O/C

CREDAI - MCHI

Ref. No. MCHI/PRES/24-25/229
Date: 16/01/2025

To
Shri Bhupender ji Yadav,
Hon'ble Minister of Environment, Forests & Climate Change, (MoEF & CC),
Government of India
Indira Paryavaran Bhawan, Jor Bagh Road,
New Delhi-110003

Reg-AD

Subject: Request for Intervention to Expedite Final Notification Regarding Stay on Environmental Approvals

Ref: 1) Bhopal NGT order dated 5th August 2024
2) MoEF&CC draft notification SO 4844E dated 7th November 2024

Respected sir,

We write to bring to your kind attention an urgent matter impacting the real estate sector in Maharashtra. The stay on environmental approvals, imposed by the Hon'ble National Green Tribunal (NGT) through its order dated 5th August 2024, has significantly disrupted real estate development across the state. This has resulted in delays, increased costs, and uncertainty for numerous projects, adversely affecting the economy and employment in the region.

Summary of NGT Order: The NGT order dated 5th August 2024 highlighted concerns regarding inadequate compliance with environmental norms in project approvals across Maharashtra. The tribunal directed a stay on all environmental clearances until a comprehensive review mechanism was established, ensuring adherence to sustainable development principles. While the intent of the order is to strengthen environmental safeguards, its immediate impact has stalled projects, causing widespread challenges for stakeholders.

Additionally, by its recent order dated 9th August 2024, the NGT, Bhopal, held that the "General Conditions" under the EIA 2006 Notification would apply to projects and activities under Item 8(a) and 8(b) of the Schedule to the EIA 2006 Notification, i.e., "Building and Construction Projects" and "Township and Area Development Projects."

Key points of the order include:

1. Item 8(a) and 8(b) of the EIA 2006 Notification pertain to Category B projects, typically appraised by the State-level SEAC/SEIAA. However, the General Conditions now stipulate that such projects will be assessed as "Category A" projects and appraised at the Central level by the EAC if they are located, in whole or in part, within 5 km from the boundary of:
    - Protected Areas notified under the Wildlife Protection Act, 1972;
    - Critically Polluted Areas (CAP) as identified by the CPCB;
    - Eco-Sensitive Areas as notified under sub-section (2) of Section 3 of the Environment (Protection) Act, 1986;
    - Inter-state and international boundaries.
2. The rationale behind this order is that since the Notification dated 22nd December 2014, issued by the MoEF&CC (2014 Notification), was quashed by the judgment of the Kerala High Court in W.P. (C) No. 3097 of 2016 on 6th March 2024, the General Conditions are now applicable to all projects under Item 8 of the Schedule to the EIA 2006 Notification.

Impact on the Real Estate Sector: The real estate business in Maharashtra is suffering immensely due to the inability to secure further environmental clearances (EC). Without these approvals, projects remain at a standstill, leading to significant delays in construction timelines and the eventual handover of properties to customers. More than 500 projects, collectively involving investments exceeding ₹1000 crores, are currently stuck. This has affected lakhs of homebuyers who are now facing uncertainty regarding the possession of their homes, causing considerable distress among the public.

This stagnation has also resulted in a slowdown in economic growth, as the real estate sector is a major contributor to employment and GDP in the state. Ancillary industries, including construction materials, logistics, and labor, have also been adversely affected, exacerbating the economic downturn.

In response to this situation, CREDAI-MCHI filed a petition seeking immediate relief, emphasizing the critical need for prompt resolution to safeguard the interests of all stakeholders involved. While we acknowledge and appreciate the proactive steps taken by the Ministry of Environment, Forest and Climate Change (MoEF&CC) in issuing the draft notification SO 4844E dated 7th November 2024, we note that the period for suggestions and objections to the draft concluded on 7th January 2025.

Given the significant implications of the stay and the urgent need for clarity, we respectfully request your esteemed office to expedite the process of finalizing and issuing the notification at the earliest. This will not only provide the much-needed relief to the real estate sector but also ensure adherence to sustainable development practices in line with the objectives of the NGT and the MoEF&CC.

We are confident that your intervention in this matter will pave the way for a balanced and timely resolution. We remain at your disposal for any further discussions or consultations required to address this issue effectively.

Thank you for your attention to this matter. We would be happy to discuss this issue further and provide any additional data or insights required.

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Counter No:1,30/01/2025,15:46
To:BHUPENDER YAD.INDIRA PARYAVARA
PIN:110003, Lodi Road HO
From:CREDAI MCHI.CHAMBER OF HSG I
Wt:125gms Ack Fee:3.00.REG=17.0
Amt:64.90.Tax:9.90.Amt.Paid:65.00(Cash)
<Track on www.indiapost.gov.in>
India Post

Yours sincerely,
For **CREDAI-MCHI**

Domnic Romell
President

Dhaval Ajmera
Hon. Secretary

मध्यवर्ती टपाल केंद्र
मुख्यमंत्री सचिवालय
महाराष्ट्र शासन
मंत्रालय, मुंबई ४०० ०३२
30/1/2025

लिपिक
उपमुख्यमंत्री यांचे कार्यालय
महाराष्ट्र शासन
मंत्रालय, मुंबई ४०० ०३२
30/1/25

CC

1) **Shri Devendra Fadnavis ji**
Hon'ble Chief Minister
Government of Maharashtra

2) **Shri Eknath Shinde ji,**
Hon'ble Deputy Chief Minister and
Minister for Urban Development,
Housing, Public Works (Public Undertakings)
Government of Maharashtra,

3) **Smt. Pankaja Munde ji,**
Hon'ble Minister for Environment and Climate Change,
Government of Maharashtra,

मध्यवर्ती टपाल केंद्र
मंत्रालय
अनुक्रमांक:- 99
दिनांक:- 30.1.25

Item No. 01

BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)

Original Application No. 93/2024(CZ)

Pranjal Karera — Applicant(s)

Vs.

Union of India & Ors. — Respondent(s)

Date of completion of hearing and reserving of order : 05.08.2024
Date of uploading of order on website : 09.08.2024

CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. A SENTHIL VEL, EXPERT MEMBER

For Applicant(s): Mr. Vanshdeep Dalmia, Adv.

For Respondent(s): Mr. Rohit Sharma, Adv.
Mr. Dharamvir Sharma, Adv.
Mr. Yadvendra Yadav, Adv.
Mr. Shoeb Hasan Khan, Adv.
Mr. Gaurvanvit Jain, Adv

ORDER

1. The present application has been filed with the prayer for issue of direction to the MoEF&CC, to appraise all those Building and Construction Projects that are located in whole or in part within 5 km of a (i) protected area notified under the Wild life Protection Act, 1972 (ii) Critically Polluted Areas and Severely Polluted Areas as identified by the CPCB (iii) Eco-Sensitive areas notified under S. 3(2) of the EP Act, (iv) located on interstate boundaries, as Category A projects by and appraise the same at the Central level by the sectoral Expert Appraisal Committees and further to apply General Conditions [GC] to Item 8 of the Schedule of the EIA, 2006 for located in a Critically and Severally polluted areas as identified by the CPCB as per letter dated 10.04.2019 and implement the

directions passed by this Tribunal vide its Orders dated 10.07.2019, 23.08.2019 and 14.11.2019 in OA No. 1038 of 2018 titled In re: News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels" & the OM dated 31.10.2019, and appraise Building and Construction Projects located in CPA/SPA areas as Category A projects, dehors whether GC applies or not.

2. The contention of the applicant is that MoEF&CC issued an OM dated 31.10.2019 devising a Mechanism for new activities/expansion by Red & Orange Category of industries in CPA's and SPA's. The relevant portion of the OM is extracted as below:

> ***"B: Considerations of proposals for grant of Environmental Clearance for new and expansion activities in 'Red' and 'Orange' Categories located in Critically Polluted Areas and Severely Polluted areas:***
>
> *i. Any project or activity specified in Category B1 will be appraised at the Central level, if located in whole or in part within 5 Km from the Boundary of Critically Polluted Areas or Severely Polluted Areas. However, Category B2 projects shall be considered at state level stipulating Environmental Clearance conditions as applicable for the Category 'B1' project/activities."*
>
> *However, Building and constructions projects located in CPA/SPA, are still being continued to be appraised at the State level, in complete dissonance with the abovementioned Orders.*
>
> *The Environment Impact Assessment Notification dated 14.09.2006 was issued by the Respondent MOEF under Section 3 of the EP Act categorizing projects and activities as Category 'A' and 'B', wherein Category 'A' projects would require a prior Environmental Clearance [EC] from the sector*

specific EACs at the Central level whereas Category 'B' projects would require the same from the State i.e. by the respective SEACs. This categorization is based on the potential impacts on the human health, nature and man-made resources, wherein, the projects and activities of a higher and larger magnitude in terms of the potential adverse impact on the environment as a whole are appraised at the central level by sector specific EACs that constitute of experts in the particular field, and those of relatively lesser potential impact, at the State level.

ii. *The Hon'ble Supreme Court in the case of IN RE: Construction of Park at Noida Okhla Bird Sanctuary while considering the issue as to whether General Conditions apply to Building and Construction projects directed that "...the question of application of the general conditions to the projects/ activities listed in the Schedule also needs to be put beyond any debate or dispute".*

3. In Writ Petition (C) No. 3097/2016 titled One Earth One Life Vs. MOEF Hon'ble the High Court of Kerala, made it clear that general condition is applicable in all such projects in item 8 of the Schedule located in CPA/SPA, eco-sensitive areas and are to be appraised and evaluated at the central level by sector-specific EAC.
4. Notices were issued to the respondents and in compliance thereof, the respondents have filed the reply. Heard the argument and perused the record.
5. The EIA Notification dated 14.09.2006 issued by the Ministry of Environment, Forest and Climate Change with subsequent amendments after 8A and 8B prescribed note with general conditions and specific conditions which are quoted below :-

"General Condition (GC)[1]

Any project or activity specified in Category 'B' will be appraised at the Central Level as Category 'A', if located in whole or in part within 5 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972 (53 of 1972); (ii) Critically Polluted areas as identified by the Central Pollution Control Board[2] constituted under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) from time to time; (iii) Eco-sensitive areas as notified under sub- section (2) of section 3 of the Environment (Protection) Act, 1986, and (iv) inter-State boundaries and international boundaries;. provided that for River Valley Projects specified in item 1(c), Thermal Power Plants specified in item 1(d), Industrial Estates/ parks/complexes/areas, export processing zones (EPZ), Special Economic Zones (SEZs), biotech parks, leather complexes specified in item 7 (c) and common hazardous waste treatment, storage and disposal facilities (TSDFs) specified in item 7 (d), the appraisal shall be made at Central level even if located within 10 km.

Provided further that the requirement regarding distance of 5 km or 10 km, as the case may be, of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective States or the Union Territories sharing the common boundary in case the activity does not fall within 5 km or 10 km, as the case may be of the areas mentioned at item (i), (ii), and (iii) above.

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

[1] GC substituted vide S.O. 3067(E) dated 1 st December, 2009; substituted all entries substituted vide S.O. 1599(E) dated 25th June, 2014

[2] Amended vide S.O. 1939 dated 13th November, 2006

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)."

6. Vide notification dated 07.03.2016 issued by the CPCB which modified directions under section 18(1)(b) of the water (prevention & control of pollution) act, 1974 and the air (prevention and control of pollution) act, 1981 regarding harmonization of classification of industrial sectors under red / orange / green / white categories prescribed the categories as follows :-

"WHEREAS, based on the series of consultations with SPCBs, different Government / Non- government Institutions including industries and MoEFCC, the following criteria on Range of Pollution Index for the purpose of categorization of industrial sectors has been finalized:

- *Industrial Sectors having Pollution Index score of 60 and above – Red Category*
- *Industrial Sectors having Pollution Index score of 41 to 59 – Orange Category*
- *Industrial Sectors having Pollution Index score of 21 to 40 – Green Category*
- *Industrial Sectors having Pollution Index score incl. & upto 20 - White Category*

WHEREAS, based on relative Pollution Index, the number of industries in various categories are as under:

i. The Red category of industrial sectors: 60
ii. The Orange category of industrial sectors: 8
iii. The Green category of industrial sectors: 63 and
iv. The Newly introduced White category: 36

WHEREAS, there shall be no necessity of obtaining the consent to operate for White Category of industries and an intimation to concerned SPCB/PCC shall suffice."

7. Notification dated 11.09.2014 and 22.12.2014 was notified by the MoEF&CC which are as follows :-

i. *"The draft notification issued on 11.09.2014 reads as under:-*

MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 11th September, 2014

S.O. 2319(E). The following draft notification further to amend the notification of the Government of India in the erstwhile Ministry of Environment and Forests number S.O. 1553(E), dated 14th September, 2006 which the Central Government proposes to issue, 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 (29 of 1986), is hereby published, as required under sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 for the information of the public likely to be affected thereby, and notice is hereby given that the said notification will be taken into consideration by the Central Government on or after the expiry of sixty days from the date on which copies of the Gazette of India containing this notification are made available to the public;

Any person interested in making any objection or suggestion on the proposals contained in the draft notification may do so in writing within the period so specified through post to the Secretary, Ministry of Environment, Forests and Climate Change, Indira Paryavaran Bhawan, Jor Bagh Road, Aliganj, New Delhi110 003 or electronically at email address: ad. raju@ni.

Draft Notification

In the Schedule to the said notification, for items 8(a) and 8(b), and the entries relating thereto, the following items and entries shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)
"8	Building / Construction projects / Area Development Project and Township			
8(a)	Building and Construction Projects	≥20000 sq.mtrs and <1,50,000 sq.m. of built up area#	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. Note: (i) The projects or activities covered are residential buildings, commercial buildings, hotels, hospitals, hostels, office blocks and information technology / software development units / Parks (ii) "General Condition" is not applicable.	
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 Note: "General Condition" is not applicable."	

ii. *In the said notification, in the second paragraph, the public at large was invited to raise objections or suggestions. Accordingly, the Department had received many objections and suggestions from various institutions or individuals throughout the country, evident from the counter filed by the respondents. However, if we see the language of the final notification dated 22.12.2014, it has been specifically stated that no objections or suggestions were received in*

response to the earlier notification dated 11.09.2014. Final notification dated 22.12.2014 reads as under:

"MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 22nd December, 2014

S.O. 3252(E).-Whereas, a draft notification further to amend the notification number S.O 1555(E), dated the 14th September, 2006 (hereinafter referred to as the principal notification), was published, as required under sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 in the Gazette of India, Extraordinary, Part II, Section 3, subsection (ii) vide number S.O. 2319, (E) dated the 11th September, 2014 (hereinafter referred to as the said notification), 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;

And whereas, copies of the said notification were made available to the public on 11th September, 2014;

And whereas, no objections or suggestions have been received in response to the said notification within the specified period of sixty days;

Now, therefore, in exercise of the powers conferred by Sub-section (1) and clause (v) of Sub-section (2) of Section 3 of the said Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following amendments in the said notification, namely:-

In the principal notification, in the Schedule, under Column (1), for item 8 relating to Building / Construction Projects / Area Development Projects and Townships and sub-items 8 (a) and 8 (b) and the entries relating thereto, specified there under, the following item, sub-items and entries shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)
"8	Building or Construction projects or Area Development projects and Townships			
8(a)	Building and Construction Projects	≥20000 sq.mtrs and <1,50,000 sq.m. 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. (ii) "General Conditions" shall not apply.	
8	Townships and Area Development projects	Covering an area ≥ 50 ha and or built up area ≥1,50,000 sq.mtrs++	A project of Township and Area Development Projects covered under this item shall require an Environment Assessment report and be appraised as Category 'B1' Project. Note.- "General Conditions" shall not apply.	

8. In light of the order passed in O.A. No. 1038/2018 dated 19.08.2019, Ministry of Environment, Forest and Climate Change issued a notification dated 24.10.2019 with the matter listed in red and orange categories located in critically polluted areas prescribing as follows :-

1. *"Consideration of proposals for grant of Environmental clearance for new and expansion activities listed in 'Red' and 'Orange' Categories located in Critically Polluted Areas and Severely Polluted areas:*

   i. *Any project or activity specified in Category B1 will be appraised at the Central Level, if located in whole or in part within 5 km from the boundary of Critically Polluted Areas or Severely Polluted Areas. However, Category B2 projects shall be considered at state level stipulating Environmental Clearance conditions as applicable for the Category 'B1' project/activities.*

   ii. *Proposals located in CPAs and SPAs may be examined by the sectoral Expert Appraisal Committee (EAC) during scoping/appraisal based on the CEPI scores of Air/Water/Land Environment as published by CPCB from time to time. In such proposals, appropriate mitigation measures for the environment possessing higher CEPI score may be made by EAC in the form of recommendations/decision. These recommendations may be explicitly mentioned in the Terms of Reference/Environmental Clearance letter and to be ensured by the member secretary concerned.*

9. The notification dated 22.12.2014 was matter under consideration which was challenged before the High Court of Kerala in W.P.(C) No. 3097/2016 and vide Order dated 06.03.2024 the court, after considering the above facts, found that the notification dated 22.12.2014 was not in accordance with the law and quashed the notification dated 22.12.2014.

10. The contention of the applicant is that after quashing the notification dated 22.12.2014 the general condition as note of the original notification, 2006 will apply.

11. The submissions of the Learned Counsel for the applicant are that as per the EIA Notification dated 14.09.2006, projects and activities are categorized as Category A and B wherein Category A projects require Environmental Clearance from the Sector specific EACs at the Central level, whereas Category B projects which relatively have a lower potential impact on the Environment would require the same from the State i.e. by the respective State SEACs/ SEIAAs. This categorization is based on the *'extend of potential impacts on human health and natural and manmade resources'*. Apropos, the projects and activities of a higher and larger magnitude in terms of the potential adverse impact on the environment as a whole are appraised at the central level by sector specific EACs that constitute of Experts in the particular field. Whereas, such projects and activities having a relatively lesser impact, are appraised at the State level by respective State SEACs/ SEIAAs that consist of homogeneous mix of experts and professionals from different sectors. The schedule of the EIA 2006 notification categorizes Building and Construction Projects and Townships and Area Development Projects as Category B1 projects under item 8(a) and item 8(b) of the Schedule and thus, the appraisal is being done at the State level i.e. by respective SEACs, however it is to be appraised at the Central level if it falls in an ecologically sensitive area/ Critically polluted area or other areas as indicated in the General Conditions.

12. It is submitted that Building and Construction Projects and Townships and Area Development Projects carried out in a critically/ severally polluted area, eco-sensitive areas etc. have a higher and larger magnitude

in terms of the potential adverse impact on the environment as a whole and thus need to be appraised at the central level by sector specific EACs that constitute of experts in the particular field.

13. While considering the matter in the O.A. No. 1038/2018, Principal Bench of this Tribunal vide order dated 14.11.2019, observed as follows:-

i. *"After considering the said data, this Tribunal in the order dated 10.07.2019 held that the Rule of Law required prohibiting polluting activities to protect the environment and public health. While remedial action may certainly be planned, current violation of law could not be ignored and was actionable by way of stopping polluting activities, initiating prosecution and recovering compensation on 'Polluter Pays' principle. The statutory authorities are accountable for performing their statutory duties. Referring to some of the earlier orders on the subject, this Tribunal observed:*

> *"7. Ill effects of industrial pollution on the environment and public health are well acknowledged. This has made it necessary to strictly apply the principles of 'Sustainable Development' and permit any activity to be carried out without degrading the environment. The statutory scheme under the Air Act, the Water Act and the EPA Act provides for standards for air and water quality which must be maintained and violation thereof is a criminal offence[3]. Any violation has to be visited with stopping of polluting activity, prosecution and compensation for restoration of environment. Accordingly, in the order dated 13.12.2018 this Tribunal observed:*

[3] Section 7 read with Section 15 of the EPA Act, Section 24 read with Section 41 and Section 45A of the Water Act, Section 21 and Section 22 read with Section 37 of the Air Act

"5. Purpose of economic development in any region is to provide opportunities for improved living by removing poverty and unemployment. While industrial development invariably creates more jobs in any region, such development has to be sustainable and compliant with the norms of environment. In absence of this awakening or tendency for monitoring, industrialization has led to environmental degradation on account of industrial pollution. It is imperative to ensure that steps are taken to check such pollution to uphold statutory norms. Adequate and effective pollution control methods are necessary.

6. Dust, smoke, fume and toxic gas emissions occur as a result of highly polluting industries such as thermal power plants, coal mines, cement, sponge iron, steel and ferrow alloys, petroleum and chemicals unless right technology is used and precaution taken. Industry specific clusters have not only become hazardous but also cause irreparable damage to our ecology and environment, often breaching the environment's carrying capacity, adversely affecting public health.

7. In Karnataka Industrial Areas Development Board vs. C. Kenchappa & Ors2.[4] *the Hon'ble Supreme Court observed, as guiding rules for Sustainable Development, that humanity must take no more from nature than man can replenish*

[4] (2006) 6 SSC 383

and that people must adopt lifestyles and development paths that work within the nature's limit. In Vellore Citizens Welfare Forum Vs. Union of India, the Hon'ble Supreme Court recognized the Precautionary Principle and explained that environmental measures by the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation.

8. This Tribunal has applied the same principles in deciding matters before it in terms of Section 20 of the National Green Tribunal Act 2010.

9 to 12..... xxxx.....xxxx.....xxxx

13. The action plan to be prepared in the States may be done by the Committee constituted by the Chief Secretary within one month from today as several Departments may be involved in the exercise. The final preparation of the action plan including its execution may be overseen by the Chief Secretary of the concerned State, along with the other connected major environmental issues of the States, such as pollution of river stretches, nonattainment cities in terms of air quality and solid waste management, utilization of treated sewage, covered by order of this Tribunal dated 20.09.2018 in Original Application No. 673/2018, News Item Published in 'The Hindu' authored by Shri. Jacob Koshy titled "More river stretches are now critically polluted: CPCB",

order dated 08.10.2018 in Original Application No. 681/2018, News Item Published In 'The Times of India' Authored by Shri. Vishwa Mohan Titled "NCAP with Multiple Timelines to Clear Air in 102 Cities to be released around August 15", order dated 20.08.2018 in Original Application No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016 and order dated 27.11.2018 in Original Application No. 148/2016, Mahesh Chandra Saxena Vs. South Delhi Municipal Corporation & Ors. The Chief Secretary will take meetings on all these issues once in three months (quarterly) and will forward Report to NGT by e-mail."

8. We may also note that on 16.01.2019, while considering the issue of compliance of Solid Waste Management Rules, 2016 and other Waste Management Rules in O.A. No. 606/2018, Compliance of MSW Rules, 2016, the Tribunal required the presence of the Chief Secretaries in person after monitoring the subjects mentioned in the said order which included polluted industrial clusters.

9. Accordingly, the Chief Secretaries appeared before this Tribunal and filed their respective versions on the subject. They have been asked to take necessary steps to enforce the environment norms and furnish periodical reports to this Tribunal. The directions include monitoring of important environmental issues including the issue of polluted industrial clusters by a Central Monitoring Committee with representatives from the Central Government and the Chief Secretaries

of the States, undertaking carrying capacity study of the areas where violation of environmental norms is established, training programme of the officers concerned with the enforcement of the environmental norms, preparation of annual environmental plan for the country giving status of gaps in compliance of environmental norms[5]. The Tribunal noted the private studies which may need to be verified assessing the number of deaths and diseases from pollution[6].

"38. Death attributable to pollution to be 2.51 million in 2015, highest in the world. Air pollution, the number of deaths in India from ambient air pollution was 1.09 million, while deaths from household air pollution from solid fuels were 0.97 million. In the case of water pollution, 0.5 million deaths were caused by unsafe water source, while unsafe sanitation caused 0.32 million deaths. Deaths from air pollution were a result of diseases such as heart disease, stroke, lung cancer, and chronic obstructive pulmonary disease (COPD). Pollution has been responsible for the most non communicable disease deaths. India ranks a dismal 110 of 149 countries on the Sustainable Development Index. With rapid urbanization, the country is facing massive waste management challenge. Over 377 million urban people live in 7,935 towns and cities and generate 62 million tonnes of municipal solid waste per annum. Only 43 million tonnes (MT) of the waste is collected, 11.9 MT is treated and 31 MT is dumped in landfill sites. An alarming 80% of India's surface water is polluted. Indian cities generate 10 billion gallons or 38 billion litres of

[5] O.A 606/2018, order dated 17.05.2019, at para 27
[6] Ibid

municipal waste water every day, out of which only 29% of it is treated.

40. In case extent of convictions for the environment related offences do not correspond to the extent of crime, paradigm shift in policies and strategies for implementation of law may need to be considered. Similarly, the mechanism for recovery of compensation may need to be revised on that pattern. Such review of policy cannot be left to the Local Bodies or the Pollution Control Boards but has to be at highest level in the State and further review at the national level. As noted in some of the studies, the ranking of the country in compliance of environmental norms needs to be brought to respectable higher position which may be possible only if there is change in policies and strategies for implementation of necessary norms at every level in right direction. The scale of compensation needs to be suitably revised so that the same is deterrent and adequate to meet the cost of reversing the pollution."

14. In reply to above averments the Respondent No. 1 MoEF&CC filed the counter affidavit and argued that the Environment (Protection) Act, 1986 authorizes the Central Government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and/or operation of any projects/activity on environmental grounds.

15. That, the answering respondent in exercise of its powers under sub-section (1) and clause (v) of Section 3(2) of Environment (Protection) Act, 1986 (EPA, 1986) had vide S.O. 1533(E) issued the Environment Impact Assessment Notification dated 14/09/2006 for mandating prior Environmental Clearance (EC) for certain category of projects covered in

the Schedule of the notification. The EC is granted following the due EIA process as mentioned in the notification.

16. That under the provisions of the EIA Notification, 2006, EC for Building and Construction Projects, Townships and Area Development Projects are covered under entry 8 (a) & (b) of the Schedule to the EIA Notification, 2006. Further, entries 8(a) and 8(b) are category 'B' projects under the EIA Notification, 2006 and the said projects are appraised by the concerned State/ UT Level Expert Appraisal Committees (SEACs) and the EC is granted by the State Environmental Impact Assessment Authorities (SEIAAs/UTEIA's).

17. That the EIA Notification 2006, provides for General Conditions which relate to categorization of the projects as Category 'A' if such projects are located in whole or in part, within either 5 km or 10 km, as the case may be, from the boundary of Protected Areas notified under the Wild Life (Protection) Act, 1972, Critically Polluted areas as notified by the Central Pollution Control Board from time to time, Notified Eco-sensitive areas and inter-State boundaries and international boundaries. GC in the EIA Notification, 2006, as amended reads as under:

> *"Any project or activity specified in Category 'B' will be appraised at the Central Level as Category 'A', if located in whole or in part within 5 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972 (53 of 1972); (ii) Critically Polluted areas as identified by the Central Pollution Control Board constituted under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) from after (Pretime: (i) Eco-sensitive areas as notified under sub. Sectioning of section 3 of the Environment (Protection) Act, 1986, and (iv) one afs boundaries and international boundaries; provided that for River Valley Projects specified in item 1(c), Thermal Power Plants specified in item 1(d), Industrial Estates/ parks/complexes/areas,*

export processing zones (EPZ), Special Economic Zones (SEZs), biotech parks, leather complexes specified in item 7 (c) and common hazardous waste treatment, storage and disposal facilities (TSDFs) specified in item 7 (d), the appraisal shall be made at Central level even if located within 10 km.

Provided further that the requirement regarding distance of 5 km or 10 km, as the case may be, of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective States or the Union Territories sharing the common boundary in case the activity does not fall within 5 km or 10 km, as the case may be of the areas mentioned at item (i), (ii), and (iii) above."

18. Further contentions of the Learned Counsel for Respondent No. 1 are that the submission of the applicant is that after the quashing of the notification general condition will apply is unfounded and not supported by the order since that order was based only on the principle of natural justice and it is further submitted that there is no difference in the qualification, eligibility criteria of the EAC and the SEACs.
19. The contention of the applicant is that the directions passed in OA No. 1038/2018 must be strictly complied with, with regard to the projects and health, projects and polluting activities which are in CPA/SPA red and orange category, and no further industrial activities or expansion be allowed with regard to red and orange category units till the said areas are brought within the prescribed parameter or till carrying capacity of area is assessed and new units or expansion is found viable having regard to the carrying capacity of the area and environmental norms.
20. The same was clarified by the notification dated 23.08.2019 where it was observed that the MoEF&CC can forthwith devise an appropriate mechanism to ensure that new legitimate activity or expansion can take

place after due precautions are taken in the areas in question by red and orange category of units.

21. Further contentions of the applicant are that the OM dated 31.10.2019 was issued by the MoEF&CC in exercise of powers conferred under Section 5 of the Environment (Protection) Act, 1986, requiring appraisal of all projects in CPA/SPA at the central level and it is binding on the MoEF&CC while it is not being fully observed by the authorities concerned. Projects located in the CPA/SPA requires to be appraised as Category A projects at the central level by the Sectoral Expert Committee, even otherwise building construction projects located in CPA/SPA have to be appraised at the central level due to the applicability of general conditions as stipulated in the EIA Notification, 2006.

22. As per Para 7(i)III(i)(d), of the EIA, 2006 (Original - unamended), all Category A and B, Building and Construction projects or Area Development Projects and Townships (Item 8) were exempted from *'Public Consultation'*. The EIA, 2006 was amended by the MoEF&CC vide Notification dated 1.12.2009 wherein the MoEF&CC withdrew the complete exemption from public consultation granted to building and constructed projects. And whereinafter such public consultation were made mandatory for Category A Building Construction Projects. That building construction projects as *per se* are Category B projects and the only manner in which they can be Category A is by the application of GC and in no other manner.

23. Para 7(i)III(i)(d) of the EIA, 2006 – before Amendment, All category A and Category B projects or activities shall undertake public consultation, except the following:

> *"d. all building and construction projects or Area development projects and Townships (item 8)"*

Para 7(i)III(i)(d) of the EIA, 2006 – Post Amendment, All category A and Category B projects or activities shall undertake public consultation, except the following:

> *"d. all building and 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"*

Thus, the 2009 Amendment indicates the understanding of the Respondent MOEF itself that certain Building projects would be Category A, and hence require a Public Consultation. Any other interpretation would render the said Amendment qua Para 7(i)III(i)(d) as redundant, superfluous and nugatory.

24. The Hon'ble Supreme Court in the case of *IN RE: Construction of Park at Noida Okhla Bird Sanctuary, (2011) 1 SCC 744* felt the need that certain entries in the Schedule to the EIA, 2006 were described ambiguously and while considering the issue as to whether General Conditions apply to Building and Construction projects directed that -

> *"...the question of application of the general conditions to the projects/ activities listed in the Schedule also needs to be put beyond any debate or dispute".*

EIA, 2006 (2014 Amendment)

The MOEF thereafter issued Notification dated 22.12.2014 whereby the EIA, 2006 was amended and interalia a Note 2 was inserted in the 5th Column of Item 8, Schedule EIA which specifically stated that *'General Conditions shall not apply'*. The said Notification dated 22.12.2014 was quashed vide Judgment dated 6.03.2024 by the Hon'ble High Court of Kerala in *'One Earth One life v. MOEF'*, WP (C) No. 3097 of 2016.

The Relevant portion of the said Judgment dated 6.03.2024 is extracted as under:

> *"In such circumstances, we are of the considered opinion that the writ petition requires consideration. Accordingly, the same is allowed. Notification dated 22.12.2014 is hereby quashed and set aside. Needless to say, the respondent authority may issue fresh notification, in accordance with law. It is made clear that the petition is entertained only on the above ground. Other contentions raised in this writ petition have not been examined on merits."*

Therefore, the Applicant submits that post the quashing of the MOEF Notification dated 22.12.2014, *General Conditions* are undisputedly applicable, and all such projects in Schedule 8 located in a CPA/SPA, Eco sensitive areas ought to be appraised and evaluated at the Central Level.

25. It is further contended that the mandate of the EIA, 2006 is to ensure Environmental protection and uphold citizens' fundamental rights under Article 21 of the Constitution of India. The aim and objective of the EIA, 2006 is to assess the impact that a project or activity would have upon the environment and to ensure protection of the environment in the face of development. Thus, the rule of reasonable interpretation in conjunction with liberal/ purposive construction ought to be applied whereby that approach for interpretation must be applied which advances the objectives and legislative intent behind issuance of the EIA, 2006.

This Tribunal in *Vikrant Tongad v. DTTC, [2015 SCC Online NGT 3 (judgment dated 12.02.2015), Karukampally Vijayan Biju v. UOI,* [2017 SCC Online NGT 1296 *(Judgment dated 27.07.2017)]and M/s Ardent Steel Limited v. MoEF, Appeal No. 05/2014 (Judgment dated 27.05.2014)* have accepted

this approach of liberal interpretation of the entries mentioned in the Schedule to the EIA, 2006 and held as under:

Vikrant Tongad v. DTTC *(2015 SCC Online NGT 3)*

> *"**18.** Having deliberated upon the relevant provisions of the Regulations of 2006, now we would deal with the principles applicable to interpretations of such Entries. The Hon'ble Supreme Court in its various judgments has stressed upon the liberal interpretation of a statute, if it is a social welfare legislation. For instance, in the case of The Authorised Officer, Thanjavur v. S. Naganatha Ayyar, (1979) 3 SCC 466, the Court held that:*
>
> > *"1. While dealing with welfare legislation of so fundamental a character as agrarian reform, the court must constantly remember that the statutory pilgrimage to 'destination social justice' should be helped, and not hampered, by judicial interpretation."*
>
> *In the case of Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation, (1985) 4 SCC 71, the Court held that:*
>
> > *"4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and 'Human Rights' legislation are not to be put in procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its mis-application must be recognised and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes."*
>
> *In the case of Securities and Exchange Board of India v. Ajay Agarwal, (2010) 3 SCC 765, the Court held that:*

"41. It is a well known canon of construction that when Court is called upon to interpret provisions of a social welfare legislation the paramount duty of the Court is to adopt such an interpretation as to further the purposes of law and if possible eschew the one which frustrates it."

19. *The Courts have also evoked the principle of purposive construction in relation to social welfare legislations. The statute and its provisions have to be given an expanded meaning that would tilt in favour of the object of the Act, curing or suppressing the evil by enforcing the law. While interpreting an Entry in a Schedule to an Act, the ordinary rule of construction requires to be applied to understand the Entries. There is a functional difference between a body of the statute on the one hand and the Schedule which is attached thereto on the other hand. The Sections in these Acts are enacting provisions. In contrast, the Schedule in an Act sets down things and objects and contains their names and descriptions. The sections of and the Schedule to the Act, have to be co-jointly read and construed, keeping in view the purpose and object of the Act while keeping a clear distinction between a fiscal and a social welfare legislation in mind. Social welfare programmes projected by the State and object of the statute are of paramount consideration while interpreting and construing such Entries. The law is always intended to serve the larger public purpose. In fact, welfare of the people is the supreme law and an enacted law should be administered lawfully, i.e., salus populi est suprema lex. It is not possible even for the legislature to comprehend and provide solution to all the evils or obstacles that are likely to arise in implementation of the enacted laws. Therefore, the Tribunal must adopt an approach for interpretation of these Entries which would further the cause of the Act and the intent of the legislation and be not unduly influenced by the rule of restricted interpretation.*

30. Thus, clearly, the mandate of the Regulations of 2006 is to ensure protection of environment and ecology in face of rapid developmental activities, which are even the need of the hour. Since the object of the Regulations of 2006 is to provide developmental activities while ensuring presence of a safer environment, it can be termed as welfare legislation. Thus, the rule of reasonable constructions in conjunction with the liberal construction would have to be applied...

33. In case of a social or beneficial legislation, the Tribunal should adopt a liberal or purposive construction as opposed to the rule of literal construction. The words used therein are required to be given a liberal and expanded meaning. The object and purpose of the Act of 1986 and the Schedule of Regulations of 2006 thereto was held to be of utmost relevance. In the case of present kind, if no checks and balances are provided and expert minds does not examine and assess the impacts of such projects or activities relating to development, consequences can be very devastating, particularly environmentally. Normally, the damage done to environment and ecology is very difficult to be redeemed or remedied. Thus, a safer approach has to be adopted to subject such projects to examination by Expert Bodies, by giving wider meaning to the expressions used, rather than to frustrate the object and purpose of the Regulations of 2006, causing irretrievable ecological and environmental damage. "

***Karukampally Vijayan Biju v. UOI**, (2017 SCC Online NGT 1296)*

"22. The reasoning given by the High Court can be safely adopted by the Tribunal to arrive at the conclusion that the expression 'pesticide' takes within its ambit insecticides as well. The expression 'pesticide' appearing in Entry-5(b) must receive liberal construction. The Act of 1986 and the Notification of 2006 is social welfare legislation and has been primarily enacted to protect the environment and public health. An interpretation which would further the cause and object

should be adopted in contradistinction to an interpretation which would frustrate the object of the Act."

M/s Ardent Steel Limited v. MoEF & Anr., *(Appeal No. 05/2014)*

"13... From the above discussion, it is clear that to an Entry of the Schedule of a social welfare legislation, the principle of reasonable and/or liberal construction should be adopted to ensure that the object and purpose of the Act is undefeated by such interpretation. Most suitable interpretation would be one which would further the cause of the Act and ensure prevention and control of pollution rather than provide escape route to the industry from taking anti-pollution measures and complying with the provisions of the Act."

26. The contention of the applicant is that there is no ambiguity on the issue as to whether *'General Conditions'* apply to Item 8 of the Schedule to the EIA, 2006, in as much as, the intention vide the 2009 Amendment ostensibly indicates and supports the same, and the 22.12.2014 Amendment stating that GC does not apply has been quashed. However, even otherwise, a view that GC apply is in consonance with the intent and purpose of the EIA, 2006 which is a social welfare legislation, and also the directions passed by this Tribunal in OA No. 1038 of 2018 wherein certain areas requires a higher degree of scrutiny and expert appraisal.

27. That Building and constructions projects located in CPA/SPA, Eco-sensitive areas were being continued to be appraised at the State level due to the operation of the MOEF Amendment Notification dated 22.12.2014 whereby GC was made not applicable to Schedule 8, however post the quashing of the Notification dated 22.12.2014, GC is undisputedly applicable, and all such projects in Schedule 8 located in a CPA/SPA, eco-sensitive areas ought to be appraised and evaluated at the Central Level by sector specific EACs.

28. The EIA, 2006 categorizes projects into Category 'A' and 'B'. Category 'A' projects require EC from Central sector-specific EAC, while Category 'B' projects require EC from State SEACs/ SEIAAs. This classification is based on potential environmental impacts, with projects having higher environmental impacts being assessed centrally and those with lesser impacts assessed at the State level.

29. The members of the EAC/SEACs comprise of Expert and Professionals who are appointed on the basis of the qualifications mentioned in Appendix VI, EIA, 2006, whereby the members of the EAC shall be experts and only in the event that Experts are not available, professionals made be considered. Conversely, the members of the State SEACs are not required to be Experts as such, and can constitute professionals, despite the availability of Experts.

30. The Respondent, MOEF has constituted 8 (eight) Expert Appraisal Committees which deal with sector specific projects under the EIA Notification, 2006 that are of more serious and significant in nature. The EACs at the Central level constitutes of members with greater competence and knowledge than the State Level Expert Appraisal Committee. A Higher level of expertise is needed for appraisal of building and construction projects in CPA/SPA areas, and sector specific EAC would be much better suited to appraise potential ecological damage and considered the impact assessment of the project submitted by the project proponent, as the said sector specific EAC would include all expert members qua the sector for which EC is being sought.

31. It is further contended that by allowing the Category 'A' projects to be appraised at the SEAC level, substantially dilutes the standard of assessment, evaluation and appraisal of violation projects that were initially sought to be done by sector specific Expert appraisal committees

which are only available at the central level. The sector specific EACs constitute of experts in the particular sector and opposed to the SEACs at the state level which do not constitute experts from a particular sector, but comprises of a homogeneous mix of experts and professionals from different sectors. Since building and construction projects located in a CPA/SPA have a higher and larger magnitude in terms of the potential adverse impact on the environment, an expert scrutiny with a higher level of expertise is needed for appraisal of building and construction projects in CPA/SPA areas.

32. Sectoral specific EAC for Infrastructural projects would be much better suited to appraise the Environmental Impact Assessment Report (EIA)/ Environmental Management Plan (EMP) submitted by the project proponent, as the said sector specific EAC would include all expert members qua the Building sector. It is submitted that the said Building sector specific would correctly and more accurately identify the possible ramifications on the Environment damage and recommend measures to mitigate the same.

33. The submission of the MoEF&CC are that the scrutiny by at the central and state level is the same but the notification dated 14.09.2006 issued by the MoEF&CC prescribes different criteria and qualification which is quoted as below :-

"COMPOSITION OF THE SECTOR/ PROJECT SPECIFIC EXPERT APPRAISAL COMMITTEE (EAC) FOR CATEGORY A PROJECTS AND THE STATE/UT LEVEL EXPERT APPRAISAL COMMITTEES (SEACs) FOR CATEGORY B PROJECTS TO BE CONSTITUTED BY THE CENTRAL GOVERNMENT

The Expert Appraisal Committees (EACs) and the State/UT Level Expert Appraisal Committees (SEACs) shall consist of

only professionals and experts fulfilling the following eligibility criteria:

Professional: *The person should have at least (i) 5 years of formal University training in the concerned discipline leading to a MA/MSc Degree, or (ii) in case of Engineering /Technology/Architecture disciplines, 4 years formal training in a professional training course together with prescribed practical training in the field leading to a B.Tech/B.E./B.Arch. Degree, or (iii) Other professional degree (e.g. Law) involving a total of 5 years of formal University training and prescribed practical training, or (iv) Prescribed apprenticeship/article ship and pass examinations conducted by the concerned professional association (e.g. Chartered Accountancy),or (v) a University degree , followed by 2 years of formal training in a University or Service Academy (e.g. MBA/IAS/IFS). In selecting the individual professionals, experience gained by them in their respective fields will be taken note of.*

Expert: *A professional fulfilling the above eligibility criteria with at least 15 years of relevant experience in the field, or with an advanced degree (e.g. Ph.D.) in a concerned field and at least 10 years of relevant experience.*

Age: *Below 70 years. However, in the event of the non-availability of /paucity of experts in a given field, the maximum age of a member of the Expert Appraisal Committee may be allowed up to 75 years.*

2.[7] The Members of the EAC shall be Experts with the requisite expertise and experience in the following fields or /disciplines. In the event that persons fulfilling the criteria of "Experts" are not available, Professionals in the same field with sufficient experience may be considered:

- *Environment Quality: Experts in measurement, monitoring, analysis and interpretation of data in relation to environmental quality.*
- *Sectoral Project Management: Experts in Project Management or Management of Process or Operations or Facilities in the relevant sectors.*

[7] Para substituted vide S.O. 1737 (E) dated 11th October, 2007; word in Para-2 amended & point-4 inserted vide S.O. 2600(E) 9th October, 2014 and amended vide S.O. 3752 dated 20.10.2020

- *Environmental Impact Assessment Process: Experts in conducting and carrying out Environmental Impact Assessments (EIAs) and preparation of Environmental Management Plans (EMPs) and other Management plans and who have wide expertise and knowledge of predictive techniques and tools used in the EIA process*
- *Risk Assessment*
- *Life Science (Floral and Faunal Management)*
- *Forestry and Wildlife*
- *Environmental Economics with experience in project appraisal*
- *Public Administration or Management covering various developmental sectors and environmental issues.*

3. The Membership of the EAC shall not exceed 15 (fifteen) regular Members. However, the Chairperson may co-opt an expert as a Member in a relevant field for a particular meeting of the Committee.

4.[8] The Chairperson shall be an eminent person having experience in environmental policy related issues, in management or in public administration dealing with various developmental sectors.

5. The Chairperson shall nominate one of the Members as the Vice Chairperson who shall preside over the EAC in the absence of the Chairman / Chairperson.

6. A representative of the Ministry of Environment and Forests shall assist the Committee as its Secretary.

7. The maximum tenure of a Member, including Chairperson, shall be for 2 (two) terms of 3 (three) years each.

Provided that wherever considered necessary and expedient, the Central Government may extend the term of such member for a further period not exceeding twelve months[9].

8. The Chairman / Members may not be removed prior to expiry of the tenure without cause and proper enquiry."

34. The notification says that the members of the EAC shall be experts with the requisite expertise and experiences in the field quoted in the notification which is different from the minimum qualification of the

[8] Omitted vide S.O. 1737 dated 11th October, 2007; and inserted vide S.O. 2600(E) dated 9th October, 2014
[9] Entry inserted vide notification number S.O 1562 (E) dated 21st May 2020; Substituted word vide S.O 3752 (E) dated 20th Oct, 2020

professionals. In the EAC there are Expert Appraisal Committee while SEAC shall consists the professionals and it shall fulfilling the conditions which are different in category in professional and the experts. The Experts eligibility criteria are at-least 15 years of relevant experience in the field are with an advance degree i.e. Ph.D in a concerned field and at-least 10 years of relevant experience while the qualification of the professionals are 5 years of formal university training in the concerned discipline leading to a M.A./M.Sc. degree. Which is lesser qualification than the experts.

35. The submission of the learned counsel for the RSPCB Mr. Rohit Sharma are that the matter is with regard to the work of issuing EC which is to be dealt by the MoEF&CC and SEIAA and PCB has no concern with the above activities. Similarly, the CPCB has submitted that the CPCB has revised CEPL evaluation methodology that Central Pollution Control Board (C.P.C.B.) carried out a Comprehensive Environmental Pollution Index (C.E.P.L.) Monitoring of the Industrial Clusters in the country in association with I.LT. Delhi in 2009. Based on C.EPI., a total of 88 industrial clusters were identified as Polluted Industrial Areas (P.I.As). Out of the identified 88 P.LAs, 43 industrial clusters were having a CEP.1. score of more than 70 and are categorized as Critically Polluted Areas (CPAs); and 32 industrial clusters with C.E.PL. scores between 60 & below 70 are categorized as Severely Polluted Areas (S.P.As)

36. Further, the CPCB revised C.E.P.I. evaluation methodology in concurrence with the MoEF&CC and issued directions on 26/4/2016 to all SPCBS/PCCs for adoption of the revised C.E.P.I. methodology, which also includes preparation of action plans for C.P.As and S.P.As by respective SPCBs/PCCs and it is further submitted that the CPCB is not involved the

process of granting Environmental Clearance, thus, no further reply is required.

37. Submission of the learned counsel Ms. Parul Bhadoria - State Pollution Control Board, Madhya Pradesh are that the compliance of the EIA Notification, 2006 or to the Ministry of Environment, Forest and Climate Change and PCB are not involved in the grant of environmental clearance and the imposition of conditions of the EC and further that the same is within the domain of MoEF&CC and SEIAA.

38. Hon'ble the Supreme Court of India, in re-construction of park at Noida Okhla Bird Sanctuary (2011), 1SCC Page 744, felt the need of the entries in the schedule to the EIA 2006 and described the ambiguity while considering the issue as to whether general condition apply to building and construction projects directed that the question of application of the general condition to the projects activities listed in the schedule also needs to be put beyond any debate or dispute and referred the construction of the park project to MoEF&CC to appraised by Sectoral Specific Expert Appraisal Committee at Central Level considering the importance of location of the project near the Okhla Bird Sanctuary, an ecologically protected area and thereby indirectly applied general condition to the project. The EIA 2006 categorizes projects activities into Category A and B. Category A projects are appraised at Central Level by Sectoral Specific EAC, while Category B Projects are appraised at State Level by SEAC and not by a Sectoral Specific SEAC.

39. The classification is based on potential environmental impacts, with projects having higher environmental impacts assessed at central level and those with lesser impacts are assessed at the state level. Building and construction projects which are located within 5 km within of (i) Ecologically protected areas (ii) CPA/SPA (iii) Eco-sensitive areas (iv) Inter-

state boundaries and international boundaries and have a higher and larger magnitude in terms of potential adverse impacts on the environmental and therefore, a greater level of in-depth scrutiny is needed for appraisal of such building and construction projects and for which sectoral specific appraisal is needed at central level by sectorial specific experts who are part of sectorial specific EAC. There are eight (8) sectoral specific EAC at central level and each of the sectoral specific EAC appraises and deals with specific project activity as per the EIA 2006.

40. In view of the above submissions, arguments and records and notification, we are of the view that after quashing the notification dated 22.12.2014, vide order dated 06.03.2024, in W.P.(C) No. 3097/2016, GC is undisputedly applicable and all such projects in Schedule 8 of EIA 2006 located within 5 km. of ecologically protected areas, CPA/SPA, eco-sensitive areas, inter-state boundaries and international boundaries are to be appraised and evaluated at the central level by sector specific EAC.

41. Accordingly, we direct the MoEF&CC to strictly enforce the notification dated 14.09.2006 attached to Category 8 in the note general conditions and we direct the MoEF&CC to appraise all those building and construction projects that are located in whole or in part within 5 km. of the protected area notified under the Wildlife (Protection) Act, 1972, critically polluted areas and severely polluted areas as identified by the CPCB, eco-sensitive areas notified under Section 3(2)of the Environment (Protection) Act, and the projects located at inter-state boundaries as Category A projects and to be appraised by the central level by the Sectoral Expert Appraisal Committee.

42. The MoEF&CC is directed to strictly comply the notification or to make a clarity by issue of notification. The copy of the order be communicated to

the MoEF&CC for clarification and issue of necessary notification or to comply the EIA, Notification, 2006 in letter and spirit.

43. With these observations the application is allowed and **Original Application no. 93/2024** stands **disposed of** accordingly.

Sheo Kumar Singh, JM

Dr. A Senthil Vel, EM

09th August, 2024
O.A No. 93/2024(CZ)
PN

रजिस्ट्री सं. डी.एल.- 33004/99 REGD. No. D. L.-33004/99

भारत का राजपत्र
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असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

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पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय

अधिसूचना

नई दिल्ली, 7 नवम्बर, 2024

का.आ. 4844(अ).—जहांकि, केन्द्र सरकार पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उपधारा (1) और उपधारा (2) के खंड (v) के तहत प्रदत्त शक्तियों का प्रयोग करते हुए निम्नलिखित प्रारूप अधिसूचना जारी करने का प्रस्ताव करती है और तदनुसार, इसे पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उपनियम (3) के तहत यथा अपेक्षित, इससे प्रभावित वाले लोगों की जानकारी के लिए प्रकाशित किया जा रहा है; और एतद्वारा यह भी अधिसूचित किया जाता है कि उक्त प्रारूप अधिसूचना पर उस तारीख से साठ दिन की अवधि की समाप्ति पर या उसके बाद विचार किया जाएगा, जिस तारीख को इस अधिसूचना को प्रकाशित करने वाले राजपत्र की प्रतियां जन साधारण को उपलब्ध करा दी जाती हैं;

यदि किसी व्यक्ति को इस प्रारूप अधिसूचना में निहित किसी प्रस्ताव को लेकर कोई आपत्ति है या वह कोई सुझाव देना चाहता है तो वह उसे विनिर्दिष्ट अवधि के भीतर तथा लिखित रूप में केन्द्र सरकार के विचारार्थ सचिव, पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय, इंदिरा पर्यावरण भवन, जोर बाग रोड, अलीगंज, नई दिल्ली-110003 के पास या ई-मेल पते diriapolicy-moefcc@gov.in पर भेज सकता है।

प्रारूप अधिसूचना

जहांकि, भारत सरकार के तत्कालीन पर्यावरण और वन मंत्रालय ने अपनी अधिसूचना संख्या का.आ. 60 (अ), दिनांक 27 जनवरी, 1994 के द्वारा भारत के किसी भी हिस्से में कोई नई परियोजना शुरू करने या अधिसूचना में शामिल किसी मौजूदा उद्योग या परियोजना के विस्तार या आधुनिकीकरण के लिए पूर्व पर्यावरणीय मंजूरी की आवश्यकता के साथ-साथ कुछ प्रतिबंध और निषेध भी लगाए थे;

और जहांकि, माननीय सर्वोच्च न्यायालय ने 'हिंदुस्तान टाइम्स' में प्रकाशित समाचार "और शांत बहती मैली यमुना" बनाम केंद्रीय प्रदूषण नियंत्रण बोर्ड और अन्य के मामले में रिट याचिका (सिविल) संख्या 725 / 1994 और रिट याचिका (सिवलि) संख्या 4677 / 1985 में अपने 12 दिसंबर 2003 के आदेश में कहा था कि भवन निर्माण से पर्यावरण को नुकसान होता है और इसलिए, ऐसी निर्माण परियोजनाओं को 1994 की उक्त अधिसूचना के दायरे में लाने पर विचार किया जा सकता है, इसलिए, उक्त अधिसूचना को संख्या का.आ. 801(अ), दिनांक 7 जुलाई, 2004, द्वारा संशोधित किया गया था जिसके अंतर्गत भवन और निर्माण परियोजनाओं की कुछ श्रेणियों को इसके दायरे में लाया गया था तथा पूर्व पर्यावरणीय मंजूरी को आवश्यक बनाया गया था;

और जहांकि, इसके पश्चात् केन्द्र सरकार ने उक्त अधिसूचना को, संख्या का.आ. 1533 (अ), दिनांक 14 सितम्बर, 2006 (एतश्मिनपश्चात् जिसे ईआईए अधिसूचना कहा गया है) के तहत अधिक्रमण कर दिया था, जिसमें अन्य बातों के साथ-साथ इसकी अनुसूची की मद 8 (क) और (ख) के अंतर्गत आने वाली भवन और निर्माण परियोजनाओं तथा टाउनशिप और क्षेत्र विकास परियोजनाओं पर कतिपय प्रतिबंध और प्रतिषेध लगाए गए थे तथा ऐसे किसी भी क्रियाकलाप के लिए पूर्व पर्यावरण मंजूरी को आवश्यक बनाया गया था;

और जहांकि, इसके पश्चात् केन्द्र सरकार ने पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उप-नियम (3) के अंतर्गत 11 सितम्बर, 2014 को एक प्रारूप अधिसूचना प्रकाशित की थी, जिसमें ईआईए अधिसूचना की अनुसूची में मद 8 (क) और (ख) तथा उससे संबंधित प्रविष्टियों के संबंध में संशोधन के लिए सभी संबंधितों से सुझाव और आपत्तियां आमंत्रित की गईं थीं तथा प्रारूप अधिसूचना के संबंध में प्राप्त सभी सुझावों और आपत्तियों पर विचार करने और उन्हें सम्मिलित करने के पश्चात् संख्या का.आ. 3252 (अ), दिनांक 22 दिसम्बर, 2014 के तहत अंतिम अधिसूचना जारी की गई थी;

और जहांकि, 11 सितंबर, 2014 और 22 दिसंबर , 2014 की प्रारूप अधिसूचना की तुलना से यह स्पष्ट है कि अनुसूची के मद 8(क) के अंतर्गत आने वाली परियोजनाएं या गतिविधियां अंतिम अधिसूचना की अनुसूची के मद 8(क) के अंतर्गत आती रहेंगी, सिवाय इसके कि औद्योगिक शेड, स्कूल, कॉलेज, शैक्षणिक संस्थाओं के लिए छात्रावास ईआईए अधिसूचना के दायरे में शामिल नहीं हैं, इस शर्त के अधीन कि ऐसे भवन सतत पर्यावरण प्रबंधन, ठोस और तरल अपशिष्ट प्रबंधन, वर्षा जल संचयन सुनिश्चित करेंगे और फ्लाई ऐश ईंटों जैसे पुनर्चक्रित सामग्रियों का उपयोग कर सकेंगे, इस प्रकार, ऐसी परियोजनाएं या गतिविधियां जो प्रारूप अधिसूचना के दायरे में शामिल थीं, शैक्षणिक संस्थाओं के लिए छात्रावासों और औद्योगिक शेड को छोड़कर अंतिम अधिसूचना में शामिल रहेंगी, और सामान्य शर्तों के लागू न होने संबंधी संशोधन और निर्मित क्षेत्र की परिभाषा मामूली संशोधन के साथ विद्यमान रहेंगी और टाउनशिप और क्षेत्र विकास परियोजनाओं को मद 8(ख) के तहत श्रेणी 'ख1' के रूप में वर्गीकृत करना और ऐसी परियोजनाओं के लिए सामान्य शर्तों के लागू न होने संबंधी प्रावधान प्रारूप अधिसूचना और अंतिम अधिसूचना दोनों में अपरिवर्तित बने रहेंगे;

और जहांकि, अंतिम अधिसूचना में असावधानी के कारण यह कहा गया था कि प्रारूप अधिसूचना पर कोई आपत्ति या सुझाव प्राप्त नहीं हुए थे;

और जहांकि, अंतिम अधिसूचना में संशोधन का प्रस्ताव करके असावधानी के कारण हुई उपर्युक्त त्रुटि को सुधारने का प्रयास किया गया था, परंतु ऐसा हो नहीं सका;

और जहांकि, केरल उच्च न्यायालय, एर्नाकुलम ने रिट याचिका (सिविल) संख्या 3097/2016 के मामले में अपने दिनांक 6 मार्च 2024 के आदेश के तहत 'वन अर्थ वन लाइफ बनाम पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय और अन्य' में 22 दिसंबर, 2014 की अधिसूचना को इस आधार पर रद्द कर दिया था कि अंतिम अधिसूचना प्रारूप अधिसूचना से अलग थी, हालांकि मंत्रालय को कानून के अनुसार एक नई अधिसूचना जारी करने की स्वतंत्रता प्रदान की गई थी;

और जहांकि, केरल उच्च न्यायालय के निर्णय के आलोक में, राष्ट्रीय हरित अधिकरण ने मूल आवेदन संख्या 93/2024 में 9 अगस्त, 2024 के अपने आदेश के तहत, अन्य बातों के साथ-साथ, पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय को ईआईए अधिसूचना की अनुसूची के मद 8 (क) और (ख) के संबंध में सामान्य शर्तों की प्रयोज्यता से संबंधित प्रावधानों का अनुपालन करने या इस संबंध में स्पष्टीकरण अधिसूचना जारी करने का निर्देश दिया था;

और जहांकि, केरल उच्च न्यायालय के निर्णय और राष्ट्रीय हरित अधिकरण के आदेश के मद्देनजर, विभिन्न भवन निर्माण परियोजनाओं के लिए पूर्व पर्यावरणीय मंजूरी की प्रयोज्यता के संबंध में सर्वोच्च न्यायालय के दिनांक 12 दिसंबर 2003 के निर्णय का पालन करने के लिए एक नई अधिसूचना जारी करने की तत्काल आवश्यकता है ;

अतः अब, पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उपधारा (2) के खंड (v) और उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उपनियम (3) के साथ पठित, केन्द्र सरकार, भारत सरकार के तत्कालीन पर्यावरण और वन मंत्रालय की अधिसूचना संख्या का.आ. 1533 (अ), दिनांक 14 सितम्बर, 2006 में और आगे भी निम्नलिखित संशोधन करती है, यथा:-

उक्त अधिसूचना में, अनुसूची में, मद 8 और उससे संबंधित प्रविष्टियों के स्थान पर, निम्नलिखित मद और प्रविष्टियों को प्रतिस्थापित किया जाएगा, यथा:-

परियोजना या गतिविधि		सीमा रेखा वाली श्रेणी		शर्तें, यदि कोई हों
		क	ख	
(1)	(2)	(3)	(4)	(5)
8		भवन या संनिर्माण परियोजनाएं या नगरीय और क्षेत्र विकास परियोजनाएं		
8(क)	भवन निर्माण और परियोजनाएं		≥ 20000 वर्ग मीटर और < 1,50,000 वर्ग मीटर निर्मित क्षेत्र	इस अधिसूचना के प्रयोजन के लिए "निर्मित क्षेत्र" को, सभी तलों पर इकट्ठे निर्मित या आच्छादित क्षेत्र के रूप में परिभाषित किया गया है जिसके अंतर्गत बेसमेंट और अन्य सेवा क्षेत्र भी हैं जिनका भवन/निर्माण परियोजनाओं के लिए प्रस्ताव किया गया है। **टिप्पण 1:** परियोजना या कार्यकलापों में औद्योगिक शेड, विद्यालय, महाविद्यालय, शैक्षिक संस्थाओं के लिए छात्रावास शामिल नहीं होंगे किंतु ऐसे भवन भरणीय पर्यावरणीय प्रबंधन ठोस और द्रव अपशिष्ट प्रबंधन, वर्षा जल संरक्षण का सुनिश्चय करेंगे और वे पुनः चक्रित सामग्रियों जैसे भस्म ईंटों का उपयोग कर सकेंगे। **टिप्पण 2:** "सामान्य शर्तें" लागू नहीं होंगी।

8(ख)	नगरीय और क्षेत्र विकास परियोजनाएं		जो ≥50 हेक्टेयर के क्षेत्र और या ≥1,50,000 वर्ग मीटर क्षेत्र को कवर कर रही हैं	इस मद के अधीन आने वाली नगरीय और क्षेत्र विकास परियोजनाओं से पर्यावरण निर्धारण रिपोर्ट अपेक्षित होगी और उनका निर्धारण श्रेणी "ख1" परियोजना के रूप में किया जाएगा। **टिप्पण :** "साधारण शर्तें" लागू नहीं होंगी।

[फा. सं. आईए3-3/46/2024- आईए. III]

डॉ. अमनदीप गर्ग, अपर सचिव

टिप्पण: मूल नियम अधिसूचना संख्या का.आ. 1533(अ), दिनांक 14 सितंबर, 2006 द्वारा भारत के राजपत्र, असाधारण, भाग II, खंड 3, उप-खंड (ii) में प्रकाशित किए गए थे और इसमें अंतिम बार अधिसूचना संख्या का.आ. 2215(अ) तारीख 7 जून, 2024 द्वारा संशोधन किया गया था।

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 7th November, 2024

S.O. 4844(E).—WHEREAS, the Central Government proposes to issue following draft notification 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 (29 of 1986) and accordingly, the same is hereby published, as required under sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, for the information of the public likely to be affected thereby; and notice is hereby given that the said draft notification shall be taken into consideration on or after the expiry of a period of sixty days from the date on which copies of the Gazette containing this notification are made available to the Public;

Any person interested in making any objections or suggestions on the proposal contained in the draft notification may forward the same in writing for consideration of the Central Government within the period so specified to the Secretary, Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhawan, Jor Bagh Road, Aliganj, New Delhi-110 003, or send it at the e-mail address: diriapolicy-moefcc@gov.in.

Draft Notification

WHEREAS, the Government of India in the erstwhile Ministry of Environment and Forest *vide* its notification number S.O.60(E) dated the 27th January, 1994 imposed certain restrictions and prohibitions and requirement of prior environmental clearance for undertaking any new project in any part of India or the expansion or modernisation of any existing industry or project covered in the notification;

AND WHEREAS, the Hon'ble Supreme Court in its order dated the 12th December 2003 in WP (C) No. 725 of 1994 and WP (C) No. 4677 of 1985 in the matter of news item published in Hindustan Times titled "And Quiet Flows the Maily Yamuna" Vs Central Pollution Control Board and Others observed that building construction causes damage to the environment and, therefore, such construction projects may be considered to be brought within the purview of the said notification of 1994, hence, the said notification was amended *vide* number S.O 801(E), dated the 7th July, 2004 bringing within its purview certain categories of building and construction projects and required prior environmental clearance;

AND WHEREAS, subsequently the Central Government superseded the said notification, *vide* number S.O. 1533(E), dated the 14th September, 2006 (hereinafter referred to as the EIA Notification), interalia, imposing certain restrictions and prohibitions on building and construction projects and township and area development projects covered under item 8 (a) and (b) of the Schedule thereof and required prior environment clearance for undertaking any such activities;

AND WHEREAS, the Central Government under sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, subsequently published a draft notification on 11th September, 2014, inviting suggestions and objections of all concerned to the amendment in the Schedule of the EIA Notification in respect of items 8 (a) and (b) and the entries relating thereto and after considering and incorporating all the suggestions and objections received in respect of the draft notification, made the final notification *vide* number S.O.3252(E) dated the 22nd December, 2014;

AND WHEREAS, it is evident from the comparison of the draft notification dated 11th September, 2014 and 22nd December, 2014 that the projects or activities covered under item 8(a) of the Schedule continue to be covered under item 8(a) of the Schedule of the final notification except that industrial sheds, schools, colleges, hostel for educational institutions are not included under the scope of the EIA notification, subject to the condition that 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, thus, the projects or activities which were included within the ambit of the draft notification continue to be included in the final notification except for hostels for educational institutions and industrial sheds, and the amendments related to non-applicability of general conditions and the definition of built up area continue to exist with minor modification and the categorisation of townships and area development projects as category 'B1' under item 8(b) and the provision related to non-applicability of General Conditions for such projects continued to remain unchanged in both the draft notification and final notification;

AND WHEREAS, in the final notification, it was inadvertently stated that no objections or suggestions were received on the draft notification;

AND WHEREAS, an attempt was made to rectify the aforementioned inadvertent error by proposing an amendment in the final notification but could not be done;

AND WHEREAS, the High Court of Kerala, Ernakulam, *vide* its order dated the 6th March, 2024, in the matter of WP (C) No. 3097 of 2016 titled One Earth One Life vs. the Ministry of Environment, Forest and Climate Change and Anr., quashed and set aside the notification dated the 22nd December, 2014 on the grounds that the final notification was different from the draft notification while granting liberty to the Ministry to issue a fresh notification, in accordance with the law;

AND WHEREAS, in the light of judgement of Kerala High Court, the National Green Tribunal, *vide* order dated 9th August, 2024, in Original Application No. 93 of 2024, *interalia*, directed the Ministry of Environment, Forest and Climate Change to either comply with the provisions related to the applicability of General Conditions in respect of items 8 (a) and (b) of the Schedule to the EIA notification or to issue a clarificatory notification in this regard;

AND WHEREAS, in view of the judgment of the Kerala High Court and the order of the National Green Tribunal, there is an urgent need to issue a fresh notification for adhering to the judgement of the Supreme Court dated the 12th December 2003 regarding applicability of prior Environmental Clearance for various building construction projects;

NOW, THEREFORE, 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 (29 of 1986), read with sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following further amendments in the notification of the Government of India in the erstwhile Ministry of Environment and Forests, number S.O.1533(E), dated the 14th September, 2006, namely: -

In the said notification, in the Schedule, for item 8 and the entries relating thereto, the following item and entries shall be substituted namely:-

Project or Activity		Category with threshold limit		Conditions if any
		A	B	
(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.m. and < 1,50,000 sq. m. of built up area	The term "built up area" for the purpose of this notification is defined as 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 (b)	Townships and Area Development Projects		Covering an area ≥ 50 ha and/or built up area ≥ 1,50,000 sq. m.	A project of Township and Area Development Projects covered under this item shall require an Environment Impact Assessment report and be appraised as Category 'B1' Project. **Note. -** General Conditions shall not apply".

[F. No. IA3-3/46/2024-IA. III]

Dr. AMANDEEP GARG, Addl. Secy.

Note.- The principal notification was published in the Gazette of India, *vide* number S.O. 1533(E), dated the 14th September, 2006 and was last amended *vide* the notification number S.O. 2215(E) dated 7th June, 2024.

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