes i.e., they are endemic in sea shores (coastal area in the Kundapur coast) etc.

18. PP is advised to consult the forest wing under BDA to design (1 to 2) rows depending on the availability of the area) the strip plantations

> on either side of the proposed road with suitable native fruit yielding shade bearing & fast growing species (instead of this consultant), to improve the micro climate. Committee decide to obtain additional information sought above and to recall the proposal alter receipt of the information.

By its letter dated 12 November 2014, the Appellant provided to the SEAC a point-wise reply to the information sought along with additional samples on ground water, surface water and soil.

49. The questions framed by the SEAC and responses filed by the Appellant demonstrate that there existed serious deficiencies in the EIA report which was submitted to the SEAC. This included outdated data on the AAQ air analysis, soil quality, forest land and the number of trees to be planted. The SEAC noted certain shortfalls which concerned limited aspects of the EIA report including the baseline data of hardness of borewell water, soil analysis and forest land. In addition to this, the SEAC directed that certain samples collected were to be marked on the map submitted to the SEAC in the EIA Report. Significantly, the SEAC noted the discrepancy concerning the disclosure of the existence of forest land. This aspect shall be explored in the course of the judgment.

50. The SEAC framed questions and sought information which was clarificatory in nature and covered specific substantive aspects of the data submitted in the EIA report. The EIA report on the other hand covers a wide range of matters which include terrain, topography, land requirements, terrain classification, wind and noise pattern analysis, air quality analysis, surface and ground water analysis, soil environment analysis, impact of flora and fauna and environmental monitoring plans.

51. The submission of additional fresh data on a few points raised in the form of a query on behalf of the SEAC does not remedy the general obligation to ensure that the EIA report was prepared within a time period of four years from the date of the issuance of the ToR, relying on primary data that was no older than four years. Merely because some additional information was sought which required the furnishing of additional details and the collection of fresh samples, it cannot be said that such an exercise cures the defect arising from the preparation of an EIA report outside the time period prescribed by the MoEF-CC. Significantly, even at the relevant time when information was sought from the project proponent, both the ToR as well as the primary data upon which the EIA report was prepared was beyond the period of their validity. In such a case, the SEAC, by seeking additional information, has traversed beyond the power conferred upon it under the 2006 Notification.

52. The SEAC proceeded to recommend to the SEIAA the grant of the EC to the PRR project in contravention of the obligations stipulated under the OMs issued by the MoEF-CC. Significantly, the SEAC considered the final EIA report only at its 121st meeting between 11 - 18 November 2014 when the OM dated 22 August 2014 issued by the MoEF-CC was in force. The SEAC was under an obligation to direct the Appellant to conduct the EIA process de novo. The SEAC and the project proponent cannot circumvent the obligation to ensure reliance on contemporary data by seeking additional information beyond the prescribed validity of the ToR and primary data. The SEAC has clearly erred in recommending to the SEIAA the grant of EC despite the non-compliance by the

Appellant with the prescribed time limit for the preparation of the EIA report.

G Deficiencies in the EIA report

G. 1 Accreditation of the EIA consultant

53. In the written submissions submitted by the Appellant, it was contended that the EIA process was undertaken on behalf of the Appellant by M/s. Ramky Enviro Engineers Pvt. Ltd., a non-accredited EIA consultant. This, it was submitted, was in contravention of the OM dated 2 December 2009 issued by the MoEF-CC mandating that only sector-specific accredited EIA consultants should be engaged to carry out the EIA process.

54. The MoEF-CC, by its notification dated 2 December 2009, mandated the registration of EIA consultants under the scheme of Accreditation and Registration of the National Accreditation Board of Education and Training/Quality Council of India. The relevant portion of the notification reads:

> **...**It has been felt in the Ministry that there is a need to enhance the quality of EIA reports as the Consultants generally, undertake preparation of EIA/EMP Reports in many sectors and in some instances without requisite expertise and supporting facilities like laboratories for testing of samples, qualified staff etc. The good quality EIA Reports are prerequisites for improved decision making.
>
> **3 .** After detailed consideration of the issued relating to the accreditation of the Consultants, following decisions have been taken:
>
> > • **All the Consultants/Public Sector Undertaking (PSUs) working in the area of Environmental Impact Assessment would be required to get themselves registered under the scheme of Accreditation and Registration of the NABET/QCI.**
> >
> > • **Consultant would be confined only to the accredited sectors and parameters for bringing in more specificity in the EIA document.**
>
> **4.** It is decided, in the above factual matrix that no EIA/EMP Reports prepared by such Consultants who are not registered with NABET/QCI shall be considered by the Ministry after 30th June, 2010.
>
> (Emphasis supplied)

55. The MoEF-CC prescribed that it is mandatory for every consultant or PSU acting as an EIA consultant to get themselves registered under the accreditation scheme of the NABET/QCI. Moreover, a consultant would be confined to the sector for which they receive accreditation to ensure expertise and specificity in the carrying out of the EIA process. This was also to ensure the availability of facilities like laboratories. It was stated that a good quality EIA report is a precondition for improved decision-making. In the written submissions before this Court, the Appellant urged that M/s. Ramky Enviro Engineers Pvt. Ltd. was hired in November 2009 upon the issuance of the ToRs prior to the coming into force of the OM dated 2 December 2009. Consequently, there was no obligation to engage an accredited consultant for the preparation of the EIA report. Be that as it may, Ramky Enviro Engineers Pvt. Ltd., Hyderabad was granted the status of a

'consultant with accreditation' vide OM dated 30 June 2011 issued by the MoEF-CC. At the time of the preparation of the EIA report which was submitted to the SEAC, the EIA consultant had received accreditation. However, the learned Counsel appearing on behalf of the Respondents has also placed on record a copy of the minutes of the 4th Accreditation Committee Meeting for Re-Accreditation held on 22 November 2013. The case of Ramky Enviro Engineers Pvt. Ltd., Hyderabad was considered in the following terms:

> **21.** Ramky Enviro Engineers Pvt. Ltd., Hyderabad
>
> The case of Ramky Enviro Engineers was discussed earlier in RAAC meeting dated Oct. 28 2013. Inadequacies with respect to a) Variation in names of candidate in list of experts/persons included in EIA b) Implementation of QMS and c) Quality of EIA were observed. Ramky Enviro was asked to explain the reasons for shortfalls to Accreditation Committee (AC)
>
> ...
>
> Results of the Re-accreditation (RA) assessment are given below:
>
> > Ramky Enviro Engineers have scored more than 60% as an organization and therefore qualifies for Cat. A EIA projects. However, in respect of Completeness and quality of EIA, the marks are less that 60% indicating scope of improvement vide points mentioned below in relevant section.
>
> **2.1**.1 Scope of accreditation

Sl. No.	Sector No. as NABET Scheme	Name of Sector	Cat.
1	1	Mining	A
2	40	Thermal Power plants	A
3	20	Petrochemical based processing	A
4	21	Synthetic organic processing	A
5	1	Industrial estate/parks/SEZ	A
6	32	TSDF	A
7	38	Building and Large construction	A
8	39	Area and Township projects	A

56. The Committee noted the deficiencies in the performance of M/s. Ramky Enviro Engineers Pvt. Ltd. as an EIA consultant and indicated a scope for improvement. The Committee then proceeded to record the sectors for which M/s. Ramky is granted accreditation. Conspicuous in its absence is the grant of accreditation for serving as an EIA consultant for highway projects. When the final EIA report for the PRR project was prepared in August/October 2014, M/s. Ramky lacked accreditation to serve as an EIA consultant for highway projects. This aspect shall be borne in mind in deciding the eventual directions which this Court seeks to issue.

G. 2 Forest land

57. Essentially, the contention urged on behalf of the Respondents in its written submissions before this Court is that there was a patent and abject failure on the part of the Appellant as project proponent, to disclose the diversion of forest land for the proposed PRR project. The Appellant, it was contended, concealed material information concerning the diversion of forest land and absent the requisite forest clearance, the EC granted for the PRR project stands vitiated.

58. In the draft EIA report prepared for the PRR project, it was stated:

> The Forest (Conservation) Act, 1980
>
> **...**No forest land is involved in the proposed project. Hence, Forest clearance is not required.

Despite an indication that the proposed PRR project did not involve the diversion of forest land, the draft EIA report stated:

> **...**As per the proposed design, the total forest land to be diverted is estimated to be 1.5 Ha and the chainage wise details of the same are presented as:
>
> Table 2.2 B. Details of Forest Area proposed to be diverted for the Project Road

Sl.No.	Proposed chainage	Length (Km)	Forest	Village	Survey No.	Area of the forest to be diverted in HA
1	Ch 12.000 to 12.500	763 M	Jarakabande kavalu	Yelahanka	59	1.5

The draft EIA report noted that 1.5 hectares of forest land in Jarakabande kavalu is proposed to be diverted between linkages Ch 12.000 and 12.500 for a portion of the proposed road totaling 763 meters. A similar contradiction is noted in the final EIA report prepared in October, 2014:

> Initial portion of the Highway is along protected forest areas. From the site visits and discussion with officials, it is inferred that there are no noticeable habitats or wild or endangered animal habitats along close vicinity of the project road...

The EIA report affirms at numerous places that 1.5 hectares of forest land will be affected by a part of the project. Despite this, the EIA report proceeds to state:

Sl. No	Type of clearance	Statutory Authority	Applicability	Project stage	Responsibility
1	Prior Environmental Clearance under EIA Notification, 2006	SEIAA	Applicable	Pre construction	BDA
2	**Forest Clearance under Forest Conservation Act, 1980**	**Karnataka State and Forest Dept & MoEF**	**Not applicable**	**Pre construction**	**BDA**

59. The EIA report proceeds on the assumption that no forest clearance is required despite the diversion of 1.5 hectares of forest land. No explanation has been provided by the Appellant either in the EIA report or in the written submissions before this Court as to why it was exempt from seeking the requisite forest clearance. The only indication of remedying the loss of forest cover provided in the EIA report is thus:

> **10.4** Afforestation Plan
>
> Affected Area - Around 1.50 Ha.
>
> Area proposed to be afforested - 4.5 Ha (three times the affected area)

> Afforestation Program will be implemented through the Forest Department, BDA and regular monitoring will be ensured.
>
> Land will be identified in consultation with state Forest Department, Bangalore.

The contradictory stand by the Appellant on the forest cover proposed to be diverted for the proposed project was noted by the SEAC in its 115th meeting dated 11-12 August, 2014. The SEAC sought additional information from the Appellant on numerous grounds, of which one concerned the potential loss of forest cover. The SEAC, in its letter to the Appellant, noted the contradictory stand of the Appellant and stated:

> ...16. As per the proposals submitted in page No. 10. "No forest land is involved in the proposed project. Hence forest clearance is not required" whereas in the same proposal page No. 21 "the total forest land to be diverted is estimated to be 1.5ha in the jarakabande kaval at Ch. 12.000" to 12.500. The contradictory information to be explained with documents.

The Appellant furnished a point wise reply to the question raised by the EAC. It replied to the question concerning forest land by stating:

> As per the proposed design the total forest land to be diverted is estimated to be 1.5 ha in the Jarakabande Kaval at Sh. 12.000 to 12.500.
>
> 25 acres of land available in possession with BDA is proposed to be given to Forest Department in lieu of 25 acre of Forest Land (PRR Chainage between 12th and 13th Km in Survey No. 59 of Jarakabande Kaval approved vide by authority Subject No. 80/89 dated 17.03.2009.) needed to PRR.

The Appellant confirmed that 1.5 hectares of forest land is proposed to be diverted. It was stated that in lieu of the 25 acres of forest land required, the Appellant shall make available to the Forest Department 25 acres of land available with it.

60. We cannot gloss over the patent contradiction of the Appellant as the project proponent in disclosing the existence of forest land to be diverted for the purposes of the PRR project. Despite a clear indication that a total 1.5 hectares of forest land is to be diverted for the purpose of the PRR project, the Appellant sought to remedy its failure in seeking the requisite clearances in a post facto manner by stipulating that 25 acres of land available with it is to be given to the forest department in lieu of the forest cover proposed to be diverted for the project. Post facto explanations are inadequate to deal with a failure of due process in the field of environmental governance. While the Appellant submitted to the EAC that it had already obtained the consent of the forest department to divert the proposed forest land, a contradictory stance was taken in the written submissions filed by the Appellant:

> It is stated herein that the PRR passes through 25 acres of forest land situated in Jarakabande Kaval Forest Area, Yelahanka Hobli, Bangalore North Taluk and since the alignment inevitably passed through this, the forest department was requested on 28.08.2018 to handover the forest land to the Appellant for the purpose of the PRR project. Thereafter, the forest department replied on 12.01.2019 requesting for alternate land of 25 acres.

It was stated by the Appellant that it was only on 28 August 2018 that it sought to remedy its failure in obtaining the requisite forest clearance by requesting the forest department to handover the forest area involved in the project. The Appellant, in its

rejoinder filed before this Court states:

> ...**It is admitted that the PRR does indeed pass through the forest land in Jarakabande Kavalu forest area.** It is also pertinent to point out here that the Appellant has also taken necessary steps to ensure that land measuring 25 acres have also been provided as alternate land for the afforestation plan due to the forests to be cleared in the Jarakabande Kavalu forest area as shown in pg. 238 of IA. No. 53243. **The contradictions mentioned in the EIA report have subsequently stood corrected and clarified before the EAC and the SEIAA.**
>
> (Emphasis supplied)

In addition to the admission by the Appellant of the contradictions in the EIA report, it sought to substitute the requisite forest clearance with an agreement with the forest department to provide an alternative site for afforestation. This is not sustainable in law. Compliance with the 2006 Notification and other statutory enactments envisaged in the EIA process cannot be reduced to an ad-hoc mechanism where the project proponent seeks to remedy its abject failure to disclose material information and seek the requisites clearances at a belated stage.

61. The Karnataka SEIAA, in its affidavit before the NGT sought to contend that the EC was granted subject to the Appellant obtaining the required forest clearance. It was stated:

> Forest Area
>
> (b) Environmental Clearance has been provided by SEIAA is for the present alignment of the road as submitted to SEIAA and any change in the scope of the project requires fresh appraisal. In this regard, it may be noted that details of the forest land involved are covered in the Environment Impact Assessment Report. The proponent has decided to provide 25 acres of land available with them to the Forest Department.
>
> It may also be noted that as per law, clearances from other statutory authorities is not mandatory for consideration of the application for Environment Clearance (hereafter, also referred to as "EC") as it is prior Environmental clearance. Nonetheless, specific conditions have been imposed in the EC that such permission shall be obtained by the project proponent.
>
> ...
>
> It is also important to note that the EC is subject to compliance with the conditions requiring obtaining of required clearances from the competent authority in accordance with the applicable law such as prior clearances relating to forests and lakes. Any non-compliance will be construed as a violation of the EC conditions and will be dealt with in accordance with law.

In the view of the Karnataka SEIAA, there was no deficiency in the grant of the EC so long as specific conditions were imposed on the project proponent to seek the requisite clearance.

62. Prior to the notification, prior clearance from regulatory bodies or authorities was not required. The MoEF-CC, by a notification dated 31 March 2011, prescribed the procedure to be followed for projects which involve forest land in the grant of an EC.

The relevant portion reads:

> ...In this regard, reference is also invited to para 8(v) of the EIA notification, 2006 which reads as follows:
>
> > Clearances from other regulatory bodies or authorities shall not be required prior to receipt of applications or prior environmental clearance of projects or activities, or screening, or scoping, or appraisal, or decision by the regulatory authority concerned, unless any of these is sequentially dependent on such clearance either due to a requirement of law, or for necessary technical reasons.
> >
> > ...
> >
> > However, in view of the complexity of the issues involved, the matter has been considered further in the Ministry and in suppression of the earlier instructions, it has now been decided to adopt the following procedure for consideration of such projects.
> >
> > ...
> >
> > I. (B) Projects for which TORs have already been prescribed by the proposal for environmental clearance is yet to be submitted:
> >
> > > In case of the proposals, which involve forestland, in part or it full, and for which TORs have already been prescribed, the project proponents are advised to ensure that the requisite stage-I forestry clearance has been granted and its copy is submitted along with their application/proposal for environmental clearance. Alternatively, the proponent should delete from their land requirement, the forest land involved in the project and the proposal so amended without any forest land may be submitted for appraisal by the EAC.
> > >
> > > In case of projects where forest diversion (Stage I clearance) has been approved for part of the total forest land involved in the project, the proposal will be considered only for the land for which forest diversion has been approved and the non forest land, if any...

63. The MoEF-CC stipulated that where ToRs have been issued and the EIA report for the grant of EC is yet to be submitted, project proponents must ensure that the requisite forest clearance has been granted. A copy of the grant should be submitted along with their application for the grant of EC. Alternatively, the project proponent may delete from the proposed project any forest land that may be affected by the project. The MoEF-CC clarified that where forest clearance has been obtained for only a part of the total forest land involved in the project, the proposal will be considered only to the extent of the land for which forest diversion has been approved.

64. By two subsequent notifications dated 9 September 2011 and 18 May 2012, the procedure concerning the grant of EC for projects involving forest land stood amended in the following terms:

> ...

(ii) At the stage of consideration of proposals for EC in respect of projects involving forestland, the project proponent would inform the respective EACs about the status of their application for forestry clearance along with necessary supporting documents from the concerned Forest Authorities. It will clearly be informed to the EAC whether the application is at the State level or at the Central level. The EAC will take cognizance of the involvement of forestland and its status in terms of forestry clearance and make their recommendations on the project on its merits. After the EAC has recommended the project for environmental clearance, it would be processed on file for obtaining decision of the Competent Authority for grant of environmental clearance. In the cases where the Competent Authority has approved the grant of environmental clearance, the proponent will be informed of the same and a time limit of 12 months, which may be extended in exceptional circumstances to 18 months, a decision on which will be taken by the Competent Authority, will be given to the proponent to submit the requisite stage-I forestry clearance. **The formal environmental clearance will be issued only after the stage-I forestry clearance has been submitted by the proponent.**

(iii) In the eventuality that the stage-I forestry clearance is not submitted by the project proponent within the prescribed time limit mentioned at para (ii) above, as and when the stage-I forestry clearance is submitted thereafter, such projects would be referred to EAC for having **a relook on the proposal on case by case basis depending on the environmental merits of the project and the site.** In such a situation the EAC may either reiterate its earlier recommendations or decide on the need for its reappraisal, as the case may be. In the eventuality, a reappraisal is asked for, the Committee will simultaneously decide on the requirement of documents/information for reappraisal as also the need for a fresh public hearing.

(Emphasis supplied)

65. Project proponents are duty bound to disclose the existence of forest land and inform the SEAC of the status of their application for forest clearance at the time of submitting the EIA report for the grant of the EC. Where the competent authority has granted the EC for a project, the project proponent is then duty bound to obtain and submit to the competent authority the requisite stage I forest clearance for the proposed project within 12 months or 18 months, as the case may be. Where the project proponent fails to submit the requisite forest clearance within the prescribed time, the EAC or the SEAC are authorised to reexamine the project and decide whether there is a need for the reappraisal of the project. The process envisaged for the disclosure of the forest clearance procedure as well as the submission of the grant of forest clearance sub-serves the purpose of ensuring timely and adequate protection of forest land. Where the EAC or the SEAC is of the opinion that additional documents are required upon the failure of the project proponent to submit the requisite forest clearance within the prescribed time, it may direct that a fresh public hearing be conducted.

66. The Appellant attempted to remedy its contradictory stand on the forest land proposed to be diverted and its failure to obtain the requisite forest clearance by submitting to the SEAC an undertaking to ensure afforestation in an alternate plot of land owned by it in collaboration with the forest department. Such a procedure is neither envisaged under the 2006 Notification nor is in compliance with the notifications issued by the MoEF-CC from time to time. Similarly, the SEAC was under an obligation to ensure that the project proponent had complied with the stipulated procedure for the

grant of forest clearance. Instead, the SEAC proceeded on the clarification issued by the Appellant in contravention of the OMs dated 31 March 2011, 9 September 2011 and 18 May 2012. Despite the numerous deficiencies that were noted in the minutes of the SEAC meeting, it proceeded to recommend to the SEIAA the grant of EC for the PRR project. The decision of the SEAC to recommend to the SEIAA the grant of the EC, despite the contradictory stand of the Appellant as well as its failure to furnish adequate reasons as to why it was exempt from seeking forest clearance, suffers from a non-application of mind.

G. 3 Trees

67. In the written submissions filed before this Court, it was contended by the Respondents that there was a material concealment by the project proponent of the number of trees proposed to be felled for the PRR project. While the Appellant stated that only 200 - 500 trees were required to be felled, the number was in fact as high as 16,000 trees. The Appellant, as project proponent, stated in the 2014 EIA report:

> Around 519 plants are felled for the project; the minimum of three times the number of felled plant will be replanted in the nearby areas

The Deputy Conservator of Forests, BDA, in a reply dated 24 April 2009 to a right to information query stated:

> With respect to the information sought under the Right to Information Act, 2005, the number of trees that will be cut for the formation of the Peripheral Ring Road - Part I have been provided below:

Sl. No.	Information sought for	Information provided
	Here is the information sought regarding cutting of trees for the formation of the Peripheral Ring Road Part - I	The below mentioned trees belong to the Horticulture & Forest Department will be cut for the formation of the peripheral ring road Part – I 1. Coconut trees: 3837 2. Mango trees: 3142 3. Guava trees: 1361 4. Sapota trees: 0818 5. Arecanut trees: 0287 6. Jamun trees: 0084 7. Jackfruit trees: 0059 8. Tamarind trees: 0040 9. Teak trees: 0201 10. Silver oak trees: 0028 11. Neem trees: 0028 12. Eucalyptus trees: 7000
	Total	**16,785**

68. The Deputy Conservator of Forests revealed that around 16,785 trees were proposed to be cut for the purpose of executing the PRR project. The abject failure of the project proponent in disclosing the number of trees required to be felled is also evident from the rejoinder filed by Appellant before this Court. It was submitted:

> **13.** In reply to Para No. 6: As had been stated earlier, the clarifications regarding cutting of trees and the corrections have been made subsequently and additionally a further 25 acres of land has been provided for the purpose of afforestation in an alternate piece of land. The same has been shown in pg. 184 of I.A. No. 53243/2019.

The EIA report prevaricated by recording that the area required for the proposed PRR project has only a few trees. Though the development of infrastructure may necessitate the felling of trees, the process stipulated under the 2006 Notification must be transparent, candid and robust. Hiding significant components of the environment from scrutiny cannot be an acceptable method of securing project approvals. There was a serious lacuna in regard to disclosures and appraisal on this aspect of the controversy.

G. 4 Pipelines

69. The EIA process was challenged on the ground that by virtue of a notification dated 12 June 1999, the Central Government acquired certain lands for laying a petroleum pipeline between Mangalore and Bangalore. Petronet MHB Ltd., by its letters dated 7 November 2005 and 21 November 2007 sought to inform the Appellant of the potential crossover of the PRR project over the pipelines. The same was reiterated in its meeting with the Appellant dated 4 February 2008. Petronet MHB Ltd. was of the opinion that as the pipelines contain hazardous material which is highly inflammable, care should be taken to either relocate parts of the project or ensure that adequate safeguards were put in place.

70. The Respondents have placed on record the minutes of the meeting dated 2 February 2008 between the Appellant authority and the representatives of M/S. Petronet MHB Limited. It was noted that the proposed PRR project crosses the PETRONET pipeline at three locations - PRR CH 7600, PRR CH 29100 to 29500 and CH 31100 to 31800 and PRR CH 39500. It was agreed that a joint-inspection would take place for one crossing, while for the other two crossings it was agreed that the PRR project would be raised for clearance height. It was stated:

> The MD, M/S. Petronet MHB Limited agreed that the PRR may be taken over at higher level with a clearance of minimum 5.20 m from the ground level and the crossing shall be preferably at right angles. He also insisted that no supports shall be constructed within their Right of user (ROU) of 18.00.

In this view of the matter, the Appellant sought to take adequate precautions to ensure that the proposed PRR project did not cross a pipeline and where it did, it was at a sufficient height without the use of support pillars. The Respondent contended that that the Appellant was constrained to revert to the proposed alignment prior to the meeting by virtue of various orders passed by the High Court of Karnataka. This shall be dealt with in the directions which this Court seeks to issue.

H Appraisal by the SEAC

71. In addition to the finding that the SEAC erred in recommending to the SEIAA the grant of EC on the basis of an expired ToR and primary data, there is another aspect of the matter that warrants the attention of this Court. The SEAC, in its 121st meeting between 11 - 18 November 2014 proceeded to recommend to the SEIAA the grant of EC for the PRR project. Appraisal by the SEAC is structured and defined by the 2006 Notification. At this stage, the SEAC is required to conduct "a detailed scrutiny" of the application and other documents including the EIA report submitted by the applicant for the grant of an EC. Upon the completion of the appraisal process, the SEAC makes "categorical recommendations" to the SEIAA either for: (i) the grant of a prior EC on stipulated terms and conditions; or (ii) the rejection of the application. Significantly, the recommendations made by the SEAC for the grant of EC, are normally accepted by the SEIAA and must be based on "reasons". At its 121st meeting, the SEAC recorded the following reasons for its recommendations:

PP and environmental consultant were present in the meeting.

PP stated that the project was conceived and the consultant was engaged in 2003 prior to 2006 EIA Notification. Now JICA is insisting for EC.

PP have submitted the compliance for the above queries raised by the committee vide their letter dated 12.11.2014.

After due deliberations the committee decided to recommend the proposal to SEIAA for consideration to issue EC.

PP has submitted an undertaking on the day of the meeting on the following points:

1. To provide pedestrian crossings in the utility crossings facility taking all the precautions.

2. Adequate CD works

3. To maintain Raja Kalave

4. To take up afforestation work separately

5. Major crossings of NH/SH/MDR/VR

6. Accessibility to proposed road from all villages without charging toll.

Action to be taken: Secretary, SEAC to submit the proposal to SEIAA accordingly.

72. The reasons furnished by the SEAC must be assessed with reference to the norm that it is required to submit reasons for its recommendation. The analysis by the SEAC is, to say the least, both perfunctory and fails to disclose the reasons upon which it recommended to the SEIAA the grant of EC for the PRR project. The SEAC proceeds merely on the reply furnished by the Appellant to the queries raised by the SEAC at its 115th meeting dated 11-12 August, 2014. In this view, the procedure followed by the SEAC suffers from a non-application of mind.

73. The SEAC is under an obligation to record the specific reasons upon which it recommends the grant of an EC. The requirement that the SEAC must record reasons, besides being mandatory under the 2006 Notification, is of significance for two reasons: (i) The SEAC makes a recommendation to the SEIAA in terms of the 2006 Notification. The regulatory authority has to consider the recommendation and convey its decision to the project proponent. The regulatory authority, as para 8(ii) of the 2006 Notification provides[17], shall normally accept the recommendations of the EAC. Thus, the role of the SEAC in the grant of the EC for a proposed project is crucial; and (ii) The grant of an EC is subject to an appeal before the NGT Under Section 16 of the NGT Act 2010. The reasons furnished by the SEAC constitute the link upon which the SEIAA either grants or rejects the EC. The reasons form the material which will be considered by the NGT when it considers a challenge to the grant of an EC.

74. In Shreeranganathan K.P. v. Union of India 2014 ALL (I) NGT Reporter (1) (SZ) 1 the grant of an EC to the KGS Aranmula International Airport Project was challenged. The NGT found fault with the process leading upto the grant of the EC since sector specific issues had not been dealt with. The NGT extensively reviewed the information

submitted with regard to the construction of the airport and held thus:

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

The Court held that the EAC had not conducted a proper appraisal given its failure to consider the available material and objections before it. The EAC had thus failed to conduct a proper evaluation of the project prior to forwarding to the regulatory authority its recommendation.

75. In Lafarge Umiam Mining Private Limited v. Union of India MANU/SC/0735/2011 : (2011) 7 SCC 338, an application was made under the 1994 notification for the grant of an EC to a proposed limestone mining project at Nongtrai Village, East Khasi Hills District, Meghalaya. A three judge Bench of this Court rejected the challenge and upheld the grant of the EC to the proposed project. Chief Justice S H Kapadia noted that the doctrine of proportionality must be applied to matters concerning the environment as part of judicial review. The principles of judicial review in environmental matters have been enunciated thus:

> In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognised principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint.

76. The SEAC, as an expert body, must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment and scrutinise the document submitted to it. The SEAC is duty bound to analyse the EIA report. Apart from its failure to repudiate a process conducted beyond the prescribed time period stipulated by the MoEF-CC, the SEAC failed to apply its mind to the abject failure of the Appellant in conducting the EIA process leading upto the submission of the EIA report for the grant of EC. The SEAC is not required to accept either the EIA report or any clarification sent to it by the project proponent. In the absence of cogent reasons by the SEAC for the recommendation of the grant of EC, the process by its very nature, together with the outcome, stands vitiated.

I Courts and the environment

77. Courts today are faced with increasing environmental litigation. A development project that was conceptualized as early as in the year 2005 has surfaced before this Court over 15 years later. The period that has led up to the present litigation has involved a myriad of decisions and processes, each contributing to the delay of a project that was outlined to sub-serve a salient development policy of de-congesting the city. Where project proponents and institutions envisaged under the 2006 Notification abdicate their duty, it is not only the environment that suffers a serious set-back, but also the development of the nation. In the eventual analysis, compliance with the deliberative and streamlined process envisaged for the protection of the environment ensures a symbiotic relationship between the development of the nation and the protection of the environment.

78. The adversarial system is, by its nature, rights based. In the quest for justice, it is not uncommon to postulate a winning side and a losing side. In matters of the environment and development however, there is no trade-off between the two. The protection of the environment is an inherent component of development and growth. Professor Charles E Corker of the University of Washington School of Law said in a speech titled "Litigating the Environment - are we overdoing it?"[18]:

> My answer is yes. We are overdoing our litigation of the environment. I do not mean that there are necessarily too many lawsuits being filed on environmental issues, and that we should somehow cut back - I would not know how, in any case - the number of those suits by ten percent, twenty percent, or fifty percent. I do mean that a disproportionately large share of attention, effort and environmental concern is being focused on lawsuits. Lawsuits cannot accomplish, by themselves, solutions to the most pressing of our environmental problems. As a result, we are in some danger of leaving the most pressing environmental problems unsolved - or even made worse - because the commotion of litigation has persuaded us that something has been accomplished.

Professor Corker draws attention to the idea that the environmental protection goes beyond lawsuits. Where the state and statutory bodies fail in their duty to comply with the regulatory framework for the protection of the environment, the courts, acting on actions brought by public spirited individuals are called to invalidate such actions. Equally important however, is to be cautious that environmental litigation alone is not the panacea in the quest to ensure sustainable development.

79. The protection of the environment is premised not only on the active role of courts, but also on robust institutional frameworks within which every stakeholder complies with its duty to ensure sustainable development. A framework of environmental governance committed to the Rule of law requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, inclusive, participatory and representative decision making. Environmental governance is founded on the Rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognized value Under Article 21 of the Constitution, proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment Under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place.

80. In the present case, as our analysis has indicated, there has been a failure of due process commencing from issuance of the ToR and leading to the grant of the EC for the PRR project. The Appellant, as project proponent sought to rely onan expired ToR and proceeded to prepare the final EIA report on the basis of outdated primary data. At the same time, the process leading to the grant of the EC was replete with contradictions on the existence of forest land to be diverted for the project as well as the number of trees required to be felled.

81. The SEAC, as an expert body abdicated its role and function by relying solely on the responses submitted to it by the Appellant and failing to comply with its obligations under the OMs issued by the MoEF-CC from time to time. In failing to provide adequate reasons for its recommendation to the SEIAA for the grant of an EC, it failed in its fundamental duty of ensuring both the application of mind to the materials presented to it as well as the furnishing of reasons which it is mandated to do under the 2006 Notification.

82. In this view of the matter, neither the process of decision making nor the decision itself can pass legal muster. Equally, this Court must bear in mind the need to balance the development of infrastructure and the environment. We are of the view that while the need for a road project is factored into the decision-making calculus, equal emphasis should be placed on the prevailing state of the environment. The appeal which was filed before the NGT in 2015, was finally disposed of at a belated stage only in 2019.

J Directions

83. Bearing in mind the need to bring about a requisite balance, we propose to issue the following directions Under Article 142 of the Constitution:

(i) The Appellant is directed to conduct a fresh rapid EIA for the proposed PRR project;

(ii) The Appellant shall, for the purpose of conducting the rapid EIA, hire a sector-specific accredited EIA consultant;

(iii) The Appellant shall have due regard to the various deficiencies noted in the present judgment as well as ensure that additional precautions are taken to account for the prevailing state of the environment;

(iv) The Appellant shall ensure that the requisite clearances under various enactments have been obtained and submitted to the SEAC prior to the consideration by it of the information submitted by the Appellant in accordance with the OMs issued by the MoEF-CC from time to time;

(v) The SEAC shall thereafter assess the rapid EIA report and other information submitted to it by the Appellant in accordance with the role assigned to it under the 2006 Notification. If it is of the opinion that the Appellant has complied with the 2006 Notification as well as the directions issued by this Court, only then shall it recommend to the SEIAA the grant of EC for the proposed project. The SEAC and the SEIAA would lay down appropriate conditions concerning air, water, noise, land, biological and socioeconomic environment and other conditions it deems fit; and

(vi) The Appellant shall consult the requisite authority to ensure that no

potential damage is caused by the project to the petroleum pipelines over which the proposed road may be constructed.

84. In moulding the above directions, this Court has factored into its decision-making calculus the fact that the appeal from the judgment of the NGT was filed by the project proponent and no appeal was filed by the Respondents. The order of the NGT directing the Appellant to conduct a rapid EIA is upheld, though for the reasons which we have indicated above. We clarify that no other Court or Tribunal shall entertain any challenge to the ultimate decision of the SEAC or the SEIAA. Liberty is granted to the parties to approach this Court upon any grievance from the decision of the SEAC or the SEIAA pursuant to the order of this Court.

85. The appeal is disposed of in the above terms. There shall be no order as to costs.

Pending application(s), if any, shall stand disposed of.

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[1]NGT
[2]EC
[3]PRR
[4]EIA
[5]SEIAA
[6]BDA Act
[7]WP No. 4550/2008
[8]No. BDA/EM/TA3/PRR/EIA/T333/09-10
[9]2006 notification
[10]ToR
[11]SEAC
[12]MoEF, later renamed as MoEFCC in 2014
[13]"Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as notified by the Central Pollution Control Board from time to time, (iii) Notified Eco-sensitive areas, (iv) inter-State boundaries and international boundaries."
[14]NHAI
[15]Notifications dated 11 November 2007, 1 December 2009, 4 April 2011 and 22 August 2013.
[16]IRC
[17]"(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned..."
[18]Speech to the Thirteenth Annual Meeting of the Interstate Conference on Water Problems, Portland, Oregon delivered on 29 October, 1970.

MANU/SC/0239/2004

Equivalent/Neutral Citation: 2004(18)AIC565, 2004(5)ALLMR(SC)719, 2004(4)ALT2(SC), 2004 (2) AWC 1709 (SC), 2004(106(2))BOMLR823, 2004(2)CLJ(SC)31, 2004 INSC 165, JT2004(5)SC386, 2004(3)SCALE369, (2004)3SCC445, [2004]2SCR1135, 2004(2)UJ1213

IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 960-961 of 2002

Decided On: 11.03.2004

Piedade Filomena Gonslves **Vs.** State of Goa and Ors.

Hon'ble Judges/Coram:
R.C. Lahoti and A.R. Lakshmanan, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Ashok Grover, Sr. Adv., Anupama Grover, V.K. Singh and T.N. Singh, Advs

For Respondents/Defendant: T.L. Vishwanatha Iyer, Sr. Adv. and A. Subhashini, Adv.

Case Note:
Housing - Construction of house within 200 metres from High Tide Line without permission--And in violation of Coastal Regulation Zone notifications--Such construction cannot be lightly condoned--High Court justified in directing its demolition.

JUDGMENT

1. The appellant is in possession of a piece of property included in survey No. 54/4 located within the jurisdiction of village panchayat of Colva, Salcete, Goa. It is the appellant's own case, vide para 4 of the writ petition, that earlier there existed a structure of thatched roof supported by laterite stone pillars, which structure was used by sun bathers and visitors. However, in place of old construction, appellant commenced putting up fresh construction which resulted into a pucca building coming up in existence in place of the old structure.

2. The new building is now structure of laterite stones and cement with a concrete roof. This construction was commenced on 13.7.1994 and completed on 17.8.1994. Two writ petitions came to be filed in the High Court of Bombay at Goa. CWP No. 76 of 1995 was filed by the appellant's neighbour seeking demolition of the construction put up by the appellant. CWP No. 237 of 1999 was filed by the appellant seeking protection of the construction raised by her. The petitioner in CWP No. 76 of 1995 alleged the appellant's construction to be unauthorised and also violative of High Tide Line in Coastal Region Zone within which no construction is permissible. The Case of the appellant in writ petition No. 237 of 1999 was that the construction put up by her was beyond 200 metres from High Tide Line, and therefore, permissible and that although the appellant's construction was not supported by previous permission by the authorities, the same could be regularised. The High Court allowed the writ petition No. 76 of 1995 while dismissing the appellant's writ petition No. 237 of 1999. The High Court directed the construction put up by the appellant to be demolished.

3. Feeling aggrieved by the common judgment disposing of the two writ petitions, the appellant has filed these appeals by special leave. The learned senior counsel for the

appellant has reiterated the same two contentions which were advanced before the High Court. Forceful reliance has been placed on the judgment of the High Court of Bombay delivered by a Division Bench on 25.9.1996 in Writ Petition No. 102 of 1996 titled The Goa Foundation and Anr. v. State of Goa and Ors., wherein the High court has issued directions in the matter of determining the High Tide Line on the basis of Hydrographic charts prepared by the Naval Hydrographic Office. The learned senior counsel for the appellant submitted that such a direction issued by the Division Bench of the High court in another writ petition has been accepted by the respondents and therefore, unless and until the High Tide Line has been determined in compliance with the direction issued by the High court on 25.9.1996, the construction raised by the appellant should not be demolished.

4. We do not think that any fault can be found with the judgment of the High Court and the appellant can be allowed any relief in exercise of the jurisdiction conferred on this Court under Article 136 of the constitution. Admittedly, the construction which the appellant has raised is without permission. Assuming it for a moment that the construction, on demarcation and measurement afresh and on HTL being determined, is found to be beyond 200 metres of HTL, it is writ large that the appellant has indulged into misadventure of raising a construction without securing permission from the competent authorities. That apart, the learned counsel for the respondents has rightly pointed out that the direction of the High Court in the matter of demarcation and determination of HTL is based on the amendment dated 18.8.1994 introduced in the notification dated 19.2.1991 entitled the Coastal Regulation Zone notification issued in exercise of the power conferred by Section 3(1) and Section 3(2)(v) of the Environment Protection Act, 1986, while the appellant's construction was completed before the date of the amendment and therefore, the appellant cannot take benefit of the order dated 25.9.96 passed in writ petition No. 102 of 1996.

5. It is pertinent to note that during the pendency of the writ petition, the appellant had moved two applications, one of which is dated 11.7.1995, for the purpose of regularisation of the construction in question. Goa State Coastal Committee for Environment-the then competent body constituted a sub-committee which inspected the site and found that the entire construction raised by the appellant fell within 200 metres of the HTL and the construction had been carried out on existing sand dunes. The Goa State Coastal Committee for Environment, in its meeting dated 20.10.1995, took a decision inter alia holding that the entire construction put up by the appellant was in violation of the Coastal Regulation Zone Notification.

6 . The Coastal Regulation Zone notifications have been issued in the interest of protecting environment and ecology in the coastal area. Construction raised in violation of such regulations cannot be lightly condoned. We do not think that the appellant is entitled to any relief. No fault can be found with the view taken by the High Court in its impugned judgment.

7. The appeals are held devoid of any merit and are dismissed accordingly.

रजिस्ट्री सं० डी० एल०-33004/99 REGD. NO. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

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पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय

अधिसूचना

नई दिल्ली, 14 मार्च, 2017

का.आ. 804(अ).—पर्यावरण (संरक्षण) नियम 1986 के नियम 5 के उपनियम (3) की अपेक्षानुसार, पर्यावरण (संरक्षण) अधिनियम 1986 (1986 का 29) की धारा 3 की उपधारा (1) और उपधारा (2) के खंड (v) के अधीन भारत के राजपत्र, असाधारण, भाग II, खंड 3, उपखंड (ii) में अधिसूचना सं. का.आ. 1705(अ) तारीख 10 मई, 2016, पर्यावरणीय अनापत्ति के निदेश निबंधनों को अनुदत्त करने के लिए परियोजनाओं के मूल्यांकन की प्रक्रिया को पूरा करने के लिए, जिनमें स्थल पर कार्य आरंभ कर दिया है, पर्यावरणीय अनापत्ति की सीमा से परे उत्पादन का विस्तार किया है या पर्यावरण संघात अधिसूचना 2006 के अधीन पूर्व पर्यावरण अनापत्ति अभिप्राप्त किए बिना उत्पाद मिश्रण में परिवर्तन किया है, द्वारा उन सभी व्यक्तियों से, जिनके उससे प्रभावित होने की संभावना थी, उस तारीख से जिसको उस राजपत्र की प्रतियां, जिसमें यह अधिसूचना अंतर्विष्ट है, उपलब्ध करा दी जाती हैं, साठ दिन की अवधि के भीतर आक्षेप और सुझाव आमंत्रित करते हुए एक प्रारूप अधिसूचना प्रकाशित की गई थी ;

2. और उक्त राजपत्र की प्रतियां जनता को 10 मई, 2016 को उपलब्ध करा दी गई थीं ;

3. और पूर्वोक्त वर्णित प्रारूप अधिसूचना पर प्राप्त सभी सुझावों या आक्षेपों पर केंद्रीय सरकार द्वारा सम्यक्तः विचार कर लिया गया है ;

4. पर्यावरण (संरक्षण) अधिनियम, 1986 के उपबंधों के अध्यधीन, अधिनियम की धारा 3 की उपधारा (1) के अधीन केंद्रीय सरकार को ऐसे सभी उपाय करने की शक्ति है, जो वह पर्यावरण की क्वालिटी के संरक्षण और सुधार तथा पर्यावरण प्रदूषण को रोकने, नियंत्रित करने और समाप्त करने के प्रयोजनों के लिए आवश्यक और समीचीन समझती है ;

5. पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 5 केंद्रीय सरकार को निदेश देने के लिए सशक्त करती है, जो इस प्रकार है "केंद्रीय सरकार किसी अन्य विधि में किसी बात के होते हुए भी, किन्तु इस अधिनियम के उपबंधों के अधीन रहते हुए इस अधिनियम के अधीन अपनी शक्तियों के प्रयोग और अपने कृत्यों के निर्वहन में किसी व्यक्ति, अधिकारी या प्राधिकरण को लिखित निदेश दे सकेगी और ऐसा व्यक्ति, अधिकारी या प्राधिकरण ऐसे निदेशों का अनुपालन करने के लिए आबद्ध होगा ;

6. पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय ने उल्लंघन के मामलों में पर्यावरणीय अनापत्ति अनुदत्त करने के लिए प्रक्रिया स्थापित करने के लिए तारीख 12.12.2012 और तारीख 27.06.2013 को एक कार्यालय ज्ञापन जारी किया है ;

7. हिन्दुस्तान कापर लिमिटेड बनाम भारत संघ के मामले में 2014 की रिट याचिका (सिविल) सं0 2364 में माननीय झारखंड उच्च न्यायालय के तारीख 28 नवंबर, 2014 के आदेश के अनुसरण में माननीय न्यायालय ने यह अभिनिर्धारित किया कि तारीख 12 दिसंबर, 2012 के कार्यालय ज्ञापन के अधीन पैरा सं0 5(i) और पैरा सं0 5(ii) की शर्तें अवैध और असंवैधानिक थीं और न्यायालय ने यह और अभिनिर्धारित किया कि अभिकथित अतिक्रमण की कार्रवाई स्वतंत्र कार्यवाही और पृथक् कार्यवाही होगी और इसलिए पर्यावरण अनापत्ति के लिए प्रस्ताव पर विचार करने के लिए परियोजना प्रस्तावक के विरुद्ध कार्रवाई आरंभ करने की प्रतीक्षा नहीं की जा सकती । माननीय न्यायालय ने यह व्यवस्था और दी कि पर्यावरण अनापत्ति के प्रस्ताव की परीक्षा इसके गुणागुण, पर्यावरण विधियों के अभिकथित अतिक्रमण के लिए किसी प्रस्तावित कार्रवाई से मुक्त आधार पर की जानी चाहिए ;

8. और राष्ट्रीय हरित अधिकरण की प्रधान न्यायपीठ ने 2015 के मूल आवेदन सं0 37 तथा 2015 के मूल आवेदन सं0 213 में तारीख 7 जुलाई, 2015 के अपने आदेश द्वारा यह अभिनिर्धारित किया कि पर्यावरण (संरक्षण) अधिनियम, 1986 या पर्यावरण समाघात निर्धारण अधिसूचना, 2006 तथा तटीय विनियमन जोन अधिसूचना, 2011 के अतिक्रमणों वाले निर्देश के निबंधनों या पर्यावरण अनापत्ति या तटीय विनियमन जोन अनापत्ति के प्रस्तावों पर विचार के विषय पर तारीख 12 दिसंबर, 2012 और 24 जून, 2013 के कार्यालय ज्ञापन पर्यावरण समाघात निर्धारण अधिसूचना, 2006 के उपबंधों को परिवर्तित या संशोधित नहीं कर सकते थे और अधिकरण ने उसे अपास्त कर दिया था ;

9. और पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय तथा राज्य पर्यावरण समाघात निर्धारण प्राधिकरण को कतिपय प्रस्ताव, निर्देशों के निबंधनों और पर्यावरणीय अनापत्ति के लिए पर्यावरण समाघात निर्धारण अधिसूचना, 2006 के अधीन ऐसी परियोजनाओं के लिए प्राप्त हो रहे हैं, जिन्होंने स्थल पर कार्य आरंभ कर दिया है, पर्यावरणीय अनापत्ति की सीमा से परे उत्पादन का विस्तार किया है या पूर्व पर्यावरणीय अनापत्ति को प्राप्त किए बिना उत्पाद मिश्रण में परिवर्तन कर दिया है ;

10. पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय ने पर्यावरण की क्वालिटी के संरक्षण और उसमें सुधार के प्रयोजन के लिए और पर्यावरणीय प्रदूषण का उपशमन करने के लिए यह आवश्यक समझा कि वह सभी निकाय, जो पर्यावरण संघात निर्धारण अधिसूचना, 2006 के अधीन पर्यावरण विनियम का अनुपालन नहीं कर रहे हैं, को समीचीन रीति में पर्यावरणीय विधियों की अनुपालना के लिए उसके अंतर्गत लाया जाए ;

11. और पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय ऐसी परियोजनाओं और क्रियाकलापों को शीघ्रतम पर्यावरणीय विधियों की अनुपालना के अधीन लाना आवश्यक समझता है न कि उन्हें अविनियमित और बिना किसी जांच के छोड़ना, जो पर्यावरण के लिए अधिक नुकसानदायक होगा तथा इस उद्देश्य को अग्रसर करने के लिए भारत सरकार ऐसी सत्ताओं को, जो अननुपालक थे, अनुपालक बनाने के लिए समुचित रक्षोपायों के साथ पर्यावरणीय अनापत्ति प्रदान करना आवश्यक समझती है, प्रक्रिया ऐसी होनी चाहिए, जो पर्यावरण समाघात निर्धारण अधिसूचना, 2006 के उपबंधों के उल्लंघन पर रोक लगाए, जिससे अननुपालना और अननुपालना के धनीय लाभ भयोपरित हों तथा पर्यावरण के नुकसान के लिए समुचित रूप से प्रतिकर हो ;

12. और माननीय उच्चतम न्यायालय ने इंडियन काउंसिल फार एन्वायरो-लीगल एक्शन बनाम भारत संघ (बिछड़ी गांव औद्योगिक प्रदूषण का मामला) में 13 फरवरी, 1996 को निर्णय देते समय विधि के सभी सुसंगत उपबंधों का विश्लेषण किया और यह निष्कर्ष दिया कि पर्यावरण (संरक्षण) अधिनियम, 1986 के अधीन नुकसानी की वसूली की जा सकती है (1996(3) एससीसी 212) । माननीय न्यायालय ने यह संप्रेक्षित किया कि पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 केंद्रीय सरकार (या, यथास्थिति, उसके प्रतिनिधि) को "ऐसे सभी उपाय करने, जो वह पर्यावरण की क्वालिटी के संरक्षण और सुधार के प्रयोजन के लिए आवश्यक या समीचीन समझे....." अभिव्यक्त रूप से सशक्त करती है । धारा 5 केंद्रीय सरकार (या उसके प्रतिनिधि) को अधिनियम के उद्देश्यों को प्राप्त करने के लिए निदेश जारी करने की शक्ति प्रदान करती है । धारा 2(क), धारा 3 और धारा 5 में "पर्यावरण" की विस्तृत परिभाषा के अनुसार केंद्रीय सरकार को ऐसी सभी शक्तियां हैं, जो "पर्यावरण की क्वालिटी के संरक्षण और सुधार के प्रयोजन के लिए आवश्यक या समीचीन" हैं । केंद्रीय सरकार, ऐसे सभी उपाय करने और ऐसे सभी निदेश जारी करने के लिए सशक्त है, जो पूर्वोक्त प्रयोजन के लिए आवश्यक हो । इस मामले में उक्त शक्तियों के अंतर्गत गाढे कीचड़ को हटाने, उपचारिक उपाय करने और उपचारिक उपाय करने की लागत को उल्लंघन करने वाले उद्योग पर अधिरोपित करने की शक्ति भी है तथा इस प्रकार वसूल की गई रकम का, उपचारिक उपायों को कार्यान्वित करने के लिए उपयोग करना भी है । माननीय न्यायालय ने यह और संप्रेक्षित किया है कि उपचारिक उपायों को कार्यान्वित करने के लिए अपेक्षित लागत का उद्ग्रहण धारा 3 और धारा 5 में अंतर्निहित है, जिसे अत्यधिक विस्तृत और व्यापक भाषा में व्यक्त किया गया है । पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 और धारा 5 जल और वायु अधिनियमों के अन्य उपबंधों के अतिरिक्त सरकार को ऐसे सभी निदेश करने के लिए और ऐसे सभी उपाय करने के लिए सशक्त करते हैं, जो "पर्यावरण" के संरक्षण और संवर्धन के लिए आवश्यक या समीचीन हों, जिस अभिव्यक्ति को पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 2(क) में अत्यधिक विस्तृत और व्यापक शब्दों में परिभाषित किया गया है । इस शक्ति के अंतर्गत किसी उद्योग कि निकट किसी क्रियाकलाप को प्रतिषिद्ध करने, उपचारिक उपायों को कार्यान्वित करने का निदेश देने और जहां कहीं आवश्यक हो, उल्लंघन करने वाले उद्योग पर उपचारिक उपायों

की लागत अधिरोपित करने की शक्ति भी है । प्रत्यर्थियों के उपचारिक उपायों की लागत की अदायगी के दायित्व का प्रश्न दूसरे दृष्टिकोण से भी देखा जा सकता है, जिसे अब सार्वभौमिक रूप से ठोस सिद्धांत के रूप में स्वीकार किया गया है, जैसे "प्रदूषणकर्ता संदाय करता है" का सिद्धांत । "प्रदूषणकर्ता संदाय करता है, सिद्धांत की यह मांग है कि प्रदूषण द्वारा कारित नुकसान को रोकने या उसका उपचार करने की वित्तीय लागत इस वचनबंध, कि जो प्रदूषण कारित करता है या ऐसे माल का उत्पादन करता है, जो प्रदूषण कारित करता है, के साथ होती है ।"

13. (1) इसलिए अब, केंद्रीय सरकार, पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उपनियम (3) के खंड (घ) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उपधारा (1) और उपधारा (2) के खंड (i) के उपखंड (क) और खंड (v) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निदेश देती है कि परियोजना या क्रियाकलाप या विद्यमान परियोजनाओं का विस्तार या आधुनिकीकरण या क्रियाकलाप, जिनके द्वारा पर्यावरण संघात निर्धारण अधिसूचना, 2006 के अधीन पूर्व पर्यावरणीय अनापत्ति अपेक्षित है भारत के किसी भाग में, यथास्थिति, केंद्रीय सरकार द्वारा उक्त अधिनियम की धारा 3 की उपधारा (3) के अधीन गठित केंद्रीय सरकार या राज्य स्तरीय पर्यावरण संघात निर्धारण प्राधिकरण से पूर्व पर्यावरणीय अनापत्ति प्राप्त किए बिना, जिसमें प्रक्रिया या प्रौद्योगिकी में परिवर्तन के साथ क्षमता में वर्धन या दोनों को शामिल किया गया है, को पर्यावरण संघात निर्धारण अधिसूचना, 2006 के उल्लंघन का मामला माना जाएगा और उससे निम्नलिखित रीति में विनिर्दिष्ट प्रक्रिया के अनुसार व्यौहार किया जाएगा ;

(2) उस दशा में, जब पर्यावरण समाघात निर्धारण अधिसूचना, 2006 के अधीन संबंधित विनियामक प्राधिकरण से पूर्व पर्यावरणीय अनापत्ति की अपेक्षा वाली परियोजनाएं या क्रियाकलाप संनिर्माण कार्य आरंभ करने के पश्चात् पर्यावरणीय अनापत्ति के लिए लायी जाती हैं या जिन्होंने पूर्व पर्यावरणीय अनापत्ति के बिना विस्तार, आधुनिकीकरण और उत्पाद मिश्रण में परिवर्तन किया है, उन परियोजनाओं को अतिक्रमण के मामले के रूप में समझा जाएगा और ऐसे मामलों में यहां तक कि प्रवर्ग ख की परियोजनाएं, जिन्हें पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उपधारा (3) के अधीन गठित राज्य पर्यावरण संघात निर्धारण प्राधिकरण द्वारा पर्यावरणीय अनापत्ति अनुदत्त की गई है, का पर्यावरणीय अनापत्ति अनुदत्त करने के लिए विशेषज्ञ मूल्यांकन समिति द्वारा ही मूल्यांकन किया जाएगा और पर्यावरणीय अनापत्ति केंद्रीय स्तर पर अनुदत्त की जाएगी ।

(3) उल्लंघन के मामलों में पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 19 के उपबंधों के अधीन संबंधित राज्य या राज्य प्रदूषण नियंत्रण बोर्ड द्वारा परियोजना प्रस्तावक के विरुद्ध कार्रवाई की जाएगी और इसके अतिरिक्त परियोजना को पर्यावरण अनापत्ति अनुदत्त किए जाने तक प्रचालन करने के लिए या अधिभोग प्रमाणपत्र जारी किए जाने के लिए अनुमति नहीं दी जाएगी ।

(4) पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उपधारा (3) के अधीन गठित संबंधित क्षेत्र विशेषज्ञ मूल्यांकन समिति द्वारा उल्लंघन के मामलों का यह मूल्यांकन करने के लिए निर्धारण किया जाएगा कि परियोजना का ऐसे स्थल पर संनिर्माण किया गया है जो लागू विधियों के अधीन अनुज्ञेय है और विस्तार किया गया है, जिसको पर्याप्त पर्यावरणीय सुरक्षोपायों के साथ पर्यावरणीय मानकों की अनुपालना के अधीन भरणीय रूप से चलाया जा सकता है ; और उस दशा में जहां विशेषज्ञ मूल्यांकन समिति का निष्कर्ष नकारात्मक है, विधि के अधीन अन्य कार्रवाईयों के साथ परियोजना को बंद करने की सिफारिश की जाएगी ।

(5) उस दशा में जहां पूर्वोक्त उप पैरा (4) के बिन्दु पर विशेषज्ञ मूल्यांकन समिति के निष्कर्ष सकारात्मक हैं, इस प्रवर्ग के अधीन परियोजनाओं को पर्यावरण संघात निर्धारण करने और पर्यावरणीय प्रबंधन योजना तैयार करने के लिए समुचित निदेश निबंधनों के साथ विहित किया जाएगा । इसके अतिरिक्त विशेषज्ञ मूल्यांकन समिति पारिस्थितिकीय नुकसान, सुधारकारी योजना और प्राकृतिक तथा सामुदायिक संसाधन आवर्धन योजना के निर्धारण पर परियोजना के विशिष्ट निदेश निबंधनों को विहित करेगी और उनको प्रत्यायित परामर्शदाताओं द्वारा पर्यावरण संघात निर्धारण रिपोर्ट में एक स्वतंत्र अध्याय के रूप में तैयार किया जाएगा । पारिस्थितिकीय नुकसान, सुधारकारी योजना तैयार करने और प्राकृतिक तथा सामुदायिक संसाधन आवर्धन योजना के निर्धारण के लिए डाटा का संग्रहण और विश्लेषण, पर्यावरण (संरक्षण) अधिनियम, 1986 के अधीन सम्यकता अधिसूचित प्रयोगशाला या राष्ट्रीय जांच और अशांकन प्रत्यायन बोर्ड द्वारा प्रत्यायित प्रयोगशाला या वैज्ञानिक और औद्योगिक अनुसंधान परिषद् की पर्यावरण के क्षेत्र में कार्य कर रही प्रयोगशाला द्वारा किया जाएगा ।

(6) विशेषज्ञ मूल्यांकन समिति, पर्यावरणीय प्रबंधन योजना, सुधारकारी योजना और प्राकृतिक तथा सामुदायिक संसाधन आवर्धन योजना से मिलकर बनने वाली पर्यावरणीय प्रबंधन योजना को उपदर्शित करेगी, जो कि मूल्यांकन किए गए पर्यावरणीय नुकसान और पर्यावरणीय अनापत्ति की शर्त के उल्लंघन के कारण उदभूत आर्थिक फायदे की तत्स्थानी होगी ।

(7) परियोजना प्रस्तावक से सुधारकारी योजना और प्राकृतिक तथा सामुदायिक संसाधन आवर्धन योजना की रकम के समतुल्य बैंक प्रत्याभूति को राज्य प्रदूषण नियंत्रण बोर्ड के पास प्रस्तुत करने की अपेक्षा होगी और मात्रा की सिफारिश विशेषज्ञ मूल्यांकन समिति द्वारा की जाएगी और इसको विनियामक प्राधिकरण द्वारा अंतिम रूप दिया जाएगा तथा बैंक प्रत्याभूति को पर्यावरणीय अनापत्ति अनुदत्त करने

से पूर्व जमा किया जाएगा और उसे मंत्रालय के प्रादेशिक कार्यालय, विशेषज्ञ मूल्यांकन समिति तथा विनियामक प्राधिकरण के अनुमोदन के पश्चात् सुधारकारी योजना और प्राकृतिक तथा सामुदायिक संसाधन आवर्धन योजना के सफलतापूर्वक कार्यान्वयन के पश्चात् निर्मुक्त किया जाएगा ।

14. ऐसी परियोजनाएं और क्रियाकलाप, जो इस अधिसूचना की तारीख को उल्लंघनकारी हैं, इस अधिसूचना के अधीन पर्यावरणीय अनापत्ति के लिए आवेदन करने के पात्र होंगे और परियोजना प्रस्तावक इस अधिसूचना के अधीन पर्यावरणीय अनापत्ति के लिए केवल इस अधिसूचना की तारीख से छह मास के भीतर ही आवेदन कर सकते हैं ।

[फा. सं. 22-116/2015-आईए-III]

मनोज कुमार सिंह, संयुक्त सचिव

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE
NOTIFICATION

New Delhi, the 14th March, 2017

S.O. 804(E).—Whereas, a draft notification under sub-section (1), and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986) was published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii), *vide* number S.O. 1705(E), dated the 10th May, 2016, as required by sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, for finalising the process for appraisal of projects for grant of Terms of Reference and Environmental Clearance, which have started the work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance under the Environment Impact Assessment Notification, 2006 inviting objections and suggestions from all persons likely to be affected thereby within a period of sixty days from the date on which copies of Gazette containing the said notification were made available to the public;

2. And whereas, copies of the said notification were made available to the public on the 10th May, 2016;

3. And whereas, all objections and suggestions received in response to the above mentioned draft notification have been duly considered by the Central Government.

4. Whereas, subject to the provisions of the Environment (Protection) Act, 1986, under sub-section (1) of section 3 of the Act, the Central Government has the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling, and abating environment pollution;

5. Whereas, section 5 of the Environment (Protection) Act, 1986 empowers the Central Government to give directions which reads as "Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions;

6. Whereas the Ministry of Environment, Forest and Climate Change issued Office Memoranda dated 12.12.2012 and 27.06.2013 to establish a process for grant of environmental clearance to cases of violation.

7. Whereas, the Hon'ble High Court of Jharkhand had passed an order dated the 28th November, 2014 in W.P. (C) No. 2364 of 2014 in the matter of Hindustan Copper Limited *Versus* Union of India in which the High Court held that the conditions laid down under Office Memorandum dated 12th December, 2012 in paragraph No. 5 (i) and 5 (ii) were illegal and unconstitutional and had further held that action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance could not await initiation of action against the project proponent. The Hon'ble Court further ruled that the proposal for environment clearance must be examined on its merits, independent of any proposed action for alleged violation of the environmental laws;

8. And whereas, Hon'ble National Green Tribunal, Principal Bench *vide* its order dated 7th July, 2015 in Original Application No. 37 of 2015 and Original Application No. 213 of 2015 had also held that the Office Memoranda dated 12th December, 2012 and 24th June, 2013 on the subject of consideration of proposals for Terms of Reference or Environment Clearance or Coastal Regulation Zone Clearance involving violations of the Environment (Protection) Act, 1986 or Environment Impact Assessment Notification, 2006 Coastal Regulation Zone Notification, 2011 could not alter or amend the provisions of the Environment Impact Assessment notification, 2006 and had quashed the same;

9. And whereas, the Ministry of Environment, Forest and Climate Change and State Environment Impact Assessment Authorities have been receiving certain proposals under the Environment Impact Assessment Notification, 2006 for grant of Terms of References and Environmental Clearance for projects which have started the work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance;

10. Whereas, the Ministry of Environment, Forest and Climate Change deems it necessary for the purpose of protecting and improving the quality of the environment and abating environmental pollution that all entities not complying with environmental regulation under Environment Impact Assessment Notification, 2006 be brought under compliance with in the environmental laws in expedient manner;

11. And whereas, the Ministry of Environment, Forest and Climate Change deems it necessary to bring such projects and activities in compliance with the environmental laws at the earliest point of time, rather than leaving them unregulated and unchecked, which will be more damaging to the environment and in furtherance of this objective, the Government of India deems it essential to establish a process for appraisal of such cases of violation for prescribing adequate environmental safeguards to entities and the process should be such that it deters violation of provisions of Environment Impact Assessment Notification, 2006 and the pecuniary benefit of violation and damage to environment is adequately compensated for;

12. And whereas, Hon'ble Supreme Court in *Indian Council for Enviro-Legal Action Vs. Union of India* (the Bichhri village industrial pollution case), while delivering its judgment on 13th. February, 1996, analyzed all the relevant provisions of law and concluded that damages may be recovered under the provisions of the Environment (Protection) Act, 1986 (1996 [3] SCC 212). The Hon'ble Court observed that …… section 3 of the Environment (Protection) Act, 1986 expressly empowers the Central Government [or its delegate, as the case may be] to "take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment.....". Section 5 clothes the Central Government [or its delegate] with the power to issue directions for achieving the objects of the Act. Read with the wide definition of "environment" in Section 2 (a), Sections 3 and 5 clothe the Central Government with all such powers as are "necessary or expedient for the purpose of protecting and improving the quality of the environment". The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilize the amount so recovered for carrying out remedial measures…….. Hon'ble Court has further observed that levy of costs required for carrying out remedial measures is implicit in Sections 3 and 5 which are couched in very wide and expansive language. Sections 3 and 5 of the Environment (Protection) Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the `environment', which expression has been defined in very wide and expansive terms in Section 2 (a) of the Environment (Protection) Act. This power includes the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry. The question of liability of the respondents to defray the costs of remedial measures can also be

looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the "Polluter Pays" Principle. "The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution".

13 (1). Now, therefore, in exercise of the powers conferred by sub-section (1) and sub clause (a) of clause (i) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986; the Central Government hereby directs that the projects or activities or the expansion or modernisation of existing projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 entailing capacity addition with change in process or technology or both undertaken in any part of India without obtaining prior environmental clearance from the Central Government or by the State Level Environment Impact Assessment Authority, as the case may be, duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act, shall be considered a case of violation of the Environment Impact Assessment Notification, 2006 and will be dealt strictly as per the procedure specified in the following manner:-

(2) In case the projects or activities requiring prior environmental clearance under Environment Impact Assessment Notification, 2006 from the concerned Regulatory Authority are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernization, and change in product- mix without prior environmental clearance, these projects shall be treated as cases of violations and in such cases, even Category B projects which are granted environmental clearance by the State Environment Impact Assessment Authority constituted under sub-section (3) Section 3 of the Environment (Protection) Act, 1986 shall be appraised for grant of environmental clearance only by the Expert Appraisal Committee and environmental clearance will be granted at the Central level.

(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.

(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law.

(5) In case, where the findings of the Expert Appraisal Committee on point at sub-para (4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment.

(6) The Expert Appraisal Committee shall stipulate the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.

(7) The project proponent will be required to submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with the State Pollution Control Board and the quantification will be recommended by Expert Appraisal Committee and finalized by Regulatory Authority and the bank guarantee shall be deposited prior to the grant of environmental clearance and will be released after successful implementation of the remediation plan and Natural and Community Resource Augmentation Plan, and after the recommendation by regional office of the Ministry, Expert Appraisal Committee and approval of the Regulatory Authority.

14. The projects or activities which are in violation as on date of this notification only will be eligible to apply for environmental clearance under this notification and the project proponents can apply for environmental clearance under this notification only within six months from the date of this notification.

[F. No. 22-116/2015-IA-III]

MANOJ KUMAR SINGH, Jt. Secy.

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