

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**

**SOUTHERN BENCH, CHENNAI**

**Original Application 396/2013 (SZ)**

**Shibu Manuel, Secretary Green Action Force Vs The Govt of India &  
Others**

&

**Original Application 242/2016 (SZ)**

**K Muhammed Iqbal Vs Kerala State Pollution Control Board & Others**

&

**Original Application 262/2017 (SZ)**

**K Muhammed Iqbal Vs Kerala State Pollution Control Board & Others**

Sl.No	Description	Pages
1	Updated Status report filed by the Chief Environmental Engineer	1-5

Dated this the 18<sup>th</sup> day of December 2020

**Rema Smrithi**, Advocate  
ADDITIONAL STANDING COUNSEL FOR THE RESPONDENT

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
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Others**

**UPDATED STATUS REPORT FILED BY THE CHIEF ENVIRONMENTAL  
ENGINEER, REGIONAL OFFICE, ERNAKULAM FOR AND ON BEHALF  
OF THE KERALA STATE POLLUTION CONTROL BOARD AS PER THE  
ORDER DATED 23.09.2020.**

Adv. Rema Smrithi.

ADDITIONAL STANDING COUNSEL FOR THE RESPONDENT:

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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
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THE KERALA STATE POLLUTION CONTROL BOARD AS PER THE ORDER  
DATED 23.09.2020.**

I, M.A Baiju, 54 years, S/o M.K Aravindakshan, now working as the Chief Environmental Engineer, Regional Office, Kerala State Pollution Control Board, Ernakulum. I am competent to and duly authorized to represent the Board. I know the facts and circumstances of the case. The factual submissions made here under are true and correct to the best of my knowledge, information and belief. In these circumstances, it is just and necessary that this Hon'ble Tribunal may be pleased to accept the accompanying information on file and it is so humbly prayed in the interests of justice in this case.

1. I may humbly submit that the recent order dated 23.09.2020 in the above-mentioned original applications is specifically ordered as follows

*So, we direct the committee constituted by this Tribunal in O.A. No. 396 of 2013 to look into the issues in OA. No. 262 and O.A. No. 242 of 2016 as well. The Principal Bench of National Green Tribunal in respect of polluted river has directed the Chief Secretary and Principle Secretaries of Irrigation as well as local administration to have a co- implementing the remedial measures for making the polluted river stretch pollution free and it appears that on the basis of the directions given by the Principal Bench, several committees from the State level and the district level have been formed , so as to supervise the implementation of the remedial measures and make the polluted rivers free from pollution. In spite of all those things the result is not to the extent expected and to the satisfaction of the Tribunal. So, the Chief Secretary as well as the Principal Secretary of the local administration and the Irrigation Department are also directed to involve in this issue and make earnest effort to provide necessary financial as well as other assistance for the purpose of implementing the remedial measures suggested by the committee, so that the process of the*



*M.A. Baiju*  
M. A. BAIJU  
Chief Environmental Engineer

implementation can be quickened. Any delay in implementation of such recommendation will only result in further disaster which is the responsibility of the State Government to prevent and they are expected to prevent the disaster from being happening and not to act after the disaster has happened.

2. It is respectfully submitted that during hearing CONDUCTED ON 23.09.2020 the Hon'ble Tribunal stated as follows regarding remediation procedures,

*"We also directed the Ministry of Environment, Forests and Climate Change (MoEF & CC) to consider the request for sharing the expenditure for remediation by the Central Government and the State Government in the ratio of 40:60 and directions have been issued to the Chief Secretary of State of Kerala as well as to the secretary, Ministry of Environment, Forests and Climate Change (MoEF & CC), New Delhi to consider the same and come with the proposal".*

3. I may humbly submit that actually, the Central Pollution Control Board (CPCB) under Ministry of Environment, Forest and Climate Change (MoEF& CC), Government of India has been entrusted as the implementing agency for the project which comprises remediation of 12 priority hazardous waste contaminated areas spread across the country. The hazardous sites which pose risks to human health and the environment were selected to be remediated as part of this initiative. Such an identified site is the Eloor- Kuzhikandom Thodu at Eloor in Ernakulam District. The remediation work of Eloor-Kuzhikandom Thodu was taken up under National Clean Energy Fund (NCEF) project initiated by MoEF & CC with support from the State Pollution Control Boards. Now the National Clean Energy Fund(NCEF) is no more existing and the balance fund of Rs. 12.21 Crores need be brought to this so that the project can be satisfactorily completed. Higher level discussions are going on to mobilize the balance fund. However, final BOQ has been submitted by M/s KITCO Ltd., a Government approved consultant for the entire project of remediation and the pending matter like technical sanction for the DPR will be settled as and when a decision is taken by the higher authorities of M/s HIL towards land allocation for setting up of ETP. Towards this an ultimatum has been given to M/s HIL and a formal agreement will be made after proper response from M/s HIL in this regard. Also, tender procedures will be completed for the first phase of the remediation ie, A1 Area (M/s HIL land). Copy of the letter issued to M/s HIL on 24.11.2020 is produced herewith and marked as **Annexure A**.

4. It is respectfully submitted that, in fact there are four companies found to be guilty in the case of pollution caused to Kuzhikandom thodu among which M/s Merchem Limited stopped their operation in early 2000 and has been taken over by another company in the name and style M/s Merchem (India) Limited. It is pertinent to note that the new company M/s Merchem (India) Limited has got an order dated 23.01.2019 passed in M.A 515 of 2018 in CP



  
M. A. BAIJU  
Chief Environmental Engineer

(IB) 689 of 2017. from National Company law Tribunal (NCLT), Chennai that they are not bound to pay the compensation to this remediation procedures as well as from remitting pending dues towards the drinking water supply programme to residents of Eloor. M/s Merchem (India) Ltd has filed an M.A before the Hon'ble National Company Law Tribunal, Kochi Bench. The reliefs sought for against the Board is in the light of the demand made by the Board in respect of Company's liability to pay the amount towards NCEF Project ie, Kuzhikkandom Thodu Remediation and the Water Supply Scheme to the affected families of Eloor Municipality etc. It is respectfully presented that though the Board had filed a counter affidavit, no consideration was given to the Board whereas the Hon'ble Court delivered an order in favour of the company M/s Merchem (India) Ltd. Copy of the order of the NCLT, Kochi Bench is produced herewith and marked as **Annexure B**. It is important to note that the Board is now proceeding with appeal before the National Company Law Appellate Tribunal (NCLAT), since there is no other way to obtain Rs 1.41 Crores which is already pending towards M/s Merchem's contribution and balance fund towards remediation project due to the discontinuation of NCEF for which about 12.21 Crores need to be arranged additionally and fund towards the earlier mentioned water supply programme.

5. I may humbly submit that the Hon'ble Tribunal through the order dated 23.09.2020 also made specific comments on pollution caused to river Periyar and are as follows,

*"The committee is directed to submit a further consolidated progress report of implementation of the remedial measures suggested to make river Periyar pollution free along with the subsidiary streams and canals which also joins the Periyar as without remedying the pollution caused to those canals and rivers, any amount of steps taken in Periyar river alone is not going to achieve the desired results".*

*"The committee is directed to submit a further progress report of the implementation and also the water quality of the Peiryar River so as to enable this tribunal to understand as to whether on account of the remedial measures taken any improvement has caused in the water quality of the river".*

*"Further, they are also directed to go into the question as to there were any clandestine method of discharging untreated effluents by the industries into river peiryar and that will also have to find out by conducting surprise inspection of the industries and if there is any such illegal act is found, regulating authorities are directed to take steps against those Industries or Institutions who are discharging untreated effluents into river Periyar in accordance with law".*

*"They are not expected to get any further orders from this Tribunal for that purpose. Once it is found during surprise inspection, that there is violation then, they will have to act swiftly in accordance with law to prevent such mischief and not to wait for the orders of this Tribunal to exercise their statutory powers which has been vested in them to protect environment".*

*"The committee is directed to submit the progress report for implementation of the remedial measures and its progress as directed by this Tribunal on or before 31.12.2020 by e-filing along with necessary hard copies to be produced as per rules".*

The Registry is directed to communicate this order to the members of the committee constituted in O.A. No. 396 of 2013 and O.A. No. 262 of 2017 and also



*M. A. BAIJU*  
Chief Environmental Engineer

to the Chief Secretary, State of Kerala, the Principal Secretaries of Irrigation and Local Administration, so as to enable them to comply with the direction of this Tribunal".

"For consideration of further report, post on 21.12.2020".

6. It is respectfully submitted that the Hon'ble tribunal through order dated 19.08.2020 in another case ie, OA 395 of 2013, an application which is primarily against rampant dumping of solid wastes including slaughter house and hospital wastes along the banks of river Periyar in Idukki District and passed an order which is as follows

"Further, in order to ascertain the nature of things which are to be assessed and immediate steps to be taken as temporary measures to avoid pollution being caused to the Periyar River, we feel that that the committee appointed by this Tribunal in Original Application No.396 of 2013 can be directed to go into these aspects on the basis of the observations made by the Chairman, State Level Monitoring Committee and come with a plan for remedying the situation in an effective manner and submit to this Tribunal before the next hearing date. We direct accordingly".

"The Registry is directed to communicate this order along with the report submitted by the Chairman, State Level Monitoring Committee dated 14.08.2020 in this case to the committee members in O.A. No.396 of 2013 so that they can go into the question and submit a proper action plan for remedying the situation in an effective manner as directed by this tribunal".

7. It is respectfully submitted that during hearing of the OA 395 of 2013 on 05.11.2020 the Hon'ble Tribunal directed as follows,

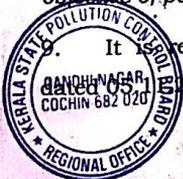
"It is seen from the report submitted by the Chief Secretary that they have received the report submitted by the supervisory committee wherein, it was mentioned that they are expected to complete the final report to be submitted on 31.01.2021 and they want time up to 28.02.2021 for submission of the action plan by them".

8. I may humbly submit that the Chief Secretary as per the report submitted before the Hon'ble Tribunal stated as follows,

"In accordance with the order of the Tribunal, assessment of the present scenario of pollution along Periyar is to be reported by the Committee constituted by the Tribunal. The combined committee (in O.A. No.396/2013, O.A. No.395/2013, O.A. No.262/2017) is to come up with a definite action plan, based on field inspections. Final report submission of the committee before NGT is envisaged to be completed by 31.01.2021, as per the report of the Joint Committee in O.A. 395 of 2013 (SZ)".

"In the above circumstances, it is the considered opinion that a comprehensive action plan may be evolved by the State, for the abatement of pollution issues of Periyar River, relying on the latest report and findings of the committee appointed by the Tribunal, comprising of field experts, so that the objective of pollution free Periyar can be materialised".

9. It is respectfully submitted that the Hon'ble Tribunal through order dated 05.11.2020 in OA 395 of 2013 finally directed as follows,



  
M. A. BAIJU  
Chief Environmental Engineer

*"So, considering the circumstances and also the nature of work involved, we feel that the request made by the Government can be accepted. The committee as well as the respective departments and the State Government are directed to submit their respective further action taken reports and progress reports and action plan as directed by this Tribunal on or before 26.02.2021 by e-filing along with necessary hardcopies to be produced as per Rules".*

10. I may humbly submit that in this context an action plan to monitor all the drains/streams, tributaries of Periyar and to assess the status of Periyar river pollution was prepared during meeting of the combined committee as mentioned in the report of the Chief Secretary mentioned earlier in para 7 above, the first phase of which was already over (Idukki Stretch) and the second phase will be over by 19.12.2020 (Ernakulam/Thrissur Stretches). Copy of the minutes dated 22.10.20 and action plan prepared by the combined committee for monitoring is produced herewith and marked as **Annexure C**. Copy of monitoring schedule for first and second phases are produced herewith and marked as **Annexure D & Annexure E** respectively.

11. I may also humbly submit that the participation of experts from different esteemed organizations viz. CPCB, NEERI, SEIAA and SPCB and identification of different polluted stretches/establishment through surveys and its precise monitoring planned along the entire stretch of Periyar from its beginning, from Idukki to Ernakulam/Thrissur and preparation of action plan will definitely help to address the issues raised by the Hon'ble Tribunal reiterated in paragraph 5 and bring back the river in its original condition. Also, there are possibilities to formulate future course of actions not to repeat such illegal practises of discharging effluent from industries or sewage from establishments/certain drains provided by the LSGDs which seems to be the main issue of river pollution as observed from preliminary surveys/monitoring conducted along different stretches of Periyar. In this context it is observed that the whole process of monitoring of the entire stretch of the river and preparation of an action plan is time consuming and austerey challenging.

All that is stated above are true to the best of my knowledge information and belief.

Dated this the 18<sup>th</sup> day of December 2020.



DEPONENT

**(Chief Environmental Engineer)**

**M. A. BAIJU**  
Chief Environmental Engineer

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**

**SOUTHERN BENCH, CHENNAI**

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SL No	Description	Pages
1	<b>Annexure (A)</b> - Copy of the letter issued to M/s HIL dated 24.11.2020	1-3
2	<b>Annexure (B)</b> - Copy of the order 06.11.2019 of the NCLT, Kochi Bench	3-47
3	<b>Annexure (C)</b> - Copy of the minutes dated 22.10.20 and action plan prepared by the combined committee for monitoring	48-55
4	<b>Annexure (D)</b> - Copy of monitoring schedule for first phase	56-60
5	<b>Annexure (E)</b> - Copy of monitoring schedule for Second phase	61-64

Dated this the 18<sup>th</sup> day of December 2020

**Rema Smrithi**, Advocate  
ADDITIONAL STANDING COUNSEL FOR THE RESPONDENT



PCB/HO/GEN/616/06

Date: 24.11.2020

**Regd . A/D**

From

The Chairman

To

Sri. P.D. Sankpal  
Unit Head  
Udyogamandal,  
Kerala- 683501  
uhudyogamandal@hil.gov.in

Sub:- OA 560/2018- Providing land for establishing STP as part of Eloor  
Kuzhikandam thodu remediation – identified land of M/s. HIL - reg

Ref:-

1. Minutes of the Video conference meeting held by the Secretary (Industries) on 25.08.2020
2. This office letter of even no. dated 16.11.2020
3. Letter No. MTS/KSPCB/2020 dated 19.11.2020 from M/s. HIL

Sir,

As per the Minutes cited 1<sup>st</sup> you were instructed to place the matter of providing sufficient land either on lease for 99 years at a nominal rate or free of cost, before the Board meeting for a favorable decision for land transferring in connection with Kuzhikandam thodu remediation. Instead of conducting the Board meeting for transferring the land, you have raised some queries thwarting the Board's letter cited 2<sup>nd</sup>. However, your queries are clarified herewith.

The land under the ownership of the industry in question was proposed

for the installation of temporary ETP and associated facilities since the remediation is proposed to be conducted in three stages - A1 area( inside HIL), A2 area (inside Merchem), and A3 area (residential area). The A2 and A3 area are very adjacent to HIL Company. The major activities in the remediation work are excavation, storage of excavated soil and sediments, analysis of soil, pumping of surface and groundwater, treatment of surface and groundwater, analysis of treated water, discharge of treated water, and disposal of hazardous soil/sediments to TSDF. Land is required for setting up infrastructures for the above activities. The land should be easily accessible, and shall be easy for vehicular movement and shall have power requirement and easy for transportation and loading/unloading activities. Above all, since the project is done with the participation of industries and State Govt fund, the safety of facilities installed such as ETP, staging area, etc for the remediation works need to be ensured. Board found the site of M/s HIL suitable meeting all the above requirements for the remediation works and being a Public Limited Industry, all necessary safety can be assured for the facilities installed inside the industry. Also, the next phases of remediation A2 and A3 are very adjacent to M/s HIL and the water and sediments/soil excavated at two sites (A2 & A3) can be easily pumped to the ETP, if installed in the land area of HIL. The supervised committee constituted with respect to the Hon'ble NGT order has also approved the identified land of M/s HIL and accordingly, the meeting with the Industries Dept was convened in which the Board of director meeting was proposed by your representative.

Also, with regard to Terms & Conditions on the acquisition of 75 Cents of land now with M/s HIL(India) Ltd, the period of use, the usability of the land after the tenure, compensation to be given to HIL for use of land, it is stated as follows

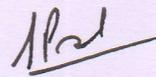
- a) As per the DPR, a total of 5 monitoring wells need to be established in the three areas A1, A2, and A3, and groundwater from the monitoring wells shall be pumped and treated till the groundwater achieves the standards

prescribed by the Board.

- b) The DPR says the maximum years for the treatment is 10 years, hence, the ETP installed for the groundwater remediation will be operated till the groundwater satisfies the standards and the maximum period up to 10 years (we will fix it as 15 years allowing additional 5 years for unforeseen incidents).
- c) After completion of the work, the facilities will be removed from the site and the industry can utilize the land for their industrial activities.
- d) Since the funding of National Clean Energy Fund (NCEF) is not going to happen as the scheme is no more in force, the balance fund needs to be collected from all these units and the percentage contribution shall be as decided during the meeting convened by the Hon'ble Chief Minister on 21.12.2017.

Hope the above clarifies your queries. Please conduct the Board meeting immediately for a favorable decision for the transferring of land free of cost for the aforementioned purpose.

Yours faithfully,



**CHAIRMAN**

Copy to :

- 1) Chief Managing Director  
Hindustan Insecticide Limited  
2nd Floor, Core - 6,  
SCOPE Complex,  
7, Lodhi Road,  
New Delhi - 110 003  
India.  
[hilheadoffice@gmail.com](mailto:hilheadoffice@gmail.com)
- 2) The Chief Environmental Engineer  
Regional Office, Ernakulam
- 3) The Senior Environmental Engineer  
ESC, Eloor

MA No.9/KOB/2019 &amp; connected M.As

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH, KERALA**

**M.A.09/KOB/2019**

with

**MA/12/KOB/2020, MA/16/KOB/2020, MA/17/KOB/2020,  
MA 18/KOB/2020 and MA/19/KOB/2020**

**in**

**CP (IB)/689/2017 (Chennai Bench)**

*(Under Section 60(5) (C) Read with Section 31(1) & 33 of IBC 2016)*

**Order delivered on: 06.11.2020**

Coram:

**Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)**

**MA/09/KOB/2019**

M/s Merchem Limited  
Having office at V0774, 141 Development Area,  
Edayar, Muppathadom, Paravur, Cochin-110  
Represented by its Authorized Signatory  
B.Unnikrishnan Nair

..... **Applicant**

**Vs.**

1.The Department of Factory & Boiler  
Represented by its Director,  
Suraksha Bhavan, Kumarapuram,  
Thiruvananthapuram-.11

2. Office of the Inspector of Factories and  
Boilders Gr.I, represented by its Inspector  
Ernakulam, Civil Station, Kakkanad.

3. The Kerala State Pollution Control Board  
Represented by its Member Secretary  
Pattom, Thiruvannthapuram-4.

4. The Environment Engineer,  
The Kerala State Pollution Control Board  
Fact Qr.No.S-5, Udyogmandal PO, Ernakulam-683501.

MA No.9/KOB/2019 & connected M.As

5. The Department of Power represented by its Secretary  
Office of the Chief Electrical Inspector,  
Housing Board Building, Shantinagar,  
Thiruvananthapuram-1
6. The electrical Inspector,  
Office of the Deputy Chief Electrical Inspector,  
Electrical Inspectorate, Thoppil Estate,  
Vytila PO, Kochi-19.
7. The Kerala Water Authority, represented by its  
Director, Jalabhavan, Vellayambalam,  
Thiruvananthapuram-10.
8. The Executive Engineer, the Kerala Water  
Authority, Kochi Region, Near Kerala High Court,  
Kochi-31.
9. Office of the Executive Engineer, the Kerala Water Authority  
Water Supply Division, Kalamassery, Kcchi-31.
10. The Kerala State Electricity Board,  
Represented by its Chairman & Managing Director,  
Vyduhi Bhavanam, Pattom, Thiruvananthapuram.4.
11. The Asst.Executive Engineer, Kerala State Electricity Board,  
Represented by its Assistant Executive Engineer,  
HMT Kalamassery, Kochi, Kerala-683104.
12. The Tahzildar (Land)  
Paravur Taluk, Ernakulam-683513.
13. The District Collector,  
Collectorate, Kakkanad, Ernakulam-682030
14. The Assitant Commissioner I, Office of the  
Assistant Commissioner, Department of Commercial Taxes,  
Special Circle, Commercial Taxes, Aluva.
15. The Regional Provident Fund Commissioner II  
Regional Provident Fund Organization,  
Regional Office, 346/685A, Bhavishyanidhi Bhavan,  
Kaloor, Kochi-682017.
16. The Enforcement Officer,  
Employees Provident Fund Organization,  
Regional Office, Bhavishyanidhi Bhavan,  
PB No.1895, Kaloor, Kochi.17.
17. The Joint Director General of Foreign Trades,  
A Block, V Floor, Kendriya Bhavan, Kakkanad, Cochin.37.

MA No.9/KOB/2019 & connected M.As

18. The Deputy Director General of Foreign Trades,]  
Office of the Additional Director General of Foreign Trade,  
Kendriya Sadan, 6<sup>th</sup> flkloor, C&E Wing, 17<sup>th</sup> Main Road,  
Koramangala, 2<sup>nd</sup> block, Bangalore.34.

19. The Secretary of Eloor Municipality,  
Eloor Municipal Office, Eloor, Kochi-683501. Kerala.

20. The Gujarat Industrial Development Corporation,  
Represented by its Vice Chairman and Managing Director,  
Block 3/4/5 Udhyog Bhavan, Sector 11  
Gandhinagar, Gujarat.

21 The Regional Manager, Gujarat Industrial Development  
Corporation, Com/Plot No.320/2, Asian Trade Centre,  
3<sup>rd</sup> floor, Near Asian Paints Chowkdi, GIDC,  
Ankleshwar, Dist. Bharuch, Gujarat.

22. The Deputy Executive Engineer,  
Gujarat Industrial Development Corporation,  
Panoli Notified Area Authority, Water Supply Division,  
Plot No.409/C, Near Fire Station Building  
Panoli, Dist. Bharuch, Gujarat.

23. Narmada Clean Tech, represented by its Managing Director,  
Surati Nagar, Near Gujarat Gas Office, Umarvade Road,  
Ankaleshwar, Dist. Bharuch, Gujarat.

24. The Assistant Commissioner of Sales Tax,  
Sales Tax Department, Govt. of Gujarat, Ghatak 56, Ankleshwar  
Taluka Seva Sadan, Dist. Bharuch, Gujarat.

25. The Assistant Commissioner of Professional Tax,  
Office of the Commsisioner of Professional Tax,  
Govt. of Gujarat, 2<sup>nd</sup> floor, Taluka Seva Sadan, Ankleshwar  
Dist.Bharuch, Gujarat.

..... **Respondents**

**MA 12/KOB/2020**

The Gujarat Industrial Development Corporation  
and another

Vs.

Merchem Limited and another

..Applicants

.. Respondent

**MA 16/KOB/2020**

The Department of Factory & Boilers and another

Vs.

... Applicants

MA No.9/KOB/2019 & connected M.As

Merchem Limited and another .. Respondents

**MA/17/KOB/2020**

Assistant Commissioner ..Applicant

Vs.

Merchem Limited and another .. Respondent

**MA/18/KOB/2020**

The Tahsildar (Land), Paravoor Taluk & Another ....Applicants

Vs.

Merchem Limited & Another ...Respondents

**MA/19/KOB/2020**

The Electrical Inspector and another .. Applicants

Vs.

Merchem Limited another ..Respondents

**Parties/Counsel present (through video conference)**

For applicants in MA.9/KOB/2019 :Advocates. RaviRajagopalan/Ramalingam,  
For applicants in M.A/12/KOB/2020 Advocates M/s Bechu Kurien & Company  
For applicants in MA 16 to 19/KOB/2020:Advocate Muhammed Fazil, Govt.Pleader

For respondents in MA 09/KOB/2019 : Adv. Muhammed Fazil, Govt.Pleader for  
R1,R2,R5, R6, R12, R13 and R14  
Adv. P.Benjamin Paul, R7,R8 & R9  
Adv. Sajeev Kumar K.Gopal for R.15&R16  
Adv.S.Gopakumar for R19  
Adv. Paul Jacob for R.20, R21 & R 22  
Adv.Akhil Suresh, R10 & R11  
Adv.T. Naveen for R3.

For Respondents in M.As 12, 16,17,  
18 & 19/KOB/2020 Adv.Ramalingam for R1  
Shri Ravindra Belayur, R.P. for R2

**ORDER**

All the aforesaid M.As are considered together being inter-connected and pass the following common order.

MA No.9/KOB/2019 & connected M.As

2. M.A./9/KOB/2019 has been filed by Merchem Limited represented by its authorized signatory -B Unnikrishnan Nair, Corporate Debtor in CP (I.B) No. 689 of 2017 under Section 60 (5) (c) read with Section 31 (1) of the Insolvency & Bankruptcy Code, 2016 for the following reliefs:

- i. Declare that the approved Resolution Plan is binding on the stakeholders including every one of the Respondents.
- ii. Direct that the amounts shown in the books of the respective Respondents, antecedent to the date of approval of Resolution Plan, still being shown as on date as due and payable by the Respondents in their books of account, as listed in Annexure 1, stands discharged in full and consequently be reversed or written off in the books of the respective Respondents in accordance with the approved Resolution Plan.
- iii. Direct that the Respondents shall cease and desist from claiming any or all debts or obligations by whatever name called, arising or pertaining to the period prior to the date of approval of Resolution Plan being 23.01.2019 and shall provide a certificate of no-dues to the Applicant signifying that there are no amounts due or payable by this Applicant, as aforesaid.

3. The Applicant Company is the Corporate Debtor (hereinafter referred to as "Applicant" or "CD") which was admitted into Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") under the Insolvency & Bankruptcy Code 2016 (hereinafter referred to as "Code") vide order dated 15.01.2018 in C.P.(IB) 689 of 2017, before the Chennai Bench of NCLT.

4. The Corporate Insolvency Resolution Process came to an end upon the approval of the Resolution Plan submitted by **Acme Chem Limited**, the Successful Resolution Applicant ("SRA") by the Chennai Bench of NCLT under Section 31(1) of the Code, by its Order dated 23 January 2019 passed in M.A 515 of 2018 in CP (IB) 689 of 2017.

5. Pursuant to the approval of the Resolution Plan, the total Resolution Plan amount of Rs 115.2520 Crores had been remitted by the SRA into the account opened with lead member of the Committee of Creditors, the State Bank of India, Palarivattom

MA No.9/KOB/2019 & connected M.As

Branch, Kochi on 18.03.2019, for being disbursed to the stakeholders in trust, by the Resolution Professional in accordance with the approved Resolution Plan. The said amount is being disbursed to all the stakeholders by the Resolution Professional, who is in charge of the disbursement of the Plan as approved by the NCLT, Chennai Bench, upon completion of the necessary documentation /formalities required on the part of the stakeholders

6. The learned counsel for the RP stated that the aforesaid Resolution Plan is presently under implementation with the management of the Corporate Debtor Company/Applicant having been taken over by the SRA and its nominees assuming office as its Directors.

7. The learned counsel further stated that Respondents 1 to 25 in this application are Statutory Creditors or local authorities and their supervisory bodies, under the Central or the State Governments of Kerala and Gujarat and are Operational Creditors within the definition of Section 5(20) read with Section 5(21) of the Code.

8. It is stated that none of these Operational Creditors filed any Claim before the IRP or RP within time, in so far as their antecedent operational debt is concerned in accordance with the provisions of the Code and the Regulations thereunder. Thus, there was no admitted liability to be paid to these Respondents under the Resolution Plan which was approved by the Chennai Bench of the NCLT under Section 31(1) of the Code.

9. It is further stated that in accordance with the Resolution Plan the Claim as well as the debt in respect of the same, for every one of the Respondents, therefore stood fully discharged. Upon approval of the Resolution Plan, the Respondent Creditors are

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obligated to reverse, write off or extinguish the liabilities/debt due to them by the Corporate Debtor, in their books and cannot insist for payment of the same.

10. It is their further contention that despite the approval of the Resolution Plan under Section 31(1) of the Code and the directive therein that the same is binding on all stakeholders including statutory creditors, the Respondents, feigning ignorance of the same continue to:

*a. Show the Corporate debtor as being liable to pay amounts in their books, as per listing provided in Annexure 1, which pertain to the period prior to the approval of the Resolution Plan;*

*b. Refuse to discharge the Applicant Corporate Debtor of the respective operational debts in accordance with the approved Resolution Plan;*

*c. Insist that the said amount of antecedent operational debt as per their records should be paid as a condition precedent;*

*d. Withhold or refuse to grant or renew or approve or extend the relevant permissions or clearances or licenses or connections or consents or authorizations and such other statutory entitlement that can and ought to be granted by them for operating the manufacturing units of the CD in the State of Kerala and Gujarat, unless the said amounts due as per their books as aforesaid are paid by the CD now.*

11. The applicant further stated that consequent to the assumption of the management of the affairs of the Corporate Debtor by the new Board of Directors, the Corporate Debtor has communicated with every one of the Respondents herein, bringing to their attention the fact that their action as above enumerated in points (a) to (d) is contrary to the provisions of the Code and had called upon them to co-operate for the orderly implementation of the approved Resolution Plan and assist in the revival of the operations of the Corporate Debtor.

12. The copies of the said communication with every one of the Respondents, individually and their responses is provided in the communication trail, with the Respondents would show that, notwithstanding the entreaties of this Applicant, inviting

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their attention to the provisions of law, the Respondents have continued to maintain their belligerent stand, professing ignorance of the relevant statutory obligations on them and insisting on remittance of the amounts due in the name of the Corporate Debtor in their books, which claim/obligation/debt, this Applicant had been discharged from, under the approved Resolution Plan.

13. The Applicant further submits that as of date, the Respondents have refused to heed the Applicant's request but are seeking payments. Thus, the Respondents herein are in continuing default of their obligations under the Code, by persisting with their actions enumerated in points (a) to (d) above and thus refusing to be bound by the approved Resolution Plan.

14. Further in so far as the Respondents State of Kerala and State of Gujarat being the representing statutory authorities for the purposes of Goods and Services Tax Act, 2016, have framed Rules and also rolled out the GsT Software System whereby current and future taxes (period subsequent to approval of Resolution Plan) cannot be paid by the Applicant Corporate Debtor, unless past dues pertaining to earlier years prior to CIRP Commencement date or Resolution Plan approval date, are paid. It is, therefore, imperative that for the Corporate Debtor to properly maintain the GST books, upon commencement of commercial activity, the Respondents herein being the GST Authorities for Kerala and Gujarat, pass the relevant entries reversing the tax liabilities pertaining to prior period which have been dealt with under the approved Resolution Plan.

15. It is further submitted that despite the Insolvency and Bankruptcy Code Amendment Act 2019 and the Government of India resolve to improve ease of business, the Respondents herein by their actions continue to act contrary to public

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policy and the laid down law, thus impeding the orderly and timely implementation of the approved Resolution Plan.

16. The Applicant has also submitted that these recalcitrant and condemnable conduct of the Respondent Creditors severally, is prima facie:

a. Violative of Section 31(1) of the Code;

b. In derogation to the orders of the Hon'ble Adjudicating Authority while approving the Resolution Plan under Section 31(1);

C. Acts in contravention of the Resolution Plan, punishable under Section 74(3) of the Code

17. It is further stated that the said actions of the Respondents as enumerated in paragraph 10(a) to (d) are ex-facie in contravention of Section 31(1) which mandates that an approved Resolution Plan is binding on all stakeholders including statutory creditors and authorities such as the Respondents herein.

18. The Applicant further submitted that the Corporate Debtor and the SRA have completed all their obligations fully in accordance with the approved Resolution Plan and the actions of the Respondents as enumerated in point (a) to (d) mentioned above is contrary to law, in derogation of their statutory obligations and designed to the art the successful implementation of a Resolution Plan approved by the Chennai Bench of NCLT under Section 31(1) of the Code.

19. The Applicant further submitted that the Corporate Debtor apart from being prejudiced by the aforesaid actions of the Respondents, is also forced to incur costs because of the delay in the sanction of renewals/extensions /permissions by the Respondents which is impacting the timely implementation of the approved Resolution Plan. It is further submitted that despite the plan being approved in January 2019, the Resolution Applicant and the Corporate Debtor are being made to run from pillar to post by these Statutory Authorities, who are bound to respond quickly and, in a time

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bound manner, in line with the essence of the Code. Therefore, in the light of the foregoing circumstances, the applicant prayed to allow this application and dismiss all other application filed separately.

**COUNTER FILED BY R1 & R2 :**

20. The R1 & R2 submitted that these respondents issued communication No. L-1/7995/2017/F&B dated 27.03.2018 to the applicant company. In response to the same, the R2 issued a communication to the Insolvency Resolution Professional Mr. Raveendra Beleyor demanding the factory license fee to be remitted by the company as ₹ 1,34,037/-.

21. It is submitted that According to Section 17 (2) (d) of I & B Code 2016 R.P or IRP have the authority to access the books of account, records and other relevant documents of the Corporate Debtor available with Government Authorities, Statutory Auditors, Accountants and such other persons as specified. In this case, this can be easily verifiable from the companies' books of account by the IRP, but this exercise was not done by the R.P. It is further stated that liability of the company that was existing during the Resolution Process cannot be written off altogether on the ground that it was not submitted to R.P or IRP as this liability arose during the exercise of various statutory provisions of Factories Act, 1948 and Kerala Factories Rules 1957.

22. The learned Government pleader appearing for the Respondents submitted that a Resolution Plan proposed by a Resolution Applicant can be approved by the Adjudicating Authority, if it satisfies the provisions of Sec.30 (2) (e) of I & B Code 2016. Accordingly, the NCLT approved the Resolution Plan after rejecting the concession/reliefs sought in Para 8.1 (B, C, D, E, F, G, H, I, J, K, L, M, T, U), 8.2, 8.4, 8.10 of the Resolution Plan. The I & B Code Amendment Act, 2019 came into force in August 2019 only. This Tribunal passed the order in January 2019. Hence the

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amendment Act, 2019 is not applicable in the matter under consideration. It is further stated that the claim put forward by the Government Department with regard to license fee stands valid due to the disallowing item 8.4 by the NCLT. Therefore, the allegation of the applicant in MA/9/KOB/2019 is baseless.

23. Respondents 1 & 2 being a statutory body does not have objection in the implementation of the Resolution Plan, if the dues were cleared by the applicant. Further applicant has not submitted any application in the prescribed format for renewal of license to the respondents 1 & 2. It is pertinent to note that Sec. 30 (2) (e), of the code demands that Resolution Plan shall not contravene any of the provisions of law for the time being in force. As such the due arose during the exercise of various statutory provisions of Factories Act and Kerala Factory Rules cannot be extinguished.

24. It is their further submission that neither the applicant's company nor the Resolution Professional has at any time intimated/put on notice, the respondent 1 & 2 about the above CIRP. In view of the lack of notice the respondents have been deprived of making its claim before the Resolution Professional. The learned counsel stated that the insolvency proceedings have been maliciously and fraudulently instituted by the Company itself to deprive its creditors their statutory dues. The proceedings are, therefore, malafide and cannot be permitted to be proceeded with its present form.

**COUNTER FILED BY R3 & R4:**

25. The 3<sup>rd</sup> Respondent in its counter stated that the respondent is a Statutory Body constituted under Section 4 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as Water Act) for discharging its duties and functions under the above Act within the territory of State of Kerala. With regard to the averment to the effect that the respondent Nos. 3 and 4 have not filed any claim before the IRP

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or RP with respect to their alleged antecedent operational debt in accordance with the provisions of the Code and there was no admitted liability to be paid to respondents under the Resolution Plan, approved by the NCLT, by granting concessions/exemptions as enumerated under Para 7.2 (A&B), 8.1(A,N,O,P,Q,R,S) Para Nos. 8.3, 8.5, 8.6, 8.7, 8.8 and 8.9 of the Resolution Plan, a perusal of the said Order dated 23.1.2019 approving the Resolution Plan shows that certain specific reliefs and concessions were sought by the applicant from the NCLT and from other Government Authorities.

26. Since the reliefs and concessions sought by various parties, M/s. Merchem Ltd. will not be absolved from its liability to pay the amounts towards NCEF Projects/Kuzhikkandom Thodu Remediation and the Water Supply Scheme to the affected families of Eloor Municipality and also from the liabilities, penalties etc. for the period pertaining prior to the effective date. Since the above liabilities are not form part of the approved Resolution Plan, there is no requirement for filling any claim before the IRP or RP as contended by the applicant, as far as the Approved Resolution Plan is concerned.

27. Apart from the above, the respondents further stated that the liability to pay amounts towards the cost of remediation of Kuzhikkandam Thodu is strictly based on the orders issued by the Hon'ble National Green Tribunal (NGT). vide its order dated 21-1-2019, in which it was ordered that the Committee constituted by the Tribunal will prepare an action plan for the remediation in the first phase by using the available funds, in a time bound manner. It is further submitted that as a part of the Action Plan, a decision was taken in the meeting held on 21.12.2017 in the auspice of the Hon'ble Chief Minister of Kerala directing M/s. Merchem Ltd. to remit an amount of Rs.1.41 crores for the Kuzhikkandam Thodu remediation and the said decision was

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communicated to M/s. Merchem Ltd. on 1.3.2018, much prior to the effective date as per Insolvency and Bankruptcy Code.

28. As regards the cost bearing towards the supply of drinking water to the affected families of Eloor Municipality is concerned, M/s. Merchem Ltd. is liable to remit its proportion to the share of liability in the light of various orders of the Hon'ble High Court of Kerala. It is also submitted that based on the directions issued by the Hon'ble Supreme Court Monitoring Committee (SCMC) constituted by the Hon 'ble Supreme Court, 3 Companies including M/s. Merchem have to bear the expenses towards the supply of drinking water to the affected communities at Eloor Municipality. As per the judgment dated 20.10.2009 in W.P.(C) No. 15311/2009, the Hon'ble High Court has held that the direction issued by the PCB to IRE Ltd. to pay water charges under the principal of "polluter pays" does not warrant interferences and the said Company is liable to remit their share. The said judgment was upheld by the Division Bench of the Hon'ble High Court vide its judgment dated 11.10.2017 in Writ Appeal No. 2884/2009 (reported in 2017 (5) KHC 468 in the case of **Indian Rare Earths Ltd. vs. State of Kerala & Ors.** In this regard it is to be noted that M/s. Merchem Ltd. has also filed a Writ Petition before the Hon'ble High Court as W.P.(C) No. 20184/2006 challenging the direction issued by the Board to make contribution for setting up water supply system. The above Writ Petition was dismissed vide judgment dated 28-3-2018, which categorically establish the fact that M/s. Merchem Ltd. is liable to bear their share of expenses towards the water supply to the affected families of Eloor Municipality.

29. The learned counsel appearing for R3 stated that, the NCLT has not given approval to clause 8.1 F, by which the Resolution applicant specifically sought regularisation and waiver of non-compliances pertaining to environment, water and forests. The liability to bear the cost of Water Supply Scheme fastened on M/s.

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Merchem Ltd. was on the basis of the clear finding that the operation of the said Unit resulted in drastic deterioration of drinking water quality in and around of Eloor Municipality area.

30. The learned counsel for R3 further stated that Para 8.1 P in the Resolution Plan deals with settling of all legal proceedings and other contingent liabilities, irrevocably and unconditionally, other than those explicitly covered in the Resolution Plan. The expression "to settle" denotes settling of liabilities/issues by mutual agreement of the parties concerned. Here question of settlement of any legal proceedings and other contingent liabilities does not arise, as Respondent Nos. 3 & 4 consistently maintained the stand that the liability fastened upon the applicant is based on the Orders of the Hon'ble NGT and the judgment of the Hon'ble High Court of Kerala. Since there is no consensus entered between the applicant or anyone else, including the Respondent nos. 3 & 4, para 8.1 P in the Resolution Plan by itself cannot be relied upon by the applicant to say that the applicant is completely absolved from liability to pay the amount due to the R 3 & 4.

31. In view of the above facts, the Respondent No.3 stated that the applicant is not entitled to the relief sought in the MA/9/KOB/2020.

**COUNTER FILED BY R5 & R6:**

32. Respondent Nos. 5 and 6 stated that at the beginning of every Financial Year the inspection fee from the applicant company as per Regulation 30 of Central Electricity Authority (Measures Relating to Safety and Electric Supply) (CEA) Regulation 2010 was demanded and demand notice was sent for the same, but the company failed to remit this fee from 2012-13 to 2016-17, which is easily verifiable from the company's books of accounts. According to Section 17(2)(d) of I & B Code 2016, RP or IRP have the authority to access the above said documents. Further no

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such request from RP or IRP was received in the office of R5 & R6 during the insolvency process. So, the liability was existing during the resolution process and it cannot be write off altogether on the ground that the claim was not submitted to RP or IRP, as this liability arose during the exercise of various statutory provisions of the Electricity Act, 2003, CEA Regulations 2010, Kerala Chief Electrical Inspector and Electrical Inspectors (Powers and Functions) Rules 2013. A Resolution Plan proposed by a Resolution Applicant can be approved by the Tribunal, if it satisfies the provisions of Section 30(2)(e) of I & B Code 2016. That is the reason why NCLT approved the Resolution Plan after rejecting the concession/reliefs sought in Para 8.1 (B,C,D,E,F,G,H,IJ,K,L,M,T,U), 8.2,8.4,8.10 of the Resolution Plan.

33. It is their further case that the claim made by Government Department in relation to inspection fee stands valid due to disallowing items 8.4 by the NCLT in its order dated 23.01.2019. Moreover, the company has not filed the application with relevant documents for renewal or revalidation.

34. The learned counsel appearing for R5 & R6 argued that as the NCLT disallowed applicants' claim No. 8.4 and passed its order there is no derogation of the order of the NCLT and that, no provisions of the Code are violated by the Respondent Nos. 5 & 6 as alleged. Further in the letter dated 29.08.2019, the Respondent's office has extended its support for implementation of Resolution Plan on submitting application with all required supporting documents and clearing all dues but the applicant has not submitted any application with required documents for the effective implementation of Resolution Plan for continuing electricity.

35. The learned counsel for the Respondents argued that an interim reliefs sought by the applicant for renewal of consumer number LCN/25/3284 and LCN/31/3414.

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LCN/25/3284 is of MERCHEM LTD and LCN 31/3414 is the consumer number of MERCHEM INDIA (P) LTD and the NCLT passed the order for MERCHEM LTD only. It is further argued that the respondent nos. 5 & 6 being a statutory body do not have objection in the implementation of Resolution Plan, if the dues were cleared by the applicant. In this connection, it is pertinent to note that Section 30(2) (e) of the Code demands that the Resolution Plan should not contravene any of the provisions of law. As this due arose during the exercise of various statutory provisions related to electricity, that the same cannot be extinguished. He further argued that neither the applicant company nor the Resolution Professional has at any time intimated/put on notice to the respondent nos. 5 & 6 about the CIRP. In view of the lack of notice, the respondent nos. 5 & 6 have been deprived of making its claim before the Resolution Professional. The learned counsel further argued that the insolvency proceedings have been maliciously and fraudulently instituted by the Company itself to deprive its creditors of their statutory dues. The proceedings are therefore malafide and cannot be permitted to be proceeded with its present form.

**COUNTER FILED BY R7, R8 & R9:**

36. The Respondent Nos. 7, 8 and 9 stated that KGR/375/N is the consumer number of water connection provided to the applicant and the date of connection was 04.11.1996. The connection has not been disconnected and the last reading was 5526kl as on 14.10.2019. It is further stated that the connection with consumer No. ELR/2405/I was given on 26.11.1996 to the applicant. The last payment was done on 12.01.2012 that is Rs. 57,967/. There after no payment was made by the applicant though several bills were issued. On 03.03.2016 the connection was disconnected due to non-payment. The applicant neither settled the due amount nor approached the respondents for reconnection. Therefore, the Revenue Recovery proceedings were

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initiated on 04.07.2018. As of now the arrears comes to Rs.2,69,987/-. It is also stated that connection with consumer No. KLY/5206/N was given to the applicant on 01.02.1997. The said connection was disconnected on 08.11.2019 due to non-payment. Reconnection can be done on clearing the arrears of Rs. 404/-.

37. The learned counsel for the respondents submitted that as per the directions of the Hon'ble Supreme Court monitoring committee, drinking water has to be supplied to 2144 families in polluted area in Eloor Municipality @ 15 KL per month and the water charges for the same has to be collected from four polluting companies by the Pollution Control Board and has to be remitted to these respondents. The applicant company is one among the four and has to remit the water charges. But it has not paid the same and hence the Pollution Control Board has not so far remitted the water charges to these respondents. The writ petition filed by the applicant company before the Hon'ble High Court of Kerala was dismissed by the judgement dated 28.03.2018 in W.P. (C) No. 20184 of 2006. Hence the allegation that the applicant is not bound to remit the charges is not sustainable.

38. The learned counsel further submitted that the Memorandum of Understanding (MOU) dated 30.06.2012 was signed by the polluting companies of Eloor Area in which Fertilisers And Chemicals Travancore Limited (FACT) has to supply 1 mld water to the residents of the affected area and the respondents have to collect the water charge shares from the companies including the applicant to FACT. The applicant company has not remitted its share to the tune of Rs. 23,52,219/- at the rate of 21.25/KL upto December 2019. The amount due upto 31.03.2019 was Rs. 20,18,061/-. It is stated that since the payment was not made by the applicant, the respondent could not remit the same as per the MOU and the applicant Company may be directed to pay the same to the respondents.

**COUNTER FILED BY R10 & R11:**

39. The 10<sup>th</sup> and 11<sup>th</sup> Respondents stated that according to Section 17 (2) (d) of I & B Code 2016, R.P or IRP have the authority to access the books of account, records and other relevant documents of the Corporate Debtor available with the Government Authorities, Statutory Auditors, Accountants and such other persons as specified. This can be easily verifiable from the companies' books of account by the IRP, but that exercise was not done by him. They have further stated that liability of the company that was existing during the Resolution Process cannot be written off altogether on the ground that it was not submitted to R.P or IRP.

40. The learned counsel appearing for R10 & 11 argued that it is an admitted fact that the amount was due to the 10<sup>th</sup> Respondent which is admittedly reflected in the books of accounts of the Corporate Debtor. Non-payment of such amount attracts proceedings under the provisions of the Electricity Act, 2003. Despite the same, neither the Corporate Debtor nor the Resolution Professional bothered to clear the dues of the 10<sup>th</sup> Respondent. Hence the approval of the Resolution Plan in itself under Section 31 of the I & B Code is bad in law and clear violation of Section 30(e) of the Code.

41. In this connection, it is pertinent to note that the NCLT approved the Resolution Plan after rejecting the concession/ reliefs sought in para 8.1 (B, C, D, E, F, G, H, I, J, K, L, M, T, U), 8.2, 8.4, 8.10 of the Resolution Plan. It is clear from that the claims from the Governmental Department such as the 10<sup>th</sup> Respondent shall stand valid since the NCLT has rightly disallowed item 8.4. So the claim of the 10<sup>th</sup> Respondent is absolutely valid.

**COUNTER FILED BY R12 & R13:**

42. Respondents No. 12 and 13 in their counter submitted that the applicant, Merchem Limited is a Rubber Chemicals Manufacturing Company incorporated under the Companies Act, 1956 and a unit of the same is functioning at Eloor Village from 1997. Finding the company encroached 52.500 cents of puramboke land in Survey No. 185/16 of Eloor Village, and erected structures over the same, the Tahsildar, Paravur initiated steps against them, in accordance with the provision of Kerala Land Conservancy Act, 1957 against the company, and imposed "Nirodhanakaram" 'as per the Proceedings No. B5-11998/96 dated 03.07.1997. It is pertinent to note here that the company admitted the encroachment by paying the "Nirodhanakaram" till the Financial Year 2006-2007. The imposition of "Nirodhanakaram" was cancelled by the Respondents' office as per Proceedings No. D1-4704/07 dated 16.06.2007 and steps for initiating the eviction of the company from Government land was proceeded. Against this step, the company approached the Hon'ble High Court of Kerala by filing W.P(C) No. 21781/07. In the Writ Petition, the applicant company admitted that there is a puramboke land (Government Land) within the premises and they have shown their readiness to surrender another 52.500 cents in the same compound of the Company. That shows that they had the full knowledge that they had encroached the Government land by erecting the compound wall and erecting intentionally their plant on the puramboke land. The said Writ Petition was disposed of by the Hon'ble High Court of Kerala, directing the Government to decide on their contentions and make a request to the Company for assignment after hearing the petitioner.

43. Based on the judgment of the Hon'ble High Court in OP No. 21781/07, considering Letter No. L8-37639/07 dated 12.07.2007 from District Collector, Ernakulam, and the application dated 24.07.2007 by the company, the Government of

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Kerala Revenue Department issued G.O(Rt) No. 235/08/RD dated 21.01.2008 ordering assignment of 52.500 cents of puramboke land on lease for 30 years subject to the conditions stipulated in the order. Thereafter the company submitted an application for assignment of land on lease dated 24.03.2008 in proper format. The company was directed by the Additional Tahsildar, Paravur on 08.05.2014 to remit lease amount of Rs. 37,22,382/- covering 8 years from 2007-08 to 2014-15, inclusive of the interest due. Admitting the facts, the company paid the said demand fully through Chalan No. 277/23.01.2015. However, when the company hesitated to pay the lease amount for the following years, the Respondents took steps under the Revenue Recovery Act. 1968 for recovery of Rs, 19,72,482/- towards the lease dues up to FY 2018-19.

44. The learned counsel appearing for R12 & R13 argued that on 06.02.2019, the Village Officer, Eloor and Tahsildar (LR). Paravur received a letter from Ravindra Beleyur, the Resolution Professional, with a Reference Number IP/MLO1/2018-19/0-26 dated 30.01.2019 saying that the Resolution Plan for Merchem Limited has been prepared and submitted by him before the NCLT, Chennai Bench, which was approved by the NCLT and that it is binding upon Respondents 12 & 13 also. From the aforesaid letter, it is abundantly clear that the Resolution Professional had full knowledge about the dues to Government of Kerala as the Government land was leased out to the company. This is easily verifiable from companies' books of accounts according to Sec. 17(2)(d) of I & B Code 2016 and the RP or IRP have the authority to access the above said documents. The Resolution Professional could have informed about the preparation of Resolution Plan well in advance to these Respondents. But the Government of Kerala came to know about it only on the perusal of the above said letter of the Resolution Professional stating that the Resolution Plan has been

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approved by the NCLT, Chennai Bench. In this connection it may be noted that the NCLT approved the Resolution Plan vide order dated 23.01.2019 by granting concession /exceptions as enumerated under para 7.2 ( A&B) and 8.1 (A, N, O, P. Q. R, S), Para No. 8.3,8.5,8.6,8.7,8.8 and 8.9 of the Resolution Plan. Concession sought in the Resolution Plan Viz 8.1(B, C,D,E.F.G.H,I,J,K,L,M,T,U) 8.2,8.4,8.10 stands disallowed by the NCLT, so the applicant is not in a position to enjoy concessions with respect to matters referred in the above items including Government dues.

**COUNTER FILED BY R14:**

45. In their counter, Respondent No. 14 submitted that M/s, Merchem Limited(applicant herein), Edayar Aluva is an assessee on the rolls of this respondent bearing TIN29150247445. The applicant is in arrears of a total amount of Rs. 82,66,54,410/- as tax, penalty and interest. All these arrears were duly communicated to the assessee as and when they are generated. It is further contended that the application of the applicant company is not maintainable under law, since the Resolution Plan approved as per Order dated 23.01.2019 is vitiated for the reason that the Resolution Professional of the assessee company, Mr. Ravindra Beleyur had not effectively discharged his duties as per Section 17 to Section 25 of the Insolvency and Bankruptcy Code, 2016. It is further stated that according to Sec. 17 (2) (d) of I & B Code 2016 IRP or RP have the authority to access the books of account, records and other relevant records of the Corporate Debtor available in the Government authorities, statutory auditors, accountants such other persons specified. In this case this can be easily verifiable from the company's books of accounts by the IRP or RP, but that exercise was not carried out by the Resolution Professional.

46. It is to be noted that a Resolution Plan proposed by the Resolution Applicant can be approved by the Adjudicating Authority, if it satisfies Section 30 (2) (e) of I & B

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Code 2016. Accordingly Adjudicating Authority approved the Resolution Plan after rejecting the concession/reliefs sought in Para 8.1 (B, C, D, E, F, G, H, I, J, K, L, M, T, U), 8.2, 8.4, 8. 10. Hence the contention in M.A/9/KOB/2019 that the applicant company stands discharged from all the claims are not tenable. Further the I & B Code Amendment Act. 2019 came into force in August 2019 only and the Adjudicating Authority passed the order approving the Resolution Plan only in January 2019, so that amendment is not applicable in this case. Hence, there is no derogation of the order of the adjudicating authority and that none of the provisions of the Code are violated by the Respondent No. 14 as alleged by the applicant.

47. Hence, it is stated that none of the reliefs sought for in this MA/9/KOB/2020 is neither tenable nor maintainable, as Section 30(2) (e) of the Code demands that Resolution Plan shall not contravene any of the provisions of law for the time being in force. In this case the liability of the company was existing during the resolution process and it cannot be written off altogether on the ground that it was not submitted claims before the RP or IRP, as this liability arose during the exercise of various statutory provisions of KGST & KVAT Act.

**COUNTER FILED BY R15 & R16:**

48. Respondent Nos. 15 & 16 in their counter submitted that in the case of failure on the part of the employer to deposit the legitimate dues of workers under Section 7A of the EPF Act, the Regional Provident Fund Commissioners/ Assistant Provident Fund Commissioners, who are statutory authorities under the EPF Act are empowered to determine the amount due from any employer under any provisions of the EPF Act.

49. They have further submitted that the Applicant M/s Merchem Limited is an establishment covered under the provisions of Provident Fund Act 1952 with code No.KR/KCH/13674 under the jurisdiction of Regional Provident Fund Commissioner-

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I, Kochi. The applicant Company was brought under the purview of the EPF Act with effect from 01.05.1993 and allotted a sub-code KR/KCH/13674A with effect from 01.06.1997, and is therefore required to comply with the Provisions of the EPF Act and Schemes framed thereunder. The applicant M/s Merchem Limited is a chronic defaulter and many Complaints were received from employees of the applicant, for non-compliance of the provisions of the EPF Act from July 2014 onwards. Therefore, the applicant is liable to pay provident fund/pension fund/insurance fund dues to them.

50. The learned counsel appearing for R15 & R16 in their counter opposed the applicant's allegation and stated that even though the amount due to the respondents is under the EPF Act, the same are not payable to the Central Government, any State Government or any local authority, but are the payments due to Provident Fund, Pension Fund and Insurance Funds of the workmen or employees, which were required to be paid by the applicant. However, the same was not done by the applicant, which are not operational credit.

51. It is their further submission that, the orders were issued by the NCLT on 28.01.2019, and at that time the following provisions in Sec.31(1) of the Code, *"including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed"* were not included in the Code. As such, the orders approving the Resolution Plan are not binding on the Respondent Nos. 15 & 16.

**COUNTER FILED BY R19:**

52. This respondent stated that they are an unpaid operational creditor and they were not aware of the liquidation proceedings and no notice has been served on this respondent at

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the time when liquidation proceedings were being processed. The applicant company was very well aware of the operational debt owed to R.19 and same is reflected in the annual financial statements of the applicant company. Thus the insolvency professional has committed error in discarding the debt owed to R19, while preparing and submitting the Total Resolution Plan of ₹ 115.2520 Crores.

**COUNTER FILED BY R20, R21 AND R22:**

53. In their counter, the Respondent Nos. 20, 21 and 22 stated that Respondent No.20, Gujarat Industrial Development Corporation (hereinafter referred to as GIDC) is a statutory organisation duly constituted under Section 3 of the Gujarat Industrial Development Act, 1962. GIDC is a secured operational creditor under the provisions of the Insolvency and Bankruptcy Code, 2016.

54. The applicant approached the GIDC for land to start its business in Gujarat. GIDC allotted Plot No. 24/1 admeasuring 40,600 Sq.m at Panoli Industrial Estate. Another property was also allotted in Plot No. 24 ad measuring 48,803.37 Sq.m at Panoli Industrial Estate. The GIDC has since then been providing services to the above applicant to operate the above industrial estates for which the company is liable to make payment in accordance with law. The total dues on Plot No. 24/1 as on 19.06.2019 is Rs. 13,93,763 and the total dues on Plot No. 24 as on 19.06.2019 is Rs. 16,76,869/-. The total dues towards water supply and drainage cess on both Plot No. 24 and 24/1 as on 31.05.2019 is Rs. 73,05,181/-. Further, notified tax with respect to plot No. 24 is Rs.51,78,712/- and with respect to plot No. 24/1 is Rs.37,56,762/-. In fact, the above claims are statutory dues admitted by the applicant and protected by the order dated 23.01.2018.

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55. The applicant company nor the Resolution Professional has at any time intimated/put on notice, the GIDC about the above proceedings. In view of the lack of notice, the GIDC has been deceived into not making its claim before the Resolution Professional. The GIDC believes that the above insolvency proceedings have been maliciously and fraudulently instituted by the company itself in order to deprive its creditors of their dues. The proceedings are therefore malafide and cannot be permitted to be proceeded with its present form.

56. They have denied the contention regarding limitation. The Company Petition was admitted on 15.01.2018 from which date time, the resolution process started running. As the Resolution Process was not completed in time and as by order dated 11.07.2018 the time was extended for a further period of 90 days with effect from 13/07/2018. The time granted lapses on 11.10.2018. As no resolution plan was filed before the permitted time of 11.10.2018, the provisions of Section 33 of the act stands in force. Needless to mention that the COC being a creature of the statute, becomes functus officio as on the given date and could not have passed any further Resolution Plans after the time allotted to them has expired. The applicant company is hence bound to be liquidated as per the law and the claims of the GIDC also to be considered in the liquidation proceedings.

**Connected M.As are as below:**

**MA/12/KOB/2020**

57. This MA has been filed under Section 60 (5) read with Section 33 of the Insolvency and Bankruptcy Code, 2016 by the Gujarat Industrial Development Corporation and Panoli Notified Area, who are Operational Creditors of the Corporate Debtor -Merchem Limited. They have filed the present MA for the following reliefs:

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- i. Declare that the Committee of Creditors and the appointment of the Insolvency Professional appointed under the above proceedings have become time barred and *Functus-officio* and the plan submitted by them is barred under Section 12 of the Insolvency and Bankruptcy Code, 2016.
- ii. Pass an order requiring the 1<sup>st</sup> respondent Corporate Debtor to be liquidated in the manner as laid down in Section 33 in Chapter III of the Insolvency and Bankruptcy code, 2016.
- iii. Declare that the order dated 23.01.2019 in MA/515/2018 in CP/698/IB/2017 is non-est and not binding on the petitioners.

58. The 1<sup>st</sup> applicant, Gujarat Industrial Development Corporation (hereinafter referred to as GIDC) is a statutory organisation duly constituted under Section 3 of the Gujarat Industrial Development Act, 1962. GIDC is a secured operational creditor of the Corporate Debtor under the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the 'Code'). The 2<sup>nd</sup> applicant is a notified Local Self Government Authority under Section 277 of the Gujarat Municipalities Act, 1963. The Panoli Notified Area Authority is a secured operational creditor under the provisions of the Insolvency and Bankruptcy Code, 2016.

59. The learned counsel for the applicants raised the same contentions made in the counter filed by them in MA/09/KOB/2020, being the Respondent No. 12, requiring the Corporate Debtor to be liquidated in the manner as laid down in Section 33 of the Code. To fortify the argument, the learned counsel for the applicants referred to the following decisions:

- i. *Arcelormittal India Pvt. Ltd. V. Satish Kumar Gupta & others* (2019) 2 SCC 1
- ii. *Gursimran Singh, Director of Downtown Temptations Pvt. Ltd. V. Indiabulls Housing Finance Ltd.* (2018) SCC online NCLAT 874
- iii. *Vijay Kumar Choudary and Another V. Educomp Infrastructure & School and Others* (2019) SCC online NCLAT 1200
- iv. *Canara Bank V. State of T.N & Another* (2000) 3 SCC 210

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**MA/16/KOB/2020**

60. This MA has been filed by the Department of Factory & boiler and Office of the Inspector of Factories & boilers under Section 60 (5) read with Section 33 of the Insolvency and Bankruptcy Code, 2016, who are Respondents in MA/9/KOB/2020. These applicants are also the Operational Creditors of – M/s Merchem Limited. They prayed for the following reliefs:

- i. Declare that the Committee of Creditors and the appointment of the Insolvency Professional appointed under the above proceedings have become time barred and Functus-officio and the plan submitted by them is barred under Section 12 of the Insolvency and Bankruptcy Code, 2016.
- ii. Pass an order requiring the 1st respondent Corporate Debtor to be liquidated in the manner as laid down in Section 33 in Chapter III of the Insolvency and Bankruptcy code, 2016.
- iii. Declare that the order dated 23.01.2019 in MA/515/2018 in CP/698/IB/2017 is non-est and not binding on the petitioners.

61. The applicants are the statutory authorities under the State of Kerala to execute provisions of Factories Act, 1948 and Kerala Factory Rules, 1957. It is submitted that the Corporate Debtor obtained factory license from the applicants and the same was renewed upto 2016. The fee and penalty to be paid by the Corporate Debtor company upto 2018 comes to ₹ 1,34,034/-.

62. The applicants have raised the same contentions which they have raised in the counter filed by them in M.A/9/KOB/2019, being the Respondent No.1 therein. Hence, the same is not repeating here.

**MA/17/KOB/2020**

63. This MA has been filed by the Assistant Commissioner, State Tax II under Section 60 (5) read with Section 33 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor for the following reliefs:

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- i. Declare that the Committee of Creditors and the appointment of the Insolvency Professional appointed under the above proceedings have become time barred and *Fanctus-officio* and the plan submitted by them is barred under Section 12 of the Insolvency and Bankruptcy Code, 2016.
- ii. Pass an order requiring the 1st respondent Corporate Debtor to be liquidated in the manner as laid down in Section 33 in Chapter III of the Insolvency and Bankruptcy code, 2016.
- iii. Declare that the order dated 23.01.2019 in MA/515/2018 in CP/698/IB/2017 is non-est and not binding on the petitioners.

64. The learned counsel for the applicant submitted that the applicant is the statutory authority under the State of Kerala and the 1<sup>st</sup> respondent- Corporate Debtor is an assessee on the rolls of the applicant bearing TIN 32150247445. The assessee/ Corporate Debtor is in arrears of a total amount of ₹ 32,66,54,410/- as tax penalty and interest. The learned counsel further stated that all these arrears were duly communicated to the assessee as and when they are generated. It is further stated that the statutory dues are admitted and protected by the order dated 23.01.2019, but the respondent/ Corporate Debtor filed an application to write off the whole claims. Therefore, the applicant seeks the Corporate Debtor to be liquidated in the manner as laid down in Section 33 of the Code.

**MA/18/KOB/2020**

65. This MA was filed by the Tahsildar (Land) and The District Collector under Section 60 (5) under Section 60 (5) read with Section 33 of the Insolvency and Bankruptcy Code, 2016, (who is Respondent No.12 in MA/9/KOB/2020) seeking the following reliefs:

- i. Declare that the Committee of Creditors and the appointment of the Insolvency Professional appointed under the above proceedings have become time barred and *Fanctus-officio* and the plan submitted by them is barred under Section 12 of the Insolvency and Bankruptcy Code, 2016.

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- ii. Pass an order requiring the 1st respondent Corporate Debtor to be liquidated in the manner as laid down in Section 33 in Chapter III of the Insolvency and Bankruptcy code, 2016.
- iii. Declare that the order dated 23.01.2019 in MA/515/2018 in CP/698/IB/2017 is non-est and not binding on the petitioners.

66. The learned counsel for the applicant submitted that the applicant is the statutory authority under the State of Kerala. The applicant found that the Corporate Debtor company encroached 52.500 cents of puramboke land in Survey No. 185/16 of Eloor Village, and erected structures over the same. The Tahasildar, Paravoor Taluk initiated steps against the Corporate Debtor in accordance with the provision of KLC Act, 1957 and imposed "Nirodhanakaram" as per the Proceedings No. B5-11998/96 dated 03.07.1997. The Corporate Debtor admitted the encroachment by paying the Nirodhanakaram till the financial year 2006-2007. As the Corporate Debtor company hesitated to pay the lease amount from 2015-16, the applicants-initiated steps under the Revenue Recovery Act, 1968 for recovery of ₹19,72,482/- towards the lease dues upto Financial Year 2018-19. The applicants have raised various contentions as raised in the counter filed by them in MA/09/KOB/2020, wherein they are respondents, including liquidation of the Corporate Debtor for the reasons stated therein.

**MA/19/KOB/2020**

67. This MA was filed by the Electrical Inspector and the Department of Electrical Inspectorate (who is Respondent No.6 in MA/9/KOB/2020) under Section 60 (5) read with Section 33 of the Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor- Merchem Limited praying for the following reliefs:

- i. Declare that the Committee of Creditors and the appointment of the Insolvency Professional appointed under the above proceedings have become time barred and Fanctus-officio and the plan submitted by them is barred under Section 12 of the Insolvency and Bankruptcy Code, 2016.

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- ii. Pass an order requiring the 1st respondent Corporate Debtor to be liquidated in the manner as laid down in Section 33 in Chapter III of the Insolvency and Bankruptcy code, 2016.
- iii. Declare that the order dated 23.01.2019 in MA/515/2018 in CP/698/IB/2017 is non-est and not binding on the petitioners.

68. The learned counsel for the applicant submitted that the applicant is the statutory authority under the State of Kerala to execute the provisions of Electricity Act, 2003, CEA Regulations, 2010, Kerala Chief Electrical Inspector and Electrical Inspectors (Powers & functions) rules, 2013. Their case is that the 1<sup>st</sup> respondent company/ Corporate Debtor has been given connection with HT Connection with Consumer Nos. LCN/25/3284 (Merchem Ltd) and LCN/31/3414 (Merchem India Pvt. Ltd.). Respondent Company has failed to remit the periodical inspection fee of the electrical installation of the company as per Regulation 30 of Central Electricity Authority (Measures relating to Safety and Electric supply) Regulation, 2010. The said dues comes to ₹1,82,015/- and ₹89,004/- from 2012-13 to 2016-17. It is further stated that the statutory dues are admitted and protected by the order dated 23.01.2019 but respondent filed MA/9/KOB/2020 to write off the whole claims. Hence, among other prayers, the applicant sought to liquidate the Corporate Debtor under Section 33 of the Code, so that they can approach the liquidator for getting their dues.

**COMMON COUNTER FILED BY THE CORPORATE DEBTOR in M.A/ 12 of 2020, MA/16 of 2020, MA/17 of 2020, MA/18 of 2020 and MA/19 of 2020.**

69. The respondent/ Corporate Debtor has filed reply in all the aforesaid M.As taking the common contentions as under:

70. The Applicants in these M.As have sought to set aside the Order approving the Resolution Plan dated 23.01.2020, notwithstanding the fact that the same has been

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upheld both by the Hon'ble NCLAT and the Hon'ble High Court of Gujarat. It is further stated that a Resolution Plan once approved by the Adjudicating Authority under Section 30 of the Code, can only be assailed in Appeal under Sections 61 or Section 62 for the grounds enumerated therein, before the Hon'ble National Company Law Appellate Tribunal ("NCLAT") or the Hon'ble Supreme Court, respectively.

71. They have further stated that this Tribunal upon approving a Resolution Plan becomes functus officio and, therefore, an Application seeking reliefs as sought for by the Applicants in these M.As, cannot be entertained, as there is no statutory provision for the same in the Code. The Applicants ought not to have approached this forum by filing these Miscellaneous Applications. The right to file Appeal under Section 61 or 62, before the Hon'ble NCLAT and Hon'ble Supreme Court respectively, too has now become barred by limitation. The learned counsel further stated that the Adjudicating Authority under the Code or this Bench as a Tribunal under Companies Act 2013 does not have the power to review, rescind or set-aside its own Order. This proposition of law has been laid down by the Hon'ble Supreme Court in **Assistant Commissioner Income Tax, Rajkot vs. Saurashtra Kutch, South Exchange Limited reported in (2008) 14 SCC 171.**

72. It is further stated by the Corporate Debtor that the Applicants in these Miscellaneous Applications are all Operational Creditors who ought to have filed their claims in accordance with the Regulations. Having not filed the same they have now sought to invoke the jurisdiction of this Tribunal seeking reliefs which is not at all within the contemplation of the Code. It is further stated that having not filed their claims in accordance with the Code and Regulations, the Applicants cannot claim now that they did not have notice and that in terms of Section 31(1) of the Code, as a stakeholder they are bound by the approved Resolution Plan. The proposition of law is that upon

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approval of a Resolution Plan, the Corporate Debtor stands discharged from claims and those claims which were not filed within time shall abate. It is further stated that this proposition of law has been laid down by the Hon'ble Supreme Court in **Essar Steel Ltd (C.A 8766-67 of 2019) dated Nov 15,2019**.

73. The learned counsel for the respondent company-Corporate Debtor during argument submitted that the Applicants of M.As have also raised a specious plea that they are statutory creditors, claiming under a statute and hence their claims cannot abate. However, in the light of Section 238 of the Code and the Judgement of the Hon'ble Supreme Court in SLP No 6483 of 2018 in **Pr CIT Vs Monnet Ispat & Energy Ltd (Orders dated 10-Oct-2018)**, the said plea is unsustainable.

74. The applicants herein having failed in their statutory duties to file claims on time, now cannot plead ignorance of law or that they had no notice or the proceedings would not bind them. The non-filing of claim by the Applicants in time constitutes laches on their part and would operate to extinguish the debts due-if any and the claim thereof therefore, abates in accordance with the approved Resolution Plan.

75. It is further stated that this Bench did not grant relief under Clause 8.4 as the Operational Creditors were fully covered under Part D, E and F of the Resolution Plan. Clause 8.4 was superfluous and hence this Tribunal discarded it. Non grant of Clause 8.4 does not mean that the Statutory Creditors are entitled to recover in full. Operational Creditors, to which the Respondents belong to, are dealt with under Part D, E and F and they are entitled to payments only under that clause read with Para 8.1 vide Resolution Plan Clause P which reads as under:

*“Clause P: .....Other than those explicitly covered under this Resolution Plan, no other person shall be eligible to receive any amounts from the Corporate Debtor either on account of unverified claims, legal proceedings etc”*

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76. The learned counsel for the respondent company/ Corporate Debtor clarified that the Clause P above has been approved by NCLT vide Para 17 of the Order dated 23.01.2019 while approving the Resolution Plan - it is to be pointed out that the sole statutory creditor ( R24 &25 in MA 9/2019 i.e., The Assistant Commissioner of State Tax, Government of Gujarat and The Assistant Commissioner of Professional Tax, Government of Gujarat) who submitted their claim has been paid under the Resolution Plan in accordance with the above clause, and therefore, the argument of the Miscellaneous Applicants who did not even file their claims, does not hold water.

77. The learned counsel concluded his argument stating the claims of all the Applicants herein were not submitted to the Resolution Professional for verification and are therefore "undecided claims" and/or "unverified claims". It is reiterated that the Respondents in MA 9/KOB/ 2019 and or the Applicants in MA 12, 16,17,18 and 19 of 2020 falls within the class of "undecided claims" and neither the Corporate Debtor nor the Resolution Applicant cannot be saddled with these undecided claims.

**FINDINGS:**

78. I have heard the arguments advanced by the Learned Counsel for the Resolution Professional and the Learned Counsels for Respondents No. 1, 2, 3, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 20, 21 and 22 in MA/09/KOB/2019 IN CP (IB)/689/17 (CHENNAI BENCH) and have also perused the records placed before me. It is found that the Respondents herein have also separately filed MA 12 of 2020 (R20), MA 16 of 2020 (R1), MA 17 of 2020, MA 18 of 2020 (R12) and MA 19 of 2020 (R6) before this Tribunal seeking to set aside the approved Resolution Plan and order Liquidation of the Corporate Debtor so as to evade discharging their obligations under the approved Resolution Plan. Counter of Respondents R1, R2, R3, R4, R5, R6, R7, R8, R9, R10, R11, R12, R13, R14, R15, R16, R19, R20, R21 and R22 are on record. Respondent

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Nos. 7, 8, 9 filed counter on 29.01.2020, but it is seen that they have been set ex parte on 11.12.2019. However, vide order dated 04.11.2020 in IA No. I.A. No.180/KOB/2020 in M.A. No.09/KOB/2020 in CP(IB) /689/2017 the ex parte declaration against Respondents 7, 8 & 9 has been set aside. Hence, the counter filed by them has been considered.

**79.** The question that arises for consideration is whether after approval of Resolution Plan by the Adjudicating Authority, the claims made by the creditors can be entertained? In such an event the remedies available has been enumerated under Section 31 (1) of the Code, which reads thus: -

*“If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under Sub-Section (4) of Section 30 meets the requirements as referred to in sub-Section (2) of Section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, **[including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,]** guarantors and other stakeholders involved in the resolution plan.”*  
The above-said section didn't include the phrase “including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed” from the initiation of the Code.

**80.** The explicit inclusion of the same by the legislature should be seen as a sense of assurance for the people who are implementing the Resolution Plan that, no one, even the Government also, will not have the power later to pop up, once the Resolution Plan is approved.

**81.** Hence, from the above provision and discussion, it is crystal clear that once the Resolution Plan is finalized and approved, it shall be binding upon all the stakeholders and nobody shall have the power to change it. Even the Adjudicating Authority will not

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have a binding say on the approval of the Resolution Plan or on the commercial wisdom of the COC. The dues and liability as mentioned in the Resolution Plan as on the commencement of the Corporate Insolvency Resolution Process (CIRP), which is the day on which the Plan is approved by the Adjudicating Authority, shall be binding on every stakeholder and the Resolution Applicant shall be bound to pay only those which are mentioned in the Resolution Plan.

82. The reason for invitation of the claims as on the date of commencement of CIRP is that the claims of any of the creditors are not left out while making of the Resolution Plan and hence claiming of the money after the passing of the Resolution Plan seems unjustifiable and unreasonable as sufficient opportunity has already been provided to submit the claims earlier, after admission of the application and ordered Corporate Insolvency Resolution Process.

83. This was done to ensure that no further such of this kind of dispute would arise in the future. Hence, in a situation where the claims submitted by the creditors, inclusive of the operational creditors, have been duly met by the applicant, no question of reclaiming the full amount or a part of it or some different amount arises which pertains to a period prior to commencement of CIRP.

84. In this context, I would like to refer the judgement of the Hon'ble Supreme court in the case of **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. Supreme Court [Civil Appeal No.8766-67/2019 and other petitions]** ("**Essar Case**") **2019 SCC OnLine SC 1478**, in which the Apex Court held as under:-

*"88. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/ Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the*

*Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count.”*

85. From a careful reading of the above decision, it is clear that a Successful Resolution Applicant is not to be burdened with undecided claims at the stage of implementation of the Resolution Plan. The Successful Resolution Applicant is to be provided with a company free from past liabilities. It has been rightly understood that a Successful Resolution Applicant cannot be saddled with past liabilities indefinitely. Such an act will make it impossible for the Successful Resolution Applicant to run the business of the Corporate Debtor effectively. In fact, saddling a Resolution Applicant with past claims will defeat the entire purpose and mechanism set out under the I&B Code, mainly when all claims have been appropriately dealt under the Resolution Plan itself.

86. Further, Section 32A of the Code grants immunity to a Corporate Debtor from the liabilities arising out of the acts committed prior to the CIRP once the Resolution Plan is approved. Hence, drawing an analogy, one can very well presume that the restructured company will not be forced or liable for paying out the dues of the period prior to CIRP which have already been taken care of in the Resolution Plan. This will make the revamped company do its business effectively and efficiently and will achieve the objective for which the Code was enacted.

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87. In this context, I would like to refer a decision of the Hon'ble NCLAT in the case of ***Pr. Director General of Income Tax (admn. & tps) v. M/s. Synergies Dooray Automotive Ltd. & Ors [CA (AT) (Insolvency) No. 205/2017 and connected matters]***, where the Appellate Tribunal considered whether the 'Income Tax', 'Value Added Tax' or other statutory dues, such as 'Municipal Tax', 'Excise Duty', etc., come within the meaning of 'Operational Debt' and whether the Central Government, the State Government or the legal authority having statutory claim, come within the meaning of OC. It was held that operational debt in normal course means a debt arising during the operation of a CD. Only when the CD is operational and remains a going concern, the statutory liability, such as payment of Income Tax, Value Added Tax etc., will arise. As the 'Income Tax', 'Value Added Tax' and other statutory dues arising out of the existing law, arises when the CD is operational, such statutory dues have direct nexus with operation of the CD. Therefore, all statutory dues, including 'Income Tax', 'Value Added Tax' etc. come within the meaning of operational debt. Consequently, 'Income Tax Department of the Central Government' and the 'Sales Tax Department(s) of the State Government' and 'local authority', who are entitled to dues arising out of the existing laws, are OCs.

88. In "**Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.— Writ Petition (Civil) No. 99 of 2018**", the Hon'ble Supreme Court while dealing with the different provisions of the 'I & B Code', including Section 5(20), observed as follows:

*"23. A perusal of the definition of "financial creditor" and "financial debt" makes it clear that a financial debt is a debt together with interest, if any, which is disbursed against the consideration for time value of money. It may further be money that is borrowed or raised in any of the manners prescribed in Section 5(8) or otherwise, as Section 5(8) is an inclusive definition. On the other hand, an "operational debt" would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of goods or services,*

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*including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority.”*

89. From a plain reading of Sub-Section (21) of Section 5, this Tribunal finds that there is no ambiguity in the said provision and the legislature has not used the word ‘and’ but chose the word ‘or’ between ‘goods or services’ including employment and before ‘a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, and State Government or any local authority’. ‘Operational Debt’ in normal course means a debt arising during the operation of the Company (‘Corporate Debtor’). The ‘goods’ and ‘services’ including employment are required to keep the Company (‘Corporate Debtor’) operational as a going concern. If the Company (‘Corporate Debtor’) is operational and remains a going concern, only in a such case, the statutory liability, such as payment of Income Tax, Land Tax etc., will arise. As the ‘Income Tax’, ‘Value Added Tax’ and other statutory dues arising out of the existing law, arises when the Company is operational, we hold such statutory dues has direct nexus with operation of the Company.

90 In this regard reference can also be made to the report of the Bankruptcy Law Reforms Committee (November 2015) wherein it is provided that, "*operational contracts typically involve an exchange of goods and services for cash. For an enterprise, the latter includes payables for purchase of raw-materials, other inputs or services, **taxation and statutory liabilities**, and wages and benefits to employees.*"

91. For the said reason also, we hold that all statutory dues including ‘Water Charge’, ‘Electricity Charge’, ‘Commercial Taxes’, ‘Land Revenue’ etc. come within the meaning of ‘Operational Debt’.

92. The other contention raised by the respondents is that the impugned order dated 23.01.2019 (Approved Resolution Plan) in MA/515/2018 in CP/689/IB/2017 protects the interest of these respondents, as the relevant demands raised by

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Merchem against these respondents were not accepted, for the reason that they were not provided any individual notice of the insolvency proceedings commenced against the Corporate Debtor by the RP, and therefore, the statutory liabilities are bound to be paid.

93. To sum up the above question, it is evident that the Resolution Plan as approved by the Committee of Creditors is by and large sanctioned by the Order dated 23.01.2019. In the judgement of the Hon'ble Apex Court *in K Sashidhar & Indian Overseas Bank &ors.[Civil Appeal No. 10673/2018], Date of order: 05.02.2019*, it has been made clear that the role of COC is quite vital for deciding the fate of the company. It has been held that the Adjudicating Authority is not required to go into the merits or reasoning of the decision taken by the COC for approval or rejection of a Resolution Plan. The only benchmark which is set up to be determined by the Adjudicating Authority is to see whether the plan has been approved by 75% voting of the COC or not? Therefore, it is clear that the commercial wisdom of CoC is not allowed to be interfered with. The relevant portion of the said judgement is reproduced herein below:

*“As aforesaid, upon receipt of a “rejected” resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the Corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of Sick Industrial Companies Act,*

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*1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the “commercial wisdom” of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable”.*

94. In short, the Resolution Plan submitted by the Resolution Applicant- M/s Acme Chem Limited, was unanimously approved by the CoC in its meeting held on 12.09.2018. The scope of any suggestion or alteration in the impugned resolution plan is very limited. As far as the procedures to be followed concerned, in this case, all the procedures have been correctly followed as per the provisions of the Insolvency Code, therefore, the Resolution Plan has been approved. It is also found that RP in accordance with Regulation 2 (a) and (b) has issued statutory notice in Form A to be published both in the State of Kerala (Registered office of the Corporate debtor) and State of Gujarat (Corporate Debtors place of business) in English and Vernacular newspapers. In view of the above facts, the Respondents herein cannot plead ignorance and the non-filing of claim before the IRP/RP within time constitute laches on their part. Section 31 of I & B Code was amended vide Gazette Notification dated 06.08.2019. As per the amended provision of Section 31 of the Code, the approved Resolution Plan has been made binding on the Corporate Debtor, its employees, members and all creditors including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is owed. With regard to the concessions sought by

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the Resolution Applicant, it is seen that the NCLT, Chennai Bench has approved Paragraph 8.1 P amongst the 'Other Terms and Conditions' in the Resolution Plan, which reads as under:

***“ P. To settle all legal proceedings and other contingent liabilities, irrevocably and unconditionally other than those explicitly covered in the Resolution Plan, no other person shall be eligible to receive any amount from the Corporate Debtor, either on account of unverified claims, legal proceedings, etc.”***

95. Based on the terms of the approved Resolution Plan, it is clear that the Operational Creditors have no right against the acquiring Company relating to the period, before the Effective Date. The Acquiring Company shall not have any liability towards Operational Creditors for the amounts owed prior to the Effective Date. Since the claim of the applicants, i.e. the Statutory dues are the operational debt of the corporate debtor, Merchem Limited, and no claim was filed by the applicants in M.As before the Resolution Professional, despite the knowledge of the Corporate Insolvency Resolution Process against the Corporate Debtor, the Appellants do not have any right to claim its dues from the acquiring Company, i.e. M/s Acme Chem Limited. The approved Resolution Plan is binding on all the stakeholders; therefore, the applicants are abode by the terms of the Approved Resolution Plan. The applicants of M.A/12/KOB/2020, M.A/16/KOB/2020, M.A/17/KOB/2020, M.A/18/KOB/2020 and M.A/19/KOB/2020 falls within the class of 'undecided/ unverified claims. Therefore, as per the law laid down by Hon'ble Supreme Court in the case of Committee of Creditors of Essar Steel India Limited (supra), Successful Resolution Applicant cannot be burdened with the past liabilities. Such an act will make it impossible for the Successful Resolution Applicant to run the business of the corporate debtor. It will ultimately defeat the entire purpose and mechanism set out under the I&B Code.

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96. The case of **Pr Commissioner of Income Tax v Monnet Ispat And Energy Ltd (Supra)**, is seminal in this regard, where the Hon'ble Supreme Court categorically adjudged that Section 238 of the IBC overrides any statute inconsistent with it, including the Income Tax Act, 1961. Therefore, it would appear that having a first charge (under another statute) may become immaterial if a company enters the ambit of insolvency under IBC.

97. I have also gone through the following judgements to come into a conclusion whether the dues of the statutory creditors can be allowed after approval of Resolution Plan:-

- i. The Code envisages submission of claims by creditors in time. Non-submission of claims in a CIRP timely may lead to loss to the State Exchequer. In [State of Haryana Vs. Uttam Strips Ltd. \[Company Appeal \(AT\) \(Insolvency\) No. 319/2020\]](#), the Hon'ble NCLAT observed that the appellant had failed to file the claim before the RP and has no right to claim its dues from the Resolution Applicant. It was held that a successful Resolution Applicant cannot be burdened with past liabilities since this would make it impossible for it to run the business, ultimately defeating the entire purpose and mechanism of the Code. The Adjudicating Authority, in [T. R. Ravichandran, RP Vs. The Asst. Commissioner \(ST and 12 Ors\) \[MA 1298/2019 in IBA/130/2019\]](#), held that being an operational creditor, the tax authorities are at liberty to make their claims before the Resolution Professional (RP) instead of insisting upon him to pay the pre-admission dues before accepting the tax liabilities arising during the CIRP period.
- ii. In State of [Haryana Vs. Uttam Strips Ltd.](#) (supra), the NCLAT observed that the approved Resolution Plan is binding on all the stakeholders; therefore, the appellant must abide by the terms of the approved Resolution Plan. In [Ultra Tech Nathdwara Cement Ltd. Vs. Union of India and Ors.](#) [DB Civil Writ Petition No. 9480/2019], it is observed that after implementation of Resolution Plan, the Central Goods and Services Tax Department issued demand notices to the corporate debtor (CD) on the ground that the RP / CoC did not pay entire dues of the Department as claimed in the resolution process and they were not heard at the time of approval of resolution plan. The Hon'ble High Court of Rajasthan

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set aside the notices issued by the Department as illegal, stating that the fresh demand notices are illegal and arbitrary.

98. It is also found that Respondent Nos. 24 and 25 in M.A/9/KOB/2019, who were statutory creditors submitted their claim before the Resolution Professional has been paid under the Resolution Plan. It is seen that Respondent 20 herein, i.e., The Gujarat Industrial Development Corporation (GIDC-applicant in MA 12 of 2020) assailed the Resolution Plan before the Hon'ble High Court of Gujarat in C.A. 22599 of 2019 by way of Writ Petition. The Hon'ble High Court vide its order dated 20.12.2019 upheld the Resolution Plan and refused to grant relief sought by the R20. It was held that the Resolution Plan has been duly approved by the Adjudicating Authority in accordance with the Code. The pronouncement of the Hon'ble Supreme Court in **Essar Steel case** (supra), Hon'ble High Court of Gujarat in **Merchem Ltd** (supra), Hon'ble NCLAT in **Director General of Income Tax case (supra)** and the Hon'ble High Court of Rajasthan in **Ultra Tech Nathdwara Cement Ltd.** case (supra) squarely apply to the present applications in hand.

99. Taking into consideration of the aforesaid discussions, it is clear that the 'Central Government', State Government' and 'local authority', who are entitled for dues arising out of the existing law are 'Operational Creditor' within the meaning of Section 5(20) of the 'I&B Code'. As the statutory dues are operational debts, and once a Resolution Plan has been approved by the Adjudicating Authority, the treatment of all stakeholders, including Operational Creditors, is to be determined as per the terms of the CoC approved Resolution Plan. A stakeholder cannot afford to sleep over his claims and fail to submit it on time and come forward after the approval of Resolution Plan by the Adjudicating Authority.

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100. For the aforesaid discussions, **M.A/9/KOB/2019 is allowed** as under: -

- I. The approved Resolution Plan approved vide order dated 23<sup>rd</sup> January, 2019 by the NCLT, Chennai Bench is binding on the stakeholders including the statutory authorities who failed to file claims before the said approval.
- II. The amounts shown in the books of the respective Respondents, antecedent to the date of approval of Resolution Plan, still being shown as on date as due and payable by the Respondents in their books of account, stands discharged in full and consequently be reversed or written off in the books of the respective Respondents in accordance with the approved Resolution Plan.

101. In view of the above order in M.A/9/KOB/2019, **M.A Nos. 12/ KOB of 2020, 16/KOB of 2020, 17/KOB of 2020, 18/KOB of 2020 and 19/KOB of 2020, stands rejected.**

Dated the 6<sup>th</sup> day of November, 2020

**(Ashok Kumar Borah)**  
**Member (Judicial)**

**Minutes of the meeting of "Combined Committee" constituted in compliance to the Orders of Hon'ble NGT related to the pollution of River Periyar dated 19.08.2020 in O.A. No.395/ 2013, dated 23.09.2020 in O.A 396/2013 and in O.A 262/2017**

While hearing in the matter of O.A 395/2018, the Hon'ble NGT considered the report filed by the Hon'ble SLMC Chairman regarding pollution of Periyar river and passed an order dated 19.08.2020 directing that ***"the committee appointed by this Tribunal in Original Application No.396 of 2013 can be directed to go into these aspects on the basis of the observations made by the Chairman, State Level Monitoring Committee and come with a plan for remedying the situation in an effective manner and submit a report to this Tribunal before the next hearing date. We direct accordingly"***.

Further while considering the case related to remediation of Kuzhikandam thodu in O.A No. 396/2013 on 23.09.2020 NGT directed that ***"the committee constituted by this Tribunal in O.A. No. 396 of 2013 to look into the issues in OA. No. 262 of 2017 and O.A. No. 242 of 2016 as well"***

In view of the above orders "Supervised committee" convened a meeting through video conference (VC) on 28.09.2020 to discuss the actions to be taken in compliance of the above NGT orders. Further, VC meeting was also conducted between nodal officers of the committees in O.A no.395/2013, 396/2013 and 262/2013 on 10.10.2020 to discuss the orders passed by the Hon'ble NGT in respective cases and activities completed/ initiated in compliance of NGT orders. After deliberate discussions, the Nodal officers decided to convene a joint committee meeting to peruse the reports of respective cases and to decide the schedule of field monitoring. Accordingly the meeting was convened by the Chief Environmental Engineer, KSPCB, Regional Office, Ernakulam on 22.10.2020 at the Research and Training Centre, Kerala State Pollution Control Board, Regional Office, Gandhinagar, Ernakulam complying all COVID protocols.

The following officials were attended the meeting.

1. Sri.M.A Baiju, Chief Environmental Engineer, KSPCB, Regional Office, Ernakulam
2. Smt. H. D. Varalaxmi, Scientist-E /Additional Director, CPCB (South), Bengaluru,
3. Dr.V. Deepesh, Scientist C, CPCB RD, Bangalore
4. Sri. Jowin Joseph, Scientist, NEERI,Chennai
5. Smt. Vinaya K.S, Senior Environmental Engineer, KSPCB, ESC, Eloor
6. Smt. Sreelakshmy P.B, Environmental Engineer, KSPCB, District office-1, Ernakulam
7. Smt. Jolly Joseph,Deputy Collector(R.R), Idukki

The following members attended the meeting through video conference

1. Dr. G. Saravanan, Sr. Scientist, CSIR-NEERI, Chennai Zonal Centre.
2. Dr. K. Jayachandran, member of SEIAA, Kerala
- 3.Shri Shajahan, Deputy Collector, Collectorate, Ernakulam

Sri.Muhammed P K, Executive Engineer in charges, Irrigation department, Sri.Eby Varghese, Environmental engineer, KSPCB, district office, Idukki, Sri. Sajeesh Joy, Assistant Environmental Engineer, KSPCB, Eloor, Smt. Shahana, Assistant Environmental Engineer, KSPCB, Regional office, Ernakulam were also present in the meeting.

1. Chief Environmental Engineer welcomed all committee members to the meeting and asked Smt. P.B Sreelakshmy, Environmental Engineer supervised committee member of KSPCB to present background of the meeting and details of various action taken by the respective committees Of OA 396 and 262.
2. Smt. Sreelakshmy P. B., Environmental Engineer, KSPCB presented following information;

- a. The orders passed by Hon'ble NGT in OA 395/2013, 36/2013 and 262/2017.
  - b. The responsibilities of the NGT constituted committees and the present status of the action done by committees.
  - c. Status of Suo Moto case filed by Hon'ble High Court of Kerala in WPC No.9500/2020
  - d. Issues in Periyar river due to improper operation of various regulator bunds constructed across Periyar river.
  - e. The details of industries/hotels/establishments etc located at the banks of river Periyar.
  - f. The details of pump houses (water intakes) situated in Periyar river.
  - g. Details of drains joining River.
3. After hearing details of activities carried out in compliance of orders passed by Hon'ble NGT, the Supervised Committee members discussed the following points with the respective committees, concerned officers of the District Office of the KSPCB and Irrigation Department.
- i. **Idukki District (OA 395/2013)- From upstream of Perinjankutty to Panamkutty, Idukki to Neriamangalam:**
    - Mapping of around 70 establishments viz. Hotels, Resorts and small-scale industries which contribute to pollution in the river, inspection and monitoring of the same.
    - Mapping and Monitoring of entire in Idukki District (1) From the upstream of Perinjankutty up to Panamkutty (2) from the upstream of Muthirapuzha to Panamkutty (3) Panamkutty to Neriamangalam stretches and (4) assessment of organic loading (Locations where identified major drains joining to the mainstream of river Periyar and Criteria for selection of location shall be as per the polluted stretch classification where minimum rate of flow shall be fixed).

ii. **Ernakulam District (OA 262/2017)- Neriamangalam to Aluva from Aluva to Eloor Ferry (Marthadavarma Branch), and Manglapuzha branch (Paravur)**

- Mapping of various drains joining River Periyar and also to assess the organic load contributed by the drains
- Mapping of around 230 Establishments viz. Hotels, Resorts, Hospitals, STP's and small scale industries are the source of pollution to Periyar river and inspection/monitoring of the same.
- Mapping and Monitoring of river stretches from Neriamangalam to Aluva, Aluva to Eloor Ferry (Marthadavarma Branch), and Manglapuzha branch (Paravur) along the Periyar river (selection of locations based on the sources of pollution/ drains joining to the river Periyar).

iii. **Thrissur District (with reference to report of SLMC filed before Hon'ble NGT):**

- Mapping of various drains joining River Periyar and also to assess the organic load contributed by the drains
- Mapping of around 41 Establishments viz. Hotels, Resorts, Hospitals, STP's and small scale industries are the source of pollution to Periyar river
- Mapping and Monitoring of river stretches of Periyar in Thrissur District (selection of locations based on the sources of pollution/drains joining to the River Periyar)

iv. **OA No. 242/2016**

- To conduct inspection in the industry and necessary monitoring so as to address the prayers of the Application- 242/2016

v. The committee asked irrigation department about the schedule of opening and closing of shutters at Pathalam and Manjummel regulators and their observations and views and also asked irrigation

department to submit the steps taken to maintain minimum flow in the river during lean period.

4. After detailed deliberations with Committee members, concerned officers of KSPCB following action plan with time line to complete the activities in compliance of Hon'ble NGT orders dated 19.08.2020 in OA 395/2013 and Order dated 23.09.2020 in O.A 396/2013 were decided.

#### ACTION PLAN

No.	Tasks	Timeline	Responsibility
1	Compilation of the activities already carried out in compliance of all previous NGT orders with respect to OA Nos. 395/2013 and 262/2016 (409/2016).	<b>Before 16<sup>th</sup> November, 2020.</b>	<b>Nodal officers, KSPCB.</b>
2	Details of pollution load assessment (district wise) already carried out by KSPCB in the impact zones of all three stretches of River Periyar.	<b>Idukki- Before 16<sup>th</sup> November, 2020.</b> <b>Ernakulam and Thrissur- Before 25<sup>th</sup> November 2020</b>	<b>Respective DO, KSPCB</b>
3	Identification & mapping of all potential pollution sources in the impact zones along the River Periyar (Idukki, Ernakulam & Thrissur districts).	<b>Idukki- Before 16<sup>th</sup> November, 2020.</b> <b>Ernakulam and Thrissur- Before 25<sup>th</sup> November 2020.</b>	<b>Respective DO, KSPCB</b>
4	Preparation of schedule of activities based on the Preliminary assessment, primary data, mapping and district environmental plan already prepared by KSPCB.	<b>Before 16<sup>th</sup> November, 2020 (For Idukki) &amp; Idukki- Before 16<sup>th</sup> November, 2020. Ernakulam and Thrissur- Before 15<sup>th</sup> December 2020</b>	<b>Respective DO, KSPCB in consultation with committee</b>
5	Preparation of work plan comprising of day wise inspection details for individual teams shall be made available prior to actual schedule of	<b>Idukki- Before 15<sup>th</sup> November, 2020</b> <b>Ernakulam and</b>	<b>Respective Committee members and DO, KSPCB</b>

	<p>inspections</p> <p>i) Idukki District</p> <p>ii) Ernakulam District</p> <p>iii) Thrissur District</p>	<p><b>Thrissur- Before 15<sup>th</sup> December 2020</b></p>	
6	<p>Inspection of all industries, hospitals, other establishments, wastes dumping grounds in the impact zones.</p>	<p><b>Idukki ( November 18 -21, 2020)</b></p> <p><b>Ernakulam &amp; Thrissur (4<sup>th</sup>-9<sup>th</sup> January,2020)</b></p>	<p><b>Committee and respective DO, KSPCB</b></p>
7	<p>Inspection of drains and assessment of pollution load in the impact zones of all three stretches of River Periyar.</p>	<p><b>Idukki- 18<sup>th</sup>-21<sup>st</sup> November. Ernakulam and Thrissur District- 15<sup>th</sup> to 19<sup>th</sup> December 2020</b></p>	<p><b>Committee and respective DO, KSPCB</b></p>
8	<p>Sample collection from all applicable sources and logistics (Number of samples and location as per the decision of committee members/ Team leader in the team). 10 % of the samples shall be duplicated for cross verification by CPCB/NEERI.</p>	<p><b>During field monitoring</b></p>	<p><b>Respective DO, KSPCB</b></p>
9	<p>Analysis of the parameter prescribed in the consent issued. In case non-consented entities, concerned team leader shall decide the parameters based on the category and pollution potential. (Recognized Govt. laboratories as decided by the committee-KSPCB to identify labs based on the parameters)</p>	<p><b>Consented Parameters details - Before 15<sup>th</sup> December, 2020.</b></p> <p><b>( The sector specific parameters to be describe as annexure)</b></p>	<p><b>KSPCB, Central Lab and respective DO.</b></p>
10	<p>Submission of analysis reports to the respective committee member or team leader.</p>	<p><b>15 days from completion of field monitoring</b></p>	<p><b>KSPCB</b></p>
11	<p>Report preparation</p> <p>i) Interim report on completed work to be submitted for review by supervised committee (Idukki, Thrissur &amp; Ernakulam).</p> <p>ii) Final report (Idukki, Thrissur &amp; Ernakulam).</p>	<p><b>Report of Idukki District- 10-12- 2020</b></p> <p><b>Ernakulam and Thrissur- 30.01.2021</b></p>	<p><b>Respective committee members/ team leaders</b></p>

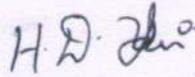
12	Final report submission before NGT	26.02.2021	Supervised committee
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The Supervised committee members asked to make available of reports/data pertains to 395, 396 and 262 before starting the inspection. 2<sup>nd</sup> phase of activity will be decided immediately after the completion of 1<sup>st</sup> phase.

The members Dr. G. Saravanan, and Dr. K. Jayachandran, informed that their convenient dates will be informed for the inspection. The Deputy Collector, Ernakulam ensured to extend all cooperation for the successful completion of the inspections, monitoring etc in Ernakulam District.

The meeting ended with thanks to Chair.

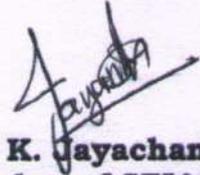
Supervised Committee-OA 396/2013



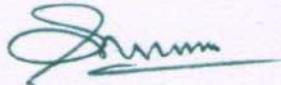
(H. D. Varalaxmi)  
Sc-E /AD, CPCB



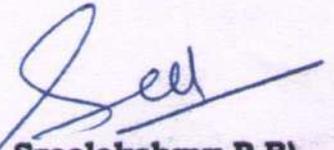
(Dr. G. Saravanan)  
Sr. Scientist,  
NEERI,



(Dr. K. Jayachandran)  
Member of SEIAA



(Sri. Shajahan.)  
Deputy Collector RR,  
Collectorate, Ernakulam



(Smt. Sreelakshmy P.B)  
Environmental  
Engineer, KSPCB

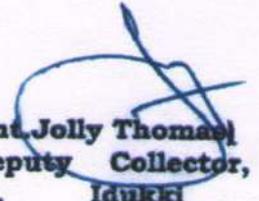
Committee- O.A -395/2013



(Dr. Deepesh.V),  
Scientist C, CPCB



(Sri. M.A Baiju)  
Chief Environmental  
Engineer, KSPCB



(Smt. Jolly Thomas)  
Deputy Collector,  
RR, Idukki

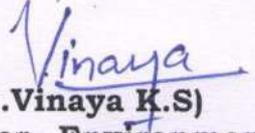
Committee- O.A- 262/2017



**(Dr. Deepesh.V),  
Scientist C, CPCB**



**(Sri. Jowin Joseph)  
Scientist, NEERI**



**(Smt. Vinaya K.S)  
Senior Environmental  
Engineer, ESC, Eloor**

**SCHEDULE FOR INSPECTION & MONITORING OA 395 / 2013 (PHASE 1-IDUKKI DISTRICT)**

	Team 1	Team 2	Team3
Day 1 November 18 <sup>th</sup>  (Stay at Munnar)	<p>SCHEDULE 1 &amp; 2 (Deepesh, Shahana)</p> <p>Munnar Tea museum Rd(Est 1-3(4kms-2hrs)</p> <p>Munnar Udumalpet Rd(Est 4-20-(6kms-7hrs)</p> <p>Assist-AE1(Revathy) &amp;AS (Divya P.S.) (Idukki)</p> <p>Vehicle 1- KL01 BT 5716(Anil Kumar- Mob 8075650892 (Deepesh)</p> <p>Vehicle 2 - (Bolero Idk – KL 01 BN 9877)</p> <p>Breakfast, lunch and dinner at Tea County, Munnar</p> <p>Deepesh (Driver-2,AE,AS)Stay at Munnar</p>	<p>SCHEDULE 3(Eby, Varalaxmi)</p> <p>Munnar top station -colony rd</p> <p>Kundala Rd (Ests 21-26, 52-53)</p> <p>Nallathanni, Kundala/Muthirapuzha sampling (55 kms-8 hrs)</p> <p>Assist-AE2(Divya K. Mohandas) &amp;NAMP1(Merin)(Idukki)</p> <p>Vehicle 1- KL 40 R 7020(Arun- Mob 9061983132 (Varalaxmi)</p> <p>Vehicle 2-(Figo)</p> <p>Breakfast, lunch and dinner at Tea County, Munnar</p> <p>Team Stay at Munnar</p>	<p>SCHEDULE 4(Sreelakshmi, Baiju)</p> <p>Munnar colony rd( ests 27-50(30 kms-14 hrs (2 days)</p> <p>Assist-AE3(Sruthy)&amp;NAMP2 (Jithin) (Idukki)</p> <p>Vehicle 1- KL 01 BV 6612 (Sri.sha,Bai)</p> <p>Vehicle 2- (Bolero Idk – KL 62C 4469)</p> <p>Breakfast, lunch and dinner at Tea County, Munnar</p> <p>Sreelakshmi, Shahana, Stay</p>

<p>Day 2 November 19 th</p> <p>(Stay at Munnar)</p>	<p>SCHEDULE6(Deepesh, Sreelakshmi, Pallivasal (Ests 79-84), Munnar – Bisonvalley – est 51</p> <p>Assist-AE1(Revathy) &amp;AS (Divya P.S.) (Idukki)</p> <p>Vehicle 1- KL01 BT 5716(Anil Kumar- Mob 8075650892 (Deepesh)</p> <p>Vehicle 2- (Bolero Idk – KL 01 BN 9877)</p> <p>Breakfast, lunch and dinner at Tea County, Munnar</p> <p>Deepesh Stay at Munnar</p>	<p>SCHEDULE 7(Eby, Varalaxmi) AM Rd(Ests 58-78)</p> <p>Sampling Munnar head works &amp;Other stations(20 Kms-12 Hrs)(2 Days)</p> <p>Assist-AE2(Divya K. Mohandas) &amp;NAMP1(Merin)(Idukki)</p> <p>Vehicle 1- KL 40 R 7020(Arun- Mob 9061983132 (Varalaxmi)</p> <p>Vehicle 2- (Figo)</p> <p>Breakfast, lunch and dinner at Tea County, Munnar</p> <p>Eby &amp; Varalaxmi Return</p>	<p>SCHEDULE 4 &amp; 5(Saravanan, Shahana)</p> <p>Munnar Devikulam Rd (Est 54-57 (4 kms-3 hrs)</p> <p>Sampling Ellackal bridge, Ellackal ests - 90(40 kms-8 Hrs)</p> <p>AE3(Sruthy)&amp;NAMP2(Jithin)(Idukki)</p> <p>Vehicle 1- (Bolero Idk – KL 62C 4469)</p> <p>Vehicle 2- KL 40 N 7566 Mob- 9947805474(Saravanan)</p> <p>Breakfast, lunch and dinner at Tea County, Munnar</p> <p>(Saravanan Stay at Munnar)</p>
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<p>Day -3 November 20</p>	<p>SCHEDULE 10(Deepesh, Vinaya) Sampling at Perinjankutty, Panamkutty to Adimaly Ests(85,86) Nariamangalam – Deviyar Sampling (70 Kms-5Hrs) Assist-AE1(Revathy) &amp;AS (Divya P.S.) (Idukki) Vehicle 1- KL 40 J 8087 Mob----- (Vinaya) Vehicle 2- (Bolero Idk – KL 01 BN 9877) Vehicle 3- KL01 BT 5716(Anil Kumar- Mob 8075650892 (Deepesh)  Breakfast and lunch at Salkara Hotel, Adimaly Deepesh Return</p>	<p>SCHEDULE7&amp;8(Jayachandran, Baiju) Adimaly to Karimban (Sampling), Cheruthoni Ests (91,92,93) Adimaly (Ests87-89) AE3(Sruthy)&amp;NAMP2(Jithin)(Idukki) Vehicle 1- KL 01 BV 6612 (Baiju) Vehicle 2-Own vehicle Vehicle 3-(Figo) Breakfast and lunch at Salkara Hotel, Adimaly  Jayachandran Return</p>	<p>SCHEDULE9 (Sajeesh, Saravanan) Cheruthoni-Mullaperiyar Sampling Mullaperiyar, Vandiperiyar,Upputhara, (110 Kms-9 Hrs) Assist-AE2(Divya K. Mohandas) &amp;NAMP1(Merin)(Idukki) Vehicle 1- KL 40 N 7566 Mob-9947805474 (Saravanan) Vehicle 2- (Bolero Idk – KL 62C 4469) Breakfast at Salkara Hotel, Adimaly Lunch at Edassery, Kattappana  Saravanan Return</p>
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<p>Day – 4 November 21</p>	<p>SCHEDULE 10(Deepesh, Vinaya)</p> <p>Assisting pending duties</p> <p>Assist-AE&amp;AS(Idukki)</p> <p>Vehicle 1-</p> <p>Vehicle 2-</p>	<p>SCHEDULE7&amp;8(Jayachandran, Baiju)</p> <p>Assisting pending duties</p> <p>Assist-JSA&amp;NAMP(Idukki)</p> <p>Vehicle 1-</p> <p>Vehicle 2-</p>	<p>SCHEDULE9(Sreelakshmi, Shahana)</p> <p>Assisting pending duties</p> <p>Assist-JSA&amp;NAMP(Idukki)</p> <p>Vehicle 1-</p> <p>Vehicle 2-</p>
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**DAY 1**

**BREAKFAST, LUNCH & DINNER (TEA COUNTY, MUNNAR) – 18 nos.**

**DAY 2**

**BREAKFAST, LUNCH & DINNER (TEA COUNTY, MUNNAR) - 18 nos.**

**DAY 3**

**BREAKFAST(SALKARA HOTEL, ADIMALY) – 20 nos.**

**LUNCH(SALKARA HOTEL, ADIMALY) -14 nos.**

**LUNCH(EDASSERY HOTEL, KATTAPPANA) -6 nos.**

**ACCOMMODATION DETAILS**

DAY	NO. OF ROOMS(TEA COUNTY, MUNNAR)	ROOM RATE (TEA COUNTY, MUNNAR)	AMOUNT(TEA COUNTY, MUNNAR)	NO. OF ROOMS(MARTHOMA RETREAT, MUNNAR)	ROOM RATE (MARTHOMA RETREAT, MUNNAR)	AMOUNT(MARTHOMA RETREAT, MUNNAR)	TOTAL
18.11.2020	4	3616	14464	6	1000	6000	33696/-
19.11.2020	2	3616	7232	6	1000	6000	

**SCHEDULE FOR INSPECTION & MONITORING OA 395/2013 (PHASE 2-ERNAKULAM & THRISSURDISTRICT)**

	<b>Team 1</b>	<b>Team 2</b>	<b>Team3</b>
<b>Day 1</b>	<b>SCHEDULE 1</b>	<b>SCHEDULE 2</b>	<b>SCHEDULE 3</b>
<b>December 15<sup>th</sup></b>	(Deepesh, Rameena)	(Jowin, Dinesh)	(Jayachandran, Sreelakshmy)
	Starts at 8.30 am	Starts at 8.30 am	Starts at 8.30 am
	Neriamangalam to Vettampara ( 24 kms)	Paniyeli to Marampilly, Aluva ( 26kms)	Ayyampuzha to Chengal, Kalady
<b>Perumbavoor &amp; EKM Stretches</b>	Sampling points	Sampling points	<u>Drains</u>
	1) Neriamangalam,Sastha Temple Ghat	1) Paniyeliporu, Whispering waters.	1. Drain-1 inside reserve forest
	2) Neriamangalam Bridge	2) Thottuva - Near River view Resort kodanad	2. Drain-2 inside reserve forest
	3) Avolichal near pumping station	3) Near Kalady Bridge	3. Perunthode
	4) Inchathotty hanging bridge	4) Vallom Angadikadavu - Near T P Hassan Memmorial Hall	4. Drian near mini industrial estate, Illithode
	5) Thattekkad Bridge, velielchal	5) Mudickal - Near pumb House.	5. Drain in Arattukadavu
	6) KWAPumpingstation, kuttampuzha	6) Kunnuvazhy - Near Universal Educational Trust	6. Drain near old malayattoor church
	7) Manikandanchal, Pooyamkutty.	7) Marampilly - Near Bank of India , Aluva - Munnar Rd	7. Neeleeswaram canal
	8) Vettampara pumping station		8. Mookkada thodu
	Assist-AE(AjithRaveendran)		9. Chengal thodu
	NAMP(Srutheesh Somanath)	Assist-AE(Mathu P Sasi) & JSA (Praveen K)	<u>River Sampling locations</u>
	Vehicle 1- KL 17P 5052 (Amal-Mob 9895486422 - (Deepesh)		1. Arattukadavu
	Vehicle 2- KL 01BN 9853 (Thankappan- Mob 9544059777	Assist-AE(Mathu P Sasi) & JSA (Praveen K)	2. Near old malayattoor church
	Team Stay	Vehicle 1- KL 40R 7020 Driver Arun – 9061983132 - (Jowin)	3. Kallukadavu, Neeleeswaram
		Vehicle 2 – Perumbavoor vehicle	4. Near Mekalady play ground
		Team Stay	Assist – AE (Hridin. K.G)
			NAMP Operator (Yadhukrishnan)
			Vehicle 1- KL 40J 8087 (Deepu-Mob 9895069781(Jayachandran, Sreelekshmi)
			Vehicle No 2 – KL 01CF 8284- Surveillance Van (Driver- Safal- 9020026365/Nisar- 9961493939)
			Team Stay

	<b>Team 1</b>	<b>Team 2</b>	<b>Team3</b>
<p><b>Day 2</b></p> <p><b>16<sup>th</sup> December 2020</b></p> <p><b>(Ernakulam&amp; Eloor stretches)</b></p>	<p><b>SCHEDULE 4</b> (Saravanan, Shahana) Starts at 8.30 am Chengal Kalady to Chengamanad, Manajaly thodu</p> <p><u>Drains</u></p> <ol style="list-style-type: none"> <li>1. Kanjoor thodu</li> <li>2. Parappuram-Arankavu drain</li> <li>3. Neduvannur-Desom-Chengamanad drain</li> <li>4. Vappalassery-Nedumbassery-Angamaly south drain</li> <li>5. Thonnamakka thodu-anattu thodu-arattupuzha-maljali thodu</li> </ol> <p><u>River Sampling locations</u></p> <ol style="list-style-type: none"> <li>1. Near Madassy mana temple, Kanjoor</li> <li>2. Parappuram vallam kadavu</li> <li>3. Thadikkadavu Bridge</li> <li>4. Angadikadavu road- Manjaly thodu, before industrial Angamaly estate</li> <li>5. Madhurampuram Bridge- Manjaly thodu- After industrial area Angamaly</li> </ol> <p>Assist-AE(Sruthi Salim, Asha) NAMP Operator(Vineeth) Vehicle No 1 -KL 40R 7020 Driver Arun – 9061983132 - (Saravanan) Vehicle No- 2 - KL 17 K 9445 (Driver- Bijoy. K.P-9747690301) – Team Stay</p>	<p><b>SCHEDULE 5</b> (Jayachandran, Sreelakshmy) Starts at 8.30 am Marampilly to Eloor</p> <p><u>Drains</u></p> <p>Thottumugham Canal Chalakkal Canal Arrakka Canal Karottupuram Canal Ashramam Road Drain Aluva Market Drain Drain near hotel Periyar, Aluva Santhi Lotous Puthalam kadavu Drain Drain near to Glass factory Road Drain Asset Kadavu Thoombungal thodu Edappally thodu</p> <p><u>River Sampling locations</u></p> <p>Chembakassery Kadavu Aluva Manappuram Uliyannur bridge Kalamassery Bridge</p> <p>Assist-AE(Reshma.S,Akhilamol) NAMP Operator (Ajmal) Vehicle 1- KL 40J 8087 (Deepu-Mob 9895069781 (Jayachandran, Sreelekshmy) Vehicle No 2- KL01CF8284-Surveillance Van (Driver- Safal-9020026365/Nisar-9961493939) Team Stay</p>	<p><b>SCHEDULE 6</b> (Deepesh, Jowin, Sajeesh) Starts at 8.30 am In and around Eloor IDA (16-20.0 kms distance)</p> <p>Sampling points – 17 Nos (List attached)</p> <p>Drain sampling (List Attached)</p> <p>Assist-AE (Anirudhan, Treesa) (ESC), NAMP (Akhil)</p> <p>Vehicle No1- KL 1 BT 5716 (Driver-Anilkumar- 9605302440) (Deepesh, Jowin)</p> <p>Vehicle 2 – Eloor Surveillance van</p> <p>Team Stay</p>

	<b>Team 1</b>	<b>Team 2</b>	<b>Team3</b>
<p><b>Day 3</b></p> <p><b>17<sup>th</sup> December 2020</b></p> <p><b>Eloor stretch</b></p>	<p><b>SCHEDULE 7</b> (Saravanan, Shahana)</p> <p>Starts at 8.30 am In and around Eloor IDA (16-20.0kms distance)</p> <p>River Sampling (By Boat)</p> <ol style="list-style-type: none"> <li>1) Mannjummel Bridge</li> <li>2) Manjummel Bund D/S</li> <li>3) Manjummel Bund U/S</li> <li>4) Uliyannoor Bridge</li> <li>5) Pathalam Bridge</li> <li>6) Pathalam Bund U/S</li> <li>7) Puthalam kadavu</li> </ol> <p>Assist-NAMP (Vinayak) &amp; NAMP (Ashkar), NAMP (Yadu) JSA (ESC)</p> <p>Vehicle 1- KL 40 R 7020 (Arun- Mob 9061983132 - (Saravanan) Vehicle 2 No- KL 17 K 9445 (Driver- Bijoy. K.P-9747690301) Vehicle 3 - NAMP- 3 Nos (Eloor vehicle)</p> <p>Team Stay</p>	<p><b>SCHEDULE 8</b> (Sajeesh, Varalakshmi)</p> <p>Starts at 8.30 am In and around Eloor IDA (16-20.0kms distance)</p> <p>River Sampling (By Boat)</p> <ol style="list-style-type: none"> <li>8) Eloor Ferry</li> <li>9) Unthithodu confluence point</li> <li>10) Methanam Bridge</li> <li>11) Vettukadavu</li> <li>12) Pathalam Bund D/S</li> </ol> <p>Assist-AE (Anuroop) NAMP (Anandhu) (ESC) NAMP (Akhil), JSA (ESC) Vehicle 1- KL 01 BV 6612 (Driver- Haridas - 9495467164) – (Varalakshmy) Vehicle 2- KL 01BN 9853 (Thankappan- Mob 9544059777 (Sajeesh) Vehicle No 3 - KL01CF8284- Surveillance Van (Driver- Safal- 9020026365/Nisar- 9961493939) (AE, NAMP)</p> <p>Team Stay</p>	<p><b>SCHEDULE 9</b> (Deepesh, Jowin, Vinaya)</p> <p>Starts at 8.30 am</p> <p>Drain sampling (List Attached)</p> <p>Assist-Assist-AE (Anirudh) NAMP (Ajmal) JSA (ESC) Vehicle 1- Vehicle 1- KL 40J 8087 (Deepu-Mob 9895069781(Vinaya) Vehicle No- 2-KL 1 BT 5716 (Driver-Anilkumar- 9605302440) (Deepesh, Jowin) Vehicle No- 3 –ESC Eloor Vehicle (AE, NAMP, JSA)</p> <p>Team Stay</p>

<p><b>Day 4</b></p> <p><b>18<sup>th</sup> December</b></p> <p><b>Eloor &amp; Thrissur stretches</b></p>	<p><b>SCHEDULE 10</b></p> <p>(Deepesh, Vinaya)</p> <p>Starts at 8.30 am</p> <p>Drain sampling</p> <p>(List Attached)</p> <p>Assist-NAMP (Vinayak) &amp; NAMP (Ashkar), NAMP (Vineeth) JSA (ESC)</p> <p>Vehicle 1- Vehicle 1- Vehicle 1- KL 40 J 8087 (Deepu-Mob 9895069781)- (Deepesh, Vinaya)</p> <p>Vehicle 2 - (Eloor vehicle) - NAMP</p> <p><b>Team Stay</b></p>	<p><b>SCHEDULE 11</b></p> <p>(Jowin, Sajeesh)</p> <p>Starts at 8.30 am</p> <p>Drain sampling</p> <p>(List Attached)</p> <p>Assist-AE (Anuroop) NAMP (Anandhu) (ESC) NAMP (Ajmal), JSA (ESC)</p> <p>Vehicle 1- KL 40R 7020 Driver Arun – 9061983132 - (Jowin)</p> <p>Vehicle No 2 - KL01CF8284- Surveillance Van (Driver- Safal- 9020026365/Nisar- 9961493939) (AE, NAMP)</p> <p><b>Team Stay</b></p>	<p><b>SCHEDULE 12</b></p> <p>(Varalakshmi, Suseela)</p> <p>Starts at 8.30 am</p> <p>Vijayan thodu to chungam thodu (7 kms distance)</p> <p>Sampling points – 8 nos</p> <ol style="list-style-type: none"> <li>1) Vijayan Thodu</li> <li>2) Kottappuram Bridge</li> <li>3) Manimakkam Thodu</li> <li>4) Drain</li> <li>5) Edamukku Thodu</li> <li>6) Mankuzhi Thodu</li> <li>7) Padanna Thodu</li> <li>8) Chungam Thodu</li> </ol> <p>Assist-AE(Kavya PG, Alba NJ) (Thrissur), NAMP Operator</p> <p>Vehicle No- 1 - KL 1 BT 5716 (Driver-Anilkumar- 9605302440) (Varalakshmy)</p> <p>Vehicle No 2 – Trichur Vehicle – (AE &amp; NAMP)</p> <p><b>Team Stay</b></p>
<p><b>Day 5</b></p> <p><b>19<sup>th</sup> December 2020</b></p>	<p><b>Team 1</b></p> <p><b>RESERVE DAY</b></p>	<p><b>Team 2</b></p> <p><b>RESERVE DAY</b></p>	<p><b>Team3</b></p> <p><b>RESERVE DAY</b></p>