

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 07th March, 2023

Pronounced on: 28th March, 2023

+ **W.P.(CRL) 629/2019 & CRL.M.A. 4489/2019**

CADDIE HOTELS PRIVATE LIMITED Petitioner

Through: Mr. Neeraj Malhotra, Senior Advocate with Mr. Shubhranshu Padi, Mr. Gaurav Adusumalli, Mr. Mohd. Ovais and Mr. Nimish, Advs.

versus

**STATE LEVEL ENVIRONMENTAL IMPACT ASSESSMENT
AUTHORITY (SEIAA) DELHI** Respondent

Through: Mr. Biraja Mahapatra, Mr. Nalin Hingorani and Mr. Rajat Sharma, Advs. for respondent – SLEIA.

**CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL**

JUDGMENT

1. This petition has been filed for quashing of summoning order dated 26th February, 2018 passed in Complaint Case No. 4558/2018 and also the complaint case itself. The petitioner/company was summoned as an accused for alleged violation of Section 15/16/19 of the Environment (Protection) Act, 1986 read with Environment Clearance Notification dated 14th September, 2006.

2. The petitioner herein is an Indian company having its registered office in New Delhi and is engaged in the business of constructing hotels. An entity called the Delhi International Airport Private Limited (DIAL) was incorporated and engaged by the Airport Authority of India (AAI) to operate, maintain, develop, design, construct, upgrade, modernise, finance and manage the Indira Gandhi International Airport (IGI) at Delhi. Land was leased by AAI to DIAL on 25th April, 2006. DIAL envisaged the development of a hospitality district on this leased land referred to as Delhi Airport Aerocity, where the earmarked area for approximately 45 acres was divided into 13 parts for development of assets including hotels in terms of the Operation, Management and Development Agreement (OMDA) dated 04th April, 2006. By means of a competitive bid process, DIAL selected bidders which included the petitioner/company for the purpose of developing, designing, constructing, owning, operating and maintaining hotels within the Aerocity.

3. As per the petitioner, DIAL applied for an environmental clearance for the expansion of the airport including the Aerocity area and the application was submitted for the entire 5,106 acres which included the airport, commercial establishments and its ancillary developments. The EC was accordingly granted on 17th January, 2007, as per this application, for the entire project, which by implication included the Aerocity area as well. This was also apparently corroborated by the acknowledgement of the State Level Expert Appraisal Committee (SEAC) in its meeting held on 29th March, 2010. Accordingly, no separate EC was required as long as the construction was carried out within the leased land for which EC had already been

granted to DIAL. Even during the bidding process when queries have been asked by bidders, DIAL replied that the entire airport premises which included the hotel projects had received environmental clearance.

4. In addition, for abundant caution, the petitioner/company applied for a separate EC *vide* application dated 20th November, 2009/23rd November, 2009 for the proposed hotel. This application was sent by the petitioner to DIAL which pursued the same with the environmental authorities. A response to a letter dated 12th February, 2010 by the SEAC was sent by DIAL on 22nd February, 2010. The petitioner/company was then intimated *vide* letter dated 18th March, 2010 regarding the proposal of granting EC that was being considered, and for that purpose the site inspection by two members of the SEAC was to be carried out. On 13th May, 2010, an inspection was carried out. The SEAC recommended granting of EC on 14th May, 2010 and asked for a submission of a detailed note for starting construction work. However, the petitioner in its *bona fide* reply *vide* letter dated 09th June, 2010 stated that the construction had already started based on the original approval of the EC given to DIAL. EC was granted for the petitioner's project on 22nd July, 2010, subject to conditions. However, the SEIAA in its meeting held on 04th July, 2017 decided that the petitioner/company had to be prosecuted under provisions of Section 15/16/19 of the Environment (Protection) Act, 1986. After more than 7 years from the date of grant of EC to the petitioner/company, the complainant/authority State Level Environment Impact Assessment Authority (SEIAA) filed complaint dated 30th January, 2018 before the ACMM, Central, Tis Hazari Courts alleging these violations. Consequently, by the impugned order, the Ld. ACMM took cognizance of the complaint which has been assailed herein.

5. The Ld. Senior Counsel for the petitioner pointed out that the petitioner/company had in the meantime already completed the construction of the premises and received a consent to operate on 17th August, 2015 and was fully functional, operating the hotel by the name of ROSEATE.

6. The learned counsel for the respondent/authority contended that since the site was dug at the time the inspection was carried out, a violation would have occurred, since the EC was still not granted and was under consideration. However, other facts relating to the flow of events, as also that the EC was finally granted and consent to operate, has not been disputed by the learned counsel for the authority.

7. In the reply filed by the Authority, however, it has been pointed out that *inter alia* as per the Development Agreement between DIAL and the petitioner, who was the developer, Asset No. 02 of the airport site was granted to the petitioner to develop after a competitive bidding process. The attention was drawn to Article II clause 2.1.4 (iv) to state that the developer had the right to develop the asset area, and had the right to apply and obtain all requisite approvals and consents including from all government authorities. It was, therefore, contended that in light of this clause the petitioner had to apply for environmental clearance. Additionally, Article VI clause 6.1.9 and para 2.3 of Annexure-D Part I was also adverted to in this regard. Attention was also drawn to the letter dated 22nd July, 2010 by the SEIAA granting Environment Clearance to the petitioner, and Part A-Specific Conditions clause I (ii). It was also stated that the SEIAA and SEAC had become non-functional since 01st April, 2018 and the records of the said authorities continuing from the earlier tenure are dealt with by the Delhi Pollution Control Committee.

8. The Ld. Senior Counsel for the petitioner *inter alia* relied upon the following decisions in support of the plea. In ***Maruti Suzuki India Ltd. v. Ministry of Environment and Forests***, (2014) SCC OnLine Del 3264, this Court had held in relation to an issue which arose relating to a project which was not within the ambit of the EIA Notification, 2006, it was held that the petitioner in that case could not have said to have acted with *mala fide* intent, since the petitioner was being asked to seek environmental clearance despite its *bona fide* belief that EIA Notification was not applicable to its projects. In ***Alpha G. Corp. Developers Pvt. Ltd. v. State of Haryana***, (2017) SCC OnLine P&H 2292, the High Court of Punjab & Haryana in relation to the petitioner's project without obtaining environmental clearance relating to constructions already carried out prior to the environmental clearance held that since on the date of institution of the complaint, the necessary permission and clearance was already granted by the competent authority, it would be a fit case for quashing of the impugned complaint, following the decision of the Hon'ble Supreme Court in ***State of Haryana v. Bhajan Lal***, (1992) Supp (1) SCC 335. Reliance was also placed on ***Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre***, (1988) 1 SCC 692, where it was held that the test to be applied at the stage of quashing is whether the uncontroverted allegations *prima facie* establish the offence. In ***Raymond Ltd. v. H.V. Doshi & Brothers Pvt. Ltd.***, (2006) SCC OnLine Cal 31, the High Court of Calcutta held that if from the consideration of the complaint it does not transpire that the petitioner had the intention to deceive or cheat the complainant from the beginning and that there was no element of *mala fide* intent, it would be a fit case where the Court can exercise its inherent jurisdiction to quash the complaint. In ***Manik Taneja v. State of Karnataka***, (2015) 7

SCC 423, the Hon'ble Supreme Court observed that while the test is that uncontroverted allegations are to be seen in adjudicating a petition of quashing, the Court could take into consideration any special features which appear in a particular case to consider whether it is expedient and in interest of justice to permit the prosecution to continue.

9. From a perusal of the documents on record and assessment of the contentions of the parties, it is evident that DIAL had obtained the environmental clearance on 17th January, 2007 itself for the entire area of development which included the hospitality district as well. This would be also evident from the Minutes of the Meeting dated 29th March, 2010 which was for considering the proposal for grant of environmental clearance to the proposed hotel project of the petitioner, where it was stated that the project was recommended for environmental clearance on submission of documents which included copy of environmental clearance issued by the MoEF to DIAL "*for the whole Aerocity development project*". It was obvious that the original clearance which was awarded to DIAL would have included the whole area including the Aerocity area as well. The Aerocity project was part of the land which was leased by the Airport Authority of India in favour of DIAL. The area earmarked of approximately 45 acres was divided into 13 parts or asset areas for development of Non Transfer Assets including hotels in terms of the Operation, Management and Development Agreement dated 04th April, 2006. Since the EC was granted for the whole project in the entire area of 5,106 acres, which included the hospitality district, it was implied that the environmental clearance had been obtained for all the developments. Even during the bidding process when the development agreement dated 15th June, 2009 was entered

between the petitioner/company and DIAL for construction of the hotel, the bidder queries relating to the issue of environmental development was clarified by DIAL stating that the entire airport premises which include hotel projects had received environmental clearance. Further, even though the petitioner/company for its own reasons and for its own volition applied for the separate EC, the same was recommended by the SEAC on 15th May, 2010 for granting of EC.

10. In these circumstances for the complainant/agency to backtrack the flow of events and file a complaint after 8 years of the said approval having been recommended for clearance and granted as also the project having been completed and consent to operate being given on 17th August, 2015, the continuance of the complaint was not tenable. In any event, these facts are not disputed by the learned counsel for the respondent/authority and the limited contention has been that digging of the ground had occurred while the permission was being considered, amounts to taking a hypertechnical view which is not in consonance with the flow of events. There is no dispute that the allocation of the said areas was for setting up hotel assets.

11. Moreover, from the facts of the case as presented, it does not seem that there was any *mala fide* intention to not procure an EC or to construct without an EC clearance or to commit any violation, since at the very least there was a genuine and *bona fide* belief that the EC had already been granted to DIAL and the project was merely a subset of the larger airport development project. The impugned order dated 26th February, 2018 is devoid of any appreciation of facts or any reasons and has summarily arrived at a conclusion that the petitioner has violated the provisions of the Environment (Protection) Act, 1986 as well as the 2006

Notification and, therefore, summoned them for offences under Sections 15/16/19 of the Environment (Protection) Act, 1986.

12. The impugned order is, therefore, set aside and the said complaint No. 4558/2018 dated 30th January, 2018 filed by the complainant/SEIAA is accordingly quashed, and also the proceedings emanating therefrom.

13. Judgment/Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

MARCH 28, 2023/MK