

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

Appeal No. 112/2018

University of Delhi

Appellant(s)

Versus

Ministry of Environment Forest and
Climate Change & Ors.

Respondent(s)

Date of hearing: 10.02.2020

Date of uploading on the website: 27.02.2020

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE MR. SIDDHANTA DAS, EXPERT MEMBER

ORDER

Introduction

1. This appeal has been preferred against the order of the State Environment Impact Assessment Authority (SEIAA), Delhi dated 23.03.2018, granting Environmental Clearance (EC) for "Group Housing Complex located at 1 and 3 Cavalry Lane and 4 Chhatra Marg at Civil Lines Delhi" by Young Builders (P) Ltd. The project is proposed on an area of 20,000 sq.m. with built up area of 1,17,733.81 sq. m. with four towers of 139.6m. height having 410 dwelling units. The total floors proposed are S+G+37 with 31,740.26 sq. m. of basement area. The EC was earlier granted in 13.08.2012. An application was submitted for amendment of the EC on 12.02.2018. According to the appellant, as per requirement of notification dated 14.09.2006, prior to its amendment on 22.12.2014, the project was to be treated as Category A to be dealt with by

MoEF&CC. To avoid such procedure, the project proponent prayed for treating the application as a new project after 20.12.2014. The SEIAA declared the earlier EC to be null and void and treated the application for amendment as a fresh application.

Pleadings and contentions of the appellant

2. Case of the appellant in the memo of appeal, written submissions and during arguments is that the land on which project has been proposed originally belonged to the Ministry of Defence. The same was acquired for development of Delhi Metro Rail project vide award dated 19.09.2001 passed by the Land Acquisition Collector, Delhi. A parcel of land admeasuring 3.05 hectares situated at Mall Road, Cavalry Lane and Chhatra Marg, falling in Zone – C (Civil Lines Zone) of the MPD-2001 was handed over to and mutated in the name of Delhi Metro Rail Corporation (DMRC). The land use was categorized under the MPD – 2021, as “public and semi-public facility”. The land use was later changed to residential purpose. DMRC proposed to develop a part of the land for group housing for which Lease Agreement dated 15.12.2008 was entered into with the project proponent – M/s Young Builders Private Limited for 2 hectares of land. Possession of the site was given on 23.01.2009 to the said builder.
3. The appellant University objected to the project on the ground that it will affect ambience and character of the university. The project proponent has removed/ transported 156 trees at the construction site in question on 25.05.2011 after permission from the Forest Department. The University represented to the State Expert

Appraisal Committee (SEAC) and DPCC on 08.02.2012 against the project. The matter was also raised before the High Court against transfer of public land to a private builder but the High Court did not interfere with the transfer of land for the project vide judgment dated 27.04.2015 in W.P. (C) No. 2743/2012. The Division Bench dismissed the appeal as barred by limitation which order was affirmed by the Hon'ble Supreme Court on 17.12.2019 in C.A. No. 9488-9489 of 2019. It is submitted that even if in view of the said judgment, the transfer of the land may have become final, validity of grant of Environmental Clearance (EC) is open to challenge which issue needs to be gone into by this Tribunal.

4. Main contention in support of the challenge to the grant of EC is that the same is vitiated as essential facts have not been disclosed in the application of the project proponent. SEAC and SEIAA have not applied mind to various facets of impact of the project on the environment particularly carrying capacity in terms of air quality, noise level, ground water etc. Reliance has been placed on judgment of the Hon'ble Supreme Court in *Hanuman Laxman Aroskar Vs. Union of India, 2019 SCC Online SC 441* to submit that in such circumstances, EC is liable to be set aside by this Tribunal in exercise of power of merit review on the anvil of Sustainable Development and Precautionary principles.

5. It is stated that the project is within 10 kms. of interstate boundary (Delhi – UP) and critically polluted areas (Najafgarh drain, Wazirpur, Naraina and Anand Parbat area) which would have rendered the project to be categorized as Category A as per EIA Notification dated

14.09.2006, prior to amendment on 22.12.2014. Even if the project is to be treated as category B and dealt with by SEIAA, evaluation of carrying capacity of recipient environment to sustain project of such magnitude which is said to be tallest building of more than 37 floors having 410 dwelling units was required to be conducted thoroughly. On the subject of suppression of material facts, it is submitted that the area is covered by the notification of silence zone under the Noise Pollution (Regulation and Control) Rules, 2000 being Notification dated 03.04.2008 issued by NCT of Delhi¹ being within 100 meters from Delhi University and Vallabhbhai Patel Chest Institute which is a super specialty hospital. Apart from the university and its hostels, there are also schools in the area. The project is within 500 mtrs. of the Northern Ridge and no consent from Ridge Management Board has been taken. Reference has also been made to the provisions of the Master Plan of Delhi (MPD), 2021. Prohibition against construction is applicable not only in the Ridge as such, which is notified as a reserved forest, but also for a project very close to and impacting the Ridge in view of Sustainable Development principle.

Morphological Ridge includes area falling outside the notification but having features of the Ridge and forming part of extension of Aravali. In the present case, even the DMRC took permission of the Ridge Management Board for the DMRC project but no such permission has been sought for the present project.

¹ ".....the Lieutenant Governor of the National Capital Territory of Delhi hereby declares the following areas as "Silence Areas/Zones" for the purpose of the said Rules, in the National Capital Territory of Delhi, namely:-

1. An area of 100 meters around all Educational Institutions having more than one thousand students;
2. An area of 100 meters around all Courts;
3. An area of 100 meters around all Government Office Complexes;
4. An area of 100 meters around all 100-bedded and above hospitals."

According to the appellant, the Delhi Ridge is made of quartzite rocks, of which Stone Age tribes used to make tools. In fact, archaeologists have discovered Stone Age 'factories' along the Delhi Ridge, evidence of the widespread production of tools. Stone Age tribes were also drawn to the dense forest cover of the Ridge, which provided food (both plant and animal) and shelter. Further, there was plentiful water, a point still relevant today. Delhi is one of the most historic capitals in the world, finding mention in the ancient epic Mahabharata. Two natural features of the city, the Ridge and river Yamuna, have made it a protected and favourite place for rulers over the ages. Therefore, the battle for protecting Delhi's "Green Lungs" started long ago. In the 14th century, the Ridge forest was covered with thorny shrubs with very little green cover. Emperor Feroze Tughlaq, who was very fond of hunting, afforested the rocky southern part of the Ridge on which Ghiyasud-Din Tughlaq built the fort city of Tughlaqabad. The efforts for betterment of the Ridge continued post-independence and it has become more pressing, regard being had to the incremental change in pollution level. Therefore, for the effective maintenance of the Ridge, the Ridge Management Supervisory Committee was constituted that gave various recommendations, including:

"1. All areas of the ridge should be declared as Reserved Forest under Section 4 of the Indian Forest Act, 1927. The Environmental (Protection) Act, 1986, should be invoked at the time of notification of the area as a Reserved Forest."

6. The appellant has thereafter referred to the provisions of the Master Plan prohibiting tall buildings in the University area. Clause 11.3 and

Clause 1.4.4 of the Zonal Development Plans have been referred to as follows :

“Clause 11.3 imposes a restriction on the height of tall building as under:-

*“The height of buildings (above and below ground) needs to be seen in the light of modern technology with due consideration for natural disasters like earthquakes, floods etc. Restrictions on tall buildings would be necessary in important areas like Lutyen’s Bungalow Zone, **Civil Lines and North Delhi Campus**. In case of urban extension, areas for specific Urban Design Projects and tall buildings should be indentified.”*

“Clause 1.4.4 of the Zonal Development Plan for Zone-C (Civil Lines) under the MPX-2021 provides as under:

“The Delhi University was established in 1924 and it has a number of old historical buildings, colleges, Viceroy’s lodge etc. of the Colonial period and therefore efforts shall be done to preserve this character. Also efforts shall be done to make it an Integrated Campus (Without thoroughfare) and self-sufficient in terms of modern infrastructure and residential requirements like hostels, staff quarters, security arrangements etc., by optimum utilization of the land. Attempt shall be made to accommodate all institutional requirements within the Campus.

***Therefore, an Urban Design study shall be taken up for this sub-Zone. MPD-2021 has restricted this area for tall buildings.** Delhi University has a large chunk of land allotted in Sub-Zone C-15, (opposite Dushehra Ground) and it is being utilized as Hostel and staff quarters. Optimum utilization of this land shall be done to meet the requirements in future. Listed Heritage buildings, some residences and Colleges of historical importance prepared by DDA, INTACH, ASI and GNCTD are given.”*

7. It is submitted that no study has been carried out in respect of impact of the project on the noise levels. Noise levels are already beyond the permissible limit in the silence zone. The project proponent did not mention the existence of the University and the Vallabhbhai Patel Chest Institute in the application. Deliberate concealment of vital information rendered the application for grant of

EC liable to be rejected under the Regulation 8(vi) of the EIA Notification, 2006. Probable increase in the noise level due to 410 dwelling units proposed will be more than a Leq of 70 dBA over a 24-hour period. This factor has not been taken into account. Given the peculiar location where the project site proposing the tallest building in Delhi is located at Chhatra Marg, University of Delhi, adjoining the Vishwavidyala Metro Station on the one side and the University residences/ departments / schools on the other sides, the SEIAA has failed to take into account the probable adverse impact qua noise that this project will generate.

8. With regard to air pollution, it is submitted that project proponent concealed a report on Group Housing at Mall Road in July 2011 (prepared by Engineering and Planning Consultants, New Delhi). Detailed Traffic Management Plan Report prepared by Professor Geetam Tiwari, IIT Delhi has been relied upon. The report states that between 2011 and 2018 traffic in the area, congestion and pollution figures have varied/ increased considerably which has not been considered. On the subject of impact on traffic, it is stated that the traffic in the area remains high because of the large movement from Vishwavidyalaya Metro Station to Kamla Nagar, Shakti Nagar, Malkaganj and other nearby residential and commercial locations. This traffic figure is in addition to the volume of commuters to and from the University and its various colleges/departments/faculties/schools on the North Campus area. Currently, about 50,000 people use other modes of transport to connect with these places apart from large vehicular movement on daily basis. Entry to Vishwavidyala Metro Station due to the current project is itself a

hindrance as the space connects the Metro Station and Chhatra Marg and Cavalry lane is less than 8.50 meters. Due to no parking being available outside the Metro Station, vehicles are parked randomly which occupy almost the whole of service lane for Metro. Due to this peculiar feature, the DMRC itself has used the land of the proposed project as parking site. According to the DMRC website, the ridership/footfall at the Vishwavidyalaya metro Station alone is around 25,000 persons. In fact, during the admission season in the University of Delhi, in June 2011, the ridership was around 42,000 persons. Increment of at least 900 vehicles is expected due to the operation of the proposed project. It has the potential to cause appreciable increase in vehicular pollutant in the atmosphere of the area which is already polluted. The increase in traffic congestion will make an already congested area totally non-commutable. Even the parking stipulated at the project site in question is insufficient for its own occupants and no yardstick has been adopted by the SEIAA to determine if the parking proposed by Respondent No.4 is capable of catering to the needs of its inhabitants during the operation phase. The width of Chhatra Marg and Cavalry Lane are 10.80 m and 8.5m respectively. Large number of vehicles and about 50,000 people commute on it on a daily basis. Due to the proposed project, there is an estimated addition of 900 vehicles and commuters on existing public infrastructure of two roads which are disproportionately high and make the area risk prone.

9. With regard to the water requirement, it is submitted that the Delhi Jal Board is stated to have given water supply clearance and it states that the total water requirement shall be restricted to 2,57,029 liters

per day. For 1,785 persons, this translates to 144 liters per person per day according to the Delhi Government's Water policy for Delhi (2016), the domestic water demand. Having no cogent indication of the basic norms, the whole burden for meeting water requirement will shift to ground water which will hamper the environmental protection afforded to this area. In such a case, the ground water extraction would be made, which will have deleterious impact on existing water bodies located in the Northern Ridge which is within 500 meters from the proposed project. Central Ground Water Board (CGWB) notified the areas for control and regulation of ground water which includes South Delhi, south West Delhi and Yamuna flood plain area in Delhi with effect from 2000. Chemical constituents in ground water beyond BID norms have been reported from Delhi as follows (contaminated areas, CGWB):-

Fluoride (above 1.5 m/g1)	Nitrate (above 45 mg/1)	Heavy metal: Lead (above 0.01 mg/1)
		Cadmium (above 0.003 mg/1)
East Delhi, New Delhi, North West Delhi, South Delhi, south West Delhi, North Delhi, West Delhi	East Delhi, Central Delhi, New Delhi North Delhi, North West South Delhi, Delhi, South West Delhi, West Delhi	Lead: Along Najafgarh drain in North, West and South-West districts Cadmium: Southwest Chromium: Northwest, South, new Delhi, East

As per information supplied by CGWB (Ground Water Information Booklet of North District, NCT, Delhi, published by CGWB, Ministry of Water Resources, State Unit office, New Delhi,

2013), the entire North Delhi district is a 'notified area' by the Government of NCT of Delhi for regulating extraction of ground water. Major ground water problems identified by the Board in this area are as follows:

- i) Ground water in deeper zones is saline. Depletion of ground water levels is attributed to over-exploitation of ground water. Example, higher Fluoride content at Kingsway Camp (500 meter away from the site in question).
- ii) North District is bounded by the Yamuna River. The district falls in Yamuna sub-basin and forms part of the Ganga basin. The entire district forms part of Yamuna River water shed. The river Yamuna, bordering eastern part of the district, controls the entire drainage system. Parts of western Yamuna Canal, Najafgarh drain and other minor drains flow through North district. This district has prestigious Delhi University, Northern Ridge, ISBT and Tis Hazari Courts. The forest cover of the district is 4.81 sq. Km. Approximately, 0.24 sq. Km. Area of the district is under water bodies.
- iii) Around 40% of the North district is under Yamuna Flood Plain, which is further divided into Active flood plain and older flood plain. The southern part of the district has a thin alluvium cover over Quartzite rock, which is extension of Delhi Ridge near Wazirabad Barrage. Though the development of ground water is not much in the district, in view of the depleting water levels, sustainable management of this precious natural resources is extremely important. The slope of the district is towards south by 0.40 m/km but at places adjoining Delhi Ridge, it gets elevated. Due to this, just northern adjoining areas along the Delhi Ridge form depressions and have been converted into the water logged area.

10. The appellant has referred to the order of the Hon'ble Supreme Court in *M.C. Mehta V. Union of India*² wherein observations have been made about the groundwater scenario in Delhi. After perusal of the Report submitted by the CGWB for its consideration, the Court observed that there is over exploitation of ground water in south

² (2019) 12 SCC 546

District, New Delhi district, South East District, East District, Shahdara, North East District, and almost rest of Delhi is in a semi – critical state.

Thus, the use of ground water for such large project as one proposed by Respondent No.04 will cause depletion of ground water level and thus the same should not be allowed. Depleted ground water conditions will seriously damage the vegetation in the Ridge and also the North Campus of Delhi University.

In such circumstances, the grant of EC is improper when the water requirement cannot be met and it affects the overall capacity to sustain such project.

11. With regard to waste management, the stand of the appellant is that the Respondent No.4 has not provided any details of STP plants, use of technology, location of plant, the area required for its installation, and the location and mode of disposal of discharge after the treatment. Therefore, the information provided by Respondent No.4 in column II (5) (6) of Form I of appendix I relating to solid waste and release of pollutant is grossly inadequate for the grant of environmental clearance. In fact, no approval from SPCB has been taken so far.
12. With regard to fire safety standards, it is submitted that availability of space for conducting a fire-fighting operation is highly questionable in the light of extremely narrow and congested Cavalry Lane on the one side and Chhatra Marg on the other, which is stipulated as the only emergency passage in the impugned EC. Congested Cavalry Lane, which is mentioned as the entry and exit of the proposed

project, is too narrow to cope with the situation of any firefighting operation in the proposed housing complex.

13. The appellant has then referred to the Geo – Technical Investigation and Liquefaction Potential. Reliance has been placed on the studies conducted by L. Thoithoi, P.S. Ningthoujam, R.P. Singh, D.P. Shukla titled “*Liquefaction study of Subsurface Soil in part of Delhi University, North Campus*”. International Journal of Advancement in Earth and Environmental Sciences, 2013, Vol- I, No. 1. Pp.14-22 records:-

“Any high-rise or mega building project will be susceptible to subsidence and liquefaction during a medium to major Earthquake in DU north campus area which lies in Seismic Zone IV.”

Pleadings and contentions of the project proponent and other opposite parties

14. We may now refer to the stand of the project proponent. The project proponent has filed its counter affidavit on 13.08.2018. It is submitted that project does not fall in silence zone. It is also submitted that the University itself has undertaken several construction projects and therefore there will be no violation of the noise norms. The project proponent has submitted traffic management report. There will no impact on increase of traffic on the air around the project. The DJB has already given clearance on the issue of water availability. Ground water problem has no relevance. The project proponent will comply with the waste management rules. Fire safety norms will be met. There will be no negative impact on the Northern Ridge. It is further stated that the distance of the project

from the interstate border (Delhi-UP) is 15 kms. Moreover, vide notification dated 22.12.2014, EIA Notification dated 14.09.2006 has been modified and project cannot now be taken to be Category A. Permission for felling trees was rightly granted. There is no violation of the Master Plan. Due permission has already been granted for construction of the group housing complex. Closeness of the project to Super Specialty Hospital and Delhi University is well known and was not required to be mentioned in the application. It is wrong to assume there will be high density of transport. Air pollution has been duly considered. There is neither any increase of the traffic because of the project nor addition to vehicular pollution. The Geo Technical Registration and Liquefaction Potential has been properly assessed. The project proponent has annexed a copy of the report dated 09.02.2012 of five Members sub Committee constituted by SEAC to consider objections of the Delhi University to the project. On the subject of objection of high rise building, it was observed that the project has been approved by the Chief Town Planner. There is no restriction against construction of tall building in the area. This objection has been negated by the High Court. SEAC may assess the traffic load. With regard to the change of land use, it was submitted that the land use was as per Notification dated 23.09.2005. On the subject of seismic threat, it was submitted that for the area in seismic zone IV, structure designs may be looked into by the sanctioning authority. With regard to the traffic impact, it was observed that the contentions are based merely on apprehension and the matter is covered by the Court judgment. Any deviation will amount to contempt of Court. Environmental concern may be appraised by the

SEAC. However, one of the members Shri Chinmaya R. Gharekhan held a different view to the effect that the project will have adverse effect on the general environment.

15. We may also refer to the pleadings of other opposite parties. Stand of the DPCC in its affidavit filed on 07.08.2018 which is now Secretariat to the erstwhile SEIAA is that tenure of SEIAA was ended over on 31.03.2018. There is no officer who can present SEIAA now. Stand of the North Municipal Corporation of Delhi in its affidavit file on 13.08.2018 is that the building plan has been rejected on 10.04.2018. Objection of the University are to be referred back to SEIAA. The project proponent has filed WP (C) No. 5574/2018 against rejection of the building plan. Affidavit of CPCB dated 13.08.2018 is formal and does not deal with the merits. Reply of the MoEF&CC dated 13.08.2018 is also on similar lines. So are the replies of DMRC dated 05.10.2018, Delhi Govt. and Delhi Fire Services 10.10.2018. DDA, in its reply dated 15.10.2018, has referred to the order of Delhi High Court dated 18.05.2011 in W.P. (C) No. 3135/2010 that development control norms for Metro Station will apply to the land developed for Metro and for land leased out, development norms as per MPD – 2021 will apply, including 200 FAR without restriction of height. Reply of the Ministry of Defence dated 01.02.2019 is that commercial use of the land by the DMRC by transfer to a private builder is not permissible. Reply of the DJB filed on 01.03.2019 is that it has no role in the matter of EC. Delhi University has filed rejoinder to some of the affidavits. The project proponent has also filed additional affidavit on 19.08.2019. It is not necessary to mention the details thereof for dealing with the issue herein.

Proceedings till date

16. The appeal was filed on 10.07.2018. Notice was issued on 12.07.2018. The matter was adjourned on 14.08.2019, 13.09.2018, 11.10.2018, 01.11.2018, 20.12.2018, 11.01.2019, 24.01.2019, 20.02.2019, 06.03.2019, 27.03.2019 for completing pleadings. On 08.04.2019, 29.04.2015, 29.05.2019, 15.07.2019 and 22.07.2019, the issue of condonation of delay was dealt with and by the last mentioned order the delay was condoned and main matter was directed to be listed for hearing. On 19.08.2019 and 09.10.2019, the matter was adjourned on the request of one or the other party. On 11.10.2019, the matter was deferred to await proceedings in Hon'ble Supreme Court (on the issue of validity of transfer of land in favour of the project proponent). The matter was further adjourned on 18.11.2019 and 02.12.2019. It was for the first time that the appeal was taken up and heard on merits on 08.01.2020. The Tribunal observed that earlier EC granted in 2012 having been declared null and void, there was no adequate data base for granting EC on 23.03.2018. Accordingly, the Tribunal constituted a joint Committee to undertake carrying capacity study of the area with reference to the project in question based on relevant data within two months and directed maintenance of *status quo* till then.
17. At the instance of the project proponent, Civil Appeal No. 341/2020 was filed in the Hon'ble Supreme Court with the grievance that all aspects had already been considered by SEIAA in its meeting held on 22.03.2018. A detailed counter affidavit had been filed which was not considered by this Tribunal before seeking evaluation by a joint

Committee and granting *status quo* order. Reliance was placed on Minutes of the 57th meeting of SEIAA while granting EC. Accordingly, the Hon'ble Supreme Court held that a detailed consideration is necessary by this Tribunal before constituting a joint Committee and passing an interim order. The Hon'ble Supreme Court observed:-

“Though it is premature for this Court to advert to the correctness or otherwise of the same, while considering the correctness of the environmental clearance dated 23.03.2018 the material relied upon will have to be taken note at the outset by the NGT even before requiring any other report but there is no reference to all these aspects in the order. Further when the counter affidavit along with the documents were available on record a detailed consideration was necessary and only thereafter if any further report was required by constituting a committee the same would have arisen. However, in the order impugned such consideration is not indicated before requiring the constitution of a Joint Committee for evaluation. The consequential interim order passed would also, therefore, not be sustainable. In that view, the appropriate course would be for the NGT to take note of the contentions put forth by the appellant herein through their counter affidavit and the environmental clearance dated 23.03.2018 and take a decision in the matter. On referring to the contention and materials, the reason for the same not being sufficient or reliable would be an aspect to be recorded and take such further action. To enable such exercise the order impugned dated 08.01.2020 is liable to be set aside, which we accordingly hereby do.

In the result the appeal is allowed, the order dated 08.01.2020 is set aside. The NGT shall take note of the counter affidavit and the documents of the appellant and consider the matter on its merits and pass orders in accordance with law. The same shall be done in an expeditious manner. All contentions of the parties are left open.”

Further consideration of the matter

18. The matter was accordingly taken up 03.02.2020. On account of absence of counsel for the project proponent, it was deferred to 10.02.2020. The appellant expressed apprehension that the project proponent may continue with the project after taking adjournment. It was also stated that the stand of the project proponent before the

Hon'ble Supreme Court that detailed counter affidavit covering all the aspects had already been filed was not correct as the project proponent has filed further affidavit and documents after the order of the Hon'ble Supreme Court. This Tribunal, while granting a short adjournment, directed that the project proponent may not proceed with further activities till consideration of the matter by this Tribunal. The matter was accordingly heard on 10.02.2020 and order was reserved.

Additional documents after order of the Hon'ble Supreme Court

19. We may at the outset mention that the project proponent has filed I.A. No. 75/2020 on 06.02.2020, after the order of the Hon'ble Supreme Court dated 28.01.2020, to place on record eight additional documents, including the minutes of 57th meeting of SEIAA. The appellant has also filed an I.A. No. 67/2020 on 01.02.2020 along with ten additional documents. We are however not making any comment on the issue whether the stand of the project proponent before the Hon'ble Supreme Court was factually correct.
20. We may now make a brief reference to the additional documents filed by the both the parties. The documents filed by the appellant are:-

1. Copy of letter dated 25.10.1943 by the Joint Secretary, Government of India to the Chief Commissioner of Delhi prohibiting high rise building in the neighborhood of Delhi University and its colleges, shown in the map covering 582.44 acres of land.
2. Copy of study conducted by Prof. Geetam Tiwari, IIT Delhi, regarding sustainability of high rise building in the area.

3. Copy of the opinion of Dr. K.S. Rao dated 23.01.2020 on the subject of earthquake vulnerability of the area.
 4. Copy of the office memorandum dated 10.11.2015 of MoEF&CC on the subject of parameters and thrust areas of environmental sustainability while appraising the Building and Construction and Township and Area Development projects.
 5. Copy of the chart showing requirement under the office memorandum dated 10.11.2015 and compliance done by the project proponent.
 6. Copy of the MoEF&CC circular dated 25.10.2017 to comply with the recommendation of CAG with regard to process of EC.
 7. Copy of the minutes of the meeting dated 24.02.2018 by SEAC.
 8. Copy of the office memorandum dated 04.01.2019 of MoEF&CC.
 9. Copy of the letter/article of Dr. Suman Lakhanpau who was member of the SEIAA and had expressed dissenting opinion with regard to the clearance of the project. On the ground that the high rise building was not viable in the area and Ridge will be adversely affected and there will be adverse effect in depleting the ground water.
 10. Copy of the letter/article of Dr. Anupam Chattopadhyay had expressed the opinion that construction of high rise buildings were not viable on account of earth quake potentiality.
21. The documents filed by the project proponent are:-
1. Copy of Form – I (application of EC dated 31.01.2018) seeking amendment of the EC granted on 13.08.2012.
 2. Copy of the presentation made by the respondent No. 4 before the SEAC on 24.02.2018.
 3. Copy of the minutes of the 95th meeting of SEAC held on 24.02.2018.
 4. Copy of the letter dated 09.03.2018 by respondent No. 4 to SEAC.
 5. Copy of the presentation by respondent No. 4 to SEAC dated 13.03.2018.

6. Copy of the letter dated 13.03.2018 by respondent No. 4 to SEAC seeking amendment to the EC.
7. Copy of the minutes of the 96th meeting of SEAC held on 13.03.2018 and 17.03.2018.
8. Copy of the minutes of the 57th meeting of respondent No. 2, SEIAA on 22.03.2018.

22. Even though the appellant raised objection to filing of certain documents by the project proponent at this stage, without going into any technicality, we have considered all the documents filed by both the parties.

Issues for consideration

23. Several arguments have been raised on behalf of the appellant-University but we find it necessary to focus only on matters which we have found to be crucial having bearing on the validity of EC and impact of the project on the environment. This Tribunal has to conduct merit review in exercise of its appellate power to consider the validity of grant of EC as held in the judgment of the Hon'ble Supreme Court in *Hanuman Laxman Aroskar v. Union of India*³ (supra). As observed in the said judgment, the EIA notification intends to ensure that any project complies with the norms for protection of environment. Environment is essential facet of development. EAC and SEAC/SEIAA have to evaluate the information furnished by the project proponent in Form I which is crucial and serves as a base upon which the process of evaluation rests. Deliberate concealment or false or inadequate and misleading

³Hanuman Laxman Aroskar v. Union of India, (2019) SCC online SC 141, para 172

information renders an application liable for rejection. EIA process is directly linked to Sustainable Development Goals (SDGs).

24. Thus, following issues arise for consideration:-

- (i) Whether full disclosure of relevant facts had been made by the project proponent in Form-I and I A which are the formats for application for EC.
- (ii) Whether SEIAA has dealt with the matter, in granting EC, holistically, after due application of mind in appraising the environmental sustainability of the project.
- (iii) Whether a case is made out for interference by this Tribunal with the impugned order.

Observations and Analysis

25. Before we proceed to consider the above issues, 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. The 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.

The project is said to be the tallest high rise building in the city comprising S+G+37 floors containing 410 dwelling units in the vicinity of educational institutions, hospital, Metro Station and the Northern Ridge. We have to accordingly consider the impact on the recipient environment, including air quality, noise, traffic congestion, water requirement, waste management, fire safety, earthquake and liquefaction potential and compliance with the Master Plan.

26. As already noted above, the appellant has relied upon office memorandum dated 10.11.2015 issued by the 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.**

27. As laid down in *Hanuman Laxman Aroskar v. Union of India* (supra), all material information, must be furnished in Form - I to enable evaluation of all possible impacts of the project. As required by the guidelines issued by the MoEF&CC, information must be given and evaluated particularly with regard to issues covered under 'h', 'j' and 'o' above.

The notification itself mentions that concealment or misleading renders an application liable to rejection. SEIAA 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 must be based on reasons on every relevant aspect. Such reasons are the live link between its process and outcome of adjudicative functions. The whole exercise must lead to environmental sustainability which is the basis of environmental rule of law.

Issue wise consideration

28. With above background, we proceed to deal with issues which have arisen for consideration.

29. **Re: Issue No. (i) – Whether there was due disclosure of information by the project proponent**

According to the appellant, Forms- I and IA do not mention closeness of the project to Delhi University and Viceroy Building (heritage site).

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. The project proponent 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.

As against the above, stand of project proponent in its counter affidavit is that there was no need to mention that the project was close to Super Specialty Hospital and Delhi University which fact is well known. There is also no suppression in relation to traffic analysis. There is no requirement of underground water. Clearance has been taken from DJB. All relevant facts have been duly disclosed.

In the written submissions filed on 12.02.2020 by the project proponent, it is mentioned that all necessary approvals have been taken. The project proponent has paid Rs.218.20 crore for the land for a lease for 90 years. Earlier EC dated 13.08.2012 was never challenged. Present challenge is malafide as the project is adjacent to bungalow of the Vice Chancellor. Fresh EC was sought in the year 2018 on account of amendment to building by laws in 2016 which required seeking revised lay out plan. Revised lay out plan was granted on 17.11.2017. The project is B2 category project and for such project stages of screening, scoping, public consultation etc. are

not required. There is no restriction on construction in silence zone. Noise source is only from generator which will be highest quality having no significant impact. Information about air monitoring points was given to SEAC. Baseline data of noise generation exceeds the limits on account of vehicular movement, the project proponent will use wind and noise barrier during and after construction and a thick brick wall with plantation after construction. Air quality data submitted by the project proponent to the SEAC and online air quality data of the nearest station from the project shows that air quality is higher than the standards. Air dispersion modelling results show that increase will be marginal for which mitigation measures will be adopted during construction and operation. Traffic management plan has been submitted to SEAC on 09.03.2018. Traffic volume is 423 pcu at Cavalry lane, 1310 pcu at Chhatra Marg. Traffic growth is 10% in the year 2020, 20% in 2025 and 30% in 2030. Documents of the appellant are authored by vested interests within the University. Parking norms have been followed. Water requirement will be met by the DJB. Revised sewerage scheme has been approved. There are facilities for waste management. Liquefaction potential has been analyzed. Soil evaluation survey has been done. There are other high rise buildings in the vicinity, fire safety standards have been looked into. There is no impact on the Northern Ridge. There is no violation of MPD. As a result of the project, water table will increase on account of rain water harvesting pits. Tree cutting permission has been validly granted.

30. We have taken into account rival stands on the subject of disclosure. The stand of the project proponent itself shows that most of the information given by it was in response to questions by the SEAC 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 the Notification, 2006. However, since the project was treated as Category B2 on account of notification dated 22.12.2014, no such study was conducted). It is further submitted 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 840 vehicles. It is further stated that there will be no significant impact of noise due to provision of wide roads.

On the above material, it is difficult to conclude that requisite disclosure was made by the project proponent. Since air quality is one of the most significant environmental aspect, even if we do not consider other aspects, it can certainly be said that no information was furnished on the 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. A reference to the minutes of the SEAC dated 24.02.2018 shows that the project proponent was required to furnish information with regard to

ambient air monitoring points, traffic management, revised EMP, water mass balance chart etc. There is no consideration of initial non-disclosure in the impugned order of SEIAA or by SEAC which by itself may vitiate the EC.

31. **Re: Issue No. (ii) – Whether SEAC and SEIAA applied before granting EC**

We may now consider whether there is due application of mind by the SEAC and SEIAA in granting EC. The stand of the appellant is that SEIAA has not applied its mind in granting EC. There is no consideration of the ambient air quality status of the area for sustenance of the project in question. The sample test report of air quality submitted by the project proponent itself and placed for consideration before SEAC show that air quality is far beyond permissible limits both in terms of PM_{2.5} and PM₁₀. Against prescribed National Ambient Air Quality Standards of 60 µg/m³ and 100 µg/m³ per day for PM_{2.5} and PM₁₀ respectively, the data shows PM_{2.5} in the range of 134.62 to 240.6 and PM₁₀ to be in the range of 242.72 to 436.8. Similar is the position with regard to NO₂.

A perusal of the impugned order shows that decision to grant EC is based on recommendation of SEAC in terms of minutes of meeting dated 24.02.2018 and 13.03.2018. The said minutes 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 the project proponent and appraisal done by Committee. Documents furnished have already been referred to above.

32. Minutes of meeting of SEAC dated 24.02.2018 and 17.03.2018 are as follows:-

24.02.2018

“Based on the information furnished, documents shown & submitted, presentation made by the project proponent SEAC sought the following information:

1. *Revised water mass balance chart with minimum excess waste water discharge in rainy and non-rainy season and with action plan to re-use/ recycle the excess treated water.*
2. *Schematic drawing of proposed STP of enhanced capacity.*
3. *Plan for handling the excavated earth is required to be submitted along with revised EMP (Environment Management Plan) for dust mitigation measures as per MoEF Notification No. GSR 94 (E) dated 25.01.2018 incorporating the provisions of spraying nozzles for dust suppression and frequency of spraying.*
4. *Details/location of ambient air monitoring points in basements including the ventilation cycle of fresh and recycle air.*
5. *Point wise comments on the issues raised vide circular no. J-11013/71/2016-IA.I(M) dated 25 October, 2017 are required to be furnished.*
6. *Traffic management plan taking into consideration the latest traffic scenario.*
7. *Landscape plan with demarcation for total green area and soft green area.*
8. *Proposed plan for implementation of renewable energy.”*

17.03.2018

“The project proponent has applied for amendment in EC under the head of fresh case on OSMEC portal stating that wrt EC letter no DPCC/SEAC/50/SEIAA/I/2012 dated 13th August, 2012 construction has not been started. Therefore present proposal is considered as a fresh case and Office Memorandum No. J-11011/618/2010-IA-II(I) dated 30.05.2012 for expansion projects is not applicable. Earlier EC issued vide letter no. DPCC/SEAC/50/SEIAA/I/2012 dated 13th August, 2012 be withdrawn and treated as null and void. With respect to the present application, based on the information furnished,

documents shown & submitted, presentation made by the project proponent and appraisal done by committee. SEAC recommended the case to SEIAA for grant of Environmental clearance imposing the following specific conditions:

1. Chhatra marg should be used for pedestrian and non-motorized vehicle or only in case of emergency with restricted motorized vehicles.
2. Treated water of DJB STP should be used for construction purposes up to the maximum extent possible.
3. Packages/mobile STP shall be provided for labour camp during construction phase.
4. Ground water should be extracted only after the permission from DJB.
5. Boring for Rain Water Harvesting system should not be permitted/done before completion of structure work. All recharge should be limited to shallow aquifer.
6. STP should be adequate to treat the waste water so that BOD level should not exceed 10mg/l in treated water.
7. Flow Meters should be installed to monitor consumption of fresh water as well as treated water and log book for these flow meters be maintained in a regular manner. Flow meters shall be installed at Inlet of STP, outlet of STP, inlet of flushing tanks, inlet of cooling water tanks and reuse line for horticulture purposes.
8. The project proponent, before starting the construction, will reconfirm the nonexistence of any water body in and around (within 500m) the project site. It will be ensured that water body/bodies identified as per guidelines MPD 2012) in and around the project suite shall not be affected due to proposed development work.
9. Minimum 1 tree for every 80 Sq. Mt of plot area should be planted within the project site in accordance with the landscape plan submitted.
10. Solar Photovoltaic (SPV) system should be installed to meet electricity generation equivalent to 1% of demand load or as per the state level/local building bye-laws, whichever is higher. Solar water heating shall be provided to meet its hot water demand as far as possible.
11. Only LEDs should be used.

12. Green building norms should be followed with a minimum 3 star GRIHA rating and Gold rating should be followed up.
13. Total capacity of DG sets should not exceed 50% of the total load.
14. Construction & Demolition waste should be disposed of at authorized C & D waste processing unit.
15. Wind-breaker of appropriate height i.e. 1/3rd of the building height and maximum upto 10 meters shall be provided all around the project site before the start of construction.
16. During the Construction Phase for control of dust pollution all precautionary measure should be ensured in compliance of Hon'ble National Green Tribunal order dated 4.12.2014 & 10.04.2015 in O.A. No. 21 of 2014 and O.A. No. 95 of 2014 in the matter of Vardhaman Kaushik vs. Union of India & others and Sanjay Kulshreshtha Vs Union of India 7Ors. And as per MoEF&CC, GOI Notification no. G.S.R.94(E) dated 25.01.2018 regarding mandatory implementation of dust mitigation measures for construction and demolition activities.
17. Project proponent shall be responsible for establishment, operation and maintenance of all common facilities and also for compliance of EC conditions during operation stage.
18. In view of MoEF&CC Office Memorandum No. 21-270/2008-IA.III dated 19.06.2013 read with MoEF&CC Office Memorandum No. 22-154/2015-IA.III dated 10.11.2015, this environmental clearance is granted focusing only on the environment concerns. The project will be regulated by the concerned local Civic Authorities under the provisions of the relevant provisions of the extant MPD-2021, Building Control Regulations and Safety Regulations.
19. The Project Proponent shall obtain water assurance form NDMC/Delhi Jal Board/ authorized source during construction/operation phase for the proposed development work. It must be obtained before starting the construction.
20. The Environmental Clearance is subject to the condition that concerned local civic agencies will give the permission for use/occupation of the building only after the written assurance of DJB/New Delhi Municipal Council/other

such local civic authority (as the case may be) regarding supply of adequate water for residents/occupiers.

21. *Grant of environmental clearance does not necessarily implies that water/power supply shall be granted to the project and that their proposal for water/power supply shall be considered by the respective authorities on their merits and decisions taking.*

22. *The investment made in the project, if any, based on environmental clearance so granted, in anticipation of the clearance from water/power supply angle shall be entirely at the cost and risk of the project proponent and SEAC/SEIAA, Delhi shall not be responsible in this regard in any manner.*

23. *Green area should not be less than 25% of the plot area out of which minimum 15% should be of soft green area, so that there should be sufficient recharging of ground water. Further along boundary wall, minimum of soft green space of 2m width be kept for better tree growth & ground water recharge, based on area of 6'x6'/tree being a norm."*

33. Minutes of 57th meeting of SEIAA dated 22.03.2018 are as follows:-

"After due deliberations, in its first sitting of 96th meeting held on 13.03.2018 the SEAC observed that the project proponent has applied for amendment in EC under the head of fresh case on OSMEC portal stating that w.r.t. EC letter no DPCC/SEAC/50/SEIAA/1/2012 dated 13th August, 2012 construction has not been started. Therefore, present proposal is considered as a fresh case and Office memorandum No.J-11011/618/2010-IA-II(I) dated 30.05.2012 for expansion project is not applicable. Earlier EC issued vide letter no DPCC/SEAC/50/SEIAA/2012 dated 13th August, 2012 be withdrawn and treated as null and void. With respect to the present application, based on the information furnished, documents shown & submitted, presentation made by the project proponent and appraisal done by committee, SEAC recommended the case to SEIAA for grant of Environmental clearance imposing the specific conditions.

The SEIAA in its 57th meeting held on 22.03.2018 approved the recommendations of SEAC that earlier EC issued vide letter no DPCC/SEAC/50SEIAA.1/2012 DATED 13TH August, 2012 be withdrawn and treated as null and void, and granted fresh Environmental Clearance to the project with the following additional specific conditions.

1. Adequate ventilation should be provided in the basements and during the operation phase the concentration levels of Carbon dioxide, Carbon Monoxide should be monitored periodically and also be reported in periodical compliance reports to be submitted. NOx, SOx and PM are also be maintained in basement as per EPA norms.
2. About 202 KLD of fresh water for operational phase will be met by DJB, hence this project will increase the demand of fresh water from DJB by 202 KLD.
3. Sign board be placed at project site indicating the Khasra No. of the land as per revenue record.”

34. As already mentioned, 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, the project proponent 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} ; ug/m ³ GRC/LAB/STP/AIR/03, Gravimetric Method	Particulate matter (PM ₁₀ ; ug/m ³ IS 5182 (Part 23): 2006	Sulphur Dioxide (PM ₁₀ ; ug/m ³ IS 5182 (Part 23): 2001 Reaff.2006	Nitrogen Dioxide (PM ₁₀ ; ug/m ³ IS 5182 (Part 23): 2006	Carbon Monoxide (CO); ug/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

Ambient Noise level as per test report dated 12.01.2018 annexed thereto which is as follows:-

S. No.	Location	Zone	Limit for As per EP Act, 1986; Leq, DB (A)		Observed value Ledq, dB (A)	
			Day Time	Night Time	Day Time	Night Time
1.	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.				

35. Another document which is part of letter is titled Traffic Analysis for proposed group housing at DU Metro Station (page 663 of the paper book) 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 patten 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 richshaw 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.”

36. As already noted, SEIAA has based its decision dated 22.03.2018 on the recommendation of SEAC, while SEAC has based its decision on Form – I, Form-I A followed by letter and presentation by the project proponent. There is hardly any tangible and substantive discussion either by SEAC or by SEIAA 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 SEAC or SEIAA is based on non-application of mind which vitiates the EC. Mere imposition of general

conditions that Air (Prevention and Control) of Pollution Act, 1981 (Air Act) and Water (Prevention and Control) of Pollution Act, 1974 (Water Act) norms will be followed is of no consequence when air quality norms are already exceeded and there is not carrying capacity assessment to sustain the project in question.

37. It is undisputed that the land on which the project is proposed belongs to the 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 10,265.90 sq.m. The appellant University raised objections on 08.02.2012 which are said to have been considered by the sub-Committee constituted by SEAC. Amendment in the project was sought on 12.02.2018 for covering more area. Prior to 22.12.2014, the requirements of EIA Notification dated 14.09.2006 were as laid down in a note against Entry VIII of the Schedule as follows:-

“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.Ts 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.”

38. The said note was deleted by the notification dated 22.12.2014. The condition shows that the project located in 10 kms. of critically polluted areas or of interstate boundary was treated as separate from any other projects. The location of the present project is within 10 kms. of interstate boundary and also within such distance from critically polluted areas. Thus, on the date earlier EC was earlier granted i.e. 13.08.2012, the project was wrongly treated as Category B. To avoid this legal hurdle, the application appears to have been treated as for grant of a fresh EC though the application was for amendment of the earlier EC, which amendment was not legally permissible without following procedure for Category A project entailing detailed EIA study and accordingly preparation of EMP.

Even for evaluation as Category BI project, appraisal was required to be based on carrying capacity of the area in terms of air quality, noise level and traffic congestion apart from other important environmental considerations. In absence thereof, it is not possible to hold that there is application of mind by SEIAA as claimed by the project proponent.

39. We find merit in the contention on behalf of the appellant that there was hardly any application of mind by SEIAA or SEAC to the available data and to the 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 the 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

40. The data furnished by the 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 the project proponent.

41. This Tribunal has earlier considered the issue of carrying capacity on certain occasions. Reference may be made to the order dated 26.10.2018, in O.A. No. 568/2016, *Ajay Khera Vs. Container Corporation of India Limited & Ors.* 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.⁴ 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*⁵ 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.*⁶ 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.*⁷ 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

⁴ Order dated 23.10.2018 in OA No. 773/2018

⁵ Order dated 05.10.2018 in O.A. No. 218/2017

⁶ Order dated 30.07.2018 in O.A. No. 462/2018

⁷ Order dated 10.12.2015 in O.A.No. 87/2015

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 depend⁸. 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 limitation⁹.

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.

⁸ (2002) 10 SCC 606 T.N. Godavarman Thirumulpad Vs. Union of India, , dated 30.10.2002

⁹ 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

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.”

42. In the same matter i.e. Ajay Khera Vs. Container Corporation of India Limited & Ors., 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.”

43. Again in *Anil Tharthare v. Secretary. Env't. Dept. Govt. of Maharashtra*, 2019 SCC Online NGT 876, 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.

44. In appeal against the above order in Hon'ble Supreme Court in *Keystone Realtors Pvt. Ltd. v. Anil v. Tharthare*, 2019 SCC Online SC 1543, it was observed:-

*“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.”*

45. This Tribunal got carrying capacity study conducted in respect of Manali and Mcleodganj in Himachal Pradesh by a Committee *inter-*

alia representing G.B. Pant Institute, Almora; Chief Town Planner, Shimla/senior Architect (Planner); A senior Scientist from MOEF&CC; A senior Scientist from the Indian Council of Forestry Research and Education, Dehradun; Senior Scientist from Wadia Institute of Himalayan Geology, Dehradun; Scientist/ Senior official from the Central Ground Water Board, New Delhi; Scientist/ Senior official from the Central Pollution Control Board, New Delhi; Representative of National Disaster Management Authority, Govt. of India and Representative of School of Planning and Architecture, New Delhi. Based on such study, the Tribunal directed restriction on constructions.¹⁰ The 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/pur1

¹⁰ Order dated 29.07.2019 in O.A. No. 635/2017, Ramesh Chand v. State of H.P.

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”.

46. 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.

47. 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.

48. It has been pointed out by the appellant that University and 100 m. from educational institutions having more than 1000 students is ‘silence zone’ as per Notification dated 03.04.2008. 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.

Air Quality, Noise Level and Traffic Congestion

49. As already mentioned, the data furnished by the project proponent 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 SEIAA/SEAC. EC has been granted mechanically, overlooking this crucial aspect. 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 SEAC/SEIAA.

Additional load of pollution on account of the project to already deteriorated air quality, noise level and traffic congestion

50. Coming to the additional load of pollution on account of added traffic on account of the project, traffic report submitted by the project proponent in the year 2011 mentioned the estimated traffic data to be 320 Passenger Car Equivalent (PCU) during peak hour. Report of Prof. Geetam Tiwari, IIT Delhi relied upon by the appellant is that since the project is for high income group, there will be about 900 motorized trips. The project may be non-complaint of Transit Oriented Development Guidelines (TOD) prepared by DDA. Traffic

report 2011 filed by the project proponent 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 the capacity, any addition on account of the project will be unsustainable.

Second report relied upon by the project proponent of the year 2018 mention width of Cavalry lane as 24 m. According to the appellant, the width of Cavalry lane is 8.5 m. Similarly width of Chhatra Marg is 10.5m and not 24m. The 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. The 2018 report is that traffic volume had dipped from 226 PCU to 208 PCU.

Air Pollution Levels in Delhi

51. Delhi is one of the 122 identified non-attainment cities, based on ambient air quality data compiled by CPCB with reference to the air quality standards under the Air Act, 1981 and EP Act, 1986. This Tribunal is considering the remedial action in the matter in O.A. No. 681/2018. After noting that the identified causes of air pollution include vehicular pollution¹¹, industrial and construction sector pollution¹², reference was made to the Graded Response Action Plan

¹¹ M.C. Mehta v. Union of India (1985)2 SCC 431, M.C. Mehta v. Union of India (2001) 3 SCC 756, M.C. Mehta v. Union of India (1998) 6 SCC 63, M.C. Mehta v. Union of India (2002) 3 SCC 356, M.C. Mehta v. Union of India (1998) 6 SCC 60

¹² M.C. Mehta v. Union of India (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. (1985) 2SCC 431, Mohd. Haroon Ansari v. District Collector (1998) 6 SCC 60, Union of India v. Union Carbide Co. (1989) 1 SCC 674, M.C. Mehta v. Union of India (1992) 4 SCC 256, Sterlite Industries (India) Ltd. etc. v. Union of India & Ors.(2013) 4SCC 575 , M.C. Mehta v. Union of India (2004) 6 SCC 588, M.C. Mehta v. Kamal Nath (2000)6 SCC 213

(GRAP) notified by the 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.¹³. The Tribunal noted that on account of air pollution, India is ranked at 177 out of 180 countries in Environmental Performance Index.¹⁴ As per the World Air Quality Report, 2019 prepared by IQAir Air Visual, Delhi has been reported to be having the worst air quality amongst all the capital cities of the World for the 2nd consecutive year.¹⁵ 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. The Tribunal noted that air pollution has enormous impact on public health particularly children, senior citizens and the poor who are more vulnerable. We have already noted the data given by the project proponent showing that air quality norms are exceeded at the location in question. The 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.

52. The Tribunal also directed carrying capacity study of all the 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

¹³ S.O.118(E), Notification, Ministry of Environment, Forest and Climate Change

¹⁴ <https://www.thehindu.com/sci-tech/energy-and-environment/india-ranks-177-out-of-180-in-environmental-performance-index/article22513016.ece>

¹⁵ World Air Quality Report, 2019 prepared by IQAir Air Visual

shifting polluting activities identified in a study. Similar directions were issued for control of noise pollution. The Tribunal, vide order dated 08.10.2018, directed steps for bringing air quality within prescribed norms by taking steps to prevent polluting activities. The 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. The 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. The 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.

53. The 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.¹⁶

High Rise Building

54. We may also consider the grievance against height of the building without considering its impact on the environment especially on account of closeness to the Ridge. We are of view that restrictions on the height of the buildings in such scenarios are inevitable to give effect to the 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

1. ¹⁶ 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.

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.”

55. We may note that initially the stand of DDA was that Master Plan of Delhi did not allow more than 8 floors. The project proponent filed W.P. (C) No. 3135/2010 before the Delhi High Court where the DDA repeated the said stand as noted in the order of High Court dated 07.03.2011. However, the High Court, considering the argument of the project proponent that project proponent will not able to achieve adequate coverage which was permissible, directed DDA to consider the representation of the project proponent for relaxing the height. Thereafter, on 18.05.2011, the DDA made a statement before the High Court that there will be no restrictions on the height of project.

The 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.

Location of the Building – Closeness to Northern Ridge

56. As per data furnished by the project proponent, the distance of the project from the Northern Ridge is within 500 meters. Vide order dated 30.11.2011 Delhi High Court in W.P. (C) No. 3339 of 2011, *Ashok Kumar Tanwar v. Union of India*, held that clearance of Ridge Management Board is required for construction in the Ridge area. This view was affirmed by the Hon'ble Supreme Court (2016) 13 SCC 561, *DDA v. Kenneth Builders & Developers Pvt. Ltd.* No doubt, in the present case, the project is said to be 500 meters away from the Ridge and not in the Ridge as such, the impact of development of project of such magnitude close to the 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.

57. 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 SEIAA and SEAC to conduct meaningful

appraisal of impact of the project on the environment. Mitigation measures can be prescribed where the 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 and Air Act. 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.

58. Considering that carrying capacity of the area to sustain such high rise building has not been conducted and that the air and noise levels are already beyond permissible limits, the 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 the EC. We are of the view that sustainability of this project was required to be evaluated by undertaking carrying capacity assessment in terms of:-

- Estimation of total Existing PM load (both PM_{2.5} and PM₁₀).
- Estimation of total Assimilative Capacity w.r.t. PM load (both PM_{2.5} and PM₁₀).
- Estimation of total Supportive Capacity w.r.t. PM load (both PM_{2.5} and PM₁₀).

As already observed above, the SEAC 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.

59. In view of above, we conclude that the EC granted is without application of mind.

60. **Re: Issue No. (iii) – Whether case is made out for directions by this Tribunal.**

In view of our conclusion that the EC has been granted without proper evaluation and the 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 for having an evaluation done from an independent Committee of experts. As already noted, 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 the flora and fauna and groundwater regime of nearby pristine Ridge.

As noted earlier, the site in question was originally parking for the Metro Station. Once the site becomes a group housing complex, the 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.

61. As already mentioned, it is well settled that Sustainable Development and Precautionary Principles are part of right to life.¹⁷ The same are also enforceable under Section 20 of the National Green Tribunal Act, 2010. The polluting activities have to be prevented for clean

¹⁷ (1996) 5 SCC 647

Para 10. The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the international sphere, "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future". The Commission was chaired by the then Prime Minister of Norway, Ms G.H. Brundtland and as such the report is popularly known as "Brundtland Report". In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit held in June 1992 at Rio which saw the largest gathering of world leaders ever in the history — deliberating and chalking out a blueprint for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". We have no hesitation in holding that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists.

11. Some of the salient principles of "Sustainable Development", as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays Principle" are essential features of "Sustainable Development". The "Precautionary Principle" — in the context of the municipal law — means:

(i) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.

Para 13 The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48-A and 51-A(g) of the Constitution are as under:

"47. *Duty of the State to raise the level of nutrition and the standard of living and to improve public health.*—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48-A. *Protection and improvement of environment and safeguarding of forests and wildlife.*—The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

51-A. (g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures."

Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject but more relevant enactments for our purpose are: the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection) Act, 1986 (the Environment Act). The Water Act provides for the constitution of the Central Pollution Control Board by the Central Government and the constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the latter part of this judgment.

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.

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 paperbook 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.

List for further consideration on 09.07.2020.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

Dr. Nagin Nanda, EM

Siddhanta Das, EM

February 27, 2020
Appeal No. 112/2018
A