

Item No. 01

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

**Original Application No. 151/2023(CZ)
(I.A. No. 32/2024)**

Rajendra Tiwari

Applicant(s)

Vs

Union of India & Ors.

Respondent(s)

Date of completion of hearing and reserving of order : 29.04.2024

Date of uploading of order on website : 15.05.2024

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant (s): Mr. Vaibhav Pancholy, Adv.
(with Mr. Rajendra Tiwari-Applicant in Person)

For Respondent(s): Mr. Ninad Laud, Adv.
(with Mr. Shivansh Soni, Adv.)
Mr. Dharamvir Sharma, Adv.
Mr. Sandeep Singh Baghel, Adv.
Mr. Vaibhav Thakuria, Adv.
Mr. Lokendra Singh Kachhawa, Adv.
Mr. Mahendra Singh Kachhawa, Adv.
Mr. Nishant Kesarwani, Adv.
(for Mr. Shoeb Hasan Khan, Adv.)
Mr. Sagar Jindal, Adv.
Ms. Rishika Narain, Adv.
Mr. IVO D' Costa, Adv.
Mr. Om Shankar Shrivastava, Adv.

ORDER

1. This application has been filed with the following prayer:-

- i. *By an appropriate order or direction, the Hon'ble Tribunal may kindly be pleased to issue the appropriate directions to respondents as to stoppage of illegal and non-forest activities which are being carried on by Respondent No.13 and 14 in their commercial establishment named KUNDANVAN without any authority with immediate effect.*
- ii. *Respondents be further directed to cease the operation of commercial establishment named KUNDANVAN being illegal*

and derogatory to concerned guidelines and notification of Eco Sensitive Zone.

- iii. This Hon'ble Tribunal is further pleased to direct the respondents to impose environmental compensation upon Respondent No. 13 and 14 for causing sound and air pollution in Eco Sensitive Zone.*
- iv. Respondents be further directed not to raise any further construction during the pendency of this original application and until the requisite permissions are received.*
- v. Forest officials be directed to initiate appropriate criminal proceedings against Respondent No.12 to 17 for their wrong deeds which are contrary to strict forest laws.*
- vi. Nagar Nigam be directed to withdraw the permissions issued to private respondents for operating this commercial establishment.*
- vii. Respondents be directed to make sure that there shall be no illegal and non-forest activities within Eco Sensitive Zone and Operation of commercial establishments of Respondent No.13 and 14 may kindly be ceased during the pendency of this original application.*
- viii. Respondents be further directed to ensure that no further construction and other activities will be operated within Nahargarh Wildlife Sanctuary without obtainment of requisite permissions.*
- ix. This Tribunal is further pleased to impose heavy penalty upon the culprits.*
- x. This Tribunal may kindly be please to take appropriate action against the responsible officers and imposed heavy penalties against the officers/officials who have failed to discharge their official duties”*

2. The facts as narrated by the applicant are that respondents nos. 13 and 14 are operating a commercial establishment in form of hotel/marriage garden-cum-resort without any authority and same is located at the distance of 50 metres from boundary of the Nahargarh Wildlife Sanctuary and same is

being operated without any authority of Forest Department and without obtainment of the wildlife clearance from National Wildlife Board.

3. The Assistant Conservator of Forest issued notice and in compliance thereof, the reply submitted by respondent no. 14 was that the build-up area of their commercial establishment is 2919.79 sq.mtr. and the guidelines/wildlife clearance would apply only to the commercial establishments which are more than 20,000 sq.mtr.

4. The facts as narrated are that:-

1. Notification dated 21.11.61 was issued by the State of Rajasthan, after hearing all the persons aggrieved and after giving an opportunity of filing appeal and after disposal of all the appeals it has been noted in the notification that in light of the Section 20 of the Rajasthan (Forest) Act, 1953, the lands listed in the notification including total area of the Nahargarh that was reported as 2152.406 Ha. was declared as a forest land and known as a Block No. 54, Amer, Badi Line, Range, Jaipur. Again vide notification dated 22.09.1980 the boundaries of Nahargarh Wildlife has been notified.

2. The Ministry of Environment, Forest and Climate Change (MoEF&CC) vide Notification dated 08.03.2019, published with regard to Nahargarh Wildlife Sanctuary after inviting objections and suggestions as follows: –

“Nahargarh Wildlife Sanctuary is lying between latitudes 26°56’15.08”N & 26°57’5.81”N and longitudes 75°48’55.70”E & 75°46’54.65”E. The Sanctuary was notified vide Government of Rajasthan notification No. F11 (39) Revenue/8/80 of dated the 22nd September, 1980. The sanctuary is situated in the Aravalli ranges at Amber hills, Jaipur district of Rajasthan and is spread over an

area of 52.40 square kilometers.

The Sanctuary has "Tropical Dry Deciduous Forest" and "Tropical Thorn Forest" as per classification of Champion and Seth. The forest is spread over the area on various geological and soil formations over the hilly terrain of Aravallis and hence varies in composition.

The Wildlife Sanctuary has a variety of habitats for diversified flora and major flora of this sanctuary includes salar (*Boswellia serrata*), gurjan (*Linnaea gradis*), tendu (*Dispyros melanoxylon*), karaya (*Sterculia urens*), gugal (*Commiphora mukul*), amaltas (*Cassia fistula*), awanla (*Embellica officinalis*), binnas (*Hesparathusa cranulata*), um (*Seccopetalum tomentosa*), goya khir (*Dishrostachya cineria*), sainja (*Maringa pterygosperma*), dhak (*Butea monosperma*), rahan (*Soydmida febriguga*), mokha (*Scherebra swetenoides*), rohini (*Mallatus philipnensis*), ber (*Zizphus jujuba*), jamun (*Syzyguim cumini*), gular (*Ficus glomerata*), kadam (*Mitragyna parvifolia*), bahira (*Terminalia bellerica*), dhaora (*Anogeissus latifolia*), kahjur (*Phoenix syvestris*), hingot (*Balanites aegyptica*), khair (*Acacia catechu*), sevan (*Gmelia arborea*), arjun (*Terminalia arjuna*), neem (*Azadirachta indica*), peepal (*Ficus religiosa*), bargad (*Ficus benghalensis*), shiham (*Dalbergia sissoo*), bijasal (*Pterocarpus marsupium*), kakon (*Flacourita indica*), kharini (*Wrightia tinctoria*), dudhi (*Wrightia tomentosa*), jhinjha (*Bauhinia recemosa*), casaeria (*Casaeria tomentosa*), barn (*Creataeva relegiosa*), bel (*Aegle marmelose*), ronj (*Acacia marmelose*), lisora (*Cordia myxa*), churel (*Holoptelia intergrifoila*), aam (*Mangifera andica*), imli (*Tamarindus indica*), kaith (*Limonia acidissima*), siris

(Albizzia lebbek), semal (Bombaz ceriba), celastrus (Cleastrus paniculates), etc.

The Sanctuary has variety of habitats for diversified fauna. Fish species recorded from of this Sanctuary includes catal (Catla catla), greyei (Channa marulius), lanchi (Walago attu), mahseer (Tor tor), mirgal (Cirrhinus mrigala), roho (Labeo rohita), savank (Channa punctatus), seenghari (Mystus seenghala). Apart from fishes, the common Indian toad (Bufo melanostictus), common frog (Rana tigerina), banded krait (Bugorus fasciatus), cobra (Naja naja), common krait (Bungarus caeruleus), fresh water swamp crocodile (Crocodylus palustris), Indian python (Python molurus), north Indian flap shelled turtle (Lissemys punctata punctata), rat snake (Ptyas mucosus), leopard (Panthera pardus), etc. the main fauna of the sanctuary.”

5. Relevant part of the notification are quoted below :

1. *Extent and boundaries of Eco-Sensitive Zone.–*

- i. The Eco-Sensitive Zone shall be to an extent of 0 (zero) to 13 kilometers around the boundary of Nahargarh Wildlife Sanctuary and the area of the Eco-Sensitive Zone is 79.356 square kilometres. Zero extent is towards the sides with heavy urbanization.*
- ii. The boundary description of Nahargarh Wildlife Sanctuary and its Eco-Sensitive Zone is appended in Annexure-I.*
- iii. The maps of the Nahargarh Wildlife Sanctuary demarcating Eco-Sensitive Zone along with boundary details and latitudes and longitudes are appended as Annexure-IIA, and Annexure-II-B.*
- iv. List of geo-coordinates of the boundary of Nahargarh Wildlife Sanctuary and Eco-Sensitive Zone are given in table A and B of Annexure-III.*

- v. *The lists of village falling in the Sanctuary and proposed Eco-Sensitive Zone along with their geo co-ordinates at prominent points are appended as Annexure-IV.*

2. Zonal Master Plan for Eco-Sensitive Zone.-

- i. *The State Government shall, for the purposes of the Eco-Sensitive Zone prepare a Zonal Master Plan within a period of two years from the date of publication of this notification in the Official Gazette, in consultation with local people and adhering to the stipulations given in this notification for approval of the Competent authority of State.*
- ii. *The Zonal Master Plan for the Eco-Sensitive Zone shall be prepared by the State Government in such manner as is specified in this notification and also in consonance with the relevant Central and State laws and the guidelines issued by the Central Government, if any.*

3. Measures to be taken by the State Government - The State Government shall take the following measures for giving effect to the provisions of this notification, namely:-

- i. *Land use.- (a) Forests, horticulture areas, agricultural areas, parks and open spaces earmarked for recreational purposes in the Eco-Sensitive Zone shall not be used or converted into areas for commercial or residential or industrial activities:*

Provided that the conversion of agricultural and other lands, for the purpose other than that specified at part (a) above, within the Eco-Sensitive Zone may be permitted on the recommendation of the Monitoring Committee, and with the prior approval of the competent authority under Regional Town Planning Act and other rules and regulations of Central Government or State Government as applicable and vide provisions of this Notification, to meet the residential needs of the local residents and for activities such as:-

- i. *widening and strengthening of existing roads and construction of new roads;*
- ii. *construction and renovation of infrastructure and civic amenities;*

- iii. *small scale industries not causing pollution;*
- iv. *cottage industries including village industries; convenience stores and local amenities supporting eco-tourism including home stay;*
- v. *rainwater harvesting; and*
- vi. *promoted activities given under paragraph 4:*

Provided further that no use of tribal land shall be permitted for commercial and industrial development activities without the prior approval of the competent authority under Regional Town Planning Act and other rules and regulations of the State Government and without compliance of the provisions of article 244 of the Constitution or the law for the time being in force, including the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007):

Provided also that any error appearing in the land records within the Eco-Sensitive Zone shall be corrected by the State Government, after obtaining the views of Monitoring Committee, once in each case and the correction of said error shall be intimated to the Central Government in the Ministry of Environment, Forest and Climate Change:

Provided also that the correction of error shall not include change of land use in any case except as provided under this sub-paragraph.

(b) Efforts shall be made to reforest the unused or unproductive agricultural areas with afforestation and habitat restoration activities

(2) Natural water bodies.-The catchment areas of all natural springs shall be identified and plans for their conservation and rejuvenation shall be incorporated in the Zonal Master Plan and the guidelines shall be drawn up by the State Government in such a manner as to prohibit development activities at or near these areas which are detrimental to such areas.

(3) Tourism or Eco-tourism.-

(a) All new eco-tourism activities or expansion of existing tourism activities within the Eco-Sensitive Zone shall be as per the Tourism Master Plan for the Eco- Sensitive Zone.

(b) The Eco-Tourism Master Plan shall be prepared by the State

Department of Tourism in consultation with State Departments of Environment and Forests.

(c) The Tourism Master Plan shall form a component of the Zonal Master Plan.

(d) The activities of eco-tourism shall be regulated as under, namely:-

(i) new construction of hotels and resorts shall not be allowed within one kilometre from the boundary of the Wildlife Sanctuary or upto the extent of the Eco-Sensitive Zone whichever is nearer:

Provided that beyond the distance of one kilometre from the boundary of the Wildlife Sanctuary till the extent of the Eco-Sensitive Zone, the establishment of new hotels and resorts shall be allowed only in pre-defined and designated areas for eco-tourism facilities as per Tourism Master Plan;

(ii) all new tourism activities or expansion of existing tourism activities within the Eco- Sensitive Zone shall be in accordance with the guidelines issued by the Central Government in the Ministry of Environment, Forest and Climate Change and the eco- tourism guidelines issued by National Tiger Conservation Authority (as amended from time to time) with emphasis on eco-tourism;

(iii) until the Zonal Master Plan is approved, development for tourism and expansion of existing tourism activities shall be permitted by the concerned regulatory authorities based on the actual site specific scrutiny and recommendation of the Monitoring Committee and no new hotel, resort or commercial establishment construction shall be permitted within Eco-Sensitive Zone area.

4. List of activities prohibited or to be regulated within Eco-Sensitive Zone.-

All activities in the Eco-Sensitive Zone shall be governed by the provisions of the Environment Act and the rules made there under including the Coastal Regulation Zone, 2011 and the Environmental Impact Assessment Notification, 2006 and other applicable laws including the Forest (Conservation) Act, 1980 (69 of 1980), the Indian Forest Act, 1927 (16 of 1927), the Wildlife (Protection) Act 1972, (53 of 1972), and amendments made thereto and be regulated in the manner specified in the Table below, namely:-

TABLE

S. No.	Activity	Description
(1)	(2)	(3)
A. Prohibited Activities		
1.	Commercial mining, stone quarrying and crushing units.	(a) All new and existing mining (minor and major minerals), stone quarrying and crushing units are prohibited with immediate effect except for meeting the domestic needs of bona fide local residents including digging of earth for construction or repair of houses and for manufacture of country tiles or bricks for housing and for other activities; (b) The mining operations shall be carried out in accordance with the order of the Hon'ble Supreme Court dated the 4 th August, 2006 in the matter of T.N. Godavarman Thirumulpad Vs. UOI in W.P.(C) No.202 of 1995 and dated the 21 st April, 2014 in the matter of Goa Foundation Vs. UOI in W.P.(C) No.435 of 2012.
2.	Setting of industries causing pollution (Water, Air, Soil, Noise, etc.).	New industries and expansion of existing polluting industries in the Eco-Sensitive Zone shall not be permitted: Provided that non-polluting industries shall be allowed within Eco-Sensitive Zone as per classification of Industries in the guidelines issued by the Central Pollution Control Board in February, 2016, unless otherwise specified in this notification and in addition the non-polluting cottage industries shall be promoted.
3.	Establishment of major hydro-electric project.	Prohibited (except as otherwise provided) as per the applicable laws.
4.	Use or production or processing of any hazardous substances.	Prohibited (except as otherwise provided) as per the applicable laws.
5.	Discharge of untreated effluents in natural water bodies or land area.	Prohibited (except as otherwise provided) as per the applicable laws.
6.	Setting up of new saw mills.	New or expansion of existing saw mills shall not be permitted within the Eco-Sensitive Zone.

7.	<i>Setting up of brick kilns.</i>	<i>Prohibited (except as otherwise provided) as per the applicable laws.</i>
8.	<i>Commercial use of firewood.</i>	<i>Prohibited (except as otherwise provided) as per the applicable laws.</i>
9.	<i>New wood based industry.</i>	<i>Prohibited (except as otherwise provided) as per the applicable laws.</i>
10.	<i>Fishing.</i>	<i>Prohibited (except as otherwise provided) as per the applicable laws.</i>
11.	<i>Use of plastic carry bags.</i>	<i>Prohibited (except as otherwise provided) as per the applicable laws.</i>
B. Regulated Activities		
12.	<i>Commercial establishment of hotels and resorts.</i>	<i>No new commercial hotels and resorts shall be permitted within one kilometer of the boundary of the protected area or upto the extent of Eco-Sensitive Zone, whichever is nearer, except for small temporary structures for eco-tourism activities:</i> <i>Provided that, beyond one kilometer from the boundary of the protected area or upto the extent of Eco-Sensitive Zone whichever is nearer, all new tourist activities or expansion of existing activities shall be in conformity with the Tourism Master Plan and guidelines as applicable.</i>
13.	<i>Construction activities.</i>	<i>(a) New commercial construction of any kind shall not be permitted within one kilometer from the boundary of the protected area or up to extent of the Eco-Sensitive Zone, whichever is nearer:</i> <i>Provided that, local people shall be permitted to undertake construction in their land for their use including the activities mentioned in sub-paragraph (1) of paragraph 3 as per building bye-laws to meet the residential needs of the local residents.</i> <i>Provided further that the construction activity related to small scale industries not causing pollution shall be regulated and kept at the minimum, with the prior permission from the competent authority as per applicable rules and regulations, if any.</i> <i>(b) Beyond one kilometer it shall be regulated as per the Zonal Master Plan.</i>

14.	<i>Felling of trees.</i>	(a) <i>There shall be no felling of trees in the forest or Government or revenue or private lands without prior permission of the Competent Authority in the State Government.</i> (b) <i>The felling of trees shall be regulated in accordance with the provisions of the concerned Central or State Act and the rules made thereunder.</i>
15.	<i>Commercial extraction of surface and ground water.</i>	<i>Regulated as per the applicable laws.</i>
16.	<i>Erection of electrical and communication towers and laying of cables and other infrastructures.</i>	<i>Regulated under applicable laws (underground cabling may be promoted).</i>
17.	<i>Widening and strengthening of existing roads and construction of new roads.</i>	<i>Taking measures of mitigation as per the applicable laws, rules and regulation and available guidelines.</i>
18.	<i>Movement of vehicular traffic at night.</i>	<i>Regulated for commercial purpose under applicable laws.</i>
19.	<i>Introduction of exotic species.</i>	<i>Regulated as per the applicable laws.</i>
20.	<i>Protection of hill slopes and river banks.</i>	<i>Regulated as per the applicable laws.</i>
21.	<i>Discharge of treated waste water or effluents in natural water bodies or land area.</i>	<i>The discharge of treated waste water or effluents shall be avoided to enter into the water bodies and efforts shall be made for recycle and reuse of treated waste water. Otherwise the discharge of treated waste water or effluent shall be regulated as per the applicable laws.</i>
22.	<i>Commercial sign boards and hoardings.</i>	<i>Regulated as per the applicable laws.</i>
23.	<i>Small scale non-polluting industries.</i>	<i>Non- polluting industries as per classification of industries issued by the Central Pollution Control Board in February, 2016 and non-hazardous, small-scale and service industry, agriculture, floriculture, horticulture or agro- based industry producing products from indigenous materials from the Eco-Sensitive Zone shall be permitted by the competent Authority.</i>

24.	<i>Collection of Forest produce or Non-Timber Forest produce.</i>	<i>Regulated as per the applicable laws.</i>
25.	<i>Solid waste management.</i>	<i>Regulated as per the applicable laws.</i>
26.	<i>Eco-tourism.</i>	<i>Regulated as per the applicable laws.</i>
27.	<i>Bio-Medical Waste Management.</i>	<i>Regulated as per the applicable laws.</i>
28.	<i>Air and vehicular pollution.</i>	<i>Regulated as per the applicable laws.</i>
29.	<i>Drastic Change of Agriculture systems.</i>	<i>Regulated as per the applicable laws.</i>
30.	<i>Fencing of existing premises of hotels and lodges.</i>	<i>Regulated as per the applicable laws.</i>
31.	<i>Infrastructure including civic amenities.</i>	<i>Taking measures of mitigation as per the applicable laws, rules and regulations available guidelines.</i>
32.	<i>Establishment of large-scale commercial livestock and poultry farms by firms, corporate and companies.</i>	<i>Regulated (except otherwise provided) as per the applicable laws except for meeting local needs.</i>
33.	<i>Undertaking other activities related to tourism like flying over the Eco-Sensitive Zone area by hot air balloon, helicopter, drones, Microlites, etc.</i>	<i>Regulated as per the applicable laws.</i>
34.	<i>Ongoing agriculture and horticulture practices by local communities along with dairies, dairy farming, aquaculture and fisheries.</i>	<i>Permitted as per the applicable laws for use of locals.</i>

C. Promoted Activities		
35.	<i>Rain water harvesting.</i>	<i>Shall be actively promoted.</i>
36.	<i>Organic farming.</i>	<i>Shall be actively promoted.</i>
37.	<i>Adoption of green technology for all activities.</i>	<i>Shall be actively promoted.</i>
38.	<i>Cottage industries including village artisans, etc.</i>	<i>Shall be actively promoted.</i>
39.	<i>Use of renewable energy and fuels.</i>	<i>Bio-gas, solar light etc. shall be actively promoted.</i>
40.	<i>Agro-Forestry.</i>	<i>Shall be actively promoted.</i>
41.	<i>Environmental awareness.</i>	<i>Shall be actively promoted.</i>
42.	<i>Skill Development.</i>	<i>Shall be actively promoted.</i>
43.	<i>Restoration of degraded land/ forests/ habitat.</i>	<i>Shall be actively promoted.</i>
44.	<i>Plantation of Horticulture and Herbals.</i>	<i>Shall be actively promoted.</i>
45.	<i>Use of eco-friendly transport.</i>	<i>Shall be actively promoted.</i>

5. Monitoring Committee for Monitoring the Eco-Sensitive Zone
Notification.- For effective monitoring of the provisions of this notification under sub-section (3) of section 3 of the Environment (Protection) Act, 1986, the Central Government hereby constitutes a Monitoring Committee, comprising of the following, namely-

S No	Constituent of the Monitoring Committee	Designation
1.	<i>District Collector, Jaipur</i>	<i>Chairman, ex officio;</i>
2.	<i>Sub Divisional Officer, Amer</i>	<i>Member;</i>
3.	<i>A representative of non-governmental organisation or working in the field of wildlife conservation to be nominated by the Government of Rajasthan for a period of three years</i>	<i>Member;</i>
4.	<i>One expert in Ecology and Environment from reputed institution or university of the State to be nominated by the Government of</i>	<i>Member;</i>

	<i>Rajasthan for a period of three years.</i>	
5.	<i>Honorary wildlife warden, Jaipur</i>	<i>Member;</i>
6.	<i>Regional Officer, Rajasthan State Pollution Control Board</i>	<i>Member;</i>
7.	<i>Mayor, Jaipur Municipal Corporation</i>	<i>Member;</i>
8.	<i>Pradhan, Panchayat Samiti, Amer</i>	<i>Member;</i>
9.	<i>Member of the State Biodiversity Board</i>	<i>Member;</i>
10.	<i>Deputy Conservator of Forest/ Wildlife, Jaipur</i>	<i>Member-Secretary.</i>

6. Boundary description of the Eco-sensitive Zone of Nahargarh Wildlife Sanctuary is given below :-

“In order to delineate boundaries of Eco-Sensitive Zone of Nahargarh Wildlife Sanctuary all field structures, habitations, water bodies, Industrial areas, religious places and other public institutes as provided by the revenue authorities have been marked on the map annexed with this notification. Geographical Positioning System (GPS) have been marked on the Sanctuary boundaries, which are numbered from 1 to 100 on the map. Then the boundaries of Eco-Sensitive Zone have also been marked on the same map and its Geographical Positioning System points have also marked on the boundary and numbered as 101 to 336. This map is annexed as Annexure-II. The boundary of Eco-Sensitive Zone is decided as indicated by the Geographical Positioning System points shown on this map as under:

Northern boundary: The extent of Eco-Sensitive Zone from Global Position point number 186 marked on reserve forest block boundary Amer-54 and Eco-Sensitive Zone boundary including villages Bagwara, Singwana. Chhapradi, Jaitpura Khinchi, Achrol, Ani, Labana, Gunawata, Dhandh, Harbar to Kukas to Global Position System point number 270 will be up to 13 kilometers. Eco Sensitive Zone boundary from Global Position System point number 186 to 270 is co-terminus with the boundary of reserve forest block Amer-54 and will include the whole reserve forest in the Eco- Sensitive Zone within these Global Position System points.

Eastern boundary: The extent of Eco-Sensitive Zone from Global Position System point number 270 to 280 will be Reserve forest block boundary, from Global Position System point number 280 to 281 will be along National Highway No. 8(Now NH-11-C), from Global Position

System point number 281 to 295 will be 100 meters to 500 meters from sanctuary boundary. Similarly, the boundary along NH 8(Now 11 C) from Global Position System point 295 to 297 will be Eco Sensitive Zone. Reserve forest block boundary from GPS point number 297 to 320 will be Eco- Sensitive Zone limit. Sanctuary boundary from Global Position System point number 320 to 325 will be Eco Sensitive Zone limit including Rajamal ka talab. The extent of Eco Sensitive Zone from Global Position System point number 297 to 325 will be from 100 meters to 2.0 kilometers.

Southern boundary: Eco-Sensitive Zone boundary from Global Position System point number 325 to 336 and up to 101 will be co-terminus with the boundary of Sanctuary. From Global Position System point number 101 to 104 it will be co-terminus with the boundary of reserve forest Block Amer -54. From GPS point number 104 to 108 it will be co-terminus with the boundary of Sanctuary. From Global Position System point number 108 to 147 it will run along the natural boundary (flow as well as bed area up to both banks) of Amanishah Nallah.

Western boundary: Eco-Sensitive Zone boundary from Global Position System point number 147 to 160 will be co-terminus with the boundary of Sanctuary. From Global Position System point number 160 to 186 it will be 50 meters to 2 kilometers including Bahav sagar, Akhepura, Badagaov, Bhatiya, Bishangarh Areas.”

7. List of villages coming under Nahargarh Wildlife Sanctuary and Eco-Sensitive Zone alongwith geo-coordinates:-

Sl. No.	Villages in the Sanctuary	Latitude	Longitude
1	Nahargarh	26°56'15.08"N	75°48'55.70"E
2	Amer	26°59'8.19"N	75°51'4.82"E
3	Chimanpura	27°1'23.51"N	75°54'4.74"E
4	Kukas	27°1'50.37"N	75°53'24.08"E
5	Nestiwas	27°1'39.28"N	75°52'25.41"E
6	Khurad	27°2'4.37"N	75°53'7.23"E
7	Taleda	27°2'41.57"N	75°52'25.42"E
8	Badagaon Jarkhya	27°2'14.47"N	75°51'22.67"E
9	Sisiyawas	27°0'37.93"N	75°50'51.32"E
10	Akeda	27°0'25.41"N	75°48'45.67"E
11	Jaisalya	26°59'36.43" N	75°49'17.09"E

12	Papad	26°58'4.10"N	75°47'41.57"E
13	Kishanbag	26°57'5.81"N	75°46'54.65" E
Sl. No.	Villages in Eco-sensitive Zone	Latitude	Longitude
1	Kukas	27°1'50.37"N	75°53'24.08"E
2	Harwar	27°3'58.08"N	75°56'25.90"E
3	Dhand	27°4'44.03"N	75°56'20.66"E
4	Gunawata	27°5'34.61"N	75°56'57.21"E
5	Labana	27°6'38.16"N	75°57'45.56"E
6	Ani	27°7'5.48"N	75°59'7.83"E
7	Achoral	27°8'8.37"N	75°58'20.78"E
8	Jaitpura Khinchi	27°7'58.38"N	75°55'2.24"E
9	Chhapreri	27°6'44.47"N	75°54'51.62"E
10	Singhwana	28°5'52.77"N	75°50'0.01"E
11	Chokhalyawas urf Kacherawala	27°4'30.74"N	75°55'2.22"E
12	Bagwada	27°5'28.14"N	75°50'51.42"E
13	Daulatpura	27°4'46.15"N	75°49'53.80"E

8. Notices were issued to the respondents and in compliance thereof, respondent no. 13 and 14 has filed the reply with the following facts :-

i. That Respondent No. 13 M/s Elite Banquets, A HUF concern, having its address at 42, Khadi Colony, Ajmer Road, Jaipur, is primarily engaged in the business of event management, and Respondent No. 14 is a company, incorporated under the provisions of the Companies Act, 1956, and is primarily engaged in dealing of immovable properties, having its registered office at J-5, Himmat Nagar, Tonk Road, Jaipur.

ii. That under the State Government's initiatives to promote tourism in and around the city of Jaipur, the answering Respondent No. 14, purchased the land ad-measuring 7.02 hectares comprising a of total 38 Khasras, at Village Nangal Susawatan, Tehsil Amer, District Jaipur vide registered sale deed dated 24.08.2005. It is imperative to submit that the said land was originally purchased by the purchaser as agricultural land, however, the nature of the land was changed on request of the original purchaser itself from "agriculture" to "Tourism unit and/or Hotel & Resorts" under the provisions of the Rajasthan Industrial Area (Allotment) Rules,

1959, vide letter bearing No. F.9(148)H/DT/2000/16239 dated 17.09.2001. Since the original purchaser was unable to embark upon any venture to make use of the converted land even after extension, therefore, permission was sought from the State Government to create a third-party right, and after having granted the said permission by the State Government under Rule 9 of the Rules of 1959, the said land got purchased by the Respondent No. 14. It is further imperative to submit that out of land measuring 7.02 hectare, land ad-measuring 0.52 was surrendered by the Respondent No. 14 in favour of State Government on 18.10.2005, for the widening of the road, and fresh patta was issued in favour of the Respondent No. 14 by the State Government on 07.07.2008. Similarly, the answering Respondent No. 14, purchased another chunk of land ad-measuring 0.81 hectares comprising a of total 3 Khasras, at Village Nangal Susawatan, Tehsil Amer, District Jaipur vide registered sale deed dated 04.02.2008, after obtaining permission by the original purchaser from the State Government on 25.01.2008, to create a third-party right on the said converted land. The copies of the pattas issued by the State Government in favour of Respondent No. 14 are enclosed as ANNEXURE R/1.

- iii. That after having purchased the land aforesaid, and having issued the patta by the State Government, the answering Respondent approached the State and its regulatory instrumentalities/authorities, to seek requisite permission to set up and operate the Marriage Garden on the land in question. It is imperative to submit that the map of the project to be undertaken on the land in question was approved by the JDA on 18.09.2017. The approval would reveal that the map was approve for the built-up area of 9030.55 Sq. Mtrs., however, as of date only 2919.67 Sq. Mtrs., a built-up area has been constructed on the said land. It is further imperative to submit that after the construction, a completion certificate has been issued by Sh. Ashok Mishra, Registered Architect with the JDA and competent to verify and issue the completion certificate. A copy of the approved map is enclosed as ANNEXURE R/2, and a copy of the completion certificate is enclosed as ANNEXURE R/3.

iv. That as stated hereinabove, the answering Respondent approached the State and its regulatory authorities to obtain the necessary permission, it is needless to submit that prior to the operation of the project, the answering Respondent had obtained various necessary permissions, which for the convenience of this Tribunal, has been listed as under:

- i. Electricity Connection;
- ii. Approval by the Tourism Department;
- iii. Patta for non-agriculture use;
- iv. Building Plan approval;
- v. Order regarding change in land use;
- vi. Proof of deposition of tax as a commercial establishment

The copies of the permission as referred are enclosed as ANNEXURE R/4.

v. That notwithstanding the above, to the utter dismay of the answering Respondents, a notice dated 09.01.2023 came to be served upon Respondent No. 13, thereby directing that till further orders no business activity shall be conducted on the impugned project "Kundanvan". The Respondent by way of said notice was further directed to provide the documents as desired therein. A perusal of the said notice, however, would reveal that the same came to be issued on the strength of the complaint purportedly filed by the petitioner, wherein without even hearing the Respondent, or granting any opportunity of hearing merely on the basis of documents along with the complaint filed by the petitioner, an opinion was framed that the project is being operated without obtaining wildlife clearance, therefore, why not the premises be seized or demolished. The notice dated 09.01.2023 further makes a reference to the various judgments passed by the Hon'ble Supreme Court, from time to time with respect to the activities carried out in eco-sensitive zone. It is stated that the said notice was duly replied to by the Respondent stating that the project needs no Environmental or Wildlife Clearance. It was further clarified that in terms of the order passed by the Hon'ble Supreme Court, the activities that are in existence and fall under the regulated category can continue with the permission of the Principal Chief Conservator of Forest. A

copy of the notice dated 09.01.2023 and its reply dated 20.01.2023, are collectively enclosed herewith and marked as **ANNEXURE R/5 (Colly)**.

vi. That further, in light of the directions passed by the Hon'ble Supreme Court vide order dated 03.06.2022, in *Re: T.N. Godavaran Thirumulpad vs. Union of India & Ors. Writ Petition (Civil) No. 202 of 1995*, the respondent vide letter dated 18.01.2023 again sought permission/No objection from the Principal Chief Conservator of Forest, for the impugned project "Kundanvan". Instead of issuing the necessary permission/NOC, another notice dated 30.01.2023 came to be served upon the Respondent, observing the reply of the Respondent to the notice dated 09.01.2023, to be unsatisfactory. Interestingly enough, the notice dated 30.01.2023, issued by the Assistant Conservator of Forest, further directed the Respondent to supply a copy of the application filed before the Principal Chief Conservator of Forest for obtaining approval and not to conduct any business activity and take any marriage bookings for the impugned project. A copy of the application dated 18.01.2023 is enclosed herewith and marked as ANNEXURE R/6, and a copy of the notice dated 30.01.2023 is enclosed herewith and marked as ANNEXURE R/7.

vii. That at this juncture it is imperative to throw lambent light on the judgments/orders passed by the Hon'ble Supreme Court, in **Re: T.N. Godavaran Thirumulpad vs. Union of India & Ors. Writ Petition (Civil) No. 202 of 1995**, from time to time. A writ petition in the nature of a Public Interest Writ Petition came to be instituted for the protection of forest land in the Nilgiris district of the State of Tamil Nadu, subsequently, the scope of the said writ petition was enlarged so as to protect the natural resources throughout the country. Thus, the directions issued by the Hon'ble Supreme Court in the said case have a bearing on the present case. It is stated that the Hon'ble Supreme Court, whilst dealing with the recommendations of the Central Empowered Committee ("CEC") and Eco-sensitive Zones issued various directions/guidelines inter-alia that "In the event any activity is already being undertaken within the one kilometer or extended buffer zone (ESZ), as the case may be, of any wildlife sanctuary

or national park which does not come within the ambit of prohibited activity as per the 9th February 2011 Guidelines, such activities may continue with the permission of the Principal Chief Conservator of Forest of each State or Union Territory and the person responsible for such activities in such a shall obtain necessary permission within a period of six months. Such permission shall be given once the Principal Chief Conservator of Forest is satisfied that the activities concerned do not come within the prohibited list and were continuing prior to passing of this order in a legitimate manner.....”

viii. That the aforesaid directions clearly envisage that a regulated activity in terms of Guidelines dated 09.02.2011, continuing as on the date of the order i.e., 03.06.2022, can continue further, however, with the permission of the Principal Chief Conservator of Forest. Further, the Hon’ble Supreme Court obligates the Principal Chief Conservator of Forest, subject to his satisfaction, to grant necessary approval/permission/NOC. Therefore, in no manner, the work of granting necessary, approval/permission/NOC, could have been delegated. The answering Respondent, in terms of the aforesaid directions by the Hon’ble Supreme Court, rightly applied before the Principal Chief Conservator of the Forest, for necessary approval. However, instead of applying its own mind to the same, the Assistant Conservator of Forest, who is subordinate to the Principal Chief Conservator of Forest, directed the Respondent to supply the application submitted to the Principal Chief Conservator of Forest in its office.

ix. That it is imperative to submit that the directions issued by the Hon’ble Supreme Court vide order dated 03.06.2022, so far as it relates to obtaining necessary approval from the Principal Chief Conservator of Forest, has now been diluted. The Hon’ble Supreme Court, vide order dated 26.04.2023, has held that such direction would be impossible to implement. Further, the directions issued by the Hon’ble Supreme Court, whilst modifying its earlier directions of approval from PCCF, has made the Environmental and Forest Clearance, prospectively. The relevant portion of the judgment reads as under:

“50. It is further to be noted that there are various regulated and permissible activities. There are also certain projects of national and strategic importance such as construction of National Highways, Railways, Defence related infrastructure etc. The effect of the directions in 56.5 of the order dated 3rd June 2022 (supra) is that all such activities will be permanently prohibited. In this respect, it is to be noted that MoEF& CC has issued Office Memorandum dated 17th May 2022 which required that any activity listed in Schedule of the EIA Notification 2006, when conducted in a notified ESZs, or in the case of National parks and Sanctuaries for which no ESZ has been finally notified, when conducted within 10 kilometers of such National Park or Sanctuary, requires the consideration and recommendation of the NBWL or its Standing Committee in addition to the Environment Clearance under the 1986 Act. Additionally, activities which are regulated as per the specified ESZ notification, require approval as per the notification. As such, we find that there are inbuilt safeguards for preventing rampant construction and abuse of process which may be detrimental to the development and maintenance of wildlife habitats. It is further to be noted that if the direction as contained in paragraph 56.5 of the order dated 3rd June 2022 (supra) that even for continuation of existing activities, the permission of the PCCF of each State of Union Territory would be necessary, remains unmodified taking into consideration that in each State of Union Territory there will be hundreds of villages wherein millions of people would be residing, the PCCF would be left with no other job except to consider such applications for permission to continue such activities. Even a farmer desirous to continue farming activities would be required to seek such permission. We find that such a directions is impossible to be implemented.....

66. We also modify the directions contained in paragraph 56.5 of the order dated 3rd June 2022 (supra) and replace the same as under:

- (i) The MoEF&CC and all the State/Union Territory Governmenshall strictly follow the provision in the*

said Guidelines dated 9th February 2011 and so also the provisions contained in the ESZs notifications pertaining to the respective Protected Areas with regard to prohibited activities, regulated activities and permissible activities.

(ii) We further direct that while granting Environmental and Forest Clearances for project activities in ESZ and other areas outside the Protected Areas, the Union of India as well as various State/Union Territory Governments shall strictly follow the provisions contained in the Office Memorandum dated 17th May 2022 issued by MoEF& CC.”

ISSUANCE OF ESZ NOTIFICATION FOR NAHARGARH WILDLIFE SANCTUARY:

- x. *That insofar as the issuance of Eco-Sensitive zone Notification (hereinafter referred to as the “ESZ Notification” for brevity), is concerned, it is submitted that the Environment (Protection) Act, 1986, empowers the Central Government to take measures to protect and improve the environment, which includes inter-alia laying down standards for the quality of the environment in its various aspects; restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards, etc. The statutory provisions for declaring the ESZ are reproduced hereunder for the convenience of this Tribunal:*

THE WILD LIFE (PROTECTION) ACT, 1972:

“5C. Functions of the National Board.—

(1) It shall be the duty of the National Board to promote the conservation and development of wild life and forests by such measures as it thinks it.

(2) Without prejudice to the generality of the foregoing provision, the measures referred to therein may provide for—

(a) framing policies and advising the Central Government and the State Governments on the ways and means of promoting wildlife

conservation and effectively controlling poaching and illegal trade of wildlife and its products;

(b) making recommendations on the setting up of and management of national parks, sanctuaries and other protected areas and on matters relating to restriction of activities in those areas;

(c) carrying out or causing to be carried out impact assessment of various projects and activities on wild life or its habitat;

(d) reviewing from time to time, the progress in the field of wild life conservation in the country and suggesting measures for improvement thereto; and

(e) preparing and publishing a status report at least once in two years on wild life in the country.”

THE ENVIRONMENT (PROTECTION) ACT, 1986:

“3. Powers of Central Government to Take Measures to Protect and Improve Environment.-

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:--

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;”

THE ENVIRONMENT (PROTECTION) RULES, 1986:

5. Prohibitions and restrictions on the location of industries and the carrying on processes and operations in different areas. - (1) The Central government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas

(i) Standards for quality of environment in its various aspects laid down for an area.

- (ii) The maximum allowable limits of concentration of various environmental pollutants (including noise) for an area.*
- (iii) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.*
- (iv) The topographic and climatic features of an area.*
- (v) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.*
- (vi) Environmentally compatible land use.*
- (vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.*
- (viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.*
- (ix) Proximity to human settlements*
- (x) Any other factor as may be considered by the Central Government to be relevant to the protection of the environment in an area.”*

- xi. That taking strength from the aforementioned provisions, the Central Government vide the National Wildlife Action Plan (2002–2016), decided “to declare identified areas around Protected Areas and corridors as ecologically fragile under the Environment (Protection) Act, 1986, whenever necessary.” The basic intention and aim behind declaring the eco-sensitive zone/eco-fragile zone, as per the said plan is to regulate certain activities around National Parks and Wildlife Sanctuaries to minimize the negative impacts of such activities on the fragile ecosystem encompassing the protected areas.*
- xii. That insofar as the Nahargarh Wild Life Sanctuary (hereinafter referred to as the “NWS” for brevity), is concerned, the Central Government issued the Notification dated 08.03.2019, demarcating boundaries and declaring an eco-sensitive zone within the NWS. As per the said Notification, the list of activities is categorized into three parts. All the development decisions shall be in conformity with the*

activities prohibited, regulated, and permitted as per Nahargarh ESZ Notification and also if those activities are not in contravention with the prevailing Master Development Plan / Zonal Development Plan of Jaipur. S.No.12 of Clause B ‘Regulated Activity’ of the Table appended to the Notification provides for “Commercial establishment of hotels and resorts”. Hotel activities are not prohibited, however, are regulated activities. A copy of the said notification is already on record and annexed as Annexure–3 to the Original Application, therefore, the same is not enclosed hereto again for the sake of brevity.

- xiii. That it is further relevant to submit here that exercising powers further under the provisions of the Act of 1986, the Central Government adopted the policy of Environment Impact Assessment. The Environment Impact Assessment formulated/prescribed various measures inter-alia mandatory requirement of Environment Clearance. The Environment Impact Assessment issued a Notification dated 14.09.2006, which envisages a list of projects or activities requiring environmental clearance. The notification further bifurcates activities into two categories Category ‘A’ and Category ‘B’. The Schedule appended to the Notification provides the requirement of environmental clearance for the Category ‘B’ Project mentioned at S.no. 8 for Building and Construction Projects, only if the built-up area is equal to or more than 20000 sq. mtrs. The relevant abstract of the EIA Notification dated 14.09.2006 is enclosed herewith and marked as ANNEXURE R/ 11.*
- xiv. That at this juncture it is apposite to mention that there is no doubt that the Hotel activities are regulated activities. However, insofar as the impugned project “Kundanvan” is concerned, the same has been constructed mainly for marriage, and corporate events. The entire built-up area consists of a garden and a banquet hall, which can be used for weddings, conferences & meetings, social events, gala dinners, etc. It is further submitted that the built-up area of the project “Kundanvan” contains only two rooms, however, unlike hotels, the same are not open to the general public. Therefore, in such circumstances, it will not be prudent/rational to treat the project which is merely a Marriage Garden as a “Commercial Establishment of Hotels & Resorts”. Similarly, the impugned project cannot be treated at par with the “Building and Construction Projects”.*

Therefore, treating the impugned project at par with the Hotels & resorts, Building and Construction Projects, and alleging violation/contravention of the laws applicable to the same operating in the eco-sensitive zone would be highly misconceived. Moreover, the purpose of incorporating Buildings and construction beyond 20,000 Sq. Meters under the ambit of EC were on account of environmental haphazard which is highly remote in the instant case as no adverse impact on the environment is observed in an area where there exists hardly 3000 sq meters of construction.

- xv. *That the State Government, has issued the Tourist Master Plan (Zonal Master Plan) for Nahargarh Wild Life Sanctuary on 03.07.2023. It envisages Development Promotion & Control Regulation and Landuse, which are the set of guidelines and rules established by local government authorities to govern landuse and development within a specific jurisdiction. These regulations aim to promote orderly and sustainable development while ensuring that it aligns with the overall planning goals and objectives of the area. The Master Plan further provides that all the development decisions shall be in conformity with the activities prohibited, regulated, and permitted as per Nahargarh ESZ Notification and also if those activities are not in contravention with the prevailing Master Development Plan / Zonal Development Plan of Jaipur. The relevant Clause 10.2 of the said Master Plan reads as under:*

“10.2 Landuses as Per Prevailing Master Development Plan/Zonal Development Plan of Jaipur and Allowed Activities in Nahargarh ESZ

As per Nahargarh ESZ Notification, the list of activities is categorized in three parts. All the development decisions shall be in conformity with the activities prohibited, regulated, permitted as per Nahargarh ESZ Notification and also if those activities are not in contravention with prevailing Master Development Plan / Zonal Development Plan of Jaipur.

10.2.1 Prohibited Activities :

As per the Nahargarh ESZ Notification the prohibited activities are given in Annexure 10A.

10.2.2 Regulated Activities

As per the Nahargarh ESZ Notification the regulated activities are given in Annexure 10B.

10.2.3 Promoted Activities

As per the Nahargarh ESZ Notification the promoted activities are given in Annexure 10C.”

- xvi. The Master Plan observes that the Prevailing Master Development Plan/Zonal Development Plan of Jaipur prescribes Landuse and Development Promotion and Control Regulations for the whole ESZ Area which shall be taken as the basis for permitted and regulated activities within ESZ. The relevant Clause 10.3 of the Master Plan reads as under:*

“10.3 Provision of Nahargarh ESZ Notification & Prevailing Master Development Plan/Zonal Development Plan of Jaipur ESZ Notification dated 08-03-2019 prescribes prohibited, promoted and regulated activities. Prevailing Master Development Plan/Zonal Development Plan of Jaipur prescribes Landuse and Development Promotion and Control Regulations for the whole ESZ Area which shall be taken as basis for permitted and regulated activities within ESZ.....”

- xvii. That as stated hereinabove, treating the impugned project at par with the “Commercial establishment of Hotels & Resort” or “Building and Construction Projects”, would be highly misconceived. However, for the sake of arguments, it can be said that the ESZ Notification provides for prohibition, or ban on new commercial hotels and resorts within 1 Km. of the boundary of the protected area or up to the extent of the Eco-Sensitive Zone, whichever is nearer, there is no prohibition on the project existing as on the date of issuance of notification. Clause 10.4 of the Master Plan takes care of the existing activity as on the date of the Notification, which reads as under:*

“10.4 Existing Activity/Use

ESZ Notification dated 08-03-2019 prescribed regulations regarding new hotel, resort, commercial establishments, etc. This leads to the requirement of defining what is “existing.”

For purpose of ZMP for the ESZ, hotels, resorts, commercial establishments, etc. shall be considered as existing if they have any of the following issued prior to 08.03.2019 ESZ Notification of Nahargarh:

- 1. Electricity connection for non-agricultural use.*
- 2. Approval by Tourism Department as tourism unit.*
- 3. Conversion order/Patta for non-agricultural use.*
- 4. Building Plan approval.*
- 5. Order regarding change in landuse.*
- 6. Proof of deposition of tax as hotel, resort, commercial establishment, etc.*
- 7. CTE/CTO/Environmental Clearance* Additionally, all the duly approved uses existing prior to issue of Nahargarh ESZ Notification shall be honoured. Further process will be done in conformity with the development controls & zoning regulation as Per Zonal Master Plan of ESZ.”

A copy of the Tourist Master Plan (Zonal Master Plan) for the Nahargarh Wildlife Sanctuary is enclosed herewith.

- xviii. That admittedly the project came into operation prior to 08.03.2019 i.e., the date of issuance of ESZ Notification. The same can be fortified by the fact that the maps came to be approved by the JDA on 18.09.2017, and the entire project came to be completed in December 2018. All the required permissions came to be obtained prior to the date of issuance of ESZ Notification.*
- xix. That the facts stated hereinabove proceed to demonstrate that the impugned project “Kundanvan” cannot be construed to fall under the category of a “new commercial establishment of hotels & resorts”. The perusal of the ESZ Notification, Master Plan, and the Office Memorandum issued by the Central Government from time to time, would reveal that there is no stipulation with respect to any “existing” project. Even otherwise, the conditions and stipulations*

cannot be imposed for a project retrospectively as the project exists as of 08.03.2019, and the conditions have come to be imposed after 08.03.2019.

REQUIREMENT OF PRIOR ENVIRONMENTAL CLEARANCE OR APPROVAL FROM THE NATIONAL BOARD FOR WILDLIFE

- xx. *That the moot question which falls for consideration of this Hon'ble Tribunal is whether it was incumbent upon the answering Respondents to seek prior approval from the National Board for Wildlife (hereinafter referred to as the "NBW" for brevity) before coming into operation of "Kundanvan" or not. At the outset, it is submitted that as per the Wildlife (Protection) Act, 1972, prior approval/clearance from NBW is to be obtained only when the project requires prior Environmental Clearance. In other words, it is not mandatory to seek 271 approval from NBW, if the project is not listed in the schedule of EIA Notification dated 14.09.2006, thereby requiring prior Environmental Clearance. The perusal of the ESZ Notification, Master Plan, and Office Memorandum issued by the Central Government, would reveal that there is no mandatory requirement of obtaining prior approval from NBW for projects like "Kundanvan" which are primarily designed, and constructed only for holding marriages, corporate meetings, etc.*
- xxi. *That the answering Respondents have already clarified that the impugned project cannot be treated at par with the "Commercial establishment of hotels & resorts" and neither can it be kept on the same page with "Building and Construction Projects". The ESZ Notification, however, deals with such kind of activities that though falling under the eco-sensitive zone, are not covered by the EIA Notification dated 14.09.2006. Clause 6 of the ESZ Notification, provides that such activities shall be scrutinized by the Monitoring Committee based on actual site-specific conditions and referred to the concerned regulatory authority. Interestingly, the ESZ notification also takes into consideration the activities that fall under the eco-sensitive zone and are covered by the EIA Notification dated 14.09.2006. Sub clause (3), Clause 6 of the ESZ Notification provides that the activities that are covered in the Schedule to the notification dated 14.09.2006, and fall in the EcoSensitive Zone, shall be scrutinized by the Monitoring Committee based on the*

actual site-specific conditions and referred to the Central Government in the Ministry of Environment, Forest and Climate Change for prior environmental clearances under 272 the provisions of the said notification. The relevant clause of the ESZ Notification reads as under:

“6. Terms of reference. – (1) The Monitoring Committee shall monitor the compliance of the provisions of this notification.....

(3) The activities that are covered in the Schedule to the notification of the Government of India in the erstwhile Ministry of Environment and Forest number S.O. 1533 (E), dated the 14th September, 2006, and are falling in the Eco-Sensitive Zone, except for the prohibited activities as specified in the Table under paragraph 4 thereof, shall be scrutinised by the Monitoring Committee based on the actual site-specific conditions and referred to the Central Government in the Ministry of Environment, Forest and Climate Change for prior environmental clearances under the provisions of the said notification.

(4) The activities that are not covered in the Schedule to the notification of the Government of India in the erstwhile Ministry of Environment and Forest number S.O. 1533 (E), dated the 14th September, 2006 and are falling in the Eco-Sensitive Zone, except for the prohibited activities as specified in the Table under paragraph 4 thereof, shall be scrutinised by the Monitoring Committee based on the actual site-specific conditions and referred to the concerned regulatory authorities.....”

xxii. That the perusal of the conditions of the Notification (supra), makes it apparent that environmental clearance is required only for the activities covered in the Notification dated 14.09.2006 and falls under the eco 273 sensitive zone. The impugned project/activity undertaken by the answering Respondents though falling under the eco-sensitive zone, is not covered by the Notification dated 14.09.2006, much less had come into operation prior to the issuance of ESZ Notification, accordingly, it was not mandatory for

the answering Respondent to take prior approval from NBW for the project “Kundanvan”.

- xxiii. That on parallel lines, even for the sake of arguments, for once it is assumed that the activity undertaken by the answering respondents falls under the category of “Building and Construction Projects” covered under EIA Notification dated 14.09.2006, then also the approval from NBW is mandatory only for the Building and Construction Projects specified under ‘Category B’ having built-up more than 20,000 sq. mtrs.*

Similarly, if the Building & Construction Projects are specified under Category ‘B’ then the requirement for prior environmental clearance would arise only in case the project has a built-up area of more than equal to 20,000 sq. mtrs. Insofar as the impugned project is concerned, it is admitted that the entire land on which the project has been constructed measures 77,062.97 sq. mtrs., however, the JDA had approved only 9030.55 sq. mtrs., for the development of the project, out of which the project has been constructed on the built-up area of 2919.67 sq. mtrs., which is far less than the requirement of 20,000 sq. mtrs., to obtain prior environmental clearance.

Therefore, having established that the impugned project did not warrant prior environmental clearance there was no occasion for seeking wildlife clearance or approval from the NBW. In a letter issued by the Ministry of Environment, Forest & Climate Change (Wildlife Division), dated 06.05.2022, the Ministry has clarified that prior approval from NBW shall be required if the activity/project is listed in the Schedule of EIA Notification 2006 as amended from time to time. Copy of the letter dated 06.05.2022 issued by MOEF&CC is marked and annexed herewith as ANNEXURE R/ 13.

- xxiv. That the facts stated hereinabove, demonstrate that by all means the answering respondents, whilst operating the impugned project, “Kundanvan” have complied with each and every provision of law governing the same. It can further very well be said that the answering Respondents have not breached any condition of the ESZ Notification dated 08.03.2019, EIA Notification dated 14.09.2006, Office Memorandum issued by the Central Government*

from time to time, and any other statutory law in force. Further, the impugned project, “Kundanvan” cannot be said to be in violation of any provisions of the Wild Life (Protection) Act, 1972, EIA Notification dated 14.09.2006, and ESZ Notification dated 08.03.2019. The allegations made by the applicant in the present Original Application, are totally baseless and inspired by personal vested interest, further, the same does not appear to be in the spirit of Wildlife Protection/Environment Protection.”

9. The matter was taken up on 18.10.2023 and the Tribunal constituted a committee to submit the factual and action taken report in the following manner:-

- i. We further constitute a committee consisting of :*
 - i. One representative from the Additional Chief Secretary, Forest & Wildlife, Govt. of Rajasthan, Rajasthan*
 - ii. One representative from Collector, Jaipur ,Rajasthan.*
 - iii. One representative from Central Pollution Control Board, Rajasthan.*
 - iv. One representative from Rajasthan State Pollution Control Board.*
- ii. The Committee is directed to visit the place, examine the facts, take remedial measures and submit the factual and action taken report within four weeks. The State PCB will be the nodal agency for coordination and logistic support.”*

10. In compliance thereof, the members of the committee visited the site, inspected it, and submitted the report as follows :-

“During the field visit and on perusal of records, it was observed that: -

- (i) M/s Inder Colonizers Pvt. Ltd. have a registered lease deed dated 14.09.2007 between M/s Inder Colonizers Pvt. Ltd. and Commissioner, Department of Tourism, Govt. of*

Rajasthan having the land for “Tourism unit and Hotel & Resort Industry”. Copy attached at Annexure-2.

- (ii) A marriage garden and a banquet hall are being operated by M/s Elite Banquets, A-42, Khadi Colony, Ajmer Road, Jaipur. Ownership of the land having the marriage garden and banquet hall is of M/s Inder Colonizers Pvt. Ltd., J-5, Himmat Nagar, Gopalpura, Jaipur. A copy of the agreement is attached in Annexure 3.*
- (iii) Unit had obtained permission from the Jaipur Development Authority for the marriage garden/banquet hall/Resort vide JDA letter dated 16.11.2017 for 73300 sq. Meter area after the surrender of 3792.97 Sq. Meter area. Copy attached at Annexure-4.*
- (iv) The total land area of the unit owned by M/s Inder Colonizers Pvt. Ltd. is 73300 Sq. Meter out of this, part of the area has been developed as a marriage garden and banquet hall, and the built-up area of the banquet hall is approx. 2900 Sq. Meter.*
- (v) Establishment is not required to obtain environmental clearance as per the EIA Notification dated 14.09.2006 and amended up to date. Besides, clearance from NBWL is also not applicable.*
- (vi) As per the distance certificates dated 01.09.2023 issued by the DCF, Wildlife (ZOO) (Annexure-5), the establishment is located 40 meters from the boundary of the Nahargarh Wild Life Sanctuary (NWLS) and is within the ESZ of the NWLS.*
- (vii) Zonal Master Plan of the Nahargarh Wild Life Sanctuary has been approved by the State Government which inter-alia says as under: -*

“10.4 Existing Activity/ Use

ESZ Notification dated 08-03-2019 prescribed regulations regarding new hotels, resorts, commercial establishments, etc. This leads to the requirement of defining what is “existing.”

For ZMP for the ESZ, hotels, resorts, commercial establishments, etc. shall be considered as existing

if they have any of the following issued before 08.03.2019 ESZ Notification of Nahargarh:

- 1. Electricity connection for non-agricultural use.*
- 2. Approval by the Tourism Department as a tourism unit.*
- 3. Conversion order/ Patta for non-agricultural use.*
- 4. Building Plan approval.*
- 5. Order regarding change in land use.*
- 6. Proof of deposition of tax as hotel, resort, commercial establishment, etc.*
- 7. CTE/CTO/Environmental Clearance.”*

(viii) According to the above the unit has 2 documents from the above list (Listed at Sr. No. 3 and 4) issued before 08.03.2019 and the documents are attached as Annexure-2 & 4. Accordingly, the establishment was in existence before the issuance of the Notification dated 08.03.2019 defining the ESZ of the NWLS.

(ix) M/s Inder Colonizers Pvt. Ltd. has applied on 23.10.2023 for consent from the State Pollution Control Board and the application is under consideration and to be decided on merits.

Conclusion

(i) The establishment is located within the ESZ of the NWLS and was in existence before the publication of the Notification dated 08.03.2019 defining the ESZ of the NWLS.

(ii) Environmental clearance as per EIA Notification dated 14.09.2006 and clearance from NBWL is not applicable for the present establishment.

Recommendation

(i) This matter be put up in the next meeting of Zonal Master Plan Monitoring Committee for further examination as no provisions of the Zonal Master Plan are being violated.

11. The Deputy Conservator of Forest Wildlife, Jaipur, and the Regional Officer, Rajasthan State Pollution Control Board with one member of the Central

Pollution Control Board was in the committee and they had clearly submitted the report that the area of banquet hall is approximately 2900 sq. mtr, and since it is less than the area prescribed, thus, there is no violation of NBWL rules.

12. Against the report submitted by the joint committee, the applicant has filed the objection on the following points:-

- i. The area as shown (built-up area) is 2919.79 sq. mtr., but total area with the other utility is 77062.97 sq. mtr, and requires EC.
- ii. The construction was after the notification of eco-sensitive zone.
- iii. Respondent no. 9, Electricity Department was also impleaded as a party and while filing the reply Respondent no. 9 has submitted that on the basis of the record on the registry of the land, electric connections were issued according to the existing rules and in a bona fide manner. It is further submitted that the impleadment of the electricity department is not proper in this case.
- iv. The perusal of the record reveals that the Electricity Department is a formal party.

13. In its reply dated 02.02.2024, the Ministry of Environment, Forest and Climate Change has submitted that the proposal pertaining to development activities within National Parks, Sanctuaries, Tiger Reserves, etc. are considered by the standing committee on the recommendation of the National Board for Wildlife, and proposal has to be submitted by the agency seeking uses of the land to the Deputy Conservator of Forest on Parivesh Portal of the Ministry.

14. It is further submitted that the Eco-sensitive Zone around Nahargarh Sanctuary has been notified on 08.03.2019. As per the notification, the Eco-Sensitive Zone shall be to an extent of 0 (zero) to 13 kilometers around the boundary of Nahargarh Wildlife Sanctuary and the area of the Eco-Sensitive

Zone is 79,356 square kilometres. Commercial establishment of hotels and resorts is a regulated activity within the Eco-sensitive Zone. As per the notification, no new commercial hotels and resorts shall be permitted within one kilometer of the boundary of the protected area or upto the extent of Eco-Sensitive Zone, whichever is nearer, except for small temporary structures for eco-tourism activities: Provided that beyond one kilometer from the boundary of the protected area of upto the extent of I co-Sensitive Zone whichever is nearer, all new tourist activities or expansion of existing activities shall be in conformity with the Tourism Master Plan and guidelines an applicable.

15. Respondent No. 11, the Deputy Commissioner, Hawa Mahal, is a formal party and submitted the reply to the fact that it pertains to the Forest Department, nothing new has been submitted.
16. Respondent Nos. 2, 4, 5, 6, 7 and 8 have submitted that the questioned construction are against the guidelines of eco-system zone and without authority from the National Wildlife Board and the Rajasthan State Pollution Control Board and further that the area is beyond 20,000 sq. mtr. which requires environment clearance by the concerned authority.
17. In its reply submitted on 12.02.2024 the State Pollution Control Board has submitted that the project proponent has filed the application for consent which is pending for consideration and that the NBWL is not applicable for the present establishment.
18. A further clarification was filed by the Rajasthan State Pollution Control Board and in its reply dated 02.04.2024, it has been submitted that the unit does not require environmental clearance as per EIA Notification dated 14.09.2006, as such permission is not required from NBWL, as per the report dated 13.12.2023 of the joint committee and further that it is not in violation of notification dated 08.03.2019. It is further submitted that the Built-up area of the unit is 2919.67 Sq.mt and Environmental Clearance is required for projects having built-up area of more than 20,000 sq. meters therefore,

environmental clearance is not required for the unit as per notification dated 14.09.2006.

19. The Industry had applied for consent to establish under the Air Act the Water Act on date 14/02/2023 and consent to operate under Air Act & Water Act on 20/02/2023 which were refused by the Board vide letter dated 03/08/2023 for not submitting following :-

- i. Distance certificate issued from competent authority for the project from Eco Sensitive Zones of Jamwaramgarh, Sariska, Nahargarh wildlife sanctuary, Sariska Tiger Reserve, Critical tiger habitat etc.
- ii. Details of land use whether the project is in conformity with the tourism master plan and guidelines, if the project is in Eco-Sensitive Zones of Nahargarh Wild life sanctuary since this activity falls in regulated activity as per the MOEFCC notification S. O. No. 1220(E) dated 8.3.2019.
- iii. Built up area of the project.

20. Learned counsel for the applicant has submitted that the unit was operating before the date of notification for last five years without the consent condition under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 and thus the State Pollution Control Board is required to calculate the environmental compensation of the past violations. In reply thereof, the learned counsel for the respondent has submitted that the concerned condition has been issued by the State Pollution Control Board and there is no violation of environmental rules.

21. It is further submitted that if the contention of the applicant is that the unit was in operation before the date of notification, i.e., 08.03.2019, thus in view of the above facts, the violation of eco-sensitive zone area is not applicable in view of the existing structures and units. For past violations the State

Pollution Control Board has already directed the project proponent for depositing the requisite fees in the form of penalty or EC which has been deposited by the project proponent. The parameter as laid down by the state PCB for realizing the above amount may be challenged before the appropriate forum by means of appropriate application but without challenging this, this Tribunal is not going to examine the above calculation.

22. Second issue which has been raised by the learned counsel for the applicant is the area and contention of the applicant is that it exceeds 20,000 sq. mtrs. and requires EC. In reply thereof, the learned counsel for the Project Proponent relied on the decision taken by the monitoring committee under the Chairmanship of District Collector, Jaipur. The proceedings of the meeting are attached with the reply of the State Pollution Control Board and it was found that there were no violations of the rules and further that the built-up area is found to be 2919.67 sq. mtrs.
23. Learned counsel for the respondent/project proponent Respondent nos. 13 and 14 have submitted that the application is barred by limitation as the banquet hall was completed by 18.02.2019 before the date of notification and was in operation prior to this and necessary lease and electric connections were there from the date prior to this which was within the knowledge of the applicant and the application is time barred. The submissions are that the dispute raised is ex-facie barred by limitation, since the construction of the banquet hall had been completed by 18.02.2019, while the OA was filed on 02.10.2023. Even assuming the cause action accrued from the detailed factual report of the Assistant Conservator of Forest dated 08.03.2023, the OA ought to have been filed within 6 months as envisaged u/s 14 of the NGT Act and that the notification demarcating the Eco-Sensitive Zone (ESZ) for Nahargarh Wildlife Sanctuary was issued only on 08.03.2019. Since the Answering Respondents had completed construction prior to this notification, the activities of the Answering Respondents qualify as an “existing activity” and do not require any permission under the notification and further that the

Answering Respondent was not required to obtain an Environmental Clearance (EC) under the EIA Notification, 2006 (EIA 2006), since the built-up area (BUA) of the banquet hall is 2919.67m² , and the requirement to obtain an EC is only for constructions above 20,000m² . Consequently, there was also no requirement for clearance from the National Board of Wildlife clearance (NBWL) as well, since it is only required for activities that require an EC.

24. It is further submitted that the Consent to Operate is not required in view of the judgment in Delhi PCB v. Splendour Land Base 2012 SCC Online Del 400. The Respondent has nonetheless applied out of abundant caution and the same has been granted. Section 14 of the National Green Tribunal Act, 2010 provides a limitation period of 6 months and employs the words “cause of action first arose.” In other words, any such application must be filed within 6 months from the date of commencement of the action complained against. The Answering Respondents commenced construction of the project on 16.11.2017, after receiving approval from Jaipur Development Authority and the OA was filed on 02.10.2023, hence, the OA has been filed more than 6 years after the cause of action “first arose”. The limitation clause in the OA reads as follows: -

“15. That Assistant Conservator of Forests had prepared a detailed factual report on 08/03/2023 and thereafter a legal notice was issued by the applicant on 20/03/2023 to Respondents and after that Chief Wildlife Warden wrote a letter to Chief Conservator of Forests on 06/04/2023 and called upon factual report, and pursuant thereto Deputy Conservator of Forests had directed the Assistant Conservator of Forests to make inquiry and same was submitted by Assistant Conservator of Forests on 14/06/2023 in the office of Deputy Conservator of Forests and ultimately 4 reminders were submitted by applicant upon Respondents but no action has been taken so far, thus there is no delay in filling this original application and the cause of action is continuous in nature, as such the present original application is well within the limitation”

Assuming without admitting that the cause action accrued when the said report came to be prepared, on 08.03.2023, the instant application ought to have been filed within 6 months i.e., 08.09.2023, in terms of Section 14 of the NGT Act, 2010. The submission of respondent are that even assuming that the limitation commences on the completion of the construction, the same was completed on 18.02.2019 and therefore even assuming this to be the starting point of limitation, the OA has been filed after more than 6 months after the cause of action first arose. In a similar factual matrix, this Tribunal in *Ajay Jayvantrao Bhonsle vs Union of India* through MoeF & Ors, O.A. No. 63 of 2019 (WZ) held the period of limitation is to be reckoned from when the construction commenced :-

“16. He has argued that in this case, there is recurring cause of action and therefore, the date which has stated in his application i.e. 15.06.2019, when the SEIAA issued 961 a Show Cause Notice to the Project Proponent, should be treated to be the date of cause of action.

....

19. We are not inclined to accept this argument because according to his pleading, he had full knowledge in the year 2011 itself when the construction had started. The pretext of having come to know about this project being constructed through RTI on a later date as stated above appears to be only in order to bring the present Original Application within limitation period. We agree with the learned Counsel for the Project Proponent (PP) that it is very easy for any person to use RTI to seek information for any project on any date chosen by him. We are of the considered opinion that such kind of practice cannot be allowed. We are not inclined to accept the argument made by the learned Counsel for the Applicant in Original Application and are convinced with the argument raised by the learned Counsel for the Respondent No. 11/Project Proponent. We find that this Original Application is time barred, hence this Original Application stands dismissed as time barred.”

20. The submission of the respondents are that the applicant has calculated the limitation period from the date of the report of the Assistant Conservator of

Forest dated 08.03.2023 which is not tenable and calculation of period is wrong and should be calculated from the date of knowledge to the applicant and accordingly as narrated above the application is time barred.

25. It is further argued that the notification dated 08.03.2019 demarcating the ESZ for Nahargarh Wildlife Sanctuary was issued after the Answering Respondents had completed construction. Therefore, the activities of the Answering Respondents qualify as an “existing activity” and does not require fresh permission, as also noted by the Joint Committee in their Report. The notification dated 08.03.2019 states as follows:

“2. Zonal Master Plan for Eco-Sensitive Zone (1) The State Government shall, for the purposes of the Eco-Sensitive Zone prepare a Zonal Master Plan within a period of two years from the date of publication of this notification in the Official Gazette, in consultation with local people and adhering to the stipulations given in this notification for approval of the Competent authority of the State.

....

(4) The Zonal Master Plan shall not impose any restriction on the approved existing land use, infrastructure and activities, unless so specified in this notification and the Zonal Master Plan shall factor in improvement of all infrastructure and activities to be more efficient and eco-friendly.

- i. The Zonal Master Plan for Nahargarh ESZ (December 2023) (ZMP) prepared by the Jaipur Development Authority defines what qualifies as an existing activity and 10.4 of the ZMP records that establishments with any one of the following documents issued prior to 08.03.2019 would indicate that the establishment had been “existing”*

- a. Electricity connection for non-agricultural use.*
- b. Approval by Tourism Department as tourism unit.*
- c. Conversion order/Patta for non-agricultural use.*
- d. Building Plan approval.*
- e. Order regarding change in landuse.*

- f. *Proof of deposition of tax as hotel, resort, commercial establishment, etc.*
 - g. *CTE/CTO/Environmental Clearance.*
- ii. *The Answering Respondent has annexed the following documents on record to establish that it had been in existence prior to the notification:*
 - a. *Electricity Connection dated 05.10.2018*
 - b. *Approval by the Tourism Department dated 07.05.2013*
 - c. *Patta for non-agriculture use dated 07.07.2008*
 - d. *Building Plan approval dated 16.11.2017*
 - e. *Order regarding change in land use dated 17.09.2001*
 - f. *Proof of deposition of tax as a commercial dated 29.05.2017*
- iii. *Though the ZMP requires 1 of these 7 documents, the Answering Respondent has produced 6/7 (six out of the seven) documents that prove prior existence, it is humbly submitted that the Answering Respondents have demonstrated that they were in existence prior to the notification dated 08.03.2019 and therefore do not require fresh permission. Moreover, as they are a permissible activity under the ESZ Notification dated 08.03.2019 and as per the 09.02.2011 guidelines, the Answering Respondents did not require to obtain fresh permission after the notification was issued.*
- iv. *The notification dated 08.03.2019, further categorises activities as regulated and prohibited within the ESZ. The notification reads as follows:*

“4. List of activities prohibited or to be regulated within Eco-Sensitive Zone - All activities in the Eco-Sensitive Zone shall be governed by the provisions of the 1963 Environment Act and the rules made there under including the Coastal Regulation Zone, 2011 and the Environmental Impact Assessment Notification, 2006 and other applicable laws including the Forest (Conservation) Act, 1980 (69 of 1980), the Indian Forest Act, 1927 (16 of 1927), the Wildlife (Protection) Act 1972, (53 of 1972), and amendments made thereto

and be regulated in the manner specified in the Table below, namely:-

TABLE	
	B.Regulated Activities
12. Commercial establishment of hotels and resorts.	No new commercial hotels and resorts shall be permitted within one kilometer of the boundary of the protected area or upto the extent of Eco-Sensitive Zone, whichever is nearer, except for small temporary structures for ecotourism activities: Provided that, beyond one kilometer from the boundary of the protected area or upto the extent of Eco-Sensitive Zone whichever is nearer, all new tourist activities or expansion of existing activities shall be in conformity with the Tourism Master Plan and guidelines as applicable. (Emphasis supplied)

v. The Hon’ble Supreme Court in In Re: T.N. Godavarman Thirumulpad v. Union of India, 2023 SCC OnLine SC 504, 50, specifically held that in case of continuation of previous activities in ESZ – there would be no requirement for obtaining fresh permission. The Hon’ble Supreme Court held:

“50...It is further to be noted that if the direction as contained in paragraph 56.5 of the order dated 3rd June 2022 (supra) that even for continuation of existing activities, the permission of the PCCF of each State or Union Territory would be necessary, remains unmodified, taking into consideration that in each State or Union Territory there will be hundreds of villages wherein millions of people would be residing, the PCCF would be left with no other job except to consider such applications for permission to continue such activities. Even a farmer desirous to continue farming activities would be required to seek such permission. We find that such a direction is impossible to be implemented.”
[Emphasis supplied.)

vi. The Joint Committee has also confirmed of the pre-existence of the facility of the Answering Respondent. Therefore the

Answering Respondents being a pre-existing permissible activity, do not require fresh permission under the notification dated 08.03.2019. As per EIA Notification 2006, an EC is required only if “construction” exceeds 20,000 m² (8.a). The BUA of the banquet hall is 2919.67m², as noted by the Joint Committee. The Hon’ble Supreme Court in Goel Ganga Developers India Pvt. Ltd v. Union of India 2018 (18) SCC 257 has held that “... under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as ‘built up area’.” This has been reiterated in Goel Ganga Developers India Pvt. Ltd v. Union of India (2019) 9 SCC 288, when the Hon’ble Supreme Court declined to reconsider the aforesaid holding. Pertinently, the consent to operate dated 03.07.2024, indicates a split up of the ‘built up area’ and the ‘activity area’. While the BUA is shown as 2919.67m², the ‘activity area’ is indicated as 6000m², which would obviously be the area which is open to sky but used for the purposes the commercial purpose of banqueting.

- vii. Hence, even if the areas open to the sky in the Answering Respondent’s facility are included, the BUA comes to only 8919.67m², (i.e., 2919.67m² + 6000m²). However, what the Applicant seeks to urge is an entirely third concept, and confuse the total land holding of the Answering Respondent of 77,062.97 m² as the built-up area to allege the requirement of an EC, though a large part thereof is not used for any commercial activity. Mere ownership of land will not attract the EIA Notification 2006, if the same is not being utilised for any activity. This is evident from the aerial photograph of the site, which leaves no room for doubt as to what is the extent of the area that is being utilised for the banquet hall, including its open area.*
- viii. With respect to the NBWL clearance it is submitted that in terms of Cl. 3.5.1 of the guidelines requiring NBWL clearance dated 19.12.2012, such permission is only required if the project requires an EC:*

“3.5.1 Activities within 10 Kms from boundaries of National Parks and Wildlife Sanctuaries:

In pursuance to the order of Hon'ble Supreme Court dated 4th December 2006 in Writ Petition (Civil) No. 460/2004, in case any project requiring Environmental Clearance, is located within the eco-sensitive zone around a Wildlife Sanctuary or National Park or in absence of delineation of such a zone, within a distance of 10 k.m. from its boundaries, the User agency /Project Proponent is required to obtain recommendations of the Standing Committee of NBWL.”

ix. *This Hon'ble Tribunal confirmed this position in Anil M. Khedekar v. Secretary, Ministry of Environment and Forests, 2017 SCC OnLine NGT 1197, wherein this Hon'ble Tribunal held: “It can be seen that MoEF has not placed any restriction of any embargo for grant of EC, but has stipulated that Project Proponent needs to take permission of NBWL prior to construction of projects, in such cases. It is also noted from the submissions of MoEF that the permission of NBWL, even if it is required based on the location of the project site, is not a condition precedent or a mandatory pre-requisite before the appraisal and grant of environmental clearance.”*

26. Learned counsel for the applicant has submitted that there is a requirement of consent and in the response thereof, the respondent had submitted that the PP is operating the banquet hall and consent condition is required only in case of domestic sewage. The contention of the respondents are that there is no requirement for consent under the Air (Prevention and Control of Pollution) Act, 1981, since there is no emission or industrial activity or process that is carried out by Answering Respondent. The Hon'ble Delhi High Court which in Delhi PCB v. Splendour Land Base 2012 SCC Online Del 400 has held as follows: -

“28. Pertaining to the Air Act, there is a material difference in the language used in Section 21 of the said Act, vis-à-vis the language used in Section 25 of the Water Act. Whereas the Water Act requires a permission to establish any industry, operation or process, the Air

Act restricts its span to prior permission being necessary only where it is intended to establish or operate any industrial plant.”

[Emphasis supplied]

27. On the point of consent under Water (Prevention and Control of Pollution) Act, 1974, it is argued by the respondent that there is no requirement for consent under the Water Act since the Answering Respondent does not operate a facility that discharges industrial effluent, but only produces domestic sewage, as per the law laid down by the Hon'ble Delhi High Court in Splendour Land Base (supra) which is as follows:

“21. ... Thus, an operation would be a working or an activity, where the core of the act constituting the activity is of a practical or technical nature especially one forming a step in a process, and since process is an going on action or a continuous series of action directed at a particular end, the conjoint reading of an operation and a process or even if the two have to be read disjunctively would mean that the expression ‘establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent’ would mean to take steps to establish any industry, establishment or undertaking where the operation or process i.e. activity is of a practical or technical nature, at the core of which are ongoing acts, in a series, directed at a particular end. Thus, the act of ablution in the toilet or washing vegetables and dishes in the kitchen of a residential complex, within the precincts of residential flats, by no stretch of imagination can be called or labeled as an operation or a process.

.....

23. The Water Act requires prior permission to establish any industry, operation or process which is likely to discharge sewage or trade effluent. It is not intended to apply to all and sundry establishments. It is restricted to only when a building, housing an industry is sought to be established or a building in which an operation or a process is intended to be carried on where effluent or trade effluent would be discharged.”

28. It is further contented that out of abundant caution, the Answering Respondent applied for Consent to Establish and Consent to Operate under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 on 14.02.2023 and 20.02.2023 respectively. The Respondent received no response from the State Pollution Control Board, until 27.03.2024. Section 25(7) of the Water (Prevention and Control of Pollution) Act, 1974, read as follows: -

“(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.”
[Emphasis supplied]

29. Therefore, as per Section 25(7) of the Water (Prevention and Control of Pollution) Act, 1974, consent to operate was deemed to be granted to the Answering Respondent on 20.06.2023. Thereafter on 27.03.2024, the Answering Respondent formally received both the consent to operate as well as Consent to Establish.

30. While hearing the parties on 13.02.2024 this Tribunal framed following issues on the basis of the pleadings :-

- a) Whether the application is maintainable in accordance with the National Green Tribunal Act, 2010.*
- b) Whether the area comes within the Eco-Sensitive Zone and violating of the provisions contained in the Eco-Sensitive Zone.*
- c) Whether the construction/commercial use is without any authority from the National Wildlife Board as required.*
- d) Whether the activities are commercial activities in the EcoSensitive Zone and comes within the*

category of prohibited categories and in violation of the Eco-Sensitive Zone.

- e) Whether the activities are in violation of notification dated 08.03.2019 issued from the MoEF&CC.*
- f) As to whether the construction/unit is in violation of EIA notification dated 14.09.2006 for want/requisite environmental clearance from the competent authority.*
- g) As to whether the construction/use of the premises are in violation of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Noise Pollution (Regulation and Control) Rules, 2000.*
- h) Whether the lease was operated w.e.f. November, 2020 after the issuance of the notification of Nahargarh Wildlife Sanctuary and hit and controlled by the provisions contained in notification dated 08.03.2019.*
- i) Whether the requisite consent to establish or other statutory requirement and permission has been obtained from the competent authority/ State Pollution Control Board.*

31. In compliance thereof the Project proponent has submitted the reply as follows :-

i. “Whether the application is maintainable in accordance with the National Green Tribunal Act, 2010.

Ans. No, it the instant application is not maintainable since it is barred by limitation because the alleged cause of action first arose on 16.11.2017, almost 6 years prior to the filing of the O.A.

ii. Whether the area comes within the Eco-Sensitive Zone and violates of the provisions contained in the Eco-Sensitive Zone.

Ans. The activity of the Answering Respondent, does come within the ESZ, however since it has been a pre-existing activity, before such an ESZ was notified, it is not a prohibited activity within the ESZ, and does not violate any provisions of the notification demarcating the ESZ.

iii. Whether the construction/commercial use is without any authority from the National Wildlife Board as required.

Ans. The construction of the Answering Respondent does not require clearance from the NBWL, since that requirement becomes applicable to projects that require an EC. Since the Answering Respondent does not require an EC, it does not require clearance from NBWL either.

iv. Whether the activities are commercial activities in the Eco-Sensitive Zone and comes within the category of prohibited categories and in violation of the Eco-Sensitive Zone.

Ans. The operation a marriage hall by the Answering Respondent is, first, a pre-existing activity and, second, a regulated activity under the notification dated 08.03.2019. Therefore, is not in violation of protective provisions of ESZ under notification dated 08.03.2019.

v. Whether the activities are in violation of notification dated 08.03.2019 issued from the MoEF&CC.

Ans. The operation of a marriage hall by the Answering Respondent is, first, a pre-existing activity and, second, a regulated activity under the notification dated 08.03.2019. Therefore, it is not in violation of protective provisions of ESZ under notification dated 08.03.2019

vi. As to whether the construction/unit is in violation of EIA notification dated 14.09.2006 for want/requisite environmental clearance from the competent authority.

Ans. No. As per EIA Notification 2006, an EC is required only if “construction” exceeds 20,000 m² (8.a). The Answering Respondent has constructed a built -up area of only 2919.67m² and therefore does not require an EC. (See, para 16-20 above). Extent of landholding is not the criteria but the extent of land use is.

vii. As to whether the construction/use of the premises are in violation of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution)

Act, 1981 and the Noise Pollution (Regulation and Control) Rules, 2000.

Ans. No, the Answering Respondent does not require consent under the Air Act or Water Act as it is not discharging any emissions or carrying out an industrial process as per Splendor (supra). The Answering Respondent nonetheless applied for consent under the Water Act, which has been deemed granted on 20.06.2023 and formally communicated on 27.03.2024.

viii. Whether the lease was operated w.e.f. November, 2020 after the issuance of the notification of Nahargarh Wildlife Sanctuary and hit and controlled by the provisions contained in notification dated 08.03.2019.

Ans. No, the lease deed of the Answering Respondent is not hit by the Master Zonal Plan prepared by the Jaipur Development Authority under the notification dated 08.03.2019. The criteria to determine pre-existing activity as per the Master Zonal Plan is not based on when the “lease deed” was signed or when commercial activities commenced, but when various permissions/electricity connection was taken by the Answering Respondent.

ix. Whether the requisite consent to establish or other statutory requirement and permission has been obtained from the competent authority/ State Pollution Control Board.

Ans. The Answering Respondent does not require consent under the Air Act or Water Act as it is not discharging any emissions or carrying out an industrial process as per Splendor (supra). The Answering Respondent nonetheless applied for consent under the Water Act, which has been deemed granted on 20.06.2023 and formally communicated on 27.03.2024.”

32. In compliance of the previous order dated 13.02.2024 the Tribunal observed that the Jaipur Development Authority is a proper and necessary party and reply on point of the approval for the construction and other existing facilities are required to be replied by the JDA and the Jaipur Development Authority in its reply has submitted that:-

- i. *“That on 16.11.2017 JDA had passed an approval for the construction of resort the khasra number's mentioned in the approval letter, after a Building Map Committee (BP) sitting on 05.09.2017. Copy of the Approval letter is filed and annexed.*
- ii. *That on 18.02.2019, the Mishra Garg & Associates (Architect & Planners) had issued a completion certificate of construction and made specific averment that the construction of structure is completed in all respects as per approved maps by JDA. Copy of the Completion Certificate is filed and annexed.*
- iii. *That on 08/03/2019, Zonal Master Plan for the Eco-Sensitive Zone of Nahargarh was issued with the Objective to advise development regulations, and suggest proposals to mitigate negative environment effect.*
- iv. *That the Zonal Master Plan of Eco-Sensitive Zone of Nahargarh addresses all the key development issues, including land use, infrastructure, and transportation, with a primary focus on ecology, environment and wildlife.*
- v. *That the Clause 10 of the Zonal Master Plan tells about Development Promotion & Control Regulations And Landuse. Clause 10.4 defines for the purpose of Zonal Master Plan for Eco-Sensitive Zone, hotels, resorts, commercial establishment etc. what are existing projects in the Eco- Sensitive Zone.*
- vi. *That on the perusal of records, the construction was completed prior to the issuance of Zonal Master Plan for Eco-Sensitive Zone for Nahargarh as notification was issued on 08.03.2019 and completion certificate was issued on 18.02.2019.”*

33. The perusal of the reply submitted by the Jaipur Development Authority reveals that approval for the construction was given to the project proponent on 16.11.2017 and completion certificate was issued on 18.02.2019, as per version narrated by the Jaipur Development Authority, the construction was completed prior to the issuance of Zonal Master Plan for eco-sensitive zones and there are no violations of environmental rules. It is further submitted that Class-10 of the Zonal Master Plan provides for the hotels, resorts and commercial establishments and existing activities.
34. The matter of eco-sensitive zone and forest area was considered in Writ Petition No. 202 of 1995, In Re: *T.N. Godavarman Thirumulpad vs Union of India and Ors.* and the Hon'ble Supreme Court passed an order as follows:

“xxxxxx.....xxx

2. The present set of applications arise out of a report of the CEC dated 20th November 2003. This report specifically pertains to Jamua Ramgarh wildlife sanctuary. This sanctuary covers an area of about 300 square kilometres. The said report gives a horrific picture of ravaging of a protected forest mainly by private miners mostly with temporary working permits obtained from the Governmental agencies. Following recommendations were made in this report:-

17..... (i) all mining leases which wholly or partly fall within the forest area inside the Jamua Ramgarh Sanctuary and also within the safety zone, should be immediately cancelled. The mining activity can be allowed to be resumed only after the new/amended mining leases, after excluding the forest area and the safety zone are sanctioned by the competent authority and the conditions mentioned herein under are fully complied with; (ii) presently a safety zone of twenty five

meter has been fixed for Jamua Ramgarh Sanctuary and other sanctuaries in Rajasthan as against 500 meter for Ranthambhore National Park in Rajasthan itself. In Madhya Pradesh safety zone of 250 meter for all the 20 forest area has been fixed. The CEC is of the view that minimum 500 meter safety zone around National Parks and Sanctuaries is necessary where no mining, construction and other projects should be allowed. Without a reasonable safety zone the habitat and wild life in the National Parks and Sanctuaries are adversely affected. Although stringent conditions are imposed at the time of the sanction of the mining leases, none are practically complied with due to weak enforcement of the laws. The mining causes heavy disturbance in the area due to blasting, removal of over burden, chiseling, transportation, flying debris and movement of a large number of labourers and other persons. The safety zone of twenty five meter presently prescribed by the Rajasthan Forest Department is totally inadequate as the rocks torn apart during blasting can travel much beyond the present safety zone. However, increasing the safety zone to the desired level of 500 meter will result in closure of large number of mines. Taking a holistic overall view of the situation, the CEC recommends that for the Jamua Ramgarh wild life sanctuary, for the "existing" mines the safety zone may be fixed as 100 meter wherein no mining should be permitted. "For new" mining leases the safety zone may be fixed as 500 meter.

(iii) reclamation and rehabilitation of the area mined inside the sanctuary should be carried out in a time bound manner at the cost of the user agency for which a detailed reclamation and rehabilitation plan along with various items of work, cost involved and time frame should be prepared and implemented on priority basis. The plan presently prepared by the State Government is totally inadequate. It does not provide for reclamation and rehabilitation of the mining pits at all. No provision for removal of stones and rocks scattered in the sanctuary has been made. Intensive plantations and protection has not been provided. The revised plan should incorporate the above and other necessary measures to provide a congenial habitat for wild life. In the event adequate funds for this purpose cannot be recovered from the erstwhile mine lease owners, the same should be made available by the State Government;

(iv) mining around the sanctuary should be allowed to restart only after a fool proof mechanism is put in place to ensure recovery of funds for implementation of reclamation and rehabilitation plan by the State Government;

(v) exemplary compensation equivalent to the present market value of the entire mineral removed by the respective mine owners by mining inside the sanctuary in violation of the F.C. Act and/or the W. P. Act should be recovered from them on the basis of the recorded production or the estimated figures mentioned in the F.C. Act applications. The money so recovered should be used

for protection and development of the sanctuary to its full potential;

(vi) the left over minerals scattered inside the sanctuary should be directed to be removed immediately.

(vii) the left over mining equipments such as cranes etc. should be confiscated and removed outside the sanctuary at the cost of the erstwhile mine lease holders;

(viii) no mining should be permitted adjoining the sanctuary till the boundary of the sanctuary is demarcated on the ground and the boundary pillars are verified with the fixed reference points; (ix) disciplinary action should be taken in a time bound manner against the erring officials in the Mines and the Forest Departments of the State of Rajasthan and the MoEF for allowing mining in violation of the F.C. Act, the W. P. Act and/or this Hon'ble Court's order;”

(quoted verbatim from paperbook)

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6. A set of Guidelines for Declaration of Eco Sensitive Zones (ESZ) around National Park and Wildlife Sanctuaries had been formulated by the Ministry of Environment, Forest and Climate Change (MoEF&CC) of the Government of India on 9th February 2011 [F. No.19/2007 WL – I (pt)]. These Guidelines deal with the process and procedures to be adopted for declaring ESZ. In Clauses 3 and 4 of these Guidelines, it has been stipulated:-

“3. Purpose for declaring EcoSensitive Zones:

The purpose of declaring Ecosensitive Zones around National Parks and Sanctuaries is to create some kind of

"Shock Absorber" for the Protected Areas. They would also act as a transition zone from areas of high protection to areas involving lesser protection. As has been decided by the National Board for Wildlife, the activities in the Ecosensitive zones would be of a regulatory nature rather than prohibitive nature, unless and otherwise so required.

4. Extent of Eco-Sensitive Zones:

4.1 Many of the existing Protected Areas have already undergone tremendous development in close vicinity to their boundaries. Some of the Protected Areas actually lying in the urban setup (Eg. Guindy National Park, Tamil Nadu, Sanjay Gandhi National Park, Maharashtra, etc). Therefore, defining the extent of ecosensitive zones around Protected Areas will have to be kept flexible and Protected Area specific. The width of the Ecosensitive Zone and type of regulations will differ from Protected Area to Protected Area. However, as a general principle the width of the Ecosensitive Zone could go up to 10 Kms around a Protected Area as provided in the Wildlife Conservation Strategy 2002.

4.2 In case where sensitive corridors, connectivity and ecologically important patches, crucial for landscape linkage, are even beyond 10 kms width, these should be included in the Ecosensitive Zone.

4.3 Further, even in context of a particular Protected Area, the distribution of an area of Eco-sensitive Zone and the extent of regulation may not be uniform all around and it could be of variable width and extent."

(quoted verbatim from paperbook)

7. In Clauses 6 and 7 of the said Guidelines, it has been specified:

“6. The procedure to be adopted:

6.1 As has been indicated in the forgoing paras, the basic aim is to regulate certain activities around National Park and Wildlife Sanctuary so as to minimize the negative impacts of such activities on the fragile ecosystem encompassing the Protected Area. As a first step towards achieving this goal, it is a prerequisite that an inventory of the different land use patterns and the different types of activities, types and number of industries operating around each of the Protected Area (National Parks, Sanctuaries) as well as important Corridors be made. The inventory could be done by the concerned Range Officers, who can take a stock of activities within 10 km of his range.

6.2 For the above purpose, a small committee comprising the concerned Wildlife Warden, an Ecologist, an official from the Local Self Government and an official of the Revenue Department of the concerned area, could be formed. The said committee could suggest the:

(i) Extent of ecosensitive zones for the Protected Area being considered.

(ii) The requirement of such a zone to act as a shock absorber.

(iii) To suggest the best methods for management of the ecosensitive zones, so suggested.

(iv) To suggest broad based thematic activities to be included in the Master Plan for the region.

6.3 Based on the above, the Chief Wildlife Warden could group the activities under the following categories (an indicative list of such activities is attached as ANNEXURE1):

(i) Prohibited

(ii) Restricted with safeguards.

(iii) Permissible

6.4 Once the proposal for Ecosensitive zones has been finalized, the same may be forwarded to the Ministry of Environment and Forests for further processing and notification. Here, it may be noted that, the State/ Union Territory Forest Department could forward the proposals to the respective authority in the State Government with copy to the Ministry of Environment and Forests, as and when the proposals (even if it is for single Protected Area) are complete. An indicative list of details that need to be submitted along with the proposals is at ANNEXURE2.

6.5 It is to mention here that in cases where the boundary of a Protected Area abuts the boundary of another State/Union Territory where it does not form part of any Protected Area, it shall be the endeavour of both the State/ Union Territory Governments to have a mutual consultation and decide upon the width of the ecosensitive zone around the Protected Area in question.

6.6 The State Government should endeavour to convey a very strong message to the public that ESZ are not meant to hamper their day to day activities, but instead, is meant to protect the precious forests/Protected Areas in their locality from any negative impact, and also to refine the

environment around the Protected Areas. A copy of the notification of the Sultanpur Ecosensitive Zone issued by the Ministry is attached herewith at ANNEXURE3 for reference and guidance.

7. These guidelines are indicative in nature and the State / Union Territory Governments may use these as basic framework to develop specific guidelines applicable in the context of their National Parks, Wildlife Sanctuaries, important corridors, etc. with a view to minimizing and preferably eliminating any negative impact on protected areas.”

(quoted verbatim from paperbook)

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10. The second report of the CEC dated 20th September 2012 makes the following recommendations as regards identification and declaration of ESZ. This report entitled “Note regarding safety zones (Ecosensitive zones) around National Parks and Wildlife Sanctuaries” makes the following recommendations:-

10. After considering that during the last ten years no significant progress has been made regarding identification and declaration of Safety Zones around protected areas and considering the matter in its totality, an implementable scheme has been prepared by the CEC and which has been dealt with in subsequent paragraphs.

11. For the purpose of identification and declaration of the Safety Zones around National Parks/Wildlife Sanctuaries (hereinafter referred to as protected areas), the protected areas based on their areas, are classified into four categories:

- i) CATEGORY-A – the protected areas having an area of 500 sq. km. or more. The total number of such protected areas is 73 and their total area is about 1,01,389 sq. km (63.44 % of total area of protected areas);
- ii) CATEGORY-B - protected areas having an area between 200 sq. km. to 500 sq. km. The total number of such protected areas is 115 and their total area is about 38942 sq. km. (24.37 % of total area of protected areas);
- iii) CATEGORY-C – the protected areas having an area between 100 sq. km. to 200 sq. km. The total number of such protected areas is 85 and their total area is about 12,066 sq. km (about 7.55 % of total area of protected areas); and
- iv) CATEGORY-D – the protected areas having an area up to 100 sq. km. The total number of such protected areas is 344 and their total area is about 7,422 sq. km (about 4.65 % of total area of all protected areas).

12. Wherever two or more protected areas are contiguous to each other, such protected areas will be placed in the appropriate category based on the sum total of their areas (and not on the basis of area of individual protected area). The details of some of the contiguous protected areas are given below:

- i) Corbett National Park (520 sq. km.) and Sonanadi Sanctuary (301 sq. km) total area is 821 sq. km and therefore both will fall in Category A;
- ii) Gir National Park (258 sq. km.) and Gir Sanctuary (1,153 sq. km.) total area is 1,411 sq. km. and therefore both will fall in Category A;

iii) Periyar National Park (350 sq. km.) and Periyar Sanctuary (427 sq. km.) total area is 777 sq. km. and therefore both will fall in Category A;

iv) Satpura National Park (585 sq. km.), Bori Sanctuary (485 sq. km.) and Pachmarhi Sanctuary (417 sq. km.) total area is 1488 sq. km. and therefore all three will fall in Category-A;

v) Valmiki National Park (335 sq. km.) and Valmiki Sanctuary (545 sq. km.) total area is 880 sq. km. and therefore both will fall in Category A;

vi) Tadoba National Park (116 sq. km.) and Andhari Wildlife Sanctuary (509 sq. km.) total area is 625 sq. km. and therefore both will fall in Category A; and

vii) Sariska National Park (273 sq. km.) and Sariska Sanctuary (219 sq. km.) total area is 492 sq. km. and therefore both will fall in Category B;

13. The Safety Zone, in respect of protected areas falling in 'Category A and Category B, may comprise of all the areas including nonforest areas falling within a distance of two kilometers and one kilometer respectively from the boundaries of the protected area. Such distances, in respect of protected areas falling within Category C and Category D, may be kept at 500 meter and 100 meter respectively.

14. The grant/renewal of mining leases (excluding for collection of boulders, gravel and sand from river beds), setting up of hazardous industries, brick kilns, wood based industries (except MDF/Particle Boards Plants) will be treated as prohibited activities within the Safety Zone

(ecosensitive zones). The activities such as setting up of industries (other than those included in the list of prohibited activities), hotels and restaurants including resorts, commercial helicopter services, hydel projects, irrigations projects, canals, laying of transmission lines and distribution lines above 33 KV, roads of more than five meter width and collection of boulders, gravel and sand from the river beds will be treated as regulated activities and which will be permissible only after obtaining environment clearance and clearance of the Standing Committee, National Board for Wildlife. All other activities which are not prescribed as prohibited activities or regulated activities will be treated as permissible activities.

15. The concerned State/UT will be at liberty to shift a protected area from a lower category to higher category (say from Category C to Category B) after considering the importance of the protected area on account of:

- i) presence of flagship species/endangered species such as Tiger, Lion, Elephant, Rhino, Snow Leopard, Red Panda, Hangul, Musk deer, Great Indian Bustard, Lion Tailed Macaque, floricans;*
- ii) fragile ecosystem such as Western Ghats, North Eastern States, areas having high altitude flora and fauna, rain forest, mangroves, marine ecosystem;*
- iii) World Heritage sites; and*
- iv) Wetland ecosystems*

16. The concerned State/UT Governments may after detailed examination of the status of habitation, existing industries and other activities and other relevant factors,

and, if found desirable and in public interest forward the proposal(s) for shifting a protected area from a higher category to a lower category. They may also forward the proposal(s) for exclusion of the areas of cities falling within the Safety Zone. The MoEF thereafter will examine such proposals and place such proposals before the Standing Committee of the National Board for Wildlife for its consideration. The proposals cleared by the Standing Committee of the NBWL will be placed before this Hon'ble Court for seeking its permission. It is only after obtaining the permission of this Hon'ble Court that a protected area may be shifted from a higher category to a lower category.

17. The Safety Zones (ecosensitive zones) around National Parks and Wildlife Sanctuaries will be in addition to the following ecosensitive zones notified by the MoEF (and by other notifications, if any):

- i) S.O. 20(E), (6/1/1989) Prohibiting industries on MurudJanijira, District Raigadh, Maharashtra;*
- ii) S.O. 102(E), (1/2/1989) Restricting location of industries, mining & other activities in Doon Valley (UP); iii) S.O. 416(E), (20/6/1991) Dahanu Taluka, District Thane (Maharashtra) to declare as Ecologically Fragile Area, amended 1999;*
- iv) S.O.319(E), (7/5/1992) Restricting certain activities causing environmental degradation at Aravalli Range;*
- v) S.O. 481 (E), (5/7/1996) No Development Zone at Numaligarh, East of Kaziranga;*
- vi) S.O. 884(E), (19/12/1996) Dahanu Taluka Environment Protection Authority, 1996, amended 2001 ; vii) S.O.*

- 350(E), (13/5/1998) Order constituting the Taj Trapezium Zone Pollution (Prevent and Control) Authority;
- viii) S.O. 825(E), (17.9.1998) Pachmarhi Region as an EcoSensitive Zone;
- ix) S.O. 52(E), (17/1/2001) Mahabaleswar Panchgani Region as an EcoSensitive Zone;
- x) S.O. 133 (E), (4/2/2003) Matheran and surrounding region as an EcoSensitive Zone 1. S.O. 83 (E), (16/01/2004) Amendments to S.O. 133(E) dated 4/2/2003;
- xi) S.O. 1545(E), (25/06/2009), Mount Abu as EcoSensitive Zone.
- xii) S.O. 1260(E), (31/05/2012) Girnar Reserve Forest as EcoSensitive Zone.

18. It is respectfully submitted that the above proposals are submitted in the backdrop of inordinate delay that has taken place in the identification and declaration of Safety Zones around National Parks/ Wildlife Sanctuaries and so as to ensure that the process of such declarations do not remain pending indefinitely.” (quoted verbatim from paperbook)

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27. It has also been highlighted by the State that 25 sanctuaries, 2 national parks have been declared by the State comprising of a total area of 9,07,070 hectares and an area of 23,29,659 hectares of area as forest area or deemed forest is already existing as ecosensitive/eco fragile/buffer/safety zones in that State within which no non-forest activities is allowed without proper permission

under the Forest (Conservation) Act, 1980. The State of Rajasthan has opposed the proposal for declaring 10 kilometres beyond the boundary of sanctuaries and national parks being declared as ESZ.

28. The role of the State cannot be confined to that of a facilitator or generator of economic activities for immediate upliftment of the fortunes of the State. The State also has to act as a trustee for the benefit of the general public in relation to the natural resources so that sustainable development can be achieved in the long term. Such role of the State is more relevant today, than, possibly, at any point of time in history with the threat of climate catastrophe resulting from global warming looming large. This Court has highlighted the Public Trust Doctrine in the case of M.C. Mehta v. Kamal Nath and Others [(1997) 1 SCC 388] and opined that the Public Trust Doctrine is part of the law of land. In Paragraph 25 of the said judgment, as reported, this doctrine has been explained with reference to writings of Joseph L. Sax, Professor of Law, University of Michigan, the proponent of Modern Public Trust Doctrine:-

“25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The

doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

“Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses.”

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32. The MoEF&CC essentially has argued in favour of having ESZ to be site specific and for that purpose they have invited proposals from individual State Government in the aforesaid Guidelines. In cases where such proposals have not come, they want 10 kilometres periphery of protected forests to be preserved as ESZ. As regards activities permissible within the buffer zone, certain works have been proposed to be regulated and certain activities to be permitted within the ESZ. This has been stipulated in Annexure I to the Guidelines. We have already referred to the prohibited activities. Among the regulated activities, as per these Guidelines are:-

- (i) *Felling of trees with permission from appropriate authority.*
- (ii) *Establishment of hotels and resort as per approved master plan, which takes care of habitats allowing no restriction on movement of wild animals.*
- (iii) *Drastic change in agricultural systems.*
- (iv) *Commercial use of natural water resources including ground water harvesting as per approved master plan, which takes care of habitats allowing no restriction on movement of wild animals.*
- (v) *Erection of electrical cables with stress on promoting underground cabling.*
- (vi) *Fencing of premises of hotels and lodges.*
- (vii) *Use of polythene bags by shopkeepers.*
- (viii) *Widening of roads with proper environmental impact assessment.*
- (ix) *Movement of vehicular traffic at night for commercial purposes.*
- (x) *Introduction of exotic species.*
- (xi) *Protection of hill slopes and river banks.*
- (xii) *Regulation of any form of air and vehicular pollution.*
- (xiii) *Putting up of sign boards and hoardings. Within permissible activities fall:*
 - (i) *Ongoing agricultural and horticulture practices by local communities.*
 - (ii) *Rain water harvesting*
 - (iii) *Organic farming*
 - (iv) *Use of renewable energy sources*
 - (v) *Adoption of green technology for all activities.*

35. *The approach of the Court in dealing with complaints of environmental degradation has been laid down by this very Bench in this Writ Petition itself in an order passed on 9th May 2022 in connection with another set of applications. In this Order, it has been observed and held:-*

“15. Adherence to the principle of sustainable development is a constitutional requirement. While applying the principle of sustainable development one must bear in mind that development which meets the needs of the present without compromising the ability of the future generations to meet their own needs. Therefore, Courts are required to balance development needs with the protection of the environment and ecology. It is the duty of the State under our Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on intergenerational equity. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.

16. In *Vellore Citizens' Welfare Forum v. Union of India*, this Court held that the 'Precautionary Principle' is an essential feature of the principle of 'Sustainable Development'. It went on to explain the precautionary principle in the following terms: (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.

17. The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by justified concern or risk potential.

18. A situation may arise where there may be irreparable damage to the environment after an activity is allowed to go ahead and if it is stopped, there may be irreparable damage to economic interest. This Court held that in case of a doubt, protection of environment would have precedence over the economic

interest. It was further held that precautionary principle requires anticipatory action to be taken to prevent harm and that harm can be prevented even on a reasonable suspicion. Further, this Court emphasises in the said judgment that it is not always necessary that there should be direct evidence of harm to the environment.”

While dealing with the applications in the present set of proceedings, we shall follow the same principles.

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44. We accordingly direct:

- a) Each protected forest, that is national park or wildlife sanctuary must have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 9th February 2011 shall be strictly adhered to. For Jamua Ramgarh wildlife sanctuary, it shall be 500 metres so far as subsisting activities are concerned.*
- b) In the event, however, the ESZ is already prescribed as per law that goes beyond one kilometre buffer zone, the wider margin as ESZ shall prevail. If such wider buffer zone beyond one kilometre is proposed under any statutory instrument for a particular national park or wildlife sanctuary awaiting final decision in that regard, then till such final decision is taken, the ESZ covering the area beyond one kilometre as proposed shall be maintained.*

c) The Principal Chief Conservator of Forests as also the Home Secretary of each State and Union Territory shall remain responsible for proper compliance of the said Guidelines as regards nature of use within the ESZ of all national parks and sanctuaries within a particular State or Union Territory. The Principal Chief Conservator of Forests for each State and Union Territory shall also arrange to make a list of subsisting structures and other relevant details within the respective ESZs forthwith and a report shall be furnished before this Court by the Principal Chief Conservator of Forests of each State and Union Territory within a period of three months. For this purpose, such authority shall be entitled to take assistance of any governmental agency for satellite imaging or photography using drones.

d) Mining within the national parks and wildlife sanctuaries shall not be permitted.

e) In the event any activity is already being undertaken within the one kilometre or extended buffer zone (ESZ), as the case may be, of any wildlife sanctuary or national park which does not come within the ambit of prohibited activities as per the 9th February 2011 Guidelines, such activities may continue with permission of the Principal Chief Conservator of Forests of each State or Union Territory and the person responsible for such activities in such a situation shall obtain necessary permission within a period of six months. Such permission shall be given once the Principal Chief Conservator of Forests is

satisfied that the activities concerned do not come within the prohibited list and were continuing prior to passing of this order in a legitimate manner. No new permanent structure shall be permitted to come up for whatsoever purpose within the ESZ.

f) The minimum width of the ESZ may be diluted in overwhelming public interest but for that purpose the State or Union Territory concerned shall approach the CEC and MoEF&CC and both these bodies shall give their respective opinions/recommendations before this Court. On that basis, this Court shall pass appropriate order.

g) In the event the CEC, MoEF&CC, the Standing Committee of National Board of Wildlife or any other body of persons or individual having special interest in environmental issues consider it necessary for maintaining a wider or larger ESZ in respect of any national park or wildlife sanctuary, such body or individual shall approach the CEC. In such a situation the CEC shall be at liberty to examine the need of a wider ESZ in respect of any national park or wildlife sanctuary in consultation with all the stakeholders including the State or Union Territory concerned, MoEF&CC as also the Standing Committee of National Board of Wildlife and then approach this Court with its recommendations.”

35. I.A. No. 131377/2022 in Writ Petition No. 202 of 1995, In Re: T.N. Godavarman Thirumulpad vs Union of India and Ors. was filed before the Hon’ble Supreme Court for modification/clarification of the orders passed by

the Hon'ble Supreme Court in W.P. (C) No. 202/1995. The relevant portions of the order are quoted below:

“xxxxxx.....xxx

2. The applicant specifically seeks modification of the directions contained in paragraphs 56.1 and 56.5 of the order dated 3rd June 2022 (supra). The said paragraphs are reproduced hereinbelow:

“56.1. Each protected forest, that is, national park or wildlife sanctuary must have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 9-2- 2011 shall be strictly adhered to. For Jamua Ramgarh Wildlife Sanctuary, it shall be 500 m so far as subsisting activities are concerned.

.....

56.5. In the event any activity is already being undertaken within the one kilometre or extended buffer zone (ESZ), as the case may be, of any wildlife sanctuary or national park which does not come within the ambit of prohibited activities as per the 9-2-2011 Guidelines, such activities may continue with permission of the Principal Chief Conservator of Forests of each State or Union Territory and the person responsible for such activities in such a situation shall obtain necessary permission within a period of six months. Such permission shall be given once the Principal Chief Conservator of Forests is satisfied that the activities concerned do not come within the prohibited list and were continuing prior to passing of this order in a legitimate manner. No new

permanent structure shall be permitted to come up for whatsoever purpose within the ESZ.”

3. The clarification/modification of paragraph 56.1 of the order dated 3rd June 2022 (supra) is sought to the extent that the Eco-Sensitive Zones (for short, “ESZs”) which have already been notified (final and draft) by the Ministry of Environment Forests and Climate Change (for short, “MoEF & CC”) or the proposals for which have been received in the Ministry be exempted from the directions therein. The applicant also sought modification to the extent that paragraph 56.1 of the order dated 3rd June 2022 (supra) may not be made applicable where National Parks and Wildlife Sanctuaries are located along interState boundaries and/or common boundaries. Modification /clarification of the directions in paragraph 56.5 of the order dated 3rd June 2022 (supra) in its entirety is additionally sought.”

36. The guidelines have been issued with regard to prohibited, regulated and permitted areas and a list of the activities which are prohibited, regulated and permitted is contained in Annexure-I of the said Guidelines.
37. In above petition, Hon’ble Supreme Court in para 48 and other paragraphs observed as follows:

“48. If the direction as issued by this Court in paragraph 56.5 of the order dated 3rd June 2022 (supra) is continued, then no permanent structure would be permitted to come up for whatsoever purpose in the aforesaid ESZs. As already pointed out from the aforesaid examples, hundreds of villages are

situated within the ESZs in the country. If no permanent construction is to be permitted for any purpose, a villager who is desirous to reconstruct his house would not be permitted. Similarly, if there is an extension in their family and some additional construction is required for accommodating the enlarged family, the same would also not be permitted. Similarly, if the Government decides to construct schools, dispensaries, anganwadis, village stores, water tanks and other basic structures for improvement of the life of the villagers, the same would also not be permitted. The effect of the order will be to prevent the State or the Central Government from constructing roads and provide other facilities to the villagers.

49. If the order dated 3rd June 2022 (supra) is not modified, it will also be impossible for the Forest Departments to conduct eco-development activities around National Parks and Sanctuaries. The said activities are required with the dual objectives of protection of wildlife and provision of benefits for the local communities. MoEF&CC provides financial assistance to the States under the Centrally Sponsored Scheme- Integrated Development of Wildlife Habitats, which includes assistance for eco-development activities. These activities often involve construction of small structures which are permanent in nature in areas including ESZs. For example, the said activities which are likely to be prohibited are thus:

- i. The construction of community halls, bridges, threshing floors, fish-drying platforms, drinking water storage, etc., for the benefit of local communities/villages;
- ii. The construction of forest chowkies, watch towers, and other structures for protection of wildlife and forests;

iii. The construction of interpretation centres, toilets and other basic structures for the environmental education of visitors to National Parks and sanctuaries.

50. It is further to be noted that there are various regulated and permissible activities. There are also certain projects of national and strategic importance such as construction of National Highways, Railways, Defence related infrastructure etc. The effect of the direction in 56.5 of the order dated 3rd June 2022 (supra) is that all such activities will be permanently prohibited. In this respect, it is to be noted that MoEF & CC has issued an Office Memorandum dated 17th May 2022 which required that any activity listed in Schedule of the EIA Notification 2006, when conducted in a notified ESZs, or in the case of National Parks and Sanctuaries for which no ESZ has been finally notified, when conducted within 10 kilometres of such National Park or Sanctuary, requires the consideration and recommendation of the NBWL or its Standing Committee in addition to the Environment Clearance under the 1986 Act. Additionally, activities which are regulated as per the specific ESZ notification, require approval as per that notification. As such, we find that there are inbuilt safeguards for preventing rampant construction and abuse of process which may be detrimental to the development and maintenance of wildlife habitats. It is further to be noted that if the direction as contained in paragraph 56.5 of the order dated 3rd June 2022 (supra) that even for continuation of existing activities, the permission of the PCCF of each State or Union Territory would be necessary, remains unmodified, taking into consideration that in each State or Union Territory there will be hundreds of villages wherein

millions of people would be residing, the PCCF would be left with no other job except to consider such applications for permission to continue such activities. Even a farmer desirous to continue farming activities would be required to seek such permission. We find that such a direction is impossible to be implemented.

51. We are of the view that if such a direction is continued, rather than avoiding man-animal conflict, it will intensify the same. As observed in the said Guidelines, the requirement of declaring ESZs is not to hamper day to day activities of the citizens but is meant to protect the precious forests/Protected Areas from any negative impact, and to refine the environment around the Protected Areas.

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55. Insofar as direction in paragraph 56.1 of the order dated 3rd June 2022 (supra) is concerned, a perusal of various orders would reveal that this Court has not directed any minimum area from the demarcated boundary of such Protected Areas. The area to be declared as ESZ cannot be uniform and will be Protected Area specific. In some cases, it may be 10 kilometres on one side and 500 meters on the other side. In certain cases, it may not be possible to have a uniform minimum area by virtue of inter-state boundaries or a sea or a river beyond one side of the Protected Area. In any case, a detailed 19 procedure is required to be followed as prescribed under Rule 5 of the 1986 Rules which we have already referred hereinabove. We find that once such a notification is issued after following the procedure prescribed under the

1986 Rules, the ESZs will have to be as per the said notification.

xxxxxx.....xxx

63. It is further directed that any person who is aggrieved with such a final notification would be entitled to approach this Court directly by filing an application in the present proceedings.

64. We further clarify that the direction contained in paragraph 56.1 of the order dated 3rd June 2022 (supra) would not be applicable where the National Parks and Sanctuaries are located on inter-State borders and/or share common boundaries.

65. We also modify the direction contained in paragraph 56.4 of the order dated 3rd June 2022 (supra) and direct that mining within the National Park and Wildlife Sanctuary and within an area of one kilometre from the boundary of such National Park and Wildlife Sanctuary shall not be permissible.

66. We also modify the directions contained in paragraph 56.5 of the order dated 3rd June 2022 (supra) and replace the same as under:

- (i) The MoEF & CC and all the State/Union Territory Governments shall strictly follow the provisions in the said Guidelines dated 9th February 2011 and so also the provisions contained in the ESZs notifications pertaining to the respective Protected Areas with regard to prohibited activities, regulated activities and permissible activities;*

(ii) *We further direct that while granting Environmental and Forest Clearances for project activities in ESZ and other areas outside the Protected Areas, the Union of India as well as various State/Union Territory Governments shall strictly follow the provisions contained in the Office Memorandum dated 17th May 2022 issued by MoEF & CC.”*

38. In view of the above records and contentions it is clear that total Nahargarh area that is the 2152.406 Ha. was declared as a forest area under Section 20 of the Act vide notification dated 21.11.1961 and the boundaries have already been declared and decided vide notification of the Government of Rajasthan dated 22.09.1980. The total area of eco-sensitive zone as notified by the MoEF&CC is 79.356 sq km and boundaries have already been notified vide Annexure 2-A and 2-B of the notification. The geo-coordinate of the boundary of Nahargarh Wildlife Sanctuary and eco-sensitive zone have already been given in Table A and Table B of annexure-3 of the notification.
39. List of the bridges falling in the sanctuary and proposed eco-sensitive zone along with their geo-coordinates at prominent points are as annexure- 4 of the notification. Section 4 provides the list of prohibited activities. Learned Counsel for the applicant has submitted that the area under question requires environmental clearance and in reply thereof, learned counsel for the project proponent has submitted that Section 12 of the list of activities provides the regulated activities and the commercial establishment of hotels and resorts comes within the regulated activities and the complete restriction is applicable for new commercial hotels and resorts and for the existing constructions before the notification of eco-sensitive zone will be governed by the Zonal Master Plan and will be in conformity with the Tourism Master Plan and Guidelines as applicable. The requirement of permission was considered by Hon'ble the Supreme Court of India in *T. N. Godavarman Thirumulpad Vs. Union of India*, 2023 SCC Online, SC 504 and in Para 50, it has been observed

that directions contained in Para 56.5 of the order dated 03.06.2020 with regard to the continuation of existing activities, the permissibility condition and direction is impossible to be implemented.

40. Learned Counsel for the applicant has argued that total area/open space will also be included while the Learned Counsel for the respondent has submitted that the Environment (Protection) Act, 1986 in the Category 8-A provides the permissibility and requirement of environmental clearance when the construction is above 20,000 sq.m. and that is the built-up area. The built-up area of the project proponent is less than 20,000 sq.m. and the general condition will not apply because the unit is in existence prior to issuance of the notification.
41. Learned Counsel for the respondent has relied on the citation of *Goel Ganga Developers India Pvt. Ltd. Vs Union of India, 2018(18) SCC, page 257* where it has been held that under the notification of 2006 all constructed area which is covered and not open to the sky has to be treated as a built-up area and this has been reiterated in (2019) 9 SCC 288. In the consent condition issued by the State PCB, the built-up area is shown as 2919.67 sq.m. and the same area has been found by the joint committee in which one of the member of the forest was also a member of the committee.
42. The copy of the Zonal Master Plan of Eco-Sensitive Zone, Nahargarh issued by the Government of Rajasthan has been annexed and filed as Annexure-R/12 and para 10.4 provides the existing activity and for purpose of deciding the Zonal Master Plan for the Eco-Sensitive Zone, Hotels, Resorts, Commercial Establishments shall be considered as existing if they have any of the following issued prior to 08.03.2019 ESZ notification of Nahargarh i.e. Electricity Connection, Approval by Tourism, Conversion Order, Patta of Non-Agricultural Use, Building Plan, Order regarding Change in Land Use, Proof of Deposition of Tax, CTE, CTO and Environmental Clearance. The present space was allotted to the project proponent under the provisions of Rajasthan Industrial Area Allotment Rules, 1959 on 17.09.2001 and Patta of

Non-Agricultural use was issued on 07.07.2008. Thus, the project proponent has argued that this is the pre-existing activity and not the new construction or new activity.

43. The matter was also referred and considered to the Monitoring Committee and the proceedings of the Monitoring Committee headed by the Collector has been attached with the report of the State Pollution Control Board on page number 928 which says that the questioned activity is found to be pre-existing activity before the Notification, 2019.
44. In view of the above discussions and the facts and record, our conclusions and directions are as follows :-

- i. The respondents are directed to strictly follow the guidelines and the provisions contained in the ESZ notification pertaining to the respective areas with regard to prohibited activities, regulated activities and permissible activities. Any matter arising out of the actions be placed before the monitoring committee as provided under Section 5 of the notification to decide it and to take immediate action and to enforce the rule of law.
- ii. The built-up area by the respondent nos. 13 and 14 is below the prescribed limit and does not require the environmental clearance and as per Joint Committee Report and the Monitoring Committee Report this is pre-existing structure and the establishment is not required to obtain environmental clearance as well as clearance from the NBWL as provided and found by the joint committee in observation at point number five. But for raising any further construction or modification, the proposed modification must be placed before the monitoring committee and will be dealt with in accordance with the decision taken by the monitoring committee as provided in Section 5 of the notification.

iii. The matter of identification and demarcation of the land has already been shown in the notification by the longitude and latitude but in case of any dispute between the parties, the matter may be placed before the Settlement Officer, Forest and the Revenue Officers and identification or demarcation shall be done in accordance with the rules subject to revision or appeal.

45. In view of directions as above, the **Original Application No. 151/2023** alongwith **I.A. No. 32/2024** stands **disposed of** accordingly. A copy of the order be send on e-mail to Collector concerned for information and necessary action.

Sheo Kumar Singh, JM

Dr. Afroz Ahmad, EM

15th May, 2024
O.A. No. 151/2023(CZ)
PN