

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
Principal Bench, New Delhi

Original Application No.502/2023

Society for Protection of Environment and Biodiversity

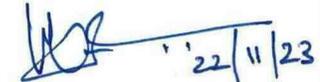
Applicant

Vs.

Union of India & Ors.

Respondent(s)

S. No.	Particulars	Page No.
1.	Action Taken Report in compliance of Hon'ble NGT Order dated 18.08.2023 in Original Application No.502/2023, Society for Protection of Environment and Biodiversity Vs. Union of India & Ors.	
2.	Annexure-I: Copy of framework was circulated to SPCBs/PCCs for implementation vide letter dated 23/09/2019.	
3.	Annexure -II: Copy of Minutes of Meeting held on 09.11.2023.	
4.	Annexure-III: Copy of the Hon'ble NGT Order dated 18.08.2023.	

 22/11/23

(B.Vinod Babu)

Scientist F

Central Pollution Control Board

Delhi-110032

Date: 22.11.2023

Place: Delhi

**Action Taken Report in the matter of O.A No. 502/2023 on implementation of CPCB's
"Framework on Identification of Materials Generated from Industrial Processes as Wastes
or By-Products"**

Background:

The Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 (HOWM Rules, 2016) defines "waste" under Clause 3(1) (38) of the HOWM Rules, 2016 as follows:

Waste means materials that are not products or by-products, for which the generator has no further use for the purposes of production, transformation or consumption. The explanation incorporated further for the purposes of this clause states as follows:

(i) Waste includes the materials that may be generated during, the extraction of raw materials, the processing of raw materials into intermediates and final products, the consumption of final products, and through other human activities and excludes residuals recycled or reused at the place of generation; and

(ii) By-product means a material that is not intended to be produced but gets produced in the production process of intended product and is used as such.

Thus the distinction between - when a material generated from a production process should be considered as a "by-product" and when it should be considered as a "waste" is required to be discern critically. In case a "waste" escapes as "by-product", it may get out of ambit of the HOWM Rules and could carry the risk of adverse impacts on human health and environment.

Considering the same and as per the recommendations of the Monitoring committee constituted by Hon'ble NGT in the matter of O.A No 804/2017, Central Pollution Control Board (CPCB) in 2019 has prepared "Framework on Identification of Materials Generated from Industrial Processes as Wastes or By-Products" for identification of material generated from industrial processes as "wastes" and "by-products" thereby resulting into effective enforcement of the HOWM Rules, 2016. The said framework was circulated to SPCBs/PCCs for implementation vide letter dated 23/09/2019 (**Annexure-I**).

The issues related to Non-implementation of CPCB's "Framework on Identification of Materials Generated from Industrial Processes as Wastes or By-Products" was raised before Hon'ble NGT in the matter O.A No. 502/2023. The Hon'ble NGT while hearing the said matter on 18/08/2023 directed that:

"...

6. *The points as raised by the applicant require further consideration.*

Accordingly, matter is referred to MoEF&CC with the direction that in consultation with the CPCB and State PCBs/PCCs, the MoEF&CC had to clarify and take immediate measures for proper implementation of the Framework on identification of material generated from industrial process as waste or by-product and to submit an action taken report before this Tribunal. MoEF&CC may also act on whether Framework can become the part of HOWM Rules. In case of any need and requirement, the MoEF&CC/CPCB may take advise of the Technical Expert Committee, as required and to provide a prescribed form for application of identification of an alleged by-product as required under the Framework. Such exercise may be completed by the MoEF&CC/CPCB within three months and further

action taken report be filed within three months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF..."

In this regard, it is humbly submitted that under the aforesaid framework Criteria for Identification of material as 'waste' or 'by-product' has been provided under which step by step procedure to be followed by the SPCBs/PCCs for identification of material has been outlined.

Further, the following 08 indicative Guiding factors for accepting a material as "by-product" have also been provided:

- i. The material fits into the definition of "by-product" as defined under clause 3(1)(38) of the HOWM Rules, 2016.
- ii. Various constituents/contaminants and their concentration in the material are known.
- iii. The material doesn't require special purification/pre-processing when compared with the raw material which is intended to be substituted by the material.
- iv. The material meets BIS specification or other prescribed standards of the product intended to be substituted by material.
- v. Consumption of the material is known and there is sufficient and established demand for such consumptions.
- vi. Consumption of the material does not cause adverse impact on effluent emission/waste generation at the process where the same is intended to be used.
- vii. The constituents/contaminants present in the material do not have environmental impact and risk at its intended end use.
- viii. It doesn't have adverse impact on the market of the product which is intended to be substituted by the material.

In compliance of the Hon'ble NGT orders, CPCB convened a consultative meeting with officials of MoEF&CC and SPCBs/PCCs to review the status of implementation of the Framework for identification of material as Waste or By-products issued by CPCB. The Minutes of Meeting are appended as **Annexure-II**.

Subsequent to the said consultative meeting, CPCB issued letters dated 10/11/2023 and 17/11/2023 to SPCBs/PCCs for providing information on the (i) Constitution of Technical Expert Committee of SPCB/PCC prescribed under the said framework (ii) Details on material (a) for which applications have been received for classification as By-product (b) Materials classified.

In this regard, 19 SPCBs/PCCs have provided information on implementation of the CPCB's "Framework on Identification of Materials Generated from Industrial Processes as Wastes or By-Products" and the same is as under:

1. 09 SPCBs/PCCs (namely Assam, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Telangana and Tripura) have informed that they have adopted the CPCB's Framework and constituted Technical Expert Committee (TEC) for examination of feasibility as per the framework.
2. 08 SPCBs/PCCs (Haryana, Jammu & Kashmir, Jharkhand, Karnataka, Kerala, Puducherry, Punjab and Tamil Nadu) have initiated the process of adopting the CPCB's framework and is in process of constitution of TEC for the same.

3. 02 SPCBs/PCCs namely Andaman & Nicobar Island and Mizoram have informed that there are no industry producing HW in their State/UT.
4. Further, Gujarat PCB has informed that 15 applications for classification of 15 materials as by-product has been received by them. Currently, no material has been classified as by-product. However, GPCB is considering application for spent HCl (purity 32% and above) generated from Chlorinated Paraffin Wax industry as by-product as per the recommendation of Technical Review Committee of MoEF&CC in its 75th meeting and subject to conditions as stipulated by TRC in view of the demand utilization and availability of the waste.
5. Madhya Pradesh has informed that 01 application for Cryolite (bath material generated in alumina refineries) has been received and the same was rejected by TEC of the State Board.

With regard to prescribing an application form for identification of a process material as a by-product. It is humbly submitted that the applications forms being received by SPCBs are being examined by CPCB and it is humbly submitted that CPCB may finalise a common Application Form and incorporate the same in the framework after consultation with the SPCBs/PCC and approval of MoEF&CC within 01 month.

It is therefore humbly prayed that Hon'ble NGT may kindly consider granting one month period for prescribing the Application form for identification of a process material as a by-product.

SPEED POST

F. No. B-29016/C-08/19/WM-II Div./

September 23, 2019

To

The Member Secretary
(all SPCBs/PCCs)

6699 to 6734

Sub: Guidelines on Framework on Identifications of Materials Generated from Industrial Processes as Wastes or By-products – in compliance to the orders dated 12/04/2019 of the Hon'ble NGT in the matter of OA No. 804/2017 -regarding.

Sir,

This has reference to the orders dated 12/4/2019 of the Hon'ble National Green Tribunal, Principal Bench, New Delhi, in O.A No 804/2017: the matter of Rajiv Narayan & Anr. Vs Union of India & Ors wherein various recommendations of the Monitoring Committee need to be complied with, where one of the recommendations is as below:

"There is a need to urgently prepare a guidelines or protocol on how to decide the by-product on specific criteria. This can be done based on chemical process involved in order to bring consistency in approach."

In compliance of aforesaid order, CPCB has prepared guidelines on "Framework on Identifications of Materials Generated from Industrial Processes as Wastes or By-products" which is available at CPCB website i.e. <https://cpcb.nic.in/ngt-mc-hw/> with the approval of Ministry of Environment, Forest & Climate Change, Govt. of India. The document outlines Essential Aspects Involved in the Identification of Material as Wastes or as By-Products; Criteria for Identification of Material as waste or By-Product; Steps to be followed; Guiding factors for accepting a material as "by-product", etc. that will be helpful for the SPCBs/PCCs to identify whether a given material is a "waste" or "by-product" generating from the industrial process.

It is therefore, requested to kindly ensure that identification and declaration of any material (generated from the industrial process) as a "waste" or "by-product" shall be as per the criteria and guiding factor laid down under the aforesaid framework.

Yours faithfully,

(Abhey S. Soni)

Additional Director & Head
Waste Management-II Division

o/c

24/09/19

List of all the State Pollution Control Boards (SPCBs) & Pollution Control Committees (PCCs)

1.	The Member Secretary Telangana Pollution Control Board Paryavaran Bhawan, A-III Institutional Estate, Sanathnagar Hyderabad – 500018.	10.	The Member Secretary Himachal Pradesh Pollution Control Board Paryavaran Bhawan, Phase-III, Below BCS, New Shimla – 171 009.
2.	The Member Secretary Andhra Pradesh Pollution Control Board D.No. 33-26-14 D/2, Near Sunrise Hospital, Pushpa Hotel Centre, Chalamvari Street, Kasturibaipet, Vijayawada – 520 010	11.	The Member Secretary J&K State Pollution Control Board Parivesh Bhawan, Shiekh-ul-Campus, behind Govt. Silk Factory, Raj Bagh, Srinagar(J&K)
3.	The Member Secretary Arunachal Pradesh Pollution Control Board Department of Environment & Forests, Paryavaran Bhawan, Yupia Road, Papu Nalah, Naharlagun- 791110	12.	The Member Secretary Jharkhand State Pollution Control Board T.A. Building, HEC, P.O. Dhurwa, Ranchi-834 004
4.	The Member Secretary Assam Pollution Control Board Bamunimaiden, Guwahati – 781021	13.	The Member Secretary Karnataka State Pollution Control Board, Parisara Bhavana, 1 st to 5 th Floor 49, Church Street, Bengaluru – 560 001
5.	The Member Secretary Bihar Pollution Control Board Parivesh Bhawan, Plot No. NS-B/2 Patliputra Industrial Area, Patliputra, Patna (Bihar)-800023	14.	The Member Secretary Kerala Pollution Control Board Pattom Palace, P.O. Thiruvananthapuram – 695 004
6.	The Member Secretary Chhattisgarh Environment Conservation Board Paryavas Bhawan, North Block Sector-19, Naya Raipur (C.G.)- 490099	15.	The Member Secretary Maharashtra Pollution Control Board Kalptaru Point, 2 nd - 4 th floor, Opp. Cine Planet, Sion Circle, Sion (E), Mumbai – 400 022
7.	The Member Secretary Goa Pollution Control Board Dempo Tower, 1st Floor, EDC Patto Plaza, Panaji, Goa - 403 001.	16.	The Member Secretary Madhya Pradesh Pollution Control Board Paryavaran Parisar, Sector E-5, Araera Colony, Bhopal – 462 016
8.	The Member Secretary Gujarat Pollution Control Board Paryavaran Bhawan, Sector 10-A, Gandhi Nagar - 382010	17.	The Member Secretary Manipur Pollution Control Board Near Imphal West D.C. Office Complex, Lamphelpat, Imphal – 795 004.
9.	The Member Secretary Haryana Pollution Control Board C-11, Sector-6 Panchkula Haryana-134 109 Chandigarh	18.	The Member Secretary Meghalaya Pollution Control Board Arden, Lumpynggad, Shillong – 793 014
		19.	The Member Secretary Mizoram Pollution Control Board New Secretariat Complex, Khatla, Thlanmual Peng, Aizawl, Mizoram - 796001

20.	The Member Secretary Nagaland Pollution Control Board Signal Point, Dimapur, Nagaland - 797112
21.	The Member Secretary State Pollution Control Board, Odisha Paribesh Bhawan, A-118, Nilakantha Nagar, Unit-VIII, Bhubaneswar – 751 012.
22.	The Member Secretary Punjab Pollution Control Board Vatavaran Bhawan, Nabha Road Patiala – 147 001
23.	The Member Secretary Rajasthan Pollution Control Board 4, Institutional Area, Jhalana Doongri Jaipur – 302 004, Rajasthan.
24.	The Member Secretary Sikkim Pollution Control Board Forest, Environment Wildlife Management Department, Government of Sikkim, Forest Secretariat Annex I, Ground Floor, Deorali, Gangtok -737102 East Sikkim
25.	The Member Secretary Tamil Nadu Pollution Control Board No. 76, Mount Salai Guindy, Chennai – 600 032
26.	The Member Secretary Tripura Pollution Control Board, Parivesh Bhawan, Pandit Nehru Complex, Gorkhabasti P.O. Kunjaban, Agartala Tripura – 799 006,
27.	The Member Secretary Uttar Pradesh Pollution Control Board Building No TC-12V Vibhuti Khand, Gomti Nagar Lucknow – 226 010
28.	The Member Secretary Uttarakhand Environment Protection & Pollution Control Board 46B, IT Park, Sahastradhara Road, Dehradun-248001 Uttarakhand.
29.	The Member Secretary West Bengal Pollution Control Board Paribesh Bhawan, 10A, Block- LA, Sector III, Salt Lake City, Calcutta- 700106
30.	The Member Secretary Chandigarh Pollution Control Committee Paryavaran Bhawan, Ground Floor Madhya Marg, Sector C19-B, Chandigarh – 160 019
31.	The Member Secretary Delhi Pollution Control Committee 4th Floor, ISBT Building, Kashmere Gate, Delhi - 110006.
32.	The Member Secretary Daman, Diu & Dadra & Nagar Haveli Pollution Control Committee Fort Area, Court Compound, Moti Daman- 396220

33.	The Member Secretary Lakshadweep Pollution Control Committee Lakshadweep Administration, Dept. Of Sc. and Technology & Environment Kavaratti Island-682 555
34.	The Member Secretary Andaman & Nicobar Pollution Control Committee Dept. Of Sc. and Technology Dollygunj Van Sadan, Haddo P.O. Port Blair – 744 102
35.	The Member Secretary Puducherry Pollution Control Committee Department of Science, Technology and Environment III rd floor, PHB Building, 5, Anna Nagar, Puducherry – 605005

Minutes of consultative meeting with the Officials of SPCBs, CPCB and MoEF&CC on implementation of "Framework on Identification of Materials Generated from Industrial Processes as Wastes or By-Products" as per the Hon'ble NGT orders in the matter of O.A No. 502/2023

In compliance of Hon'ble NGT orders dated 18.08.2023 in the matter of O.A. no 502/2023, a consultative meeting among the officials of CPCB, MoEF&CC and SPCBs/PCCs to review the status of implementation of CPCB's "Framework on Identification of Materials Generated from Industrial Processes as Wastes or By-Products" was held on 09.11.2023 through video conferencing. List of participants is placed at Annexure I.

The Divisional Head, Waste Management-II, CPCB briefed about the provisions of HOWM Rules, 2016 regarding by-products and outlined the framework for classification of material as by-products issued by CPCB in the year 2019.

Thereafter, SPCBs/PCCs were requested to present the procedure adopted in respective Boards for classification of materials as waste or by-product as per the framework of CPCB. Gujarat PCB informed that as per the framework, a Technical Expert Committee (TEC) has been constituted under chairmanship of Member Secretary, GPCB and representatives from CPCB Regional Directorate, IIM, IIT, Industries Representative, etc as members. GPCB has also designed a format for receiving such applications. The applications received for classification of material are being processed as per the framework, however, currently no material has been classified as by-product.

It was clarified that GPCB had earlier classified some of the material as by-product however, the same has been withdrawn considering the limitations that is more availability and less demand of the same, leading to disposal issues on the ground.

SPCBs of Himachal Pradesh, Odisha have informed that they have also constituted the TEC however, no applications have been received for classification of materials as by-product. SPCBs of Kerala, Tamil Nadu, Puducherry, Chhattisgarh, Jharkhand have informed that they are in the process of constituting the TEC as per the framework.

Lakshadweep PCC informed that there is no hazardous waste generating industry in the UT. Similarly, Delhi PCC informed that there are no large hazardous waste generating units therefore, implementation of said framework may not be applicable on them.

Sh. Vinod K. Singh, Additional Director (Scientist 'E'), of MoEF&CC requested all SPCBs/PCCs to adopt the framework issued by CPCB on priority as the same has been issued in 2019 as per the directions of the Hon'ble NGT.

After the deliberations, the following has been decided:

1. All the SPCBs/PCCs should submit the details of TEC constituted.
2. In Case SPCBs have not constituted the TEC, the timeline for constitution of same shall be submitted.
3. GPCB may share a copy of application form being used by them for receiving application for classification of material as by-product to CPCB, so that the same may be reviewed and circulated to rest of the SPCBs for their use.
4. All SPCBs/PCCs shall provide the list of materials (i) for which application has been received for categorization as by-product and (ii) classified as by-product.
5. The aforesaid information to be submitted by SPCBs/PCCs by 14.11.2023 to CPCB.

It was also decided to convene another meeting with SPCBs/PCCs in following week to review the progress made in implementation of the framework prior to hearing of the matter by Hon'ble NGT.



Concerned officials from MoEF&CC, CPCB & SPCBs/PCCs

1. Sh. Vinod K. Singh (MoEF&CC)
2. Sh. Vinod Babu (DH WM-II, CPCB, Delhi)
3. Sh. Sahil Patel, (Sc. 'C' WM-II CPCB, Delhi)
4. Haryana State Pollution Control Board
5. Tamil Nadu Pollution Control Board
6. Punjab Pollution Control Board
7. Assam Pollution Control Board
8. Puducherry Pollution Control Committee
9. Kerala State Pollution Control Board
10. Himachal Pradesh Pollution Control Board
11. Andaman & Nicobar Pollution Control Committee
12. Delhi Pollution Control Committee
13. Chandigarh Pollution Control Committee
14. Jharkhand State Pollution Control Board
15. Gujarat Pollution Control Board
16. Chhattisgarh Environment Conservation Board
17. Odisha State Pollution Control Board
18. Dadra Nagar Haveli & Daman Diu Pollution Control Committee
19. Sikkim Pollution Control Board
20. Rajasthan Pollution Control Board
21. Jammu & Kashmir Pollution Control Committee
22. Goa State Pollution Control Board
23. Bihar Pollution Control Board
24. West Bengal Pollution Control Board
25. Mizoram Pollution Control Board
26. Uttar Pradesh Pollution Control Board
27. Lakshadweep Pollution Control Committee
28. Nagaland Pollution Control Board

Item No. 04

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 502/2023

Society for Protection of Environment
and Biodiversity

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 18.08.2023

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, CHAIRPERSON
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Sanjay Upadhyay, Ms. Eisha Krishan & Ms. Gitanjali Sanyal, Advs.

ORDER

1. The issue raised in this application is with respect to the non-implementation of the 'Framework on Identification of Materials Generated from Industrial Processes as Wastes or By-Products' issued by the Central Pollution Control Board in September, 2019, to ensure that no hazardous waste gets categorized as by-product, thereby escaping the strict scrutiny of the Hazardous and Other Waste Management Rules, 2016. The framework has been issued in the pursuance of the direction of this Tribunal dated 12.04.2019 in the matter titled *Rajiv Narayan & Anr vs. Union of India & Ors.* bearing Original Application No. 804 of 2017. The Framework which has been specifically issued as the HOWM Rules, 2016 do not clearly establish when a material generated from any production process should be considered a "by-product" and when it should be considered a "waste". It is the case of the applicant that the mandate of the Framework has therefore not been implemented at all,

thereby defeating the purpose of the issuance of such a Framework which was intended to further bolster the implementation of the HOWM Rules, 2016 and ensure that hazardous wastes are not passed off as by-products and escape the strict scrutiny of the HOWM Rules, 2016.

2. In September 2019, Respondent No. 2, CPCB issued the Framework on Identification of Materials Generated from Industrial Processes as Wastes or By-Products, 2019. Through this Framework Guidelines, 2019, the CPCB has formulated a criteria for identification of materials as “wastes” or “by products”. The Framework Guidelines 2019, conclude that a material that is not intended to be produced but gets produced in the production process of the intended product will remain categorized as either Hazardous or other waste in accordance with the HOWM Rules, 2016. It also lays down the guiding factors for accepting a material as ‘by-product’. There are eight such guiding factors which may be considered by State Pollution Control Boards while accepting a material as by-product. In the event of accepting material as a by-product, the SPCB/PCC shall also stipulate conditions with respect to handling and end use including Materials Safety Data Sheet (MSDS) and the by-product shall be handled and managed as per the conditions stipulated by the SPCB/PCC.

3. Contention of the applicant is that no steps have been taken by the Respondent No.2, CPCB and most SPCBs, to oversee the compliance of this Framework and no steps have been undertaken to secure implementation of the same in accordance with the mechanism established in the said Framework including any prescription by the SPCBs to handle such by-products if at all it meets the criteria laid down in the Framework. That furthermore, the Respondent No.2, CPCB, despite being instrumental in bringing about the Framework and being

aware of the ground level problems owing to the lack of said framework, has been extremely deficient in enforcing the same. This laxity on the part of the regulatory authorities has led to a situation where hazardous wastes and by-products are not being appropriately identified and being handled in accordance with the Framework Guidelines. Given the viable prospects of effective utilization of various by-products, there must be proper implementation of the CPCB Framework on Identification of Materials Generated from Industrial Processes as Wastes or By-Products so as to foster the correct identification and classification of such unintentionally produced materials as either “waste” or “by-product” for their appropriate management. Currently, there is lack of implementation or rather non-implementation of the aforesaid Framework, which also includes the issue of import of material that is apprehended to be a hazardous waste but gets misclassified as a by-product such as Sulphuric acid produced by smelters. The above, if not checked immediately, is causing huge impact on the land and water environment of the country at large.

4. Further contention of the learned Counsel appearing for the applicant is that HOWM Rules, 2016 do not clearly establish as to when a material generated from a production process should be considered as a by-product and when it should be considered as waste and thus, the mandate of the Framework has not been implemented at all, thereby defeating the purpose of issuance of such a Framework which was intended to further bolster the implementation of the HOWM Rules, 2016. The directives issued and wide interpretation of the definition of waste imposes unnecessary costs on the business concerned, and could reduce the attractiveness of materials that would otherwise be returned

into the economy. There are following four conditions that a production residue must meet in order to be considered as a by-product:

- i. Further use of the substance or object is certain;
- ii. The substance or object can be used directly without any further processing other than normal industrial practice;
- iii. The substance or object is produced as an integral part of a production process; and
- iv. Further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health-protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.

5. It is further contended that absence of legal clarity had led to incorrect interpretation of what was “waste” and what was a “by-product”, and also led to unequal treatment of economic operators and obstacles in the internal market despite having similar circumstances.

6. The points as raised by the applicant require further consideration. Accordingly, matter is referred to MoEF&CC with the direction that in consultation with the CPCB and State PCBs/PCCs, the MoEF&CC had to clarify and take immediate measures for proper implementation of the Framework on identification of material generated from industrial process as waste or by-product and to submit an action taken report before this Tribunal. MoEF&CC may also act on whether Framework can become the part of HOWM Rules. In case of any need and requirement, the MoEF&CC/CPCB may take advise of the Technical Expert Committee, as required and to provide a prescribed form for application of identification of an alleged by-product as required under the Framework. Such exercise may be completed by the MoEF&CC/CPCB within three months and further action taken report be filed within three months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.

7. List the matter for further consideration on 23.11.2023.
8. A copy of this order be forwarded to the MoEF&CC and CPCB by e-mail for compliance.

Sheo Kumar Singh, CP

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

August 18, 2023
Original Application No. 502/2023
DV