

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (SZ)
CHENNAI
Original Application No. 213 of 2021 (SZ)**

S. Sakthivel ... Petitioner
Vs.
The Secretary to Government of India,
MOEF & CC and 5 others ... Respondent

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VOLUME VI**

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Dated at Chennai on this the 29th of July, 2022.

FILED BY



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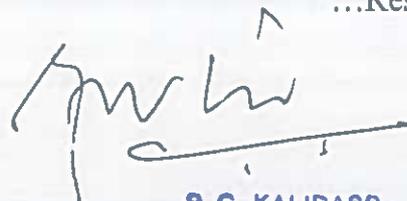
S. Sakthivel
Environmental Protection and Anti-Pollution Group
S/o P.K. Subramanyam
Alagu Vinayakar Kovil Street,
Fairland, Salem 636016

...Applicant

Vs

1. The Secretary to Government of India
Ministry of Environment and Forest and Climate Change
Indira Paryavaran Bhawan Jorbagh Road,
New Delhi 110003
2. The Director,
Department of Geology and Mines,
Industrial Estate, Guindy, Chennai 600032
3. The District Collector,
Collectorate, Salem 636 001
4. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Siva Tower, 2nd Floor, Salem 636004
5. The Member Secretary,
Central Ground Water Authority
Jam Nagar House,
18/11 Man Singh Road, New Delhi 110011
6. The Managing Director,
Dalmia Bharat Sugar and Industries Ltd.
Chettichavadi, Jagir Magnesite and Dunite Mines,
Chettichavadi Village, Salem West Tk.
Salem 636 012

...Respondents



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REPLY FILED ON BEHALF OF THE SIXTH RESPONDENT IN RESPONSE TO THE
ADDITIONAL REPORT DATED 07.07.2022 OF THE SECOND RESPONDENT

The 6th Respondent (**Answering Respondent**) above named states as follows:

1. The Second Respondent had filed its Additional report along with annexures, which were furnished to the Answering Respondent on 08.07.2022. The Answering Respondent is presently filing its response. The aforementioned documents/replies filed by this Respondent may be treated as part and parcel of this reply. This response is in addition and without prejudice to the contentions of the Answering Respondent which are already on record.

2. Before, advertng to the various allegations contained in the additional report filed by the Second Respondent, the Answering Respondent craves leave of this Hon'ble Tribunal to reiterate certain facts for the sake of convenience and clarity. **The Answering Respondent is now required to briefly set out, for the sake of convenience and clarity, regarding its Mining Lease, the renewal of which has been pending since August 2005 and its application for Environmental Clearance since 2006.**
 - a. The Government of Tamil Nadu originally granted a mining lease in favour of the Answering Respondent for mining of Magnesite and Dunite vide G.O.Ms.903 dated 25th February, 1966 and G.O. Ms. No.74 dated 11th March, 1997, respectively. Answering Respondent


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is a responsible corporate citizen of this country and has been in existence for more than eight decades.

- b. Answering Respondent applied for second renewal of the aforesaid mining lease in due compliance of Mining Lease Deed dated 30th March, 1998 and Rule 24 (A) (1) of Mineral Concession Rules 1960 (MCR 1960), *vide* its application dated 11th July, 2005 (Exhibit-R2) which was well before the 12 (twelve) months of the scheduled expiry of the mining lease. In this regard, The Answering Respondent had to file Writ Petition No.25518 of 2006 and on the basis of order dated 17.08.2006, the mining lease operations of the Answering Respondent were allowed. Mining Lease got extended till 31.03.2030 by virtue of Sec 8A (5) of the MMRD Act, read with judgment of Hon'ble Supreme Court in Common Cause dated 04.04.2016.
- c. In due compliance with the Environment Impact Notification of 1994, as amended by circular dated 28th October, 2004, which mandated environmental clearance (EC) at the time of renewal of mining lease, Answering Respondent also simultaneously applied for Environmental Clearance, on February 9, 2006, with the 1st Respondent, through the Secretary, Industries Department, and Government of Tamil Nadu, as per the prescribed procedure at the relevant time.
- d. The application for Environmental Clearance as filed by Answering Respondent on 9th February, 2006, was not processed by the



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(A)

authorities concerned for a period of 4 (four) years and it was returned by the Government of Tamil Nadu in July 2010.

- e. Thereafter Answering Respondent submitted the said application to MoEF, New Delhi vide letter no. SL: GO: 55200(1) dated 17th August, 2010. Subsequently, as directed by MoEF, Answering Respondent also submitted application for Environmental Clearance in Form 1 under EIA Notification, 2006 vide its letter No.SL: GO:55200(1) dated 12th October, 2011.
- f. In pursuance of said application for EC, the Terms of Reference (TOR) was published by the 1st Respondent, on its website in April 2012. However, no further action was taken by the 1st Respondent (MoEF) for grant of EC for want of credible action against Answering Respondent for carrying on mining operations without EC during the period started from August 2006, when the renewal of mining lease fell due. Despite the categorical findings of Jharkhand High Court observed in the matter of *Hindustan Copper Vs Union of India* W.P. No, 2364 /2014, vide orders dated 28.11.14, that processing of EC application is independent of the alleged violation cannot be withheld for previous violation. It cannot be in dispute that alleged previous violation should be considered separately.
- g. Later on, the 1st Respondent again took up the application for grant of EC filed by Answering Respondent, treating it as a violation case as

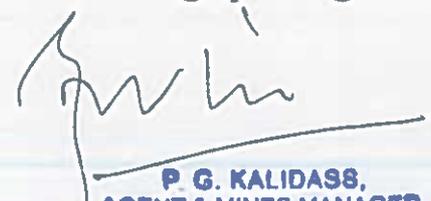


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per MOEF & CC Notification S.O.804 (C) dated 14.03.2017. The Application filed by Answering Respondent on 16.03.2018 was acknowledged by MOEF on 19.03.2018 vide IA/TN/MIN/73566/2018 (Exhibit-R7). Based on the above proposal, in the EAC Meeting held on 31.12.2020, an Expert Appraisal Committee for grant of Term of Reference, recommended for TOR at the meeting itself. Finally, Terms of Reference (ToR) has been issued by Respondent No.1 vide its letter dated 5th February, 2021 wherein MOEF issued letter granting TOR directing Answering Respondent amongst others to produce valid mining lease documents regarding subsistence/ extension of lease up to March, 2030.

- h. The Answering Respondent vide its letters dated 17th Feb 2021, 25th Sep 2021 & 30th Sep 2021, requested the 2nd Respondent, to issue valid mining lease documents or a letter recording pendency of the Appellant's mining lease application dated 11th July, 2005. However, there has been no response to date.

- i. Pursuant to the Terms of Reference, dated 5 February, 2021, the Answering Respondent submitted its Environment Management Plan on 29th November 2021 to First Respondent. In the said Environment Management Plan, the Appellant requested for grant of Environmental Clearance subject to the outcome of the present proceedings and without insisting on production of mining lease documents. This is for the reason, that whereas grant of Environmental Clearance is a pre-requisite for securing/operating a



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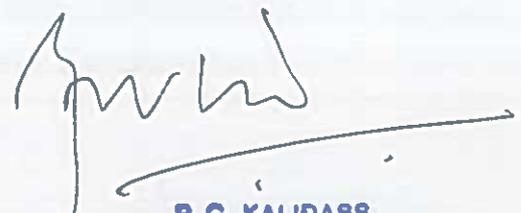
Mining Lease, the subsistence of a Mining Lease is not a pre-condition for grant of Environmental Clearance and such a situation is also inconceivable.

- j. Nonetheless, the Expert Appraisal Committee of 1st Respondent deliberated upon the Environment Management Plan submitted by the Appellant, in its meeting held on 15th December 2021 and directed Appellant, amongst others, as below:

“As, the Project Proponent could not comply with the specific condition (xviii) of ToR dated 05.02.2021 (submission of valid mining lease documents), the Appellant is required needs to seek for amendment of ToR by submitting the following evidence related to the following:

- a) To submit that Chettichavadi Jaghir Magnesite and Dunite Mine is owned by the Project Proponent.*
- b) The instant mine lease has not been lapsed currently.*
- c) An order which permits the Project Proponent to continue operation in the absence of valid extension of mine lease.”*

- k. The Answering Respondent submitted its letter on 31st January, 2022 to the First Respondent seeking Amendment of TOR dated 05.02.2021 for removal of the condition of Valid Mining Lease Documents for grant of EC in accordance with recommendation and observation of Expert Appraisal Committee held on 15.12. 2021. The Appellants also requested First Respondent to grant the EC subject to outcome of Writ Appeal No. 835/2020.



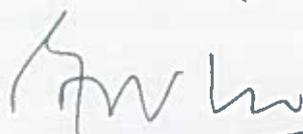
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1. On 21.10.2016, the Hon'ble Madras High Court has passed an interim order with a direction to the respondents concerned to continue to issue transport permits to remove the excavated mineral as was done hither to until further orders. Writ Petition W.P.No.29275 of 2016 was, thereafter, finally disposed of by the Hon'ble High Court of Madras *vide* order dated 11th Jan. 2022 where the Hon'ble Court *inter alia* observed that since the mining operations had been suspended by the Answering Respondent herein and grant of EC is at an advance stage, Answering Respondent can approach Respondent No. 2 & 3 therein, along with environment clearance, to consider the matter of renewal of its mining lease. The relevant paragraph of the order dated 11.01.2022 passed in W.P. No. 29275 of 2016 is extracted hereunder:

"It is left open to the Petitioner-Company to submit all the required documents, including the Environmental Clearance Certificate issued by the Competent Authorities of the State, enabling the State Authorities to consider the case and take a decision and pass appropriate orders on merits and in accordance with law"

It is respectfully submitted that the said order dated 11.01.2022 is binding on the Respondents/Authorities herein concerned that the Application for Environment Clearance should first be considered.

m. It is also pertinent to mention here that Answering Respondent *vide* its letter dated 31st January, 2022 provided copy of above mentioned


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orders dated 11th Jan 2022 to Expert Appraisal Committee of Respondent No. 1 with a request to grant EC to Answering Respondent without insisting for valid mining documents from Respondent No. 2

- n. Thereafter, the Expert Appraisal Committee of the First Respondent in its meeting held on 15th Feb 2022 deliberated upon the above-mentioned letter dated 31st January, 2022 seeking Amendment of TOR. The relevant extracts of the said minutes of said meeting is reproduced below
- o. EAC (Expert Appraisal Committee) of Respondent No. 1 considered EC application, grant of EC was opposed by Respondent No, 2 on the ground that Mining Lease in question is not valid and does not come under deemed extension of mining lease validity as the project proponent is not fulfilling the required conditions. EAC (Expert Appraisal Committee) observed that clear cut orders from the Court would be required for grant of EC. (Typeset of Documents – Volume III – filed on 21.04.2022 - Annexure R22 @ Page 83)

It is relevant to point out that the First Respondent ought to comply with the order dated 11.01.2022 in W.P.No.29275 of 2016 which requires that EC should be first considered.

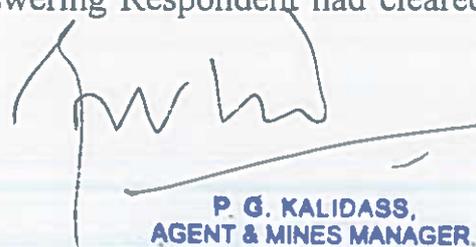
The Second Respondent's letter dated 05.12.2021 misquotes the orders dated 6th October, 2021.

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3. It is submitted that the Second Respondent had misquoted the directions of this Hon'ble Tribunal when in fact the scope of fact finding is limited to
- a) the violations of environmental law
 - b) quantity of minerals extracted during the period of such violation
 - c) Permission for extraction of ground water and
 - d) damage if any, caused to environment for the reasons best known to the Second Respondent.

This Hon'ble Tribunal has given no directions to the other respondents to look into the violation if any, of MMDR Act 1957, allegedly committed by the Answering Respondent. The directions were only in respect of the violations of environmental law. However, entire fact finding exercise has been conducted an unwarranted effort into the so called violation of MMDR Act of the Answering Respondent which is not the mandated in the order dated 6th October 2021. The fact finding exercise has been undertaken not only to unfairly harassing the Answering Respondent with baseless false allegations of illegal mining in violation of MMDR Act but also to mislead this Hon'ble Tribunal with the ulterior motive of tarnishing the image of the Answering Respondent, knowing fully well that this Hon'ble Tribunal has neither given any such directions nor this Hon'ble Tribunal has jurisdiction over the matters which relates to the violations of MMDR Act alone.

4. The alleged fact finding exercise of the Second Respondent leads to the wrong and incorrect conclusion that Answering Respondent had cleared

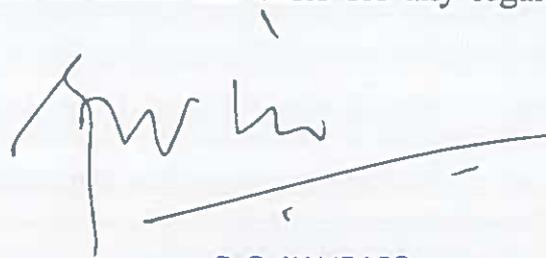


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minerals without transport permit/violated other provisions of MMDR Act.

- 5. The order dated 5th Dec 2021 of the 2nd Respondent directed assessment of the volume of minerals on the basis of total pit volume and recovery percentage as against the mineral available in stock and mineral cleared under transport permits. In this regard, it is submitted that the order dated 6th October 2021 contains no such directions.

- 6. The assessment of the quantity of mineral for the purposes of MMRD Act on the basis of pit volume or recovery ratio are not the methods prescribed under MMDR Act or rules made thereunder. Hence any assessment through such methods cannot be the basis for any proceedings under MMDR Act. The findings of alleged illegal mining, in the absence of transport permits, as contained in the Inspection Report which forms basis of JCR are liable to be rejected as this unwarranted exercise has been done without any valid mandate. The entire exercise of Second Respondent to assess the quantity of minerals is not as per law. The Inspection Report only assesses the quantity of minerals on the basis of pit dimension and recovery ratio and subtracts the same from sum total of minerals cleared on the strength of transport permit plus the stock lying in the mining area. Such assessment method is not prescribed by the MMDR Act /Rules and hence the same cannot be made the basis for any legal proceedings.



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- 7. In the annexure '1', the surface plan produced by the Second Respondent along with its additional Report dated 07.07.2022, cannot be looked into and is liable to be rejected. The depth and area as shown in the surface plan are vague and hazy and does not provide any clarity to decide neither issues before this Hon'ble Tribunal nor the irrelevant allegations put forth by the Second Respondent.

- 8. Out of the 32 pits referred in the surface plan, most of the pits are non-ore bearing areas. The alleged measurements of depth as stated in surface plan are also incorrect. In Hill slopes, the dept of the pits have been taken without consideration of slopes. The dimensions of the pits are incorrect, ultimately, the alleged area measurement is also incorrect. A tabular statement is filed herewith which would show the incorrect information regarding 32 pits.

- 9. It is submitted that the area measurement is made at the surface level and it does not lead to accurate results, while so, the area of the pits ought to have been measured by cross section method, which is a globally adopted one by geologists for measurement of pits.

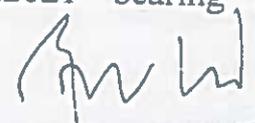
- 10. The Committee visited the mines on 06.07.2021 and 07.07.2021 and no Field Survey of pits had been carried out. The alleged survey was not conducted between 06.12.2021 to 12.12.2021 and nor between 24.01.2022 to 27.01.2022.

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 THE TRIBUNAL
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- 11. The Second Respondent had calculated the quantum of minerals based on calculating the quantity of minerals based Run of Mine and it does not provide for any definite data for the minerals mined by the Answering Respondent.
- 12. Without admitting and assuming for arguments sake that the Answering Respondent has transported minerals without transport permits, the Second Respondent has not produced any surface plan or reference data to corroborate its alleged claim of illegal mining made in its reports
- 13. The Answering Respondent most humbly submits that it has not done any manner of illegal mining or transported minerals without transport permits. Without the surface plan of the lease hold areas as on the date of grant of lease, i.e., on 1966, the reports of the Joint Committee or the other respondents may not be relevant. The Joint Committee as well as the Second Respondent ought to have calculated the minerals mined, on the basis of the waste dumps available in the said mines of the Answering Respondent, which validly proves for the quantity of Rock removed from the pits and thus the quantity of minerals mined by the Answering Respondent can be obtained.
- 14. It is further submitted that the Joint Committee or the Second Respondent has not taken into account the 50,19,862 MT of Dunite, which still remains in the spoil banks/waste dumps of the Answering Respondent. The mining plan of the Answering Respondent, as approved by the Indian Bureau of Mines vide approval dated 30.03.2021 bearing No.


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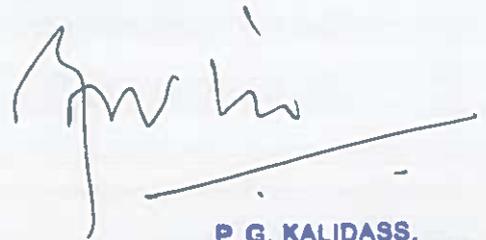
TN/SLM/MG&DU/ROMP-1646 MDS have been filed before the 1st Respondent along with the application for EC and on that basis, the Answering Respondent is entitled for the Environmental Clearance. The relevant extract of the mining plan and the approval of IBM filed herewith.

15. The Answering Respondent most humbly submits that though, this Hon'ble Tribunal has given no directions to the other respondents to look into the violation if any, of MMDR Act 1957, committed by the Answering Respondent. The directions were only in respect of the violations of environmental law. However, entire fact finding exercise has been conducted to look into the violation of MMDR Act which is not the mandated under the order dated 6th October 2021. The fact finding exercise has been undertaken not only to charge Answering Respondent with false allegations of illegal mining in violation of MMDR Act but also to mislead this Hon'ble Tribunal with the ulterior motive of tarnishing the image of the Answering Respondent, knowing fully well that this Hon'ble Tribunal has neither given any such directions nor this Hon'ble Tribunal has jurisdiction over the matters which relates to the violations of MMDR Act alone. It is also pertinent to mention here that this Hon'ble Tribunal has jurisdiction only in respect of the enactments mentioned in Schedule I of the NGT Act, however Mines & Minerals (Development & Regulation) Act 1957 is not listed therein in hence the fact with regard to the mining without transport permit cannot be looked into these proceedings.



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16. The Second Respondent has vide letter bearing Rc. No. 1355/MM9/2006 dated 07.07.2022, requested the Answering Respondent to furnish details of transport permits obtained from 1966-67 to 1978-79. The Answering Respondent has responded to the same vide letter dated 15.07.2022 that the aforesaid records which are more than 40 years old and are not available with the answering respondent. The demand by the Second Respondent to furnish the same are not only not available with the Answering Respondent but also irrelevant.
17. The Answering Respondent submits that, the Tamilnadu Magnesite Limited (hereinafter referred to as TANMAG), is a state owned undertaking, whose one of the Board of Director, amongst other is the Director of the Department of Geology and Mining. The said TANMAG addressed a letter dated 02.08.2021 inter alia requesting the District Collector to reserve the lands leased to the Answering Respondent for TANMAG's commercial exploitation and not to consider the renewal of lease proposal. Such a letter written by TANMAG, a company where the Second Respondent herein is a Director which casts serious doubts, bias and malafides on the conduct of the Second Respondent. It is most unfair, as can be seen from the record that the 2nd Respondent has colluded with TANMAG to wrongly deprive the Answering Respondent to exercise its right under the valid mining lease which has got extended till 31st March 2030 under Section 8A (5) of the MMDR Act.



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18. It is relevant to invite the attention of the Hon'ble Tribunal regarding the decision of the Hon'ble Supreme Court in Civil Appeal No.4795 of 2021 – Pahwa Plastics Pvt. Ltd. and another Vs. Dastak NGO and others which has laid down that grant of EC cannot be withheld for technical reasons. It is pertinent to mention that the Respondents in the Civil Appeal, the application for grant of Environmental Condition was filed in pursuance of EIA Notification No, S.O. 804 (E) dated 14th March 2017 and the grant of post facto Environmental Clearance was opposed, however while allowing the Civil Appeal, Apex Court also gave direction to grant Environmental Clearance in a time bound manner. It is therefore most respectfully submitted that in the present case this Hon'ble Tribunal may issue direction to Respondent No. 1 to grant Environmental Clearance to the Answering Respondent

In view of the foregoing, it is clear that the fact-finding exercise which leads to the illogical conclusion that Answering Respondent had cleared minerals without transport permit / violated other provisions of MMDR Act is beyond the mandate given by this Hon'ble Tribunal orders dated 6th October 2021, hence the same cannot be considered for these proceedings.

Solemnly affirmed at
Chennai on this the 29th day
of July, 2022 and signed his
name in my presence.


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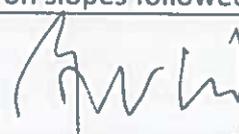
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ADVOCATE : CHENNAI

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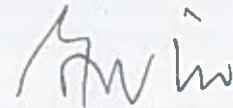
REPLY TO THE SURFACE PLAN

ANNEXURE 1

| S.No | Pit No | Comments |
|------|--------------|--|
| 1. | A- Block-1A | Depth taken is not correct. |
| 2. | A- Block-1B | No comments. |
| 3. | A- Block-1C | Depth taken is not correct. |
| 4. | A- Block-1D | No comments. |
| 5. | A- Block-1E | The area taken is not correct. |
| 6. | A- Block-1F | Non Ore Bearing area. Hence No recovery of Minerals to be considered. |
| 7. | A- Block-1G | Totally wrong. Area and Depth are wrong. |
| 8. | A- Block-1G1 | No comments. |
| 9. | A- Block-1H | No clarity in demarcation of pit. |
| 10. | A- Block-1I | Only Magnesite stringers over part of the area, hence no ore recovery can be considered for the entire volume. |
| 11. | A- Block-1J | A -west Hill slope working Area taken is not correct. |
| 12. | A- Block-1J1 | A -west Hill slope working depth taken is not correct. |
| 13. | A- Block-1J2 | No comments. |
| 14. | A- Block-1K | Old Spoil Bank shown as pit working, hence quantity worked out is to be deleted. |
| 15. | A- Block-1L | There is no mine working here. Level ground. |
| 16. | A- Block-1L1 | No comments. |
| 17. | A- Block-1L2 | Hill slope totally wrong estimation, depth taken is not correct. |
| 18. | MT-Block-1M | Very shallow working below level surface, depth taken is not correct. |
| 19. | MT-Block-1N | Partly hill slope working, depth taken is not correct. |
| 20. | MT-Block-1O | Partly hill slope working, depth taken is not correct. |
| 21. | MT-Block-1P | No Comments. |
| 22. | MT-Block-1Q | No Comments. |
| 23. | MT-Block-1R | Hill slope followed by level surface working, depth taken is not correct. |
| 24. | A-Block-1S | Hill slope with small working on the northern side, depth taken is not correct. |
| 25. | B-Block-1T | Totally wrong, for the entire block, 15 m depth is taken, it covers lot of non working areas. |
| 26. | B-Block-1U | Level surface working with one small bench only, hence depth taken is not correct. |
| 27. | B-Block-1V | It is a hill with minimum working on slopes followed by level |


P. G. KALIDASS,
 AGENT & MINES MANAGER
 CHETTICHAVADI JAGHIR MINLS
 DALMIA BHARAT SUGAR AND INDUSTRIES LTD.,
 C/o. DALMIA MAGNESITE CORPORATION
 SALEM-636 012.

| | | |
|-----|-------------|---|
| | | surface; hence depth taken is not correct. |
| 28. | B-Block-1V1 | No Comments. |
| 29. | B-Block-1W | Is a hill with minimum working on the slopes followed by level surface working, area of working taken is not correct. |
| 30. | B-Block-1X | Conical hill with minimum old working on level surface. Depth taken is not correct. |
| 31. | B-Block-1Y | Area and working depth is not correct. Covers lot of non working areas. |
| 32. | B-Block-1Z | Hill with minimum working on slopes with Magnesite stringers only. Hence ore recovery not to be considered. |



P. G. KALIDASS,
AGENT & MINES MANAGER,
CHETTICHAVADI JAGHIR MINES,
DALMIA BHARAT SUGAR AND INDUSTRIES LTD.,
(A Co. of DALMIA MAGNESITE CORPORATION)
SALEM-636 012.

18

சேலம், மாவட்ட ஆட்சித் தலைவர் அவர்களின் செயல்புறங்கள்
முன்னிலை திரு சி. அராமன், இ.ஆ.ப.,

ந.க.எண். 711/2019/கனிமம் அ

நாள். 01.08.2019

பொருள்: கனிமங்கள் -- பிரதம மந்திரி ஜல சக்தி அபியான் திட்டம் -- சேலம் மாவட்டம், சேலம் வட்டம், செட்டிச்சாவடி பகுதியில் உள்ள சுரங்க பள்ளங்களை ஆழப்படுத்தி பகுதி மக்களின் குடிநீர் தேவையை பூர்த்தி செய்ய அனுமதி கோரி வரப்பெற்றது அனுமதி வழங்கி உத்திரவிடுதல் - தொடர்பாக.

பார்வை: சேலம், மாவட்ட ஊரக வளர்ச்சி முகமை, திட்ட இயக்குநரின் கடிதம் ந.க.எண்.1034/2019/அ10, நாள் 23.07.2019

உத்திரவு:-

பார்வையில் காணும் கடிதத்தில், சேலம் மாவட்டம், சேலம் வட்டம், செட்டிச்சாவடி பகுதியில் உள்ள சுரங்க பள்ளங்களை ஆழப்படுத்தி பிரதம மந்திரி ஜல சக்தி அபியான் திட்டத்தின் கீழ், அப்பகுதி மக்களின் குடிநீர் தேவையை பூர்த்தி செய்ய அனுமதி கோரி வரப்பெற்ற கடிதத்தின் மீது விசாரணை செய்யப்பட்டது.

திருவாளர் டால்மியா பாரத் சுகர்ஸ் நிறுவனத்தார் மாண்புமிகு பாரதப்பிரதமரின் ஜலசக்தி அபியான் திட்டத்தின் கீழ் தங்களது சுரங்கப்பகுதியிலுள்ள யன்னங்களை தூர் வாரி அப்பள்ளங்களில் சேகரமாகும் மழைநீரை செட்டிச்சாவடி கிராம மக்களின் குடிநீர் தேவைக்கு பயன்படுத்திக் கொள்ள அனுமதிக்கப்படுகிறது.

மேலும், சுரங்கப்பகுதியில் தூர் வாரும்போது ஏற்படும் மண்ணோடு கிடைக்கும் மேக்னசைட் மற்றும் டீனைட் கனிமங்களை தனியே இருப்பு வைக்குமாறும் உத்திரவிடப்படுகிறது. இவ்வாறு கிடைக்கும் கனிமங்களை சுற்றுச்சூழல் தடையின்மை சான்று பெற்ற பின்னர், தனியே தள ஆய்வு செய்து கனிம இருப்பு கணக்கில் வரவு வைக்கலாம் என இதன் மூலம் உத்திரவிடப்படுகிறது.

(ஓம்/- சி.அ. ராமன்)

மாவட்ட ஆட்சித் தலைவர்,

சேலம்.

//உண்மை நகல்/உத்தரவுப்படி//

மாவட்ட ஆட்சித் தலைவருக்காக,
சேலம்.

பெறுதல்

திருவாளர்கள் டால்மியா பாரத் சுகர் மற்றும் இண்டஸ்ட்ரீஸ் லிட்.,

ஜாகீர் அம்மாபாளையம், சேலம் - 5

நகல்:

1) திட்ட இயக்குநர், ஊரக வளர்ச்சி முகமை, சேலம்.

2) உதவி இயக்குநர் (ஊராட்சிகள்), சேலம்.

भारत सरकार / GOVERNMENT OF INDIA
खान मंत्रालय / MINISTRY OF MINES
भारतीय खान ब्यूरो / INDIAN BUREAU OF MINES

क्षेत्रीय खान नियंत्रक कार्यालय / OFFICE OF THE REGIONAL CONTROLLER OF MINES

Telephone no.: 044-24914461/1570
Telefax no. 044-24911295
Email ID: ro.chennai@ibm.gov.in

C-4-A Rajaji Bhavan
CGO complex, Besant Nagar
Chennai - 600 090.

Dated: 30.03.2021

No. TN/SLN/MG&DU/ROMP-1646.MDS

To:
M/s. Dalmia Bharat Sugar and Industries Ltd.
C/o. Dalmia Magnesite Corporation
Salem - 636 012.

- Sub.: Approval of Review Mining Plan with PMCP for Chettichavadi Jaghir Magnesite and Dunite Mine over an extent of 449.364 Hectares in S.F.No.6/1 in Chettichavadi Village, Salem Taluk and District, Tamilnadu submitted by M/s.Dalmia Bharat Sugar and Industries Ltd. under Rule 17(1) of MCR, 2016.

Ref.: Party letter No.SL:MM:26141-B dated 19.03.2021.

Sir,

In exercise of the powers delegated to me under Rule 16 of Minerals (Other than Atomic & Hydro Carbon Energy Minerals) Concession Rules, 2016 vide Gazette Notification No. S.O. 1857(E) dated 18.5.2016 issued by the Controller General, Indian Bureau of Mines under F.No. T-43004/CGBM/MM(DR)/2015, I hereby approve the above said Review of Mining Plan for Magnesite & Dunite mineral only. This approval is subject to the following conditions.

- 1) That the Review of Mining Plan (including Progressive Mine Closure Plan) is approved without prejudice to any other law applicable to the mine/area from time to time whether made by the Central Government, State Government or any other authority.
- 2) That this approval of the Review of Mining Plan (including Progressive Mine Closure Plan) does not in any way imply the approval of the Government in terms of any other provision of the Mines & Mineral (Development & Regulation) Act, 2015 or the Mineral Concession Rules, 2016 or any other law including Forest (Conservation) Act, 1980, Environment Protection Act, 1986 and the rules made there under.
- 3) That this Review of Mining Plan (including Progressive Mine Closure Plan) is approved without prejudice to any other order or direction from any court of competent jurisdiction.
- 4) Provisions of the Mines Act, 1952 and Rules & Regulations made thereunder including submission of notice of opening, appointment of manager and other statutory officials as required by the Mines Act, 1952 shall be complied with.
- 5) The Provisions made under MM(D&R) Act, 2015 (Amended) and Rules made thereunder shall be complied with.
- 6) The contents of circular No. 2/2010 issued by the Chief Controller of Mines, IBM, Nagpur vide his letter No. 11013/3/MP/90-CCOM Vol. VII dated 06.04.2010 shall be complied with on or before 31.08.2021 as time limit, communicated by the Commissioner of Geology & Mining, Govt. of Tamilnadu vide their letter No.Rc.No.2921/MM4/2016 dated 09.03.2021
- 7) The execution of Mining Plan / Review of Mining Plan shall be subjected to vacation of prohibitory orders / notices, if any.
- 8) This approval of mining operations and associated activities is restricted to the mining lease area only. The mining lease area is as shown on the statutory plans under rule 32 of Mineral Conservation and Development Rules, 2017, by the lessee. Indian Bureau of Mines does not take any responsibility regarding correctness of the boundaries of the lease shown on the ground with reference to the lease map and other plans furnished by the lessee.

- 9) The Environmental Monitoring Cell of the Company shall continue monitoring ambient air quality, dust fall rate, water quality, soil sample analysis and noise level measurements on various sites established for the purpose both in the core zone and buffer zone, as per Department of Environment guidelines and keeping in view IBM's Circular No.3/92, season-wise every year or by conducting preferably the services of an Environmental laboratory approved by MOEF/CPCB. The data so generated shall be maintained in a bound paged register kept for the purpose and the same shall be made available to the inspecting officer on demand.
- 10) If anything is found to be concealed as required by the Mines Act in the contents of Review of Mining Plan and proposal for rectification has not been made, the approval shall be deemed to have been withdrawn with immediate effect.
- 11) Yearly report as required under Rule 26(2) of MCDR, 2017 setting for the extent of protection and rehabilitation works carried out as envisaged in the approved progressive mine closure plan and if there is any deviations, reasons thereof shall be submitted before 1st July of every year to the regional office, IBM, Chennai.
- 12) ~~The Review of Mining Plan is approved for the proposals contained therein and as applicable from 01.01.2021 for the mining activities to be carried out within the mining leasehold. The earlier instances of irregular mining/illegal mining, if any, shall not be regularized through the approval of this document.~~
- 13) The financial assurance submitted should be renewed before expiry of the same.
- 14) In case mining lease falls within a radius of 10 kms. of National Park/Sanctuary, recommendations of NBWL have to be obtained as per the orders of the Hon'ble Supreme Court in LA. No. 460/2004.
- 15) This approval is subject to the mining operations as per the proposals shall be carried out only after obtaining necessary clearances from MOEF, Pollution Control Board, Forest Department etc
- 16) This approval is subjected to the extension of the validity of the mining lease by the State government as per Section 8A(5) of MMDR Act, 2015 (Amended).
- 17) This approval is subject to submission of DGPS Plan duly authenticated by the State Government and submission of modifications in the approved Mining Plan if, consequent to the authentication of DGPS Survey Plan, any change in mining lease area is accepted by the State Government.
- 18) This approval is subject to the conditions as per the directions given in WP(c)No.114/2014 given by the Hon'ble Supreme Court of India should be taken care while implementing the proposals given in the PMCP part of the documents.

Yours faithfully,

Encl. Copy of approved Review of Mining Plan
(including Progressive Mine Closure Plan)

(वी.जयकृष्ण बाबु / V. Jaya Krishna Babu)
क्षेत्रीय खान नियंत्रक / Regional Controller of Mines

Copy for information to:-

1. ✓ Sri P.G. Kalidass, Qualified person, Chettichavadi Jaghir Magnesite & Dunite Mines, M/s. Dalmia Bharat Sugar and Industries Ltd., Salem - 636 012.
2. The Commissioner of Geology & Mining, Government of Tamilnadu, Guindy, Chennai - 600 032 along with copy of the approved Review of Mining Plan.

Encl : As above.

(वी.जयकृष्ण बाबु / V. Jaya Krishna Babu)
क्षेत्रीय खान नियंत्रक / Regional Controller of Mines

THE MAGNESITE ORE RESOURCES WITHIN 75 M DISTANCE ALL ALONG THE COMMON BOUNDARY AND THE BENEFITS BLOCKED UNDER THE BARRIER

All along the common boundary area from surface level upto 320 m RL, the ore resources estimated are classified under the category of ore with code (121).

A summary of the broad mineable Magnesite ore reserves and resources with cut off grade 6.2% silica as on 01-01-2021 is shown here under in Table No. 8.

TABLE NO.8.
BALANCE MINEABLE MAGNESITE ORE RESERVES AND RESOURCES AS PER UNF CLASSIFICATION AS ON 01.01.2021.

| BLOCK | Ore Reserves in million tonnes (111) | Ore Resources from Surface upto 335m Level in million tonnes (122) | Ore Resources from 335m upto 320m Level in million tonnes (122) | Ore Resources from Surface upto 320m Level in million tonnes (121) | TOTAL in million tonnes | Grade |
|----------------------|---|---|--|---|-------------------------|------------------|
| A | 0.066053 | 2.783148 | 0.763647 | - | 3.612850 | Refractory Grade |
| B | 0.268400 | 2.471578 | 2.109287 | - | 4.489265 | |
| C | 0.036045 | 0.12177 | 0.1026 | - | 0.260415 | |
| MT | 0.660327 | 0.965553 | 0.274655 | - | 1.900535 | |
| Common boundary area | | | | 0.392914 | 0.392914 | |
| Grand Total | 1.030825 | 6.342049 | 3.250189 | 0.392914 | 11.015979 | |

DUNITE RESERVES:

Freshunaltered Dunite is exposed as small out crops only at four places in the Mining Lease area (i.e., in A,C,MT Blocks). But for these small pockets of fresh unaltered Dunite, the entire parent rocks is subjected to intense weathering upto Water Table level. The weathered parent rock is medium hard to friable in nature with colours varying from yellowish brown, brownish yellow, violet etc.,

The reserves estimation for unaltered, fresh and Dunite was made based on the surface exposures as shown in the geological plan. The surface exposures are projected on the respective geological cross - sections. Then the reserve calculations were made based on the method of average cross sectional area multiplied by the

distance between the two adjoining cross-sections. The resultant volume is multiplied by 2.8 (in situ density) to arrive at the tonnage. Based on our past experience the recovery of good Dunite is taken as 15 % of the estimated total rock quantity. The depth persistence for (111) category Dunite reserves is taken from the surface level upto the Ground Water Table i.e. 335 m RL above MSL in these areas based on Mine face exposures and core drilling data of bore holes. The (122) category Dunite resources are calculated from Ground Water Table level upto 320m RL above MSL as in the case of Magnesite ore.

A summary of broad estimate of fresh Dunite reserves of (111) and (122) categories updated AS ON 01.01.2021 is given hereunder in Table no.9.

DUNITE INCIDENTAL TO MINING:

In addition to the above, Dunite from ROM also occurs in very minor proportion in the weathered parent Dunite. This Dunite can be recovered incidental to mining for raw Magnesite. Based on our experience, the quantum of Dunite from ROM present in the weathered parent rock is about 10%. The total quantity of Dunite from ROM available from the weathered parent rock till the life time of the mine will be about 26443426 tonnes.

The Dunite from ROM may also be recovered from the old spoil dumps lying in the lease hold areas. Based on our experience the Dunite will be about 10% of the total quantity of waste dumps lying in the lease hold area i.e. 50198629 tonnes (50.19 million tonnes) AS ON 01.01.2021.

Both the above quantities of Dunite from ROM 26443426 + 5019862 = 31463288 tonnes. will be added to the balance Dunite reserves as shown in Table No.9.

TABLE NO.9

SUMMARY OF DUNITE RESERVES & DUNITE FROM ROM RESOURCES AS ON 01.01.2021:

| BLOCK | DUNITE (T) @ 15% | | | DUNITE FROM ROM (T) @ 10% | | | | DUNITE From Old Spoil Banks (T) @ 10% | GRAND TOTAL | Grade |
|-------|------------------|--------|--------|---------------------------|----------|-------------------------|----------|---------------------------------------|-------------|------------------|
| | (111) | (122) | Total | (111) | (122) | (121) (common Boundary) | Total | | | |
| A | 194208 | 94080 | 288288 | 165133 | 8666983 | 271344 | 9103460 | 963387 | 10355134 | Refractory Grade |
| B | . | . | . | 680848 | 11610598 | 444288 | 12735734 | 2845707 | 15581441 | |
| C | 52920 | 37800 | 90720 | 80100 | 527100 | 2422694 | 849894 | | 940614 | |
| MT | 151817 | 171046 | 322863 | 1215900 | 2508438 | . | 3754338 | 1210769 | 5287972 | |
| Total | 398947 | 302926 | 701873 | 2171981 | 23313119 | 958326 | 26443426 | 5019862 | 32165161 | |

Details of estimation of reserves are shown in Annexure I of Volume II.

(111) 2570928
 28735907
 988321
 32165161

feasibility study report along with financial analysis for economic viability of the deposit as specified under UNFC guidelines is incorporated in Chapter No.13

1(k)

Furnish detailed calculation of reserves/resources section wise (When the mine is fully mechanized and deposit is of complex nature with variation of size, shape of mineralized zones, grade due to intrusion within ore zone etc, an attempt may be made to estimate reserves/resources by slice plan method). In case of deposit where underground mining is proposed, reserve/resources may be estimated by level plan method, as applicable, as per the proposed mining parameters.

Details of estimation of ore reserves & resources based on the method of average cross sectional area multiplied by distance between cross sections are shown in Annexure-1 of Volume II.

1(l)

Mineral Reserves/Resources:

Mineral Resources: (Mineral resources may be estimated purely based on level of exploration, with reference to the threshold value of minerals declared by IBM)

TABLE NO: 10
MINEABLE MAGNESITE ORE AND DUNITE RESERVES/ RESOURCES
AS ON :01.01.2021

| Level of Exploration | MAGNESITE | | FRESH DUNITE | | DUNITE FROM ROM & OLD SPOIL BANK | | |
|-------------------------|----------------------------------|---|----------------------------------|-----------------------------------|----------------------------------|-----------------------------------|---|
| | Reserves in million tonnes (111) | Resources in million tonnes (121) & (122) | Reserves in million tonnes (111) | Resources in million tonnes (122) | Reserves in million tonnes (111) | Resources in million tonnes (122) | Resources in million Tonnes (121) (common Boundary) |
| G1-Detailed Exploration | 0.969078 | . | 0.398947 | . | 2.171981 | . | . |
| G2-General Exploration | . | 10.046901 | . | 0.302926 | . | 28.332981 | 0.958326 |
| Grand Total | 11.015979 | | 0.701873 | | | 31.463288 | |

1(i)

Resources and Reserves within the lease may be arrived after applying results feasibility/pre-feasibility study and economic evaluation of deposit based on various factors such as:

Handwritten calculations:
111 : 9.57697
122 : 2.062516
9.531326
37-11-5161

1(i) (a) **Mining method, Recovery factor, mining losses, processing losses etc:**

Mining is carried out by open cast mining method. The recovery factor of Magnesite ore is 4.2% of the total rock volume.

Mining loss: Loss of ore due to chipping and re-cleaning is assumed as 2%. The ground loss due to mechanized loading of the ore stacks is 0.5 to 1.0% and the transport loss is around 0.5%. Totally there is a mining loss of about 3% ore due to the aforesaid reasons.

Processing loss: It is dealt with in Chapter No. 6. Processing of mineral ore and mineral rejects.

In the fresh unaltered isolated Dunite pockets, the recovery % of good Dunite is taken as 15% of the estimated total rock quantity. The depth persistence for (111) category Dunite resources is taken from the surface level upto the Ground Water Table level i.e. 335m RL above MSL. The (122) category Dunite resources are calculated from Ground Water Table level upto 320m RL above MSL as in the case of Magnesite.

Dunite can also be recovered incidental to mining for Raw Magnesite. Based on our experience the quantum of Dunite in the weathered parent rock is about 10%. Dunite Recovery percentage is also discussed under Para 1(j) under the heading "Dunite Reserves" and "Dunite incidental to mining".

1(i) (b) **Cutoff grade, Ultimate pit depth proposed.**

SiO₂% is taken as the cut off grade. The SiO₂% acceptable to the beneficiation plant, for the manufacturer of quality DBM is 6.2% SiO₂. However siliceous Magnesite ore analyzing upto 11 % SiO₂ is also accepted in the plant for manufacture of high silica DBM. Magnesite analyzing >11 % SiO₂ is sold in the local market as per permission letter issued by Secretary to Government, Industries Department, Chennai: 32325/MMD1/2000-4 dated 06.02.2001. Copy enclosed as Annexure No: XI Page No- 195-196

Ultimate Pit depth proposed: The ore reserves extend upto the depth of 320 m RL above MSL. For mining ore reserves of all the three categories mining operations shall be extended upto the depth of 320 m RL above MSL. Laterally it is proposed to extend the ultimate pit limits beyond the ore non-ore contact zone on the eastern part of the lease hold and the ultimate pit slopes will be on the barren Pyroxenite. This is proposed with the intension of mining the entire mineralized zone.

1.(l) (c) Mineral/ore blocked due to benches, barriers, pillars, road, railway, river, nallah, reservoir, electric line and other statutory barriers etc, under forest; sanctuaries etc. where necessary permissions are not available.

Along the common boundary lines with SAIL Refractory Company Ltd., a width of 7.5 m will be left out on the surface and bench slopes and bench widths are planned from the 7.5 m line all along the common boundary.

The mineral reserves locked in the 7.5 m area are included in the ore resources category. The ultimate pit slope angle is taken as 45° from the horizontal. The ultimate pit limits have been worked out and shown in all our mine layout plans and cross sections.

TABLE NO: 11

MAGNESITE ORE AND DUNITE RESERVES AND RESOURCES AS ON 01.01.2021:

| | MAGNESITE | | | DUNITE | | | DUNITE FROM ROM/SPOIL BANK | | |
|-------------------------------------|-----------|----------------------------|------------|-----------|----------------------------|------------|----------------------------|--------------------------------|------------|
| | UNFC Code | Quantity in million tonnes | Grade | UNFC Code | Quantity in million tonnes | Grade | UNFC Code | Quantity in million tonnes | Grade |
| A. Total Mineral Reserve | | | | | | | | | |
| Proved Mineral Reserve | (111) | 0.969078 | Refractory | (111) | 0.398947 | Refractory | (111) | 2.171981 | Refractory |
| Probable mineral Reserve | (121) | 0.392914 | Refractory | (121) | - | Refractory | (121) | 0.958326 | Refractory |
| B. Total Remaining Resources | | | | | | | | | |
| Feasibility mineral Resource | (122) | 9.653987 | Refractory | (122) | 0.302926 | Refractory | (122) | 28.332981 | Refractory |
| A+B (Total Reserves + Resources) | | 11.015979 | | | 0.701873 | | | 31.463288 | |
| | | | | | | | | Grand Total : 32.165161 | |

In the above table the Magnesite ore occurring in the common boundary area with SAIL Refractory Company Limited within a width of 7.5m barrier from the common boundary, is shown under the resources category i.e. (121) and Dunite recoverable incidental to Mining and from old spoil banks are shown as per UNFC AS ON 01.01.2021.

Dalmia Bharat Sugar and Industries Limited

[Formerly : Dalmia cement (Bharat) Limited]
SALEM - 636 012 TAMILNADU

To,
The Member Secretary,
IA Division, Ministry of Environment, Forest & Climate Change (Non Coal Mines),
Indira Paryavaran Bhavan, Jor Bagh Road, All ganj, New Delhi-110003

SL:MM:26150
Date 11.03.2022

Dear Sir,

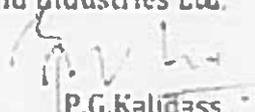
Sub: Submission of Additional/Essential Details Sought (EDS) as per 43rd EAC-Meeting Minutes dated 24.12.2021- Proposal no:IA/TN/MIN/241375/2018 -Agenda item no-43.2.1 for further consideration for issue of EC-reg.,

Ref: Intimation mail from MOEF dated 24th Dec 2021 and Agenda published on 24.12.2021 in MOEF & CC website with Agenda Item no-43.2.1.

We submit herewith ADS/EDS reply sought as per the Minutes of EAC Meeting held on 15.12.2021 for Non-Coal Mining sector in respect of our Chettichavadi Jaghir Magnesite and Dunite Mines with S/F.No-6 in Chettichavadi Jaghir Village belonging to Dalmia Bharat Sugar & Industries Ltd. We request your good self to consider the proposal for issue of EC.

Thanking You

Yours Faithfully,
For Dalmia Bharat Sugar and Industries Ltd.


P.G. Kalidass,

Agent and Mines Manager,
Chettichavadi Jaghir Magnesite and Dunite Mines.

Encl:

1. Annexure I- KML shape files for land use pattern,
2. Annexure II- Description of land cover of the lease hold area,
3. Annexure III- Photos showing plantation, garland drainage, stone parapet wall and boundary pillar in the lease area.

P. G. KALIDASS,
AGENT & MINES MANAGER
CHETTICHAVADI JAGHIR MINES
DALMIA BHARAT SUGAR AND INDUSTRIES LTD.
DALMIA MAGNESITE CORPORATION
SALEM-636 012

REGD. OFFICE : DALMIAPURAM(TAMILNADU) - 621 651.
HEAD OFFICE : HANSALAYA (11th&12th FLOORS)
15, BARAKHAMBIA ROAD, POST BOX 364
NEW DELHI - 110 001.



Dalmia Bharat Sugar and Industries Limited

[Formerly : Dalmia cement (Bharat) Limited]
SALEM - 636 012 TAMILNADU

To,
The Member Secretary
IA-Division, Ministry of Environment, Forest & Climate Change (Non Coal Mines)
Indira Paryavaran Bhawan, Jor Bagh Road, New Delhi-110003.

SL:MM:26150
Date: 11-Mar-2022

Dear Sir,

Sub: EDS for Environmental Clearance for our Chettichavadi Jaghir Magnesite and Dunite Mines-reg.

Ref: (i) Our proposal No-IA/TN/MIN/241375/2018.

(ii) Minutes of Meeting of Expert Appraisal Committee held on 15th Dec 2021 Agenda Item No- 43.2.1 Observations & recommendations of the Committee.

In compliance of the observations and recommendations of the Expert Appraisal Committee (EAC) during the meeting held on 15th December 2021, we are hereby submitting details as required by EAC for their due consideration and grant of EC to our Chettichavadi Jaghir Magnesite and Dunite Mines Salem Taluk and District, Tamil Nadu.

Our response for each of the recommendation /direction in MOM dated 15th Dec 2021 is as under

1. THE PROJECT PROPONENT NEEDS TO SUBMIT THE REVISED LAND USE-LAND COVER AND DAMAGE CALCULATION NEEDS TO BE RE-WORKED PARTICULARLY DAMAGE TO ECOLOGY AND BIODIVERSITY:

IMPACT ON LAND ENVIRONMENT DUE TO PRODUCTION OF ORE AND WASTE HANDLING & LAND USE PATTERN OF LEASE AREA IN 1993-94 AND 2018-19 Is Given In The Table As Under:

| S. NO | TYPE OF LAND USE | 1993-94 | | 2018-2019 | | Additional Area |
|-------|------------------------|---------|-------|-----------|------|-----------------|
| | | AREA(H) | AREA | AREA (HA) | ARE | |
| 1. | Area of Excavation | 356.25 | 79.28 | 356.89* | 81.6 | 10.64 |
| 2. | Storage for Topsoil | 0.5 | 0.11 | 0.5 | 0.11 | - |
| 3. | Overburden dumps | 44.483 | 9.89 | 46.853 | 10.4 | 2.37 |
| 4. | Mineral Storage | 2.51 | 0.55 | 3 | 0.67 | 0.49 |
| 5. | Infrastructure | 1 | 0.19 | 1 | 0.22 | - |
| 6. | Roads | 4.89 | 0.92 | 4.89 | 1.09 | - |
| 7. | Greenbelt & Boundary | 14.15 | 3.15 | 19.23 | 4.28 | - |
| 8. | Area which will remain | 25.581 | 5.69 | 7.001 | 1.56 | - |
| Total | | 449.36 | 100% | 449.364 | 100 | 13.20 |

REGD. OFFICE : DALMIAPURAM(TAMILNADU) - 621 651.
HEAD OFFICE : HANSALAYA (11th & 12th FLOORS)
15, BARAKHAMBA ROAD, POST BOX 364
NEW DELHI - 110 001.

- The KML Shape files for land use pattern in respect of our Chettichavadi Jaghir Mines is enclosed as Annexure No- I
- Description of land cover in the lease hold area is enclosed as Annexure No-II
- Photos showing Plantation, Garland Drainage, Stone Parapet Wall and Boundary Pillar in the lease area is enclosed as Annexure No- III.
- We have also submitted Bank Guarantee of Rs.22.468 Crores valid for 5 years upto 31.3.2026 in the name of RCOM, IBM, Chennai.

| | |
|---|--------------------------|
| The additional land use area during the period (1994-2019) | = 13.20 Hectares |
| Cost of damage on land environment @ 5 Lakhs per Ha (as per IBM rate) | = Rs 66.00 Lakhs. |
| Cost of damage on Ecology and Biodiversity @ Rs 75 Per tree for density of 1500 Trees per Ha for 13.20 Ha of damage land | = Rs 14.85 Lakhs. |
| Total | = Rs 80.85 Lakhs. |

The damage cost for Land environment was Rs.13,50,000 and is revised to Rs80.85 Lakhs.

2. THE PROJECT PROPONENT NEEDS TO SUBMIT THE REVISED ENVIRONMENTAL MANAGEMENT PLAN BUDGET, ALSO, 3% OF EMP BUDGET NEEDS TO BE ADDED IN THE COST OF DAMAGE ASSESSMENT.

The Project Cost, EMP Budget, Environmental Monitoring Budget during the operational stage are given in the following table:

PROJECT COST

| Description | Project Cost (Rs. In Lakhs) | Public Grievances Redressal cost (Rs. In Lakhs) @2% for CER |
|--|--------------------------------|---|
| Public Grievances Redressal as per OM dated 20.09.2020 | Rs. 1,957.07 | Rs. 39.14 |
| Total Cost Allocation | Rs. 1,957.07 | Rs. 39.14 |

EMP BUDGET

| S. No | Description | Budget |
|--------------|--|----------------------|
| 1 | Safety kits for 320 persons @ Rs 1000 per head | Rs. 3,20,000 |
| 2 | Water Sprinkling & Spraying | Rs.15,00,000 |
| 3 | Afforestation for @ 75 per tree | Rs. 2,00,000 |
| 4 | Noise & Vibration | Rs. 1,00,000 |
| 5 | Drainage- Parapet -Retention Wall | Rs. 5,00,000 |
| Total | | Rs 26.2 Lakhs |

3% of EMP Budget for non-compliance since 1993-94 to 2018-19 = 26.2 x 3% = Rs.20.43 Lakhs. and this cost is added in the cost of damage assessment.

ENVIRONMENTAL MONITORING BUDGET

| S. No | Environmental Monitoring Program | No. of samples per year | Cost per sample | Cost |
|--------------|---|--------------------------------|------------------------|--------------------|
| 1 | Amblent Air Quality monitoring | 12 | Rs 3500 | Rs 42,000 |
| 2 | Water quality | 12 | Rs 2150 | Rs 25,800 |
| 3 | Soil quality | 12 | Rs 3500 | Rs 42,000 |
| 4 | Noise Monitoring | 12 | Rs 1000 | Rs 12000 |
| 5 | Ground Vibration Test due to Blasting | 2 | Rs 30000 | Rs 60000 |
| | Total | | | Rs 1,81,800 |
| | Contingency @ 10% | | | Rs 18,200 |
| | Grand Total | | | Rs 2,00,000 |

ENVIRONMENTAL RECURRING EXPENDITURE

| S. No. | Particulars | 2006-07 | 2007-08 | 2008-09 | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
|--------|--|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| 1 | Air Pollution (Prevention & Control) | Rs. 0.50 |
| 2 | Water Pollution (Prevention & Control) | Rs. 0.22 | Rs. 0.22 | Rs. 0.25 | Rs. 0.25 | Rs. 0.25 | Rs. 0.22 |
| 3 | Noise Pollution (Prevention & Control) | Rs. 0.21 |
| 4 | Safety equipment's, plant & Machinery for environment protection | Rs. 3.00 | Rs. 3.50 | Rs. 3.00 | Rs. 3.00 | Rs. 3.50 | Rs. 3.00 |
| 5 | Post project env. monitoring | Rs. 1.32 | Rs. 1.32 | Rs. 1.22 | Rs. 1.12 | Rs. 1.32 |
| 6 | Reclamation/ plantation | Rs. 4.00 |
| 7 | Vibration studies | Rs. 2.50 |
| 8 | Miscellaneous | Rs. 8.20 |
| Total | | Rs. 20 |

• Annual Expenditure during 2006-19 for EMP = Rs 20.00 Lakhs per annum.

• Proposed Annual EMP budget

= Rs 26.20 Lakhs per annum.

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3. THE PROJECT PROPONENT NEEDS TO CALCULATE THE NET PROFIT BY FINANCE WHICH ALSO NEEDS TO BE A PART OF DAMAGE ASSESSMENT (3% OF NET PROFIT HAS TO BE CONSIDERED IN CRAP)

| YEAR | ACTUAL PRODUCTION MAGNESITE SITE | VALUE OF MAGNESITE PER TON RATE | TOTAL PRODUCTION COST (MAGNESITE) ₹ | ACTUAL PRODUCTION QUANTITY | VALUE OF UNIT AS PER TON RATE | TOTAL PRODUCTION COST (MAGNESITE) ₹ | TOTAL EXPENSE INCURRED FOR MINE DEVELOPMENT ACTIVITY (₹) | NET PROFIT / LOSS ₹. | 3% of Net Profit |
|------------------|----------------------------------|---------------------------------|-------------------------------------|----------------------------|-------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--|----------------------|-------------------|
| 1993-94 | 53700 | 110.25 | 45355131.01 | 0 | 60.75 | 0 | 48355131.01 | 0 | 6,714,025 | 13848892.98 | 0 | 0 |
| 1994-95 | 10922442 | 106 | 103309234.6 | 0 | 82.34 | 0 | 103309234.6 | 0 | 81047234 | 22262445.6 | 567850.34 | 567850.34 |
| 1995-96 | 9667154 | 1067 | 103146639.9 | 150 | 101.48 | 15222 | 103161861.9 | 15222 | 85924600 | 17185261.06 | 515077.86 | 515077.86 |
| 1996-97 | 10598346 | 1165 | 123470730.9 | 60 | 118 | 7080 | 123477810.9 | 7080 | 109990466 | 13487344.9 | 404670.35 | 404670.35 |
| 1997-98 | 10247279 | 1264 | 129575606.6 | 200 | 136.41 | 27282 | 129552888.6 | 27282 | 118898072 | 10743816.56 | 322314.50 | 322314.50 |
| 1998-99 | 860101 | 1216 | 107057868.2 | 1459 | 149.29 | 217814.11 | 107275682.3 | 217814.11 | 119832016 | -12556333.73 | 0.00 | 0.00 |
| 1999-2000 | 8735784 | 1337 | 116797432.1 | 1329 | 152.91 | 203217.39 | 117000649.5 | 203217.39 | 116092977 | 907672.47 | 27230.17 | 27230.17 |
| 2000-01 | 8793288 | 1377 | 101469999.8 | 0 | 125.383 | 0 | 103496999.8 | 0 | 119838815 | -16341815.24 | 0.00 | 0.00 |
| 2001-02 | 6600544 | 1337 | 88249773.28 | 0 | 138.6 | 0 | 88249773.28 | 0 | 104222828 | -15973527.72 | 0.00 | 0.00 |
| 2002-03 | 42187428 | 1340 | 58640524.92 | 1749.722 | 187.5 | 328072.875 | 58968597.8 | 328072.875 | 7863690 | 19895092.71 | 0.00 | 0.00 |
| 2003-04 | 31432453 | 1422 | 44686948.27 | 1822.818 | 235.92 | 430039.2226 | 45126987.39 | 430039.2226 | 84048048 | 38921060.61 | 0.00 | 0.00 |
| 2004-05 | 42374484 | 981 | 41654117.77 | 1096.242 | 225 | 246654.45 | 41520772.22 | 246654.45 | 7781119 | 35300346.78 | 0.00 | 0.00 |
| 2005-06 | 2688714 | 1178 | 31673050.92 | 7994.527 | 132.44 | 1058795.156 | 32731846.08 | 1058795.156 | 78295400 | -45563553.92 | 0.00 | 0.00 |
| 2006-07 | 1867143 | 1551 | 28959387.93 | 2565 | 133.41 | 342196.65 | 29301584.58 | 342196.65 | 61621383 | -32119798.42 | 0.00 | 0.00 |
| 2007-08 | 3954628 | 1413.5 | 41775466.68 | 1850 | 150 | 277500 | 42052966.68 | 277500 | 60395010 | -18347043.32 | 0.00 | 0.00 |
| 2008-09 | 4222866 | 1504 | 63510710.46 | 1430 | 200 | 286000 | 63796710.46 | 286000 | 80469835 | -16673124.54 | 0.00 | 0.00 |
| 2009-10 | 61733768 | 1574.03 | 97228664.01 | 13850 | 300 | 4155000 | 101383064 | 4155000 | 95092814 | 2290750.009 | 68707.50 | 68707.50 |
| 2010-11 | 41698568 | 1821 | 76016489.46 | 5610 | 300 | 1683000 | 77699489.46 | 1683000 | 94623810 | -16924330.54 | 0.00 | 0.00 |
| 2011-12 | 2748287 | 1841.58 | 50518031.73 | 1900 | 500 | 1980000 | 52561931.73 | 1980000 | 50473917 | -27912013.77 | 0.00 | 0.00 |
| 2012-13 | 6651081 | 2549.25 | 16955268.24 | 15150 | 647.5 | 9809625 | 26764893.24 | 9809625 | 70572649 | -43807755.76 | 0.00 | 0.00 |
| 2013-14 | 4124538 | 3082.5 | 12713888.39 | 9355 | 760 | 7016250 | 19730138.39 | 7016250 | 53065526 | 33355287.62 | 0.00 | 0.00 |
| 2014-15 | 16596706 | 1172.92 | 52658433.94 | 47500 | 800 | 38000000 | 90658433.94 | 38000000 | 77067533 | 13590500.94 | 407727.03 | 407727.03 |
| 2015-16 | 15036052 | 2977.75 | 44779593.4 | 37815 | 800 | 30220000 | 75031549.34 | 30220000 | 74035624 | 995935.343 | 29878.06 | 29878.06 |
| 2016-17 | 10343074 | 3817 | 39479533.46 | 11620 | 800 | 9296000 | 48775513.46 | 9296000 | 51052478 | -1276964.542 | 0.00 | 0.00 |
| 2017-18 | 3424934 | 3057 | 11132330.44 | 11720 | 800 | 9376000 | 22508830.44 | 9376000 | 53210503 | -30701977.56 | 0.00 | 0.00 |
| 2018-19 | 1167487 | 3198 | 4552031.813 | 131 | 800 | 104800 | 4656831.813 | 104800 | 43547561 | -39150729.19 | 0.00 | 0.00 |
| TOTAL (₹) | | | | | | | | | | | -180457632.3 | 2443411.80 |

3% of Net Profit by finance during 1993-94 to 2018-19 = Rs 24.43 Lakhs is considered in CRAP.

4) THE PROJECT PROPONENT NEEDS TO REVISE THE NRAP AND CRAP ACCORDINGLY, PARTICULARLY, AIR QUALITY ASSESSMENT NEEDS TO BE REVISED IN THE PLAN.

REVISED DAMAGE COST FOR EMISSION OF AIR POLLUTANTS:

| Year | Excess Production (Tonne) | % Red. (reduction from various activities as per Table 2 (t-c/err)) | | | | | Cost per kg of Emission (in Rs.) | | | | Revised Damage cost per annum (in Rs.) |
|--------------|---------------------------|---|-----------------|-------------------|-----------------|------------------|----------------------------------|-----------------|-----------------|----|--|
| | | PM ₁₀ | SO ₂ | PM _{2.5} | NO _x | PM ₁₀ | PM _{2.5} | SO ₂ | NO _x | | |
| 1994-95 | 1133764 | 4.78 | 0.02 | 16.67 | 10.057 | | | | | | Rs. 11,29,543.54 |
| 1995-96 | 1118728 | 2.44 | 0.02 | 15.51 | 6.754 | | | | | | Rs. 17,87,315.77 |
| 1996-97 | 1385430 | 3.10 | 0.02 | 17.42 | 7.173 | | | | | | Rs. 13,44,078.63 |
| 1997-98 | 1291558 | 2.88 | 0.02 | 15.17 | 6.827 | | | | | | Rs. 12,00,021.14 |
| 1998-99 | 714860 | 1.72 | 0.01 | 14.44 | 4.041 | | | | | | Rs. 19,10,11,098.94 |
| 1999-2000 | 641528 | 1.60 | 0.01 | 13.54 | 3.768 | | | | | | Rs. 17,64,432.55 |
| 2000-01 | 675460 | 1.61 | 0.01 | 13.89 | 3.777 | | | | | | Rs. 17,87,019.90 |
| 2001-02 | 962337 | 1.80 | 0.01 | 17.47 | 4.417 | | | | | | Rs. 22,32,259.85 |
| 2002-03 | 256244 | 0.97 | 0.002 | 6.75 | 2.115 | | | | | | Rs. 9,13,054.47 |
| 2003-04 | 267717 | 0.96 | 0.003 | 6.11 | 2.914 | | | | | | Rs. 8,51,721.37 |
| 2004-05 | 442512 | 1.78 | 0.01 | 9.85 | 2.878 | | | | | | Rs. 13,10,592.38 |
| 2005-06 | 167822 | 0.88 | 0.002 | 6.41 | 1.956 | | | | | | Rs. 8,03,720.11 |
| 2006-07 | 228164 | 0.65 | 0.002 | 5.12 | 1.484 | | | 153 | | 06 | Rs. 6,68,137.24 |
| 2007-08 | 111416 | 0.75 | 0.002 | 7.42 | 2.163 | | | | | | Rs. 9,74,036.24 |
| 2008-09 | 711188 | 1.15 | 0.01 | 11.65 | 1.076 | | | | | | Rs. 24,02,041.04 |
| 2009-10 | 318229 | 0.50 | 0.002 | 1.61 | 1.103 | | | | | | Rs. 4,31,767.75 |
| 2010-11 | 881812 | 2.51 | 0.01 | 11.11 | 5.884 | | | | | | Rs. 23,10,501.04 |
| 2011-12 | 355284 | 0.97 | 0.002 | 7.68 | 2.225 | | | | | | Rs. 10,79,943.65 |
| 2012-13 | 244500 | 0.51 | 0.002 | 3.65 | 1.327 | | | | | | Rs. 4,90,274.65 |
| 2013-14 | 78423 | 0.27 | 0.002 | 2.06 | 0.641 | | | | | | Rs. 2,77,878.89 |
| 2014-15 | 65176 | 0.14 | 0.002 | 4.11 | 1.754 | | | | | | Rs. 6,11,411.13 |
| 2015-16 | 179204 | 0.24 | 0.002 | 1.71 | 1.977 | | | | | | Rs. 8,04,219.15 |
| 2016-17 | 116172 | 0.46 | 0.002 | 1.13 | 0.998 | | | | | | Rs. 4,16,348.11 |
| 2017-18 | 37751 | 0.23 | 0.002 | 1.21 | 0.465 | | | | | | Rs. 1,81,005.61 |
| 2018-19 | 11644 | 0.04 | 0.002 | 0.11 | 0.081 | | | | | | Rs. 42,346.02 |
| Total | | | | | | | | | | | Rs. 1,59,89,154.01 |

DAMAGE COST OF AIR POLLUTION IS REVISED FROM RS.3.18 CRORES TO RS.3.55 CRORES.

- The Damage Cost due to Air quality during the violation period was revised from 3.15 Crores to 3.55 Crores and this cost of 3.55 Crore considered in NRAP & CRAP.
- The damage cost due to water environment and solid waste management remains the same as shown in Chapter-13 of the EIA/EMP Report.

The summary of the DAMAGE ASSESSMENT COST IS AS SHOWN HEREUNDER

SUMMARY OF DAMAGE ASSESSMENT COST:

| S.No | Environmental Activity | Previously proposed Damage Cost | Revised Damage Cost |
|------|--|---------------------------------|--------------------------|
| 1 | Land Environment | Rs. 13,50,000 | Rs. 66,00,000 |
| 2 | Ecology & Bio-Diversity | | Rs. 14,85,000 |
| 3 | 3 % of EMP cost saved in the past 26 years | Rs. 2,00,000 | Rs. 20,43,000 |
| 4 | 3 % of Net Profit during Violation Period | | Rs. 24,43,413 |
| 5 | Air Environment | Rs. 3,18,68,661 | Rs. 3,55,89,154 |
| 6 | Water Environment | Rs. 84,15,493 | Rs. 84,15,493 |
| 7 | Solid waste Management | Rs. 41,18,610 | Rs. 41,18,610 |
| | TOTAL: | Rs. 4,59,52,764 /- | Rs. 6,06,94,670/- |

REVISED REMEDIATION PLAN :

| Remediation Plan (Cost in Rs. Lakhs) | | | | | | | | | | |
|--------------------------------------|-------------------------------|----------------------|--|---|-------------------------------|------------|---------------------|------------------------|-----------------|-----------------|
| Sl. No. | Component Remediation | Remediation Proposed | Description | Locations | Unit Rate in Rs. | Total Qty | Total Cost in Lakhs | Phasing years in Lakhs | | |
| | | | | | | | | Year - I | Year - II | Year - III |
| 1a | Air & Noise Environment | Dust suppression | Providing Wind Barrier And Vertical Greenery To Villages Adjacent / Running Parallel To ML Area | Chettichavadi | Rs. 10,00,000/- per 100 meter | 650 Meters | Rs. 65.00 | Rs. 20.00 | Rs. 20.00 | Rs. 25.00 |
| 1b | Noise Environment and Ecology | Avenue plantation | Plantation of total 6500 Nos. of native plants at Rs. 1500 per sapling including maintenance for 3 years in nearby villages and periphery of the project | Chettichavadi Velaisipatti Kondaspathykanpatti Somaigowandamur Aaruppur | Rs. 1500 per plant | 6500 | Rs. 97.50 | Rs. 32.50 | Rs. 32.50 | Rs. 32.50 |
| Sub-Total - A (1a+1b) | | | | | | | Rs. 162.5 | Rs. 52.5 | Rs. 52.5 | Rs. 57.5 |

REVISED NATURAL RESOURCE AUGMENTATION:

Natural Resource Augmentation Plan (Cost in Rs. Lakhs)

| Sl. No. | Component Identification | Proposed Activity | Description | Locations | Unit Rate in Rs. | Total Qty. | Total Cost | Phasing years | | | |
|--------------------------|------------------------------------|---|---|--|----------------------------|------------|------------|---------------|-----------|-----------|----------|
| | | | | | | | | Year- I | Year- II | Year- III | |
| 2a | | Water Management & Ground Water Recharge | Development of Rain Water Harvesting and ground water recharge structure 5 Nos Each in nearby 5 villages | 1 Chettichavadi - 10 Nos 2 Velakkalpatti - 10 Nos 3 Kondapanayakampatti - 10 Nos 4 Senaigowandanur - 10 Nos 5 Karuppur - 10 Nos | Rs. 57000/one unit | 50 nos. | Rs. 28.5 | Rs. 9.5 | Rs. 9.5 | Rs. 9.5 | |
| | | | | 1 Chettichavadi Village 2 Velakkalpatti Village 3. Kondapanayakampatti Village | Rs 13,00,000/each village | 5 nos. | Rs. 65.00 | Rs. 21.66 | Rs. 21.66 | Rs. 21.66 | |
| 2b | Natural Resource Augmentation Plan | | Construction of Check Dams of size 4 Mtr Length X 2 Mtr Height X 1 Metre Width in nearby villages | 1. Chettichavadi Village 2. Velakkalpatti Village 3. Kondapanayakampatti Village | Rs. 13,00,000/each village | 5 nos. | Rs. 65.00 | Rs. 21.66 | Rs. 21.66 | Rs. 21.66 | |
| | | | | Chettichavadi Village - 20 Nos Outside area Around ML area - 30 Nos Sides of Public roads connecting ML Boundary Gate till factory gate - 50 Nos | Rs. 77,500/one unit | 100 nos. | Rs. 77.5 | Rs. 25.83 | Rs. 25.83 | Rs. 25.83 | |
| 2c. | | Energy Conservation by adopting Green Energy technology | Providing 40 W Solar Street Lighting (including panels, inverters, wiring, structure, connectors, junction boxes, etc.) in nearby villages @ Rs.77,500 per unit | | | | | | | | |
| Sub-Total - A (2a+2b+2c) | | | | | | | | Rs. 236.00 | Rs. 78.65 | Rs. 78.65 | Rs. 78.7 |

Revised Community Resource Augmentation Plan:

Community Resource Augmentation Plan (Cost in Rs Lakhs)

| Sl No | Component Recommendation | Proposed Activity | Description | Location | Unit Rate (Rs) | Total Qty | Total Cost | Funding details | | | |
|--------------------------|--------------------------------------|--|---|--|-----------------------------|----------------|------------|-----------------|-----------|-----------|-----------|
| | | | | | | | | Year I | Year II | Year III | |
| 13 | | Development of Infrastructure | Construction / expansion of following as per requirement from local village panchayats or municipality in nearby villages at Rs 50,00,000/- per village Public Toilets / Bath Rooms Overhead Water storage Tanks Compounding Wall around buildings at nearby Government School Bus stops Public Ladders Public Children park Primary Health centre | Chettiyarvad Village Velalipatti Village Kondapanakampatti Village Panappur Town Panchayat | Rs 50,00,000/- per village | 4 Nos Villages | Rs 200.00 | Rs 44.00 | Rs 44.00 | Rs 44.00 | |
| 14 | Community Resource Augmentation Plan | Supply of Equipments | Provision of following in nearby Government schools, Sports Materials @ Rs 1.5 Lacs Lump Sum cost 1 Nos Water Purifiers @ Rs 0.5 each Computers with Network facility facilitating Smart Class @ Rs 1 Lacs Lump Sum cost | Chettiyarvad Village • 3 Schools Velalipatti Village = 2 School | Rs 5,00,000/- per school | 3 Nos | Rs 15.00 | Rs 5.00 | Rs 5.00 | Rs 5.00 | |
| 15 | | Improving socio-economic & Health conditions | Providing following medical equipment to nearby Primary Health Centres 5 Nos Patient Beds with height adjustment @ Rs 0.25 Lac each unit 2 Nos ECG Machine @ Rs 0.5 Lacs each unit 1 Nos Portable X ray Machine @ Rs 1.5 Lacs each unit 5 Nos Vital Monitors @ Rs 1.00 Lac each 8 Nos SHTCCAN (Vital Attenuation Device including COVID 19) @ Rs 0.30 Lac each | Chettiyarvad Village Velalipatti Village Kondapanakampatti Village Panappur Town Panchayat | Rs 30,24,000 /- per village | 6 Nos | Rs 61 | Rs 18.3 | Rs 18.34 | Rs 18.34 | |
| Sub-Total - C (3a+3b+3c) | | | | | | | | Rs 208.44 | Rs 69.41 | Rs 69.48 | Rs 69.48 |
| Grand Total A+B+C (Rs) | | | | | | | | Rs 606.94 | Rs 200.53 | Rs 200.63 | Rs 205.68 |

BUDGET FOR REMEDIATION PLAN, NATURAL RESOURCE AUGMENTATION PLAN AND COMMUNITY RESOURCE AUGMENTATION PLAN:

| Sl. No. | Description | Previously proposed Cost (Rs. in Lakhs) | Estimated cost (Rs. in Lakhs) |
|---------|---|---|-------------------------------|
| 1 | Remediation Plan | 127.50 | 162.50 |
| 2 | Natural Resources Augmentation Plan | 155.00 | 236.00 |
| 3 | Community Resources Augmentation Plan | 177.60 | 208.44 |
| | Sub-Total | 460.10 | 606.94 |
| 4 | 2% Contribution from Capital Cost against community welfare activities under OM dated 30/09/2020 based on PH requirements (CER) | 34 | 39.14 |
| | Grand Total- | 494.10 | 646.08/- |

We will respond to the observation and recommendation of 46th EAC Meeting in respect of Amendment of TOH under proposal no. IA/TN/MIN/254214/2022 held on 15 Feb 2022 seperately, later on.

Thanking You

Yours Faithfully,
For Dalmia Bharat Sugar & Industries Ltd.



P.G. Kalidass, 11.3.2022

Encl. As above

Agent & Mines Manager,

Chettichavadi Jaghir Magnesite and Dunite Mines.

P. G. KALIDASS

AGENT & MINES MANAGER

CHETTICHAVADI JAGHIR MINES

DALMIA BHARAT SUGAR & INDUSTRIES LTD.
DALMIA MAGNESITE CORPORATION

SALEM-636 012

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cement! sugar! refractories! power!

Dalmia

Bharat Sugar

18th April 2022

To,

The Secretary,
Ministry of Environment, Forest & Climate Change
Indira Paryavaran Bhawan,
Jor Bagh,
New Delhi-110003

2014/122

Sub: Grant of Environment Clearance for Mining Magnesite and Dunite Minerals in Chettichavadi, District Salem, Tamil Nadu

- Ref:**
- (i) **Our proposal No-IA/TN/MIN/241375/2018.**
 - (ii) **Minutes of Meeting of 46th Expert Appraisal Committee meeting (Non-Coal Mining) held on 15th Feb 2022**

Dear Sir,

We solicit your intervention on the above referred proposal for expediting the issuance of Environment Clearance (EC) for our mining operations. The proposal was considered by the Expert Appraisal Committee (non-Coal Mining) (EAC) and after issuance of Terms of Reference dated 5th Feb 2022 (ToR), the committee desired to have a valid mining lease document or a court order for further consideration of the proposal and returned the proposal.

We present herein below chronology of events for your kind consideration and request your kind intervention for expediting grant of EC: -

1. The Mining Lease deed for the mines in reference was granted and executed in the year 1966 for 20 yrs. It was further renewed in 1986 for another 20 years, till 2006. Needless to mention here that, when the mines commenced operations in the year 1966, there was no requirement of EC, it was introduced in 1994 for new projects. Later on in 2004, as per amendment brought in EIA notification 1994 EC was mandated at the time of renewal of Mining Lease.
2. We timely applied for renewal of mining lease vide application dated 14th July 2005 for the renewal due on 20th August 2006. The mining operations continued beyond 20th Aug 2006, under the provisions of deemed extension under Mineral Concession Rules 1960, read with interim orders (dated 17th August 2006) of Hon'ble High Court of Madras in WP 25518/2006, filed by us with regard to renewal of mining lease. The mining operations continued with payment of due royalties and other statutory dues, the concerned department/s also issued necessary permit/consent to operate, including the Transport Permit.



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- As a conscious corporate we also filed application dated 9th Feb 2006 for grant of EC under EIA notification 1994 (EC), to have EC in place on or around renewal of mining lease due in Aug 2006.
4. It is to be stated that neither the application for renewal of mining lease nor the EC application was disposed by the concerned Departments and it remained pending. The operations continued under the provisions of deemed extension / interim relief granted by Madras High Court while said applications remained pending for disposal.
 5. It was only in 2010, the State Govt. intimated us to apply for EC afresh to MoEFCC under the provision of EIA notification 2006. We accordingly applied directly to MOEFCC on 17th August 2010 followed by re-filing on 12th October 2011 in FORM-I under EIA and on 10.01.2012.
 6. The said EC application was somehow kept pending for want of credible action on the alleged ground of mining without EC during the period of *deemed extension* of Mining Lease. It is pertinent to mention here that Hon'ble High Court of Jharkhand High Court in the matter of Hindustan Copper Vs Union of India W.P. No, 2364/2014 (orders dated 28.11.2014), held that processing of EC application and credible action for alleged violation are independent of each other and processing of EC application cannot be withheld for want of credible action.
 7. Thereafter, said mining lease got extended up to 31st March 2030 by virtue of introduction of Sec 8 (A) (5) of the MMDR Act and various Judgement of Hon'ble Supreme Court.
 8. The proposal of EC is now being considered under *violation category* as per MOEFCC Notification S.O.804 (E) dated 14.03.2017
 9. In the intervening period, Tamil Nadu State Pollution Control Board initiated proceedings on the alleged ground of mining without EC during the period of *deemed extension* of mining lease. State Mining Dept. has raised issues regarding mining lease in absence of EC. Further State Mining Dept. U/s 21 (5) of MMDR Act has also issued total demands of INR 18.68 Crores for mining of Dunite without EC and for mining of Magnesite without EC for the period 2001-02 to 2018-19. All these matters are pending for adjudication and the same has been duly disclosed to EAC.
 10. ToR had already been issued, with one of the conditions to produce valid mining lease documents. A Copy of TOR is annexed herewith and marked as **Annexure A**
 11. In pursuance of ToR we already submitted our Final Environment Impact Assessment & Environment Management Plan on 29th November 2021. The proposal had already been considered twice in EAC meetings held on 15th Dec 2021

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Registered Office: Dalmiapuram, District Tiruchirappalli - 621 651, Tamil Nadu, India

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Bharat Sugar and 15th Feb 2022. A Copy of Minutes of Meeting of EAC held on 15th Dec 2021 and 15th Feb 2022 is annexed herewith and marked as **Annexure B**.

- 12. EAC in its meeting held on 15.12.2021 noted that since we had not been able to furnish *Valid Mining Lease Documents*, therefore directed us to move an application to dispense with the requirement of *Valid Mining Lease Documents*.
- 13. We, accordingly submitted our said application dated 31.01.2022 also enclosing therewith copy of an order dated 11th Jan 2022 passed by Maras High Court in W.P No 29275 /2016 in the matter of Dalmia Bharat Sugar And Industries Ltd Vs State of Tamil Nadu) wherein High Court directed us to approach State Mining Dept. with EC for regularization of mining lease, relevant portion of the order reads as under

It is left open to the Petitioner-Company to submit all the required documents, including the Environmental Clearance Certificate issued by the Competent Authorities of the State, enabling the State Authorities to consider the case and take a decision and pass appropriate orders on merits and in accordance with law

A Copy of application dared 31st Jan 2022 is annexed herewith and marked as **Annexure C**.

- 14. In the 15th Dec 2022 EAC meeting there were some observations on the revision were suggested on the budgeted cost in EMP, which had also been complied with.
- 15. In the last meeting of EAC held on 15th Feb 2022, the proposal was returned for the want of clear cut orders from Court because the representative of State Mining Dept. present in EAC meeting took a view that mines is in operations, since 1966 without EC, it is violation case hence it is not entitled to deemed extension of its mining lease while, EAC has taken view that EC cannot be granted in absence of valid mining lease documents from State Mining Dept. and/or without clear cut Court Orders in this regard.
- 16. It may be noted from the above that in this matter, we have been put to befuddlement for the technical reasons alone, despite operating mines during period of *deemed extension*, in compliance of applicable laws, while pursuing our applications for grant of EC, grant of renewal of mining lease, which were filed well in time. It is also pertinent to mention here that grant of EC is pre-requite, it enables project proponent to seek grant of mining lease /permission to commence mining operation which in turn can be granted by State Mining Dept. subject to host of other conditions under mining enactments.
- 17. In this regard, we would like to draw your attention to most recent pronouncement of Supreme Court in the matter of Dastak NGO, Civil Appeal No 4795/2021, judgement dated 25.03.2022. In the said matter grant of EC was being considered under *violation category*, grant of EC was opposed on the ground that



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Bharat Sugar EC cannot be granted post facto, and operations were ordered to be closed. In the said matter Apex Court set aside the orders of closure and gave directions for final orders on grant of EC.

A copy of the order is enclosed herewith and marked as **Annexure – D**

We therefore seek your kind intervention with a request to advise the concern to consider the proposal for grant of EC to enable us to commence mining operations.

An opportunity of hearing may also be granted before such abrupt disposal of the proposal.

Thanking You.

Yours Faithfully,
For Dalmia Bharat Sugar & Industries Ltd,

Ambuj Kumar Srivastava
Authorized Signatory

Encl:

1. Terms of reference dated 05.02.2021
2. Minutes of EAC Meeting held on 15.12.2021 and 15.02.2022
3. Letter dated 31.01.2022 with annexures.
4. Judgment dated 25.03.2022 passed by the Hon'ble Supreme Court in Civil Appeal No. 4795/2021.

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COMMISSIONERATE OF GEOLOGY AND MINING

From
Thiru. J.Jayakanthan, I.A.S.,
Commissioner of Geology and Mining,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai – 600 032

To
The Dalmia Bharath Sugar and Industries
Ltd,
Jagir Magnesite and Dunite mines,
Chettichavadi Village,
Salem West Taluk,
Salem- 636 012.

Rc.No. 1355/MM9/2006 dated.07.07.2022

Sir,

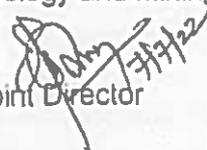
Sub: Mines and Minerals – Major Minerals – Magnesite and
Dunite – Salem District and Taluk – Chettichavadi Village
– over an extent of 574.46.00 Ha of Government lands –
S.F.No.6 – Mining lease granted to M/s. Dalmia Bharath
Sugar and Industries Ltd – O.A.No.213 of 2021 filed by
Thiru.S.Sakthivel before National Green Tribunal Chennai
– Transport permit obtained details required – Reg.

Ref: 1. Order of the National Tribunal in O.A.No.213 of
2021(Southern Zone) & I.A.No. 78 of 2022 dated:
06.10.2021 and 17.05.2022

Kind attention is invited to the references cited.

In respect to reconciliation of the quantum of mineral removed and
transported from the mining lease granted to M/s. Dalmia Bharath Sugar
and Industries Ltd over an extent of 574.46.00 Ha of Government lands in
S.F.No.6 of Chettichavadi Village, Salem Taluk and District, it is requested
to furnish the transport permit obtained details from the year 1966-67 to
1978-79 for transportation of Magnesite and Dunite. This particulars should
be reach to this office before 15.07.2022 without fail.

Sd/-J.Jayakanthan,
Commissioner of Geology and Mining,
Forwarded / By order


Joint Director

Copy to: District Collector, Salem.


7/11/22

CIN : LE6942TN1951PLC000640
Phone : 0427 - 2346762 / 2345600/2346702

Fax : 0427 - 2345616
Email : dalmlamagnosilomines@yahoo.com

AA

Dalmia Bharat Sugar and Industries Limited

[Formerly : Dalmia cement (Bharat) Limited]
SALEM - 636 012 TAMILNADU

SL:MM:26142.
Date:15.07.2022.

To,
The Commissioner of Geology and Mining,
Thiru.Vi.Ka. Industrial Estate,
Gundiy, Chennai-600 032.

Dear Sir,

Ref: Your office letter R.C.No-1355/MM9/2006 dated 07.07.2022.

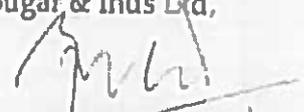
This has reference to your above cited letter requiring us to furnish details of transport permits obtained from 1966-67 to 1978-79.

In this regard we submit that the aforesaid records are too old and as such not readily available. Further we are unable to understand whether the requirement of the said transport permits obtained details is emanating from the orders of the Honorable National Green Tribunal, Chennai referred in your letter.

In view of the forgoing, we are not in a position to file the same.

Thanking you.

Yours faithfully,
For Dalmia Bharat Sugar & Inds Ltd,



P. G. Kalidass,
Agent and Supdt of Mines.
Chettichavadi Jaghir Magnesite and Dunite Mines.

CC:

The District Collector,
Salem.

REGD. OFFICE : DALMIAPURAM(TAMILNADU) - 621 651.
HEAD OFFICE : HANSALAYA (11TH&12TH FLOORS)
15, BARAKHAMBA ROAD, POST BOX 364
NEW DELHI - 110 001.

2022 SCC OnLine SC 362**In the Supreme Court of India**
(BEFORE INDIRA BANERJEE AND J.K. MAHESHWARI, JJ.)

Pahwa Plastics Pvt. Ltd. and Another ... Appellants;
Versus

Dastak NGO and Others ... Respondents.

Civil Appeal No. 4795 of 2021

Decided on March 25, 2022

The Judgment of the Court was delivered by

INDIRA BANERJEE, J.:— This appeal under Section 22 of the National Green Tribunal Act, 2010, is against an order dated 3rd June 2021 passed by the Principal Bench of the National Green Tribunal (NGT) in O.A No. 287/2020 at New Delhi, *inter alia*, holding that establishments such as the manufacturing units of the Appellants, which did not have prior Environmental Clearance (EC) could not be allowed to operate.

2. The question of law involved in this appeal is, whether an establishment employing about 8000 workers, which has been set up pursuant to Consent to Establish (CTE) and Consent to Operate (CTO) from the concerned statutory authority and has applied for ex post facto EC can be closed down pending issuance of EC, even though it may not cause pollution and/or may be found to comply with the required pollution norms.

3. With increasing industrialization and the establishment of factories which emitted smoke and other pollutants, there was worldwide concern for protection of environment. In June 1972, the United Nations Conference on the Human Environment was held in Stockholm, where decisions were taken to take appropriate steps for preservation of the natural resources of the earth, which, among other things, included preservation of the quality of air and water by controlling pollution.

4. In 1974, Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974, with a view to prevent and control water pollution and to maintain and restore wholesomeness of water.

5. In furtherance of the decisions taken at Stockholm, Parliament enacted the Air (Prevention and Control of Pollution) Act, 1981, hereinafter referred to as "the Air Pollution Act", to provide for prevention, control and abatement of air pollution.

6. The Air Pollution Act provides for the constitution of a Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCB) to deal with the problem of air pollution. Section 16 of the Air Pollution Act enables the Central Pollution Control Board to take steps to improve the quality of air and to prevent, control or abate air pollution in the country. Section 17 of the Air Pollution Act enables the State Pollution Control Boards to plan comprehensive programmes for the prevention, control or abatement of air pollution, *inter alia*, by laying down standards for emission of air pollutants.

7. Section 18 of the Air Pollution Act enables the Central Government to give directions by which the CPCB is to be bound. Similarly, every SPCB is to be bound by directions in writing as might be given by the CPCB or the State Government.

8. Where a notification is issued under the Air Pollution Act, placing an area within the control area of air pollution, permission is necessary to set up and operate any factory or plant thereat. No person operating any factory or plant in any air pollution control area is to discharge or cause or permit to be discharged the emission of any air pollutants, in excess of the standards laid down by the SPCB under Clause (a) of sub-

Section (1) of Section 17.

9. The Environment (Protection) Act, 1986, hereinafter referred to as "the EP Act" was also enacted pursuant to the decisions taken at the United Nations Conference on the Human Environment, held in Stockholm in June, 1972. As per the Statement of Objects and Reasons for enactment of the EP Act, the said Act has been prompted by concern over the environment, that has grown all over the world since the 60s.

10. Sub-section (1) of Section 3 of the EP Act empowers the Central Government to take all such measures as it might deem necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and reducing environmental pollution.

11. Sub-section (2) of Section 3 of the EP Act enables the Central Government to take, inter alia, the following measures:

"(i) co-ordination of actions by the State Governments, officers and other authorities—

(a) under this Act, or the rules made thereunder; or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(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;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions

of this Act.”

12. Sub-section (3) of Section 3 of the EP Act provides as follows:

“3. Power of Central Government to take measures to protect and improve environment.—

...

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under Section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.”

13. Subject to the provisions of the EP Act, the Central Government has power under sub-Section (1) of Section 3, to take all such measures, as it deems necessary or expedient, for the purpose of protecting and improving the quality of environment and preventing, controlling or reducing environmental pollution.

14. Section 5 of the EP Act provides that notwithstanding anything contained in any other law, but subject to the provisions of the EP Act, the Central Government may, in exercise of its powers and performance of its functions under the EP Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

15. In exercise of powers conferred by Sections 6 and 25 of the EP Act, the Central Government has made the Environment (Protection) Rules, 1986, hereinafter referred to as “the EP Rules”.

16. The Central Government issued an Environmental Impact Assessment Notification dated 27th January 1994 in exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the EP Act read with clause (d) of sub-rule (3) of Rule 5 of the EP Rules, directing that on and from the date of publication of the said notification in the Official Gazette, expansion or modernization of any activity or a new project listed in Schedule I to the said notification shall not be undertaken in any part of India, unless it has been accorded EC by the Central Government in accordance with the procedures specified in the said notification.

17. In exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the EP Act read with clause (d) of sub-rule (3) of Rule 5 of the EP Rules and in supersession of notification number S.O. 60 (E) dated 27th January 1994, except in respect of things done or omitted to be done before such supersession, the Central Government issued a notification dated 14th September 2006, being Notification S.O. 1533 (E) requiring prior environmental clearance from the Central Government or as the case may be, by the State-Level Environment Assessment Authority, duly constituted by the Central Government under sub-section (3) of Section 3 of the EP Act.

18. In terms of the said notification dated 14th September 2006, the process of environmental clearance for new projects was to comprise of a maximum of four stages, all of which might not apply to particular cases. The stages were (1) Screening, (2) Scoping, (3) Public Consultation and (4) Appraisal.

19. In the meanwhile, by a notification being S.O. 327 (E) dated 10th April 2001, published in the Gazette of India on 12th April 2001, the Central Government has

delegated the powers vested in it under the EP Act, to the Chairpersons of the respective State Pollution Control Boards/Committees to Issue directions to any Industry or any local or other authority to prevent violation of the Rules.

20. The Appellants carry on business, *inter alia*, of manufacture and sale of basic organic chemicals, namely, Formaldehyde. The Appellant No. 1, M/s. Pahwa Plastics Private Limited has two manufacturing units, one at village Kharawar in Rohtak, hereinafter referred to as the "Rohtak Unit" and the other at village Jathlana, Jagadhri in Yamuna Nagar in Haryana, hereinafter referred to as the "Yamuna Nagar Unit". The Appellant No. 2 has a manufacturing unit at village Ghespur in Yamuna Nagar, Haryana which is hereinafter referred to as the "Yamuna Nagar Unit". The manufacturing units established, run and operated by the respective Appellants fall in the category of Micro, Small and Medium Enterprise (MSME) as defined under the Micro, Small and Medium Enterprises Development Act, 2006, hereinafter referred to as "the MSME Act".

21. On or about 31st March 2014, the Appellant No. 1, M/s. Pahwa Plastics Ltd. applied for Consent to Establish (CTE) its Yamuna Nagar unit for manufacture of Formaldehyde.

22. By a communication No. HSPCB/Consent/ : 2846616YAMCTE 3087415 dated 2nd June 2016, the Haryana State Pollution Control Board (HSPCB) granted Consent to Establish (CTE) to the Appellant No. 1 M/s. Pahwa Plastics Private Limited in respect of its Yamuna Nagar Unit. The CTE was to remain valid for 60 months from the date of its issue, to be extended for another year at the discretion of the Board or till the time the unit started its trial production, whichever was earlier.

23. Some of the terms and conditions on which CTE was granted are set out hereinbelow:

"3. The officer/official of the Board shall have the right to access and inspection of the industry in connection with the various processes and the treatment facilities being provided simultaneously with the construction of building/machinery. The effluent should conform the effluent standards as applicable.

4. That necessary arrangement shall be made by the industry for the control of Air Pollution before commissioning the plant. The emitted pollutants will meet the emission and other standards as laid/will be prescribed by the Board from time to time.

5. The applicant will obtain consent under section 25/26 of the Water (Prevention & Control of Pollution) Act, 1974 and under section 21/22 of the Air (Prevention & Control of Pollution) Act, 1981 as amended to-date-even before starting trial production.

6. The above Consent to Establish is further subject to the conditions that the unit complies with all the laws/rules/decisions and competent directions of the Board/Government and its functionaries in all respect before commissioning of the operation and during its actual working strictly.

8. The Electricity Department will give only temporary connection and permanent connection to the unit will be given after verifying the consent granted by the Board, both under Water Act and Air Act.

12. That there is no discharge directly or indirectly from the unit or the process into any interstate river or Yamuna River or River Ghaggar.

13. That the industry or the unit concerned is not sited within any prohibited distances according to the Environmental Laws and Rules, Notification, Orders and Policies of Central Pollution Control Board and Haryana State Pollution Control

Board.

17. In case of change of name from previous Consent to Establish granted, fresh Consent to Establish fee shall be levied.

18. Industry should adopt water conservation measures to ensure minimum consumption of water in their Process. Ground water based proposals of new industries should get clearance from Central Ground Water Authority for scientific development of previous resources.

19. That the unit will take all other clearances from concerned agencies, whenever required.

20. That the unit will not change its process without the prior permission of the Board.

21. That the Consent to Establish so granted will be invalid, if the unit falls in Aravali Area or non conforming area.

22. That the unit will comply with the Hazardous Waste Management Rules and will also make the non-leachate pit for storage of Hazardous waste and will undertake not to dispose off the same except for pit in their own premises or with the authorized disposal authority.

23. That the unit will submit an undertaking that it will comply with all the specific and general conditions as imposed in the above Consent to Establish within 30 days failing which Consent to Establish will be revoked."

24. By another communication No. HSPCB/Consent/ : 2846618YAMCTO3098246 dated 26th March 2018, HSPCB granted consent to the Appellant No. 1 to operate its Yamuna Nagar Unit from 8th February 2018 to 31st March 2022.

25. By an order No. HSPCB/YMN/2242, dated 31st March 2010, the Appellant No. 2, M/s. Apcolite Polymer Private Limited was granted CTE to establish its Yamuna Nagar Unit for manufacture of Formaldehyde with the manufacturing capacity of 80 tonnes per day.

26. By another communication Nos. HSPCB/Consent/ : HSPCB/YMN/DLC/2011/4027 & HSPCB/YMN/DLC/2011/4029 dated 16th January 2012, HSPCB granted the Appellant No. 2, M/s. Apcolite Polymers Private Limited, Consent to Operate (CTO) its Yamuna Nagar Unit. The CTO has been extended from 1st April 2016 till 31st March 2026, by a letter dated 13th March 2016. The CTO is valid till March 2026.

27. By a communication No. HSPCB/Consent/ : 2846616YAMCT OHWM2630357 dated 13th March 2016, HSPCB granted consent for emission of AIR to Appellant No. 2, M/s. Apcolite Polymers Private Limited in respect of its Yamuna Nagar Unit on, inter alia, the terms and conditions specified in the said letter, some of which are extracted hereinbelow:—

"10. The air pollution control equipment of such specification which shall keep the emissions within the emission standard as approved by the State Board from time to time shall be installed and operated in the premises where the industry is carrying on/proposed to carry on its business.

11. The existing air pollution control equipment if required shall be alerted or replaced in accordance with the direction on the Board.

12. All solid wastes arising in the factory premises shall be properly graded and disposed of by:—

(i) In case of Land fill material, care should be taken to ensure that the material does not give rise to leachate which may percolate in ground water of carried away with storm run off.

(ii) Composting in case of bio degradable materials.

(iii) If the method of incineration is used for the disposal of solid waste the consent application should be processed separately and it should be taken up which consent is granted.

13. The industry shall submit an undertaking to the effect that the above conditions shall be complied with by them.

14. The applicant shall submit its undertaking to the effect that the above conditions shall be complied with by them.

15. The applicant shall make an application for grant of fresh consent at least 90 days before the date of expiry of this consent.

18. There should not be any fugitive emission from the premises.

19. The liquid effluent arising out of the operation of the air pollution control equipment shall also be treated in a manner and to the standards stipulated in the consent granted under Water (Prevention & Control of Pollution) Act, 1974 by this Board.

21. If the industry fails to adhere to any of the condition of this consent order the consent so granted shall automatically lapse.

33. The industry shall submit Environment Audit report once in a year.

38. In case of by passing the emissions, the consent shall be deemed revoked."

28. It is the case of the Appellants that at the time when CTE was granted to the Appellants, it was thought that EC was not required for units which manufactured Formaldehyde. Even HSPCB itself was not sure of whether EC was required for such units.

29. Mr. Gupta argued that the Appellants were *bona fide* under the impression that the Appellants were not required to obtain prior EC for setting up this establishment to manufacture Formaldehyde. On the basis of CTE granted by HSPCB, the Appellants set up their units taking huge loans from banks for which repayments have to be paid in installments.

30. In exercise of power under Section 3(1) and Section 3(2)(v) of the EP Act read with Rule 5(3)(d) of the EP Rules, the Central Government issued a notification being S.O. 804(E) dated 14th March 2017 which provides for grant of *ex post facto* EC for project proponents who had commenced, continued or completed a project without obtaining EC under the EP Act/EP Rules or the Environmental Impact Notification issued thereunder. Paragraphs 3, 4 and 5 of the said notification, read as hereunder:

"(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.

(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law.

(5) In case, where the findings of the Expert Appraisal Committee on point at

sub-para(4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment."

31. The Notification of 2017 is a valid statutory notification issued by the Central Government in exercise of power under Sections 3(1) and 3(2)(v) of the EP Act read with Rule 5(3)(d) of the EP Rules in the same manner as the EIA Notification dated 27th January 1994 and the Notification dated 14th September 2006.

32. Section 21 of the General Clauses Act, 1897 provides that where any Central Act or Regulations confer a power to issue notifications, orders, rules or bye-laws, that power includes the power, exercisable in like manner, and subject to like sanction and conditions, if any, to add to, amend, vary or rescind any notification, order, rule or bye-law so issued. The authority, which had the power to issue Notifications dated 27th January 1994 and 14th September 2006 undoubtedly had, and still has the power to rescind or modify or amend those notifications in like manner. As held by this Court in *Shree Sidhali Steels Ltd. v. State of Uttar Pradesh*¹, power under Section 21 to amend, vary or rescind notifications, orders, rules or bye-laws can be exercised from time to time having regard to the exigency.

33. Puducherry Environment Protection Association filed a Writ Petition being W.P. No. 11189 of 2017 in the High Court of Madras assailing the said notification dated 14th March 2017. By a judgment and order dated 13th October 2017, a Division Bench of the High Court refused to interfere with the said notification, holding that the impugned notification did not compromise with the need to preserve environmental purity.

34. The Ministry of Environment, Forest and Climate Change (MoEF&CC) issued a draft notification dated 23rd March 2020 which was duly published in the Gazette of India Extraordinary Part II. The Notification was proposed to be issued in exercise of powers conferred by subsection (1) and clause (v) of sub-section (2) of Section 3 of the EP Act for dealing with cases of violation of the notification with regard to EC. It was proposed that cases of violation would be appraised by the Appraisal Committee with a view to assess whether the project had been constructed or operated at a site which was permissible under prevailing laws and could be run sustainably on compliance of environmental norms with adequate environmental safeguards. Closure was to be recommended if the findings of the Appraisal Committee were in the negative. If the Appraisal Committee found that such unit had been running sustainably upon compliance of environmental norms with adequate environment safeguards, the unit would be prescribed appropriate Terms of Reference (TOR) after which the procedure for grant of EC would follow.

35. On 10th November 2020, the Department of Environment and Climate Change of the Government of Haryana issued an order which is extracted hereinbelow for convenience:

"Whereas the process of manufacturing of Formaldehyde is covered under the provisions of 5(f) of Schedule of Environment Impact Assessment Notification (EIA),

2006 of Government of India, and requires the prior Environmental Clearance (EC) from the competent authority State Environment Impact Assessment Authority (SEIAA)/Ministry of Environment, Forest and Climate Change, Government of India, before establishment and operation of such units, besides other mandatory clearance, as applicable;

Whereas, it has come to the notice of Government that around 15 such units have been permitted to establish/operate in the State of Haryana, without obtaining the necessary Prior Environmental Clearances, but with the Consent of the Haryana State Pollution Control Bureau (HSPCB), which misinterpreted the category of such units and on realising the requirement of EC in these cases, has revoked its consents issued earlier to these units recently;

Whereas, some of these units approached the Government explaining their hardship due to such sudden revocation of their consents and have sought time for obtaining the necessary EC from the competent authority as the process is likely to take a minimum of 6 months to one year period, and to allow them to operate with all pollution control measures, following the pollution control norms applicable, and,

Whereas, the Government has carefully considered their request and the competent authority has decided that these units shall be allowed to continue their operations for a period of six months, without prejudice to any legal action taken against the violations committed by them, by the competent authorities, with the conditions that they will immediately apply for Environmental Clearance from the competent authority and provide the proof of such application within 60 days from the issuance of this communication to Environment and Climate Change Department and to Haryana State Pollution Control Board.

Therefore, it is ordered accordingly."

36. Referring to the Counter Affidavit filed by HSPCB before the NGT, Mr. Gupta pointed out that, since HSPCB itself was under the misconception that prior EC was not necessary for units such as the Yamunanagar units of the Appellants Nos. 1 and 2 respectively. HSPCB took a policy decision to allow the units which did not have prior EC to operate for six months, on condition that they would apply for EC within sixty days.

37. The Appellants duly applied for EC in respect of their manufacturing units. After scrutinizing their applications and after finding the units suitable for grant of EC in terms of the prevailing guidelines, the Expert Appraisal Committee constituted by the MoEF&CC conducted a public hearing to finalize the cases of the Appellants for issuance of Terms of Reference (TOR).

38. By an Office Memorandum, being F. No. 22-21/2020-1A III, dated 7th July 2021, the MoEF&CC issued Standard Operating Procedure (SOP) for identification and handling of violation cases under EIA Notification 2006.

39. The said Office Memorandum, inter alia, reads:

"The Ministry had issued a notification number S.O.804(E), dated the 14th March, 2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.

2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.

3. Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. v. Synochem Organics Pvt. Ltd. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar v. Central Ground Water Authority, vide order dated 03.06.2021 held that "(...) for past

violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process".

4. Further, the Hon'ble National Green Tribunal in O.A. No. 34/2020 WZ in the matter of Tanaji B. Gambhire v. Chief Secretary, Government of Maharashtra, vide order dated 24.05.2021 has directed that "... a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country".

5. Therefore, in compliance to the directions of the Hon'ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn. The Ministry is also seized of different categories of 'violation' cases which have been pending for want of an approved structural/procedural framework based on 'Polluter Pays Principle' and 'Principle of Proportionality'. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.

6. In the light of the above directions of the Hon'ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations/decisions of the Hon'ble Courts wherein principles of proportionality and polluters pay have been outlined."

40. The SOP formulated by the said Office Memorandum dated 7th July 2021 refers to and gives effect to various judicial pronouncements including the judgment of this Court in *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati*.

41. In terms of the SOP, the proposal for grant of EC in cases of violation are to be considered on merits, with prospective effect, applying principles of proportionality and the principle that the polluter pays and is liable for costs of remedial measures.

42. By an order dated 9th July 2021, the MoEF&CC confirmed the minutes of an earlier meeting of the Expert Appraisal Committee and recommended issuance of terms of reference to the Appellant No. 1, M/s. Pahwa Plastics Private Limited for expansion of its Formaldehyde Manufacturing unit from 60 TPD to 150 TPD.

43. In the meanwhile, on or about 26th November 2020, the Respondent No. 1, a Non-Governmental Organisation (NGO) hereinafter referred to as "Dastak" filed an application being O.A. No./287/2020 before the NGT praying that the order dated 10th November 2020 passed by the State of Haryana be quashed and units which were operating without EC be closed. The NGT disposed of the said application of Dastak by the impugned order dated 3rd June 2021.

44. A Public Interest Litigation being W.P. (MD) No. 11757 of 2021 (*Fatima v. Union of India*) was filed before the Madurai Bench of the Madras High Court challenging the said Memorandum dated 7th July 2021. By an interim order dated 15th July 2021 a Division Bench of the Madras High Court admitted the Writ Petition and stayed the said memorandum.

45. The Madurai Bench of the Madras High Court observed and held:—

"This writ petition has been filed as a public interest litigation challenging the validity of the office memorandum dated 07.07.2021, issued by the respondent.

2. We have heard Mr. A. Yogeshwaran, learned counsel appearing for the writ petitioner and Mr. L. Victoria Gowri, learned Assistant Solicitor General of India, accepts notice for the respondent.

3. The impugned office memorandum is challenged as being wholly without jurisdiction, contrary to the Environment Impact Assessment Notification, 2006, ultra vires the powers of the respondent under the Environment (Protection) Act, 1986 and violative of the various principles enunciated by the Hon'ble Supreme

Court, while interpreting Article 21 and Article 48-A of the Constitution of India.

4. Further, it is submitted that the impugned notification is in gross violation of the undertaking given before the Hon'ble Full Bench of this Court in W.P. No. 11189 of 2017, wherein, the Court took note of the submissions made on behalf of the Government of India, that the notification impugned therein is only a one-time measure. Further, it is submitted that the respondent failed to see that concept of ex-post facto approval is alien to environment jurisprudence and it is anathema to the Environment Impact Assessment Notification, 2006.

5. Further, it is submitted that the impugned notification is in gross violation of the judgment of the Hon'ble Supreme Court in the case of Alembic Pharmaceuticals Ltd. v. Rohit Prajapati, 2020 SCC OnLine SC 347 and the orders passed by the National Green Tribunal, Principal Bench, New Delhi, in the case of S.P. Muthuraman v. Union of India, 2015 SCC OnLine NGT 169.

6. Identical grounds were considered by us in a challenge to an office memorandum dated 19.02.2021, which provided a procedure for granting post facto clearance under Coastal Regulation Zone (CRZ) Notification 2011, on the ground that despite no such provisions in the notification and being contrary to the earlier judgments and undertaking. The said writ petition in W.P(MD). No. 8866 of 2021 was admitted and by order dated 30.04.2021, the said office memorandum dated 19.02.2021 has been stayed.

7. The core issue in this writ petition is whether the Government of India could have issued the office memorandum and brought about the Standard Operating Procedure for dealing with violators, who failed to comply with the mandatory condition of obtaining prior environment clearance under the Environment Impact Assessment Notification 2006, read with the provisions of Environment (Protection) Act, 1986. This issue was considered by the Hon'ble Supreme Court in Alembic Pharmaceuticals Ltd. (cited supra), and it was held that such office memorandum in the nature of circular is without jurisdiction. The operative portion of the judgment reads as follows:

"...What is sought to be achieved by the administrative circular dated 14 May 2002 is contrary to the statutory notification dated 27 January 1994. The circular dated 14 May 2002 does not stipulate how the detrimental effects on the environment would be taken care of if the project proponent is granted an ex post facto EC. The EIA notification of 1994 mandates a prior environmental clearance. The circular substantially amends or alters the application of the EIA notification of 1994. The mandate of not commencing a new project or expanding or modernising an existing one unless an environmental clearance has been obtained stands diluted and is rendered ineffective by the issuance of the administrative circular dated 14 May 2002. This discussion leads us to the conclusion that the administrative circular is not a measure protected by Section 3. Hence there was no jurisdictional bar on the NGT to enquire into its legitimacy or vires. Moreover, the administrative circular is contrary to the EIA Notification 1994 which has a statutory character. The circular is unsustainable in law."

8. Despite the above decision, once again the Government of India, Ministry of Environment, Forest and Climate Change have chosen to adopt the route of issuing the office memorandum and virtually setting at naught the provisions of the Environment Impact Assessment Notification and the Environment (Protection) Act.

9. Before the Hon'ble First Bench, a public interest litigation was filed by the Puducherry Environment Protection Association, challenging the notification dated 14.03.2017, on identical grounds and the Hon'ble First Bench by judgment dated 13.10.2017, recorded the submissions of the learned Assistant Solicitor General of India that the said notification was a one-time measure and accordingly, disposed

of the writ petition.

10. Once again, the Ministry of Environment, Forest and Climate Change have issued the impugned office memorandum. Thus, from what we have noted above, we are of the clear view that the petitioner has made out a *prima facie* case for entertaining the writ petition. Accordingly, the writ petition is **admitted** and there shall be an order of interim stay."

46. It is true that in the case of *Puducherry Environment Protection Association v. Union of India*², the Division Bench of Madras High Court took note of and recorded the submission made on behalf of the Union of India that the relaxation was a one time relaxation. In view of such submission, this Court held that a one time relaxation was permissible.

47. It is, however, well settled that words and phrases and/or sentences in a judgment cannot be read in the manner of a statute, and that too out of context. The observation of the Division Bench that a one time relaxation was permissible, is not to be construed as a finding that relaxation cannot be made more than once. If power to amend or modify or relax a notification and/or order exists, the notification and/or order may be amended and/or modified as many times, as may be necessary. A statement made by counsel in Court would not prevent the authority concerned from making amendments and/or modifications provided such amendments and/or modifications were as per the procedure prescribed by law.

48. The Division Bench of Madras High Court fell in error in staying the said office memorandum, by relying on observations made by this Court in *Alembic Pharmaceuticals Ltd.* (supra), in the context of a circular which was contrary to the statutory Environment Impact Notification of 1994. The attention of the High Court was perhaps not drawn to the fact that the notification of 7th July 2021 was in pursuance of the statutory notification of 2017 which was valid. The judgment of this Court in *Alembic Pharmaceuticals Ltd.* (supra), was clearly distinguishable and could have no application to the office memorandum dated 7th July 2021 which was issued pursuant to the notification dated 14th March 2017.

49. The Appellants have already applied for EC. The Expert Appraisal Committee of the MoEF&CC has, after scrutinizing the application of the Appellants and finding them eligible for grant of EC, recommended their cases for grant of Terms of Reference (ToR). ToR was granted to the Appellants and a public hearing had also been conducted. Only last procedural step of issuance of EC is left.

50. It is claimed that the units of the Appellants are totally non-polluting units having "Zero Trade discharge". They have been in operation for many years. In the reply affidavit filed by the State before the NGT, it was mentioned that the units were operating in good faith with valid CTOs granted by the HSPCB. It was stated that the units were not causing pollution hazards. The only thing against the units was the procedural lapse of not obtaining EC.

51. By a communication No. F. No. IA-J-110011/185/2020-IA-II(I) dated 20th July 2021 issued to the Appellant No. 1, the MoEF&CC rejected the proposal for terms of reference on the purported ground that the activity of the Appellant No. 1 was covered under category "A" of item 5(f) "Synthetic Organic Chemicals" of the Schedule to the EIA Notification, 2006. A similar communication was issued in respect of M/s. Apcolite Polymers Pvt. Ltd. Significantly, by an order dated 9th July 2021, the MoEF&CC had confirmed the minutes of an earlier meeting of the Expert Appraisal Committee and recommended issuance of ToR to the Appellant No. 1, as observed above. The proposal for Terms of Reference has obviously been rejected at the final stage after the public hearing, by reason of the Impugned order dated 3rd June 2021 passed by the NGT on the application of Dastak, which is under appeal.

52. This appeal was listed for admission on 30th September 2021, along with an

application for interim relief being I.A. No. 110064 of 2021 praying for orders permitting the Appellants to operate their units during the pendency of the appeal. The appeal was heard at length at the admission stage and reserved for judgment along with the interim application by an order dated 30th September 2021.

53. After receiving the communication dated 20th July 2021 rejecting the proposal for Terms of Reference, the Appellants requested HSPCB to forward to the Appellants the proceedings of public hearing in respect of the manufacturing units of the Appellants. By a communication No. HSPCB/YR/2021/2830 dated 15th February 2022, HSPCB forwarded proceedings of the public hearing in respect of the Yamuna Nagar unit of the Appellant No. 1. By another Communication No. HSPCB/YR/29021/2829 dated 15th February 2022 the HSPCB forwarded to the Appellant No. 2 the proceedings of the public hearing held on 3rd February 2022 in connection with the Yamuna Nagar Unit of the Appellant No. 2.

54. The manufacturing units of the Appellants appoint about 8,000 employees and have a huge annual turnover. An establishment contributing to the economy of the country and providing livelihood ought not to be closed down only on the ground of the technical irregularity of not obtaining prior Environmental Clearance irrespective of whether or not the unit actually causes pollution.

55. In *Electrosteel Steels Limited v. Union of India*⁴, this Court held:—

"82. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down for the technical irregularity of shifting its site without prior environmental clearance, without opportunity to the establishment to regularize its operation by obtaining the requisite clearances and permissions, even though the establishment may not otherwise be violating pollution laws, or the pollution, if any, can conveniently and effectively be checked. The answer has to be in the negative.

83. *The Central Government is well within the scope of its powers under Section 3 of the 1986 Act to issue directions to control and/or prevent pollution including directions for prior Environmental Clearance before a project is commenced. Such prior Environmental Clearance is necessarily granted upon examining the impact of the project on the environment. Ex-Post facto Environmental Clearance should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of Notifications under the 1986 Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of a running steel plant.*

84. *The 1986 Act does not prohibit ex post facto Environmental Clearance. Some relaxations and even grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in over view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.*

88. *The Notification being SO 804(E) dated 14th March, 2017 was not an issue in Alembic Pharmaceuticals (supra). This Court was examining the propriety and/or legality of a 2002 circular which was inconsistent with the EIA Notification dated 27th January, 1994, which was statutory. Ex post facto environmental clearance should not however be granted routinely, but in exceptional circumstances taking*

into account all relevant environmental factors. Where the adverse consequences of ex post facto approval outweigh the consequences of regularization of operation of an industry by grant of ex post facto approval and the industry or establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. **Ex post facto approval should not be withheld only as a penal measure.** The deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.

96. The appeals are allowed. The impugned order is set aside. The **Respondent No. 1 shall take a decision on the application of the Appellant for revised EC in accordance with law, within three months from date. Pending such decision, the operation of the steel plant shall not be interfered with on the ground of want of EC, FC, CTE or CTO.**"

56. As held by this Court in *Electrosteel Steels Limited* (supra) ex post facto Environmental Clearance should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of a Notification under the EP Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of mines, running factories and plants.

57. The 1986 Act does not prohibit ex post facto Environmental Clearance. Grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in our view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.

58. As held by a three Judge Bench of this Court in *Lafarge Umiam Mining Private Limited v. Union of India*²:—

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

59. In *Alembic Pharmaceuticals Ltd.* (supra), this Court observed:—

"27. The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification

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

60. Even though this Court deprecated ex post facto clearances, in *Alembic Pharmaceuticals Ltd.* (supra), this Court did not direct closure of the units concerned but explored measures to control the damage caused by the industrial units. This Court held:—

"However, since the expansion has been undertaken and the industry has been functioning, we do not deem it appropriate to order closure of the entire plant as directed by the High Court."

61. The Notification being SO. 804(E) dated 14th March 2017 was not in issue in *Alembic Pharmaceuticals Ltd.* (supra). In *Alembic Pharmaceuticals Ltd.* (supra) this Court was examining the propriety and/or legality of a 2002 circular which was inconsistent with the EIA Notification dated 27th January 1994, which was statutory. The EIA Notification dated 27th January 1994 has, as stated above, been superseded by the Notification dated 14th September 2006.

62. There can be no doubt that the need to comply with the requirement to obtain EC is non-negotiable. A unit can be set up or allowed to expand subject to compliance of the requisite environmental norms. EC is granted on condition of the suitability of the site to set up the unit, from the environmental angle, and also existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect future generations and to ensure sustainable development, it is imperative that pollution laws be strictly enforced. Under no circumstances can industries, which pollute, be allowed to operate unchecked and degrade the environment.

63. *Ex post facto* environmental clearance should not be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of denial of *ex post facto* approval outweigh the consequences of regularization of operations by grant of *ex post facto* approval, and the establishment concerned otherwise conforms to the requisite pollution norms, *ex post facto* approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. The deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.

64. The question in this case is, whether a unit contributing to the economy of the country and providing livelihood to hundreds of people, which has been set up pursuant to requisite approvals from the concerned statutory authorities, and has

applied for *ex post facto* EC, should be closed down for the technical irregularity of want of prior environmental clearance, pending the issuance of EC, even though it may not cause pollution and/or may be found to comply with the required norms. The answer to the aforesaid question has to be in the negative, more so when the HSPCB was itself under the misconception that no environment clearance was required for the units in question. HSPCB has in its counter affidavit before the NGT clearly stated that a decision was taken to regularize units such as the Apcolite Yamuna Nagar and Pahwa Yamuna Nagar Units, since requisite approvals had been granted to those units, by the concerned authorities on the misconception that no EC was required.

65. It is reiterated that the 1986 Act does not prohibit *ex post facto* EC. Some relaxations and even grant of *ex post facto* EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with environment norms, is not impermissible. As observed by this Court in *Electrosteel Steels Limited* (supra), this Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the units and dependent on the units in their survival.

66. *Ex post facto* EC should not ordinarily be granted, and certainly not for the asking. At the same time *ex post facto* clearances and/or approvals cannot be declined with pedantic rigidity, regardless of the consequences of stopping the operations. This Court is of the view that the NGT erred in law in directing that the units cannot be allowed to function till compliance of the statutory mandate.

67. Accordingly, the appeal is allowed. The impugned order is set aside in so far as the same is applicable to the units of the Appellants established and operated pursuant to CTE and CTO from the HSPCB in respect of which applications for *ex post facto* EC have been filed. The Respondent shall take a decision on the applications of the Appellants for EC in accordance with law within one month from date. Pending decision, the operation of the Pahwa Yamuna Nagar Unit and the Apcolite Yamuna Nagar Unit, in respect of which consents have been granted and even public hearing held in connection with grant of EC, shall not be interfered with.

68. The Appellants will be allowed to operate the units. Electricity, if disconnected, shall be restored subject to payment of charges, if any. If the application for EC is rejected on the ground of any contravention on the part of the Appellants, it will be open to the Respondents to disconnect the supply of electricity.

69. The Union of India had proceeded with the application for EC and even public hearing had been held. Counsel appearing on behalf of the Union of India contended that the Appellant had not submitted its final application for EC, after public hearing. It is not clear what more was required of the Appellants. Be that as it may, the Union of India shall, within three working days from the date of receipt of a copy of this judgment and order, inform the Appellants in writing of whether anything further is required to be done by the Appellants, and if so what is required to be done. The Appellants shall, within a week thereafter do the needful. The final decision on the application of the Appellants for EC shall be taken within three weeks thereafter.

70. The application being I.A. No. 110064/2021 and other pending applications, if any, in this appeal are disposed of accordingly.

¹ (2011) 3 SCC 193

² 2020 SCC OnLine SC 347

³ 2017 SCC OnLine Mad 7056

⁴ 2021 SCC OnLine SC 1247

⁵ (2011) 7 SCC 338

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O.A. No. 213 of 2021 - S.Sakthivel Vs. Secretary, MoEF and 5 others - National Green Tribunal, Chennai

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Sirs/Madam,

We act for the 6th Respondent in the Subject O.A.

Please find attached, a scanned copy of the paper book(Volume VI) filed on behalf of the 6th Respondent and the Compilation of EIA Notifications/Circulars.

Kindly Acknowledge Receipt.

Yours faithfully
T.Poornam
Counsel for the 6th Respondent

[Quoted text hidden]

2 attachments **O.A. No. 213 of 2021 - Vol. 6 Typeset.pdf**
3980K **Compilation of EIA Notifications.pdf**
5227K