

**BEFORE THE NATIONAL GREEN TRIBUNAL**

**(SOUTHERN ZONE)**

**(ORIGINAL SIDE JURISDICTION)**

**ORIGINAL APPLICATION NO. (SZ) 27 of 2019**

IN THE MATTER OF

Shri Kishore Kumar and another

...Applicants

Vs

Union of India and others

...Respondents

**WRITTEN SUBMISSIONS ON BEHALF OF THE 11<sup>TH</sup> RESPONDENT**

**Brief facts**

1. The 11<sup>th</sup> Respondent is a partnership firm falling under an Industrial Establishment or Undertaking" dealing with fishmeal and fish oil industries in Pithrody village of Udayavara, Udupi Taluk and District. The said industry was established in the year 2008. The 11<sup>th</sup> Respondent firm was established in the year 2008. The 11<sup>th</sup> Respondent's firm initially started in a small way and subsequently the 11<sup>th</sup> Respondent by their sheer hard work and years of toil and meticulous business planning and execution, managed to develop and improve the business to a great extent that at present the fish meal and fish oil producing unit of the 11<sup>th</sup> Respondent is one of the leading fishmeal and oil producing units of the country. The Fishmeal and Fish oil unit established by the 11<sup>th</sup> Respondent is located in Sy.No. 110/15.110/9C2B2, 110/4A, 110/9C2B1- P1, 9C2B1-P2 and 110/5B of Pitrody Village Udayavara Taluk.
2. The Present Application i.e OA No. 27 of 2019 filed by the Applicants is in relation to the alleged environmental violations by three fish meal industries including the Respondent 11 where the industries have been running purportedly without any Licence and NOC for the conversion of agricultural land into industrial land and had stated that the industries of Respondent 10-12 are functioning as a serious threat to life and pollution problems resulting in death of human beings, animals, birds and marine species both flora and fauna. The Applicant also raises the allegation that Industrial effluents from fish mills of the Respondent Nos 10 to 12 are being discharged in Udayavara River every day its greasy effluent discharges contains toxins and other chemicals and due to this entire river is being polluted and also had raised a allegation that Respondents 10-12 Industries does not have proper air pollution controls in place and the villagers are made to live in foul stench and their trucks carrying fish do not have proper cover to stop the spilling of fish blood on the roads and the people of nearby villages are affected badly by water pollution and they have been suffering from skin diseases and respiratory problems. Therefore the instant application was filed by the Applicants seeking the following reliefs:
  - a) Direct the Respondents Nos 1 to 13 to take all necessary actions for the immediate closure of the illegal industries run by the Respondent Nos 10 to 12 in Udayavara Village, Udupi Taluk, Udupi District, Karnataka State i.e in the prohibited CRZ-1 area, forthwith in accordance with law
  - b) Direct the Respondents 10 to 12 to pay the compensation to all the victims who are being suffered due to the illegalities committed by them.

- c) Impose heavy penalties on the Respondent Nos 1 to 13 for not performing the duty and for allowing the Respondent Nos 10 to 12 to continue to run the industries in prohibited area, at the cost of lives of villagers and the Applicants herein
  - d) Pass any such other or further order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstance of the case.
3. The Hon'ble Tribunal vide order dated 18.10.2019 directed a Joint Committee to be constituted for the purpose of inspecting the fish meal industries and to submit a factual report regarding the allegations made in the O.A. The Joint Committee submitted its report on 03.02.2020 hereafter referred as "**JC I Report**".

### **Submissions regarding alleged environmental pollution**

The 11<sup>th</sup> Respondent submits that the instant application is maintainable neither in law nor on facts and is liable to be dismissed by this Hon'ble Tribunal as it is baseless as against the 11<sup>th</sup> Respondent. To begin with the 11<sup>th</sup> Respondent industry has been functioning in a safe manner following all the protocols and the 11<sup>th</sup> Respondent is in no way running a prohibited or illegal industry and the 11<sup>th</sup> Respondent has all the permissions and licences necessary to carry on its business and is running its business in accordance of law.

The following are the submissions made by the 11<sup>th</sup> Respondent:

#### **I. The 11<sup>th</sup> Respondent is not running the unit in a prohibited area and is running the unit in a legal and compliant manner. The Respondent Industry has been running with proper licences and NOC from the authorities**

- a) **Obtained NOC for Land Conversion** - The 11<sup>th</sup> Respondent had set up the above referred industrial unit in the aforesaid properties after obtaining the necessary licenses, permissions from all the concerned authorities including the Pollution Control Board, Gram Panchayat and the Costal regulation authorities. The 11<sup>th</sup> Respondent has also sought for an NOC from Tahsildar, Udupi Taluk for conversion of the land from agricultural to industrial purposes. The Tahsildar office in turn had sought an opinion from coastal regulation authority vide letter SI.No. ALN CR744, 800/06-07 dated 02.03.2007 and the Regional Director (Environment) Udupi vide his communication dated 16.03.2007 in SI.No.D.E.74,75/2006-07 stated that "*Land which are requested for conversion are 101 metre away from high tide line of Udyavara River and the width of the river is less than 300 metres and it is outside coastal regulation zone. So the land in Udyavara village of Udupi Taluk bearing survey number 110/9C2B- 0.48 acres, 110/5B - 0.56 acres, 110/5B - 0.20 acres, 110/4A - 0.49 acres, 110/15 - 0.17 acres, 110/9C2B - 0.19 acres, 110/5B - 0.21 acres and 110/21C2BP2- 0.39 acres situated at Udyavara Village, Udupi Taluk for industrial purpose*".

The allegation made by the Applicants is that Respondents 10 to 12 are running their respective industries in the Costal Regulation Zone 1 (CRZ-1) as classified by the Costal Regulation Zone Notification 2011 in which it states that CRZ-1 is one of the prohibited areas to run any kind of industry. It is respectfully submitted that the 11<sup>th</sup> Respondent industry is being run on the said land only after obtaining permission to use the land for commercial purposes. The Respondent No.11 had obtained necessary land conversion of Sy.No.110/4B, 110/15,110/9cb,110/5B,110/9CB2,110/4A,110/15 and 110/9C2B1-P1 for industrial purpose from Tahsildar, Udupi. The joint committee in the JC I Report at page 14 had opined that out of a total of 2.69 acres the Respondent No.11 has obtained land conversion for 2.69 acers for industrial purpose. **The same has been observed and confirmed in the JC 1 Report at Page 13.**

b) **Trade licence cannot be granted by Gram Panchayat** - The Applicants in their application have stated that the licence of the 11<sup>th</sup> respondent was cancelled by the gram panchayat Udhayavara . It is respectfully submitted that that the Village Development and Panchayath Raj Department of the government of Karnataka vide notice dated 24.02.2016 stated that the village panchayat has no right to issue any trade practice or collect any fee for licence renewal. It is further submitted that the **JC 1 Report in Page number 14 in para 5.1(b)** has stated that the gram panchayat does not have authority to issue trade license to industries and they should not collect any renewal license fees from industries. Therefore, the question of cancellation of any license by the gram panchayat does not arise in the first place. The Respondent has obtained all necessary permissions and NOCs. The allegation by the Applicant in paragraph 25 Ground-A of the Application states that the Respondent No. 11 has not obtained the No Objection Certificate (NOC) from the competent authorities. The Respondent No.11 has obtained all necessary permits to run the industry. As per the **JC I Report it stated in page 3** that the premises of the Respondent No. 11 was inspected on 10.12.2019 and in Page Number 14 it was stated that the Respondent No 11 is operating with valid consents under Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control or Pollution) Act 1981. It has also been stated in the **JC 1 Report in para 5.1(d)** that Respondent No.11 also has valid Hazardous Waste Authorization under the Hazardous Wastes (Management and Transboundary Movement) Rules 2008 with validity up to 30.06:2021 Subsequently the same was renewed up to 08.09.2024. [**Filed as Annexure A along with the reply to the application filed by the 11<sup>th</sup> Respondent**]. Further on Page 8 of JC II Report, the Committee has stated the following with respect to compliance to Hazardous Waste Management Rules by the Respondent No. 11:  
*“Provided secure area for the storage of HW and obtained Authorization”*.  
Therefore, the Applicant’s allegations have no basis whatsoever.

c) **NoC for usage of Ground Water** - The Respondent No.11 vide letter dated 21.05.2020 [**Filed as Annexure B along with the reply to the application filed by the 11<sup>th</sup> Respondent**] had sought for an NOC from Karnataka Ground Water Authority (“KGWA”) for usage of ground water for industrial purpose but the KGWA had not responded giving clear directions to the Respondent No.11. The Respondent No.11 had sought for information under Right to Information Act. 2005 by an application dated 18.09.2020, whereby the Respondent No.11 was informed by the Public Information Officer, District Ground Water Office, Ground Water Directorate, Udupi that the Udupi District Ground Water Office that till date the KGWA have not given permission to any industry to use water from well for any commercial purpose. the same is filed as **Annexure C along with the reply to the application filed by the 11<sup>th</sup> Respondent**. However as a matter of abundant caution and respecting the observation of the Joint Committee constituted by the Hon’ble NGT the Respondent No. 11 had sought for an NOC from KGWA vide letter dated 21.05.2020 for usage of ground water for industrial purposes but KGWA have not yet responded giving clear directions to the Respondent No.11, the same is filed as **Annexure D along with the reply to the application filed by the 11<sup>th</sup> Respondent**. In a bid to comply with the observations as pointed out in the JC I Report, the Respondent No.11 had again vide a letter followed up with KGWA on 30.06.2021. The letter dated 30.06.2021 is filed as **Annexure E along with the reply to the application filed by the 11<sup>th</sup> Respondent**]. Thus the question of the Respondent No.11 running their unit without obtaining NOC does not arise. Further on Page 8 of JC II Report, the Committee has stated the following with respect to water consumption and effluent generation by the Respondent No. 11:  
*“Records verified and accordingly, KSPCB has amended the consent order considering actual consumption and recycling records”*. It was further observed that the Respondent No.11 had applied to Karnataka Ground Water Authority (KGWA) and the copy of the same has been submitted to the KSPCB.

- d) **Compliance with respect to treated effluent discharge standards** – The Applicants have stated that the Industrial effluents from the fish meals of Respondents No 10-12 including that of the Respondent 11 are being discharged to Udyavara river every day and due to this fish and other marine life are dying. The Respondent No. 11 does not discharge any effluents in to the Udyavara river. As per the JC 1 Report (**in paragraph 5.1(i), at page number 16**) the Respondent No. 11 has laid pipeline of 1.5 km to discharge treated effluent into the river ending up at sea about 200 meters inside the sea and has obtained permission from the Deputy Commissioner of Udupi District for the same. However, it is to be noted that provisions which had been made for discharge of effluents into the sea were discontinued and the Respondent No 11 does not discharge any effluents into the sea as the entire effluents are being consumed for boiler feed, cooling tower makeup, washing and gardening and agricultural use since 2018 after upgradation of the Effluent Treatment Plant (“ETP”) the same may be clearly seen from the photographs [**Filed as Annexure F1 and F2 along with the reply to the application filed by the 11<sup>th</sup> Respondent**]. Further on **Page 8 of JC II Report**, the Committee has stated the following with respect to treated effluent discharge standards of the Respondent No. 11:

*“On verification of the analysis of the treated effluent collected for past six months by the KSPCB, the treated effluent is meeting with the stipulated standards”*. Further, it was observed that the direction to stop discharging canteen wastewater into the land to connect the same to the ETP has been complied with.

**On Page 10 of JC II Report**, the Committee observed that the provisions made for discharge of effluent in to the sea has been disconnected and the entire treated effluent is consumer for boiler feed, cooling tower, washing and gardening only. Treated water is also sent for watering plants along the National Highway.

- e) **Air pollution controls** - The Applicant has alleged that the Respondents No. 11 does not have proper air pollution controls in place and the villagers are made to live in foul stench. It is further alleged that the trucks carrying the fish do not have a proper cover to stop the spilling of fish blood on the roads and all the people of several villages nearby are seriously affected by this and have been suffering from diseases and respiratory problem.

It is humbly submitted by the Respondent 11 industry has proper air pollution control mechanisms in place and it is following preventive measures not only to ensure that any environmental damage is prevented but also promotes the health and safety of its own employers working within the premise of the Respondent No 11 unit on a daily basis. It is humbly submitted by the Respondent No. 11 that as stated on the JC 1 Report in **Paragraph 5.1(p) at page number 19** that the waste vapor generated from stream driers are taken to the evaporator and after heat recovery, this waste vapor is passed through tubular condenser deodorizer and enzyme scrubbers, the treated vapours are connected to the boiler chimney. Further, the stick water vapor generated in evaporators is condensed and the condensate is being taken into the ETP. In **paragraph number 5.1(t) of the report at page number 19** the report states that the 3 sets of Diesel Generator sets are provided with acoustic enclosure and emission vents. Further, as stated in **para 5.1 (r) at page 19 of the JC 1 Report** it clearly states it is clearly stated that there was not much of odour within the premises as the very nature of the activity involves fish, fish smell was in the surrounding. Thus it is very clear that the Respondent No 11 has put in place all measures to ensure that the nuisance of air pollution is controlled for the protection of our environment.

It is submitted that the trucks sent by the suppliers of the 11<sup>th</sup> Respondent Industry have sufficient safeguards in place to ensure that there is no spillage of any content from within the truck. The trucks which are used by the Respondent No.11 herein are properly sealed and totally covered and there is no chance of any leaks or spilling of the goods in the road as the same is fully covered and the goods it carries is also loaded in containers that are fully sealed, the photographs filed by the Respondent 11 also reveals the same [**Filed as Annexure G1 and G2 along with the reply to the application filed by the 11<sup>th</sup>**

**Respondent]**. Further even the JC 1 Report submitted by the joint committee which inspected the entire premise of the respondent number 11 on 10.12.2019 had not made any remarks with respect to the said allegation.

**II. The fundamental right to live of the Applicants and the people in the locality are not affected by the running of the unit by the Respondent No 11**

The Respondent no. 11 Industry has been running in a safe manner following all the protocols and the allegation that fundamental rights of the applicants are infringed is untrue. The Respondent 11 is set up with all the proper valid consents under Water (Prevention and Control of Pollution) Act. 1974 and Air (Prevention and Control of Pollution) Act 1981. It is also noted that the Respondent No.11 also has valid Hazardous Waste Authorization under the Hazardous Waste (Management and Transboundary Movement) Rules 2008 with validity upto 30.06.2021. subsequently the same was renewed up to 08.09.2024 [**Filed as Annexure A along with the reply to the application filed by the 11<sup>th</sup> Respondent**] . The allegations that the Respondent No.11 industry has caused the Water and Air Pollution thereby violating the fundamental rights of the Applicants is untrue. Moreover, the JC II Report would show that the Respondent No.11 has been compliant with all the necessary standards (**Pages 5 and 6 of the JC II Report**).

With respect to the death of a boy, **Page No. 50 of the JC I Report** clearly states that the skin and respiratory diseases reported in Malpe region are natural cases and are not related to the fish meal industry.

III. In the JC 1 Report the Joint Committee had also identified certain compliances which were complied with by the Respondent No.11. Some of the compliances have already been covered in the preceding paragraphs of this Written Submission. The details of the remaining are as follows:

- a) **Flow meter installation** - as per the page number 16 at para (f) of the JC 1 Report states that the Respondent No. 11 has not installed a flow meter for recording water consumption. The Respondent has duly taken note of this and has complied with this requirement as on 01.08.2020. The photographs of the installed flow meter has been filed as **Annexure B and C along with the further objections raised by the Respondent No.11 to the JC 1 Report**.
- b) **Water Consumption** - JC 1 Report at page number 17 at paragraph (k) states that the Respondent No 11 has exceeded the permitted capacity of KSPCB as per the consent limit. This observation in the Report is false and the actual water consumption and water generation is set out in a table filed as **Annexure G along with the further objections raised by the Respondent No.11 to the JC 1**. Accordingly, the Respondent No. 11 submits that the freshwater utilisation is 53 KLD which is well within the consented quantity of 170 KLD. Further, for all other purposes the Respondent No.11 uses only the treated water and has also reduced the consumption of fresh water. It is humbly submitted by the Respondent No. 11 that with regards to the water consumption for cooling water, the Consent for Operation ("CFO") had mentioned a limit of 70 KLD whereas the actual limit as per the logs maintained by the Respondent No. 11 was 250 KLD it is submitted that the water being utilized for the cooling water recycled water from its fluent Treatment Plant ("ETP") and thus it has not consumed any excess water for this purpose and hence there is no violation of the consent limit as specified by the KSPCB.
- c) **Effluent generation** - Further, it has been observed in the JC 1 Report in page number 17 at paragraph (k) that the CFO dated 29.09.2018 had permitted Effluent Generation up to a limit of 138 KLD whereas the actual effluent generated as per the logs maintained the Respondent No. 11 was 282 KLD. During the months of November to December 2019 as mentioned as

per the logs maintained by it and as per the CFO dated 21.05.2020 the Respondent No.11 had an ETP with a capacity of treating 400 KLD and thus even if the actual effluent generated by the Respondent No. 11 was more than 282 KLD. the unit had sufficient ETP capacity to treat such effluents and thus the problem of exceeding the permitted capacity does not arise in this instant case.

- d) **Canteen waste water** - JC 1 Report at page number 17 paragraph (I) states that the canteen wastewater is discharged without treatment into neighbouring land . It is submitted that the Respondent No. 11 has always ensured that the wastewater generated by the canteen is treated by the ETP. It is humbly submitted that the wastewater discharged in the neighbouring land was a one-time accident, after which the neighbouring land was cleaned thoroughly by the Respondent No. 11 Pursuant to the thorough cleaning, the neighbour and the Karnataka State Pollution Control Board ("KSPCB") were duly intimated of the same. In fact, the Respondent No 11 also sent photographs vide letter dated 15.12.2019 evidencing that the neighbouring land was cleaned up and the same is filed as **Annexure H 1 to H 5 along with the further objections raised by the Respondent No.11 to the JC 1 Report.**
- e) **Biological Oxygen Demand and Chemical Oxygen Demand** - The observation in page number 18 at paragraph (m) of the JC I Report states that the compiled analysis results for the period between January 2017 to October 2019 confirms that out of 28 samples collected, on 26 occasions the samples collected have met the prescribed standards with respect to Biological Oxygen Demand (BOD) and Chemical Oxygen Demand (COD) and Suspended Solid. However during September and October 2018 the limits were in excess of the prescribed standards. It is submitted that the EC Report read with JC 1 Report at page 18 merely states that the said allegation is based on the KSPCH's records. It is submitted that the JC I Report and the EC Report do not contain information regarding the date of collection of sample or the contents of the specific analysis report indicating that the sample did not comply with the standards prescribed by KSPCB. It is submitted by the Respondent No.11 that by not complying with the points mentioned above, the Respondent No.11 are in violation of Section 21 of the Water Act. It is submitted that as per JC 1 Report at page18, it is stated that the Respondent No. 11 was compliant with the discharge standards from January, 2017 to October, 2019. It is further submitted by the Respondent No. 11 that the JC II Report has examined the analysis report of the treated industrial effluent collected during the year 2020 and in January, 2021 and also examined the analysis report of the river samples collected at both the upstream and downstream of the Respondent No. 11's unit.Further, paragraph (n) of the Report states that the performance of the existing ETP is found satisfactory with BOD removal efficiency of >96% and COD removal efficiency of about 90 %.

**Submissions regarding violation of Coastal Regulation Zone Notification, 2011 ("Notification")**

1. The Applicant has alleged that the Respondent No 11 is running its unit within the CRZ-I area. The JC 1 Report raised certain concerns in relation to the Respondent being in violation of the Coastal Regulation Zone Notification, 2011.
2. The Respondent No.11 has filed its objection to the JC 1 Report on 07.08.2020 replying to the concerns raised in the JC 1 Report and that there is no violation by the 11<sup>th</sup> Respondent Industry with regard to the Coastal Regulation Zone Notification, 2011. The Committee has not conducted the inspection in accordance with law. The Committee has not verified the records nor has it conducted any survey, for measurements at the spot, therefore the observations of the committee as per the JC 1 Report is not sustainable.

3. Further, the Joint Committee had mentioned its observations in the JC 1 Report at Paragraph 6.0 of Pg. No. 34 giving the details of alleged prohibited activities done by the 11<sup>th</sup> Respondents within the CRZ. The 11<sup>th</sup> Respondents submit that the industrial unit of the Respondent No.11 has been set up in the year 2008 and any expansion that was done pursuantly do not violate any of the CRZ Notification, 2011 Regulations. Further, as alleged in Para 6.1 at Pg No. 35, there is no land reclamation or disturbance of the natural course of the sea water. The Respondent No.11 submits that there is no setting up or expanding units or mechanisms for disposal of wastes in contravention with Section 3(V) of the CRZ Notification. The alleged expansion of the unit does not offend any of the provisions of the Notifications pointed out in the JC 1 Report. Further, it is submitted by the Respondent No 11 that there is no discharge of untreated waste and effluents from the industry of the Respondent No.11 and that there is no dumping of city or town waste including construction debris, industrial solid waste, fly ash for the purpose of land filling.
4. Further, the measurements mentioned at Paragraph 6.1, at Pg No. 35 of the JC 1 Report as falling within the alleged CRZ areas are unsustainable. The JC 1 Report has failed to note the actual state of affairs existing in the concerned unit. It is submitted by the Respondent No.11 that the alleged expanded area falls outside the classified CRZ area. It is humbly submitted that they have not reclaimed any river portion which falls within the zone classified as CRZ-IV. It may be noted that the Respondent No.11 while expanding the unit had only put-up temporary shelters where structures are fixed to the ground with bolts and nuts. These shelters are capable of being removed whenever it is required. it is humbly submitted by the Respondent No.11 that the Committee has not considered that all the shelters lying within the alleged CRZI,II & IV are temporary in nature and not permanent structures.
5. The Committee has not conducted any survey or measurements while classifying the areas as CRZ-1 or CRZ-IV. The measurements and the map that is shown in Pg. No. 36 of the JC 1 Report is incorrect. Further, the measurements of areas which allegedly fall under various zones namely CRZ-I, CRZ-II, CRZ-IV have been mentioned in the JC 1 Report without disclosing or stating the method of measurement undertaken.
6. The Committee in its JC 1 Report has alleged at page number 37 of the JC 1 Report that out of the total area of 22105.996 M2. 52. 59193 percentage of the Respondent No.11's unit is falling under area classified as Coastal Regulation Zone ("CRZ") pursuant to the CRZ Notification 2011 (CRZ Notification). The JC I Report relies on google map measurements. The said google map measurements are incorrect. It is submitted that a correct map reflecting the Respondent No. 11's premises and the correct measurements as per the CRZ classification which is [**Filed as Annexure N along with the further objections raised by the Respondent No.11 to the JC 1 Report**]
7. The Committee in its JC 1 Report at page number 37, stated that the activities of the Respondent No. 11 including the parking shed with metal roofing toilet, cooling tower, weighing bridge, portion of godown. EIP-UASB tank and metal tanks (one 2000 KLD. 4\* 200 KLD) and 10 No's of T20 oil tanks are falling in the area classified as CRZ-II as per the CRZ Notification. It is humbly submitted by the Respondent No. 11 that out of the metal tanks mentioned above one 2000 KID and four 200 KLD tanks function as tanks to store rainwater and serve as emergency effluent water storage tanks. It is submitted that this is extremely essential and useful during the times the ETPs malfunction and ensure that even at times when Factory Instrumentation Protocols (FIPs) fail to function that no environmental degradation takes place. Further it is humbly submitted by the Respondent No 11 as mentioned in the JC 1 Report are all not permanent structures and are in fact temporary in nature fixed to the ground with bolts and nuts and thus are capable of being relocated if necessary. In any event, as is stated hereinabove, the allegation that the Respondent No. 11 is violating the CRZ notification is untenable. Photographs evidencing that the structures falling within the said land are temporary and the

same is [Filed as Annexure O1 and O2 along with the further objections raised by the Respondent No.11 to the JC 1 Report].

### **Environmental Compensation Report**

1. It is submitted that pursuant to the order of the NGT dated 07.02.2020, the Joint Committee was directed to assess the Environmental Compensation in accordance with the guidelines given by the CPCB and file a report. Subsequently the KSPCB issued an Environmental Compensation Report dated 19.03.2020, hereafter called the "EC Report" whereas the Joint Committee in its report at page number 4 had raised an amount of Rs. 29,06,250/- to be paid by the 11<sup>th</sup> Respondent as Environmental Compensation for the following alleged non-compliances:
  - (a) Water consumption and Effluent Generations are exceeding the permitted capacity of consent as on 10.12.2019 as per the Committee's observation
  - (b) Non-compliance if treated effluents with respect to discharge standards from September 2018 to October 2018, as per the records of KSPCB.
  - (c) Not having NOC from the ground Water Authority for drawing ground water as on 10.12.2019, as per the Committee's observation.
  - (d) Non-compliance to Hazardous & other Waste Management Rules as on 10.12.2019, as per Committee's observation.

The Respondent has filed its Objections to the Environmental Compensation Report on 07.12.2020 and the objections are mentioned here under

2. The Joint Committee in its EC Report in the table in Serial No. 2, section 4.1 of the Compensation Report that 11<sup>th</sup> Respondent industry did not comply with the standards with respect to discharge of treated effluents from September 2018 to October 2018. It is submitted that the EC Report read with JC 1 Report at page 18 merely states that the said allegation is based on the KSPCB's records. It is submitted that the JC 1 Report and the EC Report do not contain information on the date of collection of samples or the contents of the specific analysis report indicating that the sample did not comply with the standards prescribed by KSPCB. It is submitted by the Respondent No.11 that by not complying with the points mentioned above, the Respondent No.11 are in violation of Section 21 of the Water Act. It is submitted that as per JC 1 Report at page18, it is stated that the Respondent No. 11 was compliant with the discharge standards from January, 2017 to October, 2019. It is further submitted by the Respondent No. 11 that the JC II Report has examined the analysis report of the treated industrial effluent collected during the year 2020 and in January, 2021 and also examined the analysis report of the river samples collected at both the upstream and downstream of the Respondent No. 11's unit. JC II Report states that the Respondent is adhering to the prescribed standards.
3. The Respondent No. 11 submits that the KSPCB and the Joint Committee have failed follow the procedure laid down under section 21 and section 22 of Water (Prevention & Control of Pollution) Act, 1974 with respect to the alleged non-compliances in S No. 1 and 2 of the table in section 4.1 of the Environmental Compensation Report It is submitted that Section 21 of Water Act lays down the power and procedure to be followed while collecting samples.
4. The Respondent No. 11 submits that in violation of the provision of the Water Act as mentioned above, the KSPCB has not issued notice to the Respondent No.11, it has not collected the sample in the presence of the Respondent No. 11 nor has it provided a part of the sample to the Respondent No. 11. It is further submitted by the Respondent No. 11 that JC 1 Report and JC Report II have failed to set out relevant details, including whether it had sent the sample to the laboratory immediately, without any delay. It is thus submitted by Respondent No. 11 that the KSPCB are in clear violation of Sections 21 and 22 of the Water Act and the question of an alleged non-compliances cannot arise on account of a plethora of lapses on the part of the Respondent No. 15 and hence the question of levying an environmental compensation does not arise in the alleged non-compliances pertaining to S No. 1 and 2 in the table of section 4.1 of

the Compensation Report. It is submitted that the samples collected and the results are not admissible as per Section 11 of the Environmental Protection Act.

5. It is further noted that no copy of analysis reports with respect to samples collected by KSPCB or the JCI has been served on the Respondent No.11, which is gross violation of section (22) (2) of the Water Act. Further in the case of, In **Delhi Bottling Co. Pvt. Ltd and ors Vs. Central Board for the Prevention of Control of Water Pollution AIR 1986 Delhi 152**, the Hon'ble High Court Delhi has observed as follows:

*"Sub-section (2) of Section 21 states that the result of any analysis of a sample of any sewage or trade effluent taken under Sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of Sub-sections (3), (4) and (5) are complied with "*

Further, in the case of **Gauri Maulekhi Vs. Union of India and Ors. Original Application No. 486 of 2014 and M.A. No. 800 of 2014**, the Hon'ble Principal Bench of National Green Tribunal, New Delhi, vide para 25 has held that:

*"p.25. Thus, it can very well be seen that for analysis results to be admissible in evidence in any legal proceedings the procedure as stipulated in the said provisions is to be followed. No scope for any mischief making the findings of the analysis contentious is left upon following such procedure. Moreover, what law requires has to be followed."*

6. Therefore, it is submitted by the Respondent No. 11 that the alleged non-compliances in (i) and (ii) in toto cannot be relied upon as section 21, 22 of Water Act and section 11 of EP Act have not been complied with and thus, the question of non-compliance and environmental compensation does not arise.
7. The submissions of usage of groundwater, management of hazardous waste and standards of treated effluent has been dealt with extensively in the preceding paragraphs of this Written Submissions.
8. It is therefore humbly submitted that the 11<sup>th</sup> Respondent is functioning in a very safe matter following all protocols and after obtaining all concern permissions from prescribed authority the 11<sup>th</sup> Respondent Industry is also not in violation of CRZ notification and has a well elaborated waste management effluents plant and Hazardous waste storage systems

Therefore it is humbly prayed by the Respondent no.11 that the Hon'ble NGT to dismiss the present application and to dismiss the Environmental compensation Report and pass such necessary Orders as the Hon'ble Tribunal may deem fit and proper and thus render justice.

Dated at Chennai on this the 3<sup>rd</sup> day of March 2022



Counsel for the 11<sup>th</sup> Respondent