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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**WESTERN ZONE BENCH, AT PUNE**

Original Application No. 88 of 2023

In the matter of

Asif Ruabali Khan

...Applicant

Versus

The CPCB & Ors

...Respondents

**ADDITIONAL AFFIDAVIT OF THE APPLICANT PURSUANT
TO THE ORDER DATED 25/07/2023.**

I Asif Ruabali Khan, Male, Aged: 32 Years, residing at Plot No. 4210, Plastic Zone, GIDC Sarigam, Taluka Umbergaon, District Valsad, Gujarat do hereby solemnly affirm and state as under:-

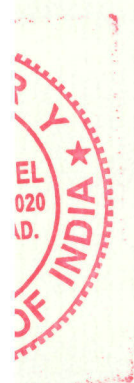
1. I state that on 25/07/2023 the original application was listed for hearing and during the course of hearing the learned council for respondent no. 8 had raised objection stating that the relief sought in one of the prayers with regard to initiation of prosecution under the India Penal Code, and The Prevention of Money Laundering Act, is not maintainable before the tribunal on grounds of jurisdiction. I say that the perspective of NGT in addressing the issue of repeated / continuous violation of environmental pollution being substantial question relating to environment has evolved by leaps and bounds with time. I further say that the original



A handwritten signature in black ink, appearing to be "Asif Ruabali Khan", written over a horizontal line.

application is very well maintainable before the tribunal as the principal bench of the tribunal has made various observations and passed directions in numerous judgements regarding invoking provisions of The Prevention of Money Laundering Act. Some of the judgements are annexed for ready reference.

2. I say that the National Green Tribunal has wide and extensive jurisdiction under section 14 and 15 of the Act to secure the ends of justice and NGT is conferred the power of moulding any relief beyond the relief sought by the parties and NGT has been recognised as one of the most progressive Tribunal in the world. I further say that, In the present case, the respondent no. 8 is a Large Scale Red Category Polluting Unit, the said unit has been in continuous violation of environmental norms and conditions of CC&A, meaning the cause of action is continuous in nature, of which latest being in March 2023. I further say that respondent no. 8 has been discharging its trade effluents, process residue / spent carbon at isolated locations and waste water into GIDC Storm water drain. I further say that as per the report of the GPCB, it is clear and evident that the respondent no. 8 is in continuous violation, and this results in commissioning of Scheduled offence and revenue earned by committing such crime is proceeds of crime as defined in PMLA 2002 and by showing it part of business proceeds in accounts amounts to projecting or claiming it as untainted property. The entire activity is



covered by Section 3 of PMLA 2002. Further the NGT act in section 27 mentions about Offences by Companies having separate legal entity.

"Section 27 in The National Green Tribunal Act, 2010

27 Offences by companies. -

(1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by the company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation. -For the purposes of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm."

Means, that when an offence has been committed with the consent or connivance of director, manager, secretary etc., then such persons guilty shall be liable to be proceeded against and punished accordingly. Therefore, the relief sought from the Hon'ble tribunal is well within its jurisdiction and in the present case the




Corporate veil of the Respondent no. 8 may be lifted and the individual directors R9 to R14 be prosecuted individually and severally. Also, in case of lack of jurisdiction, the Hon'ble tribunal may be pleased to direct the competent authority to adjudicate the matter to secure the interest of justice and address the substantial question relating to environment raised by this source of pollution.

3. I say that the NGT act was enacted in year 2010 and the amendment of PMLA 2002 was done in year 2012 and brought in force from 15/02/2013. The offences under environmental norms have been included in the schedule to PML Act, 2002 in as much as paragraph 23, 25, 26 & 27 have been inserted by section 30 of PML (Amendment) Act, 2012 and said insertion of paragraphs should logically bring the PMLA 2002 to the extent of environmental violations into ambit of The NGT Act, However the amendment to Schedule – I, has not been made pursuant to inclusion of Environmental Offences under PMLA 2002.
4. I state that In the Original Application no. 64/2016 (WZ), Akhil Bhartiya Mengela Samaj Parishad & ors Vs Maharashtra Pollution Control Board and Ors, The Principal Bench of The National Green Tribunal had passed orders on 24/01/2022. Copy of the said Order is annexed as **Annexure A-12**. The relevant paragraph is extracted under for ready reference:



"Enforcement Directorate may examine the matter for appropriate action, in the light of PMLA 2002 as amended from time to time, particularly Amendment of 2012."

Further, there were certain observations that were made during the course of the matter, the relevant paragraphs are extracted under for ready reference:

"846. In the present case, when environmental norms were not followed by not operating ETP or by discharging partially or totally untreated pollutant or by causing other violations, this resulted in commissioning of Scheduled offence and revenue earned by committing such crime is proceeds of crime as defined in PMLA 2002 and by showing it part of business proceeds in accounts amounts to projecting or claiming it as untainted property. The entire activity is covered by Section 3 of PMLA 2002."

"847. It appears that initially PMLA 2002 was enacted so as to cover activities of terrorist, illegal traffic in narcotics, enemies of the country etc., applying to a very limited number of statutes, Enforcement Directorate had been taking action under PMLA 2002 in a narrow sphere. It has forgot to take note of the fact that scope of PMLA 2002 has been enhanced or widened, a lot, at least after amendment Act of 2012 w.e.f. 15.02.2013. More than 8 and half years have passed but not a single action has been taken by Enforcement Directorate against violators committing offences under environmental statutes which have been included in the Schedule, part A of PMLA 2002. The offences under Environmental Acts, as such are non-cognizable but under PMLA 2002, offences are cognizable. Since competent authority has never resorted to proceed against violators of environmental Statutes despite committing offences thereunder, which are included in PMLA 2002, this inaction has encouraged the polluters to continue violation with impunity. Parliament's intention of treating environmental violations as a very serious offence is writ large from the fact that, offences under environmental laws as noticed above, have been included in Schedule, Part A of PMLA 2002 yet enforcement machinery has frustrated entire attempt. It is incumbent upon the competent authorities regulating and enforcing PMLA 2002 to take action against such violators, if not



against small violators, at least against substantial resourceful bigger proponents whose violations are liable to cause huge damage to environment as also the inhabitants. At least matter of LSI and MSI scale level industries should have been examined by competent authority under provisions of PMLA 2002."

I further say that the said order of The NGT was stayed on 27/04/2022 by the Apex Court as Interim Orders, without going into the merits of the appeal and without taking into consideration the observations made by NGT, subject to final adjudication of the Civil Appeal. I Further say that the said stay is merely an interim relief granted by the apex court and has not attained any finality. I Further say that pending final adjudication of the civil appeal, it cannot be treated as it has attained finality and based on such order, the present Original Application cannot be treated to be without jurisdiction. Copy of the said order is annexed as **Annexure A-13**.

5. I state that in the Original Application no. 61/2022, All India Kaimur People's Front Vs State of Uttar Pradesh and Ors, The Principal Bench of The National Green Tribunal had passed order on 16/08/2022. Copy of the said order is annexed as **Annexure A-14**. The relevant paragraph is extracted under for ready reference:

"11. Accordingly, we direct the District Magistrate and state PCB to take further steps in the matter in accordance with law, preferably within three months. Since environmental offences fall in the schedule to the PMLA Act, ED is free to consider if any action is warranted on their part under the law.



Ramchandra Chaurasia Vs State of Jharkhand with Original Application no. 373/2019, Pradeep Kumar Singh Vs State of Jharkhand, The Principal Bench of The National Green Tribunal had passed order on 23/08/2022. Copy of the said order is annexed as **Annexure A-16**. The relevant paragraph is extracted under for ready reference:

"14. --- The Tribunal may consider liability of the state later. The Chief Secretary may also file a criminal case against violators, after necessary scrutiny, including against erring officials. Since violation of environmental laws involve offences under PMLA Act, 2002, Director ED may also look into the matter. Action taken report may be filed within four months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in form of Inage PDF.

A copy of this order be forwarded to the Chief Secretary and Additional Chief Secretary , Jharkhand, State PCB and Director, ED by e-mail for compliance."

8. I state that vide observations, directions and orders as aforementioned, the Hon'ble Tribunal is ought to try the present original application in order to secure the ends of justice and as much as answer the substantial question relating to environment raised by this source of pollution.
9. Therefore, it is most humbly and respectfully prayed, that by applying three core principle i.e. Principles of Sustainable Development, Precautionary Principles and



Polluter Pays Principles, the original application be admitted as it is and adjudicated considering the merits in the greater interest of justice.

Places: Vapi

Date: 17/08/2023


Applicant

VERIFICATION

I, Mr. Asif Ruabali Khan, Age: 32, Occupation: Advocate, Address: Plot No. 4210, Plastic Zone, GIDC Sarigam, Taluka Umbergaon, District Valsad, Valsad, Gujarat – 396155, do state on solemn affirmation that all the above-mentioned contents in the Application are true and correct to the best of my knowledge, information and belief and hence I have signed here under on this the 17th day of August 2023 at Vapi, Gujarat.


Applicant

AFFIDAVIT

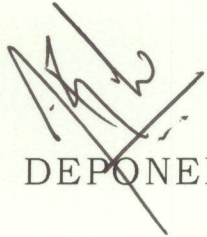
I, Asif Ruabali Khan, Age: 32, Occupation: Advocate, Address: Plot No. 4210, Plastic Zone, GIDC Sarigam, Taluka Umbergaon, District Valsad, Valsad, Gujarat – 396155 do hereby solemnly affirm and state that what has been stated hereinabove is true and correct to the best of my knowledge and belief and I believe the same to be true and correct.

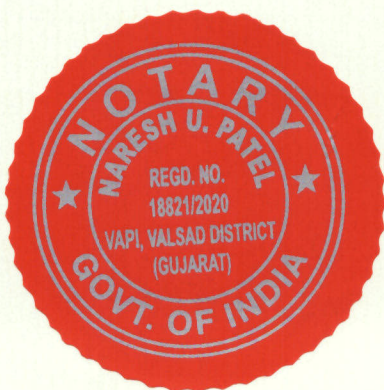
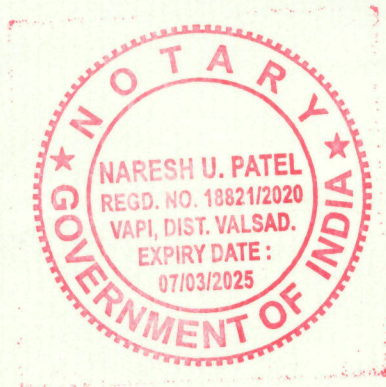
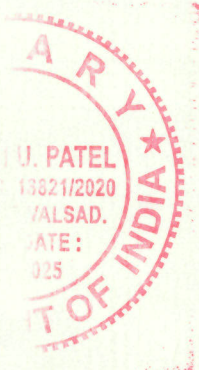


The annexure/s annexed to the present petition, if any, is/are true copy/ies of its/their respective original document/s.

What is stated hereinabove is true and correct to the best of my knowledge and belief.

Solemnly affirmed at Vapi on this the 17th day of August, 2023.


DEPONENT



Solemnly Affirmed Before me by
Shri/Smt.: Asif Ruahali Khan
of Umbergaon Who has been identified
before me by Shri/Smt. : self
of _____
Whom I Known Personally.

Date : 17/08/2023

SIGNED BEFORE ME



NARESH U. PATEL
ADVOCATE & NOTARY
VAPI, DIST. VALSAD.
GOVT. OF INDIA
REGD. NO. 18821/2020

Book No. : 01

Page No. : 69

Serial No. : 335

Date : 17/08/2023



BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

ORIGINAL APPLICATION NO. 64/2016 (WZ)
(M.A. No. 01/2021, M.A. No. 02/2021, M.A. No. 03/2021,
M.A. No. 04/2021, M.A. No. 05/2021, M.A. No. 06/2021,
M.A. No. 08/2021, M.A. No. 11/2021, M.A. No. 12/2021
I.A. No. 31/2021, I.A. No. 33/2021 & I.A. No. 62/2021)

IN THE MATTER OF:

1. Akhil Bhartiya Mengela Samaj Parishad

Mengela Samaj Bhawan,
At Post Satpati,
Ta. Dist. Palghar-401 405

2. Ashok Thakoji Tandel

President of the Applicant No. 1,
C-209, Sagar Samrat, Causeway Road,
Mahim, Mumbai- 400 016

3. Narender Purushram Naik

Secretary of the Applicant No. 1
618/D6 Anand Mangal Society
Sector No. 6,
Charkop, Chandivali,
Mumbai-400 067

4. Vaibhav Ashok Vaze

President, Youth Wing of the Applicant No. 1
Vasgaon, Vazewadi, Post Varor,
Taluka Dahanu,
Dist. Palghar-401 503

Applicant(s)

Verses

1. Maharashtra Pollution Control Board

Through its Member Secretary,
Kalpatru Building, Sion Mumbai

2. The Maharashtra Industrial Development Corporation

Udyog Sarathi, Mahakali Caves Road,
Andheri East, Mumbai- 400 093
Marol Industrial Area

3. Tarapur Environment Protection Society

Plot no AM-29/Pt,
Nr Shivaji Nagar,
MIDC Tarapur
Dist Thane- 401 506

4. The State of Maharashtra

Through its Principal Secretary,
Environment Department, Mantralaya,

Madam Kama Road,
Nariman Point, Hutatma Rajguru Chowk,
Mumbai, Maharashtra-400 032

5. The Union of India

Through the Secretary, Ministry of Environment,
Forests and Climate Change
Paryavaran Bhavan,
Lodi Road, New Delhi

6. Central Pollution Control Board

Parivesh Bhavan
CBD-cum-Office Complex East Arjun Nagar,
Delhi-110 032

7. Fisheries Department

Through the Commissioner of Fisheries
Department,
Taraporvala Aquarium, Netaji Subhash Marg
Charni Road, Mumbai- 400 002

8. JSW Steel Coated Products Ltd.

JSW Centre,
Bandra Kurla Complex,
Mumbai-400 051

Respondent(s)

Counsel for Applicant(s):

Ms. Gayatri Singh, Senior Advocate with Ms. Meenaz Kakalia, Advocate

Applicant in IAs: Mr. Vinod Khera, Advocate in IAs 31/2021, 62/2021 & 77/2021

Counsel for Respondent(s):

Mr. Atmaram N.S. Nadkarni, Senior Advocate with Mr. Devashish Bharuka and Mr. Raghunath Mahabal, Advocates for TIMA (Respondent No. 9)
Mr. Sajan Poovayya, Senior Advocate with Mr. Amit Agashe, Advocate for TEPS (Respondent No. 3)
Mr. Rahul Garg, Advocate for MoEF&CC
Mr. Aman Bhalla, Advocate for CPCB
Mr. Mukesh Verma, Advocate for MPCB

PRESENT:

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Reserved on: 30th September, 2021
Pronounced and uploaded on: 24th January, 2022

JUDGMENT

BY HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER

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1. Raising grievance of discharge of untreated effluents into Arabian Sea at Navapur, and into creeks and nallas in the vicinity, in flagrant violations of provisions of Environment (Protection) Act, 1986 (hereinafter referred to as 'EP Act, 1986'), Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as '**Water Act, 1974**') and Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as '**Air Act, 1981**'), by industries established in the industrial area, set up by Maharashtra Industrial Development Corporation (hereinafter referred to as '**MIDC**') at Tarapur, present application has been filed by four applicants namely; Akhil Bhartiya Mangela Samaj, Ashok Thakoji Tandel, Narendra Parushram Naik and Vaibhav Ashok Vaze under Sections 14, 15, 17, 18 (1) and 20 of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act, 2010**'). Applicants have impleaded, besides statutory bodies namely; Maharashtra Pollution Control Board (respondent 1) (hereinafter referred to as '**MPCB**'), MIDC (respondent 2), State of Maharashtra through Principal Secretary , Environment Department (respondent 4) (hereinafter referred to as '**State Government**'), Union of India through Secretary, Ministry of Environment, Forest and Climate Change, (respondent 5) (hereinafter referred to as '**MoEF&CC**'), Central Pollution Control Board (Respondent 6) (hereinafter referred to as '**CPCB**'), Fisheries Department through Commissioner of Fisheries Department (respondent 7) (hereinafter referred to as '**CFD**'), private respondents namely; Tarapur Environment Protection Society (respondent 3) (hereinafter referred to as '**TEPS**') and JSW Steel Coated Products Ltd. (respondent 8) (hereinafter referred to as '**JSWSCPL**'), alleging that they are responsible for causing pollution and damage to environment, on account of discharge of untreated effluent in the nearby rivers, creeks and nallas which of ultimately reach to Arabian

Sea at Navapur, District Palghar, in State of Maharashtra. Respondent 9, an association of industries established at Tarapur Industrial Area was impleaded later on.

2. Respondent 3, i.e., TEPS, is a company incorporated under Section 25 of Companies Act, 1956, formed for exclusively looking after matters relating to environmental protection and pollution control in Tarapur Industrial Area of MIDC (hereinafter referred to as **‘TIA MIDC’**). The affected water bodies, as per applicant, included Murbe creek running through Murbe till Mahagoan, Murbe-Satpati creek and Navapur-Dandi creek; and affected villages include Tarapur, Kamboda, Ghivali, Uchchheli, Dandi, Navapur, Alevadi, Murabe, Kharekuran, Satapati, Shirganv, Wadarai, Tembi, Dadara, Mahim and Kelave.

Pleadings in OA

3. Facts in brief, pleaded in the application, are that, Tarapur is a small town in Palghar District, State of Maharashtra. It is more known as “Industrial Town” located about 45 km North of Virar, on the Western railway line of Mumbai Suburban Division. Industrial area of Tarapur, set up by MIDC, is spread in and around 15 villages, having population as per census 2011, of 1,03,208. Broadly, villagers are engaged in traditional fishing which is carried out in varied fresh water resources including lakes, rivers, creeks and also in the sea. The villagers are part of indigenous fishing communities of State of Maharashtra. The grievance is that water resources, providing livelihood to the villagers and local residents, are made subject of grave degradation at the hands of respondents, on account of massive violation of environmental norms and laws, causing damage to environment in general and water bodies including rivers and sea, in particular.

4. MIDC is a statutory body constituted by State of Maharashtra and entrusted with the task of providing infrastructure for industries to operate in designated industrial zones. Such infrastructure includes providing necessary discharge pipelines to carry effluents to the designated points in the saline zones. MIDC is also required to provide water connections and maintain water supply to industries, enabling them to carry out their operations. Industrial area in Tarapur was established by MIDC in 1972. A large number of industries were setup in the said area. It is commonly known as largest chemical industrial estate in State of Maharashtra. Mainly chemical, engineering and textile industries are located, out of which 74 are highly polluting industries. 822 industries come in 'Red Category'.

5. Under Water Act, 1974, discharge of trade effluent directly in the river, etc. is not permissible unless it is treated by the concerned industrial unit by establishing Effluent Treatment Plant (hereinafter referred to as 'ETP'). In the past, there were several small scale industries which did not find it financially feasible, to establish separate ETP and thus a concept of Common Effluent Treatment Plant (hereinafter referred to as 'CETP') came to be evolved sometimes in 1980. CETP was to address problem of water pollution, by providing common facility, by treating, composite effluent, discharged by small scale industries, in a Cost Effective manner, adhering with specified norms. CETP was further expanded to cover even large and medium scale industries which had their own ETP but discharge treated water, in CETP, as a hydraulic load. Such arrangement had distinct advantage of single point control and also compatibility of effluents by 'Homogenization' and 'Neutralization'. This arrangement also facilitates better enforcement of water pollution regulations in its totality *viz-a-viz* impact on environment (receiving water

bodies) by having a single or fixed number of effluent's outlets. Over the years, CETPs have become essential part of environmental infrastructure in industrial areas.

6. TEPS is a body comprised of industries located in TIA MIDC, running, operating and managing a CETP to look after matters related to environmental protection and pollution control in TIA MIDC. CETP was commissioned by TEPS in TIA MIDC in 2006 with the capacity of 20 Millions of Liters, Per Day, (hereinafter referred to as 'MLD'). In 2009, capacity of CETP was enhanced to 25 MLD. 59 km effluent carrying pipelines run through TIA MIDC to dispose treated/partially treated effluent into Arabian Sea at Navapur which is about 8 km away from TIA MIDC. On the one hand, large number of industries were established in TIA MIDC contributing to industrial and commercial development of the country in general and State of Maharashtra in particular, but unfortunately, on the other hand, TIA MIDC also earned a bad name of causing severest pollution in the industrial area. TIA MIDC was identified as 'critically polluted area' in 1996 by CPCB. A performance status of CETPs in India was conducted by CPCB and report was published in October 2005 (Annexure A-2, page 37 of OA), where, in para 3.14, it was mentioned that *"Tarapur CETP (Maharashtra) has four-stage treatment but still these plants were not meeting standards. This reflects gross neglect in operation. If biological treatment units are properly operated and full attention is paid to proper settling and stages of treatment, as explained in Section 3.8 above, performance of these plants could be greatly improved."*

7. There have been frequent leakages from CETP, run and operated by respondent 3, resulting in high pollution levels in water bodies in vicinity of TIA MIDC and this has been reported time and again in various

reports. One such report published in May 2005 by MPCB, titled as ‘*Report on Environmental Status of Thane Region*’, has been placed on record as Annexure A-3 to OA, (page 45 of OA). As per the said report, TIA MIDC, Tarapur had a total 2034 industries, out of which 15 were large, 63 medium and 1956 small. Further classification, as per pollution level of aforesaid industries, given in the aforesaid report, is as under:

“Industry Statistics of Thane Region

Sub-region	Jurisdiction	Scale	Large	Medium	Small	Total
		Category				
Tarapur-I	MIDC Tarapur and all related issues	Red	15	56	375	446
		Orange	-	5	145	150
		Green	-	2	1436	1438
		Total	15	63	1956	2034

8. Para 4.2 of the said report, said *“there is deterioration of water quality in the vicinity of Tarapur Industrial area but the water quality is below alarming level. Central Ground Water Board has also conducted study for Tarapur industrial area in 2003 and has stressed the need of taking urgent corrective measures to mitigate the impacts of HW dumps and effluent reaching the nalla. The ground water quality observed at some location in MIDC area is presented in Table 5.”.*

9. In para 4.3 of the said report with respect to TIA MIDC, it has been said, *“some quantity of the industrial effluent from the Tarapur MIDC area is reaching the Murbe Kaharekuran creek, as the present effluent collection and disposal systems are not adequate to cater the effluent load. Further the leachets from the HW dumps in MIDC area are also reaching the creek through some extent. This has resulted in deterioration of water quality in the creek over the years.”*

10. In 2010, CPCB in association with Indian Institute of Technology, Delhi (hereinafter referred to as ‘**IIT Delhi**’) carried out an environmental assessment of industrial clusters across the country, with the aim of

identifying polluted industrial cluster and prioritizing planning need for intervention to improve quality of environment in these industrial clusters. Assessment was based on Comprehensive Environmental Pollution Index (hereinafter referred to as '**CEPI**'). The CEPI is a rational number that characterizes environmental quality at a given location, following algorithm of source, pathway and receptor. A sub-index score of more than 60 shows a critical level of pollution in the respective environmental component whereas a score between 50-60 shows a severe level of pollution with reference to respective environmental component. Industrial clusters with an aggregated CEPI score of 70 and above, were to be considered critically polluted, those with CEPI score between 60 and 70 were to be considered as severely polluted, to be kept under surveillance and pollution control measures were to be undertaken. In respect of TIA MIDC, the said study found CEPI score as 72.01, i.e., '**Critically Polluted Area**' which is at Sl. No. 36 on page 25 of the report (Annexure A-4 at page 76).

11. In view of above report, an Office Memorandum was issued by MoEF&CC on 13.01.2010, imposing certain temporary restriction on consideration of development projects in TIA MIDC and similar clusters/areas. Restriction says that development projects from industrial clusters with CEPI score above 70, received for grant of Environmental Clearance (hereinafter referred to as '**EC**'), in terms of provisions of Environment Impact Assessment Notification, 2006 (hereinafter referred to as '**EIA 2006**'), (including projects for stage-I clearance, i.e., scoping) which were in pipeline for EC or which would be received later, shall be returned to Project Proponents (hereinafter referred to as '**PP**'). The restriction initially was for a period of 8 months, i.e., up to august 2010, during which time, CPCB along with respective State Pollution control

Boards/Union Territory Pollution Committees, were to finalize a timeline action plan for improvement of environmental quality in the identified clusters/areas. Subsequently vide O.M. dated 26.10.2010, MoEF&CC lifted moratorium on consideration of projects for EC, based on inputs, received from CPCB. However, instead of improvement, pollution level in TIA MIDC deteriorated further, as is evident from annual report 2011-12 published by CPCB (annexure A-8 to OA). CEPI score at TIA MIDC was found 85.24 (at sl. No. 38, page 119 of OA). A Public Interest Litigation was initiated by filing Writ Petition, i.e., **PIL No. 17 of 2011, Nicholas Almeida and Ors. vs. State of Maharashtra and Ors.** in Bombay high Court, wherein, Court directed MPCB and MIDC to submit performance reports of various CETPs which shall be examined by listing the matter on third Thursday of every month, by the court. In the said Writ Petition, affidavit was filed on behalf of MPCB, (Annexure A-12) to OA. Affidavit was filed in January 2013 (sworn on 19.01.2013) and therein it was stated that CETP operated and managed by respondent 3 is only 25 MLD, while generation of industrial effluent is more than 33 MLD. Further, generation of effluent increased due to increase in production of some industries but capacity of CETP installed and commissioned by respondent 3, i.e., TEPS, was not increased. The affidavit shows that TEPS was formed on 25.08.2004 and commissioned its primary treatment plant of 20 MLD on 10.01.2006. Secondary and Tertiary treatment facilities for 20 MLD were commissioned in March 2007. The total area covered by CETP was 46,000 sq. meters. It enhanced capacity to 25 MLD, commissioned on 13.11.2009. Affidavit also stated that there was immediate and urgent need of expansion of capacity of CETP, at least to 37 MLD. In reply under Right to Information Act, 2005, to a query made by applicants, MPCB, vide letter dated 15.01.2016, has informed

that 35 to 40 MLD industrial effluent is generally discharged, 500 meters inside sea at Navapur (which included domestic effluent, approximately 5 MLD, from industrial colony from TIA MIDC) while capacity of CETP is only 25 MLD. It was also stated that National Institute of Oceanography (hereinafter referred to as '**NIO**'), has instructed for disposal of treated industrial effluents from Collective Effluent Treatment Centre, into deep sea, at a distance of 7.1 kms. In another query made by applicants, with regard to details of discharge of industrial effluent by industries in TIA MIDC, MPCB has submitted reply dated 09.03.2016 giving analytical results of outlet CEPT sample, surveyed by CPCB, and in respect of Chemical Oxygen Demand (hereinafter referred to as '**COD**'), Biochemical Oxygen Demand (hereinafter referred to as '**BOD**') and suspended solids, results are given, as under:

- “a. The **Chemical Oxygen Demand (COD)** is the standard method for indirect measurement of the amount of pollution (that cannot be Oxidized biologically) in a sample of water. While the **prescribed standard is 250 mg/ 1**, as can be seen from the survey report of MPCB, the **average COD for the year 2013-2014 is 539.2, for the year 2014-2015 it is 656.4 and 2015-2016 it is 601.143.***
- b. The **biochemical oxygen demand (BOD)** is a standard method for indirect measurement of the amount of organic pollution (that can be Oxidized biologically) in a sample of water. While the **prescribed standard is 100**, the **average BOD** of the TEPS-CETP (the Respondent No. 3 herein) **for the year 2013-2014 is 209.2, for the year 2015-2016 is 239.6 and for the year 2015-2016 is 235.625.***
- c. **Suspended solids** refers to small solid particles which remain in suspension in water and is used as an indicator of water quality. While the **prescribed standard for suspended solids is 100**, the **average suspended solids for the year 2013-2014 is 153.3, for the year 2014-2015 is 179.1 and for 2015-2016 is 136.**”*

12. Applicants have placed some photographs as Annexure A-15 to show that at various locations in the vicinity of TIA MIDC, the member industrial units, boldly and with impunity, discharge untreated effluents

into water bodies which has led to devastation of mangrove and wetland eco-system in and around the area but officials of State Authorities and Statutory Regulators are keeping silence and have failed to discharge their statutory obligations, for maintenance and protection of environment. Respondent 1, i.e., MPCB, has statutory responsibility for protection, preservation and control of environmental pollution under the provisions of Water Act, 1974, Air Act, 1981 and EP Act, 1986 and statutory orders issued thereunder but failed to take appropriate regulatory steps for protection of environment.

13. Before establishment of TIA MIDC, water bodies in and around the area of Tarapur, had been habitants of marine life. Discharge of untreated industrial effluent has destroyed marine life in the said water bodies. Rampant and unchecked discharge of untreated effluent in water bodies has destroyed ecology of entire area. Water pollution has affected fishes severely and led to death of aquatic habitants. Improper or partial treatment of industrial effluent and discharge thereof in water bodies has caused serious harm to aquatic ecology. It is a potential life threatening for aquatic flora and fauna. As an illustration, a chart (Annexure A-17) has been filed to show reduction in fishing activities in one of the nearby Village, i.e., Satapati showing that in 1982-83, there were 163 fishing boats which have gone down to 80 in 2013-14 and quantity of fishes, which was plus 5 tons in 1982-83, has come down to 4 in 2013-14. A comparative chart of families engaged in fishing in 16 villages, near TIA MIDC, has been filed as Annexure A-18, which is as under:

Number of families engaged in fishing

	<i>Villages</i>	<i>1975</i>	<i>2000</i>	<i>2005</i>	<i>2016</i>
1.	<i>Kamboda</i>	366	290	152	80
2.	<i>Ghivali</i>	1688	832	757	570
3.	<i>Uchchheli</i>	1492	1030	926	352
4.	<i>Dandi</i>	796	612	512	476

5.	Navapur	575	477	321	191
6.	Alevadi	480	315	237	100
7.	Murabe	2260	1918	1527	1040
8.	Kharejuran	420	278	115	52
9.	Satpati	10432	8365	6343	4497
10.	Shirganv	180	136	137	66
11.	Wadrai	719	713	595	647
12.	Tembi	313	320	239	174
13.	Dadara	388	326	144	136
14.	Mahim	716	357	319	170
15.	Kelave	694	624	483	463
16.	Tarapur	236	172	155	171
	Total	21755	16765	12962	9185

14. Besides, it is also stated that the degradation of environment has also caused adverse effect on public health. As per reply given by Medical Superintendent, Rural Hospital, Boisar, on 10.02.2016, incident of skin diseases had increased high in as much as only in Rural Hospital, Boisar, between January 2015 and January 2016, 4000 cases of skin diseases were registered. Ground water resources have also contaminated. Untreated industrial effluents are high in heavy metals and carcinogenic substances like Mercury, Lead, Chromium, Cadmium etc. When released in nallahs and storm water drainages, eventually it flows in sea, get stagnated at several places, leading its percolation into ground, thereby polluting the aquifer. Since this is going on for several decades, the trade effluents, now, is having its adverse effect on water security of society at large. The official respondents and Statutory Regulators are not only bound to prohibit, prevent and take strict measures to protect water bodies from such contamination, but also under statutory obligation to realize appropriate environmental compensation on the principle of ‘Polluter Pays’ from concerned industrial units as also the operators of CETP, who are responsible for causing pollution and damage to environment by discharging industrial effluent, untreated or partially treated, into water bodies, as detailed above. Several representations have

been made by affected people including the applicants, time and again. One such representation/letter dated 04.12.2015, sent by applicants to Sub-regional officer, MPCB, has been placed on record as Annexure A-20. Another representation dated 26.02.2016 is addressed to Principal Secretary, Environment Department (respondent 4) which is placed on record as annexure A-21. It is stated that a substantial question relating to environment pertaining to statutes mentioned in Schedule I of NGT Act, 2010 has arisen in this matter.

15. Applicants have made number of prayers, to be precise, 19 in number, (some are repetition), in para 38 of OA, under the heading, 'Prayer', but in brief, applicants have prayed, as under:

- (i) Respondent no. 1 be directed to take steps for closing down all polluting industries, discharging untreated effluents into Arabian sea at Navapur and creeks and nallas in the vicinity;
- (ii) Take stringent action against convened officials of respondent nos. 1, 2 and 6 as also respondent 3 who has failed to maintain CETP effectively and causing pollution;
- (iii) Respondent 2 should not issue any new permission or expansion to industries until CETP norms are complied with in TIA MIDC;
- (iv) Treated/partially treated water must be reused by industries within TIA MIDC;
- (v) Official respondents must take remediate measures to restore ecology including marine life and recover environmental compensation on the principle of 'Polluter Pays' from violators;
- (vi) Statutory Regulators must take steps to clear sludge, accumulated along the edge of polluted creeks and coast;

- (vii) Monitoring Committee of experts, academic institutions, Statutory Regulators in the area in question be constituted for regular monitoring of polluting industries in TIA MIDC.

Reply dated 30.06.2016 by MPCB (respondent 1)

16. In reply dated 30.06.2016 filed in Tribunal on 01.07.2016, MPCB has stated that TIA MIDC was established by MIDC in 1972 over an area of 1028 hectares. MIDC provided infrastructure facilities including 60 km asphalted road network, fire stations, effluent collection sumps, effluent collection and disposal pipelines. At the time of filing reply, i.e., June, 2016, number of industries operational in TIA MIDC was 1083 whereof 472 were in Red category, 61 in Orange category and 550 in Green category. In 1993, Tarapur Industries Manufactures Association (hereinafter referred to as '**TIMA**') established 2 MLD Industrial Effluent Plant (hereinafter referred to as '**IEP**'), for collection and treatment of industrial effluent, for the benefit of member industries, located in TIA MIDC. Collection of effluent was through tankers, as there was no pipeline for connecting effluent of all Small Scale Industrial units, (hereinafter referred to as '**SSI units**'), to TIMA's CETP. Only such SSI units joined TIMA's CETP which did not have adequate/secondary treatment facility. Later, when TEPS established its CETP in 2006, all industrial units joined the said CETP of TEPS. Since no unit thereafter carried its trade effluent to TIMA's CETP, hence TIMA took a decision to close down its CETP w.e.f. 31.03.2012 and same was communicated to MPCB, vide letter dated 12.01.2013.

17. In respect of CETP established and commissioned by TEPS, MPCB has stated in its reply that society/association was formed on 25.08.2004. It commissioned Primary Effluent Treatment Plant of 20

MLD on 10.01.2006. Secondary and Tertiary treatment facilities for 20 MLD were commissioned and made functional in March 2007. Total operating area of TEPS’s CETP is 46,000 sq. meters. Capacity of CETP commissioned by TEPS was enhanced to 25 MLD from 20 MLD on 13.11.2009. MPCB had granted consent to CETP of TEPS, from time to time, with certain terms and conditions. At the time of filing reply, the consent already granted was valid up to 31.12.2016. Copy of consent letter dated 13.04.2016 is on record as Annexure-I to the reply. It was granted for the period from 01.01.2016 to 31.12.2016, for discharge of effluent, description whereof, given in para 4, is as under:

“4. Conditions under Water (P&CP), 1974 Act for discharge of effluents:

S. No.	Description	Permitted quantity of discharge	Standards to be achieved	Disposal
1.	Trade effluent Treatment	25.00 MLD	As per Schedule-I	Marine Coastal area, at a point to be specified by National Institute of Oceanography.
2.	Domestic effluent	5.00 CMD	As per Schedule-I	Marine Coastal area, at a point to be specified by National Institute of Oceanography.

18. The aforesaid consent was granted under Section 26 of Water Act, 1974, Section 21 of Air Act, 1984 and also authorization under Rule 5 of Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008 (hereinafter referred to as ‘**HWMHTM Rules, 2008**’). **Schedule I** contains various standards which were to be observed by CETP operator, i.e., respondent 3, and we shall deal in detail at later stage, when required. MPCB further explains that small scale waste water generating industries have Primary Effluent Treatment units for treatment of industrial waste water. Primary treated industrial waste

water is disposed to CETP of TEPS for further treatment and disposal. Large scale/medium scale industrial establishments have installed their full-fledged ETPs for treatment of waste water. Apart, treated waste water from large scale/medium scale industries is discharged to CETP of TEPS for further treatment. Treated waste water from CETP of TEPS is discharged through MIDC pipeline in Navapur Sea, i.e., at a distance of 500 meters from the seashore.

19. CETP of TEPS comprised of collection tank, oil and grease removal system, equalization tank (4 nos.), flash mixer, primary clarifloculator (2 nos.), Aeration tank (4 nos.), Secondary clarifier (2 nos.), polishing tank, sand and carbon filter, decanter and sludge drying beds. As per consent granted by MPCB to industries located in TIA MIDC, total generation of industrial effluent from such industries was about 32 MLD, out of which, about 7 MLD was recycled and reused. However, pumping data of MIDC shows that quantum of waste water discharged to Navapur creek, varied from 35 to 40 MLD. MPCB said that excess quantity of waste water pumped to Navapur creek, may be due to domestic waste water generated from nearby vicinity and excel industrial waste water generated from the industries in TIA MIDC.

20. MPCB has also taken action from time to time, and the same includes:

- i. Regular Criminal Case bearing No. 338/2010 filed in the Court of Chief Judicial Magistrate, Thane, for non-compliance including violation of Consent standards. Matter is pending.
- ii. Directions under Section 33A of Water Act, 1974 were issued vide letter dated 09.09.2015 for exceeding JVS results and Rs. 10 lakhs Bank Guarantee (hereinafter referred to as '**BG**') was forfeited. The

directions contained in the order, (Annexure II to reply), read as under:

“NOW THEREFORE, in the exercise of the power conferred upon me by Board under section 33(A) of the Water (P&CP) Act, 1974, following directions are hereby issued for immediate compliance.

- a) You shall operate existing effluent treatment plant efficiently round ‘o’ clock so as to achieve consented standards. You shall restrict receipt of effluent quantity to CETP for treatment up to 25 MLD only.
- b) You shall provide online electronic flow meter at CETP inlet, outlet line with data logger within period of 15 days from receipt of the directions.
- c) The Bank Guarantee of Rs. 10,00,000/- (in words Ten Lakhs) submitted by you towards O&M of CETP is hereby forfeited.
- d) You shall submit irrevocable top up Bank Guarantee of Rs. 20,00,000/- (in words Twenty Lakhs) in favor of Regional Officer, Thane within a period of 15 days from receipt of these directions.”

- iii. Show cause notice dated 03.06.2016 was issued for violation of Consent norms and discharging polluted effluent. Respondent 3 was required to show cause why CETP operation be directed to be discontinued and member industries be directed to close down their manufacturing activities.
- iv. Letter dated 22.04.2016 was issued giving direction under Section 33A of Water Act, 1974 and Section 31A of Air Act, 1981 for installation of supervisory control and data acquisition automation control system. The directions contained in the said letter, (Annexure III to reply) are as under:

“THEREFORE, in the exercise of the powers conferred upon the Board u/s 33A of Water (P&CP) Act, 1974 and u/s 31A of Air (P&CP) Act, 1981, Maharashtra Pollution Control Board hereby issue following directions for immediate compliance:

- A. Your existing shore discharge shall be converted to marine outfalls, till then you shall achieve stream standards i.e. BOD-30mg/l.
- B. The stream standards BOD-30 mg/l shall be achieved within period of 6 months.

C. The **revised disposal standards** for other parameters mentioned in notification published by MoEF&CC dated 01.01.2016 **shall be strictly followed.**"

- v. An opportunity of personal hearing was given to the respondent 3 by MPCB on 08.06.2016 when respondent 3, i.e., TEPS, assured that it will achieve Consent norms on or before 20.06.2016.
21. MPCB issued directions to MIDC through Chief Engineer, Tarapur vide letter dated 17.04.2014 (annexure IV to reply), as under:

"NOW THEREFORE, in exercise of the powers conferred upon me by the Board, following directions are issued:

I. For Effluent Management:

- a) You shall **stop overflow from the chambers in the MIDC Tarapur, immediately** by taking effective steps like curtailing of water supply up to the limits granted under consent issued to the industries by the Board. If necessary to realigned the effluent carrying pipelines, particularly in "D" & "E" Zones of MIDC, Tarapur shall be undertaken and the time bound program for the same shall be submitted within 7 days from the receipt of these directions.
- b) You shall assist to TEPS-CETP to ensure that not more than 25 MLD effluents is generated and taken to the CETP. For this, you shall approach to the water supplying agencies those can provide water meters with the facility of supplying specified quantity of water per day within 15 days.
- c) You shall provide flow meter/measuring device at Sump No. before 15.06.2014.

II. For Unauthorised Water Supply

- d) You shall **seal all the bore-wells in MIDC, Tarapur** for which special survey shall be carried out by MIDC authority and action taken in this regard shall be submitted within a period of one month.
- e) You shall **lodge the FIR against the owner of unauthorized water tankers** and driver of the tanker along with filing of the compliant with RTO for cancellation of registration of such water tankers.
- f) You shall appoint separate personnel at the entry gate/s for preventing unauthorized entry of tankers within 15 days.

III. For industrial Estate Operations:

- g) You shall instal CCTV cameras (day& night) in the MIDC area to keep watch on illegal entry and activities in the MIDC (eg. Water tanker movement & illegal dumps of hazardous wastes/ Municipal Solid Waste etc.) before 30.09.2014.
- h) You shall **immediately prepare a concrete proposal for providing appropriate storm water drain system** and a road network in a time bound manner, which shall be under intimation to Regional Officer, M.P.C. Board, Thane & Sub-regional office, M.P.C. Board, Tarapur-I.
- i) You shall remove old RCC pipelines which was not removed while laying of New HDPE pipelines so as to avoid unauthorized disposal of effluent/waste chemicals, before March 2015.

IV. **For Effluent Disposal**

- j) You shall start implementation of the suggestion given by the National Institute of Oceanography for extending the existing pipeline used for the disposal of treated effluent from MIDC Tarapur at Navapur and complete it on or before 31st March, 2015.”

22. MPCB also required MIDC to submit an irrevocable BG of Rs.10 lakhs drawn in favour of Regional Officer, MPCB, Thane, valid for one year period, for timely compliance of directions issued vide letter dated 17.04.2015, and MIDC was also directed to submit progress report on monthly basis. In default, MIDC was informed that action may be taken under Water Act, 1974, against it.

23. Vide letter dated 23.09.2015 (annexure V to reply), MPCB issued further directions under Section 33A of Water Act, 1974 and Section 31A of Air Act, 1981, to Executive Engineer, Division No. 1, MIDC, Wagle Estate, Thane and the said directions are:

“NOW THEREFORE, in the exercise of the power conferred upon me by Board under section 33(A) of the Water (P&CP) Act, 1974, following directions are hereby issued for immediate compliance without extending further opportunity of personal hearing.

- a) You shall ensure that water supply to effluent discharging industries in MIDC Tarapur shall be curtailed by 25% immediately so as to cope up hydraulic load capacity of

CETP by providing electronic flow meter with date logger. The daily data of the same shall be submitted to Sub-Regional Office, Tarapur-I with copy to this office.

- b) You shall provide electronic flow meter at inlet and outlet of MIDC sump with online data logger on or before 30/09/2015. The daily data of the same shall be submitted to Sub-Regional Office, Tarapur-I with copy to this office.
- c) You shall restrict industries from using unauthorised water from sources like Bore well and Water Tanker immediately.”

24. MPCB has also filed a chart showing action taken against various industries in TIA MIDC and the said chart, (Annexure VI to reply), reads as under:

“Details of Action taken against industries in MIDC Tarapur

Year	2014	2015	2016	Total
Show Cause Notice	135	131	41	307
Proposed Direction	34	30	21	85
Interim Directions	29	16	20	65
Closure Directions	12	2	1	15

”

25. From April 2013 to May 2016, MPCB has also forfeited BGs furnished by various industries in TIA MIDC and details given in Annexure VII to reply, are as under:

“Statement of BG forfeited from industries in MIDC Tarapur from April-2013 to May-2016

Sl. No.	Financial Year	No. of Industries for which BG is forfeited	Amount of BG forfeited
1	April 2013-March 2014	7	5575000
2	April 2014-March 2015	24	10375000
3	April 2015-May 2016	17	8575000
Total		48	24,52,5000/-

”

26. TEPS was required to enhance capacity of its CETP and for the said purpose a proposal was submitted by TEPS for construction of 50 MLD CEPT in TIA MIDC. EC under EIA 2006 was granted by State Level Environment Impact Assessment Authority (hereinafter referred to as ‘SEIAA’), Maharashtra, vide letter dated 24.03.2015. MIDC allotted

85,000 sq. meters land to TIMA at Plot No. OS-30(Pt). The said plot was sublet by TIMA to TEPS for setting up new CETP as an extension of existing CETP. MPCB granted Consent to Establish under Section 25 of Water Act, 1974; Section 21 of Air Act, 1981 and also authorization under Rule 5 of HWMHTM Rules, 2008, vide letter dated 05.06.2014 (annexure IX to reply). The construction work had started, and likely to be completed by December, 2016. The parameters of BOD, COD and pH were analyzed and samples collected on 06.04.2015, 25.05.2015, 14.09.2015, 03.12.2015 and 21.03.2016 shown high exceeding value.

27. MoEF&CC issued direction under Section 18(1)(b) of Water Act, 1974, vide letter dated 02.09.2008 for not permitting expansion/establishment of industrial units in areas where associated CETPs are not complying with required standards and/or such CETPs do not have adequate hydraulic load capacity. The officials of MPCB visited TIA MIDC on 04.05.2016 and inspected CETP of TEPS for assessing its performance. They found that recently there was some upgradation by installation of 27 Aspirators in 3 bioreactors. Upgradation of 4th Bioreactor by installing 9 Aspirators had also completed. CETP had replaced internal pipelines of treatment units and going with regular cleaning/desludging of tanks. Pumping capacity at collection tank was increased by installing 100 HP additional pumps so as to avoid untreated waste water from collection in tank. It was also found during visit that direct discharge/overflow/bypass of untreated waste water from CETP was stopped. NIO had recommended disposal of treated waste water from CEPT to inside deep sea at about 7.1 km so as to achieve proper dispersion of pollutants. Maritime Board issued no objection certificate to MIDC for disposal of treated waste water from CETP of TEPS at about 7.1 km in deep sea. Hence, MIDC proposed to install pipeline for disposal of

treated waste water in deep sea, as recommended by NIO. MPCB granted consent to MIDC Tarapur, for laying down pipeline to carry treated effluent from CETP Tarapur to deep sea at Navapur, vide letter dated 16.04.2016. The said consent was subject to various terms and conditions, one of which was that MIDC Tarapur shall not take effective steps without obtaining CRZ clearance.

28. On the issue of CEPT, MPCB stated that CPCB published 88 polluted stretches in India in 2009, wherein CEPI of particular area was calculated, based on various parameters like presence of toxins, scale of industrial activities, pollution concentrations, impact on people, impact on ecology, potential affected population and level of exposure. TIA Palghar i.e., TIA MIDC was enlisted at Sr. No. 36. CEPI of TIA MIDC calculated on prevailing environmental baseline, and was projected as 72.01. CEPI for water, air and land was projected as 51.25, 60.75 and 56.0, respectively. Considering gravity of environmental degradation and associated population problems, CPCB declared ban on setting up of new industrial units and expansion of existing industrial units. MPCB took initiative by preparing action plan including short term and long term measures so as to minimize pollution problems and also CEPI. The action plan included fixing of responsibilities on specific stakeholders. MIDC, Infrastructure providing organization, was given major role for improving existing Infrastructure. MPCB, a Statutory Regulator had to perform its statutory obligations with a specific role of co-ordination amongst various stakeholders like MIDC, CETP, Association of Industries (TIMA) and local Government. MPCB submitted action plan to MoEF&CC and CPCB, with a request to lift ban on setting up of new industrial units. Pursuant thereto, moratorium was lifted, vide letter dated 26.10.2010. MPCB started taking rigorous follow up action with concerned stakeholders so

as to comply short term and long term measures, to minimize CEPI score of TIA MIDC.

29. MPCB was also monitoring water quality of various water bodies including sea water at Navapur and creek water at Dandi, Murbe Kherkuran, Sarawali. The analysis report of water samples of sea water and creek water show results conforming to prescribed standards and DO values were adequate for aquatic growth of organism for living organism and marine life. PH of sea water and creek water samples, collected during 2010 to 2015, was within prescribed norms, as specified for SW-II standards in EP Act, 1986.

Reply dated 01.07.2016 by CPCB (respondent 6)

30. Reply affidavit on behalf of respondent no. 6, sworn on 28.06.2016, by Shri B.R. Naidu, Scientist 'E' & In-charge, Zonal Office (West), CPCB, Vadodara, has broadly stated facts, similar to what has been stated by MPCB in its reply. It is said that TIA MIDC is largest chemical industrial estate in State of Maharashtra which include 74 highly polluting industries and 822 red category industries. In respect of TIA MIDC, it is said that CPCB identified TIA MIDC as critically polluted area in 1996. With regard to performance of CETP, it recorded the factum of improper operation of plant in its report of October, 2005. MPCB also recorded inadequacy of effluent collection and disposal of system to cater load from TIA MIDC and pollution of Murbe Kherkuran due to excess industrial effluent load and leachates from HW dump in TIA MIDC, in its report of May, 2005 published on environmental status of Thane region.

31. CPCB in its report found CEPI of TIA MIDC as 72.01, i.e., critically polluted. In PIL No. 17/2011, filed in Bombay High Court, MPCB filed an affidavit dated 13.01.2013 stating that 33 MLD effluent discharge was

found as compared to 25 MLD capacity of CETP. Besides, it also found non-compliance of standards by CETP and non-operation of CETP during MPCB visit. Broad facts stated by applicant in this regard are corroborated by CPCB in para 8 of its reply. Allegations regarding increase in skin diseases, alleged by applicants in OA, have neither been accepted nor denied, for want of knowledge. Broadly, allegations are against operator of CETP and MPCB, and they must submit their comments, is the stand taken by CPCB. However, with regard to discharge of effluent in deep sea, stand taken in para 19 of reply by CPCB is that such deep sea discharge will further degrade aquatic ecology as it will affect fishery activities, primarily carried out by traditional fisherman in deep sea.

Affidavit dated 30.06.2021 of MPCB (a brief report) filed on 01.07.2016 (considered in order dated 09.09.2016):

32. The affidavit was filed by MPCB in reply to the application with the limited purpose to bring on record steps taken by MPCB in discharge of its duties in the context of TIA MIDC. It says:

- (i) There are 1083 industries in MIDC Tarapur out of which 472 are in Red category, 61 in Orange and 550 in Green category.
- (ii) Small scale waste water generating industries have primary effluent treatment units for treatment of industrial waste water. The treated water (primarily treated industrial waste water) is disposed to CETP for further treatment and disposal.
- (iii) Large scale and medium scale industrial establishments have installed full-fledged effluent treatment plants for treatment of waste water and treated waste water is discharged to CETP for further treatment.

- (iv) CETP is discharging water in Navapur Sea which is at about 500 meters from seashore of Arabian Sea.
- (v) Existing CETP at TIA MIDC has primary, secondary and tertiary treatment facilities along with sludge handling facilities for treatment and disposal of 25 MLD effluent.
- (vi) As per consent granted by Statutory Regulators to industries located in TIA MIDC, aggregate generation of industrial effluent is about 32 MLD whereof 7 MLD is recycled and reused.
- (vii) Pumping data of MIDC however shows that quantum of waste discharge to Navapur creek varies from 35 to 40 MLD.
- (viii) Besides others, MPCB has directed MIDC to provide flow meter/flow measuring devise at the outlet of sump-2 by 15.06.2014. Again, by letter dated 23.09.2015, MIDC was directed to install flow meter with data logger at inlet and outlet of MIDC sump.

33. MPCB has monitored water quality of water bodies including sea water at Navapur and creek water at Dandi, Murbe-Kharekuran and Sarawali. Analysis reports of sea water and creek water samples for the years 2008-2015 are contained in annexure-XIII to the reply. The said reports show that BOD and fecal coliform in all the years in Navapur sea, Sarawali creek, Dandi creek and Murbe-Kharekuran creek was much beyond the prescribed limits. The average of the various parameters given in annexure-III in respect to above 4 places for the period of 2008-2015 is as under:

<i>Water Body</i>	<i>Parameter</i>	<i>DO</i>	<i>pH</i>	<i>BOD</i>	<i>Fecal Coliform</i>
	<i>Unit</i>	<i>Mg/l</i>	<i>--</i>	<i>Mg/lit</i>	<i>No. of Counts per 100 ml (MPN)</i>
	<i>Standards</i>	<i>Not less</i>	<i>6.5</i>	<i>Upto 3</i>	<i>100/100</i>

	<i>for sea (SW-II)</i>	<i>than 4 mg/lit</i>	<i>to 8.5</i>	<i>mg/lit</i>	<i>ml (MPN)</i>
<i>Navapur Sea</i>	<i>2008 to 2015</i>	<i>4.64</i>	<i>7.84</i>	<i>10.53</i>	<i>522.5</i>
<i>Sarawali Creek</i>	<i>2008 to 2015</i>	<i>4.81</i>	<i>7.85</i>	<i>8.83</i>	<i>501.54</i>
<i>Dandi Creek</i>	<i>2008 to 2015</i>	<i>4.68</i>	<i>7.8</i>	<i>10.84</i>	<i>320.81</i>
<i>Kharekuran- Murbe Creek</i>	<i>2008 to 2015</i>	<i>4.83</i>	<i>7.76</i>	<i>10.69</i>	<i>366.42</i>

Reply dated 26.07.2016 by MIDC (respondent 2)

34. In reply affidavit dated 26.07.2016 filed on 27.07.2016, respondent no. 2 has stated that it was established under MIDC Act, 1961. The aim and object of the Act is to make special provisions for securing orderly establishment in industrial areas and industrial estates of industries in State of Maharashtra, and to assist in general, in organization thereof. The primary function of MIDC is to promote and assist in rapid and orderly establishment, growth and development of industries in the State of Maharashtra, to establish and manage industrial estates at places selected by State Governments, develop industrial areas at places selected by State Government, assist those undertakings to establish, financially by loans or to coordinate or corporate with other bodies, Government, local bodies etc. An ‘industrial estate’ under MIDC Act, 1961 means any site selected by State Government where MIDC builds factories and other buildings and make them available for any industry or class of industries. Development under MIDC Act, 1961 means carrying out of building engineering, quarrying or other operations in, on, over, or under land, or the making of any material change in any building or land, and includes redevelopment but does not include mining operations. ‘Amenity’ under the Act is defined as to include road, supply of water, electricity, street lighting, drainage, sewerage conservancy and such other conveniences as the State Government, by notification, specify to be

amenity for the purpose of the Act. Broadly, functions and powers of MIDC are; firstly, to develop industrial areas and industrial estates by providing amenities of road, supply of water or electricity, street lighting, drainage, sewerage, conservancy and other conveniences, secondly, to construct works and buildings, factory sheds and thirdly, to make available buildings on hire or sale to industrialists or persons intending to start industrial undertakings and to allot factory sheds, buildings, residential tenements to suitable persons in industrial estates established or developed by MIDC and to lease, sell, exchange or otherwise transfer any property held by MIDC, on such conditions as may be deemed proper by it.

35. Under Section 64 of MIDC Act, 1961, Regulations have been framed, namely, MIDC (Disposal of Land) Regulations, 1975 and regulations 33 thereof provides that allottee of land shall abide by Water Pollution Rules. Thus, after allotment of land to the allottee, MIDC enters into an agreement to lease, with such allottee, on terms and conditions which are standard terms and thereunder allottee is required to construct industry/factory premises in accordance with sanctioned plan within stipulated time. In the said agreement, there is a standard clause regarding environmental protection which clearly says that the lessee shall duly comply with the provisions of Water Act, Air Act and rules made thereunder as also with any condition which may, from time to time be imposed by MPCB, as regards to collection, treatment and disposal or discharge of effluent or waste or otherwise, howsoever, and shall indemnify and keep indemnified the lessor against the consequence of any breach or non-compliance of any such provision or condition, as aforesaid. Thus, MIDC has taken all possible precautions in respect of environmental protection so as to avoid environmental damage to the

area, surrounding industrial areas. It has also referred to the provisions of Water Act, 1974 to demonstrate powers and functions of MPCB and has further stated that MPCB enjoys various powers for the purpose of controlling pollution and taking suitable action against erring industries causing environmental pollution. MIDC has no such statutory powers as are enjoyed by MPCB. However, to the extent possible, MIDC has imposed various conditions on industries set up in specified industrial estates in respect of environmental pollution.

36. Under Water Act, 1974, every industry has to provide adequate treatment to its effluent before disposal, irrespective of whether it is stream, land, sewerage system or sea. SSI are such units where plant and machinery are valued less than Rs. 5 crores and such industries occupy an important place in Indian economy and industrial development. Over the years, it was noticed that SSI units are major contributors to total industrial pollution load of the country. A very few SSI units had installed their own effluent treatment plants to avoid hazards of pollution but mostly due to limited size and scale of operation, find it economically unviable to install dedicated pollution control equipment for the purpose of treatment of effluent. This led to the concept of CETP, being more suitable in such areas where cluster of SSI units exist. This has been accepted by MoEF&CC and it has notified centrally sponsored scheme for enabling SSI units to set up CETPs in India.

37. MIDC has established about 240 industrial areas in the State of Maharashtra for achieving balanced industrial growth. MIDC also encourages industrial associations to establish and operate CEPTs for controlling pollution wherever individual dedicated ETPs by industries are not viable for economic or other reasons. MIDC helps industrial

associations by providing land at very nominal lease rent and contributing monetarily through various schemes floated by Central or State Governments for establishing CETPs. Till the reply filed by respondent 2, there had established 19 CETPs in the State of Maharashtra, maintained by associations of industries or individuals to whom land was allotted by MIDC at subsidized rates and subsidy was also given.

38. Explaining types of Treatment Plants, it is said that it is primary, secondary and tertiary types for individual units to comply with stringent norms and treatment standards.

39. **Primary (mechanical) treatment** is designed to remove gross, suspended and floating solids from raw sewage. It includes screening to trap solid objects and sedimentation by gravity to remove suspended solids. This level is sometimes referred to as “mechanical treatment”, although chemicals are often used to accelerate the sedimentation process. Primary treatment can reduce BOD of incoming waste water by 20-30% and total suspended solids by 50-60%. Primary treatment is usually the first stage of wastewater treatment. Many advanced waste water treatment plants in industrialized countries started with primary treatment, and then added other treatment stages as waste water load grown, the need for treatment increased, and resources became available.

40. **Secondary treatment** removes dissolved organic matter that escapes primary treatment. This is achieved through various processes including biological process in which microbes consume the organic matter as food, and convert it to carbon dioxide, water, and energy for their own growth and reproduction. The biological process is then followed by additional settling tanks (‘secondary sedimentation’) to

remove more suspended solids. About 85% of suspended solids and BOD can be removed by a well running plant with secondary treatment. Secondary treatment technologies include basic activated sludge process, variants of pond and constructed wetland systems, trickling filters and other forms of treatment which use biological activity to breakdown organic matter.

41. **Tertiary treatment** is simply additional treatment beyond secondary. Tertiary treatment can remove more percent of all the impurities from sewage. The related technology can be very expensive, requiring a high level of technical know-how and well trained treatment plant operators, a steady energy supply, and chemicals and specific equipment which may not be readily available. An example of a typical tertiary treatment process is the modification of a conventional secondary treatment plant to remove additional phosphorous and nitrogen.

42. TIA MIDC is spread over approximately 1028 hectares. Approximately 1947 plots were carved out, wherein 1477 industries are already established. Out of 1477 industries, only 1226 industries are functioning. Industries are further classified into Red, Orange and Green Categories, based on percentage of chemical effluents discharged by them. As per data furnished by MPCB, approximately 472 industries are in Red category, 155 in Orange and 500 in Green category. Approximately, 627 industries have consolidated to form an association known as TIMA which holds key in maintaining healthy communication between industries at large, including the constituent member industries of association and various government authorities. Members of TIMA have constituted and registered a body under Companies Act, 1956, known as TEPS for setting up a CETP. This body, i.e., TEPS was

incorporated in August, 2004, to enable individual industries to unite together and constitute into an Association of industries for establishment of CETP. For setting up of 20 MLD capacity CETP by TEPS, MIDC allotted plot no. AM-29 admeasuring 46,000 sq. meters and possession was handed over to TEPS on 24.05.2003. The construction of 20 MLD CETP commenced on 01.02.2005. It was commissioned on 10.03.2006 in respect of primary treatment of effluents and commenced entirely in March, 2008. Due to increase in load, capacity was expanded to 25 MLD in September 2009.

43. MIDC has provided collection lines at various locations. These collection lines collect effluents which have already undergone preliminary treatment, as per standards set by MPCB, in their letter of consent, issued in favour of individual industrial units. The collection lines are adjoined with sumps which act as repositories or tanks for collection of all the effluents and in volumes. Through these sumps, effluent is further pumped into CETP for further treatment and processing. After processing, treated effluent is disposed of at the point of disposal.

44. The old disposal line is under process of replacement. MIDC was disposing treated effluent through disposal line of approximately 6.4 kms at 500 meters inside Arabian Sea at Navapur village. It is now under replacement with HDPE pipes of 1200 mm diameter which would ensure smooth disposal of sewage with no chock ups. Administrative approval was received by MIDC on 18.02.2013 and work order to Contractor was issued on 26.11.2013. 60% work of replacement has already completed.

45. TIMA had proposed installation of additional CETP of 50 MLD for which MIDC allotted plot no. OS-30 admeasuring 85,000 sq. meters vide

letter dated 27.12.2010 and possession was handed over on 28.12.2010. There was some dispute between TEPS and TIMA which came to be settled and as a result thereof, possession of plot no. OS-30 was again handed over vide possession memo dated 25.03.2014. MPCB issued consent to establish vide letter dated 05.06.2014 and construction of 50 MLD CETP had started. Vide letter dated 22.07.2016, TEPS informed MIDC that approximately 70% work has been completed. MIDC has also taken further action for disposal of treated effluent in deep sea as suggested by NIO and further action for laying down pipelines is in process. Work order was issued to the Contractor on 26.05.2015 to carry out work of extension of disposal line with an estimated cost of Rs. 1,41,48,71,000/-. MIDC has requested MPCB to take stringent action against defaulting industries in discharge of effluent or partially treated or untreated effluents in CETP, led to ultimate disposal in Arabian Sea, by issuing various letters. It was for MPCB to take appropriate action in the matter, since, it is a Statutory Regulator and empowered to take appropriate action in the matter and also impose fine on the principle of 'polluters pay'.

Reply dated 11.08.2016 by TEPS (respondent 3)

46. Reply dated 11.08.2016 filed on behalf of respondent 3, is sworn by Shri Gajanan S. Jadhav, ETP Manager, TEPS. It is said that TEPS is a non-profit making organization, incorporated under Section 25 of Company's Act, 1956, vide Certificate of Incorporation, dated 25.08.2004, issued by Registrar of Companies, Mumbai, Maharashtra. Respondent 3 is operating existing CETP with the capacity of 25 MLD. Respondent 3 has received consent dated 13.04.2016, issued by MPCB, under Water Act, 1974, Air Act, 1981 and authorization under Rule 5 of the HWMHTM Rules, 2008 for operating CETP, under 'Red' category. The aforesaid

consent was granted for the period from 01.01.2016 to 31.12.2016. In fact, it is renewal of the consent, granted earlier by MPCB for operating CETP in TIA MIDC. Maintainability of application filed by applicants has been questioned on the ground of delay. It is said that applicants have not disclosed many material facts, data, reports and developments that have taken place towards protection of water bodies. Applicants are relying on old findings and figures, relating to environmental and ecological aspects of water bodies, in the vicinity of TIA MIDC.

47. Respondent 3, in operating CETP, is implementing all directions issued by MPCB, CPCB and MIDC and also commissioning a new 50 MLD capacity CETP at TIA MIDC. The construction of new CETP is complete up to 60% and likely to be commissioned in first quarter of 2017. Basic facts regarding requirement of CETP history of TIA MIDC and situation of discharge of effluent, we find, are similar, as stated in the application and also, as replied by respondents 1, 2 and 6 which we have already noted above. Avoiding repetition, in brief, the facts stated by respondent 3 are that in the decade of 1980, industries in TIA MIDC were treating industrial effluent, generated in the process of running industries, at their own end and discharging said effluent to common drainage network, which after receiving at sumps, used to be pumped to Navapur creek (about 500 meters inside the sea shore). Later, MPCB, CPCB, MoEF&CC and MIDC realized that individual setting of industrial effluent treatment plants to satisfy environmental standards may not be technically and feasibly possible, for small scale units and, therefore, they promoted a scheme for setting up CETP with financial assistance from World Bank. TIMA with financial assistance from State and Central Government, commenced CETP with the capacity of 2 MLD, in 1993, at plot No. O/23, TIA MIDC. It was sufficient to satisfy prevailing demand of industries

functioning at TIA MIDC. With subsequent multifold growth of industries in TIA MIDC, quantity of discharge of industrial effluent substantially increased, though gradually. Since existing plant was not able to cope up with the anguished discharge of industrial effluent, resultant pollution also increased going to the extent where CPCB declared TIA MIDC as 'critically polluted area'. The matter attracted attention of Apex Court also. Supreme Court Monitoring Committee was constituted to monitor and report situation of pollution in TIA MIDC. In view of the observations made by the said Committee, CPCB directed MPCB to take necessary steps to cater to effluent's volume received from industries from TIA MIDC. Consequently, MPCB directed TIA MIDC to construct either new CETP or to close down entire industrial units in the area. A show cause notice was issued on 03.02.2005 by MPCB to TIMA. In the meantime, TIMA itself took action to meet the situation and constituted TEPS in 2004 for the purpose of establishing, operating and managing a new CETP with appropriate capacity. Land was allotted by MIDC at Plot No. AM-29, admeasuring 46,000 Sq. Meters, at nominal rate, in MIDC Slump 2. Considering treatment study, conducted in 2005, TEPS decided to construct 25 MLD CETP, in phased manner. First phase of construction of CETP was completed with construction of 25 MLD Primary treatment facility plant. It was commissioned in January 2006. Second part of existing CETP project, i.e., 20 MLD Secondary treatment plant commenced operation in September 2008. 5 MLD enhanced capacity secondary treatment plant became operational from September 2009. After 2009, there has been an extraordinary growth in establishment of industrial units and textile processing in TIA MIDC which has resulted in increased demand of water requirement. TEPS, in order to keep pace with the growing demand, decided to expand and increase effluent treatment

capacity of CETP from 25 MLD to 75 MLD. For the said purpose, MIDC allotted plot No. AM-60, area 39,000 sq. meters. The requisite permissions/clearances were obtained and construction process commenced by TEPS. Contributions of Rs. 1.5 crores were received from member industries. After following due procedure, as per recommendation and approval from NEERI, DPR was approved by MIDC, vide letter dated 15.04.2010. When the process of expansion of CETP was on-going, MIDC abruptly stopped work, in view of agitation of local villagers who had support of some political parties. Letter for stopping work was issued by MIDC on 26.03.2010. Later, respondent 2, vide letter dated 14.09.2010, informed that in view of protest of the villagers, location of expansion of CETP has to be changed. TEPS was required to submit a revised DPR for approval. Possession of alternative land, i.e., OS 30 was given on 29.12.2010. In the meantime, TEPS took steps for improvement of performance of existing CETP of 25 MLD by replacing old fixed type aeration system with mechanical aeration system called Aspirators. These changes/improvements were given effect during December 2012 till June 2014. The above replacement costed approx. 3.25 crores to TEPS. Further, for expansion, after taking possession of alternative site, i.e., OS 30 area 85,000 sq. meters on 28.12.2010, TEPS took further steps. Firstly, it sought permission for cutting of trees, from Forest Department, since sizable number of trees were standing in the allotted land. Forest Department took almost four months to grant permission which was received by TEPS in May 2011. Compensation of Rs. 7.20 lakhs for cutting of trees was paid by TEPS to MIDC in May 2011. MIDC granted permission to cut trees on 20.05.2011. After cutting of trees and land levelling/filling within three months, TEPS applied for permission to bisect storm water nallah diversion and construction of

compound wall around plot OS-30, in the month of September, 2011. Permission was delayed by MIDC, despite several representations and reminders by TEPS. Again, by letter dated 26.06.2012, MIDC informed TEPS that upper side of land in plot OS-30 allotted to TEPS would have to be taken over for industrial purposes by M/s JSW Steels and remaining part of the same plot would be allotted to TEPS. The entire plot OS-30 had area of 1.4 lakhs sq. meters. From the land allotted to TEPS, MIDC re-located CETP by awarding 50,000 sq. meters space, out of the plot OS-30, to M/s JSW Steel. This action of MIDC was objected by TEPS vide letter dated 17.08.2012 but MIDC declined to re-visit its decision. TEPS filed **Writ Petition No. 2311/2012** in Bombay High Court. During pendency of matter, parties entered into a compromise/ settlement and Writ Petition was disposed vide judgment dated 20.02.2013 (Annexure R-3/14 page 462), in terms of settlement arrived at between the parties. TEPS then started construction of CETP with 50 MLD capacity at the lower portion of land in plot OS-30.

48. In view of above situation created by MIDC, respondent 3, i.e., TEPS could not take expeditious effective steps towards expansion of CETP. It otherwise could have been completed long back. TEPS has proceeded with pace to setup 50 MLD CETP and completed requisite formalities with TIMA and MIDC. It also applied for consent to establish, to MPCB, which was granted vide letter dated 05.06.2014. EC was granted by SEIAA, Maharashtra vide letter 24.03.2015 (Annexure R-3/16). TEPS applied for DPR approval to National Environment Engineering Research Institute (hereinafter referred to as '**NEERI**'), in May 2014, who suggested to have assessment of pilot plan performance from an Institution like IIT Mumbai. Consequently, TEPS approached IIT Mumbai for pilot plan assessment, in February, 2016. IIT Mumbai

informed TEPS that assessment will take three months to complete. IIT Mumbai submitted its report to NEERI in June 2016 suggesting incorporation of advanced oxidation of ozonation processes. Consequential letter dated 27.06.2016 was issued by NEERI suggesting, that for tertiary treatment scheme, it would be more suitable to use ozonation or other advanced oxidation process, instead of proposed activated carbon filter and pressure sand filter. TEPS agreed to augment ozonation and tertiary plant on 22.07.2016, whereupon NEERI approved DPR vide letter 25.07.2016 with further request to MPCB to ensure that a careful monitoring regime is put in place for input water and treatment capacities provided, to ensure compliance with prevailing standards.

49. Though TEPS was entitled to receive subsidy from Government but looking into the urgency, it proceeded on its own, not only for upgradation of the existing CETP but for installation of additional new CETP of 50 MLD. TEPS is working very diligently, not only for mechanical or system enhancement but also has trained operating staff, which is well experienced and work round the clock to operate CETP. TEPS has given maximum attention over primary treatment by way of batch operation of equalization tank. It has increased decanter operation period from 12 hours to 24 hours which has resulted in removal of almost 63000 MT of semi-dried solid waste in last fiscal year. Future solid waste removal trend will be almost up to 4500 to 5000 MT per year. From May 2016, TEPS has increased frequency of monitoring of inlet impact and operate even in night hours to avoid shock load in CETP. In view of directions issued by MPCB to various industries in TIA MIDC, discharge of effluent quantity at existing CETP inlet has considerably reduced from 45 MLD to 27-28 MLD. TEPS has also issued circulars to member industries to adhere to directives of MPCB and endeavor to reduce effluent quantity at

CETP inlet which would help the existing functional CETP to provide better treatment of effluent. Despite several hurdles and delay, as stated above, TEPS has been able to manage completion of almost 65% of civil work of 50 MLD capacity CETP. All the machines and equipments, necessary to be installed in the plant, have already been ordered and some equipments are being ordered. TEPS has already spent 60 crores in construction of new 50 MLD CETP. Since process of subsidy from government is getting late, TEPS has also decided to take loans from financial institutions for the project, total cost whereof is about 117 crores. TEPS is confident of commissioning of two modules of new plant, i.e., 12.05 MLD, by the end of first quarter of the year 2017. Rest modules will be functional by the second quarter of 2017. Besides, there has been overall improvement on all fronts, resulting in improvement and efficiency of treatment units which has reflected in outed parameters. Upgradation work has completely stopped backflow in underground drainage line, overflow of manholes in industrial area, etc. which is indicative of optimum performance of existing of CETP after upgradation project. CETP upgradation has lowered down environmental (water pollution) issues within industrial area and around disposal point. TEPS and other stakeholders are committed for protection of environment and taking all measures and efforts to achieve the best results. The role of TEPS is limited up to the boundary of its premises, i.e., from inlet CETP to outlet CETP, i.e., to treat effluent received from industries to meet disposal standards as specified by MPCB in consent order. Despite all obstructions, TEPS is taking all possible steps to achieve prescribed standards and upgradation of the existing CETP has resulted in substantial reduction in the level of industrial pollution. Bombay High Court in PIL No.17/2011 has already taken cognizance by directing

respondents and Regulators as well as government authority to take all remedial measures to curb and limit industrial pollution in TIA MIDC. The allegations of dereliction of duty, negligence, etc. against TEPS are incorrect. Round the clock, TEPS and its officials are working to achieve best results, required for maintenance of protection of environment and to achieve the prescribed standards.

Additional Affidavit dated 29.10.2016 by MPCB (respondent 1)

50. Additional affidavit dated 29.10.2016 has been filed on 31.10.2016 on behalf of MPCB (respondent 1). Above affidavit was filed in compliance of Tribunal's order dated 09.09.2016. A meeting was held between officials of MIDC, CETP Association and MPCB. As per discussion and decision taken thereat, different directions were issued to Regional Officer, MPCB, Thane, MIDC and CETP, which are as under:

“Directions to Regional Officer, Thane MPC Board:

- 1. Directions shall be issued to all individual effluent generating industries to Curtail their water consumption and to reduce effluent by 40 % of their present generation.*
- 2. Directions given to 59 major contributing industries shall be rigorously monitored by Sub Regional Officer, Tarapur-1. Regional Officer Thane to extend all support (manpower & logistic) from his subordinate offices and laboratory.*
- 3. To ensure compliance of earlier directions issued to 59 major effluent contributing industries to install pH, Electronic flow meter with Data Logger System within 3 days. Further to direct Industries to provide positive one point discharge within 15 days.*
- 4. Directions are issued to the CETP and Industries generating effluent more than 100 CMD and above for installation of SCADA. Sub Regional Officer, Tarapur-I to confirm the same and issue directions to Industries generating effluent more than 25 CMD to 100 CMD with time line of three months.*
- 5. SRO Tarapur-1 shall monitor CETP performance for 48 hrs. by deputing team of officers for collecting records of pH and flow and 4 hourly samples for the parameters pH, BOD, COD, TDS and SS at inlet and outlet of CETP, Samples will be jointly analysed by Scientific Staff of Regional Laboratory, Thane under supervision of Scientific Officer, I/C R- Lab, Thane at CETP Laboratory. Reports of the same shall be submitted to PSO and JD (WPC) office forthwith. Results of BOD to be submitted within 7 days.*

6. *The effluent generation, treatment and disposal compliance and sludge generation as per consent conditions will be submitted for last two years of 59 major contributing industries (50 CMD and above). Report consisting of JVS analysis reports, actions, compliance of directions, Bank Guarantee status etc. for each industry will be submitted in excel format within 3 days.*
7. *Similarly, Regional officer, Thane shall submit report for industries generating effluent below 25 CMD and industries generating effluent between 25 CMD to 50 CMD.*

Directions to MIDC:

1. *To conduct survey of bore wells (Active and Abounded Bore wells) in MIDC Tarapur and submit the report within 3 days to Regional Officer Thane, MPC Board stating details as name of industry, plot number, status of bore well (s). i.e. active/ abounded, size of borewell etc.*
2. ***The leakages and seepages of effluent conveyance line shall be attended immediately to avoid the mixing of the effluent in storm water drain and shall complete the remaining work of HDPE conveyance system on fast track.***
3. *MIDC shall empanel agency for periodic and incidental sludge removal accumulated in chambers, collection sump and pipelines and ensure the free flow of trade effluent. For this purpose advance mechanical system shall be adopted by MIDC. Sludge removed from conveyance system shall be stored in secured condition, till disposal to CHWTSDF and quarterly record of the quantity of the sludge disposed to common facility should be provided to MPCB.*
4. *MIDC shall investigate quantity of water supply to the industries and quantity of effluent disposed to Navapur Sea and submit the report of the same to MPCB within 15 days.*
5. *MIDC shall install the SCADA system to inlet and outlet of water supply pipeline system to check leakages and seepages in the supply system and shall maintain daily record for water supply and submit the same to the Board every 15 days.*
6. *MIDC Shall appoint two to three agencies for on call sludge removal, to attend leakages pipeline at chambers, in emergency situations.*
7. *MIDC Shall ensure the compliance of the direction issued to 59 major water consuming industries of CETP including directions to provide positive one point discharge within 15 days and report shall be submitted to MPCB.*

Directions to CETP:

1. ***Shall comply with disposal standards immediately.***

- 2. Shall maintain online data logs of the flow and pH using calibrated flow and pH meter.at inlet and outlet of the CETP with hourly data.
- 3. Shall **ensure the inlet flow to the CETP be restricted to 25 MLD only.**
- 4. CETP shall maintain with the data having consented effluent generation quantity, effluent generation after directions of 25% curtailment issued by Board, effluent quantity after directions of 40% curtailment of individual member industry.”

51. Further, vide letter dated 07.10.2016 (annexure II to Additional Affidavit), Regional Officer, MPCB, Thane issued directions (ten in number) in exercise of power under Section 33A of Water Act, 1974. Executive Engineer, MIDC, Division-1, Thane, vide reply dated 28.10.2016, in reference to the directions issued vide letter dated 07.10.2016 by MPCB, submitted its compliance to all the ten directions contained in letter dated 07.10.2016, and point wise compliance stated by MIDC is as under:

Sr. No.	Directions issued	Compliances of directions issued
i.	You shall carry out survey of MIDC Tarapur to find out Bare wells (active or abounded) and shall Submit its report Comprising name and address of industry. Plot No. N, status of bore wells (Active or Abounded) size of borewell, etc. to the Sub-Regional MPCB, Tarapur-I within Officer, period of three days.	As per the directions, the survey of bore wells has been conducted by the MIDC. At present 41 number of bores are detected and closed. The detailed report is enclosed herewith. (c5)
ii.	You shall breakage/leakage/ seepage inspect of effluent carrying pipeline network and it shall be immediately attended so as to arrest leakage/leakage/ overflow of MIDC chambers. The work of replacement of old by conveyance System shall completed track. It shall also	MIDC has deployed agency for AMC. The leakages in pipeline are being immediately arrested. The incidental chokes up of drainage pipelines, chambers are attended immediately. Any leakages observed in collection system are attended by MIDC through AMC. Due to release of

	ensure that the industrial waste is pipeline HDPE be on fast water not being drained/mixed in storm water drain.	excess quantity of effluent by Industries, overflow of effluent from chambers at low laying areas are observed for some time. The problem is due to short fall of capacity of Existing CETP. At present there are no leakages observed in effluent collection lines. MIDC has granted approval for replacement of balance RCC effluent lines by HDPE line for <u>Rs.23.44 crores</u>. The tenders are invited and work will be started very soon.
iii.	You shall carryout periodic of cleaning of effluent carrying pipeline, sumps, so as to remove accumulated sludge and shall ensure free flow of trade effluent in the pipeline. You shall adopt advanced automated systems to avoid accumulation of sludge in sumps and effluent carrying pipeline.	MIDC has deployed agency for AMC for maintenance of drainage lines, Removing of choke ups, and cleaning of pipelines and chambers throughout the year. If the individual industry has treated the effluent as per MPCB norms it is not expected to let out the sludge in the collection system of MIDC. You are requested to take stringent action against defaulting industry. As per your directions the proposal for removing the accumulated sludge under preparation.
iv.	The sludge removed from sewerage line and MIDC sumps shall be stored at designated place in secured condition till disposal to CHWTSDf. Also, you shall submit quarterly record of sludge generated and disposed to CHWTSDf TO Sub-Regional Officer, MPCB, Tarapur-I along with copy of this office.	The tender for removing and transportation of Sludge was invited. Accordingly, the quantity of sludge of 5936.37 MT, accumulated in the MIDC Sumps at various locations are removed and transported to CHWTSDf site at Taloja in the year 2015-16. The proposal for the next year is under preparation.
v.	You shall appoint 2 to 3 dedicated agencies on call basis, so as to attend emergency situations like	The routine preventive maintenance breakdown as well as maintenance of effluent collection and disposal

	<i>breakage/leakage/seepage effluent to carrying of pipeline, sludge removal from pipelines and submit ATR thereof.</i>	<i>pipelines is done by MIDC's Tarapur sub-division 24 x 7 basis. Any leakages/breakages observed are attended on topmost priority</i>
<i>vi.</i>	<i>You shall make necessary record of water supply to the industries and quantity of effluent disposed to Navapur sea. The data of water supply and waste water disposed to Navapur Sea for last one year shall be submitted to Sub-Regional Officer, MPCB, Tarapur-I along with copy to this office.</i>	<i>The report furnished by DE (maint) is enclosed herewith. (C-9)</i>
<i>vii.</i>	<i>You shall install SCADA system at inlet and outlet of water supply pipeline network of flow so as to access leakages/seepages in water carrying pipeline. The daily data of the same shall be maintained and submitted on every 15 days to Sub-Regional Officer, MPCB, Tarapur-I along with copy to this office.</i>	<i>The flow meters at starting point and water meters at individual industry are already installed. Leakages are regularly monitored. The data is already handed over by MIDC's DE (maint) to SRO, MPCB.</i>
<i>viii.</i>	<i>You shall ensure compliance passed by the. Hon'ble NGT, Pune dt.09/09/2016 in respect of curtailment of waste water generation of order water supply by 40% from whatever present generation.</i>	<i>AS per NGT's orders industry should curtail the effluent generation by 40 %. You should take stringent action against the defaulting industry on priority. As per your directions, MIDC has already started the curtailment of water supply of Industries by 40% at source i.e. at jackwell. As per DE (maint)'s report the water Supply valves to the major industries is also controlled by 40 %. (C11)</i>
<i>ix.</i>	<i>You shall ensure effluent discharge from industries established in MIDC Tarapur through single discharge point for effluent, which shall be connected to MIDC sewerage line. This exercise shall be done within a period of 15 days from the receipt of these</i>	<i>The effluent is collected in collection sumps provided in the Industrial Area, through the collection network and pumped to CETP for treatment. After treatment in the CETP the same is collected in the Treated effluent sump provided in the CETP premises and from sump</i>

	<i>directions.</i>	<i>it is disposed of into Navapur sea. There is no other outlet to let out the treated effluent. If there is any defaulter industry, please take stringent action from your end.</i>
<i>x.</i>	<i>You shall provide electronic flow meter with data logger at inlet and outlet of within 15 days from the receipt of these directions. The daily data of the same shall be submitted to Sub-Regional Officer, and Tarapur-I along with copy to this office.</i>	<i>The work of installation of Electronic flow meter for the Treated effluent disposal main is in progress.</i>

52. Further, MPCB issued letter dated 07.10.2016 under Section 33A of Water Act, 1974 directing 73 major industries to reduce generation of effluent by 40%. A similar direction was issued by MPCB vide letter dated 07.10.2016 to TEPS to communicate member industries about curtailment of waste water generation by 40% from whatever present generation and to operate CETP continuously and efficiently round the clock to meet consented standards and in no circumstances, substandard quality effluent shall be discharged into Navapur sea.

53. MPCB had granted consent to industries in TIA MIDC subject to condition that industry shall provide comprehensive waste water treatment facility for treatment of industrial waste water and treated waste water shall be connected to MIDC sewer only. The treated waste water through MIDC sewer is connected to CETP of TEPS for further treatment.

Affidavit dated 05.12.2016 by MPCB (respondent 1)

54. Affidavit of MPCB dated 05.12.2016 was filed on the same date. This affidavit was filed pursuant to Tribunal's order dated 31.10.2016. The affidavit brings on record consequences of action taken by TEPS in

compliance of MPCB’s letter dated 07.10.2016. Vide email dated 02.12.2016, send by MIDC, statement showing pumping of effluent from MIDC sump during the period of 01.10.2016 to 31.10.2016 and 01.11.2016 to 30.11.2016 was communicated showing reduction of average effluent generation from about 33 MLD effluent to 12.81 MLD effluent at the end of October, 2016 which thereafter increased till 08.11.2016 and stabilized at 22.8 MLD w.e.f. 09.11.2016. It is thus said that flow of effluent has reduced to the designed capacity of 25 MLD.

55. Further direction was issued by Chairman, MPCB and pursuant thereto, a scientific and technical officials team visited concerned area on 04.10.2016 for monitoring hourly performance of CETP for 48 hours. The above monitoring was conducted from 15.10.2016 (6:00 am) to 17.10.2016 (6:00 am). BOD, COD, pH, Suspended Solids and Total Dissolved Solids and Flow at inlet and outlet of CETP was measured on four hourly basis and the range of parameters observed during survey is as under:

Sr. No.	Parameters	Sampling location	Range	
			Minimum	Maximum
1.	pH	Inlet	3.97	6.68
		Outlet	7.02	7.56
2.	B.O.D. (mg/l)	Inlet	1200	2500
		Outlet	700	1400
3.	C.O.D. (mg/l)	Inlet	3240	6560
		Outlet	1728	2560
4.	Suspended Solids (mg/l)	Inlet	260	2484
		Outlet	161	296
5.	Total Dissolved Solids (mg/l)	Inlet	6023	11461
		Outlet	4267	8503

56. Quantity of effluent received at inlet of CETP and discharged in Navapur Sea as observed in the above survey from 15.10.2016 to 17.10.2016 is as under:

Date	Inlet effluent Quantity (MLD)	Outlet effluent quantity (MLD)	Excess Effluent Quantity by passed (MLD)***
15/10/2016 to 16/10/2016	41.41	24.08	17.33
16/10/2016 to 17/10/2016	32.98	25.93	7.05

57. A note is added to para 5 of the affidavit, stating as under:

*“*** The excess effluent quantity in receipt to CETP was neutralized in equalization cum neutralization tanks (4 Nos) having 16 numbers of floating aerators and then discharged to MIDC Sump No. 2 through emergency exit closed pipeline & then finally to Navapur Sea. Presently, effluent receipt to CETP is below 25 MLD.”*

58. The report shows that pH and COD at inlet and outlet are significantly exceeding inlet design standards and outlet discharge standards of CETP. MPCB issued directions to industries in TIA MIDC, having effluent generation of more than 100 CMD (37 nos.), about installation of online flow meter for pH and flow along with electronic data logger, SCADA Automation Control System for pH and flow having server connectivity with CETP. MPCB also issued directions to large and medium industries in red category and SSI with effluent generation more than 25 CMD.

59. Pursuant to the said directions, all industries with effluent generation of more than 100 CMD have installed online flow meter for pH and flow along with electronic data logger. Work of installation of SCADA Automation Control System for pH and flow is in progress and will be completed in next 15 days, and in remaining industries, work for installation of the above equipment is under process. A meeting was held between the officials of MPCB and representatives of textile industries

and it was pointed out that effluents received in sump no. 3 are highly polluting having higher COD values. Thus, it was decided to identify defaulting industries discharging high COD stream. Further, vide letter dated 29.11.2016, MPCB issued directions under Section 33A of Water Act, 1974 to MIDC to ensure that leakages and seepages of all effluent conveyance lines shall be attended immediately to avoid mixing of effluent in storm water drain and shall complete remaining work of HDPE conveyance system on fast track. In order to identify defaulting industries, various teams of officials, CETP Member industries and MIDC officials made surprise checking's and JVS sample collection and surveillance of 95 industries was carried out from 23.11.2016 to 02.12.2016. The analysis reports disclosed 46 industries primarily responsible to contribute high COD load or low pH at inlet of CETP causing total upset of CETP performance. Consequently, notice for closure was issued to 9 large scale/medium scale industries and 22 SSI. Further, show cause notices were issued to 1 large scale/medium scale industry and 3 SSI. In respect of 11 SSI, action is proposed to be taken. Further, MPCB has reviewed performance of 33 industries with Zero Liquid Discharge (hereinafter referred to as 'ZLD') and as per decision taken, MIDC Officials informed disconnection of these 33 units with ZLD from MIDC sewer.

60. MIDC was also directed to restrict illegal water supply by bore wells/tankers and in furtherance thereof MIDC has identified 41 bore wells which are permanently sealed.

Affidavit dated 05.12.2016 filed on behalf of TEPS (respondent 3)

61. Respondent 3 has stated that pursuant to order dated 09.09.2016 passed by Tribunal, TEPS has taken steps to monitor and put existing

CETP to its optimal use, including directions issued to member industries to comply with environmental protection norms. As per directives issued by MPCB and/or MIDC and as per circulars issued by TEPS, effluent quantity has reduced substantially. Water supply to member industries is curtailed by 40% by MIDC, and, it has drastically reduced effluent quantity at CETP inlet which has declined below 25 MLD from 24.10.2016. Levels are maintained till date below 25 MLD i.e., within existing capacity of CETP. A chart giving quantity details for the period of 01.11.2016 to 04.12.2016 is Annexure-A to the affidavit, and reads as under:

**“TARAPUR ENVIRONMENT PROTECTION SOCIETY
EFFLUENT RECEIPT & TREATED QUANTITY – NOV – 2016**

NOTE – FLOW METER READING (7 AM – 7 AM)

DATE	FLOW METER READING IN CUM	TOTAL EFFLUENT RECEIPT & TREATED QTY IN DAY (CMD)
	3245486	
01.11.2016	3262114	12584
02.11.2016	3274698	24188
03.11.2016	3298886	24772
04.11.2016	3323658	19919
05.11.2017	3343577	21812
06.11.2018	3343577	22179
07.11.2019	3387568	24227
08.11.2016	3411795	21201
09.11.2016	3432996	24709
10.11.2016	3457705	22442
11.11.2016	3480147	13266
12.11.2016	3493413	22408
13.11.2016	3515821	24075
14.11.2016	3539896	23511
15.11.2016	3563407	25793
16.11.2016	3589200	26441
17.11.2016	3615641	25743
18.11.2016	3641384	18461
19.11.2016	3659845	22202
20.11.2016	3682047	24256
21.11.2016	3706303	23019
22.11.2016	3729322	23864
23.11.2016	3753186	24475
24.11.2016	3777661	25262
25.11.2016	3802923	16861
26.11.2016	3819784	19137
27.11.2016	3838921	23299
28.11.2016	3862220	24951

29.11.2016	3887171	25227
30.11.2016	3912398	23823
	3912398	
01.12.2016	3936221	25235
02.12.2016	3961456	16129
03.12.2016	3977585	18166
04.12.2016	3995751	23242

”

62. The above chart shows that except 15.11.2016, 16.11.2016, 17.11.2016, 24.11.2016, 29.11.2016 and 01.12.2016, on other days, inlet effluent level was below 25 MLD but during the above-mentioned dates it exceeded existing capacity of CETP.

63. Further, it is said that though hydraulic load received at CETP had reduced, but organic/pollution load at CETP, due to some industries, in particular chemical zone in sump-3 or sump-4 of TIA MIDC, was higher than the designed capacity of CETP. TEPS monitored effluent quality of sumps-3 & 4 and conveyed deviation to MPCB, who took serious note and screened almost entire industries contributing to sumps - 3 & 4 area. Due to constant monitoring, inspection and survey by officials of MPCB and TEPS, acidic effluent receipt has almost stopped and organic load at CETP inlet has started declining. All efforts are being made to reduce and stabilize inlet organic load and bring the same within parameters. TEPS has started reclamation of biological mass by culture development etc., by taking fresh biomass from M/s. LUPIN & M/s. Galaxy Surfactant, who are having biological treatment plants of their own. Biomass development is expected to take not less than 15 to 20 days and process would take at least a month to show effective results. TEPS has also started monitoring of sump effluent and backtracking of source of erratic effluent quality. This monitoring has enabled TEPS to receive stipulated effluent quality at CETP inlet, which in turn will help to better system’s efficiency. TEPS has spent about Rs. 2.7 crores over up gradation of its existing plant,

especially, repairs/replacement of corroded pipeline, valves and elbow connectors of tertiary system (PSF followed by ACF). The work is likely to be completed within December 2016. The real hurdle caused due to lack of skilled manpower has also been sorted out and skilled manpower has already been deployed for shift operation of CETP. Operation of CETP has been extended to run round the clock. A full-fledged and accredited laboratory at new location of 50 MLD plant is in process of establishment. By first week of 2017, a new laboratory will start operation. Old laboratories of 25 MLD CETP will continue to work for specific parameter analysis like PH, TSS, TDS, O&G and COD. All these exercises will help for precise monitoring and reduction of CETP outlet parameters within prescribed limit. Project work of TEPS was facing financial issues which have also been sorted out to a reasonable extent. TEPS has spent almost Rs. 54.23 crores over project. It has applied for subsidy to concerned Government agencies. Application for subsidy was submitted at MDIC office on 03.09.2016 under State Scheme; CETP submitted subsidy application at MIDC on 21.10.2016; TEPS submitted subsidy application to MPCB on 26.10.2016; Minister for industry conducted meeting on 28.11.2016 regarding project work and subsidy related mater; issued necessary orders for release of appliable subsidy of CETP project; MIDC (facilitatory body) organized meeting on 05.12.2016; TEPS approached its banker (M/s. Saraswat Cooperative Bank Ltd.) for loan of Rs. 40 crores; member industries of TEPS contributed about Rs. 3.95 crores and more contributions are likely to be received in December 2016 for expediting new 50 MLD CETP.

64. TEPS has also raised issue of parallel power supply with Managing Director of MSEDCL; a meeting was held at Prakash Gadh at Mumbai on 23.11.2016 and Senior authorities of MSEDCL passed necessary

instructions to their Section Head at Palghar to provide power supply to upcoming 50 MLD CETP project by Mid of March-2017 up to 70% and rest power will be made available by April 2017. TEPS is endeavoring to start new 50 MLD CETP project by April 2017, after power supply is received from MSEDCL. Till commencement of new CETP, TEPS would continue to operate existing CETP at its optimal levels and take all precautionary measures to comply with the environmental norms and standards.

65. JSWSCPL filed miscellaneous application for impleadment as respondent in present original application. TEPS has stated that JSWSCPL has made requisite payment as a capital contribution to TEPS against capacity booking at upcoming 50 MLD CETP and it will be accommodated as per capacity booking from member industries, once 50 MLD CETP project becomes operational.

Affidavit dated 16.12.2016 of MIDC (respondent 2)

66. This affidavit has been filed in reply to MA No. 352/2016 filed on behalf of respondent 8, i.e., JSWSCPL for seeking permission for running its industry by ensuring that Tribunal's orders dated 09.09.2016 would operate prospectively. Tribunal had directed MPCB that no fresh Consent to Establish or for expansion in TIA MIDC is granted till further orders. The affidavit states that letter dated 27.05.2014 was issued allotting Plot No. B-6/1/1, area 51866 square meters in TIA MIDC to respondent 8. The said allotment was subject to certain terms and conditions to be complied by the allottee. The conditions include stipulation that allotted land can be used for setting up of a factory premises and not for any obnoxious industry, offensive by reasons as specified in Annexure set out in the schedule to the Agreement to Lease and, emission of odor, liquid

effluvia, dust, smoke, gas, nuisance, vibration or fire hazards. The allotment letter also says, if proposed unit is a chemical unit having possibility of causing pollution, clearance from MPCB is essential. Allottee is supposed to develop plot within two years from the date of taking possession and use 100% FSI as per MIDC Regulations. Possession of plot was handed over to respondent 8 on 30.09.2014. Further, issue of taking membership with TEPS is also mandatory as per condition no. 3 of allotment order. However, as on date, there is no development on the said plot and Respondent 8 has also not applied for building permission so as to carry out constructions, though period within which construction ought to have been completed, has already expired. Respondent 8 made a representation dated 03.02.2016, received in the office of MIDC on 08.02.2016, whereby respondent 8 made a request that plans for building permission be allowed to complete after receiving consent to establish from MPCB. The said representation of JSWSCPL has been rejected by MIDC vide letter dated 24.05.2016.

Affidavit dated 16.12.2016 of MIDC (respondent 2)

67. This affidavit has been filed in reference to MA. No. 400/2016 filed on behalf of M/s. Valsad District Cooperative Milk Products' Union Ltd. MA was filed with a prayer that applicant - M/s. Valsad District Cooperative Milk Products' Union Ltd be allowed some relaxation in use of water to the extent of 325 m³ per day through a separate temporary connection of 160 mm (6" line) in place of existing 80 mm (3" line). Affidavit of MIDC said that Tribunal, vide order dated 09.09.2016, directed MPCB and MIDC to ensure that waste generated by the industries at that particular time, is reduced by 40%. In order to ensure compliance of the said order, MIDC reduced water supply in TIA MIDC by 40% since 25.10.2016. Reduction in water supply has also resulted in

improvement of quality of effluent discharged in CETP, bringing it within prescribed capacity of CETP. MIDC has acted to comply with the order of Tribunal. However, MIDC did not object the request of M/s. Valsad District Cooperative Milk Products' Union Ltd and said that it may be considered by Tribunal whereupon MIDC will comply.

Affidavit dated 14.02.2017 filed by MPCB (respondent 1)

68. Affidavit dated 14.02.2017 received in Tribunal on 15.02.2017, is filed on behalf of MPCB (respondent 1). This affidavit has been filed pursuant to Tribunal's order dated 19.12.2016. It is said that 49 ZLD industries were directed to be disconnected from sewerage line connection, vide MPCB's letter dated 06.01.2017 (Annexure I to Affidavit). List of these 49 industries, contained in annexure I to letter dated 06.01.2017, is as under:

Annexure-A		
Sr. No	Name of Industries	Address
1.	MANDHANA INDUSTRIES PVT LT	C-3,MIDC Tarapur
2.	JSW STEEL LTD.	B-6, MIDC Tarapur
3.	JSW STEEL LTD.	B-7/ 1, MIDC Tarapur
4.	Zakaria Fabrics Pvt Ltd	A-13, MIDC Tarapur
5.	First Winner	N-66, MIDC Tarapur
6.	BOMBAY RAYON FASHION LTD	G-95, MIDC Tarapur
7.	Manan Cotsyn Pvt Ltd	G-4/ 2, MIDC Tarapur
8.	Sunway fashions. Pvt: Ltd	G-21, MIDC Tarapur
9.	SIYARAM SILK MILL LTD.	E-125, MIDC Tarapur
10.	Nirvana Silk Mils P.td	D-6, MIDC Tarapur
11.	Ramdev Chemicals P. Ltd	E-41,& E-129, MIDC Tarapur
12.	Indrox Global Pvt. Ltd	B-11, MIDC Tarapur
13.	Loba Chemie Pvt.Ltd	D-22, MIDC Tarapur
14.	Viraj Profiles Ltd	G-1/2,1/3,2, MIDC Tarapur
15.	Viraj Profiles Ltd	G-1/ 4, MIDC Tarapur
16.	NGL Fine Chem Ltd	S-18/ 3, MIDC Tarapur
17.	Samrudha Pharmacare P. Ltd	G-16/1,2,3, MIDC Tarapur
18.	Sirmaxo Chemicals P. ltd	E-130, E130/ 1, MIDC Tarapur
19.	Unitec Inc	N-30, MIDC Tarapur
20.	M/s Specteochem Pvt. Ltd.	E-96,E-97, MIDC Tarapur
21.	M/s VAP Industries	E-7/ 4, MIDC Tarapur
22.	M/s. Gunjan Chemicals Inds. P. Ltd	K-48, MIDC Tarapur
23.	M/s. Surya Chemicals Inds.	T-41, MIDC Tarapur

24.	M/s. Nuhush Textile Inds	N-17, MIDC Tarapur
25.	Trupti Pharma chem pvt ltd	W-11, MIDC Tarapur
26.	Darshan Fine fab P. Ltd	G-8/ 1, MIDC Tarapur
27.	M/s. S.R Steel Engg.	W-80/A, MIDC Tarapur
28.	M/s. Balaji Engineeering	W-38/8, MIDC Tarapur
29.	M/s. Arihant Chemical Co	W-167, MIDC Tarapur
30.	Aarti Drugs Ltd.	S-33/34, MIDC Tarapur
31.	D R CoatsInk & Rsin P. Ltd	J-51, MIDC Tarapur
32.	Indaco Jeans P. Ltd	G-21 MIDC Tarapur
33.	Shree Rajendra Engg Work.	J-139, MIDC Tarapur
34.	Satguru Steelwool (1)P. Ltd	J-139/1, MIDC Tarapur
35.	Arihant Chemical Co.	S-29. MIDC Tarapur
36.	Nutrapluse Inia Ltd,	T-30, MIDC Tarapur
37.	Shubham Inks & Chemicals P. Ltd.	T-51, MIDC Tarapur
38.	Pearle farben Chem P.Ltd	N-167, MIDC Tarapur
39.	Vivid Global Inds	D-21/ 1, MIDC Tarapur
40.	Genial Chemle.	L-59, MIDC Tarapur
41.	Petrogate Metal Products P ltd	W-55/D, MIDC Tarapur
42.	Scitech Centre	W-2, MIDC Tarapur
43.	S.K Inds	W-187, MIDC Tarapur
44.	Mecoy Pharma P, Ltd	IS-8, MIDC Tarapur
45.	Sifer Car Care	J-40, MIDC Tarapur
46.	STS Automobiles	J-185/186,MIDCTarapur
47.	Spectra MotorsLtd	J-240, MIDC Tarapur
48.	Jaron Cosmetique P. Ltd	T-48, MIDC Tarapur
49.	Ciron Drugs & pharmaceuticals P. Ltd	N-118/1, MIDC Tarapur

69. MIDC was also directed to ensure that discharge of effluent to MIDC sewer leading to CETP shall be sealed permanently so that there shall not be discharge of treated/untreated effluent from above 49 ZLD industries. However, no confirmation for compliance of above directions was received from MIDC by MPCB. As per report submitted by TEPS, daily discharge from CETP in December, 2016 and January, 2017 ranges between 16.129 MLD to 26.641 MLD and 13.292 MLD to 28.224 MLD, respectively. MPCB issued closure directions to 31 industries, show cause notices to 4 industries and proposed directions to 11 industries on the basis of their performance, pursuant to survey made between 23.11.2016 to 03.12.2016. Similar survey was continued from 07.01.2017 to 17.01.2017 and details of the survey is given as under:

- “1. Duration of Survey : 07.01.2017 to 17.01.2017
2. No. of Effluent generating units monitored : 94 Nos.
3. No. of samples collected from Industries : 275 Nos.

4. No of samples collected from Inlet of CETP : 34 Nos.
5. No of samples collected from outlet of CETP : 34 Nos”

70. MPCB decided to allow re-functioning of industries on the following criteria:

- i. Units having effluent quantity more than 25 CMD, which have upgraded Effluent Treatment Plant to achieve consented discharge standards.
- ii. Units having Zero Liquid Discharge or 100% recycling of treated effluent.
- iii. SSI CETP member industries having less than 25 CMD can be allowed upto 1000 mg/l COD (Less than CETP inlet design standards i.e. 3500 mg/l). Provided each industry submits adequacy report of Water Pollution Control/ Air Pollution Control, verified either by Respondent Board or reputed institutes like IIT/NEERI/UDCT.
- iv. Trial/ Conditional restart for the units, which have adequate Effluent Treatment Plant as verified and confirmed by the institutes, to be considered for 15 days restart. Each effluent treatment plant to be monitored twice a day, after the seventh day of the restart, to confirm performance.
- v. Non complying units given conditional restart, if found with exceedance from 25% even for a single incidence shall be closed forthwith.”

71. Based on the above criteria, on 13.02.2010, MPCB allowed conditional restart to following five industries:

- “1) Mis. Kriplon Synethics, N-97/98, MIDC Tarapur
- 2) M/s. Remi Edelstahal Tubulars Ltd., N-211/1, MIDC Tarapur
- 3) M/s. Aarti Industries, L-5, MIDC, Tarapur
- 4) M/s. Aarti Drugs, N-198, MIDC, Tarapur
- 5) M/s. Aarti Drugs, E-120, MIDC, Tarapur.”

72. Vide letter dated 13.02.2017, TEPS submitted compliance to directions issued by MPCB vide letter dated 21.01.2017. TEPS also informed to have constituted a vigilance Committee of 12 members constituting member industries for monitoring discharge of effluent by individual industries so as to control the inlet parameter of CETP. This was communicated vide letter dated 10.01.2017, send by TEPS to TIA

MIDC. It is said MPCB has taken all steps to control pollution, i.e., the process to issue direction for closure to 17 industries, show cause notices, proposing closure to 32 industries and proposed directions to 7 defaulting industries.

Affidavit dated 10.04.2017 filed by respondent 9 (TIMA), (impleaded vide order dated 06.12.2016)

73. TIMA is an association of industries established at TIA MIDC, to represent interest and functioning of industries in TIA MIDC. The association itself was impleaded as respondent 9 by Tribunal's order dated 06.12.2016 so as to represent industries in that area. All industries were allowed to place their stand through TIMA.

74. TIMA has filed its reply dated 10.04.2017. The affidavit has been sworn by Mr. Shivranjan Kailashchandra Gupta, Hon. Secretary of TIMA, giving history of industrial estate. Respondent 9 has said that in 1975, State Government approved setting up of industrial estates in various districts of Maharashtra. State Industrial and Investment Corporation of Maharashtra Ltd. (hereinafter referred to as '**SICOM**') selected Biosar-Tarapur to develop as a growth centre and channelled its efforts to make it one of the best Industrial Complex in Maharashtra. Tarapur is a census town in District Thane in State of Maharashtra, located at about 45 km north of Virar, on the Western Railway line of Mumbai Suburban Division (Mumbai Suburban Railway). Locations near Mumbai Port/Mumbai Harbour (BPT) and JNPT as well as proximity to Trans Thane Creek (TTC) MIDC, Vapi GIDC add a great value to the said industrial estate. It is located on important rail-route, Mumbai to Delhi and Mumbai-Ahmedabad Highway, part of Golden Quadrilateral project. Biosar Tarapur Industrial Estate, established in 1972 is known as MIDC Tarapur i.e., TIA MIDC. Initially, a small number of entrepreneurs were

functioning in the said area. They formed an association to take care of common interest of industries related to MIDC, MPCB, etc., and the said association formed, is called 'TIMA', after having registration under Societies Act, 1860 vide registration no. MAH/1038/THANE on 21.02.1983. There are about 1200 industries in TIA MIDC, whereof 915 industries are members of TIMA. Current turnover of TIA MIDC is to the tune of Rs. 40,000 cr. out of which almost 50% is export. It has employment potential of about 2 lakh people. Initially TIMA set up CETP in 1993 with the capacity of 2 MLD for the benefit of member industries. At that time, collection of effluent was through tankers, since no pipeline was provided by MIDC to connect all industrial units to CETP. Only those industrial units who were not having their adequate secondary treatment facility, joined CETP set up by TIMA. In the year 2004, Respondent 9 (TIMA) formed a separate body, TEPS with an objective to construct a high capacity CETP, for treatment of effluents discharged from chemical units and other plants at a centralized point so as to observe environmental norms and to prevent pollution in air, water and ground. Effluent treatment charges are collected by TEPS and MIDC from member industries which presently are to the tune of Rs. 60 lakhs per month.

75. As per order dated 31.10.2016 passed by Tribunal, member industries of respondent 9 cooperated for reduction and discharge of effluent by 40% and it is being complied with, in letter and spirit. The role of MIDC in maintenance and running of proper CETP is crucial, and without its support it is difficult to run a CETP with required achievement of standards. It is the responsibility of MIDC to provide facility for proper establishment and functioning of CETP, through appropriate drainage system. 50 MLD CETP has delayed due to problem of allotment of land at the end of MIDC, in as much as, initially land was allotted to TIMA/TEPS

but later it was allotted to a private party and the allotment made to TEPS was withdrawn. This resulted in a litigation before Bombay High Court. The possession of allotment of land was forcibly taken by MIDC. All this has caused delay. Further, for last so many years, municipal solid waste from nearby villages has been dumped into TIA MIDC. MIDC has not made any policy to allot land for dumping of municipal solid waste. Since protection, reservation and maintenance of environment is collective responsibility of MPCB, MIDC, TIMA and TEPS, hence it was not appropriate on the part of MIDC to withdraw land, already allotted, for establishment of new higher capacity CETP. Now work has already started and almost 60% project of 50 MLD CETP is complete. TIMA has made all efforts to get Tribunal's order complied and made arrangement for requisite finances, needed by TEPS, for establishment of new CETP. The order of Tribunal imposing drastic cut in discharge of effluents is causing serious prejudice to the member industries, affecting their functioning in a larger way and is also going to affect workforce, revenue, etc. Some member industries have also questioned standards to be observed by CETP, applicable to small scale industries vis-a-vis medium and large industries.

76. It is also said that whatever amount has been received by MPCB on account of forfeiture of bank guarantee etc., due to failure of observance of environmental norms, has to be used only for restoration of degraded environment and not for the purpose of its own, by MPCB. Reliance has been placed on Supreme Court's judgment in ***Indian Council for Enviro-Legal Action vs. Union of India, (1996)5SCC281***. In ***Essar Oil vs. Halar Utkarsh Samiti (2004)2SCC392*** it was held that development and environment must go hand in hand. It is necessary to preserve

ecology and environment but simultaneously it should not hamper economic and other developments.

77. Respondent 9 also made a request that it may be allowed to make an application for relaxing standards with regard to applicable norms to SSI industries, pursuant to Tribunal’s order passed in **OA 34/2013(WZ), Tarun Patel vs. GPCB and Others.**

Affidavit dated 04.05.2017 by MPCB (respondent 1)

78. Affidavit dated 04.05.2017, received in Tribunal on 04.05.2017, is filed on behalf of MPCB to bring on record action taken and subsequent events after 13.02.2017. Action taken against various industries, is as under:

Sr No	Details	1st Phase Survey (Nov, Dec-2016)	2nd Phase Survey (Jan 2017)	3rd Phase Survey (April 2017)	Regular Monitoring after 13.02.2017	Total
1.	Total industries Surveyed	153	86	12	Regular visit	251
2.	CD	31	20	11	9	71
3.	SCN	4	36	1	0	41
4.	PD	11	13	0	3	27
5.	ID	0	0	0	2	2
6.	Total Actions	46	69	12	14	141
7.	Restart given After 13.02.2017	13	0	0	1	14
8.	Restart given After 13.02.2017	16	7	0	2	25
9.	Total Restart Numbers	29	7	0	3	39
10.	Restart not given till 03.05.2017	2	13	11	6	32

79. Vide letter dated 29.03.2017, MPCB issued directions under Section 33A of Water Act, 1974 to disconnect underground drainage pipeline, connection of 49 ZLD industries, to ensure that discharge point of industrial waste water from these industries in MIDC underground system is sealed. MIDC also informed, vide letter dated 03.04.2017, that it is proposing to take over control over operation and maintenance of 6 CETPs including CETP of TEPS. Further, it has disconnected drainage line connection of ZLD industries to MIDC drainage. MIDC along with TIMA and TEPS would start desludging of all 4 sumps in phase-wise manner. The desludging of sump no. 3, in first phase, commenced on 28.04.2017 for which 148 member industries agreed not to discharge effluent from 28.04.2017 till desludging is completed.

80. Performance of CEPT is also being monitored and some time it showed improvements but sudden discharge of effluent has caused increase for which 8 defaulting industries were identified and actions were taken. The steps taken by TEPS had shown following results:

- “a. The volume of industrial effluent is reduced up to 25 MLD by curtailing the water supply of industries through MIDC. The MIDC has blocked the drainage of 49 nos. of ZLD units.*
- b. The inlet quality at CETP is improved and average COD value is 3852.0 mg/l.*
- c. The outlet of TEPS-CETP, average COD is 973.0 mg/l. COD at outlet, on 24.04.2017 has achieved 488.0 mg/lit.”*

Rejoinder dated 30.05.2017 (in reply to affidavit dated 04.05.2017 filed by respondent 1) (page/811)

81. Continuing non-compliant attitude on the part of TEPS and operating CEPT causing pollution has been fortified by referring to letter dated 23.02.2017 sent by TEPS to respondent 1 stating that CETP online monitoring system is already installed at inlet and outlet but outlet system has certain hardware issues which will be overcome shortly.

Another letter sent by TEPS on 23.03.2017 in response to a show cause notice issued by MPCB virtually reiterate the same thing stating “*TEPS installed online monitoring system @ CETP inlet & outlet, but due to some hardware problem, it was not able to link to SCADA*”. Despite continuing violations, Statutory Regulators namely MPCB has not taken any effective action exercising its statutory powers, which is not limited to just closure of industries but is much more than that. Referring to para 1(iv) of the affidavit dated 04.05.2017, it is said that the stand taken by respondent 1 that on the basis of defined policy adopted by MPCB, re-start directions were issued to several industries subsequently, but it is not made clear as to what defined policy was which was followed for permitting re-start of industries, though water pollution had continued even earlier and subsequent. The direction issued to disconnect sewage line connection of individual ZLD industries to MIDC sewer shows that there was an existing problem of industries unauthorizedly releasing effluents into the water bodies of the area but respondent 1 did not take any adequate, effective and appropriate prohibitory action by exercising different statutory powers available to it. Even MIDC had failed to carry out its functions of providing infrastructure for CEPT which includes effluent carrying pipelines and action ought to have been taken against it also but respondent 1 has failed. The analysis of inlet and outlet samples collected by MPCB at exhibit K to the affidavit dated 04.05.2017 shows that COD, BOD and suspended solids and TDS continued to remain far above the prescribed standards. Average COD value found was 973 mg/l while prescribed norm as per water rules is 250 mg/l.

Affidavit dated 30.05.2017 filed by respondent 9 (TIMA)

82. This affidavit has been filed to highlight role of MIDC in failing to provide necessary infrastructural support to CETP and also in rebuttal of

report dated 02.12.2016 submitted by Zila Parishad, Palghar. It is said that MIDC is suffering from policy paralysis with respect to environmental issues. A letter dated 24.03.2017 was issued cancelling lease of 2 MLD CETP. Thereafter, possession of plot was forcibly taken and operational 2 MLD CETP was demolished. The site of 2 MLD CETP was being used as a common hazardous waste collection centre for its onward disposal by Mumbai Waste Management Ltd., Taloja. In PIL No. 17 of 2011, before Bombay High Court, MPCB had given an affidavit that the society running 2 MLD CETP will use site for incineration of hazardous waste in future. TIA MIDC is suffering badly due to capacity constraints of CETP. The collective loss is huge, running in thousands of crores of rupees. Capacity of 2 MLD and 25 MLD CETPs could have been increased collectively to 40 MLD in a short timeframe but no such opportunity was given. MIDC gave a unilateral notice and despite reply, chose to forcibly take possession and demolish 2 MLD CETP, ignoring that State Government had given grants and subsidies for the said CETP. The site of 2 MLD CETP is an amenity plot and could not have been taken for any other purposes. Though, TEPS has made attempt and trying to complete commencement of 50 MLD CETP at the earliest but due to financial constraints and non-receipt of subsidy, it is getting delayed. Replying to the report dated 02.12.2016 filed by Zila Parishad, Palghar, it is denied that water standards in villages have got affected due to water pollution caused by TIA MIDC. Further, report of diseases spread to villagers/fishermen is also denied. Fisheries in Maharashtra is facing crisis as per report of Fisheries Department of Maharashtra due to various other reasons mainly over-fishing, destructive fishing practices, declining fish stocks, costal land use changes, sea water pollution, etc. Rise in emission of heat trapping greenhouses is causing increase in

earth's temperature and this is one of the major causes of global warming and a contributing factor to climate change. This climate change has added to the problem of fishing. For marine fisheries, temperature of water is one of the most important environmental variables. Global warming has caused rise in sea surface temperature. Average annual temperature, along Maharashtra Coast, has risen more than 10 centigrade, over the past few decades. This data is submitted by satellite thermal imageries for the past four decades. All these factors contribute to several physical and biological changes which impact coastal marine ecology and fisheries. Displacement or destruction of phytoplankton habitat and coral bleaching have a profound effect on the marine ecosystem. All these have affected fish reproduction and food consumption. They influence metabolic activity of fish and phenology (life cycle events) leading to their migration and extension of the depth where they occur. In Environment Management Plan submitted by M/s. JSW Infrastructure Ltd. in July 2015, an interim survey report on "Assessment of Impact on fish production due to development of the proposed All-Weather Captive Jetty' at Village Nandgaon, Maharashtra by Mumbai Research Centre of ICAR-Central Marine Fisheries Research Institute, was submitted. As per Environmental and physico-chemical parameters analysed by laboratories, the results show that pH range was from 7.94 to 8.35 i.e., within optimum pH range. Similarly, dissolved oxygen level was also within optimum limit i.e., from 2.4 to 4.0 ppm or mg/l. Salinity was fluctuating between 33.48-35.3 ppt; conductivity ranged between 52.4 to 54.87 ms/cm. Colour of the near shore water was black to brown with a strong stinking and chemical odour. Total dissolved solids and total suspended solids content in sea water samples ranged between 47.12 to 50.46 ppt and 0.22 to 0.56 ppt respectively. Sea water

turbidity fluctuated between 28.6 to 45.7 NTU. Nutrients play a crucial role in the primary productivity of sea water. Nutrients such as phosphate, nitrate, nitrite, silicate were analysed from water samples and results have been given in the form of a chart which is as under:

“Table No. 2: Physico-Chemical and biological parameters recorded at proposed project

Parameter	April 2015			May 2015		
	Alewadi	Navapur	Nandgaon	Alewadi	Navapur	Nandgaon
Physico-Chemical						
1. Atmospheric Temperature (°C)	35	34.5	34.5	35	34	33.8
2. Sea Surface Temperature (°C)	34.5	33.2	34	34.9	33.48	33
3. pH	8.15	7.94	8.3	8.31	8.28	8.35
4. Salinity $\times 10^{-3}$	35.3	34.8	33.49	33.6	33.48	33.64
5. Conductivity (ms/cm)	52.51	52.4	52.95	52.91	54.87	53.18
6. Dissolved Oxygen (mg/l)	4.02	3.12	3.6	2.5	3.0	2.4
7. Dissolved Oxygen Saturation (%)	54.5	44.3	50.3	36.8	43.3	35.2
8. Total Dissolved Solids (ppt)	48.93	47.12	48.47	50.46	49.66	48.67
9. Total Suspended Solids (mg/l)	0.22	0.35	0.56	0.36	0.23	0.38
10. Turbidity (NTU)	32.4	28.6	35.2	44.7	45.7	44.1
Nutrients						
1. Phosphate (mg/l)	1.1	2.8	2.1	1.1	2.3	1.3
2. Nitrate (mg/l)	11.2	5.8	6.2	5.3	6.2	4.8
3. Nitrite (mg/l)	1.8	0.5	0.25	1.65	0.59	0.25
4. Silicate (mg/l)	1.12	4.31	6.42	1.37	2.56	1.87
5. Ammonia (mg/l)	0.30	0.98	0.76	0.10	0.82	0.54
Biological						
1. Chlorophyll-a (mg/m ³)	16.39	11.83	9.31	8.57	10.17	5.05
2. Total Viable Count (cfu/ml)	10 ⁶	10 ³	10 ³	10 ³	10 ³	10 ³
3. Total Coliform Forming (cfu/ml)	Nil	10 ²	Nil	Nil	10 ²	10 ²
4. Escherichia coli (cfu/ml)	Nil	Nil	Nil	Nil	Nil	Nil

”

83. Chlorophyll content was estimated and found to be ranging between 8.57 to 16.39 mg/m³; *Escherichia coli*, a faecal coliform bacterium, was absent in the samples collected during rapid survey whereas total viable count and total coliform forming ranged between 10³ to 10⁶ and absent to 10², respectively. It is further said that phytoplankton diversity and abundance studies were undertaken for the collected water samples from selected locations. Laboratories analysis revealed presence of 12 phytoplankton species in the sea water samples. Species recorded were *Thalassioira decipiens*, *Navicula distans*, *Skeletonema costatum*, *Conscinodiscus granii*, *Scrippsiella trochoidea*, *Guinardia delicatula*, *Trichodesmium erythraeum*, *Odontella sienis*, *Navicula clavate*, *Gonyaulax polygramma*, *Diploneis* sp. and *Amphora* sp. *Thalassiosira decipiens*, *Skeletonema costatum*. It is, thus, claimed that report is based on conjectures and surmises and is incorrect. It is lastly stated that water quality status of sea water pollution was conducted by MPCB and study revealed that sea water near Shivaji Park, Chowpatty, Colaba, Dadar, Worly is polluted though no notable industries are situated near that area. Further water quality of Bhayander area and Palghar are of similar quality which shows that the industries are not the only one responsible for sea pollution.

Affidavit dated 30.05.2017 by respondent 3, TEPS (P/786)

84. Affidavit dated 30.05.2017 filed on the same date by TEPS, respondent 3. The affidavit is sworn by Shri Gajanan S. Jadhav, ETP Manager stating that the existing capacity of CETP is 25 MLD and a new 50 MLD CETP is under construction. It is likely to be completed by November 2017 (first phase-25 MLD). Respondent 3 has carried out upgradation work of existing CETP by incurring expenses of Rs. 3.15 crores till March 2016. TEPS has prepared a definitive action plan to

ensure appropriate quality of effluent to be received at CETP for treatment so as to receive prescribed standard. An extensive study of treatability of CETP facility as well as effluent streams received from industrial zone has been undertaken by TEPS and it has suggested MPCB and MIDC to segregate certain streams, like sump 3 and 4 effluent and treat separately. It was found that MIDC's two sumps (sump-3 and 4) receiving high COD were almost filled with sludge (70% capacity) which was required to be desludged. TEPS submitted action plan to MPCB vide letters dated 22.04.2017 (annexure 1-A page 795) and 17.05.2017 (annexure 1-B page 798). Action plan primarily cover following aspects:

- a) Monitoring of effluent at source;
- b) Desludging of sump- 3 and 4;
- c) Segregation of sump-3 and 4 and E-Zone effluent and pre and post treat and thereafter feed to Bioreactor.
- d) To install PH meter at sump-3 inlet, capable of sending SMS of deviated online PH;
- e) Spray drying to segregated effluent.

85. TEPS started monitoring of effluent and conveying irregularities to MPCB from time to time which has held monitoring authorities to identify defaulter industries discharging effluent at MIDC sumps. This monitoring has minimized/reduced erratic quality of effluent received at sumps. **TEPS also observed acidic effluent discharge by some units.** The irregularities were traced at source and the **defaulting industries identified, as also conveyed to MPCB, were:**

- i. M/s **Shrihance Chemicals** (acidic effluent discharge)
- ii. M/s **Omega Colours** (acidic effluent discharge)
- iii. M/s **Panchamrut Chemicals** (acidic effluent discharge)
- iv. M/s **Sunil Grate** (acidic PH, despite closure to industry)

- v. M/s **Nutra plus** (acidic PH, despite closure to industry)
- vi. M/s **JV Chem Pvt. Ltd.**

86. MPCB issued closure directions to industries i.e. M/s Shriyance Chemicals, M/s Omega Colours, M/s Panchamrut Chemical and M/s JV Chem Pvt. Ltd. The monitoring activity had resulted in almost stopping of discharge of acidic effluent though cleaning of sludge was responsibility of MIDC but they were not responding. TEPS with the co-operation of industries cleaned some and communicated to MPCB and MIDC vide letter dated 09.05.2017. After de-sludging, CETP was receiving effluent having consistent characteristics from sump-3 minimizing/stopping shock loads. TEPS also bought new floating aerators to avoid sludge accumulation and avail pre aeration at sump. Similar aerations are to be installed at sump-3 also. Delay in installation of aerator is due to want of permission from MIDC. Considering number of industries functional in TIA MIDC it is difficult to monitor raw/semi treated effluent discharged by industries in CETP. TEPS decided to first monitor sumps from which CETP received raw material for treatment. Normally such effluent received at CETP at sump-3 and 4 is high in COD. TEPC has decided to identify, separate and pre-treat effluent till primary treatment and then adopt controlled feeding of CETP aeration systems. Consistent quality of effluent feeding will improve performance of CETP. Segregation work is in progress. Pipelines are ready. RCC roads cross over via culverts were prepared. MIDC officials visited on 16.05.2017 instructed TEPS to take permission of MIDC. Consequently, TEPS applied for permission and awaiting the same from MIDC. Within 4 days of receipt of permission from MIDC, TEPS will divert effluent to segregate sump/tanks. TEPS is further ready to install PH meters at sump-3 inlet capable of sending SMS on receiving effluent with lower pH. SMS facility can be provided

to/extended to MPCB and MIDC also. Since sump is located 3-4 km from CETP, the above facility will play important role in attending the problem at short notice on getting alert on low pH at sumps, monitoring staff will be able to rush to locate the source. Pending installation of automatic recording system, TEPS presently is doing 4 hours sampling from sump. Considering high COD of some effluent streams, TEPS and TIMA decided to provide spray drying facility for segregated effluent. Bids/offers were received and under scrutiny by M/s. Aqua Air, a process consultant appointed by CETP. TEPS has strengthened its 25 MLD CETP operation and monitoring staff strength by deploying additional skilled manpower. It has increased to 5 chemist and 5 supervisors who helped to monitor round the clock. Additional measures taken to improve performance of CETP by TEPS are:

- a) Strengthening of dosing arrangement by introducing high pressure dosing pumps capable of linking to software support for automatic dose adjustment.
- b) All agitators of flocculation zone in operation have been placed and dose mixing point has also changed to bottom of the flash mixer. This exercise helps and improves sludge settlement. Sludge removal was increased in financial year 2016-2017. TEPS sent 5530.07 MT of solid waste and till 2017-2018. It has sent 1192.67 MT solid waste to CHWTSD (MWML).

87. TEPS submitted Treatment Charges Revision Proposal to MIDC for approval in September 2016 which was approved upto 5 months i.e. February 2017; TEPS struggled in receiving revised treatment charges payment from MIDC, billing as per revised rates has not been brought in effect till date by MIDC, this has paralyzed almost TEPS-CETP's financial position, no other source of income by TEPS, notice issued by MPCB

requiring to show cause for closure of CETP is disturbing and unjustified since all possible steps were taken by TEPS.

Affidavit dated 21.07.2017 by respondent 2, MIDC (page 817)

88. Affidavit dated 21.07.2021, filed on 24.04.2017 by respondent 2, is in compliance of order dated 30.05.2017 and sworn by Shri Chandrakant Adinath Bhagat, Deputy Engineer, MIDC. Tribunal by order dated 30.05.2017 directed MIDC to arrange for removal of sludge which was dumped by TEPS weighing about 400 MT. The above sludge was removed by TEPS without permission of MIDC, though MIDC has taken all plausible steps for removal of the said sludge. TEPS vide letter dated 27.04.2017 required MIDC to permit storage of sludge removed from sump-3 on plot no. OS 74 with the assurance that the same will be lifted after being dried up and send to MWML. TEPS vide letter dated 09.05.2017 requested to arrange disposal of sludge before onset of monsoon. MIDC also undertook removal of sludge from sump-1 of 83.80 MT and send for disposal by MWML. Further MIDC arranged for disposal of sludge of 1116.99 MT collected from sump-3 from 02.06.2017 and onwards and completed on 17.06.2017. For disposal of sludge 98 trucks were required as is evident from annexure 4 page 825. Representatives of MPCB visited site on 05.06.2017 and found all sludge of sump-1 lifted by MIDC; 50% sludge of sump-3 was lifted. As per inspection report dated 12.06.2017, MIDC has removed 504 MT of sludge.

Additional Affidavit dated 31.07.2017 by respondent 3, TEPS (P/835)

89. Additional affidavit dated 31.07.2017 filed on 01.08.2017 by respondent 3-TEPS. It is stated that TEPS has taken major steps for effective segregation of effluent at CETP of sump-3, 4 and part of E-zone

effluent so as to avoid shock load and also to ensure controlled feeding to CETP. This task involves:

- “(a)Monitoring of effluent at source, preparing analysis report and sharing of the same with Pollution Control Board (PCB). As part of its study, CETP also identified that out of 5 streams, 3 streams (Qty = 5.5 MLD) coming from sump-3, 4 & part of E-Zone effluents are having high organic load and if segregated, it will help CETP to perform far better. The fact is informed to MPCB. TEPS laid pipeline to divert sump-3 effluent. Whereas pipeline for diversion of sump-4 & E-zone effluent is ready for assembly at the site. MIDC’s approvals for permitting the pumping line diversion, segregation and further interconnection with existing MIDC infrastructure is required and awaited. This Hon’ble Tribunal may pass necessary directions to MIDC for the same.*
- (b) Desludging of Sump 3 & 4: While MIDC lifted solid waste from the site, TEPS at its own costs and efforts has cleared floating thick layer comprising of plastic and tarry waste (around 2.5 MT) after drying at solar pit and then sending the same to MWML facility. Desludging has resulted in overcoming issue of continuous variation in received effluent quality.*
- (c) TEPS procured floating aerators for Sump-3 to avoid deposition & help in adding pre-aeration effect. Installation of floating aerators in sump areas is under progress and TEPS is awaiting approval from MIDC as well as awaiting necessary power supply required for operating floating aerators. Necessary directions in that regard to the MIDC may please be issued.*
- (d) TEPS has also procured online PH meter capable of sending SMS alert/e-mail. Instrumentation and installation of the same along with its weather proof housing work is being carried out. TEPS is expecting MIDC’s assistance for providing power supply to the same as well as for the security of installed systems, since it is at MIDC’s premises (sump-3). Necessary directions in that regard to the MIDC may please be issued.*
- (e) CETP is taking steps for installation of Spray Dryers for segregated effluent.*
- (f) CEPT has increased monitoring activity jointly with MPCB and as a result discharge of acidic effluent from industries has almost stopped. This extensive surprise joint monitoring will further help in improving the received effluent quality.*
- (g) TEPS had augmented additional manpower from member industries to overcome issue of skilled manpower faced earlier to ensure continued monitoring.”*

90. TEPS has incurred cost of approximately 6 crores for upgradation of existing CETP and needs requisite finances for which it has requested

MIDC for revisions in billing to industries but it is pending since February 2017 with MIDC. It has required financial assistance from Government for which application was submitted requiring for subsidy under centrally sponsored scheme and subsidy under State sponsored scheme and despite completion of all formalities, the matter is withheld with MIDC. It is not taken any action despite request also made by Member Secretary, MPCB in the meeting held on 14.06.2017. MIDC has also withheld approval for mortgage of plot no. AM-29.

Written submission dated 07.12.2017 by the applicant (P/1222)

91. Applicant has summarized issues in the said submissions as under:

*“A. The **discharge of unauthorised amounts of effluent** into the Arabian sea at Navapur and water bodies in the vicinity of the Tarapur MIDC;*

*B. The **release of untreated effluent/inadequately, treated effluent** by the Respondent No.3, which does not meet the standards prescribed by the Respondent No.1, **into the Arabian sea at Navapur and the creeks and nallahs** in the vicinity of the Tarapur MIDC;*

*C. The **unauthorised dumping of untreated effluent** into the water bodies by the member industries of the Respondent No.2, leading to accumulation of chemical sludge in the water bodies;*

*D. The **release of chemical effluent from the effluent carrying pipelines into the water bodies** due to the failure of the Respondent No. 2 to ensure the upkeep and maintenance of the effluent carrying pipelines;”*

92. The above issues, it is said, have led to destruction of aquatic life, coastal eco system such as mangroves and wetlands and ultimately, livelihood of fishing communities residing in the area for decades. It has also severely affected health of the villagers residing near around TIA MIDC. Since the date of filing of application, levels of pollutants in water bodies have remained practically unchanged despite several orders passed by this Tribunal and respondent 1 have not been able to do anything effective in the matter. Referring to Expert Committee report on the question of discharge of excess and unauthorized amount of effluent

into Arabian sea at Navapur and water bodies in the vicinity of Tarapur MIDC, applicant has pointed out:

- a) Capacity of existing CETP is 25 MLD while 30-45 MLD effluent is being discharged by CETP operated by TEPS (annexure A-13 to OA, page/192).
- b) Show cause notices were issued by MPCB to respondents 2 and 3 both on discharge of excess effluent but they have failed to comply and effluent generation of 35-40 MLD has continued against capacity of 25 MLD.
- c) MPCB on 17.04.2017 (annexure IV to affidavit in reply filed by MPCB, page 273) directed MIDC to restrict supply of water to industries so that excess effluent may not be discharged. The situation has been continuing since earlier period as is evident from letter dated 23.09.2016 (annexure V to the reply affidavit of MPCB, page 277). MPCB has observed while issuing directions that the excess quantum of waste generation is due to borewell water and water supply by unauthorized tankers. So MIDC was directed to restrict unauthorized water supply by filing FIR against them and deputing security at the gate so as to prevent entry of such tankers. It was also observed by MPCB in its letter that sump-2 was regularly over flowing and untreated waste water from MIDC is being directly discharged to local nalla creating pollution nuisance in nearby area. Noticing failure on the part of MPCB in discharge of its statutory duties and continued discharge of effluent by respondents 2 and 3, Tribunal passed interim order on 09.09.2016.
- d) Letter dated 16.02.2017 issued by MPCB (annexure F to affidavit dated 04.05.2017) shows following observations

*“2. The **CETP is receiving high concentrated streams at odd hours and receiving effluent in haphazard way** which leads to destabilization of unit of CETP.*

*3. The **effluent quantity receipt at the time of visit was between 26 to 27 MLD which was earlier between 43 to 45 MLD** due to curtailment in the effluent generation and water supply by member industries it has now stabilized nearby 25 MLD plus 2 MLD.”*

- e) In para 9 of the affidavit dated 30.05.2017 filed by respondent 3, he has admitted that:

“Considering the number of industries operating in the MIDC area, it is difficult to monitor the raw/semi treated effluent discharge by the industries CETP.”

- f) Even the industries granted consent with ZLD condition were found guilty of discharging waste water of industries in CETP as is pointed out by MPCB in its letter dated 29.03.2017 (annexure B to affidavit dated 04.05.2017 filed by MPCB), stating as under:

*“...MPC Board is in receipt of complaints from industrial establishments in MIDC Tarapur **about discharge of wastewater from industrial whom the board have granted consent with ZLD conditions.** The possibility of discharge of industrial waste water from the ZLD industries was considered by the Member Secretary and it has been instructed to immediately disconnect sewage line connection of individual ZLD industry to MIDC sewer so that these industries cannot discharge their wastewater to MIDC sewer.”*

- g) The directions were issued to MIDC to seal connection of industries granted consent with ZLD conditions to disable them from discharging their effluent/waste water in sewer line.
- h) All the 3 respondents i.e., 1, 2 and 3 have failed to discharge their duties and obligations and guilty of causing pollution inviting appropriate directions under the statute. Respondent 1 is the Monitoring Authority to ensure compliance of environmental laws but it has failed. Respondent 2 is under an obligation to provide infrastructure for operations, repairs and upgradation of effluent collection system but it has failed to discharge the above obligation resulting in ultimate pollution. Respondent 3 is the proponent

responsible for operation of CETP but it has failed to ensure out flow effluent to meet prescribed standards of environmental norms and thus causing pollution in water bodies etc.

93. The documents are on record to show that standards prescribed for environmental norms are not being maintained in operation of CETP in question by respondents. From various documents, a chart has been prepared by applicant in para 4.1 of the Written Submissions (affidavits dated 05.12.2016, 14.02.2017 and 04.05.2017), showing consistent failure on the part of respondents in maintaining prescribed standards. The said chart reads as under:

“

MPCB TEPS-CETP Sampling Results (OUTLET)							
	Standard		15.10.2016-17.10.2016	07.01.2017-17.01.2017	23.01.2017-28.01.2017	02.01.2017-29.04.2017	04.09.2017
pH	5.5 to 9	Average	NA	7.6	8.0	7.2	7.1
		Minimum	7.02	7.1	7.6	6.4	NA
		Maximum	7.56	8.0	8.5	7.5	NA
BOD (mg/l)	30 (into inland surface waters) 100 (on land for irrigation and into marine coastal areas)	Average	NA	NA	NA	398	140
		Minimum	700	NA	NA	130	NA
		Maximum	1400	NA	NA	775	NA
COD (mg/l)	250	Average	NA	1544.8	1274.9	973	412
		Minimum	1728	404	800	264	NA
		Maximum	2560	2680	1952	2416	NA
TDS	2100	Average	NA	5802	4969	5918	NA
		Minimum	4267	1412	1447	858	NA
		Maximum	8506	12221	7016	10706	NA
Suspended Solids	100	Average	NA	NA	NA	286	84
		Minimum	161	NA	NA	68	NA
		Maximum	296	NA	NA	708	NA
NA Oil	20	Average	NA	NA	NA	4	NA

and grease		Minimum	NA	NA	NA	1	NA
		Maximum	NA	NA	NA	14.2	NA

94. Severity of pollution is evident from the documents filed as annexure A-15 to OA, page 221, showing unauthorized huge dumping of untreated effluent into water bodies by member industries of CETP, leading to accumulation of chemical sludge in water bodies. Pictures show layers of red chemical sludge accumulated in water bodies, untreated effluent being released into water body at Saravali, chemical sludge filled in cement bag and dumped in wetlands etc. This has led to devastation of mangrove and wetland ecosystems in and around the area. Photographs taken in April 2017 filed as annexure A-2 to Written Submissions show that there is no improvement in the situation.

95. A letter dated 03.04.2017 sent by applicant to respondent 2 annexing therewith pictures of dead fishes as a result of unauthorized dumping of sludge in the creek of Ucheli and Dandi in Palghar show huge level of pollution and inaction on the part of respondents.

96. In May 2017, TEPS underwent exercise of desludging of one of the sumps of CETP. 400 MT of chemical sludge was dumped in the open premises of MIDC. It was reported in a newspaper and only after the order passed by Tribunal, directing to take sludge to hazardous waste disposal site at Taloja, MIDC lifted the said chemical sludge and sent it to the designated place.

97. Chemical effluent from effluent carrying pipelines was released into water bodies due to lack of maintenance of the said pipelines by MIDC, causing pollution of water bodies. Respondent 2 in para 19 and 20 of its reply dated 26.07.2016 has acknowledged its role of providing disposal

line of CETP as well as replacement of old disposal lines. It has also acknowledged condition of disposal line, bad enough to warrant replacement but no proper maintenance was kept by it. The documents on record i.e., annexure A-12 to OA, (page 126), and show cause notice dated 17.04.2017, annexure IV to reply of MPCB, (page 273), show frequent leakages in the effluent carrying pipelines. It demonstrates laxity on the part of MIDC and thereby making it vicariously liable for causing pollution. CEPI for the last almost 20 years and more, is continuously going worse and worse demonstrating constant pollution caused by industries operating in the area of TIA MIDC. In 1996, respondent 6 identified area in question as critically polluted area. In 2010, CEPI was 72.01 (critically polluted) which got increased to 85.24 in 2011. Report of 2013 showed aggregate CEPI score of TIA MIDC as 73.30 (critically polluted). Committee's report dated 02.12.2016 revealed shocking state of affairs as is evident from the following:

"2) As per Inquiry Report of the Maharashtra State Public Health Services State-level Laboratory Centre Pune

Dissolved oxygen in the sea water of the laid environ appears to have depleted. Also there is intense increase in the ratio of T.D.S., C.O.D. Due to this the possibility of far-reaching consequences on aquatic animals cannot be ruled out. To add to this, it is observed that water without proper treatment from the Tarapur M.I.D.C. is being released into the sea.

3) As per the report of notings of the three years by the P.H. Centres, Murbe, Dandi under the Health Department Zilla Parishad Palghar, as well as the Rral Hospital Boisar

It is observed that there is an increase in skin diseases and breathing problems among the residents living around the aforesaid Health Centre and Hospital."

98. One of the conditions of Consent to Establish was, if CETP would not be able to achieve outlet parameters then all the members and society would be individually and jointly responsible and liable for legal action under Section 47 of Water Act, 1974 but no action has been taken against Violators for committing breach of the above condition.

Additional affidavit dated 30.08.2019, by MPCB (P/853)

99. Additional affidavit dated 30.08.2019, filed by MPCB on 11.09.2019 is in purported compliance of order Tribunal's dated 09.07.2018. Certain facts already noted above have been repeated. It also says that CETP has 25 MLD capacity but total generated capacity received at CETP is about 28 MLD to 30 MLD increasing hydraulic and pollution load on CETP. A meeting of the representatives of CETP, MIDC and Members of CETP was held on 30.01.2019. MIDC was instructed to remove sludge approximately 2000 tons from sump-1, 2, 3 and 4 and final discharge point of sump-2 and cost of de-sludging be recovered from member industries. MPCB officers visited site on various dates from January to July 2019 i.e. 07.01.2019, 14.01.2019, 21.01.2019, 28.01.2019, 04.02.2019, 11.02.2019, 18.02.2019, 25.02.2019, 05.03.2019, 11.03.2019, 18.03.2019, 01.04.2019, 08.04.2019, 15.04.2019, 06.05.2019, 13.05.2019, 20.05.2019, 27.05.2019, 03.06.2019, 10.06.2019, 17.06.2019, 24.06.2019, 01.07.2019, 08.07.2019, 15.07.2019, 22.07.2019, 29.07.2019, 05.08.2019 and 13.08.2019 and collected JVS samples of untreated and treated effluent. The analysis revealed that parameters except pH are exceeding consented limits. TEPS has disposed 1861.08 MT sludge upto 30.06.2019 from CETP and 450.45 MT sludge was removed from sump-3 and disposed. 12149.619 MT sludge was removed and scientifically disposed to CHWTSDF, still 2000 MT accumulated sludge is lying at the bottom of MIDC sump-2. TEPS vide letter dated 10.07.2019 informed that they have installed decanter of 30m³/hr. capacity to remove sludge at the bottom of sump-2 and after rainy season entire sludge from sump-2 will be removed. MPCB has already started identification of effluent generating industries as also non-complying industries. It is also initiating action including forfeiture of

bank guarantee of Rs. 66,50,000/- from 22 industries. In the meanwhile, action taken by MPCB against TEPS, stated in para 4, as under:

- “(i) The Respondent Board has issued directions u/s 33A of the Water (Prevention & Control of Pollution) Act, 1974 to MIDC vide letter dated 06/03/2017 and directed to take over non-conforming CETPs including TEPS-CETP.*
- (ii) The Respondent Board has refused consent to Tarapur CETP vide letter dated 28/2/2018. The Respondent Board thereafter has filed Criminal cases bearing No. 196/2018 against the Tarapur CETP before Hon’ble Judicial Magistrate First Class-Palghar. Being aggrieved by the Refusal Order of MPCB issued vide letter dated 28.02.2018, the TEPS-CETP vide dated 28.03.2018 has preferred an Appeal before the Principal Secretary, Environment Department Government of Maharashtra, to review the refusal order and to grant permission to operate and maintain CETP at Tarapur to the TEPS-CETP and they will undertake the up-gradation work of 25 MLD CETP. The Respondent Board in respect of resubmission of application for grant of consent by TEPS-CETP dated 07.11.2018, had once again issued Refusal Order dated 28.02.2019. Being aggrieved by the said Refusal Order dtd. 28.02.2019, the TEPS-CETP has preferred an Appeal dated 15.04.2019 before the Principal Secretary, Environment Department Government of Maharashtra, to review the Refusal Order and to grant permission to operate and maintain CETP at Tarapur to the TEPS-CETP and they will undertake the up-gradation work of 25 MLD CETP.*
- (iii) Directions u/s 5 of the Environment (Protection) Act, 1986 issued by the Central Pollution Control Board vide letter dated 23/07/2018 to Tarapur CETP and directed to take corrective action and operate properly to meet the stipulated norms, to identify the industries to keep a check on effluent quality of CETP, to install CEMS and provide data connectivity to MPCB and CPCB, to stop mixing and discharging of untreated waste water/effluent etc.*
- (iv) Prosecution Notice issued u/s 15 of the (Environment) Act, 1986 vide letter dated 21/01/2019 by the Respondent Board for non-performing existing 25 MLD CETP within stipulated period. In response to the said prosecution notice, Tarapur CETP has submitted its reply dated 08.02.2019.*
- (v) Proposed directions issued u/s 33A of the Water (Prevention & Control of Pollution) Act, 1974 vide letter dated 24/1/2019 by the Respondent Board and directed Tarapur CETP as to why it shall not be directed to deposit an amount of Rs.5,00,000/- per day (i.e. 2 paise per ltr./per day) towards the remediation cost to the environment as per ‘Polluters Pay Principle’. The TEPS-CETP vide letter dated 10.02.2019 made submission that they submitted the action plan and the execution on action plan is already started.*
- (vi) Directions issued u/s 33A of the Water (Prevention & Control of Pollution) Act, 1974 vide letter dated 14/02/2019 and directed Tarapur CETP to deposit an amount of Rs.5,00,000/- per day (i.e. 2 paise per ltr./per day) towards the remediation cost to the environment as per ‘Polluters Pay Principle’.***
- (vii) Show cause notices for closure were issued in the month of May, 2019 to 113 industries and directed to submit the details about high COD stream with quantity of effluent generated from their processes and its treatment.*

- (viii) **Bank Guarantees of the 23 non-complying industries to the tune of Rs.67 Lakhs have been forfeited.**
- (ix) *Directions u/s 33A of the Water (Prevention & Control of Pollution) Act, 1974 was issued to Tarapur Environment Protection Society CETP by the Respondent Board vide letter dated 28/6/2019 and directed to get the strainers installed on the discharge point of all the member industries along with the provision of positive discharge of effluent to collection system finally reaching to CETP.*
- (x) *Directions u/s 33A of the Water (Prevention & Control of Pollution) Act, 1974 was issued to Maharashtra Industrial Development Corporation, Mumbai by the Respondent Board vide letter dated 28/6/2019 and directed to get the strainers installed on the discharge point of all the member industries along with the provision of positive discharge of effluent to collection system finally reaching to CETP.*
- (xi) *The Respondent Board has filed Criminal cases bearing Nos.338/2010, 261/2017 and 196/2018 against the Tarapur CETP before the Hon'ble Chief Judicial Magistrate, Thane and Hon'ble Judicial Magistrate First Class-Palghar.*
- (xii) **At present civil and mechanical work of proposed 50 MLD CETP is completed. Bio-culture development in 25 MLD Phase-I out of 50 MLD is in progress."**

Orders of Tribunal passed from time to time and reports of committees

100. OA was registered on 18.05.2016 and placed before Tribunal on 19.05.2016 when notices were issued to initially arrayed seven respondents. On 01.07.2016, only respondents 1, 2 and 6 were represented through Counsel while respondents 3 to 5 and 7 remained unrepresented. On the next date i.e., 27.07.2016, Shri Amit A. Agashe, Advocate appeared on behalf of respondent 3. Still respondents 4, 5 and 7 remain unrepresented. Tribunal noted in its order dated 22.08.2016 that respondents 4, 5 and 7 are unrepresented but otherwise pleadings complete, therefore, OA was directed to be posted for final hearing.

101. On 09.09.2016, final hearing could not commence, hence matter for interim relief was taken up. Applicant's Counsel pointed out that existing CETP has limited capacity while discharge of effluents is beyond that and that is how it is causing water pollution, since much of untreated or partially treated effluents generated by industries is being

discharged ultimately in Arabian Sea. Respondent 3 (i.e., TEPS represented through Counsel Shri Amit A. Agashe) admitted that effluent received in CETP is in excess to its treatment capacity. Sri Agashe further stated that steps for up-gradation have been taken. Report of MPCB also showed that about 35 to 40MLD effluent is pumped by MIDC into the sea. In the facts and circumstances, Tribunal drew conclusion that CETP run by Respondent 3 is not functioning with required capacity, and even if, effluent is treated, the treatment is not as per standards. This is undoubtedly having bearing on environment. The factum admitted by Respondent 3 that effluent discharged is beyond the capacity of CETP, also leads to the conclusion that CETP not meeting required standards, treated effluent is not safe and bound to impact adversely on environment and life of the people. Consequently, Tribunal issued following directions:

- “1. The 3rd Respondent is directed to ensure forthwith treatment of effluent is its parameter and standards prescribed and effluent of treatment should be safe and in terms of standards fixed.
2. MPCB is further directed to ensure that it grants no fresh consent to establish or expansion of any of the industries in that area till further orders from this Tribunal.
3. The CEO, Zilla Parishad, district Palghar, is directed to constitute a Committee comprising of District Health Officer, Tehsildar and officials from department of Women and Child Welfare and Fisheries to inspect the area of Tarapur and surrounding for fact finding about adverse impact on environment and the health of local residents. After assessment of adverse impact, the CEO shall ensure proper health medical facilities made available to the residents.
4. The Deputy Collector of the jurisdiction shall ensure compliance of this order by all concerned indicated herein.
5. All the industries in Tarapur areas are directed to reduce generation of effluent waste from whatever present generation is by 40%.
6. MPCB and MIDC must ensure that waste generated by industries is reduced by 40% as indicated in the above directions.
7. There shall be no discharge of effluent in other areas except in designated locations. If any industry is found doing so, MPCB is directed to take strict action forth with as is permissible in law.”

102. Two M.A. were filed by applicants with a prayer that MPCB should be directed to close down all polluting industries, particularly within TIA

MIDC, since untreated effluent is being discharged by industrial units through CETP, run by Respondent 3, in Arabian Sea at Navapur and creeks and drain in the vicinity, causing serious pollution and affecting the environment.

103. Tribunal found from the record, and in particular, the affidavit dated 09.09.2016 of MPCB, that effluent quantity discharged at TIA MIDC was 38.20 MLD which shows that there was no reduction in the inflow of effluent in CETP of TEPS.

104. M.A. No. 351/2016 filed by JSWSCPL seeking its impleadment as respondent was allowed and that is how Respondent 8 was impleaded in OA M.A. No. 352/2016 was filed by JSWSCPL seeking modification of Tribunal's order on which notice was issued.

105. On 06.12.2016, in order to give representation to the industries at TIA MIDC, Tribunal allowed impleadment of TIMA as Respondent 9 so that industries functioning in the area of TIA MIDC may also place their stand before Tribunal.

106. M.A. 400/2016 was filed by M/s. Valsad District Cooperative Milk Products' Union Ltd. seeking intervention in OA but it was permitted to place its stand through TIMA which was impleaded as respondent 9.

107. In M.A. 352/2016, JSWSCPL sought modification/ clarification of order dated 09.09.2016 but finding that existing CETP was not capable of receiving any further load, applying "Precautionary" principle, Tribunal did not find any reason to modify its order dated 09.09.2016 and consequently rejected M.A. No. 352/2016 by order dated 08.03.2017.

108. M/s. Valsad District Cooperative Milk Products' Union Ltd. in M.A. No. 400/2016 sought a direction to MIDC to supply sufficient quantity of water of 325 m³/day minimum against 376 m³/day, approved. Considering the fact that discharge of effluent was directed to be reduced by 40%, the said request of M/s. Valsad District Cooperative Milk Products' Union Ltd. was not proper hence application was rejected vide order dated 13.04.2017.

109. Further, inquiry report dated 02.12.2016 submitted by Committee constituted by CEO Zilla Parishad, District Palghar was sought to be relied by applicants. Tribunal directed it to be placed along with original record.

110. On 30.05.2017, applicants brought to the notice of Tribunal that TEPS has discharged sludge being 400MT, dumped in the open premises of MIDC which is likely to cause serious environmental danger in ensuing monsoon season as the sludge may get washed off and pollute environment. Tribunal issued directions to MIDC to immediately arrange for removal of sludge to hazardous waste disposal site at Taloja.

111. On 24.07.2017, TEPS took stand that increased number of industries in TIA MIDC have brought increased load on CETP and it has to build extra capacity for handling such load. Counsel for TEPS stated that 75 MLD CETP is under construction and full-fledged CETP with increased capacity will be commissioned by 15.01.2018. Learned Counsel appearing on behalf of MPCB informed that no fresh consent had been granted to any industry to be established in TIA MIDC after 2014 and no consent either for establishment of new industry or expansion of existing industries, shall be granted, except ZLD industry, within TIA MIDC. The said statement was recorded by Tribunal in the order dated 24.07.2017.

112. On 08.12.2017, besides respondents 1, 2, 3, and 9, respondent 4 was also represented through Shri Rahul Garg, Advocate. MA 375/2017 filed by TEPS, seeking direction in respect of CETP was taken up, and other parties were permitted to file their response.

113. On 09.07.2018 when matter was taken up, applicants complained that even existing CETP is not being operated efficiently and to its optimal capacity. Consequently, Tribunal directed MIDC and MPCB to verify the above facts and if it is found that CETP is not properly functioning, to take appropriate action. MPCB was also directed to make inspection of individual units in the area and verify whether the same are complying with the specific conditions stipulated in the consent to operate and submit a separate report. Tribunal also observed that, in case, industries are found discharging effluent in excess of the prescribed limits and committing breach of the conditions, MPCB shall be at liberty to take action in accordance with law.

114. On 26.09.2019, Tribunal constituted a Committee to assess extent of damage, cost of restoration of environment, accountability of CETP and polluting industrial units. Committee comprised of CPCB, IIM, Ahmadabad, IIT, Ahmadabad, NEERI and GPCB (wrongly mentioned as GPCB but subsequently corrected as MPCB vide order dated 22.10.2019). Committee was directed to submit report within three months. Tribunal said that Committee will be entitled to take any factual or technical inputs in the manner found necessary and may also suggest steps for restoration of environment. Committee was also directed to give hearing to CETP Operator and the units identified, as polluting environment, by MPCB, for which list was to be supplied by MPCB to the Committee, indicating period and nature of default, within one month. MPCB was

directed to inform defaulting units for compliance of order and State Regulators had to exercise statutory powers of prosecution which power is coupled with duty. Directions contained in Para 7 (vi to x) of the order dated 29.06.2019 (as corrected on 22.10.2019) are as under:

“7. xxx xxx.....xxx

(vi) *Having regard to the entirety of the fact situation in the present case, we direct that, **except for the green and white categories of industries, other category of defaulting industries connected to the CETP, shall deposit with the CPCB the following amounts towards interim compensation within one month:***

a) Large Industries – Rs. 1 Crore each.

b) Medium Industries – Rs. 50 Lakhs each.

c) Small Industries – Rs. 25 Lakhs each.

(vii) ***The CETP on its part shall deposit a sum of Rs. 10 Crores with the CPCB towards interim compensation within one month.***

(viii) *The amount may be utilized by the CPCB for restoration of the environment.*

(ix) *The CPCB shall undertake jointly with MPCB extensive surveillance and monitoring of the CETP at regular intervals of three months and submit its report to this Tribunal.*

(x) *Copy of the order may be sent to CPCB by email and all reports in pursuance of the above directions be sent to this Tribunal at judicial-ngt@gov.in”.*

115. Tribunal also observed that similar matter being **OA No. 95/2018, Aryavart Foundation vs. M/s. Vapi Green Enviro Ltd. & Others**, was drawing attention of Tribunal in Court No. 1, therefore, present OA be listed in Court No. 1 on the next date.

Report dated 02.01.2020 submitted by Joint Committee

116. Pursuant to order dated 26.09.2019 (as corrected vide order dated 22.10.2019), report dated 02.01.2020 was submitted by joint Committee comprising of the following:

- (i) Prof Anish Sugathan, IIM Ahmedabad
- (ii) Prof Chinmay Ghoroi, IIT Gandhinagar

- (iii) Mr. Hemant Bherwani, Scientist, NEERI Nagpur
- (iv) Mr. D. B. Patil, Regional Officer, MPCB-Thane, and
- (v) Mr. Bharat K Sharma, Scientist E, CPCB

117. Report shows that MPCB submitted a list of 225 defaulting units including CETP (identified as polluting units in the last 05 years from the date of filing O.A. in Tribunal i.e., 28.4.2016) vide e-mail dated 28.11.2019. Committee afforded individual hearing to aforesaid defaulting units. It also found that in the list of 225, 04 units were not operating; 05 units did not respond to avail opportunity of hearing; and only 216 units availed opportunity of hearing which was provided. Objections, raised by aforesaid defaulting units, in general, are noticed in the report as under:

*“(a) In cases **where violations were informed about samples collected from their storm water drain, the outlet of ETP having zero liquid discharge facility, etc., the unit denied citing the following arguments:***

- (i) Samples collected from their storm water drain are not being discharged but channelized to collection tank of their ETP;*
- (ii) **Seepage/rainwater run-off from other's premises actually enters into their premises due to undulating land terrain and find place in their storm water drain;***
- (iii) Effluent collection sump is at higher elevation than that of unit's ETP treated storage tank and as a result effluent from **the collection sump enters into their ETP treated storage tank, and;***
- (iv) In cases of units having zero liquid discharge facility, the outlet of ETP (prior to RO/MEE) exceeding the prescribed discharge limits may not be considered as violations since there is no discharge line and the outlet of ETP is further subjected to RO/MEE s;*
- (v) Communication informing the exceedance of prescribed norms in samples collected by Joint Vigilance Survey or show-cause notice/interim direction has not been received by the units in some of the cases. Thus, **proper proof is missing with MPCB for few cases.***

(b) The SSI units represented that though in their Consent to Operate issued under the Water (Prevention & Control of Pollution) Act, 1974, MPCB has prescribed discharge effluent standard stringent to the design/standard of the CETP but incidences, where

effluent from their unit have found within the inlet design/standard of the CETP should not be considered as violation for imposing environmental compensation/damage.”

118. The above objections were examined and Committee took following decision:

- (i) *In view of (a) above and other similar cases, **MPCB may furnish the list of only those polluting units** for the purpose of environmental compensation/ restoration cost **for which due records are available for the violations noticed by MPCB.***
- (ii) ***Incidences of SSI units, where they have discharged into CETP exceeding their prescribed norms but within design/prescribed inlet standards of CETP, may not be included in the list of polluting units for the purpose of environmental compensation/restoration cost recovery.** For if SSI units are required to meet its outlet effluent standard to that of outlet effluent discharge standard of CETP then there remains no role of CETP which has primarily been facilitated for smaller units. However, MPCB may examine the matter and take appropriate decision in exempting such exceedance cases in case of SSI units.*
- (iii) ***The violations which are not directly related to effluent discharge into CETP or not causing damage to soil/ surface water/ground water, may not be taken in the list of polluting units.** However, MPCB may take appropriate actions for such defaults.*
- (iv) *Limiting period of violations*
Taking reference from section 15(3) of the National Green Tribunal Act, 2010, and limit a period since when the default is to be considered for assessing environmental compensation and cost of restoration, the **period of default has been taken into account from five years since the day Original Application No. 64/2016 (WZ) was made before the Hon'ble Tribunal (i.e. 28/4/2016) extended till the date of order of the Hon'ble Tribunal (i.e.26/09/2019) viz. 28/4/2011 to 26/9/2019.**
- (v) **The number of days (N) of violations:**
 - (i) *In cases where closure direction has been issued, the period of default (N in days) may be taken as the date of inspection till the effective date of closure of the unit.*
 - (ii) *For other cases including where conditional restart order or show-cause notice/proposed direction/ interim direction issued under the Water (Prevention & Control of Pollution) Act, 1974/ Environment (Protection) Act, 1986, have been issued, the period of default may be taken as the number of days(N) for which violation took place. It may be the **period between the day of violation observed/ due date of compliance of directions and***

the day as on which the compliance was verified by MPCB.”

119. MPCB was directed to re-examine in the light of above decisions of Committee. Subsequently, MPCB submitted a report in which it added 20 more units to earlier 221 units. Thus, Committee further sought time vide report dated 02.01.2020.

Rejoinder Affidavit dated 03.09.2016 filed on 07.09.2016

120. Applicants have filed comprehensive/single rejoinder affidavit in response to the replies submitted by respondents 1, 2 and 3 which has been sworn on 03.09.2016 and on paper book from page 572 to 592. In reply to the response of respondent 1, applicants have stated that respondent 1 is responsible for monitoring and supervision of environmental and forest matters in the country. It has issued various directives and guidelines for protection of rivers and water resources. It is empowered under Water Act, 1974 and Air Act, 1981 to take necessary actions including but not limited to the closure of industries in case of violation of environmental laws. It is also responsible for monitoring functioning of industries within MIDC. Though, it is said by respondent 1 that it has taken various steps including issue of show cause notices and directions to respondent 2 and 3 but the same are not sufficient, looking to the situation, prevailing at the site in question where effluent discharge in Navapur creek continues to be far above the capacity of CETP resulting in COD, BOD, pH and other values going far above the prescribed parameters. No deterrent and effective action was taken to ensure pruning or elimination of water pollution. Despite sufficient steps by authority and power under law, respondent 1 has not taken appropriate steps to mitigate the problem of pollution in the area in question. One of the conditions contained in Consent to Establish issued by respondent 1

for CETP run by respondent 3 was, if CETP would not be able to achieve outlet parameters, all the members and societies would be individually and jointly responsible and liable for legal actions under Section 47 of Water Act, 1974. Section 47 read with Section 41 of Water Act 1974 makes defaulting bodies guilty of committing offence and liable for punishment which shall not be less than one year and six months but may extend to six years and with fine. In case offence continues, an additional fine which may extend to Rs. 5,000/- per day during such failure continues after conviction for the first failure, can also be imposed. Respondent 1, though may have issued directions and show cause notices under Section 33A of Water Act, 1974 but failed to consider that directions and show cause notices, when not found effective and non-compliance continued, ought to have taken appropriate action by invoking statutory power vested in it, as also to invoke the conditions of Consent to Establish.

121. Giving parawise reply to the response of respondent 1, it is stated that respondent 1, in reply in para 3B shows that discharge of effluent in Navapur creek varies from 35 MLD to 40 MLD, while capacity of CETP is only 25 MLD, meaning thereby that there was excess discharge of effluent and apparent violation of Water Act 1974 and the conditions of Consent to Establish. Mere issue of directions in show cause notices which did not yield in any effective result, cannot justify further inaction on the part of respondent 1, by not invoking a multifarious statutory powers vested in it under different provisions of environmental laws including prosecution etc. Discharging of effluent in deep sea at a distance of 7.1 km, would lead to further degradation of the aquatic ecology and would compound difficulties faced by traditional fishermen to carry out their fishing activities for the cause of industrial units for running their ventures

defines negligence of compliance of environmental laws and have virtually no concern for preservation and protection of environment. Reply in para 6 shows that COD and BOD average value in the year 2015-2016 was above prescribed norms, hence it was admitted case of violation of environmental laws by the concerned industrial units as also the operators of CETP. The averments in para 11 of reply of respondent 1 refer analysis of DO of water samples collected at various creeks which suggests that they are adequate for fish growth. However, average BOD of sea water at Navapur and Dandi creek are 10.53 mg/l and 10.84 mg/l respectively as compared to 3 mg/l standard as specified under EP Act, 1986. Further average annual fecal coliform data for Dandi creek is 320.81/100 (MPN) as against standard of 100/100 (MPN) as specified in EP Act, 1986. Untreated organic matter contained fecal coliform, can be harmful to environment. Aerobic decomposition of this material can reduce dissolved oxygen levels if discharged into rivers or waterways and may reduce oxygen level enough to kill fish and other aquatic life.

122. Reply of respondent 2 (MIDC) has been dealt with by applicant in para 2 of rejoinder. Respondent 2, though has taken a stand that its functions are limited so far environmental protection measures are concerned but it has not considered that objects of establishment of MIDC is to secure orderly establishment of industries within designated industrial area and the provision of amenities and common facilities; this would include provision of facilities for establishment of Effluent Treatment Plant which in turn would include replacement of damaged pipelines, providing appropriate storm water drainage systems. CETP performed a vital function in waste disposal; hence MIDC was responsible for provision and upkeep of such system as a collaborator with MPCB so far as pollution control measures are concerned. It is responsibility of

MIDC to provide water connections and maintain water supply to the industries so as to enable them to carry out their operations. Discharge of effluent by CETP above its capacity of 25 MLD could have been continued by respondent 2 also by restricting the supply of water to industries so as to limit as per consents issued to such industries by the Board and in this regard, notice and direction was also issued by respondent 1 to MIDC but MIDC failed to observe the obligations and compliance of environmental laws. It is instrumental and has the authority to act for protection and preservation thereof. Even if, role of MIDC is restricted to facilitate orderly establishment and growth of industries in State of Maharashtra, the term 'orderly establishment' would entail providing requisite infrastructure for treatment and disposal of effluent generated by industries in the area developed by MIDC. For the upkeep of CETP, MIDC also had its due obligations and responsibility which it failed to observe. It cannot be said that respondent 2 has no control over industries within its industrial estate in as much as it had power to control water supply to the industries, monitoring activities of industries to ensure that hazardous waste and municipal solid waste etc. is not illegally disposed of. Further in para 19 and 20, respondent 2 has acknowledged its role in providing collection and disposal lines and replacing old disposal lines. Reply contained in para 19 and 20 also shows acknowledgment on the part of MIDC about depleting condition of disposal line warranting immediate repair and/or replacement and other corrective measures. Respondent 2 did not act within time for such replacement or repair of damaged line which abated offence on the part of respective industries and CETP to continue to cause damage to environment by discharge of effluent in creeks and sea water. Replying averments contained in para 21 and 22 of the response of respondent 2,

it is said that MIDC has not yet received CRZ or EC for the treated effluent carrying pipelines from TIA MIDC to deep sea at Navapur, notices issued to defaulting industries became ineffective and for prevention of pollution of water, MIDC ought to have stopped water supply to such industries. Respondent 2 is guilty of negligence by not ensuring that excess water is not supplied to the industries so as to prevent discharge of excess effluent in violation of provisions of Water Act, 1974 and the conditions of consent.

123. In para 3, applicant has responded to the reply of respondent 3 i.e., TEPS. It is denied that applicant has relied on old findings and reports and pointed out that the last report of MPCB, relied by applicant, is of March 2016 which is recent since O.A. itself was filed on 05.05.2016, hence report of March 2016 cannot be said to be an old report. The mere fact that respondent 3 is planning to establish 50 MLD CETP in addition to the existed one, will not be an excuse for discharge of effluent, admittedly in excess to the capacity of existing CETP when discharge is causing serious water pollution. The alleged steps taken by respondent for mitigating pollution have not been proved to be adequate and consistently Proponents have failed to prevent water pollution as long back as in 2011-2012. Aannual Report prepared by CPCB (annexure A-8 to OA) clearly mentions that *“the effluent quality of CETP, Tarapur is not meeting the discharge norms, and immediate action is required to be taken so that CETP achieves the desired discharge norms”*. The said report, as evident, is of 2011-2012 and even in March 2016, situation continued to be the same and there was no noticeable improvement. The steps taken for execution of 50 MLD CETP also show apparent irregularities and inconsistencies in as much as EC was granted in March 2015, though Detailed Project Report (hereinafter referred to as ‘DPR’) in respect to the

said project was approved only on 27.07.2016 i.e. after more than a year and three months, when EC was already accorded. It is really not understandable, how EC was accorded when even DPR was not approved, though DPR is analogous to a pre-feasibility report. The alleged steps taken for improvement of performance of existing 25 MLD CETP have not resulted in any improvement in the situation. The affidavit dated 13.01.2013 filed by MPCB in High Court in **PIL 17 of 2011** (annexure A-12 to OA) shows that during the visit of MPCB officials, CETP was not found in operation; untreated effluent from inlet tank was found overflowing into sump-2 and ultimately, leading to Navapur creek causing pollution of creek water. Even in RTI reply dated 15.01.2016, given by MPCB to applicant (annexure A-13 to OA), it is said that *“treated effluent generated by all these companies are collected in the Effluent Treatment Plant of 25 MLD capacity on behalf of Maharashtra Industrial Development Corporation through an enclosed pipeline, thereafter on behalf of M.I.D. Corporation the entire industrial effluents generally **35 to 40 MLD** are discharged 500 metres into the sea of Navapur”*. CETP continuously has discharged excess amount of effluent into water bodies and thus violating environmental laws. There is consistent violation of consent conditions on the part of CETP operator and member industries. The alleged efforts have resulted almost in negligible impact on the ultimate pollution being caused by proponents and it is evident from various reports like annexure A-14 to OA. The alleged remedial measures, if any, taken at a later stage, will not condone the offence already committed by violating environmental laws and, therefore, polluters are liable to face consequences in terms of payment of compensation, prosecution etc. Further claim that new 50 MLD capacity CETP will resolve all environmental issues, is nothing but an expectation and speculation and

cannot be an explanation or reply for consistent and continuing violation of environmental norms by discharging effluents in water bodies causing pollution.

Application dated 01.07.2020 by applicant (page 1130):

124. Applicant filed this application praying an early consideration of the matter stating that Committee was requested to submit report by January 2020 but it has sought further time and, in the meantime, industries in TIA MIDC are continuing to violate pollution norms flagrantly and also releasing untreated effluent into surrounding areas. This is causing serious health problems to the residents of surrounding areas and also fishing activities have been impacted. Untreated effluent has caused death of fauna of water bodies where fishing activities are conducted and the matter is of urgent consideration.

Detailed report dated 18.06.2020 sent by CPCB vide e-mail dated 19.06.2020

125. A detailed report dated 18.06.2020 was submitted by joint Committee through Regional Director, CPCB, Pune. Report summarized the tasks, performed by Committee, as under:

- (i) *Assessment of extent of damage;*
- (ii) *Restoration measures;*
- (iii) *environmental damage cost and cost of restoration;*
- (iv) *Individual accountability of CETP and polluting industrial units to meet the aforesaid costs after giving hearing to the polluting units identified by MPCB;*
- (v) *Steps for restoration of the environment."*

126. Committee adopted following approach to perform above task:

- “(a) Visit to the CETP and in and around MIDC Tarapur area.*
- (b) Data/information collection from CETP operator, MIDC and MPCB.*
- (c) Assimilation of information on water bodies in and around MIDC, Tarapur.*
- (d) Sampling of effluents from various components of CETP Tarapur.*

- (e) Sampling & Analysis of sediments and water samples at various drains, creek and sea shore in and around MIDC Tarapur.
- (f) Sampling & Analysis of ground water at various locations in and around MIDC, Tarapur.
- (g) Hearing to the polluting units as per list provided by MPCB for the purpose of estimating their individual accountability.
- (h) Analysis of various data/information and discussions through meetings/video conferences.
- (i) Report preparation.”

127. The breakup of categories, scales and sector wise distribution of industries in TIA MIDC given in Table 2.1 and 2.2, is as under:

“Table 2.2: Sector Wise distribution of Industries in MIDC Tarapur

Scale→ Category↓	Large Scale	Medium Scale	Small Scale	Total
Red	69	20	423	512
Orange	6	13	71	90
Green	32	26	556	614
Total	107	59	1050	1216

Major types of industrial units are bulk drugs manufacturing units, specialty chemical manufacturing units, steel plants and textile plants. Scale wise distribution of industries as Small-Scale Industries (SSI), Medium Scale Industries (MSI) and Large-Scale Industries (LSI) and sector wise distribution of industries are given in Figure 2.2 and Table 2.2 respectively.

Fig. 2.2: Scale wise distribution of industries in MIDC Tarapur

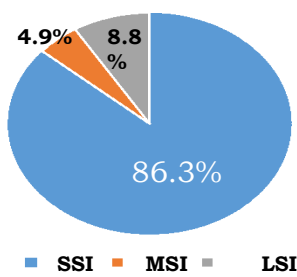


Table 2.2: Sector Wise distribution of Industries in MIDC Tarapur

Sl. No.	Industry Sector	Number
1.	Textile Processors	40
2.	Steel Processors	2
3.	Chemical	298

4.	<i>Dyes & Dyes Intermediates</i>	25
5.	<i>Pharmaceuticals</i>	120
6.	<i>Pesticides</i>	4
7.	<i>Others</i>	727
	Total	1216

128. Giving other relevant details, report says that TIA MIDC is surrounded by Navapur Dandi Creek in north and Kharekuran Murbe Creek in south direction. Their confluence points into Arabian Sea are separated by about 6.5 Km. Various natural and storm drains are also flowing through TIA MIDC which meets Navapur Dandi Creek in north and Kharekuran Murbe Creek in south, due to natural topography of TIA MIDC. There are 14 natural drains flowing through TIA MIDC and the list given thereof with plot numbers i.e., original location and further progress is as under:

“Table 2.3: List of drains flowing through MIDC, Tarapur

Drain Name	Drain Origin location	Name of the village through which drain meet Creeks	Direction towards which Drain flow from the MIDC	Creek to which drain meet
Drain 1	Starting from Plot No. RB-38	Pasthal Village	North West	Navapur-Dandi Creek
Drain 2	Starting from Plot No. C-4/2/2			
Drain 3	Starting from Plot No. E-24/2			
Drain 4	Starting from Plot No. E-13	Salwad Village		
Drain 5	Starting from Plot No. T-3	Paam Village		
Drain 6	Starting from Plot No. T-52			
Drain 7	Starting from Plot No. N-48	Kumbhavli Village	South	Kharekuran Murbe Creek
Drain 8	Starting from Plot No. N-27			
Drain 9	Starting from Plot No. M-7 (Meets with Drain No. 8 near Plot No. N-26)			
Drain	Starting from Plot No. OS-13	Kolavade Village		
Drain	Starting from Plot No. C-2			
Drain	Starting from Plot No. C-7			
Drain	Starting from Plot No. J-72/2			
Drain	Starting from Plot No. J-138			

129. In para 3.2 of the report, it is said that CETP run by Respondent 3 has 1161 industries as members. The drainage network for CETP has been detailed in para 3.3, as under:

*“The **Tarapur MIDC areas have been divided into sixteen (16) Zones** namely A, B, C, D, E, F, G, H, J, K, L, M, N, S, T and W.*

*The **effluent from industries in these zones are channelized by gravity to sumps namely Sump 1, Sump 3, Sump 4 and Gravity Main. From these, effluent are pumped to CETP except Gravity Main from where effluent is conveyed to the CETP by gravity.** The total drainage collection network is of 59.00 Km which are underground. Most of the drainage network has been converted with HDPE lines.*

*The treated effluent from CETP is conveyed to Sump-2 from where it is pumped for 1.8 km to Break Pressure Tank-2 (BPT-2). The effluent from BPT-2 is conveyed to the On-shore drop chamber which is at 3.36 Km through two pipelines i.e. Line-1 and Line-2. and is **finally released to coastal waters of Arabian Sea at a location with shallow depth.** The submarine outfall of the CETP outlet is at shallow location which is 500 meters from the On-shore drop chamber. Work of converting the existing Pre-stressed Concrete (PSC) with HDPE lines is in progress.”*

130. The management of sludge, generated from treatment process, comprised of collection of sludge in a holding tank wherefrom decanter (centrifuge) and Sludge drying Beds, it is sent to Common Hazardous Waste Treatment Storage and Disposal Facility (CHWTSDF), Taloja, District Raigad, for disposal. Annual CETP sludge received at Taloja from CETP at TIA MIDC, since April 2011 to September 2019, given in Table 3.3, is as under:

“Table 3.3: Year wise CETP Sludge received at CHWTSDF, Taloja

Sl. No.	Financial Year	CETP Sludge received at CHWTSDF Taloja from CETP Tarapur
1.	2011-12	1789.32
2.	2012-13	2347.38
3.	2013-14	3795.96
4.	2014-15	2771.865
5.	2015-16	6318.375
6.	2016-17	5533.89
7.	2017-18	5643.93

8.	2018-19	3993.08
9.	2019-20 (Up To Sept. 2019)	1034

131. Committee noted that authorization dated 29.11.2019, granted by MPCB, having validity from 31.12.2017 to 31.12.2020, allowed CETP 7 M.T./Day Chemical Sludge but it was generating more than the authorized quantity. Committee found about 750 M.T. sludge stored at CETP premises on 13.11.2019. Analyzing COD of CETP, Committee said:

*“3.4. The data given at Annexure - III and the Figure 3.4 reveals that COD outlet has hardly complied with the standard of 250 mg/l stipulated under the Consent to Operate. **Among the 391 outlet samples collected during the said period of April 2011 to Nov. 2019, 379 samples have exceeded the said outlet standard and average COD concentration in CETP outlet has been observed as 813.64 mg/l.***

*The CETP inlet effluent has also not complied continuously to the prescribed standard limit of 3500 mg/l. **Among 391 inlet samples collected during the said period of April 2011 to Nov. 2019, 100 samples have exceeded the said inlet standard and average COD concentration in CETP inlet has been observed as 5323.76 mg/l.***”

132. Similarly, analysis results of BOD of CETP inlet and outlet effluent, given in fig. 3.5, are as under:

*“3.5. The data given at Annexure - III and the Figure 3.5 reveals that **BOD outlet has hardly complied with the standard of 100 mg/l or 30 mg/l stipulated under Consent to Operate. Among the 391 outlet samples collected during the said period of April 2011 to Nov. 2019, BOD concentration of 390 samples have exceeded the said outlet standard of 100 mg/l or 30 mg/l and having average concentration as 315.6 mg/l.***

*The CETP inlet effluent has intermittently not complied to the prescribed standard limit of 1500 mg/l. **Among 391 samples collected during the said period of April 2011 to Nov. 2019, 61 samples have exceeded the said inlet standard and average BOD concentration in CETP inlet has been observed as 2098.6 mg/l.***”

133. Regarding average inlet effluent quantity, Committee has said:

“...of the 104 months since April 2011 to Nov 2019, the CETP inlet effluent quantity has exceeded for 75 months than the designed capacity of 25 MLD. During such 75 months, the said

average inlet to the CETP has been reported as 25.27 MLD having maximum monthly average of daily inlet effluent quantity as 26.343 MLD against the said design of 25 MLD. The excess hydraulic load may have resulted into drains as overflow."

134. Similarly, analysis of waste water samples from inlet and outlet showed results as under:

*"The analysis results reveal that the CETP did not meet discharge standards. Concentration of COD, BOD, Ammonical Nitrogen, TSS and TDS in CETP outlet exceed the outlet standard prescribed under the Consent to Operate in all the 04 samples. **The same exceed more than 4 to 15 times, 5 to 47 times, 1 to 8 times, 1 to 20 times and 40 to 100 times respectively to the said standards. Phenols also exceeded 1.4 to 20 times the outlet standard in two of the samples and Cyanide exceed 5.4 times in one of the samples.** In the inlet effluent also, Ammonical Nitrogen exceeded the inlet standard prescribed under the Consent to Operate in all the inlet samples except in two samples. The same exceed to more than 1.4 to 7 times the inlet standard. COD also exceeded (1.08 to 1.5 times) in two of the samples and BOD (1.3 times) in one of the samples."*

135. Further, analysis results in respect of inlet sumps and inlet of CETP, stage wise sampling from inlet to out of CETP and heavy metals showed general failure in maintenance of standards. In Para 3.8.4.1, Committee has recorded its other observations made during site visit on 13.11.2019, as under:

- "(i) All the treatment units of CETP were found operational except tertiary treatment system (comprising Pressure Sand and Activated Carbon Filter). The tertiary treatment was observed to be defunct since long time.*
- (ii) During the visit, **CETP was operational without valid consent. The earlier consent expired on 31.12.2017. MPCB issued consent on 29.11.2019 for the period from 31.12.2017 to 31.12.2020.** This shows the **CETP was operational without consent from 31.12.2017 to 29.11.2019 i.e. almost for 23 months. MPCB granted consent even though CETP is grossly polluting consistently.** MPCB has taken various actions against CETP as detailed in Point 3.11.*
- (iii) There were leakages from pipes & pumps, overflow of effluent from some units (equalization tanks/aeration tanks) and overall housekeeping was found to be poor. There was heavy smell of SVOCs/VOCs (solvents/chemicals) near the inlet sumps. **Inlet of CETP (with BOD: 3150 mg/l & COD: 5680 mg/l)***

indicating that member industries discharging their untreated/partially treated effluent to CETP without confirming the inlet design norms of CETP. CETP is not designed for such high strength effluent. There is an urgent need of separate arrangement for High COD and High TDS effluent such as Common MEE and Common Spray Dryer. Such effluent streams are required to be separately collected and transferred to common facilities with identification of such industries.

CETP has no proper mechanism in place for routine monitoring of individual defaulter member units.

- (iv) **The inlet effluent is exceeding the 25 MLD design hydraulic load of CETP.** The inlet flow meter and Online Continuously Monitoring System is not functioning consistently. **The CETP operator also informed that inlet effluent quantity exceeds the design hydraulic load of CETP of 25 MLD that too with higher concentration at inlet.** MPCB estimates that CETP inlet effluent quantity may be about 28 MLD against the design/consented capacity of 25 MLD.
- (v) Inlet Quality Standards are yet to be prescribed by MPCB for BOD & COD in the Consent of CETP as per MoEF&CC Notification dated 01.01.2016. The Consent stipulates that “Only for SSI units (having less than 25 CMD discharge effluent) BOD: 1500 mg/l and COD: 3500 mg/l is allowed and for rest of the industries, treated effluent as per their respective consents standards i.e. COD: 250 mg/l are allowed”.
- (vi) **Significant quantity of sludge is deposited (approx.-2400 MT) in the MIDC Sump-2 (10.56 Million Liters- capacity) where treated effluent is collected and further transferred to the sea shore through BPTs. There is also overflowing/leakages from pumps etc. from this sump to nearby natural drain which meets with Navapur Creek and further to the Arabian Sea.** It is informed that the operation of this Sump is under MIDC and responsibility lies with MIDC for proper maintenance and removal all the sludge from sump. MIDC needs to be directed to take immediate action for the same.
- (vii) MPCB has authorized 07 Metric Ton/Day as CETP Sludge in the Authorization under Hazardous Waste (M, H & TM) Rules, 2008 for treatment and disposal of Hazardous Waste. **The quantum of sludge generation in the CETP may be more than such specified quantity. MPCB may review the same.** Further dry weight or wet weight should be specified
- (viii) The stock of sludge about 750 MT stored in the premises needs to be disposed immediately to the CHWTSDF.
- (ix) CETP needs thorough up-gradation/revamping of its units/processes in terms of capacity, retention time, automatic chemicals dosing, scraping mechanism, aeration tanks, aeration capacity, de-sludging, transfer pumps & pipelines, removal of

corrosion affected equipment/materials, decanters and its capacity, sludge drying beds, etc.”

136. In Chapter 4 of the report, Committee has examined damage to environment in two parts i.e., drain water samples and sediments samples founded. The analytical results of water samples and sediments of creeks passing across TIA MIDC have been examined and observations of Committee, are as under:

“Thus, it indicates that the two creeks (Navapur Dandi Creek and Kharekuran Murbe Creek flowing North and South of Tarapur MIDC respectively) receiving polluted effluent from the drains of MIDC Tapaur were found having impact of discharges from such drains. Presence of odour & colour indicate requirement of further analysis which may be carried out during detailed investigation and remediation requirement as suggested under Chapter 8 “Measures for restoration of Environment in and around MIDC Tarapur” of this report.”

137. The above standards have been examined as per CCME Canadian Environmental Quality Guidelines which were recommended in “Guidance document for assessment and remediation of contaminated sites in India” by MoEF&CC. **Committee has concluded that Industries are discharging untreated effluents/solvents /chemicals to the drains.**

138. Similarly in respect of **groundwater**, Committee has said:

*“The above observations of high TDS and presence of BOD and COD in all the monitored ground water samples and presence of colour, odour, Chlorides, Fluorides, Sulphates, Total Ammonical Nitrogen, Metals (Lead, Copper, Iron and Manganese) in one or more samples of the sampled ground water indicate that **the ground water in and around Tarapur MIDC has been contaminated due to the industrial activities.**”*

139. As per Committee’s earlier directions, MPCB re-examined defaulting units. Out of 221, it had identified earlier, 83 units were re-identified. It further identified 20 units, as defaulting units, making total

103. These 103 units were identified by MPCB by applying following factors:

“(i) Inclusion of only those units for which due records are available for establishing the violations;

(ii) Exempting SSI units (having effluent discharge less than 25 KLD) who were found discharging effluent to CETP meeting CETP inlet consent norms of COD-3500 mg/l and BOD 1500 mg/l;

(iii) Non-inclusion of violations which are not directly related to effluent discharge in to CETP or not causing damage to soil/ surface water/ground water;

(iv) Considering the period of default of five years since the date of making Original Application No. 64/2016 (WZ) i.e. 28/4/2011 to 26/9/2019 taking reference from section 15(3) of the National Green Tribunal Act, 2010, with regard to consideration of default for assessing environmental compensation and cost of restoration;”

140. Committee afforded opportunity of hearing to all 103 units. It has said that out of 20 units, 03 units did not avail opportunity and out of 83 units, besides oral hearing, 27 also submitted written reply. Further, out of 05 units which earlier had not responded, 01 attended hearing. The list of these 103 units is given in annexure-V to the report.

141. Committee has examined environmental damage cost and restoration cost of environment in Chapter 6 of report. It is said that **Environmental Damage Cost Assessment** (hereinafter referred to as **EDCA**) is a tool that scrutinizes potential loss in monetary terms due to anticipated impacts on the environment due to release of pollutants beyond safety. EDCA is part of economics, mainly emphasize sustainability around the globe. Main purpose of assessment is not to hinder any type of development in the country, but to retain ecosystem in its pristine condition to avail maximum benefits to human. EDCA is generally carried out using following steps:

Identification of pollutants		Identification of EDCA method		Damages cost assessment
<i>The flow volume, pollutant type and concentration being discharged beyond the standard is analysed</i>	→	<i>Based on the pollutant concentration, the likely occurring damages are scrutinized upon which suitable methodology is selected</i>	→	<i>Monetary loss due to release of pollutant is quantified</i>

142. Committee has further observed that due to lack of availability of detailed baseline data related to identified damage parameters, various studies have been referred, to arrive at the damage costs. Approach of Direct Value Transfer is referred for assessment. Direct value transfer estimates the economic value of one location, using the study carried out for another location. The value benefit transfer method is widely used as a technique to calculate economic value of benefits for the environment when an original study for valuation is not feasible. This method calculates the value of damages by transferring the information, which is available from the studies, already conducted from the study site (completed) to the policy site (another location). Committee then referred to et.al. paper formula written in paper, published in 2010, written by Hernandez- Sancho. The formula is as under:

*“EDCA (INR) = Damage cost * loading rate * exchange rate * inflation* 365 -----(1)”*

143. Committee said that damage cost per kg of the load has been used for the study for each pollutant (which are exceeding the standards as per regular monitoring data of MPCB) individually which is discharged in to the sea and is represented in Table 1. Further, to estimate damages done due to discharge of pollutants to the Sea, effluent discharge standards in

the consent to operate issued by MPCB, were taken into consideration. The damage cost for each pollutant calculated in terms of Euro per Kg for sea in Table 6.1 as under:

“**Table 6.1:** Damage Cost for Each Pollutant in Euro per Kg for Sea

<i>Pollutant</i>	<i>Damage in Euro per Kg (2010)</i>
<i>Suspended Solids</i>	<i>0.001</i>
<i>Biological Oxygen Demand</i>	<i>0.005</i>
<i>Chemical Oxygen Demand</i>	<i>0.010</i> ”

144. Committee also observed that there are wetlands in the nearby area of discharge point. Wetlands are the transition areas between the shallow water overlying water logged soils as well as interspersed submerged or emergent vegetation. It has its own characteristics ecosystem and diverse habitat. Preservation of wetlands is important to save inland diverse endangered habitat, especially in the light of climate changes. Discharge of pollutants more than the permissible limits leads to the damage of wetland ecosystems. The wetlands and Mangroves for the region were mapped using remote sensing and shown in Figures 6.2 and 6.3. Committee has said that there are wetlands and mangroves available which are affected due to effluent discharge. It is, thus, necessary to evaluate damages related to wetlands and mangroves as well. Damage cost per kg of the load on wetlands which is used for the study for each pollutant individually is represented in Table 6.3. The valuation of damage has been carried out for both the scenarios i.e. for pure sea discharge and pure wetland discharge. Since both sea and wetlands were present in the region, Committee considered combined damages, as per Table 6.3, as under:

“Table 6.3: Damage Cost for Each Pollutant in Euro per Kg for Wetlands

<i>Pollutant</i>	<i>Damage in Euro per Kg (2010)</i>
<i>Suspended Solids</i>	<i>0.010</i>
<i>Biological Oxygen Demand</i>	<i>0.117</i>
<i>Chemical Oxygen Demand</i>	<i>0.122</i> ”

145. After converting the value of Euro into Indian Rupees given due consideration to inflation etc., environmental damage cost was calculated from April 2011 to 2019, separately for excess COD discharge, excess TSS discharge, excess BOD discharge, and thereafter, in Table 6.7, total damage for each combining damages of all the pollutants for sea has been computed. Thereafter it has been further computed for wetlands by working out damage for COD discharge, excess BOD discharge and excess Suspended Solid discharge and ultimately in Table 6.1 combined damage for the wetlands has been determined.

146. In Chapter 7, Committee has examined accountability of CETP and defaulting units in meeting environmental damage cost and cost of restoration. In Chapter 8, Committee has recorded its conclusions and measures for restoration of environment.

147. We are deferring details in this regard at this stage since parties have filed their objections to the said report and we will examine and decide objections before taking a view whether Committee report as such has to be accepted or it needs some modification or changes or in some respect any different view is needed.

Report dated 27.07.2020-Quarterly Monitoring report of CETP (P/1136):

148. This report was submitted through Regional Director, CPCB, Pune by a Committee comprising:

- i. Shri Bharat Kumar Sharma, Regional Director (Pune),
- ii. Shri Saket Kumar, Scientist B, Regional Directorate (Vadodara),
- iii. Shri Manish Holkar, Sub-Regional Officer (Tarapur) and
- iv. Shri Utkarsh Shingare, Field Officer (Tarapur)

149. This is a quarterly monitoring report submitted in reference to direction of Tribunal contained in para 7 (ix) of order dated 26.09.2019 read with 22.10.2019 directing CPCB and MPCB to jointly undertake extensive surveillance and monitoring of CETP at regular intervals of three months and submit report. Joint inspection was made on 13.11.2019 and report was submitted vide e-mail dated 02.01.2021. Second joint inspection was conducted on 12.03.2020 and samples collected were analyzed at Central Laboratory, MPCB, Navi Mumbai. Location of collection of samples is given as under:

“Table-1: Sampling locations of CETP and Sumps

S.N.	Location Description(s)
1	Inlet to CETP (from MIDC Sump-1+ Gravity)
2	Inlet to CETP (from MIDC Sump-3)
3	Inlet to CETP (from MIDC Sump-4)
4	CETP Inlet (mixed influent) (collection tank after O & G trap,)
5	Outlet of Equalization Tanks
6	Outlet of Primary clarifier
7	Outlet of Secondary Clarifier
8	Outlet of CETP (from MIDC Sump-2) (premises near CETP)
9	Outlet of CETP (MIDC BPT) near Navapur seashore

”

150. Analytical results of effluent whereof samples were collected at different locations on 12.03.2020 on various parameters is given in Table-2 as under:

“Table-2: Analysis results of effluent monitoring carried-out at CETP Tarapur – inlet sumps & inlet of CETP (12.03.2020)

Sampling Locations→ Parameters	CETP Design value	Inlet to CETP (from MIDC Sump 1+ Gravity)	Inlet to CETP (from MIDC Sump-3)	Inlet to CETP (from) MIDC Sump-4	CETP Inlet (mixed influent)	Outlet of Equalization	Inlet Standard as per the Consent
pH	5.5-7	3.6	1.2	4.7	3.3	5.7	6-9
TSS	300-400	126	518	251	401	664	Refer note below
TDS	--	12572	19660	14763	16313	11152	
BOD	1500	1650	5400	2150	2400	1750	Refer note below
COD	3500	5280	25600	6720	8400	5400	
Phenols	--	--	7.98	8.99	7.99	10.2	5
Total Ammonical Nitrogen (TAN)	--	275	280	271	274	271	50
Total Kjedadhl's Nitrogen (TKN)	--	456	1282	818	924	512	NS
Phosphate	--	2.15	1.39	1.99	4.33	0.19	NS
Sulphate	--	6705	650	5936	6895	4690	NS
Chloride	--	2769	5598	5648	4914	3089	NS
Fluoride	--	1.3	6.8	5	2.8	1	15

”

151. Table-3 provides results of stage wise effluent sampling from inlet to outlet of CETP, as under:

“Table-3 Analysis results of stage wise effluent sampling from inlet to outlet of CETP

S. N	Sampling Locations→ Parameters	CETP Inlet	Outlet of Equalisation	Outlet of Primary clarifier	Outlet of secondary Clarifier	Outlet of CETP (MIDC Sump 2)	Outlet of CETP (MIDC BPT) near Navapur beach)	Outlet Standards MPCB
1	Ph	3.3	5.7	6.8	7.2	6.7	6.5	6.0-9.0
2	TSS	401	664	142	432	345	331	100
3	TDS	16313	11152	8183	9919	10904	10936	NS
4	BOD	2400	1750	1525	1200	1450	1350	30
5	COD	8400	5400	4200	3720	4160	4680	250
6	Phenols	7.99	10.2	11.07	11.01	8.50	10.97	5
7	Total	274	271	328	287.5	184	150.5	50

	Ammonical Nitrogen (TAN)							
	Total Kjedadhl's Nitrogen (TKN)	924	512	565.6	484.4	492.8	562.8	50
	Phosphate	4.33	0.19	0.15	1.76	1.92	0.23	NS
	Sulphate	6895	4690	4300	4172	4162	5366	NS
	Chloride	4914	3089	2989.1	2149.3	3324	2179.3	NS
	Fluoride	2.8	1	1.1	0.9	0.9	0.9	15
	Cyanide	--	--	--		--	0.39	0.2

152. Comments in para 3 states that the analysis results of CETP inlet samples given at Table-2 and Table-4 vis-a-vis prescribed CETP norms as per consent order reveals that:

- (i) **Concentration of BOD and COD are not meeting inlet design norms** of CETP inlet effluent of 1500 mg/l and 3500 mg/l respectively. **The same are exceeding 1.6 and 2.4 times the design norms respectively.**
- (ii) **Phenol and TAN at the inlet of the CETP are exceeding the prescribed CETP inlet effluent limit** under Consent to Operate which is 5 mg/l and 50 mg/l respectively. **The limits are exceeding 1.6 and 5.5 times of the prescribed limit respectively.**
- (iii) **pH of CETP inlet effluent is not meeting prescribed range** under the Consent to Operate and against prescribed range of 6-9 it is 3.3.
- (iv) **Each of 3 inlet effluent sources to CETP** (for example from MIDC sump-1+Gravity; MIDC sump-3 and MIDC Sump-3) **are exceeding permitted parameters of the limits.**
- (v) **Even the graphic chart shows that there was virtually no improvement in CETP inlet effluent quality.**

153. Among monitored parameters vis-a-vis prescribed CETP outlet effluent parameters stipulated under Consent to Operate; the analysis showed:

- (a) **BOD, COD, TKN, TAN and Phenols are exceeding prescribed CETP** outlet effluent limit under Consent to Operate. It is exceeding 48.3, 16.6, 9.9, 3.7 and 1.7 times the outlet limit respectively.
- (b) Concentration of various CETP outlet effluent parameters shows that there is sampling on 12.03.2020 and **there was hardly any improvement in CETP outlet quality of effluent**
- (c) **There was hardly any improvement in the earlier sampling dated 13.11.2019 and the present one dated 12.03.2020.**

154. CETP is designed for 25 MLD capacity but there is continued exceedance of hydraulic load of CETP to the said design/prescribed limit and illegal discharges. Over flow from equalization tank and one aeration tank was found. There was no proper arrangement of flow meter for measuring CETP outlet. Flow meter was operating only in one line of the two lines used for conveying CETP treated effluent to Navapur Marine Outfall. CETP thus was not consistently complying with the prescribed capacity and receiving effluent exceeding thereto. Flow meters were not adequate to monitor inlet and outlet of CETP.

155. Excess effluent, at that time 3 MLD, was being discharged into adjacent Storm Water Drain (originating from Plot No. E-13 and further meeting into Navapur-Dandi creek through Salvad village). About 13 MLD of CETP outlet effluent not conforming to prescribed standard is also discharged through the said storm water drain into Navapur-Dandi creek. Over flow from sump-3 also occurs intermittently and flows into drain originating at Plot No. N-27, MIDC Tarapur and meeting to Murbe-

Kharekuram creek. Committee found poor sludge management and inconsistent information about sludge generation. Committee found 10 numbers of sludge drying beds near sump-4 whereof 4 were empty and 6 were filled with CETP sludge beyond capacity. Further sludge was found indiscriminately scattered in areas across sump-2, equalization tank and sump-4 which may be for poor management of sludge for over flow. In January, February and upto 17th March, 2020, sludge from CETP sent to CHWTSDF was 415.43 tonnes, 328.24 tonnes and 108.93 tonnes respectively. Committee has said that such wide variation indicates inconsistency in CETP sludge sent to CHWTSDF, Taloja and indicative of the fact that either CETP has not operated uniformly/regularly or there is wide variation in CETP inlet effluent quality. None of the major treatment units of CETP was found functioning properly as shown in Table-5 of the report as under:

“Table 5: Observation on working condition of treatment units of the CETP

Treatment Unit	Observation
Equalization Tank	• One of the four floating mixers provided in the equalization tank for uniform mixing of wastewater was not operational since long. • The equalization tank is expected to be accumulated with sludge deposition quantity of which needs to be assessed and removed by the CETP operator.
Primary Clarifiers (02 nos.)	(i) Only one of two nos. of Primary clarifiers viz. Primary Clarifier-II was operational during visit. The other Primary Clarifier-I is not operational for more than a year due to sludge accumulation and mechanical damage.
Aeration Tank (04 nos.)	(ii) 04 nos. of aeration tank is provided with 09 aspirators in each tank (total 36 aspirators) for aeration and agitation. However, only 04 nos. of aspirators were operational in each of the 04 aeration tanks. Further, proper air diffusion was observed only in 04 nos. of aspirators

	out of the said 16 operational aspirators. (iii) Dissolved oxygen monitoring system was not operational. (iv) The aeration tanks are expected to be accumulated with sludge deposition quantity of which needs to be assessed and removed by the CETP operator.
Secondary Clarifier (02 nos.)	(v) One of the 02 nos. of Secondary clarifiers (I & II) i.e. Secondary Clarifier no. I was not in operation since past 12 months due to sludge accumulation and mechanical damage.
Hypo-chlorite Oxidation Tank	(vi) The oxidation system was not operational since a week.
PSF and ACF (04 nos.)	(vii) The filters are not operational since long and are defunct.

156. **Online Continuous Monitoring System** (hereinafter referred to as ‘**OCMS**’) provided at CETP inlet and outlet were found non-functional. Further flow meters provided at CETP inlet and outlet effluent measurement were not representing actual inlet and outlet source. Committee found that CETP inlet flow meter was installed after equalization tank and it did not measure actual inlet flow due to over flow of equalization tank. Further CETP outlet flow meter was provided only in one line of the two lines from sump-2 which conveyed effluent to designated marine outfall point. Committee also found certain other inconsistency/irregularities mentioned in para 6 and then it also noted action taken by CETP operators after inspection dated 13.11.2019 and recorded its conclusions in para 9 as under:

9. CONCLUSIONS:
*The analysis results of various effluent samples of CETP collected during the joint inspection-cum-monitoring on 12/3/2020 and various observations made under preceding paras reveal that **no improvement has been made by the CETP operator to upgrade or improve performance of the CETP since the previous joint inspection conducted on 13/11/2019 except that of on-going de-sludging activities in Sump No. 2.***

Therefore, the **gross violations, also reported in earlier joint inspection report conducted on 13/11/2019, continue to be occurring in CETP operation as below:**

(a) Continued Non-compliance of CETP Inlet Effluent Quality with the Design Norms/Prescribed Limits

BOD and COD in CETP inlet effluent are exceeding 1.6 and 2.4 times the inlet design norms respectively; Phenol and TAN exceeding 1.6 and 5.5 times respectively and pH is 3.3 against the range of 6-9 prescribed under the Consent to Operate.

Each of the three inlet effluent sources to the CETP (viz. from MIDC Sump 1+ Gravity; MIDC Sump-3, and MIDC Sump-4) are also exceeding the aforesaid parameters in terms of respective CETP inlet design parameters/limit prescribed under the Consent to Operate and the effluent from MIDC Sump-3 contribute maximum exceedances among the three sources. (details given under para 3(a) of this report)

(b) Continued Non-compliance of CETP Outlet Effluent Quality with the Prescribed Limits

BOD, COD, TKN, TAN and Phenols in CETP outlet effluent are exceeding 48.3, 16.6, 9.9, 3.7 and 1.7 times respectively than the outlet limit prescribed under the Consent to Operate (details given under para 3(b) of this report)

(c) Continued exceedance of Hydraulic Load of CETP to the Design/Prescribed Limit and illegal Discharges

CETP is consistently not complying with design/consented capacity of 25 MLD and receiving excess effluent by about 3 MLD to the said capacity. The excess 3 MLD is being discharged into the adjacent storm water drain (originating from plot No. E-13 and further meeting into Navapur-Dandi creek through Salvad village). Further, about 13 MLD of the CETP outlet effluent not conforming to the prescribed standard is also discharged through the said storm water drain into the Navapur-Dandi Creek violating to the consent condition that treated CETP effluent to be disposed at the designated Marine outfall point.

Other overflow from Sump No. 3 (used to pump the effluent to CETP) also occurs intermittently and the same flows into the drain originating at Plot No. N-27, MIDC Tarapur and meeting to Murbhe-Kharekuram creek.

The above overflows may be causing further damages to the waterbodies which have been reported along with remediation measures in the report of the Committee submitted to the Hon'ble NGT vide email dated 19/6/2020 in compliance with orders dated 26/9/2019 read with order dated 22/10/2019 in the matter of Original Application No. 64/2016 (WZ); Akhil Bhartiya Mangela Samaj & Ors. Versus Maharashtra Pollution Control Board & Ors.

(details given under para 3(c) of this report)

(d) Poor CETP Sludge Management and inconsistency in CETP Sludge Generation

Inconsistency in CETP sludge sent to common Hazardous Waste Treatment, Storage and Disposal Facility (CHWTSDF), Taloja, indicates that either CETP is not operated uniformly/regularly or

there is wide variation in CETP inlet effluent quality or sludge is not sent to the CHWTSDf regularly.

Further, there is poor management of sludge drying beds and sludge was found indiscriminately scattered in areas across Sump No. 2, Equalisation Tank and Sump No. 4 which may be because of overflows or poor management of sludge.

(details given under para 3(d) of this report)

(e) Continued Improper Operation of all Major Treatment Units of CETP & Sludge Depositions

None of the major treatment units of the CETP (viz. Equalization Tank, Primary Clarifier, Aeration Tank, Secondary Clarifier and Hypo-chlorite Oxidation Tank) are functioning properly whereas Pressure Sand Filter and Activated Carbon Filters are completely defunct. Further, there could be sludge accumulation in equalization tank and aeration tanks due to poor operation.

(details given under para 4 of this report)

(f) Continued Improper CETP Inlet & Outlet Flow Meter Measurement and Non-operational Online Continuous Monitoring System

Online continuous monitoring system (OCMS) provided at CETP inlet and outlet are not in operation and in working condition. The flow meters provided as CETP inlet and outlet effluent measurement are installed at in appropriate places and, hence, not representing actual inlet and outlet flows.

(details given under para 5 of this report)

(g) Other Observations

- *Updated information such as waste water handled, hazardous waste generated and sent to common TSDF, etc. are not being displayed in the display board (installed near entry of the CETP) as per the Hon'ble Supreme Court's order in WP(C) 657/1995 and Hon'ble NGT order in OA 804/2017.*
- *A bore well is installed within the CETP premises without having requisite permission from concerned authority.*
- *About 102 M.T. and 10 M.T. of sludge are accumulated in sump No. 3 and Sump No. 4 (used for effluent inlet to CETP) occupying 60 % & 23 % of the sump capacity respectively. The same needs to be assessed and removed.*
- *The Consent to Operate and Authorisation dated 24/12/2019 have been issued by MPCB to the new CETP at Plot No. OS-30(pt), MIDC Tarapur, for 25 MLD of the proposed 50MLD. However, the new CETP has not yet been made operational.*
(details given under para 6 of this report)"

I.A. 93/2020 dated 14.09.2020 filed by respondents 3 and 9 collectively (page 1194)

157. The application has been signed by Sh. Gajanan Sahebrao Jadhav, authorized signatory of TEPS on behalf of respondent 3 and Shivranjan Gupta, honorary Secretary/authorized signatory of TIMA (respondent 9),

and has been filed to challenge reports dated March 2020 and 27.07.2020. It is said that the said reports were neither circulated to respondents 3 and 9 or to another stakeholder nor uploaded on NGT website. Only upon an e-mail request of advocate for applicant, CPCB's advocate shared soft copies of reports on its e-mail dated 01.08.2020. The reports seem to be based on historical and irrelevant data provided by Government agencies like CPCB, MPCB and MIDC and do not reflect correct picture; seems to be biased and depicts only one side of the picture; applicants and their member constituents are being made scapegoats to safeguard other contesting Government agencies like MPCB and MIDC who have shown a total lackadaisical approach in performance of their duties for past years for protection of environment at Tarapur; Committee's report lacked independence, fairness or *bona-fide*. Respondents 3 and 9 after receiving reports, circulated to all their members advising them to submit their individual grievances, if any, against the report.

Application dated 27.08.2020 filed on 07.09.2020 by Maharashtra Organo Metallic Catalysts Pvt. Ltd. (Page 1209):

158. Maharashtra Organic Metals Maharashtra Organo Metallic Catalyst Pvt. Ltd. (hereinafter referred to as 'MOMCPL'), an industry located in TIA MIDC filed objection/representation (addressed to MPCB) with the request that the above unit should be de-listed from table 88 of Committee's report as it was wrongly identified as Large-Scale Industry (hereinafter referred to as 'LSI'). A request was made by means of the above application to take on record the said representation dated 27.08.2020. It is said MOMCPL is at item 88 in the chart prepared by Committee identifying defaulting units. In column 5, scale of unit is shown as LSI though as a matter of fact it is SSI i.e., Small Scale

Industry. Reliance is placed on consent order dated 27.03.2017 wherein the above unit is shown as Red/SSI. The discharge effluent of the unit was shown as 6 CMD and unit upto discharge of 25 KLD (CMD) is within the category of SSI. As per water cess return of April 2018, water consumption from MIDC mains was about 125 KL for the full month which comes to about 4KLD and effluent discharge is much less than that, therefore unit is clearly SSI. COD was found within limit and so far as pH is concerned, report of the officials concerned pursuant to the sample collected on 24.11.2016 is not reliable. In this regard MOMCPL, in para 4 of representation/objection said:

“4. That further, Row No. 14 discloses reason for closure/noncompliance stated as discharge of substandard effluent having COD = 1728 & pH = 4.4. As per above criteria, the COD is well within the limit of 3500 as made applicable to SSI, which is our unit category.

Further, the VISIT REPORT of MPCB own Field Officer and SRO-Tarapur-I at the time of said JVS sample collection on 24/11/2016 at 1:15 AM, it was noted that the pH at collection was 6 to 7, and that hence this reading of 4.4 in analysis dated 28/11/2016 being grossly different could not be relied upon over and above that of the SRO-I signed site report.

This was already flagged as disputed by us with the MPCB in 2016-17 during closure issued.

Further, pH was also not a parameter identified to be non-compliant of in the letter of the MPCB (notice No. SROTR/TB-2158 dated 29/11/2016) and the closure was issued on consideration of non-compliance of COD only.

The site visit report and the letter by the SRO dated 29/11/2016 and our letter dated 22/12/2016 are all annexed herewith.

However, notwithstanding the said closure, for the purposes of current assessment of damages, we fall within MPCB own criteria for NOT identifying our unit as a polluting unit as stated in above lines.”

159. It is thus prayed that since MOLCPL's approved quantity of effluent discharge is less than 25 KLD and everything is within norms it should have been excluded/removed from the list of defaulting industries identified by Committee for the purpose of liability of environmental compensation.

160. Respondents 3 and 9 consulted experts/consultants to consider technical, environmental and legal issues and without prejudice to their rights to contest correctness of findings of the reports, have raised certain objections, detailed in para 8, as under:

- “(a) The Report dated March 2020 is based on **perfunctory investigation** and relies on old/historic and incorrect data pulled in from database of MPCB. The **relevant and current data has not been collected and hence, not taken note of**;
- (b) The Committee has turned a blind eye to an unfair discretion used by MPCB in preparing alleged list of polluting units, on the basis of old data and for lack of availability of data of SSI is and many other units. The **alleged final list of polluting industries** as provide by MPCB, is manifestly arbitrary, irrational and **prepared in a discriminatory manner** (Reference - Chapter V Internal Page 59 to 62 of the Report dated March 2020);
- (c) The Committee has **neither done any new sampling nor has it carried out any field investigation as of today for verifying or ascertaining sources of effluents or sources from where the CETP is receiving alleged excess effluent load**. The methodology applied by the Committee has thus vitiated the very purpose of the constitution of the Committee as a fact-finding body;
- (d) The Committee, relying on sole discretion of MPCB has **excluded and exempted about 88% of the industries (including SSI and ZLD units) plus 55 non-member industries and also units in respect of which no data is available with the MPCB from any responsibility and has the placed entire burden onto less than 12% of the industrial units** at Tarapur MIDC and the CETP managed by TEPS for the alleged environmental damage and restoration costs, which is neither legal nor acceptable for cause of environment protection (Reference Chapter V of the Report dated March 2020 read with Fig. 2.2 on Internal Page 7 read with 8.1.2 Para 7 on Internal Page 90 of the Report);
- (e) The Report is prepared in breach of fundamental principles of natural justice. There was **no real opportunity of hearing provided by the Committee to the representatives of the industrial units, which were arbitrarily identified as polluting units**. The oral/ written representation made by these units has been totally ignored by the Committee and does not find any place of consideration in the entire Report;
- (f) The Report **fails to consider new technologies** implemented by the industries including setting up of their own ETPs/STPs, and investments made in taking various measures such as forestation drives, installing additional technologies for effluent treatment in their ETPs/STPs, all for the cause of environment protection;

- (g) *The **Report further ignores JVS (Joint Vigilance Sample) Reports, and compliances made by the industries from time to time**, which were duly verified by MPCB;*
- (h) *Imposing alleged **environmental damage and restoration costs without providing evidence of any actual environmental damage at the subject MIDC location**, is in itself illegal and strongly objected by the industries and their association at Tarapur;*
- (i) *The **methodology applied for calculating alleged damage and restoration cost is neither recognized nor legal nor correct**. The period considered for fixing alleged individual liability is grossly erroneous. The Committee has also ignored past penalties paid by the industries and bank guarantees forfeited by the regulators for recovering compensation for alleged environmental violations/non-compliances and has quantified the alleged damages and costs for the same period, causing double jeopardy and violating established principle of law that no person can be penalized twice for the same offence;*
- (j) *Despite identifying list of total 14 natural and storm drains flowing through MIDC at Tarapur receiving sewage and human waste from five different villages surrounding the MIDC area, **no efforts are made by the Committee to actually measure the impact/contribution percentile of this sewage mixed in MIDC sewage disposal lines and its weightage impact on the sea waters or any other water bodies/ground water etc.** (See Table 2.3 and Figure 2.3 on Internal page 9 and 10 of the Report);*
- (k) *The **Report does not bring forth evidence of any actual environmental damage to the water bodies** and instead focuses on academic assessment of the same only for purpose of quantification of damages and restoration costs and placing accountability of the same on select industries which is done using theories/formulae having no recognition in the eyes of law nor does the Report cites any precedents in which such assessment has ever been recognized by this Hon'ble Tribunal or any other Courts or Tribunals in India;*
- (l) *The **Report is totally unfair and biased against the industry**. The Committee is suspiciously **silent on role of MPCB** (contesting Respondent No.1) **and MIDC** (contesting Respondent No.2), of their past and continued failure and breach of duties, as also vehemently pleaded by Akhil Bharatiya Mangela Samaj (original Applicant) in O.A. No. 64 of 2016 and also as pleaded by TEPS (Original Respondent No.3) in M.A. No. 375 of 2017 which pleadings and submissions are pending for consideration of this Hon'ble Tribunal;*
- (m) *The Committee for the reasons best known to it, **has totally ignored completion of the state-of-art 50 MLD (million litres per day) capacity new CETP plant constructed and installed by the Applicants and member industries by investing in excess of Rs.150 Cr.** The Committee is further silent on the fact that said new 50 MLD CETP Plant, once commissioned in addition to existing 25 MLD plant will be able to treat up to 75 MLD of load,*

which is by far more than double the capacity of actual requirement of Tarapur Industrial cluster;

- (n) The Committee has erred in not considering the fact that the said new 50 MLD plant is ready to be commissioned immediately on completion of the work of laying a discharge/disposal line by MIDC (Respondent No.2) which is pending for more than 4 years due to lackluster approach and inactions of MIDC;
- (o) The Committee has not mentioned the new 50 MLD plant in the chapter dealing with remedial measures, knowing that investment already put in by the industries will have to be factored in and alleged remedial costs and super fund that the Report recommends shall be wiped-off and/or drastically come down;
- (p) The Committee has **not provided any logical reasoning**, or actual calculations or quantification **as to how it arrived at and made a provision for 'Super Fund' of INR 75 Crores and** how such fund shall be utilized;
- (q) The Committee has irrationally **held the Applicant-TEPS (Original Respondent No.3) accountable to the extent of bearing 45% of the alleged damage and restoration costs, though TEPS has taken every possible measure in its capacity to deal with the effluent load at the existing CETP plant.** The Committee has intentionally ignored the fact that additional effluent load, if any received by CETP beyond its treating capacity is not the failure/violation of the TEPS but is failure attributable to the regulators i.e. MPCB and MIDC who have total controlling powers to decide issuance of consent to operate, permitting expansion of industries, controlling supply of water etc. Despite this, Committee has for reasons unknown and possibly due to the influence and role of these statutory bodies, have refused to hold them responsible and accountable for alleged environmental damage at Tarapur, which in itself exposes false, irrational, arbitrary and discriminatory nature of the Reports submitted by the Committee.
- (r) The Applicants further state that the **Reports seem to be full of contradictions.** First of all, there is **no conclusive evidence in the entire Report of any actual environmental damage.** Except for vague statements about restoration measures, Report does not lay any definitive roadmap for protection of environment at Tarapur. Also, the Report has not appreciated water pollution in terms of still or river water vis-a-vis flowing/tidal sea water and its long-time impact. Instead, these **Reports are solely focused on quantifying and collecting money under the pretext of penalties**, alleged restoration costs and creating alleged 'super-fund'. The contents of the Reports have no correlation with subject matter involved in the present original application and is unlikely to assist this Hon'ble Court in properly adjudicating this case."

(Emphasis added)

161. It is ultimately prayed that the objections and comments of respondents 3 and 9 be noted and they be permitted to file reply/counter

statement/affidavit to the report of the Committee and consider M.A. 375/2017 filed by respondent 3. It is also requested that the reports of CPCB be considered only after the above respondents are permitted to submit their replies/objections.

162. Present OA was heard finally on **17.09.2020** and disposed of. Operative part of the order contained in Para nos. 7 to 13, said as under:

“ xxx xxx xxx

7. *At the outset, learned Counsel for the Respondent Nos. 3 and 9 have referred to orders of the Hon’ble Supreme Court dated 18.11.2019 in Civil Appeal No. 8539/2019, Tarapur Environment Protection Society v. Akhil Bhartiya Mangel Samaj & Ors. and order dated 18.12.2019 in Civil Appeal No. 9409/2019, Tarapur Industrial Manufacturers Association v. Akhil Bhartiya Mangela Samaj Parishad & Ors., staying the interim order of this Tribunal dated 26.09.2019.*

8. *As against above, the stand of learned Counsel for the Applicant, the CPCB and the State PCB is that the said orders being only qua interim compensation, there is no bar to hearing of the matter and further orders being passed. Our attention has been drawn to para 1 of the memo of appeal in Civil Appeal 8539/2019 as follows:*

*“That the present Civil Appeal is directed against impugned interim order dated 26.09.2019 passed by the Hon’ble National Green Tribunal Principal Bench New Delhi in Original Application No. 64 of 2016 (WZ) **whereby, the Hon’ble Tribunal has imposed a penalty of Rs. 10 crores as interim compensation to be paid by the appellant herein who manages and operates the 25 MLD CETP in Tarapur Industrial area.**”*

9. *We find merit in the contention raised on behalf of the applicant, the CPCB and the MPCB that the grievance raised before the Hon’ble Supreme Court is only against interim compensation and there is no stay against proceedings before this Tribunal for enforcement of environmental norms on consideration of the reports of the Expert Committee constituted by the Tribunal. **We thus proceed to deal with the reports of the Committee.***

10. *We find that the reports of the Expert Committee have taken into consideration all relevant data after visit to the site and have considered the view point of the CETP operator and the Association of the industries. **We do not find any reason to reject the report and the conclusions and recommendations** therein. Application of ‘Precautionary Principle’ which is part of ‘Sustainable Development’ requires anticipatory action and scientific certainty before taking such remedial action is necessary, once an Expert Committee has found that there is continuous violation of*

environmental norms causing harm to the environment and health. Credentials of the Committee members and their expertise on the subject is beyond question. We do not find any merit in the objections of the contesting CETP and industries which will stand rejected and the report of the Committee is thus, accepted.

11. *In view of the above, we direct that the reports of the Committee be acted upon and further steps taken for preventing damage to the environment and for its restoration. The restoration measures will include improvement of quality of environment as well as remedying the health of the inhabitants, including providing healthcare to the affected individuals.* The amount assessed be recovered and if there is non-payment, the statutory regulatory bodies will be free to take coercive measures, including closure of the polluting activities. The same be utilized for restoration of the environment in terms of an action plan.

12. *The Committee already constituted will continue to function to oversee the remedial measures and will also include District Magistrate, Palghar.* The nodal agency for coordination will be the CPCB and the District Magistrate. The Committee may prepare a restoration plan within one month. The timeline for execution should be as expeditious as possible. It will be open to the Committee to associate any other expert/institution and decide the mode of execution of the restoration plan. MPCB may, inter-alia, monitor water quality of creeks, water bodies in vicinity and ground water quality particularly of potable sources in use with reference to parameters relevant. The Committee may meet atleast once in a month and in case physical meetings are not viable, virtual meetings may be organized.

13. *The Committee may give a status report of the steps taken after 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.”*

163. Respondent 9 carried the matter in Supreme Court in **Civil Appeal No 3756/2020, Tarapur Industrial Manufacturers Association (TIMA) vs. Akhil Bhartiya Mangela Samaj & Others**. Challenging order dated 17.9.2020. Appeal was partly allowed by Supreme Court vide **judgement dated 14.12.2020**, which reads as under:

“We have heard learned Senior Advocates for the appellants and the first respondent - Akhil Bhartiya Mangela Samaj Parishad, at length.

Having considered the issues raised, we do not think it would be appropriate and proper to admit the appeals and keep them pending in view of the order we propose to pass, which is as under:

a) ***The appellants will, within 15 days, file ground-wise objections to the report submitted by the Monitoring***

Committee specifically indicating the challenges, including the challenge to the quantum of compensation.

- b) Copy of the objections would be furnished to the Monitoring Committee and Akhil Bhartiya Mangela Samaj Parishad before they are filed before the National Green Tribunal.
- c) The Monitoring Committee may file reply to objections, if it deems proper and necessary, within such time as stipulated by the National Green Tribunal.
- d) Akhil Bhartiya Mangela Samaj Parishad would file reply to the objections within 15 days after they are served with the copy of the objections, or within such extended time as granted the National Green Tribunal.
- e) **The appellant, namely Tarapur Industrial Manufacturers Association (TIMA), or the individual units as identified in the report submitted by the Monitoring Committee, shall deposit 30% of the compensation amount within one month from today.** In case of failure to deposit, their objections would not be heard and decided.
- f) **The appellant - Tarapur Environment Protection Society (TIMA), in Civil Appeal No. 3638 of 2020, would deposit 30% of compensation amount as directed by the impugned order within one month from today.** In case of failure to deposit, their objections would not be heard and decided.
- g) **The compensation mentioned in clauses (e) & (f) will include compensation as awarded under the head of 'Super Fund'.**
- h) **Subject to the aforesaid deposits being made within the time stipulated, directions contained in the impugned order towards compensation would remain in abeyance till the decision on the objections by the National Green Tribunal.**
- i) **Order dated 17th September, 2020 would stand modified by the order so passed by the National Green Tribunal.** The appellants and other parties, subject to their right to challenge the order on the objections to be filed, would abide by the order of the National Green Tribunal. Similarly, right to challenge order dated 17th September, 2020, remains protected and principle of res judicata would not apply.
- j) **Directions passed in the present order regarding deposit of compensation by the appellants would also abide by the order of the National Green Tribunal, subject to the right to appeal and challenge.**
- k) The appellants would, within 3 weeks from today, file an affidavit before the National Green Tribunal specifically stating the steps taken, compliance made, shortfalls remaining and the time period required for making requisite compliance.
- l) National Green Tribunal, if deems appropriate, would direct the Maharashtra Pollution Control Board (MPCB) to submit their status report with regard to compliance, shortfalls and also to

meet the assertions made against them by the appellant - TIMA in Civil Appeal No. 3638 of 2020.

Recording the aforesaid, the appeals are partly allowed and disposed of with a request to the National Green Tribunal to consider and decide the specific objections of the appellants as expeditiously as possible, without being influenced by the findings in the order dated 17th September, 2020. We clarify that we have not made any comment either way on merits."

M.A. No. 01/2021 dated 29.12.2020 filed by respondent 3, (TEPS)

164. This MA is filed by TEPS, pursuant to Supreme Court's order dated 14.12.2020, raising objections to Committee reports dated 18.06.2020 and 27.07.2020. The objections are made as part of MA as annexure R-3/3. Broad points raised by TEPS are:

- a) Committee did not follow mandate of Tribunal and exceeded its authority;
- b) 'Polluters Pays' principle is inapplicable to TEPS;
- c) Wrong categorization of TEPS as LSI red category;
- d) There is non-application of mind and intentional avoidance to touch root cause of excess effluent load and consequent failure to apportion liability amongst stakeholders of effluent management system in TIA MIDC;
- e) MIDC has failed to complete infrastructure for additional treatment capacity for which TEPS cannot be made responsible;
- f) MIDC failed to stop leakages from drains and effluent carrying pipelines;
- g) Over flow/leakages from MIDC sump-2;
- h) Non-consideration of external sources of domestic sewage/effluents;
- i) No closure directions to TEPS CETP between 2011-2019;
- j) Non-consideration of 50 MLD state of art facility created by TEPS;

- k) Erroneous inclusion of damages for alleged excess loading pollutant into sea (Rs. 5.9381 crores);
- l) Erroneous inclusion of damages for alleged excess loading of pollutant into the wetland (Rs. 79.10426 crores);
- m) Duplication i.e. total discharge taken both as discharge into sea and into creeks;
- n) BOD is a sub-set of COD but taken separately;
- o) Creation for 'Super Fund' for proposed restoration of ground water (Rs. 75 crores);
- p) No fiscal discounting has been considered;
- q) Lack of baseline data;
- r) Erroneous adoption of Hernandez-Sancho et al Paper in 2010;
- s) Non-consideration of purchased power parity.

M.A 02/2021: Objections dated 29.12.2020 filed by TIMA (respondent 9) running in more than 3400 pages:

165. Pursuant to liberty granted by Supreme Court vide order dated 14.12.2020 in **C.A. No. 3756/2020**, the said objection has been filed on behalf of itself and for individual members. In para 05, it is stated that the objections are in two parts; **Part A** contained objections raised by TIMA, common to all the industries, and **Part B** comprised of individual objections raised by member industries. In para 07 of the objections, respondent 9 has prayed that Committee's report/recommendations dated 18.06.2020 and 27.07.2020 be rejected and MIDC be directed to ensure overhauling and full maintenance of 59 km drainage system connecting industrial units to existing 25 MLD CETP as also sumps belong to and maintained by MIDC so as to avoid any leakage of effluent therefrom. MIDC be further directed to undertake removal of sludge in the sumps.

166. General objections raised by TIMA, applicable to all member industries contained in part A, *inter-alia* states as under:

- (a) The committee made grave errors in assessment of liability of various units and apportionment thereof. The identification of polluting units is based on past records like show cause notice, closure direction, etc.; there was no actual identification of polluting units based on on-site inspection; the committee sought record from MPCB which itself did not provide the same and in turn sought record from respective industrial units; those units who provided record are the only ones identified for assessment and apportionment of liabilities; Units who did not respond at all have been left unaffected and no liability has been fixed thereof; approach of Committee is patently selective and arbitrary.
- (b) The committee at page 69 of report admits that number of days of violation was not provided for every units and that be so, only 103 units could not be made scape-goat for the faults contributed by other industries also who have not been included in the list of 103 defaulting units.
- (c) Committee was required to undergo a fresh exercise of proper identification of defaulting units so as to bear the burden proportionately and equitably. Several factual errors have been committed by the committee in its report and the same would be detailed further in the objections of individual units. Further, individual units ought to have been given adequate opportunity of hearing separately.
- (d) Environmental damage and cost of restoration cost has not been determined validly and by taking into consideration relevant important factors. Report says that Environment Damage Cost Assessment

(**EDCA**) is a tool that scrutinizes potential loss in monetary terms due to anticipated impact on the environment due to release of pollutants beyond safety. Calculation of compensation/cost of restitution of environment must be based on the following environment principles:

- i. Actual damage to the environment must be shown based on sampling and analysis of such samples;
 - ii. Presumed damages cannot be formed on basis of monetary compensation for restitution of environment;
 - iii. Quantification of compensation cannot be presumed but rather should be based upon a clear and workable restitution plan;
 - iv. Restitution plan must defer depending upon the nature of water body being sought to be restituted. For example; a pond, lake river or sea cannot be dealt with by applying same parameters under all circumstances. Further concept of self-cleaning or self-purification of water body has to be considered while framing a restitution plan.
- (e) On page 74 of report there is an observation that hundreds of fishes were found dead in the shore of Navapur beach reportedly due to low level of dissolved oxygen. This observation is irrelevant since Committee itself found that the results of sea water sample do not reveal trend of alleviated concentration of measured parameters near Navapur CETP outfall beach and Nandgaon beach where the two creeks confluence into the sea.
- (f) Computation of overall damages is based on multiple erroneous parameters and more so, in view of lack of data. Committee admits on page 76 of report lack of availability of detailed base line data related to identified damage parameters. Various studies have been referred, to arrive at the damage cost. It shows that the report is based on other

studies and ignores the analysis of a well measured and accepted base line data for the site in question for which no appropriate study was available.

- (g) Committee also considered error in adopting a formula suggested by Hernandez-Sancho *et al* published in 2010. This is on page 76-77 of the report. The said paper does not deal with assessment of cost on account of environmental damage and instead relates to economic value of waste water treatment. It proposed a methodology based on the estimation of shadow prices for the pollutants removed in a treatment process. This value represents environmental benefit (avoided cost) associated with undischarged pollution. 2010 paper in fact is in regard to economic benefits of treatment of effluents rather than damages on account of discharge of untreated effluents. The formula in fact relates to **cost of avoidance of environmental damage** rather than cost of restitution of environment. Spanish formula relied by Committee has not been accepted in India by any statutory authority.
- (h) Committee has calculated compensation on page 80 taking damage per kg on the basis of shadow price stated in 2010 paper of Hernandez-Sancho (*supra*). Calculation of shadow price is based on studies in European Countries and quantified in Euros. Report of the Committee simply used European price and convert to Indian price at the exchange rate of 2017 and then applied inflated price for 2019. It has committed a basic mistake in not considering and adopting Power Purchase Cost (average living cost in India) before converting Euro to INR. It is a matter of common knowledge that purchase power parity of European countries comparing to India is quite high. According to one study, local purchase power in Madrid is 44% higher than Mumbai. In

another data, purchasing power index of India is 9.5 whereas in Spain, it is 58.1. Ratio between India and Spain is $9.5:58.1 = 1:6.15$ in other words, purchasing power of Spain is more than six times than India. Obviously, what was considered in respect of Spain and applied to India, is a manifest error and Committee erred in not giving effect to the aforesaid ratio factor while computing compensation.

- (i) The committee also erred in adopting damage cost for each pollutant in Euro per kg in wetlands since damage to wetland itself is presumptive without any sampling or analysis. It is based upon alleged damage to sea water or creek water which has not been proved by the Committee in the report. Adoption of parameter of damage cost for wetlands is erroneous and entire calculation based on this parameter is liable to be rejected.
- (j) Committee has also erroneously included damages for alleged excess loading pollutant into sea.
 - (i) From the report, page 46, 50 para 4.1, it is evident that samples of sea water and sand were collected by Committee near Navapur CETP outfall, Nandgaon beach and Edvan beach which is about 85 kms from Navapur CETP outfall.
 - (ii) Analysis results of sea water samples (page 62-64 of report) do not reveal trend of alleviated concentration of measured parameters near Navapur CETP outfall beach and Nandgaon beach where two creeks confluence into sea.
 - (iii) No pollution was found as regard sea water. Still Committee has chosen to impose environmental damage cost of Rs. 5.9381 crores calculating from April 2011 to November 2019 on TSS, COD and BOD. There is no pollutants beyond prescribed standard as is evident from comparison of sample results at

table no. 4.9 (page 63 of the report) and prescribed standards of TSS, COD and BOD noted in table 6.4 to 6.6. The relevant extract of the table quoted in objections is as under:

Sl	Pollutant	Prescribed Parameter	Navapur sea beach	Nandgaon sea beach	Edvan sea beach (85 kms away)
1.	TSS	100	92	78	168
2.	BOD	30	14	14	12
3.	COD	250	236	276	228

- (iv) It is said that TIMA and TEPS are not concerned with Edvan sea beach which is about 85 km away from CETP outfall in Arabian Sea. There is no industrial estate around Edvan sea beach, yet, values are quite high.
- (v) There is no data of sampling and analysis of sea water between 2011 and 2019. There is no basis for imposing damages for such period based solely upon outlet effluence of CETP. On the contrary, irrespective of the outlet of CETP during the above period on the date of survey or sampling, no such pollution was found in sea water which would justify imposition of compensation.
- (vi) It is also to be seen that no damages for restitution of environment can be imposed without any plan for expending the same towards restitution as provided in Section 17 of NGT Act, 2010.
- (k) There is erroneous inclusion of damages for alleged excess loading pollutant into wetland by imposing compensation of Rs. 79.10426 crores.
- (i) From page 46-59 of report, it is evident that water and sediment samples were collected by Committee from three locations of two

creeks (Navapur Dandi creek and kharekuram Murbe creek flowing north and south of TIA MIDC) in which drains confluence and one location of each of the two streams before meeting the said two creeks. Analysis result of creek water shows concentration of TDS, COD and BOD with increase in trend in both the creeks but the values are within prescribed standards i.e., there is no DO; Phenols are within prescribed standards; colour and odour indicates presence of solvent/chemical; sediments sample show pH presences slightly basic indicating basic effluent discharge to both the creeks; other measured parameters were found below screening values; from the odour of chemical/solvent and sediment sample of creek near dumping, it was concluded that two creeks received polluted effluent from drains of MIDC, Tarapur.

- (ii) However, there is no concrete finding with regard to the creek water, warranting imposition of damages with respect of creek water. Hence, Committee has rightly not imposed any damages with regard to the creek water as there was no pollution.
- (iii) Despite that, Committee has imposed environment compensation on account of presumptive impact upon wetlands and mangroves. It is only unsustainable. If no compensation was imposed with respect to creek water, Committee had no justification to impose damages/compensation in respect of wetlands.
- (iv) Moreover, Committee has noted (at page 77) that discharge of effluent is being made in sea/creek area of Navapur from CETP but there are wetlands in the nearby areas of discharge point. Merely on that basis Committee has presumed damage to wetland eco-system due to discharge of effluents in the creeks. There was

no analysis, no material to show any damage to wetland ecosystem and data/figures/analytical results of sea water or other bodies could not have been imported for the purpose of wetland when a study was made in respect of wetland itself.

- (v) Moreover, there is no notified wetland in and around TIA MIDC; there is no river, lake or pond within a radius of 5 Km; no ecological park, sanctuary, flora and fauna or any eco-sensitive zone from the boundary of MIDC and, therefore, the imposition of compensation in respect of wetland is only presumptive, unnatural and based on no relevant and valid material. Committee is guilty of duplication by taking discharge of effluent in creek and sea both by way of the same discharge but for both the items, it has been taken separately and thus has resulted in duplication.
- (l) While computing damages under heading 6.2, Committee has considered **Biological Oxygen Demand (BOD)** and **Chemical Oxygen Demand (COD)** separately and computed compensation ignoring the fact that BOD is a sub-set of COD. BOD is defined as the amount of oxygen demanded by micro-organism in the sewage for decomposition for biodegradable matter under aerobic condition. It is commonly used parameter to determine strength of municipal or organic quality of water. COD is the amount of oxygen that is required for chemical oxidation of organic and inorganic chemical present in this water by utilizing oxidizing agents. Thus, BOD measures amount of oxygen required by aerobic organisms to decompose organic matter and COD measures oxygen required to decompose organic and inorganic constituents present in this water by chemical reaction. When we add untreated effluent in water, it is

called pollution. Water contains dissolved oxygen. If organic matter is dissolvable, oxygen is used to dissolve the same. In the process of dissolution, water loses oxygen level. BOD is a small circle. In mathematical terms, **COD = BOD + X**. Apparently, BOD is, therefore, part and parcel of COD in terms of water pollution control. If one reduces COD, BOD would also stand reduced. Both move in the same direction. Calculation of damages based upon BOD and COD, therefore, tend to overlap and must be factored at the time of calculation.

- (m) Committee has proposed concept of super fund by providing Rs. 75 crores. It has observed in Chapter 4 that ground water is contaminated in the region due to illegal discharge of effluents from industries/CETP. According to the Committee's own volition, these infractions are not recorded and there is lack of information on the sub-surface hydrology of the site to estimate quantum of contaminates of ground water. Committee has, for the cost to be incurred in their detailed assessment (including other water bodies) and their remediation, introduced the concept of '**Super Fund**' to be formed with Rs. 75 crores. This approach of Committee is not justified. Study of ground water was undertaken by MPCB by 2019 and report was submitted to CPCB. Hence, non-availability of data and information regarding ground water is not correct and **cannot be a justified reason to opt for a Super Fund**. MPCB report of 2019 after sampling and detailed analysis does not explicitly mention that the ground water is severely polluted and requires restitution. Though BOD and COD are on higher side, but they can be due to ingress of domestic sewage from nearby population. Thus, it was incumbent upon Committee to have further probe in the matter to

justify imposition of compensation for constituting a superfund for restitution of ground water.

- (n) **Concept of Super Fund is alien** to Indian environmental statutory regime. It appears to have been adopted from Comprehensive Environmental Response, Compensation and Liability Act, 1980, also known as Super Fund enacted by United States Congress. This law created a tax on chemical and petroleum industries and provided broad Federal Authority to respond directly to release or threaten releases of hazardous substances which may endanger public health or environment. The tax so collected goes to the Trust Fund for cleaning of abandoned or uncontrolled hazardous waste sites. It is more a common burden upon certain industrial units. **Concept of Super Fund is not recognized by any statute in India.** Under Section 15 and 17 of NGT Act, 2010, compensation towards restitution can be divided under different heads as enumerated in schedule II. None of the above facts of compensation are in the form of tax or a common burden but rather compensatory in nature. Imposition of compensation towards restitution of environment necessarily require a detailed study of actual damage cost, operation to be undertaken for restitution and cost involved. Without undertaking any such exercise, creation of superfund of Rs. 75 crores, is contrary to statute, illegal and impermissible. Under NGT Act, 2010, damages cannot be imposed merely to add to Environmental Relief Fund in general. It must relate to some identified expenses towards restitution based upon restitution plan. This is also evident from Rules 35, 36 and 37 of NGT (Practices and Procedure) Rules, 2011. Before imposing any environment cost, a restitution plan is compulsory and since no such plan has been

suggested or in existence on paper, the assessment of compensation and imposition upon member industry is illegal.

- (o) Certain aspects which would have justified **fiscal discounting, has not been done** by the Committee. It ought to have considered fiscal discounting using **Pigouvian subsidy method**. In ***M.C. Mehta vs. Union of India, MANU/GT/0067/2017 (pr.131)***, Court has taken note that rivers have self-cleaning ability primarily due to flow velocity which permits oxygenation and decomposition of biological waste. Similar is the fact applicable to sea and creeks. Sea itself has also system of self-cleansing. Natural self-purification of sea water takes place as a result of physical, chemical, bio-chemical and biological processes.
- (p) Committee has **not measured impact/contribution percentile of sewage mixed in MIDC sewage disposal lines and its weightage impact on sea waters or any other water body/ground water**. There are 14 natural and storm drains flowing through TIA MIDC receiving sewage and human waste from five different villages surrounding MIDC area but Committee has failed to measure impact/contribution percentile of sewage discharge by such habitat area around MIDC.
- (q) **Parameters** adopted by Committee for apportionment of liability **are erroneous**. Normally, process of violation reported by MPCB and steps for compliances included following stages: inspection; violation report and issuance of closure notice; denial/acceptance reply; conditional re-start; compliance report by unit; re-inspection/verification of compliance. Committee has made assessment by using the following criteria/factors:

- i. Units whose records are available for violations with MPCB shall be included (Page 70-71 of report)
 - ii. Violations not directly relatable to effluent discharge into CETP or damage to soil/surface water or ground water shall be excluded. (Page 70-71 of report)
 - iii. Period of violation would be limited from 28.04.2011 to 26.09.2011 (Page 70-71)
 - iv. Number of days of violation are further modified or altered where closure direction has been issued. In such a case, period of default is taken as date of inspection till effective date of closure of unit. In other matters, the period of violation is between date of violation observed/due date of compliance and the day on which compliance was verified by MPCB.
 - v. SSI units having effluent discharge of less than 25 KLD are exempted who were found discharging effluent to CETP meeting CETP inlet, consent norms of COD 3500 mg/l and BOD 1500 mg/l.
- (r) The formula adopted by Committee on Page 88 of report, for computation of compensation for individual units included pollution index of industrial units (based on industrial unit category), number of days of violation, factor for scale of operation, location factor and deterrent factor based and first and repeated violations. Application of these parameters shows non-application of mind on the part of Committee. It has committed grave errors resulting in substantial adverse impact upon the individual members' liability. The above errors have been pointed out in respect of certain facts taken into consideration by Committee in respect of individual units and sought to be demonstrated as under:

- i. Regarding the Category (Sl. no. 4 of the Table of units): **In some of the units, the Category adopted is completely wrong** thereby increasing the individual liability of the concerned unit. Unit-wise details of such errors is provided under Part B of these objections.
- ii. Regarding the Scale (Sl. no. 5 of the Table of units): Firstly, the relevant date for adopting the Scale should be the Scale of the unit on **the date of alleged violation**. Secondly, **in some of the units, the Scale adopted is completely wrong** thereby increasing the individual liability of the concerned unit. Unit wise details of such errors is provided under Part B of these objections.
- iii. Date of inspection and Period of Non-compliance/Violation (Sl. nos. 12 and 13 of the Table of units): There are multiple errors under this heading-
1. The Joint Vigilance Sample (**JVS**) collected by MPCB at the effluent treatment plant at inlet and outlet are vigilance samples and are not the samples collected in conformity with process prescribed under Section 21 of the Water Act. There was no opportunity for industry to take/receive a division of sample as prescribed in Section 21, in order to verify and cross check/counter the analysis results on their own. As such MPCB data lacks any authenticity and/or admissibility as evidence for adjudication of the case.
 2. Without prejudice to above, the analysis of such JVS samples can take maximum 3-5 days depending on whether 3-day or 5-day BOD is measured. It was obligatory for MPCB to communicate and share these results with the concerned industry, immediately if MPCB had noticed any major deviation or noncompliance. As seen from the records such reports are either sent after a very long time (ranging from 15 days to 2-3 months) or in some cases are not even shared with industry/units, who were directly issued Closure Notices without any opportunity to raise objection/show-cause for alleged violations.
 3. Such delay and lapses of delayed analysis of samples and/or delayed issuance of closure directions, first of all is not justified and cannot be attributed to individual industries.
 4. After Closure Notices, and after issuance of conditional restart orders, most of the industries quickly complied with the conditions and informed MPCB of compliance achieved. However, **MPCB has made a delayed verification of these compliances**. The Tables stated in the Committee Report states some irrelevant/ fictitious dates regarding verification of compliances, ignoring earlier verification dates.
 5. In order to remove these delays/ anomalies in calculating the number of violation days, and without prejudice to its other contentions, the **following formula is considered**

appropriate by TIMA for calculating the number of alleged violation days.

Total Period - X + Y = [] days

where,

X is [Period between Date of reported violation + actual days taken by MPCB for issuing Closure Notice/JVS Report **OR** 7 days (whichever lower)] + number of days taken by industry after receiving closure notice till actual closure

Y is Number of days between date of Conditional Restart Order and Date of Intimation by industry/unit to MPCB about the compliance made and conditions fulfilled. (Note – In absence of proof of Intimation– actual date of Verification of compliance, is considered)

6. It is also relevant to note that **MPCB has issued Closure Notices to the units without Show Cause notices.** In some of the cases, the alleged violation is merely relating to submission of Bank Guarantees. In certain cases, the conditions given were recommendations to install technology/equipment, which is in addition to the consent to operate, though BOD-COD parameters of such units were within prescribed norms as per JVS sample analysis reports. In these cases, in absence of any violation, holding such industry/unit as a 'Polluter' and being made liable for compensation is not justified. Such units/industries were forced to shut their plants without there being any violation/fault on their part and without any opportunity of disputing the said forced closures.
7. There is a serious **error in date of compliance, especially in repeat violations.** The date of compliance has been shown to the date prior to the next date of inspection, even though there is no basis for it and rather, the records show to the contrary. **In 17 units out of total 103 units, this error has been committed.** Unitwise details of such errors is provided under Part B of these objections.
8. Further, in many cases, the date of compliance has been shown to be 26.09.2019 (which is the date of constitution of the Committee vide order of this Hon'ble Tribunal dated 26.09.2019). This, in humble submission, is completely baseless and arbitrary. In many instances, the compliance of conditional restart order and even verification thereof is 2-3 years prior to the compliance verification date/26.09.2019 as reported in the Committee Report. It is upon the MPCB to ensure compliance inspection and if it has not done, the individual industrial unit cannot be made liable on that count. Once having sent the compliance report, the unit ought to be treated as having deemed to have complied unless an adverse inspection report is available on records. **In 33 units**

out of total 103 units, this error has been committed.

Unit-wise details of such errors is provided under Part B of these objections.

The above errors have led to substantial increase in days of violation against individual units thereby increasing their individual liability.

- iv. Reasons for Closure (Sl. No. 14 of the Table of units): Many of the reasons for closure do not contribute to the water pollution and such units cannot be penalised. In some of the units, this error has been committed. Unit-wise details of such errors is provided under Part B of these objections.
- v. There are instances where findings recorded in the Tables are contrary to the records / lab reports / MPCB reports. In some of the units, this error has been committed. Unit-wise details of such errors is provided under Part B of these objections.
- vi. Wrong company data: In Table No. 89, due to similarity in the name, the data of a wrong company has been picked up and the unit noted against the Table has been penalised. If this error is corrected, the unit noted in Table no. 89 would not be penalised at all. There is no violation reported against the industry named in Table No. 89.
- vii. Absurd figures: In some cases, the figures provided are *ex facie* absurd. For example, (i) mention of BOD/COD levels of inlet despite outlet figures are well within prescribed norms, (ii) in one instance, BOD-COD levels of outlet are shown 10 times higher than the inlet, which is scientifically impossible. Rectification of these figures would reduce the liability of the individual unit. In some of the units, this error has been committed. Unit-wise details of such errors is provided under Part B of these objections.
- viii. Quality of Effluent has not been considered as a criteria: The quality of effluent generated by each industrial unit is a relevant factor and ought to have to been considered while apportioning the liability. It is the analysis of the quality of effluent, which would actually provide the real data as regards the contribution of a particular industrial unit to the overall pollution generated. This aspect has been completely left out in the Report.
- ix. Quantity of effluent factor has been applied only by SSI/MSI/LSI and not by the actual water consumption: The **amount of effluent generated by an industrial unit is directly proportionate to the water being supplied by MIDC and the actual water consumption of such unit.** In order to reach a realistic figure of apportionment of liability, the Committee ought to have assessed the water consumption of each industrial unit and then, categorised them for the purposes of apportionment of liability rather than merely adopting the scale of operation in terms of SSI / MSI / LSI.
- x. Identification of erring Zero Liquid Discharge (ZLD) units: Further more, there is always a possibility of even ZLDs discharging

effluents in violation of the zero-discharge conditions in their respective consent to operate and the Committee ought to have undertaken the exercise of identifying such units as well and apportioning the liability rather than merely granting them a 'whole-some immunity'.

(Emphasis added)

- (s) MIDC is largely responsible on account of its inaction, faulty action, negligence, etc. and hence is liable for apportionment of environmental compensation but has not been held so by the Committee. Committee's report appears to be biased against industries and shows favor to statutory authority like MIDC. The report is silent on the role and liability of MIDC. It has ignored past and continued failure and breach of duty on the part of MIDC. Despite the fact that this is also pleaded by applicant in OA itself and TEPS i.e., respondent 3 has also made similar complaints in MA 375/2017. MIDC is vitally responsible in the process of treatment of effluent and its role is quite vital and substantial. Contamination of ground water due to leakage of effluent is referable to laxity on part of MIDC. Water supply is the function of MIDC and it releases water to be used by individual industrial units. Untreated effluents are transported through pipelines, by individual industrial units to CETP through gravity and/or pump machines and MIDC is responsible for laying down and maintaining such pipelines. After CETP treats the effluent, the treated water is transported to MIDC Sump-2 wherefrom it is transported to Navapur sea shore through pipelines maintained by MIDC. These facts have been admitted and noted by Committee, as under:

"i. A 59 kilometer effluent carrying pipeline runs through the industrial area to convey the industrial effluent of its members industries of Tarapur MIDC to CETP. The outlet from CETP is discharged into a shallow depth of Arabian Sea at Navapur which is about 5.6 km away from the CETP. (para.1.1 at pg.10 of the Report).

- ii. *MIDC provides water to the entire industrial area and residential area inside MIDC as well as adjoining villages (para. 2.3 at pg.17 of the Report).*
- iii. *Water supply to industries in the MIDC Tarapur is about 38 MLD by MIDC (para. 2.3 at pg.17 of the Report).*
- iv. *Responsibility for the collection and disposal of treated effluent rests with MIDC (para. 2.3 at pg.17 of the Report).*
- v. *The total drainage collection network is of 59.00 KM, which is underground. Most of the drainage network has been converted into HDPE lines (para. 3.3 at pg.21 of the Report).*
- vi. *Significant quantity of sludge is deposited (approx. 2400 MT) in the MIDC Sump-2 (10.56 MT capacity) where treated effluent is collected and further transferred to the sea shore through BPTs. There is also overflowing/leakages from pumps, etc. from this sump to nearby natural drain which meets with Navapur Creek and further to the Arabian Sea. The operation of this Sump is under MIDC and responsibility lies with MIDC for proper maintenance and removal of all the sludge from sump. MIDC needs to be directed to take immediate action for the same. (Page 42 and 96 of the Report).*
- vii. *Directions have issued on account of laxity on part of MIDC to ensure absence of leakage from drainage pipes and sumps/tanks (page 97 of the Report)."*

(t) Thus, role of MIDC show that it is a stakeholder in the matter of treatment of effluent and its discharge. It is also responsible for maintaining a pollution-free environment. It has failed to perform its duty which has contributed largely for contamination of atleast ground water. It has failed to ensure plugging of drains and sumps/tanks to stop leakage which has resulted in contamination of ground water. Committee despite noticing the above failure and flaws on the part of MIDC and issue direction for functioning properly in future has chosen not to impose any compensation on MIDC.

(u) Installation of new 50 MLD CETP which was delayed and still not being able to function with full capacity is on account of laxity on the part of MIDC who is not performing its own duties properly as is evident from the following:

“i. To ensure movement of untreated effluents from the industrial unit to the new 50 MLD CETP, a new drainage system is required to be laid out by MIDC. This new drainage system would ensure movement of untreated effluent either by gravity or by pumping. Presently, due to lack of such new system by the MIDC, the new CETP is working at less than half the capacity and with much difficulty.

ii. As per the report of the National Institute of Oceanography, MIDC was required to construct a new disposal pipeline at a distance of 7.1 km into the Arabian Sea. Again, in spite of repeated requests and reminders, MIDC has miserably failed in completing this line. This again has resulted in under-utilization of the new 50 MLD CETP.”

- (v) For compelling MIDC to discharge its own duties, TEPS (respondent 3) also filed MA 375/2017 requesting Tribunal to issue specific direction to MIDC but no directions have been issued. Hence, neither new 50 MLD CETP is capable of optimum utilization nor refurbishment of existing 25 MLD CETP is possible and for this, MIDC is responsible and it must have been taken care by Committee. Reliance is placed on Supreme Court’s judgment dated 04.11.2019 in ***M.C. Mehta v. Union of India, (2020) 7 SCC 573***, where considering issue of air pollution in Delhi due to stubble burning,

Court observed:

“3. ... Obviously, it is writ large that the State Governments, Government of NCT of Delhi and civic bodies have miserably failed to discharge their liability as per the directive principles of State policy which have found statutory expression, they are being made statutory mockery and also the directions of this Court and High Courts in this regard are being violated with impunity.”

“6. Everybody has to be answerable including the top State machinery percolating down to the level of gram panchayat. The very purpose of giving administration power up to the panchayat level is that there has to be proper administration and there is no room for such activities. The action is clearly tortious one and is clearly punishable under statutory provisions, besides the violation of the Court’s order. In the circumstances, as widespread stubble burning has taken place, we direct the States of Punjab and Haryana and adjoining State of Uttar Pradesh where there is blatant violation which has taken place, to halt it. We direct the Chief Secretaries of the States of Punjab, Haryana and Uttar Pradesh to be present in this Court on 6-11-

2019 including Chief Secretary of the Government of NCT of Delhi.”

“8. Let the State Governments of Punjab, Haryana and Uttar Pradesh and officials also explain that why they should not be asked to pay the **compensation** for tortious liability as they have acquiesced and due to their failure in preventing stubble burning which is in utter violation of the public trust doctrine, why they should not be held liable to **compensate**, and also the incumbents who are burning the stubble in spite of clear restrictions imposed by this Court and statutory prohibition.”

- (w) A similar observation was made by Tribunal in the order dated 14.11.2019 In **Re: News item published in OA No. 1038/2018, “The Asian Age” Authored by Sanjay Kaw Titled “CPCB to rank industrial units on pollution levels”**, in para 9 and 11, as under:

“9. ... Inaction by the statutory authorities is also at the cost of Rule of Law which is the mandate of the Constitution and is necessary for meaningful enforcement of legitimate constitutional rights of citizens and basic duty of a welfare State under the Constitution.”

“11. The Tribunal has thus no option except to reiterate that meaningful action has to be taken by the State PCBs/PCCs as already directed and action taken report furnished showing the number of identified polluters in polluted industrial areas mentioned above, the extent of closure of polluting activities, the extent of environmental compensation recovered, the cost of restoration of the damage to the environment of the said areas, otherwise there will be no meaningful environmental governance. This may be failure of rule of law and breach of trust reposed in statutory authorities rendering their existence useless and burden on the society. On default, the Tribunal will have no option except to proceed against the Chairmen and the Member Secretaries of the State PCBs/PCCs by way of coercive action under Section 25 of the National Green Tribunal Act, 2010 read with Section 51 CPC. Such action may include replacement of persons heading such PCBs/PCCs or direction for stopping their salaries till meaningful action for compliance of order of this Tribunal. The Tribunal may also consider deterrent compensation to be recovered from the State PCBs/PCCs.”

- (x) If the statutory authorities are not performing their part of duty and fails to ensure environmental clearance, they too are responsible for payment of compensation as they are also within the purview of ‘Polluter Pays’ principle and cannot be left unaffected or untouched.

- (y) Raising under the head of other issues, TIMA in its objections said that 'Polluter Pays' principle relates for past conduct of operation which has already resulted in pollution and compensation is required to be imposed for restitution of environment. 'Precautionary' principle deals with action to be taken by units to avoid further pollution. Both these cannot involve imposition of compensation, they can only include regulation of future behavior to ensure avoidance of pollution. The report talks of two actions. One, to safeguard sea and creeks, certain measures have been recommended though no pollution as on the date of report was found either in the sea or creek. The above directions at the best could be within the realm of 'Precautionary' principle. Still, imposition of damages on account of sea water and wetland is without any factual or legal support and deserve to be rejected.
- (z) **Compensation for restitution of environment without laying down a restitution plan is only erroneous.** Without assessing cost involved in restitution, an imposition of compensation is impermissible under law. Creation of superfund of Rs. 75 crores is alien to Indian environmental statutory scheme and hence, also deserves to be rejected.
- (aa) The committee has also ignored past penalties paid by member industries and also forfeiture of bank guarantees to the tune of Rs. 2.45 crores. The said amount is lying unutilized for several years and still Committee has computed further compensation which amounts to double jeopardy avoiding established principle of law that no person can be penalized twice for the same offence. Here, reliance is placed on Tribunal's judgement in ***State Pollution Control Board, Odisha vs. M/s Swastik Ispat Pvt. Ltd., 2014 SCC OnLine NGT***

13 dated 09.01.2014; wherein Tribunal has held that amount received as **compensation for violation of environmental norms must necessarily be used only for restitution of environment and no other purpose.**

(bb) Respondent 9 therefore has pleaded for rejection of the committee report with respect to environmental compensation.

167. **Part B** of the objections comprised of **individual objections** of various industries filed as annexure-R-9/5. In all, 87 industries have filed objections. We would discuss objections filed by TIMA and individual industries on merits later, after referring to some further subsequent events.

Status report dated 11.01.2021 by CPCB (P/1418)

168. Committee earlier constituted was directed to continue with inclusion of District Magistrate, Palghar and monitor compliance of environmental norms at TIA MIDC by TEPS and individual industries. It was also directed to submit status report. Hence, the above status report was submitted pursuant to order dated 17.09.2020. In the report, action plan to control impact on environment due to partial/untreated effluent discharge and restoration/remediation of contaminated water bodies in and around TIA MIDC, prepared by Committee was given in column 2 and 3 of table in annexure-II to the said report. Further action plan on prohibition of use of contaminated ground water in affected areas and remedying inhabitants health including providing health care to affected individuals in and around TIA MIDC was given in annexure III and IV of the said report. Based on the said annexure, Committee stated in brief, works/remedial measures undertaken as per compliance status by the concerned agencies, as under:

“3.1 Control of further impact on environment due to partial/untreated effluent discharge

Based on compliance status, as reported by MPCB, as given at Annexure-II, the following works/remedial measures have been undertaken to control further impact on environment due to partial/untreated effluent discharge:

- (i) **One module of 12.5 MLD out of the 04 modules (50 MLD) of the new CETP has been commissioned w.e.f. 22/11/2020.** About 1.5-8.4 MLD is being received to the new CETP which currently has pipeline connection for conveying effluent as inlet only through Sump 1 of the existing 04 pipeline connections (i.e. Sump 1, 3, 4 and Gravity Mains) used for conveying effluent to the old 25 MLD CETP.
- (ii) **The 25 MLD CETP has voluntarily shut down its operation for upgrading/retrofitting w.e.f. 26/11/2020 during which member units connected to this CETP also voluntarily closed their wastewater generation processes. The CETP is expected to start with 07 MLD effluent inlet from 30/12/2020.** Details of water supplied and effluent generation and disposal of treated effluent are given at Appendix A.
- (iii) Reduction of water supply in MIDC Tarapur from 38 MLD to about 25 MLD during the aforesaid volunteer shut down period of the 25 MLD CETP.
- (iv) Besides earlier on-going weekly monitoring by MPCB, daily monitoring of inlet and outlet of the 25 MLD CETP from 26/10/2020 up to 26/11/2020 (till the CETP was in operation) were carried out. Thereafter, samples have also been collected & analysed up to 07/12/2020. The analysis results are given at Appendix B.
- (v) MPCB has deployed teams from 18/11/2020 for identification of units not complying with the CETP inlet effluent norms. 226 industries have been monitored so far.
- (vi) District Magistrate, Palghar, has issued order on 04.12.2020 under section 144 and 133 under the Criminal Procedure Code 1973, banning water tanker movement in Tarapur MIDC w.e.f. 05/12/2020 to 02/2/2021 except Fire Tender vehicles and in extraordinary situations with written permission from MIDC.
- (vii) Completed removal of deposited sludge from various CETP inlet and outlet sumps (Sump 1, 2 and 3) and module 1 (Equalization tank; Primary settling tank; Aeration Tank and Secondary clarifier) of the two modules of the 25 MLD CETP and common Collection tank and common Oxidation tank.

Further, for improvement in overall scientific operation and maintenance of the 25 MLD CETP works such as replacement of old SS-316 sluice gates within equalization tank inlet with new sluice gates; floating aerators to submerged mixers in collection equalization tank and scrapping system in primary flocculators and secondary clarifiers with new SS-316 scrapping system, etc. have been completed in the 25 MLD. Other activities are proposed/under process such as installation of SCADA; development of facility to treat high COD and high TDS streams, up gradation of CETP, etc., as given at Annexure-II.

3.2 Restoration/remediation of contaminated ground water and drains and, if applicable, the two creeks (Navapur Dandi Creek and Kharekuran Murbe Creek) and seashore also

The committee's report, which has been accepted and directed to be acted upon by the Hon'ble NGT, outlines – (i) selection of consultant to prepare Detailed Project Report (DPR) and provide consultancy services for remediation of contaminated ground water and drains as well as control impact on the water bodies from the drains/CETP outlet for the Phase-I (detailed investigation, remediation plan, etc.) and Phase-II (execution as per the remediation plan) activities; (ii) execution as per the DPR; (iii) recovery of derived damage and restoration cost from the respective 103 polluting units (who have also been directed to pay the same vide order dated 17/9/2020 of the Hon'ble NGT) to meet the said expenses on remediation expenses. The compliance status given at Sl. No. 16 to 20 of the Table at Annexure-II reveal that:

- (h) Work of finalization of IIT Mumbai as consultant is in progress by MPCB and has already discussed this issue in length with IIT and NGRI, Hyderabad.
- (i) MPCB has issued the directions on 23/10/2020 to all 103 units for deposition of damage and restoration cost. One unit has deposited damage and restoration cost of Rs. 14.23 lakh. Initiation of necessary action against the 102 units is in progress by MPCB in the light of the Hon'ble Supreme Court order dated 14/12/2020.
- (j) MPCB has decided to meet the remediation cost from the polluting units in case recovery of the damage and restoration cost from the units is delayed or not met partially or fully due to one or other reasons at any stage.

3.3 Prohibition of use of contaminated ground water in affected areas

- (a) Ground Water Surveys and Development Authorities (GSDA) Palghar, and Sub-divisional Water Testing Laboratory carried out sampling and analysis of 86 water samples from Government marked bore wells or dug wells, and 535 water samples from private bore wells, of that 5 government and 61 private samples were found unfit for consumption due to iron and turbidity. Heavy metals were also tested in 10 randomly selected samples and were found within the prescribed limit for drinking water.

However, the committee observed that limited parameters were carried out during such sampling and analysis and various pollutants expected to be present in the ground water due to industrial activities of Tarapur MIDC were not carried out such as Ammonia, Phenolic compounds, PCB, Pesticide and PAH besides heavy metals.

- (b) It was informed that the aforesaid 13 Grampanchayat and 16 village are having regional water supply scheme by MIDC for drinking purpose and it was also observed during their survey that the aforesaid sources are not used for drinking purpose and are used for domestic purpose like washing utensils, clothing, etc.

3.4 Remedying the health of the inhabitants including providing healthcare to the affected individuals of in and around Tarapur MIDC

- (a) 16 villages (having 24,815 households with population of 91,016) have been identified which may potentially have health impact on the basis of representation received from applicant of the OA No. 64/2016 (WZ) i.e., Akhil Bhartiya Mangela Samaj to DM Palghar as affected villages.
- (b) Training to 129 healthcare officials have been imparted for active and passive health survey, screening and specialist camp.
- (c) 55,844 among the aforesaid population of 91,016 have been covered in house-to-house health survey conducted by District Health Officers/Taluka Health Officers. The rest population goes out for work and hence could not be covered in the survey. The following suspected persons have been surveyed:
 - (i) Skin infection = 361
 - (ii) Respiratory ailments = 100
 - (iii) Tuberculosis = 14
 - (iv) Suspected cancer symptoms = 21
- (d) Health screening camps for the surveyed people (planned during December 2020 but could not be done due to other activities of National Programmes) will be arranged in 3rd week of January 2021. Thereafter, Specialist camp for follow up of screened/identifies patients will be conducted in the 4th week January or 1st week of February. Distribution of medicine and patients referral to tertiary healthcare Centre will be carried out as per the requirement with effect from February 2021.”

169. Committee, thereafter made recommendations in paras 4.1, 4.2 and 4.3 as under:

“4.1 Control of further impact on environment due to partial/untreated effluent discharge

Although various works/remedial measures have been undertaken, as stated at para 3.1 above, w.r.t. the **25 MLD (old CETP) which is continuously non-compliant since the reported period from 2011** (as mentioned in the committee’s report submitted to the Hon’ble NGT) but - (i) continued non-compliance of inlet and outlet effluent of CETP even after the aforesaid order dated 17/9/2020 of the Hon’ble NGT till its volunteer closure for up-gradation/retrofitting on 26/11/2020 (ii) not able to identify/list out units contributing to the higher hydraulic load and/or higher concentrated effluent to the CETP despite surveillance by separate teams of CETP and MPCB during such period, and; (iii) continued effluent discharge to CETP and discharge of effluent from CETP through sumps (though small in quantity of about 01-02 MLD) even during the said volunteer shut-down of CETP; reveal that there may be lack of system/arrangement to identify units who contribute higher concentrated effluent or higher hydraulic load to the CETP occasionally or continuously.

It is recommended that:

- (i) *resumption of the 25 MLD CETP expected from 30/12/2020 may not be allowed by MPCB unless – (a) CETP operator or MIDC (who conveys effluent from units to CETP) individually or collectively takes the responsibility that they have mechanism in place to identify and report non-compliant units in the event of every occasion of higher hydraulic load/effluent quality being received at the CETP, and (b) the CETP demonstrates compliance to the prescribed outlet norms.*
- (ii) *If the CETP's volunteer shutdown continues, there is a need to assess supplied water (25 MLD) to MIDC Tarapur. Water intake/usage of individual units connected to the 25 MLD old CETP is to be correctly quantified (during the shutdown period) and compared with the water use pattern during normal operation period. MPCB should properly review the same.*
- (iii) *environmental compensation of Rs. 14,70,000/- (Rupees Fourteen lakhs seventy thousand only), may be imposed (calculation details given at Annexure-V) on the 25 MLD CETP operator and collected by MPCB for violating the prescribed inlet/outlet effluent norms w.e.f. 17/10/2020 (as order dated 17/9/2020 of the Hon'ble NGT). Hon'ble NGT has directed that the reports of the Committee be acted upon and the committee's report outlines. Accordingly, in case the suggested measures are not implemented effectively and CETP (either existing or new) continues to perform non-compliance to the inlet/outlet norms for a month, and that no alternate arrangement is in place for disposal of effluent, MPCB may close operation of CETP including its member units (who discharge their effluent to the CETP) till the compliance is achieved. Whereas the 25 MLD CETP continued the violations till the analysis reported period i.e. 07/12/2020 (except on 28/11/2020). MPCB didn't close the CETP and CETP continues to receive effluent and discharge the same till the reported period of 28/12/2020. MPCB need to take appropriate step as per the Hon'ble NGT order.*
- (iv) *MPCB shall supervise generation of sludge and their proper storage and disposal including record maintenance during desludging of various sumps and treatment units/tanks of CETP in accordance with provisions of the Hazardous and Other Waste (Management and Transboundary) Rules, 2016.*
- (v) *MIDC shall ensure that abandoned old effluent conveying pipeline system in Tarapur is not being used for illegal discharges of effluent. The same be dismantled in time bound manner for which action plan be submitted to MPCB.*

4.2 Restoration/remediation of contaminated ground water and drains and, if applicable, the two creeks (Navapur Dandi Creek and Kharekuran Murbe Creek) and seashore also

There is need to expedite selection of consultant by MPCB to prepare Detailed Project Report (DPR) and provide consultancy services for remediation of contaminated ground water and drains as well as control impact on the water bodies from the drains/CETP outlet for the Phase-I (detailed investigation, remediation plan, etc.) and Phase-II (execution as per the remediation plan) activities which has not been completed even after 03 months of order of the Hon'ble Tribunal.

The DPR preparation, detailed investigation/assessment, selection of remediation target level and appropriate remediation technologies and execution thereof will proceed only after selection of suitable consultant. MPCB shall, therefore:

- (i) complete selection of consultant on priority within a month and proceed DPR preparation, detailed investigation/assessment, selection of remediation target level and appropriate remediation technologies and execution thereof, etc. as recommended in the committee's report.*
- (ii) proceed for recovery of the damage and restoration cost from the 103 units of the 102 units who have not yet deposited the same in accordance with order dated 17/9/2020 of the Hon'ble NGT and order dated 14/12/2020 of the Hon'ble Supreme Court.*

4.3 Prohibition of use of contaminated ground water in affected areas

Although regional water supply scheme prevails in all the aforesaid 16 village and District Water and Sanitation Mission (DWSM) Palghar, has issued letters to BDO Palghar and concern Gramsevak for not to use the ground water for drinking purposes from the aforesaid 5 and 61 contaminated sources, however, for effective stoppage of use of drinking water from the contaminated ground water sources, there is need to;

- (i) Issue order by Zilla Parishad to ban use of ground water for drinking purpose unless water samples are analyzed comprehensively with respect to parameter expected to be contaminated due to industrial activities of MIDC. Advertisement in the local newspaper may also be issued in this regard as suggested by the committee in its 07th meeting held on 29/12/2020.*
- (ii) identify villages other than aforesaid 16 villages which may potentially have impact due to industrial activities of Tarapur MIDC by the GSDA Palghar based on aquifer recharging and ground water flow data and, if need be, similar remedial approaches, as above for the said 16 villages, be extended to the identified villages.*

4.4 Remedying the health of the inhabitants including providing healthcare to the affected individuals of in and around Tarapur MIDC

- (i) Advertisement about the on-going/proposed house-to-house survey, health screening camp and specialist camp, etc. in the aforesaid 16 villages may be done in local newspaper.*
- (ii) Health impact due to legal discharge from Tarapur MIDC may be in other villages also other than aforesaid 16 villages which were selected as affected villages on the basis of application of the applicant i.e. Akhil Bhartiya Mangela Samaj to the District Magistrate Palghar. To begin with secondary health data from primary health centre/sub-centre in and around Tarapur MIDC population may be analyzed by DHO and the ongoing/proposed house-to-house health survey, health screening camps,*

specialist camp, distribution of medicine and patients referral to tertiary care healthcare centre, etc., be extended to the identified affected villages.”

Pleadings brought on record after Supreme Court’s order dated 14.12.2020

i. Affidavit dated 04.01.2021, by respondent 3, TEPS (P/1315)

170. Reports dated 18.06.2020 and 27.07.2020 submitted by Expert Committee were accepted by Tribunal and OA was disposed of vide order dated 19.09.2020. Civil Appeal No. 3638 of 2020 filed before Supreme court was partly allowed vide judgment dated 14.12.2020 whereby TEPS and industries held liable for payment of compensation were permitted to file ground wise objections to the report of Expert Committee and that was required to be decided by Tribunal.

171. TEPS filed objections as annexure appended to MA 01/2021, on 29.12.2020. It also filed this affidavit in compliance of direction (k) of Supreme Court’s order dated 14.12.2020 to bring on record status of compliance on the part of TEPS. It is said that 25 MLD (out of 50 MLD) new CETP has been successfully commissioned. Around 11 MLD effluent received at sump-1 is now being diverted to new CETP for treatment. Though desludging is responsibility of MIDC but to expedite implementation of remediation plan, TEPS, at its own cost/expenses, has removed 5700 MT sludge from Sump-2 and disposed to CHWTSDf. TEPS has also completed desludging work of Sump-3 on 03.12.2020 by removing about 1250 MT from equalization and collection tanks out of which 563 MT sludge has been sent to CHWTSDf and remaining is for drying and thereafter will be send to the above agency. Further compliance measures/actions of TEPS stated in para 11 of the affidavit are as under:

- (a) *Revamping of Pressure Sand filter (PSF) = 02 Sets (including conversion of ACF into PSF) in each of the two modules of the CETP. One Module Completed and for second module, work of tale end piping is in progress.*
- (b) *Flow meters were received for installing at Sumps Flow outlets. The **work of Flow meter installation** has started and **will be completed by 16.01.2021** and the same will be commissioned within 02 days of installation.*
- (c) *Commissioning of two modules each of 12.5 MLD out of the 04 module (50 MLD) of the new CETP. **TEPS has diverted about 9 MLD of effluent from Sump-1 to the new CETP for the treatment.***
- (d) *For improvement in overall scientific operation and maintenance of the CETP following measures are taken:*
- i. *Replacement of old SS-316 sluice gates within equalization tank inlet with new sluice gates is completed.*
 - ii. *E.T. frontal pipe line (MS, 500 MM) was replaced with new one along with its all gate valves and NRV's having SS-316 MOC.*
 - iii. *TEPS also replaced MSEP platforms of Equalization all 04 tanks with precast RCC which will sustain as much as 20 years.*
 - iv. *Replacement of scrapping system in primary flocculators and secondary clarifiers with new SS-316 scrapping system is completed.*
 - v. *For old CETP - conversion of 1st aeration tank into anoxic treatment tank and channelization of effluent into said first aeration tank followed by into second, third and fourth aeration tanks in series having extended aeration for removal of BOD so as to improve BOD removal efficiency is under process.*
 - vi. *For old CETP - Installation of new tank where flash mixer will be installed so as to get more retention time for flocculation prior to flocculator tank is under process.*
 - vii. *For old CETP - Installation of one new tank for holding primary and secondary sludge separately in two tanks as well as installation of two additional centrifuges along with two new filter presses is under process.*
 - viii. *For old CETP - Increase in chemical preparation tank size is under process.*
 - ix. *For old CETP - Installation of auto dosing system with flow meter for in the proposed chemical dosing tank prior to flocculation tank is under process.*
 - x. *For old CETP- Installation of flow meter for activated sludge recirculation in the first anoxic treatment aeration tank is under process.*
 - xi. *Commissioning of OCEMS at inlet and outlet of both CETP with prescribed parameters is in progress and connectivity with MPCB and CPCB servers will be made immediately thereafter.*
- (e) *For adequate analytical facility to keep watch on every stage of operation of TEPS has started new laboratory at new CETP with facilities like sampling and analysis of operational parameters viz.*

BOD, DO, pH, TKN, TDS, SS, COD, O&G, Alkalinity, conductivity, heavy metals etc. CETP has also hired a trained manpower and is in process of hiring more.

(f) Laboratory at old CETP is used for general environmental parameter.

(g) Letter of intent issued by TEPS to M/s. Tesla for installation of high COD treatment facility having capacity 250 CMD. Also, additional facility will be commissioned for high TDS stream. Till they are commissioned, the concentrated streams will be disposed to TSDF by member industries.

(h) TEPS has undertaken installation and commissioning of centralized SCADA system of which SCADA platform for 55 industries installed and is under trial. Rest industries SCADA connectivity is planned on or before 31.01.2020. For that help desk is created and weekly one full day the engineers stationed at new CETP, for attending queries with respect to SCADA and industries to connect their hardware to TEPS CETP SCADA.”

Response dated 18.02.2021 of applicant to the objections filed by TEPS and TIMA (P/1490)

172. Response dated 18.02.2021 is by applicant to the objections filed by TEPS and TIMA along with M.A. 08/2021 after Supreme Court’s order dated 14.12.2020 in Civil Appeal No. 3638 of 2020. **Applicant has given parawise comments to the objections taken by TEPS** to the Expert Committee report, **in para 4 of his response** and read as under:

*“a. With reference to paragraph A(i) it is denied that the Committee did not follow the mandate of this Hon’ble Tribunal. It is submitted that the role of the Expert Monitoring Committee was to assess the extent of damage that had been caused by the industries functioning within the Tarapur MIDC as well as the pollution caused due to the persistent failure of the CETP to adhere to the environmental norms and the conditions stipulated under the Consent to Operate issued by the MPCB. Therefore, the committee was well within its mandate to examine the pollution that has been caused to the drains, creeks and the seashore areas within as well as around the vicinity of Tarapur MIDC as long as it could be sourced to the industries functioning from Tarapur MIDC. **As far as the objection to the Committee relying on Canadian guidelines is concerned, the Respondent No.3 has failed to note the fact that the Committee specifically states that the said standards have been recommended in the “Guidance document for assessment and remediation of contaminated sites in India” prepared by the Ministry of Environment, Forest & Climate Change, Government of India. It is denied that the findings of the Committee reveal that the levels from water and sediment/sand samples collected at the creek and seashore is within the prescribed standards. The Committee found indications of discharge of highly acidic untreated effluent in***

the drains from the industries, elevated concentration of TDS, BOD and COD in all the monitored drains, sediment samples from the drains as well as in the creek water samples (Pg. 45), elevated levels of Phenols in the sea water samples and elevated levels of iron and manganese (Pg. 54). The Committee noted that this was caused due to the industries discharging untreated untreated/partially treated effluent into the drains, creek and sea. It is denied that proof of actual damage to the environment is missing from the report and that there is no basis for calculating the damage coast. With regard to the contention that in the absence of there being any notified wetland and therefore no basis for collecting damage costs of 79 crores, it is submitted that **merely because the wetlands identified by the Expert Committee are not notified does not mean that it ought not to be afforded protection under the Wetland (Conservation and Protection) Rules, 2017.** It is pertinent to note that the Supreme Court by an order dated 8th February 2017 in the matter of *M.K. Balakrishnan & Ors. v. the Union of India & Ors. (Writ Petition no.231 of 2001)* after noting the fact that several state governments including Maharashtra had failed to notify wetlands within their respective states in terms of the erstwhile Wetlands (Conservation and Management) Rules, 2010, directed the state governments to protect all the wetlands that had been identified under the National Wetlands Atlas, until the process of notification of wetlands was completed. By the order dated 8th February 2017 the Supreme Court directed that Rule 4 of the Wetlands (Conservation and Management) Rules, 2010 shall apply to the wetlands that have been mapped by the Central government in the National Wetlands Atlas using remote sensing technology. This order effectively banned a host of activities in the wetlands identified by remote sensing in the National Wetlands Atlas. Such activities include Setting up of new industries and expansion of existing industries, solid waste dumping, discharge of untreated wastes and effluents from industries, new construction of permanent nature other than boat jetties etc. Hereto annexed and marked as EXHIBIT A is a copy of the order dated 8th February 2017 passed by the Hon'ble Supreme Court.

- b. The Expert Committee has mapped the wetlands and mangroves in the region using remote sensing as indicated in the Report at Pg. 69 and 70. These wetlands must therefore be protected in terms of the Supreme Court order dated 8th February 2017. Furthermore the Wetland (Conservation and Management) Rules, 2017 ('Wetland Rules') define a wetland as marsh, fen, peatland or water; whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters. It is submitted that the committee was right in describing the concerned areas as wetlands and assessing the damage accordingly inasmuch as they confirm to the definition of a wetland set out under the Wetland Rules.
- c. With reference to the contents of paragraphs A(ii) and (iii) it is denied that the Expert Committee has not assessed any actual restoration costs. It is submitted that **there are two components to the total**

compensation amount proposed by the Committee-the first is punitive and is based on the records before the Committee with regard to the infractions and consequent environmental damage committed by the industries. The second has been provisionally quantified towards the setting up of a 'Superfund'. The punitive component has been quantified by the Committee at Rs. 85.042 crores and has been arrived at on the basis of the Committee's assessment of the environmental damage caused by the industries. The second component (i.e. towards the Superfund) has been provisionally quantified at Rs. 75 crores. The Committee has proposed that the Superfund be utilized towards: (i) first, a detailed assessment to determine the available remediation options and the cost of restoration based on such options; (ii) then, the actual cost of execution of the restoration plan.

- d. The reason the Committee has suggested the setting up of the 'Superfund' (and has not, as in the case of the punitive component referred to above, finally quantified this amount) is that: (i) the Committee does not, at present, have the benefit of material to determine the nature and extent of the damage that may have been caused; and (ii) the costs towards remediation would be difficult to assess at present and may increase or decrease depending on the selected remediation option. Thus the contention that the compensation amount was inappropriately fixed before the preparation of a restoration plan is misconceived.
- e. With reference to the contents of paragraphs A(iv) it is denied that committee discriminated against large scale industries and medium scale industries. Any differentiation in the quantum of compensation ascribed to an industry was based on the scale and size of operation of the industries and the period and nature of default and therefore cannot be said to be discriminatory when there is an intelligible differentia between the 2 categories of industries. This Hon'ble Tribunal also directed the Committee hear the CETP operator and the units identified as polluting by the MPCB. In compliance with aforesaid orders of this Hon'ble Tribunal, the MPCB forwarded the list of 225 defaulting units to the Committee and it was on this basis that accountability was fixed on various industrial units apart from the CETP. With regard to the exclusion of SSI units, the Committee report noted the following justification for excluding the said units-

*'Incidences of SSI units, where they have discharged into CETP exceeding their prescribed norms but within design/prescribed inlet standards of CETP, may not be included in the list of polluting units for the purpose of environmental compensation/restoration cost recovery. For **if SSI units are required to meet its outlet effluent standard to that of outlet effluent discharge standard of CETP then there remains no role of CETP which has primarily been facilitated for smaller units.** However, MPCB may examine the matter and take appropriate decision in exempting such exceedance cases in case of SSI units.'*

- f. With reference to paragraph A(V) it is denied that the CETP polluting is not a unit. It denies logic to hold that merely because the CETP does not generate effluent it should not be considered to be a

*polluting unit in and of itself. The Respondent No.3 is well aware that **there are standards that have been specifically prescribed under the Environment (Protection) Rules, 1986 for CETPs.** The said Respondents failure to comply with the prescribed standards has been noted in detail in the Expert Committee Report and therefore the Committee rightly held the CETP accountable in meeting the environmental damage cost.*

- g. With reference to paragraph A(vi) and (vii) it is denied that the Expert Committee exceeded its powers or that it has acted in a non-transparent manner. The Committee has granted a hearing to each industry identified as polluting including the CETP and has acted in a fair and impartial manner in its assessment and in arriving at the environmental damage cost.*
- h. With reference to paragraph B it is submitted that the contention that the Respondent No.3 is not a polluter and therefore cannot be subject to the 'polluter pays' principle is untenable. It is submitted that as far as environmental damage is concerned it is irrelevant whether the CETP generates effluent itself or merely treats effluent that is generated by other industrial units. What is relevant is that the CETP has failed to meet the prescribed standards under the Environmental (Protection) Rules, 1986 and has consistently violated the conditions stipulated under the Consent to Operate issued by the MPCB. The terms and conditions stipulated therein include the permissible quantity of effluent in accordance with the design capabilities of CETP. The Consent to Operate also stipulated standards of inlet effluent quality and outlet effluent quality. TEPS was always aware of these standards, has agreed to subject itself to the same and has never challenged the said consent. Having failed to comply with the conditions of the Consent to Operate, the stand of the Respondent No.3 that the failure to comply with the conditions of the Consent to Operate are attributable to the failure of the individual member industries and not of the CETP itself cannot be countenanced. Furthermore, the **Committee Report specifically noted the continued improper operation of all the major treatment units of the CETP (Pg. 10 and 11 of the Second Report of the Expert Committee dated 27.07.2020).***
- i. With reference to paragraph C it is submitted that the classification of industries is based on their pollution index which is a function of the emissions (air pollutants), effluents (water pollution), hazardous wastes generated and consumption of resources. **CETPs are highly polluting** and has on this basis been **classified as a red category industry.***
- j. With reference to paragraph D it is submitted that the denial that the CETP continued to operate without valid Consent to Operate has no basis in fact. As noted by the Committee, the Respondent No.3 continued to operate in spite of the fact that the MPCB did not renew its Consent to Operate due to consistent violation of the stipulated conditions under the previous Consent to Operate. The earlier consent that was granted to the Respondent No.3 expired on 31.12.2017. The MPCB issues a fresh Consent to Operate only on 29.11.2019. The **CETP was thus operational without a valid***

consent from 31.12.2017 to 29.11.2019 i.e. almost for 23 months.

- k. With reference to paragraph E (i) to (vii) it is submitted that while the role of the MPCB and MIDC may be critical in managing the pollution and effluent that is caused by the industries, the CETP plays the most significant role in ensuring that the effluent that is generated by the industries is treated and disposed of in compliance with the prescribed standards. The failure of the CETP to meet the design norms and consented capacity has been noted by the Committee detail and no one else but the CETP can be held responsible for these failures. With regard to the excess load of effluent received by the CETP, the Committee noted that online continuous monitoring system (OCMS) provided at CETP inlet and outlet were found not in operation and in working condition. The Committee further observed that the CETP inlet flow meter is installed after equalisation tanks which do not measure actual inlet flow due to overflow from equalization tank, and secondly that the CETP outlet flow meter has been provided in only one of the two 2 lines from Sump No. 2 which convey effluent to the designated marine outfall point. Therefore by failing to adequately monitor the quantity of effluent that it received the CETP was itself responsible for not meeting the consent norms. **The Committee observed that none of the major treatment units of the CETP were functioning properly and certain units of the CETP were completely defunct.** The failure of the Respondent No.3 to acknowledge its own liability and responsibility while imputing the actions/failures of the other Respondents is what has caused the alarming situation in Taparapur MIDC and the reason that it continues to be a critically polluted region.
- l. With reference to paragraph E(ix) it is submitted that the Respondent No.3 has failed to ensure that the effluent outflow meets the prescribed standards before it is discharged into the water bodies, besides failing to ensure that the CETP does not take in more effluent than its designed capacity of 25 MLD. It is therefore difficult to imagine that the very same Respondent that will be responsible for the functioning of the proposed 50 MLD CETP, will be able to ensure compliance of environmental norms. It is submitted that **it is not merely a matter of inadequate capacity of the existing CETP as sought to be argued by the said Respondents, but a matter of indifference and ineptitude that has lead to severe environmental degradation in the last three decades**, the same will not be solved by the commissioning of the 50 MLD CETP.
- m. With reference to paragraph E (x) and (xi) it is submitted that the Committee duly noted the fact that the operation of the sump and the proper maintenance and removal of the sludge from the sump is the responsibility of MIDC and directed MIDC to take immediate action in this regard.
- n. With reference to paragraphs E(xii) and (xiii) it is submitted that the mandate of the Committee was to determine the individual accountability of the CETP and the polluting units responsible for the pollution in and around Tarapur MIDC and not to determine sources of external sewage.

- o. With reference to paragraph E (xiv) and (xv) it is submitted that merely the fact that no closure directions were issued by the MPCB cannot be interpreted to mean that no liability arises against the CETP. Nonetheless, the Expert Committee has taken note of the show-cause notices issued to the CETP in the past by the MPCB and the fact that the MPCB has filed a criminal case against the Tarapur CETP before the Judicial Magistrate First Class-Palghar for its consistent failure to meet the stipulated standards and for discharging untreated effluent. The CEPT plays a crucial role in the treating effluent and is responsible for ensuring that the standards stipulated under the Consent to Operate are complied with. As stated before, the Expert Committee report noted in detail the fact that the 25 MLD capacity CETP is discharging higher concentrated effluent which did not meeting the prescribed standards under the Consent to Operate issued by MPCB into coastal water of the Arabian sea besides discharge of partially treated/untreated effluent as overflow from it beyond its hydraulic load of 25 MLD. The **Committee noted the fact that such high concentrated effluent as overflow is discharged into natural drain and has impact on creeks and coastal water.** Therefore, the denial of its liability towards meeting the environmental damage cost imposed by the Expert Committee has no basis.
- p. With reference to paragraph F and G and the contents paragraph H herein are reiterated and are not reproduced for the sake of brevity.
- q. With respect to Para H(i) of the objections, I deny the contents therein as false, misleading, unfounded and say that it is nothing but is an attempt to misrepresent scientific records as a feeble attempt to discredit the expert report. I say that though the pH levels of the water at seashore exceed prescribed standards, cost of Environmental damage calculated by the Expert Committee is not on the basis of the pollution levels on the day of inspection but admittedly, on the basis of pollution levels determined between April, 2011 to November, 2019. As regards the data of 2011, the Expert Committee Report clearly states that it has taken the 2011 data since 28/4/2011 as part of surveillance undertaken by MPCB and therefore, TEPS' submissions that cost of environmental damage is incorrectly computed are misleading and unfounded. In fact, pollution levels in Tarapur have continued to remain alarmingly high for more than 3 decades and that a calculation of pollution from 2011 in itself is conservative as MPCB had initiated record-keeping of high pollutants only after Tarapur was declared as a Critically Polluted Area by CPCB in 2010. In fact, the Expert Committee Report also noted at Pg. 106 in no uncertain terms, that "the impact on sea water pollution is also very conservative due to lack of better information on pollutants including nitrogen." Therefore, the **present cost of environmental damage and restoration imposed against polluters is most conservative as the determination is made only from the year 2011 onwards, despite the release of an excess amount of untreated effluents/partially treated effluent that has continued for decades.**
- r. With reference to Para H(ii)(1-3) of the objections, I deny the contents therein as false and misleading and say that once again, TEPS has attempted to misrepresent the findings of the Expert Committee

Report in a manner that is devoid of scientific understanding. I say that in spite of the Expert Committee coming to the finding of extremely high levels of TDS (more than 3000 times the prescribed standards), BOD and COD (more than twice the prescribed standards) TEPS claims that there has been “no concrete finding which would warrant imposition of damages”. I reiterate that the present cost of environmental damage and restoration imposed against polluters is most conservative as the determination is made only from 2011 onwards, despite continuing egregious violations of the environmental norms and the Consent to Operate.

- s. *With respect to paragraph H(ii)(4) it is submitted that due to the lack of availability of detailed baseline data related to identified damage parameters, various studies have been referred to arrive at the damage costs. The direct value transfer method was used for assessment of environmental damage. Direct value transfer estimates the economic value of one location using the study carried out another location. The value benefit transfer method is widely used as a technique to calculate the economic value of benefits for the environment when an original study for valuation is not feasible.*
 - t. *With respect to Para H(iii) I deny that there is any error by duplication by the Expert Committee Report as creeks and seawater are two distinct natural ecosystems with different aquatic ecology. Any impact/damage to the creek and to the seawater, even if the origin of such damage is common, will have to be ascertained and determined separately for creek and for seawater, as rightly undertaken by the Expert Committee. In fact, the determination of environmental damage is made only from 2011 despite large-scale pollution continuing for several decades by the CETP and its associated industrial units.*
 - u. *With respect to Para H(iv) of the Objections, I deny the contents therein as absolutely baseless, unfounded, false and absurd. The contents of the said para fall afoul of the conclusive science on this subject. I say that **BOD (Biochemical Oxygen Demand) is not a subset of COD (Chemical Oxygen Demand). BOD is a biological oxidation process and COD is a chemical oxidation process. COD levels is used to determine capability of degrading industrial sewage alone and therefore, is an important constituent to determine and identify the chemical levels, whereas BOD is used to separately determine organic untreated sewage and effluents that may have a non-chemical source such as waste arising from manure, food processing plants, wastewater treatment plants, failing septic systems and pulps and paper mills among others.** Annexed and marked hereto as EXHIBIT B is a copy of a research article setting out the difference between BOD and COD levels.*
5. *The Expert Committee undertook a detailed analysis of the pollution being caused by the industrial units as well as the CETP over a protracted period of time due to the failure of both the Respondent No.3 and the member industries of the Respondent No.8 to comply with the stipulated consent terms and due to the brazen violation. Not only has the livelihood of the traditional fishermen been affected by the polluting of the waterbodies, but the degradation of the quality of the*

environment has had obvious adverse effects on public health. As such the Respondents No. 3 and 8 must be held accountable for causing damage to the environment and liable under the “polluter pays principle”.

(Emphasis added)

ii. Affidavit dated 18.03.2021, by respondent 3, TEPS (P/1522)

173. Referring to Supreme Court’s order dated 14.12.2020 in Civil Appeal No. 3638 of 2020, TEPS has stated that seeking extension of time for deposit of amount, MA 62/2021 (page-1523& 1532) in Civil Appeal no. 3638/2020 was filed in Supreme Court which was partially allowed, granting 30 days’ extension and directing TEPS to deposit 30% of the compensation amount with Authority established under Environment Relief Fund Scheme, 2008 (hereinafter referred to as ‘ERF Scheme, 2008’) as per Section 24 of NGT Act, 2010. The order reads as under:

“We have heard learned counsel for the parties.

In our order dated 14th December, 2020, clause (e) and (f) read as under:

e) The appellant, namely Tarapur Industrial Manufacturers Association (TIMA), or the individual units as identified in the report submitted by the Monitoring Committee, shall deposit 30% of the compensation amount within one month from today. In case of failure to deposit, their objections would not be heard and decided.

f) The appellant - Tarapur Environment Protection Society (TIMA), in Civil Appeal No. 3638 of 2020, would deposit 30% of compensation amount as directed by the impugned order within one month from today. In case of failure to deposit, their objections would not be heard and decided.

Under Clause (e) and (f), we had directed the parties to deposit 30 per cent of the compensation amount within a period of one month from the date of the said Order. Having regard to the submissions of the learned senior counsel appearing for the applicants, time for deposit of the amount is extended by 30 days.

The deposit shall be made with the authorities indicated in Section 24 of the National Green Tribunal Act, 2010.

The miscellaneous applications stand disposed of.”

(Emphasis added)

174. TEPS has deposited Rs. 10,90,00,000/- with United India Insurance Company Ltd. (Chennai Head Office) which is established as a Fund Manager/Authority under ERF Scheme, 2008 read with Section 24 of NGT Act, 2010. TEPS again approached Supreme Court filing M.A. 380 of 2021 seeking further extension of time to deposit the amount. By order dated 04.03.2021, Supreme Court permitted payment of Rs. two crores on 04.03.2021 itself and a week's further time for payment of balance Rs. 8,79,44,100/-. The order reads as under:

“Mr. C.A. Sundaram, learned senior counsel appearing for the applicant- Tarapur Environment Protection Society submits that the applicant will deposit a sum of Rs. 2,00,00,000/- (Rupees two crores) today. The statement is taken on record.

He further prays for some time for payment of balance amount of compensation of Rs. 8,79,44,100/- (Rupees eight crores seventy-nine lakh forty-four thousand and one hundred).

As a last chance, one week's further time is granted to the applicant to pay the balance of Rs. 8,79,44,100/-(Rupees eight crores seventy nine lakh forty four thousand and one hundred).

Application for direction is disposed of accordingly.”

175. Thus, entire balance amount was deposited by TEPS on 12.03.2021 with Fund Manager/Authority. As such, TEPS deposited 30% compensation i.e., Rs. 21,69,44,100/-. TEPS has further said that it has successfully commissioned 25 MLD CETP out of 50 MLD CETP which is running successfully.

iii. Affidavit dated 22.03.2021, by respondent 9, TIMA (P/1545)

176. It has also referred to Supreme Court's order dated 14.12.2020 and has filed objections registered as MA 02/2021. Out of 102 industrial units, 92 have deposited their respective 30% of compensation amount. 88 units deposited money with United India Insurance Company Ltd. (Chennai Head Office) i.e., Fund Manager/Authority under ERF Scheme, 2008 read with Section 24 of NGT Act, 2010 while 4 units, by mistake,

have deposited amount with MPCB. Collectively, 92 industries have deposited a total sum of Rs. 23,48,35,420/-. List of industries who had deposited 30% of the compensation amount, is given as annexure-C, as under:

Sl. No	Name and address of industry	Plot No.	Penalty amount paid	Date of Deposit
1.	Aarti Drugs Ltd.	G-60	13,74,000	11-02-2021
2.	Aarti Drugs Ltd.	N-198, 199	3,12,67,250	11-02-2021
3.	Aarti Drugs Ltd.	E-21, 22	46,91,000	11-02-2021
4.	Aarti Industries Ltd.	E-50	13,62,180	11-02-2021
5.	Aarti Industries Ltd.	K-17, 18, 19	13,67,880	11-02-2021
6.	Aarti Industries Ltd.	L-5,8,9	34,16,700	11-02-2021
7.	Bombay Rayon Fashion Ltd.	C-6,7	19,83,420	10-02-2021
8.	Siyaram Silk Mills, (Balkrishna Synthetics)	H-3/1	26,39,000	06-02-2021
9.	Camlin Fine Chemicals	D-2/3	1,54,97,000	10-02-2021
10.	Ciron Drugs & Pharmaceutical Pvt. Ltd.	N-113, 118, 119 & 119/2	3,42,000	10-02-2021
11.	DiciteX Home Furnishing Pvt. Ltd.	G-7/1 & 7/2	23,14,000	10-02-2021
12.	DiciteX Furnishing Pvt. Ltd.	G-58	5,07,000	10-02-2021
13.	DC Polyester Pvt Ltd.	E-26/2	13,91,000	10-02-2021
14.	D C Textile	E-26/1	51,300	12-02-2021
15.	JSW Steel Ltd	B-6	42,40,000	10-02-2021
16.	M/s Kriplon Synthetics Pvt Ltd	N-97/1/2, 97, 98	38,19,000	12-02-2021
17.	Mandhara Dyeing	E-25	4,39,000	16-02-2021
18.	E-Land Fashion	D-1	86,63,000	10-02-2021
19.	Nipur Chemical	D-17	14,43,900	08-02-2021
20.	Manan Costyn Pvt Ltd	G-4/2	1,52,12,000	10-02-2021
21.	Resonance Speciality Ltd.	T-140	52,13,000	10-02-2021
22.	Silvester Textiles P Ltd	E-24	57,56,000	10-02-2021
23.	Sarex Overseas	N-129, 130,131, 132	46,11,000	10-02-2021
24.	Valiant Glass P. Ltd.	J-85	33,00,000	10-02-2021
25.	Aarti Drugs Ltd.	E-9/3-4	1,44,400	10-02-2021
26.	Jakharia Textile	A-13	75,46,000	10-02-2021
27.	Pal Fashions Pvt Ltd	E-49 &	29,87,000	10-02-2021

		E-49/2		
28.	SD Fine Chemicals	E-27/28	98,79,000	11-02-2021
29.	Auro Laboratories Ltd	K-56	53,84,100	11-02-2021
30.	Iraa Clothing (P) Ltd (Shagun Clothing P Ltd)	B- 7/3	32,10,690	04-03-2021
31.	Abhilasha Texchem Pvt Ltd./ Valient Organics Ltd.	M-7	1,48,000	10-02-2021
32.	Alexo Chemicals	N-174	15,84,000	10-02-2021
33.	Accusynth Speciality Chemical	E-29/ 1-2	9,92,000	08-02-2021
34.	Aarey Drugs & Pharmaceuticals ltd	E-34	47,490	25-02-2021
35.	Aradhana Energy Pvt Ltd	K-34	625000	10-02-2021
36.	Bajaj Health Care Ltd	N-216, N-217	1586000	12-02-2021
37.	BostanPharma	E-84	1102000	10-02-2021
38.	Panchamrut Chemical Pvt Ltd (Dragon Drugs Pvt Ltd	N-76	1284000	10-02-2021
39.	Diakaffil Chemicals	E-4	570000	10-02-2021
40.	DRV Organics,	N-184, N-185	2557170	10-02-2021
41.	Dufon Laboratories P ltd,	E-61/3	5318000	10-02-2021
42.	D.H. Organic	N-89	1273000	10-02-2021
43.	Gangwal Chemical	N-5	213000	10-02-2021
44.	Haren Textile Pvt Ltd	J-194	1512000	08-02-2021
45.	Indo Amines Ltd (Previously known as Sri SaiIndsutries)	K-33	1746000	12-02-2021
46.	Indaco Jeans Pvt Ltd	G-21	588930	10-02-2021
47.	Mehta API Pvt Ltd	Gut NO- 546, 571, 519, 520	338160	10-02-2021
48.	Moltus Research Laboratories,	N-59	27000	10-02-2021
49.	K P Chemicals,	L-63	1780140	10-02-2021
50.	JPN Pharma,	T-108- 109	967000	08-02-2021
51.	Khanna & Khanna	K-10	205170	11-02-2021
52.	Keshav Organics P ltd	T-97,98, 100	155790	10-02-2021
53.	Nayakem Organics Pvt Ltd	T-128	290670	08-02-2021
54.	Nirbhay Rasayan Pvt Ltd	N-95,96, 96/ 1	2341000	11-02-2021
55.	Nutrapius India Ltd	N-92	3108000	12-02-2021
56.	Sequent Scientific Ltd (PI Drugs Pharmaceuticals)	W-136, 137,138, 151	1298000	11-02-2021
57.	Pulcra Chemicals India Ltd	D-7/ 1/ 1	1765000	09-02-2021
58.	Pentagon Drugs Ltd Plot	N-224,	767520	10-02-2021

	No.	225		
59.	Paramount Syncot Textile	N-13/2	787000	15-02-2021
60.	IPCA Laboratories (Ramdev Chemicals)	E-41	8587000	11-02-2021
61.	Tryst Chemicals	L-47	819000	09-02-2021
62.	Omtech Chemicals	T-12	503000	10-02-2021
63.	Shreenath Chemicals	T-54, T-80	152000	09-02-2021
64.	Salvi Chemicals Industries	E-90 E- 91 E-92, E-93 E- 94 E-95	4693000	05-02-2021
65.	Sapna Detergent	N-152/ N-153	1780000	08-02-2021
66.	Sagitta P Ltd	N-4	1774000	11-02-2021
67.	Surmount chemicals (I) P Ltd	N-41	194000	09-02-2021
68.	Shri VinayakChemex India Pvt.Ltd	T-11	1782000	08-02-2021
69.	Sunil Great Processers	N-47/3	2325000	12-02-2021
70.	Vardhman Dyestuff Pvt Ltd	N-33, T-34	192000	09-02-2021
71.	Usha Fashion	E-42	3776000	12-02-2021
72.	U. K. Aromatics & Chemicals	K-6/3	407000	06-02-2021
73.	Vividh Global Inds Ltd	D-21/1	1830000	08-02-2021
74.	Square Chemical	N-60	760000	08-02-2021
75.	Shree Chakra Organics Pvt Ltd	K-62	319000	09-02-2021
76.	Arti Drugs	E-106, 119, 120	211000	11-02-2021
77.	Omega Colurs Pvt Ltd.	D- 21/2/3	336000	10-02-2021
78.	REMI Edelstahi Tubulars Ltd.(Old Name- RAJENDRA MECHANICAL INDL LTD.)	N -211 /1	125000	12-02-2021
79.	Gini Silk Mills Ltd.	E-15	3579000	09-02-2021
80.	Rediant Intermediates	N-224	2526750	12-02-2021
81.	Premier Intermediate	T-55, T-56	285000	10-02-2021
82.	Maharashtra Organo Metalics Pvt. Ltd.	N-220 & 221	279270	10-02-2021
83.	Ganesh Benzoplast	D- 21/2/2	5631000	11-02-2021
84.	Zorba Dyechem	W-14,	96900	10-02-2021
85.	Aarviam Dye Chem	L-9/2	133000	10-02-2021
86.	Dhanlaxmi Steel	J-56	1664250	22-02-2021
87.	Sarswati Steel (Shiv steel)	W-88/A	174780	22-02-2021
88.	SR Steel	W-80/A	397050	10-02-2021

89.	<i>J V Chem Industries</i>	<i>N-111,112</i>	<i>484000</i>	<i>10-02-2021</i>
90.	<i>Shriyans Chemical</i>	<i>W-43</i>	<i>1621000</i>	<i>10-02-2021</i>
91.	<i>Union Park Chemicals Pvt. Ltd.</i>	<i>E-11</i>	<i>43710</i>	
92.	<i>Lavino Kapoor Cottons Pvt. Ltd.</i>	<i>H-1</i>	<i>2325000</i>	<i>25-02-2021</i>

177. List of 10 industries which had not paid amount and flouted Supreme Court’s order is also part of annexure-C at page 1563 as under:

<i>Sl. No.</i>	<i>Name of the industry</i>	<i>Plot No.</i>	<i>Penalty amount paid</i>	<i>Date of Deposit</i>
1.	<i>Zeus International Ltd.</i>	<i>A-10 & 11</i>	-	
2.	<i>Ashwin Synthetics P Ltd.</i>	<i>C-8/2</i>	-	
3.	<i>Ajmera Organics</i>	<i>N-211/2/1</i>	-	
4.	<i>Visen Industries Ltd.</i>	<i>K-30, T-31, T-32</i>	-	
5.	<i>Ujwal Pharam P Ltd.</i>	<i>N-52</i>	-	
6.	<i>Mayfair Bio tech (Ankit Petro)</i>	<i>L-12</i>	-	
7.	<i>Anuh Pharma Chem</i>	<i>E-17/3 & 4</i>	-	
8.	<i>Prabhat Engineering</i>	<i>L-50</i>	-	
9.	<i>Deep Industries</i>	<i>W-146</i>	-	
10.	<i>The Pharmaceutical Product of India Ltd.</i>	<i>N-24, N-25</i>	-	

I.A. 31/2021 filed by Ankit Petroproducts Pvt. Ltd.

178. **Objections dated 08.04.2021 along with IA 31/2021** has been filed by **M/s Ankit Petroproducts Pvt. Ltd.**, disputing computation of environmental compensation of Rs. 136.027 lakhs by Expert Committee. One of the major grounds is that M/s Ankit Petroproducts Pvt. Ltd. is SSI scale unit but computation of compensation has been made treating it as LSI which is patently illegal. Another ground is that it is Zero Liquid Discharge unit i.e., ZLD and cannot be taken to have caused any

pollution. Number of days taken for computation of compensation is also challenged. It is said that Committee has taken 716 days though at the best it could have been only 13 days therefore, computation of compensation for alleged non-violation for 716 days is incorrect. It is however, submitted that even 13 days is being objected since unit is ZLD. Constitution of Committee comprising of member of MPCB is also challenged on the ground that State PCB is the Regulatory Authority and it being at fault, could not to have been made party or member to the Committee. Further objective is that there are more than 1100 units in the area and only 100 and odd have been selected for imposition of compensation which shows that an arbitrary exercise has been undertaken by Committee. The quantum of effluent discharge taken into consideration is also challenged on the ground that the total load carried out by MIDC pipelines includes domestic waste but no study on this aspect has been conducted. Allegations are also made against TEPS stating that by letter dated 23.02.2021 and 01.04.2021, it has allowed certain units to restart discharge of effluent of 25 MLD CETP upto COD of 2000 ppm, using monitoring devices set up. Ignoring the fact that LSI companies have their own ETPs and ought to discharge effluent only with COD of 250 ppm maximum but if they are allowed with higher concentration, it would be very difficult for SSI units to perform with the permissible limits of 3500 ppm. Reliance in this regard, is placed on Tribunal's judgment dated 01.04.2014 in **OA No. 34/2013 (WZ), Tarun Patel vs. Chairman, Gujarat Pollution Control Board and others.**

Affidavit dated 01.04.2021 filed on behalf of TEPS (respondent 3)

179. This affidavit has been submitted in response to status report dated 11.01.2021 filed by Committee. The principal objections are, that in the absence of any preparation and finalization of remediation action

plan, status report is inadmissible; issue of excess load on CETP has not been addressed by Committee, therefore, there is no analysis or effort by Committee to identify root of the problem; exemption granted by Committee to all ZLDs and SSI units from liability and providing them an umbrella protection by penalizing TEPS is against the principle of polluters pays; TEPS is taking all steps to install additional CETP; Committee has ignored negligence and lack of discharge of duty on the part of MIDC and shifted entire burden upon TEPS; and no weightage has been given to the fact that TEPS has spent a huge amount for installing additional capacity CETP.

180. **M.A. 12/2021 dated 03.05.2021** has been filed by Regional Director, Shri Bharat Kumar Sharma, CPCB. It has referred to the report dated 11.01.2021 submitted by Committee after inclusion of District Magistrate, Palghar and said that report includes action plan for remedial measures and restoration of contaminated water bodies in and around TIA MIDC. The report, we have already referred above in detail.

Comments/joint reply dated 15.04.2021/13.05.2021 of Committee to the objections raised by TEPS and TIMA to the Committee's report dated 19.06.2020 (page 1664)

181. Supreme Court vide order dated 14.12.2020 while permitting TEPS and TIMA to file objections to the Committee's report dated 19.06.2020 also permitted Monitoring Committee to file its reply to the said objections, if it deemed proper and necessary. Pursuant thereto, TEPS and TIMA filed their objections dated 29.12.2020 and to the said objections, joint Committee has filed its reply/response vide letter dated 13.05.2021. Committee has justified its report and findings recorded therein. We shall discuss reply of Committee while considering objections of TEPS, TIMA and individual industries.

Response/Revised report dated 12.08.2021 submitted by Committee

182. After receiving objections of the association of industries as also individual industries, Tribunal required Committee who had submitted report dated 18.06.2020, to re-examine the matter and submit response. On 7.6.2021, a statement was made that MPCB is examining revision of estimate and in reference thereto Tribunal vide order dated 07.06.2021, required Committee to submit response as a result of revision of compensation. Committee considered various objections raised by TEPS, TIMA, and industries saddled with liability of compensation. Committee gave opportunity to all individual 102 units as also TEPS identified for determination of compensation, considered objections taken by them in writing and they were also given opportunity of oral hearing. Thereafter, Committee submitted its response/revised report vide letter dated 12.08.2021 (hereinafter referred to as '**Revised Report dated 12.08.2021**'). Report is appended with annexure 1 which is revised details of 103 units in respect whereof compensation was determined vide earlier report dated 18.06.2020. In many cases compensation has been revised in respect of most units giving reasons therefor. The objections raised by individual industries have also been mentioned and reasons for their acceptance or rejection is also given in the said report. We also find from the said report that amount of compensation has stood revised for one particular reason in as much as distribution Recovery Cost Factor (hereinafter referred to as 'DRCF') has stood revised to a higher level in view of the subsequent facts brought to the notice of Committee and this has been stated in the revised report dated 12.08.2021. We are giving hereunder a complete chart of 103 units with details including days of violation (earlier and revised), compensation determined (earlier and revised) and DRCF (earlier and revised) as under:

SN	Name and address of industry	Product, Category, Scale	Discharge quantity (m ³ /day)	Days of violation (Initial Earlier/ Revised)	Amount of compensation (Initial Earlier/ Revised) in lakhs	Distribution Recovery Cost Factor (DRCF) (Earlier/ Revised)
1	Aarti Drugs Ltd., G-60	Bulk drug, Red, LSI	119	241/168	45.786/40.517	0.0028609/0.0025316
2	Aarti Drugs Ltd., N-198, 199	Bulk drug, Red, LSI	63.1	1999/329	1042.241/368.749	0.0651229/0.0230408
3	Aarti Drugs Ltd., E-1, E-21, E-22	Bulk drug, Red, LSI	88.3	689/225	156.355/97.191	0.0097696/0.0060729
4	Aarti Industries Ltd., E-50	Bulk drug, Red, LSI	55.42 ZLD unit (Earlier it was considered as 119)	239/200	45.406/48.234	0.0028371/0.0030138
5	Aarti Industries Ltd., K-17,18,19	Bulk drug, Red, LSI	318.4	240/240	45.596/57.881	0.0028490/0.0036166
6	Aarti Industries Ltd., L-5,8,9	Bulk drug, Red, LSI	20.0 ZLD unit	600/628	113.989/151.455	0.0071225/0.0094634
7	Bombay Rayon Fashion Ltd. C-6,7	Textile, Red, LSI	6000.0	348/305	66.114/73.557	0.0041310/0.0045961
8	Siyaram Silk Mills, (Balkrishna Synthetics) H-3/1	Textile processing (earlier it was textile), Red, LSI	2000.0	463/669	87.962/208.612	0.0054962/0.0130348
9	Camlin Fine Chemicals, D-2/3	Chemical	20.0	1848/1361	516.561/428.077	0.0322766/0.0267478
10	M/s Ciron Drugs & Pharmaceutical Pvt. Ltd. N-113, 118, 119 & 119/2	Pharma, Orange, LSI	4.5	96/96	11.399/14.470	0.0007122/0.0009042
11	M/s Dicitex Home Furnishing Pvt. Ltd. G-7/1 & 7/2	Textile, Red, LSI	510.0	406/498	77.133/218.018	0.0048195/0.0136225
12	M/s Dicitex Home Furnishing Pvt. Ltd. G-58	Textile, Red, LSI	880.0	89/242	16.908/58.363	0.0010565/0.0036467
13	DC	Textile, Red,	300.0	244/	46.356/	0.0028965/

	Polyester Pvt. Ltd, E-26/2	LSI		244	58.845	0.0036769
14	DC Polyester Pvt. Ltd, E-26/1	Textile, Red, LSI	95.0	9/9	1.710/2.171	0.0001068/0.0001356
15	JSW Steel Coated Product Ltd (JSW Steel Ltd) B-6	Steel (Engineering) Red, LSI	603	744/477	141.347/115.038	0.0088318/0.0071880
16	M/s Kriplon Synthetics Pvt. Ltd, N-97/1/2, 97, 98	Textile, Red, LSI	497.0	526/272	127.288/77.416	0.0079534/0.0048372
17	Mandhara Dyeing, E-25	Textile, Red, LSI	900.0	77/36	14.629/8.682	0.0009140/0.0005425
18	E-Land Fashion (Mudra Life Style), D-1	Textile, Red, LSI	115.0	953/484	288.772/140.602	0.0180435/0.0087853
19	Nipur Chemical, D-17	Chemical Red, LSI	120.0	76/76	14.439/18.329	0.0009022/0.0011453
20	Manan Costyn Pvt. Ltd. G-4/2	Textile, Red, LSI	225.0 (ZLD)	1344/712	507.062/281.204	0.0316830/0.0175706
21	Resonance Speciality Ltd. T-140	Chemical, Red, SSI	12.0	2170/901	173.770/118.656	0.0108578/0.0074140
22	Silvester Textiles P. Ltd. E-24	Textile, Red, LSI	410.0	650/650	191.882/243.582	0.0119895/0.0152199
23	Sarex Overseas N-129,130, 131,132	Chemical, Red, LSI	400.0	809/807	153.695/194.624	0.0096034/0.0121608
24	Zeus International Ltd, A-10 & 11	Chemical, Red, LSI	400	2328/1080	619.341/483.063	0.0386986/0.0301835
25	Valiant Glass P. Ltd., J-85	Textile, Red, LSI	2000.0	453/370	110.000/99.603	0.0068732/0.0062236
26	Aarti Drugs Ltd., E-9/3-4	Bulk Drug, Red, SSI	30.0	38/102	4.813/8.200	0.0003007/0.0005124
27	Jakharia Textile, A-13	Textile, Red, LSI	378	1324/205	251.536/49.440	0.0157169/0.0030892
28	Pal Fashions Pvt. Ltd, E-49 & E-49/2	Textile, Red, MSI	500	786/281	99.551/45.179	0.0062203/0.0028230
29	SD Fine	Chemical,	16	2185/	329.302/	0.0205760/

	Chemicals, E-27/28	Red, MSI		608	164.478	0.0102772
30	Iraa Clothing (P) Ltd (Shagun Clothing P Ltd), B- 7/3	Textile, Red, MSI	180	845/ 845	107.023/ 135.859	0.0066872/ 0.0084890
31	Auro Laboratories Ltd, K-56	Bulk Drugs, Red, MSI	19	774/ 269	179.470/ 65.437	0.0112139/ 0.0040888
32	Valiant Organics Ltd. (Formerly M/s. Abhilasha Texchem Pvt. Ltd.) M-7	Textile, Red, SSI	6	78/ 55	4.940/ 4.421	0.0003086/ 0.0002763
33	Alexo Chemicals, N-174	Chemical, Red, SSI	0.7	463/ 422	52.815/ 63.749	0.0033001/ 0.0039833
34	Ashwin Synthetics P Ltd, C-8/2	Yarn Dying and textile (Chemicals)Re d, SSI	30	547/ 424	41.163/ 42.526	0.0025720/ 0.0026572
35	Accusynth Speciality Chemical, E-29/1-2	Chemical, Red, SSI	2.5	522/ 290	33.057/ 23.313	0.0020655/ 0.0014567
36	Ajmera Organics, N-211/2/1	Chemical, Red, SSI	6	24/ 24	1.520/ 1.929	0.0000950/ 0.0001206
37	Aarey Drugs & Pharmaceuticals Ltd, E-34	Drug intermediate, Red, SSI	40	25	1.583/ 2.010	0.0000989/ 0.0001256
38	Aradhana Energy Pvt Ltd, K-34	Chemicals, Red, SSI	00	329/ 32	20.835/ 2.572	0.0013018/ 0.0001607
39	Bajaj Health Care Ltd, N-216, N-217	Drug Intermediate, Red, SSI	1.3	658/ 662	52.878/ 67.769	0.0033040/ 0.0042344
40	Bostan Pharma, E-84	Chemical, Red, SSI	0.2	580/ 844	36.730/ 67.849	0.0022950/ 0.0042395
41	Panchamrut Chemical Pvt. Ltd (Dragon Drugs Pvt. Ltd), N-76	Chemical, Red, SSI	20	676/ 443	42.809/ 68.814	0.0026749/ 0.0042997
42	Diakaffil Chemicals, E-4	Chemicals, Red, MSI (SSI earlier)	1	300/ 300	18.998/ 48.234	0.0011871/ 0.0030138
43	DRV Organics, N-184, N-185	Drug Intermediate, Red, SSI	1.3	933/ 685	85.239/ 68.653	0.0053260/ 0.0042897
44	Dufon Laboratories P Ltd,	Drug Intermediate Red, SSI	15	1982/ 421	177.253/ 39.391	0.0110754/ 0.0024613

	E-61/3					
45	D.H. Organic, N-89	Bulk drug, Red, SSI	1.8	670/ 29	42.429/ 2.331	0.0026511/ 0.0001457
46	Gangwal Chemical, N-5	Chemical, Red, SSI	0.5	112/ 113	7.093/ 9.084	0.0004432/ 0.0005676
47	Haren Textile Pvt Ltd, J-194	Textile processing, Red, SSI	80	796/ 193	50.409/ 15.515	0.0031497/ 0.0009694
48	Indo Amines Ltd (Previously known as Sri Sai Industries) K-33	Chemical, Red, SSI	5.6	831/ 744	58.198/ 59.810	0.0036364/ 0.0037372
49	Indaco Jeans Pvt. Ltd, G-21	Textile processing, Red, SSI	100	227/ 227	19.631/ 24.921	0.0012266/ 0.0015571
50	Mehta API Pvt. Ltd, Gut No- 546, 571, 519, 520, Vill- Lumbhawali, Tal & Dsit- Palghar	Bulk drug, Red, MSI	7	89/ 89	11.272/ 14.309	0.0007043/ 0.0008941
51	Moltus Research Laboratories, N-59	Chemical, Red, SSI	0.1	14/ 14	0.887/ 1.125	0.0000554/ 0.0000703
52	K P Chemicals, L-63	Chemical, Red, SSI	11	937/ 19	59.338/ 1.527	0.0037076/ 0.0000954
53	JPN Pharma, T-108-109	Bulk drug, Red, SSI	3	509/ 12	32.234/ 0.965	0.0020141/ 0.0000603
54	Khanna & Khanna K-10	Chemical, Red, SSI	1.1	108/108	6.839/ 8.682	0.0004273/ 0.0005425
55	Keshav Organics P Ltd, T-97,98, 100	Chemical, Red, SSI	4.5	82/ 29	5.193/ 2.331	0.0003245/ 0.0001457
56	Nayakem Organics Pvt. Ltd, T-128	Chemical, Red, SSI	1.0	84/ 87	9.689/ 12.541	0.0006054/ 0.0007836
57	Nirbhay Rasayan Pvt. Ltd, N-95,96, 96/1	Pigment (Dyes), Red, MSI (earlier SSI)	93	1201/ 315	78.019/ 53.861	0.0048749/ 0.0033654
58	Nutraplus India Ltd, N-92	Chemical, Red, LSI (SSI earlier)	5.0	742/ 404	103.603/ 313.039	0.0064735/ 0.0195598
59	Sequent Scientific Ltd (PI Drugs Pharmaceuticals) W-136,137, 138,151	Bulk drug, Red, SSI	37.8	683/ 337	43.253/ 27.091	0.0027026/ 0.0016928
60	Pulcra Chemicals India Ltd D-7/1/1	Chemical, Red, MSI (SSI earlier)	15 ZLD	929/ 98	58.831/ 15.756	0.0036760/ 0.0009845
61	M/s.	Bulk drug,	5.5	404/	25.584/	0.0015986/

	Pentagon Drugs Ltd Plot No. N-224, 225,	Red, SSI		404	32.478	0.0020293
62	M/s. Paramount Syncot Textile, Plot No. N-13/2	Textile, Red, SSI	40.0	414/ 414	26.217/ 33.281	0.0016382/ 0.0020795
63	M/s. IPCA Laboratories (Ramdev Chemicals) Plot No. E-41	Bulk drug, Red, LSI (MSI earlier)	65.64	1374/ 110	285.226/ 26.529	0.0178220/ 0.0016576
64	M/s. Tryst Chemicals, Plot No. L-47	Bulk drug, Red, SSI	2.8	431/ 185	27.294/ 14.872	0.0017054/ 0.0009293
65	M/s. Omtech Chemicals Plot No. T-12	Chemical, Red, SSI	30.0	265/ 82	16.782/ 6.592	0.0010486/ 0.0004119
66	M/s. Shreenath Chemicals, Plot No. T-54, T-80	Chemical, Red, SSI	1.5	80/ 14	5.066/ 1.125	0.0003166/ 0.0000703
67	M/s. Salvi Chemicals Industries, Plot No. E-90, E-91, E-92, E-93, E-94, E-95	Chemical, Red, LSI (SSI earlier)	55.5	997/ 397	156.418/ 311.350	0.0097736/ 0.0194543
68	M/s. Sapna Detergent, Plot No. N-152/N-153	Chemical, Red, SSI	1.5	937/ 545	59.338/ 43.813	0.0037076/ 0.0027376
69	M/s. Sagitta P Ltd, Plot No. N-4	Chemical, Red, SSI	3.5	934/ 18	59.148/ 1.447	0.0036958/ 0.0000904
70	M/s. Surmount Chemicals (I) P Ltd, Plot No. N- 41,	Chemical, Red, SSI	0.8	102/ 102	6.459/ 8.200	0.0004036/ 0.0005124
71	M/s. Shri Vinayak Chemex India Pvt. Ltd. Plot No. T-11	Chemical, Red, SSI	1.5	938/ 245	59.401/ 19.696	0.0037116/ 0.0012306
72	M/s. Sunil Great Processers, Plot No. N-47/3	Chemical, Red, SSI	6.0	868/ 868	77.513/ 98.397	0.0048433/ 0.0061482
73	M/s. Vardhman Dyestuff Pvt. Ltd, Plot No. N- 33, T-34	Dyes, Red, SSI	52.0	101/ 101	6.396/ 8.441	0.0003996/ 0.0005274
74	M/s. Usha Fashion, Plot No. E-42	Textile, Red, SSI	305.0	1079/ 233	125.895/ 23.635	0.0078664/ 0.0014768
75	M/s. Visen	Chemical,	7.0	210/	13.299/	0.0008310/

	Industries Ltd Plot No. K-30, T-31, T-32	Red, SSI		212	17.043	0.0010649
76	M/s. U. K. Aromatics & Chemicals Plot No. K-6/3	Chemical, Red, SSI	6	156/149	13.552/16.802	0.0008468/0.0010498
77	M/s. Ujwal Pharma P Ltd., Plot No. N-52	Chemical, Red, SSI	4.0	918/921	83.275/106.115	0.0052033/0.0066304
78	M/s. Vividh Global Inds Ltd Plot No. D-21/1	Chemical, Red, SSI	40.0	963/965	60.984/77.576	0.0038105/0.0048472
79	M/s. Square Chemical Plot No. N-60	Chemical, Red, SSI	4.0	400/402	25.331/32.317	0.0015828/0.0020193
80	M/s. Shree Chakra Organics Pvt. Ltd Plot No. K-62	Chemical, Red, SSI	25.0	168/170	10.639/13.666	0.0006648/0.0008539
81	M/s. Arti Drugs, Plot No. E-105, 106, 119, 120	Bulk Drugs, Red, SSI (LSI earlier)	23 CMD	37/37	7.029/2.974	0.0004392/0.0001859
82	Omega Colurs Pvt. Ltd., Plot No. D-21/2/3	Crude pigment green. (Earlier mentioned as Dyes), Red, SSI	82	106/435	11.209/78.380	0.0007004/0.0048975
83	REMI Edelstahi Tubulars Ltd., (Old Name- RAJENDRA MECHANICAL INDL LTD.) Plot No.- N-2011 /1	Engineering, Red, LSI	20	22/22	4.180/5.306	0.0002612/0.0003315
84	Gini Silk Mills Ltd., Plot No.E-15	Textile, Red, LSI	510	628/321	119.309/77.416	0.0074548/0.0048372
85	Mayfair Bio tech (Ankit Petro) Plot No. L-12	Chemical, Red, SSI (earlier LSI)	Nil	716/716	136.027/57.559	0.0084995/0.0035965
86	Rediant Intermediate s Plot No. N-224	Chemical, Red, SSI	1.4	926/418	84.225/66.081	0.0052627/0.0041290
87	Premier Intermediate Plot No. T-55, T-56	Bulk Drugs, Red, SSI (earlier LSI)	5	50/50	9.499/4.019	0.0005935/0.0002512
88	Maharashtra Organo Metalics Pvt.	Chemical, Red, SSI (earlier LSI)	6	49/18	9.309/1.447	0.0005817/0.0000904

	Ltd., Plot No. N-220 & 221					
89	(Anuh Pharma Chem Plot No. E-17/3 & 4, Anu Pharma Chem, N-183	Bulk drug, Red, LSI	10	266/ 267	50.535/ 64.392	0.0031576/ 0.0040235
90	Ganesh Benzoplast Plot No.- D-21/2/2	Bulk Drug, Red, LSI	5	988/ 988	187.702/ 238.276	0.0117283/ 0.0148883
91	Zorba Dyechem Plot No. W-14	Dyes, Red, SSI	0.3	51/ 51	3.230/ 4.100	0.0002018/ 0.0002562
92	Prabhat Engineering Plot No. L-50	Engineering (Earlier it was mentioned as pickling), Red, LSI	0.75	42/ 42	7.979/ 10.129	0.0004986/ 0.0006329
93	Aarviam Dye Chem Plot No. L- 9/2	Dyes, Red, SSI	20	70/ 71	4.433/ 5.708	0.0002770/ 0.0003566
94	Dhanlaxmi Steel Plot No.J-56	Engg., Red, SSI	0.8	47/ 876	55.475/ 3.778	0.0034663/ 0.0002361
95	Sarswati Steel (Shiv steel) Plot No. W-88/A	Engg., Red, SSI	0.5	92/ 92	5.826/ 7.396	0.0003640/ 0.0004621
96	Deep Industries Plot No. W-146	Engg., Red, SSI	0.2	24/ 24	1.520/ 1.929/	0.0000950/ 0.0001206
97	SR Steel, Plot No. W-80/A	Engg., Red, SSI	0.2	209/ 83	13.235/ 6.672/	0.0008270/ 0.0004169
98	J V Chem Industries, Plot No. N-111,112	Chemical, Red, SSI	4 ZLD	255/ 255	16.148/ 20.499/	0.0010090/ 0.0012809
99	Shriyans Chemical, Plot No.W-43	Chemical, Red, SSI	1	853/ 42	54.018/ 3.376	0.0033753/ 0.0002110
100	The Pharmaceutica l Product of India Ltd., Plot No. N-24, N-25	Bulk Drug, Red, LSI	63	131	24.888/ 31.593	0.0015551/ 0.0019741
101	Union Park Chemicals Pvt. Ltd., Plot No.E-11	Dyes, Red, SSI	6	23/ 23	1.457/ 1.849	0.0000910/ 0.0001155
102	Lavino Kapoor Cottons Pvt. Ltd., Plot No.H-1	Cotton, Red, LSI	1380	408/ 408	77.513/ 98.397	0.0048433/ 0.0061482
103	M/s. Tarapur Environment	Collection, storage and	25 MLD	First non- compliance=	7231.470/ 9179.894	0.4518483/ 0.5735928

	Protection Society CETP (25 MLD), Plot No. AM-29	treatment of effluent from member industries, Red, LSI		342 First repeated non- compliance= 255 Second repeated non- compliance= 35 Third repeated non- compliance= 250 Fourth repeated non- compliance= 2192		

iv. Additional Affidavit dated 01.09.2021 by R-9, TIMA P/2268

183. The above affidavit has been filed in reply to Expert Committee’s comments/response dated 12.08.2021 incorporating revised environmental damages and recovery cost distributed on identified units. It is said that Expert Monitoring Committee while responding to errors in date of inspection, date of compliance, names/identification of units, closures was expected to give opportunity of hearing to all individual units identified but no such opportunity was given. Majority of units were distributed calculation made by MPCB with regard to number of days of violation and there were lapses on the part of MPCB on issue of closure notices and verification of the compliance by the units and suggestion with regard to formula given by respondent 9 but the same has not been paid any attention/consideration by the Committee. In some units, the compensation has increased exponentially without rendering any opportunity of hearing. Several discrepancies were found in MPCB report justifying revised days of working to be examined but instead of undertaking examination of the same by committee it has relied on the information supplied by MPCB whose information itself was disputed by concerned industrial units. The Committee’s observations made in para 8

of the response is wholly erroneous. In some units, there were glaring errors for which respondent 9 intended to file additional documents (placed on record as annexure to this affidavit) and request is made to provide opportunity of hearing to all 103 units. The response contained in para 8 to 10 of Committee's documents was denied and it is said that the entire report is based on the inputs and recommendations submitted by MPCB which itself was not legal or tenable.

v. Additional affidavit dated 01.09.2021 by respondent 3, TEPS (P/2308)

184. This affidavit is also to dispute the response dated 12.08.2021 submitted by Committee and contains similar allegations as are raised by respondent 9 in its affidavit dated 01.09.2021. It is stated that earlier Committee had recommended imposition of compensation of Rs. 72,31,47,000/- which has now been enhanced to 91,79,89,400/- (an increase of Rs. 19,48,42,400/-) which has no basis. We are not repeating the assertions made in this affidavit but whenever required may refer during the discussion.

ISSUES

185. The issues involved in the present OA are “(i) **Whether respondents TEPS, TIMA and member industries have committed violations, discharged polluted effluents and caused pollution of water and water bodies and if so, (ii) What liability is to be imposed upon them and other remedial action to be taken**”.

186. **ARGUMENTS:** Learned Counsel appearing for applicants has reiterated her submissions as raised in O.A. and written submissions. She urged that reports of Committees appointed by Tribunal have demonstrated beyond doubt that respondents industries have

continuously polluted water bodies by discharging polluted affluent hence stringent measures must be taken. It is argued that besides compensation, polluting industries be directed to be closed. Further, quantum of compensation computed and recommended by Committee is not adequate and do not follow norms laid down by Supreme Court. In fact, environmental compensation be determined on annual turnover of industries and for every year of violation, compensation be determined on the basis of turnover of concerned industries of that year. Statutory Regulators must also initiate criminal action against violators. She also said that there is consistent failure on the part of statutory authorities in managing, monitoring and treatment of industrial effluent which has caused damage to water bodies and environment, hence they are also pollutors and must be held accountable by directing to pay environmental compensation besides criminal action.

187. Per contra, learned Senior Counsels Shri Nadkarni and Poovaya argued on behalf of TIMA and TEPS and individual industries, that Committee's reports should be rejected as it has wrongly held these bodies responsible for alleged pollution and illegally imposed compensation. On behalf of individual industries, learned Senior Counsel Shri N.S. Nadkarni, adopting the arguments advanced for TIMA and TEPS, said that compensation determined is not founded on any valid criteria or formula, highly exorbitant and based on incorrect facts, hence should be rejected. In fact, detailed objections have been filed by above respondents i.e., TIMA, TEPS and about 90 industries (some through TIMA and some separately) against reports of Committee. Learned Senior Counsels have reiterated those objections during arguments and placed before us part of reports which are also referred in

written objections, hence we propose not to repeat same but would consider every objection threadbare hereinafter.

DISCUSSION ON MERITS:

188. The first issue formulated above involves two aspects, one, whether pollution is being caused in the area in question and second, who is causing pollution, if first aspect is returned in affirmance.

189. So far as first aspect is concerned, we are satisfied that polluted industrial effluent is being discharged in arabian sea and other water bodies as well as man groves in the area for the last several years, continuously, through drains receiving discharge from CEPT and also directly from industries working in TIA MIDC. This is evident from record. As long back as in 1996, CPCB identified TIA MIDC as critically polluted area. In the report published in May 2005, by MPCB, titled as 'Report on Environmental Status in Thane Region' (Ann. A-3 to O.A.), number of industries in TIA MIDC as also pollution level has been given. There were 2034 industries (15 large, 63 medium, 1956 small). All 15 in large scale, 56 medium and 375 small were in RED category. Para 4.2 of report says, there is deterioration of water quality in the vicinity of TIA MIDC. Para 4.3 of report says that present effluent collection and disposal systems are not adequate to cater the effluent load. The report published in October 2005 by CPCB (Ann.2 to O.A.) says that in TIA MIDC, treatment plants are not meeting standards and it reflects gross neglect in operation. In 2010, CPCB and IIT Delhi assessed CEPI score of TIA MIDC as 72.01 i.e., Critically Polluted Area. This situation led to issue of O.M. dated 13.01.2010 by MoEF&CC imposing restriction on registration of development projects in TIA MIDC and similar other industrial estates. Pollution level in TIA MIDC worsened as is evident from annual report

2011-12 published by CPCB finding CEPI score 85.24 (Ann.A-8 to O.A.). The problem of pollution came before Bombay High Court in PIL 17/2011. There, MPCB filed affidavit (Ann. A-12 to O.A.) in January 2013 stating/admitting that capacity of CETP in TIA MIDC was only 25 MLD while industrial effluent discharge was more than 33 MLD. All these facts are self evident to show that industries were discharging polluted effluent exceeding prescribed standards. In fact, respondents' proponents have not controverted these facts by placing any otherwise material before us. It is also not disputed that effluent ultimately reach Arabian sea at Navapur. MPCB' letter dated 09.03.2016 shows that CPCB survey found level of COD, BOD, and SS extremely high in 2013-14; 2014-15; and 2015-16.

190. We have referred to these details to show that industries in TIA MIDC were polluting water bodies including creeks and sea for the last more than two and half decades. For their own commercial interest, they completely ignored their legal, social and moral obligations in regard of environment and persistently damaged it. They have shamelessly compromised with the health and ecology of flora and fauna in the vicinity including aquatic life. Applicants have shown serious consequences like loss of aquatic life and ecology, adverse effect on local residents' life due to consistent reduction in fishing activities, contamination of ground water etc. Here also no material has been placed to show any discrepancy, by respondents' proponents. When Tribunal took cognizance of the matter, learned counsel appearing on behalf of TEPS admitted before us on 09.09.2016 that CETP at TIA MIDC has limited capacity of only 25 MLD while discharge of industrial effluent is much higher, hence large quantity of untreated or partially treated effluent is reaching Arabian sea. The defence was lack of control over new

establishment of industries adding burden by increasing volume of effluent, delay on the part of statutory authorities in permitting setting of new CETP, non control on member industries on release of volume of effluent etc. All these facts as also fact-finding reports of Committees appointed by us, which we have referred in detail above, leave no manner of doubt that respondents proponents have been causing huge pollution by discharging polluted effluent in water bodies in vicinity, causing sever damage to environment and are liable for all legal consequences, jointly and individually. **We answer issue 1 accordingly.**

191. Before answering **issue 2** we find it appropriate to consider **objections raised by TEPS vide I.A. 93/2020, dated 14.09.2020;** and **M.A.01/2021 dated 29.12.2020;** by **TIMA vide objections dated 29.12.2020 (M.A.2/2021)** filed vide e-mail dated 07.01.2021 alongwith **individual objections raised by several industries.**

192. **ACTUAL QUANTUM OF DAMAGE TO ENVIRONMENT:** The foremost objection taken commonly by above Proponents is that before computing compensation, it was incumbent upon Committee to find out actual quantum of damage to environment, cost of its remediation and only then the Proponents could have been asked to pay compensation. Quantification of compensation can neither be presumptive nor assumptive. It must be based on actual facts and figures.

193. The argument is attractive but shows lack of understating of fundamentals of environmental laws and principles. Here discharge of polluted effluent in water bodies in violations of section 25 of Water Act 1974 and conditions of consent granted by MPCB is not disputed. Individually some proponents have taken defence that they did not discharge polluted effluent and some others are responsible but as a

whole it has not been controverted that through CETP, untreated or partially treated effluent was discharged in creeks and sea and Member Industries are contributing by releasing their industrial effluent in CETP. Further, effluent was highly polluted. Whenever polluted air is released in air or polluted water is discharged in water or land, it is bound to cause damage to ecological balance of respective air, water or land. When a drop of ink is mixed in a bucketful of water or a drum, the entire water gets contaminated, degree may differ. Similarly, a small amount of poison, if enters in a bucketful of water or bigger drum, the entire water would get infected. Release of pollutant in environment would cause damage to environment in all cases, though degree of impact may differ. We can have illustration of air pollution in Delhi and NCR area. Pollutants affects air quality and whosoever inhales such air gets affected adversely, though apparent impact on individual's body would depend upon his level of immunity and other physical conditions. In some cases, reaction may be immediate but in others it may take longer time. Thus, when we talk of assessment of damage to environment, it does not mean a sheer mathematical computation of such damage. Here assessment includes several aspects as also various principles recognized as part of environmental laws. This aspect can more suitably be demonstrated by referring to law laid by Apex Court in a catena of authorities.

194. The issue relating to damages/compensation and further remedial or restorative action for the degradation/loss/damage caused to environment is largely governed by judicial precedents of Apex Court which has acted as a champion for protection of environment in the last almost four decades having considered various activities causing degradation/damage to environment in multi-various manner. It would

be appropriate to have a quick retrospect of such authorities which will be relevant and prove to be a useful guide as also binding precedent for answering questions relating to protection of environment, determination of environmental compensation, further direction necessary for remediation/restoration of environment and also to ensure that no further violation of environmental laws takes place.

195. In ***Municipal Council, Ratlam vs. Shri Vardhichand & Others***, **AIR1980SC1622**, non-disposal of waste, stinking open drains and pollution created due to public excretion by nearby slum dwellers was brought to the notice of the court by the residents, by way of filing an application under Section 133 Cr.P.C. Magistrate held that local municipal body was responsible for cleaning and removal of waste. The matter came to Supreme Court. Upholding order of Magistrate, Court said that maintenance of public health is the statutory responsibility of Ratlam Municipality and its defence of lack of funds is of no consequence. Court issued various directions to Ratlam Municipality so as to maintain public health.

196. In ***Rural Litigation and Entitlement Kendra & Others vs. State of U.P. & Others***, **AIR1985SC652**, issue of indiscriminate limestone quarrying causing ecological disturbance was brought to the notice of Supreme Court. Issues involving environment and development opposing each other were sought to be canvassed. Court preferred primacy to environment through the concept of 'sustainable development' and further said that **whosoever has caused harm to environment, has absolute liability, not only to compensate the victim of pollution, but also to bear cost for restoration of environmental degradation.**

197. In ***Rural Litigation and Entitlement (supra)***, Court said that over thousands of years, man had been successful in exploiting ecological system for his sustenance but with the growth of population, demand for land has increased and forest growth is being cut down. Man has started encroaching upon nature and its assets. Scientific developments have made it possible and convenient for man to approach the places which were hitherto beyond his ken. Consequences of such interference with ecology and environment had now come to be realised. It is necessary that the Himalayas, and Forest growth on mountain range should be left uninterfered with so that there may be sufficient quantity of rain. With regard to **top soil**, Court said that “***the top soil can be preserved without being eroded*** and the natural setting of the area may remain intact tapping of (natural) resources have to be done with requisite attention and care, so that ecology and environment may not be affected in any serious way, (and) there may not be any depletion of water resources and long term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are ***not intended to be exhausted in one generation***”.

198. Court emphasised that **preservation of environment and keeping ecological balance unaffected is a task which not only governments but also every citizen must undertake**. It is a social obligation and every citizen must remind to himself that it is his fundamental duty as enshrined under Article 51A(g) of the Constitution.

199. In ***Sachidananda Pandey vs. State of West Bengal & Others, AIR1987SC1109***, dealing with the matter pertaining to environment, Court said that whenever a problem of ecology is brought before it, the Court is bound to bear in mind Article 48A and 51A(g) of the

Constitution. When a court is called upon to give effect to the directive principles of fundamental duties, it cannot shirk its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authorities. The least court must give is, to examine whether appropriate considerations are gone in mind and irrelevancies are excluded. In appropriate cases Court could go further but how much further would depend upon the circumstances of the case. Court may always give necessary directions.

200. In ***M.C. Mehta vs. Union of India*, AIR1987SC1086 (Sodium gas leak case)**, issue of gas leak in a chemical factory and its repercussions came to be considered. Court expanded the doctrine of liability by modifying ‘strict liability’ principle enshrined in *Rylands v. Fletcher* to ‘absolute liability; and said, “*enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of persons working in the factory and residing in the surrounding areas, poses an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken-the enterprise must be absolutely liable to compensate for such harm and it should be not answer to the enterprise to say that it has taken all reasonable care....*”.

201. Court also said that **larger and more prosperous enterprise, greater must be the amount of compensation** payable for the harm caused on account of the activity being carried on by the industry.

202. In ***M.C. Mehta vs. Union of India*, AIR1988SC1037 (pollution by tanneries in Ganga River)**, Court said that the State is under an obligation to stop exploitation of natural resources.

203. In **State of Bihar vs. Murad Ali Khan, Farukh Salauddin & Others AIR1989SC1**, dealing with an appeal, concerning protection of wildlife in Kundurugutu Range Forest in Bihar, Court referred to a decree issued by Emperor Ashoka in third century BC, which said “*Twenty six years after my coronation, I declared that following animals were not to be killed; parrots, mynas, the arunas, ruddy- geese, wild geese, the nandimukha, cranes, bats, queen ants, terrapins, boneless fish, rhinoceroses... and all quadrupeds which are not useful or edible....forests must not be burned.*”

204. Having referred to the abovesaid, Court further observed that environmentalist conception of the ecological balance in nature is based on fundamental concept of nature as a series of complex biotic communities of which a man is an interdependent part. It should not be given to a part to trespass and diminish the whole. Larger single factor in depletion of wealth of animal life in nature has been civilized man operating directly through excessive commercial hunting or, more disastrously, or indirectly through invading or destroying natural habitats.

205. In **Vellore Citizens Welfare Forum vs Union Of India & Others (1996)5SCC647**, Court held “*In view of the Constitutional and Statutory Provisions---*, “*Precautionary*” Principle and “*Polluter Pays*” Principle are part of the Environmental Laws of our country”.

206. Explaining “Precautionary” principle, Court said that it includes (i) environmental issues - by the State Government and statutory bodies – must anticipate, prevent and attempt causes of environmental degradation (ii) where there are threats of serious and irreversible

damage, lack of full scientific certainty should not be used as a reason for proposing cost effective measures to prevent environmental degradation (iii) the 'onus of proofs' is on the actor or the developer/industrialist to show that the action is environmentally benign.

207. "Polluter Pays" principle was interpreted stating that **absolute liability for harm to environment extends not only to compensate victim of pollution but also the cost of restoring environmental degradation**. Environmental protection and prevention of pollution is primarily function of executive but unfortunately, they have failed.

208. In ***Tarun Bharat Sangh, Alwar vs. Union of India, AIR1992SC514***, issue of mines licenses granted in Rajasthan for mining limestone or dolomite stone in Sariska Tiger Park was considered. Court issued various directions for protection of the area. It also observed that a litigation relating to environment initiated by a common person, individually or collectively, should not be treated as usual adversarial litigation. The person(s) is concerned for environment, ecology and wildlife and it should be shared by government also.

209. In ***Virendra Gaur vs. State of Haryana, (1995)2SCC577***, Court said that Government had no power to sanction lease of land vested in municipality for being used as open space for public use. The word 'environment' is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance". It is duty of State and every individual to maintain hygienic environment. State in particular has duty to shed its extravagant unguided sovereign power and to forge in its policy to maintain ecological balance in hygienic environment. Court further said:

*“Enjoyment of life and its attainment including their **right to life** with human dignity encompasses within its ambit, **the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed**, any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water pollution etc. should be regarded as amounting to violation of Article 21.”*

210. Court also held that hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a human and healthy environment. Court further said

“Therefore, there is a constitutional imperative on the State Government and the Municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the manmade and the natural environment.”

211. In **Indian Council for Enviro-Legal Action vs. Union of India, (1996)3SCC212**, Court said that once activity carried on is hazardous or inherently dangerous, a person carrying on such activity is liable to make good, the loss, caused to any other person, by his activity, irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on. It was held that **polluting industries are absolutely liable to compensate for the harm caused by them to the people in the affected area, to the soil and to the underground water.**

212. **Polluter Pays Principles** means absolute liability for harm to the environment, not only to compensate victims of pollution but also cost of restoring environmental degradation. Remediation of damaged environment is part of the process of ‘sustainable development’. As such, **polluter is liable to pay cost to the individual sufferers as well as cost of reversing the damaged ecology.**

213. With respect to polluter pays principle, Court in ***Indian Council for Enviro-Legal Action vs. Union of India (supra)***, in para 65, said that **any principle evolved in this behalf should be simple, practical and suit to the conditions obtaining in the country.**

214. In ***Indian Council for Enviro-Legal Action (supra)***, issue of damage to mother earth by industries producing toxic chemicals was brought to the notice of the Court. It was found that water in wells and streams turned dark and dirty rendering it unfit for human consumption or even for cattle and for irrigation. Court issued various directions which included closure of industries.

215. Again issue of pollution from tanneries in rivers including river Ganga was considered by Supreme Court in ***Vellore Citizens' Welfare Forum (supra)***. Recognizing principle of 'sustainable development', Court held that it is a balancing concept between ecology and development and remediation of damage to the environment is part of the process of sustainable development; precautionary principle, polluter pays principle and new burden of proof have become part of environmental law of the country.

216. In ***M.C. Mehta vs. Kamal Nath & Others, (1998)1SCC388*** a two Judges Bench had an occasion to examine, "whether natural resources can be allowed to be used or processed by private ownership for commercial purpose". The background facts giving rise to above issue are, that a news item was published in daily newspaper 'Indian Express', dated 25.02.1996, under the caption "Kamal Nath dares the mighty Beas to keep his dreams afloat". The news item reveals that after encroachment of 27.12 bighas of land which included substantial forest land, in 1990, a Club was built in Kullu-Manali valley by a private

company 'Span Motels Private Limited', which owns a resort- Span Resorts. The land was later regularised and leased out to the company on 11.04.1994. At the time of regularisation, Mr. Kamal Nath was Minister of Environment and Forests. The swollen Beas changed its course, engulfed Span club and adjoining lawns, washing it away. Thereafter, management took steps and by using bulldozers and earth-movers, turned course of Beas by blocking flow of river just 500 meters and creating a new channel to divert River to atleast 1 km downstream. Supreme Court took *suo-moto* cognizance of the matter, and case was registered as W.P. No. 182/1996 under Article 32 of the Constitution. Notices were issued to the company as well as Mr. Kamal Nath. After considering the pleadings and other material, Supreme Court decided vide Judgment dated 13.12.1996 recording a finding that Motel had encroached upon an area of 22.2 bighas adjoining to the lease-hold area. Earlier, 40 bighas 3 biswas land, alongside Kullu- Manali Road on the bank of river Beas, was granted on lease to the above Motel for a period of 99 years with effect from 1.10.1972 to 1.10.2071. Besides above, the motel encroached upon 22.2 bighas of land further. It also built extensive stone, cemented and wire-mesh embankments all along the river bank. Various activities undertaken by motel show a serious act of environmental degradation on its part. Motel tried to defend construction raised by it on the ground that it was to protect lease land from floods. Court held that **motel interfered with natural flow of river by trying to block natural relief/spill channel of the river**. With regard to river, it was observed that Beas is a young and dynamic river, runs through Kullu valley, between mountain ranges of Dhaulandhar in the right bank, and Chandrakheni, in the left. The river is fast flowing, carry large boulders, at the time of flood. When water velocity is not sufficient to carry boulders, those are deposited in

the channel often blocking flow of water. Under such circumstances, the river stream changes its course by remaining within the valley but swinging from one bank to the other. The right bank of river Beas where motel is located, mostly comes under forest; the left bank consists of plateaus, having steep bank facing the river, where fruit orchards and cereal cultivation are predominant. The area is ecologically fragile and full of scenic beauty, should not have been permitted to be converted into private ownership, and for commercial gains. Having said so, Court refers to the right of public to nature and natural resources and said that public has a right to expect certain lands and natural areas to retain their natural characteristic. Court refers to the work of David B. Hunter (University of Michigan) and Professor Barbara Ward where it was stressed upon that major ecological tenet is that the world is finite. Earth can support only so many people and only so much human activity before limits are reached. Absolute finiteness of the environment when coupled with human dependency on the environment, leads to the unquestionable result that human activities will, at some point, be constrained. There is a commonly recognised link between laws and social value but to ecologists, a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened. Historically, we have changed environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important resources-for example, wetlands and riparian forests - can no longer be

destroyed without enormous long-term effects on environmental and therefore social stability. Need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature. Court refers to the legal theory said to be developed in ancient Roman empire, i.e., 'Doctrine of Public Trust' founded on the idea that certain common properties such as rivers, sea-shore, forests and the air were held by Government in trusteeship for the free and unimpeded use of general public. English law as well as American Law on the subject was also referred to and then it is said in para 34 of the Judgment that our legal system includes Public Trust Doctrine as part of the Jurisprudence. State is the trustee of all natural resources which, by nature, are meant for public use and enjoyment. Public at large is beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. State as a trustee, is under a legal duty to protect natural resources. These resources meant for public use cannot be converted into private ownership. Executive, acting under **Doctrine of Public Trust**, cannot abdicate natural resources and convert them into private ownership or for commercial use.

217. Supreme Court while disposing of Writ Petition issued certain directions contained in para 39 of the judgment which included that the motel shall pay compensation by way of cost for restitution of environment and ecology of the area. Pollution caused by various constructions made by motel in river bed and banks of river Beas has to be removed and reversed. NEERI was directed to inspect the area and make an assessment of the cost, likely to be incurred for reversing damage caused to environment and ecology. Further, motel is also required to show cause as to why it be not imposed pollution fine in addition to cost for restoration of ecology which it had to pay.

218. In **S. Jagannath vs. Union of India & Others, AIR1997SC811**, adverse effect of shrimp culture in coastal zones notified under Coastal Zone Regulation Notification dated 19.02.1991 came up for consideration and Court issued directions for closure of shrimp culture industries in view of ecologically fragile coastal areas and adverse effect on environment.

219. In **M.C. Mehta vs. Union of India, (1997)11SCC312 (groundwater matter)**, Court issued various directions including constitution of regulatory authorities for management of groundwater i.e., Central Government Ground Water Body as an authority under Section 3(3) of EP Act, 1986.

220. In **Dr. Ashok vs. Union of India & Others, (1997)5SCC10**, issue of use of pesticides and chemicals causing damage to the health was considered and directions were issued for constitution of a committee of experts and senior officers to collect information and take suitable measures in respect of insecticides and chemicals found to be hazardous for health.

221. The activity of fishing and reservoir within areas of national park in Madhya Pradesh was considered in **Animal and Environment Legal Defence Fund vs. Union of India, (1997)3SCC549**. Court observed that livelihood of tribals should be considered in the context of maintaining ecology in the forest area and if there is shrinkage of forest area, State must take steps to prevent any destruction or damage to the environment, *flora-fauna* and wildlife keeping in mind Articles 48A and 51A(g) of the Constitution.

222. In ***M.C. Mehta vs. Union of India, (1997)2SCC411 (Calcutta tanneries matter)***, Court considered issue of discharge of untreated noxious and poisonous effluents into river Ganga by tanneries at Calcutta, and ultimately issued directions for closure of tanneries, relocation and payment of compensation to the employees.

223. In ***M.C. Mehta vs. Union of India, (1997)11SCC327 (hazardous industries in Delhi matter)***, Court considered issue of pollution caused in Delhi by various industries engaged in hazardous, noxious products etc. and issued directions for shifting, relocation, closure and utilization of land for protection of environment and payment of compensation.

224. The issue of preservation of forest was considered at length in ***T.N. Godavarman Thirumulpad vs. Union of India & Others, (1997)2SCC267*** and series of orders were passed from time to time for protection of forest and prevention of unlawful felling of trees in forest, encroachment, etc. Court expanded the term 'forest' to include certain areas as deemed forest beyond what was defined in the Statutory Act.

225. In ***M.C. Mehta vs. Union of India, (1997)3SCC715 (Badkal and Surajkund lakes matter)***, Court considered the issue of preservation of tourist spots near Delhi at Badkal and Surajkund lakes. Applying principle of 'sustainable development' and 'precautionary principle', Court banned construction activities within the radius of 1 km from the lakes. Court relied on the reports of experts from National Environmental Engineering Research Institute (NEERI) and Central Pollution Control Board (CPCB) stating that it is not advisable to permit large scale construction activities in close vicinity of lakes which would have an adverse impact on local ecology. It could affect water level under the ground and also disturb hydrology of the area.

226. In ***M.C. Mehta vs. Union of India, (1997)2SCC353 (Taj Trapezium matter)***, issue of preservation of Taj was considered and Court issued directions for changeover of coal in coal-based industries within Taj Trapezium zone, to the use of natural gas or otherwise industries should stop functioning or shift.

227. In ***M.C. Mehta vs. Union of India, (1998)6SCC60***, issue of vehicular pollution in Delhi City was considered and several orders were issued. Court said that it is the duty of Government to see that air is not contaminated by vehicular pollution since right to clean air also stemmed from Article 21.

228. For protection of environment by making available lead-free petrol supply, directions were issued in ***M.C. Mehta vs. Union of India, (1998)8SCC648 (lead free petrol matter), phasing out*** old commercial vehicles of more than 15 years old was considered and directions were issued in ***M.C. Mehta vs. Union of India, (1998)8SCC206 (matter of clean air in Delhi by phasing out old commercial vehicles)***.

229. Issue of poor efficiency of Common Effluent Treatment Plants at Patancheru, Bollaram and Jeedimetla in Andhra Pradesh was considered in ***Indian Council for Enviro-Legal Action vs. Union of India, (1998)9SCC580*** and Court issued directions that **industry should not be allowed to discharge effluent which exceeded permissible limits**. Such industries should install system for release of effluents upto permissible limits. Similar directions in the context of UP industries, discharging effluent beyond permissible limits, were issued in ***World Savior vs. Union of India & Others (1998)9SCC247***.

230. In ***Almitra H. Patel vs. Union of India, (1998)2SCC416***, issue of urban solid waste management was considered and directions were issued.

231. Hazardous waste lying in docks/ports/ICDS and its management was considered in ***Research Foundation for Science vs. Union of India & Others, (1999)1SCC223***. Court directed authorities to personally monitor waste and not release auction of waste unless matter is examined by Statutory Regulators as per law and appropriate directions are issued.

232. Pollution by discharge of effluents by distilleries attached to sugar industries was considered in ***Bhawani River Sakthi Sugar Ltd. Re: (1998)6SCC335*** and directions were issued for control of pollution and monitoring by Statutory Regulators.

233. The casual approach on the part of Statutory Regulators like State PCBs was examined in ***M.C. Mehta vs. Union of India, (1998)2SCC435*** and criticizing the same, Court issued appropriate directions. The issue of pollution by hot mix plants towards supplying hot mix for runways at airports, causing pollution due to smoke emitted by them was considered in ***M.C. Mehta vs. Union of India, (1999)7SCC522 (Hot mix plant matter)*** and appropriate directions were issued.

234. The matter of providing clean drinking water for Agra town was considered in ***D.K. Joshi vs. Chief Secretary, State of UP, (1999)9SCC578***.

235. Applying **doctrine of accountability** to the State and Statutory Regulators and its officers, in ***Pollution Control Board, Assam vs.***

Mahabir Coke Industry & Another, (2000)9SCC344, Court held that they are accountable for wrong advice.

236. Liberal attitude of courts in the matter of quantum of punishment in criminal prosecution for offences relating to environmental pollution was criticised in ***UP Pollution Control Board vs. M/s Mohan Meakins Ltd. & Others, (2000)3SCC745***. It was held that courts cannot afford to deal lightly with cases involving pollution of air and water. Courts must share parliamentary concern on the escalating pollution levels of environment. Those who discharge noxious polluting effluents into streams appeared to be totally unconcerned about the enormity of injury which they are inflicting on the public health at large, the irreparable impairment it causes on the aquatic organisms, to deleterious effect it has on the life and health of animals. **Court should not deal with the prosecution for pollution related offences in a casual or routine manner.**

237. A major irrigation project relating to construction of dam on Narmada River came up for consideration in ***Narmada Bachao Andolan vs. Union of India, (2000)10SCC664***. The project involved construction of a network of over 3000 large and small dams. **Explaining precautionary principle and burden of proof, it was held that the same would apply to polluting project or industry where extent of damage likely to be inflicted is not known.** But where effect on ecology or environment on account of setting up of an industry is known, what has to be seen is whether environment is likely to suffer and if so what mitigative steps have to be taken to efface the same. Merely because there will be a change in the environment is no reason to presume that there will be ecological disaster. Once effect of project is known, then principle

of sustainable development would come into play and that will ensure that mitigative steps are taken to preserve ecological balance. Sustainable development means what type or extent of development can take place which can be sustained by nature/ecology with or without mitigation.

238. Where a project is likely to effect environment, a proper study of impact on environment ought to have been conducted and once such a study is conducted and project is found in public interest, necessary for development, the principle of sustainable development requires that the measures mitigating damage to the environment must be observed.

239. Precautionary principle, in the context of municipal laws means (i). Environmental measures, required to be taken by State Government and Statutory Authorities, and they must anticipate, prevent and attack the causes of environmental degradation; (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental depredation; (iii) The onus of proof is on the actor or the developer/industry, to show that his action is environmentally benign.

240. In ***Essar Oil Ltd. vs. Halar Utkarsh Samiti, (2004)2SCC392***, issue with regard to laying of pipelines passing through a portion of marine national park and marine century came to be decided by a two judges Bench of Supreme Court. M/s Essar Oil Ltd., Bharat Oman Refineries Ltd. and Gujarat Positra Port Company Ltd. intended to lay pipelines to pump crude oil from a single buoy mooring in the gulf across a portion of the marine National Park and Marine Sanctuary to their oil refineries in Jamnagar District. The issue was raised by filing a Public Interest Litigation that it would adversely affect environment in particular destruction or damage to habitate, wildlife etc. Gujarat High Court

restrained State Government from granting any further authorization and permission for laying down any pipeline in any part of Sanctuary or National Park. A number of appeals were filed before Supreme Court not only by oil companies but also by State of Gujarat and Gujarat Positra Port Company Ltd. Supreme Court also transferred Writ Petitions filed by Halar Utkarsh Samiti challenging order passed by State Government granting permission to Bharat Oman Refineries Ltd., pending in Gujarat High Court. Issue for consideration was “can pipelines carrying crude oil be permitted to go through the marine National Park and Sanctuary?”. To answer this question, Court, besides EP Act, 1986, also considered Wildlife (Protection) Act, 1972 (hereinafter referred to as ‘WL Act, 1972’) and Forest (Conservation) Act, 1990 (hereinafter referred to as ‘FC Act 1990’). It was an admitted position that there was declaration of Jamnagar National Park as a ‘National Park’, after following the procedure prescribed under WL Act, 1972. Court also referred to the Notification dated 19.02.1991 issued by Central Government under Section 3 (1), (2) (v) of EP Act, 1986 read with rule 5 of Environment (Protection) Rules, 1996 (hereinafter referred to as ‘**EP Rules, 1996**’) declaring coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action in the landward side, up to 500 metres from the High Tide Lines and land between Low Tide Lines and High Tide Line, as ‘Coastal Regulation Zone’ (hereinafter referred to as ‘CRZ’) with effect from the date of Notification 19.02.1991. Notification imposes certain restrictions in CRZ but the same were modified by permitting some activities vide Notification SO 329 (E) dated 12.04.2001. Court held that all the statutes noted above, needed different clearances/permissions and are independent to each other. **Clearances under each of separate statute is essential** before any activity otherwise

prohibited under those Acts may be proceeded with. Court observed that High Court passed order without giving opportunity to the concerned industries and hence, principles of 'Natural Justice' were violated. But instead of remanding the matter, on this alone, it chose to decide on merits considering nature of the stakes involved, which demanded no further delay. Court held that Stockholm Declaration of 1972 is *Magna-carta* of our environmental laws resulting in amendments in Constitution of India in 1976, inserting Article 48 A and 51A (g). The principles containing the resolution aimed at balancing economic and social needs on one hand with environmental considerations on the other hand. However, it is also true that in one sense, development is an environmental threat. The very existence of humanity and rapid increase in pollution together with consequential demands to sustain pollution has resulted in concerting of open lands, cutting down of forest, filling up of lakes and water resources and the very air which we breathe. Therefore, a balance and harmony has to be maintained in development and environment. Section 29 of WL Act, 1972, Court held, has to be construed keeping in mind the above background. There is no presumption of destruction of wildlife on account of laying of pipelines. It is a question of fact which is to be seen in the light of expert's opinion. State Government before granting approval under Section 29 or 35 of WL Act, 1972 should consider whether damage in respect of proposed activity is irreversible or not. If it is irreversible, it amounts to destruction and no permission may be granted unless there is positive proof of betterment of the lot of wildlife.

241. Court also observed that for preventing possible future damage, Government must publish its proposal for knowledge of the public so that the individuals or organizations, working as watchdogs to preserve

environment, may be aware and put forth their views on the matter. Hence all these preventions and precautions are to be taken by State Government. It should ensure that impact on environment is transient and minimized. Court will not substitute its own assessment in place of opinion of persons who are specialist and decide question with objectivity and ability. Supreme Court set aside judgment of High Court observing that ultimate permission was granted by Government of India under WL Act, 1972 and interpretation of High Court of Section 29 and 35, being erroneous, the judgment cannot be sustained. The appeals were allowed. Court directed State Government to issue authorization under the requisite format under Section 29 and 35 of WL Act, 1972. Court also said that once State Government has exercised its powers by application of mind under Section 29 and 35, it was not open to Chief Wildlife Warden to take otherwise decision. In fact, his decision has to be in accordance with the decision of State Government.

242. In ***Karnataka Rare Earth & Another vs. senior Geologist, Department of Mines and Geology & Another, (2004)2SCC783***, certain mining leases for quarry of granite in Government land were granted under Rule 3 of the Karnataka Minor Mineral Concession Rules, 1969. It was contrary to Rule 3A of the said Rules. The leases were challenged in Karnataka High Court in Public Interest Litigation. Writ petitions were allowed by a Learned Single judge and all grants were quashed. Intra Court Appeals were also dismissed by Division Bench. Lessees came to Supreme Court where an interim order was passed in favour of lessees on 19.11.1993. Ultimately, appeals were dismissed vide Judgment dated 18.01.1996 passed in ***Alankar Granite Industries vs. P.G.R. Scindia, (1996)7SCC416***. Lessees, who had continued with the quarry of granite, were issued notices by the Government requiring them

to pay price of granite blocks quarried by them during pendency of the matter. This demand was challenged in Karnataka High Court alleging that quarry was valid, pursuant to the court's order, therefore demand is penal in nature and illegal. Writ petitions were dismissed by High Court upholding demand of price of granite blocks by State Government, and that is how matter came to Supreme Court in ***Karnataka Rare Earth (supra)***. It was contended that quarrying of granite was accompanied by payment of royalty, issue of transport permits, though under interim order of the Supreme Court but was lawful and *bonafide*. Negating the argument, Court said, demand raised by State of Karnataka can neither be said to be penalty nor penal action. It is in the nature of recovering compensation for minerals taken away without any lawful authority. Court explained underlining principle by holding “***a person acting without any lawful authority must not have himself placed in a position more advantageous, then the person raising minerals with lawful authority***”. Relying on an earlier judgment in ***South Eastern Coal Fields Limited vs. State of M.P., (2003) 8 SCC 648***, Court said that the doctrine of ‘actus curiae neminem gravabit’, would apply not only to such acts of court which are erroneous but to all such acts to which it can be held that court would not have so acted had it been correctly apprised of facts and law. The principle of Restitution is attracted. Court said “*when on account of an act of a party, persuading the court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party, then a successful party finally held entitled to a relief, accessible to terms of relief at the end of litigation, is entitled to be compensated in the same manner in*

which the parties would have been if the interim order of court would not have been passed.” Demand raised therefore, is not penal. Recovery of price of mineral is intended to compensate for loss of mineral, owned by it and caused by a person who has been held to be not entitled in law to raise the same. There is no element of penalty involved and recovery of prices is not a penal action. It is just compensatory.

243. In ***Deepak Nitride Limited vs. State of Gujarat & others, (2004)6SCC402***, question of determination of compensation of degradation of environment or damage caused to any concern by applying principle of ‘Polluter Pays’ was up for consideration before a two Judges Bench. A Public Interest Litigation was taken in Gujarat High Court alleging large scale pollution caused by industries located in Gujarat Industrial Development Corporation, Industrial Estate at Nandesari. On the order of High Court, 252 industrial units relating to chemical were also made party in the litigation besides State of Gujarat, CPCB, Gujarat Industrial Development Corporation and Nandesari Industries Association. A common effluent treatment plant (CETP) was erected in the industrial estate with contribution made by industrial units. The complaint was that CETP was not achieving required parameters laid by State PCB. On 9.05.1997, High Court directed industries to **pay 1 percent of maximum annual turnover of any of the preceding 3 years, towards compensation and betterment of environment**. This order was challenged in appeal before Supreme Court. High Court also directed to keep the said amount separate, by Ministry of Environment, and utilize for the work of socio- economic upliftment of people of the affected area, betterment of education, medical and veterinary facilities, agricultural and livestock etc. The imposition of 1 percent compensation was challenged on the ground that court had no power to impose penalty or

fine or make any general levy unless authorized by general statute. It was also said that in any case, award of damages may be by way of restitution to the victim or restoration or restitution and restoration of ecology but for this purpose a finding has to be given that there had been degradation of environment. It was urged that there is no damage to the people in vicinity in as much as CETP had permitted a separate channel to flow effluent into river which ultimately reached the sea and would not cause any damage to the people or villages in the vicinity. After considering the rival submissions, Supreme Court, in para 6, noted that the fact that standard prescribed by State PCB were not observed by industries discharging effluent from CETP to River Mahi and ultimately the sea is not disputed. However, that by itself would not lead to the consequence that such a lapse has caused damage to the environment. Court said, that **compensation awarded must have broad co-relation not only to the magnitude and capacity of the enterprises but also to the harm caused by it.** In a given case, **percentage of turnover itself may be a proper measure because the method to be adopted for awarding damages and the basis of Polluter Pays principle has got to be practical, simple and easy in application.** There has to be a finding that there has been degradation of environment or any damage caused to any of the victims by the activities of industrial units and then certainly damages have to be paid. Court remanded the matter to High Court to examine the aspect of damage to environment and/the people, as the case may be, and thereafter to decide appropriate compensation to be awarded.

244. In *M.C. Mehta vs. Union of India, (2004)6SCC588 (Industries in residential area in Delhi matter)*, Court considered the question, “whether industrial activities in residential/non- conforming areas is

permissible and what directions should be issued to end such illegal activities”. Various orders were passed in 1995 and onwards resulting in closure, shifting etc., of industries, which, by an estimation were about 1,01,000, operating in Delhi in non-conforming zones but illegally permitted by Municipal Corporation of Delhi to operate in residential areas/ non- conforming areas. An application was filed on behalf of Delhi Government that closure of such a large number of industries functioning in residential/non-conforming areas may render about 7 lakh workers unemployed, causing hardship to 7 lakh families. The question considered by Court was, *“whether a Government can plead such a justification for violation of law and throw to the winds norms of environment, health and safety or is it possible to help the workers even without violating law if there is a genuine will to do so”*. There was an attempt on the part of the concerned authority for regularization of certain areas having concentration of industries. Deprecating it, Court said, **“Regularization cannot be done if it results in violation of the Right to Life enshrined in Article 21 of the Constitution. The question will have to be considered not only from the angle of those who have setup industrial units in violation of the master plan but also others who are residents and are using the premises as allowed by law.”** Court also considered the changes proposed/made in the master plan and said, *“The changes in the master plan or its norms to accommodate illegal activities not only amount to getting reward for illegal activities but also resulted in punishing the law abiding citizen.”* Commenting upon the authorities, Court said, *“lack of action and initiative by the authorities is the main reason for the industry merely continuing illegal activities. **There is total lack of enforcement of law by the authorities concerned.**”* Rejecting an argument that industries were working with the consent of

Government, Court said that **an illegality would not become legality on inaction or connivance of the Government authorities.** It further said *“There cannot be any doubt that non-conforming industrial activities could not have commenced or continued at such a large scale in the capital of the country if the Government and the concerned authorities had performed their functions and obligations under various statutes. But such a situation cannot be permitted to continue forever so as to reach a point of no return, where the chaotic situation in city has already reached. **The law-breakers, namely, the industries cannot be absolved of the illegalities only on the ground of inaction by the authorities.**”* Court also rejected an argument on behalf of the industries that if they are ready to pay penalty, so long as the same is paid, they are entitled to continue with their activities. Court held *“merely by payment of penalty, continued misuse cannot be permitted.”* Court condemned authorities for inaction and said that growth of illegal manufacturing activity in residential areas has been without any check or hindrance from the authorities. The manner in which such large scale violations had commenced, and continued, leaves no manner of doubt that it was not possible without the connivance of those who are required to ensure compliance and reasons are obvious. Such activities result in putting on extra load on the infrastructure. The entire planning has gone totally haywire. The law abiders are sufferers. All this has happened at the cost of health and decent living of the citizens of the city violating their constitutional rights enshrined under Article 21 of the Constitution of India. Further, it is necessary to bear in mind that the law makers repose confidence in the authorities that they will ensure implementation of the laws made by them. If the authorities breach that confidence and act in dereliction of their duties, then the plea that the observance of law will

now have an adverse effect on the industry or the workers cannot be allowed. Court, in the light of the facts and pleadings, issued various directions including closure of all industries, came up in residential/non-conforming areas in Delhi on or after 01.08.1990. It also constituted a monitoring committee comprising of officials of Delhi Government, Delhi Police, local bodies and said that the said committee shall be responsible for stoppage of illegal commercial activities.

245. In ***N.D. Jayal vs. Union of India, (2004)9SCC362***, issue of safety and environmental aspects arising from Tehri Dam was considered by a 3 Judges Bench and the judgment has been rendered by majority. Looking to the retrospect of events, Court found that investigation for construction of dam at Tehri for hydel power generation commenced in 1961; Planning Commission in 1972 envisaged cost of Rs. 197.92 Crores; Government of U.P. granted administrative clearance to the project in 1976; In March 1980 the then Prime Minister directed authorities to undergo an in depth review of the entire project; Ministry of Science and Technology constituted an experts group which submitted an interim report in May 1980 and final report in August 1986; though 206 crores were already spent, expert committee recommended abandonment of project; recommendation was accepted by MoEF in October 1986; in November 1986 erstwhile USSR offered an administrative, technical and financial assistance on a turnover base and it revived Tehri project as recipient of such aid; and in November 1986 a protocol was signed with USSR for providing technical and financial assistance to the tune of 1000 M Rouble. Thereafter, events proceeded with pace. Government announced clearance of project in January 1987 and for execution of the project instead of irrigation department of Government of UP which had initiated, it was taken over by a joint venture company of Government of

India and Government of UP called “Tehri Hydro Development Corporation” (THDC). In February 1990, Environment Appraisal Committee of MoEF recommended that project does not merit environmental clearance. However, on 19.01.1990, conditional clearance was given. At this stage, matter was brought to Court by filing Writ Petition under Article 32 of the Constitution. It was argued that once project was already decided to be abandoned, how clearance could be given subsequently and that serious consequences of implementation have not been taken note. Court referred to similar issue already considered in relation to Sardar Sarovar Project in ***Narmada Bachao vs. Union of India, (2000)10SCC664***. It was held that once a considered decision is taken, it is for the Government to decide how to do its job. When it has put a system in place for the execution of the project, and such a system cannot be said to be arbitrary then the only role which Court has to play is to ensure that the system works in the manner in which it was envisaged. It further said *“decision that the questions whether to have an infrastructure project or not and what is the type of project to be undertaken and how it has be executed, are a part of policy making process and the courts are ill-equipped to adjudicate on the policy decision.”* Having said so, Court further said, ***“courts have a duty to see that in the undertaking of a decision, no law is violated and people’s fundamental rights as guaranteed under the Constitution are not transgressed upon except to the extent permissible under the Constitution.”*** Various specific aspects of safety and conditional clearance were examined on the basis of material which included safety aspect, and the aspects relating to conditional clearance comprising catchment area treatment, command area development etc. and lastly environmental conditions under head of catchment area, water quality maintenance,

command area Bhagirathi Basin Management Authority, impact on human health, disaster management and rehabilitation, were considered and challenge was negated. Thereafter for monitoring of observance of conditions of environment clearance, Court transferred the matter to Uttaranchal High Court for further consideration.

246. In ***M.C. Mehta vs. Union of India & Others, (2004)12SCC118 (Mining activities on Delhi, Haryana Border and in Aravalli Hills Matter)***, Supreme Court passed order on 20.11.1995 directing Haryana Pollution Control Board to inspect and ascertain the impact of mining operation on Badkal Lake and SurajKund, ecologically sensitive areas, falling within State of Haryana. Report said that rock blasting and mining has caused ecological disaster in the area. It was recommended that the miners must prepare an Environment Management Plan (EMP) and it should be implemented in a time bound manner. Report also recommended stoppage of mining activities within the radius of 5 Km from Badkal Lake and SurajKund. Haryana Government consequently issued an order to stop such mining within radius of 5 Km of Badkal Lake and SurajKund. Objections were filed by mining operators that such prohibition should not go beyond 1 Km radius. Supreme Court, by order dated 12.04.1996, sought opinion of NEERI and considering its report Court came to the conclusion that mining activities in vicinity of tourist resorts were bound to cause serious impact on local people. Court directed to stop all mining activities within 2 Km radius to tourist resorts of Badkal Lake and SurajKund and that mining leases within area from 2 Km to 5 Km will not be renewed without prior NOC from Haryana Pollution Control Board and also CPCB. This order is reported in ***M.C. Mehta vs. Union of India & Others, (1996)8SCC462***. Various conditions imposed by PCB and State PCB, while issuing NOC to mining

operators, were challenged and the issue of compliance of various statutory provisions was also raised in respect of areas of mining falling within the Districts of Faridabad and Gurgaon in Haryana State. Supreme Court considered effect on ecology, of mining activity carried on within an area of 5 Km of Delhi, and Haryana Border on Haryana side in areas falling within district of Faridabad and Gurgaon and in Aravalli Hills within Gurgaon District. The question formulated by Court for consideration was “*whether the mining activity deserves to be absolutely done or permitted on compliance of stringent conditions and by monitoring it to prevent the environmental pollution*”. It was admitted that on 7th May 1992, parts of Aravalli range were declared ecologically sensitive under EP Act, 1986. Certain activities including new mining operations and renewal of mining lease were restricted and it was said that permission would be required from MoEF. In August 1992, Forest Department of Haryana had issued a notification under the Punjab Land Preservation Act 1900, banning the clearing and breaking up the land not under cultivation, quarrying of stone in the Badkal area without prior permission of the forest department. This ban was for 30 years. Further Central Government had certain powers under Notification dated 07.05.1992 which it delegated to State of Rajasthan and Haryana, vide Notification dated 29.11.1999, issued by MoEF in exercise of under power Section 23 read with 23 of EPF 1986 read with Rule 5 (4) of EP Rules of 1986. Among other issues, Court also examined circular dated 14.05.1918 issued by MoEF extending time to the units which did not apply for EC under EIA 1994 to obtain *ex-post-facto* EC. Court observed that statutory Notification cannot be notified by issue of circular. Further, if MoEF intended to apply the said circular to mining activities commenced and continued in violation of EIA, 1994 it would also show

total non-sensitivity of MoEF to the principles of Sustainable Development and the object behind issue of EIA 1994. It also said that **EIA 1994 is mandatory and its compliance before commencement of any mining operation is essential and cannot be dispensed with.** Referring to its earlier judgment in ***Subhash Kumar vs. State of Bihar (1991)1SCC598***, Court held that Right to Life is a fundamental right under Article 21 and included right to enjoyment of pollution free water and air for full enjoyment of life; natural resources of air, water and soil cannot be utilized if the utilization results in irreversible damage to environment. Court said that mining operation is hazardous in nature. It impairs ecology and people's right to natural resources. The entire process of setting up and functioning of mining operation requires utmost good faith and honesty on the part of intending entrepreneur for carrying on any mining activity close to township which has tendency to degrade environment and is likely to affect air, water and soil and impair the quality of life of inhabitants of the area, there will be responsibility on the part of the entrepreneur. Regularity authorities have to act with utmost care in ensuring compliance of safeguard norms and standards to be observed by such entrepreneur. Court further said "*where regularity authorities either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to the environment, natural resources and people's life, health and property, the principles of Accountability for Restoration and Compensation have to be applied*". When there is an equilibrium between the interest of environment and development Court said "*protection of environment would have precedence over the economic interest.*" Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not necessary that there should always be direct evidence

of harm to the environment. Considering applicability of EIA 1994 to the mining operations where only renewal was under consideration, Court said that a grant of renewal is a fresh grant and must be consistent with law and it must conform to EIA 1994. For this purpose, Supreme Court relied on its decision ***Ambica Quarry Works vs. State of Gujarat, (1987)1SCC213*** and ***Rural Litigation and entitlement vs. State of U.P. (supra)***. It clearly held that no mining operation can be held without obtaining mining EC under EIA 1994. With regard to the areas covered by Notifications issued under Section 4 and/5 of Punjab land Preservation Act, 1900 and also coming under FC Act, 1980, Court said that such areas shall be treated as Forest and for use of it for non-forestry purpose compliance with provisions of FC Act, 1980 would be necessary. The order dated 6.05.2002 of Supreme Court thereafter, was clarified by issuing directions in para 19 of the judgment.

247. In ***Re: Noise Pollution, (2005)5SCC733***, a two judges bench examined issue relating to noise pollution vis-a-vis right to life enshrined under Article 21 of the Constitution. A Public Interest Litigation was filed by one Anil K. Mittal, an engineer by profession, under Article 32, in Supreme Court, raising a serious and disturbing complaint that a minor girl, victim of rape, suffered since her cries for help went unheard due to blaring noise of music over loudspeaker in the neighbourhood. The girl, later in the evening, set herself ablaze and died of 100% burn injuries. It was complained that most modern sound equipments are used in functions, parties and merry making celebrations etc., without giving any regard to the level of sound and also disturbance caused to the people, in the neighbourhood or vicinity. It was prayed that the existing laws restricting use of loud speakers and high-volume sound equipments be directed to be rigorously enforced. In another matter, validity of

amendment made in Noise Pollution (Regulation and Control) Rules, 2000 (hereinafter referred to as 'NP Rules, 2000'), framed by Govt. of India, was challenged before Kerala High Court where petition was dismissed and thereagainst, an Appeal was filed before Supreme Court.

248. Writ Petition and Appeal came up before Supreme Court in 2003. Cognizance was taken and notices were issued to Govt. of India and CPCB. Court observed that Right to Life under Article 21 guaranteed a person, life with human dignity which includes all aspects of life which go to make a person's life meaningful, complete and worth living. No one has right to claim to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours or others. Even Article 19(1)(a) of Constitution does not give fundamental right to create noise by amplifying the sound. While one has a right to speech, others have a right to listen or decline to listen. Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears or mind of others.

249. Supreme Court examined various kinds of noise and source of noise pollution, particularly in the special context of fire-works. Commenting upon the hazardous effect caused by high sounding fire crackers, Court observed that it not only increases ambient noise level but also contributes significantly, an increase in air pollution. Then it also examined methodology adopted in other countries for control of noise pollution and referred to the laws made in United Kingdom, United States of America, Japan, China, Australia and local laws made in Montgomery County, Maryland, USA, and statutory laws in India including NP Rules 2000, Section 268 of I.P.C, Section 133 of Cr.P.C. and provisions in Factories Act 1948, Motor Vehicles Act 1988, Air Act 1981, EP Act 1986

and Law of Torts. It also referred to some judgments of High Courts namely Punjab, Calcutta, Andhra Pradesh and Madras to observe that Indian judicial opinion is uniform in recognizing Right to live in freedom from noise pollution as Fundamental Right protected by Article 21 of Constitution. Noise pollution beyond permissible limits is an in-road on that right. For observance and enforcement of right against noise pollution, Court said that an appropriate legislation is still wanting to cover the menace of noise pollution. Further, there is equal need of developing a mechanism and infrastructure for enforcement of prevalent laws. The matter was disposed of, issuing orders and directions, in general to all the States, requiring to make provisions for seizure and confiscation of equipments/instruments, creating noise beyond the permissible limits. The judgment did not deal with the correctness of Kerala High Court judgment dismissing Writ Petition wherein validity of Rules 5 (3) inserted by Amendment Notification dated 11.10.2002 in NP Rules, 2000 was challenged. This was brought to the notice of Supreme Court by filing an IA. Vide order dated 03.10.2005 (reported in **(2005)8SCC794**), Supreme Court reopened Civil Appeal No. 3735/2005, examined correctness of High Court judgment and ultimately decided vide judgment dated 28.10.2005. Court found that power of exemption granted to the Government, permitting use of loudspeakers etc. during night hours (between 10 pm to 12 pm) or during any cultural or religious festive occasions for a limited duration, as such, cannot said to be unreasonable. Court upheld the said amendment, confirmed High Court judgment and dismissed Appeal. This judgment is reported in **(2005)8SCC796**.

250. In ***Ganapathi Metals vs. M.S.T.C. Ltd. & Others*** **(2005)12SCC169**, a question was raised that in a tender notice, there

was no condition with regard to compliance of Hazardous Wastes (Management and Handling) Rules, 1989 and, therefore, there was no obligation on the part of successful bidder to follow those Rules. Rejecting this argument, Court said that the compliance of statutory rules will not depend on the party's agreement, even if the party is a statutory body or Government and instead statutory rules have to be complied with.

251. In ***Research Foundation for Science vs. Union of India & Others, (2005)13SCC186***, in pending matters, namely, Writ Petition No. 457/1995; SLP(C) No. 16175/1997 and Civil Appeal No. 7660/1997, Supreme Court in its judgment dated 05.01.2005 considered the question, "*how hazardous waste oil imported and lying in 133 containers at Nhava Sheva Port is to be dealt with*". Monitoring Committee constituted by Court categorically found that what was imported is hazardous waste and it was imported illegally in the garb of importing lubricant oil. On behalf of the Importers, reliance was sought on the Basel Convention and standards mentioned therein but Court said that Basel Conventions are only guidelines and individual countries can provide different criteria in their national laws. National law laying stricter condition has to prevail. Imported hazardous material has, therefore, to be wasted and the manner it was to be done, left to be decided by the Government within the prescribed time. Court said:

"the liability of the importers to pay the amounts to be spent for destroying the goods in question cannot be doubted on applicability of precautionary principle and polluter pays principle. These principles are part of the environmental law of India. There is constitutional mandate to protect and improve the environment." In para 28 of the judgment, Court categorically said, "*the national law has to apply and shelter cannot be taken under guidelines of Basel Convention*".

252. On 'polluter pays' principle, Court said,

*“‘polluter pays’ principle basically means that the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. **This includes environmental cost as well as direct cost to the people or property, it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately tangible.** The principle also does not mean that the polluter can pollute and pay for it. The nature and extent of cost and the circumstances in which the principle will apply may differ from case to case.”*

253. Court also distinguished its earlier judgment in **Deepak Nitrite Ltd. vs. State of Gujarat, (2004)6SCC402**, observing that it was decided on its own facts and in the light of the circumstance that there was no finding of any damage to the environment. Having said so, Court also said that the decision in the **Deepak Nitrite (supra)** cannot be said to have laid down a proposition that in the absence of actual degradation of environment by the offending activities, payment for repair on the application of ‘polluter pays’ principle cannot be ordered. Court reiterated that *“in India the liability to pay compensation to affected persons is strict and absolute and the rule laid down in **Rylands vs. Fletcher, (1868) 3HL 330: (1861-73) ALL ER Rep 1, 626: 19 LT 220**, has been held to be not applicable”*. Explaining judgment in **Raylands vs. Fletcher (supra)**, Court said, the judgement was rendered in 19th sanctuary when all the developments of science and technology had not taken place. In modern day society, with highly developed scientific knowledge and technology, law has to grow to satisfy needs to fast-changing society. It has to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy. Court said:

*“an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes **an absolute and non-delegable duty to the community to ensure that no harm results to anyone.**”*

254. Court further said,

“if the enterprise is permitted to carry on a hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such activity as an appropriate item of its overheads.”

255. Referring to its earlier order dated 14.10.2003, in these very matters, Court said,

*“**principle of good governance** is an accepted principle of international and domestic laws. It **comprises of the rule of law, effective State institutions, transparency and accountability in public** affairs, respect for human rights and the meaningful participation of citizens in the political process of their countries and in the decisions affecting their lives”.*

256. Court said that environmental concerns are at the same pedestal as human rights, both being traced to Article 21 of the Constitution. The right to information and community participation for protection of environment and human health are also rights which flow from Article 21. Consequently, Court directed to destroy 133 containers having hazardous substance, as recommended by Monitoring Committee.

257. In ***Chhidda Singh Jat & Others vs. Suresh Chand Tyagi & Another, (2005)13SCC378***, Court gave an order of simple imprisonment and fine, imposed upon Shri Gopal Krishan Yadav, Chairman of Municipality who was found responsible for non-compliance of Court’s order to regulate a nalla which was polluting surrounding area but that was not done. There, High Court had imposed above punishment for non-compliance of the order. Supreme Court affirmed the said order and dismissed appeal of Shri Gopal Krishan Yadav and others. The above order shows that **any public authority if found to violate order of the Court, regarding protection and preservation of environment, is accountable and can be imposed punishment.**

258. In ***T.N. Godavarman Thirumulpad vs. Union of India & Others, (1997)2SCC267***, various writ petitions were filed in Supreme Court involving question about conservation, preservation and protection of forest and ecology. Various orders were passed from time to time, reported in law journals. In ***T.N. Godavarman Thirumulpad vs. Union of India & Others, (2006)1SCC1***, (order dated 23.09.2005), Court considered the question, when forest land is used for non-forest purpose, what measures are required to be taken to compensate for loss of forest land and to compensate the effect on ecology. Court recognized that development of nation undoubtedly involves industrial development but it has to be consistent with protection of environment and not at the cost of degradation of environment. Any programme, policy or vision for overall development must evolve systematic approach so as to balance economic development and environmental protection. Then Court considered the question, *“whether permission to use forest land for non-forest purpose and consequential loss or benefits must cause in imposing liability of payment of ‘Net Present Value’ (hereinafter referred to as ‘NPV’) of such diverted land, so as to utilize the amount for getting back in the long run, benefits which are lost by such diversion?”* In this regard, what should be the guidelines for determination of NPV, how to compute it, can there be some exemptions etc., are the aspects, to be considered by MoEF. Referring to earlier orders, Court said that MoEF was directed to formulate a scheme providing for compensatory afforestation, whenever permission for diversion of forest land is granted under Forest (Conservation) Act, 1980 (hereinafter referred to as, the 'FC Act'). MoEF, consequently, submitted a scheme with its affidavit dated 22.03.2002, which was examined by Central Empowered Committee (hereinafter referred to as '**CEC**') along with other relevant material and submitted a

report/recommendation dated 09.08.2002. MoEF, in principle, accepted recommendations of CEC and it was noticed by Supreme Court in its order dated 29.10.2002. MoEF, by Notification dated 23.04.2004, by exercising powers under sub-section (3) of Section 3 of EP Act, 1986, constituted an authority, i.e., Compensatory Afforestation Fund management and Planning Authority (hereinafter referred to as 'CAMPA'. Court suggested that in the said constitution of CAMPA, MoEF should include an expert in the field of forest and another expert in the field of forest economy development. Some other modifications/amendments in the said Notification were also recommended. Then the question, how NPV be determined, was examined in detail. Court observed that there are different factors which may count for determination of biodiversity valuation and it is for the experts in the field to make suggestion for determination of relevant factors for such computation. Environment is not a State Government's property but a national asset. It is the obligation of all to conserve environment and for its utilization, it is necessary to have regard to the principles of "sustainable development" and "inter-generational equity". Further, Court said, NPV is a charge or a fee within Entry 47 read with Entry 20 of List III of the Constitution. It further said *"the Fund set up is a part "of economic and social planning" which comes within Entry 20 of List III and the charge which is levied for that purpose would come under Entry 47 of List III and, therefore, Article 110 is not attracted."* The NPV is not only for compensatory afforestation but for ecology. Compensatory afforestation is only a small portion, in the long-range efforts, in the field of regeneration. Forest Management Planning involves a blend of ecological, economic and social systems with the economic and social sides of planning, often just as complex as the ecological sides. Rejecting contention of State Government that amount of

NPV shall be made over to State Government, Court held, natural resources are not the ownership of any one State or individual, the public at large is its beneficiary. In para 78, Court said

*“The **damage to environment is a damage to the country’s assets as a whole.** Ecology knows no boundaries. It can have impact on the climate. The principles and parameters for valuation of the damage have to be evolved also keeping in view the likely impact of activities on future generation.*

259. Examining various aspects of biodiversity and loss to ecology due to any destruction to biodiversity etc., Court recorded conclusions in para 98 of the judgment, as under:

“In view of the aforesaid discussion, our conclusions are:

- 1. Except for government projects like hospitals, dispensaries and schools referred to in the body of the judgment, all other projects shall be required to pay NPV though final decision on this matter will be taken after receipt of Expert Committee Report.*
- 2. The payment to CAMPA under notification dated 23rd April, 2004 is constitutional and valid.*
- 3. The amounts are required to be used for achieving ecological plans and for protecting the environment and for the regeneration of forest and maintenance of ecological balance and eco-systems. The payment of NPV is for protection of environment and not in relation to any propriety rights.*
- 4. Fund has been created having regard to the principles of intergenerational justice and to undertake short term and long-term measures.*
- 5. The NPV has to be worked out on economic principles.”*

260. Consequently, Court constituted a Committee of Experts to examine various aspects relevant for determination and computation of NPV and MoEF was directed to modify its Notification dated 23.04.2004.

261. In ***Bombay Dyeing & Mfg. Co. Ltd. vs. Bombay Environmental Action Group & Others, (2006)3SCC434***, a two judges’ bench examined, whether development or redevelopment of lands of sick and/or closed cotton textile mills is valid and permissible or should not be allowed on the ground of damage to environment. Upholding statutory regulations, i.e., Development Control Regulation 58, as amended from

time to time, made under Maharashtra Regional and Town Planning Act, 1966, Court said that a balanced view has to be taken. Doctrine of ‘sustainable development’ indeed is a welcome feature but while emphasizing the need of ecological impact, a delicate balance between it and the necessity for development must be struck. The statute nowhere, *per se*, envisaged any degradation of environment. Before raising construction, if impact on ecology is examined by an expert Committee and it clears construction, unless there is anything *ex-facie* arbitrary, the view of experts has to be respected.

262. In ***M.C. Mehta vs. Union of India & Others, (unauthorised constructions and violation of laws in Delhi matter) (2006)3SCC399***, Supreme Court in its order dated 16.02.2006, dealing with the complaint that officers of State and Statutory Authorities are indulging in illegal activities and must be held accountable, observed:

“If the laws are not enforced and the orders of the courts to enforce and implement the laws are ignored, the result can only be total lawlessness. It is, therefore, necessary to also identify and take appropriate action against officers responsible for this state of affairs. Such blatant misuse of properties at large scale cannot take place without connivance of the concerned officers. It is also a source of corruption. Therefore, action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens. Those who own the properties that are misused have also implied responsibility towards the hardship, inconvenience, suffering caused to the residents of the locality and injuries to third parties. It is, therefore, not only the question of stopping the misuser but also making the owners at default accountable for the injuries caused to others. Similar would also be the accountability of errant officers as well since, prima facie, such large scale misuser, in violation of laws, cannot take place without the active connivance of the officers. It would be for the officers to show what effective steps were taken to stop the misuser.”

263. In ***Intellectuals Forum, Tirupathi vs. State of A.P. & Others, (2006)3SCC549***, a complaint was raised, in writ petitions filed before Andhra Pradesh High Court, that there is a systematic destruction of percolation, irrigation and drinking water tanks in Tirupathi town,

alienation of Avilala tank bed land to Tirupathi Urban Development Authority and AP Housing board for housing purposes. The writ petitions were dismissed on the ground that the activities were in public interest in view of growing population in the town and need of housing accommodation for the people. In appeal, Supreme Court formulated following four questions of law:

- “1. Whether the Urban Development could be given primacy over and above the need to protect the environment and valuable fresh water resources?
2. Whether the action of the A.P. state in issuing the impugned G.Os could be permitted in derogation of Articles 14 and 21 of the Constitution of India as also the Directive Principles of State Policy and fundamental duties enshrined in the Constitution of India?
3. Whether the need for sustainable development can be ignored, do away with and cause harm to the environment in the name of urban development?
4. Whether there are any competing public interests and if so how the conflict is to be adjudicated/reconciled?”

264. Referring to the responsibility of State to protect environment and the principle of sustainable development, Court said,

“merely asserting an intention for development will not be enough to sanction the destruction of local ecological resources. What this Court should follow is a principle of sustainable development and find a balance between the developmental needs which the respondents assert, and the environmental degradation.”

265. Considering the facts that ground realities are different, huge amount has been spent and natural resource lost is irreparable and beyond the power of Court to rectify, best way was to accept findings of the Committee which suggested some rectification but with change in quantum of the area. Report was accepted by the authorities. Thus Court decided matter on the peculiar facts of the case but issued separate orders in respect to two tanks namely, Peruru tank and Avilala tank,

restraining any further construction in the area and to take other steps for avoiding/preventing any loss/damage to the said tanks.

266. In ***Mullaperiyar Environmental Protection Forum vs. Union of India & Others, (2006)3SCC643***, a three judges' bench of Supreme Court considered the question about safety of the dam if water level is raised beyond existing level of 136 ft. The aforesaid reservoir is surrounded by high hills on all sides with forest and is a sheltered reservoir. Concerned authorities intended to increase its height to 142 ft. from 136 ft. The dam/reservoir was serving two States, i.e., Tamil Nadu and Kerala, in terms of an agreement in 1970. The proposed increase in height by State of Tamil Nadu was objected by State of Kerala also. The dam is an old one having been constructed in 1895. Various aspects have been considered. In respect of FC Act, 1980, Court said that strengthening work of existing dam cannot be termed as non-forestry activity and there is nothing to show that increase in water level will affect flora and fauna. Experts submitted report that apprehension of adverse impact on environment and ecology is unfounded and their opinion was accepted by Supreme Court, in the absence of any material to contradict it.

267. In ***Akhil Bharat Goseva Sandh vs. State of A.P. & Others with Umesh & Others vs. State of Karnataka & Others, (2006)4SCC162***, M/s. Al Kabeer Exports Limited, a company engaged in the business of processing meat, mainly for export purposes, applied for permission to construct a factory and other buildings in village Rudraram, Medak district, Andhra Pradesh. On 24.03.1989, Gram Panchayat concerned, issued No Objection Certificate (hereinafter referred to as, 'NOC') and ultimately permission was granted by State Government to run slaughter

house, on the selected site, on 29.06.1989. Andhra Pradesh Pollution Control Board also issued NOC under Water Act, 1974. The company started construction work but thereafter an order was issued by Executive Officer of Gram Panchayat suspending permission, granted for construction of factory and other buildings. Some other organizations also opposed establishment of slaughter house. Initially company filed writ petition but subsequently it was withdrawn and a revision was filed before State Government which was allowed on 15.09.1990. This order was challenged by some organizations and individuals in writ petitions before High Court, wherein an interim order was passed and revisional order was stayed. Company filed writ appeals; wherein single judge's order was stayed. The writ petitions were disposed of by order dated 16.11.1991, wherein authorities were directed to examine the matter with regard to water, air and environment pollution etc. after giving opportunity to all concerned parties and thereafter, pass appropriate order. Consequently, State Government constituted a Committee, i.e., Krishnan Committee which submitted its report that after taking some safeguards/steps and proper monitoring by State PCB, pollution of air and water can be kept within reasonable limit but it concurred with the objections of Food and Agriculture Department, with regard to depletion of cattle wealth. However, it gave recommendation to allow establishment of slaughter house with certain conditions. When final decision on Committee report was pending at the level of the Government, a writ petition was filed by two Environmentalists seeking a direction to restrain Hyderabad Metropolitan Water Supply and Sewerage Board from supplying water to slaughter house. An interim order was passed, therein, by High Court. Some other writ petitions were filed challenging NOC granted by APPCB and also permission granted for running of

slaughter house. The writ petitions were dismissed, giving rise to five appeals in Supreme Court. Among various questions, the issue with regard to sanction of grant of consent by APPCB was examined, whether it was in accordance with law or not. Court took the view that function of company would not result in depletion of buffalo population in the Hinterland of the abattoir and reliance placed on the judgment in ***Mohd. Hanif Quareshi & Others vs. The State of Bihar, (1959SCR629)***, does not help the organizations since in that case there was a complete ban on slaughter of old cattle which was struck down. Further, judgment in ***State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat and Others, (2005)8SCC534***, also did not help since there was a finding that adequate quantity of cattle feed resources was available and, therefore, the question of total ban on slaughter of old cattle does not arise. In ***State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat and Others (supra)***, Court did not hold, that permitting slaughter of bovine cattle by itself is unconstitutional. With regard to grant of consent, Court observed that matter was examined by experts under the statutes and thereafter consent has been granted, therefore, in the absence of anything to show that their satisfaction was arbitrary or illegal, no interference would be called by the Court. Moreover, grant of NOC was challenged on the ground that information was not disclosed but it was repelled observing that no member of public has any legal right to demand any information from PCB prior to issue of NOC. Challenge to NOC on the ground that PCB was not properly constituted was also repelled and for this purpose Court relied on Section 11 of Water Act, 1974, that if there is some defect in the composition of PCB that would not validate consent order.

268. In ***T.N. Godavarman Thirumulpad vs. Union of India & Others*** **(2006)5SCC28** (Order dated 10.04.2006), an issue raised by Mr. Deepak Agarwal through an Interlocutory Application regarding allotment of land to a company for setting up of a coal washery plant on the ground that it was forest land was examined. Court referred to its earlier order in ***T.N. Godavarman Thirumulpad vs. Union of India & Others*** **(1997)2SCC267**, wherein Court had held, “FC Act, 1980, must apply to all forests irrespective of the nature of ownership or classification thereof. The word ‘forest’ must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the FC Act. The term ‘forest land’ would also include any area recorded as forest in the Government record irrespective of the ownership.”

269. Before proceeding on merits, Court observed that if the person filing a PIL is found not to be a *bona-fide pro bono* litigant, Court has to decline its judicial scrutiny at the behest of that person. However, only in exceptional cases, it may proceed to examine the matter on merit. With regard to Deepak Agarwal, Court clearly recorded its findings that he is nothing but a name lender, application lacks bonafide and has a camouflage of PIL. Thereafter, Court examined issue on merits since it was with regard to forest land and found that land in dispute was not a forest land. Application was dismissed with cost of ₹ 1,11,000/- (Rupees One lakhs) awarded against Deepak Agarwal.

270. In ***T.N. Godavarman Thirumulpad vs. Union of India & Others***, **(2006)5SCC47 (Order dated 10.04.2006)**, Court considered whether fish tanks constructed inside Kolleru Wildlife Sanctuary would be permissible or not. Central Empowered Committee had issued directions for

demolition of all fish tanks constructed inside Kolleru Wildlife Sanctuary which included Kolleru lake area extended over 901 sq. km. The lake is largest shallow freshwater lakes in Asia, located between delta of Krishna and Godavari rivers in State of Andhra Pradesh. It is serving as a natural flood, balancing reservoir for the two rivers. It receives water from 67 inflowing drains and channels. However, only 308 sq. km area was declared as wildlife sanctuary. On account of blockage of free flow of water into the lake caused by encroachers, resulting in submergence of delta facility in upstream area, order was issued by CEC for demolition of all fish tanks. Court observed that interest of fishermen for having traditional method of fishing was not obstructed but they were not allowed to raise any construction and also not using pesticides and chemicals for their traditional agriculture. In the circumstances, direction for removal of encroachment has not affected any right of the fishermen. When a bund is found in a sanctuary or a lake it seeks to encapsulate an area which in turn obstructs free flow of water to lake bed area, formation of bund reduces retention capacity of lake. This formation, if allowed, would destroy lake and all commercial activities would also destroy ecology which is prohibited under Section 29 of Wild Life (Protection) Act, 1972. Court further observed that oil cakes used as manure also pollute Sanctuary. It is true that there are other effluents which also pollute the lake hence, destruction of fish tanks is justified. Court also made it clear that use or transportation of inputs for pisciculture shall be stopped immediately.

271. In ***Karnataka Industrial Areas Development Board vs. C. Kenchappa and Others, (2006)6SCC371***, acquisition of agricultural land for industrial purposes was challenged on the ground of adverse impact on environment, depravation of villagers of their fertile

agricultural land etc. for setting up of an industrial establishment by Gee India Technology Centre Pvt. Ltd. Karnataka Industrial Areas Development Board sought to acquire land which was challenged in writ petition. The writ petition was allowed to the extent of acquisition of land which was reserved for grazing cattle, agricultural and residential purpose. High Court also directed that whenever there is an acquisition of land for industrial commercial or non –agricultural purpose, except of residential purposes, authorities must leave one kilometre area from the village limits as a free zone or green area to maintain ecological equilibrium. Consequently, acquiring body, i.e., Karnataka Industrial Areas Development Board came in appeal. Supreme Court examined in the light of several decades continuous degradation resulting in continuous depletion of environment and observed that the entire world is facing a serious problem of environmental degradation due to indiscriminate development. Industrialization, burning of fossil fuels and massive deforestation are leading to degradation of environment. Court said that if we carefully evaluate entire journey of judicial pilgrimage from the decade of 1960 till 2006, one would find that in the decade of 1960, hardly anyone expressed concern about ecology and environment. In the decade of 1970, a serious concern about degradation of ecology and environment was articulated and it was realised that for a civilized world both development and ecology are essential. The concern was examined in detail later leading to the principle of sustainable development. Court allowed appeal and disposed the matter by issuing directions which included that *“in future, **before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be***

acquired for development that they do not gravely impair the ecology and environment.”

272. In ***Susetha vs. State of Tamil Nadu & Others (2006)6SCC543***, Court said that **natural water storage resources are not only required to be protected but also steps are required to be taken for restoring the same if it has fallen in disuse**. The same principle cannot be applied in relation to artificial tanks.

273. In ***T.N. Godavarman Thirumulpad (45) vs. Union of India & Others, (2007)15SCC288 (order dated 23.11.2001)*** passed in (IA No. 295 and 664 in WP (C) No. 202 of 1995), one of the aspects considered by Court is use of money received by various Governments, for compensatory afforestation, from user agencies to whom permissions were granted for using forest land, for non-forest purposes. Court found that substantial amount released was not used by respective Governments. Hence Court directed MoEF&CC to formulate scheme placing responsibility upon the user agency to take steps for compensatory afforestation, from the amount it ought to have paid to the concerned State Government, and for this purpose, State Government must provide land either at the expense of user agency or State Government, as decided by the concerned State Government. The scheme must ensure that afforestation takes place as per the permission granted, and there should be no shortfall in respect thereto.

274. In ***T.N. Godavarman Thirumulpad (39) vs. Union of India & Others, (2007)15SCC273 (order dated 22.09.2000)*** passed in (IA No. 424 in WP (C) No. 202 of 1995), Court considered the issue of permission of felling of trees vis-a-vis regeneration. Court noticed, when permission for felling of trees, subject to regeneration is granted, felling of trees part

is executed but other part i.e., regeneration, used to remain unimplemented. Court observed that both activities must co-exist. There cannot be felling without regeneration because that will cover a period of time, and if not observed rigorously, may result in vanishing of forest. If there is shortfall with regard to regeneration, and felling continue, it would result in depletion of forest cover. The authorities responsible under law, must ensure that no further depletion of forest cover takes place, instead, targets for increase in forest cover are met. In other words, **regeneration should commensurate with the felling.** Further, regularization of encroachment in forest area will not be made unless conditions found necessary for regularization are first fulfilled/observed/complied. Court said that eligible conditions for permission to grant regularization of encroachments should be fulfillment beforehand of conditions under the guidelines specially in regard to compensatory afforestation.

275. In ***Research Foundation for Science Technology and Natural Resource Policy vs. Union of India & Others, 2007(15)SCC193*** (order dated 11.09.2007 in IA 34 of 2006 In WP (C) No. 657 of 1995), Court considered the issue, “*whether permission for dismantling of ship “Blue Lady” at Alang, Gujarat should be granted or not*”. The ship, a passenger liner, built in France in 1961, was a steam turbine driven vessel, registered as a Barge under the flag of Bahamas. The ship was beached on 15.08.2006/16.08.2006, off the Alang coast which is located on the west coast of Gujarat. Alang is the largest ship recycling yard and one of the choicest ship-scrapping destination for ship owners around the world. Observing that ship breaking is an industry, Court said that **when apply principle of ‘sustainable development’, one has to keep in mind concept of development on one hand and concepts like generation of**

revenue, employment and public interest on the other hand and here the principle of proportionality comes in. Court examined report of Technical Experts Committee and said that suggestions made by the said Committee, must be observed. It will satisfy the concept of “balance”. Permitting Ship breaking, Court also observed that recycling is a key element of sustainable development.

276. In ***State of Madhya Pradesh & Others vs. Madhukar Rao, (2008)14SCC624 (order dated 09.01.2008)*** in (Civil Appeal Nos. 5196 to 5200 of 2001, SLPs (C) Nos. 2095 & 8024 of 2002 and Criminal Appeal No. 487 of 2006), the question for consideration was, “whether a vehicle or vessel etc., seized under Section 50(1)(c) of Wild Life (Protection) Act, 1972 (hereinafter referred to as ‘Act 1972’) will put beyond power of Magistrate to direct its release during pendency of trial, in exercise of powers under Section 451 of CrPC 1973. Court held that Section 50 and other provisions in Chapter VI of Act 1972 would not exclude application of any provision of CrPC. Section 51(4) expressly excludes application of Section 360 of CrPC and provisions of Probation of Offenders Act to persons eighteen years or above in age. But it does not mean that Section 50 of Act 1972 in itself or taken along with the other provisions under Chapter VI, constitutes a self-contained mechanism so as to exclude every other provision of the Code. Court, therefore, answered the question stating that Section 50 of Act 1972 and amendments made thereunder, do not in any affect magistrate power to make an order of interim release of the vehicle under Section 451 of CrPC.

277. In ***T.N. Godavarman Thirumulpad (57) vs. Union of India & Others, (2008)16SCC337 (order dated 29.10.2002)***, question of encroachment of forest area and liability of compensation was examined.

There was some dispute with regard to boundary of forest but for this purpose, Court held that the map drawn by Survey of India must be accepted as it is a body under duty to prepare plan after carrying out surveys hence Survey Report of Survey of India, have to be accepted. Further, it held that all encroachers into forest land have to be evicted. Court said:

“if an area which falls within these said forests/forest land and cannot be encroached upon”.

278. Court also directed, that encroachers are liable to compensate for the losses caused due to encroachments, especially when land encroached upon has been utilized for commercial purposes. Taking a lenient view, Court observed that if encroachers voluntarily vacate by the prescribed date, they may not pay compensation but if they continue to remain in possession, they will have to pay Rs. 5 lakhs per hectare per month as compensation which shall be used for forest protection and reutilization. Court also imposed a ban upon mining activity in Aravalli hills specially in the parts which have been recorded as forest area or protected under EP Act, 1986. This order was subsequently modified by order dated 16.12.2002 (**(2008)16SCC401**) and permission/approval under Forest Conservation Act, 1989 and EP Act, 1986 was granted.

279. In **Gujarat Pollution Control Board vs. Nicosulf Industries & Export Pvt. Ltd. & Others, (2009)2SCC171, (order dated 04.12.2008)** in (*Criminal Appeal No. 9 of 2002*), question was, “whether the complainant i.e., the officer of State PCB had authority to file complaint or not”. Interpreting Section 49 of Water Act, 1974, Court said that it required State Board to file a complaint or to authorize any of its officers to file complaint. The authorization has to be by State Board. There is no difference between power to sanction a complaint or power to authorize

the complaint in as much as when a sanction to file a complaint is given in law, it amounts to authorize to file the complaint.

280. In ***U.P. Pollution Control Board vs. Dr. Bhupendra Kumar Modi & Another, (2009)2SCC147, (order dated 12.12.2008)*** in (*Criminal Appeal No. 2019 of 2008*), order of High Court of Judicature at Allahabad, Lucknow Bench, quashing complaint, filed by State PCB under Section 44 of Water Act, 1974 was challenged. High Court quashed proceedings on the ground that there was no material on record to show that Dr. Bhupendra Kumar Modi, at the relevant time, was incharge and responsible to the company for conduct of its business. The only question considered by Court in Appeal, was, “whether the view taken by High Court is justified or not”. Court did not find the view of High Court to be correct in view of the averments made in the complaint, read with Sections 25, 26, 44 and 47 of Water Act, 1974 and hence allowed Appeal and set aside the order. Before Supreme Court, an argument was raised that the proceedings commenced in 1985 and long time has passed but rejecting this, Court said that **lapse of long period cannot be a reason to absolve respondents from the trial, considering nature of the matter involving public health**. If it is ultimately proved that the act of accused has affected public health, Court cannot afford to deal lightly with cases involving pollution of air and water. It said,

*“The message must go to all concerned persons whether small or big that the courts will share the parliamentary concern and legislative intent of the Act to check the escalating pollution level and restore the balance of our environment. **Those who discharge noxious polluting effluents into streams, rivers or any other water bodies which inflicts (sic harm) on the public health at large, should be dealt with strictly de hors to the technical objections.** Since escalating pollution level of our environment affects on the life and health of human beings as well as animals, the courts should not deal with the prosecution for offences under the pollution and environmental Acts in a causal or routine manner”.*

281. In ***Fomento Resorts & Hotels & Another vs. Minguel Martins & Others, (2009)3SCC571 (order dated 20.01.2009)*** in (*Civil Appeal No. 4154 of 2000*), a private company approached State Government for acquisition of land comprised in Survey nos. 788, 789, 803, 804, 806 and 807 of Village Taleigao, Dona Paula for construction of Beach Resort Hotel Complex by highlighting its benefits. Acted thereupon, acquisition proceedings were initiated. Acquisition proceeding were challenged but in the meantime hotel project was completed and commenced function. Goa Bench of Bombay High Court allowed writ petition and quashed acquisition notification by judgment dated 26.06.1984. The judgment was reversed in appeal by Supreme Court in ***Fomento Resorts and Hotels Ltd. vs. Gustavo Renato Da Cruz Pino, (1985)2SCC152*** and matter was remitted to High Court. Subsequently, parties compromised and writ petition was withdrawn from High Court. The hoteliers entered into an agreement with the Government. The hoteliers thereafter, applied for extension of hotel building and this issue was raised again in a writ petition filed in High Court which was allowed by observing that extension of hotel building was impermissible. The issue of acquisition was also raised. Supreme Court formulated it as issue one and answered in negative in para 35 of the judgment. Next question was, whether public access to beach, available through survey no. 803 before acquisition, could have been restricted by hoteliers. Court refers to public trust doctrine and said that there is an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof. In para 54 of judgment, Court said,

“The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their

administrators on behalf of all the people and especially future generations. For example, **renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved.** The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets”.

282. Elaborating it, in para 55, Court said,

“Public Trust Doctrine is a tool for exerting long-established public rights over short-term public rights and private gain. Today, every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long term and enjoyment by future generations. To say it another way, **a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people’s rights** and the people’s long term interest in that property or resource, including down-slope lands, waters and resources”.

283. Referring to ancient Indian heritage and culture which was in harmony with nature, Court said:

*“The Indian society has, since time immemorial, been conscious of the necessity of protecting environment and ecology. The main moto of social life has been “to live in harmony with nature”. Sages and Saints of India lived in forests. **Their preachings contained in Vedas, Upanishadas, Smritis etc. are ample evidence of the society’s respect for plants, trees, earth, sky, air, water and every form of life.** It was regarded as a sacred duty of every one to protect them. In those days, people worshipped trees, rivers and sea which were treated as belonging to all living creatures. The children were educated by their parents and grandparents about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora fauna and every species of life”.*

284. Court reiterated that natural resources including forest, water bodies, rivers, seashore etc. are held by State as a trustee on behalf of people and specially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. State cannot transfer public trust properties to a private party. If such a transfer interferes with the right of the public, Court can invoke public

trust doctrine and take affirmative action for protecting right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural eco-systems. The questions, were answered observing that access road cannot be obstructed. Court also upheld the view taken by High Court that extension of hotel building was illegal and, therefore, it has to be demolished.

285. In ***Nature Lovers Movement vs. State of Kerala & Others, (2009)5SCC373 (order dated 20.03.2009)*** in (*Civil Appeal No. 2116 of 2000*), Section 2 of Forest (Conservation) Act, 1980 (hereinafter referred to as 'FC Act, 1980') *vis-a-vis* Kerala Forest Act, 1961 were under consideration. Court held that FC Act, 1980 enacted by virtue of list III Seventh Schedule and contains non obstante clause. Section 2, hence, has over-riding effect. The purpose of Act is conservation of forest and to prevent depletion thereof. The Act is applicable to all forests irrespective of the nature of ownership or classification thereof. After 25.10.1980 i.e., date of enforcement of FC Act, 1980, no State Government or other authority can pass an order or give a direction for de-reservation of reserved forest or any portion thereof or permit use of any forest land or any portion thereof for any non-forest purpose or grant any lease, etc. in respect of forest land to any private person or any authority, corporation, agency or organization which is not owned, managed or controlled by the Government. Further user of forest land for non-forest purpose prior to enforcement of FC Act, 1980 will not be a ground to explain tenure of such activity by way of renewal etc.

286. In ***M.C. Mehta vs. Union of India & Others, (2009)6SCC142 (Aravalli hills range mining matter)*** (order dated 08.05.2009), Court said that the Aravalli is the most distinctive and ancient mountain chain

of Peninsular India, mark the site of one of the oldest geological formations in the world. Due to its geological location, desertification is stopped and it prevents expansion of desert into Delhi. However, Court noticed regular mining activates in violation of law particularly, environmental laws and norms. Since mining was banned by Supreme Court, applications were filed for modification and seeking permission. Disposing all applications, Court said that since statutory provisions have not been complied with, all mining operations in Aravalli hill range falling in State of Haryana within the area of approximately 448 sq. kms. in Districts of Faridabad and Gurgaon including Mewat shall remain stopped till Reclamation Plan duly certified by State of Haryana, MoEF and CEC is prepared with law.

287. In ***Tirupur Dyeing Factory Owners Association vs. Noyyal River Ayacutdars Protection Association and others, (2009)9SCC737*** (order dated 06.10.2009 in ***Civil Appeals No. 6776 of 2009 with 6777 of 2009***), Public Interest Litigation was filed by Noyyal River Ayacutdars Protection Association (hereinafter referred to as 'Association') seeking directions for preservation of ecology and for keeping Noyyal river in Tamil Nadu free from pollution. It was alleged that large number of industries working in Tirupur area had indulged in dyeing and bleaching works and discharging industrial effluents into river causing water pollution to the extent that river water was neither fit for irrigation nor potable. It had also affected Orthapalayam reservoir and other tanks and channels of Noyyal river. Court **directed to set up CETP** with zero liquid discharge trade effluents. Court also directed the industries association to pay an amount compensating damage to ecology for cleaning and desilting operations and for remediation. In Appeal, Supreme Court initially directed industries association to deposit Rs. 25 crores and while

deciding the matter finally, it observed that **there has been unabated pollution by members of industries association. They cannot escape responsibility to meet out the expenses of reversing the ecology.** They are bound to meet the expenses of removing the sludge of the river and also for cleaning the dam. The principles of “polluters-pay” and “precautionary principle” have to be read with the doctrine of “sustainable development”. **It becomes the responsibility of the members of the appellant Association that they have to carry out their industrial activities without polluting the water.** Court also held that a number of farmers have suffered because of pollution caused by industries. Farmers could not cultivate any crop in the land and industries have to pay to the farmers also. Court also directed State PCB to ensure that no pollution is caused, giving strict adherence, to the statutory provisions.

288. In ***Tirupur Dyeing Factory Owners Association vs. Noyyal River Ayacutdars Protection Association & Others, (2009)9SCC737***, Court said:

“in spite of stringent conditions, degradation of environment continues and reaches a stage of no return, the court may consider the closure of industrial activities in areas where there is such a risk. The authorities also have to take into consideration the macro effect of wide scale land and environmental degradation caused by absence of remedial measures. The right to information and community participation for protection of environment and human health is also a right which flows from Article 21.

289. In ***T.N. Godavarman Thirumulkpad v. Union of India & Others, (2006)13SCC689*** (order dated 17.10.2016) in (IAs No. 1156, 1192, 756, 1463, 1501 and 1532 in WP(C) No. 202/1995), a complaint was made that in Master Plan, 1962 certain area was earmarked/identified as green area but changing user to urban area under latter Master Plan, i.e., 2001, Delhi Development Authority (hereinafter referred to as ‘DDA’) has proposed development of International Hotels Complex on such land,

area 315 ha, situated in Vasant Kunj. Court constituted a Committee to examine environment impact assessment of the area and stopped constructions till submission and consideration of report by the said Committee. Latter stand was taken before Supreme Court that out of 315 ha only 220 ha would be used for commercial construction purposes. Committee submitted its report in which it observed that DDA has not exercised adequate environment precaution based on sustainable environmental management approach. It also pointed out that many proponents have raised constructions in a very environmentally unsound manner and DDA had permitted a higher FAR. As damage control by strict implementation of effective Environment Management Plan and resource conservation measures, Committee made certain suggestions/recommendations. Commenting upon the role of DDA, Court said that it ought to have acted with more transparency. Thereafter, Court directed MoEF&CC to consider the stand taken by all the parties concerned and take a decision in the light of the suggestions made by Committee. It also directed MoEF&CC to decide, what remedial measures including imposition of such amount as cost, can be taken.

290. In ***Research Foundation for Science vs. Union of India & Another, (2007)8SCC583***, (order dated 06.09.2007) in (WP(C) No. 657/1995 with SLP(C) No. 16175/1997, Civil Appeal No. 7660/1997), Court in the matter of ship breaking, examined report of High Powered Committee and noticing the same in para 9 of the order, directed Government of India to formulate a comprehensive code incorporating recommendations and to make the same operative until concerned statutes are amended in line with the recommendations. Court also said that till such statutes are enacted, the recommendations shall be operative by virtue of its (Supreme Court) order, aforesaid.

291. In ***Parthiban Blue Metal & Others vs. Member Secretary, Tamil Nadu Pollution Control Board & Others, (2007)13SCC197***, (order dated 01.02.2007) in (Civil Appeal No. 411/2007) issue of distance of stone crushers from residential area was considered. Various stone crusher units were operating in village Trisoolam, Kanjipuram district, Tamil Nadu prior to 1974. After enactment of Water Act, 1974 and Air Act, 1981, unit operators applied for consent but relying on Rule 36(1) of Tamil Nadu Minor Mineral Concession Rules, 1959, as amended, prohibiting quarrying within a radial distance of 500 metres from inhabited site, State PCB issued notices requiring proponents to shift to alternative sites. Writ Petitions were filed in Madras High court stating that units were operating since 1972 and at that time area was non-urban zone. Writ Petitions were dismissed and, then came to Supreme Court. In the matter of distance, Court did not interfere and said that since there is some dispute about the actual distance, the same be examined and for this purpose remanded the case to High Court.

292. In ***Suresh Estates Private Limited & Others vs. Municipal Corporation of Greater Mumbai & Others, (2007)14SCC439*** (order dated 14.12.2007) in (Civil Appeal No. 5948/2007), a three judges' bench, besides others, also considered the question, "*whether Coastal Regulation Zone (hereinafter referred to as, 'CRZ') will prevail over the provincial municipal laws or vice versa*". The Notification dated 09.02.1991 issued under Sections 3(1) and 3(2)(v) of EP Act, 1986, declaring coastal stretches as CRZ and making regulations for regulating activities in such zone was considered. Court held that the word 'existing regulations' means those which were enforced on the date when CRZ Notification came into force, i.e., 19.02.1991. CRZ Notification referred to the structures which were in existence on the date of Notification and did not

talk of future provisions. After enforcement of CRZ Regulations, building activity permitted under that notification only shall be applicable and any future variation would not have any impact. Court said that in view of Section 3 of EP Act, 1986, any order/notification issued thereunder shall prevail over provisions of any other law which will also include MRTP Act, 1966 and Municipal laws.

293. In ***T.N. Godavarman Thirumulpad (104) vs. Union of India & Others, (2008)2SCC222***, (order dated 23.11.2007) in (IAs No. 1324, 1474 and 2081-82 in WP(C) No. 202/1995), an application was filed on behalf of M/s. Vedanta Alumina Ltd. seeking clearance for use of 723.343 ha of land including 58.943 ha of reserve forest land in Lanjigarh Tehsil of Kalahandi District for setting up alumina refinery. Court proposed certain conditions which if agreeable, it would consider grant of clearance but in the context of principle of sustainable development *vis-a-vis* mining activities, Court said: “*while applying principle of sustainable development one must bear in mind that **development which meets the needs of the present without compromising the ability of future generations to meet their own needs is sustainable development**--it is the duty of the State under our Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity.*” Court further said that “*mining is an important revenue-generating industry*” but Court cannot allow country’s national assets to be placed into the hands of companies without a proper mechanism in place and without ascertaining credibility of the user agency.

294. In ***A. Chowgule and Company Limited vs. Goa Foundation India & Others, (2008)12SCC646***, (order dated 18.08.2008) in (Civil

Appeal No. 5180/2001), issue of “prior approval”, in the context of FC Act, 1980 read with Forest (Conservation) Rules, 1981, was considered. M/s. A. Chowgule & Co. Ltd. (hereinafter referred to as, ‘proponent’) was engaged in mining, processing and export iron ore. Certain land was allotted to the proponent for establishment of 100% export-oriented unit in Sanguem Taluka in South Goa district. No Objection Certificate was issued by State PCB on 15.04.1991. The allotted land included some part which was claimed to be forest land but for permitting non-forest activities in forest land, no prior approval was obtained from MoEF&CC. A Writ Petition was filed in Goa bench of Bombay High Court wherein lease agreement dated 01.11.1989 was quashed. For holding what forest is, reliance was placed on Supreme Court judgment in ***T.N. Godavarman Thirumulkpad vs. Union of India, (1997)2SCC267***. Court examined Section 2 of FC Act, 1980 and Rules framed thereunder and said that under the provisions, “prior approval” is required for diversion of any forest land and its use for some other purpose. It also said that before promulgation of Act, a lease may be granted as per the then law but for renewal the provisions of subsequent enactment would have to be followed. Referring and relying on earlier decisions in ***Ambica Quarry Works vs. State of Gujarat, (1987)1SCC213***; ***Rural Litigation and Entitlement Kendra vs. State of U.P. (Supra)***; ***T.N. Godavarman Thirumulkpad vs. Union of India, (1997)2SCC267*** and ***M.C. Mehta vs. Union of India, (2004)12SCC118***, Court held “*after the coming into force of the Act, the renewal of a pre-existing mining lease in a forest area can be granted only if the requirements of Section 2 are satisfied.*” Considering the arguments that proponent was willing to reforest in identical area if the lease is allowed to be effectuated, Court examined as to what is implied by the term ‘afforestation’ or ‘re-forestation’. It is said

“is it merely the replacement of one tree with another or does it imply something a little more complex? “Reforestation is the restocking of existing forests and woodlands which have been depleted, with native tree stock, whereas afforestation is the process of restoring and recreating areas of woodlands or forest that once existed but were deforested or otherwise removed or destroyed at some point in the past”.”

295. Court also noticed its experience that re-forestation or afforestation carried out in India does not meet the fundamentals and planting of new trees to match the numbers removed is too simplistic and archaic a solution, as in the guise of compensatory replantation, local varieties of trees are being replaced by alien and non-indigenous but fast-growing varieties such as poplar and eucalyptus which make up the numbers but cannot satisfy the needs of our environmental system. Court cautioned that one must borne in mind that both re-forestation and afforestation envisage a resurrection and re-plantation of trees and other flora similar to those which have been removed and which are suitable to the area in question. Court further elaborated its experience in the light of disappearance of different kinds of birds due to cutting of large scale of trees for widening of roads. In paragraphs 25 and 26 of the judgment, Court said:

*“25. There is yet another circumstance which is even more disturbing inasmuch as the removal of existing forest or trees suited to the local environment have destroyed the eco system dependent on them. This is evident from the huge depletion of wild life on account of the disturbance of the habitat arising out of the destruction of the existing forest cover. A small but significant example is the destruction of plantations alongside the arterial roads in India. 30 years ago, all arterial roads had huge peripheral forest cover which not only provided shade and shelter to the traveller but were a haven to a large variety and number of birds and other wild life peculiar to that area. With the removal of these plantations to widen the roads to meet the ever growing needs of the traffic, and their replacement by trees of non-indigenous varieties, (which are often not eco or bird friendly) in the restricted and remaining areas bordering the widened roads, **the shelter for birds has been***

destroyed and where thousands of birds once nested and bred, there has been a virtual annihilation of the bird life as well.

26. Those who live in North India would do well to remember that a drive along the Grand Trunk Road, National Highway No.1, northwards of Delhi, particularly during the hours of dawn or dusk, was as if through an aviary with thousands of birds representing a myriad of species with their distinctive calls reaching a crescendo during early evening and gradually fading into silence as darkness set in. Sadly, all that can now be seen are crows feeding on the decaying and mutilated carcasses of dogs and other animals killed by speeding vehicles. Equally disturbing is the decrease in the reptilian population as the undergrowth in which it lived and prospered has been destroyed, and with the concomitant increase in the rodent population, colossal losses and damage to the farmer and in the storage of food grains.”

296. The widening of roads has destroyed shelter for birds where thousands of birds used to nest and bred and it has resulted in virtual annihilation of the bird life as well. Court, therefore, dismissed appeal of the proponent and said that any subsequent approval will not make good the violation of environmental laws, already committed.

297. In **News Item Published in Hindustan Times Titled “And Quiet Flows The Maily Yamuna”, In Re, (2009)17SCC708** (order dated 12.04.2005), Supreme Court continued to consider the issue of pollution of river Yamuna, deprecated authorities for their inaction/negligence and said,

“It is for the Government to implement the laws. It is no answer to say that the master plan, building bye-laws and other laws were observed in breach and the authorities were silent spectators. It seems that there was connivance of officers/officials concerned without which it is quite difficult for such large-scale unauthorized acts to take place”.

298. In para 13 of the order, Court referred to its earlier order dated 10.04.2001 wherein it has said:

“...right to life guaranteed under Article 21 of the Constitution would surely include the right to clean water, which is being deprived to millions of citizens of Delhi because of large-scale pollution of River Yamuna”.

299. Court recorded its concern in para 16 of the order, and said:

*“This is a most unsatisfactory way of tackling the problem which, admittedly as per the Government’s perception too, is alarming and emergent. How seriously the measures have been taken is evident from the fact that **despite the orders of this Court, there is no assistance or affidavit from the National River Conservation Authority. It seems evident that the Government and its functionaries and authorities have failed in their public duty** and obligations towards the citizens of Delhi. Despite all these years, they have not been able to provide clean water of Class ‘C’ category which had been directed years back”.*

300. In ***News Item Published in Hindustan Times Titled “And Quiet Flows The Maily Yamuna”, In Re, (2009)17SCC545*** (order dated 14.02.2006), Court noticed attempt of the authorities in placing alleged scheme for improvement of water quality, without any clarity, and in para 5 said:

*“We do not know what are the so-called innovative and convenient ways of which suggestion is given in the affidavit. The **authorities have to be clear in their perception** and palm of action lest the huge amounts incurred with a view to improve the water quality go down the drain. **After clearly laying down the plan of action in consultation with all concerned, there has to be meticulous implementation, then alone some progress can be made in improving the quality of water.**”*

301. Further in para 7, Court said, since State/authorities are not in a position to make available the basic services on the pretext of server limitation, there shall be no regularization of unauthorized colonies. Court clarified that regularization should be made only if it is possible for the respondents to make available the basic services.

302. In ***State of Uttaranchal vs. Balwant Singh Chaufal and others, (2010)3SCC402***, Court had a retrospect of the matters filed as Public Interest Litigation and examined its evolution in the backdrop where appointment of L.P. Naithani, Senior Advocate as Advocate General was challenged in a Public Interest Litigation on the ground that he was above 62 years, hence ineligible, though it was already settled in catena

of decisions that the age of superannuation prescribed for High Court Judges was not applicable to office of Advocate General. In para 23, Court said that Public Interest Litigation in question was an abuse of the process, and High Court should not have heard and entertained such petitions since controversy was decided as long back as in 1952 in **G.D. Karkare vs. T.L. Shevde, AIR1952Nag330**. While going through evolution of Public Interest Litigation, Court said that the origin and development of PIL can broadly be placed in three phases:

“

- *Phase I.- It deals with cases of this Court where directions and orders were passed primarily to protect fundamental rights under Article 21 of the marginalized groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach this Court or the High Courts.*
- **Phase II.- It deals with the cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments, etc.**
- *Phase III.- It deals with the directions issued by the Courts in maintaining the probity, transparency and integrity in governance.”*

303. Phase II deals with the public interest litigations entertained for issuing directions to preserve and protect ecology and environment and Court referred to some leading cases in paras 76 to 95.

304. In **M. Nizamudeen vs. Chemplast Sanmar Limited and Others, (2010)4SCC240**, issue of transfer of hazardous substances from ships to ports in CRZ area in the light of the provisions of CRZ Notification dated 19.02.1991 as amended from time to time was considered. One M/s. Chemplast Sanmar Limited (in short ‘Chemplast’) sought to establish a unit for manufacturing Poly-Vinyl Chloride (in short ‘PVC’) at Semmankuppam village, SIPCOT Industrial Complex, Phase-II, Cuddalore District, Tamil Nadu. EC was granted by MoEF on 28.11.2005 subject to certain conditions. For manufacturing PVC one of the raw materials was Vinyl Chloride Monomer (in short ‘VCM’) which was not available

indigenously and had to be imported from international suppliers. Proponent proposed to install Marine Terminal Facility near the seashore at Chitrapettai Village for receiving and transferring VCM from ships to PVC plant through underground pipeline. This proposal was recommended in favour of proponent by District Coastal Zone Management Committee and considered by Tamil Nadu State Coastal Zone Management Authority (TNSCZMA) recommending to State Government to forward proposal to MoEF for issue of CRZ clearance. Government of Tamil Nadu vide letter dated 09.11.2005 informed National Coastal Zone Management Authority its acceptance of the recommendation made by the TNSCZMA and ultimately MoEF also granted EC on 19.12.2005. Consent under Water Act, 1974 was granted by State PCB on 14.09.2006. Thereafter, proponent made an application dated 06.02.2008 to Executive Engineer, PWD seeking permission for carrying seawater and raw-materials through pipelines laid 3.50 meter below the river bed. Initially, permission was granted by Executive Engineer on 27.02.2008 but within less than a month on 19.03.2008, the said permission was cancelled by Executive engineer on the ground that VCM may cause pollution and health hazard to the public. This order of cancellation was challenged by proponent in High court. Writ Petition was allowed on 18.07.2008 setting aside order cancelling permission dated 19.03.2008. Thereafter, one Shri M. Nizamudeen filed a PIL in Madras High Court challenging order dated 27.02.2008 granting permission by Executive Engineer. He did not challenge EC granted by MoEF on 28.05.2005 and 19.12.2005. High Court dismissed writ petition of Shri M. Nizamudeen vide judgment dated 31.10.2008 and thereafter, appeal came up before Supreme Court. The first question raised before Supreme Court was, whether river Uppanar and its drain at the point where

pipeline pass, fall in CRZ tree area and secondly if the first question is answered in affirmative whether pipeline crossing underneath Uppanar would require EC. Another incidental question was whether para 2(ii) of CRZ Notification, 1991 restricts transfer of VCM (hazardous substance) beyond port area to PVC plant through pipelines. Examining CRZ Notification, 1991 along with its amendments dated 29.12.1998 and 21.05.2002, Court observed that the provisions have to be read so as to render them workable and not ineffective, inoperative or redundant. Hence, explaining the expression “in the port areas”, court said that it should be read as “in or through the port areas” so that the basic purpose is served effectively and in a workable manner. Court said that there cannot be an intention that hazardous substance though maybe brought into refinery or terminal in the port area from the ship but would remain there and cannot be taken beyond the port area because of the prohibition so as to frustrate the purpose for which the same were brought in.

305. In ***Goan Real Estate & Construction Ltd. & Anr. vs. Union of India, (2010)5SCC388***, writ petition under Article 32 was filed before Supreme Court with a prayer that building plans, sanctions and constructions made and on-going constructions pursuant to CRZ Notification dated 19.02.1991 as amended by notification dated 16.08.1994 are dwelled. Under Notification of 1991, area upto 100 meters from High Tide Line was earmarked as ‘No Development Zone’ and no construction was permissible within this zone except repairs etc. Vide notification dated 16.08.1994 an amendment was brought in relaxing no development zone from 50 meters to 100 meters pursuant whereto, some people applied for raising construction between 50 meters to 100 meters for which the concerned authorities granted permission and, in some

matters, construction started, and in some cases, it was already completed. Earlier in ***Indian Council for Enviro-Legal Action vs. Union of India, (1996)5SCC281*** a complaint that CRZ Notification 1991 was not being followed by the authorities themselves causing continuous degradation of ecology was made. In that writ petition, Goa Foundation Society filed an application challenging vires of notification dated 16.08.1994 by which notification dated 19.02.1991 was amended. The writ petition in ***Indian Council for Enviro-Legal Action (supra)*** was partly allowed and two amendments introduced by Notification dated 16.08.1994 were strike down. Reduction from 100 meters to 50 meters was not found to be rational and valid and held contrary to the object of EP Act, 1986. The authorities started action in respect of on-going project, in the light of Supreme Court judgment striking down amendment made by Notification dated 16.08.1994 and that is how matter came again before Supreme Court in ***Goan Real Estate and Contraction Limited (supra)***. The question for consideration was whether construction made or on-going pursuant to the plan sanctioned on the basis of Notification dated 16.08.1994 would be affected or not. The question was answered holding that judgment dated 18.04.1996 rendered in ***Indian Council for Enviro-Legal Action (supra)*** will not affect on-going constructions or completed constructions pursuant to plan sanctioned under Notification dated 16.08.1994 till two clauses of the same were set aside by Supreme Court and the said judgment will not affect the completed or the on-going constructions being undertaken pursuant to the amended Notification.

306. In ***James Joseph vs. State of Kerala, (2010)9SCC642***, Section 12-A(1) of Kerala Forest Act, 1961 was considered which provided second appeal. An argument was raised that second appeal would be available

only if there is a substantial question of law like Section 100 CPC and not otherwise. The said argument was rejected observing that an appeal is governed by statute and the Appellant authority can examine correctness of the order appealed on the point of law or fact, both, unless there is any specific requirement provided in the provision providing second appeal.

307. In ***Sansar Chand vs. State of Rajasthan, (2010)10SCC604***, while hearing criminal appeal wherein appellant has challenged his conviction under Wild Life Protection Act, 1972 (WLP Act 1972) on the charges of poaching etc., Court observed that preservation of wild life is important for maintaining ecological balance in the environment and sustaining ecological chain. Directions were issued to Governments and State authorities to ensure preservation of wild life and take stringent action against those who are violating the provisions of WLP Act, 1972.

308. In ***People for Ethhical Treatment of Animals vs. Central Zoo Authority and Others***, W.P. No. 195/2006 was filed in Supreme Court under Article 32 raising the issue of cruelty on animals in unrecognized/derecognized Zoos/Circuses/Rescue Centres etc. On 09.10.2006, Court directed that no zoo shall permit any breeding of animals beyond the numbers specified by Central Zoo Authority in its directive dated 07.02.1995, besides other directions. Ultimately, after noticing the progress resulting in closure of unrecognized/derecognized Zoos/Circuses/Rescue Centres etc., issue of guidelines, framing of rules etc., Court found that the purpose of writ petition has been achieved and disposed the matters vide order dated 10.02.2009 reported in ***(2010)14SCC733***.

309. In ***Re: Construction of Park at Noida near Okhla Bird Sanctuary vs. Union of India and Others, (2011)1SCC744***,

environmental issues arising from development of five parks at Sector 95 at NOIDA by State Government and NOIDA were considered. The project was opposed by applicants who brought the matter in Supreme Court in pending **W.P. No. 202/1995, T.N. Godavarman Thirumulpad vs. Union of India & Others**, by means of IAs, on the ground that large number of trees were cut down for clearing ground in an area which was ‘forest’ in terms of judgment in **T.N. Godavarman Thirumulpad (supra)**, in violation of FC Act, 1980 and EP Act, 1986. Project on its western side lies in very proximity to Okhla Bird Sanctuary which included a large water body and is home to about 302 species of birds. Sanctuary was so declared by Notification dated 08.05.1990 issued under Section 80 of WLP Act, 1972. The stand taken by State Government was that project area does not have naturally grown trees but planted trees; area has neither been notified as “forest” nor recorded as “forest” in Government record and not identified as deemed forest. Court accepted stand of the State and held that project site is not forest land hence does not contravene Section 2 of FC Act, 1980. With regard to application of EIA 2006 to the said project, Court examined provisions of EIA 2006, and said that entries 8(a) and 8(b) of Schedule talk of “building and construction project” and “townships and area development project”. Since two kinds of projects are treated separate and differently, it would mean that an ‘area development project’ though may involve a good deal of construction, would not be a ‘building and construction project’. Court also considered the argument that in Category 8(a), there is no mention of the construction activities of more than 1,50,000 sq.m. and, therefore, necessarily, it would be covered by Category 8(b) and said in para 64, 65, 66 and 67, as under:

“64. The amicus, also arguing in the same vein, submitted that as far as building and construction projects are concerned there was no

qualitative difference in Items 8(a) and 8(b) of the schedule to the notification. **A combined reading of the two clauses of Item 8 of the schedule would show the continuity in the two provisions; 1,50,000 sq m of built-up area that was the upper limit in Item 8(a) was the threshold marker in Item 8(b). This clearly meant that building and construction projects with built-up area/activity area between 20,000 sq m to 1,50,000 sq m would fall in Category 8(a) and projects with built-up area of 1,50,000 sq m or more would fall in Category 8(b).** The amicus further submitted that though it was not expressly stated, the expression “built-up area” in Item 8(b) must get the same meaning as in Item 8(a), that is to say, if the construction had facilities open to sky the whole of the “activity area” must be deemed to constitute the “built-up area”.

65. It is extremely difficult to accept the contention that the contention that the categorisation under Items 8(a) and 8(b) has no bearing on the nature and character of the project and is based purely on the built-up area. **A building and construction project is nothing but addition of structures over the land. A township project is the development of a new area for residential, commercial or industrial use. A township project is different both quantitatively and qualitatively from a mere building and construction project.** Further, an area development project may be connected with the township development project and may be its first stage when grounds are cleared, roads and pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other civic infrastructure. Or an area development project may be completely independent of any township development project as in case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park.

66. **The illustration given by Mr Bhushan may be correct to an extent. Constructions with built-up area in excess of 1,50,000 would be huge by any standard and in that case the project by virtue of sheer magnitude would qualify as township development project. To that limited extent there may be a quantitative correlation between Items 8(a) and 8(b).** But it must be realised that the converse of the illustration given by Mr Bhushan may not be true. For example, a project which is by its nature and character an “area development project” would not become a “building and construction project” simply because it falls short of the threshold mark under Item 8(b) but comes within the area specified in Item 8(a). **The essential difference between items 8(a) and 8(b) lies not only in the different magnitudes but in the difference in the nature and character of the projects enumerated thereunder.**

67. In light of the above discussion it is difficult to see the project in question as a “building and construction project”. Applying the test of **“dominant purpose or dominant nature”** of the project or the **“common parlance” test** i.e. how a common person using it and enjoying its facilities would view it, the project can only be categorised under Item 8(b) of the schedule as a township and area

development project". But under that category it does not come up to the threshold marker inasmuch as the total area of the project (33.43 ha) is less than 50 ha and its built-up area even if the hard landscaped area and the covered areas are put together comes 1,05,544.49 sq m i.e. much below the threshold marker of 1,50,000 sq m. The inescapable conclusion, therefore, is that the project does not fall within the ambit of the EIA Notification S.O. 1533(E) dated 14-9-2006. This is not to say that this is the ideal or a very happy outcome but that is how the notification is framed and taking any other view would be doing gross violence to the scheme of the notification."

310. On the question of project being within 10 kms of Okhla Bird Sanctuary, it was noticed that Sanctuary is hardly at a distance of 50 meters but unfortunately, neither there was any notification declaring eco-sensitive zone nor Central or State Government have notified buffer zones around Sanctuaries and National Parks to protect sensitive and delicate ecological balance required for the Sanctuaries. However, Court said that absence of statute will not preclude Court from examining project's effects on the environment with particular reference to Okhla Bird Sanctuary. **As per jurisprudence developed by Court, environment is not merely a statutory issue but is one of the facets of the Right to Life guaranteed under Article 21 of Constitution. Environment, therefore, is a matter directly under Constitution and if Court perceives any project or activity as harmful or injurious to environment, it would feel obliged to step in.** Consequently, Court issued certain directions for maintaining soft/green landscaping and thick cover of trees of native variety on the side of bird sanctuary.

311. Court also noticed anomaly in EIA 2006 Items 8(a) and 8(b) and in para 84 said:

"84. The EIA Notification dated 14-9-2006 urgently calls for a close second look by the authorities concerned. The projects/activities under Items 8(a) and 8(b) of the schedule to the notification need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity

and vagueness. *The question of application of the general condition to the projects/activities listed in the schedule also needs to be put beyond any debate or dispute. We would also like to point out that the environmental impact studies in this case were not conducted either by the MoEF or any organisation under it or even by any agencies appointed by it. All the three studies that were finally placed before the Expert Appraisal Committee and which this Court has also taken into consideration, were made at the behest of the project proponents and by agencies of their choice. This Court would have been more comfortable if the environment impact studies were made by the MoEF or by any organisation under it or at least by agencies appointed and recommended by it.*”

312. In **Krishnadevi Malchand Kamathia and Others vs. Bombay Environmental Action Group and Others, (2011)3SCC363**, the matter was taken up in I.A. in contempt. Original proceedings in Civil Appeal No. 4421 of 2010 were decided vide judgment dated 07.05.2010. It was brought to the notice of Court that appellant has damaged mangroves in the garb of repair of bund and violated Court’s order. Observing that justice is only blind or blindfolded to the extent necessary to hold its scales evenly, and it is not, and must never be allowed, to become blind to the reality of the situation, lamentable though that situation may be, Court held appellant guilty of contempt and issued directions for restoration of bund by removing all debris/bricks, etc. and restore situation as it existed earlier so as to facilitate natural flow of sea water into land.

313. In **K. Balakrishnan Nambiar vs. State of Karnataka and Others, (2011)5SCC353**, a question arose ‘*whether areca nut cultivation can be treated to be a forest activity or not*’. On behalf of appellant, the argument was that areca nut cultivation cannot be treated as a non-forest activity since it does not involve cutting of trees. Rejecting the same, Court dismissed appeal. Reference was made to judgment in **T.N. Godavarman Thirumulpad vs Union of India & Others, (1997)2SCC267**, where direction was issued to all State Governments to

ensure that all on-going non-forest activities within any forest, without prior approval of Central Government, must cease forthwith. Court also emphasized that every State Government must ensure total cessation of all non-forest activities forthwith.

314. In ***State of Karnataka and Others vs. Janthakal Enterprises and Another, (2011)6SCC695***, continued mining by scrupulous mining lease holders, who got order from High Court, was deprecated and Court said:

*“The Courts should share the legislative concern to conserve the forest and mineral wealth of the country. **Court should be vigilant in issuing final or interim orders in forest/mining/environment matters so that unscrupulous operators do not abuse the process of courts to indulge in large-scale violations or rob the country of its mineral wealth or secure orders by misrepresentation to circumvent the procedural safeguards under the relevant statutes.....**A wrong decision in such matters may lead to disastrous results-in regard to public interest-financially and ecologically. Therefore, writ petitions involving mineral wealth/forest conservation or environmental protection should not be disposed of without giving due opportunity to the departments concerned to verify the facts and file their counter affidavits/objections in writing.*

315. The effect of mining on environment in the context of National Forest Policy, 1988 was considered in ***Lafarge Umiam Mining Private Limited vs. Union of India, (2011)7SCC338***. The company, M/s. Lafarge Surma Cement Ltd. (hereinafter referred to as ‘LSCL’) was incorporated under the laws of Bangladesh. It had set up a cross-border cement manufacturing project at Chhatak in Bangladesh which *inter-alia* has a captive limestone mine of 100 hectares located at Phlangkaruh, Nongtraï, East Khasi Hills District in State of Meghalaya. Mine was leased out in favour of Lafarge Umium Mining (P) Ltd. (hereinafter referred to as ‘LUMPL’), which was a company incorporated under Companies Act, 1956 and wholly owned subsidiary of LSCL. Entire produce of mine was used for production of cement at manufacturing plant at Chhatak under

agreement/arrangement between Governments of India and Bangladesh. There was no other source of limestone available for LSCL except for captive limestone mine situated at Nongtraï. LUMPL conveyed limestone extracted from mines situated at Nongtraï after crushing in a crusher plant to LSCS plant in Bangladesh. LUMPL submitted an application on 01.09.1997 for grant of EC under EIA 1994 for limestone mining project at Nongtraï. The application was returned by MoEF with the direction to seek site clearance as well as project clearance as per amendment made in EIA 1994. Application for site clearance was submitted on 23.09.1998, which was allowed by MoEF vide letter dated 18.06.1999. Thereafter, application was submitted on 17.04.2000 for grant of EC under EIA 1994 for excavation of 2 million tonnes per annum of limestone and transportation thereof to Chhatak in Bangladesh through a conveyor belt. The mining area of 100 hectares was declared as 'barren' land. Divisional Forest Officer issued a certificate on 13.06.2000 certifying that mining site was not forest area nor did it fall under any notified reserved or protected forest. Ultimately, EIA clearance was given by MoEF on 09.08.2001. Chief Conservator of Forest, however, vide letter dated 01.06.2006 informed MoEF that mining area included thick natural vegetation cover with sizable number of tall trees and permission under FC Act, 1980 was necessary, which was not obtained. Project Proponent applied for NOC from Forest Department. On the ground that the area included forest and there was violation of FC Act, 1980, Chief Conservator of Forest requested Government of Meghalaya to stop further mining etc. MoEF consequently issued order dated 30.04.2007 for complete closure of all on-going non-forest activities by Lafarge. This prompted Lafarge to move to Supreme Court by filing I.A No. 1868 of 2007 in ***Lafarge Umiam Mining Private Limited, T.N. Godavarman***

Thirumulpad vs. Union of India and others, (2011)7SCC338 seeking a direction to MoEF to expeditiously process its application under Section 2 of FC Act, 1980. Vide order dated 05.02.2010 (reported in ***T.N Godavarman Thirumulpad vs. Union of India, (2010)12SCC376***) Court directed proponent to stop all mining activities. MoEF granted EC on 19.04.2010 with certain additional conditions and forest clearance was issued on 22.04.2010. State Government recommended diversion of 116.589 hectare of forest land for limestone mining in favour of project proponent vide letter dated 16.07.2007 which was examined by Expert Appraisal Committee and ultimately, Government of Meghalaya vide letter dated 12.07.2010 made recommendation for grant of formal approval under Section 2 of FC Act, 1980. Answering the issues relating to nature of land and validity of ex-post facto clearance, Court said that universal human dependence on use of environmental resources for the most basic needs render it impossible to refrain from altering the environment. As a natural corollary, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environment protection and the risk which are to be regulated. This aspect is recognized by the concept of 'sustainable development'. Court held it valid on the ground that record show that it was not granted without due consideration and hence it is not vitiated for non-application of mind. Court also held that ex-post facto clearance is based on revised EIA 1994, EIA 2006 has no application. It also observed in para 119 that facts of the case justify application of constitutional 'doctrine of proportionality' to the matters concerning environment as a part of process of judicial review in contradistinction to merit review. In this regard, Court said,

"It cannot be gainsaid that utilisation of the environment and its natural resources has to be in a way that is consistent with

*principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognised principles of judicial review. **Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision?** Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of “margin of appreciation” in favour of the decision-maker would come into play.”*

316. Further, directions were issued by Supreme Court for future cases. In para 122, Court said that National Forest Policy, 1988 which lays down far-reaching principles, must necessarily govern grant of permissions under Section 2 of FC Act, 1980 as the same provides road map to ecological protection and improvement under EP Act, 1986. Court further said, “*The **principles/guidelines mentioned in the National Forest Policy, 1988 should be read as part of the provisions of the Environment (Protection) Act, 1986 read together with the Forest (Conservation) Act, 1980***”. Court also directed Central Government to appoint an appropriate authority in the form of Regulator at State and Central level, for ensuring implementation of National Forest Policy, 1988. Several other guidelines in respect of clearance for non-forest activities in forest area and grant of EC where forest land is involved, were issued in para 122 and 123 of the judgment.

317. In *Indian Council for Enviro-Legal Action vs. Union of India and Others (2011)8SCC161*, Court examined issue of environmental compensation as also compensation to the individual victims on account of industrial activities carried out by M/s. Hindustan Agro Chemicals

Ltd., Rajasthan Multi Fertilisers, Phosphate India, Jyoti Chemicals and Silver Chemicals. It was an off-shoot of earlier proceedings initiated by same complainant namely; Indian Council for Enviro-Legal Action, where the matter was decided vide judgment dated 13.02.1996, reported in **(1996)3SCC212**. W.P.(C) No. 967 of 1989 was filed complaining that certain chemical industries were indulged in industrial activities in utter violation of statutory conditions and environment norms; they are recklessly spreading hazardous industrial waste (iron sludge and gypsum sludge) all over the area and do not bother to ensure proper disposal; Toxic substances percolated into earth polluting soil, aquifers and subterranean water supply and also causing ailments and diseases to local villagers. During pendency of Writ Petition, Rajasthan State PCB directed closure of certain industries by issuing an order under Section 33 (A) of Water Act, 1974. This order was also challenged before Supreme Court in W.P.(C) No. 76 of 1994, wherein, an interim order was passed, permitting industry to continue to run with certain conditions. Another W.P.(C) No. 824 of 1993, filed by M/s. Hindustan Agro Chemicals also came up for disposal along with W.P.(C) Nos. 967 of 1989 and 76 of 1994 and decided by judgment dated 13.02.1996 reported in **(1996)3SCC212 (supra)**. Court held that industries concerned were liable for pollution caused and industries had forfeited all claims for any lenient consideration. Court directed attachment of factories, plant, machinery and all other immovable assets of the said industries and Rajasthan State PCB was directed to seal all the factories and plants. Later, vide order dated 04.11.1997, Court determined cost of remedial measures at Rs. 37.385 crores on the basis of assessment/reports of various authorities and by adjudicating the contentions raised. M/s. Hindustan Agro Chemical Ltd., however, avoided payment by keeping litigation alive for

1½ decade and, thereafter, in I.A. filed, Court, in para 197, laid down certain principles to be observed and followed, as under:

*“197. The other aspect which has been dealt with in great details is to **neutralize any unjust enrichment and undeserved gain made by the litigants.** While adjudicating, the courts must keep the following principles in view:*

(1) It is the bounden duty and obligation of the court to neutralize any unjust enrichment and undeserved gain made by any party by invoking the jurisdiction of the court.

(2) When a party applies and gets a stay or injunction from the court, it is always at the risk and responsibility of the party applying. An order of stay cannot be presumed to be conferment of additional right upon the litigating party.

(3) Unscrupulous litigants be prevented from taking undue advantage by invoking jurisdiction of the Court.

(4) A person in wrongful possession should not only be removed from that place as early as possible but be compelled to pay for wrongful use of that premises fine, penalty and costs. Any leniency would seriously affect the credibility of the judicial system.

(5) No litigant can derive benefit from the mere pendency of a case in a court of law.

(6) A party cannot be allowed to take any benefit of his own wrongs.

***(7) Litigation should not be permitted to turn into a fruitful industry** so that the unscrupulous litigants are encouraged to invoke the jurisdiction of the court.*

(8) The institution of litigation cannot be permitted to confer any advantage on a party by delayed action of courts.”

318. Ultimately, Court directed M/s. Hindustan Agro Chemicals Ltd. to pay Rs. 37.385 crores along with compound interest at 12% per annum and also cost of Rs. 10 lakhs in both I.As.

319. In **T.N. Godavarman Thirumulpad (2011)15SCC671** (Order dated 28.11.2006 in I.A. No. 826 and others), Court considered complaint about constitution of Forest Advisory Committee where in Mining and Civil Engineers were brought in as Members. Deprecating the same, Court said that *“extraction of minerals and reclamation strictly does not follow within the domain of Ministry of Environment and Forest and an expert needed for conservation of forest cannot be substituted by alleged experts in the field of mining etc.”* In para 21, Court said, *“mining or other development projects cannot be said to be allied disciplines of forestry.*

Allied disciplines may be like water harvesting, wildlife protection, biodiversity, etc. The composition of these 3 is to strengthen the participation of people in the matter of conservation of forest and to check the degradation of the environment". Again, in para 23, Court said that it is implicit in Rules of 2003 and when seen in the light of 1981 Rules, coupled with the objects of FC Act, 1980 that the persons to be included in the category under consideration are those who are independent experts in the field of conservation of forests and allied disciplines, and have established their credentials in that capacity as opposed to those who may be government servants.

320. In ***Meghwal Samaj Shiksha Samiti vs. Lakh Singh & Others (2011)11SCC800***, Court shows its concern for protection of water body. In village Raniwara Kalan, District Jalore, Rajasthan, in Revenue records, a village pond as '*gair mumkin nada*' was recorded. After sometime it fell into disuse whereafter District Collector allotted 0.48 hectares of the area of the said pond to Meghwal Samaj Shiksha Samiti on 99 years lease. The said allotment was challenged in a writ petition filed in High Court which was allowed vide judgment dated 20.11.2002. Court said that once the land was recorded as pond, it was incumbent upon the authorities concerned to restore and maintain the same as pond and it could not have been allotted for any purpose or construction. The allottee in Appeal before Supreme Court placed reliance on the report of *Patwari* that there was no water in the pond and hence, it could have been allotted but rejecting the same, Court relied on the judgment in ***Hinch Lal Tiwari vs. Kamala Devi (2001)6SCC496***, and said that if land was recorded as pond it had to be maintained as it is and the report of *Patwari* will not be of any consequence. In ***Hinch Lal Tiwari (supra)***, it was found that once a pond is existed and recorded in Revenue records, merely because for

some time or otherwise, it has encroached or dried up, will not change its nature and it has to be protected. In para 13 of the judgment Court said: *“the material resources of the community like forests, tanks, ponds, hillock, mountain, etc. are nature’s bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution.”*

321. Court further said that Revenue Authorities should make all attempts to develop the pond if it is so recorded and cannot take advantage of any encroachment or drying up of the pond. Protection and preservation of the pond would prevent ecological disaster and provide better environment to the people at large.

322. Protection of wild buffaloes mostly found in Western and Eastern *ghats* of the country in the context of State of Chhattisgarh was considered in ***T.N. Godavarman Thirumulpad vs. Union of India & Others (2012)3SCC277*** (order dated 12.02.2012 in IA Nos. 1433 and 1477 of 2005 in WP (C) No. 202 of 1995). Wild buffalo was declared State animal in State of Chhattisgarh. Referring to the statute enacted for protection of wild life i.e., WP Act, 1972, Court observed that prior to the said act there was a scheme namely “Assistance for the Development of National Parks and Sanctuaries” which used to support only National Parks and Wildlife Sanctuaries. Subsequently with the enactment of Act 1972 and amendment made in 2003, two more categories were added i.e., Conservation Reserves and Community Reserves. Earlier the areas namely Sanctuaries, National Parks and Closed Areas were substituted by the words “protected areas” by Act 16 of 2003 and in view of the 42nd amendment of Constitution and insertion of Entry 17A i.e. “forest” and

Entry 17B i.e. “protection of wild animals and birds”, Central as well as State Government both got mandated with the responsibility of protection and conservation of wild life and its habitants. Steps taken by State were not found satisfactory for protection of wild buffalos and directions were issued for undertaking intensive research and monitor as also training to the officials and maintain sanctuary and other areas whereby buffalos are found, in a more scientific and effective manner.

323. The issue of protection of sandalwood and red sandalwood said to be endangered species was considered in ***T.N. Godavarman Thirumulpad vs. Union of India & Others, (2012)4SCC362*** (order dated 13.02.2012 in IAs Nos. 1287, 1570-71 of 1996 with other IAs). NGO moves Central Empowered Committee for initiating steps to close unlicensed sandalwood industries particularly, in State of Kerala. CEC submitted report. After giving notice, the matter was considered. Court observed that the examination of Statues relating to environment in India as also international convention it found that there was a shift from environmental rights to ecological rights though gradually but substantial. The report was based on anthropocentric ethics which also find ambit in the principle that all humans are equitable access to natural resources meaning thereby all natural resources are treated as property and not alive. Further Precautionary Principle and Polluter Pays Principle followed by this Court, also based on anthropocentric principle since they also cause harm to human as a pre-requisite for invoking these principles. The principle of sustainable development and Inter-Generational equity too pre-supposes the higher needs of humans and lays down that exploitation of natural resources must be equitably distributed between present and future generations. Environmental ethics behind the above principles were human need and exploitation but

have no role when an issue of endanger species come for consideration before this Court. Explaining anthropocentric approach, Court said that it considers humans to be the most important factor and value in the universe. Humans have greater intrinsic value than other species. Under this approach, environment is only protected as a consequence of and to the extent needed to protect human well being. However, there is another approach i.e. ecocentric which stress the moral imperatives to respect intrinsic value, inter dependence and integrity of all forms of life. Thereafter, Court issued directions for conservation of sandalwood.

324. In ***Deepak Kumar & Others vs. State of Haryana & Others, (2012)4SSC629***, effect of mining of minor minerals and its regulation was considered in the context of auction notices issued by Department of Mines and Geology, Government of Haryana. Supreme Court, however, extended its scope of direction, Pan India. Background facts are, that auction notice dated 3.6.2011, issued by Department of Mines and Geology, Haryana proposing to auction extraction of minor minerals, boulders, gravel and sand quarries of an area, not exceeding 4.5 ha in district of Panchkula, was challenged. Further, auction notices dated 8.11.2011, in the district of Panchkula, Ambala and Yamuna Nagar exceeding 5 ha and above, quarrying minor mineral, road metal and masonry stone mines in the District of Bhiwani, stone and sand mines in the district of Mohindergarh, slate stone mines in the district of Rewari, and also in the districts of Kurukshetra, Karnal, Faridabad and Palwal, with certain restrictions for quarrying in the riverbeds of Yamuna, Tangri, Markanda, Ghaggar, Krishnavati River basin, Dohan River Basin etc., were also challenged. It was also brought to the notice of Supreme Court that similar illegal mining is going on in various districts of Rajasthan and Uttar Pradesh. It was pointed out that under EIA 2006, EC is

required only when mining is permitted in an area not less than 5 ha. Auction notices permitting mining in area less than 5 ha were challenged on the ground that in order to escape from environment study under EIA 2006, bigger areas have been divided in smaller areas of less than 5 ha and that is how illegal mining is being permitted causing damage to environment. Supreme Court noticed the stand taken by MoEF in its affidavit dated 23.11.2011 that where mining area is homogenous, physically proximate and identifiable piece of land of 5 ha or more, it should not be broken into smaller sizes to circumvent EIA 2006. There was a Committee of Minor Minerals which had recommended minimum lease size of 5 ha for minor minerals for undertaking scientific mining for the purpose of integrating and addressing environmental concerns. Court said that minor minerals, boulders, gravel and sand quarries etc., in the places notified in auction notices, including the riverbeds of Yamuna, Tangri, Markanda, Ghaggar, Krishnavati River basin, Dohan River Basin etc., would result in environmental degradation and threat to biodiversity, damage to riverine vegetation, cause erosion, pollute water resources etc. There was nothing on record to come to otherwise conclusion. It further shows that sand mining on either side of river upstream and instream, is one of the causes for environmental degradation and also threat to biodiversity over the years; India's rivers and riparian ecology had been badly affected at alarming rate due to unrestricted sand mining which has caused damage to ecosystem of rivers and safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds. It would also affect fish breeding and migration, spells disaster for conservation of many bird species, and had increased saline water in rivers. Commenting on the loss to the environment due to mining of minerals within or near

streambeds or inside streambeds, Court observed, that extraction of alluvial material from within or near a streambed has direct impact on stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, instream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. If these habitat characteristics are altered, the same can have deleterious impact on both, instream biota and the associated riparian habitat. It is true that demand for sand had continued and would continue to increase, day by day, due to ongoing construction of new infrastructures and expansion of existing ones. It is continuous process, placing immense pressure on the supply of sand resource. This has, and would, encourage mining activity which are bound to go on, legally or illegally, without any restriction. Lack of proper planning and sand management cause disturbance of marine ecosystem and would upset, the ability of natural marine processes to replenish the sand. Court expressed its anguish in the manner auction notices which were published by State of Haryana, permitting quarrying, mining and removal of sand from upstream and instream of several rivers which may have serious environmental impact on ephemeral, seasonal and perennial rivers and riverbeds, and sand extraction may have an adverse effect on biodiversity as well. This may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. Some of the rivers mentioned in the auction notices are on the foothills of fragile Shivalik Hills. Shivalik Hills are the source of rivers like Ghaggar, Tangri, Markand, etc. River Ghaggar is a seasonal river which rises up, in the outer Himalayas, between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes through Ambala and Hissar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal

river like Ghaggar, which also originates from the lower Shivalik Hills and enters Haryana near Ambala. During monsoon, this river swells up into a raging torrent, notorious for its devastating power, as also River Yamuna. Court found that without conducting any study on the possible environmental impact, on/in the riverbeds, and elsewhere, the auction notices were issued. Court said that, when extraction of alluvial material within or near a riverbed has an impact on river's physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that extraction is in blocks of less than 5 ha, separated by 1 km, since their collective impact may be significant, hence the necessity of a proper environmental assessment plan. MoEF brought to the notice of Court that it had come across several instances across the Country regarding damage to lakes, river beds and ground water leading to drying up of water beds and causing water scarcity on account of quarrying/mining leases and mineral concessions granted under rules, by Provincial Governments. State Government paid less attention on environmental aspect of minor minerals on the pretext that area was small but ignored the fact that collective impact in a particular area, over a period of time, was or would be significant. For taking note of these aspects, MoEF constituted, a Core Group under Chairmanship of Secretary (Environment and Forest) to look into the environmental aspects associated with mining of minor minerals, vide order dated 24.3.2009. The Core Group considered matter on following aspects: i.) Need to relook the definition of minor mineral, ii.) Minimum size of lease for adopting eco-friendly scientific mining practices, iii.) Period of lease, iv.) Cluster of mine approach for addressing and implementing EMP in case of small mines, v.) Depth of mining to minimise adverse impact on hydrological

regime, vi.) Requirement of mine plan for minor minerals, similar to major minerals, vii.) Reclamation of mined out area, post mine land use, progressive mine closure plan etc., The Core Group examined the matter and submitted a Draft report to MoEF which was considered and discussed on 29.01.2010 and thereafter final report was circulated to all the State Governments vide MoEF's DO letter dated 1.06.2010. The Ministry of Mines, Government of India also prepared draft rules called "Minor Minerals (Conservation and Development) Rules 2010", and also sent communication dated 16.05.2011, called "Environmental Aspects of Quarrying and of Minor Minerals-Evolving of Model Guidelines" along with a draft model guideline, calling for inputs, before 30.06.2011. In view of above, Court noticed that it is absolutely necessary to have an effective frame work of mining plan which will take care of all environmental issues, evolve a long term rational and sustainable natural resource base and also bio assessment protocol. Quarrying of river sand is an important economic activity of the Country with river sand, forming a crucial raw material for infrastructural development and construction industry, but excessive instream sand and gravel mining causes degradation of rivers. Instream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material from within or near a streambed has a direct impact on stream's physical habitat characteristics. Sand mining, therefore, may have an adverse effect on bio-diversity as loss of habitat caused by sand mining will affect various species of flora and fauna and may also destabilise soil structure of river banks and often leaves isolated islands.

325. In these circumstances, Supreme Court said that Government of India's recommendations made in March 2010 followed by Model Rules 2010 must be given effect so as to inculcate spirit of Article 48 (A), Article 51 (A) (g) read with Article 21 of the Constitution. Court, therefore, issued directions to all States and Union Territories, MoEF and Ministry of Mines to give effect to the recommendations made by MoEF in its Report of March 2010 and the model guidelines framed by Ministry of Mines, within a period of six months from the date of the Judgment i.e., 27.02.2012 and submit compliance. Court also directed Government of India to take steps to bring into force Minor Minerals Conservation and Development Rules, 2010 at the earliest. Various State Governments and Union Territories were also directed to take steps to frame necessary rules under Section 15 of MMRD Act, 1957, taking into consideration recommendations of MoEF in its Report of March 2010 and Model Guidelines framed by Ministry of Mines, Government of India.

326. The details of recommendation made by MoEF are reproduced in para 19 of the judgment and key recommendations contained in MoEF's DO letter dated 1.06.2010 are mentioned in para 22 of judgment. Supreme Court specifically directed that lease of minor minerals including renewal of an area of less than 5 ha would be granted by concerned authorities only after getting EC from MoEF.

327. In ***Samaj Parivartan Samudaya & Others vs. State of Karnataka (2012)7SCC407***, issue of illegal mining in Andhra Pradesh was for consideration. Court constituted a Committee to collect facts and report. Report of Committee was challenged on the ground that no opportunity was given to the parties. Rejecting this argument, Court said that Committee is not discharging quasi-judicial or even administrative

functions with a view to determine any rights of the parties. It was not expected of Committee to give notice to the companies involved in illegalities or irregularities, as it was not determining any of their rights. It was simpliciter reporting matters to the Court as per ground realities, primarily with regard to environment and illegal mining, for appropriate directions. In fact, Committee was conducting a fact finding inquiry. A similar argument was raised in respect to CBI enquiry was rejected by Court observing that there is no provision in CrPC which requires investigating agency to give an opportunity to the affected party before registering an FIR or even before carrying on investigation prior to registration of case against the suspect. Court also commented upon the obligation of State where offences by carrying out illegal mining are being committed. Court said that State cannot escape its liability by stating that private complainant, who made complaint, must bring sufficient material to prove offence. Court also said that whenever and wherever State fails to perform its duties, Court shall step in to ensure that Rule of Law prevails over the abuse of process of law. Such abuse may result from inaction or even arbitrary action of protecting the true offenders or failure by different authorities in discharging statutory or legal obligations in consonance with the procedural and penal statutes.

328. In ***Orissa Mining Corporation Ltd. vs. Ministry of Environment and Forest, (2013)6SCC476***, order of MoEF&CC dated 24.8.2010 rejecting Stage-II Forest Clearance for diversion of 660.749 hectares of forest land for mining of bauxite ore in Lanjigarh Bauxite Mines in Kalahandi and Rayagada Districts of Orissa, was challenged in writ petition filed under Article 32 of the Constitution and decided by a 3 judges bench vide judgement dated 18.04.2013. The brief background facts are that M/s. Sterlite, (parent company of Vedanta), sought EC from

MoEF submitting application dated 19.03.2003 for establishing Alumina Refinery Project (ARP) in Lanjigarh Tehsil of District Kalahandi. The company stated that no forest land was involved within an area of 10 kms. Another application dated 6.03.2004 was filed by M/s. Vedanta seeking clearance for use of 723.343 ha of land (including 58.943 ha of reserve forest land) in Lanjigarh Tehsil of District Kalahandi for setting up an Alumina Refinery. Involvement of forest land rendered State of Orissa to forward a proposal dated 16.08.2004 to MoEF for diversion of 58.90 hectare of forest land which included 26.1234 hectare of reserve forest land. Later, State of Orissa withdrew its proposal. MoEF granted EC on 22.9.2004 to M/s. Sterlite to execute Alumina Refinery Project with 1 million tonne per annum capacity of refinery along with 75 MW coal based CPP at Lanjigarh on 720 hectare land, by delinking it with the mining project. Later, State of Orissa vide letter dated 24.11.2004 informed MoEF about involvement of 58.943 ha of forest land in the project where it was mentioned NIL, in the application for EC. Forest Department issued a show cause dated 5.08.2004 to M/s. Vedanta for encroachment of 10.41 acres of forest land by way of land breaking and levelling. State of Orissa, on 28.2.2005 forwarded proposal to MoEF for diversion of 660.749 ha of forest land for mining bauxite ore in favour of Orissa Mining Corporation in Kalahandi and Rayagada Districts. Central Empowered Committee (CEC), in the meantime, sent a letter dated 2.3.2005 to MOEF stating that pending examination of the project by CEC, no proposal for diversion of forest land be decided. M/s. Vedanta filed I.A. No. 1324 of 2005 seeking direction to MoEF to take a decision on his application for forest clearance which was objected by CEC. Court on 03.06.2006, directed MoEF to consult experts and submit report. Ultimately Forest Advisory Committee (FAC) on 27.10.2006 approved

proposal of Orissa Mining Corporation for diversion of 660.749 ha. of forest land for the mining, subject to the conditions. Vedanta's I.A. was disposed of by Court on 23.11.2007 making certain observations. The suggestions made in the said order were jointly agreed by M/s. Sterlite, State of Orissa and Orissa Mining Company. One Siddharth Nayak filed a Review Petition stating that Court did not pose appropriate question while deciding I.A. and has not examined ecological and cultural impact of mining in Niyamgiri Hills. MoEF agreed in principle for diversion of 660.749 ha of forest land subject to conditions and communicated its decision to Orissa Government vide letter dated 11.12.2008. EC was granted to Orissa Mining Corporation by MoEF vide proceeding dated 28.04.2009, subject to certain conditions. MoEF rejected request for stage-II clearance by order dated 24.08.2010 considering report of Forest Advisory Committee and Saxena Committee appointed by MoEF, and this order was challenged in Court. Since matter involved Tribal area, Court also examined Article 244(1) and 5th Schedule of the Constitution. Referring earlier judgment in ***Samatha vs. State of Arunachal Pradesh, (1997)8SCC191***, Court said that all relevant clauses in the Schedule and Regulations should be harmoniously and widely be read as to elongate Constitutional objectives and dignity of person, to Scheduled Tribes and ensuring distributive justice as an integral scheme thereof. It also referred to Panchayats (Extension to Scheduled Areas) Act, 1996 extending Part IX of the Constitution to the Scheduled Areas and that its validity was upheld in ***Union of India vs. Rakesh Kumar, (2010)4SCC50***. It also examined provisions of Schedule Tribes and other traditional forest dwellers (Recognition of Forest Rights) Act, 2006, a social welfare or remedial statute, enacted to protect a wide range of rights of forest dwellers and Schedule Tribes including customary rights

to use forest land as a community forest resource and not restricted merely to property rights or to areas of habitation. The inter se relationship of Forest Rights Act and Mines and Minerals Development Regulations Act, 1957 was considered and relying on earlier judgement in ***Amritlal Athubhai Shah and others vs. Union Government of India and Another, (1976)4SCC108***, Court held, “*the State Government is the owner of minerals within its territory, and the minerals vest in it and hence power to reserve any particular area for Bauxite mining for a public section corporation*”. However, for deciding nature and extent of individual or community forest rights or both, Court found that it is the Gram Sabha which is the competent authority which can take such a decision and hence directed Gram Sabha to take appropriate decision on the question, whether Schedule Tribes had any religious right of worship over the Niyamgiri hills, and the writ petition was disposed of.

329. In ***G. Sundarrajan vs. Union of India & Others, (2013)6SCC620***, ecological and environmental issues in the context of setting up of a nuclear power plant at Kudankulam in the State of Tamil Nadu were considered. National policy was pronounced by Central Government to develop, control and use of atomic energy for welfare of people of India. Atomic Energy Act, 1948 was repealed and replaced by Atomic Energy Act 1962. In September 1987, Government of India formed a public sector company i.e., Nuclear Power Corporation of India to design, build and operate nuclear reactors in the country. The nuclear power was broadly utilized for generation of electricity and about 20 power reactors were installed with a capacity of 4780 MWe, between 1969 to 2011. Seven more were proposed with a capacity of 5300 MWe which included Kudankulam. Examining the fact that in India bulk of the electricity i.e., 64% is generated from thermal sources, 18% was available

from hydro project and 15% from renewal sources, and only 3% share of electricity generation was attributable to nuclear projects, Court observed that it cannot sit over the judgment/decision taken by Government for setting up of nuclear plant. It is not for Court to determine whether a particular policy or a particular decision taken in fulfillment of a policy is fair or not. In Para 15, Court said, *“It is not for Courts to determine whether a particular policy or a particular decision taken in fulfillment of a policy, is fair. Reason is obvious, it is not the province of a court to scan the wisdom or reasonableness of the policy behind the Statute.”* However, Court proceeded to examine only legal aspects involving Statutes as also the environmental issues. Entire project was examined with the consideration that people’s comfort, happiness, prosperity and economic growth of nation is always concern of their representatives in the Parliament. Public opinion, national policy, economic growth, sustainable development, energy security, are all intrinsically interlinked. One cannot be divorced from other, all the same, a balance has to be struck. National policy is that atomic energy has a unique position in the emerging economics in India. Nuclear energy is a viable source of energy and it is necessary to increase country’s economic growth. Nuclear energy is considered in India as a sustainable source of energy and country cannot afford to be a nuclear isolated nation, when most of the developed countries consider it as a major source of energy for their economic growth. In this back drop, Court considered, ‘whether project had obtained all necessary environmental clearances’ and said that the mere fact that project is a nuclear one and has been cleared by Atomic Energy Commission and other bodies related with nuclear establishments, would not be sufficient to confer authority upon Project Proponent to commission a nuclear project unless it conforms to the standards set by

statutory authorities like MoEF and State Pollution Control Board and follow environmental laws. Court found that, when project was sought to be commenced, Regulations relating to Coastal area were not available, EC was granted by competent authority and neither there was any violation of CRZ Notification, 1991 nor there was violation of EIA 1994 since environmental clearance was granted to units 1 and 2 on 19.05.1989. It also held that for units 3 to 6 EC was granted in accordance with EIA 2006. Meeting various objections, Court did not find any legal or otherwise flaw in execution of the project. Serious apprehension expressed by certain section were repelled by observing that apprehensions howsoever, legitimate, cannot override justification of the project. Nobody on this earth can predict what would happen in future and to a larger extent we have to leave it to the destiny. But once justification test is satisfied, apprehension test is bound to fail. Court said that apprehension is something, we anticipate with anxiety or fear, a fearful anticipation, which may vary from person to person. Power generation through a nuclear plant, set up after following all safety standards, rules and regulations, is for welfare of people and economic growth of the country. Nuclear energy assumes an important element in country's energy mix for sustaining economic growth of natural and domestic use which in future has to replace a significant part of fossil fuel like coal, oil, gas etc. Electricity is the heart and soul of modern life, a life, meant not for the rich and famous alone but also for the poor and down trodden. They should also have an adequate means of livelihood, job opportunities for which we have to set up Industries and commercial undertakings in the public as well as private sector and also have to invite foreign investment. Referring to ***Chameli Singh & Others vs. State of U.P. & Another, (1996)2SCC549***, Court reiterated that in an

organized society right to live as a human being is not ensured by meeting only the animal needs of man, but secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. Right to shelter includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and civil amenities like road etc. so as to have easy access to his daily avocation. Nuclear power plant is being established not to negate right to life but to protect the said right guaranteed under Article 21.

330. In concurring judgment, Hon'ble Dipak Mishra, J. in **G. Sundarrajan (supra)**, referred to the role of welfare state and reminded the concept of *parens patriae* recognised in **Charan Lal Sahu vs. Union of India, (1991)6SCC613** and the maxim *salus populi (EST) suprema lex*, i.e., regard for public welfare is the highest law. His Lordship also referred to other maxim that is *salus republicae suprema lex* i.e. safety of State is a supreme law, and said that law has many a mansion and the mosaic of law covers many spectrums so that both the maxims, namely, *solus populi supreme lex* and *salus republicae supreme lex*, can harmoniously coexist. His Lordship also referred to judgment in **T.N. Godavarman Thirumulpad (supra)**, observing that no development is possible without some adverse effect on the ecology and environment, the projects of public utility cannot be abandoned and it is necessary to adjust interest of people as well the necessity to maintain environment. A balance has to be struck between the two interests. When commercial venture or enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be by passed.

331. In ***Association for Environment Protection vs. State of Kerala and Others, (2013)7SCC226***, Court considered an appeal arising from judgment of Kerala High Court. Writ Petition raising a question of illegal construction on the banks of river Periyar within the area of Aluva Municipality was dismissed by High Court, not by discussing matter on merit, but only on ground that complainant has questioned construction of a hotel while builder was constructing a restaurant as part of the project for renovation and beautification of Manalpuram Park. Issue was raised by an Association, a registered body, engaged in protection of environment in State of Kerala. In 2005, Aluva Municipality reclaimed a part of Periyar river. District Tourism Promotion Council, Ernakulam decided to construct a restaurant on reclaimed land by citing convenience of public coming on Sivarathri festival. Proposal was forwarded to State Government by including the same in project for renovation and beautification of Manalpuram Park. Administrative sanction was granted by State Government by order dated 20.05.2005. When construction was started by State Promotion Council, ***W.P.(C) No. 436/2006*** was filed in High Court seeking a direction to the respondents restraining from continuing with construction on the bank of river Periyar and to remove construction already made. Writ Petition was dismissed by High Court, after taking cognizance of Government sanction order dated 20.05.2005. The construction was challenged before Supreme Court stating G.O. dated 13.01.1987 mandated a reference to environmental planning and coordination committee for review and assessment where cost of scheme is more than 10 lakhs but no such review and reassessment was made. Court found that construction was sanctioned and proceeded in violation of mandate of Government order dated 13.01.1987. Court also read Government order as power exercised to protect and improve

environment envisaged under Article 48A and thus mandate of the said order could not have been condoned. Accordingly, Court allowed appeal, and while setting aside High Court's order, allowed Writ Petition. It also directed respondents to demolish structures raised in the park. Court resorted to the above direction relying on various earlier orders and specifically referred to the decision in ***M.I. Builders Pvt. Ltd. vs. Radhey Shyam Sahu, (1999)6SCC464***, where decision of Lucknow Nagar Mahapalika permitting construction of an underground shopping complex in Jhandewala Park, Aminabad Market, Lucknow was set aside by High Court and construction made on the park land was directed to be demolished and this was upheld up Supreme Court.

332. In ***Samaj Parivartana Samudaya & Others vs. State Of Karnataka & Others, (2013)8SCC154*** (order dated 18.04.2013 deciding Writ Petitions 562 of 2009, 411 of 2010, 66 of 2010 and 76 of 2012 and other connected appeals), issue of systematic plunder of natural resources by a handful of opportunists seeking to achieve immediate gains in the context of mining of Iron Ore and allied minerals in the State of Karnataka was considered. While deciding, Court referred to its earlier order dated 28.09.2012 wherein resumption of mining was allowed subject to payment of **minimum compensation of Rs. 5 crores per hectare** and further additional amount on the basis of final determination of national loss caused by illegal mining and illegal use of land for overburden dumps, roads, offices, etc. **Court also required guarantee money to be paid by leaseholders, to the extent of 15% of the sale proceeds of the iron ore sold.** Looking to the gravity of situation, Court observed that an extraordinary situation has arisen on account of large scale illegalities committed in the operation of mines in question resulting in grave and irreparable loss to the forest wealth of the

country besides colossal loss caused to the national exchequer. The situation being extraordinary, the remedy, indeed, must also be extraordinary. Illegal mining, apart from playing havoc on the national economy had, in fact, cast an ominous cloud on the credibility of the system of governance by laws in force. It has a chilling and crippling effect on ecology and environment. Thereafter in the light of the joint committee constituted by court, it passed various directions.

333. The issue of protection of Asiatic Lion was considered in ***Centre for Environmental Law, WWF-India vs. Union of India, (2013)8SCC234.***

While considering legal framework, Court observed that Bio Diversity Act, 2002 was enacted for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the utilisation of genetic resources. **Article 21 was extended by observing that it protects not only the human rights but also casts an obligation on human being to protect and preserve animals as species are becoming extinct and conservation and protection of environment is an irreparable part to Right to Life.** Consequently, directions were issued for identification of the species which are endangered and take appropriate remedial steps.

334. ***Laxmi Narain Modi vs Union of India & Others, (2013)10SCC227,*** Court needed guidelines issued by MoEF for transportation of animal and slaughter Houses for proper implementation of provisions of prevention of cruelty to animals, (Establishment and Registration of Societies for Prevention of Cruelty to Animals) Rules, 2000, the Environment Protection Act, 1986, the Solid Waste (Management and Handling) Rules, 2000, the Prevention of Cruelty to

Animals (Slaughter House) Rules, 2000 and directed all the Governments to follow the said guidelines.

335. In ***Alaknanda Hydro Power Co. Ltd vs. Anuj Joshi & Others (2014)1SCC769***, ecological issue relating Srinagar Hydro Electric Project (SHEP) located in Tehri/Pauri Garhwal on river Alaknanda came up for consideration. Applicability of EIA 1994 with regard to grant of EC when it was already granted long back, also came up for consideration. Central Electricity Authority exercising power under Section 29 of Electricity (Supply) Act, 1948, issued Techno-Economic Approval to establish 200 MW hydro generation project over river Alaknanda, in its meeting dated 6.11.1982, subject to environmental clearance from Ministry of Environment. Initially project was clubbed with some other projects but later it was segregated. A separate Environment Impact Assessment (EIA) was made with regard to SHEP on 9.2.1985. Consequently, MoEF granted EC vide letter dated 03.05.1985. Project involved diversion of 338.38 hectares of forest land which was granted by Forest Department vide letter dated 15.04.1987. Subsequently, Electricity Board proposed to increase capacity from 200 MW to 330 MW which was approved by Central Electricity Authority and Planning Commission also granted investment approval. The project could not make any effective progress due to paucity of funds with State Electricity Board. State Government entered into a Memorandum of Understanding (MOU) with M/s Duncan Industries Ltd. on 27th August, 1994 for development of project. M/s Duncan Industries Ltd. in terms of the MOU established a generating company 'Duncan North Hydro Power Co. Ltd.'. Energy Department of Uttar Pradesh wrote to MoEF vide letter dated 04.09.1997 to transfer EC in favour of the said company. M/s Duncan submitted revised EIA and conveyed that the project of enhanced capacity had to be transferred to

M/s Duncan. MoEF consequently transferred EC to M/s. Duncan on 27.07.1999. Central Electricity Authority also granted Techno Economic Clearance vide letter dated 14.06.2000 to Duncans. M/s. Duncan also gave up project after carrying out some work and then it was substituted by M/s. Alaknanda Hydro Power Company Ltd. (AHPCL) in whose favour also EC was transferred by MoEF vide letter dated 27.03.2006. Writ Petition was filed in 2009 in High Court of Uttarakhand at Nainital challenging order enhancing capacity to 330 MW. Writ Petition was disposed of on 19.04.2011 permitting M/s. AHPCL to approach MoEF for a specific decision as to the clearance for increased capacity of generation and increased height of the dam. MoEF in its turn clarified that transfer letter dated 27.03.2006 was for 330 MW and communicated its decision dated 03.08.2011. It was challenged in Writ Petition no. 68 of 2011 i.e., a PIL which was disposed of by order dated 3.11.2011 directing M/s AHPCL to place the matter before MoEF again and Ministry was directed to hold a public hearing. That is how matter came before Supreme Court in Appeal by AHPCL. Court examined the matter and disposed of by issuing various directions on the subject of safety of dam, safety and security of the people, muck management and disposal Catchment Area Treatment. Court also expressed concern over mushrooming of large number of hydroelectric projects in State of Uttarakhand and its impact on Alaknanda and Bhagirathi river basins. Taking note of recent tragedies/calamities suffered by the people of Uttarakhand, Court issued certain directions in para 52 of the judgment which included that no further EC or forest clearance be granted for any hydro-electricity power project in State of Uttarakhand until further order and on further examination by expert committee to be constituted by MoEF.

336. In **Godrej & Boyce Mfg. Co. Ltd. & Another vs. State Of Maharashtra, (2014)3SCC430**, a question arose, “*whether disputed land was a forest land*”, and further, “*whether constructions already raised in last more than half a century should be directed to be demolished*”. M/s. Godrej & Boyce herein referred to as GBMCL, by registered deed of conveyance dated 30.07.1948, acquired land in Vikhroli in Salsette taluka in Maharashtra. Land belonged to one Nowroji Pirojsha, (successor in interest of Framjee Cawasjee Banaji) who was given a perpetual lease/kowl for the land by Government of Bombay on 07.07.1835. Land was described in the perpetual lease/kowl as “waste land”. The dispute raised before Court related to Survey Nos. 117,118 and 120 covering area of 133 acres and 38 gunthas of land. On 27.08.1951, Legislative Assembly of State of Bombay passed Salsette Estates (Land Revenue Exemption Abolition) Act, 1951 which came into force on 1.03.1952. It provided that waste lands granted under a perpetual lease/kowl, not appropriated or brought under cultivation before 14.08.1951, shall vest in and be the property of the State. State Government claimed that disputed property has vested in it under Section 4 of the aforesaid Act which was challenged by GBMCL in Suit No. 413 of 1953, filed in Bombay High Court seeking a declaration that it was the owner of the disputed land. Suit, though contested by Government but ultimately decided by a consent decree on 8.01.1962 to the effect that except for an area of 31 gunthas, all other land was appropriated and brought under cultivation by Godrej before 14.08.1951 and are the property of Godrej. In 1967, a development plan for the city of Bombay was published. Next development plan was published in 1991. In both development plans, disputed land was designated as ‘R’ i.e. ‘Residential’. On publication of the first development plan, Godrej applied

for construction of residential buildings which was allowed. It raised four such buildings. In 1976, Urban Land (Ceiling and Regulation) Act, 1976 came into force. The disputed land became excess land being beyond ceiling limit. Godrej applied for exemption which was allowed by State Government. Again, Godrej applied for further construction of multi storey buildings which was granted and constructions were made resulted in more than 40 multi-storeyed residential buildings on the disputed land. In 1975, State Legislature enacted Maharashtra Private Forests (Acquisition) Act, 1975. In 2006, Forest Authorities issued notices to M/s. Godrej to stop construction on the ground that disputed land was affected by the reservation of a private forest and hence no construction could be carried out without permission of Central Government under FC Act, 1960. This notice was challenged in High Court but Writ Petition was dismissed and then came up in appeal before Apex Court. The first question was, ‘whether land is not “forest” within the meaning of Section 2 (c-i) of the Private Forests Act’. The question was answered in favour of M/s Godrej. In Para 48, Court said *“Under the circumstances, by no stretch of imagination can it be said that any of these disputed lands are ‘forest’ within the primary meaning of that word, or even within the extended meaning given in Section 2 (c-i) of the Private Forests Act.”* Thereafter, question of notice was decided in favour of M/s Godrej. The next question considered was with regard to decision of Government for demolition even if the land held to be forest land. Court said that the broad principle laid down by Supreme Court is not in doubt. An unauthorized construction, unless compoundable in law, must be razed. Court referred to **MI Builders case (supra)** where order of demolition was passed; **Pleasant Stay Hotel And Another vs. Palani Hills Conservation, (1995)6SCC127** wherein sanction was granted for two

floors but 7 floors were constructed and Court held that 5 floors constructed illegally, should be demolished; and ***Pratibha Co-operative Housing Society Ltd. vs. State of Maharashtra, (1991)3SCC341***, where also 8 floors were constructed in violation of FSI norms and hence **demolition order of 6 floors completely and 7th floor partially was issued**. However, in the case of Godrej, Court held that the above directions had to be given considering various circumstances and practical application of the principle. Municipal authorities and builders conspiratorially join hands in violating laws but the victim is an innocent purchaser or investor who pays for mal-administration; where activities have undergone for several decades, various permissions have been granted by statutory authorities and innocent buyers/purchasers have believed on state sanctions, such innocent buyers deserve to be protected.

337. In ***Municipal Corporation of Greater Mumbai and Others vs. Kohinoor CTNL Infrastructure Company Private Ltd., (2014)4SCC538***, issue of minimum recreational/amenity open spaces and other amenities including safety in respect of high rise/multi storied buildings was considered. Reduction of recreational area, height of the building vis-a-vis width of the roads, population of the area having impact on the traffic and height of the building resulting in fire hazards and safety problem, were all pointed out and non-application of mind and lack of consideration on these aspects by concerned statutory bodies was deprecated. With regard to open space/recreational area, Court said that it cannot be reduced to the minimum provided else it will violate Fundamental Right to Healthy Environment under Article 21 of the Constitution. Similarly, if height is increased causing fire hazard that also cannot be permitted. Court held that the human life cannot be made to

suffer only on the ground that in redevelopment scheme sufficient access cannot be provided for fire engines to enter the plot from one side. **Not providing a minimum space of six meters which makes room for the fire engine to access the building, amounts to violation to Right to Life and equality to the residents of these buildings by not providing the same standard of safety to them which are available to residents of all buildings.** Court directed fire department that it must insist upon the builders of all buildings to get certification of at least once in six months that the access to the building, the internal exits and the internal firefighting arrangements are maintained as per the expectations under the DCR, the norms of the fire department and must check them periodically on its own. Court also deprecated permission of construction of high-rise buildings creating congestions.

338. In ***Goa Foundation vs. Union of India & Others, (2014)6SCC590***, relying on interim report dated 15.03.2012 submitted by Justice Shah Commission to Ministry of Mines, Government of India recording its findings in respect of illegal Mining of iron ore in violation of Forest (Conservation) Act, 1980 (hereinafter referred to as 'FC Act 1980'), Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'MMDR Act, 1957'), Mineral Concession Rules 1960 (hereinafter referred to as 'MC Act, 1960'), EP Act, 1986, Water Act, 1974, Air Act, 1981 and Wild Life (Protection) Act, 1972 (hereinafter referred to as 'WLP Act, 1972'), Goa Foundation came to Court by filing Writ Petition under article 32 of the Constitution, in Supreme Court and made a prayer that direction be issued to the Respondents to prosecute all those who have committed offences under different laws and are involved in pilferage of State revenue through illegal mining activities in State of Goa, including public servants who have aided and abated the offences. Goa

Foundation also prayed that an independent authority be appointed with full powers to take control, supervise and regulate mining operations in State of Goa and to ensure implementation of laws. Lastly, Goa Foundation also prayed for some incidental and consequential reliefs. Entertaining Writ Petition, Supreme Court on 05.10.2012, issued notice directing Central Empowered Committee to submit report on the issues raised in the Writ Petition. Supreme Court further directed that, till further orders, all mining operations in the leases identified in the report of Justice Shah Commission, transportation of iron ore and manganese ore from those leases, whether lying at the mine-head or stockyards, shall remain suspended, as recommended in the said report. Simultaneously, some mining lessees of State of Goa and Goa Mining Association had filed Writ Petition in Bombay High Court, (Goa Bench), seeking a declaration that report of Justice Shah Commission is illegal. They also prayed to quash the order issued by State Government, suspending mining operation in State of Goa, pursuant to the aforesaid report. MoEF's order dated 14th September, 2012, directing to keep Environmental Clearances to mines, in State of Goa, in abeyance, was also sought to be quashed. On the application moved before Supreme Court, Writ Petitions filed before Bombay High Court, were transferred to be heard in Supreme Court, along with ***Writ Petition (Civil) No. 435/2012*** filed by Goa Foundation. Some Background facts, giving rise to the above matter are, that prior to 19.12.1961, when Goa was a Portuguese territory, the then Government granted mining concessions in perpetuity to certain persons (hereinafter referred to as '**concessionaires**'). Goa was liberated on 19.12.1961. MMDR Act, 1957 was made applicable to State of Goa on 1.10.1963. Controller of Mining Leases, on 10.3.1975, issued a notification calling upon every lessee and sub-lessee to file returns under

Rule 5 of Mining Leases (Modification of Terms) Rules, 1956 and sent copies of the notification to concessionaires in Goa. The above notification was challenged by concessionaires in Bombay High Court (Goa Bench). Vide judgment dated 29.09.1983, in ***Vassudeva Madeva Salgaocar vs. Union of India, (1985)1Bom.CR36***, Bombay High Court restrained Union of India from treating concessions as mining leases and from enforcing notification against concessionaires. To overcome difficulty arisen due to above judgment, Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987 was passed which received assent of President of India on 23.05.1987. The said act abolished mining concessions and declared that with effect from 20.12.1961, every mining concession will be deemed to be a mining lease granted under MMDR Act, 1957 and that provisions of MMDR Act, 1957 will apply to such mining lease. The above Abolition Act was challenged by lessees in Bombay High Court wherein an interim order was passed permitting lessees to carry on mining operations and mining business in the concessions for which renewal applications had been filed under 24-A of the MC Rules, 1960. The above ***Writ Petition 177 of 1990, Shantilal Khushaldas and Bros. (P) Ltd. vs. Union of India*** was decided by Bombay High Court vide judgment dated 20.6.1997. The validity of Abolition Act, as such, was upheld, but Court held Section 22(i)(a) of Abolition Act to operate prospectively and not retrospectively. Concessionaires filed appeal in Supreme Court in ***SLP (C) no. 23827 of 1997, Shantilal Khushaldas and Bros. (P) Ltd. vs. Union of India*** wherein an interim order was passed on 2.3.983 permitting concessionaires to carry on mining operations and mining business in the mining areas for which renewal applications were made but imposing a condition that lessees would pay to the Government, dead rent from the date of commencement of

Abolition Act. When appeal was pending, Central Government appointed a Commission under Section 3 of Commissions of Inquiry Act, 1952, by notification dated 22.11.2010, to enquire into and determine nature and extent of mining, trade and transportation, done illegally or without lawful authority, of iron ore and manganese ore, and the losses therefrom; and also, to identify the person etc., engaged in such illegal activities. The term of reference contained four aspects. Justice Shah Commission was constituted in view of various reports received from various State Governments regarding widespread mining of iron and manganese ore, in contravention of MMDR Act 1957, FC Act 1980, EP Act 1986 and rules and guidelines issued thereunder. Justice Shah submitted an interim report on 15th March, 2012 to Ministry of Mines, Government of India which was tabled on Parliament along with an Action Taken Report. State Government of Goa passed an order on 10.9.2012, suspending all mining operations in State of Goa, with effect from 11.9.2012. Consequently, District Magistrates in State of Goa, banned transportation of iron ore in their respective Districts. Director of Mines and Geology, ordered verification of mineral ore which was already extracted, and also issued show cause notices on 13.9.2012 to about 40 mining leases. On 14.9.2012, MoEF issued an order keeping in abeyance all ECs granted to mines in State of Goa. In this backdrop, Goa Foundation came in Supreme Court and other litigation arose as already stated. Report of Commission was challenged primarily on the ground of violation of Principles of the Natural Justice. Mining lessees argued that they were not given any opportunity of hearing in the Inquiry conducted by the said Commission and, therefore, Principles of Natural Justice have been violated. Supreme Court recorded stand of Government of Goa that no action will be taken against mining lessees only on the basis of

findings recorded in the report of Justice Shah Commission but it would make its own assessment of facts after giving opportunity of hearing to all concerned parties and in that view of the stand taken by State Government, Supreme Court, in para 14 of judgment, observed that it is not inclined to quash Justice Shah Commission's Report on the ground of violation of Principles of Natural Justice but also would not direct to prosecute lessees only on the basis of findings recorded in the said report. However, looking to the serious dispute raised in the matter pertaining to environment, Supreme Court proceeded to examine legal and environmental issues raised in the Report of Justice Shah Commission. The first issue was regarding continuance of leases, as deemed renewed. Court held, in para 28 of judgment, that deemed mining leases of the then lessees in Goa, expired on 22.11.1987, under sub-section (1) of Section 5 of Abolition Act. The maximum of 20 years renewal period of deemed mining leases in Goa, as provided in sub-section (2) of Section 8 of MMDR Act 1957 read with sub-rules (8) and (9) of Rule 24-A of MC Rules 1960, expired on 22.11.2007. The next question was, dumping of reject, tailing or waste, whether can be kept beyond lease area. This question was answered in negative i.e., against the stand taken by mining lessees. Court said (i) a holder of mining lease does not have any right to dump any reject, tailings or waste in any area outside the leased area of the mining lease on the strength of a mining lease granted under MMDR Act, 1957 and rules framed thereunder. Even if such area is outside the leased area of mining lease, belong to State or any private person, but if mining lease does not confer any right whatsoever on the holder of a mining lease to dump any mining waste outside the leased area, he will have no legal right whatsoever to remove his dump, overburden, tailings or rejects and keep the same in an area

outside the leased area. Dumping of waste materials, tailings and rejects, outside leased area, would be without valid authorisation under the lease deed. In view of Section 9(2) of MMDR Act, 1957, if mineral is removed or consumed from the leased area, holder of mining lease, has to pay royalty. The term 'mineral' includes tailings or rejects, excavated during mining operations. Rule 64-C of MC Rules, 1960, firstly, did not permit dumping of tailings or rejects in any area outside the leased area and even otherwise if a rule goes beyond what the section contemplates, the rule must yield to the statute as held in ***Central Bank of India vs. Workmen, AIR1960SC12***, therefore, Rule 64-C of the MC Rules, 1960, if suggests dumping of tailings or rejects outside the leased area, it must give way to section 4 of MMDR Act, 1957 which does not authorise dumping of minerals outside the leased area. The said Rule must give way to section 9 of MMDR Act, 1957 which does not authorise removal of minerals, outside the leased area, without payment of royalty. Even Rule 16 of Mineral Conservation and Development Rule 1988 (hereinafter referred to as 'MCD Rules, 1988') does not permit dumping of overburden and waste materials, obtained from mining operation, outside the leased area. The lessees also cannot be allowed to dump overburden tailings or rejects in the area owned by them for the reason that most of the land, owned by lessees, is located in the forest area where non-forest activities such as mining is not permissible in view of section 2 of FC Act, 1980 and it also requires prior EC under EP Act, 1986 read with rule 5 (3) of EP Act, 1986. For dumping of mining waste on the private land, Court said that prior clearance of Central Government under notification issued under Rule 5 (3) of EP Rules, 1986 would be necessary. Justice Shah Commission found that despite restriction on mining activities inside National Parks, Sanctuaries and other protected and eco-sensitive areas,

mining activities have been permitted within 10 km and inside the national parks, sanctuaries and protected area. Thus, Court considered next question as to within what distance from the boundaries of national parks and wildlife sanctuaries mining is permissible or not in the State of Goa. Answering this question, Court found that State of Goa has taken a clear stand that no mining operations were allowed inside any National Park or Wildlife Sanctuaries hence question to this extent did not require any adjudication. Next question was “***whether mining could have been permitted or could be permitted within a certain distance from the boundaries of national park or wildlife sanctuary in the State of Goa***”. Answering it, Court said that the argument advanced on behalf of lessees that until a notification is issued under EP Act, 1986 and rules framed thereunder prohibiting mining activities in an area outside the boundaries of a national park/wildlife sanctuary, no mining can be prohibited, is misconceived. Here Court relied on article 21 of the constitution which guarantees right to life and further refers to a three Judge Bench Judgment in ***Noida Memorial Complex near Okhla Bird Sanctuary, In Re, (2011)1SCC744***, where it was held that environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution. Environment is, therefore, a matter, directly under the Constitution and if Court perceives any project or activity as harmful or injurious to the environment, it would feel obliged to step in. Then, with regard to permissible mining activities, Supreme Court referred to order dated 4.8.2006 in ***T.N. Godavarman Thirumulpad vs. Union of India, (2010)13SCC740***, and 4.12.2006 in ***Goa Foundation vs. Union of India, (2011)15SCC791***, and said that the above orders make it clear that grant of temporary working permits should not result in any mining activities within safety zone, around National Parks and Wildlife

Sanctuaries, and as an interim measure, 1 km safety zone was to be maintained. Since the said orders were not varied subsequently, Supreme Court directed that the said order have to be followed and there will be no mining activity within 1 km safety zone around National Park and Wildlife Sanctuary in State of Goa.

339. The contention advanced on behalf of Goa foundation, that within 10 kms from the boundaries of national park or wildlife sanctuary, no mining activity can be permitted, was returned by Supreme Court holding that no such order was issued either in ***Goa Foundation vs. Union of India (supra)*** or elsewhere. Court further referred to EP Rules, 1986 and said that until Central Government takes into account various factors mentioned in sub-rule 1, follows procedure laid down in sub-rule 3 and issues a notification under rule 5 prohibiting mining operations in a certain area, there can be no prohibition under law to carry on mining activity beyond 1 km of the boundaries of national parks or wildlife sanctuaries. The issue of the distance, with regard to mining activities qua National Park and Sanctuaries, was decided accordingly. The next question was regarding transfer or amalgamation of lease for which Justice Shah Commission observed that Rule 37 and 38 of MC Rules, 1960 were violated. Here State Government took a stand that there was a practice prevailing in State of Goa that a mining lease, by a person other than lease holder, can be operated. Deprecating it, Supreme Court said that rules 37 and 38 clearly prohibit such transfer or amalgamation unless permitted specifically by State Government and directed State Government not to allow such activities in violation of rules 37 and 38. Court also found from CEC's Report that there was no effective checks and measures with regard to production and transportation of mineral from the mining leases in the State of Goa, hence there was every

possibility to believe that excess quantity of minerals were extracted and transported. Court also found existence of Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013 but non-observance thereof by the Authority. It directed State Government to enforce above rules, strictly.

340. The next question related to environment. “To what extent, mining has damaged environment in Goa” and “what measures are to be taken to ensure intergenerational equity and sustainable development”. In this regard, Court vide order dated 11 and 12.11.2013 (***Goa Foundation vs. Union of India, (2014)6SCC738***) constituted an Expert Committee to conduct, a macro-EIA study, and propose sealing of annual excavation of iron ore in State of Goa, considering its iron ore resources, carrying capacity, keeping in mind Principles of Sustainable Development, Intergenerational Equity and all other relevant factors. The said Committee submitted report dated 14.3.2014 indicating that economy of Goa depends upon tourism, iron ore mining, besides agriculture, horticulture and minor industries. Commenting upon damage to environment in State of Goa, Expert Committee said that production of iron ore has drastically jumped on, from 14.6 million tons in 1941 to 41.17 million tons in 2010-2011. This has led to massive negative impact on all ecosystems leading to enhanced air, water and soil pollution, affecting quality of life, across Goa. With regard to sustainability of iron ore mining in Goa, Expert Committee opined that mining at the rate of 20 to 27.5 million tons per annum may be sustainable in State of Goa. Supreme Court referred to a report of Indian School of Mines, Dhanbad (hereinafter referred to as ‘ISM’), who was entrusted, by MoEF, to carry out regional impact assessment study of mining in Goa region. In the said report, ISM recommended a cap of 24.995 MT per annum on the basis of

carrying capacity of existing infrastructure of State of Goa. Relying on the said report, Court held that a cap between 20 to 27.5 MT per annum should be fixed for excavation of iron ore in State of Goa. Court also found that Goa State Pollution Control Board (Goa PCB) has immense powers under Air Act, 1981 and Water Act, 1974 but despite that, iron ore production in State of Goa has led to massive negative impact on all ecosystem leading to enhanced air, soil and water pollution affecting quality of life across State of Goa, and Goa PCB has miserably failed in discharge of its statutory functions. Supreme Court's observations are, ***“Rather, it appears that the Goa State Pollution Control Board, though conferred with immense statutory powers, has failed to discharge its statutory functions and duties”***. Court directed that Goa PCB would exercise strict vigil and monitor water and air quality and if lessees failed to conform the prescribed norms, Goa PCB must not hesitate in closure of mining operations of such lessees. Further, for restoration of environment, Court directed that **10% of sale proceeds of all iron ore**, excavated in State of Goa, and sold by lessees, would be appropriated towards 'Goan Iron Ore Permanent Fund', constituted for the purpose of sustainable development and intergenerational equity.

341. The next question, “whether mining in future should be allowed by granting leases in auction or otherwise”, was answered by noticing observations in ***Centre for Public Interest Litigation vs. Union of India (2012)3SCC1***, that ***“State of the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good.”*** Court also noticed observations of constitution bench in ***Natural Resources Allocation, In Re, Special Reference No.***

1 of 2012, (2012)10SCC1 that auction, despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources, and therefore, every method other than auction cannot be struck down as ultra vires of the constitutional mandate. It is for State Government to decide as a matter of policy in what manner leases of mineral resources would be granted but this should be in accordance with statutory provisions i.e., MMDR Act, 1957 and rules framed thereunder by taking a policy decision. Supreme Court also quoted opinion of four Judges out of five Judges, in **Natural Resources Allocation (supra)**, (in para 149), that alienation of natural resources is a policy decision and the means, adopted for the same, are, thus executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit, maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue, may be arbitrary and face wrath of Article 14 of the Constitution. Hence no hard and fast method ought to be laid by Court but judicial scrutiny of such matter would depend on fact and circumstances in each case. Supreme Court also held that the order issued by Government of Goa suspending mining operations cannot be quashed since in any case renewal of deemed mining leases expired on 22.11.2007 and any mining thereafter was illegal. Therefore, order dated 10.9.2012 of Government of Goa and 14.9.2012 of MoEF, will have to continue till decision is taken by State Government to grant fresh leases and MoEF takes decision for granting fresh EC for mining project in accordance with law. Supreme Court ultimately issued directions which are briefly stated in para 87 and 88 of the judgment. The above judgment

shows that for remedy to the damaged done to environment, 10% of sale proceeds of the subject i.e., goods and in this case mined iron ore, was required to be paid by lessees who excavated the said ore, illegally. The amount collected was to be kept in a separate fund, and to be consumed by appropriate authorities for sustainable development and intergenerational equity. Further, here environment compensation was determined at 10% in view of the fact that mining cannot be stopped, and would continue as providing revenue to Government and heavy profits to illegal minors. Further, environment compensation was determined on the rate of sale proceeds i.e., selling rate of mineral.

342. In ***Animal Welfare Board of India vs. A. Nagaraja & Others, (2014)7SCC547*** (order dated 07.05.2014 passed in Civil Appeals No. 5387/2014 with Nos. 5388/2014, 5389-90/2014, 5391/2014, 5392/2014, 5393/2014 and 5394/2014, Writ Petition (C) No. 145/2011, TCs Nos. 84-86, 97-98 and 127/2013) (commonly known as **Jallikattu matter**), rights of animals under Constitution of India, laws, culture, tradition, religion and ethology arising from the events held in the States of Tamil Nadu and Maharashtra, namely, Jallikattu, bullock cart races etc. came up for consideration. Issue was examined in the light of provisions of Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as 'PCA Act, 1960'); Tamil Nadu (Regulation of Jallikattu) Act, 2009 (hereinafter referred to as "TNRJ Act, 2009") and notification dated 11.7.2011 issued by Government of India under Section 22(ii) of PCA Act, 1960. The leading appeal had arisen from judgment of Madras High Court (at Madurai), dated 09.03.2007 passed in ***K. Muniasamythevar v. Supt. of Police, (2007)5MLJ135***. Some other Writ Petitions were also filed by some organizations working against cruelty to animals wherein Notification dated 11.07.2011 was challenged and the said Writ Petitions

were transferred to Supreme Court. Another SLP No. 13199/2012, challenged Bombay High Court's order dated 12.03.2012 passed in ***Gargi Gogoi v. State of Maharashtra, PIL(L) No. 28/2012***. Bombay High Court has upheld MoEF Notification dated 11.07.2011 and corrigendum issued by Government of Maharashtra, dated 24.08.2011 prohibiting all Bullock-cart races, games, training, exhibition etc. A review application was also filed but dismissed by Bombay High Court on 26.11.2012 and this was also challenged in SLP No. 4598/2013. The events of Jallikattu or Bullock-cart races etc., were challenged as constituting cruelty to animals alleging that there is no historical, cultural or religious significance, either in State of Tamil Nadu or Maharashtra and in any case provision of PCA Act, 1960 would supersede such practices and must be observed and enforced strictly. Court reminded a word of caution and concern and said in para 15 that the issue raised had to be examined, primarily keeping in mind welfare and well-being of the animals, not from the stand point of the Organizers, Bull tamers, Bull Racers, spectators, participants or respective States or Central Government, since a welfare legislation of a sentient being, over which human beings have domination, was being dealt with. Court would apply, in deciding the issue, standard of "Species Best Interest", subject to just exceptions, out of human necessity. Referring to PCA, 1960, Court said that it is a welfare legislation, to be construed keeping in mind the purpose and object of the Act and Directive Principles of State Policy laid down in the Constitution. The above Act should be liberally construed in favour of weak and infirm. Court should be vigilant to see that benefits conferred by remedial and welfare legislations are not defeated by subtle devices. Court has got the duty that, in every case, where ingenuity is expanded to avoid welfare legislations, to get behind the smoke-screen,

and discover the true state of affairs. Court can go behind the form and see substance of the devise for which it has to pierce the veil and examine whether the guidelines or regulations are framed so as to achieve some other purpose than the welfare of animals. **Regulations or guidelines, whether statutory or otherwise, if they purport to dilute or defeat welfare legislation and constitutional principles, Court should not hesitate to strike them down so as to achieve ultimate object and purpose of welfare legislation.** PCA Act, 1960, being welfare legislation, would over-shadow or override any tradition and culture, if any. Referring to earlier judgment in ***N.Adithayan v Thravancore Dewaswom Board & Others, (2002)8SCC106 (para 18)***, Court reiterated following extract:

“18..... Any custom or usage irrespective of even any proof of their existence in pre-constitutional days cannot be countenanced as a source of law to claim any rights when it is found to violate human rights, dignity, social equality and the specific mandate of the Constitution and law made by Parliament. No usage which is found to be pernicious and considered to be in derogation of the law of the land or opposed to public policy or social decency can be accepted or upheld by courts in the country.”

343. Court also quoted from Isha-Upanishads, saying *“The universe along with its creatures belongs to the land. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species.”* Referring to international approach to animal welfare, Court observed that there is no international agreement which ensures welfare and protection of animals. Even United Nations, all the years, has sought to safeguard only rights of human beings and not the rights of other species like animals. Castigating this approach of international community, Court said *“there has been a slow but observable shift from anthropocentric approach to more nature’s right centric approach in International Environmental Law, Animal Welfare Laws etc.”* This development was noticed to have

proceeded in three stages; (i) First Stage: Human self-interest reason for environmental protection, referring to some instruments executed during the last century, i.e., Declaration of the Protection of Birds Useful to Agriculture (1875), Convention Designed to Ensure the Protection of Various Species of Wild Animals which are Useful to Man or Inoffensive (1900), Convention for the Regulation of Whaling (1931) which had objective of ensuring health of the whaling industry rather than conserving or protecting whale species. Attitude behind the above instruments of the treaties was assertion of an unlimited right to exploit natural resources which derived from their right as sovereign nations; (ii) Second Stage: International Equity-In this stage we saw extension of treaties beyond requirements of present generation to also meet needs to future generations of human beings; and (iii) Third Stage: Nature's own rights- Here Court referred to UNEP Biodiversity Convention (1992). Having said so, it was held that Supreme Court in India had accepted and applied eco-centric principles and for this referred to its earlier orders in ***T.N. Godavarman Thirumulpad vs. Union of India & Others (2012)3SCC77***; ***T.N. Godavarman Thirumulpad vs. Union of India & Others (2012)4SCC362*** and ***Centre for Environmental Law World Wide Fund India vs. Union of India & Others (2013)8SCC234***. Based on eco-centric principles, rights of animals have been recognized in various countries. In the above backdrop, Court said: *"when we look at the rights of animals from national and international perspective, what emerges is that every species has an inherent right to live and shall be protected by law, subject to exception provided out of necessity. Animal has also honour and dignity which cannot be denied arbitrarily, its rights and privacy have to be respected and protected from unlawful attacks."* Ultimately, Court held that the

events like Jallikattu, bullock cart race, etc. are illegal and violative of Sections 3, 11(1)(a) and 11(1)(m)(ii) of PCA Act, 1960. Court also upheld MoEF Notification dated 11.07.2011.

344. In ***Gulf Goans Hotels Company Limited & Another vs Union of India & Another (2014)10SCC673***, (order dated 22.09.2014 in Civil Appeals No. 3434-35/2001 with Nos. 3436-39/2001), owners of Hotels, Beach Resorts and Beach Bungalows in Goa facing threat of demolition of their properties claiming to be in existence at the respective places for last several decades, approached Supreme Court for protection of their properties. Background facts are that Goa Foundation, a non-Governmental body, claiming to be dedicated to the cause of environmental and ecological, filed a Writ Petition seeking demolition of alleged illegal constructions raised by the above hoteliers, resort owners etc. Simultaneously, some orders of demolition were passed by the Authorities which were challenged by owners of the property in Bombay High Court. Vide judgment dated 13.07.2000, Bombay High Court upheld demolition orders. Hence, matter came to Supreme Court. The orders of demolition were issued on the ground that constructions were raised between 90 to 200 meters from High Tide Line (HTL), though constructions within 500 meters of HTL were prohibited except in rare situations where constructions between 200 to 500 meters from HTL may be permitted by Competent Authority subject to observance of certain conditions. These constructions were raised before 19.02.1991, i.e., enforcement of Coastal Regulation Zone (CRZ) Notification dated 19.02.1991. The owners of property contended that at the time when constructions were raised prohibition was only within 90 meters from HTL and no construction was raised by property owners within the said range. On the contrary, authorities and complainants, justifying

demolition, relied on a letter dated 27.11.1981 issued from the office of Prime Minister, 'Guidelines issued in 1983 (Environmental Guidelines for Development of Beaches, July 1983),' order dated 11.06.1986 of Under Secretary, Ministry of Tourism addressed to Chief Secretary, Government of Goa, constituting an Inter-Ministerial Committee for considering Tourist Projects within 500 meters and Notification dated 22.07.1982 of Governor setting up Ecological Development Council for Goa, for scrutiny of beach construction within 500 meters of HTL. A question was raised *'whether above letter and guidelines satisfy requirement of law, authorizing authorities to demolish disputed property'*. Observing that protection of environment in the light of International conventions and resolutions as also various authorities of Supreme Court, is a matter of prime importance and concern but in the absence of any law, a person cannot be deprived of his property. Court said *"violation of Article 21 on account of alleged environmental violation cannot be subjectively and individually determined when parameters of permissible/impermissible conduct are required to be legislatively or statutorily determined under Sections 3 and 6 of the Environment Protection Act, 1986....."*.

345. In **B.S. Sandhu vs. Government of India & Others, (2014)12SCC172**, (order dated 21.05.2014 in Civil Appeals No. 4682-83/2005 with Nos. 4684-85, 4798-4800/2005, SLPs(C) No. 19226 and 20235/2013), strictly relying on a Notification under Section 3 of Punjab Land Preservation Act, 1900, Court held that it covers forest and non-forest land and unless a specific finding is recorded that disputed property or non-forest activities are carried out in forest land, a prohibitory order by a High Court was not correct. Court held that FC Act, 1980 was enacted to check further deforestation and would apply to

all forest irrespective of nature of ownership or a classification that the land must be a forest land.

346. In ***State (NCT of Delhi) vs. Sanjay, (2014)9SCC772***, (order dated 04.09.2014 in Criminal Appeals No. 499/2011 with Nos. 2105-12/2013), authority of Police and other law enforcement agencies for prosecution under Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'MMDR Act, 1957') was challenged and considered. Issue for consideration was 'whether Section 21 and 22 of the aforesaid Act would operate as bar against prosecution of a person who has been charged with allegations which constitute offences under Section 379/114 and other provisions of IPC, 1860. In other words, 'whether MMDR Act, 1957, explicitly or impliedly, excludes provisions of IPC when act of an accused is an offence under both statutes. The contention was that the offence, if any, committed under the provisions of MMDR Act, 1957 but no complaint had been made, then no cognizance can be taken in IPC and since the offence is covered by MMDR Act, 1957, provisions of IPC cannot be resorted to. Considering the above question, Court said that mining activity also cause and destruct environment if conducted in absence of proper scientific methodology; **lack of proper scientific methodology for river sand mining have led to indiscriminate sand mining**; and weak governance and corruption have led to widespread illegal mining. Court referred to UNEP Global Environmental Alert Service report, stating in reference to India, that sand trading is a lucrative business, and there is evidence of illegal trading broadly under the influence of sand mafias; **mining of aggregates in rivers has led to severe damage to river, including pollution and changes in level of pH; removing sediment from river causes the river to cut its channel through the bed of the valley**

floor, or channel incision, both upstream and downstream of the extraction site; leads to coarsening of bed material and lateral channel instability; it can change the riverbed itself; removal of more than 12 million tonnes of sand a year from the Vembanad Lake catchment in India has led to lowering of the riverbed by 7 to 15 centimeters a year; **Incision can also cause alluvial aquifer to drain to a lower level, resulting in a loss of aquifer storage; and can also increase flood frequency and intensity by reducing flood regulation capacity.** However, lowering the water table is most threatening to water supply exacerbating drought occurrence and severity as tributaries of major rivers dry up when sand mining reaches certain thresholds. Illegal sand mining also causes erosion. Damming and mining have reduced sediment delivery from rivers to many coastal areas, leading to accelerated beach erosion. Quoting above report of United Nations, impact of sand mining was further discussed in para 34 and 35 of the judgment, as under:

*“34. The report also dealt with the **astonishing impact of sand mining on the economy**. It states that the tourism may be affected through beach erosion. Fishing, both traditional and commercial, can be affected through destruction of benthic fauna. Agriculture could be affected through loss of agricultural land from river erosion and the lowering of the water table. The insurance sector is affected through exacerbation of the impact of extreme events such as floods, droughts and storm surges through decreased protection of beach fronts. The erosion of coastal areas and beaches affects houses and infrastructure. A decrease in bed load or channel shortening can cause downstream erosion including bank erosion and the undercutting or undermining of engineering structures such as bridges, side protection walls and structures for water supply.*

35. Sand is often removed from beaches to build hotels, roads and other tourism-related infrastructure. In some locations, continued construction is likely to lead to an unsustainable situation and destruction of the main natural attraction for visitors-beaches themselves. Mining from, within or near a riverbed has a direct impact on the stream’s physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, in stream roughness of the bed, flow velocity, discharge capacity, sediment transportation capacity, turbidity, temperature, etc. Alteration or modification of the above attributes may cause

hazardous impact on ecological equilibrium of riverine regime. This may also cause adverse impact on in stream biota and riparian habitats. This disturbance may also cause changes in channel configuration and flow-paths.”

347. Relying on the Doctrine of Public Trust, applied in the context of environment, Court held that natural resources constitute public assets and State is trustee and custodian to protect it, even if proceedings have not been initiated under MMRD Act, 1957, if a person has extracted minerals unauthorizedly and illegally, it amounts to theft and, therefore, offence is covered under Sections 378 and 379 of IPC, wherein police can take cognizance and Magistrate on receipt of police report is empowered to proceed without waiting for a complaint to be filed by an officer authorized under MMRD Act, 1957. Court said that dishonest removal of sand gravel and other minerals from river which is property of the State, out of State's possession without consent, constitutes an offence of theft. Hence, provisions of MMRS Act, 1957 will not debar police from taking action against persons committing theft of sand and minerals by exercising power under Cr.P.C. and submit a report before Magistrate for taking cognizance against such persons. Court said ***“any case **where there is a theft of sand and gravel from the Government land, the police can register a case**, investigate the same and submit a final report under Section 173 of Cr.P.C before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) of Cr.P.C”***. Further in para 73, Court said that *“we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the river beds without consent, which is the property of the State, is a distinct offence under the IPC. Hence, for the commission of offence under Section 378 Cr.PC, on receipt of the police report, the Magistrate having jurisdiction*

can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorized officer for taking cognizance in respect of violation of various provisions of the MMRD Act.”

348. **Goa Foundation vs. Union of India & Others, (2015)1SCC153**, (order dated 14.10.2014 in IA No. 86/2014 in Writ Petition (Civil) No. 435/2012) is a follow up of earlier decision dated 10.09.2012 reported in **(2014)6SCC590**. An application was filed by mining proponents claiming that they had extracted 67,285 metric tonnes of iron ore and they should be allowed to lift the same. Referring to the statutory provisions that extracted ore should have been removed within a period of six months, Court did not accept the above request and held that the provisions of Mineral Rules mandate that the excavated mineral ore is liable to be removed by lessee within a period of six months, failing which, after issuance of a notice, same would stand forfeited to the Government. Further, earlier direction of Supreme Court said that all extracted mineral ore contained in the inventory prepared by the Monitoring Committee would vest in the State Government. That being so, the request of mining proponent cannot be accepted.

349. In **Muneer Enterprises vs. Ramgad Minerals and Mining Limited & Others, (2015)5SCC366**, (order dated 12.03.2015 in Civil Appeal No. 2818/201), an order of transfer of mining lease from original lessee to a third person was challenged on the ground that a lease which was surrendered or found illegal to have not followed law, cannot be allotted by transfer. In para 76 of the judgment, Court said that grant, operation and termination of mining lease is governed by statute, anyone of these factors, i.e., grant of lease or operation of mines based on such grant and termination, either by way of surrender at the instance of

lessee or by way of termination at the instance of State should be carried out strictly in accordance with prescribed stipulations of statutes. Referring to Section 19 of MMRD Act, 1957, Court said that any mining lease granted in contravention of the provisions of the said Act or Rules shall be void and would have no effect. The above provision is mandatory. Further, if a mining lease is granted in violation of Section 2 of FC Act, 1980, in law it can be said that there is no mining lease in existence. In para 104, Court said, *“therefore, for a mining lease to remain valid, twin requirements of the approval of the Central Government under the proviso to Section 5(1) of MMDR Act and Section 2 of the Forest Act of 1980 have to be fulfilled. Therefore, a lessee cannot be heard to contend that such statutory requirements are to be thrown overboard and permitted to seek for such approvals after the expiry of the lease at its own sweet will and pleasure and the time to be fixed on its own and that the operation of the mining lease should be allowed ignoring such mandatory prescription”*. That being so, nothing could have been further transferred to anyone. Court also seriously deprecated State Authorities acting in violation of law and observed that strict action needed to be taken against them. In para 118 of the judgment, Court said, *“in this context, it will be more relevant to state that mines and mineral being national wealth, dealing with the same as the largesse of the State by way of grant of lease or in the form of any other right in favour of any party can only be resorted to strictly in accordance with the provisions governing disposal of such largesse and could not have been resorted to as has been done by the State Government and the Director of Mines and Geology of the State of Karnataka by passing the order of transfer dated 16.3.2002. **Such a conduct of the State and its authorities are highly condemnable and, therefore, calls for stringent action against them**”*.

350. In ***M.C. Mehta vs. Union of India & others, (2015)12SCC764***, a complaint of pollution of river Ganga and its cleanliness was raised in Writ Petition No. 3727/1985 filed under Article 32 of the Constitution. Subsequently, petition was transferred to this Tribunal vide order dated 29.10.2014, ***(2015)12SCC764***, with the observations made in paras 19 and 20 as under:

“19. We are confident that the Tribunal which has several experts as its members and the advantage of assistance from agencies from outside will spare no efforts to effectively address all the questions arising out of industrial effluents being discharged into the river. This will include discharge not only from the grossly polluting industries referred to in the earlier part of this order but also discharge from "highly polluting units" also. As regards the remainder of the matter concerning discharge of domestic sewage and other sources of pollution we will for the present retain the same with us.

*20. We accordingly request the Tribunal to look into all relevant aspects and to pass appropriate directions against all those found to be violating the law. **We will highly appreciate if the Tribunal submits an interim report to us every six months only to give us an idea as to the progress made and the difficulties, if any, besetting the exercise to enable us to remove such of the difficulties as can be removed within judicially manageable dimensions.** The Registry shall forward a copy of the order to the National Green Tribunal alongwith a copy of the writ petition and the affidavits filed in reply from time to time.”*

351. In ***Rajendra Shankar Shukla & others vs. State of Chhattisgarh & others, (2015)10SCC400***, (order dated 29.07.2015 in Civil Appeal No. 5769-70/2015 with Nos. 5771-75/2015), certain land owners whose land was acquired for Town Development Scheme, namely, Kamal Vihar Township Development Scheme No. 4, challenged acquisition of land on various grounds including violation of requirement of EC under EIA 2006. Having lost before Single Judge and Division Bench in High Court, land owners came to Supreme Court. The question relating to EC under EIA 2006 was considered as issue no. (vi) in para 116-126. Court held that since land in question was in ‘critically polluted area’, the category of the project from ‘B1’ would be treated as category ‘A’

and Competent Authority to grant EC was MoEF&CC not SEIAA. Hence, EC granted by SEIAA was illegal. Court, however, held, if there is any deviation in land use from proposal as disclosed in the application, a fresh EC would have to be sought by the proponent. In the case, there was a change in land use but not such fresh EC was sought. In the circumstances, Scheme could not have allowed to proceed illegally. In para 126, Court said, ***“therefore, we are of the opinion that due to the change in the scope of the project, Respondent No. 2 RDA was required to seek sanction for the project from the Central Government. The same has not been done....failed to obtain the environmental clearance requirement which is the mandatory requirement in law for initiating any project by the RDA...town development scheme prepared through incompetent authorities with blatant violation of legal and environmental procedure cannot be the reason for deprivation of constitutional rights of the appellants”***. Court thus held that acquisition of land will not be valid for an illegal project.

352. In ***Anirudh Kumar vs. Municipal Corporation of Delhi & Others, (2015)7SCC779***, (order dated 20.03.2015 in Civil Appeal No. 8284/2013), issue of noise pollution was raised where two doctors running a pathological lab in a residential building, were causing noise pollution. A direction was sought to restrain them from running such lab. Court held that running of pathological lab by respondent owners creates air and sound pollution rampantly on account of which public residents' health and peace is adversely affected. Therefore, public interest is affected and there is violation of rule of law. Appeal was allowed. The respondent owners were directed to close down their establishment, i.e., pathological lab. Municipal Corporation as well as Pollution Control

Committee were directed to ensure that no unlawful activities are carried out in residential premises. Commenting adversely upon role of local bodies and environmental regulatory authority, Court, in para 56 and 57, said:

“56. Therefore, **both the MCD and the DPCC abdicated their statutory duties in permitting the owners to carry on with the unlawful activities** which inaction despite persistent request made by the appellant and the residents of the area did not yield any results. The counsel for the MCD made the statement before the courts below and even before this Court that there are no illegal activities on the part of the respondent-owners as they are supported by issuance of a Regularisation Certificate. In this regard as discussed previously in this judgement, the issuance of **Regularisation Certificate to run the Pathological Lab in the building is totally impermissible in law** even though the respondent-owners have placed reliance upon Mixed Use of the land in the area as per MPD 2021 referred to *supra*.

57. Further, it is necessary for us to make an observation here that the **conduct of the MCD and the DPCC for their inaction is highly deplorable as they have miserably failed to discharge their statutory duties on account of which there has been a blatant violation of the rule of law** and thereby a large number of residents of the locality are suffering on account of the unlawful activities of the respondent-owners, whose activities are patronised by both the authorities.”

353. It may be worthy to note that pathological lab was running in the basement, ground floor and first floor of the premises while complainant was residing on the second floor of the said building. Initially, complainant approached High Court but it declined to interfere, hence, he came to Supreme Court, where Appeal was allowed and order noted above was passed. The arguments raised on the plea that mixed use was allowed in residential building, Court deprecated and said, “*a liberalised provision of mixed use in the residential areas has been adopted adhering to the requisites of the environment while achieving better synergy between work-place, residence and transportation*”. Court also found that in the garb of running pathological lab, owners were also running a nursing home in the residential area which was not permissible in law. With regard to mixed use, Court referring to the Master Plan, said, “**the**

area/street for mixed use activity should be identified by conducting a study of the impact on the traffic in that area/street in which such mixed use activity is likely to take place and also evaluate the environmental needs and impact on municipal services of the area if mixed use is allowed”.

354. In ***Union of India vs. Vijay Bansal & Others, (2015)14SCC424***, appeal against Punjab and Haryana High Court, was considered wherein order directing State of Haryana to apply to Expert Appraisal Committee for determining Terms of Reference (TOR) and get Environmental Clearance Impact Assessment Report (EIAR) required for the entire mining area falling within the fragile Shivalik Ranges of the Himalayas and then complete process of public consultation and get a final Environmental Impact Assessment Report prepared, was challenged on the ground that application for grant of EC can be filed only by the party, applying for mining lease, and not by Government as such. Reliance was placed upon MoEF's notification dated 04.04.2011, wherein it was clarified that application for seeking EC shall be made by PP. Even Government of India before Supreme Court took the same stand and consequently, appeal was allowed and High Court's order was set aside to the extent of above direction, issued to State of Haryana.

355. In ***V.C. Chinnappa goudar vs. Karnataka State Pollution Control Board and Another, (2015)14SCC535***, an issue was raised that Government officer/public servant is entitled for protection under Section 197 CrPC and without such sanction, Magistrate cannot take cognizance even if, he is accused of an offence under section 48 of Water Act, 1974. High Court of Karnataka rejected this contention and in

appeal Supreme Court confirmed the above view, observing in para 8 and 9, as under:

“8. In this context, when we refer to Section 5 CrPC, the said section makes it clear that in the absence of specific provisions to the contrary, nothing contained in the Criminal Procedure Code would affect any special or local laws providing for any special form or procedure prescribed to be made applicable. There is no specific provision providing for any sanction to be secured for proceeding against a public servant under the 1974 Act. If one can visualise a situation where Section 197 CrPC is made applicable in respect of any prosecution under the 1974 Act and in that process the sanction is refused by the State by invoking Section 197 CrPC that would virtually negate the deeming fiction provided under Section 48 by which the Head of the Department of a government department would otherwise be deemed guilty of the offence under the 1974 Act. In such a situation the outcome of application of Section 197 CrPC by resorting to reliance placed by Section 4(2) CrPC would directly conflict with Section 48 of the 1974 Act and consequently Section 60 of the 1974 Act would automatically come into play which has an overriding effect over any other enactment other than the 1974 Act.

9. In the light of the said statutory prescription contained in Section 48, we find that there is no scope for invoking Section 197 CrPC even though the appellants are stated to be public servants.”

356. In **Vardah Enterpirises Private Limited vs. Rajendra Kumar Razdan and Others, (2015)15SCC352**, issue of construction in the alleged restricted area of Fatehsagar and Pichola Lakes in Udaipur was in question. Rajasthan Government issued a notification dated 17.01.1999 under Section 171 of Rajasthan Municipalities Act, 2009, declaring area around Fatehsagar and Pichola Lakes in Udaipur as “No Construction Zone”. Another notification was issued on 10.12.1999, superseding the earlier one, declaring area around Fatehsagar and Pichola Lakes in Udaipur as ‘Controlled Construction Area’. **W.P. (C) No. 427 of 1999** was filed by one Rajendra Kumar Razdan in Rajasthan High Court at Jaipur, praying that all constructions, in and around lakes specified in Rajasthan Government notification dated 17.01.1997, be stopped and Government agencies be stopped to carry on harmful and dangerous activities, for maintenance of lives of population in the said area. Writ

petition was allowed vide judgment dated 06.02.2007, taking a view that there would be no construction in and around the said lakes and their respective catchment areas; and Statutory Authorities cannot permit any construction activity in the 'Controlled Construction Area'. On the basis of perusal of record, Supreme Court found that the land of appellant which was disputed, did not attract either notification dated 17.01.1997 or 10.12.1999. Consequently, proceedings initiated against appellant *M/s. Vardha Enterprises Private Limited* were set aside. In another connected matter, where issue of wetland under Wetlands (Conservation and Management) Rules, 2010 was raised, Court held, where statutory permission was already granted, the aforesaid Rules of 2010 will not apply. Further, so long as, there is no wetland notified under the Rules, the prohibition/restriction contained therein, would not be attracted.

357. In ***Wildlife Rescue and Rehabilitation Centre and Others vs. Union of India and Others, (2016)1SCC716***, issue of cruelty upon captive elephants in State of Kerala was raised and referring to WLP Act, 1972 and Kerala Captive Elephants (Management and Maintenance) Rules, 2012, Court issued direction that those Rules and Statutory Provisions should be strictly followed, observed and applied and enforced by the concerned Authorities.

358. In ***Electrotherm (India) Limited vs. Patel Vipul Kumar Ramjibhai and others, (2016)9SCC300***, issue of public hearing before grant of EC in the context of EIA 1994 and EIA 2006 was under consideration. Gujarat High Court had set aside EC dated 27.01.2010 granted to appellant and allowed continuance of its unit only till fresh EC was accorded in its favour by MoEF. It was challenged by appellant/PP before Supreme Court stating that PP has set up a steel plant at village

Samakhiyali, for manufacturing various products; NOC was issued by State PCB on 25.02.2005 and Authorization Order was issued on 10.11.2005 for manufacture of Pig Iron, Steel Billets/Slabs, Steel Bars and Rods, etc.; appellant set up his plant and vide letter dated 30.11.2007 applied for grant of EC; it was granted by MoEF on 20.02.2008; appellant thereafter, applied for expansion of steel plant; informed Expert Appraisal Committee that while granting EC earlier public hearing for the project was already held on 12.06.2007 and since expansion would be within the existing industrial premises and no extra land would be required, hence an exemption be allowed for public hearing. Expansion project was granted EC by MoEF vide order dated 27.01.2010. This was challenged in Gujarat High Court on the ground that grant of EC for expansion of plant exempting public hearing was not in conformity with the provisions of EIA 2006. High Court held that grant of EC dated 27.01.2010 without any public consultation or hearing was bad since public consultation/public hearing was mandatory requirement under EIA 2006. In appeal, Supreme Court observed that public consultation/public hearing is one of the important suggestions while considering the matter for grant of EC; record show that exemption was allowed on the ground that no additional land will be required and no additional ground water drawl or other features will be necessary. Further, Court observed that so far as requirement of water is concerned, it is a community resource and when expansion was allowed, use of water would definitely be additional of what it was required earlier and, therefore, expansion of project would have entailed additional pollution load due to larger requirement of water. Court referred to the amendment notification dated 01.12.2009 of EIA 2006, wherein no provision for exemption from public hearing was made for holding that public

consultation/public hearing was mandatory, Supreme Court relied on its earlier decision in ***Lafarge Umiam Mining Private Limited vs. Union of India (supra)***. However, instead of closing the unit, Court permitted unit to continue till public hearing is conducted and observed that if as a result of public hearing, any negative mandate against expansion of the project is to be issued; Competent Authority may ensure scaling down activities to the level which was already permitted by earlier EC dated 20.02.2008. This method was adopted only since expansion had already been undertaken and proponent was working with expended capacity hence in the peculiar facts of the case and not as a general proposition of law, Court allowed indulgence though held that public hearing is mandatory.

359. In ***Anil Hoble vs. Kashinath Jairam Shetye and others, (2016)10SCC701***, judgment of this Tribunal was challenged whereby direction for demolition of construction raised in restricted coastal zone was issued. Background facts are that Anil Hoble, appellant raised a commercial building on plot of land bearing Chalta No.1/PTS No.10, Panjim City and Survey No.65/1-A Village Morombio Grande in Mercas Panchayat, Goa without obtaining necessary permission from the concerned Authorities. Alleging that construction is detrimental to the coastal ecosystem and river ecosystem; likely to cause pollution of river water due to commercial activities of the bar and restaurant and the construction was raised with political influence in utter violation of CRZ Notification dated 19.02.1991; an application under Section 14 of NGT Act, 2010 was filed before Tribunal. The defence taken was that structure was in existence prior to 19.02.1991 hence would not attract restriction imposed by notification dated 19.02.1991. Tribunal after perusal of record, recorded findings that the defence taken by appellant that the

structure was prior to 19.02.1991 was not correct and, thereafter, relying on Bombay High Court's judgment in ***Goa Foundation vs. The Panchayat of Condolim & The Panchayat of Calangut, WP No. 422 of 1998***, decided on 13.10.2006, wherein directions were issued to State Authorities to take action against such unauthorized structures and construction put up on the land falling within CRZ-III area in Goa village or town after 19.02.1991, held construction raised by appellant illegal and directed its demolition by the concerned Executive Authority. Appellant was also imposed Rs. 20 lakhs cost of degradation of environment caused due to violation of CRZ Notification dated 19.02.1991. Appellant preferred review which was also rejected by order dated 14.12.2015. In appeal, Supreme Court found that appellant purchased plot vide sale deed dated 03.08.1992 when a small structure at the corner of the said plot was in existence, used as a garage hence the disputed structure admittedly was not there at least upto 03.08.1992 hence, Tribunal rightly found structure post 19.02.1991. Further, CRZ Policy prohibited construction upto 200 metres from High Tide Line as the said zone was treated as 'No Development Zone', except for repairs of existing authorized structures. Court agreed with the findings of Tribunal that construction was post 19.02.1991 and not prior to 19.02.1991 as pleaded by appellant. In that view of the matter, construction admittedly was contrary to CRZ Regulation as also judgment of Bombay High Court in ***Goa Foundation vs. The Panchayat of Condolim (supra)*** and Tribunal in fact, after recording the directions issued by Bombay High Court in ***Goa Foundation vs. The Panchayat of Condolim (supra)*** issued consequent directions in the present case also. Court held that the directions of Bombay High Court were imposed, and Authorities were bound by the same to implement and to prevent any breach thereof. Any

permission given contrary to the said direction, must be viewed as nullity and non-est, having been given in complete disregard of the directions of the High Court. Consequently, Court upheld the directions for demolition, issued by Tribunal.

360. On the issue of assessment of compensation for damage to environment in the matter of illegal mining, recently Supreme Court in ***Bajri Lease LOI holders Welfare Society vs. State of Rajasthan and others, SLP (Civil No.) 10584 of 2019*** (order dated 11.11.2021) has said that compensation/penalty to be paid by those indulging in illegal sand mining cannot be restricted to be value of illegally mined minerals. The **cost of restoration of environment as well as the cost of ecological services should be part of compensation**. ‘Polluter Pays’ principle as interpreted by this Court means that absolute liability for harm to the environment extends not only to compensate victims of pollution but also cost of restoring environmental degradation. Remediation of damaged environment is part of the process of “sustainable development” and as such the polluter is liable to pay the cost the individual sufferers as well as the cost of reversing the damaged ecology.

361. ***In M.C. Mehta vs UOI (2017)7SCC243 (Vehicular Air Pollution Matter)*** (orders dated 29th March 2017, 13th April 2017 and 20th March 2017 printed together), Supreme Court did not appreciate approach of automobile industries giving primary importance to commercial profit instead of taking proactive steps to reduce vehicular pollution. It is said, “*when the health of millions of our countrymen is involved, notification relating to commercial activities ought not to be interpreted in a literal manner.*”

362. Development vs. Environment paradigm may be debated upon but there cannot be any debate in the development vs. public health paradigm. Polluted air can lead to a variety of health problems as it is evident from a casual visit to website of CPCB and WHO. As per WHO report, when urban air quality declines, risk of stroke, heart disease, lung cancer, chronic and acute respiratory diseases including asthma increases. Office Memorandum dated 3.03.2015 cannot be read as to permit manufacture of BS-III complaint vehicles to go for manufacturing up to last and thereafter permit clearance sale thereof so as to postpone implementation of policy BS-IV complaint vehicles. Such an interpretation will make a mockery of all the efforts in regulating vehicular emissions and virtually would enable vehicle manufacturers to emasculate an important component of Right to Life guaranteed by Article 21 of the Constitution namely entitlement of millions of countrymen and women to breath less polluted air and ignore public health issues in conducting their business. Court therefore, rejected permission sought by Auto manufacturers for permitting clearance of the earlier version of vehicles.

363. Issue relating to illegal mining in State of Orissa in violation of environmental laws was considered in ***Common Cause vs. U.O.I. & Others (2017)9SCC499***. Two Writ Petitions were filed under Article 32 of the Constitution before Supreme Court, one by Common Cause, a public-spirited Organization, and another by Prafulla Samantra and Another complaining heavy illegal mining of iron ore and manganese ore in districts of Keonjhar, Sundergarh and Mayurbhanj in Odisha, national environment and forest and also causing untold misery to the tribals in the area. When Writ Petition were entertained initially on 21.04.2014,

noticing the averments that several mining operations were continuing without clearance under EP Act 1986 and FC Act 1980, Supreme Court directed Central Empowered Committee to make a list of such lessees who are operating leases in violation of law. The report dated 25.04.2014 submitted by CEC was considered on 16.05.2014 and Court found that in the above 3 districts, total leases granted for mining iron and manganese ore were 187 out of which 102 lease holders did not have requisite Environmental Clearance under EP Act, 1986 or approval under FC Act, 1980 or approved mining plan and/or Consent to Operate under the provisions of Air Act 1981 or Water Act 1974. Court directed suspension of such 102 mining leases till they obtain requisite clearances, approvals or consents. The order dated 16.05.2014 is reported in ***Common Cause vs. Union of India & Others, (2014)14SCC155***. Out of 187 leases, 29 were already determined or rejected or had lapsed and direction was issued for suspension of said 29 mining leases till they commence operation after obtaining requisite statutory permissions etc. 53 iron ore/manganese ore mining leases were operational having necessary approvals under FC Act, 1980, consent to operate under Air Act 1981 or Water Act 1974 and also having approved mining plans but nothing was disclosed about availability of EC. 3 mining leases were located in forest as well as non-forest land, but mining operations were being conducted in non-forest areas. Court also examined above 56 operational mining leases and found that 14 were operating on first renewal basis under Section 8(2) of Mines and Minerals (Development and Regulation) Act, 1957 (hereafter referred to as 'MMDR Act 1957') read with Rule 24-A(6) of Mineral Concession Rules, 1960 (hereafter referred to as 'MCR 1960') and 16 mining leases were operating since lease deeds for grant of renewal were executed in their favour. The

remaining 26 mining leases were operating on second and subsequent renewal basis with renewal applications pending final decision with the State Government. Court allowed 14+ 16 mining leases to continue but in respect of 26 mining leases operating on 2nd and subsequent renewal applications, it found that in view of earlier judgement in **Goa Foundation vs. U.O.I. (2014)6SCC590** holding that for a second or subsequent deemed renewal no provision was available in view of Section 8(3) of MMDR Act 1957, Court directed to stop operation of 26 leases until express orders are passed by State Government under Section 8(3) of MMDR Act 1957. There was an amendment in MMDR Act 1957 with effect from 12th January, 2015 in Section 8(3) pursuant where to remaining 26 leases also restart functioning. CEC in the report, dealt with the following ten topics:

- I. *“Production of iron ore and manganese ore without/in excess of the environmental clearance/Mining Plan/Consent to Operate.*
- II. *Mining leases operated in violation of the Forest (Conservation) Act, 1980.*
- III. *Illegal mining outside the sanctioned mining lease areas.*
- IV. *Mining leases acquired in violation of Section 6 of the MMDR Act, 1957.*
- V. *Violation of Rule 37 of the Mineral Concession Rules, 1960 by the lessees.*
- VI. *Illegalities involved in the mining leases of Essel Mining & Industries Ltd.*
- VII. *Illegalities involved in the mining lease of Sharda Mines (P) Ltd.*
- VIII. *Massive illegal mining in Uliburu Forest land.*
- IX. *Inordinate delays in taking decisions by the State Government regarding renewal of the mining leases.*
- X. *Other issues.”*

364. Court formulated four issues as under:

- I. *Leases lapsed under Section 4-A(4) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as MMDR Act, 1957) (11 leases);*
- II. *Violation of Rule 24 of the Minerals (other than Atomic and Hydrocarbons Energy Minerals) Concession Rules, 2016 (hereinafter referred to as MCR, 2016) and Rule 37 of the Mineral Concessions Rules, 1960 (hereinafter referred to as MCR, 1960) (9 leases);*
- III. *Illegal mining in forest lands (20 leases); and*
- IV. *Iron ore produced without/in excess of the environmental clearance (each of the operating leases involved).”*

365. With respect of issue one, Court found that it was also covered by order dated 04.04.2016 reported in **(2016)11SCC455** and therefore did not survive for consideration. The remaining three issues, Court found overlapping with topics I, II and V, dealt with, by CEC. Further topics III, IV, VI, VII identified by CEC were also found worth adjudication but in respect to topics VIII, IX and X, parties did not advance any submissions and hence Court accepted reports on those topics. The judgement deals with the topics identified by CEC from I to VII. CEC also reported volume of mining to the extent of 2130.988 Lakhs MT of iron ore and 24.129 Lakhs MT of manganese ore. The above quantity did not include extraction of ore without Forest Clearance. In terms of value which CEC determined on notional basis, the iron ore extracted worth Rs. 17,091.24 crores while manganese ore worth Rs. 484.92 crores. With respect of illegal mining, Central Government had also appointed Judicial Commission under Commissions of Inquiry Act, 1952 vide notification dated 22.11.2010 appointing Justice M.B. Shah, a retired judge of Supreme Court to inquire on the Terms of Reference mentioned in Para 27 of the judgement. Commission's proceedings were also taken into consideration by Court. The objection raised by lease holders on the report of CEC on its authority was rejected. CEC was earlier constituted by Supreme Court's order dated 09.05.2002 **((2013)8SCC198)** and later by notification dated 17.09.2002 issued under Section 3(3) of EP Act 1986. It was constituted conferring a statutory status to the said body. Facts stated by Court regarding CEC were not disputed though there was some challenge to the conclusions drawn by CEC. MMDR Act, 1957 and MCR Act, 1960 were considered in detail and thereafter Court considered EIA 1994. Court said that EIA 1994 clearly contemplated that in the matter of mining operations site clearance shall be granted for sanctioned

capacity and would be valid for a period of five years from the date of commencement of mining operation. It shows that on receipt of an EC, a mining lease holder can extract mineral only from a specified site, upto the sanctioned capacity and only for a period of five years from the date of grant of an EC. This is regardless of the quantum of extraction permissible in the mining plan or mining lease and regardless of the duration of mining lease. Further, a mining lease holder would necessarily have to obtain a fresh EC after every five years and can also apply for an increase in the sanctioned capacity. Court very categorically said ***“There is no concept of a retrospective EC and its validity effectively starts only from the day it is granted. Thus, the EC takes precedence over the mining lease or to put it conversely, the mining operations under a mining lease are dependent on and ‘subordinate’ to the EC.”*** Explanatory Note was added to EIA 1994 on 04.05.1994 and note one was found relevant which deals with the expansion and modernization of existing projects. Referring hereto, Court said, if any proposed expansion and modernization activity results in an increase in the pollution load than a prior EC is required, Project Proponent should approach concerned State Pollution Control Board (for short ‘SPCB’) for certifying whether the proposed expansion or modernization is likely to exceed the existing pollution load or not. If pollution load is not likely to be exceeded, Project Proponent will not be required to seek an EC but a copy of such a certificate from SPCB will be required to be submitted to the Impact Assessment Agency which can review the certificate. Note 8 permitted existing mining operations which have obtained NOC before SPCB before 27.01.1994, not to obtain EC from Impact Assessment Agency but this is subject to the substantive portion of EIA 1994 and 1st Note. It was made clear, if existing mining

project does not have a NOC from SPCB, then an EC under EIA 1994 was required. Court then formulated two questions.

- a. What is the base year for considering pollution load while proposing any expansion activity?
- b. What is the duration for which an EC is not necessary for an ongoing project which does not propose any expansion, or to put it differently, what is the validity period for a no objection certificate from SPCB?

366. First question was answered observing that base year is immediately preceding year that is 1993-94. The arguments of mine holders that annual production even prior to 1994 may be considered to ascertain whether there was an expansion or not was rejected observing that high annual production in any one year is not reflective of a consistent pattern of production and it would also lack uniformity between mining lease holders. Different base years for mining lease holders are not conducive to good governance. However, Court permitted an exception that if there was no production during 1993-94 in that eventuality immediately preceding year would be relevant. Further it is said that EIA is mandatory in character; applicable to all mining operations/expansion of production or even increase in lease area, modernization of the extraction process, new mining projects and renewal of mining leases. A mining lease holder is obliged to adhere to the terms and conditions of a mining lease and applicable laws and the mere fact that a mining plan has been approved does not entitle a mining lease holder to commence mining operations. The approach of MoEF by issuing circular permitting ex post facto EC did not mean that MoEF intended to legalize commencement or continuance of mining activity without compliance of requirement of EIA 1994. It was obligation of everyone to

abide by the law; and the soft approach taken by MoEF cannot be an escapist excuse for non-compliance with the law or EIA 1994.

367. Coming to EIA 2006, Court said that reference to any circular is of no consequence. A statutory notification cannot be over ridden by a circular. With regard to the arguments advanced by the mining lease holders of confusion created by MoEF, rejecting the same, Court said there is no confusion, vagueness or uncertainty in the application of EIA 1994 and EIA 2006 insofar as mining operations commenced on mining leases before 27.01.1994 (or even thereafter). Post EIA 2006, every mining lease holder having a lease area of 5 hectares or more and undertaking mining operations in respect of major minerals was obliged to get an EC in terms of EIA 2006. Court referred to major minerals since in the case in hand issue of major minerals was under consideration. It was also clarified that a mining plan is also subordinate to EC. Another argument that whenever EC is granted it would have retrospective effect from the date of application was also rejected observing that grant of EC cannot be taken as a mechanical exercise. It can be granted only after due diligence and reasonable care since damage to environment can have a long term impact. Rejecting the argument that EC ex post facto can be granted or should be taken to have been granted, Court said *“EIA 1994 is therefore very clear that if expansion or modernization of any mining activity exceeds the existing pollution load, a prior EC is necessary and as already held by this Court in M. C. Mehta **even for the renewal of a mining lease where there is no expansion or modernization of any activity, a prior EC is necessary.** Such importance having been given to an EC, the grant of an ex post facto environmental clearance would be detrimental to the environment and could lead to irreparable degradation of the environment. The **concept of an ex post facto or a retrospective EC is completely***

alien to environmental jurisprudence including EIA 1994 and EIA 2006. *We make it clear that an EC will come into force not earlier than the date of its grant.”.*

368. An issue was also raised as to what illegal mining is? Mining lease holders argued that mining operations outside the mining area would constitute illegal mining. It was rejected by Court observing that this approach would make illegal mining lease centric and this narrow interpretation given by CEC was not acceptable to Court. Explaining as to what would be illegal mining, Court said *“the holder of a mining lease is required to adhere to the terms of the mining scheme, the mining plan and the mining lease as well as the statutes such as the EPA, the FCA, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. If **any mining operation is conducted in violation of any of these requirements, then that mining operation is illegal or unlawful. Any extraction of a mineral through an illegal or unlawful mining operation would become illegally or unlawfully extracted mineral**”.*

369. Suggestion of Counsel for mining lease holders that only mining operations outside mining leased area would constitute illegal mining was not accepted in the manner it was suggested but Court said that such activity is obviously illegal or unlawful mining but Illegal mining takes within its fold excess extraction of a mineral over the permissible limit even within the mining lease area which is held under lawful authority, if that excess extraction is contrary to the mining scheme, the mining plan, the mining lease or a statutory requirement. Referring to Section 4(1) of MMDR Act 1957, Court said any person carrying out mining operations without a mining lease is indulging in illegal or unlawful mining. This

would also necessarily imply that if a mining lease is granted to a person who carries out mining operations outside the boundaries of the mining lease, the mineral extracted would be the result of illegal or unlawful mining. Court also rejected argument of deviation stating, under the rules only 20% variation is permissible but it does not mean that mining lease for 5 years is given, a mining lease holder can affect 5 years quantity (with a variation of 20%) in one or two years only. The extraction has to be staggered and continued over a period of five years. Court also clarified letter dated 12.12.2011 of Ministry of Mines, Government of India observing that While mining in excess of permissible limits under the mining plan or the EC or FC on leased area may not amount to mining on land occupied without lawful authority, it would certainly amount to illegal or unlawful mining or mining without authority of law. Construing Section 21(5) of MMDR Act, Court said that whenever any person raises without any lawful authority, any mineral from any land, in such a case the **State Government is entitled to recover from such person the minerals so raised or where such mineral has been disposed of the price thereof as compensation.** The words ‘any land’ are not confined to the mining lease area. As far as the mining lease area is concerned, extraction of a mineral over and above what is permissible under the mining plan or under the EC undoubtedly attracts Section 21(5) of MMDR Act 1957 being extraction without lawful authority. It would also attract Section 21(1) of the said Act. Further Section 21(5) is not only attracted but not limited to a violation committed by a person only outside the mining lease area – it includes a violation committed even within the mining lease area. With regard to the recovery of price of the illegally mined ore, Court said *“In our opinion, **there can be no compromise on the quantum of compensation that should be***

*recovered from any defaulting lessee – it should be 100%. If there has been illegal mining, the defaulting lessee must bear the consequences of the illegality and not be benefited by pocketing 70% of the illegally mined ore. It simply does not stand to **reason why the State should be compelled to forego what is its due from the exploitation of a natural resource and on the contrary be a party in filling the coffers of defaulting lessees in an ill gotten manner***". Section 21(5) does not talk of any penalty and is not penal provision. Referring to "**Karnataka Rare Earth v. Senior Geologist, Department of Mines & Geology (2004) 2 SCC 783**" and expressing agreement with the law laid down therein, Court said that **recovery of price of mineral is intended to compensate the State for the loss of the mineral owned by it and caused by a person who has been held to be not entitled in law to raise the same**. There is no element of penalty involved and the recovery of price is not a penal action, it is just compensatory. In para 157 of the judgement Court said that the compensation should be payable by lease holders at 100% of the price of the minerals as rationalized by CEC. With regard to FC Act 1980 referring to "**Ambica Quarry Works v. State of Gujarat and Others, (1987)1SCC213, Rural Litigation and Entitlement Kendra v. State of U.P. 1989Supplement1SCC504 and T.N. Godavarman v. Union of India, (1997)2SCC267**" Court expressed its view that as held therein, in a forest area, no mining is permissible unless Section 2 of FC Act 1980 is complied with and NOC is obtained from Forest Department. In para 180, Court also observed that any mining activity in forest in violation of Section 2 of FC Act 1980 is unauthorized and illegal and the benefit mining leaseholders have derived from such illegal mining would be subject to Section 21(5) of MMDR Act 1957. Court said "*therefore the price of the iron ore and manganese ore*

mined by the mining lease holders from 07.01.1998 is payable until forest clearance under Section 2 of the FC Act is obtained by the mining lease holders.” The suggestion that only 70% of the notional value of the ore mined illegally be recovered, was rejected and in para 185, Court said *“We are of the view that Section 21(5) of the MMDR Act 1957 should be given full effect and so **we reiterate that the recovery should be to the extent of 100%.**”* In reference to the requirement of EC, in Para 186, Court said *“We make it clear that mineral extracted either without an EC or without an FC or without both would attract the provisions of Section 21(5) of the MMDR Act 1957 and 100% of the price of the illegally or unlawfully mined mineral must be compensated by the mining lease holder. To the extent of the overlap or the common period, obviously only one set of compensation is payable by the mining lease holder to the State of Odisha. We order accordingly. However, **we make it clear that whatever payment has already been made by the mining lease holders towards NPV, additional NPV or penal compensatory afforestation is neither adjustable nor refundable since that falls in a different category altogether.**”*

370. Clarifying an observation in ***T.N. Godavaraman Thirumulpad v. Union of India & Others (2011)15SCC658*** and ***(2011)15SCC681***, where observation was that violation of FCA is condonable on payment of penal compensatory afforestation charges, Court in para 187 of the judgement, said *“We may note that this Court has held in *T.N. Godavarman v. Union of India* that a **violation of the FCA is condonable on payment of penal compensatory afforestation charges. This obviously would not apply to illegal or unlawful mining under Section 21(5) of the MMDR Act**, but we make it clear that the*

mining lease holders would be entitled to the benefit of any Temporary Working Permission granted”.

371. Making observations that Government of India should revisit National Mineral Policy 2008, Court referred to the principle of Intergenerational equity and said that there are 3 principles which form the basis of Intergenerational equity, the first one is ‘conservation of options’ second is ‘conservation of quality’ and third is ‘conservation of access’. Accepting argument based on the principle of Intergenerational equity and rampant mining in the State of Orissa, Court found that there should have been some check and therefore new policy should be evolved by the Government of India.

372. In ***State of Madhya Pradesh & others vs. Kallo Bai, (2017)14SCC502***, the question was, whether an order of confiscation of vehicle and forest produce could have been passed before conviction, with reference to Section 15-A to 15-D of Madhya Pradesh Van Upaj (Vyapar Viniam) Adhiniyam, 1969 (hereinafter referred to as ‘MP Forest Produce Act, 1969’). Court held that the above Act was enacted with an object to regulate trade of certain forest produce in State of Madhya Pradesh, known for abundant biodiversity which generates minor forest produce such as tendu, harra, sal seeds and gum etc. Scheme of the Act shows that legislature intended to empower authorized officers of Forest Department for proper implementation of the provisions of Statute and to enable them to take effective steps for preserving forest produce. The said enabling power includes power of seizure, confiscation and forfeiture. Court held that confiscation proceedings contemplated under Section 15 of M.P. Forest Produce Act, 1969 is a *quasi-judicial* proceeding and not a criminal proceeding. It proceeds on the basis of satisfaction of Authorized

Officer with regard to the commission of forest offence. It was also held that Authorized Officer is empowered to confiscate seized forest produce on being satisfied that an offence under M.P. Forest Produce Act 1969 has been committed, and that being power under special enactment, general power vested in Magistrate for dealing with interim custody/release of seized material under Cr.P.C. would give way. Magistrate while dealing with a case of seizure of forest produce under M.P. Forest Produce Act 1969, should first examine whether power to confiscate seized forest produce is vested in the Authorized Officer under the Act and if he finds so, then he has no power to pass any order dealing with interim custody/release of seized material. Such ouster of jurisdiction would aid in proper implementation of the statute. If in such cases power to grant interim custody/release of seized forest produce is vested in the Magistrate then it will defeat the very scheme of the Act. Such a consequence is to be avoided. Court further said:

“The said section makes it clear that section 15-D subjects itself to confiscation proceedings under Section 15, 15-A, 15-B and 15-C of Act. Further Section 15-D speaks of confiscation of all tools, boats, vehicles, ropes, chains or any other articles upon conviction of the offender for such forest offence. This Section is equivalent to Section 55 of the Indian Forest Act as amended by the State of Madhya Pradesh. In this Section the confiscation after the conviction is subjected to separate confiscation proceedings as contemplated under Section 15, 15-A, 15-C. At the cost of repetition, it should be noted that if a confiscation proceeding under Section 15 has commenced and the confiscation has already occurred, then there is no question of confiscation under Section 15-D again. If the confiscation has not taken place under Section 15, then the Court after final conviction can order confiscation under Section 15-D of the Adhiniyam.”

373. Reiterating and further explaining, Court said, broad scheme of Act is to punish those who are in contravention of law at the hand of criminal Court. Confiscation being incidental and ancillary to prosecution, State of Madhya Pradesh separated process of confiscation from the process of prosecution. The purpose of enactment seems to be that the power of

Criminal Court regarding disposal of property is made subject to the jurisdiction of Authorized Officer with regard to that aspect; jurisdiction of Criminal Court in regard to the main prayer remains unaffected. Recording its conclusion, Court said that Section 15 gives independent power to the authority concerned to confiscate articles, even before guilt is completely established. This power can be exercised by officer concerned if he is satisfied that the said objects were utilized during commission of a forest offence. A protection is provided to the owners of the vehicles/articles if they are able to prove that they took all the reasonable care and precaution as envisaged under Section 15(5) of the Act and the said offence was committed without their knowledge or connivance. Criminal prosecution is distinct from confiscation proceedings. Two proceedings are different, each having a distinct purpose. The object of confiscation proceedings is to enable a speedy and effective adjudication with regard to confiscation of the produce and the means used for committing offence while the object of prosecution is to punish the offender. The scheme of Act prescribes an independent procedure for confiscation. The intention of prescribing separate proceedings is to provide deterrent mechanism and to stop further misuse of the vehicle.

374. Issue of use of fire-crackers causing air pollution, whether should be allowed or not in Delhi and NCR area, was considered in **Arjun Gopal & Others vs. Union of India & Others, (2017)16SCC280** (Order dated 12.09.2017 in IA No. 52448 of 2017 in WP (C) No. 728/2015). Here Court referred to a decision of National Green Tribunal in **Vardhaman Kaushik vs. Union of India, (2016) SCC Online NGT 4176**, observing that there are seven major contributors of air pollution in NCR and these are (i) construction activity and carriage of construction material; (ii)

burning of municipal solid waste and other waste; (iii) burning of agriculture residue; (iv) vehicular pollution; (v) dust on the roads; (vi) industrial and power house emission including fly ash and (vii) emissions from hot mix plants and stone crushers. It was further observed that bursting of fireworks is also one of the causes of air pollution. It was, in fact, due to the use of strontium chromite which is harmful and dangerous to human health, as concluded by CPCB. Consequently, Court observed that it has no option but to prohibit use of the said chemical in the manufacture of fireworks. Reiterating earlier observations, Court said that **Right to Breath clean air is a recognized Right under the Constitution**. Right to Health coupled with Right to Breath in clean air leaves no manner of doubt that it is important that air pollution deserves to be eliminated. Consequently, Court issued several directions as noted in para 70 to 72.2.16 in the judgment.

“70. But, from the material before us, it cannot be said with any great degree of certainty that the extremely poor quality of air in Delhi in November and December 2016 was the result only of bursting fireworks around Diwali. Certainly, there were other causes as well, but even so the contribution of the bursting of fireworks cannot be glossed over. Unfortunately, neither is it possible to give an accurate or relative assessment of the contribution of the other identified factors nor the contribution of bursting fireworks to the poor air quality in Delhi and in the NCR. Consequently, a complete ban on the sale of fireworks would be an extreme step that might not be fully warranted by the facts available to us. There is, therefore, some justification for modifying the interim order passed on 11.11.2016 and lifting the suspension of the permanent licences.

71. At the same time, it cannot be forgotten that admittedly there is a huge quantity of fireworks in Delhi and in the NCR and the figure has been provided to us by the applicant. Similarly, there can be no doubt that the Delhi Police had issued a large number of temporary licences in 2016 and it would not be unreasonable to assume that around and during Diwali, there would have been some illegal temporary shops set up, whether known or not known to the police. We do not have the figures with regard to the NCR, but we assume that like in Delhi, a large number of temporary licences have been issued for the possession and sale of fireworks. Therefore, there is a need to regulate the availability and sale of fireworks in Delhi and the NCR.

Directions

72. As mentioned above, the **health of the people in Delhi and in the NCR must take precedence over any commercial or other interest of the applicant or any of the permanent licensees** and, therefore, a graded regulation is necessary which would eventually result in a prohibition. Taking all factors into consideration, we are of the view that the following orders and directions are required to be issued and we do so:

72.1 The directions issued by this Court in *Sadar Bazar Fire Works (Pucca Shop)* shall stand partially modified to the extent that they are not in conformity with the Explosives Rules which shall be implemented in full by the concerned authorities. Safety from fire hazards is one of our concerns in this regard.

72.2 Specifically, Rule 15 relating to marking on explosives and packages and Rule 84 relating to temporary shops for possession and sale of fireworks during festivals of the Explosives Rules shall be strictly enforced. This should not be construed to mean that the other Rules need not be enforced – all Rules should be enforced. But if the fireworks do not conform to the requirements of Rules 15 and 84, they cannot be sold in the NCR, including Delhi and this prohibition is absolute.

72.3 The directions issued and restrictions imposed in the order passed by this Court on 18-7-2005 in *Noise Pollution (5), In re, (2005) 5 SCC 733* shall continue to be in force.

72.4 The police authorities and the District Magistrates will ensure that fireworks are not burst in silence zones that is, an area at least 100 meters away from hospitals, nursing homes, primary and district health-care centres, educational institutions, courts, religious places or any other area that may be declared as a silence zone by the authorities concerned.”

72.5 The Delhi Police is directed to reduce the grant of temporary licences by about 50% of the number of licences granted in 2016. The number of temporary licences should be capped at 500. Similarly, the States in the NCR are restrained from granting more than 50% of the number of temporary licences granted in 2016. The area of distribution of the temporary licences is entirely for the authorities to decide.

72.6 The Union of India will ensure strict compliance with the Notification GSR No. 64(E) dated 27-1-1992 regarding the ban on import of fireworks. The Union of India is at liberty to update and revise this notification in view of the passage of time and further knowledge gained over the last 25 years and issue a fresh notification, if necessary.

375. In ***Wild Life Warden vs. Komarikkal Elias, (2018)8SCC114***, a question arose, whether illegally obtained/procured elephant tusk is Government property attracting presumption under Section 69 of Kerala

Forest Act, 1961. A vehicle was seized from a workshop by Forest Officials on the complaint that the respondent had unauthorizedly collected and stored Elephant Tusk, an unlicensed gun and other accessories. In the criminal case initiated against the respondent, he was acquitted. Assistant Wildlife Warden directed for confiscation of seized items and Jeep. The order was challenged before District Judge, Wayanad, who held that elephant tusk was not a forest produce and remanded the matter. There against, revision was preferred but High Court held that presumption under Section 69 of Kerala Forest Act, 1961 was not attracted since elephant tusk was not a forest produce. Reliance was placed on the definition of 'forest produce', in Section 2 of Kerala Forest Act, 1961. Supreme Court referred to Section 39(1) of Wildlife Protection Act, 1972 and particularly, clause (c) which was inserted w.e.f. 02.10.1991 to hold that ivory imported in India and an article made from such ivory in respect of which any offence against 1972 Act or rule or order made thereunder, has been committed, shall be deemed to the property of State Government. Further where such animal is hunted in a sanctuary or national park declared by Central Government, such animal or any animal article, trophy, uncured trophy or meat derived from such animal shall be the property of Central Government. In view thereof, Court held that there is a declaration that elephant tusk is a property of Government and in that view of the matter, High Court erred in observing that Section 69 of Kerala Forest Act, 1961 is not attracted. Whether it is a forest produce or not under Section 2(f) of Kerala Forest Act, 1961 is immaterial.

376. In ***Lal Bahadur v. State of UP & Others, (2018)15SCC407***, change of master plan and converting green area into residential one was considered. The issue was, whether such conversion is conducive to

protection of environment or not. In the master plan of 1995 of Lucknow, area in dispute was reserved as green belt. In master plan 2021, the same area, shown earlier as green belt, was converted as residential. This part of master plan 2021 was challenged before Lucknow bench of Allahabad High Court. Writ petition was dismissed. The matter came in appeal before Supreme Court. Court held in para 12 of judgment that change of area from green belt to residential is in violation of Article 21, 48A and 51A(g) of the Constitution. Reliance was placed on ***Bangalore Medical Trust v B.S. Muddappa & Others, (1991)4SCC54***, wherein Court had said that protection of environment, open spaces for recreation and fresh air, playground for children, promenade for the residents and other conveniences or amenities are matters of great public concern and a vital interest to be taken care of in a development scheme. Public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other use. Court also relied on an American Supreme Court Judgment ***Agins vs. City of Tiburon, [447 us 255 (1980)]***, wherein Court said: ‘... *it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant adverse impacts, such as pollution, ... destruction of scenic beauty, disturbance of the ecology and the environment, hazards related geology, fire and flood, and other demonstrated consequences of urban sprawl*’.

377. In para 15, Court said that, “***This Court had clearly laid down that such spaces could not be changed from green belt to residential or commercial one. It is not permissible to the State Government to change the parks and playgrounds contrary to legislative intent having constitutional mandate, as that would be an abuse of statutory powers***

vested in the authorities. Court also observed, when master plan was prepared earlier and authorities found importance of such space, it was their bounden duty not to change its very purpose when they knew very well the importance of this place to be kept as open space. Court said,

*“The **importance of park is of universal recognition.** It was against public interest, protection of the environment and such spaces reduce the ill effects of urbanisation, it was **not permissible to change this area into urban area as the garden/ Greenbelt is essential for fresh air, thereby protecting against the resultant impacts of urbanization, such as pollution etc.** The provision of the Act of 1973 and other enactments relating to environment could not be permitted to become statutory mockery by changing the purpose in the master plan from green belts to residential one. Authorities are enjoined with duty maintain them as such as per doctrine of public trust.”*

378. Ultimately, Court quashed Master Plan 2021 changing use of area in question from greenbelt to residential and said that it shall be held in trusteeship only for the purpose of park in future.

379. Heavily striking upon the officials of Statutory Authorities of Government, in ***M.C. Mehta vs UOI & Others (2018)2SCC14***, (I.A. No.93010 and 93007 of 2017 in WP(C) 4677 of 1995), (order dated 15.12.2017); Court said that invaders have pillaged Delhi for 100 of years but for the last couple of decades it is being ravaged by its own citizens and officials governing Capital city. Court gave details of various unauthorized and illegal constructions and misuse of residential premises for industrial and commercial purposes which was allowed by the local bodies/authorities despite several orders passed by Court. Showing its anguish, Court said that it cannot remain spectator when violations of law affect the environment and healthy living of those who abide by law. When time fixed by Court sought to be extended by legislative exercise, Court did not approve the same and in Para 24, referred to its earlier judgment in ***M.C. Mehta vs. Union of India (2006)7SCC456*** wherein Para 20 Court had said ‘*there cannot be any*

doubt that the legislature would lack competence to extend the time granted by this court in the purported law-making power. That would be virtually exercising judicial function. Such functions do not vest in the legislature.'

380. In **State of Uttarakhand vs. Kumaon Stone Crusher, (2018)14SCC537**, issues relating to transaction fee arising from different districts was considered. One of the issues raised was whether coal (and its various varieties) limestone, dolomite, fly ash, clinker, gypsum, veneer and plywood are 'forest produce'. In Para 71 to 78, Court held that coal, hard coke, soft coke and coal briquettes etc. for all forest produce. Similarly, limestone, dolomite and gypsum are also forest produce. However, fly ash clinker and synthetic gypsum are not forest produce. Veneer and waste ply board are also forest produce. With respect to Forest Act, 1927 and Mines and Minerals Development and Regulations Act, 1947, Court held that both operate in different fields and it cannot be said that one repeals other. With regard to the meaning of the term 'forest', Court relied on the judgment in **T.N. Godavarman Thirumulpad vs Union of India & Others (1997)2SCC267** and held that definition of forest cannot be read in a restrictive manner. In the conclusions recorded in para 215, Court said that crushing of stones etc., does not result into a new commodity different from forest produce, the crust materials continue to be stone and retain their nature of forest produce. Similar is the position with regard to coal marbles etc.

381. In **Goa Foundation vs. Sesa Sterlite Limited and & Others (2018)4SCC218**, Court observed that once a decision was rendered in Goa Foundation, earlier case, **(2014)6SCC590** and it was directed that Government shall grant fresh leases, it means that Government could

have not granted fresh lease by way of renewal. It was observed that though renewal of a lease is virtually the same as grant of the fresh lease but a converse direction to grant a minor lease cannot be understood to mean granting a renewal of a minor lease. Obviously, grant of a fresh lease is not the same as a renewal of a lease. When Court in **Goa Foundation (supra)** required state to grant a fresh lease, it did not require State to renew existing (expired lease). On the question, how lease should be granted, Court observed that it is not obligatory, constitutionally or otherwise that natural resource (other than spectrum) must be disposed of or alienated or allocated only through an auction or through competitive bidding. Where distribution, allocation, alienation or disposal of a natural resource is to a private party for a commercial pursuit of maximizing profits, then an auction is a more preferable method of such allotment. A decision to not auction a natural resource is liable to challenge and subject to restricted and limited judicial review under Article 14 of the Constitution. A decision to not auction of natural resource and sacrifice maximization of revenue might be justifiable if the decision is taken inter alia for a social good or the public good or the common good. Unless alienation or disposal of a natural resource is for the common good or social or welfare purpose, it cannot be dissipated in favour of a private entrepreneur, virtually free of cost or for a consideration not commensurate with its work without attracting Article 14 and Article 39-B of the Constitution. Court also said that fresh final leases required to be granted, would require fresh environmental clearances. Relying on earlier decisions in **Ambica Quarry Works & Another vs State of Gujarat & Others (1987)1SCC213**; **Rural Litigation and Entitlement Kendra vs State of U.P. 1989(supplement)1SCC504** and **State of Madhya Pradesh vs.**

Krishna Das Tikka Ram, 1995 (supplement) 1 SCC 587, Court said that renewal of a lease whether under FC Act, 1980 or otherwise cannot be granted without the lease holder complying with the necessary statutory requirements, particularly, since a grant of renewal is a fresh grant and must be consistent with law. On this aspect, Court also referred to the judgment in **Common Cause vs. UOI & Others (2017)9SCC499**. In Para 150, Court also said that MoEF has no authority to issue an order or notification or memorandum which is contrary to the judgment of Supreme Court in the context of OM dated 21.08.2013, issued by MoEF. Court held that validity period of EC granted under EIA 1994 is only 5 years and a valid EC is necessary for renewal of mining lease.

382. In **Techi Tagi Tara vs. Rajendra Singh Bhandari (2018)11SCC734**, observations and directions issued by NGT in respect of appointment/nominations, in State Pollution Control Boards/Pollution Control Committees were considered. In view of constitutional provisions, Court observed that it is the fundamental duty of citizen of the Country to protect and improve environment including forest, lakes, rivers and wildlife and to have compassion for living creatures. Despite that society in the last few decades has seen repeated onslaught against environment on different grounds. Composition of State Pollution Control Board in State of Uttarakhand was challenged on the ground that the persons appointed are not properly qualified. The jurisdiction of Tribunal in giving directions to reconsider appointment of Chairperson and Members of State PCB and to lay down guidelines for their appointment was challenged. Supreme Court held that the issue of appointment was not a dispute and that too which can be said to have arisen relating to environment, constituting a substantial question and hence beyond the

scope of Section 14 and 15 of NGT Act, 2010. Court said that proper qualified experts should be appointed and if such appointments are not made, the same can be challenged in High Court by filing Writ of *quo warranto*.

383. In **Goel Ganga Developers India Private Limited vs. Union of India, (2018)18SCC257**, judgment dated 27.09.2016 passed by NGT in **Tanaji Balasaheb Gambhire vs. Union of India, 2016 SCC Online NGT 4213** was challenged. Tribunal held that the builder/proponent has violated conditions of EC and therefore, liable to pay environmental compensation of Rs. 100 crores or 5% of the total cost of project, whichever is less for restoration and restitution of environment damage and degradation. In addition, it shall also pay Rs. 5 crores for contravening mandatory provisions of environmental laws. Tribunal also imposed fine of Rs. 5 Lakhs upon Pune Municipal Corporation and cost of Rs. 1 lakh each upon the said Corporation, Department of Environment, State of Maharashtra and SEIAA, Maharashtra. Two appeals were filed, one by the proponent and another by Pune Municipal Corporation. The factual background is that the Proponent purchased 79,900 sq. meters or 7.91 hectares of land comprised in six survey nos. 35, 36, 37, 38, 39 and 40 in Vad Gaon, Pune. All these survey numbers were amalgamated to become one plot. Proponent applied for sanction of layout and building proposal plan on 12.03.2017 on an area of 15141.70 sq. meters, originally depicted as plot no. 3. Sanctioned FSI was 515313.16 sq. meters. Thereafter, on 05.09.2007, revised layout plan was submitted for an area measuring 28233.23 sq. meters and sanctioned FSI was 39526.54 sq. meters. Proponent also applied for EC vide proposal dated 27.06.2007. He assured that he would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. 12 buildings were to

have stilts with basements and 11 floors. Total built up area was indicated as 57658.42 sq. meters. EC was granted on 04.04.2008. Defining as to what is the meaning of the term “built up area”, Court after referring to EIA Notification, 2006, said in para 16 as under:

16. *From a bare perusal of the two hash tags (#) in Column 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines “built up area” to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that **under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as “built up area”. There is no exception for non-FSI area.***

384. It also said that the concept of FSI or non FSI has no consonance or connection with the grant of EC. The same may be relevant for the purpose of Building Plans under Municipal Laws and Regulations but has no linkage or connectivity with the grant of EC. The authority while granting EC is not concerned whether area is to be constructed as FSI area or non FSI area. Both will have an equally deleterious impact on environment. Construction implies usage of lot of material like sand, gravel, steel, glass, marble etc., all of which will impact environment. Merely because under Municipal Laws some of the constructions are excluded while calculating FSI, is no ground to exclude it while granting EC. Therefore, when EC is granted for a particular construction, it includes both FSI and non FSI area. Considering correctness of Notification dated 04.04.2011 and clarification dated 07.07.2017, Court said that such memorandums could not or should not have been issued. EIA 2006 is a statutory Notification and such Notifications cannot be set at naught by a Joint Director by issuing any clarificatory letter. In para 22, Court said, *“we are of the view that since such decision has not been notified in the gazette the statutory notification dated 14-9-2006 and its subsequent clarification dated 4-4-2011 could not have been virtually set*

*aside by this office memorandum". It was also held that OM dated 07.07.2017 is not clarificatory since EIA 2006 itself was very clear and considering question, whether Proponent has violated conditions of EC, Court found that construction raised was much more than what was approved and permitted in EC. Against the total built up area sanctioned in EC i.e., 57658.42 sq. meters, Proponent has constructed 100002.25 sq. meters which was patently illegal. Then, Court considered as to what order could have been or ought to have been passed. Considering the probability including justification for demolition, Court found that large number of flats and shops are already occupied by innocent people who have paid money. These people are from middle class having invested from their life's earning in the project. Since these persons are not parties, Supreme Court took the view that the demolition is not proper answer in the peculiar facts and circumstances of the case as that would put innocent people at loss. However, Court added in para 54 by observing that PP cannot be permitted to build any more flats than what was permitted but only to complete construction of 807 flats and 117 shops/offices and cultural center including the club house. Court stopped from constructing two buildings and directed to refund the money with 9% interest. In this regard, Court said in para 54, *"There is no equity in favour of these persons since the plan to raise this construction was submitted only after 2014 when the validity of the earlier EC had already ended. Therefore, though we uphold the order of the NGT dated 27-9-2016 that demolition is not the answer in the peculiar facts of the case, we also make it clear that the project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and club house"*.*

385. Court did not find any ground to award special damages to original applicant/complainant looking into his conduct. For the assessment of damages, **Court observed that it cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles. No such principles have been accepted or established in that case. No assessment in actual terms can be made, though Court can impose damage or cost on principles which have been well-settled by law.** Referring to some earlier matters, where Court awarded damages as 5% of the project cost and also looking to the fact that the case in hand was where severe violations were found and PP was in transient and unapologetic behavior, it imposes damages of 100 Crores or 10% of project cost whichever is more besides, Rs. 5 Crores as damages in addition to above for contravening mandatory provisions for environmental laws. In this regard, the observations of the Court are as under:

*“64. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. **This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent.** He has maneuvered and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone upto 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is **directed to pay damages of Rs.100 crores or 10% of the project cost whichever is more.** We also make it clear that **while calculating the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. The cost of construction shall be calculated on the basis of the schedule of rates approved by the Public Works Department (PWD) of the State of***

Maharashtra for the year 2014. In case the PWD of Maharashtra has not approved any such rates then the Central Public Works Department rates for similar construction shall be applicable. We have fixed the base year as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of Transfer of Development Rights (for short "TDR") with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs. 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws."

386. In **M.C. Mehta (Kant Enclave matters) v. Union of India & Others (2018)18SCC397** (order dated 11.09.2018 in IA No. 2310/2008 and others in WP No. 4677/1985 & IA No. 2310-11 in WP (C) No. 202/1995), a question was raised, whether land notified under Punjab Land (Preservation) Act, 1900 is forest land or is required to be treated as forest land and if so whether construction carried out by R Kant & Co. on the said land is in contravention of notification dated 18.08.1992 issued under the said Act, FC Act, 1980 and the decisions of the Supreme Court. Court answered both the questions in affirmative. However, considering the fact that there were *bona-fide* purchasers, Court observed that it will not be proper to demolish buildings raised before 18.08.1992. However, subsequent constructions were directed to be demolished. On applying the principle of 'Polluters Pay', Court observed that the builder, Kant & Co. has already spent an amount of Rs. 50 crores, must pay 10% more thereof, for rehabilitation of damaged area.

387. **Goel Ganga Developers India Private Limited vs. Union of India & Others (2019)9SCC288** is follow up of the judgment reported in **(2018)18SCC257**. The original matter was decided in *Civil Appeal No.10854 of 2016*. Thereafter, I.A. No. 64665 of 2019 was filed and came to be decided by judgment dated 11.09.2019 reported in 2019. Proponent

filed application stating that three Judges bench judgment in Noida Memorial Complex, i.e., in ***Okhla Bird Sanctuary, In Re: (2011)1SCC744*** has not been considered in recording interpretation of 'built up area' in terms of Item 8 of EIA 2006. The contention advanced on behalf of Proponent was rejected by observing that the main dispute in ***Noida Park (supra)*** was whether project, a building and construction project or a township and area development project. Court answered holding that it is a township and area development project. While answering this, Court felt some ambiguity in Item 8-A and 8-B of Schedule to EIA 2006, but there was no issue raised with regard to the fact about covered area being built up. Court observed that all parties were *ad-idem* in ***Noida Park case*** that covered construction was built up area and Court also held so. In ***Goel Ganga Developers judgment***, Court has held that all covered construction shall be deemed built up area and Municipal Laws regarding Floor Space Index (FSI) or Floor Area Ratio (FAR) have no relevance. Therefore, ***Noida Park judgment*** has no application as the issue did not arise herein.

388. In ***State of Meghalaya vs. All Dimasa Students Union, Dima-Hasao District Committee & Others (2019)8SCC177***, various appeals arising from judgment of NGT were considered. NGT judgment dated 31.08.2018 in ***O.A. No. 110 of 2012, Threat to life arising out of Coal Mining in South Garo Hill District vs. State of Meghalaya***; judgment dated 10.05.2016 in ***O.A. No. 73 of 2014, All Dimasa Students Union vs. State of Meghalaya***; and judgment dated 25.03.2015 in ***O.A. 73 of 2014 (M.A. No. 92 of 2015), All Dimasa Student Union vs. State of Meghalaya*** and order dated 04.01.2019 in ***O.A. No. 110 of 2012, Threat to life arising out of Coal Mining in South Garo Hill District vs. State of Meghalaya*** came to be considered by Supreme Court and

decided on 03.07.2019 by a two Judges Bench. Court observed that natural resources of country are not meant to be consumed only by present generation of men or women of the region where natural resources are deposited. These features of nature are for all generations to come and for intelligent use of the entire country. Present generation owes a duty to preserve and conserve the natural resources of the nation so that it may be used in the best interest of the coming generations as well as for the country as a whole. The background facts are that Guahati High Court on the basis of a News Item published on 06.07.2012 that 30 coal labourers were trapped inside a coal mine at Nongalbibra in the District of South Garo Hills and 15 of them died inside the coal mine, registered a PIL Suo Moto number (SH) 3 of 2012. By order dated 10.12.2012, Guahati High Court passed order transferring the matter to NGT, where notice was issued on 30.01.2013, registering as *110 (THC) of 2012*. Another *O.A. 73 of 2014* was filed by All Dimasa Students Union before Tribunal making serious complaints with regard to rat hole mining operations going on in Jaintia Hills in the State of Meghalaya for the last many years without being regulated by law. After hearing the matter, Tribunal on 17.04.2016 passed an order directing Chief Secretary, Meghalaya and Director General of Police, Meghalaya to ensure that rat hole mining/illegal mining is stopped forthwith throughout State of Meghalaya and no illegal transport of coal shall be allowed. Large number of applications, by different Associations and persons carrying interest in the subject matter who have undertaken the above mining, were filed before Tribunal. Both OAs were clubbed together. On 31.08.2018, Tribunal passed order directing that ban on rat hole mining shall continue subject to further order passed by Supreme Court. It also allowed ban on transportation of extracted coal to continue subject to

further orders of the court. For restoration of environment and rehabilitation of victims, Tribunal constituted a Committee headed by Justice B.P. Katakey, former Judge of Guahati High Court with representatives of CPCB, and Indian School of Mines, Dhanbad. The said Committee submitted report dated 02.01.2019, and after considering report, Tribunal passed order dated 04.01.2019 observing that State of Meghalaya had failed to perform its duties to act on the recommendation of the report of Meghalaya State PCB, submitted in 1997 and an interim amount be deposited towards restoration of environment. **Court directed State of Meghalaya to deposit Rs.100 crores** within two months with CPCB. Against the order dated 31.08.2018 & 04.01.2019, appeals were filed. Large number of issues were raised and including that of jurisdiction of Tribunal. The issues raised before Court are formulated in Para 53 as under:

“53. From the submissions of the parties as noted above and the materials on record in these appeals following points arise for consideration.

53.1 *(1) Whether orders passed by the National Green Tribunal are without jurisdiction being beyond the purview of Sections 14, 15 and 16 of the National Green Tribunal Act, 2010?*

53.2 *(2) Whether provisions of Mines and Minerals Development Regulation Act, 1957 are applicable in Tribal areas within the State of Meghalaya, included in Sixth Schedule of the Constitution?*

53.3 *(3) Whether for mining the minerals from privately owned/community owned land in hills districts of Meghalaya, obtaining a mining lease is a statutory requirement under the MMDR Act, 1957 and the Mineral Concession Rules, 1960?*

53.4 *(4) Whether under the MMDR Act, 1957 and Mineral Concession Rules, 1960, it is the State Government, who is to grant lease for mining of minerals in privately owned/community owned land or it is the owner of the minerals, who is to grant lease for carrying out mining operations?*

53.5 *(5) Whether the State of Meghalaya has any statutory control over the mining of coal from privately owned/community owned land in hills districts of State of Meghalaya?*

53.6 (6) *Whether the power to allot land for mining purposes is vested in Autonomous District Councils?*

53.7 (7) *Whether the order of National Green Tribunal dated 17.04.2014 directing for complete ban on mining is unsustainable?*

53.8 (8) *Whether the complete ban on mining of coal in the State of Meghalaya as directed by NGT deserved to be vacated/modified in the interest of State and Tribals?*

53.9 (9) *Whether NGT had any jurisdiction to constitute committees to submit reports, to implement the orders of NGT, to monitor storage/transportation; of minerals and to prepare action plan for restoration of environment?*

53.10 (10) *Whether the NGT committed error in directing for constitution of fund, namely, Meghalaya Environment Protection and Restoration Fund?*

53.11 (11) *Whether NGT by constituting Committees has delegated essential judicial powers to the Committees and has further encroached the constitutional scheme of administration of Tribal areas under Article 244(2) and Article 275(1) and Schedule VI of the Constitution?*

53.12 (12) *Whether direction to deposit Rs.100 crores by the State of Meghalaya by order dated 04-1-2019 of NGT impugned in C.A.No.2968 of 2019 is sustainable?*

53.13 (13) *Whether NGT's order dated 31-3-2016 that after 15-5-2016 all remaining coal shall vest in the State of Meghalaya is sustainable?*

53.14 (14) *Whether assessed and unassessed coal which has already been extracted and lying-in different Districts of Meghalaya be permitted to be transported and what mechanism be adopted for disposal of such coal?"*

389. Returning question 1, Court observed that in the case there were not mere allegation of environmental degradation by illegal and unregulated coal mining, rather there was material on record including reports of Experts to show degradation of water, air and surface of land. Hence, there was sufficient allegations regarding substantial questions relating to environmental and violation of enactments in Schedule I. Court also distinguished judgment in **Techi Tagi Tara vs. Rajendra Singh Bhandari (supra)** and said that the issue raised therein was totally different. It, therefore, answered issue 1 holding that Tribunal

acted within its jurisdiction under Section 14 & 15 of NGT Act, 2010. Coming to point two, Court said that it would proceed with the assumption that Tribals are owners of the land. In fact, Court proceeded to examine issue 2 on the premise that in privately owned land or community lands, minerals also vest in the owner that is the private persons. Referring to the provisions of MMDR Act, 1957, Court held that there is nothing in Schedule VI of the Constitution which in any manner excludes applicability of MMDR Act, 1957 in tribal areas of hill Districts of State of Meghalaya and the contentions advanced otherwise are to be rejected. Then question 3 was considered. Court held that District Magistrate had jurisdiction under Mines Act, 1952 to take action and it was also incumbent upon State to ensure compliance of not only MMDR Act 1957 but Mines Act, 1952 and EP Act, 1986. Issue 4 was answered by observing that power to grant mining lease is with owner as per Chapter 5 of Mineral Concession Rules, 1960 and State Government could not have granted mining lease on such private on land. Issue 5 was answered by observing that our country is governed by Constitution of India and all the States are to implement Parliamentary Acts in true spirit. In the present case, State was advised, time and again, by Comptroller and Auditor General and despite of being aware of its statutory obligations, State failed to do so and wrongly contended that there was no requirement of mining lease for winning them minerals. Court said in para 139:

“The above stand of the State taken before this Court gives the impression that instead of implementing the Parliamentary enactment and regulatory regime for mineral regulation some vested interests wants to continue the illegal regime of illegal mining to the benefit of the few persons which is unacceptable and condemnable. We, thus, conclude that the State of Meghalaya has jurisdiction and power to ensure that no mining of coal should take place except when a mining lease granted under Mineral Concession Rules, 1960, Chapter V, as discussed above.”

390. Point 6 was answered by holding that District Counsel has no power to make any law with regard to grant of mining lease which have to be governed by MMDR Act 1957 and Rules 1960. Issues 7 and 8 were answered together and Court held that there was no error in the order of Tribunal restraining illegal coal mining but the same would not extend to mining operations undertaken by Tribals or other owners in accordance with MMDR Act 1957 and Rules. Issues 9 and 10 were also answered together with respect to jurisdiction of Tribunal and Court held that under Rule 24, Tribunal has power to issue orders to secure justice and direction to constitute funds is also saved under such power. Court also held that there is no lack of jurisdiction in Tribunal in directing for appointment of Committee or to obtain a report from a Committee in the given facts of the case. Then, point 11 was answered by observing that when a Committee is constituted by Tribunal and Committee over steps its authority, it is always open to Tribunal to take corrective measures and Committee report only for that reason is not to be challenged. Further, it does not amount to delegating essential judicial functions when Tribunal requires Committee to prepare action plan and submit report. It means that Tribunal has kept complete control on all steps which were required to be taken by Committee. Court also held that when Committee examined the matter with regard to environmental degradation and illegal coal mining, it cannot be treated to be an encroachment upon administration of tribal areas by District and Regional Council. Direction of payment of 100 crores as interim compensation was considered in point 12. **Court held that it is neither a penalty nor a fine imposed upon State Government.** The amount was directed to be deposited for carrying out steps regarding restoration of environment. The **direction for payment of 100 crore rupees was**

affirmed, though source of payment was allowed to be taken from environment fund. Issue 13 was in respect of disposal of coal lying in open after being extracted after 15.05.2016. Court held that it will not automatically vest in the State. The owner of the coal or the person who has mined the coal shall have propriety right in the mineral which shall not be lost. Point 4 relates to various IAs which we do not find of relevance for the purpose of issue on merits of law on environment.

391. In ***Tata Power Delhi Distribution Limited vs. Manoj Mishra & Others (2019)10SCC104***, issue of levy of sewerage charges pursuant to order passed by this Tribunal in ***Manoj Mishra vs. Union of India, O.A. No. 06 of 2012 decided on 13.01.2015*** was considered. In this regard, in an application filed, order was subsequently passed on 11.09.2019 directing Delhi Government, Delhi Jal Board and Delhi Municipal Corporation to introduce **regime of levy of sewerage charges**. Supreme Court disposed of application filed by Electricity Distribution Company by directing that the direction issued on 11.09.2019 shall be implemented.

392. In ***Chander Prakash Budakoti vs. Union of India & Another (2019)10SCC154***, order of Tribunal dated 05.04.2019, passed in ***O.A. No. 626 of 2016, Chander Prakash Budakoti vs. Union of India*** was challenged. Appellant, a journalist filed application before Tribunal complaining about environmental damage caused by respondents 4 to 8. He alleged that large number of trees were cut illegally and there is usage of forest land for non-forest purpose. After examination, Tribunal found that Khasra No. 512 and 514 were private forest land as recorded in Revenue Records and provisions of FC Act, 1980 were inapplicable. Accordingly, it issued directions to forest authorities to take appropriate action. Supreme Court held that in order to record a finding whether land

in dispute is or not a forest land, reliance can be safely placed on Revenue Records. Referring to an earlier judgment in ***Noida Memorial Complex New Near Okhla Bird Sanctuary, In Re: (2011)1SCC744***, Court held that due weight has to be given to Revenue Records especially those pertaining to a period when the dispute regarding land being a forest land did not exist.

393. In ***Kerala State Coastal Zone Management Authority vs. State of Kerala, Maradu Municipality & Others (2019)7SCC248***, judgment of Kerala High Court dated 11.11.2015 passed in *Writ Appeal No.132 of 2013* was challenged. Allegations were made that construction activities were going in critically vulnerable coastal areas notified as CRZ-III; Panchayats had issued permissions in violation of relevant statutory provisions and CRZ Notifications. Vigilance Department of the Government detected violations and directed local bodies to revoke flat building permits whereupon show cause notice was issued under Rule 16 of Kerala Municipality Building Rules, 1999. Writ Petition was also filed in the High Court which was allowed by Single Judge and Division Bench dismissed appeal. Supreme Court constituted a Committee after hearing appeals for sometimes to find out whether area in question is in CRZ Category 3, Category 1 or Category 2. Committee submitted report recording its findings that the area in dispute at the relevant time when objection was raised, was within CRZ III. As per CRZ Notification dated 19.02.1991, in CRZ III area of 200 meters from high tideline is 'No Development Zone' and no construction could have been permitted within this zone except for repairs of authorized structures not exceeding existing FSI. Court finds that in view of the said report, it was impermissible and construction raised within prohibited area was unauthorised. Court referred to its earlier judgments in ***Vaamika Island***

(Green Lagoon Resort) Vs. Union of India & Others (2013)8SCC760 and **Piedade Filomena Gonsalves vs State of Goa & Others (2004)3SCC445** and held that the direction of High Court for demolition warrants no interference and upheld the same.

394. In **Pawan Kumar vs. State of H.P. (2019)4SCC182**, in the matter of prosecution under Section 379 IPC, 41 & 42 of Forest Act, 1927, Court held that mere production of seizure memo is not sufficient. Non-production of seized wood and the vehicle, the primary evidence of the offence, renders prosecution case fragile and unsustainable. Mere production of seizure memo does not tantamount to the production of seized wood sent to the lorry. Unless seized wood was produced, mere production of the sample and when there is no material in support to show that the sample was out of the same 22 logs, conviction of accused cannot be sustained.

395. In **Sarvepalli Ramaiah (Dead) as per legal representatives and others vs. District Collector Chittoor & Others (2019)4SCC500**, the question was whether an area declared as water body can be leased out or not. Supreme Court said that High Court rightly held that a tank (water body) cannot be alienated, no patta can be granted in respect of tanks and water bodies including those that might have dried up or fallen into disuse. In this regard, Court reiterated and followed its earlier decisions and in Para 49 said:

“49. This Court has time and again emphasized the need to retain and restore water bodies and held that *water bodies are inalienable. Land comprised in water bodies cannot be alienated to any person even if it is dry.* Reference may be made to the judgments of this Court in:

- (1) *Susetha vs. State of Tamil Nadu, (2006)6SCC543;*
- (2) *M.C. Mehta vs. Union of India, (1997)3SCC715, and*
- (3) *Intellectuals Forum v. State of A.P. (2006)3SCC549.*”

396. In **Vasant Chemicals Limited Vs Managing Director Hyderabad Metropolitan Water Supply and Sewerage Board & Others (2019)4SCC562**, Court upheld levy of sewerage cess on industries which were already getting the effluent treated and also held that charges collected from Effluent Treatment Company as well as cess from industries by Board, does not amount to double taxation.

In para 19 of the judgment, court said:

“...Proviso to Section 55 of the Act contemplates that the sewerage cess shall not be levied on the occupier of the premises if such premises is stated to be in an area which is not served by the sewerage system of the Board. The proviso implies that the occupier of such premises cannot use the Board sewer by any means whatsoever. Therefore, the contention of the appellant that it is not liable to pay sewerage cess to the Board as it is not directly letting out sewage effluents into the sewage line of the Board and that it is carrying its effluents in the tanker, lorries and letting out in the effluent treatment plant of JETL and thus not connected with the sewage system of the Board, in our view, is wholly untenable. Since the sewage of the appellant is ultimately let into the sewer line of the Board, the appellant cannot contend that it is not covered under Section 55 of the Act and that it is covered under proviso to Section 55 of the Act.”

397. Describing nature of sewerage cess, Court said that **it aims to recover the cost of treating the effluents of strength stronger than domestic sewage and to make the effluents of acceptable quality**. The payment of sewerage surcharges and other charges by JETL cannot take away the statutory liability of sewerage cess levied on the occupier of the premises who consumes water and lets out the sewerage into the Board Sewer System. The payment of sewerage surcharge and other charges by JETL to respondent-Board will not amount to double levy.

398. In **Hanuman Laxman Aroskar vs. UOI & Others (2019)1SCC401**, issue of grant of EC for development of Greenfield International Airport at Mopa in Goa was considered. Provisions of EIA Notification, 2006 and the process thereunder were considered in detail.

It was an appeal taken to Supreme Court, from a judgment/order dated 21.08.2018 passed by this Tribunal in **Appeal No. 5/2018** (earlier *Appeal No. 61/2015/WZ*), **Federation of Rainbow Warriors vs. Union of India & Others** and **Appeal No. 6/2018, Hanuman Laxman Aroskar vs. Union of India**, wherein grant of EC for development of green field International Airport at Mopa, Goa, was challenged. Project was in category 'A' hence as per EIA 2006 'Prior EC' was to be granted by MoEF. EC was granted on 28.10.2015. It was challenged by M/s. Federation of Rainbow Warriors in Appeal No. 61/2015 at Tribunal's Western Zonal Bench, Pune. Another Appeal No. 1/2016 was filed by Hanuman Laxman Aroskar at NGT, Western Zonal Bench, Pune. Both these appeals were transferred to Principal Bench at New Delhi and numbered as Appeal No. 5 and 6 of 2018 respectively. One of the issues raised before Supreme Court was; PP did not give complete information in Form 1 submitted to the Competent Authority for grant of EC; PP is duty bound to make a proper disclosure and highest level of transparency is required; and there was concealment of certain facts by leaving certain columns blank or by not giving required details. It was contended that for these reasons, application for EC ought to have been rejected. Supreme Court also referred and approved two judgments of this Tribunal in **Save Mon Region Federation vs. Union of India, 2013 (1) All India NGT Reporter 1** and **Shreeranganathan K P vs. Union of India 2014 SCC online NGT 15** wherein, on the basis of information furnished in Form 1, the deficiencies in EIA Report, process of appraisal etc., were considered in detail to find out whether EC was granted in accordance with law or not. Court distinguished an earlier judgment in **Lafarge Umiam Mining Private Limited vs. Union of India 2011(7)SCC338** observing that it was the case under EIA 1994 when provisions of EIA 2006 were not

applicable. Court said that decision was based on facts of that case, summarized by Court in **Hanuman Laxman Aroskar (supra)** in para 138 of judgment. It was also held that, relevant material, if has been excluded for consideration or extraneous circumstances were brought in mind, there was a failure to observe binding norms under EIA 2006 and consequential serious flaw in the decision-making process, would amount to an illegal exercise and failure of statutory duty, so as to vitiate EC. In para 157 of judgment, importance of the correct and complete disclosure of information by PP in his application, Form 1 and Form 1A, and further consideration by Competent Authority has been discussed, as under:

*“The 2006 Notification must hence be construed as a significant link in India’s quest to pursue the SDGs. Many of those goals, besides being accepted by the international community of which India is a part, constitute a basic expression of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the aspirations of our own Constitution. **The fundamental principle which emerges from our interpretation of the 2006 Notification is that in the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive.**”*

(Emphasis Added)

399. Further, in para 158 of the judgment, in **Hanuman Laxman Aroskar (supra)**, Court observed:

*“Repeatedly, it has been urged on behalf of the State of Goa, MoEFCC and the concessionaire that the **need for a new airport** is paramount with an increasing volume of passengers and **consequently the flaws in the EIA process should be disregarded.** The need for setting up a new airport is a matter of policy. The role of the decision-makers entrusted with authority over the EIA process is to ensure that every important facet of the environment is adequately studied and that the impact of the proposed activity is carefully assessed. **This assessment is integral to the project design because it is on that basis that a considered decision can be arrived at as to whether***

necessary steps to mitigate adverse consequences to the environment can be strengthened.”

(Emphasis Added)

400. Illegal mining by M/s. Sharda Mines Private Limited, and action to be taken there against, was considered by Supreme Court in ***Common Cause vs. Union of India & Others (2019)11SCC674*** (Order dated 12.11.2018 in I.A. 40 & 42 of 2015 etc. in WP (C) No. 114 of 2014). The judgment is a follow up action of the earlier issue decided in ***Pawan Kumar vs. Union of India (2017)9SCC499***. Court examined only validity of EC granted to Sharda Mines Private Limited and production of iron ore without/in excess of EC. In particular, the issue relates to mining lease granted to above Proponent over 947.046 hectare of land for 20 years from 14.08.2001 to 13.08.2021 at Thakurani Mines, Block B village Soyabali, District Keonjhar, State of Odisha. The background facts are that the company was granted permission on 13.07.1999 to extract 1,40,000 MT iron ore per annum. Company did not act upon the said permission till 13.08.2001/14.08.2001. On 22.09.2004, EC for extraction of iron ore (lump) was granted. It allowed extraction of 1.5 lakh ton per annum to 4 million tons per annum. There was a progressive gradation in the production capacity. Court observed that the permission granted on 13.07.1999 was for production of iron ore and not iron ore (lump). EC granting permission to iron ore (lump) introduced something alien to the permission granted on 13.07.1999. Court also found that EC was granted only to the expansion of production of iron ore from 1.5 LTPA to 4.0 MTPA. It was not disputed before Court that EC will not have retrospective effect and would be operational from the date it is granted. In view of the law laid down in ***Common Cause vs. Union of India (2017)9SCC499***, Court held that to the extent there is mining beyond the permission in EC, it is illegal and the incumbent must be penalized in

terms of judgment in **Common Cause (supra)**. Differentiating between iron ore and iron ore (lump), Court found that lumps are a by-product of extraction of iron ore. Thereafter, Court permitted Central Empowered Committee to rework quantum of excessive or illegal mining and consequent penalty.

401. **Arjun Gopal & Others vs UOI & Others (2019)13SCC523** is a follow up of earlier decision in respect of firecrackers i.e. **(2017)14SCC488**. I.A. No.6 & 8 of 2016 and others were filed by manufactures of firecrackers as well as some other parties. The arguments were raised that there was no sufficient study as to what extent burning of crackers is contributing towards air and noise pollution and whether it was so serious so as to warrant ban. Second argument was raised with reference to the fact that bursting of crackers during Diwali is a religious factor and therefore, protected under Article 25. In Para 32, Court observed that *“it is an accepted fact that bursting of firecrackers during Diwali is not only the only reason for deterioration of air quality. There are other factors as well. It calls for necessity to tackle the other contributory factors for air pollution and making the air quality as “very poor” and even “poor”. Unregulated construction activity which generates lot of dust and crop burning in the neighbouring States are the two other major reasons, apart from certain other reasons, including vehicular pollution etc.”*. Dealing with Article 25 Court said that **“Article 25 is subject to Article 21 and if a particular religious practice is threatening the health and lives of people, such practice is not entitled to protection under Article 25.”**

402. The issue of economic hardship and unemployment was considered and answered in Para 44 and Court observed as under:

“...First aspect is that the argument of economic hardship is pitched against right to health and life. **When the Court is called upon to protect the right to life, economic effect of a particular measure for the protection of such right to health will have to give way to this fundamental right.** Second factor, which is equally important, is that the economic loss to the State is pitched against the economic loss in the form of cost of treatment for treating the ailments with which people suffer as a result of burning of these crackers. Health hazards in the form of various diseases that are the direct result of burning of crackers have already been noted above. It leads to asthma, coughing, bronchitis, retarded nervous system breakdown and even cognitive impairment. Some of the diseases continue on a prolonged basis. Some of these which are caused because of high level of PM_{2.5} are even irreversible. In such cases, patients may have to continue to get the medical treatment for much longer period and even for life. **Though there are no statistics as to what would be the cost for treating such diseases which are as a direct consequence of fireworks on these occasions like Diwali, it can safely be said that this may also be substantial.** It may be more than the revenue which is generated from the manufacturers of the crackers. However, we say no more for want of precise statistical data in this behalf.”

403. Further Court held that there is no complete ban in as much as there is no ban on green crackers.

404. In **Municipal Corporation of Greater Mumbai & Ors. Vs. Hiranman Sitaram Deorukhar & Others (2019)14SCC411**, the issue of conversion of a property reserved for garden and development plan prepared earlier for other commercial residential purposes, whether permissible was considered. Relying on the earlier decision in **Bangalore Medical Trust vs. B.S. Muddappa (1991)4SCC54**, Court said that it cannot be done. It referred to the following observations made in **Bangalore Medical Trust Case (supra)**:

“23. The scheme is meant for the reasonable accomplishment of the statutory object which is to promote the orderly development of the City of Bangalore and adjoining areas and to preserve open spaces by reserving public parks and play grounds with a view to protecting the residents from the ill-effects of urbanisation. It meant for the development of the city in a way that maximum space is provided for the benefit of the public at large for recreation, enjoyment, “ventilation” and fresh air. This is clear from the Act itself as it originally stood. The amendments inserting Sections 16 (1) (d), 38A and other provisions are clarificatory of this object. The very purpose of the BDA, as a statutory authority, is to promote the

healthy growth and development of the City of Bangalore and the area adjacent thereto. **The legislative intent has always been the promotion and enhancement of the quality of life by preservation of the character and desirable aesthetic features of the city. The subsequent amendments are not a deviation from or alteration of the original legislative intent, but only an elucidation or affirmation of the same.**

24. Protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. **The public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user.** Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens.

25. Reservation of open spaces for parks and play grounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanisation.”

405. Thereafter, in Para 7, 8, 9 & 10 of the judgment, Court said:

“7. This Court has laid down that public interest requires some areas to be preserved by means of open spaces of parks and play grounds, and that there cannot be any change or action contrary to legislative intent, as that would be an abuse of statutory powers vested in the authorities. Once the area had been reserved, authorities are bound to take steps to preserve it in that method and manner only. These spaces are meant for the common man, and there is a duty cast upon the authorities to preserve such spaces. Such matters are of great public concern and vital interest to be taken care of in the development scheme. **The public interest requires not only reservation but also preservation of such parks and open spaces. In our opinion, such spaces cannot be permitted, by an action or inaction or otherwise, to be converted for some other purpose, and no development contrary to plan can be permitted.**

8. The importance of open spaces for parks and play grounds is of universal recognition, and reservation for such places in development scheme is a legitimate exercise of statutory power, with the rationale of protection of the environment and of reducing ill effects of urbanisation. It is in the public interest to avoid unnecessary conversion of ‘open spaces land’ to strictly urban uses, for gardens provide fresh air, thereby protecting against the resultant impacts of urbanization, such as pollution etc. Once such a scheme had been

prepared in accordance with the provisions of the MRTP Act, by inaction legislative intent could not be permitted to become a statutory mockery. Government authorities and officers were bound to preserve it and to take all steps envisaged for protection.

9. *It could be legitimately expected of the authority to take timely steps in which they have failed. Their inaction tantamount to wrongful deprivation of open spaces/garden to public. This Court in Animal and Environment Legal Defence Fund v. Union of India & Ors., (1997) 3 SCC 549 has laid down that **there is duty to preserve the ecology of the forest area.** This Court has enunciated the doctrine of the public trust based on ancient theory of Roman Empire. Idea of this theory was that certain common property such as lands, waters and airs were held by the Government in trusteeship for smooth and unimpaired use of public. Air, sea, waters and the forests have such a great importance to the people that it would be wholly unjustified to make them a subject of private ownership. The American courts in recent cases expanded the concept of this doctrine. The doctrine enjoins upon the Government to protect the natural resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. The aforesaid concept laid down by this Court in M.C. Mehta v. Kamal Nath & Ors. (1997) 1 SCC 388 and this Court held that the State Government has committed patent breach of public trust by leasing the ecologically fragile land to the Motel management.*

10. *This Court in Vellore Citizens Welfare Forum v. Union of India & Ors., AIR 1996 SC 2715 had laid down that protection of environment is one of the legal duties. While setting up the industries which is essential for the economic development but measures should be taken to reduce the risk for community by taking all necessary steps for protection of environment. In M.C. Mehta v. Union of India (1987) Supp. SCC 131, certain directions were issued by this Court regarding hazardous chemicals. Relying partly on Article 21, it was observed that life, public health and ecology are priority and cannot be lost sight of over employment and loss of revenue. This Court in Subhash Kumar v. State of Bihar & Ors. (1991) 1 SCC 598 has held that right to pollution-free air falls within Article 21. In M.C. Mehta v. Kamal Nath (2000) 6 SCC 213, it was held that any disturbance to the basic environment, air or water and soil which are necessary for life, would be hazardous to life within the meaning of Article 21 of the Constitution. Precautionary principle had been developed by this Court in M.C. Mehta v. Union of India & Ors. (1997) 3 SCC 715 which requires the State to anticipate, prevent and attack the causes of environmental degradation.”*

406. Fundamental principles culled out from the above binding precedents, can be summarized as under:

- “i. Protection and preservation of environment part of fundamental right to life under Article 21 of the Constitution. It includes right to information and community participation for protection of environment and human health, right to shelter which encompasses adequate living space, safe and decent structure, clean and decent

- surroundings, sufficient light, pure air and water, electricity, sanitation, civil amenities like road etc.
- ii. *Preservation of environment and maintenance of ecological balance is a social obligation of every person and also a fundamental duty under Article 51A(g) of the Constitution.*
 - iii. *Enjoyment of life and its attainment including right to life with human dignity encompasses within its ambit protection and preservation of environment, ecological balance, pollution free air and water, sanitation, land etc.*
 - iv. *A balance and harmony have to be maintained in development and environment. Hence principle of sustainable development is the determining factor. Universal human dependence on use of environmental resources for the most basic needs render it impossible to refrain from altering the environment. As a natural corollary, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environment protection and the risk which are to be regulated. This aspect is recognized by the concept of 'sustainable development'.*
 - v. *Principle of sustainable development has certain salient features/subsidiary principles namely use and conservation of natural resources; Precautionary principle; Polluter Pay principle; intergenerational equity; new burden of proof; obligation to assist and cooperate, eradication of poverty and financial assistance to the developing countries; doctrine of public trust etc.*
 - vi. *Natural resources including forest, water bodies, rivers, seashores, etc. are held by State as a trustee on behalf of people and specially the future generation. These constitutes common properties and people are entitled to uninterrupted use thereof.*
 - vii. *Sustainable development is that which meets the needs of the present without compromising the ability of future generations to meet their own needs. It is the duty of the State under Constitution to devise and implement a coherent and coordinated programme its obligation of sustainable development based on intergenerational equity.*
 - viii. *Environment is a matter directly under Constitution. Absence of law will not preclude Court from examining issue of environment. If Court perceives any project or activity as harmful or injurious to environment, it would under obligation to step in.*
 - ix. *Precautionary principle is a fundamental tool to promote sustainable development. It provides for action to avert risks of serious or irreversible harm to the environment or human health in the absence of scientific certainty.*
 - x. *State government and statutory authorities must anticipate, prevent and attack the causes of environmental pollution. Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*
 - xi. *The onus of proof is on the actor or developer or industrialist to show the actions are environmentally benign.*
 - xii. *Polluter Pays principle means absolute liability for harm to environment extends to compensate victim of pollution and cost of restoration of environmental degradation. It cannot be restricted to cost of item/subject/material and/or natural resources like water, minerals, etc.*

xiii. Whenever there is violation of environmental norms and environment is degraded, violators must be saddled with liability of payment of environmental compensation besides undergo other proceedings including prosecution.”

407. The law discussed above made it clear that degradation of environment has to be seen as a serious violation of law and applying Pollutors Pay Principle, violators must pay, not only for damage to environment but also for remediation/restoration of environment, and loss caused or likely to be suffered by flora and fauna and also for breach of statutory obligations. The assessment made by expert's Committee is not to be examined with mathematical precision. The violators can not dispute liability by asserting that despite their act of causing pollution, and breach of law, no liability can be fastened unless with scientific precision quantum of actual damage to environment is assessed. This submission is contrary to what has already been settled by Apex Court in catena of authorities, we have referred above. Court has repeatedly said that principle should be simple and straight like cost of project, annual turnover, sale price of the commodity obtained by causing pollution, damaging environment and flouting statutory obligations and sanctions, etc. However, capacity of pollutors is also to be seen. In the case in hand, discharge of polluted effluent and damage to environment is evident from record. Hence Pollutors are bound to pay compensation. The question of factors to be considered in computation of compensation, we shall discuss in detail later, while dealing direct issue involving this aspect. In view of above discussion, **above objection relating to actual quantum of damage is rejected.**

408. **SAMPLES NOT PROPERLY TAKEN:** A general and common objection taken by all respondents Proponents is regarding the manner of collection of samples by officials of MPCB or the Committee. We find from

documents relating to collection of samples, (some are placed on record alongwith objections by Proponents), that inspections were carried out and samples were collected in the presence of senior officials or representatives of concerned Proponents. In no case any objection was raised by proponents' representatives regarding the place or point of collection of samples or the manner of collection, at the time of inspection or collection of samples. All the memos of inspections or samples collection, placed before us, contain signatures of such representatives without mentioning any objection. Further, immediately after such inspections, no complaints were made to higher authorities about the manner of collection of samples. Broadly, after issue of closure notice, such plea has been taken either in the reply submitted to officials of MPCB or in the memo of appeals preferred before Chairman or Member Secretary, MPCB. If there was any such complaint regarding Committee appointed by Tribunal, such issue could have been raised before Tribunal by filing an application but that was also not done. Only when reports were submitted, such objections have been taken. Clearly these objections are after thought and not genuine. Moreover, in most cases it has been said that faults found in inspections have been later rectified which is an admission of the irregularities found in inspections. Later rectification can not condone earlier act of violation. Subsequent improvements or rectifications or remediations by polluting industries/proponents would not nullify or set at naught the pollution already caused and the pollutors would be liable to bear consequences of their act of pollution, damage to environment and sufferance by common people who suffered due to illegal act of pollutors who have given priority to their commercial interests over purity of environment. Hence this objection is **rejected**.

409. IDENTIFICATION OF ONLY 103 INDUSTRIES; VIOLATIONS CONSIDERED SINCE 2011 AND SOME FACTUAL ERRORS:

The next objection is identification of only 103 units for the purpose of computing compensation/damages on the ground that only those units were taken to task whose record was found available with MPCB showing non-compliance with environmental norms and those whose record were not available have been left and this amounts to arbitrary and selective penalization of a small number of industries comparing to the large number of industries connected with CETP. The previous violations prior to filing of application and also prior to inspections, considered by Committee is illegal and amounts to double penalization. There is another part of objection regarding factual inaccuracy in respect of even 103 selected industries where upon compensation has been determined.

410. So far as factual inaccuracies are concerned, the same have been taken care, not only by Committee in revised report dated 12.08.2021 but by us also wherever such error has been found after perusal of relevant record. Other objections have no merit.

411. Admittedly Member Industries are discharging their effluents in CETP. It is admitted by TEPS, the operator of CETP, that quantity of total discharge was much more than the sanctioned capacity of CETP i.e., between 35 to 40 MLD comparing to 25 MLD capacity of the CETP. This shows an excess discharge to the extend of 45 to 70 %, over and above the capacity of CETP.

412. In various inspection reports and sample surveys it has been found that COD and BOD in CETP outlet was much in excess to the prescribed standards. Reports said that it exceeded more than three, ten and two times to the prescribed standard since long i.e., 2011 to 2019. Pollution

in TIA MIDC and in vicinity, due to violations of environmental laws by respondents' proponents, was continuing even much prior to 2011 but in view of limitation prescribed in Section 15 of NGT Act 2010, Committee has confined itself to, within 5 years from date of O.A. On this approach, learned Senior Counsels and others, appearing on behalf of TEPS, TIMA and individual industries who have filed objections before us and contesting the matter, could not point out any infirmity.

413. In para 8.1.1.1 Chapter 8 of the report, Committee has also clarified that earlier period of violation of prescribed standards in respect of COD and BOD has been referred only to show consistency and frequency of violation and not for any other purpose since it was well aware of the period of limitation prescribed in Section 15 (3) of NGT Act 2010 and for the purpose of computation of compensation, it has taken into account the said period of limitation. This is also evident from Chapter 5, Recommendation No. 4 dealing with period of violation with reference to Section 15(3) of NGT Act 2010.

414. Committee has decided to limit period of violation from the date of inspection till the effective date of closure of the unit. In regard of violation of norms, Committee has reported that COD concentration in CETP inlet was not complying continuously to the desired norms. BOD was also intermediately found flouting since 2011. Average exceedances of COD and BOD was found more than two times of the desired norms. Sampling analysis carried by CPCB and MPCB on various occasions show that CETP did not meet discharge standard as under:

*“(i) The concentration of **COD, BOD, Ammonical Nitrogen, Phenols, TSS and TDS in CETP outlet exceed the outlet standard prescribed under the Consent to Operate in all the 02 samples.** The same exceed more than 4 to 15 times, 5 to 47 times, 1 to 8 times, 1.4 to 20 times, 1.28 to 20 times and 40.5 to 100.8 times respectively to the said standards.*

(ii) In the inlet effluent also, Ammonical Nitrogen exceeded the inlet standard prescribed under the Consent to Operate in all the inlet samples except in one sample. The same exceed more than 2 to 7 times the inlet standard. COD and BOD also exceeded 1.5 times and 1.3 times respectively in one of the samples.”

415. This is also evident from the table 3.4 wherein non-compliances, with prescribed standards and various inspection jointly made by CPCB and MPCB between 2007 to 2013 and January, 2018 have been demonstrated. We reproduce the said table as under:

“Table 3.4: Analysis result of waste water samples from inlet and outlet

Sampling Locations	Date of monitoring	Parameter(s)									
		pH	TSS	TDS	BOD	COD	O&G	Phenols	CN-	NH3-N	S-2
Design/Inlet Norms		5.5-9.0	--	--	1500*	3500\$	20	5	0.2	50	--
Inlet to CETP	02.03.2007	5.3	224	2463	696	3780	--	--	--	70	--
	24.01.2008	2.41	329	2324	883	1877	--	0.54	--	28	--
	12.01.2011	7.1	1021	4122	1263	3147	--	5.76	0.26	123	--
	29.09.2011	6.27	562	4458	1239	2718	--	17.33	--	281	--
	28.12.2011	2.37	310	5997	974	2323	62.1	18.6	0.28	136	--
	28.12.2011	2.76	452	5781	959	2709	--	9.02	0.26	225	--
	04.05.2012	4.98	915	3597	956	2914	--	4.64	--	102	--
	25.09.2012	6.51	436	3972	1000	2082	50.9	10.33	--	40.3	--
	17.04.2013	6.52	604	3551	1052	2460	--	11.8	--	156	--
	17.01.2018	5.38	600	9259	2000	5388	--	63.1	--	354.5	--
Design/Outlet Norms		5.5 - 9	100	100	30 (100\$)	250	10	5	0.2	50	--
Outlet of CETP	02.03.2007	6.9	176	4419	550	1554	2.3	0.59	0.04	151	--
	24.01.2008	8.15	610	5434	585	2229	--	2.9	1.08	168	--
	12.01.2011	7.4	128	4031	513	1036	11	7.02	0.09	90	--
	17.02.2018	6.8	2073	10080	1410	3960		100.3	0.065	402.7	52.54

Note: Except pH, all other results are expressed in mg/L.

* The Consent stipulates CETP Inlet norms for SSI industries (discharge up to 25 m³/day) i.e. Industries' Outlet norms- BOD: 1500 mg/l, COD: 3500 mg/l. The SSI (more than 25 m³/day), MSI and LSI units, are required to discharge effluent to CETP within stipulated standards in their individual consent (i.e. COD: 250mg/l; BOD 100 mg/l and other parameters & limits specified therein)."

416. Observations of Committee on the analysis result, reproduced in the table are:

"The analysis results reveal that the CETP did not meet discharge standards. Concentration of COD, BOD, Ammonical Nitrogen, TSS and TDS in CETP outlet exceed the outlet standard prescribed under the Consent to Operate in all the 04 samples. **The same exceed more than 4 to 15 times, 5 to 47 times, 1 to 8 times, 1 to 20 times and 40 to 100 times respectively to the said standards. Phenols also exceeded 1.4 to 20 times the outlet standard in two of the samples and Cyanide exceed 5.4 times in one of the samples.** In the inlet effluent also, Ammonical Nitrogen exceeded the inlet standard prescribed under the Consent to Operate in all the inlet samples except in two samples. The same exceed to more than 1.4 to 7 times the inlet standard. COD also exceeded (1.08 to 1.5 times) in two of the samples and BOD (1.3 times) in one of the samples."

417. Committee report also shows that it visited the site on 13.11.2019 and found certain serious illegalities/irregularities/violations which apparently caused pollution. Para 8.1.1.4 of report reads as under:

- "(a) The tertiary treatment (comprising Pressure Sand and Activated Carbon Filter) was observed to be defunct since long time.**
- (b) The inlet design norms of CETP are BOD: 1500 mg/l & COD: 3500 mg/l. However, with the present way of functioning of CETP comprising primary, secondary and defunct tertiary treatment (Sand & carbon Filtration), meeting of outlet standards (BOD: 30 mg/l, COD: 250 mg/l) prescribed by MPCB is not possible.**
- (c) There were leakages from pipes & pumps and overflow of effluent from some units (equalization tanks/aeration tanks). There was heavy smell of SVOCs/VOCs (solvents/chemicals) near the inlet sumps. Inlet of CETP (with BOD: 3150 mg/l & COD: 5680 mg/l) indicating that member industries discharging their untreated/partially treated effluent to CETP without conforming the inlet design norms of CETP. There is no separate arrangement for high COD and high TDS effluent. Also, no arrangement for treating the refractory COD. Thus, the operation of CETP is not efficient to meet the prescribed norms.**

CETP is not designed for such high strength effluent. CETP has no proper mechanism in place for routine monitoring of individual defaulter member units.

- (d) The **flow meters and Online Continuously Monitoring System are not functioning consistently**. The inlet flow meter has been provided after equalization tanks which may not take into account of overflow from or before of the equalization tanks.
- (e) **Significant quantity of sludge is deposited** (approx.-2400 MT) in the MIDC Sump-2 (10.56 Million Liters- capacity) where treated effluent is collected and thereafter conveyed to the sea shore through BPTs. **Overflow/leakages were also observed from this sump to nearby natural drain which meets with Navapur Dandi Creek and further to the Arabian Sea**. CETP operator informed that the operation of this Sump is under MIDC and responsibility lies with MIDC for proper maintenance and removal of sludge from sump.
- (f) Inlet effluent quality standards are yet to be prescribed by MPCB for BOD & COD in the Consent of CETP as per MoEF&CC Notification dated 01.01.2016. The Consent stipulates that "Only for SSI units (having less than 25 CMD discharge effluent) BOD: 1500 mg/l and COD: 3500 mg/l is allowed and for rest of the industries, treated effluent as per their respective consents standards i.e. COD: 250 mg/l are allowed".
- (g) MPCB has **authorized 07 Metric Ton/Day as CETP Sludge in the Authorization dated 29/11/2019 under Hazardous Waste (M, H & TM) Rules, 2008** for treatment and disposal of Hazardous Waste. The **quantum of sludge generation in the CETP is more than such specified quantity**.
- (h) The stock of sludge about 750 MT stored in the premises shows storage of the same beyond the prescribed storage duration stipulated under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. The same require to be disposed immediately to the CHWTSDF.
- (i) CETP needs thorough up-gradation/revamping of its units/processes in terms of capacity, retention time, automatic chemicals dosing, scraping mechanism, aeration tanks, aeration capacity, de-sludging, transfer pumps & pipelines, removal of corrosion affected equipment/materials, decanters and its capacity, sludge drying beds, etc. Moreover, persons at CETP need to be more sensitized through constant follow up and training."

418. These facts have not been challenged or disputed or controverted by placing any material, by respondents Proponents in the objections under considerations. Nothing has been placed on record to demonstrate or show that the above facts and observations made by Committee are incorrect.

419. Thus, violation of environmental norms in operating CEPT by TEPS and respondents Member Industries of respondent 9 is well established.

They all are directly responsible, individually as well as collectively. Principle of absolute liability to pay for compensation by application of Principle of Polluters Pay is clearly attracted and onus shifted upon them to show that they have not violated environmental norms and laws which has not even been attempted by the Respondents Proponents in the observations under consideration. Further, it is also admitted by the all the respondents that discharge from CETP goes to drains of MIDC which ultimately leads to Navapur creeks and Arabian Sea causing pollution thereat.

420. Committee has gone ahead and examined even damage to water bodies in Chapter 8 Para 8.2 and has recorded findings which demonstrate contamination of ground water, natural storm drains and surface water impacting creeks and seashores. Water in drains, in and around Tarapur MIDC, was found contaminated with elevated levels of TDS, BOD, COD, TSS, Fluorides and Phenols, besides acidic water in one or more drains. Odour and colour was also observed in drain water. Dissolved oxygen was found absent in four out of nine monitored drains. Ph near M/s Everest Kanto was found highly acidic (PH value was 2.34 at surface and 2.52 at the depth of 30 CM from bed surface) which indicate discharge of acidic effluent. Ph of storm drain near Auro Lab was slightly basic having 8.48 value indicating discharge of basic effluent in the storm drains from industries. Ground water in and around Tarapur MIDC was tested. High TDS and presence of BOD and COD in all monitor samples and presence of colour, odour, Chlorides, Fluorides, Sulphites, Total Ammonical Nitrogen, Metals (Lead, Copper, Iron and Manganese) in one or more samples of ground water, were found. This indicated contamination of ground water due to trade effluent by industrial units in

and around Tarapur MIDC. In respect of Creeks and Seashores around TIA MIDC, report says:

“8.2.1.3 Creeks around Tarapur MIDC

The two creeks (Navapur Dandi Creek and Kharekuran Murbe Creek flowing North and South of Tarapur MIDC respectively) receiving polluted effluent from the drains of MIDC Tapaur were found having impact of discharges from such drains.

Elevated levels of COD and TDS at different stretches (where interference of water from Tarapur MIDC area begins). There was no DO in Creeks near Dumping ground (upstream of Navapur Dandi Creek) and Dandi Creek (downstream of Navapur Dandi Creek). Colour and odour were observed at different locations of the both the Creeks. Further, Phenols at downstream location of both the Creeks viz. Dandi Creek (downstream of Navapur Dandi Creek) and Murbe Creek (downstream of Kharekuran Murbe Creek) have been observed higher than other sampling locations of the Creeks and streams though the same are within the aforesaid standards.

8.2.1.4 Seashores around Tarapur MIDC

*With regard to the seashores i.e. Navapur CETP outfall and Nandgaon, where the two creeks confluence into the sea, the results though do not reveal trend of elevated concentration of measured parameters near to Navapur CETP outfall beach and Nandgaon beach, however, **presence of Phenols in both the beaches indicate impact of discharge from Tarapur MIDC.***”

421. In these facts and circumstances, when violation of environmental norms causing pollution in water bodies is evident and proved and nothing has been brought on record by the polluters to discredit the said findings of Committee, it cannot be said that the individual industries who have been found violating environmental norms on the basis of record could not have been settled with liability of environmental compensation by application of Polluters Pay Principle. The mere fact that some other industries have not been included cannot be a ground to absolve the industries who have been found committing the said default. A defaulter cannot seek exemption on the ground that there are some more violators and unless they are also held, the identified defaulter cannot be held liable. Every violator/offender/defaulters is responsible for

his own nefarious activities and is bound to bear all consequences. His liability can not be mitigated, if some others are not identified or proceeded against. It is not a case where someone is identified and despite availability of relevant material against him, no action has been taken against him. All similarly situated are being dealt with in similar manner. Hence plea of discrimination has no substance.

422. One has to keep in mind that in the matter of protection and preservation of environment, it is the principle of absolute liability applicable to all individuals for their own acts and omissions. The contention therefore that identification of only 103 units, leaving others, is arbitrary, is misconceived and has to be rejected. It is something like that the crime is being committed by several others and since all have not been convicted and punished those who are admittedly found guilty could not be punished. This submission is absurd, misconceived and shows a total lack of basic knowledge with regard to application of environmental law. Laws relating to Environmental protection are different and can not be tested by applying principles of criminal jurisprudence. Once violation of environmental norms is there, by application of principle of Pollutors Pay, Absolute liability, and precautionary principle, violators are bound to pay **compensation/damages** for damage to environment, its remediation, breach of conditions of statutory consent, clearance, approvals and NOCs etc. Onus is upon Polluter to show that he had not violated environmental norms which has not been done in the case in hand. **Thus, the above objections are rejected.**

423. **FORMULA FOR COMPUTATION OF COMPENSATION:** The next objection is with regard to application of principle/formula for computation of compensation. This objection has been given real thrust

by Respondent 3 and 9 in as much as substantive part of their objections is contributed to this aspect. Same objection has been raised in different ways by construction of sentences. Even during oral arguments this ground was argued at length.

424. Before coming to merits of this objection, we may place on record that during course of arguments we pointed out to Sri Nadkarni, Senior Advocate that one of the principles applied by Supreme Court is annual turnover of Proponent and we may examine applicability of this principle in present case but unfortunately facts giving details of annual turnover of concerned Proponents are not on record. At this stage learned Senior Counsel assured us to supply requisite details of annual turnover of all concerned industries alongwith his written arguments which request we accepted and allowed. However, no such information has been supplied either by him or proponents represented by him. No application has been filed giving any reason for such withholding of information.

425. We, however, tried to find out probable reason from information available in public domain. **Bombay Rayon Fashion Ltd.** C-6,7, TIA MIDC is one of the industries, recommended for imposing compensation of Rs. 73.557 lacs by Committee, vide revised report dated 12.08.2021. It is a large scale, red category unit. The information in public domain shows that it claims to be the largest single roof processing unit in India at Tarapur with 400000 (4 lacs) meters per day capacity. Its authorized share capital is 200 cr. As on 31.3.2018 (F.Y.2017-18), its total Revenue Receipt was Rs. 3108.59 crores. As on 31.3.2019 (F.Y.2018-19), total Revenue was Rs. 983.34 crores. As per Annual Report 2018-19, drastic reduction was for some exceptional reasons. Without entering into reasons for change in Revenue Receipts, if we take the above figures, and

compute compensation at the rate of just 5% of turnover, it would come to Rs. 155.4245 crores for F.Y. 2017-18 and Rs. 49.167 crores for F.Y. 2018-19. Committee has recommended only Rs.73.557 lacs i.e., just about 0.73557crores which is not even one crore. Similarly, in the case of **SIYARAM SILK MILLS**, Committee has recommended compensation of Rs.208.612 lacs (2.08612 crores). Its annual Revenue Receipts for F.Y.s 2017-18 and 2018-19 are 1729.63 and 1811.32 crores, respectively. That will bring compensation at 5% of turnover to Rs. 86.4815 and 90.566 crores, respectively. These are only illustrations and also show that even 1% of turnover, in most cases would be many times more than what is recommended by Committee.

426. Thus, reason for not providing above information is very obvious. It is not necessary to go into details of all concerned proponents particularly when they, despite statement given by learned Senior Counsel, appearing on their behalf, have chosen to withhold such information. Now it is open for us to draw inference as is justified in the facts of this case. The challenge on the formula adopted by Committee is under various sub heads which we have already reproduced in deatail, above, hence not repeating and proceed to deal with the same on merits hereat.

427. The entire objection is founded on application of relevant formula/criteria for computation of environmental compensation. The **issue in effect is, what should be the appropriate methodology for determining environmental compensation.**

428. This objection, in our view needs consideration at some length. On this aspect we also find reply given by Committee itself, in its reply dated 13.04.2021, as under:

“1 The submissions made by M/s TIMA about the application of Market Exchange Rate (MER) and Purchasing Power Parity (PPP) to estimate environmental damage cost has been noted by the Committee. **The Committee examined the various methods used for environmental damages cost assessment and it is safe to say that each of the methods have their own merits and limitations [1,2].** The peer-reviewed literature (<https://www.sciencedirect.com/science/article/pii/S0959652620345650#appsec1>) describes the approaches used for environmental damages cost assessment in detail and a copy of the same is given in Appendix- A.

2. The **guiding principle to be deployed for the choice of the appropriate transfer-cost multiplier (PPP or others) depends on the basis of assessment of commensurate value of damages in the target location vis-a-vis a source location where the estimate was originally conducted [3,4].** Given above, the Committee re-examined and worked out the estimates based on the available data and limitations therein. As an additional measure, the Committee also made an attempt to find direct costs [Cost of Treatment (CoT)*] which would have incurred (other than what has been incurred by M/s TEPS) in treatment of effluent by the CETP operator – M/s TEPS in achieving the prescribed CETP outlet effluent norms during the reported period under reference viz. 2011-12 to 2019-20. The estimates using varied techniques are shown below:

- Using MER (As submitted in the original report filed by the Committee) = Rs. 85.042 Crores
- Using PPP = Rs. 27.04 Crores
- Using CoT* = Rs. 88.6 Crores

3. It is to be noted here that **damage cost is a function of environmental pollution, its magnitude and intensity and affect generated thereof.** With a view to provide avenues of improvement of environmental infrastructure in Tarapur region, funds can/may be used out of these estimates given above.”

429. Committee in support of its reply, has also made reference to the following:

- “1. Hon’ble NGT decision on VOC case of Mahul area of Mumbai: https://www.livelaw.in/pdf_upload/pdf_upload-380054.pdf
2. PWC, valuing corporate environmental impacts PwC methodology document. <https://www.pwc.co.uk/sustainability-climate-change/assets/pdf/pwc-environmental-valuation-methodologies.pdf>
3. Hernández-Sancho, F., Molinos-Senante, M., & Sala-Garrido, R. (2010). Economic valuation of environmental benefits from wastewater treatment processes: An empirical approach for Spain, Science of The Total Environment, Volume 408, Issue 4, 953-957.
4. A Study on the Economic Valuation of Environmental Externalities from Landfill Disposal and Incineration of Waste;

European Commission, DG Environment.
https://ec.europa.eu/environment/pdf/waste/studies/econ_evaluation_landfill_annex.pdf

430. On the question of application of formula and apportionment of liability, Committee has replied as under:

- “1. That averments made about formula adopted by the Committee in assessing the individual unit’s liability, formulating principles in apportionment of individual unit’s liability, etc. resulting into erroneous liability, it is submitted that, as mentioned under Chapter 7 of the Committee’s report, **the methodology recommended in “Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund” has been used by the Committee with addition of some additional features to meet objective of distributing the cost of 160.042 Crore INR among the 103 polluting units. The said methodology adopted is also part of Environmental compensation regime fixed for industrial units which has been accepted by the Hon’ble Tribunal and has also been directed to be acted upon as an interim measure vide order dated 28.08.2019 of the Hon’ble Principal Bench of the Tribunal in the matter of Original Application No. 593/2017 titled Paryavaran Suraksha Samiti & Anr. Versus Union of India & Ors. The adopted methodology takes into account the pollution index depending on pollution hazard, scale of operation, load factor based on the population located around the industrial unit and the number of days for which violation took place for respective polluting unit.**
2. The derived **Damage Recovery cost for a polluting unit (in lakh INR) = DRC factor x 160.042 Crore x 100**, as derived at page 82 under para 7.1 of Chapter 7 of the Committee’s report, **gives distributed accountability of each of the identified 103 polluting units in recovering the estimated environmental damage cost and restoration cost of 160.042 Crore INR in terms of their respective pollution index depending on pollution hazard, scale of operation, load factor based on the population located around the industrial unit, number of days for which violation took place and also considering deterrence for repeat/habitual violators.**
3. As mentioned in the report of the Committee (Page 59 - 64 of the report), it is submitted that in compliance of aforesaid order of the Hon’ble Tribunal, **MPCB submitted list of 221 polluting units who were individually heard by the Committee during Nov-30, Dec-03, 2019 during which MPCB presented nature and period of violations, etc. to each of the units’ representative. The representative of the respective unit was also given opportunity to submit records against such violations presented by MPCB.**

The Committee, however, observed during the hearing that:

- (a) In cases where violations were informed about samples collected from their storm water drain, outlet of ETP having

zero liquid discharge facility, etc., the unit denied citing the following arguments:

- (i) Samples collected from their storm water drain are not being discharged but channelized to collection tank of their ETP;
 - (ii) Seepage/rainwater run-off from others premises actually enters into their premises due to undulating land terrain and find place in their storm water drain;
 - (iii) Effluent collection sump is at higher elevation than that of unit's ETP treated storage tank and as a result effluent from the collection sump enters into their ETP treated storage tank;
 - (iv) In cases of units having zero liquid discharge facility, outlet of ETP (prior to RO/MEE) exceeding the prescribed discharge limits may not be considered as violations since there is no discharge line and the outlet of ETP is further subjected to RO/MEEs, and;
 - (v) Communication informing the exceedance of prescribed norms in samples collected by Joint Vigilance Survey (JVS) or show-cause notice/interim direction has not been received by the units in some of the cases.
- (b) The SSI units represented that though in their Consent to Operate issued under the Water (Prevention & Control of Pollution) Act, 1974, MPCB has prescribed discharge effluent standard stringent to the design/standard of the CETP but incidences, where effluent from their unit have found within the inlet design/standard of the CETP should not be considered as violation for imposing environmental compensation/damage.

In order to rationalize the criteria for identification of polluting units and their nature & period of violation under given varied scenarios, the Committee made the following recommendations to MPCB after detailed discussions:

- (1) In view of (a) above and other similar cases, MPCB may furnish the list of only those polluting units for the purpose of environmental compensation/restoration cost for which due records are available for the violations noticed by MPCB.
- (2) Incidences of SSI units, where they have discharged into CETP exceeding their prescribed norms but within design/prescribed inlet standards of CETP, may not be included in the list of polluting units for the purpose of environmental compensation/restoration cost recovery. For if SSI units are required to meet its outlet effluent standard to that of outlet effluent discharge standard of CETP then there remains no role of CETP which has primarily been facilitated for smaller units. However, MPCB may examine the matter and take appropriate decision in exempting such exceedance cases in case of SSI units.
- (3) The violations which are not directly related to effluent discharge in to CETP or not causing damage to soil/ surface water/ground water, may not be taken in the list of polluting units for the purpose of environmental compensation in this matter under

reference. However, MPCB may take appropriate actions for such defaults.

(4) *Limiting period of violations*

Taking reference from section 15(3) of the National Green Tribunal Act, 2010, and to limit a period since when default is to be considered for assessing environmental damage cost and cost of restoration, the period of default has been taken into account since five years prior to the day Original Application No. 64/2016 (WZ) was made before the Hon'ble Tribunal (i.e. 28/4/2016) and till the date of order of the Hon'ble Tribunal (i.e. 26/09/2019) viz. 28/4/2011 to 26/9/2019.

(5) *Number of days (N) of violations:*

(i) In cases where closure direction has been issued, the period of default (N in days) may be taken as date of inspection till the effective date of closure of the unit.

(ii) For other cases including where conditional restart order or show-cause notice/proposed direction/interim direction issued under the Water (Prevention & Control of Pollution) Act, 1974/ Environment(Protection) Act, 1986, have been issued, the period of default may be taken as number of days(N) for which violation took place. It may be the period between the day of violation observed/ due date of compliance of directions and the day as on which the compliance was verified by MPCB.

4. MPCB was requested by the Committee to re-examine considering the above and provide revised list of polluting units along with nature and period of defaults to the Committee.

5. MPCB re-examined and identified 83 of the said 221 units as polluting units and another 20 units considering observations and recommendations of the Committee for the purpose of imposing environmental damage cost/damage restoration cost. MPCB informed that the following recommendations of the Committee were considered by MPCB in arriving units as the polluting units:

(i) Inclusion of only those units for which due records are available for establishing the violations;

(ii) Exempting SSI units (having effluent discharge less than 25 KLD) who were found discharging effluent to CETP meeting CETP inlet consent norms of COD-3500 mg/l and BOD 1500 mg/l;

(iii) Non-inclusion of violations which are not directly related to effluent discharge in to CETP or not causing damage to soil/ surface water/ground water;

(iv) Considering the period of default of five years since the date of making Original Application No. 64/2016 (WZ) i.e. 28/4/2011 to 26/9/2019 taking reference from section 15(3) of the National Green Tribunal Act, 2010, with regard to consideration of default for assessing environmental compensation and cost of restoration;

6. It was also informed that **period of violations** for the aforesaid 103 identified polluting units for the purpose of imposing environmental damage cost/damage restoration cost were also revised as per recommendations of the Committee that in cases where closure direction have been issued, the period of **default (N in days) has been taken as date of inspection till the**

effective date of closure of the unit. For other cases including where conditional restart issued under W (P&CP) Act, 1974/ EP Act, 1986, the period of default has been taken as no of days (N) for which violation took place. Such N has been taken as the period between the day of violation observed/ due date of compliance of directions and the day as on which the compliance was verified. The period between effective closure of the unit till the date of restart order issued by MPCB has not been considered as violation period.

7. *The aforesaid additional 20 units were also given opportunity of hearing by the Committee on 27/1/2020 and the 103 polluting units were also served with notices by MPCB giving them another opportunity of submitting additional details/records against the said violations, if any.*
8. ***The identified units have thus been given due consideration and the Committee rationalized the criteria for identification of polluting units and their nature & period of violation with best possible logic under given varied scenarios for distributing accountability of CETP and polluting industrial units towards cost of restoration of the environment.***

431. The issue with regard to methodology for computation of environmental compensation has been considered, time and again since no single methodology can be appropriately made applicable without considering the nature of industry, the nature of pollution and other relevant factors. In this regard it will be useful to refer some relevant statutory and precedential law as also other relevant factors which may provide a guideline as to how environmental compensation should be determined.

Environmental Compensation-Assessment/Methodology

432. The question of **assessment of environmental compensation** includes the principles/factors/aspects, necessary to be considered for computing/assessing/determining environmental compensation. Besides judicial precedents, we find little assistance from Statute. Section 15 of NGT Act 2010 talks of relief of compensation and restitution. It confers wide powers on this Tribunal to grant relief by awarding compensation for

the loss suffered by individual(s) and/or for damage caused to environment. Section 15 reads as under:

“15. Relief, compensation and restitution-(1) *The Tribunal may, by an order, provide:*

*a) **relief and compensation** to the victims of pollution and **other environmental damage arising under the enactments** specified in the Schedule I (including accident occurring while handling any hazardous substance);*

*b) **for restitution of property damaged;***

*c) **for restitution of the environment** for such area or areas, as the Tribunal may think fit.*

(2) The relief and Compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section of (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the' applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

*(4) The Tribunal may, **having regard to the damage** to public **health, property and environment**, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.*

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may, be, compensation or relief received from, any other Court or authority.

433. Sub-section 1 enables Tribunal to make an order providing relief and compensation to (i) the victims of pollution, (ii) other environmental damage arising under the enactments specified in the Schedule I. Tribunal is also conferred power to pass an order providing relief for restitution of property damaged. Section 15(1)(c) enables Tribunal to pass an order providing relief for restitution of the environment for such area or areas, as Tribunal may think fit. Section 15 sub-section 4 says that Tribunal may divide compensation or relief payable under separate heads

specified in Schedules II, having regard to the damage to public health, property and environment so as to provide compensation or relief, (i) to the claimants and (ii) for restitution of the damaged property or environment, as it may think fit.

434. Schedule II of NGT Act, 2010 gives a list of heads under which compensation or relief for damage may be granted. It has 14 heads in total out of which item (a) to (f), (l), (m) and (n) relates to loss, damage etc. sustained to the person or individual or their property. Item (i) to (k) relates to harm, damage, destruction etc. of environment or environmental system including soil, air, water, land, and eco-system.

Items (i) to (k) of Schedule II of NGT Act 2010 are as under:

“(i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;

(j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;

(k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;”

435. Items (g) and (h) relate to expense and cost incurred by State in providing relief to affected person; and loss caused in connection with activity causing damage. The damage to environment covers a very wide variety of nature as is evident from definition of environment under section 2 (c) which is inclusive and says; ‘environment includes water, air, and land and the interrelationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property’.

436. Section 20 of NGT Act, 2010 requires Tribunal to apply principles of sustainable development, the precautionary principle and the polluter pays principle.

437. Thus, broad principles of environmental laws are given but the methodology for assessing/determining compensation is not provided in the statute. Even Rules framed under NGT Act, 2010 are silent on this aspect. Issue of determination of EC is significant in the sense that it should be proportionate to or bears a reasonable nexus with the environmental damage and its remediation/restoration. Similarly in case of compensation to be determined for a victim, it needs to co-relate to injury caused or damage suffered by such person as also cost incurred for treatment/remediation.

438. Taking into consideration multifarious situations relating to violation of environmental laws *vis-a-vis* different proponents, nature of cases involving violation of environmental laws can be categorized as under:

- (i) Where Project/Activities are carried out without obtaining requisite statutory permissions/consents/clearances/NOC etc., affecting environment and ecology. For example, EC under EIA 2006; Consent under Water Act 1974 and Air Act 1981; Authorisation under Solid Waste Management Rules 2016 and other Rules; and NOC for extraction and use of ground water, wherever applicable, and similar requirements under other statutes.
- (ii) Where proponents have violated conditions imposed under statutory Permissions, Consents, Clearances, NOC etc. affecting environment and ecology.
- (iii) Where Proponents have carried out their activities causing damage to environment and ecology by not following

standards/norms regarding cleanliness/pollution of air, water etc.

439. The above categories are further sub-divided, i.e., where the polluters/violators are corporate bodies/organisations/associations and group of the people, in contradistinction, to individuals; and another category, the individuals themselves responsible for such pollution.

440. Further category among above classification is, where, besides pollution of environment, proponents/violators action also affect the community at large regarding its source of livelihood, health etc.

441. The next relevant aspect is, whether damage to environment is irreversible, permanent or is capable of wholly or partially restoration/remediation.

442. Determination/computation/assessment of environmental compensation must, not only conform the requirement of restoration/remediation but should also take care of damage caused to the environment, to the community, if any, and should also be preventive, deterrent and to some extent, must have an element of “being punitive”. The idea is not only for restoration/remediation or to mitigate damage/loss to environment, but also to discourage people/proponents from indulging in the activities or carrying out their affairs in such a manner so as to cause damage/loss to environment.

443. To impose appropriate ‘environmental compensation’ for causing harm to environment, besides other relevant factors as pointed out, one has to understand the kind and nature of ‘Harmness cost’. This includes risk assessment. The concept of risk assessment will include human-health risk assessment and ecological risk assessment. U.S.

Environmental Protection Agency has provided a guideline to understand harm caused to environment as well as people. For the purpose of human-health risk assessment, it comprised of three broad steps, namely, planning and problem formulation; effects and exposure assessment and risk categorization. The first part involves participation of stakeholders and others to get input; in the second aspect health effect of hazardous substances as well as likelihood and level of exposure to the pollutant are examined and the third step involves integration of effects and exposure assessment to determine risk.

444. Similarly, ecological risk assessment is an approach to determine risk of environmental harm by human activities. Here also we can find answer following three major steps, i.e., problem codification; analysis of exposure and risk characterization. First part encompasses identification of risk and what needs to be protected. Second step insists upon crystallization of factors that are exposed, degree to exposure and whether exposure is likely or not to cause adverse ecological effects. Third step is comprised of two components, i.e., risk assessment and risk description.

445. In totality, problem is multi-fold and multi-angular. Solution is not straight but involves various shades and nuances and vary from case to case. Even Internationally, there is no thumb-rule to make assessment of damage and loss caused to environment due to activities carried out individually or collectively by the people, and for remediation/restoration. Different considerations are applicable and have been applied.

446. In India, where commercial activities were carried out without obtaining statutory permissions/consents/clearance/NOC, Courts have determined, in some matters, compensation by fixing certain percentage

of cost of project. In some cases, volume of business transactions, turnover, magnitude of establishment of proponent have also been considered as guiding factors to determine environmental compensation.

447. Nature is extremely precious. It is difficult to price elements of nature like light, oxygen (air), water in different forms like rain, snow, vapour etc. When nature is exploited beyond its' carrying capacity, results are harmful and dangerous. People do not understand the value of what nature has given free. Recently in Covid-19 wave II, scarcity of oxygen proved its worth. In dreadful second phase of the above pandemic, any amount offered, in some cases, could not save life for want of oxygen. Further, damage to environment, sometimes do not reflect in individuals immediately and may take time but injury is there. In such cases, process of determination of compensation may be different.

448. In an article, '*the cost of pollution-Environmental Economics*' by Linas Cekanavicius, 2011, it has been suggested, where commercial activities have been carried out without consent etc., and pollution standards have been violated, Total Pollution Cost (hereinafter referred to as '**TPC**') can be applied. It combines the cost of abatement of environment pollution and cost of pollution induced environmental damage. The formula comes to $\mathbf{TPC(z)=AC(z)+ED(z)}$, where **z** denotes the pollution level. Further, clean-up cost/remediation cost of pollution estimated to be incurred by authorities can also be used to determine environmental compensation.

449. When there is collective violation, sometimes the issue arose about apportionment of cost. Where more than one violator is indulged, apportionment may not be equal since user's respective capacity to produce waste, contribution of different categories to overall costs etc.

would be relevant. The element of economic benefit to company resulting from violation is also an important aspect to be considered, otherwise observations of Supreme Court that the amount of environmental compensation must be deterrent, will become obliterated. Article 14 of the Constitution says that unequal cannot be treated equally, and it has also to be taken care. Determination/assessment/computation of environmental compensation cannot be arbitrary. It must be founded on some objective and intelligible considerations and criteria. Simultaneously, Supreme Court also said that its calculations must be based on a principle which is simple and can be applied easily. In other words, it can be said that wherever Court finds it appropriate, expert's assessment can be sought but sometimes experts also go by their own convictions and belief and fail to take into account judicial precedents which have advanced cause of environment by applying the principles of 'sustainable development', 'precautionary approach' and 'polluter pays', etc.

450. Clean-up cost or TPC, may be a relevant factor to evaluate damage, but in the diverse conditions as available in this Country, no single factor or formula may serve the purpose. Determination should be a quantitative estimation; the amount must be deterrent to polluter/violator and though there is some element of subjectivity but broadly assessment/computation must be founded on objective considerations. Appropriate compensation must be determined to cover not only the aspect of violation of law on the part of polluter/violator but also damage to the environment, its remediation/restoration, loss to the community at large and other relevant factors like deterrence, element of penalty etc.

451. **CPCB Guidelines:** CPCB has suggested in a report methodology for assessment of environmental compensation which may be levied or imposed upon industrial establishments who are guilty of violation of environmental laws and have caused damage/degradation/loss to environment. It does not encompass individuals, statutory institutions and Government etc. Report is titled as “*Report of the CPCB In-house Committee on Methodology for Assessing Environmental compensation and Action Plan to Utilize the Fund*” which was finalized in the meeting held on 27.03.2019. It shortlisted the incidents requiring an occasion for determining environmental compensation. Six such incidents, shortlisted, are:

“Cases considered for levying Environmental Compensation (EC):

- a) *Discharges in violation of consent conditions, mainly prescribed standards/consent limits.*
- b) *Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.*
- c) *Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.*
- d) *Accidental discharges lasting for short durations resulting into damage to the environment.*
- e) *Intentional discharges to the environment -- land, water and air resulting into acute injury or damage to the environment.*
- f) *Injection of treated/partially treated/ untreated effluents to ground water.”*

452. For the instances at item (a), (b) and (c), report says that ‘Pollution Index’ (hereinafter referred to as ‘**PI**’) would be used as a basis to levy environmental compensation. CPCB had already published Guidelines categorizing industries into Red, Orange, Green and White, based on the concept of **PI**. The **PI** is arrived after considering quantity and quality of emissions/effluents generated, types of hazardous waste generated and consumption of resources. **PI** of an industrial sector is a numerical number in the range of 0 to 100 and is represented as follows:

PI=f (Water Pollution Score, Air Pollution Score and HW Generation Score).

453. Since range of PI is 0 to 100, increase in value of PI denotes increasing degree of pollution hazard from industrial sector. Accordingly, report says, for determining environmental compensation in respect of cases covered by item (a), (b) and (c), it will apply following formula:

$$EC = PI \times N \times R \times S \times LF$$

Where,
EC is Environmental Compensation in ₹
PI = **Pollution Index of industrial sector**
N = Number of days of violation took place
R = A factor in Rupees (₹) for EC
S = Factor for scale of operation
LF = Location factor”

454. The formula incorporates anticipated severity of environmental pollution in terms of PI, duration of violation in terms of number of days, scale of operation in terms of micro and small/medium/large industry and location in terms of proximity to the large habitations. A note is also given under the aforesaid formula and it reads as under:

- “Note:
- a. The **industrial sectors** have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental Compensation for Red, Orange and Green categories of industries, respectively.
 - b. N, number of days for which violation took place is the period between the day of violation observed/due date of direction’s compliance and the day of compliance verified by CPCB/SPCB/PCC.
 - c. R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of violation.
 - d. S could be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units.
 - e. LF, could be based on population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or up to 10 km distance from the municipal boundary of the city/town, following factors (LF) may be used:

Table No. 1.1: Location Factor Values

S. No	Population* (million)	Location Factor# (LF)
1	1 to <5	1.25
2	5 to <10	1.5
3	10 and above	2.0

**Population of the city/town as per the latest Census of India*
#LF will be 1.0 in case unit is located >10km from municipal boundary
LF is presumed as 1 for city/town having population less than one million.

*For notified Ecologically Sensitive areas, for beginning, LF may be assumed as 2.0. **However, for critically Polluted Areas, LF may be explored in future.***

- f. In any case, minimum Environmental Compensation shall be ₹ 5000/day.*
- g. In order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2 times on 1st repetition, 4 times on 2nd repetition and 8 times on further repetitions.*
- h. If the operations of the industry are inevitable and violator continues its operations beyond 3 months then for deterrent compensation, EC may be increased by 2, 4 and 8 times for 2nd, 3rd and 4th quarter, respectively. Even if the operations are inevitable beyond 12 months, violator will not be allowed to operate.*
- i. Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.*

A sample calculation for Environmental Compensation (without deterrent factor) is given at Table No. 1.2. It can be noticed that for all instances, EC for Red, Orange, and Green category of industries varies from 3,750 to 60,000 ₹/day.

Table No. 1.2: A sample calculation for Environmental Compensation

Industrial Category	Red	Orange	Green
Pollution Index (PI)	60-100	41-59	21-40
Average PI	80	50	30
R-Factor	250		
S-Factor	0.5-1.5		
L-Factor	1.00-2.00		
Environmental Compensation (₹/day)	10,000-60,000	6,250-37,500	5,000-22,500

455. We find that **R** which is a factor in Rupees (₹) is taken to be 100 minimum and 500 maximum. It has suggested that R value be taken as average i.e., Rs. 250/-. On what basis this minimum and maximum has been determined and why average is suggested, beyond any comprehension. We do not find any material in the above report which may throw light for taking value of R as above. Similarly, for determining

value of S i.e. Factor for Scale of Operation from 0.5 to 1.5, we find no Guidelines as to on what basis, it has been determined and only on the size of the industry, divided in small, medium and large, the said factor has been prescribed. The note further says that minimum environmental compensation would be Rs. 5000/- per day. From table 1.2, we find that in the highest case i.e., large industry, depending on the level of PI, maximum environmental compensation would be Rs. 60,000/- per day and minimum Rs. 10,000/- per day. The above determination excludes the actual loss to the environment and cost of remediation including damage to *flora-fauna* and human beings. Moreover, classification of industries for industrial policy, or for some licensing purpose, banking purpose etc. would be wholly irrelevant for environment. A small industry may be capable of causing much more pollution than medium or even large industry. For example, pollution caused by a brick kiln using coal as fuel may be much more than many medium category industries.

456. In respect of items (d), (e) and (f), report says that for determining environmental compensation, one has to consider the matters in two parts, one for providing immediate relief and another long-term relief, such as remediation. In such cases, detailed investigations are required from Expert Institutions or Organizations, based on which environmental compensation will be decided. Second part of report is with regard to utilization of environmental compensation fund. For this purpose, report says that CPCB will finalize a scheme for utilization of fund for protection of environment. Certain schemes identified by CPCB for utilization of the said fund are mentioned in para 1.4.1, as under:

- “a. *Industrial Inspections for compliance verification*
- a. *Installation of Continuous water quality monitoring stations/Continuous ambient air quality monitoring stations for strengthening of existing monitoring network*

- b. Preparation of Comprehensive Industry Documents on Industrial Sectors/clean technology
- c. Investigations of environmental damages, preparation of DPRs
- d. Remediation of contaminated sites
- e. Infrastructure augmentation of Urban Local Bodies (ULBs)/capacity building of SPCBs/PCCs.”

457. All the above, except item (e), relate to establishment/infrastructure for monitoring/prevention of pollution which in fact is the statutory duty and function of officials of State PCB and CPCB. It appears that CPCB has attempted to utilize environment fund to meet expenses which is the responsibility of Government.

458. Chapter II of report deals with determination of environment compensation for violations of **Graded Response Action Plan** (GRAP) in NCR. Here, a fixed amount of environmental compensation has been recommended in table 2.1, as under:

“Table No. 2.1: Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in Delhi-NCR.

Activity	State Of Air Quality	Environmental Compensation
Industrial Emissions	Severe +/-Emergency	Rs 1.0 Crore
	Severe	Rs 50 Lakh
	Very Poor	Rs 25 Lakh
	Moderate to Poor	Rs 10 Lakh
Vapour Recovery System (VRS) at Outlets of Oil Companies		
i. Not installed	Target Date	Rs 1.0 Crore
ii. Non-functional	Very poor to Severe +	Rs 50.0 Lakh
	Moderate to Poor	Rs 25.0 Lakh
Construction sites (Offending plot more than 20,000 Sq.m.)	Severe +/-Emergency	Rs 1.0 Crore
	Severe	Rs 50 Lakh
	Very Poor	Rs 25 Lakh
	Moderate to Poor	Rs 10 Lakh
Solid waste/garbage dumping in Industrial Estates	Very poor to Severe +	Rs 25.0 Lakh
	Moderate to Poo	Rs 10.0 Lakh
Failure to water sprinkling on unpaved roads		
a) Hot-spots	Very poor to Severe +	Rs 25.0 Lakh
b) Other than Hot-spots	Very poor to Severe +	Rs 10.0 Lakh

”

459. Chapter III considers determination of environmental compensation where a proponent has discharged pollutants in water bodies or failed to

prevent discharge of pollutants in water bodies and also failed to implement Waste Management Rules. Laying down Guidelines for determination of environmental compensation in this category, report has referred to Tribunal's order dated 06.12.2018 in **OA No. 125/2017 and MA No. 1337/2018, Court on its own motion vs. State of Karnataka**, stating as under:

*“Since failure of preventing the pollutants being discharged in water bodies (including lakes) and failure to implement solid and other waste management rules are too frequent and widespread, the **CPCB must lay down specific guidelines to deal with the same, throughout India, including the scale of compensation to be recovered from different individuals/authorities, in addition to or as alternative to prosecution. The scale may have slabs, depending on extent of pollution caused, economic viability, etc. Deterrent effect for repeated wrongs may also be provided.**”*

460. It is suggested that determination of environmental compensation in this category would have two components, (i) Cost saved/benefits achieved by the concerned individual/authority by not having proper waste/sewage managing system; and (ii) Cost to the environment (environmental externality) due to untreated/partially treated waste/sewage because insufficient capacity of waste/sewage management facility. It further says that Cost saved/benefits achieved would also include interest on capital cost of waste/sewage management facility, daily operation and maintenance (O & M) cost associated with the facility. The determination of environmental compensation, therefore, is suggested, applying following formula:

“Therefore, generalized formula for Environmental Compensation may be described as:

$EC = \text{Capital Cost Factor} \times \text{Marginal Average Capital Cost for Establishment of Waste or Sewage Management or Treatment Facility} \times (\text{Waste or Sewage Management or Treatment Capacity Gap}) + \text{O\&M Cost Factor} \times \text{Marginal Average O\&M Cost} \times (\text{Waste or Sewage Management or Treatment Capacity Gap}) \times \text{No. of Days for which facility was not available} + \text{Environmental Externality}$ ”

461. Environmental externality has been placed in two categories (i) untreated/partially treated sewage discharge and (ii) improper municipal solid waste management and detailed in table 3.1 and 3.2, as under:

“Table No. 3.1: Environmental externality for untreated/partially treated sewage discharge

Sewage Treatment Capacity Gap (MLD)	Marginal Cost of Environmental Externality (Rs. per MLD/day)	Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)
<i>Up to 200</i>	<i>75</i>	<i>Min. 0.05, Max. 0.10</i>
<i>201-500</i>	<i>85</i>	<i>Min. 0.25, Max. 0.35</i>
<i>501 and above</i>	<i>90</i>	<i>Min. 0.60, Max. 0.80</i>

Table No. 3.2: Environmental externality for improper municipal solid waste management

Municipal Solid Waste Management Capacity Gap (TPD)	Marginal Cost of Environmental Externality (Rs. per ton per day)	Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)
<i>Up to 200</i>	<i>15</i>	<i>Min. 0.01, Max. 0.05</i>
<i>201-500</i>	<i>30</i>	<i>Min. 0.10, Max. 0.15</i>
<i>501-1000</i>	<i>35</i>	<i>Min. 0.25, Max. 0.3</i>
<i>1001-2000</i>	<i>40</i>	<i>Min. 0.50, Max. 0.60</i>
<i>Above 2000</i>	<i>Max. 0.80</i>	

”

462. CPCB has further recommend a fixed cap for minimum and maximum cost for capital and O & M component for environmental compensation in table 3.3 and 3.4, as under:

“Table No. 3.3: Minimum and Maximum EC to be levied for untreated/partially treated sewage discharge

Class of the City/Town	Mega-City	Million-plus City	Class-I City/Town and others
Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)	<i>Min. 2000 Max. 20000</i>	<i>Min. 1000 Max. 10000</i>	<i>Min. 100 Max. 1000</i>
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	<i>Min. 2 Max. 20</i>	<i>Min. 1 Max. 10</i>	<i>Min. 0.5 Max. 5</i>

Table No. 3.4: Minimum and Maximum EC to be levied for improper municipal solid waste management

Class of the City/Town	Mega-City	Million-plus City	Class-I City/Town and others
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 1000 Max. 10000	Min. 500 Max. 5000	Min. 100 Max. 1000
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 1.0 Max. 10.0	Min. 0.5 Max. 5.0	Min. 0.1 Max. 1.0

463. Para 3.3 deals with the method of determining environmental compensation for damage by untreated/partially treated sewage by concerned individual/authority. Under this head, CPCB has considered that for population above 1 lakh, requirement of water supply, would be minimum 150 to 200 lpcd and 85% whereof would result in sewage generation. It takes capital cost for 1 MLD STP ranges from 0.63 crores to 3 crores and O & M cost around Rs. 30,000 per month. Consequently, it suggested to assume capital cost for STPs as Rs. 1.75 crores/MLD (marginal average cost). Expected cost for conveyance system is assumed as Rs. 5.55 crore/MLD and annual O& M as 10% of combined capital coast. Based on the above assumptions, Committee has recommended/suggested environmental compensation, to be levied on urban local bodies, by applying anyone of the two formulae which are as under:

“EC= Capital Cost Factor × [Marginal Average Capital Cost for Treatment Facility × (Total Generation-Installed Capacity) + Marginal Average Capital Cost for Conveyance Facility × (Total Generation -Operational Capacity)] + O&M Cost Factor x Marginal Average O&M Cost × (Total Generation-Operational Capacity) × No. of Days for which facility was not available + Environmental Externality × No. of Days for which facility was not available

Alternatively;

EC (Lacs Rs.) = [17.5(Total Sewage Generation – Installed Treatment Capacity) + 55.5(Total Sewage Generation-Operational Capacity)] + 0.2(Sewage Generation-Operational Capacity) × N + Marginal Cost of Environmental Externality × (Total Sewage Generation-Operational Capacity) × N

Where; N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Quantity of Sewage is in MLD”

464. Para 3.4 deals with the method of environmental compensation to be levied on concerned individual/authority for improper solid waste management, chargeable from urban local body. The recommended formula is as under:

“EC = Capital Cost Factor × Marginal Average Cost for Waste Management × (Per day waste generation-Per day waste disposed as per the Rules) + O&M Cost Factor × Marginal Average O&M Cost × (Per day waste generation-Per day waste disposed as per the Rules) × Number of days violation took place + Environmental Externality × N

Where;

Waste Quantity in tons per day (TPD)

N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Simplifying;

EC (Lacs Rs.) = 2.4(Waste Generation - Waste Disposed as per the Rules) +0.02 (Waste Generation - Waste Disposed as per the Rules) × N + Marginal Cost of Environmental Externality × (Waste Generation-Waste Disposed as per the Rules) × N”

465. Here also certain assumed figures have been taken by CPCB. Report says that municipal solid waste generation is approximately 1.5 lakh MT/day in India as per MoHUA Report-2016. As per principles of Solid Waste Management Rules, 2016 and PWM Rules, 2016, total cost of municipal solid waste management in city/town includes cost for door-to-door collection, cost of segregation at source, cost for transportation in segregated manner, cost for processing of municipal solid waste and disposal through facility like composting bio-methanation, recycling, co-

processing in cement kilns etc. It is estimated that total cost of processing and treatment of municipal solid waste for a city of population of 1 lakh and generating approximately 50 tons/day of municipal solid waste is Rs. 15.5 Crores which includes capital cost (one time) and Operational and Management cost for one year. Expenditure for subsequent years would be only 3.5 Crores/annum. For arriving per day waste generation, CPCB has referred to a survey conducted by Environment Protection Training Research Institute (EPTRI) which estimated that solid waste generated in small, medium and large cities and towns is about 0.1 kg (Class-III), 0.3-0.4 kg (Class-II) and 0.5 kg (Class-I) per capita per day respectively. The Committee opined that 0.6 kg/day, 0.5 kg/day and 0.4 kg/day per capita waste generation may be assumed for mega-cities, million-plus UAs/towns and Class-I UA/Towns respectively for calculation of environmental compensation purposes.

466. Sample calculation of environmental compensation to be levied for improper management of municipal solid waste has been provided in table 3.6 which reads as under:

“Table No. 3.6: Sample calculation for EC to be levied for improper management of Municipal Solid Waste

City	Delhi	Agra	Gurugram	Ambala
Population (2011)	1,63,49,831	17,60,285	8,76,969	5,00,774
Class	Mega-City	Million-plus City	Class-I Town	Class-I Town
Waste Generation (kg. per person per day)	0.6	0.5	0.4	0.4
Waste Generation (TPD)	9809.90	880.14	350.79	200.31
Waste Disposal as per Rules (TPD) (assumed as 25% of waste generation for sample calculation)	2452.47	220.04	87.70	50.08
Waste Management Capacity Gap (TPD)	7357.42	660.11	263.09	150.23
Calculated EC (capital cost component) in Lacs. Rs.	17657.82	1584.26	631.42	360.56

Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	<i>Min. 1000 Max. 10000</i>	<i>Min. 500 Max. 5000</i>	<i>Min. 100 Max. 1000</i>	<i>Min. 100 Max. 1000</i>
Final EC (capital cost component) in Lacs. Rs.	10000.00	1584.26	631.42	360.56
Calculated EC (O&M Component) in Lacs. Rs./Day	147.15	13.20	5.26	3.00
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./Day)	<i>Min. 1.0 Max. 10.0</i>	<i>Min. 0.5 Max. 5.0</i>	<i>Min. 0.1 Max. 1.0</i>	<i>Min. 0.1 Max. 1.0</i>
Final EC (O&M Component) in Lacs. Rs./Day	10.00	5.00	1.00	1.00
Calculated Environmental Externality (Lacs Rs. Per Day)	2.58	0.18	0.03	0.02
Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. per day)	<i>Max. 0.80</i>	<i>Min. 0.25 Max. 0.35</i>	<i>Min. 0.01 Max. 0.05</i>	<i>Min. 0.01 Max. 0.05</i>
Final Environmental Externality (Lacs Rs. per day)	0.80	0.25	0.03	0.02

”

467. Chapter IV deals with determination/computation of environmental compensation in case of “illegal extraction of ground water” and for this purpose report has referred to Tribunal’s order dated 03.01.2019 passed in **OA No. 327/2018, Shailesh Singh vs. Central Ground Water Board & Ors.** The relevant extract of the order, quoted in para 4.1 of the report, is as under:

“CPCB may constitute a mechanism to deal with individual cases of violation of norms, as existed prior to Notification of 12/12/2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law.”

468. Here, broadly, determination of environmental compensation refers to two major aspects i.e., illegal extraction of water as one aspect and illegal use of ground water as second aspect. For determination of environmental compensation for illegal extraction of ground water, formula suggested by Committee is:

“ EC_{GW} =Water Consumption per Day x No. of Days x Environmental Compensation Rate for illegal extraction of ground water (ECR_{GW})

Where water Consumption is in m³/day and ECR_{GW} in Rs./m³

*Yield of the pump varies based on the capacity/power of pump, water head etc. For reference purpose, yield of the pump may be assumed as given in **Annexure-VI**.*

Time duration will be the period from which pump is operated illegally.

In case of illegal extraction of ground water, quantity of discharge as per the meter reading or as calculated with assumptions of yield and time may be used for calculation of EC_{GW} .”

469. Depending on the category of the area for the purpose of ground water i.e., safe, semi-critical, critical and over-exploited and also the purpose for which ground water is used, determination of environmental compensation for illegal use of ground water, has been suggested differently for different purpose/use i.e., for drinking and domestic use; for packaged drinking water units/for mining infrastructure and dewatering projects and for industrial units. Hence all these aspects are separately given in paragraph 4.6.1, 4.6.2, 4.6.3 and 4.6.4 as under:

“4.6.1 ECR_{GW} for Drinking and Domestic use:

Drinking and Domestic use means uses of ground water in households, institutional activity, hospitals, commercial complexes, townships etc.

Sl. No	Area Category	Water Consumption (m ³ / day)			
		<2	2 to <5	5 to <25	25 & above
		Environmental Compensation Rate (ECR_{GW}) in Rs./m ³			
1	Safe	4	6	8	10
2	Semi Critical	12	14	16	20
3.	Critical	22	24	26	30
4	Over-Exploited	32	34	36	40

Minimum EC_{GW} =Rs 10,000/- (for households) and Rs. 50,000 (for institutional activity, commercial complexes, townships etc.)

4.6.2 ECRGW for Packaged drinking water units:

Sl. No	Area Category	Water Consumption (m^3 / day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR_{GW}) in Rs./ m^3			
1	Safe	12	18	24	30
2	Semi Critical	24	36	48	60
3.	Critical	36	48	66	90
4	Over-Exploited	48	72	96	120
Minimum EC_{GW} =Rs 1,00,000/-					

4.6.3 ECRGW for Mining, Infrastructure and Dewatering Projects:

Sl. No	Area Category	Water Consumption (m^3 / day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR_{GW}) in Rs./ m^3			
1	Safe	15	21	30	40
2	Semi Critical	30	45	60	75
3.	Critical	45	60	85	115
4	Over-Exploited	60	90	120	150
Minimum EC_{GW} =Rs 1,00,000/					

4.6.4 ECRGW for Industrial Units:

Sl. No	Area Category	Water Consumption (m^3 / day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR_{GW}) in Rs./ m^3			
1	Safe	20	30	40	50
2	Semi Critical	40	60	80	100
3.	Critical	60	80	110	150
4	Over-Exploited	80	120	160	200
Minimum EC_{GW} =Rs 1,00,000/-					

470. It is also recommended that minimum environmental compensation for illegal extraction of ground water would be Rs. 10,000/- if it is for domestic purposes, but in other matters, it would be Rs. 50,000/-.

471. These recommendations by CPCB have not been given in the form of a binding statutory provision. Even otherwise, we find that these are only broad suggestions, ignore several relevant aspects which have to be

considered while determining environment compensation in a given case and, therefore, there cannot be taken as readymade application to all situations for determining of environment compensation. Moreover, on some aspects there is no suggestion, but it is deferred.

472. We also find that some crucial relevant aspects requiring application of 'Polluters Pay', have not been considered in the above suggestions. CPCB has failed to consider that the purpose of determination/ computation/ assessment of environmental compensation and levy thereof, involve various factors like (i) cost of damage to environment, (ii) cost needed for restoration/remediation of damage caused to environment, (iii) element of deterrent/provincial, (iv) liability arising for violation of statutory mandatory law relating to environment namely requirement of consent, EC and NOC etc. It is not mere cost of item or subject but computation of something which situation has arisen by an act of PPs due to violation of environmental law causing damage to environment. The loss and its remedy involve complex of components.

473. Nature is precious. The elements of nature like air, water, light and soil in materialistic manner may not be priced appropriately and adequately. Most of the time, whenever price is determined, it may be extremely low or highly exorbitant meaning thereby disproportionate. Still, since some of the assets of nature are marketable, on that basis price may be determined but when such elements are damaged or degraded, restoration thereof, in effect is priceless. Many a times, it may be almost impracticable and improbable to recover and remediate damaged environment to its position as it was. Moreover, its cost might be very high. It also cannot be doubted that once there is a pollution or

damage to environment, it would affect adversely not only the environment but also inhabitants and all biological organisms. Damage is there, only degree may differ whether to the environment or to the inhabitants and other organisms. To find out simultaneously degree of damage and to ascertain the same in many cases may not be possible or practicable. For example, a polluted air causes respiratory diseases but the people do not get infected and starts reflection of the disease immediately but it takes some time. The time taken in reflection of injury on the person or body also differs from person to person depending upon his immunity and other health conditions. In some cases, damage to environment i.e., air pollution may be fatal to a person who already has respiratory problem. For some a minor inconvenience, minor injury to others, and some may not suffer to the extent of showing symptoms of any diseases at all. When we talk of environmental compensation for causing degradation to environment and for its restoration or remediation, it is not a formal or casual or symbolic amount which is required to be levied upon the violator. It is substantive and adequate amount which must be levied for restoration of environment. CPCB in determining values of fixed quotients and rupees etc., has been very lenient as if only symbolically violator is to be held liable and it must pay a petty amount.

474. Statutory Regulators must realize that the amount is needed for remediation and restoration of damaged environment; enough to be deterrent, to provide adequate compensation where inhabitants are affected adversely and where violator has proceeded in violation of Environmental Laws relating to consents, clearances, permissions etc., to penalize him for such violation to prove to be a deterrent to him and others. Unfortunately, the above guidelines laid down by CPCB have not

considered all these aspects and it appears that the same have been prepared in a very casual and formal manner.

475. In respect of computation of compensation for illegal extraction of ground water, CPCB has referred to Tribunal's order in ***Court on its own motion vs. State of Karnataka (supra)*** directing it to lay down guidelines to deal with the scale of compensation but has failed to consider that Tribunal has also observed that its scale may have slabs depending on extent of pollution caused, economic viability etc. and deterrent effect.

476. Statutory Regulators have also failed to consider that environmental compensation is not a kind of fee which may result in profiteering to violators and after adjusting a nominal amount of environmental compensation, a violator may find it profitable to continue with such violations. The objective of environmental compensation is that not only the loss and damage already caused, is made to recover and restore but also in future, the said violator may not repeat the kind of violation already committed and others also have a fear of not doing the same else similar liability may be enforced upon them. Unless amount of compensation is more than maximum permissible profit arising from violation, the purpose of environmental compensation would always stand defeated.

477. Loss caused to surroundings of the environment, may also include *flora-fauna* and human beings. It is in this backdrop that in various matters when the issues were considered by Courts and Tribunal and found necessary to impose environmental compensation upon Proponent/Violator of environmental laws, they have followed different mechanisms. Sometimes, Committee's reports confirming violations have

been referred but for quantum of compensation, directions have been issued in different ways. In some cases, CPCB guidelines have been applied while in many other, project cost has been made basis.

478. CPCB Guidelines have taken care of industries and municipal bodies. Its application in all cases irrespective of other relevant consideration may prove to be disastrous. Individuals, charitable, social or religious bodies, public sector and government establishments etc., may, in given circumstances justify a different approach. Further, there may be cases attracting aggravating factors or mitigating factors, for example in national emergency some activity got performed violating environmental norms or a proponent is resilient to any advice to adhere law to protect environment and so on. In fact, quantum of EC should have nexus with State's efforts for protection and preservation of environment and control of pollution. Compensation regime must be a deterrent to violators and incentivize eco-friendly proponents. No one should get profited by violating environmental laws and community should also not suffer for violation of environmental norms by defaulting proponents. There is no reason, if beside the aspects noticed above, the computation process also incorporates the elements of inflation, quality of life, and economic prosperity.

479. In the context of "violation of disposal of Bio-Medical Waste" and "Non-compliance of Bio-Medical Waste Management Rules, 2016" and determination of environmental compensation for such violations, Tribunal in **OA No. 710/2017, Shailesh Singh vs. Sheela Hospital & Trauma Centre, Shahjahanpur & Others** and other connected matters, vide order dated 15.07.2019, accepted report of CPCB, and said:

"10. The compensation regime suggested by the CPCB may be adopted. It will be open to the State PCBs/PCCs to adopt a higher

scale of compensation, having regard to the problems faced in such States/UTs.

11. It is made clear that if even after two months the States/UTs are found to be non-compliant, the compensation will be liable to be recovered from the said States/UTs at the rate of Rs. 1 Crore per month till the non-compliance continues.”

480. The above recommendations i.e., in para 10, Tribunal said “*compensation regime suggested by the CPCB may be adopted. It will be open to the State PCBs/PCCs to adopt a higher scale of compensation, having regard to the problems faced in such States/UTs*”. It further says that if State Governments and UTs still remain non-complying for two months, compensation will be recovered at the rate of Rs. 1 crore per month till non-compliance continues.

481. In respect of solid waste, sewage effluent, ground water extraction etc., Tribunal in **OA No. 593/2017, Paryavaran Suraksha Samiti and another vs. Union of India and others**, vide order dated 28.08.2019 has said in para 16, that as regards environmental compensation regime fixed vide CPCB guidelines for industrial units, GRAP, solid waste, sewage and ground water is accepted as an interim measure. Tribunal further observed that recovery of compensation on ‘Polluter Pays’ principle is a part of enforcement strategy but not a substitute for compliance. It directed all States/UTs to enforce compensation regime latest w.e.f. 01.04.2020 and made it clear that it is not condoning any past violations. Tribunal directed to enforce recovery of compensation from 01.04.2020 from the defaulting local bodies failing which the concerned States/UTs themselves must pay the requisite amount of compensation.

482. In the matter of illegal mining causing damage to environment, methodology for determining environmental compensation was examined in **OA No. 360/2015, National Green Tribunal Bar Association vs.**

Virender Singh (State of Gujarat) and other connected matters decided on 26.02.2021. Here a report was submitted by CPCB on 30.01.2020, placing on record recommendations made by Committee comprising:

- i.) Dr Purnamita Dasgupta, Professor, IEG, Delhi,
- ii.) Dr K.S. Kavi Kumar, Professor, MSE, Chennai,
- iii.) Dr. Yogesh Dubey, Associate Professor, IIFM, Bhopal,
- iv.) Shri Sundeep, Director, MoEF&CC, Delhi and
- v.) Shri A. Sudhakar, Additional Director, CPCB, Delhi

483. Report was considered by Tribunal vide order dated 17.08.2020.

Report said:

- “8. The Committee considered two approaches:
(I) Approach 1: Direct Compensation based on the market value of extraction, adjusted for ecological damages.
(II) Approach 2: Computing a Simplified NPV for ecological damages.

9. In the first approach, the criteria adopted is:

- Exceedance Factor (EF).
- Risk Factor (RF).
- Deterrence Factor (DF).

10. Approach 1 is demonstrated by Table 1 as follows:

Table No. 01: Approach 1				
Permitted Quantity (in MT or m³)	Total Extraction (in MT or m³)	Excess Extraction (in MT or m³)	Exceedance in Extraction:	Compensation Charge (in Rs.)
X	Y	Z=Y-X	Z/X	D* (1+RF+DF) Where D=Z x Market Value of the material per MT-or-m³
				DF = 0.3 if Z/X = 0.11 to 0.40 DF = 0.6 if Z/X = 0.41 to 0.70 DF = 1 if Z/X >= 0.71
				RF = 0.25, 0.50, 0.75, 1.00 (as per table 2)

11. Approach 2 is demonstrated by following formula:
“Total Benefits (B)=Market Value of illegal extraction: D(refer Table 1)

Total Ecological Costs (C) = Market Value adjusted for risk factor: D * RF (refer Table 1).”

12. Final recommendation is as follows:
“Thus, it is recommended that the annual net present value (NPV) of the amount arrived at after taking the difference between the costs and the benefits through the use of the above approach, maybe calculated for a period of 5 years at a discount rate of 5% for mining which is in a severe ecological damage risk zone. **The rationale for levying this NPV is based on expert opinion that reversal and/or restoration of the ecological damages is usually not possible within a short period of time and rarely is it feasible to achieve 100% restoration, even if the sand deposition in the river basin is restored through flooding in subsequent years.** The negative externalities of the mining activity are therefore to be accounted for in this manner. Ideally, the worth of all such damages, including costs of those which can be restored should be charged. **However, till data on site-specific assessments becomes available, this approach may be adopted in the interim.** In situations where the risk categorization charged. However, till data on site-specific assessments becomes available, this approach may be adopted in the interim. In situations where the risk categorisation is unavailable or pending calculation, the following Discount Rates may be considered:

Severity	Mild	Moderate	Significant	Severe
Risk Level	1	2	3	4
Risk Factor	0.25	0.50	0.75	1.0
Discount Rate	8%	7%	6%	5%

Here, in both the approaches, element of illegality committed by PP in carrying on mining was not considered at all. For example, if EC and/or consent is not obtained. Similarly cost of remediation/restoration was also not taken into consideration.

484. Counsel for applicant gave certain suggestions, which are mentioned in para 13 of order dated 17.08.2020. Tribunal directed Committee to re-examine the matter. Thereafter, further report was submitted on 12.10.2020 wherein earlier report was reiterated. Tribunal in para 12 of judgment dated 26.02.2021 said “**we propose to accept approach-2 in the report**”. Further in para 25, Tribunal said:

*“25. In the light of discussion in para 12 above, having regard to the totality of the situation, we accept the report of the CPCB and direct that the scale of compensation calculated with reference to approach II be adopted by all the States/UTs. **Though compensation assessment for damage to the environment is a dynamic concept, depending on variables, floor level formula can be worked out to avoid arbitrariness inherent in unguided discretion. CPCB may issue an appropriate statutory direction for the facility of monitoring and compliance to the Environment Secretaries of all the States/UTs who may forthwith evolve an appropriate mechanism for assessment and recovery of compensation in all Districts of the State.** The recovered compensation may be kept in a separate account and utilized for restoration of environment by preparing an appropriate action plan under the directions of the Environment Secretary with the assistance of such individual/ institutions as may be considered necessary.”*

485. Though Tribunal said that determination of environment compensation is a dynamic concept and depends on variables, and also directed CPCB to issue statutory directions to all States/UT so that they may evolve appropriate mechanism for assessment, but nothing has been done in this regard till date. Some States have found it convenient to follow CPCB guidelines. State of Tamil Nadu vide order dated 03.01.2020 and State of Haryana vide order dated 29.04.2019 have adopted CPCB Guidelines.

486. In some cases, compensation has been awarded by Tribunal on lump sum basis without referring to any methodology. For example: (i) *in Ajay Kumar Negi vs Union of India, OA No. 183/2013*, Rs. 5 cr. was imposed. (ii) In *Naim Shariff vs M/s Das Offshore Application no. 15(THC) of 2016*, Rs.25 cr. was imposed (iii) *Hazira Macchimar Samiti vs. Union of India*, Rs 25 cr. was imposed.

487. In *Goa Foundation vs. Union of India & Others (2014)6SCC590*, Supreme Court relied on *Samaj Parivartana Samudaya & Others vs. State of Karnataka & Others (2013)8SCC209* and held that **ten per cent of the sale price** of iron ore

during e-auction should be taken as compensation. To arrive at the above view, Court observed that this was an appropriate compensation given that mining could not completely stopped due to its contribution towards employment and revenue generation for the State. Further, Court directed to create a special purpose vehicle, i.e., “Goan Iron Ore Permanent Fund” for depositing above directed compensation and utilization of above fund for remediation of damage to environment.

488. In ***Mantri Techzone Private Limited vs. Forward Foundation & Others, (2019)18SCC494***, Supreme Court affirmed imposition of environmental compensation by Tribunal, considering cost of the project, where there was violation regarding EC/consent and proponent proceeded with construction activities violating provisions relating to EC/Consent. Tribunal determined environmental compensation at 5% and 3% of project cost of two builders. 5% of project cost was imposed where PP had raised illegal constructions while 3% was imposed where actual construction activity was not undertaken by PP and only preparatory steps were taken including excavation and deposition of huge earth by creating a hillock. Besides, Tribunal also directed for demolition and removal of debris from natural drain at the cost of PP.

489. In ***Goel Ganga Developers vs Union of India and Others, (2018)18SCC257***, Tribunal imposed 195 cr. compensation since project was executed without EC. Supreme Court reduced it to **100 cr. or 10% of project cost whichever is higher**. Supreme Court also upheld Rs.5 cr. imposed by Tribunal vide order dated 27.09.2016. **Thus, total amount exceeded even 10% of project cost.**

490. Learned Sr. Counsels appearing for Respondents Proponents have argued that the formula adopted by Committee suggested by Spanish

author, cannot be applied mechanically in India where conditions are totally different. Similar textured arguments were raised in objection under consideration.

491. We find that to some extent the argument that the conditions applicable in European or other Countries are different from India has force and substance. The level of pollution and nature of pollution is much different in India comparing to European Countries and particularly Developed Countries. The problem of dust, air and water pollution and degree of pollution in India is incomparable with European Countries and in particular Developed Countries. Degree of such pollution in India is extremely severe. **As per IQ Air Quality Index of 2020, on the basis of level P.M. 2.5, India is third most polluted country in the world with 51.90 while at top is Bangladesh and second is Pakistan.** This position has been continuing at least since 2018 and onward, though level of pollution, overall, has been shown lesser. In the said list, Spain is shown in green category with 10.40 and is at Sr. No. 80. Obviously, therefore, the standards which are applicable or can be made applicable to Spain and similar other European Countries, are inapplicable for India where much stricter and heavy liability standards and norms have to applied. To this extent, in fact, Committee has dealt with the matter very leniently which has helped Respondents Proponents in limiting liability of compensation to very moderate level which otherwise would have been much higher. Moreover, Respondents Proponents have said in their objections that Spanish formula was designed to meet cases of prevention of degradation of environment which means that all relevant aspects have not been accounted for otherwise quantum of compensation would have been multifold high. Element of damage caused, cost of remediation, element of distress necessary to

prevent persistent violation, cost of recovery of health suffered by people in the area, element of penalty for breach of statutory provisions relating to environment, etc., in true perspective and spirit, stood omitted when above Spanish formula is applied mechanically. The obvious result would be that amount of compensation liable to be determined, in this matter, must be several times high.

492. Here we also find it appropriate to place on record that fortunately on the issue of carbon dioxide emission, position of India is much different and as per United Nations Inter Governmental Panel on Climate Change, in the 10 top most polluting Countries, Spain is at Sr. No. 8 with 6.09 per capita figures. Position of India is much better. Be that as it may, for the purpose of kind of pollution, we are concerned in this matter, i.e., water pollution, we have no manner of doubt that Committee has made an attempt to compute compensation taking into consideration interest of Industrial Units also and it has been very considerate to ensure that compensation may not be very heavy to Industrial Units. Unfortunately, in the above process, Committee has omitted to include certain very relevant factors resulting in assessment of inadequate and insufficient amount which would not serve the purpose appropriately for which the compensation is assessed. In fact, the recommendations of Committee are more in the interest of industries than remediation of degraded environment.

493. On the one hand Committee has undergone a very onerous and burdensome job of taking into consideration different aspects to determine compensation and apportion it, and we place on record our appreciation for this tough task, but on the other hand, simultaneously, we cannot appreciate that law of land relevant for determination of

compensation, laid down by Supreme Court, binding on all, pointing out relevant aspects which must have been accounted for, while determining compensation, have been ignored in fact, though reminded in words in the report of Committee. This is a major flaw and can not be maintained but needs remedial and curative approach on the part of Tribunal.

494. If we follow the simple and straight method based on turnover of Polluters Unit which has been applied time and again by Supreme Court as well as by this Tribunal, situation would have been much different and liability of many member industries of Respondent 9 would have come to several times more than what has been computed and determined by Committee. Moreover, in a case where pollution is continuous, violations of environmental laws and norms are consistent and Industries for their own benefit are carrying on their commercial activities without showing any legal, social and ethical obligations, responsibilities and duties toward society, i.e., preservation, protection and maintainance of purity of environment, they cannot be allowed to raise any technical plea to take advantage of their own wrong or own practical problems for the reason that the factum of causing pollution by violating environmental norms is sufficient to attract Principle of Polluters Pay and since violation is for commercial interest of industries, they must be required to pay in terms of their volume of business which has been suggested by Supreme Court also as we have already discussed above.

495. Additional and not the least important consideration is that violation of Environmental norms continued for years cannot justify imposition of Environmental Compensation only for a small period of violation. Polluters must account for such liability consistently, persistently and throughout for entire period of industrial activities.

Nothing has been placed on record that till the date of submission of report by Committee, pollution found by Committee had stopped. In fact, computation of pollution ought to have been for the entire period, at least the period which is within limitation under section 15 (3) of NGT Act, 2010 i.e., 5 years earlier from the date of filing Original Application and entire period when the matter has remained pending before this Tribunal. One must appreciate that discharge of polluted effluent may be for certain period but its consequences due to pollution are long term and process of damage may also continue for much longer time. If somebody drops a little amount of sulfuric or hydrochloric acid on a wooden plank, acid continue to burn wooden plank for a long time.

496. The matter can be examined from another angle. It is an accepted fact that any development is bound to affect environment adversely, degree may differ, depending on the nature of industries, kind of effluents or emissions released, ecological conditions in the area etc. Recognising this fact, legislation has provided standards/limits of contents of industrial effluents and emissions. Industries and others are permitted to cause pollution to that extent. This is part of concept of 'sustainable development' where a balance has been attempted to be maintained by Statutes. Whenever statute permits discharge of polluted effluent or emission upto certain level, that means pollution is there but law does not treat it offensive. Pollution within standards/limits is tolerable. Society, to that extent, has agreed to suffer. In other words, pollution within limits may not affect flora and fauna noticeably. Any crossing of limits means release of polluting contents beyond toleration causing impermissible damage to environment and ultimately to society. Here, Respondents Proponents have been crossing limits/standards and releasing polluted effluents just for their commercial interests and

thereby compromising ecological sustenance and health of society. Determination of compensation, thus must correlate level of industrial/commercial activities of such Pollutors i.e., volume of business. As we have already said, respondents Proponents were permitted to bring on record information about their annual turnover but they have refrained from giving such information.

497. The discussions made above show that objections raised by respondents industries about method adopted by Committee are not justified. Amount of compensation determined by Committee is neither excessive, nor exorbitant nor unreasonable in terms as suggested by Proponents nor arbitrary. On the other hand, Committee, in its wisdom, has followed a principle which is also referred in a publication of Ministry of Environment and Forest, Government of India titled as 'National Program for Rehabilitation of Polluted Sites in India- Guidance document for assessment and remediation of contaminated sites in India', 1st edition, March 2015. Committee was comprised of very senior professionals and experts, i.e., a Professor from Indian Institute of Management, Ahmedabad; another Professor from Indian Institute of Technology, Gandhinagar; a Scientist from National Environmental Engineering Research Institute, Nagpur; Regional Director, CPCB, Pune; and Regional Director, MPCB. Out of five members, three are from Institute of very high repute. One member is from Central Statutory Regulator. No complaint or allegation of bias has been made against these four members. In textured objections, presence of MPCB official has been objected but during oral arguments before us this issue has not been raised. Even otherwise, official of MPCB is only one out of five members and it can not be believed that he could have influenced all other senior Academicians of repute and a senior official of Central Statutory

Regulator. Moreover, Committee's job is confined to collect facts, examine and submit report to Tribunal. Committee is not empowered to take a final decision in the matter. It is ultimately order of this Tribunal which will adjudicate rights of the parties. If Tribunal accept report, it would become part of order of Tribunal, but on its own, reports of Committee would not impact rights of the parties. This aspect has already been answered by Supreme Court in **State of Meghalaya vs. All Dimasa Students Union (Supra)** while answering issue 11. Court held that despite constitution of Committee entire control remains with Tribunal and any recommendation of Committee is always subject to affirmation by Tribunal and would be enforceable only thereafter. The objection regarding constitution of Committee has no substance and appears to have been raised in desperation.

498. In view of the above, contention advanced on behalf of Respondents Proponents on the methodology adopted by Committee for computation of compensation has no merit and rejected. However, it does not lead to inference that compensation determined by Committee as such stands approved. We still have to examine its adequacy in the light of various components, already pointed out above. In fact, we were inclined to follow the basis of commercial activities undertaken by Proponents by violation of environmental laws and norms and to make computation on the basis of some percent i.e., 5% or around it, of annual turnover of concerned Proponents, but we find that amount environmental compensation would increase multifold, industries had some problems in last one and half years due to pandemic and number of industries in TIA MIDC as a whole has also gone down considerably, hence for the health of industries and their survival, much higher liability may not be conducive. Thus taking a pragmatic view in the matter, consistent with the principle of "sustainable

development”, attempting to maintain a balance between the task of preservation and protection of environment and sustained development, we are of the view that **quantum of compensation determined by Committee vide revised report dated 12.08.2021 be enhanced twice where Proponents have been found with single violation, thrice where two violations and tetra (four times) where violations are more than two. The above direction will not apply to TEPS.** This approach will meet the ends of justice, in the peculiar facts of this case. The amount of compensation, determined above shall be utilized for remediation/restoration of environment as also for the benefit of affected people in the area. If any deficiency is found ultimately in the funds while carrying out above directions, shortfall shall be made good by State Government of Maharashtra since these industries are contributing to public exchequer by paying huge amount of taxes etc. **The issue relating to methodology adopted by Committee for determination of compensation is answered accordingly.**

499. With regard to the inaccuracies/errors on certain factual aspects Committee has itself suggested that if there is any error in the information supplied by MPCB, individual industries may point out the same to MPCB and it is open to MPCB to re-examine the quantum of environment compensation. We modify the above direction to the extent that MPCB shall follow process of computation in the light of directions given above.

500. **SUPER FUND AND FISCAL DISCOUNTING:** On this aspect lot of objections have been raised. It is said that unless remediation plan is prepared no such fund can be created and the direction for super fund itself is illegal since such fund is alien to environmental laws. It is also

said that remedial measures adopted by Proponents including TEPS have not been given any weightage though such steps taken should have resulted in appropriate discounting in the amount of compensation.

501. On the aspect of superfund and fiscal discounting Committee has submitted its response dated 13.05.2021 and it would be useful to refer relevant extract thereof:

“That regarding averment made by TIMA about proposal of the concept of super fund for the pollution which has not even been established or quantified, it is submitted that the CETP Tarapur has been found violating effluent discharge standards as well as CETP inlet design/inlet standards during the reported period of 28/4/2011 to 30/11/2019, as concluded at page 83 of the Committee under the Chapter 8 read with Chapter 3. The report also outlines that the CETP is not adequate to treat the effluent currently being received. Besides, it also operated at beyond its hydraulic load capacity of 25 MLD and resulting into the overflow from the CETP during such duration and such overflow effluent is being discharged into to drains leading to other water bodies (creeks, sea and ground water). Details of exceedance of parameters in inlet and outlet effluent of CETP and hydraulic load exceedance during the said reported period have also been presented in the report.

1. As submitted above under para (1) to (3) (a) - (h) above, it is obvious that illegal discharges of non-complying effluent from the CETP since long time, as above, may have impact on the environment. However, in order to ascertain the impact, if any, the Committee did field sampling & analysis of various surface water bodies (drains passing through MIDC Tarapur and receiving water bodies Creeks and Sea water) and ground water in and around the MIDC area. Based on analysis results of monitoring of the said water bodies, the **Committee has arrived at affirmative contamination of - groundwater and drains in and around Tarapur MIDC area due to industrial discharge of untreated effluent/solvent/chemicals, and; impact on Creeks and Seashores around Tarapur MIDC thereto (paras 8.2.1, 8.2.1.1 to 8.2.1.4 at page 91-92 under Chapter 8 read with para 4.2 to 4.5 at page 44-57 under Chapter 8 of the Committee’s report may be referred in this regard).**
2. Therefore, **contamination due to illegal discharges of non-complying effluent from the CETP and industries and affirmative contamination/impact thereof on water bodies have been established, as above. Once established, quantification of pollution including delineation of the contaminated areas and areas needing remediation; detailed site investigation & characterization; risk assessment studies & identification of remediation goals/objectives and preparation of remediation plans thereof; selection of remediation criteria; outlining**

remediation options and preparation of detailed technical document with specifications for the selected remediation option; are subsequent steps in scientifically management of contaminated sites. As part of restoration measures, the Committee has recommended Phase-I work which includes the said activities by preparing Detailed Project Report (DPR) followed by execution of the selected remediation plan as Phase-II work. Preparation of the said DPR and remediation thereto have been recommended by the Committee in line with "Guidance document for assessment and remediation of contaminated sites in India" prepared by the Ministry of Environment, Forest & Climate Change, Govt. of India (para 8.2.2; page 92-93 of Chapter-8 of the Committee report may be referred in this regard).

Reply to TIMA's objection w.r.t. concept of "Super Fund" is alien

1. That regarding averments made by TIMA that concept of "Super Fund" is alien to the Indian environmental regulation statutory regime and seems to have been adopted from the Comprehensive Environmental Response and Liability Act (CERCLA) enacted by the United States Congress, the Committee, in addition to comments submitted under para (i) of Para (3) (i) above, submits that the terminology of "Super Fund" has been used by the **Committee merely to allocate certain amount of fund to meet the future studies to carry out as the aforesaid Phase-I activities comprising of delineation of the contaminated areas and areas needing remediation; detailed site investigation & characterization; risk assessment studies & identification of remediation goals/objectives and preparation of remediation plans thereof; selection of remediation criteria; outlining remediation options and preparation of detailed technical document with specifications for the selected remediation option, and preparation of DPR on the same as given ; followed by execution of the remediation plan as per the said DPR as Phase-II activities.** Methodologies on the same are also indicated in Annexure-VI of the Committee's report which has been recommended to be implemented by MPCB.
2. Without prejudice to regulation of "Super Fund" in United States or other countries or its merits/demerits or its applicability in the country, the Committee has just used the term "Super Fund" so as to meet the aforesaid future expenses in remediating the contaminated sites in and around the Tarapur due to industrial activities and money to the said Super Fund would be deposited based on precautionary principal and polluter pay principal and the aforesaid 103 identified polluting units are the identified polluters who have been identified with systematic and rational approach in compliance with order dated 26-09-2019 of the Hon'ble NGT by the Committee.
3. It is also submitted that:

- i. in the absence of delineation of the contaminated areas and areas needing remediation (which require detailed hydrology, geology, etc. studies and detailed sampling & analysis) and remediation technique required thereof, which will be outlined in the DPR as recommended under Phase-I activities followed by field remediation work as recommended under Phase-II activities in the Committee's report, and;
 - ii. considering that ground water and drains in and around the Tarapur MIDC have been found contaminated;
- the Committee has suggested initial amount for the Super Fund as 75 Crores INR to meet the cost to be incurred in the aforesaid activities of Phase-I and Phase-II in remediation. However, the Committee has also suggested (please refer para 8.2.2.2; page 94 and of Chapter 8 and page 77 of chapter 6 of the Committee's report) that depending upon the selected remediation options, the cost of remediation may increase or decrease to that of Rs. 75 Crores. In such case, the amount may be collected or refunded to each of the said 103 polluting units, as the case may be, in the same proportion as the damage recovery cost has been recommended to be paid using the equation (4) as given at page 82-83 under Chapter 7 of the Committee report.
4. The Committee, therefore, submits that the proposed 'Super Fund' of INR 75 Crs. is indeed a novel concept for the Indian environmental statutory regime and yet in spirit fully upholds the precautionary principle and the polluter pays principles that are the cornerstones of the Indian environmental jurisprudence.
 5. Further the expert Committee has taken cognizance of the fact that long procedural delays and direction in remedial/restoration of the environment, especially in critically polluted areas where the carrying capacity of the natural environment is severely tested, exacerbates the degradation of the local ecology. Worse in such cases, the underlying non-linearities of the complex ecosystem may even push the local biosphere beyond a point of no return.
 6. The concept of 'Super Fund' is proposed in all earnest to endow the regulatory bodies and local governments with sufficient financial resources to expeditiously engage in restoration and remediation action and prevent irreversible damages to the environment.
 7. It is submitted that the Committee was directed by the Hon'ble NGT to assess the extent of damage and cost of restoration of the environment and individual accountability of CETP and polluting industrial units. The Committee complied with the said directions by performing various activities diligently including field sampling/monitoring and scientific & technical analysis of the various information/data/analysis results which have been presented along with conclusions and recommendations in its report submitted to the Hon'ble NGT.
 8. It is denied that the Committee erred in imposing Rs. 75 crores under the heading 'Super Fund' upon TIMA members and TEPS, the Committee disagrees such error in recommending creation of Super Fund of Rs. 75 crores and recommends such Super Fund considering immediate remedial measures

required for remediation of environmental pollution. The comments submitted by the Committee under para (i) to (iii) of the para 3(i) above may be referred in this regard.

Reply to TIMA's objection w.r.t. consideration of fiscal discounting

1. *That averments made by M/s TIMA about fiscal discounting referring self-cleansing ability of water bodies, sewage and human waste attributed by five different villages surrounding the MIDC area, etc., it is submitted that analysis results of all the samples collected from the monitored drains passing through the MIDC Tarapur, the two creeks in which the said drains confluence and 01 location of each of the two streams before confluence of the said drains, and; sea water and sand near to Navapur CETP outfall, Nandgaon beach and the other at Edvan beach about 85 kms from the said Navapur CETP outfall, and; ground water samples from 06 different bore-wells in and around MIDC area; attribute to presence of one or more parameters such as odour, colour, pH, TDS, COD, TSS, Fluorides, Phenols, Total Ammonical Nitrogen, Metals (Lead, Copper, Iron and Manganese), etc. which are signatures of industrial discharges sourced from industrial activities of Tarapur MIDC (please refer analysis results given at Table 4.5 to 4.11, paras 42. To 4.5 at pages 42-58 under Chapter 4 of the Committee's report). Presence of such parameters and elevated concentration of parameters in water bodies to that of as recommended in the "Guidance document for assessment and remediation of contaminated sites in India" prepared by the Ministry of Environment, Forest & Climate Change, Govt. of India, indicate contamination/impact on such water bodies resulting into environmental damage which has obviously occurred after exceeding the self-cleansing ability of the water bodies.*
2. *It is further submitted that the discounting can be defined as the technique used to compare costs and benefits that occur at different points in time. Its main motive is to express in present values the flow of costs and benefits that arise across the full lifetime of a scenario or project. Discounting can be used whenever long-term impacts need to be assessed, and when discount rates can be identified to reflect the opportunity cost of being able to make use of benefits now or defer costs until later. Moreover, immediate impacts of a policy or other intervention are often considered to be valued more highly than the same impacts at some future date and hence it is designed to adjust the value of future impacts to present values, in order to allow cost and benefits to be aggregated and compared in a consistent form.*
3. *The objection regarding fiscal discounting states that the Committee ought to have considered some extent of fiscal discounting in costs based on the following grounds that sea and creek can be considered as public undepletable externality and it has a system of self-cleansing process of a period of time. However self-cleansing property requires time and repeated effluent discharges aggravates the pollution and hence the objection statement "Pollutants like BOD, COD, TSS have the capacity to disintegrate over a period of time so much so that they do not remain harmful" is irrelevant and in ignorance assumes the notion of the sea and natural water bodies as infinite sinks capable of assimilating pollutants for an indefinite period of time. However, the environmental damage cost assessment done by the expert Committee is based on the background of present*

scenario damages (Assessment period) caused due to the pollution and hence the concept of fiscal discounting is not applicable”

502. We entirely agree with the view expressed by Committee. In fact, Proponents or learned Senior Counsels representing them could not advance any substantive argument to support their objections. Moreover, Tribunal’s similar direction for creation of a fund to be utilized in future has been upheld in ***State of Meghalaya vs All Dimasa Students Union (supra)***. There, Tribunal required State Government to deposit 100 crores and keep it in a separate fund, i.e., Meghalaya Environment Protection and Restoration Fund and this direction was upheld by Supreme Court. The title or label will not be a determining factor but substance and objective which matters.

503. Subsequent remedial steps would not condone earlier violations and compensation is determined for what has been done. The concept of fiscal discounting is inapplicable in the process of determination of environmental compensation. The steps taken to prevent pollution in future does not amount restoration or remediation of damage or degradation already caused to environment. The objection regarding fiscal discounting, therefore, is misconceived. **We, therefore, reject both objections regarding Super Fund and fiscal discounting.**

504. **EARLIER PENALTIES, FORFEITURE OF BANK GUARANTEES:** The objection with regard to non-consideration of earlier penalties and forfeiture of bank guarantees etc. is misconceived. Objectives of the said actions were different. Same cannot be clubbed. While considering question of computation of environmental compensation, different penalties/fines/damages etc. relating to different aspects cannot be clubbed together. Neither any law requires such clubbing nor any

precedent has been shown to us on such aspect. **Therefore, we find no reason to accept the same.**

505. The other objections are more repetitive and in fact covered by what we have discussed above. In fact, during the course of arguments, only two aspects were emphasised by Learned Senior Counsels appearing on behalf of Proponents i.e., selection of only 103 units leaving others for payment of compensation and application of formula for computation of Environmental Compensation. We have already discussed these aspects in detail, above.

Individual objections filed as part B in MA 02/2021 dated 29.12.2020/07.01.2021:

506. Respondent 9 has filed collectively individual objections of member industries, as part B to M.A.02/2021. The affidavit in support has been sworn by Shri Dhanaji Laxman Kakade, Vice President who claims to be authorized representative of M/s. Aarti Drugs Ltd, Plot no. G-60, MIDC Tarapur and also member of TIMA. **These are 85 objections** and we are dealing with the same individually as under:

(i) Objection by M/s. Aarti Drugs Ltd., Plot no. G-60, MIDC Tarapur (at item no. 1 in the list of 103 industries submitted by Committee (in short referred to as 'List-103 of Committee')):

507. This is an LSI scale red category unit, established on 01.10.1994, and manufacture bulk drugs according to consent renewal application dated 21.10.2013 (placed on record on page 149 of MA). Total water consumption for deterrent uses is shown as 802 m³/day i.e. 552m³/day for industrial cooling etc., 35 m³/day for domestic purpose and 135 m³/day and 40m³/day for processing whereby water gets polluted and the pollutants are easily bio-degradable. The quantity of waste water generated disposed is 20 m³/day from domestic, 116 m³/day from industrial process and 3m³/day from boiler blowdown. It claims to

discharge treated effluent to CETP for further treatment, disclosing total quantity as 119m³/day. In the category of fuel consumption, it has disclosed consumption for coal as 12 to 15 MT/day and Brickuette 30MT/day. An inspection was made on 05.09.2013 by MPCB officials pursuant where to, notice dated 15.10.2013 was issued showing following major and minor non-compliances:-

“Major Non compliances:

1. *Discharge of untreated acidic effluent having pH 3-4 with strong solvent smell and blackish in color into MIDC effluent conveyance system to CETP drain (By pass) and poor O & M of ETP, thereby hampering CETP operation which is confirmed by exceeding JVS results.*
2. *Fuel changed from LDO/FO to coal/Briquette without prior permission from Board, thereby leading to excess emission load environment at inadequate height.*

Minor Non-Compliance:

3. *Flow & pH meter is not provided, thereby making it difficult to verify the quantity of effluent discharge to CETP.”*

508. Proponent replied notice stating as under:

*“1) Out treated effluent sent to CETP is always within the prescribed limits (as can seen from various JVS reports of last six months). **There is possibility of some effluent from MIDC chamber bank mixed in our treated effluent as there is no sufficient gradient to the pipe line connected to MIDC chamber. That may be the reason for acidic effluent found during this visit.***

*2) **We will take permission for change over from F.O. to briquette/ coal immediately.***

*3) Flow meter is already provided in the treated effluent discharge line to CETP. **We will also install Ph meter as asked by you.”***

509. Reply above shows that broadly, non-compliances reported by MPCB, were not challenged. The closure notice was issued on 15.10.2013 by MPCB. A reply was again submitted by proponent on 18.10.2013 and a conditional restart order was issued on 31.10.2013. Till this date, proponent has not got the change of fuel permitted. Admittedly, application for seeking permission of change of fuel was submitted for the first time on 31.10.2013. Certain relevant conditions mentioned in the restart order dated 31.10.2013 are:

- a) You shall ensure that your production shall be restricted to the generation of effluent as promised by you to the TEPS-CETP by reducing total daily generation of TEPS-CETP effluent from the list of its members submitted with voluntary closure in a staggered manner in the month of November, 2013 for one day of each week and two days of each week in the month of December, 2013 in a week, so as to restrict total generation of TEPS-CETP in a time bound manner to 25 MLD each day, which shall further be continued after December, 2013 also bank guarantee of Rs. 2.5 lakhs shall be charges for adhering to staggered schedule and which shall be valid for a period upto the validity of the consent/one year whichever is later, to be submitted within 15 days time from the date of receipt of these directions in favour of Regional Officer, MPCB, Thane.*
- b) You shall not carry out any excess production or produce new products without consent of the Board and without an Environment Clearance wherever it requires, for which, you shall furnish an irrevocable bank guarantee of Rs. 2.5 lakhs, which shall be valid for a period upto the validity of the consent/one year whichever is later, to be submitted within 15 days time from the date of receipt of these directions in favour of Regional Officer, MPCB, Thane.*
- c) You shall operate and maintain existing ETP effectively and remove all the bypasses, whereby the mode of disposal prescribed in the consent order is not followed, for which you shall furnish an irrevocable bank guarantee of Rs. 2.5 lakhs, which shall be valid for a period upto the validity of the consent/one year whichever is later, to be submitted within 15 days time from the date of receipt of these directions in favour of Regional Officer, MPCB, Thane.*
- d) You shall not discharge any effluent in any other source other than the CETP sewerage drain for further treatment and disposal for which you shall furnish an irrevocable bank guarantee of Rs. 5 lakhs, which shall be valid for a period upto the validity of the consent/one year whichever is later, to be submitted within 15 days time from the date of receipt of these directions in favour of Regional Officer, MPCB, Thane.*
- e) You shall make provision for online flow meter and pH meter, separate energy meter to pollution control devices within 3 months i.e. on or before 31/01/2014, for which you shall furnish an irrevocable bank guarantee of Rs. 1 lakhs, which shall be valid for a period upto the validity of the consent/one year whichever is later, to be submitted within 15 days time from the date of receipt of these directions in favour of Regional Officer, MPCB, Thane.*
- f) You shall make an application & obtain the amendment in consent for fuel change within two months, for which you shall furnish an irrevocable bank guarantee of Rs. 1 lakhs, which shall be valid for a period upto the validity of the consent/one year whichever is later, to be submitted within 15 days time from the date of receipt of these directions in favour of Regional Officer, MPCB, Thane.*
- g) You shall properly collect, transport & regularly dispose of the hazardous waste to CHWTSDf, in compliance of the Hazardous Wastes (Management, Handling & Transboundary Movement) Rules,*

2006 and keep proper manifest thereof, for which you shall furnish an irrevocable bank guarantee of Rs. 1 lakhs, which shall be valid for a period upto the validity of the consent/ one year whichever is later, to be submitted within 15 days time from the date of receipt of these directions in favour of Regional Officer, MPCB, Thane.

- h) You shall provide lock & key arrangement for treated industrial effluent on or before 30/11/2013, you shall furnish an irrevocable bank guarantee of Rs. 1 lakhs, which shall be valid for a period upto the validity of the consent/ one year whichever is later, to be submitted within 15 days time from the date of receipt of these directions in favour of Regional Officer, MPCB, Thane.”*

510. In the backdrop of above facts, amount of compensation has been objected by Proponent broadly on the ground of number of days of violation. According to proponent, it should be only 67 days and not 241 days for which compensation was determined. Proponent has stated that after earlier inspection of 05.09.2013, further inspection was made on 02.01.2014, 03.03.2014 and 07.04.2014. It claims that the number of days of violations should have been computed as under:

“Bifurcation of our calculation of correct number of days is given below:

$$\mathbf{X + Y = [7 + 60] = 67 \text{ days}}$$

***X**– [Period between Date of reported violation + actual days taken by MPCB for issuing Closure Notice/ JVS Report OR 7 days (whichever lower)] + number of days taken by industry after receiving closure notice till actual closure*

***Y** – Number of days between date of Conditional Restart Order and Date of Intimation by industry/ unit to MPCB about the compliance made and conditions fulfilled. (Note – In absence of proof of Intimation – actual date of Verification of compliance, is considered)”*

511. In the revised report dated 12.08.2021, amount of compensation has been revised and reduced to Rs. 40.517 lakhs in place of Rs. 45.786 lakhs. The number of days of violation has been reduced to 241 to 168. After revision of compensation, no objection to Committee report has been filed. In any case, we do not find anything on record to show that non-compliances found in the inspection report dated 12.08.2021, have been removed by applicant at any earlier point of time. Proponent has

claimed in the objection in question that it complied as communicated vide letter dated 30.12.2013, copy whereof is at page 180, and reads as under:

“The conditions you have given in the restart order have been completed. As such we are submitting the compliance report of your conditions.

a) We had staggered our manufacturing activities on 04/11/13, 05/11/13, 27/11/13 and 28/11/13 in the month of November and on 07/12/13, 08/12/13, 14/12/13, 15/12/13, 21/12/13, 22/12/13, 28/12/13, 29/12/13 in the month of December to reduce the effluent load of 25MLD CETP.

b) We are not carrying out any excess production or produce new product without consent of the M.P.C. Board. Production capacities are as per mentioned in consent.

c) We are operating and maintaining existing ETP effectively and have removed all the bypasses.

d) We are discharging the effluent in 25MLD CETP and not in any other sources.

e) We have installed flow meter and on line pH meter to the final effluent discharge line and have also installed separate energy meter to all pollution control devices.

f) We are running the steam boiler with the fuel i.e. LDO/FO which is given in the MPCB Consent. We have applied to the SRO, MPCB Officer, Tarapur for LDO/FO/Briquette amendment in the MPCB Consent.

g) We have properly collected, transported and regularly disposed off the hazardous waste to CHWTSDF and we have kept properly entry in the Hazardous Waste Manifest (FORM-13).

h) We have provided lock and key arrangement for the treated industrial effluent discharge pump's electrical ON/OFF switch on 04/11/13 and we have handed the key to the authorized person.”

512. The Proponent for the first time claimed compliance vide letter dated 31.12.2013. It shows violations on his part as reported in inspection. So long as claim of Proponent about verification of compliance is verified, it is not the case of Proponent that MPCB officials deliberately delayed verification. Reasonable time has to be allowed to Regulators for visit to verify whether there is compliance. Proponent can not blame officials who have their own limitation of infrastructure, manpower etc. In

any case this situation was created by Proponent. Subsequently Proponent cannot expect the official's availability at his volition. Hence view taken by Committee with regard to computation of days of violations cannot be said to be illogical or unreasonable or contrary to any settled legal principle. Objection thus rejected.

(ii) Objection by M/s. Aarti Drugs Ltd., N-198, 199, TIA MIDC (item 2-List 103 of Committee):

513. This is also a bulk drug manufacturing, Red category, LSI scale industry. It was established on 01.04.1994. Facts stated in the objections show that on 4 occasions, closure orders were issued to this Proponent for violation of environmental norms. First inspection was made on 12.04.2012. Permitted quantity of discharge of effluent was 63.1m³/day. Sample collected in the above inspection shows violation of prescribed standards permissible by more than 100%. It means that Proponent's ETP was not properly functioning and it was discharging sub-standard effluent to CETP. Closure order was issued on 16.05.2012. Proponent submitted letter dated 29.05.2012 in which alleged violation was not disputed. On the contrary, Proponent said that now it will not discharge sub-standard effluent to CETP. Reply dated 29.05.2012 submitted by Proponent with reference to closure order dated 16.05.2012, reads as under:

"We hereby assure that we will operate out ETP so as to not exceed the prescribed standard of treated effluent. We also assure you that we will not discharge substandard effluent to CETP so as to maintain its performance. All necessary precautionary measures related to ETP shall be taken from our side.

We also enclosed herewith Bank Guarantee of Rs. 2,00,000. Therefore kindly give consideration to us and withdraw order of voluntary closure and allow us to continue manufacturing activities."

514. Considering reply and subsequent compliance report dated 13.06.2012, restart order was passed on 19.06.2012 (page/217). Again,

officials of MPCB visited unit on 05.09.2013 wherein 3 major non-compliances and 1 minor non-compliance were found:

“Major Non-Compliance

- 1) *Untreated effluent having yellow color & strong solvent smell found discharging to nalla back side of ETP (Bypass) thereby you are causing grave injury to environment which is also confirmed by exceeding JVS results.*
- 2) *Changed fuel from FO to coal without prior permission of the Board thereby leading to excess emission load to environment at inadequate height.*

(Third non compliance is not legible)

Minor Non-Compliance

- 4) *Flow meter is not provided, thereby making it difficult to verify the quantity of effluent discharged to CETP.”*

515. Show cause notice dated 15.10.2013 was issued with a direction for closure which was replied by Proponent on 22.10.2013. Thereafter, restart order was issued on 13.11.2013 with a number of conditions mentioned therein. Proponent was permitted manufacturing activities except manufacturing of 2-methyl,4,5 nitro Imidazole. Proponent submitted letter dated 30.12.2013 stating that it has complied with the conditions mentioned in restart order dated 13.11.2013. Proponent claimed that thereafter, inspection was made by MPCB officials on 21.01.2014 and they found compliance with restart order. Third inspection was made by MPCB officials on 23.11.2016 and sample was collected. As per analysis report dated 24.11.2016, pH was 7.1 and COD was 1520mg/l. This result shows that pollutants exceeded permissible limit. Closure cum show cause notice was issued on 03.12.2016. Relevant extract thereof is as under:

“The analysis reports show values of pH- 7.1 & COD – 1520 mg/l which is exceeding to the inlet designed parameters of CETP thereby up setting CETP performance. It is found from vigilance sampling drawn during odd hours that you are discharging highly polluted stream/chemical load to the CETP and degree to exceedance to COD compared to consented norms is 508%. The above fact clearly indicates that you have adopted these practices of discharging of high COD steam and your tendency towards not to abide environment norms. The high polluting/COD steam hamper functioning of CETP operations thereby

discharging substandard quality effluent in Navapur sea and creating adverse impact on nearby environment. After perusing the results, degree of exceedance and tendency of discharge of untreated effluent I am of the opinion that you are willfully/intentionally discharging highly polluting effluent stream thereby violating consent norms and causing severe damage to the environment which needs to be stopped immediately to protect such damage of environment.”

516. Proponent submitted reply dated 07.12.2016 in which high COD value from ETP outlet was admitted and it said that in future it will take care but further try to justify that total inlet parameter of CETP is 3300mg/l COD and, therefore, COD value of 1520mg/l found in the sample of proponent was within the said parameters. Proponent could not have justified its own violation by relying to limits of CETP which are separately sanctioned/approved by MPCB in the consent granted to CEPT.

517. Proponent submitted an appeal dated 09.12.2016 to Member Secretary, MPCB for withdrawal of closure order dated 03.12.2016 wherein also while admitting higher COD found in the sample mentioned above, Proponent assured that in future it shall maintain proper standard. Again, same defense with reference to inlet parameter of CETP was taken. Appeal also shows that despite closure order dated 03.12.2016, received by proponent on 06.12.2016, on the date of filing of appeal, i.e, 09.12.2016, unit was not closed. This is evident from the following averments made in the appeal:

“We will close down the direct discharge of emulsified stream which may have high COD, which is the only polluting activity of our production line, by 9th December 2016 as per your direction, by taking necessary safety measures. We are requesting you to issue necessary directions to MIDC and MSDCL for not disconnecting the Water & Power supply, so that we can carry out maintenance and other works as per your directions. Water and power supply is also required for the workers and safety.”

518. Another letter dated 24.12.2016 was submitted by Proponent to Sub Regional Officer, MPCB, MIDC Tarapur wherein, it submitted a proposal for treatment of high COD and high TDS effluent streams. Proponent said that it will install multiple effect evaporator for high COD and high TDS effluent streams which will take about 4 to 5 months. Restart order was issued on 03.07.2017 (page 313).

519. There is fourth closure order dated 25.04.2017 pursuant to the results of inspection made on 22.04.2017. Analysis report of sample collected on 22.04.2017 shows pH 5.1, COD 28000mg/l and Suspended Solids 800mg/l. Again, a team visited site on 23.04.2017 at 02:05 AM and recorded its observations as under:

*“Industry is found in operation at the time of visit.
Storm water drain was found to be flown with acidic effluent (1-2) which further collected in collection tank.
Industry was by-passing effluents into MIDC chamber; which was brought to the notice of industry representative. JVS of by-pass effluent is collected.”*

520. Closure cum show cause notice was issued on 25.04,2017. Proponent submitted appeal dated 28.04.2017. Though it has said that it was not byepassing effluent into MIDC cahmber but nothing has been said as to why no such objection was taken when inspection was made in presence of Sri Anant Ikke and Dhanraj Rane, representatives of Proponent who also signed inspection report. Thus, violation of environmental norms on the part of proponent is duly proved. The defence taken by Proponent was that parameters of CETP were more than the discharge of the effluent with high COD by proponent. This defence is misconceived. CETP was catering to all the member industries and proponent could not have claimed benefit for itself alone ignoring entitlement of other member industries to discharge effluent within their

own permissible quantity of effluent. Restart order was issued on 18.05.2017.

521. Further objection raised is about number of days of violation for which compensation has been determined by Committee. Committee had computed compensation of Rs. 1042.241 lakhs taking 482 days of violation in respect of first closure order, 1150 days in respect to second closure order, 58 days in respect of third closure order and 309 days in respect of fourth closure order. The proponent in his representation has said that correct number of days of violation should have been only 235 and not 1999 (i.e. 12 for first closure, 58 for second closure, 25 for third closure and 140 for fourth closure).

522. As we have already noted that it is a case of repeated non-compliances on the part of proponent. **Committee has already revisited and amount of compensation is reduced to Rs. 368.749 lakhs vide revised report dated 12.08.2021.** The Proponent's objection on number of days of violations is on same grounds as we have already discussed above, and following same reasons, we reject objection with regard to number of days of violations. In the result entire objections of this Proponent are rejected.

(iii) Objections by M/s. Aarti Drugs Ltd., E-1, E-21,22, MIDC Tarapur (item 3-List 103 of industries):

523. This industry was established on 01.04.1994, engaged in manufacturing of bulk drugs, an LSI unit, Red category. For a total period of 555 for first closure and 134 for second closure (total 689 days) of non-compliance, pursuant to results of the inspection dated 12.04.2012 and 05.09.2013, Committee imposed compensation of Rs. 156.355 lakhs. Here also objection of proponent is basically for number

of days of violations. According to proponent, it ought to be only 65 days instead of 555.

524. In the inspection dated 12.04.2012, samples were collected and analysis report show pH 7.6, BOD 2550mg/l and COD 7440mg/l. Consequently, closure order/show cause notice dated 16.05.2012 was issued stating that analysis show discharge of effluent exceeding prescribed standard by more than 100%. Proponent submitted reply dated 29.05.2012 with assurance that it will abide by the standards, rrelevant extract whereof is as under:

“This is in reference to your letter No. MPCB/ROT/1066 Date 16th May 2012.

We hereby assure that we will operate our ETP so as to not exceed the prescribed standard of treated effluent. We also assure you that we will discharge substandard effluent to CETP so as to maintain its performance. All necessary precautionary measures related to ETP shall be taken from our side.

We also enclosed herewith Bank Guarantee of Rs. 2,00,000/-. Therefore, kindly given consideration to us to withdraw order of voluntary closer and allow us to continue manufacturing activities.”

525. Proponent submitted letter dated 02.06.2012 requesting for permitting restart wherein explaining reason for violation of norms it said as under:

“Last month the agitator of primary clarifier got damaged & hence performance of the ETP was slightly affected. We immediately took corrective steps & ordered new agitator also which will fitted at the earliest.”

526. The permission for restart was granted by MPCB by order dated 19.06.2012 with the condition that proponent shall maintain and operate existing ETP on record so as to bring all parameters within prescribed standards.

527. Another inspection was made by the officials of sub-Committee constituted by MPCB on 05.09.2013 and following major and minor non-compliances were noticed:

“Major Non-Compliance

- 1) *Water consumption is more than consented quantity, which shows excess load discharged to CETP thereby hampering operation of CETP you are using Bore well water for domestic purpose.*
- 2) *Primary Settling tank & Secondary Settling Tank not in operation and also tertiary treatment is by passed, thereby leading to sub standard discharge of effluent to CETP.*
- 3) *Fuel changed from FO to Briquette and now coal from Jan 2012 without prior permission of the Board, thereby leading to excess emission load to environment at inadequate height.*

Minor non-Compliance:

- 4) *Domestic Effluent- 40 m³/Day for which STP is not provided causing injury to environment.”*

528. A closure order/show cause notice was issued on 15.10.2013. Proponent submitted reply dated 21.10.2013 wherein findings recorded by MPCB were not disputed. Instead, proponent stated that it has decided to reduce effluent load to around 55m³/day. Proponent claimed to have closed operations on 21.10.2013 but requested for release of restart order vide letter dated 06.11.2013.

529. Detailed reasons explaining violation given by Proponent are as under:

“1. Water consumption is more than consented quantity, which shows excess load discharged to CETP thereby hampering operation to CETP. You are using Bore well water for domestic purpose.

i) Internal audit for water consumption has been conducted. In this audit it has been observed that although the water consumption is high, our effluent load remains controlled & does not exceed the sanctioned effluent load of 70 m³/Day for trade effluent & 40 m³/Day for domestic effluent. The reason for higher water consumption is that water quantity for industrial cooling & boiler was mistakenly reported at the time of consent application from our side. The water quantity for industrial cooling & boiler required is around 210 m³/Day while the quantity reported in consent is only 80 corrections (Reference: please refer copy of application submitted to your office). In mean time we assure you that we shall strictly observe the present consent norms for water consumption by reducing our production quantity significantly.

ii) We have already disconnected & demolished bore well water. We also like to bring to your notice that we were using bore water as a standby arrangement only for domestic purpose only. (which have now been totally stopped).

2. Primarily settling tank & secondary settling tank not in operation & also tertiary treatment is by passed, thereby leading to substandard discharge of effluent to CETP.

Clarification:

We want to bring to your notice that we never bypass tertiary treatment & also keep both primary settling tank & secondary settling tank in operation. **At the time of visit of your officers, our operating staff mistakenly provided incorrect information.**

We hereby assure you that we shall operate ETP properly & continuously with all three treatments (primary, secondary & Tertiary).

3. Fuel changed from FO to briquettes & now coal from Jan 2012 without prior permission of the board, thereby leading to excess emission load to environment at inadequate height.

Clarification:

We have already made application to your office for replacing FO boiler by Briquette/ coal fire Bioler.

4. Domestic Effluent 40 M3/D for which STP is not provided causing injury to environment.

Clarification;

We shall make arrangement for appropriate treatment of domestic effluent eight by providing STP or using the present spare capacity of ETP (since present effluent load is 65 M3/Day against total capacity 110 M3/Day of ETP) after taking expert advice.

we hereby make our strong commitment for controlling the water consumption by all means. This shall be achieved by taking following corrective & preventive measures:

1. Recycling of water washing.
2. Reducing production quantities significantly.
3. Minimizing the equipment cleaning activities by proper planning."

530. The above explanation does not dispute correctness of facts noticed in inspection report showing that Proponent was apparently violating conditions of consent and environmental norms.

531. MPCB issued conditional restart order dated 21.11.2013 with number of conditions which Proponent claimed to have complied.

532. Here also we find that in revised report dated 12.08.2021, Committee has reduced compensation to Rs. 97.191 lakhs by taking days

of violation as 47 in respect of first closure and 178 in respect of second closure. Proponent has claimed however that it ought to be 16 days for first closure and 65 days for second closure. We find no reason to accept the manner in which the proponent has sought to compute number of days of violation and as much as when violation is there, it is the responsibility of Proponent to demonstrate that it was not violating environmental norms prior to inspection or even thereafter. In the matter of environment, principle of absolute liability is attracted and once it is found that the proponent is causing pollution, responsibility lies upon it to show that it was not doing so. Similarly, onus lie upon Proponent to show that there was no pollution on certain particular days which have been taken into account for computation of compensation. Further grounds taken on this aspect are same which we have already considered and rejected. The said reasons and conclusion are reiterated hereat also.

(iv) Objection by Aarti Industries Ltd., plot no. E-50, MIDC Tarapur (item 4-list 103 of Committee):

533. It is also a bulk drugs manufacturing unit in Red category and scale LSI. Consented discharge quantity of effluent is 119. Compensation was assessed at 45.406 lakhs treating 239 days of violation vide Committee's report dated 18.06.2020.

534. Basic objection is with regard to number of days. As per proponent, it ought to be 83 instead of 239. Record filed along with objection show that inspection was made by MPCB team on 05.09.2013. Total water consumption was 160 m³/day. Following major and minor non-compliances were noticed:

“Major Non compliance:

1. Water consumption is more than consented quantity, which shows excess load discharge to CETP thereby hampering operation to CETP.

2. High TDS and Low TDS effluent stream is not segregated as per consent condition there by affecting the treatment. Also you have not provided secondary & tertiary treatment system for weak stream.

3. The layer of solvent in the collection tank of ETP indicates non recovery of solvents thereby implying non operation/inadequate capacity of solvent recovery system.

Minor Non-Compliance:

4. Hazardous Waste disposal is less as compare with consented quantity, indicates non operation of effluent treatment system regularly.

5. The Hazardous Waste viz filters, cartridges, neon filters is being disposed of unscientifically, also not included in the consent.”

535. MPCB issued Closure/show cause notice dated 15.10.2013.

Proponent submitted reply dated 18.10.2013 in which excess water consumption was admitted but said that it has not discharged excess quantity of water into CETP. In respect of second and third major non-compliances, reply was as under:

For second violation

“Reply: We have double effect evaporator system: the system is design such way that the neutralized High TDS and Low TDS mixed trade effluent is treated completely and recycle this is for the gardening and utility purpose. The residue remaining after double effect evaporator is then incinerated in our in-house incinerator.”

For third violation

“Reply: we have carrying out the solvent Recovery in a Reactor which is provided with double condenser to get maximum solvent recovery.”

536. In respect of minor non-compliance, reply was as under:

“Reply: As the production is carried is less than consented qty & is produced on campaign basis so hazardous waste generation is less. We have also incinerated some water in our in-house incinerator.

Reply: we are not using cartridge, neon filters & other filters. As per your direction if require very soon we will apply for consent amendment.”

537. Reply was considered by MPCB in its restart order dated 31.10.2013 and it held that there was excess discharge in CETP besides consumption of excess water despite directions issued by TEPS so as not

to result in excess discharge of pollutants by CETP. MPCB allowed restart of production with number of conditions mentioned in the said order. Proponent submitted a compliance letter dated 11.01.2014 in respect of other conditions except condition (a) for which it sought exemption giving its reasons.

538. This proponent has also objected days of violation on the same ground as raised by earlier Proponents. According to this Proponent, days of violation should have been 83 only. In general, it has also challenged compensation itself on the ground that it had not violated any condition or consent and therefore no compensation could have been imposed. We find on merit. Consumption of very high quantity of water then sanctioned is admitted. It is also not shown as to how excess water was dealt with so as not to discharge extra or excess release in CETP. With respect of major non-compliances of 2 and 3, Proponent relied on its double effect evaporator system stating that neutralized high TDS and low TDS mixed trade effluent is treated completely and recycled for the gardening and the utility purpose and residue after double effect evaporator is then incinerated in-house incinerator. No supporting material is placed before us. On the question of non-recovery of solvent based on layer of solvent in collection tank of ETP, reply is that Proponent is carrying out solvent recovery in a reactor which is provided with double concentrator to get maximum solvent recovery. In this regard, Proponent has placed on record consent renewal order dated 09.10.2012. With regard to trade effluent disposal, condition 3(iv) of consent renewal order said:

“Trade Effluent Disposal: High TDS effluent should be burnt in the existing incinerator equipped with wet scrubber Low TDS effluent should be treated in the effluent Treatment plant. The treated industrial effluent after conforming to the prescribed standards should be reused/recycled to the maximum extent and remaining should be counted to sewerage system provided by MIC for treatment at CETP for further treatment.”

539. In item 3 of chart at para 6(i), consent renewal order shows quantity of ash from incineration at 60kg/day (page 463). In support of submission that Proponent was achieving what he claimed from the alleged double effect evaporator system, neither any material has been placed to show quantity of ash generated as a result of treatment in the incinerators and how that ash was managed and treated. When process of evaporator system with incineration is adopted, it is bound to result in additional high consumption of electricity but to support thereof nothing has been placed on record. Inspection was made by Committee in the presence of Proponents representatives but no such explanation was given at the time of inspection. It is thus an afterthought. Therefore, the entire defence based on incinerator is uncredit worthy in view of above findings. In respect of days of violation, similar arguments we have already rejected giving reasons and the same is followed here also.

(v) Objection by Aarti Industries Ltd., K-17,18, 19 (item 5-List 103 of Committee):

540. This proponent has not raised any specific objection except saying that it has objection to the amount of compensation and liability in view of larger issue/objection raised by TIMA in the objections filed against report dated 18.06.2020.

541. In the affidavit dated 26.12.2020 sworn by Mr. Suresh L. Khimasia, authorized signatory of M/s Aarti Industries Ltd., it is said that statement of objection has been submitted to TIMA along with affidavit and the same is relied. However, no separate affidavit is on record before us. Available record shows that this industry was established in 1995 for manufacturing bulk drugs, a Red category, LSI scale unit. Under consent order, sanctioned discharged quantity of effluent is 318.4m³/day. Inspection was made on 05.09.2013 when Proponent was found using

excess water against sectioned quantity and also discharging sub-standard effluent in CETP. Consequently, closure/show cause notice dated 15.10.2013 was issued pursuant where to unit was closed on 18.10.2013. Conditional restart order was issued on 31.10.2013. Committee computed 240 days of non-compliance and compensation of Rs. 45.596 lakhs vide report dated 18.06.2020. Again, after giving further opportunity of hearing, vide revised report dated 21.08.2021, compensation has been revised to Rs. 57.881 lakhs. The difference of amount has come on account of change of distribution recovery cost factor which earlier was taken as 0.0028490 but subsequently found as 0.0036166. Thus, violation is evident and we find on ground to sustain objection.

(vi) Objections by Aarti Industries Ltd., L-5,8,9 TIA MIDC (item 6-List 103 of Committee):

542. This proponent is also a bulk drugs manufacturing unit in Red category with scale LSI. It was established in 1993 and as per consent order, sanctioned discharge quantity of effluent is 20 CMD. Taking days of violation as 600, Committee vide report dated 18.06.2020 computed compensation of Rs. 113.989 lakhs. The objections raised are:

- (i) Proponent is not in category Red and ought to be treated as Orange/Green category.
- (ii) It is not LSI scale unit but MSLA.
- (iii) Number of days of violation ought to be only 36 (17+19) and not 600 (13+587) as taken by committee.

543. We find from record that consent renewal was given by MPCB on 06.03.2014. It was amended vide order dated 06.11.2015 showing category and scale of proponent as Red/MSI and mentioned its capital investment as Rs. 8.03 crores. Board officials, in the inspection dated

23.11.2016 found from the sample of waste water collected from ETP outlet of proponent, pH 6.2 and COD 840mg/l against 250 mg/l. Thus, level of COD was much more and highly exceeded to the prescribed standard. Consequently, closure/show cause notice dated 03.12.2016 was issued. With regard to high level COD, Proponent admitted this fact in reply dated 09.12.2016 stating, *"The joint vigilance sample of treated effluent taken on 23.11.2016 was shown the COD of **840** mg/l which is higher than consent limit. **During the JVS sampling there was some technical problem in the separate tank & treasury treatment plant operation tertiary treatment plant operation. This problem was notices and immediately rectified** & the plant was running smoothly.*

***Hence COD was slightly higher than consent limit** we have improved our effluent treatment plant operation & treating the trade effluent effectively____ we will run our ETP plant effectively & take almost care to keep the ____ of our treated effluent within the prescribed consented limit. Last JVS report enclosed for your reference.*

We are in process of upgrading our existing ETP with the help of ETP consultants & try to maintain quality consistently. The up gradation will be done by installing fine bubble diffusers existing Secondary Settling Tank with proper feed well arrangement."

544. Proponent submitted letter dated 27.12.2016 informing about upgradation proposal for ETP. Another similar letter was submitted on 16.01.2017. Ultimately, restart order was issued by MPCB on 03.02.2017 recording undertaking of Proponent given on 17.01.2017 for modification of existing ETP to meet prescribed standards and time bound programme for ZLD system. Conditional restart order was given. Proponent was issued further consent renewal order dated 13.10.2017 wherein its category and scale was shown as Red and LSI, respectively and capital investment as Rs. 12.55 crores.

545. The objections of Proponent regarding category therefore, has no substance and and rejected since its category was specifically mentioned in consent order as Red throughout and also in the amendment consent order issued on 06.11.2015.

546. Objection with regard of number of days of violations, since grounds are same as propounded by Proponents referred above, hence for the reasons we have discussed above, this contention is also rejected.

547. The third submission regarding scale, in our view has substance. From 23.11.2015 to 03.02.2017, under consent order effective during that period, scale of industry of proponent was MSI, hence to that extent computation of compensation needs to be revised. It also placed on record that Committee vide revised report dated 21.08.2021 has revised compensation to Rs. 151.455 in place of 113.989 lakhs. The reason evident from the revised report is that date of inspection was mentioned wrongly earlier as 23.11.2018 and there was some mistake in respect of date of restart order. Further even distinction recovery cost factor has been modified and earlier it was 0.0071225 which has been found to be 0.0094634. Be that as it may, since scale of Proponent for the period during which compensation has been computed has been taken incorrectly and it has been taken as LSI though during the said period it was MSI, to that extent compensation determined against this proponent needs be revised. **The objection of this Proponent is partly allowed.**

(vii) Siyaram Silk Mills ltd. (earlier known as M/s Balkrishan Synthetics Ltd. (item 8-List 103 of industries):

548. This is a textile processing industry in Red category and LSI scale. It was established in 1981 and as per consent, industrial effluent discharge quantity permitted is 2000 CMD. Committee has computed compensation of Rs. 87.962 lakhs for 463 days of violation. Objection of

this Proponent mainly on the correctness of inspection and sample collected on 06.09.2013 and number of days of violation which according to proponent ought to be 21 only. The inspection conducted on 06.09.2013 found many violations. Closure/show cause notice was issued on 15.10.2013 mentioning major and minor non-compliances as under:

“Major Non-Compliance:

1. Aeration system of ETP found not in operation final outlet effluent is temperature at 40 to 50° C blackish color effluent was discharged to CETP the substandard effluent discharge is hampering operation of CETP which is also confirmed by exceeding JVS results.

*2. You have **changed fuel from coal to ... coke without proper permission of the Board thereby leading to excess emission load to environment at enadequate height.***

*3. You have not provided STP for the treatment of sewage, ... CMD and the same is **directly discharged into MIDC drain causing injury to environment.***

Minor Non-Compliance:

4. Flow meter is not provided thereby making it difficult to verify the quantity of effluent discharge to CETP.

5. You are disposing off the Hazardous Waste (waste oil) to the unauthorized party.”

549. Proponent submitted reply dated 19.10.2013 in which remarks of Committee were not shown incorrect but it has tried to explain the same. Conditional restart order was passed on 29.10.2013. The inspection was made in the presence of the representatives of the Proponent and no objection was mentioned in the inspection note to the observations noticed by inspection team. Moreover, reply submitted shows almost admission of discrepancies though proponent has tried to explain the same. We therefore find no reason to doubt the said inspection and observations made therein.

550. With respect to the number of days, we do not find any force since proponent has claimed lesser number of days on the same reasons as we have already discussed and rejected.

551. Further, compensation has been revised vide report dated 12.08.2021 in which it has been found that an inspection was made on 22.12.2014 when discharge of sub-standard effluent having COD 1500mg/l (against permitted 250mg/l) besides other major non-compliances were noticed. Committee vide revised report dated 21.08.2021 has computed compensation for 201 further days of violation and total compensation has been computed as Rs. 208.612 lakhs. Nothing has been placed before us to dispute this inspection and violations found therein. In view thereof the objections raised by proponent in entirety are rejected.

(viii) Camlin Fine Sciences Ltd., D-2/3 (item 9-list 103 of Committee):

552. The industry is producing synthetic organic chemical, established in 1984, in category Red and scale LSI. Permitted discharge quantity of effluent is 20 CMD. Committee report dated 18.06.2020 determined compensation of Rs. 516.561 lakhs for 871 days for violation. Factual inaccuracy with respect to date of inspection and restart date has been raised and further objection is about number of days of violation which according to proponent ought to be $189+61=250$. Inspection was made at the site on 22.04.2017 and discharge of sub-standard effluent to CETP with COD 23200 mg/l and Suspended solids 385 mg/l was found against prescribed limit of 250 mg/l and 100 mg/l respectively. Closure/show cause notice dated 25.04.2017 was issued. Proponent submitted letter dated 15.05.2017 suggesting some change in the process so as to reduce COD at the ground level. It did not dispute correctness of the facts found

by inspection team in the inspection dated 22.04.2017. Proponent has filed another letter dated 25.04.2017 purported to be reply of notice dated 25.04.2017 and therein also it had assured to maintain proper standard but there is nothing to show any inaccuracy in the report on the basis whereof closure/show cause notice dated 25.04.2017 was issued. Later, conditional restart order was issued on 16.05.2017. Committee made computation of compensation for 871 days at Rs. 516.561 lakhs.

553. However, the matter has been re-examined by Committee after objections were filed before this Tribunal. Committee granted opportunity of hearing to all identified defaulting industries. The number of days of violation has been reduced to 44 instead of 871. Further Committee has found from record two more instances of violation pursuant to inspection dated 16.04.2013 where closure notice was issued on 24.05.2013 and restart order was issued on 24.05.2013 and third inspection dated 11.09.2013 where closure order was issued on 15.10.2013 and restart order was issued on 01.11.2013. In the inspection report dated 16.04.2013, proponent was found discharging treated effluent beyond the prescribed standard by more than 100% and in the inspection dated 11.09.2013, again discharge of sub-standard effluent to sub-standard effluent to CETP was found where COD 1112mg/l, BOD was 800mg/l, increased water consumption and no separate treatment for high COD. In view thereof, the number of violation further was found for 148 and 192 days respectively, hence compensation in all has been revised to Rs. 428.077 lakhs against Rs. 516.561 lakhs. We find nothing from record to contradict above findings. The grounds regarding manner of computation of days of violation are rejected for the reasons we have already given in respect of earlier discussed Proponents.

(ix) CIRON DRUGS AND PHARMACEUTICALS PVT.LTD.(item 10-list of committee)

554. This industry has also filed objection but it does not say anything except that being an Orange category industry, level of pollution it is causing is negligible. Record show that it is LSI scale unit. Approved quantity of effluent discharge is 4.5 CMD. In the inspection dated 30.07.2018 unit was found discharging polluted effluent with COD 396mg/l, no sewage treatment plant for domestic effluent was provided, and contaminated plastic bags disposal was proper. Committee computed 96 days of violations and assessed compensation, vide report dated 18.06.2020 at Rs.11.399 lacs which is revised to Rs.14.470 lacs vide revised report dated 12.08.2021. Discharge of effluent with almost more than 50% high COD qua prescribed limit can not be said to be a negligible pollution. Since Proponent has not mentioned any ground of challenge, objection is rejected.

(x) M/s Dicitex Home Furnishing Pvt. Ltd. G-7/1 & 7/2, MIDC Tarapur (item 11-List 103 of Industries):

555. This industry is engaged in the production and process of textiles, established in 2004. It is Red category and LSI scale unit. Effluent discharge quantity, as per consent is 510 CMD. Committee computed compensation of Rs. 77.133 lakhs for 406 days of violation vide report dated 18.06.2020. Basic objection is regarding number of days of violation and as per proponent, it ought to be 222 only.

556. An inspection was made on 07.10.2017 when it was found that proponent has not provided Multiple effective Evaporator. Closure/show cause notice was issued on 06.02.2018 and restart order was issued on 13.03.2018. Violation noted above has not been shown incorrect and, therefore, we find no reason to interfere. Further, the case of proponent

has been re-examined by Committee vide report dated 12.08.2021. It has found that also an inspection was made on 06.09.2013 where various violations namely poor O&M of ETP, discharge of sub-standard quality effluent and violation of HW Rules were found. For the said violation also, compensation has been determined for 92 days. Compensation has been revised to Rs. 218.018 lakhs vide report dated 12.08.2021. Nothing has been placed to discredit above report. Hence objections are rejected.

(xi) M/s Dicitex Furnishing Pvt. Ltd. (Item 12-List 103 of Committee)

557. This is also a Textile industry, engaged in weaving and dyeing of home furnishing fabric, established in 2001 and its category and scale are Red and LSI, respectively. Sanctioned quantity of effluent discharge is 880 CMD. Committee's report dated 18.06.2020 assessed compensation of Rs. 16.908 lakhs taking days of violation as 89. Basic objection is with respect of number of days of violation and according to proponent it should be 54.

558. As per record, inspection was made on 6.09.2013 and following violations were found by Committee:

- “1. The industrial operations of Dyeing are not in operation, only activities related to furnished yarn were in operation.*
- 2. The primary damper laundry was observed with growth of spyregyra, the sludge also spirogyra, the sludge also found in launder channel.*
- 3. The sludge is observed in the final chamber before MIDC drain.*
- 4. There is provision of pipeline from primary clarifiers to treat water storage tank.*
- 5. HW generation and disposal is not matching i.e. disposal is very less as compared to consented quantity.*
- 6. The coal consumption is 20 MT/D approx. as compared to 14 MT the consented quantity.”*

559. Consequently, closure/show cause notice dated 15.10.2013 was issued referring to following major and minor non-compliances.

“Major non compliances:

1. *You have made provision of pipeline from primary clarifier to treated water storage tank, which indicates provision of bypass arrangement to discharge sub standard effluent to CETP which is also confirmed by the exceeding JVS results. Primary clarifier is also not in use for long period as indicated by algal growth.*
2. *The sludge/ slurry arises during treatment of effluent is being discharge in the final chamber before MIDC drain, leading to CETP, which hampers effective functioning of CETP.*
3. *Goal consumption is more than consented quantity, thereby leading to excess emission load to environment at inadequate height.*

Minor Non Compliance:

4. *You have not submitted Bank Guarantee of Rs. 2 lakhs, thereby violating consent condition no. 12.*
5. *Hazardous waste disposal is less compared to consented quantity.”*

560. Proponent submitted reply dated 22.10.2013 wherein broadly violations were not disputed. On the contrary, Proponent assured to comply with environmental norms and conditions of consent. MPCB issued order dated 29.10.2013 permitting restart of the unit with number of conditions. Proponent vide letter dated 11.11.2013 assured MPCB of compliance of all the conditions mentioned in the restart order.

561. Before us Proponent has filed a chart as annexure 2 (page 782) to show that from 2011-2019 on 30 occasions samples were taken and parameters were found within limits. Proponent has sought to contend that it was not violating environmental norms and not responsible for excess discharge of untreated/partially treated effluent by CETP. We find that the said chart nowhere refers to inspection dated 06.09.2013 in which admittedly number of violations were found. The said inspection was made in the presence of representatives of proponent who had also signed the report. Proponent was found to have violated environmental norms, particularly direct discharge without treatment by making bypass arrangement. There is nothing to discredit above report. Hence, we find no merit in the objections.

562. So far as dispute with regard to number of days is concerned, the grounds taken are similar as in other matters we have discussed above and for the reasons given, objection with regard to days of violation is rejected.

563. Based on the verification of the compliance date, Committee vide revised report dated 12.08.2021 has found period of non compliance as 242 and amount of compensation has been computed as 58.363. The said amount has been computed not only on the basis of the revised days of violation but also higher distribution recovery cost factor as it is evident from the report dated 12.08.2021.

(xii) M/s DC Polyester Pvt. Ltd. (Item 13-list 103 of Committee)

564. This is also a textile unit in red category and scale LSI. The sanctioned discharge quantity of effluent is 300 CMD. As per report dated 18.06.2020 Committee had assessed compensation of Rs. 46.356 lakhs taken number of days of violation as 244. In the visit of MPCB team on 06.09.2013 following non compliances (major and minor) were noticed.

“Major Non Compliances:

1. *You have undertaken excess production of grey cloth, texturised yarn & twisted yarn without obtaining prior permission from the Board thereby violated condition No. 2 at the Consent to Operate which might be leading to extra effluent load on CETP.*
2. *The JVS sample collected from the outlet of ETP are not confirming to the standards which indicates sub standard effluent discharge to CETP thereby hampering the CETP performance.*
3. *Hazardous Waste generated is not disposed to CHWTSDF within stipulated time period thereby violated the provisions of the Haz. Waste (Management, Handling & Transboundary Movement) Rules 2008.*

Minor Non-Compliances:

4. *Flow meter is not provided thereby making it difficult to verify the quantity of effluent discharged to CETP.”*

565. Consequently closure/show cause notice dated 15.10.2013 was issued. Proponent submitted reply dated 22.10.2013, firstly stating that

Proponents company is D.C. Polyester Pvt. Ltd. while notice is in the name of M/s DC Polymer Pvt. Ltd. and therefore name should be corrected. The allegation of excess production and generation of hazardous waste disposal in concentrate quantity was not disputed by Proponent in its reply dated 22.10.2013 though it has sought to explain the same. It also sought to rely on a private testing report dated 06.09.2013 to show that standards of discharge were within prescribed limits though how when and in what circumstances sample was taken is not clear from this report. This report dated 18.09.2013, therefore, is not reliable and can not discredit inspection report dated 06.09.2013 of MPCB officials. MPCB issued order dated 29.10.2013 permitting restart of unit with certain conditions. Proponent submitted acceptance of conditions mentioned in restart order, vide letter dated 11.11.2013. It was also stated that only one authorized discharge for treated effluent into the collection system of CETP is provided and it has installed flow meter to measure the flow. Vide letter dated 07.04.2014, Proponent clarified that it provided lock and key arrangement in November 2013, and that was not properly functioning and as per advice given by MPCB official it has changed the system and rearranged it. The objection with regard to number of days are on the same ground as raised by other Proponents which we have already dealt and rejected and the same is followed hereat. Mistake in the name of Proponent has not caused any prejudice to this Proponent hence no technical advantage can be given to this Proponent.

(xiii) M/s JSW Steel Coated Products Ltd., (JSW Steel Ltd.) (Item 15-List 103 Committee)

566. This is a Steel (Engineering) industry in red category in LSI Scale. Sanctioned quantity of effluent is 603 CMD. Vide report dated

18.06.2020, Committee computed compensation of Rs. 141.347 lacs. Inspection was made on 03.08.2011 when Proponent was found to have not installed Multiple Effective Evaporator. Closure order was issued on 21.12.2011 and conditional restart order was passed on 23.12.2011. Compensation was revised vide report dated 12.08.2012 to Rs. 115.038. Committee found that there was some error in the date and correcting the same, number of days of violation got reduced from 744 to 477 resulting in reduction of compensation.

567. Proponent has placed on record a letter dated 15.12.2011 whereby renewal of consent under Section 27 of Water Act, 1974 and 21 of Air Act, 1981 was refused by MPCB. Further closure notice dated 21.12.2011 shows that earlier consent to operate was granted subject to condition that Proponent shall provide multiple effect evaporation treatment system but despite expiry of one year it was not provided thus for violation of condition of consent, closure/show cause notice was issued on 21.12.2011. However earlier thereto, renewal of consent was refused by order dated 15.12.2011. Later on, by order dated 23.12.2011, after considering Proponent's letter dated 22.11.2011 assuring for commissioning of multi effect evaporator on or before 15.04.2012, MPCB kept in abeyance closure notice dated 21.12.2011 and consent renewal refusal letter dated 15.12.2011. Proponent's letter dated 23.04.2012 shows that it commissioned multiple effect evaporator on 22.04.2012. Thus, it cannot be said that the period for which compensation has been determined by Committee, there was no violation on the part of Proponent. The objection is accordingly rejected.

(xiv) M/s Kriplon Synthetics Pvt. Ltd. (Item No. 16-List 103 of Committee)

568. This is a textile industry in red category and LSI Scale. Sanctioned quantity of effluent discharge is 497 CMD. Vide report dated 18.06.2020, Committee computed compensation at Rs. 127.288 lakhs for two violations comprising 526 days of violations. Proponent claims that the number of days should have been only 93 and not 526. At the outset we may notice that in the subsequent revised report dated 12.08.2021 Committee has re-determined compensation at Rs. 77.416 lakhs and number of days of violation are also reduced to 172.

569. As per record placed by proponent itself, there was an inspection on 28.11.2016. Proponent was found violating following conditions:

- (a) RO and MEE not provided.
- (b) Did not submit DG.
- (c) Excess discharge to CETP.
- (d) STP not provided.
- (e) Details of ash disposal not provided.

570. Closure/show cause notice was issued on 03.12.2016 and restart order was passed on 25.01.2017. Proponent submitted letter dated 08.04.2017 showing compliance of conditions stated in restart order wherein it is said that it had reviewed ETP, incorporating requisite adequacy measures to ensure its efficient operation and performance. With regard to installation of RO and MEE, it is said that the matter is under consideration of experts for installation. It also assured to comply with all the norms in future. Another inspection was made on 02.02.2018 wherein also Proponent was found to have not installed multiple effective evaporator. Closure/show cause notice dated 06.02.2018 was issued and conditional restart order was issued on 21.02.2018. Proponent sent letter dated 08.02.2018 whereby it replied closure notice, and said that viability

of ZLD is under consultation with experts. However, it requested the authority, vide letters dated 8.4.2017 15.6.2017 and 20.09.2017, to waive condition of ZLD. It is evident that no order was passed for waiver of the said condition. Hence violations on the part of Proponent are established.

571. However, finding certain actual mistakes in the dates, Committee vide revised report dated 12.08.2021 has reduced days of violation to 172 and compensation amount has also been reduced as stated above. The grounds on which computation of number of days of violation has been disputed, is already rejected above and the same is followed here at also. We may also place on record that objections in question nowhere show that the condition of providing multiple effective evaporator has been complied even now and the said violation is still continuing continuing.

(xv) M/s Mandhana Dyeing (Item No. 17- List 103 Committee)

572. It is also a textile industry, red category, LSI scale with sanctioned quantity of discharge of effluent as 900 CMD. Committee has assessed compensation at Rs. 14.629 lakhs taking days of violation as 77. Proponent has stated that M/s Mandhana Dyeing has become M/s G.B. Global Ltd. since 2018. Basic objection is with respect of number of days of violation.

573. Proponent unit was inspected by MPCB officials on 11.05.2017 and found discharge of polluted effluent, having COD 1016 mg/L. Closure/show cause notice was issued on 17.05.2017 and restart order was passed on 02.06.2017. We do not find anything on record to show that above violation was not caused by Proponent. So far as objection in regard of manner of computation of number of days of violation is concerned, the grounds taken are similar as taken in other matters we

have already discussed and rejected. We, therefore, find no force in the objections.

(xvi) E-Land Fashion (India) Pvt. Ltd. (Mudra Life Style) (Item No. 18-List 103 of Committee)

574. A textile industry, in red category and scale LSI with sanctioned quantity of discharge of effluent as 115 CMD. Inspection was made on 12.04.2016 when discharge of sub-standard effluent to CETP having COD 828 mg/l and SS 142 mg/l was found which was much beyond the permissible limit. Closure/show cause notice was issued on 14.10.2016 and restart order on 28.10.2016. Another inspection was made on 12.05.2017 when again similar violations were found i.e. discharge of sub-standard effluent to CETP having COD 976 mg/l and SS 125 mg/l. Closure/show cause notice dated 20.05.2017 was issued and restart conditional order on 23.06.2017. Committee computed compensation of Rs. 288.772 lakhs taking violation days as 386 and 597, respectively for both the inspections. Subsequently vide revised report dated 12.08.2021, number of days have been reduced to 385 and 99, noticing certain error in the dates hence compensation has also reduced to Rs. 140.602 lakhs. In respect to both the inspection basic objection raised by proponent is with regard to computation of the days of violation and according to it the same ought to be 47 and 94, total 141 only. The reasons are same as we have already discussed and rejected. The objection is therefore rejected.

(xvii) M/s Manan Cotsyn Pvt. Ltd. (Item No. 20-List 103 of Committee)

575. It is a textile processing of fabrics industry, red category and scale LSI. Approved quantity of effluent discharge is 225 CMD (ZLD). Consent to operate was given 31.12.2013. However, prior to that, inspection was made on 27.12.2012 when it was found that ZLD was not available,

tanker water was being used and sub-standard quality effluent was being discharged. Consequently, closure/show cause dated 10.01.2013 was issued. Another inspection was made on 11.09.2013 when following violations were found:

- (i) ETP not in operation.
- (ii) Made by pass arrangement for discharge of sub-standard quality effluent.
- (iii) ZLD not provided.
- (iv) Use of tanker water.

576. Closure/show cause notice was issued on 15.10.2013 and conditional restart order issued on 31.12.2013. In respect of both the violations, compensation was determined at Rs. 507.062 by Committee in its report dated 18.06.2020 taking number of days of violation as 1344. Subsequently, vide report dated 12.08.2021, Committee has found some error in the dates hence number of violation of days have been reduced to 258 and 455 respectively, total 713 and compensation has reduced to 281.204 lakhs. Proponent says that subsequently it has not been found committing any default and category of company has wrongly been taken as LSI though it is SSI unit. Proponent has raised a serious objection about the scale and said that when consent to establish was issued on 21.12.2010 and consent to operate issued on 31.12.2013, Proponent unit was in SSI scale and therefore compensation could not have been computed treating it as LSI. On this aspect we do not find any consideration by Committee in the revised report also. In our view, to this extent, matter needs reconsideration. The objections are partly allowed and Committee would revisit amount of compensation. We make it clear that scale of industry would be such as on the date of violation(s). Rest

objections are rejected as findings of violations could not be contradicted by placing any material.

(xviii) Resonance Speciality Ltd. (Item No. 21-List 103 of Committee)

577. It is a chemical industry, red category, SSI scale, established in 1992. Discharge quantity of effluent permitted is 12 CMD. Compensation of 173.770 lakhs was determined by Committee vide report dated 18.06.2020 taking days of violation as 1596 and 574, respectively, total 2170 in two incidents of violations. Amount of compensation has been revised vide Committee's revised report dated noticing some mistake in the days to 326 and 575 days respectively, total 901, and compensation has been reduced to 118.656 lakhs.

578. Inspection was made on 12.09.2013 when following violations were noted:

- i. Manufacturing un-authorized products.
- ii. Effluent treatment plant corroded and dismantled condition indicating non-operation of ETP and thereby leading to sub-standard quality of discharge to CETP.
- iii. Using pet coke as fuel without permission and causing excess emission load to environment.
- iv. Distillation residue is unscientifically stored and burned in industrial premises leading to polluted emission.
- v. Smell of ammonia gas was felt all over the industrial premises indicating non-provision of ammonia scrubbing system.

579. Closure/show cause notice was issued on 15.10.2013 and conditional restart order on 07.11.2013. Another inspection was made on 13.02.2018 and following violations were found:

- (i) RND facility installed without obtaining consent from MPCB.

- (ii) About 10 Mp distillation residuary illegally stored in premises.
- (iii) Increase fuel quantity.
- (iv) Sample collected show polluted effluent discharge having COD 3536 TDS 4682 mg/l affecting performance of CETP.

580. Show cause/closure notice was issued on 18.04.2018 and conditional restart order on 26.09.2019. Objection is to the manner of computation of number of days of violation. As per proponent, the same should have been 382 and 191, respectively, total 573. The grounds for disputing number of days of violation are the same as we have already discussed and rejected and same are followed hereat also. Since pollution found to be caused by Proponent is virtually admitted, therefore, we find no reason to grant any relief to this Proponent.

(xix) Silvester Textiles Pvt. Ltd. (Item No. 22-List 103 of Committee)

581. A textile unit, is red category, LSI scale, has sanctioned quantity of discharge of effluent as 410 CMD. On 04.09.2013, when inspection was made, following violations were found:

- (i) Operation without valid consent, applied for renewal.
- (ii) Secondary treatment not provided at ETP.
- (iii) Poor operation and maintenance of ETP.
- (iv) Sub-standard quality of effluent discharged to CETP.
- (v) Flow meter not provided.

582. Closure/Show cause notice was issued on 15.10.2013 and conditional restart order on 29.10.2013. Another inspection was made on 9.07.2017 when Proponent was found discharging Sub-standard quality discharge having COD 432 mg. Closure/show cause notice 21.07.2017 was issued and conditional restart order on 18.08.2017. Committee in the report dated 18.06.2020 computed compensation at Rs. 191.882

lakhs taking violation days as 290 and 360, respectively, total 650. In the revised report dated 12.08.2021, amount of compensation has been revised to 243.582 lakhs. Proponent has basically disputed number of days of violation and according to it the same ought to be 45 and 16 days, respectively. The grounds for disputing number of days are same as we have already discussed and rejected and same are followed hereat also.

583. Moreover, violations found by the team are not disputed therefore we find no reason to grant any relief to the Proponent.

(xx) Sarex Overseas (Item No. 23-List 103 of Committee)

584. It is a chemical industry, in red category and LSI scale. Sanctioned discharge quantity of effluent is 200 CMD. In the inspection dated 09.07.2017, Proponent was found operating unit without consent and discharging sub-standard effluent having COD 432 mg/l.

585. Closure/ show cause notice was issued on 21.07.2017. Compensation was determined vide report dated 18.06.2020 as Rs. 153.695 lakhs for 809 days. However, it has been revised to 807 days and Rs. 194.624. Basic reason of increase is change of distribution of recovery cost factor which earlier was 0.0096034 but now revised to 0.0121608. In the objections it is said that initial consent was for a period of 01.03.2013 to 28.02.2018 and it was renewed for five years from 01.03.2018 to 28.02.23. Therefore, report that proponent was operating without consent is incorrect. We find force in this submission. Copy of consent to operate dated 28.08.2013 has been placed on record showing that it was granted for a period upto 28.02.2018. Consent renewal order dated 31.05.2018 is also placed on record showing that it was granted upto 28.02.2023. It cannot be said that Proponent was operating without

valid consent. However, this does help the Proponent. We find that in the inspection report dated 09.07.2017, there are more violations noted by inspection team:

- (i) Significant quantity of untreated effluent found flowing outside factory premises, SW drains, spot pH noted 7-8 (as per pH paper)
- (ii) Air emission (acidic) from zero section is noticed emanating from mother liquor tank from centrifuge tank (as informed by President)

586. In the closure/show cause notice also violations given are:

- (i) Board officials has visited your industry on 09.07.2017 and during visit significant quantity of untreated effluent found flowing outside factory premises through storm water drain.
- (ii) JVS from was collected, and after analysis of the same the parameter COD 432 mg/l is which is exceeding the consented limit.
- (iii) Acidic fumes from zero section of mother liquor tank near centrifuge area.

587. In respect to discharge of polluted effluent, Proponent in its reply dated 24.07.2017 has said:

- (i) We have also mentioned in the inspection report that there was some leakage in our water hydrant line which was going into drain and it was not the untreated effluent.
- (ii) You have mentioned in your above referred letter that the COD of joint vigilant sample was found 432 mg/L and that is exceeding the consent limit. **We assure you that we will take abundant care to see that COD remains less than the prescribed limit of MPC Board.** We are attaching herewith results of past JVS where we have successfully complied with the MPCB norms. The copies of JVS results are attached herewith as Annexure "A".

(iii) During the visit of Sub Regional Officer, it was also observed that, at the ground floor of our plant ("0" meter section) there was some fume form the tank of mother liquor. This was due to leakage of the gasket which was immediately rectified and attended during visit of Sub Regional Officer itself and shown to him to his satisfaction. The same was also mentioned by us as 'our note' in the inspection report hence this issue is attended and resolved.

588. Thus, violations noted by the inspection team are admitted. The mere fact that some observations of violations are not correct, would make no difference since computation of compensation is not dependent on the number of violations. The further objection that number of days has been wrongly taken and the same should have been only 13 based on the same reasons which we have already discussed and rejected. Following the same reasons, it is rejected here at also.

(xxi) Zeus International (Item No. 24-List 103 of Committee)

589. It is chemical industry, red category, scale LSI with sanctioned quantity of effluent discharge as 400 CMD. In the report dated 18.06.2020, Committee has determined compensation as Rs. 619.341 lakhs taking days of violation as 2328. In the revised report dated 12.08.2021, noticing some mistakes and factual errors in the dates, days of violations have been revised to 1487. Further another violation based on a third inspection has been found for which 650 days have been taken. The quantum of compensation has been re-determined as Rs. 463.063.

590. There were 3 inspections and violations were noted on 3 occasions. First inspection is dated 11.10.2012. Proponent was found discharging sub-standard effluent, highly exceeding prescribed standards. Closure/

show cause notice was issued on 24.05.2013 but proponent failed to comply therewith and continued to violate closure direction. Second inspection was made on 15.09.2013 and again discharge of sub-standard effluent to CETP was found. Closure/show cause notice was issued on 15.10.2013 and conditional restart order on 07.11.2013. Third inspection was made on 16.01.2017 and again discharge of sub-standard effluent to CETP was found with COD 504 mg/l. Again on 17.01.2017 COD level was found as 252mg/l. Closure/show cause notice was issued 14.02.2017 and conditional restart order on 09.05.2017.

591. Proponent has basically disputed days of violation taken for computing compensation and according to it for violations pursuant to reports dated 11.10.2012 and 16.01.2017, it should have been 163 days and 81 days, respectively. The grounds taken are same as we have already discussed and rejected and followed hereat also. Further this is a clear case where Proponent has repeatedly violated environmental norms and hence we do not find any ground justifying any relief.

(xxii) Valiant Glass Works Pvt. Ltd. (Item No. 25-List 103 of Committee)

592. It is textile unit, red category and scale LSI. Sanctioned discharge quantity of effluent, as per consent order is 2000 CMD. Committee in the report dated 18.06.2020 computed assessment at Rs. 110 lakhs for 327 and 126 days of violation total 453 days. There are two inspections when Proponent was found violating environmental norms. One is dated 11.09.2013. Violations found were noted and based thereon, closure/show cause notice dated 15.10.2013 was issued giving details of violations as under:

“Major Non-Compliances:

1. *You have not provided Secondary & tertiary treatment to treat the trade effluent and the operation of primary treatment is observed*

unscientific thereby discharging sub-standard effluent to CETP which is also confirmed by exceeding JVS reports. Further the effluent generated from printing section having pH 9 to 10 is directly connected to final outlet bypassing ETP, thereby discharging sub-standard effluent to CETP which is also confirmed by exceeding JVS reports.

- 2. It was noticed that after April, 2013 you have not disposed off the hazardous waste to CHWTSDf. Also, further no hazardous waste was observed stored in premises which indicates non operation of effluent treatment system. Thus, you are discharging sub-standard effluent to CETP, thereby hampering proper functioning of CETP.*
- 3. You have change fuel from coal to pet coke without prior permission of the Board, thereby leading to excess emission load to environment at inadequate height.*
- 4. Flow meter is not provided thereby making it difficult to verify the quantity of affluent discharged to CETP.”*

593. Proponent did not reply show cause notice and this fact is not disputed in the letter dated 23.10.2013 submitted by Proponent in compliance of the conditions of restart order dated 29.10.2013. Violations noticed by inspection team are virtually not disputed by Proponent.

594. Another inspection was made on 01.12.2018 and pursuant to the violations found, closure/show cause notice dated 24.12.2018 was issued mentioning violations as under:

- (i) As per consent conditions, till date you have not installed S.T.P. for treatment of sewage effluent generated from your unit.
- (ii) The analysis report JVS collected of outlet of ETP shows parameter (COD-496) exceeding consented limits.

595. The reply dated 25.11.2018 shows admission of both the violations. Proponent has tried to explain the same.

596. Further objection is with regard to manner of computing number of days of violation for which compensation has been determined by Committee on the same ground as we have already discussed and rejected. The said reasoning is reiterated here also.

597. However, in the revised report dated 12.08.2021, Committee has taken days of violation as 327 and 43, total 370 days, noticing certain factual errors in the dates and compensation has been re-determined as Rs.99.603 lakhs.

(xxiii)M/s Aarti Drugs Ltd. Plot E-9/3-4, MIDC (Item No. 26-List 103 of Committee)

598. It is a bulk drugs manufacturing unit, red category, scale SSI. Sanctioned quantity of effluent is 30 CMD. Proponent was assessed compensation of Rs. 4.813 lakhs for 38 days of violation. Committee treated Proponent as MSI but in the revised report dated 12.08.2021, scale of Proponent has been modified as SSI but number of days of violations are increased to 102 instead of 38 and compensation has been redetermined as Rs. 8.2 lakhs in place of Rs. 4.813 lakhs.

599. The only objection raised before us is with regard to manner of computation of number of days of violation and according to it the same should have been 37. The grounds are same as we have already discussed and rejected and follow the same hereat also. With respect to violations, we find that inspection was made on 12.09.2013 when Proponent was found committing violations pursuant Where to closure/show cause notice dated 15.10.2013 was issued giving details of violation as under:

“Major Non-Compliances

- 1. The ETP especially secondary & tertiary treatment was not found in operation thereby leading to sub standard discharge of effluent to CETP which is also confirmed by exceeding JVS results.*
- 2. The provision of By-pass arrangement from collection tank to final outlet and from primary clarifier to outlet have been confirmed during the visit, thereby leading to sub standard discharge of effluent to CETP which is also confirmed by exceeding JVS results.*
- 3. The high COD stream is not disposed off properly which has also been confirmed by the exceeding JVS results thereby hampering operation of CETP.*
- 4. You are disposing waste solvent in an unauthorized manner.*

5. *You have increased production of 2-Phenoxy sulphonamide more than consented quantity without obtaining EC & consent from the Board.*
6. *Change of fuel from Briquette to coal without prior permission of the Board, thereby leading to excess emission load to environment at inadequate height.*

Minor Non-Compliances:

7. *Flow meter is not provided, thereby making it difficult to verify the quantity of effluent discharged to CETP.”*

600. Proponent by letter dated 21.09.2013 stated to MPCB that it assures to reduce effluent quantity by 25% in future and to comply with norms. The relevant extract of reply given by proponent is as under:

“Thus violation is admitted and thus we find no reason to justify any relief to this proponent.”

(xxiv) Jakharia Fabrics Pvt. Ltd. (Item No. 27-List 103 of Committee)

601. A textile unit, red category, LSI scale, and has sanctioned discharge quantity of effluent, as per consent order is 378 CMD. Committee vide report dated 18.06.2020 determined compensation of Rs. 251.536 lakhs for 1324 days of violation. However, in the subsequent revised report dated 12.08.2021 compensation has been reduced to Rs. 49.440 lakhs reducing days of violation as 205.

602. Inspection was made on 09.03.2013 noticing violations pursuant where to closure/show cause notice dated 15.10.2013 was issued detailing major and minor violations as under:

1. *Production quantity observed more than consented limit which means violating the consent conditions and creating extra pollution load in the environment.*
 2. *Board has granted the consent to achieve ZERO effluent discharge whereas you are discharging untreated effluent having (pH 10 to 11) outside the factory premises in MIDC open drain (Bypass) which is causing grave injury to environment which is also confirmed by exceeding JVS results and non operation of ETP as reported during visual inspection.*
- Minor Non Compliances:**
3. *Flow meter is not provided, thereby making it difficult to verify the quantity of effluent discharged to CETP.”*

603. The violations noted were virtually admitted by Proponent though with some explanation, vide reply dated 18.10.2020. The objection with regard to manner of computation of day of violation is rejected for the same reasons we have discussed above in the case of Proponent at item 1 in the list. We therefore find no reason to grant any relief.

(xxv) Pal Fashions Private Limited (Item No. 28-List 103 of Committee)

604. A textile unit, red category and scale LSI, has sanctioned quantity of effluent for discharge as 500 CMD as per consent order. Committee vide report dated 18.06.2020 determined compensation as Rs. 99.551 lakhs for 786 days of violations. However, in the revised report dated 12.08.2021 compensation has been reduced to Rs. 45.179 lakhs for 281 days noticing some errors in the dates.

605. An inspection was made on 13.09.2013 and based on the violations noted therein closure/show cause notice dated 15.10.2013 was issued giving details of violation as under:

“Major Non Compliances:

1. *Water consumption is more than consented quantity which shows excess load discharged to CETP thereby hampering operation of CETP.*
2. *No treatment chemicals observed at ETP also ETP was not found in operation, thereby leading to discharge of sub standard effluent having pH 10 to 11 (by pH paper) to CETP which is also confirmed by exceeding JVS reports.*
3. *Algal growth noticed in sludge drying bed which indicates chocking of Sludge drying bed and non operation from long period.*
4. *Fuel consumption is more than consented quantity. One stream boiler (2.5 TPH) and oil fired boiler installed without obtaining permission from the Board thereby leading to excess emission load to environment at inadequate height.*
5. *As per consent condition fly ash arrester/ ESP is not provided thereby violating the consent condition.*

Minor Non Compliances:

6. *Flow meter is not provided thereby making it difficult to verify the quantity of effluent discharged to CETP.”*

606. The violations noted on the date of inspection have not been shown incorrect by Proponent though it is relying on some other reports of

different dates to justify that it was not violating the norms. Conditional restart order was issued on 29.10.2013 and in reply thereof Proponent in letter dated 18.11.2013 stated it shall abide by all the conditions mentioned in the restart order. We therefore find no reason to grant any relief to this proponent. Various representations filed by Proponent show that it is trying to justify request for reduction in compensation on the ground of its subsequent efforts to remove violations but subsequent efforts cannot condone earlier violations.

(xxvi) SD Fine Chem Ltd (Item No. 29-List 103 of Committee)

607. A chemical industry, red category, MSI scale, and sanctioned quantity of effluent discharge is 16 CMD for industrial purpose and 2 CMD for domestic purpose. On two occasions violations were noted. Taking days of violation as 1770 in respect of violations of 2013, vide report dated 18.06.2020 compensation was assessed at Rs. 329.302 lakhs. Later noticing error in the dates, days of violation has been revised and subsequent violations have also been taken into consideration. Taking total days of violations as 193 days and 415, total 608 days, compensation has been redetermined at Rs. 164.478 lakhs.

608. Inspection was made on 12.09.2013 and noticing violations, closure/show cause notice dated 15.10.2013 was issued giving details of violations as under:

“Major Non Compliances:

1. *Manufacturing various products other than consented products and the total quantity is also very high than the consented quantity which is a violation of consent conditions. Environmental Clearance is not obtained for the additional new products.*
2. *Scrubber provided to MPP plant and H & D plant was not in operation, thereby untreated emission are led to environment causing grave injury to environment.*

Minor Non-Compliance:

3. *Hazardous Waste disposal is less as compared with consented quantity, indicates non operation of effluent treatment system regularly.*

4. *Flow meter is not provided, thereby making it difficult to verify the quantity of effluent discharged to CETP.*
5. *JVS results are exceeding the stipulated standards implying discharged of sub-standard effluent to CETP.”*

609. The violations have not been disputed in the reply submitted by proponent vide letter dated 18.09.2013 though it has attempted to explain. Conditional restart order was issued on 30.10.2013.

610. Another inspection was made on 28.07.2018 and noticing violations, closure/show cause notice dated 8.08.2018 was issued detailing violations as under:

- (i) You are manufacturing un-consented product like Genorool. JPA, Chloform and also increased quantity of some products which violating the consent conditions no. 12 of page No. 3 and 4.
- (ii) Your JVS report of samples collected on 28.07.2018 are exceeding the consented limit for COD-408 mg/L and SS 119 mg/L.
- (iii) During visit primary clarifier found not in operation uneven flow was, observed in launder which shows your negligence towards operation & maintenance of ETP.
- (iv) You are operating multi product plant where ammonia fumes are generated.
- (v) You have provided online pH meter & flow meter, but not provided data logger.
- (vi) You have stored about 30 MT zinc oxide since from 15 years (as reported by industry representative) generated during manufacturing of product Cupferron.
- (vii) You have stored other outdated chemicals such as Nitrobenzene, Phenolcrystence, isopherylether, triacetate in factory premises.

611. Proponent submitted reply dated 13.08.2018 where from we find that the proponent has tried to explain violations in his own way and there is no clear denial. Therefore, we find that substantial violations noted in inspections have not been shown incorrect. Conditional restart order was issued on 23.08.2018. Since violations are writ large, Proponent is not entitled for any relief and objection against computation of compensation is rejected.

(xxvii) Auro Laboratories Limited (Item No. 31-List 103 of Committee)

612. It is a bulk drugs manufacturing unit, red category, MSI scale. Sanctioned effluent discharge 19 CMD. In the report dated 18.06.2020 Committee determined compensation of Rs. 179.470 lakhs taking days of violation as 131 and 643, total 774 days, based on two inspections. However, later noticing mistakes in the dates, compensation has been redetermined as Rs. 65.437 lakhs reducing days of violations as 131 and 138, total 269 days.

613. Inspection dated 03.06.2016 shows following violations:

- (i) It is not in operation.
- (ii) Storm water drain to carry effluent.
- (iii) Generation of mother liquor but not shown in consent.
- (iv) HW stored near ETP unscientifically.

614. Closure/show cause notice was issued on 28.07.2016 and conditional restart order was issued on 17.05.2017.

615. Another inspection was made on 28.07.2017 noticing following violations:

- (i) Discharge of substandard quality effluent having COD 70,000 mg/l.
- (ii) ETP not operational

616. Closure/show cause notice dated 08.08.2018 was issued and thereafter restart conditional order on 07.01.2019. In the objections before us we do not find any material to show that the violations noted by inspection team were not correct. The computation of days of violation has been challenged on the same grounds which we have considered and rejected and we reiterate here also. Since violations are admitted, we find no reason justifying any relief to this Proponent.

(xxviii) M/s Valiant Organics Ltd. (Formerly known as M/s. Abhilasha Tex-Chem Pvt. Ltd.) (Item No. 32-List 103 of Committee)

617. The unit is producing para nitro aniline and red category, SSI scale unit. It claims to be ZLD unit, but in the inspection dated 10.11.2016 it was found that ZLD was not at all provided and unit was discharging high COD stream directly to MIDC sewage. Consequently closure/show cause notice dated 29.11.2016 was issued. Proponent's letters dated 21.01.2017 and 01.02.2017 clearly show that ZLD was not provided till that date. However, restart order was passed on 15.02.2017 with certain conditions including that the proponent shall improve/modify existing ETP and operate it continuously. Committee determined compensation of Rs. 4.94 lakhs in the report dated 18.06.2020 taking days of violation as 78. Vide revised report dated 12.08.2021 compensation has been reduced to Rs. 4.421 lakhs on 55 days of violation. The entire objections are rejected, Firstly, proponent was clearly causing pollution and secondly for the reasons we have already discussed above with respect to number of days. we find no merit in the objections raised and the same are rejected.

(xxix) M/s Alexo Chemicals (Item No. 33-List 103 of Committee)

618. It is a Chemical industry, red category and SSI scale. Sanctioned quantity of effluent is 0.7 CMD. Vide report dated 18.06.2020,

compensation was determined at Rs. 52.815 lakhs for 463 days of violation. The objection is against manner of computation of days of violation. According to Proponent it should have been 171 days.

619. Inspection was made on 28.11.2016 when several violations were noted pursuant where to closure/show cause notice dated 03.12.2016 was issued mentioning violations as under:

“Board officials visited your industry on 28.11.2016 to verify compliance of consent conditions & collection of Joint Vigilance sample from ETP outlet. Sub-Regional Officer, Tarapur-I communicated analysis reports of waste water collected from ETP outlet/V-notch/bypass line/treated effluent sumps of your industry. The analysis reports show values of pH-10.6; & COD-32000 mg/L which is exceeding to the inlet designed parameters of CETP thereby up-setting CETP performance. It is found from vigilance sampling drawn during odd hours that you are discharging highly polluting stream/chemical load to the CETP and degree of exceedance of COD compared to consented norms is 12700%. The above fact clearly indicates that you have adopted this practice of discharge of high COD stream and your tendency towards not to abide environment norms. The high polluting/COD streams hampers functioning of CETP operations thereby discharging substandard quality effluent in Navapur sea and creating adverse impact on nearby environment. After perusing the results, degree of exceedance and tendency of discharge of untreated effluent, I am of the opinion that you are willfully/intentionally discharging highly polluting effluent stream thereby violating consented norms and causing severe damage to the environment which needs to be stopped immediately to protect such damage of environment.”

620. Another inspection was made on 26.07.2018 and pursuant to the violation noted therein, closure/show cause notice dated 08.08.2018 was issued mentioning violations as under:

“During visit to your, plant found under maintenance, however discharge of washing effluent was found going outside the factory premises. The sample analysis reports at this effluent are exceeding the consented limit for BOD-23000 mg/L, COD-70400 mg/L & TDS 4884 mg/L.”

621. Conditional restart orders were issued on 17.03.2017 and 08.10.2018, respectively. Vide revised report dated 12.08.2021, compensation has revisited as Rs. 63.749 lakhs by taking 51 days of

violation in respect to first inspection and 371 in respect to second inspection. Nothing has been placed on record by Proponent to show that violations were not caused by it. The objections that number of days should have been only 171 is not acceptable for the reasons already discussed and rejected above. The objections are accordingly rejected.

(xxx) Ashwin Synthetics Private Limited (Item No. 34-List 103 of Committee)

622. It is a chemical industry in red category with SSI scale. Effluent discharge was sanctioned for 30 CMD. Vide report dated 18.06.2020 Committee computed compensation at Rs. 41.163 lakhs for 444 and 103 days of violations, pursuant to two inspections. In the revised report dated 12.08.2021, days of violation have been revised as 319 and 103 noticing some mistakes in the dates and compensation has been re-determined at Rs. 42.526 lakhs.

623. The objection of Proponent is that it is not a chemical industry but a yarn dyeing and textile unit. This aspect is of no consequence since category would remain same. Quantum of effluent discharge is disputed stating that it was sanctioned higher quantum but nothing on record is placed to fortify it. With regard to inspection, it is said that it was conducted hasty and unfair and alleged non-compliance is also disputed. Further even days of violation are disputed.

624. From record we find that inspection was made on 07.12.2016. Proponent was found discharging sub standard effluent to CETP. Closure/show cause notice was issued on 18.12.2016 and conditional restart order was issued on 16.06.2017.

625. Again, inspection was made on 30.08.2018, the violations recorded are:

- (i) Violation of closure direction.
- (ii) Jeans washing activity without permission.
- (iii) Direct discharge in nala.
- (iv) Using unauthorised water (tanker).
- (v) Not disposing hazardous waste to common disposal facility i.e., CHWTSDF.

626. These violations are not shown incorrect by placing any material before us. Therefore, we find that Proponent is not entitled for any relief. Dispute with regard to days of violations since based on the same grounds which we have already discussed and rejected, the same are followed here at also.

(xxxix) Accusynth Specialty Chemicals Pvt. Ltd. (Item No. 35-List 103 of Committee)

627. It is a bulk drugs intermediate manufacturing unit, in red category and SSI scale. Effluent discharge quantity permitted is 2.5 CMD. Committee vide report dated 18.06.2020 computed compensation at Rs. 33.057 lakhs for 522 days of violation. In the revised report dated 12.08.2021, compensation has reduced to 23.313 lakhs due to reduction in days of violation as 290 instead of 522.

628. Inspection was made on 5.1.2018. Number of violations were noted as under:

- (i) Increase water consumption.
- (ii) Violation of environment clearance.
- (iii) Exceeding fuel consumption.
- (iv) Illegal transportation of spent acid.
- (v) Not disposing hazardous waste timely.

629. Proponent submitted reply to closure/Show cause notice dated 12.01.2018 vide letter dated 17.01.2018 wherein with regard to excess use of water it has said that large quantity of water was used in garden and there was a leakage in condensate reuse line. Some other explanations are also given. With respect to excess production than permitted, Proponent has tried to explain that combined production of different products should be examined and not separately. With respect to violation of EC, it is not disputed that some products manufactured were not permitted in EC but explanation is that the quantity produced was within the limit of production permitted. Use of fuel or material not permitted is also not disputed. Though it is sought to be explained on the ground that it was cost effective and had other advantages. With respect to transportation of acid also we find no satisfactory explanation. All the explanations are lame and flimsy. Proponent has not denied violations but tried to explain the same in a different perspective which is not permissible. Further objection with regard to days of violation, which according to Proponent should have been 127, the grounds are same as we have already discussed and rejected. In the entirety we find no merit and all objections are rejected.

(xxxii) M/s Aradhana Energy Pvt. Ltd. (Item No. 38-List 103 of Committee)

630. It is a chemical industry, red category, SSI scale. Sanctioned discharge of effluent is Nil. Proponent was granted consent to operate by letter dated 11.03.2019 but it already underwent production. Inspection was made on 20.01.2019 when Proponent's unit was found in production without consent to operate. Consequently closure/show cause notice was issued on 12.03.2019 and restart order on 04.04.2019. For 329 days of violation, Committee, vide report dated 18.06.2020 computed

compensation at Rs. 20.835 lakhs. However, compensation has been revisited vide report dated 12.08.2021 and has reduced to Rs. 2.572 lakhs based on 32 days of violation noticing some factual errors. Since violations, on the face are evident we find no justification for any relief to Proponent. Further objection is that days of violation should be taken as 88 stands already infructuous since Committee has reduced days of violation as 30. Therefore, nothing survives so far as this Proponent is concerned with respect to issuance of computation of days of violation.

(xxxiii) Bajaj Healthcare Ltd. (Item No. 39-List 103 of Committee)

631. The unit is engaged in the production of drugs intermediate, a red category, SSI scale industry. Quantity of effluent sanctioned is 1.3 CMD. Based on two inspections where violations were found, Committee, vide report dated 18.06.2020 assessed compensation at Rs. 52.878 lakhs for 481 and 777 days of violations.

632. Inspection was made on 12.04.2012 when violation of discharge of sub-standard discharge of effluent to CETP was found. Closure/show cause notice was issued on 16.05.2012 and conditional restart order on 19.06.2012.

633. Another inspection was made on 05.09.2013 and following violations were noted:

- (i) Manufacturing unconsented products.
- (ii) Inadequate ETP, discharge of sub-standard effluent to CETP.

634. Closure/show cause notice was issued on 15.10.2013 and conditional restart order on 30.10.2013. From the reply of Proponent, we find that discharge of polluted effluent in CETP was not disputed. On the other hand, explanation was that Proponent's effluents treatment plant was slightly destabilized as blower of aeration tank was under

maintenance. It is also admitted that sample collected on 12.04.2012 showed COD as 642, against permissible standard of 250. Similar admission we find in respect of ETP condition also.

635. Further objection is with regard to days of violation and according to Proponent the same should have been only 14 days. The grounds taken are same which we have already discussed and rejected. The objections are entirely rejected.

636. We may also place on record that in the revised report dated 12.08.2021, Committee has found certain factual mistakes in computation of number of days of violation and the same has been revised as 481 and 188. Amount of compensation has been redetermined as Rs. 67.769 lakhs.

(xxxiv) Boston Pharma (Item No. 40-List 103 of Committee)

637. It is a distillation of solvent plant in red category, SSI scale. Sanctioned quantity of effluent discharge is 0.2 CMD. Committee, vide report dated 18.06.2020 computed compensation at Rs. 36.730 lakhs on 580 days of violation. In the revised report dated 12.08.2021, days of violation have been found 844 (earlier some mistake of date occurred) and therefore compensation has been redetermined as Rs. 67.849 lakhs.

638. Inspection was made on 10.01.2017 when discharge of polluted effluent having COD 18080 mg/l was found was found directly releasing in CETP. Closure/show cause notice was issued on 14.02.2017 and conditional restart order on 14.07.2017. Nothing has been placed on record to show that the above findings are incorrect hence we find no justification to grant any relief.

(xxxv) Panchamrut Chemicals Pvt. Ltd. (Item No. 41-List 103 of Committee)

639. It is a chemical industry, red category, SSI unit with sanctioned effluent quantity of discharge as 20 CMD. Based on two inspection reports, Committee, vide report dated 18.06.2020, computed compensation at Rs. 42.809 lakhs for 676 days of violation. However, in the revised report 12.08.2021, compensation has been enhanced to Rs. 68.814 Lakhs, based on 30 and 413 days of violation, total 443 and also due to revised distribution recovery cost factory.

640. In the inspection dated 30.11.2016, following violation were found:

- (i) ETP was not is operation.
- (ii) Untreated effluent discharge in MIDC drain (COD 23600mg/l) and pH 1.2.

641. Closure/show cause notice was issued on 18.12.2016 and conditional restart order on 17.03.2017.

642. Another inspection was made on 26.07.2018 and based on the violations found, closure/show cause notice dated 08.08.2018 was issued giving details of violations as under:

1. You have not provided segregation and treatment facility for high COD stream the sample analysis reports of the samples collected from ETP inlet for COD-37600 mg/l and Ss 549 mg/l.
2. The trade effluent was by passing along the periphery leading to nearby nalla.
3. Oil spillages/seepage observed in the premises, due to rain chances of flowing the same to near by nalla cannot be ruled out.
4. You have provided ETP comprising of primary, aeration tank and final collection tank which was filled with seems to be full of fresh water.

5. You have provided scrubber but the same was not in operation.

643. From the reply submitted by Proponent, we do not find any falsity or irregularity in the findings of inspection team. So far as dispute with regard to days of violation in concerned, the grounds are same which we have already discussed and rejected. Hence in our view Proponent is not entitled for any relief.

(xxxvi) Diakaffil Chemicals India Ltd. (Item No. 42-List 103 of Committee)

644. It is a synthetic Organic Chemicals industry, in red category, SSI scale with sanctioned quantity of discharge of effluent as 10 CMD. Committee vide report dated 18.06.2020 assessed compensation at Rs. 18.998 lakhs.

645. Inspection was made on 12.09.2013 and based on the observation/violations found, closure/show cause notice dated 15.10.2013 was issued mentioning violations as under:

“Major Non-Compliances:

1. *Carried out excess production from 20MT/M to 146 MT/M also taking crude and dilution products without obtaining permission for Board which is causing extra pollution load on CETP.*
2. *Effluent generation from the process is more than consented quantity which shows excess load discharged in CETP thereby hampering of CETP.*
3. *Since your capital investment might have increased in view of excess production you have to provide high COD separation followed by.....*
4. *Dust collector not in operation O & M of APC's is poor as process fumes noticed in premises.*
5. *Cola consumption is excess than consented quantity thereby leading to excess emission load to environment at inadequate height.*

Minor non compliances:

6. *ETP sludge not disposed in last one year indicates non operation of effluent treatment system regularly.*
7. *Flow meter is not provided thereby making it difficult to verify the quantity of effluent discharged to CETP.*

646. Restart order was issued on 01.11.2013. Nothing has been placed by Proponent before us to show that the findings recorded by inspection team are incorrect.

647. The dispute with regard to number of days of violation, we find, is raised on the same grounds as we have already discussed and rejected.

648. We may also notice that in the revised report dated 12.08.2021, Committee has reexamined the matter in the light of the submissions advanced by the proponent in oral hearing dated 02.12.2019 before Committee and the days of violation are redetermined as 300. Amount of compensation is recomputed as Rs. 48.234 lakhs.

(xxxvii) M/s DRV Organics (Item 43-List 103 of Committee)

649. It is a drugs intermediate manufacturing, red category, SSI scale industry. The approved discharge quantity of effluent is 1.3 CMD. Vide report dated 18.06.2020, Committee assessed compensation of Rs.85.239 lakhs based on two inspections showing days of violation as $516+417=933$ days.

650. Unit of Proponent was inspected on 30.11.2016 when Proponent was found discharging sub-standard effluent, COD 6000 and 12460 mg/l. Closure/show cause notice dated 03.12.2016 was issued whereupon proponent submitted an appeal dated 09.12.2016 to Member Secretary, MPCB wherein results of analysis of sample were not disputed. However, Proponent said "*the high COD mentioned in the directions may be due to interference by dissolve solids*". Restart order was given on 04.03.2017.

651. Another inspection was made on 26.07.2018. Again it was found that Proponent's unit was discharging sub standard effluent with COD

11760 mg/l. Closure/show cause notice dated 08.08.2018 was issued which was replied by Proponent by letter dated 12.08.2018 wherein results were not disputed. It only said that results are totally unexpected. Proponent, thereafter said that it would proceed to make some modifications in the management of effluents. Restart order was issued on 11.08.2018.

652. Thus, violation of environmental laws as also discharge of effluent beyond prescribed limits is evident and undisputed.

653. Further manner of computation of days of default/violation is challenged stating that the assessment of compensation should have been for 24 and 52 days =76 days but the reasons for such suggestion are same which we have already discussed and rejected, hence entire objection of Proponent is rejected.

654. We may also notice that noticing some factual errors in dates, Committee, vide revised report dated 12.08.2021 has taken days of violation as 516 and 169=685 days and assessment has been revised and reduced to Rs. 68.653 lakhs.

(xxxviii) Dufon Laboratories Private Limited (Item 44-list 103 of Committee)

655. It is a drugs intermediate manufacturing, red category, SSI Scale unit. Compensation was determined by Committee vide report dated 18.06.2020 as Rs.177.253 lakhs based on two inspections and computing days of violation as 1165+817=1982 days. However, the said compensation has been revised vide report dated 12.08.2021 to Rs.39.391 lakhs taking days of violation as 352 and 69 respectively. Unit of Proponent was inspected on 06.09.2013 when number of violations were noted and, on the basis thereof, closure/show cause notice dated

15.10.2013 was issued. Restart order was issued on 30.10.2013. In the meantime, Proponent submitted letter dated 22.10.2013, stating that it proposes to take certain steps, for reducing pollution in the effluent. We do not find any denial to the factum of violations noted by inspection team on 06.09.2013.

656. Again, samples were collected on 09.01.2017 and 10.01.2017 and level of COD was found 17600 mg/l and 2512 mg/l respectively which highly exceeded to the prescribed limits. Nothing has been placed on record to show that Proponent ever disputed aforesaid sample report.

657. Further objection is in respect of number of days of violation on the same grounds we have already considered and for the same reasons reject hereat also. The mere fact that on certain dates, Proponent was found to have not violated prescribed limits, does not nullify the factum that on other occasions, effluent discharge by Proponent was found highly polluted. Objections are rejected.

(xxxix) M/s D.H. Organics (Item 45 - list 103 of Committee)

658. Industry is manufacturing bulk drugs, red category and SSI scale. The sanctioned quantity of effluent which it can discharge is 1.8 CMD. Committee, vide report dated 18.06.2020 made assessment of Rs.42.429 lakhs taking days of violation as 670. However, vide revised report dated 12.08.2021 compensation has been reduced to Rs.2.331 lakhs and days of violation are reduced to 29, on account of some factual mistake in the dates.

659. Inspection of the unit was made on 24.11.2016 and it was found that the unit was discharging sub standard quality of effluent with pH 8.5 and COD 9760 mg/l. Closure/show cause notice dated 06.12.2016 was

issued and restart order was issued on 17.03.2017. Nothing has been placed on record to show that the above findings are incorrect.

660. The proponent however, claims that the days of violation should have been 19 and not 670. The grounds taken are same as we already discussed and rejected, hence the entire objections are rejected hereat also.

(xl) Gangwal Chemicals Private Limited (Item 46-list 103 of Committee)

661. This is a chemical manufacturing, red category, SSI scale unit. Report dated 18.06.2020 assessed compensation as Rs.7.093 lakhs for 112 days of violation.

662. Inspection was made on 30.11.2016 and unit was found discharging polluted effluent with COD 12960mg/l. This report has been filed by Proponent itself and is on record. Closure/show cause notice was issued on 03.12.2016 and restart order on 04.03.2017. Proponent had not placed anything on record to show that violations found in the above inspection was not correct.

663. Further objection is with regard to number of days of violation and as per proponent it should have been 17 days. The grounds taken by Proponent, however, are same which we have already discussed and rejected and the same followed here at also.

664. Further we may notice that vide revised report dated 12.08.2021, Committee has revised assessment to Rs.9.084 lakhs, taking days of violation as 113 instead of 112 and also revising distribution recovery cost factor.

(xli) Haren Textiles Private Limited (Item 47 –list 103 of Committee)

665. It is a textile, red category and SSI Scale industry. Permitted quantity of effluent it can discharge is 80 CMD. Committee made assessment of compensation of Rs. 50.409 lakhs vide report dated 18.06.2020. Compensation was determined computing 796 days of violations. However, it has been revised and amount of compensation has been reduced to Rs. 15.515 lakhs vide report dated 12.08.2021 and number of days has been reduced to 193 on account of certain error of the dates.

666. Inspection was made on 21.06.2018 when following violations were noted:

- “1. You have not sought prior consent for establishing ETP on plot other than mentioned in consent i.e. Plot No.J-169, MIDC Tarapur.*
- 2. You have been granted consent for 50% recycling of treated effluent; however, you have not provided adequate effluent treatment facility for the same.*
- 3. You are exceeding water consumption than the consented quantity i.e., 3952 m³ to 5092 m³. 5102 m³, 4524 m³, 5170 m³, 5265 m³, 6501 m³& 5049 m³ for the period Jan to July-2018 which is violation of Board’s Direction dtd 07/10/2016 regarding curtailing in water consumption by 40%.*
- 4. You have not provided on-line system along with SCADA system.*
- 5. You are not maintained the record of hazardous waste generated & its disposal.*
- 6. You are exceeded Fuel consumption from consent 6 MT/day to 7 MT/day.”*

667. Closure/show cause notice dated 17.07.2018 was issued. Reply was submitted by Proponent on 21.07.2018 which shows that at the premises where construction was going on, no consent for establishment was obtained. In respect of other violations also, we find only explanation and no denial. Conditional restart order was issued on 31.07.2018. Since violations have not been shown incorrect, hence, we do not find anything wrong in the findings of Committee.

668. Further objection is with regard to manner of computation of number of days of violations. Proponent claims that the same should have been 16. The grounds taken are same as we have already discussed above and rejected, hence objections of Proponent are rejected in entirety.

(xlii) M/s INDO Amines Ltd. (Item no.48-List 103 of Committee)

669. Proponent is manufacturing fatty amines. The unit is red category and SSI scale. Sanctioned quantity of effluent 5.6 CMD. Vide report dated 18.06.2020, Committee assessed compensation of Rs.58.198 lakhs, based on two inspections, taking days of violation as 743.

670. Inspection was made on 12.01.2017. Proponent was found discharging sub standard effluent having pH 9.8 and COD 13280 mg/l which exceeded much to the prescribed limits. Closure/show cause notice was issued on 14.02.2017 and restart order issued on 31.05.2017.

671. Another inspection was made on 21.01.2019 when again COD in the effluent discharged by Proponent was found 1272 mg/l. Closure/show cause notice was issued on 12.03.2019 and restart order on 04.04.2019. The violations noted by the team during inspection have not been shown incorrect.

672. Proponent has filed some other reports showing that various components therein were within prescribed parameters but that will not nullify the factum in the abovementioned inspections when Proponent was found violating environmental norms.

673. Further objection is with regard to manner of computation of number of days. As per Proponent it should have been 36. The grounds taken are same as we have already discussed and rejected. The objections are rejected.

674. We also notice that vide revised report dated 12.08.2021, Committee has made reassessment of compensation as Rs.59.810 lakhs which is mainly due to addition of one day of violation and change in distribution recovery cost factor.

(xliii) M/s. Moltus Research Laboratories (Item No. 51-List 103 of Committee)

675. It is a chemical industry in red category and SSI scale. Quantity of effluent permitted to be discharged is 0.1 CMD. In report dated 18.06.2020, Committee assessed compensation of Rs.0.887 lakhs for 14 days of violation.

676. Inspection was made on 19.07.2017. It was found that hazardous waste was dumped illegally. Closure/show cause notice was issued on 28.07.2017 and conditional restart order 06.12.2017. We find nothing on record to show that the above findings in the report are incorrect, hence, find no reason to interfere.

677. Further objection with regard to number of days of violation is also rejected since the grounds on which the same is assailed, are same which have already been considered and rejected above.

678. In the revised report dated 12.08.2021, Committee has revised assessment to Rs.1.125 lakhs. Increase is mainly due to change in distribution recovery cost factor.

(xliv) M/s. KP Chemicals (Item 52-List 103 of Committee)

679. It is a chemical industry in red category, SSI Scale and 11 CMD of effluent it can discharge as per consent orders. Committee vide report dated 18.06.2020 computed compensation of Rs. 59.338 lacs for 937 days of violations. Amount of compensation is, however, substantially

reduced as per Committee report dated 12.08.2021 to Rs. 1.527 lakhs since days of violation are also reduced to 19 noticing some error in the days.

680. The inspection was made on 24.11.2016 when Proponent was found discharging sub standard effluent with COD 8560 mg/l. Closure/show cause notice was issued on 03.12.2016 and conditional restart order was issued on 17.03.2017. There is nothing on record to show that violation shown is incorrect. In the appeal dated 09.12.2016, Proponent has referred to other reports but that will not justify report as noted above. We, therefore find no reason to grant any relief.

681. Further manner of computation of number of days has been challenged but on the same ground which we have already discussed and rejected, hence the same are rejected for the same reasons here also.

(xlv) JPN Pharma (Item 53 List 103 of Committee)

682. It is a bulk drug manufacturing industry in red category and SSI scale. Discharge of effluent permitted by the consent order is 3 CMD. In the report dated 18.06.2020, Committee assessed compensation of Rs. 32.234 lakhs taking days of violation as 509. However, finding a mistake in the dates, it has been revised vide report dated 12.08.2021 and number of days have reduced to 12 and compensation to Rs.0.96 lakhs.

683. Inspection was made on 29.11.2016, when Proponent was found discharging sub standard effluent with COD 7280 mg/l. Closure/show cause notice was issued on 03.12.2016 and conditional restart order is dated 17.03.2017. Nothing has been placed on record to show that the above violations found are not correct, hence no interference is called for.

684. Further objection is with regard to number of days raising the same grounds as we have same discussed above hence the same is rejected here at also.

(xlvi) Keshav Organics Pvt. Ltd. (Item 55-List 103 of Committee)

685. It is chemical industry in red category and SSI scale. Approved effluent discharge quantity is 4.5 CMD. Committee, vide report dated 18.06.2020 made assessment of compensation at Rs. 5.193 lakhs taking days of violation as 82. Compensation has been revised and reduced to Rs.2.331 lakhs taking 29 days of violation vide revised report dated 12.08.2021.

686. Inspection was made on 25.11.2016 and Proponent was found discharging sub standard effluent with COD 5720 mg/l. Closure/show cause notice was issued on 03.12.2016 and conditional restart order is dated 20.02.2017. Against closure notice, Proponent submitted appeal dated 09.12.2016 and perusal thereof shows that the blame has been levelled on manner of taking sample ignoring the fact that sample was collected in the presence of Proponent's representative and it did not notice any flaw in the inspection report. Further we find from record that proponent itself has placed on record renewal of consent to operate order dated 02.11.2015 prescribing standard of COD 250 mg/l. However, there are certain analysis reports placed on record to show that higher level of COD was found even on 07.03.2017 showing COD as 472mg/l and 392 mg/l based on the different points where samples were taken. So far as the dispute with regard to the number of days, the grounds are same as we have already discussed and rejected, hence proponent's entire objection is rejected.

(xlvii)Nayakem Organics Pvt. Ltd. (Item 56-List 103 of Committee)

687. In the Committee report, it is shown as chemical industry while in the objections Proponent has shown itself as plasticizers in red category and SSI scale unit with approved quantity of effluent as 1 CMD. Both come in red category. Compensation of Rs.9.689 lakhs assessed by Committee vide report dated 18.06.2020 which has been revised to Rs. 12.541 lakhs vide revised report dated 12.08.2021. No substantial objection has been raised by this Proponent.

(xlvi) Nirbhay Rasayan Pvt. Ltd. (Item 57- List 103 of Committee)

688. It is a dye industry (pigment) in red category and SSI scale. Approved quantity of effluent which it can discharge is 93 CMD. Compensation of Rs.78.019 lakhs was assessed vide report dated 18.06.2020 which has been reduced and revised to Rs.53.861 lakhs vide revised report dated 12.08.2021.

689. Proponent unit was inspected on 05.09.2013 when following violations were found:

- (i) Discharge of sub-standard quality effluent
- (ii) Additional product manufacturing without consent
- (i) 50 MT excess production.

690. Another inspection was made on 30.11.2016, when again sub-standard effluent with COD 1248 mg/l was found being discharged.

691. Nothing has been placed on record to show that the above findings are incorrect.

692. Compensation was determined taking days of violation as 1170 and 31 respectively but the same is revised to 295 and 20 respectively vide

report dated 12.08.2021. In the absence of any material to show any discrepancy in the above reports, we find no reason to interfere.

693. With respect to days of violation, Proponent claims that the same should have been 58 but the grounds taken are same as we have already discussed above and rejected and the same are rejected here at also.

(xlix) Nutraplus India Pvt. Ltd. (Item 58-List 103 of Committee)

694. It is a chemical industry in red category and SSI Scale. Approved effluent quantity it can discharge is 5 CMD. Compensation of Rs.103.603 lakhs was assessed by Committee vide report dated 18.06.2020 which has been revised to Rs.313.039 lakhs vide revised report dated 12.08.2021.

695. Inspection was made on 26.11.2016. Proponent was found discharging sub standard effluent with CMD 8560 mg/l. Closure/show cause notice dated 03.12.2016 was issued and conditional restart order is dated 17.07.2017.

696. Another inspection dated 25.07.2018 again show various violations that is:

- (i) High COD stream not segregated
- (ii) Online monitoring system for pH flow, COD TSS and positive discharge not provided
- (iii) Separate storm water drain not provided
- (iv) Hazardous waste storage not proper
- (v) Fail to curtail 40% water consumption.

697. Closure/show cause notice issued on 08.08.2018 and conditional restart order is dated 09.11.2018.

698. A third inspection was made on 24.12.2018 on account of accident due to improper operation of reactor meta bromo nitro benzene kept aside spilled on floor. Closure/show cause notice was issued on 27.12.2018. No restart order was issued but on 26.09.2019, unit was found operating illegally.

699. Proponent has not placed anything on record to show any discrepancy in the above findings. The issue raised with regard to number of days, we find based on the same grounds as we have already discussed and rejected hence the entire objections are rejected.

(I) Sequent Scientific Ltd. (Item No.59- List 103 of Committee)

700. It is a bulk drugs industry in red category and SSI scale. Quantity of effluent discharge approved is 37.8 CMD. Vide report dated 18.06.2020, Committee assessed compensation of Rs.43.253 lakhs which has been revised to Rs.27.091lakhs vide revised report dated 12.08.2021.

701. Inspection was made on 22.04.2017 when it was found that Proponent has made bye-pass arrangements and discharging sub standard effluent with COD 268 mg/l. Closure/show cause notice was issued on 25.04.2017.

702. Again on 28.04.2017, an inspection was made. Besides other, inspecting body found as under:

“Industry has blocked the another discharge point by concrete from inside and outside of factory premise, photographs enclosed. It was collected from that point on 22.04.2017.”

703. Restart order was issued on 04.01.2018. The bye-pass arrangement made by Proponent were in flagrant violation of conditions of consent. Nothing has been placed on record to show above findings incorrect therefore, we do not find any ground for relief to Proponent.

704. Proponent has further raised objection on the manner of computation of days of violation but the grounds are same as we have already considered and rejected and same are followed here also.

(li) Pulcra Chemicals India Ltd. (Item No. 60-List 103 of Committee)

705. It is a chemical industry in red category and SSI scale, effluent quantity approved is 15 CMD. Compensation was determined vide report dated 18.06.2020 as Rs.58.831 lacs but revised to Rs.15.756 lacs vide report dated 12.08.2021. Report also shows that the unit was earlier SSI scale industry but subsequently, came into the scale of MSI. It is a ZLD unit and sanctioned discharge quantity is 15 ZLD.

706. Inspection was made on 12.01.2017 when unit was found discharging sub standard effluent, outlet COD as 32400 mg/l. Closure/show cause notice dated 14.02.2017 was issued and conditional restart order is dated 18.04.2017. In the reply dated 20.02.2017 Proponent has said that its ETP was under maintenance since 10.01.2017. This clearly shows that on 12.01.2017, what was found by inspection official team was not incorrect. Further objection that sample was not properly taken, is not worth acceptance inasmuch as sample was taken in presence of the representatives of Proponent but no such objection has been mentioned in the inspection report.

707. The objection has been raised with respect to number of days of violation on similar grounds which we have already considered and rejected.

708. We may notice that Committee, in the revised report has found certain errors in the dates and therefore, days of violation have reduced to 98 as a result whereof compensation has reduced to Rs. 15.756 lakhs.

(lii) Pantagon Drugs Pvt. Ltd. (Item No.61-List 103 of Committee)

709. It is a bulk drug manufacturing unit in red category and SSI scale. Compensation of Rs.25.584 lakhs was computed vide report dated 18.06.2020, which has been revised to Rs. 32.478 lakhs vide report dated 12.08.2021.

710. Inspection was made on 30.07.2018 and the sample shows level of COD as 59200 mg/l and suspended solids as 49. Report dated 30.07.2018 had signature of Mr. Jayesh Sanghi who has filed these objections showing his designation as Managing Director. Closure/show cause notice was issued on 08.08.2018 noticing following violations:

- “1. You have not provided segregation & treatment facility for high COD stream, the sample analysis reports of the samples collected from ETP inlet for pH-22, COD-59200 mg/l.*
- 2. You have provided collection neutralization, aeration, sand & carbon filters for treatment of effluent generated from your process which is not adequate for treatment of high COD stream.”*

711. Conditional restart order is dated 01.09.2018. Proponent has not placed anything on record to show any error in the inspection mentioned above.

712. Further objection is with regard to number of days of violation which according to Proponent, should have been 12 but the grounds taken are the same as we have already discussed and rejected hence the objections are rejected.

(liii) M/s. Ramdev Chemicals Pvt. Ltd. (Now IPCA Laboratories (Item 63-List 103 of Committee)

713. It is a bulk drugs manufacturing, red category, MSI scale unit. The revised report dated 12.08.2021 shows that industry is now LSI. Approved quantity of effluent it can discharge is 65.6 CMD. Compensation of Rs.285.226 lakhs was determined vide report dated

18.06.2020 based on two inspections dated 12.04.2012 and 12.04.2017. However, compensation has been revised and reduced to Rs.26.529 lakhs vide revised report dated 12.08.2021.

714. Inspection was made on 12.04.2012. Proponent was found discharging highly polluted effluent in CETP. Closure/show cause notice dated 16.05.2012 was issued mentioning violations as under:

*“AND WHEREAS, Sub-regional Officer (S.R.O.), Tarapur-1, has communicated analysis results of treated effluent collected from the final outlet of your ETP on 14/04/2012. On scrutiny of the same, it is noted that the **analysis results are exceeding the prescribed standards by more than 100%** which clearly shows that you are not operating your ETP properly and are discharging sub-standard effluent to the CETP, thereby disturbing its performance.”*

715. Proponent's letter dated 31.05.2012 did not dispute findings of violations during inspection. Conditional restart order was issued on 30.01.2013.

716. Another inspection was made on 22.04.2017 when Proponent was found discharging sub standard effluent with COD 508 mg/l and suspended solids 313 mg/l. Closure/show cause notice was issued on 25.04.2017 mentioning violations as under

“AND WHEREAS, JVS from outlet of tertiary treatment was collected and after analysis of the same the parameter COD-508 mg/l & Suspended Solids-313 mg/l are exceeding the consented limit.”

717. Proponent sent letter dated 26.04.2017 as an appeal to Regional Officer, MPCB but we do not find any fault was shown in the inspection report. Conditional restart order was issued on 09.05.2017.

718. We, therefore, find no reason to interfere in view of above facts. Further dispute is raised in respect of number of days of violation but the grounds taken are same, we have already considered and rejected. Compensation of Rs.285.226 lakhs determined vide report dated

18.06.2020 has been revised and reduced to Rs. 26.529 lakhs vide revised report dated 12.08.2021.

(liv) Tryst Chemicals Pvt. Ltd. (Item No. 64-List 103 of Committee)

719. It is a bulk drug manufacturing, red category, SSI scale unit. Compensation of Rs.27.294 lakhs was assessed vide report dated 18.06.2020 which has been reduced to Rs. 14.872 lakhs vide report dated 12.08.2021. In the revised report, days of violation are reduced from 431 to 185 finding certain factual error in the dates.

720. Proponent unit was inspected on 24.11.2016 when it was found discharging highly polluted effluent with COD 488000 mg/l and pH 11.8. Closure/show cause notice dated 03.12.2016 was issued noticing violations as under:

*“AND WHEREAS, Board officials visited your industry on 24/11/2016 to the compliance of consent conditions & collection of Joint Vigilance sample from ETP Outlet, Sub Regional Officer, Tarapur-I communicated analysis reports of waste water collected from ETP outlet /V-notch / bypass line /treated effluent sumps of your industry. The **analysis reports shows values of pH-11.8, & COD-488000 mg/l** which is exceeding to the inlet designed parameters of CETP thereby up-setting CETP performance. It is found from vigilance sampling drawn during odd hours that you are discharging highly polluting stream / chemical load to the CCETP and degree of exceedance of COD compared to consented norms is 195100%. The above fact clearly indicates that you have adopted these practices of discharge of high COD stream and your tendency towards not to abide environmental norms. The high polluting / COD streams hampers functioning of CETP operations thereby discharging substandard quality effluent in Navapur sea and creating adverse impact on nearby environment. After perusing the results, degree of exceedance and tendency of discharging highly polluting effluent stream thereby violating consented norms and causing severe damage to the environment which needs to be stopped immediately to protect such damage of environment.”*

721. Proponent submitted appeal dated 09.12.2016 but therein did not give any material to show anything wrong in the above inspection except of disputing the point of sample collections which can not be accepted

since inspection was made in presence of Proponent's representative. Conditional restart order was issued on 17.03.2017. Objection is rejected.

(lv) M/s Omtech Chemicals (Item No. 65-List 103 of Committee)

722. It is a chemical, red category and SSI scale industry. Approved quantity of effluent it can discharge is 30 CMD. Vide report dated 18.06.2020, compensation of Rs.16.782 lakhs was determined which has been reduced vide revised report dated 12.08.2021 to Rs.6.592 lakhs.

723. Inspection was made on 14.09.2013 when it was found that ETP was not in operation, product not consented was being manufactured, scrubber was not in operation and flow meter was not provided. All these violations have been admitted by Proponent in its letter dated 21.10.2013, filed pursuant to closure/show cause notice dated 15.10.2013. Conditional restart order is dated 01.11.2013. In view of proven violations, we do not find that this Proponent is entitled for any relief. The dispute with regard to number of days of violation which according to proponent should have been only 35, is founded on similar grounds which we have already considered and rejected and the same is rejected here also.

(lvi) M/s Shreenath Chemicals (Item No. 66- List 103 of Committee)

724. It is a chemical, red category and SSI scale industry. Approved quantity of effluent it can discharge is 1.5 CMD. Inspection was made on 27.11.2016 when Proponent was found discharging sub standard effluent with COD 4000 mg/l. Closure/show cause notice was issued on 03.12.2016 and conditional restart order is dated 17.03.2017. Nothing has been placed on record to discard the above reports, we find no reason to grant any relief. The dispute with regard to number of days of violation is founded on the same grounds which we have already rejected. The

compensation determined vide report dated 18.06.2020 was Rs.5.066 lakhs but the same has been revised to Rs.1.125 lakhs vide revised report dated 12.08.2021.

(lvii) Salvi Chemicals Industries (Item No. 67-List 103 of Committee)

725. It is a chemical industry, red category, LSI scale. Approved quantity of effluent discharge is 55.5 CMD. Based on 4 inspection reports, Committee, vide report dated 18.06.2020 made assessment of Rs. 156.418 lakhs which has been revised and increased to Rs. 311.350 lakhs vide revised report dated 12.08.2021.

726. Inspection was made on 20.08.2016 when, besides other, Proponent was found discharging sub-standard effluent with very high COD and suspended solids. In closure/show cause notice dated 04.11.2016, violations mentioned are as under:

*“AND WHEREAS, Board officials visited your industry on 20/08/2016 to verify compliance of consent conditions and directions issued by the Board. Sub-Regional Officer, Tarapur-1 submitted proposal as per Enforcement Policy of the Board for initiation of action against you vide above referred letter at sr. no. 3 and it has been reported that effluent treatment plant provided by you was not in operation thereby untreated acidic effluent is directly discharged into MIDC drain. Aeration and settling tank observed in idle condition indicating poor O & M of pollution control measures. The JVS analysis reports of sample collected from ETP outlet on dtd. 16/07/2015, 24/08/2015, 15/10/2015, 04/1/2016 & 16/2/2016 are exceeding to the consented norms. The **analysis reports of sample collected on 16/2/2016 shows BOD, COD, SS, O & G, TDS to the tune of 1,15,000 mg/l, 4,68,000 mg/l, 656 mg/l, 255 mg/l and 5439 mg/l respectively.** It can be concluded from above that there is need of segregation of High COD/SS stream along with further segregation of high TDS stream also.”*

727. Proponent submitted letter dated 09.11.2016 but therein we find no denial of above violations except that Proponent had no experience of such high value effluent. Conditional restart order was issued on 12.01.2017.

728. Another inspection is dated 11.04.2018 when violations including sub standard discharge of effluent with COD 12080 mg/l, BOD 5300 mg/l, SS 668 etc. were found. Closure/show cause notice was issued on 17.07.2018 and restart order is dated 24.05.2018.

729. Similar violations were found in the inspection dated 28.08.2018 and 30.10.2019 but nothing has been placed on record to show any discrepancy in the inspection notes prepared by concerned authorities. We therefore, find no reason to grant relief to this Proponent. So far as dispute with regard to number of days is concerned, the grounds taken have already been considered and rejected and the same are rejected here also.

(lviii) M/s Sapna Detergent and Chemicals Pvt. Ltd. (Item 68-List 103 of Committee)

730. This is a laboratory chemical manufacturing, red category and SSI scale unit. Approved quantity of effluent is 2 CMD. Vide report dated 18.06.2020, compensation of Rs. 59.338 lakhs was determined taking days of violation as 937. However, the said amount is revised and reduced to 40.813 lakhs on 545 days of violation vide revised report dated 12.08.2021.

731. Inspection was made on 24.11.2016 when Proponent was found discharging sub-standard effluent with COD 4480 mg/l and pH 4.4. Another inspection was made on 28.11.2016 when also discharge of sub-standard effluent was found with COD 3160 mg/l and pH 6.8. Closure/show cause notice dated 03.12.2016 was issued mentioning violations as under:

“Board officials visited your industry on 24.11.2016 and 28.11.2016 to verify compliance of consent conditions & collected two Joint vigilance samples from ETP outlet. Sub Regional Officer, Tarapur-I communicated analysis reports of waste water collected from ETP

outlet/V notch/bypass line/treated effluent sumps of your industry. **The analysis reports show values of pH-4.4, 6.8 & COD 4480 mg/L, 3160 mg/L respectively which is exceeding to the inlet designed parameters of CETP** thereby up-setting CETP performance. It is found from vigilance sampling drawn during odd hours that you are discharging highly polluting stream/chemical load to the CETP and degree of exceedance of COD compared to consented norms is 1692 % and 1164% respectively. The above fact clearly indicates that you have adopted these practices of discharge of high COD stream and your tendency towards not to abide environmental norms. The high polluting/COD streams hampers functioning of CETP operations thereby discharging substandard quality effluent in Navapur sea and creating adverse impact on nearby environment. After perusing the results, degree of exceedance and tendency of discharge of untreated effluent, I am of the opinion that you are willfully/intentionally discharging highly polluting effluent stream thereby violating consented norms and causing severe damage to the environment which needs to be stopped immediately to protect such damage of environment.”

732. Proponent submitted letter dated 12.12.2016 as an appeal to Member Secretary, MPCB but therein we do not find any denial of violations noted in the above inspections. On the contrary, Proponent admitted these violations as is evident from the following:

“The high COD mentioned in the directions may be due to interference by dissolved solvents”.

733. In view of the above admitted position of violation of environmental norms, we find no reason to grant any relief to this Proponent. Conditional re-start order was issued on 17.03.2017. Proponent has further objected assessment of days of violations stating that the same ought to be 59 only but the grounds on which the said objection has been raised, we have already discussed and rejected hereinabove and the same are reiterated here also. The entire objections are therefore rejected.

(lix) M/s Sagitta Pvt. Ltd. (Item 69-List 103 of Committee)

734. It is a chemical manufacturing, red category, SSI scale industry with approved effluent discharge quantity of 3.5 CMD. Computation of assessment of Rs. 59.148 lakhs was made by Committee vide report dated 18.06.2020 but in the revised report dated 12.08.2021,

compensation is reduced to Rs. 1.447 lakhs. The days of violation earlier were 934 which are reduced to 18 in the revised report due to factual mistake in the dates detected.

735. Inspection was made unit premises on 24.11.2016 when Proponent was found discharging pollutED effluent with pH 11.4 and COD 976 mg/l. Closure/show-cause notice dated 03.12.2016 was issued stating violations on part of Proponent as under:

*“Board officials visited your industry on 24.11.2016 to verify compliance of consent conditions & collection of Joint vigilance samples from ETP outlet. Sub Regional Officer, Tarapur-I communicated analysis reports of waste water collected from ETP outlet/V notch/bypass line/treated effluent sumps of your industry. The **analysis reports show values of pH 11.4.4, 6.8 & COD 976 mg/L which is exceeding to the inlet designed parameters of CETP** thereby up-setting CETP performance. It is found from vigilance sampling drawn during odd hours that you are discharging highly polluting stream/chemical load to the CETP and degree of exceedance of COD compared to consented norms is 290 %. The above fact clearly indicates that you have adopted this practices of discharge of high COD stream and your tendency towards not to abide environmental norms. The high polluting/COD streams hampers functioning of CETP operations thereby discharging substandard quality effluent in Navapur sea and creating adverse impact on nearby environment. After perusing the results, degree of exceedance and tendency of discharge of untreated effluent, I am of the opinion that you are willfully/intentionally discharging highly polluting effluent stream thereby violating consented norms and causing severe damage to the environment which needs to be stopped immediately to protect such damage of environment.”*

736. Proponent submitted letter dated 08.12.2016 to Member Secretary, MPCB wherein violations noted above, as a matter of fact, are not disputed. Relevant extract of reply is reproduced under:

“During the visit of your Officer on 24th November 2016 at our unit, sample was drawn and PH was checked and found to be pH 8 by your Officer and the same was showed in our online Electronic PH meter which is within the limit and is also mentioned in your visit report.

However as per report received from your Office for the same sample shows pH 11.40 which we cannot prove, since we don't have the counter sample with us. But COD in your report is shown as 976 which is within the limit of SSI.”

737. Conditional re-start order was issued on 17.03.2017. Since violations found in the inspection have not been shown incorrect by placing any material before us, we find no reason to grant any relief. So far as objection with regard to number of days of violation is concerned, the grounds taken are same as we already discussed above and rejected, hence and entire objection of proponent is rejected.

(lx) Shri Vinayak Chemex (I) India Pvt. Ltd. (Item 71-List 103 of Committee)

738. Proponent is API and intermediate manufacturer, red category and SSI scale industry, with approved quantity of effluent discharge as 7.5 CMD. Assessment of compensation of Rs. 59.401 lakh was made vide report dated 18.06.2020 taking days of violations as 938. It has been revised vide report dated 12.08.2021 and taking days of violation days as 245, compensation amount is reduced to Rs. 19.696 lakhs.

739. Inspection was made on 23.11.2016 when Proponent was found discharging highly polluted effluent with COD 68800 mg/l. Closure/show-cause notice dated 03.12.2016 was issued. Proponent has placed on record various sample reports of different periods but nothing on record is available to show, what was found in the inspection dated 23.11.2016 was incorrect. We find no reason to grant any relief. Further objection is regarding number of days of violations which as per Proponent should be 8. However, grounds taken for the said submission are same which we have ready discussed above and rejected, hence following the same here at also, objections under consideration are rejected.

(lxi) M/s Sunil Great (H.Y.K.) Processors Pvt. Ltd. (Item No. 72-List 103 of Committee)

740. It is a chemical industry with red category with SSI scale and approved quantity of effluent it can discharge is 6 CMD. Vide report dated

18.06.2021, compensation of Rs. 77.513 lakhs was determined with reference to two inspections dated 24.11.2016 and 29.07.2018. Later vide report dated 12.08.2021 compensation is revised and increased to Rs. 98.397 lakhs.

741. Inspection was made 24.11.2016 when Proponent was found discharging highly polluted effluent with COD 16160 mg/l. Closure/show cause notice dated 3.12.2016 was issued and conditional restart order was issued on 17.03.2017. Proponent has placed on record his letter dated 13.12.2016 filed as an appeal before Regional Officer MPCB against closure order wherein, like others, objection with regard to collection of sample has been taken. Inspection was made in presence of representative of Proponent and it has not noted any objection with regard to the sample collected by officials making inspection. Hence different stand taken subsequently is nothing but an afterthought and cannot be believed. Moreover, some kind of explanation is also there in the letter dated 13.12.2016 which shows admission of violations. It says:

“There was some spillage in the drain. We have already taken corrective action and filled up the ditches and cleaned the storm water drain. We will take care that this will not happen in future.”

742. It shows that violations found by inspection team, as a matter of fact, were correct and hence we do not find any reason to grant any relief to this Proponent.

743. Another inspection was made on 29.07.2018 and noticing violation found therein, closure/show cause notice dated 08.08.2018 was issued giving details of violations as under:

- (i) You have not provided segregation & treatment facility for high COD stream the sample analysis reports of the samples collected from ETP outlet for COD-88800 mg/L and SS 1821

mg/L & phenol-11.6 mg/L which are exceeding the consented limit.

(ii) You have increased water consumption from 11 CMD to 16.5 CMD in the month of April 2018 and 13.5 CMD in the month of May-2018, thus violating the NGT order for curtailing of 40% water consumption & effluent generation.

(iii) You have altered the fuel consumption from coal to wood without prior permission from M.P.C.B.

(iv) You have stored about 25.30 MT of ETP sludge unscientifically in factory premises.

744. Proponent has placed on record letter dated 07.08.2018 sent just one day before closure/show cause notice but pursuant to inspection dated 29.07.2018 wherein it has clearly said that it is going to take action and appropriate steps so as to avoid any mistake in future. This shows that the violations found were in fact correct and in our view no relief would be justified. So far as objection with regard to days of violation is concerned the ground are same which we have already considered above and rejected and the same is followed here also.

(lxii) M/s Vardhaman Dyestuff Industries Pvt. Ltd. (Item 73-List 103 of Committee)

745. It is a dyeing manufacturing, red category, SSI scale unit. Approved quantity of effluent which it can discharge is 52 CMD. Compensation of Rs. 6.396 lakhs was assessed vide report dated 18.06.2020 which has been revised vide report dated 12.08.2021 as Rs. 8.441 lakhs.

746. Inspection was made on 08.05.2012 when it was found that Proponent was discharging sub standard effluent with high COD level. In fact record shows that consistently, on various dates, level of COD was found much beyond the permissible limit as under:

Date of sample collection	COD level	PH	TDS
10.12.2013	336 Mg/L		
02.12.2014	540 Mg/L		
30.05.2015	392 Mg/L		
05.12.2016	1260 Mg/L		
28.01.2014		pH-5	
31.11.2016	364 Mg/L		
14.11.2019			3322 g/L

747. Record shows that virtually Proponent admitted high COD value in the effluent found from time to time. Thus there is nothing to take a different view in the matter. Further objection with regard to days of violation is founded on the grounds we have already considered and rejected. The same is reiterated here also.

(lxiii) M/s Usha Fashion Pvt. Ltd (Item 74-List 103 of Committee)

748. It is a textile industry, red category, SSI scale. Approved quantity of effluent it can discharge is 305 CMD. Compensation of Rs. 125.895 lakhs was determined vide report dated 18.6.2020 but later on vide revised report dated 12.08.2021 compensation has been revised and reduced to Rs. 23.635 lakhs. Computation of days of violation is based on two inspections taking 170 and 909 i.e.,1079 days of violation but the same after noticing some mistakes in the dates, have been reduced to 172 and 61 respectively i.e., 233 days.

749. Inspection was made on 05.09.2013 and several violations were noted. Closure/show cause notice dated 15.10.2013 was issued mentioning violations as under:

- “Major Non-Compliances:*
- 1. You are not properly operating Effluent Treatment Plant to treat industrial effluent and discharging substandard effluent into CETP thereby hampering its performance.*
 - 2. You are using Pet Coke as fuel instead of Coal thereby violated condition No. 7 –(i) of the Consent to Operate.*
 - 3. You have not provided adequate air pollution control system i.e., Wet Scrubber to Thermopack thereby violated condition No. 7 (ii) of the Consent to Operate.*

Minor Non Compliances:

4. *Flow meter is not provided thereby making it difficult to verify the quantity of effluent discharged to CETP.*

5. *You have not provided temporary storage facility for storage of hazardous waste and same is being stored on open ground which may lead to soil & surface water contamination.”*

750. Proponent submitted reply dated 28.10.2013 but violations found in the inspection were not disputed as is evident from the following:

1. During the visit of team of officers of the Sub-Committee constituted by the Board and inspection and sampling of our unit at that time the mechanical stinger at Neutralization tank was under maintenance. Hence, dosing chemicals which were added in it for neutralization purpose was not mixed properly and **lead to show the parameters towards higher side.**

Whereas, the problem has been rectified soon after & **now the E.T.P. is running smoothly and efficiently to achieve desired limits.** We have provided full-fledged physics-chemical treatment to our plant comprising Neutralization, Primary settling & Tertiary treatment with filtration (Pressure sand & Activated carbon)

We are also going for upgradation of existing treatment plant within a period of 3 months.

2. Now we are using coal as fuel instead of Pet coke.
3. We have placed the orders for Wet scrubber from thermoplastic end it will get commissioned within a period of 2 months (purchase order annexed)
4. We have provided temporary storage facility for storage of hazardous chemicals.
5. Also, we are self concerned about environment and assure you to take utmost care in future.

751. Conditional restart order was issued on 07.11.2013. Another inspection was conducted on 10.01.2017 when it was found that level of parameters of BOD and COD exceeded the permissible limit. Smples were also collected on subsequent dates which also shows similar violations as under:

<i>Date of sample collection</i>	<i>level of COD</i>
<i>13.01.2017</i>	<i>1552 mg/L</i>
<i>14.01.2017</i>	<i>1240 mg/L</i>
<i>15.01.2017</i>	<i>560 mg/L</i>

752. Proponent has not placed anything on record to show the above findings of violations incorrect so as to warrant any interference. The objection has been raised further with regard to days of violation on which the compensation has been determined and according to proponent the same should have been 43+38 i.e., 81 days. However, the grounds taken are same as we have already considered and rejected and the same are reiterated here at also.

(lxiv) M/s Visen Industries Ltd. (Item 75-List 103 of Committee)

753. It is chemical manufacturing industry, red category and SSI scale. Approved quantity of effluent it can discharge is 7 CMD. Compensation of Rs. 13.299 lakhs was determined vide report dated 18.06.2020 but the same is revised to Rs. 17.043 lakhs vide revised report dated 12.05.2021. Earlier days of violations were taken as 210 but after noticing factual mistakes, revised to 212.

754. Inspection was made on 21.01.2019 when Proponent was found discharging highly polluted effluent with pH 9.4, BOD 11000 mg/l and COD 36000 mg/l and O&G 257.6 mg/l. Based on the above violations closure/show cause notice dated 12.03.2019 was issued. Proponent’s letter dated 22.03.2019 in fact shows that above violations were not disputed. It says, “Board official has issued instructions for discharge of

domestic effluent in MIDC sewage system which is connected to CETP. We were not aware of this but after getting instruction from Board we immediately provided smoke pit and now we are reusing maximum extent of domestic effluent into gardening. We already have submitted a letter to MPCB on 20th February, 2019.

*Board official has collected JVS from outside of our unit which after **analysis shows high COD, BOD and O&G which is neither matching with our untreated nor with treated.** We have full fledged ETP, having primary, secondary and tertiary system and it is working properly. As we said we are chemical manufacturer for textile unit and effluent coming after process having COD around 3000-4000. We do primary treatment first and getting 40-45% reduction in COD there. We also have 3 stages Biological tank and getting good reduction in COD and HO around 90-95% followed by tertiary system comprising PSF and ACF. After all processing COD and BOD is come down to 250 and 100 mg/L which is under MPCB prescribed norms”.*

755. Consequently, we find no reason to interfere and grant any relief. Conditional restart order was issued on 22.04.2019. Proponent has also disputed days of violation and according to it the same should have been 57 only but the grounds taken are same which we have already considered and rejected. Hence the same are reiterated here also.

(lxv) M/s U.K. Aromatics & Chemicals (Item 76-List 103 of Committee)

756. It is an aromatics chemicals manufacturing unit, red category and SSI scale. Approved quantity of effluent it can discharge is 6 CMD. Compensation of Rs. 13.552 lakhs was determined vide report dated 18.06.2020 but the same has been renewed and revised vide report dated

12.08.2021 as Rs. 16.802 lakhs. Compensation has been assessed taking into account two inspection reports dated 01.12.2016 and 21.01.2019.

757. In inspection dated 01.12.2016 Proponent was found discharging sub standard effluent with BOD 10320mg/l and pH 4.8. Consequently closure/show cause notice dated 23.02.2017 was issued and conditional restart order was issued on 08.08.2017.

758. In the inspection dated 21.01.2019, again Proponent was found discharging sub standard effluent with BOD 72000 mg/l and COD 224000 mg/l. Proponent has not placed any material on record to show the above findings incorrect or having any discrepancy justifying any interference. Committee computed days of violation as 98 and 58 i.e., 156 days for assessment vide report dated 18.06.2020 but the same has been revised to 89 and 16 vide report dated 12.08.2021. The objection with regard to days of violation are on the same grounds which we have already considered and rejected and the same is followed here at also.

(lxvi) M/s Ujwal Pharma Pvt. Ltd. (Item 77-List 103 of Committee)

759. It is a chemical industry in red category in SSI scale with approved discharge quantity of 4 CMD. Referring to inspection report dated 28.12.2016, assessment of compensation of Rs. 83.27 lakhs was made vide report dated 18.06.2020 but the same has been revised vide report dated 12.08.2021 as Rs. 106.155 lakhs. In two inspections Proponent was found guilty of violation of environmental norms.

760. Inspection dated 28.11.2016 was made when Proponent was found discharging sub standard effluent with COD 11360 mg/l. Closure/Show cause notice was issued on 03.12.2016 and conditional restart order was issued 04.03.2017. Another inspection was made on 30.07.2018 when

again sub-standard discharge of effluent was found with pH 11.6 and COD 296000 mg/l. Closure/show cause notice was issued on 08.08.2018 and conditional restart order on 06.09.2018. Proponent has disputed the manner in which samples were collected but it is not in dispute that samples were collected in the presence of representative of Proponent and no objection with regard to any irregularity in collection of samples was pointed out in the inspection/visit report. The objection therefore is an after thought and cannot be believed. The objection with regard to days of violation are the same which we have already considered and rejected and the same is followed here at also.

(lxvii)M/s Vivid Global Industries Limited (Item 78-List 103 of Committee)

761. It is a chemical manufacturing industry, red category, SSI scale. Approved quantity of effluent discharge is 40 CMD. Assessment of Rs. 60.984 lakhs was made as compensation vide report dated 18.06.2020 which has been revised to Rs.77.576 lakhs vide report dated 12.08.2021. Earlier days of violation were taken as 963 which are revised to 965.

762. Inspection was made on 23.11.2016 when number of violations were noted based whereon closure/show cause notice dated 23.02.2017 was issued giving details of violations as under:

*“Board officials visited your industry on 23.11.2016 to verify compliance of consent conditions & collection of Joint Vigilance sample from ETP outlet. Sub-Regional Officer, Tarapur-I communicated analysis reports of waste water collected from ETP outlet/V-notch/bypass line/treated effluent sumps of your industry. The **analysis reports shows values of pH-2.5 & COD-52000 mg/L which is exceeding to the inlet** designed parameters of CETP thereby up-setting CETP performance. It is found from vigilance sampling drawn during odd hours that you are discharging highly polluting stream/chemical load to the CETP and degree of exceedance of COD compared to consented norms is 20700 %. The above fact clearly indicates that you have adopted this practices of discharge of high COD stream and your tendency towards not to abide environmental norms. The high polluting /COD streams hampers functioning of CETP operations thereby discharging*

substandard quality effluent in Navapur sea and creating adverse impact on nearby environment. After perusing the results, degree of exceedance and tendency of discharge of untreated effluent, I am of the opinion that you are willfully/intentionally discharging highly polluting effluent stream thereby violating consented norms and causing severe damage to the environment which needs to be stopped immediately to protect such damage of environment.”

763. In the reply dated 03.03.2017, Proponent claimed that it is a zero-discharge unit and not giving any effluent to CETP. However, we find that at the time of inspection ZLD was not operating and that being so the reply submitted by Proponent without placing anything on record to show that ZLD was functional and actually functioning at the time of inspection, we find no reason to take a different view than what has been taken by the Authority. Conditional restart order was issued 11.05.2017. Inspection report is duly signed by the representative of Proponent and no otherwise observation was made by him therefore dispute about sample collection is an after thought. Infact Proponent has placed on record another order dated 07.05.2018 of CPCB referring to its visit dated 28.03.2018 when officials of CPCB noted following violations:

- (i) The unit was operational during the visit. The unit failed to provide the date regarding raw material consumption and product manufactured.
- (ii) The unit generates 40 KLPD of trade effluent which is treated in Effluent treatment plant of 50 KLD. The unit has not installed web camera (PTZ) which is requisite as per condition of Consent to Operate.
- (iii) Effluent is collected in open channels as well as in pits at several locations. From the pit, effluent is conveyed to main collection tank manually using bucket.

- (iv) The unit has 12 reactors for various slops of manufacturing. Leakages from reactors and obnoxious fumes from nutche filter were observed.
- (v) Large amount of liquid were found in pits and PVC drums without any identification mark. The effluent was found overflowing in low lying areas near pits due to improper and unlined drainage for effluent which has potential for water and soil pollution.
- (vi) Leakage from effluent pumps was abandoned in nearby soil.
- (vii) Large amount of solid waste was observed within the premises as well as outside at several locations.
- (viii) The unit has two vents, but the approach to stacks for monitoring has not been provided.
- (ix) The stack of DG set was situated within the shed of DG set.

764. The point wise reply was submitted by proponent vide letter dated 14.12.2018 and perusal thereof shows that virtually all the observations have been admitted and reply basically is a subsequent attempt of clarification. Further, objection with regard to days of violation are the same which we have already considered and rejected and the same is followed here at also.

(lxviii) M/s Square Chemicals (Item 79-List 103 of Committee)

765. It is a chemical industry, red category, SSI scale with approved effluent discharge quantity of 4 CMD. Compensation of Rs. 25.331 lakhs was determined vide report dated 18.06.2020 which has been revised and increased to Rs. 32.317 lakhs vide report dated 12.08.2021. Inspection was made on 11.02.2018 when several violations were noticed pursuant whereto closure/show cause notice dated 19.03.2018 was issued mentioning violation as under:

- (i) You have drained huge quantity of yellow/turmeric colour sludge illegally into MIDC drainage system which gets accumulated and causing choking of two MIDC chambers leading to sump no. 3.
- (ii) You are carrying unconsented activity i.e. job work of distillation of solvent form spent mother liquor without obtaining prior permission from the Board.
- (iii) You have not provided positive discharge system till the date inspite of Hon'ble NGT order still continued with gravity discharge pipeline.

766. Proponent submitted letter dated 24.03.2018 which is on record and perusal thereof shows that Proponent admitted to manufacture items which were not approved in the consent order and with respect to other violations also there is no denial to the factum but only explanation. Conditional restart order is dated 17.05.2018. Since violations are not shown to be incorrect, we find no reason to grant any relief. With regard to dispute on days of violation the same have already been considered and rejected and the same is followed here at also.

(lxix) Shree Chakra Organics Pvt. Ltd.(Item 80-List 103 of Committee)

767. It is a chemical industry, red category and SSI scale. Approved quantity of effluent which it can discharge is 63.9 CMD. Compensation of Rs. 10.639 lakhs was determined vide report 18.06.2020 finding days of violation as 168. The amount has been revised to Rs. 13.666 lacs for 170 days of violation vide revised report dated 12.08.2021.

768. Inspection was made on 29.01.2018 when Proponent was found discharging sub standard effluent with COD 17440 and SS 3049. Closure/show cause notice was issued on 08.08.2012. Proponent has placed nothing on record to show the above findings incorrect, hence we

find no reason to interfere. Further, objection with regard to days of violation is same which we have already considered and rejected and the same is followed here at also.

(lxx) Aarti Drugs Ltd. E-105,106,109,120 TIA MIDC (Item 81-List 103 of Committee)

769. It is a bulk drug manufacturing industry, red category, SSI scale. Earlier it was LSI unit but subsequently has come in SSI scale. The approved quantity of effluent discharge is 23 CMD. Compensation of 7.029 lakhs was determined vide report dated 18.06.2020 which has been revised and reduced to Rs. 2.974 lakhs vide report dated 12.08.2021.

770. Inspection was made on 25.11.2016 when proponent was found discharging sub standard effluent with COD 704 mg/l. Based on the said violation, closure/show cause notice dated 03.12.2016 was issued. Proponent submitted reply dated 8.12.2016 wherein it sought to explain/justify COD level with reference to capacity of CETP and not on the basis of its own consent order prescribing limits of COD. We therefore find no error or discrepancy in the findings and there is no reason to interfere. Further objection with regard to days of violation is same which we have already considered and rejected and the same is followed here at also.

(lxxi) Omega Colors Pvt. Ltd. (Item 82-List 103 of Committee)

771. It is a dye manufacturing industry, red category, SSI scale. Approved quantity of effluent discharge is 82 CMD. There are two inspections which have been referred by Committee for making assessment of compensation of Rs. 11.209 lakhs vide report dated 18.06.2020 taking days of violation as 35 and 71 total 106. However, after review, vide report dated 12.08.2021, days of violation are revised as

35 and 470, total 505. Consequently, amount of compensation is revised to Rs. 78.380 lakhs. In the Inspections dated 23.11.2016 and 30.11.2016, samples were collected wherein COD level was found as 320 mg/l and 612 mg/l, respectively. Consequently closure/show cause notice dated 03.12.2016 was issued and conditional restart order dated 23.02.2017. Further inspection was made on 05.04.2017 when again discharge of sub-standard quality of effluent was found with pH 4.9 while prescribed standard was 5.5 to 9.0, as per consent order. Closure/show cause notice dated 05.04.2017 was issued and order of conditional restart is dated 01.06.2017. Proponent has not placed anything on record to show anything wrong in the above findings and we find no reason to interfere. Reports of some other period are of no relevance so far as violations noted in the inspections above. Dispute with regard to days of violation, has no merit since similar grounds we have already considered discussed and rejected and the same are followed here at also.

(lxxii)M/s Remi Edelstahl Tubulars Ltd. (Formerly Rajendra Mechanical Industries Ltd) (Item 83-List 103 of Committee)

772. It is an engineering industry, red category and SSI scale. Effluent discharge quantity approved is 20 CMD. Compensation of Rs. 4.180 lakhs was determined for 22 days of violation vide Committee's report dated 18.06.2020. The said amount is revised to 5.306 lakhs vide report dated 12.08.2021.

773. Inspection was made on 28.12.2016 when Proponent was found discharging sub standard effluent with COD 976 mg/L and pH 2.7 which were not in accordance with the limits prescribed in the consent order. Closure/show cause notice was issued on 03.12.2016 and conditional restart order is dated 25.01.2017. Proponent has not placed anything on record to show the above finding incorrect and we find no reason to

interfere so as to grant any relief to the Proponent. Further, objection with regard to days of violation is same which we have already considered and rejected and the same is followed here at also.

(lxxiii) Gini silk Mills limited (item 84-List 103 of Committee)

774. It is textile processing industry in red category and MSI scale. The quantity of effluent it can discharge is 510 CMD. Compensation of Rs. 119.309 was determined vide report dated 18.06.2021 but the same has been revisited and it reduced to Rs. 77.416 lacks vide report dated 12.08.2021. Inspection was made on 23.11.2016 when proponent was found discharging polluted effluent with COD 896mg/l. Closure notice dated 03.12.2016 was issued. Conditional restart order was issued on 03.03.2017. There is nothing on record to show that the violation found in the inspection dated 23.11.2016 was not correct. In view thereof we have no hesitation in holding that the proponent has violated environmental laws and condition of consent and liable for payment of environmental compensation. One of the objections is that earlier, as per consent to operate applicable on 23.11.2016, it was LSI and scale has been modified as MSI vide renewal of consent dated 02.07.2020 in view of MSME Act (Micro, Small and Medium Enterprises Development Act) came into force on 01.06.2020. In our view, subsequent change in the scale is of no relevance since on the date when Proponent was found causing pollution by discharging sub-standard effluent, it was LSI and therefore for the purpose of compensation to be determined it has to be treated as LSI. The objection taken otherwise is rejected. Further objection taken in respect of days of violation founded on the same grounds we have already considered rejected above hence for the same reasons this objection is also rejected.

(lxxiv) M/s. Ankit Petroproducts Ltd.-earlier known as Mainfair biotech (item 85-List 103 of Committee)

775. The unit is manufacturing Poly Vinyl Acetate Thermoset Polymers, 1000 ton/year category and SSI scale. Compensation of Rs. 136.077 lakhs was determined vide report dated 18.06.2020 but the same has been reduced and revised vide report dated 12.08.2021 as Rs. 57.559 lakhs.

776. Inspection was made on 24.11.2016 when Proponent was found discharging sub-standard effluent with pH 7.4 and COD 8880mg/l. Closure/show cause notice dated 03.12.2016 was issued mentioning violations as under:

“AND WHEREAS, Board officials visited your industry on 24/11/2016 to verify compliance of consent conditions & collection of Joint Vigilance sample from ETP Outlet. Sub-regional Officer, Tarapur-I communicated analysis reports of waste water collected from ETP outlet/V-notch/bypass line/treated effluent sumps of your industry. The analysis reports shows values of pH-7.4 & COD- 8660 mg/l which is exceeding to the inlet designed parameters of CETP thereby up-setting CETP performance. It is found from vigilance sampling drawn during odd hours that you are discharging highly polluting stream/chemical load to the CETP and degree of exceedance of COD compared to consented norms is 3452%. The above fact clearly indicates that you have adopted this practices of discharge of high COD stream and your tendency towards not to abide environmental norms. The high polluting/COD streams hampers functioning of CETP operations thereby discharging substandard quality effluent in Navapur sea and creating adverse impact on nearby environment. After perusing the results, degree of exceedance and tendency of discharge of untreated effluent. I am of the opinion that you are willfully/intentionally discharging highly polluting effluent stream thereby violating consented norms and causing severe damage to the environment which needs to be stopped immediately to protect such damage of environment.”

777. Conditional restart order was issued on 24.10.2017. First objection taken by Proponent is that inspection was not properly made. We, however find that inspection was made in presence of representatives of the unit and no objection was taken at the time of inspection or immediately thereafter. Second objection is that unit is SSI/ZLD but compensation has been computed by treating it as LSI. We find that this objection stands removed since in the revised report dated 12.08.2021 compensation has been redetermined treating Proponent as SSI unit.

Third objection is with regard to days of violation and according to proponent it should have been 10 days. The grounds taken are same as we have already discussed above and rejected, hence the objection taken by proponent in this regard is rejected here it also.

(lxxv) M/s. Radiant Intermediates Pvt. Ltd. (item 86-list 103 of Committee)

778. This is a chemical manufacturing unit, red category, SSI scale. The approved quantity of effluent it can discharge is 1.4 CMD. Compensation of Rs. 84.225 was determined vide report dated 18.06.2020 based on two inspection reports when Proponent was found violating environmental laws and causing pollution, taking days of violation as 522 and 404 respectively. However, vide revised report dated 12.08.2021 days of violation are reduced to 14 and 404.

779. Inspection was made on 29.11.2016 when Proponent was found discharging sub-standard effluent with COD 15360 mg/l and pH-5. The sample report dated 01.12.2016 is on record filed by Proponent himself. On the date of inspection, sample was collected in the presence of industry's representatives as is evident from report available on record at page 3175. Closure/show cause notice dated 03.12.2016 was issued. With regard to high level of pollution i.e. COD level, Proponent has not denied the same but has sought to explain by observing that since water consumption was reduced, the dilution of effluent may not have been done to the requisite level. This is evident from the following extract of reply submitted by Proponent vide letter dated 08.12.2016:

“As you are well aware the working of Small Scale Industries and also the ETP Facilities installed as per the Guidelines by MPCB, we generally Dilute the effluent by Adding water to bring down the COD level.

*We here want to make a statement that **it may have happened that since Water was not available in sufficient quantity, the***

COD level may have gone little up, but not the extent as shown in the result.

As we assessed the situation, we were thinking that we have reduced the Effluent Quantity and the same will solve the problems assuming that other parameters will be taken care by CETP

Sine this has not happened, so as per the Guidelines, we will have to cut down the Production Activity by 60% to have sufficient water to bring down the COD level to the prescribed limit and thus improve the Quality of Effluent with Reduced Quantity

We are committed to this and we Assure you that you will take this as very seriously and reduce the Production Activity till it matches with Effluent of Prescribed Quality in Less Quantity.”

780. In view thereof and admission of Proponent, determination of compensation cannot be faulted and objection there against is rejected.

781. Another inspection was made on 30.07.2018 when also several violations were noticed based whereon closure/show cause notice dated 08.08.2018 was issued mentioning violations as under:

“AND WHEREAS, the Board officials visited to your unit on 30/072018. The non-compliances observed during the visit are as follow:

- 1. You have not provided segregation & treatment facility for high COD stream.*
- 2. You are treating the effluent generated from M/s Pantagon Drugs plot No. N-225 without prior permission from Board.*
- 3. You have not provided online monitoring & not connected to MPCB server till date.*
- 4. You failed to provide details of solvent generation & disposal to the visiting MPCB officials.”*

782. Proponent submitted reply dated 13.08.2018 stating that it has made arrangement of segregation on 08.03.2017 but nothing has been placed on record to show that the same had continued or actually was available on the date of inspection i.e. 30.07.2018. The second violation of treating effluent generated by M/s Pantagon Drugs, Plot No. N-225, Proponent explained that it is not doing any such treatment and has further explained that Pantagon is a group company on the adjacent plot and has a separate consent as well as effluent treatment arrangements. Since Proponent and Pantagon are same group company, both shares

drainage connection to MIDC drainage chamber, have only one drainage connection to MIDC chamber; provided combined pH flow meter which shows that the observations made in the report are incorrect. With respect to other faults also, it sought to explain the things but explanation appears to be afterthought. Moreover, no such observation with regard to findings mentioned in report dated 30.07.2018 has been noted by representatives of Proponent who signed inspection report. Further objection is with regard to days of violation and the grounds are same as we have already discussed and rejected hence the same are rejected here at also. Conditional restart order was issued on 01.09.2018. Amount of compensation has been reduced noticing some factual errors in the dates. In view of above discussions, objections raised by Proponent are rejected.

(lxxvi) Premier Intermediate Pvt. Ltd. (Item No. 87-List 103 of Committee)

783. It is a bulk drugs manufacturing, red category, LSI scale unit. The effluent quantity approved as per consent order is 5 CMD. Compensation of Rs. 9.499 lakhs was determined vide report dated 18.06.2020 but the same has been reviewed and reduced to Rs. 4.019 lakhs vide revised report dated 12.08.2021.

784. Inspection was made on 28.11.2016 when proponent was found discharging sub standard effluent with COD 6400 mg/l. Closure/show cause notice dated 03.12.2016 was issued and conditional restart order is dated 17.03.2017. The first objection taken by Proponent is that it was wrongly considered as LSI for the purpose of compensation but we find that as per revised report dated 12.08.2021, compensation has been re-determined by treating Proponent as SSI, therefore, this objection stands removed. Second objection is on the manner of computation of number of

days of violation. According to Proponent it ought to be 9 while Committee has computed as 50. However, the grounds of challenge are same which we have already discussed and rejected, hence the same are rejected here also.

(lxxvii) M/s Maharashtra Organo Metalics Pvt. Ltd. (Item No. 88-List 103 of Committee)

785. It is a chemical manufacturing industry in red category and SSI scale with approved quantity of effluent discharge is 6 CMD. Compensation of Rs. 9.309 lakhs was determined vide report dated 18.06.2020 but the same has been reviewed, revised and reduced to Rs. 1.447 lakhs vide revised report dated 12.08.2021.

786. The inspection was made on 24.11.2016 when Proponent was found discharging polluted effluent with COD 1728mg/l and pH 4.4. Closure/show cause notice was issued on 03.12.2016. Proponent submitted reply on 22.12.2016 referring to a third party testing in which no violation was found but in the absence of collection of sample in the presence of authorised officials, the private testing after collecting samples as per the convenience of Proponent cannot be a valid defence, hence rejected. Next objection is that the unit on the date of inspection was SSI but wrongly taken as LSI. We find that in revised report dated 12.08.2021, this discrepancy has been corrected and compensation has been re-determined by treating Proponent as SSI, hence this objection no more survive.

(lxxviii) Anuh Pharma Chem, N-183, MIDC Tarapur (Item No. 89-List 103 of Committee)

787. It is a bulk drugs manufacturing, red category, LSI scale unit. The quantity of effluent approved for discharge is 10 CMD. Compensation of Rs. 50.535 lakhs was determined vide report dated 18.06.2020 but revised to Rs. 64.392 lakhs vide revised report dated 12.08.2021. A

substantial objection raised is that there is some mistake of identity inasmuch as compensation relates to another industry and not to this Proponent. It appears that compensation order was in the name of **Anu Pharma Chem Plot No. E-17/3 & 4** who filed objection that compensation has wrongly been addressed to it though it appears to be in relation to another industry industry working at plot no. N-183, TIA MIDC. This objection has been accepted by Committee vide revised report dated 12.08.2021 and it has been clarified that compensation of Rs. 64.392 lakhs is in respect of M/s. **Anu Pharma Chem, plot no. N-183 TIA MIDC**. Rectification of error is appreciable but substitution of industry without giving opportunity to the correct Proponent is erroneous. Once Committee found error in respect of identity, it ought to have given opportunity of hearing to Proponent of corrected identity. In our view, to this extent, computation of compensation in respect of **Anu Pharma Chem, Plot no N-183** needs to be revisited after giving opportunity to the above Proponent. **Objection of this Proponent is allowed to this extent.**

(lxxix) M/s Ganesh Benzoplast Ltd. (Item No. 90-List 103 of Committee)

788. It is a bulk drugs manufacturing, red category, LSI scale unit. Approved effluent quantity permissible for discharge is 5 CMD. Compensation of Rs. 187.702 lakhs was determined vide report dated 18.06.2020 but subsequently vide report dated 12.08.2021, it has been revisited and increased to Rs. 238.275 lakhs.

789. Proponent unit was inspected on 07th and 8th January, 2017 when ETP was found not operating and discharging sub standard effluent with COD 260 mg/l.

790. Unit was again inspected on 08.01.2017 when discharge of polluted effluent was found with pH 3.9 and COD 7560 mg/l. Closure/show cause notice dated 14.02.2017 was issued mentioning violations as under:

“AND WHEREAS, Board officials visited your industry to verify compliance of consent conditions & collection of Joint Vigilance sample from ETP Outlet. Sub-Regional Officer Tarapur-I communicated analysis reports of waste water collection from ETP outlet/V-notch/bypass line/ treated effluent from your industry. The analysis reports of the sample collected are given in the table below which are exceeding to the inlet designed parameters of CETP thereby up-setting CETP performance.

S.No.	Date of Sample Collection	Point of Sample Collection	Parameters		% Exceedance of COD
			pH	COD	
1	7.1.2017	ETP outlet	7.7	260	4
2	8.1.2017	ETP outlet	3.9	7560	2924

*AND WHEREAS, it is found from the vigilance sampling drawn during odd hours that you are discharging highly polluting stream/chemical load to the CETP and **degree of exceedance of COD compared to consented norms is up to 2924%.** The above fact clearly indicates that you have adopted this practices of discharge of high COD stream and your tendency towards not to abide environmental norms. The high polluting/COD streams hampers functioning of CETP operations thereby discharging substandard quality effluent in Navapur sea and creating adverse impact on nearby environment. After perusing the results, degree of exceedance and tendency of discharge of untreated effluent, I am of the opinion that you are willfully/ intentionally discharging highly polluting effluent stream thereby violating consented norms and causing severe damage to the environment which needs to be stopped immediately to protect such damage of environment.”*

791. Proponent submitted reply dated 18.02.2017 in which it simply denied the violations and said it is discharging effluent meeting the norms without placing any material in support thereof. Conditional restart order was passed on 23.02.2017. The objection with regard to inspection report is that Proponent does not admit the same but in absence of any material to show any fault or discrepancy, we find no reason to accept this defence. Further objection is with regard to days of violation on the same grounds which we have already discussed and rejected, hence rejected here also.

(lxxx) Aarviam Dye Chem (Item No. 93-List 103 of Committee)

792. It is a dyes unit in red category and scale SSI. Permitted quantity of effluent it can discharge is 20 CMD. Compensation of Rs. 4.433 lakhs was determined vide report dated 18.06.2020 which has been revised and reduced to Rs. 5.708 lakhs vide report dated 12.08.2021.

793. Inspection was made on 12.01.2017 when Proponent was found discharging sub standard effluent with COD 7400 mg/l and pH 11. Closure/show cause notice was issued on 14.02.2017 and conditional restart order was passed on 18.05.2017. Interestingly, compensation was determined earlier for 70 days and after revision for 71 days but Proponent, in his objection has submitted that days of violation should have been 90. Therefore, we find no real objection in this regard. With respect of violations nothing substantial has been placed on record by the proponent to show any fault with the said report. The objection is therefore rejected.

(lxxxi) Dhanlaxmi Steel (Item No. 94-List 103 of Committee)

794. It is an engineering company in red category and SSI scale. Approved quantity of effluent for discharge is 0.8 CMD. Compensation was determined vide report dated 18.06.2020 as Rs. 55.475 lakhs but reduced vide revised report dated 12.08.2021 as Rs. 3.78 lakhs.

795. Inspection was made on 15.10.2016 when Proponent was found to have started pickling activity, wire drawing, and did not provide ETP. Based on such violations, closure/show cause notice dated 23.11.2016 was issued mentioning violations as under:

“AND WHEREAS, Board officials visited your industry on 15.10.2016 to verify compliance of consent conditions and investigate complaint matter. Sub-Regional Officer, Tarapur-I submitted proposal as per Enforcement Policy of the Board for initiation of action against you vide above referred letter at sr.no.2. It has been reported that **you have started wire drawing &**

pickling activity without obtaining prior consent from the Board. You have not provided effluent treatment plant thereby untreated waste water generated from pickling activity is directly discharged outside factory premises creating pollution nuisance to the environment. You have not provided air pollution control system to the pickling section thereby off gases/process emissions are being discharged into environment. You have not obtained membership of CHWTSDf thereby hazardous waste generated from process is being disposed unscientifically creating pollution nuisance in the nearby vicinity."

796. Conditional restart order was issued on 03.03.2017. Proponent has not placed anything on record to show that the violations found were not correct. In the objections nothing has been said on this aspect. The real objection is with regard to number of violation and according to proponent it should have been 96 days. We find that earlier in the report dated 18.06.2020 days of violation were taken as 876 but now the same are reduced to 47. Quantum of environmental compensation has also been revisited and reduced substantially. Hence basic objection raised by Proponent stands removed.

(lxxxii) M/s S R Steel (Item No. 97-List 103 of Committee)

797. It is an engineering unit, red category and SSI scale with effluent quantity permissible for discharge is 0.2 CMD. Compensation of Rs. 13.235 lakhs was determined vide report dated 18.06.2020 but reviewed, revised and reduced to Rs. 6.672 lakhs by revising the days of violation from 209 to 83.

798. Inspection was made on 01.04.2017 when it was found that proponent's ETP was not operating and untreated effluent was being discharged. Based thereon, closure/show cause notice was issued on 26.04.2017 mentioning above violations. Proponent submitted reply vide letter dated 12.05.2017 which shows that violations found were not disputed. Relevant extract of reply dated 12.05.2017 is as under:

*“1. I want to bring to your kind notice that when F.O. visited, my ETP had gone to repair. Now it is proper. I am attaching the bill for the same. **Now ETP has been made perfect and I will use it in zero discharge.***

2. Scrubbing system was repaired and now in working condition.

3. Kachcha pit has been repaired with RCC Cement.

4. Every month I will give Sludge to Taloja.

5. I had some issue with money so I could not pay the money as bank guarantee. But now I promise to pay it at the earliest.

6. I further request that my family and families of 8 workers under me only on this business.”

799. Conditional restart order was issued on 29.09.2017. In view of the fact that violations found are incorrect and on contrary, virtually admitted by Proponent, it cannot be said that Proponent is not liable to pay environmental compensation on the principle of polluter pays. Further objection is with regard to days of violation and as per Proponent it should have been 154 days. We find that earlier compensation was determined vide report dated 18.06.2020 for 209 days of violation but reduced to 83 days vide report dated 12.08.2021 while Proponent himself says that days of violation should have been only 154. It is also mentioned in the objection that if record is fully examined, number of days of violation would only be 81 days but how it comes to this figure, nothing has been said. In any case, this objection substantially stands removed.

(lxxxiii) M/s J V Chem Industries (Item No. 98-List 103 of Committee)

800. It is a chemical industry in red category, SSI scale with approved quantity of effluent it can discharge is 4 ZLD. Compensation of Rs. 16.148 lakhs was determined vide report dated 18.06.2021 but reviewed and revised to Rs. 20.499 lakhs vide revised report dated 12.08.2021. Objection of Proponent basically is that neither it is a red nor orange nor green category unit, hence wrongly included in the list of polluting units.

It a SSI unit and total discharge is less than 25 KLD. It ought to have been excluded. It is also disputing date of inspection stating that on the said date no inspection was made. It has not violated any environmental norms and even otherwise days of violation are wrongly mentioned and correct days of violation should have been 21.

801. Unit was inspected on 05.04.2017 when several violations were found, whereupon closure/show cause notice dated 10.04.2017 was issued mentioning violations as under:

“AND WHEREAS, TEPS-CETP vide their e-mail dtd. 5/4/2017 reported that **your industry was discharging acidic effluent pH-1.2 and sample of the same was collected by TEPS-CETP and also communicated the analysis report of the same i.e. pH-1.2 and COD-960 mg/l which is exceeding to the permissible limit.** The Sub-Regional Officer, Tarapur-I has communicated the same on dtd.5/4/2017.

AND WHEREAS, after examining all the reports and records available with this office, I have come to conclusion that you are knowingly and willfully violating the consent conditions thereby provisions of Water (P & CP) Act, 1974 and Air (P & CP) Act, 1981.”

802. Conditional restart order was issued on 04.07.2017. Proponent filed an appeal seeking withdrawal of closure directions vide letter dated 02.06.2017 wherein it has said that sample was not properly taken from the appropriate place and results of sample are also not correct.

803. With regard to the objections for samples it was taken in the presence of representatives of industry. No such objection was taken at that time. Responding Proponent's objection that it is neither red nor orange nor green category industry, Committee has found that in the consent order industry was shows as red category and therefore, objection on this aspect has no substance and rejected. Scale of unit as per consent order is SSI hence Committee has rightly computed compensation treating Proponent unit as red category, SSI scale. Nothing

has been placed on record to show any fault in the findings recorded by Committee. So far as objection with regard to manner of computation of number of days of violation is concerned, the grounds are same as we have already discussed and rejected, hence entire objections are rejected.

(lxxxiv) M/s Shreyans Chemicals (Item No. 99-List 103 of Committee)

804. It is chemical, red category, SSI scale industry with approved quantity of effluent it can discharge is 1 CMD. Compensation of Rs. 54.018 lakhs was determined vide report dated 18.06.2020 which is reviewed and reduced to Rs. 3.376 lakhs vide revises report dated 12.08.2021.

805. Inspection was made on 04.04.2017 (wrongly mentioned in the earlier report dated 18.06.2020 as 05.04.2017) when proponent was found discharging sub standard effluent with pH 3.19 and COD 19680 mg/l. Founded on the said violations, closure/show cause notice dated 05.04.2017 was issued. Proponent has relied on certain reports of other dates showing that no violation was found but that will not be of any relevance with regard to violation found on 04.04.2017 in respect where to nothing has been placed on record to controvert. One of the objections taken by proponent is that on 04.04.2017, inspection was not made by officials of MPCB or CPCB but by officials of TEPS operating CETP. In our view that will not make any difference inasmuch TEPS is an association of industries themselves. Proponent is also member of TEPS. There is no reason as to why officials of TEPS operating CETP in which Proponent is also discharging its effluent, would have any reason to submit wrong adverse report against Proponent. The purpose is prevention of degradation of environment and for this purpose any reliable information can be acted upon. Further objection is on the

manner of computation of number of days of violation. As per Proponent it should have been 38. Earlier compensation was computed by taking days of violation as 853 which are revised and reduced to 42 days. Substantially, grievance of Proponent has been met out. Even otherwise the grounds taken in respect of days of violation are same as we have already discussed and rejected. Same reasons are followed hereat also.

(lxxxv) M/s Bombay Rayon Fashions Ltd. (item 7-List 103 of Committee)

806. It is a textile industry, red category, LSI scale with approved quantity of effluent it can discharge is 6000 CMD. Compensation of Rs. 66.114 lakhs was determined vide report dated 18.06.2020 which has been reduced and revised as Rs. 73.557 lakhs vide revised report dated 12.08.2021.

807. Inspection was made on 29.04.2016 when Proponent was found committing following violations:

- (i) Discharging substandard quality effluent
- (ii) Ozonization was not in operation
- (iii) Decanter was not in operation
- (iv) ETP maintenance and operation was very poor
- (v) Excess water consumption and excess effluent generation hampering performance of CETP.

808. Closure/show cause notice was issued on 14.10.2016 and conditional restart order is dated 27.10.2016. Objection raised by Proponent is that there was no discharge of sub-standard effluent since sample collected on 16.01.2017 and 18.01.2017 found meeting norms but the said samples in our view are irrelevant for the violation found in inspection dated 29.04.2016. Further objection is that observations with regard to decanter, ozonisation and ETP are not correct in view of

subsequent reports of 16th and 18th January but the same is also liable to be discarded as irrelevant for the violations found in inspection dated 29.09.2016. Objection with regard to manner of computation of days of violation is founded on the same grounds which we have already considered and rejected. Committee earlier determined compensation taking days of violation as 348 but the same are revised to 305. Compensation however has increased on account of change in distribution recovery cost factor from 0.0041310 to 0.0045961.

MA No. 3/2021 & 4/2021

809. Some MAs have been filed by individual industries referring to their objections on different aspects and seeking permission to intervene. Some of these industries have also filed objections along with MA 2/2021 i.e., through their associations which we have already discussed above. However, we are taking these individual applications also into consideration and wherever any additional objection has been raised, we would consider the same.

810. MA 3/2021 dated 28.12.2021 has been filed on behalf of M/s Maharashtra Organo Metalics Pvt Ltd. (Item 88). Principle objection is that unit is SSI though it has been taken LSI for the purpose of determining compensation. Objection of this unit we have already discussed above and found that scale of unit is rectified in revised report dated 12.08.2021 and compensation has been redetermined treating this Proponent as SSI. MA 3/2021 stands disposed of.

811. MA 4/2021 dated 20.11.2020 has been filed by same proponent. Its objection is with regard to manner of computation of number of days of violation and further that any violation in respect of pH is not relevant for SSI unit. So far as days of violation is concerned, we have already

discussed above that in respect of the concerned Proponent, the same has reduced to 18 from 49, vide revised report dated 12.08.2021 and the amount of compensation has also reduced from Rs. 9.309 lakhs to 1.447 lakhs. Further, once prescribed limit is breached, scale or category of unit would not be relevant for seeking any exemption from such violation and in law, industry is liable to pay compensation for causing pollution on the application of principle of polluters pay. Further objection is that Committee had not given any opportunity of hearing but in the report dated 12.08.2021 we find that this Proponent was given opportunity of hearing on 30.11.2019 and thereafter revised report has been submitted, hence we find no substance in the objection raised in MA 4/2021 and the same is rejected.

MA 5/2021 and 6/2021:

812. These MAs dated 02.02.2021 have been filed on behalf of Anu Pharma Chem, plot no. E-17/3& 4 and E-18, TIA MIDC. Objection of this proponent we have already discussed above. Revised report dated 12.08.2021 also says that compensation determined vide report dated 18.06.2021, revised vide report dated 12.08.2021 is applicable to M/s Anu Pharma Chem, plot no. N-183. Hence grievance of this Proponent does not survive any more. The MAs 5/2021 and 6/2021 stand disposed of accordingly.

MA 08/2021: by Applicant

813. This application dated 08.03.2021 has been filed by applicants with the request to direct officials and respondents to utilize amount deposited by Polluter Proponents in Environment Relief Fund to initiate restoration and remedial steps, outlined in Chapter VIII of Expert Committee report dated 18.06.2020 including remedying health of inhabitants and providing health care to affected individuals. It for the Tribunal to pass

appropriate order and there is no reason to anticipate the tribunal will pass such order.

814. **ISSUE 2** formulated above in para 185, in fact, substantially has been considered and answered above when we considered the objection regarding formula adopted and applied by Committee for computation of compensation. We reiterate above reasons but would add some further crucial angles to support final return to the said issue.

815. This matter has remained pending for almost 5 years before Tribunal. The mischief of Proponents, apathy towards preservation of environment, consistent violation of statutory conditions of consents/approvals granted by Statutory Regulators and provisions of environmental laws, emboldened conduct to justify their act of destruction of ecology, unhesitant attitude to compromise purity of nature in preference of commercial interest etc. has caused almost unmeasurable damage to water bodies including marine ecology and local residents in particular. The matter has been examined at different levels by different Expert Committees as also by Tribunal very meticulously. It is beyond doubt that discharge of polluted effluent by TEPS through CETP had violated capacity norms. Against the capacity of 25 MLD, actual discharge was much higher and also contained pollutants beyond permissible and prescribed limits/standards. Individual member industries are also guilty by discharging polluted effluent, damaging environment and breaching conditions of consent/approvals. Committee has also shown that the land area and water bodies in and around TIA MIDC, where industries which are members to TEPS and TIMA are situated, have suffered huge degradation. Proponents have caused deterioration and damage to environment by affecting not only the land

but also ground water, surface water, and water bodies including Arabian Sea where highly polluted effluents ultimately reach. These facts and findings recorded by Committee have not been controverted either by TEPS or TIMA or the individual members who have submitted their own documents also which we have already discussed. Rather documents submitted by Proponents have proved their fault. Mere denial is not sufficient considering the fact that in the matter of environment when Proponents are found discharging polluted effluents etc. and causing pollution, principle of absolute liability is attracted and it is upon Proponents to demonstrate that they were/are not violating environmental norms/laws, by placing positive material before Court which has not been done in the case in hand.

816. So far as the compensation determined by Committee is concerned, objections raised by Proponents including operator of CETP i.e., TEPS, we have considered above and rejected. However, it does not mean that we have approved the amount of compensation, determined by Committee, as such. Committee has concentrated on the quantum of pollutant and the period for which it was discharged for the purpose of computing compensation but when we talk of environmental compensation for the purpose of causing damage to environment and for remediation/restoration of environment, it is not only the quantity of pollutant but the severity of damage caused to the environment, sphere of influence, mediums of environment affected and other relevant factors like:

- (a) Damage caused to environment
- (b) Cost of remediation/restoration of environment,
- (c) Deterrence to the polluter for causing violation of environmental norms so that one may not get encouraged to do the same in future, instead scared to repeat,

- (d) The act of violation of statutory orders like consent, NOCs, permission etc.,
- (e) The loss/damage caused to the inhabitants and their health immediately and likely to cause in future.

817. In **Goa Foundation (supra)** Supreme Court awarded compensation on 10% of sale price of the goods. In **Deepak Nitrite (supra)** Supreme Court said that in a given case the percentage of the turnover itself may be a proper measure because the method to be adopted in awarding damages on the basis of 'pollutor to pay' principle has got to be practical, simple and easy in application. In **Goel Ganga Developers (supra)** Supreme Court allowed 10% of project cost as compensation. As we have already examined probability of computation of environmental compensation based on turn over and we have found that compensation would increase multifold. We have given reference of some units based on their turn over as available on public domain. That approach would place very heavy burden upon Proponents. Interestingly, TIMA in its reply dated 10.04.2017 has said that current turnover in TIA MIDC is 40000 crores. If we take just 1%, it will come to Rs.400 crores. Here Committee has ignored the fact that violation of environmental norms by Proponents by discharging polluted effluent has continued for years together and compensation if determined for one, two or more violations, based only on the date of inspection, it would condone violations continued for years and that is how would allow Proponents to profiteer by continuing business with continued violation of environmental norms, without any liability. In such cases where violation has continued for years together, compensation should be imposed, in the absence of regular periodical inspection report due to lackcity on the part of the officials of Statuary Regulators, atleast on annual basis based on turn over of the unit. We

may point out to an interesting factor that most companies have placed on record inspection reports when an individual official of State PCB made inspection and found everything correct but when surprise checking and particularly by joint Committee is made, violations have been found. This speaks volumes not only about the conduct of industries but also inspecting officials of State PCB.

818. Officials of State PCB have also not taken care of their duties by strict enforcement of law inasmuch as violation of laws in the case in hand causing pollution of water, water bodies etc. is an offence under Section 41 to 45A of Water Act, 1974.

“[41. Failure to comply with directions under sub-section (2) or sub-section (3) of section 20, or orders issued under clause (c) of sub-section (1) of section 32 or directions issued under sub-section (2) of section 33 or section 33A.—(1) Whoever fails to comply with the direction given under sub-section (2) or sub-section (3) of section 20 within such time as may be specified in the direction shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.

(2) Whoever fails to comply with any order issued under clause (c) of sub-section (1) of section 32 or any direction issued by a court under sub-section (2) of section 33 or any direction issued under section 33A shall, in respect of each such failure and on conviction, be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.

(3) If the failure referred to in sub-section (2) continues beyond a period of one year after the date of conviction, the offender shall, on conviction, be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.]

42. Penalty for certain acts. (1) Whoever—

(a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or

(b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or

(c) damages any works or property belonging to the Board, or

(d) fails to furnish to any officer or other employee of the Board any information required by him for the purpose of this Act, or
 (e) fails to intimate the occurrence of any accident or other unforeseen act or event under section 31 to the Board and other authorities or agencies as required by that section, or
 (f) in giving any information which he is required to give under this Act, knowingly or wilfully makes a statement which is false in any material particular, or
 (g) for the purpose of obtaining any consent under section 25 or section 26, knowingly or wilfully makes a statement which is false in any material particular,
 shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to 1 [ten thousand rupees] or with both.

(2) Where for the grant of a consent in pursuance of the provisions of section 25 or section 26 the use of meter or gauge or other measure or monitoring device is required and such device is used for the purposes of those provisions, any person who knowingly or wilfully alters or interferes with that device so as to prevent it from monitoring or measuring correctly shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to 1 [ten thousand rupees] or with both.

43. Penalty for contravention of provisions of section 24.—

Whoever contravenes the provisions of section 24 shall be punishable with imprisonment for a term which shall not be less than 2 [one year and six months] but which may extend to six years and with fine.

44. Penalty for contravention of section 25 or section 26.—

Whoever contravenes the provisions of section 25 or section 26 shall be punishable with imprisonment for a term which shall not be less than 2 [one year and six months] but which may extend to six years and with fine.

45. Enhanced penalty after previous conviction. —If any person who has been convicted of any offence under section 24 or section 25 or section 26 is again found guilty of an offence involving a contravention of the same provision, he shall, on the second and on every subsequent conviction, be punishable with imprisonment for a term which shall not be less than 3 [two years] but which may extend to seven years and with fine:

Provided that for the purpose of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished. 4

[45A. Penalty for contravention of certain provisions of the

Act.—Whoever contravenes any of the provisions of this Act or fails to comply with any order or direction given under this Act, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or with both, and in the case of a continuing contravention or failure, with an additional fine which may extend to five thousand rupees for every day during which such contravention or failure continues after conviction for the first such contravention or failure.]”

819. Though there is massive violations by hundreds of industries in TIA MIDC but negligible number of complaints have been filed and that too without any conviction till date. It appears that officials impression is that after filing a complaint, their responsibility is over. Actually, element of accountability is completely missing. Statutory Regulators offices have become decorated power points where anything may matter but not protection and preservation of environment and positive action for enforcement of environmental laws. An individual small industry having single instance of violation may not be prosecuted, but we find no reason for not taking action under Chapter VII of Water Act, 1974 prescribing offences and punishment of such offences against Proponents who have repeatedly committed violations. Further such repeated offences in respect of larger industries like MSI and LSI should have been taken more seriously but nothing of this sort has been done by officials of MPCB/Statutory Regulators who are responsible for ensuring strict compliance of the provisions of environmental norms.

820. Similarly, violation of environmental norms is also an offence under Section 15 of EP Act, 1986. Discharge or emission causing environmental pollution in excess of standard prescribed is prohibited under Section 7 of EP Act, 1986 and an offence under Section 15 but here also nothing has been done by responsible Statutory Regulators and no action of criminal prosecution has been initiated against Proponents violating the said provisions particularly when such violations are repeated i.e. committed for more than, one found in the inspections conducted by the officials and becomes more serious when such violation is by larger industries like MSI and LSI.

821. Some provisions of IPC also cover these offences and are cognizable but even Police has not touched these violators/offenders. In **State (NCT of Delhi) vs Sanjay (supra)**, Supreme Court, while considering an argument whether offences under MMDR Act would exclude action under I.P.C., held that it will not. Illegal mining is an offence under MMDR Act but also amount to theft, an offence under I.P.C. and even if no action was taken under MMDR Act, that does not mean that offender can not be prosecuted under section 379 I.P.C. Hence Police can also take appropriate action but unfortunately, we have never seen them taking offences relating environment, seriously.

Offence under Prevention of Money Laundering Act, 2002:

822. When environmental norms are not observed and in violation thereof there is discharge and/or emission of pollutants causing pollution and thereby commercial activities for commercial gains continue, such activities also attract provisions of Prevention of Money Laundering Act, 2002 (hereinafter referred to as '**PMLA 2002**' as amended from time to time).

823. PMLA 2002 was enacted pursuant to resolution No. S-17/2 adopted by General Assembly of United Nation at 17th Special Sessions held on 23.02.1990 on political declaration and global programme of action; and political declaration adopted by UNGA in the Special Session held on 8th to 10th June, 1998. It came into force however on 01.07.2005. The term "money laundering" and "proceeds of crime" are defined in Section-2(p)&(u) which read as under:

2(p). "Money Laundering" has the meaning assigned to it in Section-3.

*2(u). "**Proceeds of Crime**" means any property derived or obtained directly or indirectly, by any person as a result of **criminal activity** relating to a "**scheduled offence**" or the*

value of any such property or where such property is taken or held outside the country, then the property equivalent in value within the country or abroad.

[Explanation: for the removal of doubts, it is hereby clarified that proceeds of crime include property not only derived or obtained from the “scheduled offence” but also any property which may directly or indirectly be derived or obtained as result of criminal activity relatable to the “schedule offence”;

824. “Scheduled Offence” is defined in Section 2(y) and says;

2(y). **“Scheduled Offence” means-**

- (i) The offences **specified under Part-A of the Schedule**; or
- (ii) The offences specified under Part-B of the Schedule, if the total value involved in such offences is one crore rupees or more; or
- (iii) The offences specified under Part-C of the schedule.

825. Section 3 of PMLA 2002 talks of offence of money laundering and says:

“3. Offence of money laundering: whosoever directly or indirectly attempts to indulge or knowingly assists or knowing is a party or is actually involve **in any process or activity connected proceeds of crime** including in concealment, possession, acquisition or use **and projecting or claiming it as untainted property** shall be guilty of offence of money laundering.”

826. There is an explanation also inserted by Finance Act, 2019 w.e.f. 01.08.2019, but for the issue under consideration, it is not relevant, hence ommitted.

827. Attachment of property involved in “money laundering” is governed by Section 5 of PMLA 2002 which permits attachment by Director or any other officer not below the rank of Deputy Director authorised by Director for the purpose of such attachment and he has reason to believe (to be recorded in writing) on the basis of material in his possession that **any person is in possession of any proceeds of crime** and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner

which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this chapter (by order in writing), may provisionally attach such property for a period not exceeding 180 days from the date of the order, in such manner as may be prescribed.

828. First proviso of Section 5(1) imposes a condition that no such order of attachment shall be made unless, in relation to the “Scheduled offence”, a report has been forwarded to a Magistrate U/s 173 C.R.P.C. or a complaint has been filed by a person authorised to investigate the offence mentioned in that schedule, before a Magistrate or Court for taking cognizance of the “Scheduled offence”.

829. There is an exception in 2nd proviso of Section 5(1) authorising Director or the officers authorised by him to attach any property of any person referred to in Sub-Section 1, if he has reason to believe (to be recorded in writing), on the basis of material in his possession that if such property involved in money laundering is not attached immediately, it is likely to frustrate proceeding under PMLA 2002.

830. Section 5 (5) requires the Director or the other officer, who has provisionally attached property under Sub-Section 1 to file a complaint within 30 days from such attachment stating facts of such attachment before Adjudicating Authority which is appointed U/s 6.

831. Section 8 provides the procedure to be observed by **Adjudicating Authority** to pass an order confirming attachment of property U/s 5(1). When such order of confirmation is passed, attached property would remain under attachment till trial completes and if Special Court under PMLA 2002 recorded finding of conviction of commission of offence of money laundering, such property shall stand confiscated to the Central

Government but where Special Court finds that offence of money laundering has not taken place or properties not involved in money laundering, it shall release such property to the person entitled to receive it.

832. Section 5 shows that except the cases covered by second proviso, no attachment is permissible unless report U/s 173 C.R.P.C. submitted to the Magistrate or complaint has been filed before the Magistrate or concerned **to take cognizance of “Scheduled offence”**.

833. Schedule to PMLA 2002 as initially came into force on 01.07.2005, was having Part-A divided in paragraph 1 dealing with Section 121 & 121(A) of IPC; paragraph-2 covering certain offences under Narcotic Drugs and Psychotropic Substances Act, 1985 and Part-B paragraph 1 offences U/s 302, 304, 307, 308, 327, 329, 364(A), 384 to 389, 392 to 402, 467, 489A and 489B of IPC; paragraph 2 contain some offences of Arms Act, paragraph 3 referred to offences under Wild Life Protection Act 1972, Paragraph 4, offences under Immoral Traffic Prevention Act 1956 and Paragraph 5, offences U/s 7, 8, 9 and 10 of PCA 1988.

834. Thus, PMLA 2002, at the time of enforcement in 2005, did not cover Sections 120-B, 468, 420 and 471 IPC and Section 13 of PCA, 1988 and environmental enactments. In other words, offences under these Sections/Statutes were not “Scheduled offences” for the purpose of Section 3 PMLA 2002.

835. The Schedule underwent amendment for the first time vide Prevention of Money Laundering (Amendment) Act, 2009 published in Gazette of India, Extraordinary dated 6.3.2009. In Part A paragraph 1

Section 489A & 489B were inserted. We are not concerned with the offences referred under paragraph 2 of the Schedule, hence amendments made therein are omitted. After paragraph-2, paragraph-3 and paragraphs-4 were inserted relating to offences under Explosive Substance Act, 1908 and Offences Under Unlawful Activities (Prevention) Act, 1967. In Part-B paragraph-1 was substituted and a number of offences of IPC were added and this included Section 120-B, 420, 467 and 471 IPC. Some amendments were made in paragraph 3 and 5 of Part-B and thereafter paragraphs 6 to 25 were inserted covering offences under several enactments which are not relevant for the purpose of issue before us. Part C was also inserted in the schedule to cover cross border offences and the same is also omitted. Even after this amendment, Section 468 IPC and 13 PCA, 1988 were not “scheduled offence” so as to attract offence U/s 3 of PMLA 2002. The amendment was given effect from 01.06.2009.

836. Next amendment was made vide Prevention of Money Laundering (Amendment) Act, 2012 published in Gazette of India, Extraordinary dated 4.1.2013. Paragraph A part-1 of the Schedule was substituted adding some more offences of IPC. In fact, entire Part A was substituted by a new Part-A which had paragraphs 1 to 28 covering offences under various Statutes, some were earlier in Part A and also Part B and some newly added. Paragraph 8 Part 1 as substituted in 2012 covered offences under Sections 7, 8, 9, 10 and 13 of PCA, 1988. Thus, Section 13 was included therein only in 2013. In Part B paragraph 1 to 25 were omitted and in Part C serial No. 2 and entries relating thereto were omitted. This amendment came into force from 15.02.2013.

837. The offences under environmental norms have been included in the Schedule to PML Act, 2002 inasmuch as paragraph 23, 25,26,27 have been inserted by Section 30 of PML (Amendment) Act, 2012 which came into force on 15.02.2013 and said insertion of paragraphs are as under:

“PARAGRAPH 23
OFFENCES UNDER THE BIOLOGICAL DIVERSITY ACT, 2002
(18 of 2003)

Section	Description of offence
55 read with section 6.	Penalties for contravention of section 6, etc.

PARAGRAPH 25
OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986
(29 OF 1986)

Section	Description of offence
15 read with section 7.	Penalty for discharging environmental pollutants, etc., in section 7 excess of prescribed standards.
15 read with section 8.	Penalty for handling hazardous substances without section 8 complying with procedural safeguards.

PARAGRAPH 26
OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974
(6 OF 1974)

Section	Description of offence
41(2)	Penalty for pollution of stream or well.
43	Penalty for contravention of provisions of section 24.

PARAGRAPH 27
UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981
(14 OF 1981)

Section	Description of offence
37	Failure to comply with the provisions for operating industrial plant.”

838. All these provisions relating to offences under various Environmental Statutes have been placed in part A of the Schedule. Application of PMLA 2002 in respect to the aforesaid offences has to be seen in the light of Section 3 read with schedule as amended vide Amendment Act, 2012.

839. In ***A.K. Samsuddin Vs. Union of India, Writ Petition No. 15378/2016 decided on 19.07.2016***, Kerala High Court said that the time of commission of the “scheduled offence” is not relevant in the context of the prosecution under the Act. What is relevant in the context of the prosecution is the time of commission of the Act of money laundering. It has to be established that the money involved are the proceeds of crime and having full knowledge of the same, the person concerned projects it as untainted property.

840. In ***Smt. Soodamani Dorai v. Joint Director of Enforcement, Writ Petition No.8383 of 2013 decided on 04.10.2018***, a Single Judge of Madras High Court observed that substratal subject of the Act is to prevent money laundering and to confiscate proceeds of crime.

841. PMLA 2002 brings in a different kind of offence on the statute book. In ***Janta Jha v. Assistant Director (2013) SCC Online (Odisha) 619***, High Court of Odisha held that even if an accused has been acquitted of the charges framed against him in Sessions Trial, a proceeding under PMLA 2002 cannot amount to double jeopardy where procedure and nature of proof are totally different from a criminal proceeding under IPC.

842. On the contrary in ***Rajeev Chanana v. Deputy Director (2014) SCC Online (Delhi) 4889***, it was held by Delhi High Court that after acquittal of a person from a “Scheduled offence”, trial for an offence U/s 3

of PMLA 2002 will not survive. Court said it is hard to imagine as to how a trial for an offence of money laundering can continue where the fundamental basis, i.e., the commission of a Scheduled offence has been found to be unproved.

843. The question of simultaneous investigation by Police or CBI or any other Investigating Agencies in respect of schedule offences and ED U/s 3 of PMLA 2002 was considered by a Single Judge (Hon'ble S.P. Garg, J) of Delhi High Court in ***Rohit Tandon v. Enforcement Directorate in Bail Application No. 119 of 2017 and Crl.M.B. 121 of 2017***. In the judgment dated 05.05.2017, Court found that Delhi Police registered FIR u/s 420, 406, 409, 467, 468, 188 and 120-B on 25.12.2016 and very next date ED registered ECIR on 26.12.2016. Court said that presence of "Scheduled offence" is only a trigger point for initiating investigation under PMLA 2002. Act nowhere prescribes, if ED is debarred from conducting investigation U/s 3 & 4 PMLA 2002 unless investigating agency concludes its investigation in the FIR or charge sheet is filed therein for commission of "Scheduled offence". The proceedings under PMLA 2002 are distinct from the proceedings of the "Scheduled offence". In the Investigation of FIR by Police, ED has no control. The proceedings under PMLA 2002 are not dependent on the outcome of the investigation conducted in the "Scheduled offences". More over to avoid conflicting and multiple opinions of court, section 44 PMLA 2002 provides trial by Special Court in case of "Scheduled Offence" and offence under PMLA 2002. Delhi High Court relied on a judgment of Allahabad High Court in ***Sushil Kumar Katiyar v. Union of India & Ors. (MANU/UP/0777/2016)*** wherein Allahabad High Court said:

"A person can be prosecuted for the offence of money laundering even if he is not guilty of "Scheduled offences" and his property can also be provisionally attached irrespective of

the fact as to whether he has been found guilty of the “Scheduled offences”. The prosecution is not required to wait for the result of the conviction for the “scheduled offences” in order to initiate proceedings U/s 3 of the PML Act. However, the person against whom, there is an allegation of the offence of money laundering, can approach appropriate forum, in order to show his bonafide and innocence that is not guilty of the offence of money laundering and has not acquired any proceeds of crime or any property out of the proceeds of crime.”

844. Against the judgment of Delhi High Court in **Rohit Tandon appeal was filed in Supreme Court and judgment is reported in (2017) SCC Online SC 1304**. Supreme Court upheld, the order of High Court rejecting Bail. Then meeting further argument raised on behalf of Rohit Tandon that the incriminating material recovered, would not take the colour of proceeds of crime as there is no allegation or the prosecution complaint that un-accounted cash deposited by Appellant was result of criminal activity, it was observed that the expression “criminal activity” has not been defined but very nature of the alleged activities of the accused referred to in the predicate offence are criminal activities. Court observed:

“... however, the stated activity allegedly indulged into by the accused named in the commission of predicate offence is replete with mens-rea. In that the concealment, possession, acquisition or use of the property by projecting or claiming it as untainted property and converting the same by bank drafts, would certainly come within the sweep of criminal activity relating to a “scheduled offence”. That would come within the meaning of Section 3 and punishable under Section 4 of the Act, being a case of money laundering.”

845. Recently in **P. Chidambaram v. Directorate of Enforcement (2019) SCC Online SC 1143** Court considered scheme of PMLA 2002, and observed that **money laundering is the process of concealing illicit sources of money and launderer transferring the money proceeds derived from criminal activity into funds and moved to other institution and transformed into legitimate asset**. It is realized

world around that money laundering poses a serious threat not only to the financial system of the country but also to their integrity and sovereignty. **“Schedule offence” is a sine qua non for the offence of money laundering which would generate the money i.e., being laundered.**

846. In the present case, when environmental norms were not followed by not operating ETP or by discharging partially or totally untreated pollutant or by causing other violations, this resulted in commissioning of Scheduled offence and revenue earned by committing such crime is proceeds of crime as defined in PMLA 2002 and by showing it part of business proceeds in accounts amounts to projecting or claiming it as untainted property. The entire activity is covered by Section 3 of PMLA 2002.

847. It appears that initially PMLA 2002 was enacted so as to cover activities of terrorist, illegal traffic in narcotics, enemies of the country etc., applying to a very limited number of statutes, Enforcement Directorate had been taking action under PMLA 2002 in a narrow sphere. It has forgot to take note of the fact that scope of PMLA 2002 has been enhanced or widened, a lot, at least after amendment Act of 2012 w.e.f. 15.02.2013. More than 8 and half years have passed but not a single action has been taken by Enforcement Directorate against violators committing offences under environmental statutes which have been included in the Schedule, part A of PMLA 2002. The offences under Environmental Acts, as such are non-cognizable but under PMLA 2002, offences are cognizable. Since competent authority has never resorted to proceed against violators of environmental Statutes despite committing offences thereunder, which are included in PMLA 2002, this inaction has

encouraged polluters to continue violation with impunity. Parliament's intention of treating environmental violations as very serious offences is writ large from the fact that, offences under environmental laws as noticed above, have been included in Schedule, Part A of PMLA 2002 yet enforcement machinery has frustrated entire attempt. It is incumbent upon the competent authorities regulating and enforcing PMLA 2002 to take action against such violators, if not against small violators, at least against substantial resourceful bigger proponents whose violations are liable to cause huge damage to environment as also the inhabitants. At least matters of LSI and MSI scale level industries should have been examined by competent authority under provisions of PMLA 2002.

848. We do not intend to delve more on the above aspect. Our endeavour was to highlight inapt attitude and apathy towards enforcement of laws enacted to give teeth to environmental laws but responsible authorities find it convenient to put these laws in hibernation. Now reverting back to **issue 2**, we find that simpler methods of computation of compensation are available but here, in absence of relevant informations, it is difficult to follow any of such method. Proponents's learned Senior Counsels stated during arguments to furnish such informations but have refrained from doing so. In the entirety of the circumstances and also considering the fact that matter is pending for more than five years and it is high time to give it a rest, we find it appropriate to attach finality to our view expressed above in **para 498** and direct that amount of compensation recommended by Committee would be made twice where concerned Proponents are shown with single instance of violation of environmental norms; thrice where there are two violations and tetra where there are more than two violations. However, we make it clear that in respect of TEPS, amount of compensation recommended by Committee vide revised

report dated 12.08.2021 would remain unchanged. **We answer ISSUE 2 accordingly.**

849. MIDC: In the entire matter role of MIDC is very crucial and occupy central place. Admittedly it is a statutory body constituted in 1962 under Maharashtra Industrial Development Act 1961 (MID Act 1961) enacted by Provincial Legislature. Functions of MIDC are provided in section 14 of MID Act, 1961. In MIDC website, it claims to be the highest contributor to nation's economy, industrial growth, exports and FDI attractiveness. Its plan 'Magnatic Maharashtra 2.0' says that MIDC is the nodal Investment Promotion Agency under Government of Maharashtra. It provides land, roads, water supply, drainage facilities and street lights etc. It is owner of largest industrial land bank in Country having more than 2.5 lakh acres. TIA MIDC is said to be one of the best industrial areas situated near Mumbai. In ACTION PLAN FOR TIA MIDC prepared by MPCB in 2010, it is said, area is near Mumbai Port/Mumbai Harbour, JNPT and Trans Thane Creek, MIDC. River surya is main water source for operation of indusrial activities. The effluent generated from industrial area is finally disposed in the Creeks i.e., Navapur sea, Kharekuram murbe creek, Dandi creek, and Sarvalli creek. MIDC had provided 59 kilometers of effluent pipeline throughout industrial area to dispose effluent, treated/partially treated, to Arabian sea at Navapur. In 2009-10, average 45.6 tonnes per day COD was being received whereof only 37 tonnes per day was treated. About 4 MLD of untreated effluent was being collected every day at Sump no.3 of MIDC, giving about 15.04 tons per day COD, discharged in Arabian sea. This situation, more or less has continued. Proponents have said repeatedly that MIDC was not properly maintaining pipelines, not cleaning sludge collected in huge quantity in different sumps maintained by MIDC. Applicants have also said so. Committee

reports certify these complaints. MPCB has taken a stand that several notices were issued to MIDC but they did not respond positively and effectively. Record show that MIDC in general, observed a passive inactive response. Being a statutory body, it had statutory obligation to ensure protection and preservation of environment but it miserably failed. In our view MIDC also has also contributed in causing pollution by failing to ensure its functions of maintenance of pipelines, non clearance of sludge in a regular manner etc. It is also responsible to pay compensation which we compute at Rs. 2 crores. If we apply methodology of Committee or the one, we have referred above, amount of compensation would have been very heavy but we have taken a little considerate approach since MIDC is a statutory non-commercial body.

850. We cannot leave the matter without commenting upon extremely negligent and lax approach, careless aptitude, non bona fide conduct and lack of devotion to duty on the part of officials of MPCB. They are the Regulators and under Statute, bound to ensure compliance of environmental laws. If they would have been vigilant, active, sensitive to subject, and honest to their duties, the situation we are confronted, would not have arisen. We hope and trust that superior officers including Secretary, department of Environment, Maharashtra and Chairman/Member Secretary MPCB shall look into the matter and take appropriate action, also necessary to repel general perception of top support to wrongdoers.

851. Accordingly, we accept Committee's reports/response dated 18.06.2020 and 12.08.2021 partly i.e, except the amount of compensation recommended as payable by Proponents and to the extent the same are inconsistent to our observations/findings recorded in this

order. Periodical monitoring/compliance reports submitted have been perused, discussed and are accepted.

852. In the light of the above discussions, we dispose of Original Application and all M.A.s and I.A.s. O.A. is partly allowed, with following directions:

- (i) Committee shall continue for a period of one year to monitor compliance conditions in TIA MIDC by all stake holders and submit quarterly reports to Registrar General, NGT, PB, who shall, if find necessity of any further directions/instructions etc. ot Tribunal, will place before us.
- (ii) The objections of M/S AARTI INDUSTRIES LTD., L-5,8,9; MANAN COSTYN PVT. LTD., G-4/2; ANUH PHARMA CHEM., N-183, TIA MIDC are allowed. Committee shall determine compensation payable by above Proponents afresh after giving opportunity of hearing, within two months from today.
- (iii) The Proponents named in column II shall pay environmental compensation mentioned in column IV, in the chart below:

I	II	III	IV
SN	Name and address of industry	Product, Category, Scale	Compensation Rs. In lakh
1	Aarti Drugs Ltd., G-60	Bulk drug, Red, LSI	81.034
2	Aarti Drugs Ltd., N-198, 199	Bulk drug, Red, LSI	1474.996
3	Aarti Drugs Ltd., E-1, E-21, E-22	Bulk drug, Red, LSI	291.573
4	Aarti Industries Ltd., E-50	Bulk drug, Red, LSI	96.468
5	Aarti Industries Ltd., K-17,18,19	Bulk drug, Red, LSI	115.762
6	Bombay Rayon Fashion Ltd. C-6,7	Textile, Red, LSI	147.114
7	Siyaram Silk Mills, (Balkrishna Synthetics) H-3/1	Textile processing (earlier it was textile), Red, LSI	625.836
8	Camlin Fine Chemicals, D-2/3	Chemical	1,712.308
9	M/s Ciron Drugs &	Pharma, Orange, LSI	28.94

	Pharmaceutical Pvt. Ltd. N-113, 118, 119 & 119/2		
10	M/s Dicitex Home Furnishing Pvt. Ltd. G-7/1 & 7/2	Textile, Red, LSI	654.054
11	M/s Dicitex Home Furnishing Pvt. Ltd. G-58	Textile, Red, LSI	116.726
12	DC Polyester Pvt. Ltd, E-26/2	Textile, Red, LSI	117.69
13	DC Textile Pvt. Ltd, E-26/1	Textile, Red, LSI	4.342
14	JSW Steel Coated Product Ltd (JSW Steel Ltd) B-6	Steel (Engineering) Red, LSI	230.076
15	M/s Kriplon Synthetics Pvt. Ltd, N-97/1/2, 97, 98	Textile, Red, LSI	232.248
16	Mandhara Dyeing, E-25	Textile, Red, LSI	17.364
17	E-Land Fashion (Mudra Life Style), D-1	Textile, Red, LSI	421.806
18	Nipur Chemical, D-17	Chemical Red, LSI	36.658
19	Resonance Speciality Ltd. T-140	Chemical, Red, SSI	355.968
20	Silvester Textiles P. Ltd.E-24	Textile, Red, LSI	730.746
21	Sarex Overseas N-129,130,131,132	Chemical, Red, LSI	389.248
22	Zeus International Ltd, A-10 & 11	Chemical, Red, LSI	1,932.252
23	Valiant Glass P. Ltd., J-85	Textile, Red, LSI	298.809
24	Aarti Drugs Ltd., E-9/3-4	Bulk Drug, Red, SSI	16.4
25	Jakharia Textile, A-13	Textile, Red, LSI	98.88
26	Pal Fashions Pvt. Ltd, E-49 & E-49/2	Textile, Red, MSI	90.358
27	SD Fine Chemicals, E-27/28	Chemical, Red, MSI	493.434
28	Iraa Clothing (P) Ltd (Shagun Clothing P Ltd), B- 7/3	Textile, Red, MSI	271.718
29	Auro Laboratories Ltd, K-56	Bulk Drugs, Red, MSI	196.311
30	Valiant Organics Ltd. (Formerly M/s. Abhilasha Texchem Pvt. Ltd.) M-7	Textile, Red, SSI	8.842
31	Alexo Chemicals, N-	Chemical, Red, SSI	191.247

	174		
32	Ashwin Synthetics P Ltd, C-8/2	Yarn Dying and textile (Chemicals)Red, SSI	127.578
33	Accusynth Speciality Chemical, E-29/1-2	Chemical, Red, SSI	46.626
34	Ajmera Organics, N-211/2/1	Chemical, Red, SSI	3.858
35	Aarey Drugs & Pharmaceuticals Ltd, E-34	Drug intermediate, Red, SSI	4.02
36	Aradhana Energy Pvt Ltd, K-34	Chemicals, Red, SSI	5.144
37	Bajaj Health Care Ltd, N-216, N-217	Drug Intermediate Red, SSI	203.307
38	Bostan Pharma, E-84	Chemical, Red, SSI	135.698
39	Panchamrut Chemical Pvt. Ltd (Dragon Drugs Pvt. Ltd), N-76	Chemical, Red, SSI	206.442
40	Diakaffil Chemicals, E-4	Chemicals, Red, MSI	96.468
41	DRV Organics, N-184, N-185	Drug Intermediate Red, SSI	205.959
42	Dufon Laboratories P Ltd, E-61/3	Drug Intermediate Red, SSI	118.173
43	D.H. Organic, N-89	Bulk drug, Red, SSI	4.662
44	Gangwal Chemical, N-5	Chemical, Red, SSI	18.168
45	Haren Textile Pvt Ltd, J-194	Textile processing, Red, SSI	31.03
46	Indo Amines Ltd (Previously known as Sri Sai Industries) K-33	Chemical, Red, SSI	119.62
47	Indaco Jeans Pvt. Ltd, G-21	Textile processing, Red, SSI	74.763
48	Mehta API Pvt. Ltd, Gut No- 546, 571, 519, 520, Vill- Lumbhavali, Tal & Dsit- Palghar	Bulk drug, Red, MSI	28.618
49	Moltus Research Laboratories, N-59	Chemical, Red, SSI	2.25
50	K P Chemicals, L-63	Chemical, Red, SSI	3.054
51	JPN Pharma, T-108-109	Bulk drug, Red, SSI	1.93
52	Khanna & Khanna K-10	Chemical, Red, SSI	17.364
53	Keshav Organics P Ltd, T-97,98,100	Chemical, Red, SSI	4.662
54	Nayakem Organics Pvt. Ltd, T-128	Chemical, Red, SSI	37.623
55	Nirbhay Rasayan Pvt. Ltd,	Pigment (Dyes), Red, MSI	161.583

	N-95,96,96/1		
56	Nutraplus India Ltd, N-92	Chemical, Red, LSI	1,252.156
57	Sequent Scientific Ltd (PI Drugs Pharmaceuticals) W-136,137,138,151	Bulk drug, Red, SSI	54.182
58	Pulcra Chemicals India Ltd D-7/1/1	Chemical, Red, MSI	31.512
59	M/s. Pentagon Drugs Ltd Plot No.N-224, 225	Bulk drug, Red, SSI	64.956
60	M/s. Paramount Syncot Textile, Plot No. N-13/2	Textile, Red, SSI	66.562
61	M/s. IPCA Laboratories (Ramdev Chemicals) Plot No. E-41	Bulk drug, Red, LSI	53.058
62	M/s. Tryst Chemicals, Plot No. L-47	Bulk drug, Red, SSI	29.744
63	M/s. Omtech Chemicals Plot No T-12	Chemical, Red, SSI	13.184
64	M/s. Shreenath Chemicals, Plot No. T-54, T-80	Chemical, Red, SSI	2.25
65	M/s. Salvi Chemicals Industries, Plot No. E-90, E-91, E-92, E- 93, E-94, E-95	Chemical, Red, LSI	1,245.4
66	M/s. Sapna Detergent, Plot No. N-152/N-153	Chemical, Red, SSI	87.626
67	M/s. Sagitta P Ltd, Plot No. N-4	Chemical, Red, SSI	2.894
68	M/s. Surmount Chemicals (I) P Ltd, Plot No. N-41,	Chemical, Red, SSI	16.4
69	M/s. Shri Vinayak Chemex India Pvt. Ltd. Plot No. T-11	Chemical, Red, SSI	39.392
70	M/s. Sunil Great Processers, Plot No. N-47/3	Chemical, Red, SSI	295.191
71	M/s. Vardhman Dyestuff Pvt. Ltd, Plot No. N-33, T-34	Dyes, Red, SSI	16.882
72	M/s. Usha Fashion, Plot No. E-42	Textile, Red, SSI	70.905
73	M/s. Visen Industries Ltd Plot No. K-30, T-31, T-32	Chemical, Red, SSI	34.086
74	M/s. U. K. Aromatics & Chemicals Plot No. K-6/3	Chemical, Red, SSI	50.406
75	M/s. Ujwal Pharma P Ltd., Plot No. N-52	Chemical, Red, SSI	318.345
76	M/s. Vividh Global	Chemical, Red, SSI	155.152

	Inds Ltd Plot No. D-21/1		
77	M/s. Square Chemical Plot No. N-60	Chemical, Red, SSI	64.634
78	M/s. Shree Chakra Organics Pvt. Ltd Plot No. K-62	Chemical, Red, SSI	27.332
79	M/s. Arti Drugs, Plot No. E-105, 106, 119, 120	Bulk Drugs, Red, SSI	5.948
80	Omega Colurs Pvt. Ltd., Plot No.D-21/2/3	Crude pigment green. (Earlier mentioned as Dyes), Red, SSI	235.14
81	REMI Edelstahi Tubulars Ltd., (Old Name-RAJENDRA MECHANICAL INDL LTD.) Plot No.- N-2011 /1	Engineering, Red, LSI	10.612
82	Gini Silk Mills Ltd., Plot No.E-15	Textile, Red, LSI	154.832
83	Mayfair Bio tech (Ankit Petro) Plot No. L-12	Chemical, Red, SSI	115.118
84	Rediant Intermediates Plot No. N-224	Chemical, Red, SSI	198.243
85	Premier Intermediate Plot No. T-55, T-56	Bulk Drugs, Red, SSI	8.038
86	Maharashtra Organo Metalics Pvt. Ltd., Plot No.N-220 & 221	Chemical, Red, SSI	2.894
87	Ganesh Benzoplast Plot No.- D-21/2/2	Bulk Drug, Red, LSI	476.552
88	Zorba Dyechem Plot No.W-14	Dyes, Red, SSI	8.2
89	Prabhat Engineering Plot No. L-50	Engineering (Earlier it was mentioned as pickling),Red, LSI	20.258
90	Aarviam Dye Chem Plot No. L-9/2	Dyes, Red, SSI	11.416
91	Dhanlaxmi Steel Plot No.J-56	Engg., Red, SSI	7.556
92	Sarswati Steel (Shiv steel) Plot No.W-88/A	Engg., Red, SSI	14.792
93	Deep Industries Plot No.W-146	Engg., Red, SSI	3.858
94	SR Steel, Plot No.W-80/A	Engg., Red, SSI	13.344
95	J V Chem Industries, Plot No. N-111,112	Chemical, Red, SSI	40.998
96	Shriyans Chemical, Plot No.W-43	Chemical, Red, SSI	6.752
97	The Pharmaceutical Product of India Ltd.,	Bulk Drug, Red, LSI	63.186

	Plot No.N-24, N-25		
98	Union Park Chemicals Pvt. Ltd., Plot No.E-11	Dyes, Red, SSI	3.698
99	Lavino Kapoor Cottons Pvt. Ltd., Plot No.H-1	Cotton, Red, LSI	196.794
100	M/s. Tarapur Environment Protection Society CETP(25 MLD), Plot No. AM-29	Collection, storage and treatment of effluent from member industries, Red, LSI	9179.894

- (iv) MIDC shall pay compensation of Rs. Two crores.
- (v) The above amount of Environmental Compensation shall be paid by concerned Proponents/MIDC within three months with MPCB. If any amount is already deposited, the same shall be adjusted. If amount of has been deposited with any other authority, it shall be transferred to MPCB. If any Proponent has paid more amount than what has been determined above, the excess amount shall be refunded within one month.
- (vi) The amount of compensation shall be utilised for remediation/restoration of environment, and healthcare activities of people in area under guidance and supervision of a Committee comprising CPCB, MPCB, a senior Mdical Expert nominated by Secretary, Medical and Health Department of Government of Maharashtra, National Institute of Oceanography and Collector, Palghar. MPCB and Collector shall be nodal authorites. Committee may opt for any other expert/authority, if finds necessary. Plan for remediation shall be finalized within three months and would be executed within one year thereafter.
- (vii) Enforcement Directorate may examine the matter for appropriate action, in the light of PMLA 2002 as amended from time to time, particularly Amendment of 2012.

- (viii) The Proponent(s) whose amount of compensation has been increased in the revised report dated 12.08.2021, would have liberty to request Committee to re-visit, if they have any appropriate ground for the same. If any such application is filed, Committee shall consider the same and take final decision within two months. We make it clear that if there is any alternation or modification in the amount, the same shall ultimately be governed by the direction contained in this judgment with regard to number of violations and enhancement of compensation accordingly, as we have directed.
- (ix) A copy of this order shall be forwarded to Chief Secretary, State of Maharashtra, CPCB, MPCB, MoEF&CC and Enforcement Directorate by e-mail for compliance.

Adarsh Kumar Goel,
Chairperson

Sudhir Agarwal,
Judicial Member

Brijesh Sethi,
Judicial Member

Dr. Nagin Nanda,
Expert Member

January 24, 2022
Original Application No. 64/2016 (WZ)

ITEM NO.4 +14

COURT NO.7

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 2862-2863/2022

TARAPUR INDUSTRIAL MANUFACTURERS ASSOCIATION (TIMA)Appellant(s)

VERSUS

AKHIL BHARTIYA MANGELA SAMAJ PARISHAD & ORS.

Respondent(s)

(IA No.54337/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.54338/2022-STAY APPLICATION)

WITH

C.A. No. 3018/2022 (XVII)

IA No.60090/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.60087/2022-STAY APPLICATION)

C.A. No. 3031-3032/2022 (XVII)

(IA No.60235/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.60236/2022-EX-PARTE STAY and IA No.60238/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

ITEM NO. 14

CIVIL APPEAL Diary No(s). 11485/2022

FOR ADMISSION and IA No.60894/2022-STAY APPLICATION and IA No.60892/2022-PERMISSION TO FILE APPEAL)

WITH

Diary No(s). 10637/2022 (XVII)

(FOR ADMISSION and IA No.60459/2022-STAY APPLICATION and IA No.60451/2022-PERMISSION TO FILE APPEAL)

Date : 27-04-2022 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. ABDUL NAZEER

HON'BLE MR. JUSTICE VIKRAM NATH

For the parties:

Signature Not Verified
Digitally signed by
Anita Mahapatra
Date: 2022.04.30
12:42:12 IST
Reason: 

Mr. Abhishek manu Singhvi, Sr. Adv.

Mr. C.A. Sundaram, Sr. Adv.

Mr. Devashish Bharuka, AOR

Mr. Sarvshree, Adv.

Mr. Justine George, Adv.

Mr. Sanjiv Goel, Adv.

Mr. Pinaki Mishra, Sr. Adv.
Ms. Nina Nariman, Adv.
Mr. Vinod Khera, Adv.
Dr. Brij Bhushan K. Jauhari, Adv.
Mr. O.P. Singh, Adv.
Mr. Gaurav Sharma, Adv.
Mr. Aman Garg, Adv.
Mr. J.R. Garg, Adv.
Ms. Purnima Jauhari, AOR

Mr. Shyam Divan, Sr. Adv.
Mr. Gopal Jain, Sr. Adv.
Ms. Nandini Gore, Adv.
Ms. Natasha Sahrawat, Adv.
Ms. Neha Khandelwal, Adv.
Mr. Yash Dubey, Adv.
Mr. Adith Deshmukh, Adv.
M/S. Karanjawala & Co., AOR

Mr. Saurabh Kirpal, Sr. Adv.
Ms. Diksha Rai, AOR
Mr. Ankit Agarwal, Adv.
Ms. Gulnar A. Mistry, Adv.
Ms. Teresa R. Daulat, Adv.
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Mr. Rohan Shah, Adv.
Mr. Ajay Bhargava, Adv.
Ms. Vanita Bhargava, Adv.
Mr. Trishala Trivedi, Adv.
Mr. Srisabari Rajan, Adv.
Ms. Shweta Kabra, Adv.

Mr. Mukesh Verma, Adv.
Mr. Yash Pal Dhingra, Adv.

Ms. Anitha Shenoy, Sr. Adv.
Ms. Srishti Agnihotri, AOR
Ms. Aarti Krupa Kumar, Adv.
Ms. Ayushma Awasthi, Adv.
Ms. Sanjana Grace Thomas, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Diary No. 12669, 12657, 12484 & 13099 of 2022 etc. are taken on board and be tagged with C.A. Nos. 2862-2863/2022 etc. subject to curing of defects, if any .

Diary No(s). 11485 and 10637/2022 be also tagged with C.A. Nos. 2862-2863/2022 etc..

Permission to file Appeal(s) is granted.

Issue notice.

Until further orders, the enhanced compensation in terms of the impugned order dated 24.01.2022 is stayed and the Direction No. (vii) contained in paragraph 852 of the impugned judgment dated 24.01.2022 is also stayed.

Counter affidavit, if any, be filed within eight weeks.

The amount in terms of the order dated 17.09.2020 shall be deposited within a period of eight weeks from today with the Maharashtra Pollution Control Board.

(NEELAM GULATI)
ASTT. REGISTRAR-cum-PS

(KAMLESH RAWAT)
COURT MASTER (NSH)

Item No. 03

Court No. 1

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

(By Video Conferencing)

Original Application No. 61/2022

All India Kaimur People's Front

Applicant

Versus

State of Uttar Pradesh & Ors.

Respondent(s)

Date of hearing: 16.08.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Vikas Kumar Singh, Advocate

Respondent(s): Mr. Daleep Dhyani, Advocate for UPPCB
Mr. S.K. Pathak & Mr. Sunil Singh, Advocate for R - 7
Mr. Sharad Chauhan, Advocate for M/s BCS Enterprises (R - 8)
Ms. Prabha Sharma, Advocate for M/s Ishana Construction (R - 9)

ORDER

1. Grievance in this application is against illegal mining on the land of Chak Dam (Small village Dam) nala and railway pit, within the periphery of 50 meters from the land of dam, nala and railways in village Billi Markundi, Tehsil Obra, District Sonbhadra, in violation of Sustainable Sand Mining Guidelines and other environmental norms, including Mining Rules, 1963, by Respondents – Rajesh Kumar son of late Kaliram, Farida Begum wife of Imtiyaz Ahmad, Chopan, District Sonbhadra, M/s BCS Enterprises, Proprietor Chandra Bhushan Gupta son of Ram Lakhan Gupta, Obra, District Sonbhadra and M/s Ishana Construction, Proprietor

Afreena Khan wife of Ishtiyag, resident of village Billi Markundi, Obra, District Sonbhadra, UP.

2. Vide order dated 23.03.2022, the Tribunal directed the District Magistrate, Sonbhadra, Chief Development Officer, Sonbhadra and State PCB to look into the grievance and take remedial action in accordance with law. It was further directed that an action taken report be filed and if any violations are noticed, the violators may be put to notice of these proceedings for their response.

3. Accordingly, an action taken report has been filed on 25.05.2022 through the State PCB and the affected Project Proponents (PPs) have filed their response.

4. The report mentions that site inspection was conducted on 21.05.2022. It was found that the PPs had undertaken illegal mining. PP - Rajesh Kumar and Farida Begum, apart from earlier violations for which action was taken, conducted mining in excess of permitted quantity to the extent of 3854 cubic meters of boulders, for which notice was issued for recovery of penalty of Rs. 37,49,840.00/-. Further, illegal mining/ transportation was also found to the extent of 15,200 cubic meters, apart from other violations. In respect of M/s BCS Enterprises, there was illegal mining for which a sum of Rs. 26,79,440.00/- has been assessed and paid by the PP. In respect of Ishana Construction, illegal mining was found beyond permitted area to the extent of 15,732 cubic meters for which notice to recover amount of Rs. 1,19,99,000/- has been issued. The report recommends recovery of compensation for illegal mining from the three PPs in question.

5. The PPs have filed their respective replies. According to Rajesh Kumar and Farida Begum, mining was stopped on 28.01.2022 by Director, Mines & Safety. The said PPs have not undertaken any illegal mining. Stand of M/s BCS Enterprises is that there is no illegal mining outside the mining lease area. Stand of Ishana Construction is also that no illegal mining had been done.

6. The applicant has filed objections to the effect that the report ignores existence of *nalla* which is entered in the Revenue Record. The report merely states that the same was not visible. The report also ignores other violations of mining in prohibited area, ignoring the deep pits in the area showing further violations and need for stringent action for repeated violations.

7. We have heard learned counsel for the parties and perused the record.

8. We are of the opinion that the report being based on site inspection by a credible team of statutory regulators, there is no reason to reject the findings therein in absence of any tangible reason. Self-serving denial by the PPs can certainly be no reason to hold that there is no violation particularly when Rajesh Kumar and Farida Begum have already deposited the penalty on 15.03.2022. Mere fact that Ishana Construction claims to have challenged the penalty cannot be a ground to hold that no action is liable to be taken against the said PP.

9. Learned Counsel for the project proponent has referred to letter on record suggesting verification of compliance status of 22 leaseholders. The same may accordingly be verified and remedial action taken as per law.

10. Accordingly, we accept the facts found as per the report, showing illegal mining by the PPs for which accountability of the said PPs is required to be fixed. Apart from recovery of royalty and penalty under the Mining Rules, compensation for damage to the environment is also required to be assessed and recovered as per law, particularly judgements of the Hon'ble Supreme Court in *Common Cause vs. Union of India & Ors*, (2017) 9 SCC 499 and *Goa Foundation v. Union of India & Ors*. (2014) 6 SCC 590, to the effect that under section 21 (5) of the MMDR Act, 1957, the entire value of the mined material is to be recovered, in addition to compensation for damage to the environment.

11. Accordingly, we direct the District Magistrate and State PCB to take further steps in the matter in accordance with law, preferably within three months. Since environmental offences fall in the schedule to the PMLA Act, ED is free to consider if any action is warranted on their part under the law.

The Application is disposed of.

A copy of this order be forwarded to the District Magistrate, State PCB and Director, ED by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

August 16, 2022
Original Application No. 61/2022
AB

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Original Application No. 661/2018

IN THE MATTER OF:

1. **Mr. Praveen Kakar**
aged about 52 years
s/o Late Sh. Krishan Kakar,
r/o C-2488, Phase I, SL, Gurgaon-122009
2. **Mr. J C Kalra**
about 75 years,
r/o C-2492, Phase I, Sushant Lok, Gurgaon-122009
3. **Mr. D K Pant**
about 50 years,
r/o C-2615, Phase I, Sushant Lok, Gurgaon-122009

...Applicant(s)

Versus

1. **Ministry of Environment, Forest and Climate Change**
Union of India through Secretary,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi-110003
2. **State of Haryana**
Through Chief Secretary,
Government of Haryana,
Haryana Secretariat, Chandigarh-122001
3. The Director General
Town and Country Planning Deptt, Haryana
H.Q., SCO 71-75, Sec.17C, Chandigarh-160017
4. The Commissioner
Municipal Corporation of Gurgaon
C-1, Sector 34, Infocity,
Gurgaon-122001, Haryana
5. **The Collector/Deputy Commissioner**
First Floor, Mini Secretariat,
Near Rajiv Chowk,
Gurgaon-122001, Haryana
6. **The SDM, North**
Mini Secretariat,
Gurgaon-122001, Haryana
7. The Chairman
Central Ground Water Board

Bhujal Bhawan, NH-IV,
Faridabad-121001, Haryana

8. The State Level Environment Impact Assessment Authority

Bays No. 55-58, Parytan Bhawan,
1st Floor, Sector 2, Panchkula-134109
Haryana

9. Haryana Urban Development Authority (HUDA)

HUDA Office Complex,
C-3, Sector 6,
Panchkula-134109, Haryana

10. Haryana State Pollution Control Board

C-11, Sector-6
Panchkula-134109, Haryana

11. Ansal Properties & Infrastructure Ltd

Through its Director,
Regd. Office: 115 Ansal Bhawan, K.G. Marg,
New Delhi-110001

...Respondent(s)

Counsel for Respondent(s):

Mr. Anil Grover, Senior AAG with Mr. Rahul Khurana, Advocate for State of Haryana & HSPCB

Mr. Amit Singh Chauhan, Advocate for CPCB

Ms. Nitika Choukse, Advocate for DHBVN

PRESENT:

**HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON HON'BLE
MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MS. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

**Reserved on: 01st April, 2022
Pronounced on: 4th July, 2022**

SYNOPSIS

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JUDGMENT

BY HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER

1. Original Application 661/2018 (hereinafter referred to as '**OA**') has been preferred under Section 14 and 15 (b) and (c) read with 18 (1) and (2) of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act, 2010**') by three applicants namely Praveen Kakar, J C Kalra and D K Pant, complaining that M/s. Ansal Properties and Infrastructure Ltd., registered office at 115, Ansal Bhawan, K G Marg, New Delhi i.e. respondent 11 (hereinafter referred to as '**APIL-PP**') has illegally encroached upon and sold a substantial part of land, comprising about 45% of the construction project, which was reserved/meant for parks, roads etc. in Sushant Lok, Phase I, Gurgaon in violation of environmental laws, causing degradation to environment, hence, appropriate directions be issued for restoration of environment and appropriate environmental compensation should also be imposed for causing damage to environment.

2. Facts in brief stated in OA are that respondent 11 has developed a construction project i.e. Sushant Lok, Phase I, Gurgaon (hereinafter referred to as ‘**Questioned Project**’) on a piece of land admeasuring more than 600 acres. The area of project has undergone alteration from time to time and substantially increased in 2011. A chart has been given in OA mentioning year of commencement of project, the area of project as per sanctioned layout plan and remarks about purpose of certain part of land in the said sanctioned layout plan, as under:

Year	Sanctioned Layout Plan/Amended Layout Plan (Area in Acres)	Remarks
1986	550.000	Original Plan showing provision of parks, open space etc.
1989	453.450	Part of Green Area, Parks, Open Space wiped out
1992	500.000	Part of Green Area, Parks, Open Space further wiped out
1993	512.000	Part of Green Area, Parks, Open Space further wiped out
1995	580.000	Part of Green Area, Parks, Open Space further wiped out
1997	582.000	Part of Green Area, Parks, Open Space further wiped out
1998	595.260	Part of Green Area, Parks, Open Space further wiped out
2001	595.760	Part of Green Area, Parks, Open Space further wiped out
2004	601.640	Part of Green Area, Parks, Open Space further wiped out
2007	601.648	Part of Green Area, Parks, Open Space further wiped out
2011	602.648	Part of Green Area, Parks, Open Space further wiped out

3. Copies of sanctioned layout plans as amended from time to time are collectively placed on record as annexure P-1 (pages 28 to 37). The project is situated at Sector 27, 28 and 43 in Gurgaon. The last sanctioned layout

plan on page 37 shows the date of sanction as 15.09.2010 giving details of area, plots and public amenities as under:

“Details of Plots

SR. NO.	TYPE	SIZE (sq.mt.)	AREA (sq.mt.)	TOTAL NO. OF PLOTS	TOTAL AREA (sq.mt.)
1.	I	5.0x 10.25	51.25	1018	52172.5
2.	II	9. x20.0	180	1304	234720
3.	II(b)	9.0x16.0	144.0	23	3312
4.	II(c)	10.0x 20.0	200	38	7600
5.	II(d)	10.0x 22.0	220	6	1320
6.	III	10.0x 25.0	250	1422	355500
7.	III(a)	15.0x20.0	300.0	13	3900
8.	IV	12.5x29.0	350.0	598	209300
9.	IV(a)	12.25x24.3	300.125	56	16807.0
10.	V	14.0x30.0	420.0	347	145740
11.	V(a)	12.0x29.0	348.0	70	24360.0
12.	VI	17.0x40.0	680.0	113	76840.0
13.	VI(a)	17.0x36.25	616.25	16	9800.0
14.	VII	18.0x45.0	910.0	56	45360
15.	VII	18.0x45.0	610.0	56	45360
16.	VII	15.0x45.0	675.0	11	7425.0

TOTAL NO.S 5091

DETAIL OF AREAS

	PARTICULARS	AREA (IN ACRES)
1.	AREA ALREADY LICENSED PRODUCING LAND EXCHANGE WITH HUDA VIDE THEIR MEMO NO. 21254 DT. 25-10-2002	602.648
2.	LICENCE APPLIED AREA	1546
3.	TOTAL SCHEME AREA	604.194
4.	AREA UNDER GH (11.47 + 5.887 + 1)	18.357
5.	AREA UNDETERMINED	0.04
6.	NET PLANNED AREA	585.797
7.	AREA UNDER PLOTS	295.098
8.	AREA UNDER COMM.	21.704 (3.71%)
9.	-	-
10.	PERCENTAGE	54.08%

	PUBLIC AMENTIES	REQUIRED	PROPOSED
1.	CRECHE	3	3
2.	NURSERY SCHOOL	21	18 + 3
3.	PRIMARY SCHOOL	10	10
4.	HIGH SCHOOL	3	3
5.	DISPENSARY	3	3
6.	HEALTH CENTRE	2	2
7.	CLUB/ COMMUNITY CENTRE	3	3
8.	POLICE POST	2	2
9.	RELIGIOUS BUILDING	3	3
10.	ELECTRIC SUB STATION	2	3
11.	MINI TELEPHONE EXCHANGE	0	1
12.	SUB PURI OFFICE	3	3

4. The total number of plots in the chart mentioned above are 5091 while actual number comes to 5147.

5. The amendment of layout plan, infact, was an attempt to encroach upon the green area initially proposed and approved for the project and thus, in the amended sectioned plan, the said area was reduced. This attempt of developer i.e., respondent 11 was co-operated by Town and Country Planning Department, Haryana (hereinafter referred to as **‘TCPD Haryana’**), permitting sanction of layout plans whereby green area was constantly reduced. The authorities as well as respondent 11 ignored the provisions made for providing 45% of land available for roads, open spaces, schools and other public amenities as contained in clause 4 (1) of Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter referred to as **‘HDRUA Rules, 1976’**) which reads as under:

*“(1) In the layout plan of a colony other than an industrial colony, the **land reserved for roads, open spaces, schools, public and community buildings and other common uses shall not be less than forty five percent of the gross area of the land under the colony.***

Provided that the Director may reduce after recording reasons therefor, this percentage to a figure not below thirty five percent where in his opinion the planning requirements and the size of the colony so justifies.”

6. In a plot measuring about 600 acres, a simple computation of 45% area would come to 270 acres which a builder has to leave for the purposes of roads, open spaces etc. but in the case in hand, respondent 11 has not provided the said land as per the above provision. Applicants have applied for specific information by submitting application under Right to Information Act, 2005 but information has not been made available. There was a public park in Block-C, Sushant Lok, Phase I, Gurgaon but substantial land thereof has been reduced by APIL-PP by selling it for construction purposes to third parties and even remaining part is in the process of such sale transactions. For prohibiting APIL-PP from altering park land, some residents filed civil suits but nothing has caused any impact upon APIL-PP who is continuing in his efforts of reducing amenities

areas in the said project. On account of reduction of open space, parks etc., the environment in the area is getting degradable, particularly, on account of illegal construction obstructing flow of drainage, sewage and water outlets causing water logging etc. and disturbing ecological balance in the area in question. Respondent 4 i.e., Municipal Corporation of Gurgaon (hereinafter referred to as '**MCG**') has prepared a DPR in respect of Sushant Lok, Phase I, Gurgaon and prominent observations therein are:

- a) It is estimated that the solid waste generation for the township to be approximately 50 ton.*
- b) It is estimated that 50% of the solid waste generated will be decomposable waste.*
- c) There is **no existing system for proper collection and disposal of solid waste.***
- d) The **colony developed by the colonizer is not as per the approved plans.***
- e) The **green belt and open spaces are being used as commercial centres.***
- f) **There is no exit for sewerage from C Block because HUDA sewage lines from Gold souk to Ram Mandir near HUDA City Centre Metro Station is choked and damaged.***
- g) **There is back flow of sewerage into the houses during heavy rains.***
- h) **At some points, the sewer lines are connected with the drainage system, which is a absolutely wrong.***
- i) During Survey work it has been found that the storm water drains laid in these areas do not have proper gradient/slope and disconnection at various points.*
- j) The **Chakarpur sewage lines have been connected into storm water drain.***
- k) The **open drains have been clogged with the sold waste which is a cause of health concern.***
- l) **The existing rain harvesting system is poorly designed and is not in working condition."***

7. However, the aforesaid shortcomings were not heeded by APIL-PP who is encroaching upon the open area/green belt/park area and thereby causing damage to environment, disturbing environmental equally. No development is permissible at the cost of environment and every person has a Fundamental Right to live in a healthy environment. Some of the copies of representations/complaints/letters sent by applicants and other residents are filed as annexure P-6 and P-7 to OA I.

8. Applicants have prayed for action against respondent 11 for illegally grabbing and selling major part of 45% area of the project meant for parks, roads etc. and also to impose environmental compensation, particularly, since project is without any Environmental Clearance (hereinafter referred to as '**EC**') required under the provisions of Environment (Protection) Act, 1986 (hereinafter referred to as '**EP Act, 1986**') read with Environment Impact Assessment Notification dated 14.09.2006 (hereinafter referred to as '**EIA 2006**'). Applicants have also prayed for a direction to respondents 1 to 10 i.e., Statutory Regulators and Authorities to take appropriate action against respondent 11 so as to ensure that people residing in Sushant Lok, Phase I, Gurgaon live in free and unpolluted environment. Applicants have impleaded Statutory Authorities and Regulators as respondents 1 to 10, which are Ministry of Environment, Forest and Climate Change (hereinafter referred to as '**MoEF&CC**'); State of Haryana through Chief Secretary, Director General, TCPD Haryana; Commissioner, MCG; Collector/Deputy Commissioner, Gurgaon (hereinafter referred to as '**DC, Gurgaon**'); Sub-Divisional Magistrate, Gurgaon; Chairman, Central Ground Water Board, Faridabad (Haryana) (hereinafter referred to as '**CGWB**'); State Level Impact Assessment Authority, Haryana (hereinafter referred to as '**SEIAA Haryana**'); Haryana Urban Development Authority (hereinafter referred to as '**HUDA**') and Haryana State Pollution Control Board (hereinafter referred to as '**HSPCB**').

9. This OA was registered on 18.09.2018 and considered by Tribunal on 19.09.2018. Noticing the averments made in OA, Tribunal found it appropriate to obtain a factual report for which a joint Committee was constituted comprising Central Pollution Control Board (hereinafter referred to as '**CPCB**'), TCPD Haryana, Central Ground Water Authority

(hereinafter referred to as 'CGWA'), SEIAA Haryana and Delhi School of Planning and Architecture.

Inspection Report dated 16.11.2018 by CPCB, filed on 16.11.2018

10. Pursuant to order dated 19.09.2018, joint Committee comprising Pankaj Agarwal, Scientist 'E', CPCB; R K Chauhan, Joint Director, SEIAA Haryana; Sanjay Kumar Nayak, Assistant Hydrologist, CGWA Delhi; Amit Madholia, Assistant Town Planner-Enforcement, TCPD Haryana and Dr. Minakshi Dhote, HOD-Landscape Architecture, Delhi School of Planning and Architecture, through CPCB submitted report dated 13.11.2018 vide letter dated 16.11.2018. Observations and findings of Committee and concluding remarks are as under:

"Observations & Findings of Meeting and Site Visit:-"

Open, Green and Plotted Areas:-

Sushant Lok, phase-1 is a residential township spread over 604.194 Acres across sectors 27,28,43,52 of Gurugram and has been developed by Ansal Properties & Infrastructure Pvt. Ltd, New Delhi under various licenses issued to the project proponent by Town and Country Planning Dept., Haryana from 1985 to 2011 under Section 3 of the Haryana Development & Regulation of Urban Areas Act, 1975 and Rules framed there under. Block-C as mentioned in Hon'ble NGT order is a part of aforesaid township.

*List of various Licenses is enclosed as **Annexure-II**. Copy of first license dated 01.06.1985 (**Annexure II A**) and last two licenses dated 12.02.2007 (**Annexure II B**) & 13.04.2011 (**Annexure-II C**) are also enclosed.*

*As per clause 4(1) of Haryana Development & Regulations of Urban Areas Rules, 1976 "**percentage of area under roads, open spaces etc in layout plans,***

"In the layout plan of a colony, other than an industrial colony, the land reserved for roads, open spaces, schools, public and community buildings and other common uses shall not be less than 45% of the gross area of the land under the colony".

*It was observed that as per approved Revised Layout Plan bearing Drawing no. D.G., T.C.P.-2342 dated 24.12.2010 (**Annexure-III**) of Sushant lok-1, total licensed area of Sushant lok-1 is 604.194 Acres and out of it 18.357 Acres is earmarked for Group Housing. The remaining licensed area i.e. 585.797 Acres is under net planned area. Area under plots 8 under commercial is 295.098 acres & 21.704 acres respectively making total saleable area 316.802 (295.098+21.704) which is 54.08% of net planned area.*

The committee visited the parks, green and plotted area in Block-C of Sushant Lok-I and some encroachment like hutment for security/labors, DG sets, kitchen garden were observed. **(Photo-1)**

In earmarked green areas, green belt has not been developed by project proponent according to norms and standard practices, natural shrubs have grown as against turfing and plantation. (Photo-2)

It was understood that area under open/green area, road and community site needs to be verified as per standard methods adopted by Town & Country Planning dept. which will lead to the conclusion whether 45% approved area under open/green area, road and community site is available or not.

Requirement of Environment Clearance:-

Project proponent has **not obtained Environmental Clearance (EC)**. The Committee observed that **last two licenses (Annexure-II B & II C) for development of area of 1 acre & 1.55 acre were granted on 12.2.2007 & 13.04.2011 respectively which falls after EIA notification date 14.09.2006**, cut-off date of requiring Environmental Clearance (EC) and execution of aforesaid licenses comes under expansion of project and **total area of licensed colony after expansion is 604.19 Acres which crosses the threshold limits (>50ha=123.5 Acres of area development projects) and thus project proponent was required to obtain EC.**

Requirement of Consent To Establish & consent To Operate:-

Under the provisions of Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981, project proponent was required to obtain Consent to Establish (CTE) from respective State Pollution Control Board prior to commencement of construction activities at site and was required to obtain Consent to Operate (CTO) after establishment of licensed colony.

The committee was informed by project proponent that **CTE & CTO have not been obtained.**

Use of Ground Water:-

Project proponent has applied for registration of 39 number of already existing tube wells in Sushant Lok-1 with Central Ground Water Authority (CGWA), New Delhi in year 2001 & 2002. Presently, out of these 39 tube wells, **21 tube wells arc being used to supply water to residents of this colony. No objection certificate (NOC) from CGWA in this regard is not available with project proponent.**

The committee inspected **two operating tube wells (TW 16 & TW 17) in Block-C and found that flowmeters fixed with these tube wells are not working (Photo-3)**. List of 39 tubewells and two tubewells' registration application is enclosed as **(Annexure - IV)**.

Sewage Treatment Plant:-

Sewage treatment plant (STP) **is not installed** and sewage generated in the licensed colony is discharged through Haryana Urban Development Authority (HUDA) sewerage system to HUDA STP for treatment but committee observed that **sewage is meeting the**

storm water drain as it is not getting passed through sewerage system to STP. (Photo-4).

Rain Water Harvesting System:-

11 nos. of Rain Water Harvesting Structures (**Annexure-V**) for open spaces and Common area are constructed in Sushant Lok-1.

Committee visited **3 nos. of rain water harvesting structures in Block-C and found non-functional.** The basic purpose of ground water recharging is not being achieved by these structures (**Photo-5**)

As per the Haryana Building code, 2017, clause 8.1 (1) arrangement of roof Rain water Harvesting within the plot shall have to be made by plot owner, constructing the building on the plot where the area of the rooftop is 100 Sq Meters or more.

Committee observed that Rain Water Harvesting System for houses is not provided.

Maintenance of Licensed Colony:

Project proponent has executed tripartite agreement (**Annexure-VI**) with Pro Facilities Pvt. Ltd. and Sushant Lok Residents Welfare Association for maintenance services in licensed colony.

The committee observed that maintenance of roads, footpath, parks is not up to the mark and **system of collection of solid waste is not effective. (Photo-6)**

Construction and Demolition Waste Management Rules, 2016:-

Construction and Demolition waste management rules, 2016 and its guidelines are **not being followed** in the colony. (**Photo-7**)

Diesel Generator (DG) Sets:-

DG sets are operating without adequate stack height in the licensed colony. (**Photo-8**)

Completion certificate:-

Part completion certificate under rules 16 of Haryana Development and Regulation of Urban Areas Rules, 1976 have been **granted** to project proponent by Town and Country Planning Department, Haryana **from 1991 to 2003.**

Copy of Part Completion Certificate dated 10.05.1991 is enclosed as (**Annexure VII**)

CONCLUDING REMARKS:-

1. Encroachment like hutment for security/labors, DG sets, kitchen gardens were observed. In earmarked green areas, green belt has not been developed according to norms and standard practices by project proponent, natural shrubs have grown as against turfing, plantation. However, committee recommend that area under open/green area, road and community site needs to be verified as per standard methods adopted by Town & Country Planning dept. which will lead to the conclusion whether 45% approved area under open/green area, road and community site is available or not.
2. Project proponent is required to obtain Environmental Clearance (EC) under provisions of EIA notification dated 14.09.2006, as last

two licenses were Granted after 14.09.2006, cutoff date of requiring EC and total area crossed the threshold limit.

- 3. Consent to Establish & Consent to Operate have also not been obtained. It is violation of Water (prevention and Control of Pollution) Act, 1974 & Air (prevention and Control of Pollution) Act, 1981 by project proponent.*
- 4. Project proponent has applied for registration of 39 Tube wells with Central Ground Water Authority (CGWA) but No Objection Certificate (NOC) from CGWA for extraction of ground water is not available. Flowmeters fixed with tube wells need to be rectified to get the quantity of extracted water.*
- 5. Rain water harvesting system for houses is not provided & rain water harvesting structures for open spaces & common area are non-functional. The basic purpose of ground water recharge is not being achieved by these structures.*
- 6. Sewage is meeting the storm water drain as it is not getting passed through sewerage system to HUDA STP. Project proponent, Haryana Shehri Vikas Pradhikaran (HSVA) (former HUDA) and Gurugram Metropoliton Development Authority (GMDA) are required to resolve this issue jointly.*
- 7. Maintenance of roads, footpath, parks is not up to the mark and system of collection of solid waste is not effective.*
- 8. Construction and Demolition waste management rules, 2016 and its guidelines are not being followed in the colony.*
- 9. DG sets are operating without adequate stack height.*
- 10. Part completion certificates have been granted to project proponent by Town and Country Planning Department, Haryana.”*

11. The above report was considered by Tribunal on 08.01.2019.

Noticing serious violations of environmental norms and laws by APIL-PP,

including execution of project without EC under EIA 2006 and Consent to

Operate (hereinafter referred to as ‘**CTO**’) under Water (Prevention and

Control of Pollution) Act, 1974 (hereinafter referred to as ‘**Water Act,**

1974’) and Air (Prevention and Control of Pollution) Act, 1981 (hereinafter

referred to as ‘**Air Act, 1981**’) and yet no remedial/ preventive/punitive

action was taken by Statutory Regulators, Tribunal castigated role of

Statutory Regulators and directed appropriate action by such Regulators.

Relevant extract of the order dated 08.01.2019 comprising paras 4 to 7, is

as under:

*“4. The **above factual conclusion shows violation of environmental norms by the respondent no. 11- Ansal Properties and Infrastructure Ltd.** The project has been constructed without taking consent to operate under the Air (Prevention and Control of Pollution) Act and Water (Prevention and Control of Pollution) Act and without requisite Environmental Clearance. Rain water harvesting system has not been provided*

*and ground water has been extracted without requisite NOC from CGWA. Sewage is meeting the storm water drain. Maintenance is not upto the mater, Construction and Demolition Waste Management Rules, 2016 have not complied with. DG sets are operating without stack height. Inspite of the above, part completion certificate have been granted by the Town and Country Planning Department, Haryana. It is also clear that despite serious violations, the Haryana State Pollution Control Board has failed to perform its duties in taking statutorily mandated coercive measures under Sections 31A Air Act and 33B of the Water Act or initiating prosecution. **The CGWA, CPCB, State PCB have also failed to perform their duties. The Town and Country Planning Department appears to have colluded.***

5. *In view of above, we direct CPCB to exercise its statutory power to determine and recover the damages and issue appropriate further directions for closure of the project and initiating prosecution in accordance with the procedure prescribed under Air Act and Water Act.*
6. *The CPCB will be at liberty to coordinate with the concerned Authorities including the CGWA and the State PCB. Action may include recovery of damages for loss to environment, closure of the project as well as prosecution under the relevant statutory provisions.*
7. *Action plan may be furnished to the Tribunal within three months by e-mail at ngt.filing@gmail.co."*

Status Report dated 05.04.2019 by CPCB

12. In compliance of the above order dated 08.01.2019, a status report dated 05.04.2019 was submitted by CPCB stating that Chairman, CPCB issued certain directions to respondent 11(APIL-PP) vide letter dated 28.02.2019 and also to Member Secretary, CGWA for determination and levy of environmental compensation for extraction of ground water illegally from 39 tubewells.

13. Report also referred to reply dated 13.03.2019 (page 128 of paper book), submitted to CPCB denying allegations made and directions issued by CPCB and NGT. It also challenged authority and power of NGT as also delegated to CPCB by environmental laws and NGT.

14. Report also said that the manner in which respondent 11 operated, was found highly unsatisfactory by HSPCB as communicated vide letter

dated 26.02.2019. Respondent 11 has apparently defaulted earlier and has no regard to environment as well Statutory Regulators who are responsible for protection of environment, made certain recommendations/submissions. The relevant extract of report dated 05.04.2019 reads as under:

*“5. In view of the non-compliance observed, Order of NGT dated 08.01.2019 and in exercise of the power vested under Section 5 of the Environment (Protection) Act, 1986, **Chairman, CPCB has directed M/s Ansal Properties & Infrastructure Ltd (through its Chairman) vide letter dated 28.02.2019 to the following effects:***

- i. To stop all the construction/expansion activities in Shushant Lok, Phase 1, Gurugram with immediate effect.*
- ii. M/s Ansal Properties & Infrastructure Ltd shall pay Environment Compensation of Rs 12.18 Crore (Rs. Twelve crore eighteen lacs only) to CPCB **on account of discharge of untreated sewage for 178 days (till 28.02.2019)** as per Environmental Compensation Policy framed in compliance of Hon’ble NGT order dated 31.08.2018 in OA no. 593/2017 within 15 days from the receipt of these directions.*
- iii. M/s Ansal Properties & Infrastructure Environmental Ltd **shall pay another Environmental Compensation as determined by Central Ground Water Authority on account of extraction of ground water without permission and defunct rain water harvesting system in Shushant Lok, Phase-1, Gurugram.***
- iv. The Environment Compensation amount mentioned in sl. no. 1 above shall be deposited in CPCB’s Union bank of India A/C no. 532702010009078, IFSC code UBINO553271, Branch-IP Extension, Delhi.*
- v. In case of delay in deposition of Environment Compensation, penal interest shall be charged as per rules.*
- vi. Ansal Properties & Infrastructure Ltd shall submit action plan to CPCB regarding rectification of the shortcomings as highlighted above in the concluding remarks of report within 7 days from the receipt of these directions.*
- vii. All the shortcomings as highlighted above in the concluding remarks of report shall be rectified within 30 days from the receipt of these directions.*
- viii. Action taken report be submitted along with necessary documentary evidences immediately after completion of action taken.*

- ix. **Ansal Properties & Infrastructure Ltd shall apply & obtain all relevant NOCs, Consents and Environmental Clearance from concerned departments.**

Copy of the CPCB Directions is attached as Annexure II.

6. CPCB has also directed vide its direction dated 28.02.2019 as referred above in 5 to **The Member Secretary, Central Ground Water Authority**, 18/11, Jamnagar House, Man Singh Road, New Delhi-110011 for determination and levying Environmental Compensation on account of extraction of ground water through 39 nos. of tube-wells without permission and defunct rain water harvesting system in Shushant lok, Phase-1, Gurugram. Action taken Report from CGWA is still awaited.
7. **In response to CPCB Directions dated 28.02.2019, M/S Ansal Properties & Infrastructure Ltd, Sushant lok-1, Gurugram vide its letter dated 13.03.2019 has communicated complete denial of directions issued by CPCB and NGT. Rather, the builder has questioned the 'Authority and Powers' delegated to CPCB by the Act of Law and NGT. The reply received is very casual, arrogant, open ended and without any action plan. Response by the Builder is as follows:**
- i. Hon'ble Authority has wrongly and without having jurisdiction to issue directions of punitive nature in subject matter has issued the directions u/s 5 of the E(P) Act, 1986.
 - ii. Authority has got no power or jurisdiction to issue directions for any arbitrary compensation which is punitive in nature.
 - iii. State Environmental Impact Assessment Authority (SEIAA) shall assess the degree of violations in such project and the compensation if any shall be decided by SEIAA.
 - iv. **Process of compliance has already been initiated with Haryana SPCB, CZWA and State EIAA.**
 - v. **Preparation of application for obtaining Environmental Clearance has been initiated.**

Copy of the reply is attached as Annexure III.

8. Scrutiny of the documents submitted by M/s Ansal Properties & Infrastructure Ltd, Sushant lok-1, Gurugram revealed that none of the Authority as claimed by the company is in the process of levying Environmental Compensation for the damages caused to the environment by the company. It is also observed that **Haryana SPCB is also completely dissatisfied with the acts of operation and reply by the company as evident by Haryana SPCB letter dated 26.02.2019.**
9. **The reply of M/S Ansal Properties & Infrastructure Ltd, Sushant Lok-1, Gurugram does not mention about action plan in respect of the shortcomings pointed out by the joint inspection team. The reply is also silent on extraction of ground water without permission and defunct rain water harvesting system in Shushant Lok, Phase-1, Gurugram.**

10. It is worth to mention here that the same Group of Company has also been found guilty of damaging the environment in another case also titled as *Rajendra Kumar Goel Vs. MoEFCC & Ors.* (OA No. 378/2016 before NGT) and accordingly Hon'ble NGT has imposed an Environmental Compensation of Rs. 10.00 Crores with directions for deposition of an additional performance guarantee of Rs. 5.00 crores vide Order dated 25.03.2019.

11. From the above, it is evident that M/s Ansal Properties & Infrastructure Ltd, Sushant lok-1, Gurugram, have defaulted earlier also and having no regard for the Environment as well as Authorities concerned for protection of environment.

➤ In view of the foregoing paras, it is humbly submitted that:

1. **M/s Ansal Properties & Infrastructure Ltd, Sushant lok-1, Gurugram, may be directed to submit the action plan for prevention & control of pollution from the premises and deposition of Environmental Compensation so that measures for restoration of normal environment.**
2. Haryana SEIAA, CGWA and Haryana SPCB may also be included as Respondents in the application under consideration.
3. **CGWA may be directed for determination and levying Environmental Compensation on account of extraction of ground water through 39 nos. of tube-wells without permission and defunct rain water harvesting system in Shushant lok, Phase-1, Gurugram and also prosecute the agency for violations under E(P) Act, 1986."**

15. The compliance report, in fact, did not show any effective action on the part of Statutory Regulators. The above report was considered by Tribunal on 21.05.2019 and noticing that Statutory Regulators have not taken any appropriate action in the matter, Tribunal passed order, relevant extract whereof reads as under:

*"Compliance report has been filed vide email dated 05.04.2019 indicating the steps taken. **There is however nothing to show the exercise of statutory power for prosecution.** The CPCB has suggested that the project proponent should furnish an action plan and CGWA should determine compensation for illegal extraction of ground water. **We are of the view that such powers can be exercised by the CPCB itself by giving directions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. A Pollution Board is entitled to disconnect the electricity and water supply and take measures for stopping illegal activities as condition for continuing consent to establish or to operate.***

Let such further steps be taken in accordance with law and further report furnished to the Tribunal within one month by email at ngt.filing@gmail.com."

Action taken report dated 21.06.2019 by CPCB, filed on 21.06.2019:

16. An action taken report dated 21.06.2019 pursuant to order dated 21.05.2019, was submitted by CPCB. Action taken by various authorities is given in the form of a chart, as under:

*“Accordingly, CPCB has initiated actions and details are as follows:
1. In exercise of the powers vested under Section 5 of the Environment (Protection) Act, 1986 to the Chairman, CPCB, following directions have been issued on 21.06.2019 to the Project Proponent and concerned Authorities to ensure compliance of Environmental Regulations and Orders issued by Hon’ble NGT.*

1.	The Chairman, Ansal Properties & Infrastructure Ltd.	-	<i>a. To stop all the construction/expansion activities in Shushant Lok, Phase1, Gurugram with immediate effect.</i> <i>b. To pay Environment Compensation of Rs. 14.6962 Crore (Rs. Fourteen Crore, Sixty Nine lacs, Sixty Two Thousand only) only to CPCB on account of discharge of untreated sewage for 281 days (till 17.06.2019) to CPCB’s Union bank of India A/c no. 532702010009078, IFSC code UBINO553271, Branch-IP Extension, Delhi as per Environmental Compensation Policy framed in compliance of Hon’ble NGT order dated 31.08.2018 in OA no. 593/2017 within 7 days from the receipt of these directions. In case of delay in deposition of Environment Compensation, penal interest shall be charged as per rules.</i> <i>c. To pay another Environmental Compensation as determined by Central Ground Water Authority on account of extraction of ground water without permission and defunct rain water harvesting system in Shushant Lok, Plase-1, Gurugram.</i> <i>d. To submit action plan to CPCB regarding rectification of the shortcomings as highlighted above in the concluding remarks of report within 7 days from the receipt of these directions and to rectify all the shortcomings as highlighted in the concluding remarks of report within 30 days from the receipt of these directions. Action taken report be</i>

			submitted along with necessary documentary evidences immediately after completion of action taken.
2.	The Chairman, Haryana State Pollution Control Board	-	a. NOCs, Consents and Authorisation granted to M/s Ansal Properties & Infrastructure Ltd, Gurugram be revoked immediately and shall not be considered in future also till compliance of these directions are made. b. Discharge of untreated sewage from the premises of the company into storm water drain be stopped.
3.	The Member Secretary, Central Ground Water Authority	-	Environmental Compensation on account of extraction of ground water through 39 nos. of tube-wells without permission and defunct rain water harvesting system in Shushant Lok, Phase-1, Gurugram, be determined and levied immediately.
4.	The Chairman, State Environment Impact Assessment Authority, Haryana	-	Environmental Clearance(s) granted to the Company, if any, be revoked immediately. No expansion case in future related to this site be considered till compliance of these directions are made.
5.	The City Magistrate, CTM Gurugram	-	a. Compliance of these directions issued to the Company and other State Government departments be ensured. b. Collection of Environmental Compensation imposed by CPCB be ensured.
6.	The Director Town and Country Planning Department, Haryana	-	a. No further expansion of the project be considered. b. No completion certificate be granted to the Company and any such certificate already granted be revoked immediately.
7.	The Chairman cum Managing Director, Dakshin Haryana Bijli Vitran Nigam	-	No electricity supply be provided for any further expansion of the project by the company in Sushant Lok-1, Gurugram.
8.	The Chief Administrator, Haryana Shahari Vikas Pradhikaran	-	No Water supply to the company be sanctioned for any further expansion of the project in Sushant lok-1, Gurugram.

Affidavit/Reply dated 09.07.2019 by CGWA, filed on 10.07.2019:

17. A separate affidavit/reply dated 09.07.2019 was also filed by CGWA vide letter dated 10.07.2019 stating that pursuant to Tribunal's order dated 08.01.2019, CGWA requested/directed DC, Gurugram, vide letter dated 08.02.2019, to seal illegal borewells and also recover damages and initiate prosecution against respondent 11 (APIL-PP) under Section 15 and 19 of EP Act, 1986. Matter relating to determination of compensation was already dealt with by Tribunal in **OA 176/2015** and other connected matters. It was also found that CPCB has determined compensation for entire Phase I of Sushant Lok though joint Committee has inspected only Block C in Sushant Lok, Phase I. CGWA had issued directions for registration of all existing borewell in entire district of Gurgaon. Pursuant thereto, respondent 11 got registered 39 tubewells on 27.03.2002 in the office of DC, Gurgaon. These wells were reportedly constructed during 1985 to 2000 though in some cases, year of construction was not categorically mentioned in the registration form. CGWA vide Public Notice dated 26.12.2000 declared Gurugram town and adjoining industrial area as "Notified Area" and imposed prohibition on construction and installation of new ground water structures without permission. Any scheme/project of ground water development and management require prior permission as per public notice dated 26.12.2000. CGWA further declared entire Gurgaon district as 'Notified Area' vide public notice dated 13.08.2011. Restrictions on construction and installation of new ground water structures and NOCs were required to be issued by DC, Gurgaon. The existing tubewells of Sushant Lok, Phase I were not covered under directions of CGWA. Considering directions of Tribunal dated 15.04.2015 in **OA 204/2015**, CGWA issued guidelines on 16.11.2015 directing industries/projects to obtain NOC and pursuant thereto respondent 11 which had only part completion certificate, was bound to comply

Tribunal's direction dated 15.04.2015 given in **OA 204/2015** and CGWA's guidelines dated 16.11.2015. Respondent 11 submitted application dated 16.03.2019 (online application submitted on 13.03.2019) for grant of NOC to Regional Director, CGWB Chandigarh, which was received thereat on 20.03.2019. As per the application, water requirement was 7,056 m³/day i.e., 25,75,440 m³/year from the existing 21 operative tubewells. The break up reported by respondent 11 is that HUDA is supplying 2,500 m³/day and respondent 11 is drawing 1,100 m³/day of ground water. It was also reported that 3,456 m³/day treated waste water is getting recycled from the project site. It was admitted by PP that ground water is brackish and require treatment after blending with fresh water supplied by HUDA. Committee has reported that PP constructed 11 Rain Water Harvesting (hereinafter referred to as 'RWH') structures but three structures visited by Committee were found defunct at the time of inspection. Other NOC application submitted by PP to CGWB proposed to construct 11 large additional recharge structures for open/common area and 600 additional recharge structures for individual houses in Sushant Lok, Phase I. Giving background of various guidelines issued by CGWA, it was stated in the above affidavit/reply of CGWA that guidelines were issued in 2009, 2012, 2015 and of 2018 which was on hold by Tribunal's order dated 03.01.2019 in **OA 176/2015**. Following Tribunal's order dated 03.01.2019 and 07.05.2019 in **OA 176/2015**, MoEF&CC has to come out with a new set of guidelines. No such guidelines were filed by MoEF&CC by 04.07.2019, hence proceeding in **OA 176/2015** and other connected matters was deferred. Hence, there was no provision under which environmental compensation could be levied/determined. However, NGT is competent to take a decision on environmental compensation under Section 15 of NGT Act, 2010 which it may impose as it may deem fit.

18. Reply of CGWA also said that Committee investigated only C Block of Sushant Lok Phase I but compensation was determined for the entire Phase I. As per application of PP, dated 13.03.2019, ground water requirement for Phase I in Sushant Lok is 1,100 m³/day (1,01,500 m³/year) and estimated recharge given under recharge proposal of PP is 2,33,000 m³/year from paved and road areas of Sushant Lok, Phase I. Excess estimated as per information given by PP is 1,68,500 m³/year. CGWA has written letter to DC, Gurgaon on 08.02.2019 to take appropriate action as per Tribunal's order dated 08.01.2019. CGWA on its own, formerly recommended environmental compensation at the rate of Rs. 24/- which comes to around Rs. 40,44,000/- per annum and directed thereof as under:

“In view of above position and based on the information given by the project proponent (R/ 11) under his application for grant of NOC, the CGWA could determine the environmental compensation @ R. 24/- per m³/year (i.e. @ Rs. 2/- per m³/month × 12 months) on 1,68,500 m³/year of excess draft reported by project proponent w.e.f. 15.4.2015 or 16.11.2015, i.e. @Rs. 2 × 12 × 1,68,500=Rs. 40,44,000.00 per annum or as may be considered by this Hon'ble Tribunal. The proposed Environment compensation is based on the rates prescribed for water conservation fee under Notification S.O. No. 6140(E)/12.12.2018 for infrastructure projects (other than dewatering project).”

19. It is also pointed out that in **OA 546/2016, Harinder Singh & Ors. vs. M/s. Prateek Buildtech (India) Pvt. Ltd.**, vide order dated 30.11.2018, Tribunal determined environmental compensation of Rs. one Crore i.e., at the rate of Rs. 33/- (i.e., Rs. 3000/- per 10,000 liters). Therefore, it was also recommended that same criteria may also be followed in the present case. Similar directions were issued on 02.05.2019 in **OA 186/2019, Jagriti Sansthan vs. State of Uttar Pradesh**. CGWA also recommended that for failure to construct RWH structures by 600 individual houses, a fine of Rs. one Lakh on each house, may be imposed.

20. Action taken report dated 21.06.2019 submitted by CPCB and CGWA affidavit/reply dated 09.07.2019 were considered by Tribunal on 13.09.2019. Tribunal directed that as per information given in the action taken report as also in the reply, follow up action be taken and environmental compensation as recommended by CGWA may be recovered as interim compensation after noticing the contents of action taken report, Tribunal issued directions in para 4 and 5 of order dated 13.09.2019 which read as under:

*“4. Further steps need to be taken as follow up of above directions. We find from the affidavit filed by the CGWA on 09.07.2019 that compensation has been assessed for failure to recharge the ground water in terms of the conditions for ground water extraction at Rs. 40,44,000.00 per annum. **The said amount may be recovered as interim compensation.** The CGWA claims to have written letter dated 08.02.2019 to the Deputy Commissioner, Gurgaon to seal illegal wells.*

5. Let the compliance reports be filed by the CPCB, State PCB, SIEAA, Haryana, CGWA, Town and Country Planning Department, Haryana, Dakshin Haryana Bijli, Vitran Nigam, Haryana Shahari Vikas Pradhikaran and District Magistrate Gurgaon within one month by e-mail at judicial-ngt@gov.in.”

CGWA letter dated 30.09.2019 to respondent 11:

21. In compliance of the above order dated 13.09.2019, CGWA issued a letter dated 30.09.2019 to respondent 11, directing it to deposit Rs. 40,44,000/- towards extraction of ground water as an interim compensation.

Reply dated 04.10.2019 by respondent 11, filed on 07.10.2019:

22. Reply dated 04.10.2019 was submitted by PP which was placed before Tribunal along with letter dated 07.10.2019. PP said that the project was completed before 07.07.2004 and at that time, there was no provision to construct STP in residential projects. HUDA has provided a common STP for all sectors to treat sewerage and issued NOC to PP to connect colony sewer line to their master sewer line. Further, SEIAA has also taken

cognizance of the issues and matter pending thereat, therefore, no separate action is needed on part of either CPCB or any other department. With regard to payment of interim compensation, PP said that project was already handed over to RWA/MCG, therefore, PP is not liable to pay any compensation.

23. Documents appended to the reply of APIL-PP show that Phase I project was handed over to RWA vide Memorandum of Understanding dated 25.05.2015 (page 379) and further to MCG, it was proposed in 2016. However, APIL-PP claimed transfer to MCG in 2016 and said that after handing over of the project to MCG, the said body is responsible for operation, maintenance and extraction of ground water.

Compliance Report by CPCB dated 14.10.2019 filed on 15.10.2019:

24. A separate compliance report dated 14.10.2019 along with letter dated 15.10.2019 was submitted by CPCB. It is stated therein that pursuant to Tribunal's order dated 13.09.2019, a meeting was convened on 13.09.2019 with all concerned authorities and recommendations made in the said meeting are as under:

- “(i) M/s Ansal Properties & Infrastructure be asked to provide revised ATR and to deposit the Environmental Compensation of Rs. 16.729 Crore (Rupees Sixteen Crore, Seventy-Two Lakhs Ninety Thousand) only (till 13.09.2019) and to deposit the compensation assessed by the Central Ground Water Authority for failure to recharge the ground water in terms of the conditions for ground water extraction at Rs. 40,44,000.00/-per annum.**
- (ii) As per submission of DTCP representative, two licenses were issued after notification of EIA notifications, 2006 (after 14.09.2006) which led to expansion of the project and thus the project need Environmental Clearance from SEIAA-Haryana and CTE & CTO from HSPCB.**
- (iii) It was informed by DTCP that some colonies built by M/s Ansal Properties & Infrastructure, at Sushant Lok-1, Gurugram has been transferred to MCG vide letter dated 12.02.2019, while the matter is still subjudice. Also license for expansion of the project has been granted by DTCP, although the project did not have necessary EC. DTCP may provide an explanation as to how the property**

has transferred to MCG when the matter is subjudice and also how completion certificate has been granted.

- (iv) In view of above, DTCP is directed not to grant license for expansion/completion certificate to any other project within its jurisdiction if any court matter is pending against the project/EC is not granted to the project.***
- (v) Similarly, explanation be called from HSPCB as to how Consents/Authorization have been issued to the project when it has not been granted EC and be further directed not to grant any Consent/Authorization to projects which did not have EC.*
- (vi) In view of above discussion, all the members agreed that the Municipal Corporation Gurugram (MCG) may be directed further to examine the matter and to take necessary action at their level also.*
- (vii) It is decided that all the Agencies will send their action taken report to CPCB in compliance of CPCB's directions dated 18.06.2019 at the earliest so that CPCB may file Report before Hon'ble NGT."*

25. CGWA also issued another letter dated 21.10.2019 to PP which was replied by it vide letter dated 05.11.2019 denying any liability of payment of compensation.

Report dated 06.12.2019 by SEIAA Haryana

26. SEIAA also submitted a report dated 06.12.2019 that no EC was applied by PP and it is only in 2019 when application has been submitted for grant of EC.

27. Further, CGWA sent letter to DC, Gurgaon dated 27.12.2019 but the same was also replied by APIL-PP denying all the allegations, vide letter dated 28.12.2019.

Action taken report dated 08.01.2020 by HSPCB:

28. Thereafter, HSPCB submitted a report dated 08.01.2020. The facts stated in the said report after referring to order dated 13.09.2019 passed by Tribunal, read as under:

"The constituted committee by Hon'ble NGT observed that that last two licenses for development or area of 1 acre and 1.55 acre were

granted on 12.02.2007 (License No 62 of 2007 dated 12.02.2007) & 13.04.2011 (License No 32 of 2011 dated 13.04.2011) respectively which falls after EIA Notification dated 14.09.2006, cut-off date or requiring environmental clearance & execution of aforesaid licenses comes under expansion of project and total area of licensed colony after expansion is 604.19 Acres which crosses the threshold limits (>50ha=123.5 Acres for area development project) and thus Company was required to obtain EC. **Out of two license one license (62 of 2007) is in the name of B.C.C. Properties (P) Ltd., 115 Ansal Bhawan, 16 Kausturba Gandhi Marg, New Delhi for setting up of a Group Housing Colony at Village Sukhrali District Gurugram.**

The questioned matter is regarding Sushant Lok, Phase – I which is a residential township spread over 604.194 acres in Sector - 27, 28, 43, 52 of Gurugram developed by the Company on various (112 Nos.) licenses (Annexure-3) (including license No. 151 of 2004 dated 02.12.2004 IVY Group Housing Complex- 5.88 Acres) issued to the Company by Town and Country Planning Dept., Haryana from 1985 to 2011 under Section 3 of the Haryana Development & Regulations of Urban areas Act, 1975 and Rules framed there under. **As per revised approved layout plan dated 24.12.2010 of Sushant Lok -I, total licensed area is 604.194 acres, out of which 18.357 Acres is earmarked for Group Housing. The remaining licensed area i.e. 585.797 acres is under net planned area. Area under plots & under commercial is 295.098 acres & 21.704 acres respectively making total saleable area 316.802 (295.098+21.704) which is 54.08% of net planned area.**

The Company had applied for Environmental Clearance to the MoEF&CC on 30.03.2006 for the project IVY Group Housing Complex (License No. 151 of 2004 dated 02.12.2004 Total Plot area 23823.94 Sqm (5.88 Acres) and total Built up are 41433.94 Sqm) as the project was covered under EIA notification 1994 amended on 07.07.2004. The Company had applied No Objection Certificate (NOC) vide their letter dated 19.01.2006 & 17.07.2006 in connection with the requirement of environmental clearance from MoEF&CC, New Delhi and had deposited public hearing fee to the Board for which public hearing was conducted by the Board on 08.03.2006 which was pre-requisite for deciding environmental clearance by MoEF&CC, New Delhi. The minutes of meeting of public hearing dated 08.03.2006 was sent to the Secretary, Ministry of Environment, Forests & Climate Change, Government of India, New Delhi for deciding environmental clearance of the said project. Board had granted NOC vide No. HSPCB/2006/TAC-A/997 dated 07.08.2006 (Annexure-4) from pollution angle in connection with the requirement of Environmental Clearance from MoEF&CC and NOC to establish will become operational once the environmental clearance is granted by MoEF&CC under intimation to the Secretary, Ministry of Environment, Forests & Climate Change, Government of India, New Delhi. The NOC was issued is wholly and solely for the purpose of meeting the requirement of Govt. of India and this NOC does not entitle the right to establish or right to operate the unit. **A complaint under section 15 of the Environment Protection Act was filed against the Company for the Group Housing Residential Complex (IVY), Sushant Lok, Gurugram (License No. 151 of 2004) for starting construction**

activity without obtaining prior mandatory environmental clearance as per notification dated 27.01.1994/07.07.2004/14.09.2006 in Special Environment Court vide complaint No. 48/08 (Annexure-5). The Hon'ble Court has convicted the Company for the said offence and disposed off through Mega Lok Adalat the case on 20.12.2008 by imposing fine of Rs. 1000/- and compensation of Rs. 1.00 lac for the said offence considering plea bargaining application moved u/s 265-B Cr. PC. The representative of the Company has made a statement before the Hon'ble Court on 20.12.2008 that the Company have obtained environmental clearance but Company have never obtained environment clearance for this project till date. The order of the Special Environment Court in this regard is enclosed as Annexure -6.

In view of above stated facts & incompliance of CPCB directions 18.06.2019, NGT order dated 08.01.2019, 13.09.2019 and CPCB letter dated 03.10.2019 and report of constituted committed 16.11.2018 & 05.04.2019, it is submitted that:

- 1. NOC, Consent to Operate** under Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981 & Authorization under Hazardous & Other Waste Management Rules, 2016 **granted to M/s IVY Group Housing Complex, Sushant Lok-I, Gurugram [One of the project -5.88 Acres area bearing license No. 151 of 2004 dated 02.12.2004) of the whole project under question - 604.19 acres] has been revoked by HSPCB vide No HSPCB/2019/798 dated 19.11.2019. (Annexure-7).**
- 2. DG sets which were operating without adequate stack height have been sealed by the Board,** copy of closure order and compliance of closure order is enclosed as (Annexure -8 & 9).
- 3. Sanction for prosecution** against M/s Ansal Properties & Infrastructure Ltd. Ansal Bhawan, 16 K.G. Marg, New Delhi - 110001 and it's responsible persons **has been accorded by the Chairman, HSPCB, Panchkula** under Water of (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control Pollution) Act, 1981 **vide Endst. No. HSPCB/Consent/2019/618 dated 15.10.2019 (Annexure-10) and the prosecution case will be filed in due course or time before Special Environment Court, Faridabad.**
- 4. Gurugram Metropolitan Development Authority (GMDA), Gurugram vide letter No. File No. 225025/01/2019/Infra-II/2006 dated 15.10.2019 (Annexure-11) has intimated that they have stopped untreated sewage flowing from the premises of the company and other areas in Storm Water Drain (SWD) and connection under question has been disconnected and now, there is no sewage flowing on said location and the same has already verified by the concerned field officer of HSPCB & GMDA at site on 19.10.2019 (Annexure -12)."**

Letter dated 10.01.2020 from Hydrologist, Ground Water Cell Gurugram filed by CGWA on 16.01.2020

29. CGWA also filed a letter dated 16.01.2020 stating that an order was passed by Supreme Court in **Civil Appeal Diary No. 25471/2019, M/s Ansal Buildwell Ltd. vs. Rajender Kumar Goel & Others** dated 02.08.2019 is with respect of an order dated 25.03.2019 passed by Tribunal in **OA 378/2016, Rajendra Kumar Geol vs. MoEF&CC** and 25.03.2019 in MA 721/2016 and 16.07.2019 in **RA No. 41/2019** which is not applicable to the proceedings in **OA 661/2018**, hence DC Gurgaon should comply with the directions given by CGWA.

DC Gurgaon letter (Compliance report) dated 27.01.2020 (page/544):

30. DC, Gurgaon sent a letter dated 27.01.2020, informing Tribunal that compliance reports has already been submitted by SEIAA, HSPCB, MCG, CGWA and TCPD Haryana. Further, Tehsildar has been deputed for recovery of compensation imposed by CGWA.

Tribunal's order dated 05.02.2020

31. HSPCB report dated 08.01.2020 was considered by Tribunal on 05.02.2020 and after referring to earlier proceedings as also the contents of report dated 08.01.2020 submitted by HSPCB, this Tribunal in para 7 to 10 in the order, said as under:

- “7. *In view of above, reports of the CPCB and the SPCB, it is patent that the project has been built up illegally without any EC and without any consent under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974. It is a matter of great surprise how the Town and Country Planning Department, Haryana granted license or a part completion certificate, ignoring serious violations.*
8. *In view of the above serious violation of law, including non-payment of assessed compensation of Rs. 16.729 crore (as per report of CPCB quoted above) for discharge of untreated sewage water, apart from compensation for illegal extraction of ground water required to be paid at the rate of Rs. 40,44,000.00 per annum (as per report of CPCB quoted above),*

we require the Chief Secretary, Haryana to suggest the mechanism for enforcement of Rule of Law and also to prevent such illegalities in the State. The Chief Secretary may explore action against the collusion by the concerned officers of the State PCB, the Town and Country Planning Department or other State authorities for their failures mentioned above including the officers who agreed for insignificant compensation of one lac by way of plea bargaining in spite of conviction for serious offence. In this regard, action of black listing, attaching available assets of the defaulting builder may also be considered, apart from other coercive measures. Such a report be furnished by e-mail at judicial-ngt@gov.in within one month.

9. ***It will be open to the State of Haryana to bring to the notice of any Authority where proceedings involving the said party may be pending the above defaults. The Chief Secretary may also explore whether the matter needs to be entrusted to CBI.***
10. ***That apart, considering the seriousness of the breach of the environmental laws by the project proponent where even EC has not been obtained for such a mega project, the MoEF&CC besides taking action as provided in statute may also consider working out a mechanism for mitigation measures to offset the damages already caused to the environment and for taking precautionary measures for anticipated future damages.”***

Report dated 16.03.2020 by Chief Secretary, Government of Haryana (page/547)

32. Pursuant to order dated 05.02.2020, Chief Secretary, State of Haryana submitted report dated 16.03.2020 stating that a meeting was convened with TCPD Haryana and HSPCB to decide further course of action. HSPCB informed that it had already revoked consent and authorization granted to the concerned PP and initiated action against erring officials for lapses indicated in the matter. TCPD Haryana was directed to identify lapses and persons accountable for the same and take action. It also directed to submit a proposal on the mechanism to prevent such illegalities in the State. Further direction was also issued to Commissioner Gurgaon, GMDA, TCPD Haryana, DHBVN and HSVP to submit interim reports.

Report dated 30.09.2020 by Chief Secretary, Government of Haryana filed on 30.09.2020 (page/549)

33. Further report dated 30.09.2020 was submitted by Chief Secretary, Government of Haryana and relevant extract thereof reads as under:

*“In this regard, it is submitted that the matter has been reviewed at the level of undersigned through three meetings held on 13.02.2020, 17.07.2020 and on 11.08.2020, with the stakeholder Departments of Town and Country Planning, Environment and Climate Change and Power and authorities/agencies of SEIAA, HSPCB, GMDA, DHVBN and District Administration and reviewed the various actions undertaken by different agencies of the State, in compliance of the directions issued by Hon’ble Tribunal. HSPCB has revoked the consents issued to the Project, and sealed the DG sets, operating without adequate stack height. **Further, HSPCB has also filed prosecution before the Special Environment Court of Faridabad on 30.06.2020 against M/s Ansal Properties & Infrastructure Ltd.** The remaining State agencies have been directed to submit their reports to the Hon’ble Tribunal, in compliance of specific directions issued to them.*

With reference to the actions to be initiated against the possible collusion of HSPCB and TCP officials in the lapses, it is informed that HSPCB has initiated action against the lapses by instituting an enquiry under an independent enquiry Officer Sh. Sh. R.R Banswal, IAS (Retd.) on 20.05.2020 and same is under process. Similarly, TCP Department has also been directed to examine the details and take action against the erring officials.

In continuation of the meetings held at Chief Secretary level, a follow up meeting was also held at the level of Additional Chief Secretary of Environment and Climate Change Department on 14.08.2020 to finalize the draft mechanism and to strengthen the existing structure of SEIAA/SEAC in the State. Accordingly, a draft mechanism is being proposed by SEIAA the salient features of which are as below.

- *The draft mechanism is proposing to include consolidated conditions relating to different Departments/agencies/authorities, for appropriate monitoring through proper coordination among different Departments/agencies.*
- *The proposed mechanism will assess and review the progress of various mitigation measures imposed in the EC issued for Category B projects under the EIA Notification by SEIAA through the Monitoring Cell, headed by DG, Environment and Climate Change Department, who is also the Member Secretary of SEIAA. The Monitoring Cell shall include Joint Director of Environment and Technical Executive Officers supported by three Technical Officers in the rank of Scientists/Engineers in the respective fields of expertise. Further, the Monitoring Cell will also have adequate administrative and field staff, including Sectoral Coordinators and Domain Area Experts, as determined by the Environment Department.*
- *As far as imposition of conditions are concerned, it has been decided to take up the issue with HRERA and TCP Department*

for making provisions in its regulations for registrations of building construction and area development projects with detailed provisions for submission of arrangements and facilities to be provided to control environmental pollution and waste management including measures like greenbelts, conservation of water, ambient air quality monitoring facilities, waste recycling provisions, etc.

- *The TCP Department shall also include conditions, seeking NOC from Power Department before granting OC to the developers and TCP Department shall also earmark requisite land for substations at the time of approving the layout plan for the projects. TCP Department has also been directed to explore and impose conditions, as indicated by Hon'ble Tribunal for regulating the environmental norms in the projects.*

This mechanism will be finalized by Department of Environment and Climate Change and will be adopted in the State after due approval of the competent authority, including MoEF & CC. We expect the same to be in place within next three months, i.e., by November 2020.

Therefore, as indicated in the above paras, the State is finalizing its mechanism for monitoring the conditions and environmental norms imposed by various authorities and agencies, which is likely to be in place soon. The above interim report may kindly be taken on record and an additional period of two months time may kindly be granted for filing of the final report as directed by the Hon'ble NGT vide its order dated 05.02.2020.

Further, the delay in submission of the report due to unavoidable administrative delays may kindly be condoned."

34. Chief Secretary's reports dated 16.03.2020 and 30.09.2020 were considered on 01.10.2020. Tribunal placed on record serious dissatisfaction on lack of effective action against defaulters and said in para 4 and 5, as under:

"4. From the above, it is clear that no effective steps have been so far taken. Neither the guilty officers have been brought to book nor the violations of law have been remediated. Compensation assessed has not been recovered. Even simple step of black listing of the project proponent has not been taken. We have noticed similar non compliance in several matters, including four other matters listed today being OA No. 506/2019, *Mukund Dhote v. UOI*, OA No. 764/2018, *Kissan Udey Samiti v. State of Haryana & Ors.*, OA No. 688/2019, *Aditya Jakhar v. State of Haryana* and OA 155/2020, *Dr. Manorama v. TDI*.

5. In view of the above, let necessary effective steps be now taken and further report filed by the Chief Secretary, Haryana before the next date 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.

A copy of the report may be simultaneously provided to the project proponent, for response, if any before the next date.”

Action taken report dated 07.09.2021 by Chief Secretary, Haryana filed on 10.09.2021

35. A further report dated 07.09.2021 was submitted by Special Secretary Environment Change Department, Haryana and in respect to OA in question, report said as under:

“a. In OA No 661/2018 (Praveen Kakkar & Ors V/s MoEF & CC and Ors).

- *The Haryana State Pollution Control Board (HSPCB) has revoked the NOC, Consent to operate issued under the provisions of Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981 and also revoked the authorization granted under Hazardous & Other Waste Management Rules, 2016 vide letter no. HSPCB/2019/798 dated 19.11.2019 to M/S IVY Group Housing Complex, Sushant Lok-I Gurugram (One of the projects with 5.88 acres area bearing license No 151 of 2004 dated 02.12.2004) of the whole project under question- 604.19 acres.*
- *HSPCB has sealed the DG sets which were operating without adequate stack height.*
- *HSPCB has also filed prosecution case under Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981 against M/s Ansal Properties & Infrastructure Ltd. 115, Ansal Bhawan, 16 KG Marg, New Delhi - 110001 and other persons/directors in the Special Environment Court, Faridabad on 30.06.2020.*
- *Gurugram Metropolitan Development Authority (GMDA), Gurugram vide letter No. File No. 225025/01/2019/Infra-11/2006 dated 15.10.2019 has intimated that they have **stopped untreated sewage flowing from the premises of the company and other areas in Storm Water Drain (SWD) and connection under question has been disconnected** and now there is no sewage flowing on said location and the same has already been verified by the committee of HSPCB & GMDA by conducting site visit on 19.10.2019.*
- *With reference to the actions to be initiated against the possible collusion of HSPCB and Town and Country Planning (TCP) officials in the lapses, HSPCB has initiated action by instituting an inquiry under an independent inquiry Officer Sh. R.R Banswal, IAS (Retd.) on 20.05.2020. In furtherance, 8 no. of hearings were conducted by inquiry officer. However, due to prevailing COVID-19 pandemic and health issues, he has requested Member Secretary, H.S.P.C.B. vide letter no. 834916/2021/Estt.Br. Dated 22/06/2021 to assign the instant enquiry to some other*

inquiry officer. Sh. Balwan Singh , IAS (Retd), 178-J Amaravali Enclave , Post Office Chandi Mandir, Panchkula has appointed as Inquiry Office vide letter no. HSPCB/Estt/2021/3097-3101 Dated 10.08. 2021. Copy of aforementioned letter dated 22.06.2021 is hereby annexed as Annexure R/3.

- *Deputy Commissioner, Gurugram directed the concerned Tehsildars to recover the compensation amount of Rs. 44.44 lacs per annum imposed by CGWA and 16.729 crores imposed by CPCB on M/ S Ansal Properties & Infrastructure Ltd. and the proceedings of the recovery were initiated and recovery certificates were issued for attaching the property but **the proceedings were stopped in compliance of Supreme Court orders in the matter of CA No. 3111/ 2020 M/S Ansal Properties and Infrastructure Ltd. vs. Praveen Kakkar & Ors. The relevant portion of the orders is given below:***

“Status quo as of today with regard to the possession of the property shall be maintained by the parties”.

36. This report was considered on 28.09.2021. Tribunal seriously deprecated lack of effective action on the part of Statutory Regulators and consistent inaction despite several orders passed by Tribunal, not only in the present matter, but some other matters also, observations whereof were made in the order dated 01.10.2020, pursuant where to, composite report dated 07.09.2021 was submitted by Special Secretary. The observations and directions of Tribunal contained in paras 9 to 12 of order dated 28.09.2021 are as under:

*“9. We have given due consideration to the report of the Chief Secretary, Haryana and find that the effectiveness of mechanism needs to be studied in the light of success in preventing and remedying violations. The Chief Secretary, while experimenting the mechanism evolved, may undertake study of extent of its success to consider what further changes are required in the mechanism after some time. **Violations have been reported in the last several years and it is yet to be seen whether the compliance level has improved.** We have separately considered violations in different cases mentioned in the report by separate orders in the said matters today. Violations found in the present case include absence of EC, Consent to Establish, Consent to Operate and consent for extraction of groundwater. **The compensation assessed is only on account of untreated sewage water discharge and illegal extraction of groundwater. No compensation has been assessed for establishing the project without prior EC. In view of law laid down in Goel Ganga Developers India Pvt. Ltd. v UOI , the scale of compensation has to be related to the cost of the project so as to operate as deterrent against the law violators. The scale of compensation, thus, needs to be revised.***

10. It does appear that so far effectiveness of monitoring is not reflected from the report either in the matter of preventing colluding officers who have enabled gross violations or from dissuading the violators or providing remedy to the victims. Only mention is appointment of an inquiry officer on 10.08.2021. Unless there is speedy effective action, **mere appointment of an enquiry officer after three years of highlighting of rampant violations, in collusion with the State authorities is merely an eye wash. Similarly, with regard to effective recovery from M/s Ansal Properties and Infrastructure Ltd., only justification for not effecting recovery or taking punitive measures is order of status quo with regard to possession. There is no bar against effecting recovery of assessed compensation or blacklisting, in terms of observations of the Tribunal in Para 4 in the order dated 01.10.2020. This only shows lack of sensitiveness, commitment and will of the administration in enforcing rule of law.** We further find that as per order of the CPCB under Section 5 of the EP Act dated 21.06.2019, the State PCB was required to revoke the consents/authorizations given to M/s Ansal Properties and Infrastructure Ltd., the SEIAA, Haryana was required to revoke EC. The Director, Town and Country Planning Department was required not to allow any expansion or grant any completion and the Electricity Department was directed not to supply electricity for expansion of any project of the PP in Sushant Lok, Phase-1, apart from direction to the HSVP not to supply water for such expansion. Nothing is shown to have been done. Thus, **the policy needs to be reviewed. Least expected for ensuring compliance by Residential Complexes is to inventorise such projects and to ascertain their compliance status. Second step is to place such status in public domain with reference to check list of conditions requiring compliance, with technical accuracy, to ensure that no such projects come up without being compliant with norms. There have to means to encourage best practices for waste management, including decentralised waste processing facility in coordination with concerned local body for collection of residual waste. Other issues need focus are water harvesting, greenery, leaving open spaces, dual piping system for utilisation of treated water for reuse. One cannot ignore that haphazardly developed housing projects are potential for degradation of environment, affecting public health. Prior to occupation and handing over to RWA, audit of compliances by a proper and accountable mechanism needs to be ensured. Revamping of Town and Country Planning Department, SEIAA, SEAC and State PCB and their interse coordination is a must for meaningful and prompt action against violators. Ownership and oversight of mechanism has to be of officers of proven credibility and status.**

11. We note that notice has not been issued to the PP so far, as the Tribunal in the first instance sought action taken report from statutory authorities in exercise of their powers but in view of inadequacy of action, the Tribunal may have to consider further action after giving opportunity to the PP. **Issue notice to the PP – M/s Ansal Properties and Infrastructure Ltd., 115 Ansal Bhawan, K.G. Marg, New Delhi-110001 by e-mail to show cause why further action be not taken for the violations, already noted. Response be filed**

within one month. Haryana Sehari Vikas Pradhikaran (HSVP) and Town and Country Planning Department, Haryana may also explain how licenses have been granted for developing societies without ensuring requirement of providing basic infrastructure of waste management and other amenities required for clean environment and what action is being taken when violations are found. The said Departments may also file their action taken reports in the matter by e-mail in same manner as in above direction.

12. We also direct the Chief Secretary, Haryana to coordinate further action in light of above observations by calling a joint meeting of the concerned State authorities within one month from today. Status report of steps so taken as on 31.01.2022 may be filed before the next date 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. Likewise, CPCB may also file its additional status report in the matter in the light of above observations.”

37. Pursuant to order dated 28.09.2021, notice was issued to APIL-PP i.e. respondent 11 by Registry’s letter dated 05.10.2021.

Compliance Report dated 03.02.2022 by Dakshin Haryana Bijli Vitran Nigam on 11.02.2022

38. A compliance report dated 03.02.2022 has been filed on behalf of Dakshin Haryana Bijli Vitran Nigam and relevant extract thereof from para 7 to para 14 is reproduced as under:

“7. In furtherance to above, a report dated 05.04.2019 was filed by the CPCB in compliance with the order dated 08.01.2019 passed by the Hon’ble Tribunal. Further, in accordance with the order dated 21.05.2019 of this Hon’ble Tribunal, another action taken report dated 21.06.2019 was filled by CPCB stating that it had issued directions under section 5 of the Environmental (Protection) Act, 1986 to the Project Proponent as well as the concerned authorities to ensure compliance of Environmental Regulations and orders issued by this Hon’ble Tribunal. The direction qua the Applicant by the CPCB through its report dated 21.06.2019 is as follows:

“No electricity supply be provided for any further expansion of the project by the company in Sushant Lok-1, Gurugram.”

8. The Hon’ble Tribunal vide its order dated 13.09,2019 had directed the Applicant to file the compliance report, to which, the Applicant has filed its compliance report dated 10.01.2020. In the said report, it is stated that no electricity supply has been provided to the Project Proponent for any further expansion of project in the Area. In the said report, the Applicant has further raised the issue of application(s) for new electricity connection(s) being received by the consumers who have purchased plots/flats in the Area. A copy

of the compliance report dated 10.01.2020 filed by the Applicant is annexed hereto and marked as Annexure-C1.

9. The Applicant has also issued a sale circular n. D-26/2021 dated 15.07.2021, vide which it was clarified that the Govt. of Haryana has approved the release of tubewell connections in dark zones/notified area. Copy of the Sales circular dated 15.07.2021 bearing no. D-26/2021 issued by the Applicant is annexed hereto and marked as Annexure C2.

RE: ELECTRICITY CONNECTIONS TO CONSUMERRS

10. The Area in question is a residential area and many individual consumers are purchasing the plots/flats in the Area, due to which there are several applications being received on behalf of consumers for grant of new electricity connection and/ or expansion of load from various consumers/plot owners/flat owners. **The Project Proponent has developed the Area and further sold the plots to the consumers.**

11. The Applicant being a distribution licensee under the provisions of the Electricity Act, 2003 is bound by the various rules and regulations issued under the Electricity Act, 2003, including the Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2014 ("Regulations"), to grant electricity connections to the consumers. Since the directions which are passed by this Hon'ble Tribunal is in respect of the Project Proponent, therefore, **the Applicant is not issuing any fresh electricity connection to the Project Proponent for the expansion in the Area.**

12. It is submitted that **requisite electrical infrastructure as per ultimate load norms of the Applicant has not been provided by the Project Proponent in the Area.** There are other builders who failed to provide the adequate electrical infrastructure. The issue with respect of inadequacy was duly appraised to the Govt. of Haryana and a **scheme has been approved by the Management of the Applicant wherein the connections of electricity in future would only be released to the individual residents consumers only after depositing the development charges.**

13. In this regards, the Applicant has also filed the Petition No. PRO 55 of 2021 before the Ld. Haryana Electricity Regulatory Commission ("HERC") against various builders, under section 43, 46 and 50 of the Electricity Act, 2003 read with Regulation 8 and 9 of the HERC Duty to Supply Electricity on Request, Power to Recover Expenditure incurred in providing Supply and Power to require Security) Regulations, 2016, and Regulation 16 of the HERC Electricity Supply Code Regulations, 2014, read with Section 142 and 146 of the Electricity Act, 2003, which is pending adjudication before the Ld. HERC.

14. In view thereof, the **Applicant is bound to provide new connection(s) to the Consumers subject to the deposit of developmental charge."**

Reply/Status Report dated 30.03.2022 by TCPD Haryana filed on 30.03.2022

39. TCPD Haryana has also filed status report dated 30.03.2022. The said report, in effect, is an explanation to the observations made as to how licenses were granted to societies without ensuring compliance of basic infrastructure of waste management and other amenities for protection of environment. Explanation given by TCPD Haryana in para 2 to 14 reads as under:

2. *It is relevant to submit before the Hon'ble Tribunal that all such services are part of External Development Works which are to be executed by HSVP being a nodal agency for execution of all such development works in the Urban Estates of Haryana.*
3. *That it is submitted that licences for development of residential/commercial/industrial colonies are granted by the Department of Town and Country Planning in accordance with the provisions of Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 (in short the Act of 1975) and rules framed thereunder. That the 'external development works' and 'internal development works' have been defined in Section 2(g) and 2(i) respectively of the Act of 1975 which are reproduced as under:*

*“(g) **“external development works”** shall include any or all infrastructure development works like water supply, sewerage, drains, necessary provisions of treatment and disposal of sewage, sullage and storm water, roads, electrical works, solid waste management and disposal, slaughterhouses, colleges, hospitals, stadium/sports complex, fire stations, grid sub-stations etc. and any other work which the Directory may specify to be executed in the periphery of or outside colony/area for the benefit of the colony/area;*

*(i) **“internal development works”** mean— (i) metalling of roads and paving of footpaths;
(ii) turfing and plantation with trees of open spaces;
(iii) street lighting;
(iv) adequate and wholesome water supply;
(v) **sewers and drains both for storm and sullage water and necessary provision for their treatment and disposal; and**
(vi) any other work that the Director may think necessary in the interest of proper development of a colony;”*

4. *That the provisions of Trunk Infrastructure network through External Development Works (EDW) is based on the proportionate payments received from end users as routed through colonizers. The proportionate cost of External development works to be executed by HSVP is recovered from the project proponents. It is relevant to highlight the following points:*

- i. *The cost of provision of trunk water supply and sewer network along with STP is borne out of EDC funds received from colonisers upon grant of licence;*
 - ii. *Thus, on account of such statutory provisions, it is possible that, in several cases the establishment of colony takes place before the provision of trunk water supply and sewer network along with STP;*
 - iii. *The cost of city level infrastructure covered under EDC works which has been worked out amounting to Rs. 26,974 Crore. However, it is submitted that the total EDC amount collected for Gurugram is Rs. 18,393 Crore from 01.04.2000 to 31.12.2021 whereas the amount spent for providing city level infrastructure is Rs. 23,083.71 Crore which is more than the EDC collected from the colonizers. It is further submitted that an outstanding amount of EDC is Rs. 8,578.71 Crore which is to be collected from various colonizers.*
 - iv. *This mechanism ensures that the development of colonies by various colonisers and provisioning of EDC works by the nodal agencies, viz. HSVP, HSIIDC run parallel to each other for balanced urban development in accordance with the mechanism envisaged in the statute.*
5. *That at the time of grant of licence, a condition is imposed that the colonizer will make its own arrangements for laying down the infrastructure which is to be linked with the infrastructure as part of External Development Works to be provided by HSVP at a later stage. Further, **while issuing the part completion certificate/Occupation Certificate, a condition is also imposed that the services will be laid by the colonizer upto the alignment of the proposed external services of the town and connecting with the HSVP system will be done by the colonizer at its own cost with the prior approval of the competent authority.** It is also laid down that the colonizer will be solely responsible for making arrangement of water supply and disposal of sewerage and storm water of their colony as per requirement/guidelines of HSPCB/ Environment clearance till such time, the external services are provided by HSVP/State Government as per their scheme.*
6. *That further part completion certificates & occupation certificate for the residential plotted colonies & group housing colonies respectively completed in this area granted by the Department subject to the condition that the licensee shall apply for connection for disposal of sewerage, drainage and water supply from HSVP as and when the services are made available within 15 days from its availability and that the licensee shall maintain the internal services till the colony is handed over after granting final completion. **It was also stipulated that the licensee shall be fully responsible for supply of water, disposal of sewerage and storm water of the colony till these services are made available by HSVP/State Government as per their scheme.***

7. That as per the report of Chief Engineer-I, HSVP dated 13.10.2011, the Master Water Supply Lines, Master Sewerage Line, Storm Water Drainage, Master Roads were constructed which are part of EDC services. **It is further submitted that the water connection (sector-27&28) in Sushant Lok-I was released by EE-HUDA Division-III vide letter no. 16502 dated 20.12.1999 and in sector-43 & 53 on 23.12.1999. The water connection for block-C was also released on 06.10.2004.**

It is further submitted that Sewerage connection was released on 01.06.2004 by HSVP. **So, all the EDC services around the Sushant Lok-I colony exists before the year 2004.**

8. That the Hon'ble NGT in para no. 1 of the order dated 05.02.2020 have observed that despite non-compliance of the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 by the colonizer, has granted the Completion Certificate to Ansal (API). In this regard, it is submitted that Rule 16 of Haryana Development and Regulations of Urban Areas Rules of 1976 provides for grant of Completion Certificate for the part or complete area of the colony once the internal development works have been executed as per the approved plans. The provisions of Rule 16 of Rules of 1976 is reproduced as under:

“16. Completion certificate/Part Completion Certificate [Section 24].— 139[(1) After the colony has been laid out according to approved layout plans and development works have been executed according to the approved designs and specifications, the coloniser shall make an application to the Director in Form LC-VIII alongwith a demand draft on account of Infrastructure Augmentation Charges as per the rates prescribed in the Schedule-B of these rules if not paid earlier in accordance with the provision of Section 3(7) of the Act.]

(2) After such [scrutiny], as may be necessary, the Director may issue a [completion certificate/part completion certificate] in form LC-IX or refuse to issue such certificate stating the reasons for such refusal:

Provided that the colonizer shall be afforded an opportunity of being heard before such refusal.”

The first part Completion Certificate to the colonizer was granted by the Department on 10.05.1991 for an area measuring 388.89 acres i.e. more than 50% area of the colony. The Part Completion Certificate was granted on the basis of the verification of laying down of internal development works and services as verified by CE, HUDA, Panchkula (now HSVP) vide their letter no. 769 dated 31.01.1991. The services forming part of internal development works are defined in section 2(i) of the Act no. 8 of 1975, which are reproduced a under:

- “(i) internal development works means-
- (i) metalling of roads and paving of footpaths;
 - (ii) turfing and plantation with trees of open spaces;

- (iii) street lighting;
- (iv) adequate and wholesome water supply;
- (v) **sewers and drains both for storm and sullage water and necessary provision for their treatment and disposal;** and
- (vi) any other work that the Director may think necessary in the interest of proper development of a colony;”

Thereafter, the subsequent Part Completion Certificates were granted by the Department on 10.11.2000, 15.01.2001, 23.02.2001, 26.06.2001, 10.07.2002 and 25.05.2003 respectively. All Part Completion Certificate were issued after taking the requisite verification reports from HSVP regarding laying down of the services as per the approved service plan estimates.

The details of the part completion certificates granted by the Department are as under:

Date of applications received	License no./Year	Area	Completion granted area	Date of grant of completion certificate
02.03.1990, 24.07.1990, 30.04.1990, 24.04.1991	7-12 OF 1985	101.25	388.89	7978-84/10-05-1991
	20-22 OF 1985	17.96		
	33-34 OF 1985	20.92		
	36-40 OF 1985	64.07		
	51-54 OF 1985	14.24		
	1-3 OF 1986	37.12		
	11-12 OF 1986	25.65		
	15-17 OF 1986	41.82		
	18-20 OF 1986	8.56		
	31-33 OF 1986	9.38		
	40-41 OF 1986	12.16		
	7-9 OF 1987	36.26		
	20-23 OF 1987	23.07		
05-07-1996	9-18 of 1993	10.31	10.313	16234/10.11.2000
07-11-1993	39-43 of 1989	41.003	41.003	916/15.01.2001
14-01-1996	6-11 of 1992	48.69	48.692	2715/23.02.2001
17-11-2000	88-101 of 1995	49.736	49.736	8838/26.06.2001
26-09-2002	1-9 of 1996	18.41	18.41	9802/10.07.2002
31-10-2002	14-24 of 1998	5.889	5.889	7443/20.05.2003
31-10-2002	1 of 2001	0.5	0.5	
	Total		563.433	

Moreover, **the Department has rejected the request dated 21.10.2014/ 24.03.2015 for issuance of final Completion Certificate of the above colony vide order dated 19.04.2018.**

9. Further, in compliance of Hon'ble NGT order dated 13.09.2019, Department has **not granted Completion Certificate to the colonizer i.e., Ansal (API).**

10. That the Hon'ble NGT in para no. 5 (iii) of the orders dated 05.02.2020 directed that DTCP may provide an explanation as to how the property has transferred to MCG when the matter is sub-judice.

In this regard, it is submitted that the matter is sub-judice since the year 2018 whereas the **decision regarding transfer of the colonies known as Palam Vihar, Sushant Lok (Phase-I) & DLF (Phase-I-III), Gurugram to Municipal Corporation, Gurugram was taken by the Government in the year 2016 itself under the provision of section 23A of the Act no. 8 of 1975 and same was circulated vide DTCP order dated 08.02.2016 (Annexure-R/1). Further clarification to the said orders dated 08.02.2016 was issued on 12.02.2019 (Annexure-R/2).** No orders of Hon'ble NGT to the contrary or imposing any restriction on transfer of colony was applicable on such date.

It is submitted that transferring the licence colonies to the local authority i.e. MCG is concerned, section 3 (3)(i)(iii) of the Act no. 8 of 1975 provides as under:

“(iii) the responsibility for the maintenance and upkeep of all roads, open spaces, public park and public health services for a period of five years from the date of issue of the completion certificate unless earlier relieved of this responsibility and thereupon to transfer all such roads, open spaces, public parks and public health services free of cost to the Government or the local authority, as the case may be;”

It has been clarified in the para 3 of the order that the transfer of colony shall not be constituted as grant of completion certificate under provision of Act No. 8 of 1975 and colonizer shall continue to responsible for compliance of various terms and conditions of licence including but not limited to the following:

- a. Renewal of licenses
- b. Construction of community sites as per provisions of Act 8 of 1975 as amended upto date.
- c. Liability to obtain completion / part completion certificate.
- d. Development of commercial pockets including approval of building plans and grant of occupation certificates.
- e. Development of group housing component including approval of building plans and grant of occupation certificates.
- f. Liability to deposit Infrastructure Augmentation Charges, if not deposited earlier.
- g. Liability to pay the cost/bank guarantee for deficit Electrical Infrastructure on account of load assessment and

corresponding Infrastructure inadequacy assessment by Power Utilities.

- h. *Clearance of outstanding dues on account of EDC/IDC including enhanced and interest thereupon, if any.*
 - i. *Revalidation of the bank guarantees including IDW.*
 - j. *Other statutory approval as required under Act/Rules as applicable on the licensed colony.*
11. *That the Hon'ble NGT in para no. 5 (iv) of the order dated 05.02.2020 directed DTCP not to grant licence for expansion as completion certificate to any other project within its jurisdiction if any court matter is pending against the project/EC is not granted. In this regard **as per the directions of Hon'ble NGT, Department has not granted any expansion and completion certificate in the colony after the said order.***
12. *That the Hon'ble NGT in para no. 9 of the orders dated 28.09.2021 directed HSVP not to supply water for such expansion. In this regard, it is submitted that internal water supply of the sectors is being maintained by Municipal Corporation Gurugram and master connection issued by GMDA. GMDA has informed that no new water supply connection has been sanctioned in Sushant Lok-I and necessary directions have been issued to the field officers not to sanctioned any fresh/new water supply connection in future.*
13. *That the Hon'ble NGT in para no. 10 of the order dated 28.09.2021 directed that there is no bar against the effective recovery of assessed compensation or black listing in term of observation of Tribunal in para no. 4 of order dated 01.10.2020. In this regard, it is submitted as per the order of Hon'ble NGT, **Ansal Properties and Infrastructure Ltd. has been blacklisted vide order dated 28.03.2022. The copy of the said order is also enclosed as Annexure-R/3.***
14. *That however, the answering respondents undertake that they will comply with any direction which this Hon'ble Tribunal may issue for proper implementation of the project in question."*

Report dated 31.03.2022 by Chief Secretary, Haryana filed on 31.03.2022

40. Chief Secretary, Haryana has also filed its report dated 31.03.2022

and the relevant extract thereof from 5 to 18 reads as under:

"5. That in compliance of the directions of Hon'ble Tribunal, all the Departments/Agencies were directed to take necessary steps to ensure compliance of the directions and to report for apprising the Hon'ble Tribunal accordingly. Further, a meeting was held on 25 March 2022 with the Administrative Secretaries and Senior officers of all the stakeholder Departments / Agencies / District Administrations of Gurugram and Sonapat, wherein the compliance of different directions issued by the Hon'ble Tribunal was reviewed with reference to the policy initiatives for preventing recurrence of such violations of environmental norms, actions undertaken by them against the violators, remedial actions undertaken by the

Departments, recovery of Environmental Compensation and action against the erring officers.

6. That in compliance of the directions of Hon’ble NGT to ensure effective monitoring of prescribed environmental norms in case of projects requiring Environmental Clearance, the State has already proposed a mechanism as presented in its earlier report dated 07 September 2021, wherein it was proposed - with State Level and District Level Monitoring Committees at the first tier and a State Environment Monitoring Cell in the second tier and a provision for engaging Sectoral Coordinators and Domain Area Experts to help the State Level Monitoring Committee, if necessary. This matter was reviewed at the level of Chief Secretary, in compliance of the directions of Hon’ble Tribunal and constitution of a high powered Committee for Redressal of Environment Compliance of Projects requiring Environmental Clearances (CRECOMP) has been proposed in State of Haryana for periodic review of actions against the violators and to ensure the right of citizen to clean environment, reviewing compliance of directions issued by Hon’ble NGT in various related cases and the Committee shall consist of the following:

Sr. No.	Designation	Remarks
1.	Chief Secretary to Govt. Haryana	Chairman
2.	Administrative Secretary, Environment & Climate Change Department	Member
3.	Administrative Secretary, Town and Country Planning Department	Member
4.	Administrative Secretary, Urban Local Bodies Department	Member
5.	Chairman, Haryana State Pollution Control Board	Member
6.	Chairman, State Environment Impact Assessment Authority, Haryana	Member
7.	Director, Environment & Climate Change Department	Member Convener

And further that, as decided by the competent authority, the Monitoring Cell shall be constituted at the level of Haryana State Pollution Control Board for conducting the field inspections and monitoring of individual projects for compliance of various environmental norms prescribed by the authority, granting environmental clearances.

7. That the Government of Haryana is committed for conservation, regulation and management of ground water and water resources in the State. The **Government vide notification dated 07 December 2020 enacted the Haryana Water Resources (Conservation, Regulation and Management) Authority Act, 2020, to regulate the extraction of ground water in the State.** The provisions of the Act provide for punishment/fine for illegal extraction of ground water under Section 25 and any violation of the direction of the Authority is punishable under Section 22. Further, under Section 19, the Government in consultation with the Haryana Water Resources Authority, vide Order No. 1IW-030001/19/2021 dated 06 December 2021, designated the following officers as enquiry/ enforcement/

compliance officer, who shall function under the directions and general superintendents of the Authority:

- (i) The officers such as Executive Engineers from Irrigation & Water Resources Department, District Town Planner from Town and Country Planning Department, Haryana and Regional Officers from Haryana State Pollution Control Board.
- (ii) Under Section 22 of the Act power has been given to the Inquiry/Enforcement Officer to enter into any premises and inspect such premises to check the compliance of the provisions of the Act and directions of the Authority. Recently, the Haryana Water Resources Authority under Section 12 (3), after seeking approval from the Government notified the provisions for imposition for Environment Compensation on such project proponents who have been extracting ground water without permission of the Competent Authority. Before the Haryana Water Resources Authority, the Central Ground Water Authority has been regulating the ground water in the State.

8. That, the HSPCB vide letter dated 10 February 2022 (**Annexure-R/1**) has submitted action taken report wherein it has been mentioned:

- (i) With reference to OA No.661 of 2018, **NOCs and Consent to Operate issued to M/s IVY Group Housing Complex, Sushant Lok-I, Gurugram under various regulations have been revoked.**
- (ii) **DG sets operating without adequate stack height have been sealed.**
- (iii) Prosecution has been initiated under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 against the Project Proponent and other responsible persons and the case has been filed in Special Environment Court, Faridabad and the action under Environment (Protection) Act, 1986 is also under process.
- (iv) With regard to directions of Hon'ble NGT to revoke the Environment Clearance granted to Project Proponent in O.A. No. 661/2018, it is humbly submitted for appraisal of Hon'ble Tribunal that State Environment Impact Assessment Authority has submitted that, **'No Environment Clearance has been issued by SEIAA for the site under reference' (Letter dated 09 November 2021 - Annexure R/2).**

9. That the Town & Country Planning, Haryana has submitted that, DTCP has not granted any expansion and completion in the colonies. Further, the **Colony has been transferred to the Municipal Corporation Gurugram for maintenance purposes vide order dated 12 February 2019 (Letter dated 10 February 2022 -Annexure R/3).**

10. That the Central Ground Water Board, NWR, has submitted that M/S Ansal Properties and Infrastructure Ltd. has been directed multiple times to submit amount of compensation as directed by Hon'ble NGT vide order 13 September 2019. However, on repeated failure of Project Proponent to do so, Deputy Commissioner, Gurugram has been requested to take necessary action for recovery of

environmental compensation of Rs. 40,44,000/- per annum from Project proponent. (Letter dated 11 February 2022 (**Annexure R/4**).

11. That the Municipal Corporation, Gurugram has submitted that, **20 Rain Water Harvesting Structures (RWHS) are functional and maintained by MCG in the concerned area. Further, planning for 20 more RWHS is under process and will be constructed by 30 June 2022.**

12. That the post taking over the charge of the parks of **Sushant Lok-I** in 2019, MCG has renovated 100 parks with grassing, plantation of hedges and garden features like installation of Canopy, open Gyms and children's playing equipments. Further, MCG has planted about 42,400 shrubs and 2600 trees in parks and other approved green areas of **Sushant Lok-I**.

13. That the **Decentralized micro STPs, having capacity of 50 KLD & 25 KLD, have been installed by MCG for reusing treated water. Tenders have been floated for covering all the parks of Sushant Lok-I under the tertiary treated water pipeline empanelment of agencies.**

Similarly, 26 agencies has been empanelled for providing technical support for onsite composting of biodegradable waste (Lr dated 01 February 2022 -**Annexure R/5**).

14. That in compliance of the directions of Hon'ble NGT, GMDA has submitted that no new water supply connection has been sanctioned in **Sushant Lok-1** and necessary directions have been issued to field officers not to sanction any fresh/new water supply connections to the company. Further, **no untreated sewage from Sushant Lok-I is flowing into the storm water drain. (Report dated 02 February 2022-Annexure R/6).**

15. That in compliance of order dated 28 September 2021, Haryana Shehri Vikas Pradhikaran, (vide letter dated 10 February 2022), Public Health Engineering Department (vide its letter dated 11 February 2022) and Dakshin Haryana Bijli Vitran Nigam (vide its letter dated 15 March 2022) have submitted their action taken reports, which have been annexed hereby as **Annexure R/7(Colly), R/8 and R/9** respectively wherein following submissions have been made:

- (i) Out of 18 projects at Sonipat, 11 have obtained sewer connections. Further, **out of 18 Kms. of requisite sewer lines, 14.225 Km sewer has been laid out and rest 3.890 Km is pending.** It is further humbly submitted that laying down of master sewer line is pending in compliance to the interim directions to maintain status quo, passed by Hon'ble Punjab & Haryana High Court vide order dated 12 January 2018 in CWP No. 523 of 2018 titled as **Rajender Singh Vs. State of Haryana & ors.**
- (ii) Dakshin Haryana Bijli Vitran Nigam has already filed its compliance report dated 10 January 2020 wherein it has been submitted that no electricity connection has been provided to the project proponent for any further expansion of the project.

- (iii) *And in case of OA No. 764/2018 and 115/2020, it is informed that, **prosecution cases have already been filed by HSPCB against all the units for the violations identified in Special Environment Court, Kurukshetra as already submitted in compliance report dated 07 September 2022.***
- (iv) *TCP Department has informed vide its communication dated 28 March 2022 that no request for the grant of Occupation Certificate (OC) / Completion Certificate (CC) has been considered by the Department, till date. The applications received for grant of part CC and OC have been kept pending by the Department.*
- (v) *TCP Department has also **lodged FIR against the Directors of the Company for occupation of the project without obtaining OC (Annexure R/10).***

16. That, in compliance of the directions of Hon'ble Tribunal to initiate action against the erring officers, it is submitted that, Haryana State Pollution Control Board (HSPCB), as communicated by its report dated 10 February 2022 (**Annexure R/1**), an enquiry was got conducted to enquire into the irregularities committed in the case, which has already been concluded, and the **Board has issued final show cause notice to the officers concerned, and action will be completed as per the Service Rules accordingly.**

17. That considering the seriousness of the corruption cases involving senior officers, the Government of Haryana has proposed to constitute a high powered vigilance committee headed by Chief Secretary with Administrative Secretaries of Home, Principal Secretary to Chief Minister, Director General of Police, Director General of State Vigilance Bureau and Additional Director General of Police (CID) as Members and Secretary of Vigilance Department as Member Secretary, with the objective of formulating policies to combat corruption and to periodically review the pending enquiries and corruption related pending issues with the Departments concerned.

18. That in compliance of the directions of Hon'ble NGT with reference to recovery of environmental compensation imposed in OA No.661/2018 for various violations, it is informed that, the project proponent filed a Civil Appeal in Hon'ble Supreme Court (Civil Appeal Diary Nos 19879/2020) requesting therein to deter the concerned authorities from taking any adverse action against the project proponent for recovery of Environmental Compensation as imposed by Hon'ble NGT and the Hon'ble **Court has specifically issued directions to maintain the status quo in regards to the possession of property by the parties vide its order dated 14 October 2020 (Annexure R/11).**

And that in case of OA No. 764/2018 and OA No.155/2020, it is informed that three project proponents (i.e., M/s Parker Estate Development Pvt. Ltd., and M/s Pardesi Developer Pvt. Ltd.) filed civil appeal before Hon'ble Supreme Court and Narang Construction and Finances Pvt. Ltd. has approached the Hon'ble High Court of Punjab and Haryana, wherein directions for depositing 50% of the interim Environmental

Compensation have been passed. In compliance of the same, three of the Project Proponents i.e. M/s CMD Build tech Pvt.; M/s Parker Estate Development Pvt. Ltd. and M/s Narang Constructions & Financiers Pvt. Ltd. have deposited the amount and approached HSPCB for final decision, as directed by the Hon'ble Courts. M/s TDI Infrastructure Ltd. has also filed Civil Appeal No.3478/2020. The District Administration of Sonipat was directed to recover the environmental compensation from the remaining units under the provisions of Land Revenue Act, 1887, following the due procedure. The property of TDI Infrastructure Ltd. has been attached. M/s TDI Infrastructure Ltd. has now filed an IA No. 31938/2022 (Annexure R/12). The said IA is scheduled for 04 April 2022. Copy of order dated 10 March 2022 & 21 March 2022 is enclosed as (Annexure R/13).

In view of the submission made herein above, the actions taken by various Departments / Agencies of the State of Haryana may be taken on record."

41. On 01.04.2022, this OA was heard along with two other **OA Nos. 764/2018, Kissan Udey Samiti vs. State of Haryana & Others** and **155/2020, Dr. (Mrs.) Manorama Sharma & Another vs. TDI infrastructure Limited & Others**, since similar violations were observed in all these matters relating to construction projects and inaction on the part of Statutory Regulators was also common. Therefore, all the matters were heard together and order was reserved but we are deciding this OA separately so as to have clarity of the facts and consideration of violations, inaction etc. of each PP separately. Hence, the separate judgment in this OA.

42. Though, neither applicants nor their counsel appeared at the time of final hearing of this matter but later they have filed a written submission. Learned Senior Counsel on behalf of CPCB and other Statutory Regulators pointed out that violations on the part of APIL-PP are apparent from record, therefore, appropriate action under relevant environmental laws is necessary to be taken against proponent. None has appeared on behalf of APIL-PP (respondent 11) despite notice. Statutory Regulators and local bodies referred and relied on their replies/reports etc.

in defense. While reserving the order, parties were allowed to file written submissions. Only applicant has filed written submission.

Written Submission dated 12.04.2022 by applicant, filed on 15.04.2022

43. Applicant has filed written submissions dated 12.04.2022 stating that ignoring the provisions of clause 4(1) of HDRUA Rules, 1976, illegal benefits were extended to APIL-PP by TCPD Haryana, to the tune to 700 Crores and gross violation on the part of PP is a writ large from joint Committee report dated 16.11.2018. Referring to Tribunal's orders dated 08.01.2019 and 05.02.2020, applicants have further contended that despite recommendations of joint Committee, area has not been measured by officials of TCPD Haryana, HSPCB and other concerned authorities and APIL-PP is still encroaching, grabbing and selling green area in Sushant Lok, Phase I, Gurgaon which includes a public park in C Block, Phase I, Sushant Lok, Gurgaon and huge damage has been caused to environment for which compensation must be determined appropriately which has not been done. Reiterating what the applicants have stated in OA, in para 10 and 11 of written submissions, they have said:

“10. That the damage caused by the Project Proponent to the environment is immense and irreparable, which cannot be compensated in terms of money.

11. That it is respectfully submitted that without measuring the said 45% at site, the real magnitude to the illegal gains and the loss caused to the environment cannot be assessed.”

Joint Committee Report dated 13.06.2022 by CPCB filed on 14.06.2022

44. After reserving order, joint Committee through CPCB has submitted report dated 13.06.2022, giving details of proposed compensation against PP. We are refraining from taking into consideration the said report since it has been submitted after hearing was completed and order was reserved

and for that reason, party likely to be affected i.e. proponent has no opportunity to reply the said report.

ISSUES:

45. From the pleadings, various reports and the stand taken by official respondents including Statutory Regulators as also the written submissions filed by applicant and submissions advanced by the counsels appearing for Statutory Regulators, we find that the basic issue raised in this OA relates to development and execution of project in question without complying environmental laws and in utter disregard to environmental norms necessary to be observed for preservation, protection and remediation of environment. However, record also shows that the project has commenced in different stages commencing from 1986. Therefore, in view of the provisions of Sections 14 and 15 of NGT Act, 2010, we have also to consider the question of limitation as to whether OA as such is barred by limitation or what would be the period of which this Tribunal may take cognizance in the matter. In view of above, we find that following issues have arisen requiring adjudication of this Tribunal in this OA:

- I. Whether application is barred by limitation?
- II. Whether there is violation of environmental norms and laws as also the provisions of Water Act 1974, Air Act 1981 and EP Act 1986 on the part of respondent11 i.e., APIL-PP?
- III. Whether Statutory Regulators and other authorities including local bodies have failed to enforce law, in particular, environmental laws in respect of project in question?
- IV. What remedial action/order need to be passed in these matters?

ISSUE I - Relating to Limitation:

46. For considering the above rival submissions, it would be appropriate to have a glance over Sections 14 and 15 of NGT Act, 2010 which read as under:

“14 Tribunal to settle disputes. –

(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.”

“15 Relief, compensation and restitution. –

(1) The Tribunal may, by an order, provide,-

(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority.”

47. Limitation prescribed in Section 14(3) is in respect of the matters come within the purview of Section 14(1). It is said that an application for adjudication of dispute under Section 14(1) shall not be entertained by Tribunal unless it is made within a period of 6 months from the date on which, the cause of action for such dispute first arose. This period of limitation is different in the context of the subject *qua* limitation prescribed in Section 15(3), which provides the period of 5 years from the date on which cause for compensation or relief under clauses (a), (b) and (c) of sub-section (1) arose. Under Section 14(3) and 15(3), both, Tribunal has been conferred power to allow filing of applications beyond the period of limitation prescribed in the above provisions but not beyond 60 days.

48. We may also refer to Section 16 which confers appellate power upon Tribunal against certain orders or decisions or directions under specified statutes wherein also limitation of 30 days from the date on which order or decision or direction or determination is communicated to applicant, is prescribed, which is extendable by maximum 60 days under proviso to Section 16. This includes an appeal against an order granting EC.

49. Jurisdiction of Tribunal under Section 14 is over civil cases where a substantial question relating to environment, including enforcement of any legal right relating to environment, is involved, if such question arises out of the implementation of enactments specified in Schedule I of NGT Act 2010. Limitation under section 14(3) is with reference to cause of

action. The term ‘cause of action’ has been examined and explained in a catena of binding authorities of Apex Court. Commonly understood, ‘cause of action’ reflects the reasons for grievance which has been unsettled in so much so that a plaint is filed in a Court of law for their redressal. Since in a Court of law, the redressal of grievance is justified only in accordance with law, the cause of action must also raise legally supportable claim otherwise the action would fail.

50. In **Cooke v Gill, (1873) 8 CP 107**, it is said, “*cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court.*” In India, repeatedly, it has been observed that ‘cause of action’ as understood in legal parlance is a bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed. Nature of Suit or even form of action is one thing and cause of action is another. Nature of Suit may be ascertained or determined by looking at the kind of relief asked for in the Suit but ‘cause of action’ is made up of a number of facts which are necessary to be pleaded and which if established would enable plaintiff to obtain from the Court, remedy against defendant. Cause of action encompasses both, legal provisions of what legal wrong plaintiff claims to have suffered and remedy which is the relief, a Court is asked to grant.

51. In **Read vs. Brown, 1889 (22) Q.B.D. 128**, Lord Esher, M.R., observed that cause of action would mean, “*every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court.*” It does not comprise every piece of evidence which is necessary to prove each fact but every fact which is necessary to be proved. In **Niranjan Agarwalla v. Union of India, AIR 1960 Cal 391**, Calcutta High Court observed that cause of action in its widest sense means the necessary conditions for the maintenance of the Suit and in its

restricted sense means the circumstances forming the infringement of right or the immediate occasion for the action.

52. In ***Navinchandra N. Majithia vs. State of Maharashtra (2007) 7 SCC 640***, Supreme Court observed that in legal parlance, 'cause of action' is an expression comprising a situation or state of facts that entitles a party to maintain an action in a Court or a Tribunal. In other words, one can say it is group of operative facts giving rise to one or more basis for suing or a factual situation that entitles one person to obtain remedy in court from another person. An apprehension cannot be a basis for a suit or exemption.

53. In ***Raj Kumar Jain & Others vs. Smt. Jagwati Devi and Others AIR 1980 All 225***, Allahabad High Court said that the date mentioned in the plaint as the date of accrual of cause of action is not conclusive. It is to be gathered from the whole claim.

54. Thus, it can be said that bundle of facts which when taken with the law applicable to them gives the plaintiff the right to relief against defendants, constitute cause of action. It must contain facts or acts done by the defendants to prove cause of action. While considering the cause of action, Court must read the pleadings as a whole to ascertain its true input. It would not be appropriate to cull out a sentence or a passage here and there and to read it out of context in isolation. It is the substance and not the form that has to be considered by the Court.

55. However, the expression 'cause of action' normally has been construed in the context of civil jurisprudence particularly, the code of civil procedure. We find that in the context of NGT Act 2010, it needs to be examined a little bit differently so as to give effective implementation to the objective of NGT Act 2010. The enactment of NGT Act 2010 is not in the

context of an ordinary adjudication of civil dispute but certain matters having constitutional provisions relating to environment, where generally individual rights are not in question unless somebody has suffered any personal loss, are adjudicated. The degradation of environment is a cause of concern to the entire community which has to be examined by this Tribunal. It has to ensure protection of environment and wherever any damage has caused, to take steps for its remediation and impose compensation upon the person who has caused such damage applying principle of 'Polluter's Pays'. The other principles applicable are also not recognized in civil jurisprudence but in the context of environmental laws, they are well applicable in the light of law laid down by Supreme Court in various authorities, and these are 'precautionary principle' and 'sustainable development'.

56. The objective, purpose and jurisdiction of Tribunal in the matter of environment has been considered by Supreme Court recently when an issue, whether Tribunal has power to take *suo-moto* cognizance of a matter where there is damage or degradation to environment, was raised.

57. In ***Municipal Corporation of Greater Mumbai vs. Ankita Sinha & Others, Civil Appeal Nos. 12122-12123 of 2018*** connected with other appeals, decided **vide judgment dated 07.10.2021**, a three judges' bench of Supreme Court examined the question "*whether NGT has power to exercise suo-moto jurisdiction*". It was argued that NGT did not have power to initiate suo-moto proceedings. The grounds raised in support of the above contention, as formulated by Supreme Court, founded on the arguments, were (i) NGT is a creature of the statute and just like other statutory Tribunals, NGT is also bound within statutory confines, (ii) NGT Act is applicable to "disputes" as necessarily referring to a lis between two

parties and (iii) lack of general power of judicial review shows legislative intent to curb *suo-moto* powers.

58. Dealing with above arguments and the grounds, Supreme Court examined the matter from various angles i.e. the backdrop of constitution of National Green Tribunal, preamble & statement of objects and reasons of NGT Act 2010, purposive interpretation, features of NGT Act 2010, non-adjudicatory roles of NGT, uniqueness of NGT vis-à-vis other Tribunals, need of NGT to exercise *suo-moto* powers, sui generis role of NGT, authority with self-activating capability, precautionary principle, environmental justice, environmental equity and environmental jurisprudence in India. We may summarize observations made by Supreme Court under the above-mentioned heads as under:

- i) NGT was conceived as a complimentary specialized forum to deal with all environmental multidisciplinary issues, both as original and also as an appellate authority, which complex issues were hitherto dealt with by High Courts and Supreme Court.
- ii) NGT was intended to be the competent forum for dealing with environmental issues instead of those being canvassed under the writ jurisdiction of the Courts.
- iii) Creation of NGT would allow Supreme Court and High Courts to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialized forum.
- iv) The power of judicial review was omitted to ensure avoidance of High Courts' interference with Tribunal's orders by way of a mid-way scrutiny by High Courts, before matters would travel to Supreme Court where NGT's orders can be challenged.

- v) The mandate and jurisdiction of NGT is conceived to be of the widest amplitude and it is in the nature of a *sui generis* forum.
- vi) Unlike Civil Courts which cannot travel beyond the relief sought by the parties, **NGT is conferred with power of moulding any relief.** The provisions show that NGT is vested with the widest power to grant appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.
- vii) Myriad roles are to be discharged by NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons.
- viii) Parliament intended to confer wide jurisdiction on NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by High Courts under Article 226 of the Constitution or by Supreme Court under Article 32 of the Constitution.
- ix) The activities of NGT are not only geared towards the protection of environment but also to ensure that the developments do not cause serious and irreparable damage to ecology and the environment.
- x) **Concept of *lis*, would obviously be beyond the usual understanding in civil cases** where there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment.
- xi) **NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration.**
- xii) In ***Bhopal Gas Peedith Mahila Udyog Sangathan vs. Union of India (2012) 8 SCC 326***, Court mandated transfer of all cases concerning the statutes mentioned in Schedule I of NGT Act to the

specialized forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered *suo-moto* by the Courts.

- xiii) As long as the sphere of action is not breached, NGT's powers must be understood to be of the widest amplitude.
- xiv) In ***Mantri Techzone (P) Ltd. vs. Forward Foundation, (2019) 18 SCC 494***, Court recognized that NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the context, Tribunal has special jurisdiction for enforcement of environmental rights.
- xv) In ***Rajeev Suri vs. DDA, 2021 SCC Online SC 7***, Court said that in its own domain, as crystalized by the statute, the role of NGT is clearly discernible.
- xvi) Referring to ***Andhra Pradesh Pollution Control Board v. Prof. M. V. Nayudu (Retd.) and Others (1999) 2 SCC 718***, Court said that **role of NGT was not simply adjudicatory** in the nature of a *lis* **but to perform equally vital roles which are preventative, ameliorative or remedial in nature**. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.
- xvii) **Statutory Tribunals were categorized to fall under four subheads**; Administrative Tribunals under Article 323A; Tribunals under Article 323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights under Article 21. As already noted, the **duties of NGT brings it within the ambit of the fourth category**, creating a compelling proposition for wielding much broader powers as delineated by the statute.

- xviii) Referring to ***State of Meghalaya vs. All Dimasa Students Union (2019)8SCC177***, Court said that reflecting on the expanded role of NGT unlike other Tribunals, this Court so appositely observed that the forum has a duty to do justice while exercising “*wide range of jurisdiction*” and “*wide range of powers*”, given to it by the statute.
- xix) NGT has been recognized as one of the most progressive Tribunals in the world.
- xx) NGT being one of its own kind of forum, commends us to consider the concept of a sui generis role, for the institution.
- xxi) Referring to ***DG NHAI vs. Aam Aadmi Lokmanch, 2020 SCC Online SC 572***, Court repelled the argument for a restricted jurisdiction for NGT, and observed in paragraph 76 that **powers conferred on NGT are both reflexive and preventive** and the role of NGT was recognized in paragraph 77 as “an expert regulatory body”, which can issue general directions also albeit within the statutory framework.
- xxii) **NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from High Courts and Supreme Court.**
- xxiii) Given the multifarious role envisaged for NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take suo-motu cognizance of matters, for effective discharge of its mandate.
- xxiv) Section 14(1) of NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an

application is necessary to trigger NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of NGT gets activated. On these material aspects, NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the **exercise of power by NGT is not circumscribed by receipt of application.**

- xxv) **Section 14(1) exists as a standalone feature**, not constricted by the operational mechanism of the subsequent subsections. The sub-Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub-Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play.
- xxvi) When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.
- xxvii) The other pertinent provisions relating to, *inter-alia*, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for NGT to pass necessary orders. These crucial powers are expected to be exercised by NGT, would logically

suggest that the action/orders of NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

xxviii) To be effective in its domain, we need to ascribe to NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application.

xxix) It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as non-adversarial.

xxx) It would thus be appropriate to state that much of the principles, institutions and mechanisms in this sphere have been created, on account of this Court's initiative.

xxxi) Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse.

xxxii) **NGT is the institutionalization of the developments made by Supreme Court in the field of environment law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns.** Its functions, therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.

xxxiii) NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum

itself has correctly identified the need for collective stratagem for addressing environmental concerns.

xxxiv) NGT must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal.

59. To attract Section 14 however, the cause of action should essentially have nexus when the matters relating to environment and raise a substantial question of environment relating to implementation of the statutes specified in Schedule I of NGT Act, 2010. The cause of action might arise during chain of events in establishment of a project but would not be construed as a cause of action under Section 14 unless it has a direct nexus to environment or gives right to a substantial environmental dispute. Further, cause of action has to be completed.

60. This Tribunal while considering Section 14 in **O.A. No. 222/2014, *The Forward Foundation & Others vs. State of Karnataka & Others***, vide judgment dated 07.05.2015, in para 24, observed,

“24..... For a dispute to culminate into a cause of action, actionable under Section 14 of the NGT Act, 2010, it has to be a ‘composite cause of action’ meaning that, it must combine all the ingredients spelled out under Section 14(1) and (2) of the NGT Act, 2010. It must satisfy all the legal requirements i.e. there must be a dispute. There should be a substantial question relating to environment or enforcement of any legal right relating to environment and such question should arise out of the implementation of the enactments specified in Schedule I. Action before the Tribunal must be taken within the prescribed period of limitation triggering from the date when all such ingredients are satisfied along with other legal requirements. Accrual of ‘cause of action’ as afore-stated would have to be considered as to when it first arose.”

61. This Tribunal in ***Forward Foundation (supra)*** further considered the term ‘continuing cause of action’, ‘recurring cause of action’ or ‘successive cause of action’ and in para 25 to 32, said:

“25. In contradistinction to ‘cause of action first arose’, there could be ‘continuing cause of action’, ‘recurring cause of action’ or ‘successive cause of action’. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and

different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of *Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors.*, AIR 1959 SC 798.

26. In the case of *State of Bihar v. Deokaran Nenshi and Anr.*, (1972) 2 SCC 890, Hon'ble Supreme Court was dealing with the provisions of Section 66 and 79 of the Mines Act, 1952. These provisions prescribed for a penalty to be imposed upon guilty, but provided that no Court shall take cognizance of an offence under Act unless a complaint thereof has been made within six months from the date on which the offence is alleged to have been committed or within six months from the date on which the alleged commission of the offence came to the knowledge of the Inspector, whichever is later. The Explanation to the provision specifically provided that if the offence in question is a continuing offence, the period of limitation shall be computed with reference to every point of time during which the said offence continues. The Hon'ble Supreme Court held as under:

"5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

27. **Whenever a wrong or offence is committed and ingredients are satisfied and repeated, it evidently would be a case of 'continuing wrong or offence'.** For instance, using the factory without registration and licence was an offence committed every time the premises were used as a factory. The Hon'ble Supreme Court in the case of *Maya Rani Punj v. Commissioner of Income Tax, Delhi*, (1986) 1 SCC 445, was considering, if not filing return within prescribed time and without reasonable cause, was a continuing wrong or not, the Court held that continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continued. The penalty is impossible as long as the default continues and as long as the assessee does not comply with the requirements of law he continues to be guilty of the infraction and exposes himself to the penalty provided by law. Hon'ble High Court of Delhi in the case of *Mahavir Spinning Mills Ltd. v. Hb Leasing And Finances Co. Ltd.*, 199 (2013) DLT 227, while explaining Section 22 of the Limitation Act took the view that **in the**

case of a continuing breach, or of a continuing tort, a fresh period of limitation begins to run at every moment of time during which the breach or the tort, as the case may be, continues. Therefore, continuing the breach, act or wrong would culminate into the 'continuing cause of action' once all the ingredients are satisfied. Continuing cause of action thus, becomes relevant for even the determination of period of limitation with reference to the facts and circumstances of a given case. The very essence of continuous cause of action is continuing source of injury which renders the doer of the act responsible and liable for consequence in law.

Thus, the expressions 'cause of action first arose', 'continuing cause of action' and 'recurring cause of action' are well accepted cannons of civil jurisprudence but they have to be understood and applied with reference to the facts and circumstances of a given case. It is not possible to lay down with absolute certainty or exactitude, their definitions or limitations. They would have to be construed with reference to the facts and circumstances of a given case. These are generic concepts of civil law which are to be applied with acceptable variations in law. In light of the above discussed position of law, we may revert to the facts of the case in hand.

28. The settled position of law is that in law of limitation, it is only the injury alone that is relevant and not the consequences of the injury. If the wrongful act causes the injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. In other words distinction must be made between continuance of legal injury and the continuance of its injurious effects. **Where a wrongful act produces a state of affairs, every moment continuance of which is a new tort, a fresh cause of action for continuance lies.** Wherever a suit is based on multiple cause of action, period of limitation will began to run from the date when the right to sue first accrues and successive violation of the right may not give rise to a fresh cause of action. [Ref: Khatri Hotels Private Limited and Anr. v. Union of India (UOI) and Anr., (2011) 9 SCC 126, Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors, AIR 1959 SC 798, G.C. Sharma v. Municipal Corporation of Delhi, (1979) ILR 2 Delhi 771, Kuchibotha Kanakamma and Anr. v Tadepalli Ptanga Rao and Ors., AIR 1957 AP 419].
29. A cause of action which is complete in all respects gives the applicant a right to sue. An applicant has a right to bring an action upon a single cause of action while claiming different reliefs. Rule 14 of the National Green Tribunal (Practise and Procedure) Rules, 2011, shows the clear intent of the framers of the Rules that multiple reliefs can be claimed in an application provided they are consequential to one another and are based upon a single cause of action. Different causes of action, thus, may result in institution of different applications and therefore, there is exclusion of the concept of the 'joinder of causes of action' under the Rules of 2011. The **multiple cause of action again would be of two kinds. One, which arise simultaneously and other, which arise at a different or successive point of time.** In first kind, cause of action accrues at the time of completion of the wrong or injury. In latter, it may give rise to cause of action or if the statutes so provide when the 'cause of action first arose' even if the wrong was repeated. **Where the injury or wrong is complete at different times and may be of similar and different nature,**

then every subsequent wrong depending upon the facts of the case may give rise to a fresh cause of action.

To this general rule, there could be exceptions. In particular such exceptions could be carved out by the legislature itself. In a statute, where framers of law use the phraseology like 'cause of action first arose' in contradistinction to 'cause of action' simpliciter. Accrual of right to sue means accrual of cause of action for suit. The expressions 'when right to sue first arose' or 'cause of action first arose' connotes date when right to sue first accrued, although cause of action may have arisen even on subsequent occasions. Such expressions are noticed in Articles 58 of the Limitation Act, 1963. We may illustrate this by giving an example with regard to the laws that we are dealing here. When an order granting or refusing Environmental Clearance is passed, right to bring an action accrues in favour of an aggrieved person. An aggrieved person may not challenge the order granting Environmental Clearance, however, if on subsequent event there is a breach or non-implementation of the terms and conditions of the Environmental Clearance order, it would give right to bring a fresh action and would be a complete and composite recurring cause of action providing a fresh period of limitation. It is also for the reason that the cause of action accruing from the breach of the conditions of the consent order is no way dependent upon the initial grant or refusal of the consent. Such an event would be a complete cause of action in itself giving rise to fresh right to sue. Thus, where the legislature specifically requires the action to be brought within the prescribed period of limitation computed from the date when the cause of action 'first arose', it would by necessary implication exclude the extension of limitation or fresh limitation being counted from every continuing wrong, so far, it relates to the same wrong or breach and necessarily not a recurring cause of action.

30. Now, we would deal with the concept of recurring cause of action. The word 'recurring' means, something happening again and again and not that which occurs only once. Such reoccurrence could be frequent or periodical. ***The recurring wrong could have new elements in addition to or in substitution of the first wrong or when 'cause of action first arose'.*** It could even have the same features but its reoccurrence is complete and composite. The recurring cause of action would not stand excluded by the expression 'cause of action first arose'. In some situation, it could even be a complete, distinct cause of action hardly having nexus to the first breach or wrong, thus, not inviting the implicit consequences of the expression 'cause of action first arose'. The Supreme Court clarified the distinction between continuing and recurring cause of action with some finesse in the case of *M. R. Gupta v. Union of India and others*, (1995) 5 SCC 628, the Court held that:

"The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits. He would be entitled to be paid according to the properly fixed pay scale in the future and the

question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See *Thota China Subba Rao and Ors. v. Mattapalli, Raju and Ors.* AIR (1950) F C1.”

31. The **Continuing cause of action would refer to the same act or transaction or series of such acts or transactions.** The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It may have even be de hors the first cause of action or the first wrong by which the right to sue accrues. **Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark.** Every rejection of a right in law could be termed as a recurring cause of action. [Ref: *Ex. Sep. Roop Singh v. Union of India and Ors.*, 2006 (91) DRJ 324, *M/s. Bengal Waterproof Limited v. M/s. Bombay Waterproof Manufacturing Company and Another*, (1997) 1 SCC 99].
32. The principle that emerges from the above discussion is that the 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. **A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue.** In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of

*composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action first arose' would not effect in computing the period of limitation. The concept of cause of action first arose must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. **To put it simply, it would be act or series of acts which arise from the same event, may be at different stages.** This expression would not de bar a composite and complete cause of action that has arisen subsequently. To illustratively demonstrate, we may refer to the challenge to the grant of Environmental Clearance. When an appellant challenges the grant of Environmental Clearance, it cannot challenge its legality at one stage and its impacts at a subsequent stage. But, **if the order granting Environmental Clearance is amended at a subsequent stage, then the appellant can challenge the subsequent amendments at a later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the concept of cause of action first arose.**"*

62. The issue of limitation, which directly relates with the jurisdiction of Tribunal, is also to be examined in the light of different spheres of legal consequences covered by three basic provisions i.e., Sections 14, 15 and 16. As we have already said, Section 14 confers power to decide all civil cases where substantial question relating to environment is involved having arising out of implementation of Scheduled enactments. Section 15 gives power to Tribunal to grant relief, compensation and restitution. The power of relief and compensation under Section 15(a) is confined to the matters where victim of pollution and environmental damage can be brought within the purview of enactments specified in Schedule I but Section 15(1)(b) and (1)(c) do not have any such restriction relating to enactments specified in Schedule 1. If there is a damage to environment, Tribunal has power to direct restitution of environment under Section 15(1)(c) and similar power for restitution of property damage is given under Section 15(1)(b).

63. In ***Mantri Techzone Pvt. Ltd. vs. Forward Foundation and Ors.***, (2019) 18 SCC 494, Supreme Court in para 42 of the judgment, said, “it is noteworthy that **Section 15(1)(b) and (c) have not been made relatable to Section 1 enactments of the Act.**”

64. Having said so, Supreme Court further observed in ***Mantri Tech (supra)*** that Section 15(1)(c) is an entire island of power and jurisdiction read with Section 20 of NGT Act, 2010. Principles of sustainable development, precautionary principle and polluters pay propounded by Supreme Court by way of several judicial pronouncements have been embedded as a bedrock of environmental jurisprudence under NGT Act 2010. Wherever environment and ecology are being compromised and *jeopardised*, Tribunal can apply Section 20 for taking restorative measures in the interest of environment. Court also said,

“The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading... The existence of the Tribunal without its broad restorative powers under [Section 15\(1\)\(c\)](#) read with [Section 20](#) of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns.”

65. Supreme Court, in ***Mantri Tech (supra)***, further said that Tribunal has a legal obligation to provide for preventive and restorative measures in the interest of environment. In para 45 of the judgment, Court said:

“45. Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that **jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently.** The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, **the legislative intent is clear to keep Section 14 and 15 as self contained jurisdictions.**”

66. Considering the issues and questions raised in this OA, we find that the violations preceding 5 years from the date of filing of this OA can be examined by Tribunal and if violations are established, appropriate preventive and/or remedial order can also be passed. In the present case, though the project commenced long back but a revised layout plan comprising the entire project was sanctioned on 15.09.2010. Even thereafter, another license was granted on 13.04.2011 which was taken as part of the entire project. Part Completion Certificates were issued on 10.05.1991, 10.11.2000, 15.01.2001, 23.02.2001, 26.06.2001, 10.07.2002 and 20.05.2003 but no Completion Certificate for the complete project has ever been issued. Status report dated 30.03.2022 filed by TCPD Haryana shows that a final Completion Certificate was requested to be granted by APIL-PP on 21.10.2014/24.03.2015 but it was rejected by order dated 19.04.2018. It is thus evident that no Part Completion Certificate has been issued till date. The violation of discharge of sewage of untreated sewage directly in the storm water drain, withdrawal of ground water illegally without permission of CGWA has continued throughout and these constitutes continuous cause of action as also recurring cause of action in as much as every time when ground water was/is drawn or sewage was/is discharged directly in storm water drain and other violations are committed, an actionable violation is committed by proponent and, therefore, it cannot be said that OA in its entirety is barred by limitation. We are of the view that violations which are within the last five years from the date of filing of this OA including any violation being committed after filing OA can be considered in the light of the issues raised in this OA and appropriate order can be passed.

67. **Issue I is answered accordingly.**

ISSUE II:

68. The second issue has to be considered in the light of the Statutes i.e., EP Act 1986, Water Act 1974 and Air Act 1981 as also the provisions of Environment Impact Assessment Notification issued under EP Act, 1986.

Violation in regard to EIA 2006:

69. From the record and also facts noted above, it is evident that APIL-PP i.e. respondent 11 developed a residential township, named as ‘Sushant Lok, Phase I’ spread over 604.194 acres of land in Sectors 27, 28, 43 and 52 of Gurgaon. The project progressed in phases and area of development also expanded from time to time, in phases. It commenced when license dated 01.06.1985 was issued by TCPD Haryana under Haryana Development & Regulation of Urban Areas Act, 1975 (hereinafter referred to as ‘**HDRUA Act, 1975**’) and rules framed thereunder. At that time, proponent who had applied for license was M/s. C. Lyall & Company (Construction) Pvt. Ltd. 115, Ansal Bhavan, 16 Kasturba Gandhi Marg, New Delhi which has proposed to set up a residential colony at village Sarhaul, Sukherali, Bulakhra and Kanhali Tehsil, District Gurgaon. Six licenses were issued on 31.05.1985 for total area of 98.45acres. Thereafter, more licenses were issued on various dates and up to 15.06.1987, a total 43 licenses were issued for a total area of 388.89 acres as detailed above:

1.	7 of 1985/31.05.85	19.01
2.	8 of 1985/31.05.85	13.48
3.	9 of 1985/31.05.85	14.25
4.	10 of 1985/31.05.85	24.53
5.	11 of 1985/31.05.85	17.25
6.	12 of 1985/31.05.85	9.93
7.	20 of 1985/22.8.85	8.13
8.	21 of 1985/22.8.85	7.74
9.	22 of 1985/22.8.85	2.09
10.	33 of 1985/27.9.85	7.11
11.	34 of 1985/27.9.85	13.89

12.	36 of 1985/7.11.85	23.13
13.	37 of 1985/7.11.85	15.13
14.	38 of 1985/7.11.85	7.23
15.	39 of 1985/7.11.85	4.11
16.	40 of 1985/2.12.85	8.01
17.	51 of 1985/2.12.85	3.02
18.	52 of 1985/2.12.85	3.00
19.	53 of 1985/2.12.85	5.27
20.	54 of 1985/2.12.85	2.94
21.	1 of 1986/15.1.86	7.50
22.	2 of 1986/15.1.86	12.58
23.	3 of 1986/15.1.86	15.23
24.	11 of 1986/19.2.86	10.24
25.	12 of 1986/19.2.86	15.41
26.	15 of 1986/10.3.86	9.72
27.	16 of 1986/10.3.86	22.16
28.	17 of 1986/10.3.86	9.94
29.	18 of 1986/1.4.86	0.98
30.	19 of 1986/1.4.86	4.85
31.	20 of 1986/1.4.86	2.73
32.	31 of 1986/16.4.86	-
33.	32 of 1986/16.4.86	1.00
34.	33 of 1986/16.4.86	2.99
35.	40 of 1986/16.5.86	6.31
36.	41 of 1986/16.5.86	-
37.	7 of 1987/9.4.87	19.69
38.	8 of 1987/9.4.87	9.86
39.	9 of 1987/9.4.87	5.50
40.	20 of 1987/15.06.87	20.69
41.	21 of 1987/15.06.87	1.35
42.	22 of 1987/15.06.87	0.69
43.	23 of 1987/15.06.87	0.20
	Total	388.89

70. These licenses were not given to single proponent but different proponents as under:

- (i) M/s. C Lyall & Company
- (ii) M/s. APIL
- (iii) M/s. Ansal Housing Finance & Leasing Co. Ltd.
- (iv) M/s. Suraj Construction & Estate Pvt. Ltd.
- (v) M/s. Delhi Towers & Estates Pvt. Ltd.
- (vi) Ms/. Green Park Builders Promoters Pvt. Ltd.
- (vii) M/s. Housing & Estate (P) Ltd.

71. The promoters/proponents got colonies developed by APIL-PP named as '**Palam Vihar**' and '**Sushant Lok**' under the above 43 licenses and thereafter applied for part Completion Certificate to be issued by TDPD Haryana. In regard to project in question i.e., Sushant Lok, Phase 1, it is not disputed by any party that it was developed by APIL-PP.

72. Director, TCPD Chandigarh, Haryana issued a composite part Completion Certificate dated 10.05.1991 under Rule 16 of HDRUA Rules, 1976 in respect of residential colonies developed at Palam Vihar and Sushant Lok by above mentioned 7 proponents subject to the following conditions:

- "1. That you shall abide by the direction of D.T.C.P. between now and till the time final completion certificate of the entire colony viz. Palam Vihar and Sushant Lok is granted with regard to carrying out of any leftover services/works which are deem appropriate by the DTCP Haryana.*
- 2. That you would be fully responsible to meet the demand of water as per the prescribed norms and provisions/maintenance of allied services. You shall further abide by the directions of D.T.C.P. to provide the requisite number of tube wells as per the schedule determined and specified by the D.T.C.P. You shall also furnish undertaking to this effect within one month from the date of issued of this letter.*
- 3. The **storm water services will be laid by you upto the alignment of proposed work of HUDA for their connection and disposal arrangement.** All links and connection within the HUDA system will be done by you. **Similarly left-over sewer connection shall be connected with sewer and when these are laid by HUDA. Interim arrangement for disposal shall be made by you as may be necessary.***
- 4. You will be fully responsible for laying of survives through thief un-licensed pockets/area for linking and connecting the services. If any, as per the directions of D.T.C.P.*
- 5. In case some additional structures relating to public Health Services/internal development are required to be constructed as desired by DTCP/HUDA at later stage the same would be binding upon you.*
- 6. You shall pay the E.D.C. for the area for which the completion certificate is being issued within 7 days from the date of demand, if after reconciliation of the account the amount of E.D.C. is found due with him and furnish an undertaking to this effect.*
- 7. You should furnish an undertaking within seven days on stamp paper of Rs. 3/- that you shall submit the certificates as stipulated under clause 1 of the agreement executed by you at the time of grant of licenses within 90 days from the date of issue of completion certificate.*

- 8. *This partial completion certificate is further without prejudice to the final decision on the transfer/construction of community Building sites, wherein third party interest have been created. This is only without prejudice to the decision on this shopping/commercial sites.*
- 9. *That you should transfer all the remaining community sites on which third party interest has not been created within 15 days.*
- 10. *That you should alongwith the profitability submit the details of price of plots being sold by you which inter-alia included 15% profitability within 15 days.*
- 11. *That you shall abide by all the directions/instructions of DTOP and abide by the provisions of Act No. 8 of 1975 and Rules framed thereunder and shall continue to maintain services as provided thereunder.”*

73. After 15.06.1987, there are some more licenses issued for the development of residential colonies in Sushant Lok Sector, 27, 28, 43 and

53. Brief details thereof are as under:

S. No	License No. & date	No of Lic	Area (In Acres)	Type of Dev.	Name of Project
1	39-43 of 89 dt 2.12.89	5	41.003	Plotted	
2	6-11 of 92 dt 17.1.92	6	48.692	Plotted	
3	9-18 of 93 dt 8.7.93	10	10.312	Plotted	
4	88-101 of 95 dt 30.12.95	14	49.736	Plotted	
5	1-9 of 96 dt 10.1.96	9	18.41	Plotted	
6	49-51 of 97 dt 5.11.97	3	2.25	Plotted	
7	14-24 of 98 dt 20.3.98	11	5.889	Plotted	
8	111-117 of 98 dt 21.8.98	7	6.518	Plotted	
9	1 of 2001 dt 23.2.2001	1	0.5	Plotted	
10	151/2004 dt 2.12.2004	1	5.887	G.II	IVY
11	62/2007 dt 12.2.2007 (G.H.)	1	1.0	G.II	IVY
12	32/2011 dt 13.4.2011	1	1.546	Plotted	

74. The licenses mentioned hereinabove were issued to different proponents, some are detailed as under:

- (i) License no. 62 of 2007 dated 12.02.2007/14.02.2007 was issued to M/s. B.C.C. Properties (P) Ltd., 115, Ansal Bhawan, 16 Kasturba Gandhi Marg, New Delhi for setting up a Group Housing colony at village Sukhrali, District Gurgaon.
- (ii) License no. 32 of 2011 dated 13.04.2011 was issued to M/s. Landmark Education Society C/o M/s. Ansal Properties and Infrastructure Ltd., 115 Ansal Bhawan, 16 KG Marg, New Delhi for development of residential plotted colony over an

additional area measuring 1.546 acres in revenue estate of village Wazirabad, Sector 43, Gurgaon.

75. The above licenses dated 12.02.2007 and 13.04.2011, copies thereof are on record as part of joint Committee report dated 16.11.2018 show that proponents were clearly directed to obtain approval/NOC from Competent Authority to fulfil the requirement of EIA Notification dated 14.09.2006, before starting development work at site.

76. In respect to the above licenses issued since 1987, part Completion Certificates were issued as under:

- (i) For licenses no. 39 to 43 of 1989 dated 02.12.1989 granted for the total area of 41.003 acres, **Part Completion Certificate dated 15.01.2001** was issued by Director, TCPD Haryana for area measuring 30.503 acres to APIL and its associate companies on certain conditions which are same as were mentioned in part Completion Certificate dated 10.11.2000 and we have already reproduced above.
- (ii) For licenses no. 6 to 11 of 1992 dated 16.01.1992 granted for a total area measuring 48.692 acres, **Part Completion Certificate dated 23.02.2001** was issued to APIL and its associate companies by Director, TCPD Haryana for area measuring 48.692 acres on certain conditions which are same as were mentioned in part Completion Certificate dated 10.11.2000.
- (iii) For the project developed, pursuant to licenses no. 9 to 18 of 1993 dated 08.07.1993 by M/s. APIL and its associate companies, **Part Completion Certificate** was issued by Director, TCPD Haryana vide letter **dated 10.11.2000**. The above document is on record at page 163 and shows that licenses no.9-18 of 1993 were issued for developing area admeasuring 10.313 acres and part Completion

Certificate was issued for area admeasuring 9.343 acres. The said certificate was issued subject to certain conditions as under:

- “(i) That you shall abide by the directions of Director, Town and Country Planning, Haryana till the time final completion certificate of the entire colony is granted. You shall also carry out all left over services/ works which are deemed appropriate by the Director, Town and Country Planning, Haryana.
- (ii) That you will be fully responsible to meet upto the demand of water as per the prescribed norms and provisions and maintain the allied services. You shall further abide by the directions of DTCP to provide the requisite number of tubewells as per the schedule determined and specified by the DTCP and you shall furnish an undertaking to this effect within one month from the date of issue of this letter.
- (iii) **That the services will be laid by you upto the alignment of proposed external works of HUDA for their connections and disposal arrangements.** All the links and connections with the HUDA services will be done by you.
- (iv) That in case some additional structures are required by DTCP/HUDA at later stage, the same would be binding upon you.
- (v) **That you will be solely responsible for making disposal arrangement of sewerage and storm water drainage of your Colony till such time the HUDA services are made available.**
- (vi) That this partial completion certificate is without prejudice to the final decision on the transfer/lease/construction of community buildings.
- (vii) That you shall make the pumping arrangements in case invert level of sewerage and storm water drainage system laid by-you are lower than the HUDA system.
- (viii) **That you will get these licenses renewed till such time final completion certificate of the colony is granted to you by the DTCP.**
- (ix) An undertaking to the effect that you shall pay the due amount of external development charges/enhanced external development charges after the final reconciliation of EDC accounts.
- (x) That you will submit the certificate to DTCP Haryana within 90 days of the full and final completion of the project from a Chartered Accountant that a minimum of 20% in case of EWS/LIG Plots and 25% plots of ‘No Profit No Loss’ category have been allotted as per conditions of bilateral agreement.
- (xi) That you will submit the certificate within 90 days of full and final completion of the project that the overall net profit (after making provisions for the all taxes) has not exceeded 15% of the total project cost.
- (xii) That the Bank guarantees furnished by you at the time of grant of said licenses on account of internal development works will be got revalidated till the final completion of the colony is granted.
- (xiii) That the department will retain 25% bank guarantee of the total cost of construction of community buildings in the area and the same will only be released after the completion of construction of community buildings.

- (xiv) *That this part completion certificate is only in respect of the services mentioned herein and the **final completion certificate in respect of the total area including the area mentioned in this certificate would be granted after all the obligations / liabilities cast upon you through the agreements and Act & Rules are discharged to the satisfaction of the Director, Town and Country Planning, Haryana.** In the event of failure of the license to do so, this partial completion certificate would be deemed to have been cancelled at any time. You shall also abide by all the directions/instructions of DTCP and provisions of Act No. 8 of 1975 and Rules framed thereunder. You shall continue to maintain the services as per the provisions of Act and Rules.”*
- (iv) For licenses no. 88 to 101 of 1995 dated 30.12.1995 granted for the total area of 49.736 acres, part Completion Certificate dated 26.06.2001 was issued by Director, TCPD Haryana for area measuring 49.736 acres to APIL and its associate companies on certain conditions which are same as were mentioned in part Completion Certificate dated 10.11.2000.
- (v) For licenses no. 1 to 9 of 1996 dated 10.01.1996 granted for total area of 18.41 acres, part Completion Certificate dated 10.07.2002 was issued by Director, TCPD Haryana for area measuring 18.41 acres to APIL and its associate companies on certain conditions which are same as were mentioned in part Completion Certificate dated 10.11.2000.
- (vi) For licenses no. 14 to 24 of 1998 dated 20.03.1998 granted for total area of 5.889 acres and license no. 1 of 2001 dated 23.02.2001 for area measuring 0.50 acres, part Completion Certificate dated 20.05.2003 was issued by Director, TCPD Haryana for area measuring 5.889 acres in respect of license no. 14 to 24 of 1998 and 0.50 acres in respect of license no. 1 of 2001 to APIL and its associate companies on certain conditions which are same as were mentioned in the part Completion Certificate dated 10.11.2000.

77. In all the above certificates, it was mentioned that development works comprise water supply, sewerage, storm water drainage, roads, horticulture and electrification etc. which was claimed to have been completed by proponent and verified by the report and certification to the services issued by Chief Engineer, HUDA.

78. APIL-PP submitted an application dated 22.04.2004 seeking permission of sewer connection at location 'A' of Sushant Lok-I with HUDA sewer between Sector 43 and 53 Gurgaon which was granted by Executive Engineer HUDA Division No. II, Gurgaon vide letter dated 01.06.2004 subject to following conditions:

- “1. *M/s. Ansal properties will deposit the EDC (External Dev. Charges) as fixed by HUDA. All works of providing and laying of sewer extra upto the HUDA main sewer (laid on 30M wide sector road between sector-43 & 53) will be carried out at his own cost.*
2. *Sewer connection shall be released in the presence of the representative of the department (HUDA) only authorized by the Executive Engineer concerned.*
3. *The **maintenance of internal sewer lines and connections etc. in all respect shall be the owner's responsibility and his own cost.***
4. *The rates shall be charges as fixed by the Chief Administrator HUDA from time to time and shall be binding upon M/s. Ansal properties ltd.*
5. *Sewer connection shall be released in the presence of the representative of M/s Ansal Properties Ltd. and the monthly charges shall also be paid by the firm regularly.*
6. *The connection shall be maintained strictly as per rules and regulations framed by HUDA.*
7. *Sewer connection will be utilized and limited for water and sewer facilities to M/s. Ansal Properties Ltd. only.*
8. *For any dispute in connection with the release of sewer connection/maintenance and disconnection etc. for the said sewer connection and matter shall be referred by any of the two parties to the concerned Superintending Engineer, HUDA Circle, Gurgaon and his decision in the matter shall be final and legally binding on both the parties.*

9. *The sewerage charges for the whole complex will be deposited by M/s. Ansal Properties Ltd. on the basis of rates fixed by HUDA from time to time.*
10. ***It will be ensured by the M/s. Ansal Properties Ltd. that sewerage effluent to be disposed of in HUDA sewer within the permissible limits as prescribed by the Haryana Pollution Water & Control Board.***
11. *Rates of monthly charges will be 8/- per K.L or 70% of water consumed of actual reading checked by the SDE concerned.*
12. *Amount of Rs. 2,75,000/- has been deposited by the above said firm on account of security charges and sewer connection fee vide receipt no. 70/204 dt 31.5.04 in the office.*
13. *It will be ensured by the M/s Ansal Properties Ltd. that road cut involved (10 Mtr.) shall be made and restore own his cost and necessary permission for the road out shall be obtained from the Executive Engineer, HUDA division No. I, Gurgaon and necessary charges if any will be deposited to concerned office before connection*
14. *All payments will be deposited in the office of the Sub-Divisional Engineer, HUDA Sub division No. 6, Gurgaon."*

79. APIL-PP however, itself has admitted that the entire project namely Sushant Lok, Phase I at Sector 27, 28, 43 and 53, Gurgaon comprising land admeasuring 604.194 acres spread over 25 licenses belong to it as is evident from its reply dated 29.01.2019 at page 149 submitted to Regional Officer, HSPCB, Gurgaon. It is however, said that part of the project under 23 licenses was issued prior to enforcement of EIA 2006 and only two licenses were issued in 2007 and 2011 for the land admeasuring 2.546 acres only; out of total licensed area 604.194, 18.357 acres was earmarked for Group Housing and remaining area i.e., 585.797 acres was under net planned area; area under plots and commercial purposes is 295.098 acres and 21.704 acres i.e. total 316.802 acres which constitutes 54.08% of net planned area. It has taken the defense that existing colony was completed much before July 7, 2004, therefore, provisions of prior EC or EC were not applicable to the projects of APIL-PP.

80. The provisions of Environment Impact Assessment under EP Act 1986 initially were made in 1994 and replaced by a new set of provisions in 2006. In order to examine the extent of the application of the above provisions in respect of project in question, we may have a bird eye view of the scheme of enactment of the above statutory provisions as under:

Statutory Provisions:

81. The requirement of prior EC is with reference to the provisions made under EP Act 1986 that is Environment Impact Assessment Notification dated 27.01.1994 (hereinafter referred to as '**EIA 1994**') and EIA 2006.

EP Act, 1986:

82. Section 3(1) of EP Act, 1986 read with Section 2(v), confer power upon Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving quality of environment and preventing, controlling and abating environmental pollution. Sub-section (2) of Section (3) refers to certain specific subject matters in addition to general power conferred by sub-section 1.

83. Central Government has issued various orders and directions in exercise of powers under Section 3. In ***M.C. Mehta vs. Union of India, (2002)4SCC356***, it has been held that such directions are binding on all persons concerned.

84. EP Rules, 1986 have been framed in exercise of power under Sections 6 and 25 of EP Act, 1986. Rule 4 thereof, states that any direction issued under Section 5 shall be in writing. Rule 5 contemplates certain factors to be taken into consideration by Central Government while exercising power for prohibition/restriction on the location of industries and/or carrying on processes and operations in different areas and these factors are detailed in clause (i) to (x) of Section 5(1). Procedure for issuing

such directions imposing prohibition, restriction etc. is given in sub-section (2) of Section 5.

EIA 1994:

85. Process for making provisions, imposing restrictions and prohibition on expansion and modernization of any activity or a new project unless EC has been accorded, was initiated by the Government of India by publishing notification dated 28.01.1993 under Section 5(3)(a) of EP Rules 1986, inviting objections from the public within 60 days from the date of publication of the said notification in respect to the matters detailed therein.

86. After considering objections, MoEF, exercising powers under Section 3(1)(2)(v) of EP Act, 1986, read with Rule 5(3)(d) of EP Rules 1986, issued **notification dated 27.01.1994** on Environmental Impact Assessment of Development Projects (hereinafter referred to as '**EIA 1994**'). It provided that expansion and modernization of any activity (if pollution load is to exceed the existing one) or a new project, listed in Schedule I of the said notification, shall not be undertaken in any part of India unless it has been accorded EC by Central Government in accordance with the procedure specified in the said Notification.

87. Initially, in the Schedule I to EIA 1994, there were 30 projects/activities, which were required to obtain EC under EIA 1994.

88. In ***W.P. (C) No. 725/1994 with IA No. 20, 21, 1207, 1183, 1216 and 1251 in WP (C) No. 4677/1995***, Supreme Court considered a news item published in Hindustan Times titled "And Quit Flows the Maily Yamuna Vs. Central Pollution Control Board and Other" and vide order dated 12.12.2003, Supreme Court observed that building constructions cause damage to environment and, therefore, such construction projects

may be considered to be brought under EIA regime so that all such projects must take all the mitigating steps so as to safe environment of the area in which such a project was being constructed by the proponent. Consequently, MoEF issued **notification dated 07.07.2004**, making amendment in EIA 1994 and '**new construction projects**' were placed at **item 32 in the Schedule**. The amendment notification says that new construction projects which were undertaken without obtaining clearance required under EIA 1994 and where construction work has not come up to the plinth level, shall require clearance under EIA 1994 w.e.f. 07.07.2004.

89. In order to complete the evolution of EIA 1994, we may mention here that it was amended by several notifications i.e., dated 04.05.1994, 10.04.1997, 27.01.2000, 13.12.2000, 01.08.2001, 21.11.2001, 13.06.2002, 28.02.2003, 07.05.2003, 04.08.2003, 22.09.2003 and 07.07.2004.

90. Para 2 of EIA 1994 talks of requirements and procedure for seeking EC of projects and reads as under:

"2) Requirements and procedure for seeking environmental clearance of projects:

I.(a) Any person who desires to undertake any new project in any part of India or the expansion or modernization of any existing industry or project listed in the Schedule-I shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.

The application shall be made in the proforma specified in Schedule-II of this notification and shall be accompanied by a project report which shall, inter alia, include an Environmental Impact Assessment Report, Environment Management Plan and details of public hearing as specified in Schedule-IV prepared in accordance with the guidelines issued by the Central Government in the Ministry of Environment and Forests from time to time. However, Public Hearing is not required in respect of

(i) small scale industrial undertakings located in (a) notified/designated industrial areas/industrial estates or (b)

areas earmarked for industries under the jurisdiction of industrial development authorities;

- (ii) widening and strengthening of highways;
- (iii) mining projects (major minerals) with lease area up to 25 hectares,
- (iv) units located in Export Processing Zones, Special Economic Zones
- (v) modernisation of existing irrigation projects.
- (vi) offshore exploration activities, beyond 10 kilometres from the nearest habituated village boundary, gaothans and ecologically sensitive areas such as, mangroves (with a minimum area of 1000 sq.m), corals, coral reefs, national parks, sanctuaries, reserve forests and breeding and spawning grounds of fish and other marine life; .

Provided further, that for pipeline projects, Environmental Impact Assessment report will not be required:

Provided further, that for pipeline and highway projects, public hearing shall be conducted in each district through which the pipeline or highway passes through:

(b) Cases rejected due to submission of insufficient or inadequate data and Plans may be reviewed as and when submitted with complete data and Plans. Submission of incomplete data or plans for the second time would itself be a sufficient reason for the Impact assessment Agency to reject the case summarily.

II. In case of the following site specific projects:

- (a) mining;
- (b) pit-head thermal power stations;
- (c) hydro-power, major irrigation projects and/or their combination including flood control;
- (d) ports and harbours (excluding minor ports);
- (e) prospecting and exploration of major minerals in areas above 500 hectares;
- (f) greenfield airports, petrochemical complexes and refineries.

The project authorities will intimate the location of the project site to the Central Government in the Ministry of Environment and Forests while initiating any investigation and surveys. The Central Government in the Ministry of Environment and Forests will convey a decision regarding suitability or otherwise of the proposed site within a maximum period of thirty days. The said site clearance shall be granted for a sanctioned capacity and shall be valid for a period of five years for commencing the construction, operation or mining

III. (a) The reports submitted with the application shall be evaluated and assessed by the Impact Assessment Agency, and if deemed necessary it may consult a committee of Experts, having a composition as specified in Schedule-III of this Notification. The Impact Assessment Agency (IAA) would be the Union Ministry of Environment and Forests. The Committee of Experts mentioned above shall be constituted by the Impact Assessment Agency or such other body under the Central Government authorised by the Impact Assessment Agency in this regard.

(b) The said Committee of Experts shall have full right of entry and inspection of the site or, as the case may be, factory premises at any

time prior to, during or after the commencement of the operations relating to the project.

(c) The Impact Assessment Agency shall prepare a set of recommendations based on technical assessment of documents and data, furnished by the project authorities supplemented by data collected during visits to sites or factories, if undertaken and details of the public hearing.

The assessment shall be completed within a period of ninety days from receipt of the requisite documents and data from the project authorities and completion of public hearing and decision conveyed within thirty days thereafter.

The clearance granted shall be valid for a period of five years for commencement of the construction or operation of the project.

No construction work, preliminary or otherwise, relating to the setting up of the project may be undertaken till the environmental and site clearance is obtained.

IV. In order to enable the Impact Assessment Agency to monitor effectively the implementation of the recommendations and conditions subject to which the environmental clearance has been given, the project authorities concerned shall submit a half yearly report to the Impact Assessment Agency. Subject to the public interest, the Impact Assessment Agency shall make compliance reports publicly available.

V. If no comments from the Impact Assessment Agency are received within the time limit, the project would be deemed to have been approved as proposed by project authorities.”

91. In Schedule I, which contains list of projects requiring EC from Central Government, Item 32 relates to ‘new construction projects’. Para 3 provides the cases in which EIA 1994 provisions would not apply and reads as under:

“3. Nothing contained in this Notification shall apply to:

- (a) any item falling under entry Nos. 3 *18*20* 31*and 32* of the Schedule-I to be located or proposed to be located in the areas covered by the Notifications S.O. No. 102 (E) dated 1st February, 1989, S.O. 114 (E) dated 20th February, 1991; *S.O. No. 416 (E) dated 20th June, 1991* and S.O. No.319 (E) dated 7th May, 1992.*
- (b) any item falling under entry Nos.1,2,3,4,5,7,9,10,13, 14,16,17,19,*21*,25 and 27 of Schedule-I if the investment is less than Rs.100 crores for new projects and less than Rs. 50 crores for expansion/modernization projects;*
- (c) any item reserved for Small Scale Industrial Sector with investment less than Rs. 1 crore.*

- (d) *defence related road construction projects in border areas.*
- (e) *any item falling under entry No. 8 of Schedule I, if that product is covered by the notification G.S.R. 1037(E) dated 5th December 1989.*
- (f) *Modernisation projects in irrigation sector if additional command area is less than 10,000 hectares or project cost is less than Rs. 100 crores.:*
- (g) *any construction project falling under entry 31 of Schedule-I including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1000 (one thousand) persons or below or with an investment of Rs.50,00,00,000/- (Rupees fifty crores) or below.*
- (h) *any industrial estate falling under entry 32 of Schedule-I including industrial estates accommodating industrial units in an area of 50 hectares or below but excluding the industrial estates irrespective of area if their pollution potential is high.*

Explanation-

- (i) ***New construction projects which were undertaken without obtaining the clearance required under this notification and where construction work has not come up to the plinth level shall require clearance under this notification with effect from the 7th day of July, 2004.***
- (ii) ***In the case of new Industrial Estates which were undertaken without obtaining the clearance required under this notification, and where the construction work has not commenced or the expenditure does not exceed 25% of the total sanctioned cost, shall require clearance under this notification with effect from the 7th day of July, 2004.***
- (iii) ***Any project proponent intending to implement the proposed project under sub-paras (g) and (h) in a phased manner or in modules, shall be required to submit the details of the entire project covering all phases or modules for appraisal under this notification.”***

92. Para 4 says that if any information is found false etc., the decision or recommendation if any, would be rejected and if approval granted, would be revoked.

EIA 2006, Notification dated 14.09.2006

93. MoEF felt that EIA 1994 needs a complete overhauling. Consequently, in exercise of powers under Rule 5(3) of EP Rules, 1986, a

draft notification was published in the Gazette of India (Extraordinary) dated 15.09.2005, inviting objections and suggestions from all persons likely to be affected thereby, within a period of 60 days from the date on which copies of gazette containing draft notifications were made available to the public. The said draft notification contains provisions for imposing certain restrictions and prohibition on new projects or activities or on the expansion or modernization of existing projects or activities based on their potential environmental impacts as indicated in the schedule to the draft notification, being undertaken in any part of India, unless prior EC has been accorded.

94. Copies of draft notification were made available to the public on 15.09.2005. After considering objections and suggestions received in response to the above draft notification, by the Government of India, notification dated 14.09.2006 was issued in exercise of powers conferred by Section 3(1) and (2) (v) of EP Act, 1986 read with rule 5(3)(d) of EP Rules, 1986, in supersession of EIA 1994, except in respect of things done or omitted to be done before such supersession.

95. Preamble of notification dated 14.09.2006 says that Central Government hereby directs that on and from the date of publication of the notification, the required construction of any projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the notification dated 14.09.2006 entailing capacity addition with change in process and or technology, shall be undertaken in any part of India only after obtaining prior EC from Central Government or as the case may be, by State Level Environment Impact Assessment Authority, duly constituted by Central Government under section 3(3) of EP Act, 1986, in accordance with the procedure specified in the notification dated 14.09.2006. There were some typing mistakes in EIA 2006, as initially

published, hence a **corrigendum** was issued vide **notification dated 13.11.2006** and we have read EIA 2006, here at, as corrected by the said corrigendum.

96. Para 2 of EIA 2006 imposes condition of requirement of prior EC and reads as under:

“2. Requirements of prior Environmental Clearance (EC):- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under **Category ‘A’** in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under **Category ‘B’** in the said Schedule, **before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:**

(i) All new projects or activities listed in the Schedule to this notification;

(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified range.”

97. Para 3 talks of constitution of State Level Environment Impact Assessment Authority (SEIAA).

98. Para 4 of EIA 2006 categorizes projects and activities and reads as under:

“4. Categorization of projects and activities:

(i) **All projects and activities are broadly categorized in to two categories - Category A and Category B**, based on the spatial extent of potential impacts and potential impacts on human health and natural and manmade resources.

(ii) **All projects or activities included as Category ‘A’** in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, **shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF)** on the recommendations of an Expert Appraisal Committee (EAC) to be

constituted by the Central Government for the purposes of this notification;

(iii) **All projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA).** The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. In the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be treated as a Category 'A' project;"

99. Paras 5, 6 and 7 concerned with the procedure of grant of prior EC and read as under:

"5. Screening, Scoping and Appraisal Committees:

*The same Expert Appraisal Committees (EACs) at the Central Government and SEACs (hereinafter referred to as the (EAC) and (SEAC) at the State or the Union territory level shall screen, scope and appraise projects or activities in Category 'A' and Category 'B' respectively. **EAC and SEAC's shall meet at least once every month.***

(a) *The composition of the EAC shall be as given in Appendix VI. The SEAC at the State or the Union territory level shall be constituted by the Central Government in consultation with the concerned State Government or the Union territory Administration with identical composition;*

(b) *The Central Government may, with the prior concurrence of the concerned State Governments or the Union territory Administrations, constitutes one SEAC for more than one State or Union territory for reasons of administrative convenience and cost;*

(c) *The EAC and SEAC shall be reconstituted after every three years;*

(d) *The authorised members of the EAC and SEAC, concerned, may inspect any site(s) connected with the project or activity in respect of which the prior environmental clearance is sought, for the purposes of screening or scoping or appraisal, with prior notice of at least seven days to the applicant, who shall provide necessary facilities for the inspection;*

(e) *The **EAC and SEACs shall function on the principle of collective responsibility.** The Chairperson shall endeavour to reach a consensus in each case, and if consensus cannot be reached, the view of the majority shall prevail.*

6. Application for Prior Environmental Clearance (EC):

An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, **before commencing any construction activity, or preparation of land, at the site by the applicant.** The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, **in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report.**

7. Stages in the Prior Environmental Clearance (EC) Process for New Projects:

7(i) The environmental clearance process for new projects will comprise of a maximum of four stages, all of which may not apply to particular cases as set forth below in this notification. These four stages in sequential order are:

- Stage (1) Screening (Only for Category 'B' projects and activities)
- Stage (2) Scoping
- Stage (3) Public Consultation
- Stage (4) Appraisal

I. Stage (1) - Screening:

In case of Category 'B' projects or activities, this stage will entail the scrutiny of an application seeking prior environmental clearance made in Form 1 by the concerned State level Expert Appraisal Committee (SEAC) for determining whether or not the project or activity requires further environmental studies for preparation of an Environmental Impact Assessment (EIA) for its appraisal prior to the grant of environmental clearance depending up on the nature and location specificity of the project. The projects requiring an Environmental Impact Assessment report shall be termed Category 'B1' and remaining projects shall be termed Category 'B2' and will not require an Environment Impact Assessment report. **For categorization of projects into B1 or B2 except item 8 (b), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time.**

II. Stage (2) - Scoping:

(i) "Scoping": refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects or activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, **determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought.** The Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the Terms of Reference on the basis of the

information furnished in the prescribed application Form 1/Form 1A including Terms of Reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, Terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. **All projects and activities listed as Category 'B' in Item 8 of the Schedule (Construction/Township/Commercial Complexes/Housing) shall not require Scoping and will be appraised on the basis of Form 1/Form 1A and the conceptual plan.**

(ii) The **Terms of Reference (TOR)** shall be conveyed to the applicant by the Expert Appraisal Committee or State Level Expert Appraisal Committee as concerned **within sixty days of the receipt of Form 1**. In the case of Category, A Hydroelectric projects Item 1(c) (i) of the Schedule the Terms of Reference shall be conveyed along with the clearance for preconstruction activities. **If the Terms of Reference are not finalized and conveyed to the applicant within sixty days of the receipt of Form 1, the Terms of Reference suggested by the applicant shall be deemed as the final Terms of Reference approved for the EIA studies.** The approved Terms of Reference shall be displayed on the website of the Ministry of Environment and Forests and the concerned State Level Environment Impact Assessment Authority.

(iii) Applications for prior environmental clearance may be rejected by the regulatory authority concerned on the recommendation of the EAC or SEAC concerned at this stage itself. In case of such rejection, the decision together with reasons for the same shall be communicated to the applicant in writing within sixty days of the receipt of the application.

III. Stage (3) - Public Consultation:

(i) "Public Consultation" refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate. **All Category 'A' and Category B1 projects or activities shall undertake Public Consultation, except the following:**

- (a) modernization of irrigation projects (item 1(c) (ii) of the Schedule)
- (b) all projects or activities located within industrial estates or parks (item 7(c) of the Schedule) approved by the concerned authorities, and which are not disallowed in such approvals.
- (c) expansion of Roads and Highways (item 7 (f) of the Schedule) which do not involve any further acquisition of land.
- (d) **all Building/Construction projects/Area Development projects and Townships (item 8).**

e) **all Category 'B2' projects and activities.**

f) *all projects or activities concerning national defence and security or involving other strategic considerations as determined by the Central Government.*

(ii) *The Public Consultation shall ordinarily have two components comprising of:*

(a) a public hearing at the site or in its close proximity-district wise, to be carried out in the manner prescribed in Appendix IV, for ascertaining concerns of local affected persons;

(b) obtain responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity.

(iii) the public hearing at, or in close proximity to, the site(s) in all cases shall be conducted by the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) concerned in the specified manner and forward the proceedings to the regulatory authority concerned within 45 (forty five) of a request to the effect from the applicant.

(iv) in case the State Pollution Control Board or the Union territory Pollution Control Committee concerned does not undertake and complete the public hearing within the specified period, and/or does not convey the proceedings of the public hearing within the prescribed period directly to the regulatory authority concerned as above, the regulatory authority shall engage another public agency or authority which is not subordinate to the regulatory authority, to complete the process within a further period of forty five days,.

(v) If the public agency or authority nominated under the sub paragraph (iii) above reports to the regulatory authority concerned that owing to the local situation, it is not possible to conduct the public hearing in a manner which will enable the views of the concerned local persons to be freely expressed, it shall report the facts in detail to the concerned regulatory authority, which may, after due consideration of the report and other reliable information that it may have, decide that the public consultation in the case need not include the public hearing.

(vi) For obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity, the concerned regulatory authority and the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) shall invite responses from such concerned persons by placing on their website the Summary EIA report prepared in the format given in Appendix IIIA by the applicant along with a copy of the application in the prescribed form, within seven days of the receipt of a written request for arranging the public hearing. Confidential information including non-disclosable or legally privileged information involving Intellectual Property Right, source specified in the application shall not be placed on the web site. The regulatory authority concerned may also use other appropriate media for ensuring wide publicity about the project or activity. The regulatory

authority shall, however, make available on a written request from any concerned person the Draft EIA report for inspection at a notified place during normal office hours till the date of the public hearing. All the responses received as part of this public consultation process shall be forwarded to the applicant through the quickest available means.

(vii) After completion of the public consultation, the applicant shall address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP. The final EIA report, so prepared, shall be submitted by the applicant to the concerned regulatory authority for appraisal. The applicant may alternatively submit a supplementary report to draft EIA and EMP addressing all the concerns expressed during the public consultation.

IV. Stage (4) - Appraisal:

(i) Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance. This **appraisal shall be made by Expert Appraisal Committee or State Level Expert Appraisal Committee concerned in a transparent manner** in a proceeding to which the applicant shall be invited for furnishing necessary clarifications in person or through an authorized representative. On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned **shall make categorical recommendations** to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same.

(ii) **The appraisal of all projects or activities which are not required to undergo public consultation, or submit an Environment Impact Assessment report, shall be carried out on the basis of the prescribed application Form 1 and Form 1A as applicable, any other relevant validated information available and the site visit wherever the same is considered as necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.**

(iii) The appraisal of an application shall be completed by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within sixty days of the receipt of the final Environment Impact Assessment report and other documents or the receipt of Form 1 and Form 1 A, where public consultation is not necessary and the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee shall be placed before the competent authority for a final decision within the next fifteen days. The prescribed procedure for appraisal is given in Appendix V;

7(ii). Prior Environmental Clearance (EC) process for Expansion or Modernization or Change of product mix in existing projects:

All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernization of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product –mix shall be made in Form I and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultations and the application shall be appraised accordingly for grant of environmental clearance.”

100. Para 8 talks of the final stage of grant or rejection of prior EC and reads as under:

“8. Grant or Rejection of Prior Environmental Clearance (EC):

(i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.

(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be final and conveyed to the applicant by the regulatory authority concerned within the next thirty days.

(iii) In the event that the decision of the regulatory authority is not communicated to the applicant within the period specified in subparagraphs (i) or (ii) above, as applicable, the applicant may proceed as if the environment clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of

the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.

(iv) On expiry of the period specified for decision by the regulatory authority under paragraph (i) and (ii) above, as applicable, the decision of the regulatory authority, and the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be public documents.

(v) Clearances from other regulatory bodies or authorities shall not be required prior to receipt of applications for prior environmental clearance of projects or activities, or screening, or scoping, or appraisal, or decision by the regulatory authority concerned, unless any of these is sequentially dependent on such clearance either due to a requirement of law, or for necessary technical reasons.

(vi) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice.”

101. Para 9 deals with the validity of EC, i.e., the tenure etc. and reads as under:

“9. Validity of Environmental Clearance (EC):

The “Validity of Environmental Clearance” is meant the period from which a prior environmental clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub paragraph (iv) of paragraph 7 above, to the start of production operations by the project or activity, or completion of all construction operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers. The prior environmental clearance granted for a project or activity shall be valid for a **period of ten years in the case of River Valley projects (item 1(c) of the Schedule), project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects and five years in the case of all other projects and activities. However, in the case of Area Development projects and Townships [item 8(b)], the validity period shall be limited only to such activities as may be the responsibility of the applicant as a developer.** This period of validity may be extended by the regulatory authority concerned by a maximum period of five years provided an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form 1, and Supplementary Form 1A, for Construction projects or activities (item 8 of the Schedule). In this regard the regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee as the case may be.”

102. Para 10 talks of monitoring of post EC stages and says:

“10. Post Environmental Clearance Monitoring:

(i) *It shall be mandatory for the project management to submit **half-yearly compliance reports** in respect of the stipulated prior environmental clearance terms and conditions in hard and soft copies to the regulatory authority concerned, on 1st June and 1st December of each calendar year.*

(ii) **All such compliance reports submitted by the project management shall be public documents.** *Copies of the same shall be given to any person on application to the concerned regulatory authority. The **latest such compliance report shall also be displayed on the web site of the concerned regulatory authority.**”*

103. A prior EC granted to a project or activity is transferable, subject to certain conditions. This aspect is dealt with in para 11 as under:

“11. Transferability of Environmental Clearance (EC):

A prior environmental clearance granted for a specific project or activity to an applicant may be transferred during its validity to another legal person entitled to undertake the project or activity on application by the transferor, or by the transferee with a written “no objection” by the transferor, to, and by the regulatory authority concerned, on the same terms and conditions under which the prior environmental clearance was initially granted, and for the same validity period. No reference to the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned is necessary in such cases.”

104. Para 12 is a transitional provision dealing with the pending cases under EIA 1994 and said:

“12. Operation of EIA Notification, 1994, till disposal of pending cases:

From the date of final publication of this notification the Environment Impact Assessment (EIA) notification number S.O.60 (E) dated 27th January, 1994 is hereby superseded, except in supersession of the things done or omitted to be done before such supersession to the extent that in case of all or some types of applications made for prior environmental clearance and pending on the date of final publication of this notification, the Central Government may relax any one or all provisions of this notification except the list of the projects or activities requiring prior environmental clearance in Schedule, or continue operation of some or all provisions of the said notification, for a period not exceeding one year from the date of issue of this notification.”

105. EIA 2006 further contains **a Schedule** and **six Appendixes**. **Appendix I** is a format of Form-1 and **Appendix II** is a format of Form-1A which are referred in para 6 of EIA 2006. These are the formats of application to be submitted by a proponent for grant of prior EC. **Appendix III** contains a chart giving generic structure of environmental impact assessment document with reference to para 7 and **Appendix III A** provides contents of summary environmental impact assessment and it is also in reference to para 7 of EIA 2006. **Appendix III has 12 items** comprising EIA structure and the contents thereof are also separately detailed as under:

“GENERIC STRUCTURE OF ENVIRONMENTAL IMPACT ASSESSMENT DOCUMENT

S. NO.	EIA STRUCTURE	CONTENTS
1	Introduction	• Purpose of the report • Identification of project & project proponent • Brief description of nature, size, location of the project and its importance to the country, region • Scope of the study – details of regulatory scoping carried out (As per Terms of Reference)
2	Project Description	• Condensed description of those aspects of the project (based on project feasibility study), likely to cause environmental effects. Details should be provided to give clear picture of the following: • Type of project • Need for the project • Location (maps showing general location, specific location, project boundary & project site layout) • Size or magnitude of operation (incl. Associated activities required by or for the project) • Proposed schedule for approval and implementation • Technology and process description • Project description. Including drawings showing project layout, components of project etc. Schematic representations

		<i>of the feasibility drawings which give information important for EIA purpose</i> • <i>Description of mitigation measures incorporated into the project to meet environmental standards, environmental operating conditions, or other EIA requirements (as required by the scope)</i> • <i>Assessment of New & untested technology for the risk of technological failure</i>
3	<i>Description of the Environment</i>	• <i>Study area, period, components & methodology</i> • <i>Establishment of baseline for valued environmental components, as identified in the scope</i> • <i>Base maps of all environmental components</i>
4	<i>Anticipated Environmental Impacts & Mitigation Measures</i>	• <i>Details of Investigated Environmental impacts due to project location, possible accidents, project design, project construction, regular operations, final decommissioning or rehabilitation of a completed project</i> • <i>Measures for minimizing and/or offsetting adverse impacts identified</i> • <i>Irreversible and Irretrievable commitments of environmental components</i> • <i>Assessment of significance of impacts (Criteria for determining significance, Assigning significance)</i> • <i>Mitigation measures</i>
5	<i>Analysis of Alternatives (Technology & Site)</i>	• <i>In case, the scoping exercise results in need for alternatives:</i> • <i>Description of each alternative</i> • <i>Summary of adverse impacts of each alternative</i> • <i>Mitigation measures proposed for each alternative and</i> • <i>Selection of alternative</i>
6	<i>Environmental Monitoring Program</i>	• <i>Technical aspects of monitoring the effectiveness of mitigation measures (incl. Measurement methodologies, frequency, location, data analysis, reporting schedules, emergency procedures, detailed budget & procurement schedules)</i>
7	<i>Additional Studies</i>	• <i>Public Consultation</i>

		• Risk assessment • Social Impact Assessment. R&R Action Plans
8	Project Benefits	• Improvements in the physical infrastructure • Improvements in the social infrastructure • Employment potential –skilled; semi-skilled and unskilled • Other tangible benefits
9	Environmental Cost Benefit Analysis	• If recommended at the Scoping stage
10	EMP	• Description of the administrative aspects of ensuring that mitigative measures are implemented and their effectiveness monitored, after approval of the EIA
11	Summary & Conclusion (This will constitute the summary of the EIA Report)	• Overall justification for implementation of the project • Explanation of how, adverse effects have been mitigated
12	Disclosure of Consultants engaged	• The names of the Consultants engaged with their brief resume and nature of Consultancy rendered

106. Summary of environmental impact assessment should contain details given in Appendix III A of EIA report, on seven aspects, as under:

- “1. Project Description
2. Description of the Environment
3. Anticipated Environmental impacts and mitigation measures
4. Environmental Monitoring Programme
5. Additional Studies
6. Project Benefits
7. Environment Management Plan”

107. **Appendix IV**, also with reference of para 7, provides procedure for conduct of public hearing.

108. **Appendix V**, again with reference to para 7, provides procedure for appraisal of Environment Impact Assessment Report and other documents and talks of following steps:

“PROCEDURE PRESCRIBED FOR APPRAISAL

1. The applicant shall apply to the concerned regulatory authority through a simple communication **enclosing the following documents where public consultations are mandatory:**

- *Final Environment Impact Assessment Report [20(twenty) hard copies and 1 (one) soft copy]*
- *A copy of the video tape or CD of the public hearing proceedings*
- *A copy of final layout plan (20 copies)*
- *A copy of the project feasibility report (1 copy)*

2. *The Final EIA Report and the other relevant documents submitted by the applicant shall be scrutinized in office within 30 days from the date of its receipt by the concerned Regulatory Authority strictly with reference to the TOR and the inadequacies noted shall be communicated electronically or otherwise in a single set to the Members of the EAC/SEAC enclosing a copy each of the Final EIA Report including the public hearing proceedings and other public responses received along with a copy of Form -1 or Form 1A and scheduled date of the EAC/SEAC meeting for considering the proposal.*

3. *Where a public consultation is not mandatory, and therefore a formal EIA study is not required, the appraisal shall be made on the basis of the prescribed application Form 1 and a pre-feasibility report in the case of all projects and activities other than Item 8 of the Schedule. **In the case of Item 8 of the Schedule, considering its unique project cycle, the EAC or SEAC concerned shall appraise all Category B projects or activities on the basis of Form 1, Form 1A and the conceptual plan and stipulate the conditions for environmental clearance. As and when the applicant submits the approved scheme/building plans complying with the stipulated environmental clearance conditions with all other necessary statutory approvals, the EAC/SEAC shall recommend the grant of environmental clearance to the competent authority.***

4. *Every application shall be placed before the EAC/SEAC and its appraisal completed within 60 days of its receipt with requisite documents/details in the prescribed manner.*

5. *The applicant shall be informed at least 15 (fifteen) days prior to the scheduled date of the EAC/SEAC meeting for considering the project proposal.*

6. *The minutes of the EAC/SEAC meeting shall be finalised within 5 working days of the meeting and displayed on the website of the concerned regulatory authority. In case the project or activity is recommended for grant of EC, then the minutes shall clearly list out the specific environmental safeguards and conditions. In case the recommendations are for rejection, the reasons for the same shall also be explicitly stated."*

109. **Appendix VI** with reference to paragraph 5 of EIA 2006 gives composition of sector/project specific Expert Appraisal Committee for category A projects and the State/UT Level Expert Appraisal Committees for category B projects to be constituted by Central Government. Schedule

gives the list of projects or activities which would require prior EC and covers the following projects/activities:

- “1. Mining, extraction of natural resources and power generation (for a specified production capacity)**
 - 1(a) Mining of minerals
 - 1(b) Offshore and onshore oil and gas exploration, development & production
 - 1(c) River Valley projects
 - 1(d) Thermal Power Plants
 - 1(e) Nuclear power projects and processing of nuclear fuel
- 2. Primary processing**
 - 2(a) Coal washeries
 - 2(b) Mineral beneficiation
- 3. Materials Production**
 - 3(a) Metallurgical industries (ferrous & non-ferrous)
 - 3(b) Cement plants
- 4. Materials Processing**
 - 4(a) Petroleum refining industry
 - 4(b) Coke oven plants
 - 4(c) Asbestos milling and asbestos based products
 - 4(d) Chlor-alkali industry
 - 4(e) Soda ash industry
 - 4(f) Leather/ skin/ hide processing industry
- 5. Manufacturing/Fabrication**
 - 5(a) Chemical fertilizers
 - 5(b) Pesticides industry and pesticide specific intermediates (excluding formulations)
 - 5(c) Petro-chemical complexes (industries based on processing of petroleum fractions & natural gas and/or reforming to aromatics)
 - 5(d) Manmade fibres manufacturing
 - 5(e) Petrochemical based processing (processes other than cracking & reformation and not covered under the complexes)
 - 5(f) Synthetic organic chemicals industry (dyes & dye intermediates; bulk drugs and intermediates excluding drug formulations; synthetic rubbers; basic organic chemicals, other synthetic organic chemicals and chemical intermediates)
 - 5(g) Distilleries
 - 5(h) Integrated paint industry
 - 5(i) Pulp & paper industry excluding manufacturing of paper from waste paper and manufacture of paper from ready pulp without bleaching
 - 5(j) Sugar industry
 - 5(k) Induction/ arc furnaces/ cupola furnaces 5TPH or more
- 6. Service Sectors**
 - 6(a) Oil & gas transportation pipeline (crude and refinery/ petrochemical products), passing through national

parks/sanctuaries/coral reefs/ecologically sensitive areas including LNG Terminal.
6(b) *Isolated storage & handling of hazardous chemicals (As per threshold planning quantity indicated in column 3 of schedule 2 & 3 of MSIHC Rules 1989 amended 2000)*

- 7. Physical Infrastructure including Environmental Services**
7(a) *Air ports*
7(b) *All ship breaking yards including ship breaking units*
7(c) *Industrial estate/parks/complexes/areas, export processing Zones (EPZs), Special Economic Zones (SEZs), Biotech Parks, Leather Complexes.*
7(d) *Common hazardous waste treatment, storage and disposal facilities (TSDFs)*
7(e) *Forts, Harbours*
7(f) *Highways*
7(g) *Aerial ropeways*
7(h) *Common Effluent Treatment Plants (CETPs)*
7(i) *Common Municipal Solid Waste Management Facility (CMSWMF)”*

110. For the purpose of present case, we are concerned with item 8 which deals with building construction projects/area development projects and townships and it has two categories which we reproduce as under:

“

(1)	(2)	(3)	(4)	(5)
8		Building Construction projects/Area Development projects and Townships		
8(a)	Building and Construction projects		≥20000 sq.mtrs and <1,50,000 sq. mtrs. of built-up area#	*(built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development projects		Covering an area ≥ 50 ha and or built up Area ≥1,50,000 sq. mtrs ++	++All projects under Item 8(b) shall be appraised as Category B1

”

111. At the end of the schedule there is a note containing certain conditions as General Condition (GC) and Specific Condition (SC) but **column (5) shows that these conditions have not been made applicable to the projects/activities covered under items 8(a) and 8(b).** However, to make study of EIA Notification, 2006, complete, we may reproduce these conditions as under:

“Note:
General Condition (GC):
Any project or activity specified in Category ‘B’ will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as identified by the

Central Pollution Control Board from time to time, (iii) Notified Eco-sensitive areas, (iv) inter-State boundaries and international boundaries:

Specific Condition (SC):

If any Industrial Estate/Complex/Export processing Zones/ Special Economic Zones/Biotech Parks/Leather Complex with homogeneous type of industries such as Items 4(d), 4(f), 5(e), 5(f), or those Industrial estates with pre-defined set of activities (not necessarily homogeneous, obtains prior environmental clearance, individual industries including proposed industrial housing within such estates/complexes will not be required to take prior environmental clearance, so long as the Terms and Conditions for the industrial estate/complex are complied with (Such estates/complexes must have a clearly identified management with the legal responsibility of ensuring adherence to the Terms and Conditions of prior environmental clearance, who may be held responsible for violation of the same throughout the life of the complex/estate)."

112. EIA 2006 as initially notified, qualified projects/activities covered under item 8(a) and 8(b) as category 'B' projects. The projects/activities under item 8(b) were clearly categorized as B1. The application for prior EC, if submitted for a project/activity under item 8 of Schedule of EIA 2006, para 6 of EIA 2006 requires that in addition to form 1 and supplementary form 1A, the proponent shall also submit a copy of conceptual plan instead of pre-feasibility report. Para 7(I) Stage (1) - Screening says that in category B projects/activities, environment Impact Assessment Report shall be prepared only for the projects/activities come under category B1 and category B2 projects will not require EIA report. Para 7(II) Stage (2) - Scoping (i) further says that scoping shall not be required for the projects/activities listed in category B in item 8 of the schedule of EIA 2006. In such cases, appraisal shall be on the basis of form 1/form 1A and conceptual plan. Para 7(III) Stage (3) - Public Consultation (i) also provides that public consultation shall not be required in respect to projects/activities under item 8 of the Schedule. Thus, in respect of the projects/activities under item 8 of the Schedule I to EIA 2006, a modified/simpler procedure was prescribed for consideration of application for grant of prior EC.

113. EIA 2006 has been amended up to July 2021 by more than 55 **amendment** notifications but all are not relating to project/activities referable to item 8 of the Schedule of EIA 2006 and since we are concerned only to project/activities fall under item 8 of the Schedule of EIA 2006, we would be referring hereunder only such amendments which are relatable to item 8 of the Schedule or procedure of appraisal of the project/activities under item 8.

A. Notification dated 01.12.2009 published in Gazette of India extraordinary of the same date.

a) In **para 3** of EIA 2006 **sub-para (7) was substituted** as under:

*“(7) All decisions of the SEIAA shall be taken in a meeting and shall ordinarily be unanimous:
Provided that, in case a decision is taken by majority, the details of views, for and against it, shall be clearly recorded in the minutes and a copy thereof sent to MoEF.”*

b) In **para 4, sub-para (iii) certain words and letters were changed** and the amended provision reads as under:

*“4(iii) All projects or activities included as Category ‘B’ in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfil the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. **In the absence of a duly constituted SEIAA and SEAC, a Category ‘B’ project shall be considered at the Central Level as a Category ‘B’ project.**”*

c) In **para 7(i) (III) relating to Stage (3) after sub-clause (c), the following was inserted:**

“(cc) maintenance dredging provided the dredged material shall be disposed within port limits.”

d) In **para 7(i) (III) relating to Stage (3) sub-clause (d) was substituted** as under:

*“(d) All Building or Construction projects or Area Development projects (which do not contain any category ‘A’ projects and activities) and Townships (**item 8(a) and 8(b)** in the Schedule to the notification).”*

- e) In **para 10 clause (i) was renumbered as (ii) and before such renumbered (ii), a sub-para (i)(a) and (b) was inserted** as under:

*“(i) (a) In respect of Category ‘A’ projects, it shall be mandatory for the project proponent to make public the environmental clearance granted for their project along with the environmental conditions and safeguards at their cost by prominently advertising it at least in two local newspapers of the district or State where the project is located and in addition, this shall also be displayed in the project proponent’s website permanently. (b) **In respect of Category ‘B’ projects, irrespective of its clearance by MoEF/SEIAA, the project proponent shall prominently advertise in the newspapers indicating that the project has been accorded environment clearance and the details of MoEF website where it is displayed.** (c) The Ministry of Environment and Forests and the State/Union Territory Level Environmental Impact Assessment Authorities (SEIAAs), as the case may be, shall also place the environmental clearance in the public domain on Government portal. (d) The copies of the environmental clearance shall be submitted by the project proponents to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt.”;*

*(b) **existing sub-para (ii) shall be renumbered as sub-para (iii).**”*

- f) In the Schedule, **General Condition was substituted** as under:

“General Condition (GC):

Any project or activity specified in Category ‘B’ will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected areas notified under the Wild Life (Protection) Act, 1972; (ii) Critically polluted areas as identified by the Central Pollution Control Board from time to time; (iii) Eco-sensitive areas as notified under section 3 of the Environment (Protection) Act, 1986, such as, Mahabaleshwar Panchgani, Matheran, Pachmarhi, Dahanu, Doon Valley, and (iv) inter-State boundaries and international boundaries:

Provided that the requirement regarding distance of 10 km of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective States or U.T.s sharing the common boundary in case the activity does not fall within 10 kilometres of the areas mentioned at item (i), (ii) and (iii) above.”

- g) Amendment was also made in **Appendix I whereby in Form-1 item (I) relating to Basic Information, was substituted by a**

new format and in Appendix IV the procedure for conduct of public hearing was completely substituted.

h) In **Appendix V, para 3** was substituted as under:

*“3. Where a public consultation is not mandatory, the appraisal shall be made on the basis of the prescribed application Form 1 and EIA report, in the case of all projects and activities other than Item 8 of the Schedule. **In the case of Item 8 of the Schedule, considering its unique project cycle, the EAC or SEAC concerned shall appraise all Category B projects or activities on the basis of Form 1, Form 1A and the conceptual plan and make recommendations on the project regarding grant of environmental clearance or otherwise and also stipulate the conditions for environmental clearance.**”*

B. Notification dated 04.04.2011 published in Gazette of India extraordinary dated 06.04.2011:

a) **Para 6 was amended by substituting certain words** and amended para 6 reads as under:

“6. Application for Prior Environmental Clearance (EC):

An application seeking prior environmental clearance in all cases shall be made by the project proponent in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report.”

b) In **para 7, sub-para II, Stage (2), clause (i) was amended by substituting certain words** as under:

(i) *“Scoping”: refers to the process by which the Expert Appraisal Committee in the case of Category ‘A’ projects or activities, and State level Expert Appraisal Committee in the case of Category ‘B1’ projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought. The Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the Terms of Reference on the basis of the information furnished*

*in the prescribed application Form 1/Form 1A including Terms of Reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, Terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. All projects and **activities listed as Category 'B' in item 8(a) of the schedule (building and construction projects)** shall not require Scoping and will be appraised on the basis of Form 1/Form 1A and the conceptual plan."*

- c) In the **schedule, item 8(a) column (5) the existing entry was substituted** by the following:

"The built up area for the purpose of this Notification is defined as "the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects."

- d) **In Appendix V, para 3 was also substituted** as under:

*"3. Where a public consultation is not mandatory, the appraisal shall be made on the basis of prescribed application Form-1 and EIA report, in the case of all projects and activities other than item 8 of the schedule. **In the case of item 8 of the schedule, considering its unique project cycle, the EAC or SEAC concerned shall appraise projects or activities on the basis of Form-1, Form-1A, conceptual plan and the EIA report [required only for projects listed under 8(b)] and make recommendations on the project regarding grant of environmental clearance or otherwise and also stipulate the conditions for environmental clearance.**"*

C. Notification dated 22.08.2013 published in Gazette of India Extraordinary of the same date:

- a) In **para 7 sub-paragraph II, item (i) of EIA 2006 was substituted** as under:

*"(i) **"Scoping" refers to the process** by which the Expert Appraisal Committee in the case of Category 'A' projects activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion or modernization or change in product mix of existing projects or activities, **determine detailed and comprehensive Terms of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report** in respect of the project or activity for which prior environmental clearance is sought and the Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the terms of reference on the basis of the*

information furnished in the prescribed application Form 1 or Form 1A including terms of reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned:

Provided that the **following shall not require Scoping-**

- (i) **all projects and activities listed as Category ‘B’ in item 8 of the Schedule (Construction or Township or Commercial Complexes or Housing);**
- (ii) *all Highway expansion projects covered under entry (ii) of column (3) and column (4) under sub-item (f) of item 7 of the Schedule:*

Provided further that-

- A. **the projects and activities referred to in clause (i) shall be appraised on the basis of Form I or Form IA and the conceptual plan;**
- B. *The projects referred to in clause (ii) shall prepare EIA and EMP report on the basis of model TOR specified by Ministry of Environment and Forests;”*

D. Notification dated 26.02.2014 published in Gazette of India Extraordinary of the same date:

a) Here in paragraph 7(II) item (i) which was already substituted vide the notification dated 22.08.2013, was again substituted as under:

“(i) all projects or activities listed under Category, ‘B’ against item 8(a) of the Schedule;”

E. Notification dated 22.12.2014 published in Gazette of India Extraordinary of the same date:

a) **Item 8 in the Schedule** as existing in entirety **was substituted** as under:

(1)	(2)	(3)	(4)	(5)
“8		Building or Construction projects or Area Development projects and Townships		
8(a)	Building and Construction projects		>20,000 sq. mtrs and <1,50,000 sq. mtrs of built up area	The term “built up area” for the purpose of this notification the built up or covered area on all floors put together, including its basement and other service areas, which are proposed in the building or construction projects.

				Note 1.- The projects or activities shall not include industrial shed, school, college, hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled materials such as fly ash bricks. Note 2.- “General Conditions” shall not apply.
8	Townships and Area Development Projects		Covering an area >50 ha and or built up area >1,50,000 sq. mrts	A project of Township and Area Development Projects covered under this item shall require an Environment Assessment report and be appraised as Category ‘B1’ Project. Note.- “General Conditions” shall not apply.

b) Substantial amendment came to be made in EIA 2006 in the Schedule item 8 by the above notification whereby the term “built up area” was explained as built up or covered area on all floors put up together, including its basement and other service areas, which are proposed in the buildings or construction projects. However, it was clarified by note one that projects/activities shall not include industrial shed, school, college, hostel for educational institution but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled material such as fly ash bricks. Inapplicability of “general conditions” was maintained in respect of item 8 of the Schedule of EIA 2006.

F. Notification dated 29.04.2015 published in Gazette of India Extraordinary on 30.04.2015:

a) Hereby **existing paragraph 9 was renumbered as sub-paragraph (i) with certain amendments of the words therein** and the amended sub-paragraph (i) reads as under:

“(i) Validity of Environmental Clearance (EC):

The “Validity of Environmental Clearance” is meant the period from which a prior environmental clearance is granted

by the regulatory authority, or may be presumed by the applicant to have been granted under sub paragraph (iv) of paragraph 7 above, to the start of production operations by the project or activity, **or completion of all construction operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers.** The prior environmental clearance granted for a project or activity shall be valid for a period of ten years in the case of River Valley projects (item 1(c) of the Schedule), project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects **and seven years in the case of all other projects and activities.**
(Emphasis added)

b) Further, **sub-paragraph (ii) was inserted** as under:

“(ii) In the case of Area Development projects and Townships [item 8 (b), the validity period shall be limited only to such activities as may be the responsibility of the applicant as a developer:

Provided that this period of validity may be extended by the regulatory authority concerned by a maximum period of seven years if an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form I, and Supplementary Form IA, for Construction projects or activities (item 8 of the Schedule):

Provided further that the regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee, as the case may be, for grant of such extension.

(iii) Where the application for extension under sub-paragraph (ii) has been filed-

(a) **within one month after the validity period of EC,** such cases shall be referred to concerned Expert Appraisal Committee (EAC) or State Level Expert Appraisal committee (SEAC) and based on their recommendations, the delay shall be condoned at the level of the Joint Secretary in the Ministry of Environment, Forest and Climate Change or Member Secretary, SEIAA, as the case may be;

(b) **more than one month after the validity period of EC** but less than three months after such validity period, then, based on the recommendations of the EAC or the SEAC, the delay shall be condoned with the approval of the Minister in charge of Environment Forest and Climate Change or Chairman, as the case may be.”

G. Notification dated 09.12.2016 published in Gazette of India Extraordinary of the same date:

a) Hereby **after paragraph 13 of EIA 2006, paragraph 14 was inserted** as under:

“14. Integration of environmental condition in building bye-laws.-

(1) The integrated environmental conditions with the building permission being granted by the local authorities and the construction of buildings as per the size shall adhere to the objectives and monitorable environmental conditions as given at Appendix-XIV.

(2) The States adopting the objectives and monitorable environmental conditions referred to in subparagraph (1), in the building bye-laws and relevant State laws and incorporating these conditions in the approvals given for building construction making it legally enforceable shall not require a separate environmental clearance from the Ministry of Environment, Forest and Climate Change for individual buildings.

(3) The States may forward the proposed changes in their bye-laws and rules to the Ministry of Environment, Forest and Climate Change, who in turn will examine the said draft bye-laws and rules and convey the concurrence to the State Governments.

(4) When the State Governments notifies the bye-laws and rules concurred by the Ministry of Environment, Forest and Climate Change, the Central Government may issue an order stating that no separate environmental clearance is required for buildings to be constructed in the States or local authority areas.

(5) The local authorities like Development Authorities, Municipal Corporations, may certify the compliance of the environmental conditions prior to issuance of Completion Certificate, as applicable as per the requirements stipulated for such buildings based on the recommendation of the Environmental Cell constituted in the local authority.

(6) The State Governments where bye-laws or rules are not framed may continue to follow the existing procedure of appraisal for individual projects and grant of Environmental Clearance for buildings and constructions as per the provisions laid down in this notification.

(7) For the purpose of certification regarding incorporation of environmental conditions in buildings, the Ministry of Environment, Forest and Climate Change may empanel through competent agencies, the Qualified Building Environment Auditors (QBEAs) to assess and certify the building projects, as per the requirements of this notification

and the procedure for accreditation of Qualified Building Auditors and their role as given at **Appendix-XV**.

(8) In order to implement the integration of environmental condition in building bye-laws, the State Governments or Local Authorities may constitute the Environment Cell (herein after called as Cell), for compliance and monitoring and to ensure environmental planning within their jurisdiction.

(9) The Cell shall monitor the implementation of the bye-laws and rules framed for Integration of environmental conditions for construction of building and the Cell may also allow the third part auditing process for oversight, if any.

(10) The Cell shall function under the administrative control of the Local Authorities.

(11) The composition and functions of the Cell are given at Appendix-XVI.

(12) The Local Authorities while integrating the environmental concerns in the building bye-laws, as per their size of the project, shall follow the procedure, as given below:

BUILDINGS CATEGORY '1' (5,000 to < 20,000 Square meters)

A Self declaration Form to comply with the environmental conditions (Appendix XIV) along with Form 1A and certification by the Qualified Building Environment Auditor to be submitted online by the project proponent besides application for building permission to the local authority along with the specified fee in separate accounts. Thereafter, the local authority may issue the building permission incorporating the environmental conditions in it and allow the project to start based on the self declaration and certification along with the application. After completion of the construction of the building, the project proponent may update Form 1A online based on audit done by the Qualified Building Environment Auditor and shall furnish the revised compliance undertaking to the local authority. **Any non-compliance issues in buildings less than 20,000 square meters shall be dealt at the level of local body and the State through existing mechanism.**

OTHER BUILDINGS CATEGORIES ($\geq$ 20,000 Square meters)

The project proponent may submit online application in Form 1 A alongwith specified fee for environmental appraisal and additional fee for building permission. The fee for environmental appraisal will be deposited in a separate account. The Environment Cell will process the application and present it in the meeting of the Committee headed by the authority competent to give building permission in that local authority. The Committee will appraise the project and stipulate the environmental conditions to be integrated in the building permission. After recommendations of the Committee, the

building permission and environmental clearance will be issued in an integrated format by the local authority.

The project proponent shall submit Performance Data and Certificate of Continued Compliance of the project for the environmental conditions parameters applicable after completion of construction from Qualified Building Environment Auditors every five years to the Environment Cell with special focus on the following parameters:-

- (a) Energy Use (including all energy sources).*
- (b) Energy generated on site from onsite Renewable energy sources.*
- (c) Water use and waste water generated, treated and reused on site.*
- (d) Waste Segregated and Treated on site.*
- (e) Tree plantation and maintenance.*

After completion of the project, the Cell shall randomly check the projects compliance status including the five years audit report. The State Governments may enact the suitable law for imposing penalties for non-compliances of the environmental conditions and parameters. The Cell shall recommend financial penalty, as applicable under relevant State laws for non-compliance of conditions or parameters to the local authority. On the basis of the recommendation of the Cell, the local authority may impose the penalty under relevant State laws. The cases of false declaration or certification shall be reported to the accreditation body and to the local body for blacklisting of Qualified Building Environment Auditors and financial penalty on the owner and Qualified Building Environment Auditors.

No Consent to Establish and Operate under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 will be required from the State Pollution Control Boards for residential buildings up to 1,50,000 square meters.”;

b) Further in the **schedule item 8 entries were substituted** as under:

(1)	(2)	(3)	(4)	(5)
"8		Building/Construction projects/Area Development projects and Townships		
8(a)	Building and Construction projects		≥ 20,000 sq. mtrs and < 1,50,000 sq. mtrs of built up area	The term "built up area" for the purpose of this notification is the built up or covered area on all floors put together including its basement and other service areas, which are proposed in the buildings and construction projects. Note 1. The projects or activities shall not include industrial shed, universities, college, hostel for educational institutions, but such buildings shall ensure sustainable environmental management,

				solid and liquid and implement environmental conditions given at Appendix-XIV. Note 2.-General Condition shall not apply. Note 3.-The exemptions granted at Note 1 will be available only for industrial shed after integration of environmental norms with building permissions at the level of local authority.
8 (b)	Townships and Area Development projects	≥ 3,00,000 sq. mtrs of built up area or Covering an area ≥ 150 ha	≥1,50,000 sq. mtrs and < 3,00,000 sq. mtrs built up area or covering an area ≥ 50 ha and < 150 ha	Note.- General Condition shall not apply”.

c) This notification also **inserted three Appendixes i.e. XIV, XV and XVI** and we find the same to be relevant since all relates to environmental conditions for building and construction.

APPENDIX –XIV
ENVIRONMENTAL CONDITIONS FOR BUILDINGS AND CONSTRUCTIONS
(CATEGORY ‘1’: 5,000 to less than 20,000 Square meters)

MEDIUM	S.N.	ENVIRONMENTAL CONDITIONS
Topography and Natural Drainage	1	The natural drain system should be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site. No construction is allowed on wetland and water bodies. Check dams, bioswales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water.
Water Conservation, Rain Water Harvesting, and Ground Water Recharge	2	Use of water efficient appliances shall be promoted. The local bye-law provisions on rain water harvesting should be followed. If local bye-law provision is not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Bye-Laws, 2016. A rain water harvesting plan needs to be designed where the recharge bores (minimum one recharge bore per 5,000 square meters of built up area) is recommended. Storage and reuse of the rain water harvested should be promoted. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority.

		<i>All recharge should be limited to shallow aquifer.</i>
	2(a)	At least 20% of the open spaces as required by the local building bye-laws shall be pervious. <i>Use of Grass pavers, paver blocks with at least 50% opening, landscape etc. would be considered as pervious surface.</i>
Waste Management	3	<i>Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste.</i> <i>Sewage: In areas where there is no municipal sewage network, onsite treatment systems should be installed. Natural treatment systems which integrate with the landscape shall be promoted. As far as possible treated effluent should be reused. The excess treated effluent shall be discharged following the CPCB norms.</i> <i>Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development, Central Public Health and Environmental Engineering Organisation (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013.</i> <i>The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.</i>
Energy	4	<i>Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have notified their own ECBC, shall comply with the State ECBC.</i> <i>Outdoor and common area lighting shall be Light Emitting Diode (LED).</i> <i>Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1% of the demand load or as per the state level/ local building bye-laws requirement, whichever is higher.</i> <i>Solar water heating shall be provided to meet 20% of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.</i> <i>Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design.</i> <i>Wall, window, and roof u-values shall be as per ECBC specifications.</i>
Air Quality and Noise	5	<i>Dust, smoke & other air pollution prevention measures shall be provided for the building as well</i>

		as the site. These measures shall include screens for the building under construction, continuous dust/ wind breaking walls all around the site (at least 3 meter height). Plastic/tarpaulin sheet covers shall be provided for vehicles bringing in sand, cement, murram and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site. Sand, murram, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution. Wet jet shall be provided for grinding and stone cutting. Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust. All construction and demolition debris shall be stored at the site (and not dumped on the roads or open spaces outside) before they are properly disposed. All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Rules 2016. All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask. For indoor air quality the ventilation provisions as per National Building Code of India shall be made.
	5 (a)	The location of the DG set and exhaust pipe height shall be as per the provisions of the CPCB norms.
Green Cover	6	A minimum of 1 tree for every 80 square meters of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species.
	6 (a)	Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees for every 1 tree that is cut) shall be done and maintained.

(Category ‘2’: 20,000 to less than 50,000 Square meters)

MEDIUM	S.N.	ENVIRONMENTAL CONDITIONS
Topography and Natural Drainage	1	The natural drain system should be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site. No construction is allowed on wetland and water bodies. Check dams, bio-swales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water. Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.
Water Conservation,	2	A complete plan for rain water harvesting, water efficiency and conservation should be prepared.

<i>Rain Water Harvesting, and Ground Water Recharge</i>		<i>Use of water efficient appliances should be promoted with low flow fixtures or sensors.</i> <i>The local bye-law provisions on rain water harvesting should be followed. If local bye-law provision is not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Byelaws, 2016.</i> <i>A rain water harvesting plan needs to be designed where the recharge bores of minimum one recharge bore per 5,000 square meters of built up area and storage capacity of minimum one day of total fresh water requirement shall be provided. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority.</i> <i>All recharge should be limited to shallow aquifer.</i>
	<i>2(a)</i>	<i>At least 20% of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks with at least 50% opening, landscape etc. would be considered as pervious surface.</i>
<i>Waste Management</i>	<i>3</i>	<i>Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste.</i> <i>Sewage: Onsite sewage treatment of capacity of treating 100% waste water to be installed. Treated waste water shall be reused on site for landscape, flushing, cooling tower, and other end-uses. Excess treated water shall be discharged as per CPCB norms. Natural treatment systems shall be promoted.</i> <i>Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development, Central Public Health and Environmental Engineering Organisation (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013.</i> <i>The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.</i>
	<i>3 (a)</i>	<i>All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.</i>
	<i>3(b)</i>	<i>Organic waste compost/Vermiculture pit with a minimum capacity of 0.3 kg/person/day must be installed.</i>
<i>Energy</i>	<i>4</i>	<i>Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have</i>

		<i>notified their own ECBC, shall comply with the State ECBC.</i> <i>Outdoor and common area lighting shall be LED.</i> <i>Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design.</i> <i>Wall, window, and roof u-values shall be as per ECBC specifications.</i>
	4 (a)	<i>Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1% of the demand load or as per the state level/ local building bye-laws requirement, whichever is higher.</i>
	4 (b)	<i>Solar water heating shall be provided to meet 20% of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.</i>
	4 (c)	<i>Use of environment friendly materials in bricks, blocks and other construction materials, shall be required for at least 20% of the construction material quantity. These include flyash bricks, hollow bricks, AACs, Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials.</i> <i>Fly ash should be used as building material in the construction as per the provisions of the Fly Ash Notification of September, 1999 as amended from time to time.</i>
Air Quality and Noise	5	<i>Dust, smoke & other air pollution prevention measures shall be provided for the building as well as the site. These measures shall include screens for the building under construction, continuous dust/ wind breaking walls all around the site (at least 3 meter height). Plastic/ tarpaulin sheet covers shall be provided for vehicles bringing in sand, cement, murram and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site.</i> <i>Sand, murram, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution.</i> <i>Wet jet shall be provided for grinding and stone cutting. Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust.</i> <i>All construction and demolition debris shall be stored at the site (and not dumped on the roads or open spaces outside) before they are properly</i>

		disposed. All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Rules 2016. All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask. For indoor air quality the ventilation provisions as per National Building Code of India.
	5 (a)	The location of the DG set and exhaust pipe height shall be as per the provisions of the CPCB norms.
Green Cover	6	A minimum of 1 tree for every 80 sq.mt. of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species.
	6 (a)	Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees for every 1 tree that is cut) shall be done and maintained.
Top Soil preservation and reuse	7	Topsoil should be stripped to a depth of 20 cm from the areas proposed for buildings, roads, paved areas, and external services. It should be stockpiled appropriately in designated areas and reapplied during plantation of the proposed vegetation on site
Transport	8	A comprehensive mobility plan, as per MoUD best practices guidelines (URDPFI), shall be prepared to include motorized, non-motorized, public, and private networks. Road should be designed with due consideration for environment, and safety of users. The road system can be designed with these basic criteria. 1. Hierarchy of roads with proper segregation of vehicular and pedestrian traffic. 2. Traffic calming measures. 3. Proper design of entry and exit points. 4. Parking norms as per local regulation.

(Category ‘3’: 50000 to 150000 m²)

MEDIUM	S.N.	ENVIRONMENTAL CONDITIONS
Topography and Natural Drainage	1	The natural drain system should be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site. No construction is allowed on wetland and water bodies. Check dams, bio-swales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water. Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.

Water conservation- Rain Water Harvesting, and Ground Water Recharge	2	A complete plan for rain water harvesting, water efficiency and conservation should be prepared. The local bye-law provisions on rain water harvesting should be followed. If local bye-law provisions are not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Byelaws, 2016. A rain water harvesting plan needs to be designed where the recharge bores of minimum one recharge bore per 5,000 square meters of built up area and storage capacity of minimum one day of total fresh water requirement shall be provided. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority. All recharge should be limited to shallow aquifer.
	2(a)	At least 20% of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks with at least 50% opening, landscape etc. would be considered as pervious surface.
	2(b)	Use of water efficient appliances should be promoted. Low flow fixtures or sensors be used to promote water conservation.
	2(c)	Separation of grey and black water should be done by the use of dual plumbing system. In case of single stack system separate recirculation lines for flushing by giving dual plumbing system be done.
Solid Waste Management	3	Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste. The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.
	3(a)	All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.
	3(b)	Organic waste composter/Vermiculture pit with a minimum capacity of 0.3 kg/person/day must be installed.
Sewage Treatment Plant		Onsite sewage treatment of capacity of treating 100% waste water to be installed. Treated waste water shall be reused on site for landscape, flushing, cooling tower, and other end-uses. Excess treated water shall be discharged as per CPCB norms. Natural treatment systems shall be promoted. Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and

		<i>disposed as per the Ministry of Urban Development, Central Public Health and Environmental Engineering Organisation (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013.</i>
<i>Energy</i>	<i>5</i>	<i>Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have notified their own ECBC, shall comply with the State ECBC.</i> <i>Outdoor and common area lighting shall be LED.</i> <i>Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design.</i> <i>Wall, window, and roof u-values shall be as per ECBC specifications.</i>
	<i>5 (a)</i>	<i>Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1% of the demand load or as per the state level/local building bye-laws requirement, whichever is higher.</i>
	<i>5 (b)</i>	<i>Solar water heating shall be provided to meet 20% of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.</i>
	<i>5 (c)</i>	<i>Use of environment friendly materials in bricks, blocks and other construction materials, shall be required for at least 20% of the construction material quantity. These include flyash bricks, hollow bricks, AACs, Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials.</i> <i>Fly ash should be used as building material in the construction as per the provisions of the Fly Ash Notification of September, 1999 as amended from time to time.</i>
<i>Air Quality and Noise</i>	<i>6</i>	<i>Dust, smoke & other air pollution prevention measures shall be provided for the building as well as the site. These measures shall include screens for the building under construction, continuous dust/ wind breaking walls all around the site (at least 3 meter height). Plastic/ tarpaulin sheet covers shall be provided for vehicles bringing in sand, cement, murram and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site. Wheel washing for the vehicles used be done.</i>

		Sand, murram, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution. Wet jet shall be provided for grinding and stone cutting. Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust. All construction and demolition debris shall be stored at the site (and not dumped on the roads or open spaces outside) before they are properly disposed. All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Rules 2016. All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask. For indoor air quality the ventilation provisions as per National Building Code of India.
	6 (a)	The location of the DG set and exhaust pipe height shall be as per the provisions of the CPCB norms.
Green Cover	7	A minimum of 1 tree for every 80 sq.mt. of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species.
	7(a)	Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees for every 1 tree that is cut) shall be done and maintained.
Top Soil Preservation and Reuse	8	Topsoil should be stripped to a depth of 20 cm from the areas proposed for buildings, roads, paved areas, and external services. It should be stockpiled appropriately in designated areas and reapplied during plantation of the proposed vegetation on site.
Transport	9	A comprehensive mobility plan, as per MoUD best practices guidelines (URDPFI), shall be prepared to include motorized, non-motorized, public, and private networks. Road should be designed with due consideration for environment, and safety of users. The road system can be designed with these basic criteria. 1. Hierarchy of roads with proper segregation of vehicular and pedestrian traffic. 2. Traffic calming measures. 3. Proper design of entry and exit points. 4. Parking norms as per local regulation.
Environment Management Plan	10	An environmental management plan (EMP) shall be prepared and implemented to ensure compliance with the environmental conditions specified in item number 1 to 9 above. A dedicated Environment Monitoring Cell with defined functions and

		<i>responsibility shall be put in place to implement the EMP. The environmental cell shall ensure that the environment infrastructure like Sewage Treatment Plant, Landscaping, Rain Water Harvesting, Energy efficiency and conservation, water efficiency and conservation, solid waste management, renewable energy etc. are kept operational and meet the required standards. The environmental cell shall also keep the record of environment monitoring and those related to the environment infrastructure.</i>

APPENDIX-XV

Accreditation of Environmental Auditors (Qualified Building Auditors)

The Ministry of Environment, Forest and Climate Change (MoEFCC), through qualified agencies shall accredit the Qualified Building Environment Auditors (QBEAs). The Qualified Building Environment Auditors could be a firm/organization or an individual expert, who fulfils the requirements. The Ministry will implement this process of accreditation through Quality Council of India (QCI), National Productivity Council or any other organization identified by the Government. The organizations like Indian Green Building Council, Bureau of Energy Efficiency etc. can also be associated in the process of accreditation, training, and renewal. The environmental consultants accredited by the QCI for building sector will be qualified as QBEAs. The QBEAs will meet the following criteria. The accrediting agency can improvise on these criteria.

Qualifications of the Auditor:

- a. Education: Architect (Degree or Diploma), Town Planners (Degree), Civil Engineer/Mechanical Engineer (Degree or Diploma), PG in Environmental Science or any other qualification as per the scheme of the accreditation.*

Training:

- b. Mandatory training to be given by the accreditation body or their approved training providers. This will be as per the scheme of the accreditation.*

Experience:

- c. At least 3 years of work experience in the related field or building sector Environment Impact Assessment consultants accredited by QCI or any other experience criteria as per the scheme of the accreditation.*

Infrastructure and equipment:

- d. As per the scheme of the accreditation*

Renewal:

- e. The accreditation will be valid for 5 years and will be renewed as per the process developed under the accreditation scheme.*

Accountability/Complaint redressal mechanism: Any complaints regarding the quality of the work of QBEAs shall be made to the accreditation body. The accreditation body shall evaluate the complaint and take appropriate action including black listing or cancellation of the accreditation with wide public notice. This will be in addition to the action at the level of local authority for penalty and blacklisting. The Ministry can also take such action in case of specific complaint or feedback.

APPENDIX-XVI

Environmental Cell at the level of Local Authority:

An Environmental Cell shall be setup at the local authority level to support compliance and monitoring of environmental conditions in buildings. The Cell shall also provide assistance in environmental planning and capacity building within their jurisdiction. The responsibility of this cell would be monitoring the implementation of this notification and providing an oversight to the Third-Party Auditing process. The cell will operate under the local authority.

Constitution of the cell:

The cell will comprise of at least 3 dedicated experts in following fields:

- a. Waste management (solid and liquid)*
- b. Water conservation and management*
- c. Resource efficiency including Building materials*
- d. Energy Efficiency and renewable energy*
- e. Environmental planning including air quality management.*
- f. Transport planning and management.*

The Cell shall induct at least two outside experts as per the requirements and background of dedicated experts. Existing environmental cells at the level of local authority can be co-opted and trained for this Cell.

Financial Support:

An additional fee may be charged along with processing fee for building permission for integrating environmental conditions and it's monitoring. The local authority can fix and revise this additional fee from time to time. The amount of this fee shall be deposited in a separate bank account, and used for meeting the requirement of salary / emoluments of experts and running the system of online application, verifications and the Environmental Cell.

Functions of the Cell:

- 1. The cell shall be responsible for assessing and appraising the environmental concerns of the area under their jurisdiction where building activities are proposed. The Cell can evolve and propose additional environmental conditions as per requirements. These conditions may be area specific and shall be notified in advance from time to time. These additional conditions shall be approved following a due consultation process. These environmental conditions will be integrated in building permissions by the sanctioning authority.*

2. *Develop and maintain an online system for application and payment of fees. The Cell shall maintain an online database of all applications received, projects approved, the compliance audit report, random inspections made. The Cell shall maintain a portal for public disclosure of project details including self certification and compliance audit reports filed by the Qualified Building Environment Auditors for public scrutiny of compliance of environmental conditions by the project.*

3. *Monitoring the work of Environmental Audit process carried by the Qualified Building Auditors.*

4. *The Cell shall review the applications; finalize the additional environmental conditions if required within 30 days of the submission of the application to the local authority.*

5. *The Cell shall adopt risk based random selection of projects for verifying on site for certification of QBA, compliance of environmental conditions and five yearly audit report.*

6. *The Cell shall recommend to the local authority for financial penalty for non-compliance of environmental conditions by the project proponent.*

7. *The Cell shall recommend to the accrediting body and the local authority against any Qualified Building Environment Auditor, if any lapse is found in their work.”*

- d) This **amendment notification sought to decentralize regulation of building projects**, by authorizing urban local bodies to grant approval for building permission by providing integrated environmental conditions examined by environmental cell constituted in the said local bodies and this was required to be processed after making requisite changing/amendments in the by-laws and the relevant rules to be notified by State Governments after having concurrence from MoEF&CC and where such by-laws and rules are amended and, thereafter, on the recommendation of the environmental cell, constituted under urban local bodies, building permissions are granted. It was provided that Central Government may issue an order exempting requirement of separate EC for such projects. Different provisions were provided for the buildings having size of the projects between $5,000 \text{ m}^2 < 20,000 \text{ m}^2$; more than $20,000 \text{ m}^2$

but lesser than 50,000 m² and more than 50,000 m² but upto 1,50,000 m².

- e) This amendment notification was challenged before Tribunal in ***OA 677/2016, Society for Protection of Environment & Biodiversity vs. Union of India; OA 01/2017, Pushp Jain vs. Union of India; OA 7/2017, Ajay Kumar Singh vs. MoEF&CC; OA 55/2017, Mahendra Pandey vs. UoI and OA 67/2017, R. Shreedhar vs. UoI along with MA Nos. 148/2017, 03/2017, 445/2017, 879/2017 and 620/2017.*** The above OAs were disposed of by Principal Bench of Tribunal vide judgment dated 08.12.2017 and striking out provisions of clause 14(8) as amended by the above notification, Tribunal directed MoEF&CC to re-examine the notification dated 09.12.2016 and take appropriate steps to delete, amend and rectify the clauses in the light of the observations made in the judgment. In the meantime, since bye-laws were also amended by Delhi Development Authority (hereinafter referred to as '**DDA**') by notification dated 22.03.2016, Tribunal held that the said notification also shall not be given effect to unless the amendment notification dated 09.12.2016 is re-considered and amended as per the directions continued in the judgment. Tribunal also restrained MoEF&CC from giving effect to amendment dated 09.12.2016 till the above judgment is complied with. However, Tribunal also said that as per the earlier existing provisions of EIA 2006, the applications for grant of prior EC may be considered.
- f) This Tribunal gave a categorical and clear message to MoEF&CC that laudable social cause of providing houses to poor, does not get defeated by business, economic profitability with reference to ease of doing business while particularly protecting environment.

g) The above judgment was challenged in Supreme Court in **Civil Appeal No. 2522/2018, Union of India vs. Society for Protection of Environment & Biodiversity** which is pending.

H. Notification dated 14.11.2018 published in Gazette of India Extraordinary of the same date:

a) By this notification, **certain conditions were imposed upon Municipalities, Development Authorities, District Panchayats by delegating them power to ensure compliance of environmental conditions as specified in the Appendix** in respect of building and construction projects with built up area ≥20,000 sq. mtrs. to 50,000 sq. mtrs. and industrial sheds, educational institutions, hospitals and hostels for educational institution ≥20,000 sqm upto 1,50,000 sqm along with building permission and **to ensure that the conditions specified in Appendix are complied with, before granting the occupation certificate/completion certificate.** The Appendix given in this notification is as under:

“APPENDIX
Environmental Conditions for Buildings and Constructions
(Category: Building or Construction projects or Area Development projects and Townships> 20,000 to <50,000 Square meters as well as for industrial sheds, educational institutions, hospitals and hostels for educational institutions from 20,000 sq.m to<1,50,000 sq.m)

S.N	MEDIUM	ENVIRONMENTAL CONDITIONS
(1)	(2)	(3)
1	Topography and Natural Drainage	The natural drain system shall be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site. No construction is allowed on wetland and water bodies. Check dams, bio-swales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water. Buildings shall be designed to follow the natural topography as much as possible.

		<i>Minimum cutting and filling should be done.</i>
2	<i>Water Conservation, Rain Water Harvesting and Ground Water Recharge</i>	<i>A complete plan for rain water harvesting, water efficiency and conservation should be prepared and implemented.</i> <i>Use of water efficient appliances should be promoted with low flow fixtures or sensors.</i> <i>The local bye-law provisions on rain water harvesting should be followed. If local bye-law provision is not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Bye-laws, 2016.</i> <i>A rain water harvesting plan needs to be designed where the recharge bores of minimum one recharge bore per 5,000 square meters of built-up area and storage capacity of minimum one day of total fresh water requirement shall be provided. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority.</i> <i>All recharge should be limited to shallow aquifer.</i>
2(a)		<i>At least 20 per cent of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks, landscape etc. with at least 50 per cent opening in paving which would be considered as pervious surface.</i>
3	<i>Waste Management</i>	<i>Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste.</i> <i>Sewage: Onsite sewage treatment of capacity of treating 100 per cent waste water to be installed. Treated waste water shall be reused on site for landscape, flushing, cooling tower, and other end-uses. Excess treated water shall be discharged as per statutory norms notified by Ministry of Environment, Forest and Climate Change. Natural treatment systems shall be promoted.</i> <i>Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the</i>

		Ministry of Urban Development, Central Public Health and Environmental Engineering Organisation (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013. The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.
3 (a)		All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.
3(b)		Organic waste compost/Vermiculture pit with a minimum capacity of 0.3 kg per person per day must be installed.
4	Energy	Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have notified their own ECBC, shall comply with the State ECBC. Outdoor and common area lighting shall be Light Emitting Diode (LED). Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design. Wall, window, and roof u-values shall be as per ECBC specifications.
4 (a)		Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1 per cent of the demand load or as per the state level/ local building bye-laws requirement, whichever is higher.
4(b)		Solar water heating shall be provided to meet 20 per cent of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.

4(c)		Use of environment friendly materials in bricks, blocks and other construction materials, shall be required for at least 20 per cent of the construction material quantity. These include flyash bricks, hollow bricks, Autoclaved Aerated Concrete (AAC), Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials. Fly ash should be used as building material in the construction as per the provisions of the Fly Ash Notification S.O. 763(E) dated 14th September, 1999 as amended from time to time.
5	Air Quality and Noise	Roads leading to or at construction sites must be paved and blacktopped (i.e. metallic roads). No excavation of soil shall be carried out without adequate dust mitigation measures in place. No loose soil or sand or Construction & Demolition Waste or any other construction material that causes dust shall be left uncovered. Wind-breaker of appropriate height i.e. 1/3rd of the building height and maximum up to 10 meters shall be provided. Water sprinkling system shall be put in place. Dust mitigation measures shall be displayed prominently at the construction site for easy public viewing. Grinding and cutting of building materials in open area shall be prohibited. Construction material and waste should be stored only within earmarked area and road side storage of construction material and waste shall be prohibited. No uncovered vehicles carrying construction material and waste shall be permitted. Construction and Demolition Waste processing and disposal site shall be identified and required dust mitigation measures be notified at the site. Dust, smoke and other air pollution prevention measures shall be provided for the building as well as the site. Wet jet shall be provided for grinding and stone cutting.

		<i>Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust.</i> <i>All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Rules 2016.</i> <i>All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask.</i> <i>For indoor air quality the ventilation provisions as per National Building Code of India.</i>
5(a)		<i>The location of the Genset and exhaust pipe height shall be as per the provisions of the statutory norms notified by Ministry of Environment, Forest and Climate Change.</i> <i>The Genset installed for the project shall follow the emission limits, noise limits and general conditions notified by Ministry of Environment, Forest and Climate Change vide GSR 281(E) dated 7th March 2016 as amended from time to time.</i>
6	Green Cover	<i>A minimum of 1 tree for every 80 sq.mt. of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species.</i>
6 (a)		<i>Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees for every 1 tree that is cut) shall be done and maintained.</i>
7	Top Soil Preservation and reuse	<i>Topsoil should be stripped to a depth of 20 cm from the areas proposed for buildings, roads, paved areas, and external services.</i> <i>It should be stockpiled appropriately in designated areas and reapplied during plantation of the proposed vegetation on site.</i>
8	Transport	<i>The building plan shall be aligned with the approved comprehensive mobility plan (as per Ministry of Housing and Urban Affairs best practices guidelines (URDPFI)).</i>

I. Notification dated 15.11.2018 published in Gazette of India Extraordinary of the same date:

a) Paragraph 14 of EIA 2006 and entries in the item 8 in the schedule were substituted as under:

“14. Local bodies such as Municipalities, Development Authorities and District Panchayats, shall stipulate environmental conditions while granting building permission, for the Building or Construction projects with built-up area ≥ 20,000 sq. mtrs and < 50,000 sq. mtrs and industrial sheds, educational institutions, hospitals and hostels for educational institutions from built-up area ≥ 20,000 sqm to <1,50,000 sq.m as specified in Notification S.O. 5733(E) dated 14th November, 2018.”

(ii) in the Schedule, for item 8 and the entries relating thereto, the following item and entries shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)
“8	Building or Construction projects or Area Development projects and Townships as well as for industrial sheds, educational institutions, hospitals and hostels for educational institutions			
8(a)	Building and Construction projects		≥50,000 mtrs. sq. and <1,50,000 sq. mtrs. of built-up area	Note-1: The term “built-up area” for the purpose of this notification is the built-up or covered area on all the floors put together including its basement and other service areas, which are proposed in the buildings or construction projects. Note 2: The projects or activities shall not include industrial sheds, educational institutions, hospitals and hostels for educational institutions. Note 3: General Conditions shall not apply.
8 (b)	Townships and Area Development projects as well as industrial sheds educational institutions, hospitals and hostels for educational institutions		≥1,50,000 sq. mtrs. of built-up area and or covering an area ≥ 50 ha.	A project of Township and Area Development Projects covered under this item shall require an Environment Assessment Report and be appraised as Category ‘B1’ Project. Note: - General Conditions shall not apply.

- b) Notifications dated 14.11.2018 and 15.11.2018 were issued in complete disregard of directions contained in the judgment dated 08.12.2017. MoEF&CC insisted to delegate power to local bodies ignoring that these local bodies have any expert in the matter and no study was conducted whether expert infrastructure is available to such bodies. It is also true that though appeal was filed in Supreme Court but the same was pending and judgment of Tribunal has its legal consequences so long it is not otherwise ordered by appellate Court i.e., Supreme Court.
- c) The notifications dated 14.11.2018 and 15.11.2018 were challenged in Delhi High Court in various writ petitions wherein interim orders were passed. These writ petitions are 12571/2018, Social Action for Forest and Environment vs UoI and No. 12570/2018, Society for Protection of Environment & Biodiversity (SPENBIO) vs. UOI. The same issue was raised before this Tribunal also in **OA 1017/2018, Shashikant Vithal Kamble vs UOI** but referring to the matter pending in Delhi High Court, Tribunal had deferred the matter *sine-die* vide order dated 22.01.2019.

114. A perusal of EIA 2006 and its amendments made from time to time particularly, in respect of projects/activities covered by entry 8 in Schedule I of the said **notification** shows that the activities relating to building construction and development would require EC from Competent Authority, if the built up area is more than 20,000 m². Item 8(a) says that in respect of building and construction projects, if built up area is more than 20,000 m² and less than 1,50,000 m², the project would be treated as 'B2' category project. Item 8(b) covers another category of township and area development activities/projects where land is more than 50 ha or

built-up area is more than 1,50,000 m² and under this item, the category would be 'B1'. However, under item 8, the projects whether under item 8(a) or 8(b), the same would be '**B category**' projects. The difference in categorization of the projects is in respect to process of consideration of application for prior EC and appreciation by the concerned Environmental Assessment Committee.

Analysis of EIA 2006 by Courts:

115. Provisions of EIA 2006 and the process thereunder have been considered in detail, by Supreme Court in ***Hanuman Laxman Aroskar vs. Union of India, (2019)15SCC401***. It was an appeal taken to Supreme Court, from a judgment/order dated 21.08.2018 passed by this Tribunal in ***Appeal No. 5/2018*** (earlier ***Appeal No. 61/2015/WZ***), ***Federation of Rainbow Warriors vs. Union of India & Ors. and Appeal No. 6/2018, Hanuman Laxman Aroskar vs. Union of India***, wherein grant of EC for development of green field International Airport at Mopa, Goa, was challenged. Project was in category 'A' hence as per EIA 2006 'Prior EC' was to be granted by MoEF. EC was granted on 28.10.2015. It was challenged by M/s. Federation of Rainbow Warriors in ***Appeal No. 61/2015*** at Tribunal's Western Zonal Bench, Pune. Another Appeal No. 1/2016 was filed by Hanuman Laxman Aroskar at NGT, Western Zonal Bench, Pune. Both these appeals were transferred to Principal Bench at New Delhi and numbered as Appeal No. 5 and 6 of 2018 respectively. One of the issues raised before Supreme Court was; PP did not give complete information in Form I submitted to the Competent Authority for grant of EC; PP is duty bound to make a proper disclosure and highest level of transparency is required; and there was concealment of certain facts by leaving certain columns blank or by not giving required details. It was

contended that for these reasons, application for EC ought to have been rejected.

116. Supreme Court considered scheme of EIA 2006 in detail. Going into historical backdrop of EIA 2006, Court said that by Constitution (Forty-second Amendment) Act 1976 w.e.f. 03.01.1977, Article 48A was inserted to the Constitution which mandates that State shall endeavor to protect and improve environment and safeguard forests and wildlife of the country; Article 51A(g) of Constitution places a corresponding duty on every citizen to protect and improve natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures; following decisions taken at United Nations Conference on Human Environment held at Stockholm (Stockholm Conference) in June 1972, in which India also participated, Parliament enacted EP Act, 1986 to protect and improve environment and prevent hazards to human beings, other living creatures, plants and property; on 27.01.1994, MoEF&CC, in exercise of powers under Section 3(1) read with (2)(v) of EP Act, 1986 and Rule 5(3)(d) of EP Rules, 1986, issued notification, S.O. 60(E), 1974, imposing restrictions and prohibitions on the expansion and modernization of any activity or new project unless an EC was granted under the procedure stipulated in the notification; Notification contemplated that any person undertaking a new project or expanding and modernizing an existing project, would submit an application to the Secretary, MoEF; application to be made in accordance with Schedule, also provided that, it shall accompany project report including EIA Report, an Environment Management Plan (hereinafter referred to as '**EMP**') and other details as per the Guidelines issued by Government from time to time; Competent Impact Assessment Agency would then evaluate application and submit report; and if necessary, it is also empowered to

constitute a Committee of Experts which would have a right of entry into and inspection of the site during or after the commencement of the preparations relating to the project; concealment of any factual data or submitting false or misleading information would make the application liable for rejection and would lead to cancellation of any EC already granted on that basis; EIA 1994 was superseded by EIA 2006; real distinction between EIA 1994 and EIA 2006 is that in the later EC must be granted by Regulatory Authority prior to commencement of any construction work or preparation of land; EIA 2006 divides all projects in Category A and Category B projects; under EIA 1994, PP was required to submit application along with all reports including EIA report but under EIA 2006 prior to preparation of EIA report by PP, the authority concerned would formulate comprehensive Terms of Reference (hereinafter referred to as 'ToR') on the basis of information furnished by PP addressing all relevant environmental concerns; this would form the basis for preparation of EIA Report; a pre-feasibility Report is also required to submit with the application unless exempted in the Notification; under EIA 1994, final approval was granted by Impact Assessment Authority but under Notification of 2006, final regulatory approval is granted by MoEF&CC or SEIAA, as the case may be; but approval is to be based on recommendations of EAC functioning in MoEF&CC or State Expert Appraisal Committees (SEACs) which are constituted for that specific purpose; thus the salient objective which underlies EIA 2006 is protection, preservation and continued sustenance of environment when the execution of new projects or the expansion or modernization of existing projects is envisaged; it imposes certain restrictions and prohibitions based on the potential environmental impact of projects unless 'Prior EC' has been granted by the authority concerned.

117. Supreme Court said that **an application must be submitted prior to the commencement of any construction activity or preparation of the land at the site.** The process to obtain EC comprised broadly 4 stages i.e. (i) Screening, (ii) Scoping, (iii) Public Consultation and (iv) Appraisal. The step of screening is restricted to Category B projects. It entails an examination of whether the proposed project or activity requires further environmental studies for preparation of an EIA for its appraisal prior to grant of EC. The projects requiring an EIA are further categorized as Category B1 projects and remaining projects are categorized as Category B2 projects. Category B2 projects do not require an EIA. The categorization is in accordance with the guidelines issued by MoEF&CC in this regard from time to time. The stage of scoping requires formulation of comprehensive ToR so as to address all relevant environmental concerns for the preparation of EIA. Amongst other things, information furnished by applicant in Form 1 and Form 1A along with the proposed ToR forms the basis for preparation of ToR. Public consultation at the third stage is attracted in all Category A and Category B1 projects. Summary of EIA is prepared in the format given in Appendix IIIA on the basis of ToR furnished to the applicant. This stage involves the process by which concerns of local affected persons and others who have plausible stake in the environmental impact of the project or activity are ascertained with a view of taking into account all the material concerns in the project or activity design as appropriate. The stage of appraisal involves detailed scrutiny by EAC or SEAC of all documents submitted by applicant for the grant of EC. The appraisal is carried out in a transparent manner in a process to which PP is also invited for furnishing clarification in person or through an authorized representative. The scheme requires Regulatory Authority to examine documents strictly with reference to ToR and if there is any inadequacy to communicate to EAC or SEAC within 30 days of receipt of

the documents; recommendations made by EAC or SEAC are then required to be considered by MoEF&CC or concerned SEIAA who are supposed to communicate their decision to PP within 45 days of receipt of the recommendations. Ordinarily Regulatory Authorities are supposed to accept recommendations of EAC or SEAC. In case of disagreement, Regularity Authority is required to seek a reconsideration of recommendations by the concerned recommending body. Importance of provisions of EIA 2006 in reference to protection of environment has been stressed upon by Supreme Court in **para 56** of the report (**SCC**) as under:

*“The 2006 notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. It serves as a balance between development and protection of the environment: there is no trade-off between the two. **The protection of the environment is an essential facet of development. It cannot be reduced to a technical formula.** The notification demonstrates an increasing awareness of the complexities of the environment and the **heightened scrutiny required to ensure its continued sustenance, for today and for generations to come.** It embodies a commitment to sustainable development. In laying down a detailed procedure for the grant of an EC, the 2006 notification attempts to bridge the perceived gap between the environment and development.”*

118. Court also observed that under EIA 2006, process of obtaining an EC commences from the production of information stipulated in Form 1/Form 1A; crucial information regarding particulars of proposed project is **sought** to enable EAC or SEAC to prepare comprehensive ToR which applicant is required to address during the course of preparation of EIA. Relevant observations in **para 60 of judgment** are as under:

“60. Under the 2006 Notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1A.

.....

.....

Some of the information sought is produced thus:

60.1. Construction, operation or decommissioning of the project involving actions, which will cause physical changes in the locality (topography, land use, changes in water bodies, etc.).

60.2. **Use of natural resources** for construction or operation of the project (such as land, **water**, materials or energy, especially any resources which are non- renewable or in short supply).

60.3. Use, storage, transport, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about the actual or perceived risks to human health.

60.4 **Production of solid wastes during construction, operation or decommissioning.**

60.5. Release of pollutants or any hazardous, toxic or noxious substances to air.

60.6. Generation of noise and vibration, and emissions of light and heat.

60.7. **Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea.**

60.8. Risk of accidents during construction or operation of the project, which could affect human health or the environment.

60.9. **Environment sensitivity which includes**, amongst other things, the furnishing of the following details:

60.9.1. **Areas protected under** international and **national legislation.**

60.9.2. **Ecologically sensitive areas**

60.9.33 **Areas used by protected, important or sensitive species of flora or fauna.”**

(Emphasis added)

119. The importance of correctness and transparency of the information and that any false statement or concealment of the same would be fatal, was **particularly** stressed by Court in **para 62 of judgment**, observing:

“62. The information provided in Form 1 serves as a base upon which the process stipulated under the 2006 notification rests. An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable persons concerned to provide comments and representations at the public consultation stage. The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be

rejected immediately. Clause (vi) of paragraph 8 of the notification provides thus:

“Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice.”

(Emphasis added)

120. Supreme Court also referred and approved two judgments of this Tribunal in **Save Mon Region Federation vs. Union of India, 2013 (1) All India NGT Reporter 1** and **Shreeranganathan K P vs. Union of India 2014 SCC online NGT 15** wherein, on the basis of information furnished in Form 1, the deficiencies in EIA Report, process of appraisal etc., were considered in detail to find out whether EC was granted in accordance with law or not. Court distinguished an earlier judgment in **Lafarge Umiam Mining Private Limited vs. Union of India 2011 (7) SCC 338** observing that it was the case under EIA 1994 when provisions of EIA 2006 were not applicable. Court said that decision was based on facts of that case, summarized by Court in **Hanuman Laxman Aroskar (supra)** in **para 138 of judgment**. It was also held that, relevant material, if has been excluded for consideration or extraneous circumstances were brought in mind, there was a failure to observe binding norms under EIA 2006 and consequential serious flaw in the decision-making process, would amount to an illegal exercise and failure of statutory duty, so as to vitiate EC. In **para 157 of judgment**, importance of the correct and complete disclosure of information by PP in his application, Form 1 and Form 1A, and further consideration by Competent Authority has been discussed, as under:

“The 2006 Notification must hence be construed as a significant link in India’s quest to pursue the SDGs. Many of those goals, besides

*being accepted by the international community of which India is a part, constitute a basic expression of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the aspirations of our own Constitution. **The fundamental principle which emerges from our interpretation of the 2006 Notification is that in the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive.***

(Emphasis Added)

121. Further, in **para 158 of judgment**, in ***Hanuman Laxman Aroskar (supra)***, Court observed:

*“Repeatedly, it has been urged on behalf of the State of Goa, MoEFCC and the concessionaire that the **need for a new airport** is paramount with an increasing volume of passengers and **consequently the flaws in the EIA process should be disregarded.** The need for setting up a new airport is a matter of policy. The role of the decision-makers entrusted with authority over the EIA process is to ensure that every important facet of the environment is adequately studied and that the impact of the proposed activity is carefully assessed. **This assessment is integral to the project design because it is on that basis that a considered decision can be arrived at as to whether necessary steps to mitigate adverse consequences to the environment can be strengthened.**”*

(Emphasis Added)

122. Supreme Court ultimately held that report of EIA based on incomplete information supplied by PP is vitiated. In **para 159**, it is said:

*“In the present case, as our analysis has indicated, **there has been a failure of due process commencing from the non-disclosure of vital information by the project proponent in Form 1. Disclosures in Form 1 are the underpinning for the preparation of the ToR. The EIA report, based on incomplete information has suffered from deficiencies which have been noticed in the earlier part of this judgment including the failure to acknowledge that within the study area contemplated by the Guidance manual, there is a presence of ESZs.**”*

(Emphasis Added)

123. Manner in which application submitted for grant of EC has to be dealt with by SEIAA or MoEF, has been considered in ***Bengaluru***

Development Authority v. Sudhakar Hegde & Ors.; (2020) 15 SCC 63.

Supreme Court had an appeal arising from NGT's judgment dated 08.02.2019, whereby EC granted to appellant (BDA) for development of an eight lane Peripheral Ring Road connecting Tumkur Road to Hosur Road, a length of 65 kilometers was quashed, on the ground that report was based on primary data collected more than three years prior to submission to SEIAA. Tribunal directed that PP will not proceed on the basis of EC, which was quashed. Three issues were raised before Supreme Court. For our purpose, relevant question is, "whether EIA 2006 was followed or not".

In **para 87 of judgment**, Court said that

*"appraisal by SEAC is structured and defined by EIA Notification, 2006. At this stage, **SEAC is required to conduct "a detailed scrutiny" of the application and other documents including EIA report submitted by applicant for grant of an EC.** Court also said that upon completion of appraisal processes, SEAC makes "categorical recommendations" to SEIAA either for grant of a 'Prior EC' on stipulated terms and conditions or rejection of the application. The **recommendations made by the SEAC for the grant of EC, are normally accepted by the SEIAA and must be based on "reasons".**"*

(Emphasis Added)

124. Court further said that **reasons furnished by SEAC must be assessed with reference to the norm that it is required to submit reasons for its recommendations.** Court found that SEAC, in that case, analyzed the matter perfunctory and fails to disclose reasons upon which it made recommendation to SEIAA for grant of EC. It merely proceeds on the reply submitted by PP. In para 89 of judgment, Court said:

***"SEAC is under an obligation to record the specific reasons upon which it recommends the grant of an EC.** The requirement that the SEAC must record reasons, besides being mandatory under the 2006 Notification, is of significance for two reasons: (i) The SEAC makes a recommendation to the SEIAA in terms of the 2006 Notification. The regulatory authority has to consider the recommendation and convey its decision to the project proponent. The regulatory authority, as para 8(ii) of the 2006 Notification provides, shall normally accept the recommendations*

of the EAC. Thus, **the role of the SEAC in the grant of the EC for a proposed project is crucial**; and (ii) The grant of an EC is subject to an appeal before the NGT under Section 16 of the NGT Act 2010. The **reasons furnished by the SEAC constitute the link upon which the SEIAA either grants or rejects the EC**. The reasons form the material which will be considered by the NGT when it considers a challenge to the grant of an EC”.

(Emphasis added)

125. Approving judgment of this Tribunal in **Shreeranganathan K P vs. Union of India; (2014) SCC Online NGT 15**, Supreme Court said:

“EAC had not conducted a proper appraisal given its failure to consider the available material and objections before it. The EAC had thus failed to conduct a proper evaluation of the project prior to forwarding to the regulatory authority its recommendation”.

(Emphasis added)

126. In para 92 of the judgment, Supreme Court said:

“SEAC, as an expert body, must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment and scrutinize the document submitted to it. The SEAC is duty bound to analyze the EIA report. The SEAC is not required to accept either the EIA report or any clarification sent to it by the project proponent. In the absence of cogent reasons by the SEAC for the recommendation of the grant of EC, the process by its very nature, together with the outcome, stands vitiated.”

(Emphasis added)

127. The above statutory provisions and binding authorities of Supreme Court make it very clear that the projects/activities which are covered by EIA 1994 or EIA 2006 are bound to obtain environmental clearance/prior environmental clearance and any violation thereof would result in rendering the entire project, wholly illegal.

128. In the present case, we find that EIA 1994 was amended by Notification dated 07.07.2004 bringing in construction projects within its purview and, therefore, even the license for development of 5.887 acres of land granted on 02.12.2004 was within the purview of EIA 1994. It has

also come on record that APIL-PP applied to MoEF&CC on 30.03.2006 for grant of EC for IVY Group Housing Project for which license dated 02.12.2004 was granted by TCPD. Obviously, this application was filed under the amended provisions of EIA 1994 which became applicable since 07.07.2004. APIL-PP disclosed total plot area as 23823.94 m² (5.88 acres) and built-up area as 41433.94 m². No EC was granted but APIL-PP proceeded with the execution of the project. Taking cognizance of this violation, a complaint under Section 15 of EP Act, 1986 was filed in Special Environment Court vide complaint No. 48/08 which was disposed on 20.12.2008 in a Mega Lok Adalat. This is evident from report dated 08.01.2020 filed by HSPCB that APIL-PP made a statement before Mega Lok Adalat that it had obtained EC and accordingly, fine of Rs. One thousand and compensation of Rs. One Lakh was imposed by Mega Lok Adalat considering plea bargaining application moved u/s 265-B Cr. PC. It is thus evident that even the license of 2004 and the construction made pursuant thereto was illegal and it was found so by Special Environment Court while deciding complaint no. 48/08 though on a false statement made by APIL-PP, Mega Lok Adalat while deciding the said complaint vide order dated 20.12.2008 imposed petty fine/compensation upon APIL-PP.

129. We have referred to this fact not to make this violation as one of the foundations of our order but only to show that APIL-PP has not only violated environmental laws earlier but was convicted also in the proceedings initiated under Section 15 of EP Act, 1986.

130. Now coming to the subsequent licenses dated 12.02.2007 and 13.04.2011, we find that APIL-PP in its objections filed before CPCB/Statutory Regulators claimed that the same were separate projects but sanctioned layout plan dated 15.09.2010 shows that subsequent licenses were part and parcel of earlier licenses and thus a composite

layout plan was sanctioned by TCPD Haryana. In view thereof, provisions of EIA 2006, in our view were attracted to the development carried out pursuant to licenses dated 12.02.2007 and 13.04.2011 but APIL-PP having proceeded to execute the said development without obtaining any EC, has clearly violated the provisions of EIA 2006.

131. It is also evident from record that Consent to Establish/Consent to Operate under provisions of Water Act 1974 and Air Act 1981 were also not obtained by PP. Therefore, there is clear violation thereof of the said statutes also.

132. The stand taken by APIL-PP before authorities that it had completed project in 2004 is neither substantiated nor proved from any document in as much as in respect of some of the licenses granted, only Part Completion Certificates were issued by TCPD Haryana and final Completion Certificate application was rejected on 19.04.2018. It is not the case of anyone that the said order was challenged by APIL-PP in any higher forum in appeal etc. Therefore, we can reasonably conclude that the said order dated 19.04.2018 rejecting application for grant of final Completion Certificate has attained finality. In the result, we have no hesitation in observing that the constructions and development made by APIL-PP were in utter violation of environmental laws including EIA 2006 read with EP Act 1986, Water Act 1974, Air Act 1981 and violation within limitation of Section 15 can be taken into consideration for the purpose of passing consequential punitive/remedial order by this Tribunal.

Revised approved Layout plan dated 15.09.2010:

133. Copy of this plan has been filed as annexure-III to the report submitted on 16.11.2018. Approval of layout plan was granted on 15.09.2010 but corrected by including license no. 32/2011 dated

13.04.2011 as mentioned in the said plan, evident from page 88. The revised plan shows that license was not treated as a separate project but a comprehensive expansion of already issued licenses. The details of areas in the approved plan mention that area already licensed is 602.64 acres and the new license was issued for 1.546 acres making total licensed area as 604.194 acres. In the entire area of 604.194 acres, area under group housing was 10.357 acres and net plan area was 585.295 acres. Public amenities to be provided included crèche, nursery school, primary school, secondary schools, dispensaries, health centers, club/community centers, police post, religious building, sub-post office, telephone exchange and electric service stations. Details of plots comprising 15 types based on sizes are also given in the approved plan and total number of plots are more than 5,000. **It is thus evident that license no. 32 of 2011 dated 13.04.2011 was expansion of already granted licenses and total area being more than 50 ha., project was within item 8(b) of schedule I to EIA 2006, hence prior EC was obligatory but the same was not obtained.**

Completion Certificates:

134. APIL-PP has taken a defense before Committees and CPCB that the project in question was completed prior to 07.07.2004, therefore, provisions of EIA 1994 as amended by notification dated 07.07.2004, as also EIA 2006 were not applicable to the project question. Since it has not appeared before us, we do not have advantage of its defense. However, we will proceed to consider merits of stand taken by APIL-PP before authorities.

135. The submission is misleading and remained unsubstantiated. We have already referred to the so-called Completion Certificates which are only part Completion Certificates dated 10.11.2000, 15.01.2001,

23.02.2001, 26.06.2001, 10.07.2002 and 20.05.2003. Nothing has been placed on record to show that a complete Completion Certificate was ever issued by Component Authority prior to 07.07.2004 or even thereafter. The defense taken by APIL-PP, therefore, has no basis and remained unsupported by any document. Be that as it may, ‘development’ included sewer system, roads, parks and green belts etc. It has come on record vide joint Committee’s report dated 16.11.2018 that though APIL-PP claimed that sewage generated in the licensed colony is discharged through HUDA sewerage system through HUDA STP for treatment but as a matter of fact, sewage was meeting storm water drain and not getting passed through sewerage system to STP. This fact is fortified from photo 4 which is on page 105 of the paper book.

136. This fact is not disputed by APIL/PP as is evident from its reply dated 29.01.2019 (page 149 of paper book) and instead claim of APIL-PP is that the project was completed prior to 07.07.2004 and at that time, there was no requirement making it mandatory to provide STP in a residential project. Findings of Committee and reply given by APIL/PP in its letter dated 29.01.2019 read as under:

Sl No.	Points raised in Show Cause Notice	Reply
6	Concluding Remarks:- Project proponent is required to obtain Environmental Clearance under provisions of notification dated 14 th September 2006, as last two licenses granted after 14.09.2006, cutoff date of requiring EC and total area crossed the threshold limit. Consent to Establish & Consent to Operate have also not been obtained. It is violation of Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 by project proponent. Sewage is meeting to the storm water drain as it is	<i>The existing Colony was completed much before July 7, 2004 notification (and its amendment on 14th Sep. 2006), in which, MoEF included the residential project. Previously before the notification it was not necessary to get the EC for residential/plot development project.</i> <i>Licenses of 1.0 acre and 1.55 acre are separate licenses and do not fall under the purview of obtaining EC, since, it does not cross either the built-up area of 20000 Sq.</i>

	<i>not getting passed through sewerage system of HUDA STP and not installed STP. DG sets are operating without adequate stack height.</i>	<i>m. or 50 hectare. Hence, proponent did not proceed for obtaining EC.</i> <i>Due to some unforeseen reasons, the CTE/CTO application could not be submitted.</i> <i>Now, we intend to submit the application, which nay kindly be permitted pleas.</i> <i>Huda has provided us a NOC letter also to connect the colony sewer line to their master sewer line.</i>

137. The defense that two licenses of 1.0 acre and 1.55 acres were separate, we have already dealt with in the light of revised lay out plan demonstrating fallacy of this defense.

Violation regarding STP:

138. It is not disputed that APIL-PP has not obtained Consent to Establish/CTO before commencement or making the project operational. It is however, said that STPs were provided separately in all licensed Group Housing projects and APIL-PP has also **undertaken to provide separate STP of sufficient capacity** in respect of area of any separate license. However, with regard to discharge of sewerage, it is said that HUDA has issued NOC to connect colony sewer line to Master Sewer line of HUDA and, therefore, there is no violation.

139. The provisions of Water Act, 1974 and Air Act, 1981 were in operation when project commenced. Even NOC dated 01.06.2004 issued by HUDA communicating its consent provided a condition to connect sewer connection at location ‘A’ of Sushant Lok I with HUDA sewer line between Sector 43 and 53 Gurgaon. Condition no. 10 categorically stated that it shall be ensured by APIL-PP that sewerage effluent to be disposed of in HUDA sewer **within the permissible limits as prescribed by**

Haryana Pollution Water & Control Board. It clearly shows that only treated sewage could have been discharged in HUDA sewer line. In order to make sewage in conformity with permissible limits of the standards prescribed by Haryana Pollution Water & Control Board, untreated sewage water in the project area/area developed by APIL-PP has to be treated by installing STP. **Discharge of untreated sewage by not constructing STP in the project area of the requisite capacity, and more so, discharge of untreated sewage in storm water drain, is a serious violation of the provisions of Water Act, 1974.**

140. Further, stand taken by APIL-PP that it undertakes to provide separate STP of requisite capacity in all separate licenses area, is an assurance for future but in the past as well as in present time, violation of environmental laws and norms is admitted, hence consequential action including remedial action has to be taken and ordered against APIL-PP.

Encroachment on green belt/park and open space area:

141. Committee has very categorically recorded its findings that there is encroachment like hutment for security/labour, DG Sets, kitchen, garden etc. and further the area earmarked as green area/green belt has not been developed according to norms and standards. APIL-PP has replied on this aspect by relying on approved plan, stating that net planned area provided saleable area of 316.802 acres out of total licensed area of 604.194 acres which comes to 54.08% leaving more than 35% area for green belt, roads etc. Reply is clearly misleading in as much as approved plan was and may have been as per the relevant provisions complying with the requirement of remaining 45% area for roads, open spaces etc. but what area was actually left by APIL-PP was relevant to be replied by PP in this case, which it has not. Committee has found that there were encroachments and earmarked area for green belt etc. was not developed as per norms. APIL-

PP in its reply dated 29.01.2019 has not stated anywhere specifically that at least 45% of the total licensed area was left for the purposes as provided under clause 4(1) of HDRUA Rules, 1976. Here, we are more concerned with non-development of green area/green belt which was part of approved plan and Committee report shows that the same has not been developed as per the norms. The inference is inevitable that APIL-PP has not complied with the approved plan/scheme as per the norms, by observing and complying with those aspects which were relevant for protection and preservation of environmental i.e., maintenance of green belt.

142. Violation under this head has to be examined in the light of the relevant provisions made with regard to extraction of ground water and also the status of ground water in district Gurgaon, Haryana.

GROUND WATER

143. One of the allegations of violation of environmental norms relates to illegal extraction of ground water. Proponents claimed that they have not violated the said provisions particularly, same were not applicable to them at the relevant point of time while the applicants as also the Committee's reports and the facts on record are otherwise. This issue needs to be considered in the light of the evolution of the statutory provisions relating to ground water and it needs a brief retrospect of the said evolution of laws relating to extraction of ground water.

GROUND WATER – CONCEPT - PAST AND PRESENT

144. Before dealing with the issues on merits, it would be appropriate to have a glance on the concept of ground water since ancient times.

145. Water is one of the five elements which constitute human body. It is needed for very sustenance of civilization. Interest of society, in general, and common man's need of water for drinking purposes, domestic uses

etc., in particular cannot be doubted. In many areas, people find it difficult to get potable water, due to scarcity. Almost every second day we find crises of water, reported in media, in one or the other city. Simultaneously, there is commercial interest of individuals who contribute to the economy of the country and they require water for commercial purposes. The scarcity of water is well known. Search of solution of this problem is Global. Scarcity of water is being faced almost by all countries. Attempts have been made at different levels, including national and international, to take steps for making potable water available to the common man but simultaneously there cannot be a complete denial or prohibition for use of water in commercial and industrial activities which is the backbone of development and economy. A balance has to be made but when situation comes in a given case, to select any one of them, obviously saving of life will have to be preferred.

Life cannot be imagined without water (बिन पानी सब सून):

146. No one can dispute the importance of water. It is essential for life on earth. It is available on the planet in all the three phases namely solid, liquid and gas. Water ties together, major parts of earth climatic system, in the form of air, clouds, ocean, lakes, vegetation, snowpack and glaciers. Conversion and reconversion of one form of water to any other, is commonly known as water cycle which shows continuous movement of water within earth and atmosphere. In the form of liquid and solid, it is available on earth, on the surface and beneath the surface. Snowpack and glaciers are solid forms on the surface while in liquid form, it is available in the running condition as oceans, rivers, streams, waterfalls etc. and sometimes as water body or wetland in the form of lakes, ponds and other wetlands. Inside/beneath the surface, it percolates the sand and rocks and is available as ground water. Existence of ground water is necessary

and integral part of water cycle in as much as it contributes to the surface water which is involved in the process of conversion as vapour/cloud due to heat or in cold areas solidify as snow. In the areas where large quantity of water evaporates, and results in scarcity of water on the surface, it is ground water which helps to maintain surface water and also contributes to fill water in wells. Water influences intensity of climate variability and change. It is key part of extreme events like drought and floods. If surface water exceeds the limit of carrying capacity, it will flood the plains and if evaporation of surface water is very high and recharge is not as per the requirement, it may result in causing drought. Not only for human sustenance, but, for every activity or in other words, in every walk of life, mankind needs water.

147. Water has its role as an intimate part of the human existence, as an individual, or, in group or society, for personal life or social life, for household needs or commercial or industrial needs, etc. Everywhere water is required. It is fundamental and basic need of life cycle, whether it is animal kingdom or plant kingdom. It is, therefore, extremely important that water resources are protected, both, for human uses and eco-system.

148. Our forefathers at a very early stage, had recognized importance of water and educated people to respect nature, giving it spiritual and religious stature. Mountains, rivers, waterfalls, streams, ponds, wells, trees etc., all were treated as divine objects, and worshipped. The idea was that the people would be obliged not only morally but socially and religiously to protect nature including water sources, resources and, practice its reasonable utilization. Unfortunately, in the last few centuries, above learnings and teachings, handed down to us, by our learned, wise and farsighted esteemed forefathers/ancestors, have been ignored under a misconception of a materialistic kind of development. We have

compromised with water resources, exploited indiscreetly, misused gift of nature i.e., free availability of minerals, wood, clean air and water, in all possible manner. That is how rivers, streams, and water bodies are drying, ground water table is depleting, glaciers are melting and world is facing a severe crisis of water supplies. True, the developmental activities cannot be made solely responsible in as much as population explosion, our negligence towards environmental pollution, etc. are some other root causes which have also contributed to this problem.

149. Sometimes, it is said that scientifically, water is never lost but only changes form, therefore, alleged crisis is artificial and a hollow cry. But this is not true. When we consider in the context of need of water for human activities, it is true that earth water is always in movement and there is a natural water cycle known as hydrologic cycle. There is continuous movement of water on, above, and below the surface of the earth. But the cardinal fact is, if water, available on surface and under the surface, is used in an unplanned manner, irrespective of the quantum of water available at a particular place, there will be a scarcity and this will reflect not only on the hydrologic cycle but adversely affect water availability at other places also. If surface water for one or the other reason, goes down, recharge of ground water will also get reduced and it will create scarcity of ground water, reflect when it is sought to be extracted through wells and this will ultimately reflect upon the quantum of surface water also.

150. Water is important for the very sustenance, not only for Homo Sapiens but the entire animal kingdom. With water regime, civilizations have developed and disappeared. Interestingly, everybody knows that mankind cannot survive without fresh, healthy and sustained air, water and clean atmosphere, still ground level efforts for its protection are not

so serious. Globally, though every country talks seriously about environment and its protection, shows concern about its depletion, but in practice, their action is not true to the words spoken in global meetings. Developed countries find themselves free to damage environment in the manner they like but blame underdeveloped or developing countries and so is the reverse. The developing and underdeveloped countries lack resources to take care and leave climate at its fate, and making it free to its inhabitants to use and consume natural resources in whatever manner they like. Extensive exploitation of water, either unregulated or with superficial or shallow regulation becomes destiny of water.

151. So far as India is concerned, historically, environment has been given a very pious place and regard, since pre-*vedic* as well as *vedic* era. “Water”, since pre-*vedic* era, has been recognized as a spiritual symbol. *Rigveda* identifies “water” as the first residence or ayana of nara, the Eternal Being. Therefore, water is said to be *pratishttha*, the underlying principle, or the very foundation of this universe. In Sataptha, it is said:

“Water may pour from the heaven or run along the channels dug out by men; or flow clear and pure having the Ocean as their goal...In the midst of the Waters is moving the Lord, surveying men’s truth and men’s lies. How sweet are the Waters, crystal clear and cleansing...From whom... all the Deities drink exhilarating strength, into whom the Universal Lord has entered..”.

152. Early *Vedic* texts also identify “water” as a manifestation of the feminine principle, commonly as *Sakti*. *Rigveda* said:

“I call the Waters, Goddesses, wherein our cattle quench their thirst; Oblations to the streams be given...”.

153. It is said that the primordial cosmic man or Purusa was born of the Water. Later *Vedic* texts identify that, “*Water is female..*” (Satapatha). Philosophically, *vedas* bestows a sacred character on water, identified therein, a medium to attain spiritual enlightenment. *Vedas* identify water

as the very essence of spiritual sacrifice, or as stated in *Atharvaveda* “*the first door to attain the divine order*”. The use of water in daily life as well as in ritualistic ceremony was referred to as spiritual sacrifice, a process of attaining eternity. *Rigveda* said:

“...Whatever sin is found in me, whatever wrong I may have done, if I have lied or falsely sworn, Waters remove it far from me...”.

154. Besides, philosophical and spiritual status given to environment including water, in ancient vedic scriptures, even on the issue of hydrology, we find a lot of material in *vedic* literature showing that since ancient time science of water was well developed in ancient India. Certain concepts of modern hydrology, we find, scattered, in various verses of *Vedas*, *Puranas*, *Meghmala*, *Mayurchitraka*, *Vrhat Sanhita* and other ancient scriptures. Our forefathers in *Vedic* age, had developed the concept that water gets divided into minute particles due to the effect of sun rays and wind. In *Puranas*, at various places, it is alluded that water cannot be created or destroyed, and that, only its state is changed through various phases of hydrological cycle. Evaporation, condensation, cloud formation, precipitation and its measurements were well understood in ancient India as we find from the study of *Vedic* and *Puranic* scriptures. During the time of *Kautilya*, contrivances to measure rainfall were developed which had the same principle as that of modern hydrology, except that weight measures were adopted instead of modern linear measurement of rainfall.

155. Indians, in ancient times, had well developed concepts of groundwater occurrence, distribution and utilization. Ancient literature also reveals that hydrologic indicators such as physiographic features, termite mounds, soils, flora, fauna, rocks and minerals were used to detect presence of groundwater. In *Vrhat Sanhita*, chapter 54, we find a detailed description of variation in the height of water table with place, hot and cold

springs, ground water utilization by means of wells, construction methods of well and requisite equipments. Chapter 54 of *Vrhat Sanhita* is named as '*Dakargala*'. As early as 550 A.D., *Varamihira* presented a simple method for obtaining potable water from a contaminated source of water. Efficient water use, lining of canals, construction of dams, tanks, essential requirements for the construction of good tanks, bank protection methods, spillways and other minor aspects were given due consideration in ancient times in India.

156. "National Institute of Hydrology", (Ministry of Water Resources, River Development & Ganga Rejuvenation) (hereinafter referred to as '**MOWRRD&GR**'), Jal Vigyan Bhawan, Roorkee, in a work, published in December 2018, has recognized that knowledge of hydrology was permissive in ancient India starting from pre and dusk valley civilization days and has been discussed in depth in Vedas, Puranas, Arthashastra, Astadhyayi, Brihat Samhita, Ramayana, Mahabharata, Meghamala, Mayurchitraka, Jainist and Buddhist and many other ancient literature. In the aforesaid work of MOWRRD&GR, ground water is the subject of discussion in chapter 6. It is stated that in Rigveda, Samveda and Yajurveda, concept of hydrological cycle and water use through wells etc. was present which clearly imply use of ground water in chapter 54 of *Vrhat Sanhita*. Its author Varahamihira (AD 505-587) has dealt with ground water exploration and extraction with various surface features that are used as hydrologic indicators to look at sources from ground water at different depths in well, from 2.29 meters to 171.45 meters. In verses 54.1 and 54.61-62, chapter 54 of *Vrhat Sanhita*, two technical terms shira and shiravigyan have been used. The term shira implies arteries of water or streams. Shiravigyan exactly conveys the meaning of water table. Verse 54.2 says that the water which falls from

the sky, originally, has the same colour and same taste, but assumes different colour and taste after coming down on the surface of the earth and after percolation. In a very scientific manner, ground water and its explanation were dealt with, keeping in mind the preservation of water and its availability for all times to come, without getting it polluted or contaminated by any external means or operations.

157. The science of water in India is ancient but unfortunately forgotten in the last few centuries. Indian sub-continent, was invaded and ruled by people from other areas having different concepts, convictions and religious culture. The ancient scientific knowledge went in dormancy. The invaders treated inhabitants in a very crude manner, did not hesitate in destroying treasure of knowledge given in this sub-continent by great Saints and Rishis, and compelled common folk to believe that their cultural wealth was a myth. Huge collection of research and knowledge stored in educational institutes of repute were set on fire or damaged otherwise. Volumes of ancient knowledge treasure was also taken away by later invaders and rulers. The resultant subsequent unscientific, unmindful and irrational massive excavation, extraction and consumption, not only of surface water, but ground water, in the name of development of civilization, has created a situation where in some parts of country, even drinking water is not available or has become a serious scarcity.

158. Availability of water in all the areas is not uniform, whether it is surface water or ground water. Water covers about 71% of the earth surface. It comes to about 333 million cubic miles on the planet. In a U.S. Geological Survey's Water Science School, taking data source from Igor Shiklomanov's chapter "World freshwater resources" in Peter H.

Gleick (editor), 1992, availability of earth water has been shown in three parts:

- i.) For total global water available, 96.5% is in oceans, 0.9% is other saline water and only 2.5% is fresh water.
- ii.) For 2.5% fresh water available, further division is that 68.7% thereof is in the form of glaciers and ice caps, 30.1% is ground water and only 1.2% is surface or other fresh water.
- iii.) For 1.2% surface/other fresh water available, again it is in different forms, i.e. 69.0% as ground ice and permafrost, 20.9% lakes, 3.8% soil moisture, 2.6% swamps and marshes, 0.49% rivers, 0.26% living things and 3% in atmosphere.

159. In other words, as a rough estimate, out of total water supply of about 333 million cubic miles (1386 million km³), more than 97% is saline. Only a small percentage, i.e., 2.5% fresh water is available. There against also, substantial part, i.e., 68% is locked up in ice and glaciers. A very small amount is available as surface water for human uses, i.e. 1.2%, which comes around 22300 cubic miles (93100 km³) which is about 0.007% of total water available on earth. These figures should not surprise us. Despite a very small fragment of water, available on surface, is consumable by human being, yet rivers are source of most of the water, the people use.

160. The quantum of ground water, comparing to the surface water, is definitely much more. However, comparing with global availability of water, it is a very small fraction thereof.

LAW ON USE OF GROUND WATER

161. In past, there was no control, regulation or supervision in respect of extraction of ground water. On the contrary, a recognition of owner's right

to use ground water, we find in Section 7 of Indian Easement Act, 1882 wherein Illustration (g) provides that land owners have the right to collect and dispose of all water under the land within their own limits. Availability of water *vis-a-vis* population and activities, was enough. Hence owners right on water was given recognition without any restriction or regulation. Habitation was village centric. It is 20th century urbanization which made drastic change in the life of common man creating various scarcities, most important whereof, is water including ground water.

162. In India, we had a persistent problem of acute and severe drought as also floods in various parts of the country, if not every year, then quite frequently. Some States are such which experience problem of flood and drought almost every year. A gigantic growth of infrastructure and industrial development in various forms also substantially consumed, not only surface water but also ground water. Almost at the end of 20th century, it was realized that a systematic water regime is the only option to protect human race, existence whereof was imperilled, and in furtherance thereof, Government of India, though reluctantly, attempted to create common awareness. It sought cooperation of all the States when it prepared Model Bill 1970 and circulated to all the States with request for adoption. It did not result into immediate positive response though subsequent amendments and re-circulations were made in 1992, 1996 and 2005. However, some Provincial Governments responded by making Provincial enactments for regulation of ground water. These enactments may have the objective of regulation of ground water so as to protect and preserve water table but in effect the provisions showed identification of areas where ground water level was depleted, declaration of such hard areas as notified area, and thereafter, bringing in, the concept of permission, from a Ground Water Authority, allowed very leniently,

without any scientific study, impact assessment, carrying capacity etc. It was like importing the idea of license-raj, in the field of consumption of water, in notified areas. The provisions necessary for recharge, restoration and replenishment and its effective monitoring to ensure that it is actually done, were lacking.

163. International community ultimately, more particularly in the last about fifty years, realized danger of scarcity of water, so much so, sometimes it is said that third world war will be fought for water. Consequently, some steps were sought to be taken to mitigate, restore and rejuvenate but positive effect is still a mirage.

164. In the context of environment, it has been held from time to time that a clean and healthy environment is part of Fundamental Right of life, conferred by Article 21 of Constitution. In **Subhash Kumar vs State of Bihar (1991)1SCC598**, Supreme Court said:

“the right to live includes the right of enjoyment of pollution free water and air for full enjoyment of life.”

165. In **Narmada Bachao Andolan vs Union of India (2000)10SCC664**, Court said:

“Article 21 of the Constitution of India provides for right to life and right to live with human dignity. The right to clean environment and further, pollution free water has been protected under the broad rubric of the right to life guaranteed under Article 21”.

166. Reference is also made to Article 48A, inserted in Part 4, (Directive Principle of State Policy) by 42nd amendment of Constitution, w.e.f. 03.01.1977, which reads as under:

“48A. Protection and improvement of environment and safeguarding of forests and wild life: *The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.”*

167. Further, Part 4A, comprises of Article 51A, was also inserted in the Constitution by 42nd amendment w.e.f. 03.01.1977 and reads as under:

“51A. Fundamental duties: *It shall be the duty of every citizen of India-*

(a) to abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.”

168. Concern about pollution of rivers and streams, render water unsuitable for supporting aquatic and surface life, causing damage to irrigation/agriculture, untreated discharge of domestic and industrial effluents in rivers etc., were certain issues which drew attention of Government India resulting in constitution of a Committee in 1962 to prepare a draft enactment for Prevention of water pollution. The report submitted by Committee was forwarded to various State Governments. It was also considered by Central Council of local self-Government in September 1963. Council resolved that a comprehensive law dealing with the issue of water pollution and control, at Central and State level, may be

enacted by Central legislature. Since subject matter of legislation was relatable to entry 17 list 2 of Seventh Schedule of the Constitution, Parliament lacked legislative competence to make law on the subject (except as provided in Article 249 and 250 of the Constitution), i.e., unless legislatures of 2 or more States pass resolution in pursuance of subject. Consequently, Provincial legislatures of Gujarat, Jammu and Kashmir, Kerala, Haryana and Mysore passed such resolution. Thereafter, Bill of Water Act 1974 was prepared and passed by Parliament. It was also passed under 252(1) of the Constitution by Provincial legislatures of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal. Ultimately Water Act 1974 came into force on 23-03-1974.

169. At the first instance, it was made applicable to States which had passed resolution under Article 252 (1) adopting the said Act. Section 1 sub-section 3 said that it shall come into force at once in those States. Further it shall apply to the States which would adopt the said Act from the date of such adoption.

170. In the meantime, conference on human environment was held in Stockholm in June 1972 at the instance of United Nations in which India also participated.

171. In 1972 in Stockholm Convention, world leaders, showed global concern with respect of depleting environment and endeavoured to protect and preserve it by taking appropriate steps. Decisions were taken therein to take appropriate steps for preservation of natural resources. In furtherance to the said decision and in order to give effect to the International resolution passed at United Nations, Central Legislature enacted Air Act, 1981 which came into force on 16.05.1981.

172. Subsequently, it was realized that the existing laws focused on specific types of pollution or on specific categories of hazardous substance and major areas of environmental hazards are not covered. There were several aspects untouched and several gaps, needing a comprehensive statute, for protection and improvement of environment and matters connected therein. It resulted in enactment of EP Act 1986 which came into force on 19.11.1986.

173. In fact, Stockholm declaration caused amendment of Constitution and insertion of Article 48A in Fundamental duties chapter and also part of fundamental duties. The concept was that it is fundamental human right to live in an unpolluted environment and it is fundamental duty of every individual to maintain purity of environment. The issue of environment assumed such an importance that Supreme Court in ***M.C. Mehta vs. Union of India A.I.R. 1992S.C.382***, directed University Grants Commission to prescribe a course on environment.

174. Since Statues for protection of environment were enacted to implement decision reached at Stockholm conference, the same are referable, to Article 253, to confer legislative competence upon Central Legislature, irrespective of subject in the list of legislation, under Schedule 7. Article 253 reads as under:

“253. Legislation for giving effect to international agreements: Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.”

175. An enactment referable to Article 253 is further referable to entry 13 List 1 of Schedule 7 of the Constitution, which says:

“13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.”

176. Further, there was no specific penal legislation dealing with the matter of environment in India. In Indian Penal Code, 1860 (hereinafter referred to as “I.P.C.”), Section 268, defined “Public Nuisance” and abatement of public nuisance was covered by Sections 133 to 144 I.P.C. Section 269 to 278 I.P.C. made provisions which means that a person guilty or violating any of the above provisions would be liable to prosecution and punishment.

177. University Grants Commission (India) in February 1997, launched its symposium on development of environmental studies in Indian universities. This symposium was organized in collaboration with some other organizations. The consensus arrived in this symposium was that ecology and environmental issues should form part of the courses of study at all levels. Government of India however treated environmental violations with more seriousness and in 2012, brought amendment in Prevention of Money Laundering Act, 2002 (hereinafter referred to as ‘**PMLA 2002**’) by incorporating environmental laws i.e., Biological Diversity Act, 2002; Water Act 1974; Air Act 1981 and EP Act 1986 in Part A of the Schedule of PMLA 2002.

Provincial Enactments for Regulation of Ground Water:

178. Earlier the only available legislation was Indian Easement Act, 1882 which conferred certain rights upon the owner of a property to use water (groundwater) with ownership rights. There was no regulation governing abstraction of ground water. Government of India prepared a Model Bill in 1970 for ground water regulation and circulated to States for adoption. This version was revised in 1992, 1996 and 2005 but there was no substantial progress.

179. With the awareness of protection of environment, and international resolutions passed in United Nations, three enactments were made in India, Water Act, 1974, Air Act, 1981 and EP Act, 1986 but specifically, problem of exploitation of ground water was not dealt with. Lead was taken by some State Legislatures, and in brief, we refer to these Provincial enactments, to complete our stock of Statutory Provisions, available in India, to regulate ground water:

- a. Andhra Pradesh Ground Water (Regulation for Drinking Water Purposes) Act, 1996
- b. Assam Ground Water Control and Regulation Act, 2012.
- c. Bihar Groundwater (Regulation and Control of Development and Management) Act, 2006
- d. Goa Ground Water Regulation Act, 2002
- e. Gujarat Irrigation and Drainage Act, 2013.
- f. Haryana Water Resources (Conservation, Regulation and Management) Authority Act, 2020 published in the Gazette of Haryana dated 07.12.2020 (Extraordinary).
- g. Himachal Pradesh Ground Water (Regulation and Control of Development and Management) Act, 2005.
- h. In Jammu and Kashmir, it is Water Resources (Regulation and Control of Development and Management) Act, 2010.
- i. Karnataka Ground water (Regulation and Control of Development and Management) Act, 2011
- j. Kerala Ground Water (Control and Regulation) Act, 2002 (Act 19 of 2002)
- k. Lakshadweep Ground Water (Development and Control) Regulation, 2001
- l. Madhya Pradesh Peya Jal Parirakshan Adhiniyam, 1986.

- m. Maharashtra Groundwater (Development and Management) Act, 2009
- n. National Capital Territory of Delhi
- o. Pondicherry Ground Water (Control and Regulation) Act, 2002 (Act No. 2 of 2013)
- p. Punjab Preservation of Subsoil Water Act, 2009.
- q. Rajasthan Soil and Water Conservation Act, 1964.
- r. Tamil Nadu Municipal Laws and the Chennai Metropolitan Area Groundwater (Regulation) Amendment Act, 2014 (Act No. 23 of 2014)
- s. Union Territory of Chandigarh Water Supply Byelaws, 2011 (Amendment 2018).
- t. Uttar Pradesh Ground Water (Management and Regulation) Act, 2019
- u. Uttarakhand Ground Water (Regulation and Control of Development and Management) Act, 2016.
- v. West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005 (Act XVIII of 2005)

History of CGWA, its origin and relevant provisions relating to its powers, duties etc.:

180. Issue relating to depletion of ground water, for the first time, caught attention of Supreme Court in ***M.C. Mehta vs. Union of India & Others. (1997)11SCC312***. On 20.03.1996, in daily newspaper “Indian Express”, published on 18.03.1996, a news item was published under the caption of “Falling Groundwater Level Threatens City”. Court took judicial notice on 20.03.1996 and required CGWB and Delhi Pollution Control Committee to respond. On 03.04.1996, Court issued notices to Municipal Corporation of Delhi and Delhi Waterworks and Sewerage Disposal Undertaking. One scientist Dr. P.C. Chaturvedi, (Director), CGWB filed affidavit stating that

since 1962 and onwards, water levels in country are declining. During the years 1971 to 1983, fall in water level was 4 meters to 8 meters in National Capital Territory. There was a further fall of water level from 4 meters to more than 8 meters during 1983 to 1985. One of the reasons stated in the affidavit for decline of water level was, enhanced pumpage. Consequently, Supreme Court issued notice to Government of India through Secretary, Ministry of Water Resources and Government of National Capital Territory, Delhi. The factual position regarding fall of water levels in the country was admitted in the affidavits filed by various authorities before Supreme Court. Thereafter, vide order dated 04.09.1996, Supreme Court requested Director, NEERI to examine the matter at institute level, by experts in the field, and submit report. NEERI was also required to submit suggestions and recommendations for checking further decline of underground water level. Consequently, NEERI submitted report dated 23.09.1996 with the title **“Water Resources Management in India, Present Status and Solution Paradigm”**. An affidavit dated 24.10.1996 was filed on behalf of Ministry of Water Resources, by Additional Secretary, making comments on NEERI report, indicating an overall declining water level picture in the country, and also, schemes and activities undertaken by Government of India through various departments to monitor ground water. It was pointed out that in order to arrest depleting trend and to avoid indiscriminate withdrawal of ground water, Government of India had circulated a Model Bill to States/Union Territories, in 1970, to help them to bring out suitable legislation on the lines of Model Bill to regulate and control development of ground water in the respective areas. It was stated in the affidavit that in more than 120 blocks i.e. 231 blocks, in 6 Mandals, and 12 Talukas, level of ground water is over exploited. Noticing all these facts, Supreme Court, accepted one of the suggestions of NEERI, regarding constitution of an Authority under Section 3(3) of EP Act 1986, and passed

order on 05.12.1996, over ruling objection taken by Ministry of Water Recourses, Government of India that water being a State subject, it would not be possible to constitute an Authority under Section 3(3) of EP Act 1986, and held that **EP Act, 1986 is made by Parliament under Entry 13 List I Schedule 7 read with Article 253 of the Constitution of India and shall have an over-riding effect.** There was already an Organization namely CGWB having its Office across the country, hence Supreme Court directed that Central Government may consider to issue a Notification constituting the “Board” itself as an “Authority” under Section 3(3) of EP Act, 1986. It also observed that the said Authority would have all statutory powers under Section 3(3) of EP Act 1986 and would be in a position to have effective control all over India. **Supreme Court also said that any institution/department constituted by State Government can independently function in its own field with the cooperation and under the guidance of the organization set up by CGWB.**

181. As a result, thereof, we find Notification dated 14.01.1997 issued by Ministry of Environment and Forest (hereinafter referred to as ‘**MoEF**’), in exercise of power conferred by Section 3(3) of EP Act 1986 constituting CGWB as an Authority i.e. CGWA, for the purpose of regulation and control of ground water management and development, from the date of publication of the said Notification in the official Gazette. It was published in the Gazette of India on the same date.

182. As per para 1 of Notification of 1997, CGWA would constitute of the following:

- (i) Chairman, CGWB-Chairperson
- (ii) Member (Exploratory Drilling and Materials Management), CGWB-Member
- (iii) Member (Sustainable Management and Liaison), CGWB-Member

- (iv) Member (Survey, Assessment and Monitoring), CGWB-Member
- (v) An officer not below the rank of the Joint Secretary to the Government of India to be appointed by the Central Government-Member

183. Para 2 of the said Notification dated 14.01.1997, provided powers and functions of CGWA, and said:

“2. The Authority shall exercise the following powers and perform the following functions, namely: -

- (i) exercise of powers under section 5 of the Environment (Protection) Act, 1986 for issuing directions and taking such measures in respect of all the matters referred to in sub-section (2) of section 3 of the said Act;*
- (ii) to resort to the penal provisions contained in sections 15 to 21 of the said Act;*
- (iii) **to regulate indiscriminate boring and withdrawal of ground water in the country and to issue necessary regulatory directions with a view to preserve and protect the ground water.”***

184. The jurisdiction of the said Authority was declared to be whole of India, vide para 3.

185. Supreme Court in ***M.C. Mehta vs. Union of India & Others. (1997)*** (*supra*) also said that the Authority i.e., CGWA can resort to penal provisions contained in Section 15 to 21 of EP Act 1986. It also observed that main object for constitution of said Authority being the urgent need for regulating indiscriminate boring and withdrawal of underground water in the country, the said Authority so constituted, shall apply its mind to this urgent aspect of the matter and issue necessary regulatory directions with a view to preserve and protect underground water.

186. Initially, constitution of CGWA was for one year as provided in para 1 of Notification dated 14.01.1997. It was amended by Notification dated 13.01.1998, published in the Gazette of India (Extraordinary) of the same date and in place of one year, it was made five years.

187. Another amendment was brought in Notification dated 14.01.1997 by Notification dated 05.01.1999, published in the Gazette of India (Extraordinary) dated 08.01.1999 and thereby, CGWA was made six persons Authority by adding Regional Director or an officer of equivalent rank, CGWB as Member Secretary.

188. The constitution of CGWA and its functions underwent a major amendment vide Notification dated 06.11.2000, published in Gazette of India (Extraordinary) dated 16.11.2000. Thereby, in para 1, period of CGWA was deleted, hence CGWA became an Authority without any limitation of period. Further, composition of CGWA was also changed by making it a ten members Committee including Chairman, with a further provision authorizing it to have some special invitees, as and when required. The new composition of CGWA was as follows:

- (i) Chairman, CGWB-Chairman
- (ii) Member (Survey, Assessment and Monitoring), CGWB-Member
- (iii) Member (Exploration Drilling and Materials Management), CGWB-Member
- (iv) Member (Sustainable Management and Liaison), CGWB-Member
- (v) Member (Training and Technology Transfer), CGWB-Member
- (vi) Joint Secretary (Administration), Ministry of Water Resources-Member
- (vii) Joint Secretary and Financial Adviser, Ministry of Water Resources-Member
- (viii) Joint Secretary, MoEF-Member
- (ix) Chief Engineer, Irrigation Management Organisation (Water, Planning and Projects), Central Water Commission-Member
- (x) Director/General Manager (Exploration), Oil and Natural Gas Corporation Ltd.-Member

189. The aforesaid Notification further authorized CGWA to invite, from time to time, following, as special invitees, as and when required:

- (i) Joint Secretary (Soil and Water Conservation), Department of Agriculture and Co-operation
- (ii) Joint Secretary (Water Supply), Ministry of Urban Development
- (iii) Joint Secretary (Department of Drinking Water Supply), Ministry of Rural Development
- (iv) Director, National Institute of Hydrology, Roorkee
- (v) Director, National Geo-physical Research Institute, Hyderabad.

190. The powers and functions of CGWA described by Notification dated 14.01.1997 were also amended and for clause (iii), the following clause (iii) and (iv) were substituted:

“(iii) to regulate and control, management and development of ground water in the country and to issue necessary regulatory directions for this purpose;

(iv) exercise of powers under Section 4 of the Environment (Protection) Act, 1986, for appointment of officers.”

191. CGWA was conferred with powers to issue directions under Section 5 and also to exercise powers on the matters referred to in Section 3(2) of EP Act 1986. Thus, it would be appropriate to have a bird eye-view of Section 3(3), 3(2) and 5 of EP Act 1986. Section 3(2) and (3) read as under:

“3(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:

- (i) co-ordination of actions by the State Governments, officers and other authorities-*
 - (a) under this Act, or the rules made thereunder, or*
 - (b) under any other law for the time being in force which is relatable to the objects of this Act;*
- (ii) planning and execution of a nationwide programme for the prevention, control and abatement of environmental pollution;*
- (iii) laying down standards for the quality of environment in its various aspects;*
- (iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:*

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

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

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

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

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

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

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

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

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

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

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

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

192. Section 5 confers power to give directions which was also conferred upon CGWA by Central Government in its notification under Section 3(3).

Section 5 reads as under:

“5. POWER TO GIVE DIRECTIONS:

Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may¹, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

Explanation-*For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-*

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) stoppage or regulation of the supply of electricity or water or any other service.”

193. Perusal of above, shows that Section 5 has been given an overriding effect over any other law but directions issued under Section 5 have to be within the compass of EP Act 1986 and cannot travel beyond. Further sub-section 2 of Section 3 has to be read with sub-section 1 which shows that power to take such measure as deemed necessary and expedient, was conferred with the clear objective that it should be for the purpose of protecting and improving quality of environment and preventing, controlling and abating environmental pollution. Further the aforesaid power is also subject to the provisions of EP Act 1986.

194. Section 24 of EP Act 1986 also made a declaration that subject to sub-section 2, provisions of EP Act 1986 and the rules or orders made therein, shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than EP Act, 1986.

195. Therefore, not only provisions of EP Act 1986 but even rules or orders issued under EP Act 1986 shall prevail over any other enactment except EP Act 1986. In other words, if, there is anything otherwise provided in EP Act 1986, then the rules/orders etc. will have to be read consistent therewith and as per legislative or statutory hierarchy, the one which is superior in hierarchy, shall prevail.

196. The steps, taken by Central Government or the Authority constituted under Section 3(3) with power to issue directions under Section 5 or to take such measures as are necessary under sub-section 2 of Section 3, are the orders in respect whereof, Section 24 sub-section 1 provides that the same shall prevail over any other enactment having any inconsistent provision. The only exception is with regard to the offences and punishment, subject to the provisions of sub-section 2 of Section 24, which provides, where any Act or omission constitutes any offence punishable under EP Act 1986 and also under any other Act, then the offender found guilty of such offence, shall be liable to be punished under the other Act and not EP Act 1986.

197. Section 25 of EP Act 1986 confers power upon Central Government to frame rules and Section 26 provides procedure which obviously would not include or cover the direction or orders or steps taken by virtue to Section 3(2) or Section 5 of EP Act 1986.

198. Hence directions issued under Section 5 or orders issued on the matters referable to Section 3(2), in our opinion, are statutory orders. We have already discussed that EP Act 1986 is referable, to Entry 13 List I Schedule VII of the Constitution read with Article 253, having been enacted pursuant to the International Conference and resolutions and to give effect thereto, it shall prevail over Provincial legislation. All Provincial enactments, relating to ground water, therefore, would have to subserve the Guidelines issued by CGWA since these guidelines are referable, to Section 5 read with Section 3(2) of EP Act 1986. These guidelines are not mere executive orders but statutory orders and, in any case, having been issued in exercise of powers under EP Act 1986, as stated above, shall prevail over Provincial enactments/legislations. To the extent, subject is

covered by EP Act 1986 and the orders issued by CGWA, Provincial legislature would lack power to make law, and if made, shall sub serve.

199. The limitation upon CGWA is that the guidelines, not only, are subject to the provisions of EP Act 1986 but should also conform the mandate that it should be for the purpose of protecting and improving quality of environmental and preventing, controlling and abating environmental pollution.

200. Supreme Court in its order dated 10.12.1996 in ***M.C. Mehta vs. Union of India & Others (1997) (supra)***, made it very clear, in para 12 of the judgment, that the main object for constitution of CGWB, as an Authority, is the urgent need for regulating indiscriminate boring and withdrawal of ground water in the country. Court further said that it has no doubt that the Authority, i.e., CGWA shall apply its mind to this urgent aspect of the matter and issue necessary regulatory directions with a view to preserve and protect ground water. Court reiterated its above directions by stating *“This aspect may be taken up by the Authority on an urgent basis”*.

201. Supreme Court also took notice of the fact that there are some legislations in the States to regulate water resources development but by and large, ground water was being exploited all over the country, without any effective regulatory regime. It is in this regard, Court directed that an Authority under EP Act 1986 be constituted with powers necessary to deal with situation created by indiscreet abstraction of ground water causing depletion of ground water levels, dwindling surface water resources, deterioration of surface and ground water quality and haphazard land use.

202. In the same case, i.e., ***M.C. Mehta vs. Union of India & Others. (1997) (supra)***, in earlier order dated 05.12.1996, Court had also rejected contention advanced on behalf of Government of India, Ministry of Water Resources that under the constitution, water is State subject and, therefore, Central Government or Parliament has no role. Court said that:

“We are prima facie of the view that the Act being an Act made by Parliament under Entry 13 List I read with Article 253 of the Constitution of India, it has an overriding effect.”

203. In ***S. Jagannath vs. Union of India & Others., 1997 (2) SCC 87***, Supreme Court in its judgment dated 11.12.1996, was confronted with the situation where provincial legislations on coastal aquaculture regulating industries, set up in coastal areas, contained provisions which were not in consonance with Central enactment i.e., EP Act 1986 and notification issued by Government of India under Section 3(3) of the said Act, i.e. Coastal Regulation Zone (CRZ). Supreme Court held:

“...we are of the view that the Act being a Central legislation has the overriding effect. The Act, (the Environment Protection Act, 1986) has been enacted under Entry 13 of list I Schedule VII of the Constitution of India. The said entry is as under:

“Participation in international conferences, assessment and other bodies and implementing of decisions made thereat.”
*The preamble to the Act clearly states that it was enacted to implement the decisions taken at the United Nations’ Conference on the Human Environment held at Stockholm in June, 1972. Parliament has enacted the **Act under Entry 13 of List I Schedule VII read with Article 253 of the Constitution of India. The CRZ notification having been issued under the Act shall have overriding effect and shall prevail over the law made by the legislatures of the States.***

(Emphasis added)

204. In ***Mantri Techzone Pvt. Ltd. vs. Forward Foundation & Others (2019)18SCC494***, it was reiterated when a similar question with respect to Provincial legislation vis-a-vis law on environment was raised. Supreme Court said:

“A Central legislation enacted under Entry 13 of Schedule VII List I of the Constitution of India will have the overriding effect

over State Legislations. The corollary is that the **Tribunal** while providing for restoration of environment in an area, **can specify ‘Buffer Zones around specific lakes and water bodies in contradiction with zoning regulations under these statutes or RMP’.** (Para 47)

(Emphasis added)

205. Recently, in **Civil Appeal No. 6932 of 2015, The Director General (Road Development) National Highways Authority of India vs. Aam Aadmi Lokmanch & Others.**, the above view taken in **Mantri Technoze Pvt. Ltd. vs. Forward Foundation (Supra)** has been referred and followed.

206. Therefore, it is now established that irrespective of the legislative list contained in Schedule 7, whenever matter relates to environment is to be seen, if governed by the laws enacted on environment by Parliament, referable to entry 13 List 1 of 7th Schedule, the same shall prevail. In other words, when a subject is covered by a legislation referable to list 1 of Seventh Schedule of the Constitution, to the extent matter is covered by such Central legislation, Provincial legislature would cease to have any legislative competence to that extent, irrespective of entry in list 2. Provincial legislature can make law only on the aspects not covered by Parliamentary enactment.

207. Thus, we are clearly of the view that on the subject of regulation of ground water, provisions of EP Act 1986, the orders issued by Central Government under Section 3(3), and by CGWA under section 5 and/or section 3(2) of EP ACT 1986 shall hold field and on this subject Provincial legislation cannot be brought in to impede, obstruct or deny or deprive CGWA, in its function for protection, perseveration and sustenance of ground water in the country.

208. Though CGWA was constituted in January 1997, we do not find much activity on its part initially for about two years. Only in 1999, CGWA issued “Guidelines for granting NOC for withdrawal of ground water by industries/projects w.e.f. 01.01.1999” (hereinafter referred to as ‘**Guidelines 1999**’). It permits all industries seeking NOC for ground water abstraction, to submit application in the prescribed proforma, in the Office of Regional Director, CGWB of the concerned State or Member Secretary, CGWA, New Delhi. Proponent was to submit a referral letter from Statutory Organizations like State Pollution Control Boards, MoEF, Bureau of Indian Standards, etc. for processing of its case. Proponent was also required to submit detailed designs for Rain Water Harvesting which was mandatory for areas falling in critical blocks. For evaluation of proposal, Guidelines 1999 provided, in respect of over-exploited, critical and semi-critical blocks, as under:

“Over-Exploited Blocks- *It was decided that clearance to industries in Critical/Over-Critical areas needs to be considered on case to case basis and in case of severely over-exploited areas which are devoid of any deeper potential aquifers clearances for industrial use of ground water may be denied as per the policy. (21st meeting held on 24.5.2006).*

Critical Blocks-*granting permits to industries for ground water extraction be considered subject to implementation of Rain Water Harvesting/Ground Water Recharge matching the proposed draft. (23rd meeting held on 28.8.2007).*

Semi-critical Blocks-*granting permits to industries be considered subject to implementation of Rain Water Harvesting/Ground Water Recharge. (23rd meeting held on 28.8.2007).”*

209. Thereafter, a new set of Guidelines was issued, with effect from 20.10.2009, i.e., “Guidelines for evaluation of proposals/requests for ground water abstraction for drinking and domestic purposes in Notified areas and Industry/Infrastructure project proposals in non-notified areas” (hereinafter referred to as ‘**Guidelines 2009**’). It recognized high intensive development of ground water in certain areas, i.e. irrigation, drinking, domestic and industrial uses in the country, resulting in over-exploitation,

leading to long term decline in ground water levels. In certain situations, quality of ground water was found deteriorated. As per the study available up to 2004, out of 5723 assessed units (Blocks, Mandals, Talukas and Districts), 839 were over-exploited, 226 critical, and 550 semi-critical. However, details of Guidelines 2009 show, since CGWA had notified only 43 areas for the purpose of regulation of ground water development, hence it confined its regulatory action only to “notified areas”. Guidelines also said that NOC can be accorded for construction of tube wells/replacement of existing defunct well for drinking and domestic purpose to Government department entrusted with the water supply; other Government organizations if Water Supplying Department is not providing water in the area; schools/institutions/universities; hospitals; Embassies and State Bhawans. Pre-conditions for grant of NOC for abstraction of ground water to above categories were also given in said Guidelines.

210. Chapter A, para 1, of **Guidelines 2009**, gives details of the purpose for which NOC could be accorded, and pre-conditions for grant of NOC mentioned therein, are as under:

- “1) NOC can be accorded for construction of tube wells/replacement of existing defunct well for drinking and domestic purpose to:*
- a. Government department entrusted with the water supply*
 - b. Other Government organizations if Water Supplying Department is not providing water in the area*
 - c. Schools/Institutions/Universities*
 - d. Hospitals*
 - e. Embassies*
 - f. State Bhawans*
 - g. For Individuals for individual households.”*

211. **Guidelines 2009** further laid down pre-conditions for grant of NOC for abstraction of ground water to categories under serial no. (i) to (vi) in notified areas, as under:

“Pre-conditions for grant of NOC for abstraction of ground water to categories under Sl. No. (i) to (vi) are:

1. *Maximum diameter of the tube well should be restricted to 100 mm only and capacity of the pump should not exceed 1HP except in case of Government water supply agencies. In case of Govt. water supply agencies, tubewell size/dia. can be more depending on the ground water availability and requirement.*
2. *Concurrent with the construction of tube well, **the owner of the tube well shall undertake installation of the rain water harvesting structure in the premises** within 45 days of issuance of NOC and will confirm to the Authority for verification.*
3. *The water from the tube well be used for drinking and domestic purposes only.*
4. *All details of the drilling like rock formations encountered, the depth and diameter of the constructed tube well, type of pipes used, yield of bore well/tube well and ground water quality etc. have to be furnished to the nodal agency authorized by district administration head within 15 days of the completion of the construction.*
5. ***This permission is valid for a period of two months from the date of issue of NOC** except in case of Government water supplying agencies/departments.”*

212. In respect of Sl. No. (vii) i.e. For Individuals for individual households, in notified areas, **Guidelines 2009** imposed conditions as under:

- “1. *Only one tube-well is allowed for construction in the premises to meet the drinking and domestic purposes. No tube-well/bore-well will be constructed, if any working tube-well already exists. In case the existing well has become non-functional and is to be replaced, it should be converted into recharge well, if possible or properly sealed and no water be pumped from it.*
2. *The persons(s) intending to construct new tube-well will intimate the Authorized office/Advisory Committee, 10 days in advance along with the name and address of the drilling agency, which will undertake construction of tube-well. Authorities/Nodal Agency can ask the user to supply additional information.*
3. *The maximum diameter of the tube-well should be restricted to 100mm only and the capacity of the pump should not exceed 1HP.*
4. ***Concurrent with the construction of tube-well, the owner of the tube-well shall undertake installation of the rainwater harvesting system in the premises.***
5. ***The water from the tube-well/bore-well will be used exclusively for drinking and domestic purposes only.***

6. *All details of the drilling like rock formations encountered, the depth and diameter of the constructed tube well, type of pipes used in tube-well, yield of bore well/ tube well and ground water quality etc. shall be kept for record and are to be provided at the time of inspection.*
7. *Any violation of the above conditions will attract legal action under section 15 of the Environment (Protection) Act, 1986.”*

213. Chapter A, para II of **Guidelines 2009** said that permission will not be accorded for construction of tube well for agriculture, industrial, commercial, horticulture and construction purposes in “notified areas”.

214. Chapter B of **Guidelines 2009**, laid down Guidelines for evaluation of proposals/requests for abstraction of ground water for industrial/infrastructure projects, in **non-notified areas**. Para B-1, mentioned 12 criteria on which the proposals shall be evaluated i.e. (i) purpose of ground water use, (ii) area of ground water against its availability, (iii) availability of shallow aquifer, (iv) availability of deeper aquifer, (v) Criteria for recycling and reuse of effluents, (vi) adoption of water conservation measures, (vii) installation of water meters, (viii) examining the scope of rain water harvesting and ground water recharging potential, (ix) land use, (x) ground water draft, (xi) saline ground water aquifers and (xii) mining areas.

215. It was stated further that project proposals for various purposes would be evaluated for consideration of ground water abstraction, under different hydrological conditions, including water conservation measures in safe, semi-critical, critical and over-exploited areas. A chart was given for evaluation of proposals to abstract ground water for industries, as under:

“Evaluation of Proposals to Abstract Ground Water for Industries

Category	Stage of Development	Recycle/Reuse	Other Water Conservation Practices	Withdrawal permitted (%age of proposed recharge)
Safe	<70	Mandatory recycling and reuse of water	Water audit measures to be adopted	To be brought under the purview if quantity of abstraction exceeds 1000 m ³ /day in hard rock areas and 2000 m ³ /day in alluvial areas. RWH to be adopted.
Semi-critical	70-100	Efficient utilization of recycled water and reuse of water should be mandatory.	Water audit measures to be adopted	Withdrawal may be permitted subject to undertaking of recharge measures. Since the area is less stressed, at least 50% recharge be made mandatory.
Critical	90-100	Efficient utilization of recycled water and reuse of water should be mandatory.	Water audit measures to be adopted	Withdrawal may be permitted subject to undertaking of recharge measures. The quantum of recharge should be equal to or more than the proposed withdrawal.
Over-exploited	>100	Efficient utilization of recycled water and reuse of water should be mandatory.	Water audit measures to be adopted	Withdrawal may be permitted up to 60% of proposed recharge. Also withdrawal should not exceed a maximum limit of 1500 m³ /day for each unit.

216. Chapter B, Para B-2 of **Guidelines 2009**, laid down certain conditions for abstraction of ground water for infrastructure projects in non- notified areas, as under:

“B-2 ABSTRACTION OF GROUND WATER FOR INFRASTRUCTURE PROJECTS

- *Run-off from the entire project area is to be utilized for artificial recharge to ground water.*

- *In case of residential township and colony, the quantum of water for usage other than drinking/ domestic shall not exceed 25% of the total requirement.*
- *The concerned State Government, while sanctioning any infrastructure project is to look into the ground water availability aspect also.*
- *Proponents are to submit a status report on water supply available from water supplying agencies stating the quantum of water that would be provided by the agency.”*

217. In para B-3, conditions for abstraction of ground water for industrial projects in non - notified areas was laid down as under:

“B-3 ABSTRACTION OF GROUND WATER FOR INDUSTRIAL PROJECTS

a) Areas having Deeper Aquifers:

In all Over-exploited and Critical areas having deeper potential aquifers, withdrawal may be permitted irrespective of the stage of development subject to:

- (a) *Withdrawal of water from deeper aquifers only,*
- (b) *Implementing recharge measures to recharge shallow/deeper aquifers to the extent possible within the lease/industry area*
- (c) *Recommendation of concerned Regional Directorate on feasibility of exploitation of deeper aquifers.*

b) Water table intersection by mining industries and dewatering of mine pit water

Abstraction of ground water by mining industry intersecting water table can be permitted and dewatering of mine pit water be permitted subject to the following conditions:

- *The mine water is to be put to gainful use. This may include water supply to adjacent areas and local water supply agencies, utilization for dust suppression by the industry, utilization by the mining industry for different processes, utilization for artificial recharge to ground water etc.*
- *Piezometers for monitoring the ground water level are to be mandatorily installed within the mine lease area and in peripheral areas. The record of water level data be maintained and to be provided whenever demanded by the regulating agency.*

c) Abstraction of saline ground water by Industries

Due care to be taken in respect of disposal of the effluents by the units so as to protect the water bodies and the sub-surface shallow aquifers from pollution. Proposals pertaining to the cases must have a detailed report elucidating the mechanism of handling the effluent water and its various uses. All precautions must be taken for protection of environment. Large scale recharge mechanism is mandatory in such cases to improve the ground water quality in the region.”

218. Certain exemption of industries from obtaining NOC was provided in para-B-3 (IV) as under:

“IV Exemption of Industries from obtaining NOC from CGWA.

- (i) *Industries requiring ground water upto 25 m³/day located in over exploited areas; upto 50 m³/day for critical areas; and upto 100 m³/day in semi-critical areas are exempted from obtaining NOC for ground water abstraction from CGWA.*
 - *The responsibility of verifying the actual requirement and withdrawal is vested with the State Pollution Control Boards.*
 - *It should also be mandatory for such industries to undertake Rain Water Harvesting to the extent possible and enforcement of the same is vested with the State Pollution Control Boards.*
- (ii) *Industries located in Safe category areas, are required to obtain NOC from CGWA if ground water abstraction by the industry exceeds 1000 m³ /day for hard rock areas and 2000m³/day for alluvial areas. Such cases will be examined as in ‘B’.*

(The above will not include industries which are using water as a raw material like packaged drinking water industries, distilleries and breweries)”

219. For the purpose of monitoring of implementation of **Guidelines 2009**, CGWA made State Pollution Control Boards, responsible. Further, a Committee was constituted at District level for evaluation of industry/infrastructure project proposals seeking ground water clearances, comprising of:

- (i) District Collector - Chairman
- (ii) Hydrogeologist, CGWB of concerned District - Member
- (iii) Representative from Industry - Member
- (iv) Representative from Pollution Control Boards - Member
- (v) Additional member to be adopted if required.

220. The aforesaid Guidelines show that all substantially highly affected areas, facing scarcity of ground water, already placed in the category of over-exploited and critical, were not managed/regulated on a mere pretext that CGWA has notified only 43 areas and, therefore, CGWA without any reason, in an unwarranted and unauthorized manner, defied directions of

Supreme Court issued in ***M.C. Mehta vs. Union of India & Others (1997) (supra)***, by restricting its activity of regulation to only 43 “notified areas” for protection of ground water. This approach of CGWA was not consistent with the directions given by Supreme Court in ***M.C. Mehta vs. Union of India & Others (1997) (supra)***. Further, unfortunately, CGWA assumed role of mere licensing Authority, permitting abstraction of ground water by industrial and other establishments, and failed to withstand the expectations and objective with which it was constituted. It restricted its statutory duties on its own, ignoring mandate of Supreme Court requiring it to take immediate steps to protect depletion of ground water where its level had gone down to alarming level, unconcerned to whether it is notified or not, in the entire country.

221. Vide instruction no. 26-1/CGWA/D1/09/744 dated 08.10.2009, CGWA issued directions to Heads of Central Road Research Institute, National Highway Authority of India, Central Public Works Department, State Public Works Department, Indian Railways, Sports Authority of India, Board of Cricket Control of India, Airport Authority of India, Ministry of Civil Aviation, Ministry of Sports and Youth Affairs to take up rain water harvesting/adopt artificial recharge of ground water to augment ground water resources and to save it from further depletion. In furtherance of above, CGWA said:

*“1. The Director, Central Road Research Institute, Chairman, National Highway Authority of India, Director General, Central Public Works Department; Heads of the State Public Works Department whether called as Secretary, Principal Secretary or by any other name; Chairman, Railway Board; Head of Sports Authority of India; Chairman, Airport Authority of India; Director General, Ministry of Civil Aviation; Heads of Ministry of Youth Affairs and Sports, **shall ensure taking up rain water harvesting/adoption of artificial recharge to ground water in the country by their respective organizations/Departments, within a period of 365 days from the date of receipt of this direction, to augment ground water resources and to save it from further depletion.***

2. The above authorities shall obtain site-specific designs and other technical guidance from the Regional Director/Office-in-Charge of Central Ground Water Board or the Ground Water Department of the State/Union Territory.

3. The Regional Director/Officer-in-charge of Central Ground Water Board or the Ground Water Department of the State/UT, upon request from the above authorities shall extend all necessary technical assistance/design input.

4. The authorities mentioned in the directions No. 1, shall intimate the action taken report in this connection, to Central Ground Water Authority within a period of 90 days of completion of rainwater harvesting/recharge structure.”

222. Another direction was issued vide instruction no. 26-1/CGWA/D1/09/743/783 dated 08.10.2009, directing all residential group housing societies/institutions/schools/hotels/industrial establishments falling in the over-exploited and critical areas as specified in the Schedule, to adopt roof top Rain Water Harvesting systems in their premises. They were directed to complete the systems, by May 2010.

223. CGWA issued a new set of Guidelines namely “Criteria for Evaluation of Proposals/Requests for Ground Water Abstraction” (hereinafter referred to as ‘**Guidelines 2012**’) which came into force on 15.11.2012.

224. **Guidelines 2012** laid down different parameters for notified areas and non-notified areas. Chapter A with the title ‘Notified Areas’ said that permission to abstract ground water through any energized means will not be accorded for any purpose other than drinking water. In para II, it provided that NOC can be accorded for construction of ground water abstraction structures/replacement of existing defunct well for drinking purpose only to:

- “a. Government department/Agency/Undertaking entrusted with the water supply*
- b. Other Government organizations/State Government Guest Houses/Registered Housing societies*

- c. *Schools/educational & State/Central Government recognized research Institutions/ Universities*
- d. *Hospitals.”*

225. It further stated that NOC for items (b) to (d) will be considered only if Water Supplying Department is not providing adequate water in the area/ premises. Further it laid down pre-conditions for grant of NOC for abstraction of ground water to categories (a) to (d) as under:

- “1. *Maximum diameter of the groundwater abstraction structures should be restricted to 150 mm (6 inches) only and capacity of the pump should not exceed 1 HP. In case of Government water supply agencies, housing societies, tube well size/dia. & HP of prime mover can be more depending on the ground water availability and requirement.*
2. *Concurrent with the construction of groundwater abstraction structures, the **organization shall undertake artificial recharge to groundwater through rain water harvesting structure in the premises** within 45 days of issuance of NOC and will confirm to the Authorised Officer for verification.*
3. ***Water meter installation in the abstraction structure is mandatory*** and confirmation of water meter installation shall be given to the Authorised Officer under intimation to the concerned Regional office of CGWB immediately after construction. ***The daily water meter reading should be maintained and quarterly report should be submitted to Authorised Officer.***
4. *The water from the groundwater abstraction structures will be used for drinking and domestic purposes only.*
5. *All details of the drilling like rock formations encountered, the depth and diameter of the constructed groundwater abstraction structures, type of pipes used, yield of bore well/ tube well (Fracture zones encountered/zones tapped) and ground water quality etc. have to be furnished to the nodal agency authorized by district administration head within 15 days of the completion of the construction.*
6. *The permission for construction of groundwater abstraction structure would be valid for a period of six months from the date of issue of NOC.*
7. *The NOC issued would be non-transferable.”*

226. Another category, “Individual Household” also could be accorded NOC for drinking purposes. Conditions for the same, provided in Guidelines 2012, read as under:

“e. *For Individual households:*

1. *Permission to be granted only for such cases where public water supply system does not exist. The permission shall*

be valid only till such time there is no public water supply provided. In that case, the abstraction structure shall be exclusively utilized for artificial recharge to groundwater or sealed.

2. *A certificate from the water supply agency regarding non-availability of government water supply to the area/individual is to be submitted by the applicant.*
3. *The premises should have only one Groundwater abstraction structure (either existing or new) to meet the drinking and domestic requirements. No tube-well/bore-well will be constructed, if any working tube-well already exists. In case the existing well has become non-functional and is to be replaced, it should be converted into recharge well, if possible or properly sealed and no water be pumped from it. **An undertaking as per Annexure-II is to be submitted by individual.***
4. *The person(s) intending to construct new tube-well will seek permission from the Authorized officer/ Advisory Committee, at least 30 days in advance along with the name and address of the drilling agency, which will undertake construction of tube-well. Authorities/ Nodal Agency can ask the user to supply additional information.*
5. *The maximum diameter of the tube-well should be restricted to 110 mm (4 ½ inches) only and the capacity of the pump should not exceed 1HP. In case of deep water level the capacity/dia. of the structure will be decided by the Authority based on the site specific recommendations.*
6. ***Concurrent with the construction of groundwater abstraction structure, the owner of the tube-well shall undertake artificial recharge to groundwater through rainwater harvesting in the premises.***
7. *The water from the tube-well/bore-well will be used exclusively for drinking and domestic purposes only within the premises.*
8. *All details of the drilling like rock formations encountered, the depth and diameter of the constructed tube-well, (Fracture zones encountered/zones tapped) type of pipes used in tube well, yield of bore well/tube well and ground water quality etc., shall be kept for record and are to be provided at the time of inspection.*
9. *Any violation of the above conditions will attract legal action under section 15 of the Environment (Protection) Act, 1986.*

In case the notified area is de-notified subsequently, the conditions pertaining to “non-notified areas” shall be followed.”

227. **Guidelines 2012** said, if a notified area is subsequently de-notified, conditions pertaining to non-notified areas shall be followed.

228. Chapter B of **Guidelines 2012** dealt with “non-notified areas”. It is stated that NOC for ground water withdrawal will be considered for

industries/infrastructure projects which are either **new or under expansion** as per the criteria given in Para I to VI, which reads as under:

“B. NON-NOTIFIED AREAS

NOC for Ground Water withdrawal will be considered for Industries/Infrastructure projects **which are either NEW or under EXPANSION** as per the criteria given below:

I. Industries

Category*	Recycle/Reuse (for various purposes except recharge to ground water)	Withdrawal permitted (% of proposed recharge)
Safe	Mandatory recycling and reuse of water	NOC is required for groundwater withdrawal if quantity of groundwater abstraction exceeds 100 m³/day. AR to groundwater to be adopted. However, Industries under B-VI have no exemption from obtaining NOC.
Semi-critical	Major and Medium industries shall recycle and reuse at least 50% of the waste water	Withdrawal may be permitted subject to undertaking of recharge** measures. The withdrawal should not exceed 200% of the recharged quantity.
Critical	Major and Medium industries should fully recycle and reuse the waste water	Withdrawal may be permitted subject to undertaking of recharge** measures. The withdrawal should not exceed 100% of the recharged quantity.
Over-exploited (except industries falling under category mentioned in B(VI))	Full utilization of recycled water and reuse of water should be mandatory	Withdrawal may be permitted subject to undertaking of recharge** measures. The withdrawal should not exceed 50% of the recharged quantity.

*The present guidelines will follow the assessment of Ground Water Resource Estimation (GWRE) 2009 till it is revised.
The **recharge should be implemented within the premises and/or preferably in the same water shed/assessment unit. Detailed Project Proposal (DPR) shall be included along with the application for NOC.

II. Infrastructure Projects

- (SEZ, Group Housing projects, Residential townships, Hospitals, Educational Institutions, Roads, Bridges, Technology parks, Malls, Multiplex, etc.)
- a. Run-off from the entire project area is to be utilized for artificial recharge to ground water unless risk of contamination exists or

- area is water logged. The runoff from the entire premises shall be utilized for harvesting/storage also, apart from recharge.
- b. The quantum of ground water for usage other than drinking/domestic shall not exceed 25% of total ground water abstraction in case of Housing projects/ Residential Townships.
 - c. Proponents are to submit a status report stating the quantum of water required and the quantity that would be provided by the Government Water Supplying agency. This should be supported by a letter from the agency.

III. Areas Having Specific Depth Zones Notified:

- a. In areas where specific depth zones are notified, permission to withdraw groundwater can be considered based on the site specific recommendations of Regional Directorate of CGWB from the depth zones, which are not coming under the notification.

IV. Mining and Dewatering Projects

Abstraction of ground water by mining industries intersecting water table for dewatering of mine pit water, and dewatering ground water for basement construction of buildings, etc., may be permitted subject to the following conditions in addition to those already specified under Para B-I.

- a. The dewatered quantum of water is to be put to gainful use. This may include water supply and provide to water supply agencies, agriculture, dust suppression by the industry, utilization by the mining industry, utilization for artificial recharge to groundwater, etc.
- b. Piezometers for monitoring the ground water level are to be mandatorily installed within the premises and in peripheral areas. The record of water level data be maintained and to be provided periodically or whenever demanded by the regulating agency.
- c. Wherever the mines/dewatering project is situated in the coastal area special care should be taken to prevent sea water ingress. This should be supported by a technical evaluation report.
- d. In case of mining projects detailed and continuous study on the groundwater regime, including groundwater modeling should be carried out and the results should be submitted to the Regional Directorate of CGWB periodically.

V. Abstraction of Saline Ground Water by Industries/ infrastructure Projects

Industries/infrastructure projects desirous of utilizing saline ground water would be permitted to extract saline groundwater. However, due care to be taken in respect of disposal of the effluents by the units so as to protect the water bodies and the aquifers from pollution. Proposals pertaining to such cases must have a detailed project report elucidating the mechanism of handling the effluent water and its various uses. All precautions must be taken for protection of environment especially fresh water aquifers in and around the area. Large scale recharge mechanism should be adopted wherever feasible in such cases to improve the ground water conditions in the region.

VI. Industries Using Groundwater as Raw Material and other Water Intensive Industries

Industries using water as raw material/water intensive industries like packaged drinking water, mineral water industries, distilleries, breweries, soft drink manufacturing industries, textiles, paper & pulp, etc. shall not be granted NOC for groundwater withdrawal from OE areas. In Safe, Semi-Critical & Critical areas NOC for ground water withdrawal is mandatory for these industries as per Section B-1. However, ground water withdrawal will be limited as follows:

Category	Ground water withdrawal limit
Safe	Withdrawal limited to 200% of ground water recharge
Semi-critical	Withdrawal limited to 100% of ground water recharge
Critical	Withdrawal limited to 50% of ground water recharge
Over-exploited	No permission for industries under this category

”

229. Some further conditions are provided in clause D as under:

“D. OTHER CONDITIONS (Applicable for all cases):

- a. Sale and supply of raw/unprocessed/untreated ground water by unauthorized agencies for commercial use is not permitted.
- b. **Non-compliance of conditions mentioned in the NOC may be taken as sufficient reason for cancellation of NOC accorded/ non-renewal of NOC.**
- c. **Wherever State Government Authorities are in existence to manage and control ground water regimes, the Groundwater Regulation would be done by them.** The State Ground Water Authority (SGWA) shall send a quarterly progress report to CGWA for records.
- d. In case of any delay in executing the project for bona fide reasons within the set time, for which NOC has been granted, the firm shall apply to CGWA for extension. CGWA may consider extension based on its merits.
- e. No application for NOC shall be entertained without proper referral letters from the statutory authority (Central and State Govt. Dept and Agencies).
- f. The referral letter shall contain verification on the quantum of water for the industry/project with detailed break up of groundwater consumption, recycle & reuse of the waste water, so that the wastage of the precious resource can be avoided. In case this is not given by the referral authority, applicant should obtain a letter from the Industries Dept/Project Sanctioning Authority on the same line.
- g. The CRZA rules and regulation shall be applicable wherever in vogue.
- h. No permission required for withdrawal of ground water from any area if withdrawal is done through non-energized means.
- i. Mandatory clause on RWH may be relaxed in case of water logged/ shallow water level (<5 m bgl during pre-monsoon) areas.

- j. ***Relaxation in the quantity of ground water withdrawal in over-exploited areas, and/or quantity of recharge being affected by the firm can be permitted by CGWA if it feels it absolutely necessary in national interest.***
- k. *The artificial recharge proposals are required to be vetted by any competent authority of State/ Centre.*
- l. ***Treated water shall not be used for recharge to ground water, since it may contain heavy metals & other toxic elements. The treated waters shall be fully used by the proponent or any other agency, who can utilize it without contaminating the underlying aquifer / water bodies.***
- m. *NOC issued is non-transferable.”*

230. Thus **Guidelines 2012** show that study of State wise resources as on 31.03.2009 was available, showing that out of 5842 assessment units (Blocks, Mandals, Talukas, districts), 802 were over-exploited, 169 critical, 523 semi-critical, 4277 safe and 71 saline. Annual replenishable ground water resources was estimated as 431 billion cubic meters (hereinafter referred to as ‘bcm’), net ground availability was 396 bcm and overall stage of ground water development of the country was 61%.

231. **Guidelines 2012** further stated that CGWA has notified 82 areas for the purpose of regulation of ground water development. District Administrative Head i.e. Divisional Commissioner or District Magistrate in case of Administrative Block or Taluka or Head of Municipality in case of municipal area of notified area, was appointed Authorized Officer by CGWA under Section 4 of EP Act, 1986. All issues pertaining to grant of NOC for ground water withdrawal, checking violations, sealing of ground water abstraction structure, launching of prosecution against offenders, attending to complaints etc. were to be addressed by Authorized Officers. In “notified area”, Guidelines said, that permission to abstract ground water through any energized means will not be accorded for any purpose other than drinking water. In notified area, NOC was open for sanction for drinking purposes only and that too to the limited categories of Government departments entrusted with water supply, other Government

organizations and educational institutions-private or Governmental including research institutions/universities and also hospitals where water supply is not available from Government or semi-governments water supply departments. In non-notified areas, directions for grant of NOC for withdrawal of ground water to new and under expansions industries and infrastructure projects with certain conditions, were mentioned in **Guidelines 2012**.

232. Here again we find that CGWA, in respect of over-exploited and critical areas, assumed jurisdiction in a restricted manner by confining it to 82 areas which it had notified, though it is evident from Guidelines, that as per Ground Water Resource Estimates of 2009, 802 areas were identified as over-exploited and 169 as critical and 523 semi-critical. This restricted regulation assumed by CGWA was clearly in defiance of dictates of Supreme Court in ***M.C. Mehta vs. Union of India & Others. (1997)*** (*supra*).

233. At this stage, we find that ***OA No. 59/2012, Vikrant Kumar Tongad vs. Union of India & Others*** was filed before Tribunal, raising grievance that there is under regulated, large scale dewatering of areas particularly in NOIDA and Greater NOIDA, by various construction companies, excessive use of ground water and non-compliance of notifications and guidelines issued under EP Act 1986 which is causing depletion of ground water level in district Gautam Buddha Nagar, (State of Uttar Pradesh). Applicant, Vikrant Kumar Tongad requested Tribunal to direct authorities concerned to, make proper assessment of depletion in ground water level in district Gautam Buddha Nagar, stop dewatering activity in violation of guidelines, regulate ground water extraction for commercial, industrial, residential and other purposes, stop illegal water packaging units, make assessment of their impact on ground water,

implement regulations related to ground water harvesting and take penal action against defaulting industries, infrastructure units and establishments etc. State of UP contested the matter by filing reply dated 06.02.2013 wherein it admitted depletion of ground water level in NOIDA and Greater NOIDA, at certain places, but pleaded its compulsion on the ground of fulfilment of daily requirement of urban and rural populace. It also brought before Tribunal the efforts taken by State of UP for conservation of ground water resources by taking steps as under:

- a. An Executive Committee under Chairmanship of Chief Secretary, Government of UP was constituted in 2004 to review rain water harvesting and ground water recharge programmes in State of UP;
- b. Roof top rain water harvesting systems was made mandatory for individual plots having size of 300 square meters or more, made compulsory for existing as well as new Government and Semi-Government buildings;
- c. Housing schemes/plans of 20 acres or more at the layout level, 5% of total areas was to be kept aside for pond/water bodies while maximum depth of ponds is to be kept 3 meters;
- d. Pucca construction in parks would be allowed only up to 5% of total area and as far as possible, pavements would be made of permeable or semi-permeable/perforated material;
- e. For new schemes, geological and hydrological surveys need be carried out so that ground water recharging system can be adopted as per local conditions;
- f. For monitoring of ground water level and assessment of ground water quality in all industrial units, installation of piezometers (ground water monitoring system) was made compulsory;
- g. Steps were taken for spreading awareness amongst general public;

- h. Ground Water Department of State was assigned job of regular monitoring of ground water level, in both, urban and rural areas and also to conduct block wise ground water resource estimation.
- i. Central Government had not framed any norms for ground water resource assessment in urban areas but the State Government of U.P. issued various Government orders dated 12.04.2001, 08.09.2004, 19.11.2004, 02.12.2004, 28.09.2004, 25.04.2006, 01.07.2008, 19.06.2009 and 05.08.2010 wherein, besides other thing, more emphasis was laid on rain water harvesting.

234. A separate reply was filed by CGWA, dated 12.02.2013, wherein it referred to Guidelines 2012 and reiterated that State wise assessment of ground water resources was last assessed, as on 31.03.2009 which revealed 802 units in the category of over-exploited but there against only 162 units were notified and therein extraction of ground water was made impermissible for any purpose other than drinking water. In respect of Gautam Buddha Nagar, it pointed out that it had four blocks-Bisrakh, Dadri, Dankaur and Jewar. As per estimation on 31.03.2004, all the four blocks were in the category of safe but as per the estimation on 31.03.2009 Bisrakh and Dankaur entered the category of “semi-critical” and Block Jewar shifted to the category of “over-exploited”. Only Dadri could maintain its category of “safe” though ground water development had gone from 25.98% (as on 31.03.2004) to 73.03% (as on 31.03.2009).

235. CGWA, however, did not give any reason, why despite identification of large number of units as over-exploited only fraction thereof were notified. Boldly it continued to ignore and defy mandate of Supreme Court, given in ***M.C. Mehta vs. Union of India & Others (1997) (supra)***.

236. From the record, we find that application filed by Vikrant Kumar Tongad was admitted on 21.11.2012 and an interim order was also passed on 11.01.2013 granting injunction against abstraction of ground water by builders in NOIDA and Greater NOIDA.

237. When the above matter was pending, CGWA issued an **additional Guideline/criteria** which **came into force on 05.04.2013**, permitting abstraction of saline ground water in notified areas subject to certain conditions mentioned therein.

238. At this stage, one more application i.e., **OA No. 108/2013, Legal Aid National Green Tribunal Bar Association vs. NCT of Delhi & Others** was filed under Section 18(1) read with 14, 15 and 17 of NGT Act, 2010 which raised grievance concerning illegal abstraction of ground water in State of Delhi resulting into abnormal fall in ground water level. It refers to a notification dated 12.07.2010 published in Delhi Gazette dated 9th-15th July, 2010 issued by Lieutenant Governor of National Capital Territory of Delhi, in exercise of powers under Section 5 of EP Act 1986 stating that no person etc. shall draw ground water through bore well or tube well (new or existing), without permission, for domestic, commercial, agriculture and/or industrial uses. Applicant therein sought relief from this Tribunal directing authorities concerned to implement relevant provisions for effective management and regulation of ground water and rain water harvesting. This application was taken up on 23.04.2013 and notices were issued to the respondents. Tribunal required respondents to specifically place on record how many bore wells/tube wells were working in Delhi and how many of them were authorized or unauthorized. In the reply filed by Delhi Jal Board and other authorities, it was stated that there were 106 tube wells operating with permission and 205 were functioning unauthorizedly and illegally. Tribunal found that the persons operating

tube wells, illegally, were not paying any charges to the authorities and it had become an incentive for illegal and unauthorized use of ground water leading to depletion of underground water and the common problem of water scarcity to the people of Delhi. Consequently, a Committee was constituted to collect complete data of legal and illegal tube wells working in NCT of Delhi, take potential action against illegally operating tube wells/bore wells, recommend measures to be taken to prevent fall of level of ground water in Delhi and also to suggest methods and means for encouraging rain water harvesting and efforts for recharging level of ground water in Delhi.

239. A similar grievance/complaint was made in **OA No. 179/2013, Raj Hans Bansal vs. Ministry of Water Resources & Others** in respect of NCT of Delhi. Notices were issued in this matter to the respondents on 23.08.2013 and subsequently, it was clubbed with **OA No. 108/2013 (supra)** vide order dated 19.11.2013.

240. During pendency of above matters, **Guidelines 2012** underwent a minor amendment by **CGWA Notification dated 06.08.2014** stating that Guidelines/Criteria thenceforth will follow report on ground water resources estimation as on March 2011 for evaluation of project proposal of industries/infrastructures/mining, seeking ground water extraction.

241. Neither the above Guidelines resulted in any improvement to pathetic condition of constant depletion of ground water nor CGWA made any serious attempt for betterment of the situation. The water level continued to deplete.

242. Complaints about ineffective, inadequate and improper regulatory measures adopted and/or omissions on the part of CGWA, and indiscriminate extraction of ground water continuously, across the

country, were brought before Tribunal in several other matters. One of such matters is **OA No. 176/2015 (*supra*)** wherein grievance raised was that large number of hotels in State of UP were drawing ground water for commercial purposes without having any permission/sanction from CGWA and authorities including UPPCB, CPCB; and that CGWA is not taking any action against them though their action of withdrawal of ground water illegally is causing harm to environment, ground water level and global warming. This application was entertained and notices were issued to the respondents on 26.05.2015. It was found that 3 hotels namely Hotel Holiday Regency, Moradabad, Hotel Clark Awadh, Lucknow and Hotel Country Inn, Sahibabad were extracting ground water without permission while Hotel Sunshine Park, Ghaziabad claimed that it was having a separate water connection from Ghaziabad Nagar Nigam. Hotel Raddisson Blu, Kaushambi informed that it has both sources of water i.e. ground water and water supply from Nagar Nigam. Extraction of ground water was not with the permission of CGWA though after filing of OA, some hotels moved application and subsequently got permission from CGWA.

243. CGWA, in response, relied on **Guidelines 2012** and took the stand that it is regulating only notified areas where abstraction of ground water is permissible only for drinking water but in non-notified areas the permission can be granted subject to conditions mentioned in Guidelines 2012.

244. Thereupon, CGWA issued another set of Guidelines (a draft at that stage) namely “Guidelines/Criteria for evaluation of proposals/request for ground water abstraction”, (hereinafter referred to as “**Guidelines 2015**”), giving effect from 16.11.2015, claiming that the same have been framed as per Tribunal’s direction for further betterment of ground water regulatory processes. CGWA invited objections/suggestions/comments till

15.01.2016. These Guidelines show that latest assessment of State wise ground water resources was available to CGWB as on 31.03.2011. According to which, out of 6607 assessment units (Blocks, Mandals, Talukas, districts), 1071 were over-exploited, 217 critical, 697 semi-critical, 4580 safe and 92 saline. Annual replenishable ground water resource was estimated as 433 bcm and net ground water availability as 398 bcm. Overall stage of ground water development of country was 62%. Guidelines 2015 also show that till that time, CGWA had notified only 162 areas for the purpose of regulation of ground water development. Guidelines 2015 sought to supersede all earlier Guidelines w.e.f. 16.11.2015. In respect of notified areas, it provided that permission to abstract ground water through any energized means will not be accorded for any purpose other than drinking water. However, in respect of non-notified areas, CGWA followed very flexible stand which it had earlier also, but with certain conditions. It provided that NOC for ground water withdrawal will be considered for industries/infrastructure/mining projects, as per categorization of the areas i.e., safe, semi-critical, critical and over-exploited. It also said that industries using water as raw material/water intensive industries shall not be granted NOC for ground water withdrawal in over-exploited area.

245. The ineffectiveness and casual approach of CGWA was brought to the notice of Tribunal, with further complaint that ground water level in entire country is continuously depleting and going down, in **OA No. 176/2015 (supra)**. It was also pointed out that by order dated 15.04.2015 in **OA No. 204/2014, Krishan Kant Singh vs. M/s. Deoria Paper Ltd.**, Tribunal directed that it shall be obligatory upon CGWA to ensure that any person operating tube well or any means to abstract ground water should obtain its permission and operate the same subject to law in force, whether

it is existing unit or still to be established, and in compliance thereof, **Guidelines 2015** were published, inviting objections.

246. The matter of **Vikrant Kumar Tongad (supra)** came up for consideration on 26.07.2018. During the course of arguments, it was brought to the notice of Tribunal that water is depleting in certain areas regularly as per study of CGWA and, therefore, a Rational Policy has to be adopted so as to make water available to cope up the need of society, and simultaneously, preserving water for further generation by preventing wastage of preventable use based on the principle of “sustainable development”. It was also noticed that problem of depletion of ground water was not limited to Delhi or NCR but needs be considered for entire country and effective enforcement of regulatory measures PAN India, particularly, in respect of semi-critical, critical and over-exploited areas. Draft Guidelines 2015 were also referred. Tribunal did not find effective regulatory measures either on the part of CGWA or concerned Ministry, hence, directed an expert from Ministry of Water Resources to remain present on next date with latest updates. Para 15 to 18 of order dated 26.07.2018 in **Vikrant Kumar Tongad (supra)** read as under:

“15. Certain Affidavits have been filed with regard to the inference about the extent of extraction of ground water. In its compliance report dated 31.05.2018 the Senior Town Planners, Department of Country Town and Planning, State of Haryana has suggested a formula for tentative calculation of water consumption for constructions which broadly is 0.75 kilo litre per sqm to 1 kilo litre per sqm. Actual requirement was found to be 2 kilo litre per sqm. for the building upto 20 stories if the number of storeys is more, the use of water per sqm. was more. On that basis it is suggested as follows:

Sr. No.	Building/Tower	Factors for Water consumption (In Litres per sqm. of build up area)
1.	Buildings upto 5 stories	750 litres per sqm.
2.	Buildings 5 to 10 stories	1000 litres per sqm.
3.	Buildings 10 to 20 stories	1500 litres per sqm.
4.	Buildings above 20 stories	2000 litres per sqm.

16. When the matter taken up for hearing today, learned counsel for the parties submitted that the concern for ground water depletion is not limited to Delhi or NCR. This Tribunal may, instead of going **into the issue limited to NCR region, consider various aspects of the said issue comprehensively including the existing mechanism for regulation of ground water extraction as well as recharge of ground water.**

17. On the one hand there is the need for the water which is the basic necessity, on the other compulsion of restricting its use in view of the fact that the availability of water is inadequate and level of water is depleting atleast in certain areas as per the study of Central Ground Water Authority. The Policy has to be rational, meeting the basic need of everyone and at the same time preserving the water for the future generation by preventing wastage or preventable use based on the principle of Sustainable Development. **Incidental to such policy is the issue of punitive measures and recovery of damages for those who have extracted ground water in the past who go on doing unauthorised/illegal extraction, leading to alarming depletion in the ground water.** Further question will be steps to be taken to tap all relevant sources specially the rain water harvesting, persevering the water bodies etc.

18. Our attention has been drawn in this regard to the guidelines for the criteria for evaluation of proposal for extraction of ground water w.e.f. 16.11.2015. These guidelines provide for notified and non-notified areas depending upon the availability of water and criteria adopted for permitting extraction and the area where there is water scarcity. Learned counsel for the Applicant submits that further guidelines have been prepared though the same may be at the draft stage.

For this purpose, we may direct an Expert from Ministry of Water of Resources to remain present on the next date with the latest updates.”
(Emphasis added)

247. In **OA No. 176/2015 (supra)**, Tribunal on 28.08.2018, taking note of complaints of inaction of CGWA, and ineffective regulation of extraction of ground water in critical areas, observed:

*“we are disappointed at the apathy shown by the CGWA. **On the one hand the CGHWA has classified over-exploited, critical and semi-critical areas for regulation, on the other it has refused to regulate such areas on a specious plea that it is only concerned with the notified area.** Being the Central Authority for the whole country under the binding mandate of the order of the Hon’ble Supreme Court, such apathy can hardly be appreciated and such pleas is against the concept of rule of law.”*

(Emphasis added)

248. Consequently, vide order dated 28.08.2018, Tribunal directed Ministry of Water Resources, in consultation with MoEF and Ministry of

Agriculture, to forthwith review existing mechanism so as to ensure effective steps for conserving ground water, at least in areas which are over-exploited, critical and semi-critical. Tribunal further said, the **policy framework should include monitoring mechanism with provision for coercive measures required**, consistent with the directions of Supreme Court in *M.C. Mehta vs. Union of India & Others (1997) (supra)*; policy must also **provide for recovery of damages for illegal drawl of ground water**; and **damages should include penalty as well as environmental compensation.**

249. On 29.08.2018, matter of *Vikrant Kumar Tongad (supra)* came up before Tribunal when it expressed its displeasure, for non-finalization of Guidelines, despite order of Supreme Court passed as long back as in 1996 in *M.C. Mehta vs. Union of India & Others (1997) (supra)* pursuant whereunto, CGWA was constituted by Government of India vide Notification dated 14.01.1997. Referring to all its earlier orders passed in *Vikrant Kumar Tongad (supra)* and also in some other cases which came up before Tribunal later, namely *OA No. 176/2015 (supra)* and *OA No. 484/2015, Shailesh Singh vs. Hotel the Oberoi Amarvilas & Other* (order dated 28.08.2018), it was observed that CGWA has failed to perform its duty of coming out with clear rational policy for conserving ground water despite Supreme Court orders in *M.C. Mehta vs. Union of India & Others (1997) (supra)*. Tribunal also referred to its orders in *OA No. 108/2013 (supra)*, *OA No. 179/2013 (supra)* and *Appeal No. 67/2015, Apex Chambers of Commerce and Industries of N.C.T. of Delhi & Others vs. Govt. of NCT Delhi & Others* which pertained to Delhi Jal Board, wherein stand of Board was that for commercial packaging or supply, permission to abstract ground water would not be granted. Hence Tribunal by order dated 10.07.2018 prohibited such abstraction.

250. In another matter taken up on the same date i.e., 29.08.2018 i.e., **OA No. 411/2018, M/s. A-One Mineral Water Industry vs. Central Ground Water Authority & Others**, Tribunal deprecated and disapproved approach and working of CGWA including its Chairman and Administrator and required Secretary, MoEF&CC to look into the matter and report before Tribunal.

251. Several matters namely **OA No. 59/2012 (supra)**, **OA No. 108/2013 (supra)**, **OA No. 179/2013 (supra)**, **OA No. 176/2015 (supra)**, **OA No. 484/2015 (supra)**, **OA No. 327/2018, Shailesh Singh Vs Panchsheel Buildtech Pvt. Ltd. & Others.**, **OA No. 115/2017, Shailesh Singh Vs. Central Ground Water Board & Others**, **OA No. 411/2118 (supra)** and **Appeal No. 67/2015 (supra)** came up on 22.10.2018 when no progress was shown by the authorities before Tribunal, despite categorical orders passed earlier. Deprecating, Tribunal observed that the authorities are comfortably sleeping over the matter, and in spite of pendency, no concrete steps were shown to have been taken by them. The matter was adjourned to 12.11.2018 directing Secretary, Water Resources, Govt. of India to remain personally present to show cause why action for defiance and non-compliance of Tribunal's order be not taken.

252. All these matters led by **OA No. 59/2012 (supra)** came up before Tribunal on 12.11.2018. In its order, Tribunal noticed that even in over-exploited, critical and semi-critical area, with or without permission underground water continued to be extracted on a specious plea that though critical, the area was not notified and thus, not regulated. Before Tribunal, CGWA sought to disown its responsibility stating that water is a subject matter of 'State' and, therefore, Central bodies have limited role. Similar defence taken before Supreme Court, by Government of India, was

already negated in ***M.C. Mehta vs. Union of India & Others (1997) (supra)***, still CGWA repeated the same. This was deprecated by Tribunal. Various observations made by Tribunal, demonstrating failure of CGWA in functioning as per directions and observation of Supreme Court in ***M.C. Mehta vs. Union of India & Others (1997) (supra)***, in paras 3 to 8, read as under:

“3. As a result of the survey of the geographical areas in the country, over exploited, critical and semi critical areas have been declared. The CGWA had issued 2012 guidelines and **thereafter prepared draft guidelines on 16.11.2015 which are pending finalization for the last three years.** The Tribunal noticed that **even in over exploited, critical and semi critical areas, with or without permission, underground water continues to be extracted on a specious plea that though critical the area was not declared notified and is, thus, not regulated.** The CGWA has also sought to disown its responsibility by saying that the matter was State subject.

4. The Tribunal has passed several order prohibiting extraction of underground water for commercial purposes with or without permission. **Mechanical condition of requiring recharge of the underground water, which does not actually happen, and on that basis permitting drawal of underground water for commercial purposes has been held to be unjustified.**

5. The **underground water has been found to be extracted for building construction, for bottling plants, for swimming pools, threatening availability of the underground in over exploited, critical and semi critical areas specially in absence of adequate steps for rain water harvesting for recharge of the underground water.**

6. The **plea that industries are allowed to draw underground water against charges is ridiculous and beyond comprehension in over exploited, critical and semi critical areas.** It is against the precautionary principle, sustainable development as well as inter generational equity principle. One may understand the drawal of underground for drinking purposes where no other source for such purpose exists but for no other purpose, much less the industrial purpose such drawal of underground water can be allowed with or without payment in such areas. The Tribunal has also noted that **drawal of ground water in the catchment areas of rivers may affect e-flow of the rivers which in turn affect aquatic life and the river water quality.**

7. We do appreciate the difficulties of the agriculturists but the option of providing alternative of use of treated sewage water etc. or switching over to less water consuming crops needs to be considered. Equally significant is the need for checking contamination of underground water by who are discharging untreated effluents in the earth or in the water bodies. Comprehensive planning and execution

thereof on the subject with utmost priority is necessary and absence thereof has led to emergency situation in certain areas.

8. In several orders, we have noted the apathy of the Authorities in the last six years in neglecting the subject in breach of the trust reposed in such Authorities. It was this concern that led to our earlier observations and direction to require the presence of Secretary, Department of Water Resources in person. We have no information about steps taken in compliance of earlier directions, including action for illegal activities of the CGWA except a statement that the said Authority is ill equipped. If so, we do not know why? We note that presence of the said Secretary today and also affidavit filed before this Tribunal on 16.10.2018 to the effect that policy framework has been evolved and re-framing of policy guidelines are “under consideration” for reference to the Ministry of Law.”

(Emphasis added)

253. Thereafter, CGWA came up with a new set of Guidelines, vide Notification S.O. 6140(E) dated 12.12.2018, published in Gazette of India (Extraordinary), of the same date, titled as “Guidelines to regulate and control ground water extraction in India”. It was given effect from 01.06.2019 (hereinafter referred as ‘**Guidelines 2018**’).

254. Para 2 thereof stated that these Guidelines shall supersede all earlier guidelines issued by CGWA and will have PAN India applicability.

255. Para 2.1 referred those categories of users who were exempted from obtaining NOC for ground water abstraction and read as under:

“2.1. Exemptions

1. The following categories of users shall be exempted from obtaining NOC for ground water abstraction:

- i. All users drawing/proposing to draw ground water through non-energized means (bucket & rope, hand pump, mhote etc.)*
- ii. Individual households drawing/proposing to draw ground water from a single dug well/bore well/tube well through delivery pipe of up to 1" diameter*
- iii. Agricultural users*
- iv. Armed Forces Establishments during operational deployment or during mobilization in forward locations.*

The following categories of users shall be granted exemption from the requirement of NOC for ground water withdrawal, subject to submission of particulars as per the proforma (Annexure III) to CGWA.

- i. *Strategic and operational infrastructure projects for Armed Forces*
- ii. *Defence Establishments and Paramilitary Forces Establishments*
- iii. *Government water supply agencies in safe and semi critical areas*

The agencies mentioned under Sl. Nos. i, ii and iii shall install digital water flow meters to monitor monthly ground water abstraction, construct observation wells (piezometers) equipped with Digital Water Level Recorders (DWLR) for regular monitoring of ground water levels if the proposed ground water extraction is > 10 m³/day. Data sharing mechanism will be the same as in Section 2.3.1.VII. They will also monitor ground water quality from the abstraction structures once in a year during the month of April/ May. Guidelines for construction of piezometer are given in Annexure IV. The ground water samples collected shall be analysed at an NABL accredited laboratory. The data on ground water abstraction, ground water levels and ground water quality shall be submitted to the concerned Regional Office of Central Ground Water Board on the web portal.”

256. Para 2.2 deals with drinking and domestic use and said as under:

“2.2. Drinking & Domestic use

Request for NOC shall be considered only in cases where the water supply department/agency concerned is unable to supply adequate amount of water in the area. For granting NOC for ground water withdrawal for drinking & domestic purposes, two broad categories identified are as follows:

- a) *Individual households/connections*
- b) *Infrastructure projects/industries/mining projects/water supply agencies/others”*

257. Para 2.2.1 deals with the conditions and procedure for grant of NOC to individual household. Para 2.2.2 deals with infrastructure projects/industries/mining projects/public water supply agencies/ others requiring water only for drinking & domestic use. These paras 2.2.1 and 2.2.2 read as under:

“2.2.1. Individual households:

Individual houses drawing/ proposing to draw ground water through more than one functional bore well/tube well/dug well or drawing ground water through delivery pipe of more than 1" diameter from a single ground water abstraction structure shall be required to seek NOC for ground water withdrawal under this category. NOC for ground water extraction shall be granted subject to the following conditions:

- i. Application for NOC shall be accompanied by the proof of ownership of household(s).
- ii. NOC for new wells shall be granted only in such cases where public water supply system does not exist/water supply is inadequate.
- iii. Applicant shall submit an affidavit on non-judicial stamp paper of Rs. 10/- confirming non/inadequate availability of public water supply.
- iv. The NOC shall be valid for a period of 5 years from the date of issue or till such time public water supply is provided to the household, whichever is earlier. The applicant shall apply for renewal of NOC at least 90 days prior to expiry of its validity.
- v. The user shall install digital water flow meter on the tube well/ bore well / dug well and submit the data through the web-portal
- vi. The user shall submit ground water abstraction data through the web-portal.
- vii. If the existing well becomes defunct within the validity period of NOC, the user can construct a replacement well under intimation to the Regional Director of CGWB. The defunct well shall be properly sealed as per guidelines given in Annexure V.
- viii. The owner shall implement roof top rain water harvesting as per the prevalent building bye laws. However, no recharge shall be undertaken in areas prone to water logging (water levels within 5 metres below ground level).
- ix. The owner shall pay Water Conservation Fee based on quantum of ground water extraction as applicable (Refer Sub-section 2.6).
- x. The NOC shall become void in case of change in land use of the property/ water use. It will then become mandatory for the owner to apply for fresh NOC.

2.2.2. Infrastructure projects/ industries/ mining projects/ public water supply agencies/other requiring water only for drinking & domestic use.

An indicative list of infrastructure projects to be considered under this category is given in Annexure VI. **NOC for ground water withdrawal for drinking and domestic purpose only** for infrastructure projects/ industry/ mining projects/water supply agencies/others will be granted based on the following conditions:

- I. Application for NOC shall be accompanied by the following documents:
 - i) Approval in the form of Terms of Reference / Consent to Establish/Consent to Operate / License issued by the statutory bodies viz. Ministry of Environment, Forests& Climate Change (MoEF & CC) / State Level Expert Appraisal Committee (SEAC)/State Level Environment Impact Assessment Authority (SLEIAA) / State Pollution Control Board (SPCB) / Urban/ Rural Development Authority / Department of Industries or any other authority mandated by Central/State Government.
 - ii) Details of water requirement computed as per National Building Code, 2016 (Annexure VII), taking into account recycling/ reuse of treated water for flushing etc. (in case of new buildings).
 - iii) Affidavit on non-judicial stamp paper of Rs. 10/- by the applicant, confirming non/ inadequate availability of public

- water supply in case of users requiring ground water up to 10 m³/day for drinking/ domestic use.*
- iv) Certificate of non-availability of water from government water supply agency in case of infrastructure project/industry/ mine requiring ground water in excess of 10 m³/day for drinking/ domestic use.*
 - v) Water quality data of bore well/ tube well/ dug well in respect of existing projects from NABL accredited laboratory.*
- II. Use of recycled/ treated waste water for purposes like flushing, green belt etc. shall be mandatory for new projects requiring >12.5 m³/d of ground water.*
 - III. NOC for new /existing wells shall be granted only in such cases where the required amount of water is not available from the public water supply system.*
 - IV. If the existing well becomes defunct within the validity period of NOC, the user can construct a replacement well under intimation to CGWA on web portal. The defunct well shall be properly sealed (Refer Annexure V).*
 - V. The proponent shall mandatorily install roof top rain water harvesting system in the project area, wherever the ground water level is deeper than 5 metres below ground level.*
 - VI. The proponent shall pay Water Conservation Fee based on quantum of ground water extraction as applicable (Refer Sub-section 2.6).*
 - VII. Installation of digital water flow meter (conforming to BIS standard) in the abstraction structure(s) shall be mandatory and intimation regarding the same shall be communicated to the CGWA within 30 days of grant of NOC through the web-portal. Monthly water meter reading shall be digitally recorded and reports of ground water abstraction shall be submitted through the web portal to CGWA.*
 - VIII. Construction of purpose-built observation wells (piezometers) for monthly ground water level monitoring shall be mandatory for proponents drawing/ proposing to draw 10m³/day or more of ground water. Detailed guidelines for construction of piezometers are given in Annexure IV. Depth and zone of aquifer tapped in the piezometer should be commensurate with that of the pumping well.*
 - IX. Installation of Digital Water Level Recorders (DWLR) in the observation well shall be mandatory for projects requiring ground water from 50 to less than 500 m³/day in safe and semi critical assessment units and 20 to less than 200 m³/day in critical and overexploited assessment units. The list of safe, semi critical, critical, overexploited and saline assessment units is available at www.noc-cgwb.gov.in.*
 - X. For projects requiring ground water extraction of 500 m³/day or more in safe and semi critical assessment units and 200 m³/day or more in critical and overexploited**

assessment units, installation of DWLR with telemetry in the observation well shall be mandatory. The data server shall be maintained by the supplier of the instrument and access will be provided to CGWA through the web portal. It shall be the responsibility of the applicant to provide user ID and password to the above agency.

- XI. Monthly water level data shall be submitted to CGWA through the web portal.
- XII. All proponents shall monitor quality of ground water from the abstraction structure(s). Water samples from borewells/ tube wells / dug wells shall be collected during April/May every year and analyzed from NABL accredited laboratories for basic parameters (cations and anions), heavy metals, pesticides/ organic compounds etc. Water quality data shall be made available to CGWA through the web portal.
- XIII. The **NOC shall be valid for a period of 5 years from the date of issue or till such time public water supply is provided to the project area, whichever is earlier.**
- XIV. The proponent/ authorized representative of the occupants of the infrastructure project shall apply for renewal of NOC at least 90 days prior to expiry of its validity.”

258. The indicative list of “Infrastructure projects” governed by para 2.2.2, as mentioned in annexure VI to the **Guidelines 2018**, referred to: residential apartment, Residential township, Office building, School College, University, Industrial Area (Drinking use), SEZ (Drinking use), Metro Station, Railway Station, Bus Depot, Airport, Seaport, Highway infrastructure, Fire station, Warehouse, Business Plaza, Malls & Multiplex, Hospitals, Nursing Homes, Water Park/Theme Park/Amusement Park, Resort, Hotel/Restaurant/Food Plaza, Holiday home/Guest house, Banquet Hall/Marriage Gardens, IT Complex, Logistics & Cargo, Clubs and Trade Centre.

259. Para 2.3 deals with industrial/mining/infrastructure projects and separate conditions are provided for industries, mining projects and infrastructure projects and the conditions are as under:

“2.3 Industrial/ Mining/ Infrastructure projects

*All industries/ mining/ infrastructure projects, **whether existing/ new/ under expansion** and drawing/ proposing to draw ground*

water through energized means shall need to obtain NOC for ground water withdrawal from the Central Ground Water Authority.

2.3.1 Industries

NOC to industries shall be granted only for such cases where government agencies are not able to supply the desired quantity of water. The applications for NOC shall be considered as per the criteria given below.

I. Application for NOC shall be accompanied by the following documents:

- i) Approval in the form of Terms of Reference/ Consent to Establish/ License issued by statutory bodies viz. Ministry of Environment, Forests & Climate Change (MoEF&CC) or State Pollution Control Board (SPCB) or State Level Expert Appraisal Committee (SEAC) or State Level Environment Impact Assessment Authority (SLEIAA) or Bureau of Indian Standards (BIS) or Food Safety and Standards Authority of India (FSSAI) or Department of Industries or any other authority mandated by Central or State Government.
- ii) A valid Consent to Operate issued by the Industry Department/ Pollution Control Board/ copy of application submitted for renewal of Consent to Operate.
- iii) Certificate regarding non/partial availability of fresh water/treated waste water supply from the concerned government agency in cases where requirement of ground water is more than 10 m³/day.
- iv) An affidavit on nonjudicial stamp paper of Rs. 10/- regarding non availability of water supply from government agencies in cases where ground water requirement is up to 10 m³/day.
- v) Water quality data of bore well/tube well/ dug well in respect of existing industries from NABL accredited laboratory.

II. **Hydrogeological report** prepared by NABET accredited consultant shall be mandatory for users drawing/ proposing to draw ground water to the tune of 2000 m³/day or more in safe assessment units, **1500 m³/day or more in semi critical and critical assessment units and 1000 m³/day or more in over-exploited assessment units**. Pro-forma for hydrogeological report is given in Annexure VIII. Installation of **digital water flow meter** (conforming to BIS standard) in the abstraction structure(s) **shall be mandatory** and intimation of the same shall be communicated to the CGWA through the web portal within 30 days of grant of NOC.

III. **Monthly water flow meter readings shall be recorded and reports of ground water extraction shall be submitted to CGWA through the web portal.**

IV. Industries shall minimize the use of fresh ground water through recycling and reuse of waste water.

V. All industries abstracting ground water to the tune of 500 m³/day or more in safe and semi critical and **200 m³/day or more in critical and over-exploited assessment units shall be required to undertake water audit** (Annexure IX) through CII/ FICCI/ NPC certified auditors and submit report within three months of completion

of the same to CGWA through the web portal. **The first audit shall be done within a year of grant of NOC.** Subsequent audits shall be conducted once in 3 years for Safe/ Semi critical assessment units and once in 2 years in critical/over-exploited assessment units.

VI. Construction of observation well(s) **(piezometers) within the premises, for monthly ground water level monitoring, shall be mandatory for industries drawing/ proposing to draw more than 10 m³/day of ground water.** Depth and aquifer zone tapped in the piezometer shall be commensurate with that of pumping well/ wells. The number of observation wells (piezometers) shall be specified in the No Objection Certificate. Detailed guidelines for construction of piezometers are given in Annexure IV. Monthly water level data shall be submitted to the CGWA through the web portal.

VII. Industries drawing/proposing to draw ground water from 50 to less than 500 m³/day in safe and semi critical assessment units and those drawing/proposing to draw **20 to less than 200 m³/day of ground water in critical and over-exploited assessment units shall install digital water level recorder (DWLR) in the observation well for continuous monitoring of ground water levels.** Depth to water levels shall be monitored at 12 hour intervals and the DWLR data shall be retrieved and submitted to CGWA through the web portal.

VIII. Industries drawing/proposing to draw ground water to the tune of 500 m³/day or more in safe and semi critical areas and **200 m³/day or more in critical and over-exploited areas would be required to install DWLR with telemetry in the observation well for continuous monitoring of ground water levels.** The server will be maintained by the supplier of the instrument and access shall be provided to CGWA. It shall be the responsibility of the proponent to provide User ID and password to the CGWA.

IX. All industries shall monitor quality of ground water from the abstraction structure(s). Water samples from bore wells/tube wells/dug wells shall be collected during April/May every year and analysed from NABL accredited laboratories for basic parameters (cations and anions), heavy metals, pesticides/organic compounds etc. Water quality data shall be made available to CGWA through the web portal.

X. All industries except those falling in red and orange categories as per CPCB (list available on http://envfor.nic.in/sites/default/files/Latest_118_Final_Directions.pdf) shall implement roof top rain water harvesting within six months of grant of NOC. Recharge of harvested water shall not be permitted in areas prone to water logging (water level within 5 m.bgl).

XI. Industries shall deposit **Water Conservation Fee (WCF)** based on quantum of extraction as applicable (see Subsection 2.6). Industries which are not able to implement roof top rain water harvesting due to likely threat of pollution or any other valid reason shall be required to pay additional water conservation fee to compensate for the quantum of water that could have been recharged by the unit.

XII. NOC shall be valid for a period of 3 years in safe and semi critical areas and 2 years in critical and overexploited areas.

XIII. The applicant shall apply for renewal of NOC at least 90 days prior to expiry of its validity.

XIV. Industries which are likely to cause ground water pollution e.g. Tanning, Slaughter Houses, Dye, Chemical/Petrochemical, Coal washeries, other hazardous units etc. (as per CPCB list) need to undertake necessary measures to ensure prevention of ground water pollution (Annexure X).

XV. Recharge/ injection of treated/untreated waste water within/ outside the plant premises is strictly prohibited.

XVI. Existing industries, which have already obtained NOC and have implemented recharge measures as specified in the NOC, shall be exempted from paying WCF. However, if the industry is going for expansion, WCF will have to be paid for the additional quantum of ground water withdrawal as per applicable rates.

*XVII. Existing industries, which have obtained NOC and adopted pond/ ponds but have not been able to implement the specified volume of recharge due to various reasons, shall have an option to de-adopt pond/ ponds and pay WCF within six months of the effectiveness of these guidelines. **If at the time of renewal it is observed that the industry has not been able to comply with the recharge condition specified in the NOC, the industry shall have to pay WCF in addition to the penalty as specified in the Environment (Protection) Act, 1986.***

XVIII. Wherever feasible, requirement of water for greenbelt (horticulture) shall be met from recycled/ treated waste water.

XIX. If an existing well becomes defunct within the validity period of NOC, the proponent shall construct a replacement well under intimation to the CGWA through the web portal. The defunct well shall be properly sealed (Annexure V).

XX. In case of change of ownership, new owner of the industry will have to apply for necessary changes in the NOC with documentary proof within 45 days of taking over possession of the premises.

2.3.2 Mining projects

All existing as well as new mining projects need to obtain NOC for mine dewatering and/or ground water withdrawal through wells, if any, from Central Ground Water Authority. NOC for abstraction of ground water shall be granted subject to the following conditions:

I. Application for NOC shall be accompanied by the following documents:

- i) Approval from statutory bodies viz. Ministry of Environment, Forests & Climate Change (MoEF & CC) or State Pollution Control Board (SPCB) or State Level Expert Appraisal Committee (SEAC) or State Level Environment Impact Assessment Authority (SLEIAA).*
- ii) Certified mine lease map.*

- iii) Document showing ownership/ lease of land.
- iv) Mining plan approved by the concerned Govt. agency/ department.
- v) Comprehensive report prepared by NABET accredited consultant on ground water conditions in both core and buffer zones of the mine, depth wise and year wise mine seepage calculations, impact assessment of mining and dewatering, details of recycling, reuse and recharge, reduction of pumping with use of technology for mining and water management to minimize and mitigate the adverse impact on ground water, based on local conditions. Format for report is given in Annexure VIII.

II. The water available from de-watering operations shall be put to gainful use such as water supply, irrigation, dust suppression, mining process etc.

III. Installation of digital water flow meter (conforming to BIS standard) in the abstraction structure(s) shall be mandatory and intimation of the same shall be communicated to the CGWA through the web portal.

IV. Water flow meter reading shall be digitally recorded and submitted to the CGWA through the web portal.

V. The proponent shall have to pay WCF based on quantum of ground water extraction as applicable (see Subsection 2.6).

VI. Construction of observation well(s) (piezometers) within the premises along the periphery, for monthly ground water level monitoring, shall be mandatory for mines drawing/ proposing to draw more than 10 m³/day of ground water. Depth and aquifer zone tapped in the piezometer shall be commensurate with that of pumping well/ wells. The number of observation wells (piezometers) shall be specified in the No Objection Certificate. Detailed guidelines for construction of piezometers are given in Annexure IV. Monthly water level data shall be submitted to the CGWA through the web portal.

VII. Proponents drawing/ proposing to draw ground water from 50 to less than 500 m³/day in safe and semi critical assessment units and those drawing/ proposing to draw 20 to less than 200 m³/day of ground water in critical and over-exploited assessment units shall install digital water level recorder (DWLR) in the observation well(s) for continuous monitoring of ground water levels. Depth to water levels shall be monitored at 12 hour intervals and the DWLR data shall be retrieved and submitted to the CGWA through the web portal.

VIII Proponents drawing/ proposing to extract ground water to the tune of 500m³/day or more in safe and semi critical areas and 200 m³/day or more in critical and over-exploited areas would be required to install DWLR with telemetry in the observation well for continuous monitoring of ground water levels. The server will be maintained by the supplier of the instrument and access shall be provided to CGWA. It shall be the responsibility of the proponent to provide User ID and password to CGWA.

IX. In addition, the proponent shall monitor ground water levels by establishing key wells in the core and buffer zones as specified in the NOC.

X. All mining units shall monitor quality of ground water from the abstraction structure(s). Water samples from bore wells/ tube wells / dug wells shall be collected during April/May every year and analyzed from NABL accredited laboratories for basic parameters (cations and anions), heavy metals, pesticides/ organic compounds etc. Water quality data shall be made available to the CGWA through the web portal.

XI. The NOC shall be valid for a period of 2 years from the date of issue of NOC.

XII. The proponent shall apply for renewal of NOC at least 90 days prior to expiry of its validity.

2.3.3 Infrastructure projects requiring dewatering or use of ground water for construction

New infrastructure projects/residential buildings may require dewatering during construction activity and/or use ground water for construction. In both cases, applicants shall seek NOC from CGWA before commencement of work. The NOC will be granted subject to the following conditions:

I. Application for NOC shall be accompanied by the following documents:

i) Approval letter from statutory bodies viz. Ministry of Environment, Forests & Climate Change (MoEF & CC) or State Pollution Control Board (SPCB) or State Level Expert Appraisal Committee (SEAC) or State Level Environment Impact Assessment Authority (SLEIAA) or Urban/Rural/Area Development Authority.

ii) In cases where dewatering of more than 100 m³/day is required, hydrogeological report prepared by NABET accredited consultant on the ground water situation in the area giving detailed plan of pumping, proposed usage of pumped water and comprehensive impact assessment of the same on the ground water regime. The report should highlight environmental risks and proposed management strategies to overcome any significant environmental issues.

iii) An affidavit on nonjudicial stamp paper of Rs. 10/- regarding non availability of water from any other source for construction in safe and semi critical areas.

iv) Certificate from the government agency regarding non availability of treated sewage water for construction within 10 km radius of the site in critical and over-exploited areas.

II. The proponent shall be required to adopt roof top rain water harvesting in the project premises after completion of building construction. Recharge measures shall not be implemented in areas prone to water logging (water level within 5 metres below ground level).

III. The proponent will have to pay WCF based on quantum of ground water extraction as applicable (see Sub-section 2.6).

IV. Proponent shall be required to carry out regular monitoring as mentioned below:

Parameter to be monitored	Frequency	Submission to the CGWA
Dewatering discharge rate (using a digital water flow meter)	Continuous	Through the web-portal
Water levels in the surrounding area by constructing observation wells (piezometers) in consultation with the concerned Regional Office of CGWB	Fortnightly	Through the web-portal

Monitoring records and results should be retained by the proponent for up to two years, for inspection or reporting as required by CGWA.

V. NOC shall be valid for the specific period as per the detailed proposal submitted by the project proponent.”

260. Para 2.4 deals with agriculture sector and said that it shall be exempted from obtaining NOC for ground water withdrawal but placed responsibility upon concerned State Governments to undertake sustainability of ground water source. Para 2.5 deals with the abstraction of saline/contaminated ground water. It is said that abstraction of saline/contaminated ground water for use by industries/ dewatering by infrastructure/mining projects including those located in over-exploited areas would be encouraged. The list of such assessment units having saline ground water at all depths as per the latest assessment of dynamic ground water resources will be made available by the Authority in the web-based application system. Packaged drinking water units shall be encouraged to be set up in quality affected areas. All precautions must be taken for protection of environment, especially fresh water aquifers in and around the area. Other conditions for granting NOC would be the same as mentioned in Para 2.3 for industries and infrastructure projects, respectively. Some additional conditions were provided which we are

omitting being non-relevant at this stage. Para 2.6 is a provision for Water Conservation Fee (hereinafter referred to as '**WCF**'), made in compliance of Tribunal's order dated 13.07.2017 in **OA No. 200/2014** dealing with Ganga matter, wherein it was observed that all users must be required to pay for ground water extraction. The rates of WCF were claimed to have been determined by CGWA after considering factors namely, i) **Cost of implementation of rainwater harvesting/artificial recharge structures** by industries/infrastructure units/mines which have been mandated to implement the same as per NOCs granted earlier; and ii) **charges** being levied by various State Governments **for use of surface water by industries.**

261. On 18.12.2018, leading cases **OA 176/2015 (supra)** and **OA 59/2012 (supra)** came up before Tribunal along with **OA 108/2013 (supra)**, **OA 179/2013 (supra)**, **OA 484/2015 (supra)**, **OA 327/2018 (supra)**, **OA 115/2017 (supra)**, **OA No. 411/2118 (supra)**, **OA 613/2017, Mohd. Javed Asghar vs. M/s Upper Ganges Sugar and Industries Ltd. (Distillery Unit) & Others** and **OA 614/2017, Mohd. Javed Asghar vs. State of U.P. & Others** and **Appeal 67/2015 (supra)**. After hearing, order was uploaded on 03.01.2019. Entire historical background and also litigation going on in Tribunal, in respect of massive abstraction of ground water and failure of statutory body like CGWA in effective regulation, consistent depletion of ground water level worsening the condition, was noticed and then Tribunal also examined Guidelines 2018. Deprecating the same, in para 22 to 27 of order dated 03.01.2019, Tribunal said:

*"20. It is clear from the above that, rather than laying down stricter norms for extraction of ground water for commercial purposes and putting in place a robust institutional mechanism for surveillance and monitoring, **extraction of ground water has been liberalized adding to the crisis unmindful of the ground situation and likely impact it will have on environment.** No data has been furnished to justify the policy reversal by way of uncontrolled liberalized drawal of groundwater in OCS areas.*

21. The provisions of the impugned notification show that **drawal of ground water has been**, for all practical purposes, **made unregulated in all areas, including the OCS areas**.

22. The **so called regulation is illusory**. The so called conditions are incapable of meaningful monitoring, as shown by past experience also

23. The **water conservation fee virtually gives licence to harness ground water to any extent** even in OCS areas.

24. There is **no institutional mechanism to monitor removal** and replenishment of ground water.

25. Delegation provision is virtual abdication of authority.

26. There is no check on injection of pollutants in the ground water in the impugned notification. There is no provision with regard to check on water quality and its remediation, if there is contamination.

27. We are satisfied that the **Notification dated 12.12.2018** tested on the Precautionary Principle, Sustainable Development as well as Inter-generational Equity Principles **is unsustainable in law** and instead of conservation of ground water which is necessary for providing access to drinking water in OCS areas, as well also other needs of environment, including sustenance of rivers and other water bodies, it will result in fast depletion of ground water and damage to water bodies and will be destructive of the fundamental right to life under Article 21 of the Constitution of India.”

(Emphasis added)

262. Consequently, Tribunal directed not to implement said Notification.

Its direction in para 28, reads as under:

“28. Accordingly, the impugned **Notification may not be given effect to in view of serious shortcomings as pointed above so that an appropriate mechanism can be introduced consistent with the needs of environment.**”

(Emphasis added)

263. Tribunal directed MoEF&CC to constitute an Expert Committee by including representatives from IIT Delhi, IIT Roorkee, IIM Ahmedabad, CPCB, NITI Ayog and any other concerned agency or department to examine the issue of appropriate **policy for conservation** of ground water with a robust institutional mechanism for **surveillance and monitoring**, with a view to enhance access to ground water for drinking purposes in

OCS (over exploited, critical and semi-critical) areas by way of **appropriate replenishment practices which can be properly accounted and measured for, as well as to sustain floodplains of rivers in terms of e-flow and other water bodies**. Giving this direction in para 29 of the judgment, Tribunal directed MoEF&CC and also Ministry of Water Resources to finalize the issue of subject, inter-se, with regard to ground water reserve and its quality. Committee was to be constituted in two weeks and report was directed to given by Committee in two months. **Committee was also required to indicate projection of its impact study in the light of projected data for next 50 years (in phased manner with action plan for each decade)**. Thereafter, the concerned Ministry was to issue fresh guidelines and submit report to Tribunal on or before 30.04.2019. In para 32, Tribunal directed CPCB to constitute a mechanism to deal with individual cases of violations of norms, as existed prior to Notification of 12.12.2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law. Tribunal further said that all the matters related to illegal extraction of ground water by individuals are disposed of with these directions.

264. Thus, vide order dated 03.01.2019, all individual matters relating to extraction of ground water illegally, stood disposed of. However, when the matters were next listed on 07.05.2019, Tribunal found that MoEF&CC has failed to perform its duty, and directions, issued by Tribunal vide order dated 03.01.2019, were not complied. In fact, Committee required to be constituted within two weeks, was actually constituted only on 29.03.2019. Tribunal deprecated it and said:

“We do not appreciate such attitude of Government departments when under a statutory enactment, violation of orders of this Tribunal is a criminal offence. The Committee has not acted promptly and no significant progress has been brought to our notice.

Lack of sensitivity of serious issues of environment such as fast depleting ground water is a matter of concern.”

265. Having said so, Tribunal directed Committee to submit report positively by 30.06.2019, failing which Joint Secretary concerned of MoEF&CC was directed to remain present to explain as to why action be not taken for violation of Tribunal's orders. Further, report dated 30.04.2019 submitted by CPCB vide e-mail, was also considered wherein it had taken the stand that assessment of environmental compensation for illegal extraction of ground water has been done. This report was not accepted by Tribunal, giving following reasons:

- “i. The OCS areas which need regulation for conservation of ground water cannot be further treated separately as notified or non-notified. Conservation of ground water in the said areas is of equal necessity. Depletion of ground water in the said areas affects the sub-terranean flow and results in contamination of ground water and also poses a potential danger for drying up of important natural resource in violation of established principle of ‘Intergenerational Equity’.***
- ii. The compensation to be recovered for illegal extraction has to be deterrent specially when it is for commercial or industrial purpose and linked to the quantum of ground water extracted and the period for which such extraction takes place.***
- iii. Scenario analysis with robust scientific logic is required for all the classes considered in comparable terms which has not been done in the present report.”***

266. CPCB was directed to submit fresh report on or before 30.06.2019.

267. Referring to ground water development on the basis of Guidelines 2015 for existing industries, infrastructure in the said mining projects, Tribunal said that it did not find any safeguards suggested to address the concern, earlier expressed against depleting ground water. It further held:

“The mandate of CGWA is not exploitation of ground water in depleted areas but to conserve it. Any policy which results in further depletion obviously cannot be permitted in OCS areas. CGWA is free to lay down and follow stringent norms to ensure that there is no depletion of ground water in OCS areas and depleted water level is improved and replenished. Any policy

has to be in that direction and not in reverse direction as is unfortunately being attempted by CGWA, as noticed in earlier orders.”

268. Tribunal also observed that MoEF&CC must come up with an appropriate policy. Strangely, MoEF&CC took the plea that CGWA has not cooperated, which has caused delay. This stand was denied by CGWA. In this situation, Tribunal observed that the fact remains that failure is on the part of both. Entrusted with the responsibility of protecting ground water, CGWA and all other Authorities must cooperate and collaborate in the exercise to come out with a policy which must result in checking further depletion of ground water and enhance replenishment. Tribunal directed concerned Secretaries to monitor compliance of directions, having regard to the importance of the issue.

269. Mistakenly, Registry failed to notice that individual matters were already disposed of vide order dated 03.01.2019, and thus, should not have listed on 07.05.2019, except the matter relating to status of compliance of directions of Supreme Court in NGT, to check depletion of ground water level in the country. This mistake occurred on 23.08.2019 also.

270. In the meantime, pursuant to order dated 03.01.2019 and 07.05.2019, MoEF&CC filed affidavit on 18.07.2019. Report of CPCB dated 26.06.2019 was also filed. Both these were taken into consideration on 23.08.2019 and order of Tribunal was uploaded on 11.09.2019.

271. The listing of disposed matter was noticed by Tribunal in the order dated 11.09.2019, hence, it was clarified that all the above matters be treated to be disposed of and shall be dealt with by concerned Regulatory Authority in accordance with law. The relevant extract of order dated 11.09.2019 passed in **OA 59/2012 (MA 34/2016 & MA 190/2016)**

(supra), OA 108/2013 (supra), OA 179/2013 (supra), Appeal No. 67/2015 with MA 107/2019 (supra), OA 176/2015 (supra), OA No. 484/2015 (supra), OA 327/2018 (supra), OA 115/2017 (supra), OA 411/2018 (supra), OA 613/2017 (supra) and OA 614/2017 (supra), reads as under:

“These matters involve the issue of conservation of ground water.

Vide order dated 03.01.2019 in O.A. No. 176/2015, this Tribunal directed as follows:

*“32. The CPCB may constitute a mechanism to deal with individual cases of violations of norms, as existed prior to Notification of 12.12.2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law. **All the matters relating to illegal extraction of ground water by individuals are disposed of with these directions.**”*

In view of above, the above matters having been disposed of were wrongly listed on 07.05.2019 and on 23.08.2019. The same be treated and disposed of and may be dealt with by the concerned regulatory authorities in accordance with law. The report of CPCB dated 26.06.2019 may be following on the subject of assessment of recovery of compensation for illegal drawl of ground water apart from prosecution and stoppage of illegal drawl of ground water in accordance with law.”

272. A separate order in **OA 176/2015 (supra) (MA 133/2015)** was uploaded on the issue of conservation of ground water. Considering the said issue, Tribunal found that the report was deficient on the issue of prevention or depletion of ground water and the same was not addressed at all. No effective enforcement mechanism of conditions, subject to which ground water extraction may be allowed in OCS areas, was provided. Mere condition of recharge without clear strategy of enforcement was not found appropriate and adequate safeguard, for permitting extraction of ground water. The report left many issues for being considered. Some aspects of the report were considered in paras 20 and 21 of the order dated 11.09.2019 passed in **OA 176/2015 (supra)**, which read as under:

“20. The **report of CPCB dated 26.06.2019 deals with methodology for assessing environmental compensation (EC)**, Formula for Environmental Compensation for illegal extraction of ground water, Environmental Compensation Rate (ECRGw) which has been further dealt with in different categories, i.e. ECRGw for Drinking & Domestic use for household purposes and those for institutional activity, commercial complexes, townships etc., ECRGw for Packaged Drinking Water Units, ECRGw for Mining, Infrastructure and Dewatering Projects, ECRGw for Industrial Units, Deterrent factors to compensate losses and environmental damage (for packaging drinking water units, mining, industrial and commercial purposes) and Deterrent Factor . Formula for Environmental Compensation for illegal extraction of ground water is as follows:

“5. Formula for Environmental Compensation for illegal extraction of ground water

The committee recommended that the formula considering water consumption, no. of days, rates for imposing Environmental Compensation based on the purpose for illegal abstraction of ground water as well as the deterrent factor detailed below:

$$\text{ECGw} = \text{Water consumption per day} \times \text{Environmental Compensation rate for illegal extraction of ground water (ECRGw)} \times \text{No. of Days} \times \text{Deterrent Factor}$$

Where, water consumption is in m^3/day and ECRGw in Rs/m^3 ”

All other details can be seen from the report which is available on the website of CPCB. The report also gives recommendations as follows:

21. The committee has given following recommendations:

1. In case of **fixation of liability, it always lies with current owner of the premises** where illegal extraction of groundwater is taking place.
2. **Violation duration** may be assumed as **at least one year** in case where no evidence for period of installation of **borewell could be established**.
3. For illegal industrial ground water abstraction, where metering system is not available, water consumption may be estimated as per consent conditions imposed by SPCB/PCC.
4. **Water intensive industries should only be permitted in safe, semi-critical and critical area, and should not be allowed to establish new industries in overexploited area.**
5. **Water in over-exploited area should be permitted only for drinking purposes** and industries established in this area without prior consent or NOC from CGWA or another concerned

department must be closed down with immediate effect. No expansion in existing industrial activity should be permitted, irrespective of additional water demand arises or not.

- 6. **Present categorization of area (Over-exploited, Critical and Semi-Critical), as per CGWA shall be considered for calculation of EC, regardless of the area category when the period of violation started.**
- 7. **In case of all existing cases having more than 5000 KLD ground water demand, permission may be given only after examining scientific assessment of water availability and assessing intergenerational equity by CGWA.**
- 8. **The industrial units should be directed to adopt State of the Art technologies, use of surface water, treated waste water and reduce specific water consumption, thereby ground water demand is reduced by 10% over three years' period. The industries also be encouraged to create facilities for storage of excess storm water and adequate measures such as groundwater recharge as well as restoration of lakes /ponds in the vicinity of the industry.**
- 9. **In addition, all repeated violations will attract EC at 1.25 times the previous EC.**
- 10. **Authorities assigned for levy EC and taking penal action are listed below:**

S. No.	Actions	Authority
1.	To seal illegal borewell/tube-well to stop extraction of water and further closure of project	District Magistrate
2.	To levy ECGw as per prescribed method	District Magistrate/CGWA
3.	To levy EC on industries involved in illegal abstraction of Groundwater , as per the method prescribed in report of CPCB- “EC for industrial units”	CPCB/SPCB/PCC
4.	Prosecution of Violator	CGWA under Environment (Protection) Act,1986 (or)
		SPCB/PCC under Water (Prevention

		and Control of Pollution), Act, 1974

273. Tribunal then constituted another Committee comprising of Joint Secretary, MoEF&CC, concerned Joint Secretary, MoWR, CGWB, National Institute of Hydrology, Roorkee, National Remote Sensing Center, Hyderabad and CPCB to go into the following questions:

- “(a) Steps required to be taken for preventing depletion of ground water.
- (b) Robust monitoring mechanism to ensure that no ground water is unauthorizedly extracted, including review of manning and functioning of CGWA.
- (c) Robust mechanism to monitor conditions laid down for grant of permission for extraction of ground water.
- (d) Recommendations in the report of the CPCB dated 26.06.2019 referred to above.”

274. Tribunal, however, accepted report of CPCB with regard to compensation as an interim arrangement and directed that the same may be acted upon by Regulatory Authorities and compensation be recovered from violators, for the period of violation, which may be assessed on case to case basis. Further, **Tribunal said that report of CPCB that water intensive industries can be allowed even in semi-critical and critical area without any further safeguards, may not be acted upon, till further orders.**

275. The association of Industrial Manufactures, Ghaziabad filed **I.A. No. 640/2019** in **OA No. 176/2015 (supra)**, seeking review of order dated 11.09.2019 on the ground that order has caused prejudice to them, hence needs reconsideration. This I.A. was considered on 10.10.2019 and rejecting the same, in para 6, Tribunal said:

“6. Since the OCS areas have been found to be seriously affected by over-drawl of ground water, regulation of such drawl for commercial purposes cannot be dispensed with for any industry even in industrial area. Availability of water for drinking is a first priority. The ‘Precautionary’ principle, ‘Sustainable

*Development' principle and the Inter-generational equity are part of life and **in absence of replenishment of ground water, unregulated drawl thereof cannot be held to be right of any commercial entity.** Shortage of availability of water for commercial purposes cannot be remedied by drawl of groundwater in over exploited, critically exploited and semi-critical exploited (OCS) areas. Water is certainly a scarce resource and the industry has to put up with such scarcity. **It is for the industry and the concerned authorities to find out alternative ways and means for sustenance of the industries instead of permitting indiscriminate drawl of groundwater in such areas till situation improves. Alternative means may be shifting to areas where water is not scarce or to processes where water is not required.** As already noted, groundwater is depleting in such areas and measures are required to check such depletion. If industries continue to draw ground water without NOC from CGWA as per current guidelines and orders of this Tribunal in OCS areas, the industries will have to face legal consequence of such illegal action."*

276. As per directions contained in order dated 11.09.2019, report submitted on 16.03.2020 was placed before Tribunal along with **OA No. 176/2015 (supra)** on 13.07.2020. It was brought to the notice of Tribunal that illegal extraction of ground water is neither being effectively checked nor there is any recovery of compensation from defaulters. In an article, published in "**Times of India**", dated 06.06.2017, it was stated that four crore litres of water was being illegally extracted in Gurgaon daily. Similar complaints of huge quantity of ground water extraction by tanker mafias were reported in NCT of Delhi which require constant action by Regulatory Authorities and robust mechanism for effective review. A news item was published in daily newspaper "**Tribune**", on 15.07.2020, under the title "Decline in water table caused crack in Mahendragarh Field: Experts". Drying of main rivers including Ganga due to depletion of ground water, water bodies running dry at alarming rate and extraction of ground water resulting in fall of water table beyond the level of replenishment, various studies and articles published in different magazines of repute etc. were considered by Tribunal in its order uploaded on 20.07.2020. In respect of State of Uttar Pradesh, in particular, district Gautam Buddha Nagar, Tribunal considered complaint of fast depletion of ground water due to

large scale extraction by various commercial entities, including hotels in Ghaziabad, Moradabad and Agra etc. Giving reference of earlier orders passed from time to time, including order dated 03.01.2019, Tribunal observed that preparation of Guidelines, without studying “Impact Assessment” would be against the principle of “sustainable development”. The principal vulnerable features, on account whereof Guidelines 2018 were criticized and Regulatory Authorities were directed not to give effect to it, were noted in para 15 of judgment dated 20.07.2020, as under:

“15. In its order of 03.01.2019, the Tribunal disapproved the notification, holding that ultimately, it is the result of all the measures, shown by the data on the ground, which has to be the basis of any policy and not just laying down of measures. It was observed that the notification granted exemptions in OCS areas without having regard to the impact on groundwater, or a roadmap for controlling the falling ground level. Doing so without impact assessment was against sustainable development.

Some further vulnerable features of the notification were noted as follows:

i. Exemption of individual households to draw ground water from single dug well/bore well/tube well through delivery pipe of upto 1" diameter and certain other categories, even if there is an existing supply of drinking water.

Beyond the said exemption, ground water withdrawal can be permitted on the basis of NOC where water supply is not adequate subject to certain conditions.

ii. Infrastructural projects including water supply agencies could be allowed to get NOC and the said industries are in Annexure-VI.”

277. Tribunal said that Guidelines had to show an application of mind as to how the Policy adopted by Regulatory Authorities would prevent extraction of water beyond desired level in OCS areas. Tribunal also noted its order dated 07.05.2019, considering CPCB report dated 30.04.2019, with regard to compensation regime, which was found unsatisfactory and CPCB was directed to give a fresh report observing that compensation to be recovered for illegal extraction has to be deterrent, especially when it is for commercial or industrial purpose, and should be linked to the quantum of ground water extraction and period for which such extraction takes

place. It was also observed that scenario analysis with robust scientific logic is required for all the classes considered in comparable terms. Tribunal considered affidavit dated 16.03.2020, filed by CGWA for Ministry of Jal Shakti, and pointed out that **Committee report annexed to the affidavit continues to be entirely unsatisfactory.** The observations made in para 24 of the judgment dated 20.07.2020, are:

*“24. The matter is being taken up in continuation of order dated 11.09.2019. We have heard Shri Vikramjit Banerjee, learned ASG appearing for MoJS and CGWA, We have considered the CGWA affidavit dated 16.3.2020 filed for MoJS which annexes the report of the Committee purporting to be in compliance of Tribunal order dated 11.9.2019. **The situation continues to be entirely unsatisfactory. Several issues in the report are same which were rejected in the order dated 3.1.2019.** The MoJS appears to be avoiding its Constitutional obligation of complying with the judgement of the Hon’ble Supreme Court and repeated directions of this Tribunal. Surprisingly and regretfully, a wholly untenable prayer is made that the Tribunal should review its earlier orders, which have attained finality, never having been challenged. It is thus clear that there is no intent or effort to comply with the said orders. **The report is not in compliance of this Tribunal’s orders but rather, largely violates the spirit of the said mandate.** We proceed to record the reasons.”*

278. Several issues in the report were same as already rejected by Tribunal vide order dated 03.01.2019. Ministry of Jal Shakti was found avoiding its Constitutional obligation of complying with the judgment of Supreme Court and repeated directions of Tribunal. Observing that report was not in compliance of Tribunal’s earlier orders, rather violates their spirit, Tribunal gave its reasons, in para 25 to 30, as under:

*“25. The CGWA affidavit states that **the restriction on extraction of groundwater in OCS areas is likely to have adverse impact on industrial production, employment opportunities and GDP of some States.** It seeks vacation of the Tribunal order dated 03.01.2019, so as to issue NOCs for groundwater extraction as per proposed guidelines or as per 2015 guidelines.*

*26. **As mentioned earlier, the report practically reiterates the regime earlier brought out on 12.12.2018, which was rejected by the Tribunal on 3.1.2019** being against sustainable development and mandate of law laid down by the Hon’ble Supreme Court. We do not find it necessary to reproduce the report in extenso but refer to and comment upon the main aspects thereof.*

- a. The report states at the outset, contrary to the Hon'ble Supreme Court judgment:

*“Water being a State subject, **initiatives on water management including conservation and water harvesting in the Country is primarily States' responsibility**. Further, to supplement the efforts of the State Governments, Government of India provides technical and financial assistance to encourage sustainable development and efficient management of water resources through various schemes and programmes.”*

However, as against the above stand, the report also mentions that the CGWA is vested with the regulation, control, management and development of groundwater in the country. It has issued guidelines (including the 2015 and the 2018 guidelines), and enumerated its various initiatives and policy decisions.

- b. *For the same reasons for which notification dated 12.12.2018 was found unacceptable, the proposed recommendations, **liberalizing groundwater extraction across the board to certain categories without any impact assessment and effective checks, are against law.***
- c. *Exemptions for infrastructure projects, MSMEs or other industries or commercial purposes except drinking water, where supply is not otherwise available in water stressed areas, will be against **sustainable development and public trust doctrine unless individual impact assessment is conducted and permitting such extraction found viable.***
- d. *There has to be listing of priorities within available limited resources and unlimited demands and impact assessment of such activity and policy of permitting extraction has to be based on **carrying capacity in the form of the water levels.***
- e. *No **road map has been provided how the new regime will check and neutralize falling ground water levels. There is neither a claim that in the last 24 years of regulation by the CGWA, ground water levels have improved, nor any projection for future improved.** Data compiled by Niti Ayog in its report published in 2018 'composite water index' is clear evidence of over exploitation at several locations. Moreover, CGWA itself has conducted survey and identified 1868 out of 6585 assessment units as OCS areas. Its failure is in not having effective regulatory regime. There is no adequate implementation of conditions for drawal of ground water for commercial purposes. Such failure is shown by falling levels and news of **mafias engaged in illegal drawal of ground water in OCS areas without effective check.** Further liberalization will defeat the purpose of having CGWA and be contrary to the mandate of public trust doctrine. Effective steps for protecting ground water in OCS areas against **singularly commercial considerations** are critical.*
- f. The report observes:
- “During the discussions, it was observed that ground water is a replenishable resource and the aquifer zones from which ground*

water is extracted gets replenished every year from rainfall and other sources. **Therefore, there is a need to extract groundwater by various users including industries/agriculture needs in safe, semi-critical and critical areas as space is to be created in the aquifers for replenishment of water through rainfall/other sources.** It is pertinent to mention here that in case we do not allow extraction of ground-water in these areas the precious rainfall may be lost through runoff as the void in aquifers may not be available for recharge purposes through rainfall.

In safe, semi-critical and critical areas, annual ground water withdrawal is less than the annual ground water recharge and in over-exploited areas, it exceeds annual recharge. In view of this,, the Committee was of the view that it may not be appropriate to club semi-critical and critical with over-exploited assessment units, provided necessary measures to compensate the ground water withdrawal are ensured and at no point groundwater extraction exceeds 100% of recharge. **Hence, the committee was of the opinion that two broad categories of assessment units namely i) over-exploited and ii) critical, semi-critical & safe be considered for framing the guidelines. Stricter regulatory regime was suggested for over-exploited assessment units to avoid further deterioration.”**

We find the statement that withdrawal to the extent of replenishment **must be done** to avoid wastage of rain water is contradicted by **continually falling levels of ground water in OCS areas.** There is no question of wastage of rain water where water level is falling. In such areas, the withdrawal has to be reduced not only to the extent of replenishment but to enhance the ground water to safe and sustainable levels. Replenishment and raising of water level are both important in OCS areas. Falling groundwater levels dry up water bodies and reduce the flow of the rivers. CPCB website acknowledges **351 river stretches as polluted for reasons including non-availability of flow which prevents adequate dilution capacity. This affects the aquatic life, wildlife and food-chain and the entire eco-system.**

- g. The report states, under the heading ‘**action being taken for preventing depletion of groundwater and recharge**’:

“The focus of this report is therefore to create a balanced approach, **with emphasis on demand side management and practical regulation that does not impede development.** Committee was also apprised about the fact that Water being a State subject, initiatives on **water management including conservation of ground water is primarily States’ responsibility.** However, Central government supplements the efforts of states Government through technical and financial assistance.”

There is clear contradiction in mentioning need for balanced approach on the one hand and **emphasis on the demand side.** Such approach is against the mandate of ‘Sustainable Development’, including Precautionary principle, intra and inter-generational equity and ‘public trust’ doctrine.

- h. The report's recommendation under the heading '**Industry, Infrastructure and Mining projects**' that extraction of groundwater by existing industries need not be checked as it may obstruct growth, is an argument against the principle of 'Sustainable Development'. **There is no absolute right even of existing industries to continue to draw ground water without regard to depleting groundwater levels as held even in 2015.** Such extraction cannot be at the cost of environment and ignoring intra and intergenerational, precautionary and sustainable development principles. **Development and growth must be undertaken but not without ignoring the sustainable groundwater level.**
 - i. Recommendation for robust monitoring mechanism by restructuring CGWA, strengthening manpower having network upto District Level etc. may be looked into by the concerned authorities and action taken for implementation so as to ensure that there is effective regulatory mechanism as per the mandate of law. Our observations are same with regard to robust mechanism to monitor conditions laid down for grant of permission for extraction of groundwater.
 - j. Recommendation in para 13.0, on quantum of compensation and action required against violators, are contrary to CPCB recommendations for closing down industries in over exploited areas for extracting groundwater illegally, and cannot be accepted. The present proposal is against stringent action against violators committing criminal offence which cannot be appreciated. To regulate and control groundwater extraction in India, the overriding principle of carrying capacity has to apply to every category of commercial use of groundwater, including industrial use, mining projects, infrastructure projects. Compensation for unlawful groundwater extraction must be on the bases of **restitution and deterrence.**
 - k. The water rates in para 6.0 of the report with regard to various categories including packaged water and beverages and mining infrastructure projects **in OCS have to be in the nature of deterrent because groundwater extraction for such purposes is not permissible beyond carrying capacity. The proposed rates do not meet such test.** Thus, unregulated drawal of water being a criminal offence under the law, **compensation may be recovered as per CPCB report dated 26.06.2019 until any further appropriate mechanism is prepared.** The 2015 CGWA guidelines and the MoEF report itself provides that groundwater extraction for commercial purposes was impermissible in OCS areas. Instead of moving in that direction, present proposal is in reverse direction which is not permissible.
27. In terms of the Tribunal's previous orders (dated 03.01.2019, Paras 29 and 31, and dated 11.09.2019, Para 24), **the core issues that are required to be considered are:**
- a. **Has a robust institutional monitoring mechanism been evolved**
 - i. **To define 'assessment unit' - wise carrying capacity and accordingly set (a) target replenishment levels and (b) plan for permissible levels of extraction, of ground water levels in OCS areas;**

- ii. *to assign individual target replenishment levels as a condition for granting extraction permits, and to audit such replenishment by those who are extracting groundwater; as well as to audit and measure actual carrying capacity periodically;*
 - iii. *to monitor real-time implementation of conditions for permitting extraction of ground water;*
 - iv. *to withdraw permits for extraction of ground water failing target replenishment levels; as well as*
 - v. *to sustain the flow of rivers in terms of e-flows and sustain other water bodies?*
 - b. *Is there a provision for an impact study in light of projected data for the next 50 years (in phased manner with action plan decade-wise)?*
 - c. *Has an effective and measurable plan been prepared for preventing depletion and unauthorized extraction of ground water backed by requisite mechanism in the form of manning and effective functioning of CGWA so as to ensure sustainable ground water management in terms of the Hon'ble Supreme Court mandate by which CGWA was created?*
 - d. *Is the compensation regime against violators adequately deterrent?*
28. *The answer is 'no'. If implemented, the current report would nullify the mandate of the Hon'ble Supreme Court by seeking to deregulate ground water extraction, ignoring its impact on the e-flow of rivers, water bodies and overall sustainable management of scarce natural resources with emphasis on industrial development, without balancing development and environment. Irreversible damage cannot be allowed by extracting water beyond safe levels, without impact assessment.*
29. *We, thus, hold that as per mandate of sustainable development under Section 20 of NGT Act, 2010, which has been held to be part of right to life under Article 21 of the Constitution, the **regulatory authority must direct its policy towards preventing further depletion of and upgrading the groundwater levels based on impact assessment.** Extraction can neither be unregulated or allowed across the board without individual consideration. For this purpose, there is need to compile data by **mapping all the assessment units individually in terms of current and estimated water level, drawal and replenishment and preparing a management plan for all such units.** The CGWA being a statutory regulator for the country has to exercise **overriding power in the form of statutory regulatory orders.** It may have its own network and, to the extent found viable, utilize the network of existing Authorities like District Magistrates, Environment Departments, Departments of Irrigation and Public Health etc. **The ground water assessment has to be done annually and placed on the respective websites of the Districts or States.** Any extraction of groundwater has to be permitted keeping in mind*

availability of groundwater ensuring that there is no further depletion and ground water level remains at safe level.

30. At this stage, **we may notice that the regulatory mechanism of the CGWA has not been adequate, as the report also notes.** CGWA does not appear to have requisite strength nor enforcement mechanism nor strategies. This may be one of the reasons for failure in effective monitoring, defeating the object of law. This has led to large number of petitions before this Tribunal pointing out that illegal groundwater extraction was rampant. The plans for **rain water harvesting and many other steps to a great extent remain largely only on paper.** Remedial measures need to be taken in view serious challenges in protection of groundwater level, to save rivers and water bodies and the entire chain of environment.”

279. Thereafter, following directions were issued in para 39:

“Directions

39. In the light of the above discussion, we direct as follows:
- b. MoJS may ensure requisite manning and effective functioning of CGWA so as to ensure **sustainable ground water management** in terms of the Hon’ble Supreme Court mandate by which CGWA was created.
 - c. **Let CGWA and MoJS comply with the directions of this Tribunal in orders dated 3.1.2019, 7.5.2019 and 11.9.2019, to have a meaningful regulatory regime and institutional mechanisms for ensuring prevention of depletion and unauthorized extraction of ground water and sustainable management of groundwater in OCS areas. Regard must be had to water availability and safe levels to which its drawal can be allowed, especially for commercial purposes, based on available and assessed data in each “Assessment unit”.** Procedures for assessment of individual applications and institutional mechanism may be clearly laid down.
 - d. As per orders dated 3.1.2019, undertaking an impact study in light of projected data for the next 50 years (in phased manner with action plan decade-wise).
 - e. There must be **no general permission for withdrawal of ground water, particularly to any commercial entity, without environment impact assessment of such activity on individual Assessment units in cumulative terms covering carrying capacity aspects by an expert committee.** Such permission should as per Water Management Plans to be prepared in terms of this order based on mapping of individual assessment units. Any permission should be for specified times and for specified quantity of water and not in perpetuity, and be necessarily subject to digital flow meters which cannot be accessed by proponents, with mandatory annual calibration by authorized agency at proponents’ cost. **An annual review by independent and expert evaluation must audit and record ground water levels as well as compliance with the conditions of the permission.** Such audits must be published online for transparency and to track compliance and year-on-year change in ground water levels, and swift action

taken against those who fail audit, including withdrawal of permission, blacklisting, initiation of prosecution and recovery of deterrent compensation as per CPCB regime. Records must be maintained online and for a sufficient and reasonable time.

- f. As observed in para **Error! Reference source not found.**(a) and **Error! Reference source not found.**(a) above, all OCS assessment units must undergo water mapping. Water Management Plans need to be prepared for all OCS assessment units in the country based on the mapping data, starting with Over-exploited blocks. The Water Management Plans, data on water availability or scarcity and policy of CGWA must be uploaded on its website for transparency and public involvement. Such exercise may be done expeditiously, preferably within next three months.”*

280. Interestingly, Ministry of Jal Shakti, after referring to earlier orders and order dated 20.07.2020, passed by Tribunal, issued a fresh notification dated **24.09.2020**, published in Gazette of India (Extraordinary) dated 24.09.2020, laying down Guidelines to regulate and control ground water extraction in India, in supersession of all earlier Guidelines issued by CGWA (hereinafter referred to as '**Guidelines 2020**'). These Guidelines have come into force from the date of publication in the Gazette i.e., 24.09.2020. It further says that Guidelines shall have PAN-India applicability.

281. Guidelines 2020 says that Ground water abstraction in States/ UTs (which are not regulating ground water abstraction) shall continue to be regulated by CGWA. Further, wherever States/UTs have come out with their own ground water abstraction Guidelines, which are inconsistent with the CGWA Guidelines, the provisions of CGWA Guidelines will prevail. However, in case, Guidelines followed by such States/UTs contain some more stringent provisions than CGWA Guidelines, such provisions may also be given effect to, by the States/UTs Authorities, in addition to those contained in the CGWA Guidelines. States may be at liberty to suggest additional conditions/criteria based on the local hydro-geological situations which shall be reviewed by CGWA/Ministry of Jal Shakti,

Government of India before acceptance. All new/existing industries, industries seeking expansion, infrastructure projects and mining projects abstracting ground water, unless specifically exempted under para 1.0 below, will be required to seek NOC from CGWA, or, the concerned State/UT Ground Water Authority, as the case may be. Guidelines 2020 said that water management plans shall be prepared by all State Ground Water Authorities/Organizations for all over-exploited, critical and semi-critical assessment units, starting with over-exploited units.

282. Para 1.0 of **Guidelines 2020** deals with exemptions from seeking NOC. It is more or less similar to the earlier exemption clause contained in the preceding Guidelines, with a solitary difference that this time industrial units in the category of Micro and Small Enterprises drawing less than 10 cum/day, are added in the category of exempted categories. It says:

“1.0 Exemptions from seeking No Objection Certificate:

Following categories of consumers shall be exempted from seeking No Objection Certificate for ground water extraction:

- (i) Individual domestic consumers in both rural and urban areas for drinking water and domestic uses.*
- (ii) Rural drinking water supply schemes.*
- (iii) Armed Forces Establishments and Central Armed Police Forces establishments in both rural and urban areas.*
- (iv) Agricultural activities.*
- (v) **Micro and small Enterprises drawing ground water less than 10 cum/day.***

283. For Drinking & domestic use for Residential apartments/Group housing societies/Government water supply agencies in urban areas, procedure for NOC is provided in para 2.0. It says that for new and existing wells, where Government water supply agency is unable to supply requisite amount of water in the area, NOC shall be granted, subject to following specific conditions:

- “i) Installation of **Sewage Treatment Plants** shall be mandatory for all residential apartments/ Group Housing Societies where ground water requirement is more than 20 m³/day. **The water from Sewage Treatment Plants shall be utilized for toilet flushing, car washing, gardening etc.**
- ii) The No Objection Certificate shall be valid for a period of five years from the date of issue or till such time local Government water supply is provided to the project area, whichever is earlier. In case the project proponent receives water supply from the concerned local Government Water Supply Agency during the validity of the No Objection Certificate, intimation regarding availability of public water supply shall be sent by the project proponent to CGWA and No Objection Certificate will be cancelled by the Authority. In other cases, the project proponent will apply for renewal of No Objection Certificate, ninety days before the expiry of No Objection Certificate.
- iii) Proponents shall be liable to pay ground water abstraction charges for the quantum of ground water proposed to be extracted, as per rates mentioned in Table 5.1.”

284. Vide para 3.0, Agriculture sector was exempted from obtaining NOC for ground water extraction. For commercial use, para 4.0 of Guidelines, 2020, says that no new major industry shall be granted NOC in over-exploited assessment areas except as per the policy Guidelines.

285. Para 4.1 deals with the case of industrial use and says that in over-exploited assessment units, NOC shall not be granted for ground water abstraction to any new industry except those falling in the category of Micro, Small and Medium Enterprises (hereinafter referred to as '**MSME**'). However, an exception has been provided for grant of NOC for drinking/domestic use for work force, green belt use by these new industries. Expansion of existing industries involving increase in quantum of ground water abstraction in over-exploited assessment units shall not be permitted. NOC shall not be granted to new packaged water industries in over-exploited areas, even if they belong to MSME category. Thereafter, certain specific conditions have been mentioned for grant of NOC to industries, and the same are as under-

- “i) No Objection Certificate shall be granted only in such cases where local government water supply agencies **are not able to supply the desired quantity of water.**
- ii) All industries shall be required to adopt latest water efficient technologies so as to reduce dependence on ground water resources.
- iii) All **industries abstracting ground water in excess of 100 m³/d** shall be required to **undertake annual water audit** through Confederation of Indian Industries (CII)/ Federation Indian Chamber of Commerce and Industry (FICCI)/ National Productivity Council (NPC) certified auditors and submit audit reports within three months of completion of the same to CGWA. All such industries shall be required to reduce their ground water use by at least 20% over the next three years through appropriate means.
- iv) Construction of observation well(s) (piezometer)(s) within the premises and installation of appropriate water level monitoring mechanism as mentioned in Section 15 shall be mandatory for industries drawing/ proposing to draw more than 10 m³/day of ground water and. **Monitoring of water level shall be done by the project proponent. The piezometer (observation well) shall be constructed at a minimum distance of 15 m from the bore well/production well.** Depth and aquifer zone tapped in the piezometer shall be the same as that of the pumping well/wells. Detailed guidelines for design and construction of piezometers are given in Annexure II. Monthly water level data shall be submitted to the CGWA through the web portal.
- v) The proponent shall be required to adopt roof top rain water harvesting/ recharge in the project premises. **Industries which are likely to pollute ground water (chemical, pharmaceutical, dyes, pigments, paints, textiles, tannery, pesticides/insecticides, fertilizers, slaughter house, explosives etc.) shall store the harvested rain water in surface storage tanks for use in the industry.**
- vi) Injection of treated/untreated waste water into aquifer system is strictly prohibited.
- vii) Industries which are likely to cause ground water pollution e.g. Tanning, Slaughter Houses, Dye, Chemical/ Petrochemical, Coal washeries, other hazardous units etc. (as per CPCB list) need to undertake necessary well head protection measures to ensure prevention of ground water pollution (Annexure III).
- viii) **All industries drawing ground water in safe, semi-critical and critical assessment units shall be required to pay ground water abstraction charges** as applicable as per Tables 5.2 A and 5.3 A.
- ix) **All existing industries drawing ground water in over-exploited assessment units shall be liable to pay ground water restoration charges** as applicable as per Tables 5.2 B and 5.3 B.”

286. The documents to be submitted along with application for grant of NOC, included an IAR, which was made mandatory, where abstraction of ground water proposed is in excess of 100 m³/day in over-exploited, critical and semi-critical areas. The aforesaid report shall be on the ground water regime and also socio-economic impacts to be prepared by accredited consultants.

287. In respect of mining projects, Para 4.2 says that there is no restriction on grant of NOC even in over-exploited areas. It reads as under:

*“All existing as well as new mining projects will be required to obtain No Objection Certificate for ground water abstraction. **Since mining projects are location specific, there will be no ban on grant of No Objection Certificate for abstraction of ground water for such projects in over-exploited assessment units.**”*

288. However, specific conditions attached for issue of NOC for mining projects are provided in para 4.2, as under:

- “i) It shall be mandatory for all the mining industries to ensure that water available from de-watering operations is properly treated and should be gainfully utilized for supply for irrigation, dust suppression, mining process, recharge in downstream and for maintaining e-flows in the river system.*
- ii) Construction of observation well(s) (piezometers) along the periphery in the premises, for monthly ground water level monitoring, shall be mandatory for mines drawing/ proposing to draw more than 10 m³/day of ground water. Depth and aquifer zone tapped in the piezometer shall be commensurate with that of pumping well/ wells.*
- iii) In addition, the proponent shall monitor ground water levels by establishing observation wells (piezometers) in the core and buffer zones as specified in the No Objection Certificate.*
- iv) In case of coal and other base metal mining the project proponent shall use the advance dewatering technology (by construction of series of dewatering abstraction structures) to avoid contamination of surface water.*
- v) In addition to this, all mining units shall also monitor the water quality of mine seepage and mine discharge through NABL accredited/ Govt. approved laboratories and the same shall be submitted at the time of self-compliance.*
- vi) All mining projects drawing ground water in safe, semi-critical and critical assessment units shall be required to pay ground water abstraction charges as applicable as per Tables 5.4 A.*

- vii) *All mining projects drawing ground water in over-exploited assessment units shall be liable to pay ground water restoration charges as per Table 5.4 B.”*

289. The documents required to be submitted along with application for NOC in respect of a mining project, include, besides mining plan approved by the concerned Authorities and proposals for rain water harvesting/recharge within the premises, a comprehensive report, made mandatory vide clause(c), which reads as under:

- “(c) *Comprehensive report prepared by accredited consultant on ground water conditions in both core and buffer zones of the mine, depth wise and year wise mine seepage calculations, impact assessment of mining and dewatering on ground water regime and its socio-economic impact, details of recycling, reuse and recharge, reduction of pumping with use of technology for mining and water management to minimize and mitigate the adverse impact on ground water, based on local conditions. Format for report is given in Annexure V.”*

290. In Para 4.3 of **Guidelines 2020**, issue of NOC to infrastructure project has been dealt with. Here, it is said that since infrastructure projects are location specific, grant of NOC to such projects located in over-exploited assessment units shall not be banned. It reads as under:

“4.3 Infrastructure projects:

Since infrastructure projects are location specific, grant of No Objection Certificate to such projects located in over-exploited assessment units shall not be banned. New infrastructure projects/residential buildings may require dewatering during construction activity and/or use ground water for construction. In both cases, applicants shall seek No Objection Certificate from CGWA before commencement of work. However, in over-exploited assessment units, use of ground water for construction activity shall be permitted only if no treated sewage water is available within 10 km radius of the site. New as well as existing Infrastructure projects shall also be required to seek No Objection Certificate for abstraction of ground water.”

291. However, it is also provided in para 4.3 that no NOC shall be granted for extraction of groundwater for water parks, theme parks and amusement parks in over-exploited assessment units. Thereafter, specific

conditions for grant of NOC for ground water abstraction in infrastructure projects are provided, in para 4.3 in clauses (i) to (v), as under:

- “i) In case of infrastructure projects that require dewatering, proponent shall be required to carry out regular monitoring of dewatering discharge rate (using a digital water flow meter) and submit the data through the web portal to CGWA/SGWA as applicable. Monitoring records and results should be retained by the proponent for two years, for inspection or reporting as required by CGWA/SGWA.*
- ii) Installation of Sewage Treatment Plants (STP) shall be mandatory for new projects, where ground water requirement is more than 20 m³/day. The water from STP shall be utilized for toilet flushing, car washing, gardening etc.*
- iii) For infrastructure dewatering/ construction activity, No Objection Certificate shall be valid for specific period as per the detailed proposal submitted by the project proponent.*
- iv) All infrastructure projects drawing ground water in safe, semi-critical and critical assessment units shall be required to pay ground water abstraction charges as applicable as per Table 5.3 A.*
- v) All infrastructure projects (new/ existing) drawing ground water in over-exploited assessment units shall be liable to pay ground water restoration charges as per Table 5.3 B.”*

292. For documents required to be submitted along with the application, clauses (a), (c) and (e) to (g) of Para 4.3, talk of the following documents:

“(a) In cases where dewatering is involved, submission of impact assessment report prepared by an accredited consultant on the ground water situation in the area giving detailed plan of pumping, proposed usage of pumped water and comprehensive impact assessment of the same on the ground water regime shall be mandatory. The report should highlight environmental risks and proposed management strategies to overcome any significant environmental issues such as ground water level decline, land subsidence etc.

(c) Certificate from a government agency regarding non availability of treated sewage water for construction within 10 km radius of the site in critical and over-exploited areas.

(e) Proposal for rain water harvesting/ recharge within the premises as per Model Building Bye Laws issued by Ministry of Housing & Urban Affairs.

(f) Details of water requirement computed as per National Building Code, 2016 (Annexure I), taking into account recycling/ reuse of

treated water for flushing etc. (in case of completed infrastructure projects for commercial use).

(g) Completion certificate from the concerned agency for infrastructure projects requiring water for commercial use.”

293. More attention has been paid in **Guidelines 2020** on ground water abstraction charges. It is payable by all residential apartments/group housing societies/Government water supply agencies in urban areas and industries/mining/infrastructure projects. Ground water abstraction charges, based on quantum of ground water extraction and category of assessment units as per details given in Guidelines, are payable by all industries/mining/infrastructure projects drawing ground water in safe, semi-critical and critical assessment units. Ground water restoration charges, based on quantum of ground water abstraction, are payable by all existing mining/infrastructure projects and existing industries including MSME drawing ground water in over-exploited assessment units. Ground water restoration charges are also payable by new MSME, new infrastructure and new mining projects in over-exploited areas.

294. Para 6.0 deals with Bulk Water Supply and says that all private tankers, abstracting ground water, and use it for supply as bulk water suppliers, will now mandatorily seek NOC for ground water abstraction. Bulk water suppliers through tankers drawing ground water in safe, semi-critical and critical assessment units shall pay ground water abstraction charges as per Table-6.1A. Bulk water suppliers drawing ground water in over-exploited assessment units shall pay ground water restoration charges as per the Table-6.1B. All tankers will have to install GPS based system for their monitoring of movement/area of operation.

295. Para 7.0 deals with abstraction of saline ground water and here the provision is broadly similar as it was in earlier Guidelines.

296. A new provision with regard to protection of wetland areas is added vide para 8.0 and it reads as under:

“8.0 Protection of Wetland Areas
*The wet land areas in the country are very crucial as they are direct reflection of the presence of ground water in such areas. The protection of the wetland areas is being separately handled by the Wetland Authorities. **Since ground water is very crucial for the survival of the wetland area, any excessive ground water development within the zone of wetland area would affect the volume of water in that wetland.***

***Projects falling within 500 m. from the periphery of demarcated wetland areas shall mandatorily submit a detailed proposal indicating that any ground water abstraction by the project proponent does not affect the protected wetland areas.** Furthermore, before seeking permission from CGWA, the projects shall take consent/approval from the appropriate Wetland Authorities to establish their projects in the area.”*

297. Thereafter, in para 9.0 some general compliance conditions of NOC are mentioned which we are omitting at this stage.

298. In para 11.0, subject of renewal of NOC is dealt with. The term of renewal is specified in para 11.0 (v) as under:

*“v. **No Objection Certificate will be renewed for the terms specified for various uses as follows:***

Category	Use	Term of renewal
<i>Critical, Semi-critical and safe</i>	<i>Infrastructure projects for drinking & domestic use and urban Water Supply Agencies</i>	<i>5 years</i>
	<i>Industries</i>	3 years
	<i>Mines</i>	<i>2 years</i>
<i>Over-exploited</i>	<i>All users in ‘Over-exploited areas’</i>	2 years

”

299. If there is delay in finalization of NOC, Para 11.0 (vi) contains provision for deemed grant of NOC and reads as under:

*“vi. If the application for renewal is submitted in time and the CGWA/the respective State/UT Authority is unable to process the application in time, **No Objection Certificate shall be***

deemed to be extended till the date of renewal of No Objection Certificate.

300. However, if PP has delayed in applying for renewal, provision has been made that he will have to pay only environmental compensation for the period starting from the date of expiry of NOC till NOC is renewed by Competent Authority. However continued withdrawal/extraction of ground water by PP, despite expiry of NOC, will not be illegal. This is what is provided in para 11.0 (vii) which reads as under:

“vii. If the proponent fails to apply for renewal within 3 months from the date of expiry of No Objection Certificate, the proponent shall be liable to pay Environmental Compensation for the period starting from the date of expiry of No Objection Certificate till No Objection Certificate is renewed by the competent authority.”

301. **Guidelines 2020**, vide para 13.0 has appointed District Magistrate/District Collector/Sub Divisional Magistrates of each Revenue District/Sub division as Authorized Officers, delegating power to seal illegal wells, disconnect electricity supply to the energized well, launch prosecution against offenders etc., including grievance redressal related to ground water in their respective jurisdictions. It is also provided that to decentralize and strengthen monitoring and compliance mechanism as per the Guidelines, officials of concerned Departments of Revenue and industries of States/UTs shall be appointed as Authorized Officers in consultation with State/UT Governments. Copy of NOC issued by CGWA shall be forwarded to the respective District Magistrate/District Collector. It is provided in Para 13.0 that for any violation of directions of CGWA and non-fulfilment of the conditions laid down in NOC, Authorized Officers will file appropriate petition/original application etc. under Sections 15 to 21 of EP Act 1986, in appropriate Courts.

302. Para 14.0 direct all Project Proponents (drawing ground water more than 10m³/day) to have mandatorily constructed piezometers (observation wells) within their premises for monitoring of ground water levels.

303. Determination of environmental compensation and formula thereof is provided in para 15.0 of **Guidelines 2020**, and, it reads as under:

“Extraction of ground water for commercial use by industries, infrastructure units and mining projects **without a valid No Objection Certificate** from appropriate authority **shall be considered illegal** and such entities shall be **liable to pay Environmental Compensation** for the quantum of ground water so extracted. The norms prescribed by Central Pollution Control Board (CPCB) shall be utilized for calculating the Environmental compensation as mentioned below:

*ECGW = Ground water consumption per day x Environmental Compensation rate (ECRGW) x No. of days x Deterrence factor
where ground water consumption is in m³/day and ECRGW in Rs./Cum”*

304. Rates of environmental compensation are prescribed in para 15.1 which are different for different kinds of units in as much as table 15.1 provides rates of environmental compensation for packaged drinking water units; table 15.2 in respect of mining/infrastructure dewatering projects; and table 15.3 for industrial units. It is, however, provided in all the 3 tables mentioned above that minimum environmental compensation shall not be less than Rs. One lakh.

305. Para 15.2 lays down deterrent factors to compensate losses and environmental damage (packaged drinking water units and mining/infrastructure dewatering projects). Para 16.0, besides, and/or in addition of environmental compensation, provides penalty liable to be imposed on Proponents for non-compliance of NOC conditions issued by appropriate authority and rates of penalty are given in Table 16.1.

306. Para 17.0 provided other important conditions applicable to all and reads as under:

“17.0 Other important Conditions (Applicable to all):

- i. *Sale of ground water by a person/agency not having valid no objection certificate from CGWA/State Ground Water Authority is not permitted.*
- ii. *In infrastructure projects, paved/parking area must be covered with interlocking/perforated tiles or other suitable measures to ensure groundwater infiltration/harvesting.*
- iii. *In case of Infrastructure projects, the firm/entity shall ensure implementation of dual water supply system in the projects. Compliance of the same shall be submitted through the web portal.*
- iv. ***Non-compliance of conditions mentioned in the No Objection Certificate may be taken as sufficient reason for cancellation of no objection certificate accorded/non-renewal of No Objection Certificate.***
- v. *No application shall be entertained without supporting documents as specified in relevant sections.*
- vi. *Abstraction structure(s) should be located inside the premises of project property.*
- vii. *Self compliance of conditions laid down in the no objection certificate shall be reported by the users online in the web portal of Central Ground Water Authority/state Ground Water Authority.*
- viii. *Processing fee prescribed, if any, from time to time shall be charged for various services.*

Note:

1. *Guidelines are subject to modification from time to time.*
2. *In case of any discrepancy between Hindi and English versions of this document including the annexures, the English version shall prevail.”*

307. Thus, the concerned Ministry namely Ministry of Jal Shakti (Department of Water Resources, river Development and Ganga Rejuvenation) issued **Guidelines 2020** in purported compliance of directions contained in Tribunal’s orders dated 11.09.2019, 20.7.2020 and earlier orders referred in this judgment, but as a matter of fact, we find that Guidelines 2020 broadly do not satisfy directions as given repeatedly and persistently, reposing confidence in the Authorities who are responsible and accountable for preservation and protection of

environment, that they would understand their statutory obligations, sensitize themselves with the traumatic condition of environment, show patent endeavour for improvement, march with a conviction that not only present day people but coming generations also get a healthy environment with clean air, non-contaminated water, adequate for drinking and other daily uses, enough ground water necessary for agriculture and simultaneously for developmental activities; and perform with a real sense of devotion and determination. To our utter dismay, they have failed. We do not find much improvement in **Guidelines 2020**. Virtually, it is only a new cover provided to the old scheme with minor variations, alterations and modifications, here and there, but having no substantial consequences to the root cause and central issue, i.e. protection and preservation of ground water, prevention of, not only further depletion, but a serious and effective attempt for recharge and restoration.

308. So far as exemption for requirement of NOC is concerned, the category of consumers namely domestic, requiring water for drinking and domestic uses, whether in rural and urban areas, Establishments of Security Forces like Armed Forces and Central Armed Police Forces etc. and agricultural activities, we, at this stage, do not find any reason to make any comment but inclusion of some commercial and industrial activities i.e. micro and small industrial entrepreneurs category i.e. MSME, drawing ground water less than 10m³/day, even in the area where ground water level is critical or over exploited, is incomprehensible. The number of such units and impact of drawl of ground water, by such units, on the water level, it appears, has not been examined at all, in as much as the Tribunal passed order on 20.07.2020 and notification containing **Guidelines 2020** has been issued 24.09.2020 i.e. within less than two months.

309. Further, in respect of other commercial and industrial activities also, the alleged restrictions are only an eye wash. For commercial uses, it is provided that no NOC to new major industries shall be granted in over-exploited assessment areas except as per Policy Guidelines. In the context of commercial use, only for industrial use, it is provided that NOC shall not be granted for ground water extraction to a new industry, except those falling in the category of MSME. The existing units are not covered by it. More over in the new units, NOC for abstraction of ground water for drinking/domestic use for work force, green belt etc. shall be permitted. Expansion of existing units involving increase of ground water extraction in over-exploited assessment areas shall not be permitted. There is a twist when it says that NOC shall not be granted to new packaged water industries in over-exploited areas even if they belong to MSME category. In Guidelines 2015, no NOC was to be given to any water intensive industry, even if it is MSME, in over exploited assessment areas. Now it is restricted to packaged water industries. Apparently, a drastic relaxation has been given in respect of water intensive industries, for no reason, and that too in flagrant defiance of order of Tribunal.

310. The critical and semi-critical areas have been left untouched and there is no such restriction at all. The only reference to these areas in para 4.1 (viii) is that industries drawing ground water in safe, semi-critical and critical assessment areas shall be required to pay ground water extraction charges which will also be paid by existing industries. The charges are provided as per table 5.2 A and 5.3 A for safe, semi-critical and critical assessment units and tables 5.2 B and 5.3 B for over-exploited areas. The rates provided therein are:

“Table 5.2 A: Rates of ground water abstraction charges for packaged drinking water units (Rs per m³)

S.No.	Category of area Ground water use	Quantum of ground water withdrawal				
		Up to 50m ³ /day	51 to <200 m ³ /day	200 to <1000 m ³ /day	1000 to <5000 m ³ /day	5000 m ³ /day and above
1.	Safe	1.00	3.00	5.00	8.00	10.00
2.	Semi-critical	2.00	5.00	10.00	15.00	20.00
3.	Critical	4.00	10.00	20.00	40.00	60.00

Table 5.3 A: Rates of Ground Water abstraction charges for other industries & infrastructure projects (Rs per m³)

S.No.	Category of area Ground water use	Quantum of ground water withdrawal			
		< 200 m ³ /day	200 to <1000 m ³ /day	1000 to <5000 m ³ /day	5000 m ³ /day and above
1.	Safe	1.00	2.00	3.00	5.00
2.	Semi-critical	2.00	3.00	5.00	8.00
3.	Critical	4.00	6.00	8.00	10.00

Table 5.2 B: Rates of ground water restoration charges for packaged drinking water units (Rs per m³)

S.No.	Category of area Ground water use	Quantum of ground water withdrawal				
		Up to 50 m ³ /day	51 to <200 m ³ /day	200 to <1000 m ³ /day	1000 to <5000 m ³ /day	5000 m ³ /day and above
1.	Over-exploited (existing industries only)	8.00	20.00	40.00	80.00	120.00

Table 5.3 B: Rates of ground water restoration charges for other industries & infrastructure projects (Rs per m³)

S.No.	Category of area ↓ Ground water use →	Quantum of ground water withdrawal			
		< 200 m ³ /day	200 to <1000 m ³ /day	1000 to <5000 m ³ /day	5000 m ³ /day and above
1.	Over-exploited (existing industries / new Industries as per the present Guidelines)	6.00	10.00	16.00	20.00

311. Rates prescribed above are very nominal and virtually permits abstraction of ground water in stressed area almost free. Water charges prescribed by local bodies by supplying surface water are much more. Such nominal rates for abstraction of ground water would in fact encourage more abstraction for commercial purpose and frustrate the gigantic efforts being made by Supreme Court and this Tribunal to preserve and protect ground water particularly in stressed areas.

312. In respect of mining and infrastructure projects, it is specifically provided that NOC shall not be denied or banned for existing as well as new projects in over-exploited areas. Though some conditions are there for monitoring of quantity of ground water extraction in the said area, payment of abstraction charges or the restoration charges as the case may be, but effective steps capable of execution for recharge/restoration are clearly wanting.

313. Thus, the issue of constant depletion of water level, initially brought before Tribunal, in the context of NOIDA and Greater NOIDA which are part of district Gautam Buddha Nagar, but subsequently, extended to the entire country since this problem was/is being faced by people throughout the country, remained unexecuted. This Tribunal repeatedly required Statutory Regulators to take effective steps for prevention of depletion of water level and also for recharge/restoration/rejuvenation of water level;

enough power is conferred by Statute upon Statutory Regulator i.e. CGWA to take all permissible, possible and effective steps for the purpose, but it is not understandable why it has been/is reluctant to execute and enforce the said power, in the manner it was desired to protect and preserve ground water level across the country. It is admitted, as also demonstrated in earlier paragraphs, that when study of ground water level was made in different phases, extreme alarming level of ground water was noted in sufficiently large number of places but for regulation purposes a very small fragment thereof was selected by CGWA. In its own discretion, without specifying the criteria on which only a few areas were so selected, CGWA notified a very small numbers and made some provisions, that too, very superficial, for regulating the same. In respect of others, termed as non-notified area, very relaxed and concessional provisions were made, that too, like grant of a license i.e. NOC, in a very smooth and casual fashion, unmindful of the fact that its statutory duty was to take steps for protection and conservation of ground water level and not to grant easy access for abstraction, that too, to commercial institutions/establishments/bodies, to extract ground water for commercial/industrial purposes without having any corresponding actual recharge/restoration of ground water, particularly, in the area where it had already depleted to a very low level and was classified as over-exploited, critical or semi critical. Tribunal did not appreciate this approach, expressed its displeasure and disapproval repeatedly, but, and despite that, CGWA, on the pretext of effective functioning of economy, issued revised Guidelines repeatedly and frequently but all failed, when tested at the anvil of conservation and protection of ground water level in stressed or highly stressed areas.

314. Major deficiencies, observed by Tribunal, in various guidelines issued by CGWA, are summarized here as under:

- i. Policy to be followed by CGWA has to be rational, meeting basic need of everyone and at the same time preserving water for future generation by preventing wastage or preventable use based on the principle of “sustainable development”.
- ii. Policy must have punitive measures and recovery of damages from those who have extracted ground water in past and continue to do so unauthorizedly, i.e., illegal extraction, leading to alarming depletion of ground water.
- iii. Steps to be taken to tap all relevant sources specially the rain water harvesting and preservation of water bodies;
- iv. When CGWA has classified, over-exploited, critical and semi critical areas for regulation, it has no reason to refuse regulation of such areas on the plea that it would govern/regulate only notified area;
- v. Being Central Authority, CGWA has to regulate ground water in the whole country under the mandate of Supreme Court, hence cannot show apathy on the pretext of notified area, ignoring other areas where ground water level is similarly stressed i.e., over-exploited, critical or semi-critical;
- vi. Extraction of ground water in over-exploited, critical and semi-critical area with or without permission, only on the pretext of being non-notified, amounts to failure of Statutory duty on the part of CGWA;
- vii. Mechanical imposition of condition of recharge of underground water without any mechanism for ensuring its compliance or to check, whether complied or not, at all, while continuing to permit drawl of ground water for commercial purposes, is unjustified;**
- viii. Abstraction of ground water for building construction, watering plants, swimming pools, threatening availability of ground water in

over-exploited, critical and semi- critical areas, specially, in absence of adequate steps for recharge of ground water, is unjustified;

- ix. **Mere provision for realization of some amount/charges for drawl of ground water is ridiculous and illegal, in respect of extraction of ground water in over-exploited, critical and semi-critical area;**
- x. CGWA has to observe in its functions, precautionary principle, sustainable development as well as inter-generational equity principle. Drawl of ground water for industrial purposes with or without payment, in OCS areas, should be banned.
- xi. Checking of contamination of ground water by discharge of untreated effluents in water bodies need comprehensive planning and execution and on priority basis, it is necessary, failing whereof, has led to emergency situation in certain areas;
- xii. Apathy of authorities in last several years, in neglecting subject in breach of trust, reposed in such authorities, has been noted by Tribunal still no information was given with regard to compliance of earlier orders including action for illegal activities of CGWA.
- xiii. Instead of laying down strict norms for extraction of ground water for commercial purposes and putting in place a robust institutional mechanism for surveillance and monitoring, **extraction of ground water has been liberalized**, adding to the crisis, unmindful of ground situation and likely impact, it will have on environment.
- xiv. No study or data has been furnished or collected to justify this approach.
- xv. Drawl of ground water for all practical purposes made unregulated in all areas including OCS.
- xvi. So called regulation is illusory.

- xvii. **Water conservation fee in effect a license to harness ground water to any extent even in OCS areas.**
- xviii. No institutional mechanism to monitor removal and replenishment of ground water;
- xix. No check on injunction of pollutants in ground water;
- xx. No provision to check water quality and remediation, if there is contamination;
- xxi. Instead of conservation of ground water necessary for providing access to drinking water in OCS areas, Guidelines would result in fast depletion of ground water and damage to water bodies;
- xxii. Mandate of CGWA is not exploitation of ground water in depleted area but to conserve it;
- xxiii. OCS areas need regulation for conservation of ground water, cannot be treated separately as notified or non-notified;
- xxiv. Compensation to be recovered for illegal abstraction, has to be deterrent, linked to the quantum of ground water extracted and period for which such extraction took place;
- xxv. CGWA must lay down and follow stringent norms to ensure that there is no depletion of ground water in OCS areas and depleted water level is improved and replenished;
- xxvi. The abstraction of ground water in over-exploited area should be permitted only for drinking purposes;
- xxvii. For calculation of environmental compensation, present categorization of area (over-exploited, critical and semi-critical) shall be considered, irrespective of when violation started or committed;
- xxviii. In case of demand of more than 5000 KLD in existing cases, permission be given only after examining scientific assessment of water availability and inter-generational equity. In case of repeated

violations, environmental compensation shall be computed at 1.25 times of the previous environmental compensation;

- xxix. Since OCS areas have been found seriously affected by over-drawl of ground water, regulation of such drawl for commercial purposes cannot be dispensed with for any industry, even in industrial area;
- xxx. In absence of replenishment of ground water, unregulated drawl cannot be permitted to any commercial entity;
- xxxi. Shortage of availability of water for commercial purposes cannot be remedied by permitting drawl of ground water in OCS areas.
- xxxii. Water is a scarce resource; hence, industry has to cope up with such scarcity and find out its own alternative ways to meet the requirement of water;
- xxxiii. They cannot be permitted indiscriminate drawl of water in such areas till situation improves;
- xxxiv. Liberalization of ground water extraction across the board, to certain categories, without any impact assessment and effective checks, are against law;
- xxxv. No road map has been prepared by CGWA as to how revised Guidelines will check and neutralize falling ground water level particular, when it has continuously gone down. Liberalization of abstraction of ground water would defeat the purpose of Constitution of CGWA and is contrary to mandate of Public Trust doctrine;
- xxxvi. Effective steps for protecting ground water in OCS areas against individual commercial considerations are must to serve general people.

315. In the backdrop of the aforesaid observations which we have culled out from various orders of Tribunal, referred above, ultimately, in the order

dated 20.07.2020, 4 issues were formulated in para 27 and in para 28, Tribunal said that the answer to the said issues is 'no'. Tribunal held that as per mandate of sustainable development under Section 20 of NGT Act 2010, Regulator must direct its policy towards preventing further depletion of, and upgrading, ground water levels, based on impact assessment. Extraction can neither be unregulated nor allowed across the board without individual consideration. The directions were consequently issued to prepare meaningful regulatory regime, institutional mechanism for ensuring prevention of depletion, unauthorized extraction of ground water and sustainable management in OCS areas.

316. Unfortunately, the concerned Ministry and Regulator have acted in haste and just in 2 months i.e., 24.09.2020, have published Guidelines 2020 wherein most of the infirmities, irregularities, and failures, pointed out on the part of CGWA, in earlier Guidelines, as such, are present. Though there are minor variations and alterations, but the same are wholly inconsequential, looking to the gravity of the situation, arising due to consistent depletion of ground water.

317. We have given a complete retrospect to the Statutory provisions as also Statutory Regulators to regulate ground water in the country so as to clearly understand the scheme of regulation of ground water in the country. In the present case, however, it is evident from record that no permission at any point of time was obtained by APIL-PP either from CGWA or from any other Competent Authority at any point of time for extraction of ground water and this violation has continued not only at the time when the present OA was filed but even earlier thereto and till date. Nothing has been placed on record that even provisions of Haryana Water Resources (Conservation, Regulation and Management) Authority Act, 2020 have been followed though we may add as caution that the provisions of the

said Act can be made applicable only subject to consistency thereof with the provisions made by CGWA with regard to extraction of ground water. Therefore, there is a blanket defiance, disregard and violation on the part of APIL-PP in respect of extraction of ground water and the extraction throughout is patently illegal.

Illegal extraction of ground water:

318. The report categorically said that since 2001 and 2002, there were 39 borewells/tubewells in the area in question. Obviously, at that time, project was in construction phase, if not in entirety, then substantial part thereof. PP claimed that it had applied for permission/NOC to CGWA but the fact remains that no permission was granted. Mere submission of application does not mean that permission has been granted. Even at the time of inspection, 21 tubewells were found in operation for supply of water to the residents of the area though area in question is within the supply of water by municipal authorities and, therefore, withdrawal of ground water in the area in question was illegal. No specific reply has come from APIL/PP on this aspect except that it had applied for permission and failure on the part of CGWA in granting permission cannot be a reason to penalize PP. Thus, it is proved that extraction of ground water was illegal.

Status of Ground Water in Gurugram:

319. At this stage, we may also place on record that ground water status in Gurugram is in stressed condition. In a study conducted by CGWB, it has been observed that Gurgaon district is situated on South eastern part of Haryana State covering an area of 1200 sq.km. In North, it is bordered by the Union Territory of Delhi, in east by Faridabad, in North West by Jhajjar and Rewari districts of Haryana and in West by Alwar district of Rajasthan State and south by Mewat district of Haryana. The district is divided in four Blocks, namely, Gurgaon, Pataudi, Farrukhanagar, and

Sohna. There is one sub-division, Gurgaon. Gurgaon town is headquarter of the district.

320. As per ground water Resources estimation of the district conducted in 2009, overall stage of ground water development in the block is in the order of 232% exceeding replenishable recharge. Therefore, **district was categorized as 'over-exploited'**. As on 31.03.2009, net annual ground water availability of the district was 23261 ham and existing gross ground water draft for all users was 53927 ham.

321. The quality of ground water for drinking and irrigation purposes was studied and it was found:

“The shallow ground water of the district is alkaline in nature (pH 7.25 to 8.13) and is moderately to highly saline (EC 805 to 3410 μ S/cm). Among cations, sodium is the dominant cation in 63% samples and in the remaining mixed cationic character is observed whereas among anions, mostly mixed anionic character dominates. However, bicarbonate is found to be the dominant anion in 25% samples. On comparing the concentration values of major ions with the recommended desirable and permissible concentration limits for drinking water (Bureau of Indian Standards), it is found that ground waters is mostly unsuitable for drinking purposes in 88% of wells mainly due to high nitrate and fluoride contents that exceed the maximum permissible limits of these parameters which are 45 mg/l and 1.5mg/l respectively.

Salinity (EC), Sodium Adsorption Ratio (SAR) and Residual Sodium Carbonate (RSC) are generally the parameters for ascertaining the suitability of ground water for irrigational uses. These parameters range from 805 to 3410 μ S/cm at 250C, 1.57 to 15.27 and –17.15 to 5.30 milli-equivalents respectively. Plot of USSL diagram used for the classification of irrigation waters indicated that ground water samples mostly fall under class C₃S₁ & C₃S₂ (56%). Such waters are likely to cause medium to high salinity hazards but they may not cause sodium hazards because of low SAR. The remaining 44% of water samples fall under C₃S₃, C₃S₄, C₄S₁, C₄S₂ C₄S₃ and C₄S₄ classes of irrigation water. Waters having C₄, C₃ and S₃ and S₄ may lead to both salinity and sodium hazards when used for irrigation under normal practices. Such waters, nevertheless, can be used for semi-salt tolerant to salt tolerant crops along with appropriate amount of gypsum on well drained soils”.

322. The above report also shows that Gurgaon block and adjoining industrial area was notified by CGWA on 26.12.2002 for ground water regulation. For registration purpose, Farukhnagar and Pataudi blocks

were notified on 13.03.2006 and 20.11.2006 respectively. **The entire Gurgaon block was notified by CGWA vide public notice no. 1/2006 dated 13.3.2006. Due to worsening of situation CGWA vide public notice no. 2/2011 dated 13.8.2011 notified entire Gurgaon district.**

323. Therefore, from 2011, the entire Gurgaon district is a notified area by CGWA and irrespective of the observations and discussions made above with regard to notified or non-notified area, so far as Gurgaon is concerned, Statutory Regulator i.e., CGWA has notified it in 2011 and no extraction of ground water without permission could have been carried out on and after 13.08.2011 in the entire district Gurgaon particularly for commercial purposes. Therefore, extraction of ground water in the case in hand, without permission/NOC/Clearance by Competent Statutory Regulators, was/is illegal.

324. Further defense of PP that it has handed over developed area to Sushant Lok Resident Welfare Association (hereinafter referred to as '**SLRWA**') in 2015 and further maintenance of builder's area has been transferred to MCG, hence it is not responsible/liable for any fault/violation found in the questioned area, is not acceptable. The memorandum of understanding entered between APIL-PP and SLRWA shows that maintenance of the area in question is under control of APIL-PP and service provider/agency for actual maintenance work is selected/appointed by APIL-PP. So far as the alleged transfer of the area to MCG is concerned, letter dated 12.07.2019 issued by Executive Engineer-V, MCG is on record (page 426) and it shows that decision was taken by the Government to take over 06 nos. of private builder's areas i.e., licensed colonies by MCG but actual hand over of the area to MCG has not accomplished. On the contrary, MCG required APIL-PP to make inventory of machinery and work force (manpower) engaged for

maintenance of water supply, sewage system, road, storm water drain and sanitation etc. and depute some representatives along with details to initiate handing over and taking over process as per the Government orders. No document has been placed on record to show that this handing over and taking over by MCG was completed on 12.07.2019 or any point of time thereafter.

Breach in respect to RWH system:

325. Committee has categorically observed that though 11 nos. of RWH structures for open spaces and common area were constructed in Sushant Lok-I but on verification, it was found that in Block-C where Committee visited, 3 nos. of RWH structures were not functional and therefore the basic purpose of ground water recharging was not being achieved. On this aspect, nothing has been said by APIL-PP.

Breach of various other rules and violations:

326. The reports referred to above also shows that Solid Waste Management Rules, 2016 and Construction and Demolition Management Rules, 2016 were violated and no arrangement was made for compliance thereof. Further, rain water harvesting systems for houses were not provided. Diesel Generator sets were operating without taking steps for prevention of air pollution etc. On all these aspects, we find nothing from record to show that the findings given in the reports mentioned above are not correct. We accordingly hold the proponent guilty of violating the environmental laws and statutes in respect to above violations.

327. **We accordingly answer Issue II in affirmance** by holding that multiple provisions of environmental laws and norms have been violated by APIL-PP in carrying out project in question and such violations are still continuing.

Issue III-regarding accountability of Statutory Regulators and Statutory Authorities including local bodies:

328. Facts of the case discussed above are self-speaking to demonstrate gross dereliction of duties in functioning of the responsible authorities or local bodies, other sanctioning authorities and Statutory Regulators responsible for enforcement of environmental laws. TCPD Haryana in a mechanical manner granted licenses without ensuring whether earlier conditions of licenses were complied with by APIL-PP and for years together licenses were issued. It felt sufficient to make a condition in orders that APIL-PP shall observe various provisions and obligations for example regarding sewer connection, treatment and management of domestic sewage, storm water services, water supply etc. However, it did not get the things verified from spot as to whether those conditions were actually followed and observed or not.

329. In Part Completion Certificates issued by TCPD Haryana, from time to time, it repeatedly said that APIL-PP shall be responsible solely for making disposal arrangement of sewerage/storm water drainage of the colony but did not bother to verify whether the same was being complied with and observed by APIL-PP, in fact on the spot. It also ignored provisions of EIA 1994 and EIA 2006 which contemplate EC/prior EC from Competent Authority before commencement of any activity of the project.

330. HSPCB was under an obligation to ensure compliance of environmental laws but we do not find any effective regulatory and monitoring action on its part. It has enough powers under the Statute to take several actions against APIL-PP but it failed to do so. Even when complaint was filed under Section 15 of EP Act 1986 before Special Environment Court and APIL-PP made a false statement that it had obtained EC and thereafter, matter was disposed with petty amount of fine and compensation, HSPCB did not contest the matter and informed the

Court that no such EC was actually obtained by APIL-PP and statement was false. The negligence and inaction on the part of officials of HSPCB, is highly condemnable and we observe that it crosses the limit of simple negligence and enters into the arena of criminal negligence. Violation of environmental laws by APIL-PP has degraded and damaged environment. Condition of air quality and ground water is very poor in entire District Gurugram. Pollution caused by APIL-PP has obviously contributed to it. It causes damage to the health of general public for no fault on their part. Polluters, in the case in hand, virtually given a clear march-over all illegal activities and no effective, preventive and remedial action has been taken. It also shows lack of concern on the part of official of HSPCB to the poor people who had suffered on account of illegal activities on the part of APIL-PP due to continued pollution caused by execution of its project in violation of environmental laws and contrary to environmental norms in a district where ground water level was in the category of over-exploited and the entire district was notified by CGWA for the purpose of regulation of ground water in 2011 and air quality was also very poor yet HSPCB failed to take any action in the matter. This is a very serious situation where Statutory Regulators and Statutory local bodies as also other authorities are not serious enough to discharge their statutory duties with utmost devotion. Tribunal castigated this failure in its various earlier orders referred above but till date even the highest authority in the State of Haryana (Chief Secretary) has failed to take any effective action against such defaulters, incompetent and inefficient officials who have miserably failed to enforce compliance of environmental laws and permitted continued violation by APIL-PP.

331. Even local bodies like MCG, HSVP have failed to ensure compliance of various laws and Statutory provisions on the part of APIL-PP. The

inferences is clear that if it is not an active collusion and co-operation by the authorities yet passive participation which has allowed APIL-PP to violate blatantly environmental laws and such activities were continuing when OA was filed and even thereafter. In fact, nothing was placed before us even on the date of hearing that such activities as such have been stopped in entirety. We, therefore, hold that Statutory Regulators, local bodies and other authorities are guilty of gross negligence which has caused blatant violation of environmental laws on the part of APIL-PP in proceeding with the project in question without having any care and regard for environmental laws.

332. **Issue III is answered accordingly.**

Issue IV

333. It is repeatedly held by Apex Court that the issue of environmental matters have to be considered in the light of the well recognized principles like Precautionary Principle, Polluters pay, Doctrine of Trust and Principle of Burden upon Violator. Article 21 has been read as to include Fundamental Right of people to live in healthy environment. Preservation of environment and keeping ecological balance unaffected is a task which not only governments but also every citizen must undertake. It is a social obligation and every citizen must remind to himself that it is his fundamental duty as enshrined under Article 51A(g) of the Constitution.

334. In ***Sachidananda Pandey vs. State of West Bengal & Others***, **AIR1987SC1109**, dealing with the matter pertaining to environment, Court said that whenever a problem of ecology is brought before it, the Court is bound to bear in mind Article 48A and 51A(g) of the Constitution. When a court is called upon to give effect to the directive principles of fundamental duties, it cannot shirk its shoulders and say that priorities

are a matter of policy and so it is a matter for the policy making authorities. The least court must give is, to examine whether appropriate considerations are gone in mind and irrelevancies are excluded. In appropriate cases Court could go further but how much further would depend upon the circumstances of the case. Court may always give necessary directions.

335. In ***M.C. Mehta vs. Union of India*, AIR1987SC1086 (Sodium gas leak case)**, issue of gas leak in a chemical factory and its repercussions came to be considered. Court expanded the doctrine of liability by modifying ‘strict liability’ principle enshrined in *Rylands v. Fletcher* to ‘absolute liability; and said, “*enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of persons working in the factory and residing in the surrounding areas, poses an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken-the enterprise must be absolutely liable to compensate for such harm and it should be not answer to the enterprise to say that it has taken all reasonable care....*”.

336. Court also said that **larger and more prosperous enterprise, greater must be the amount of compensation** payable for the harm caused on account of the activity being carried on by the industry.

337. In ***Vellore Citizens Welfare Forum vs Union Of India & Others* (1996)5SCC647**, Court held “*In view of the Constitutional and Statutory Provisions---*, “*Precautionary*” Principle and “*Polluter Pays*” Principle are part of the Environmental Laws of our country”.

338. In ***Virendra Gaur vs. State of Haryana, (1995)2SCC577***, Court said that Government had no power to sanction lease of land vested in municipality for being used as open space for public use. The word ‘environment’ is of broad spectrum which brings within its ambit “hygienic atmosphere and ecological balance”. It is duty of State and every individual to maintain hygienic environment. State in particular has duty to shed its extravagant unguided sovereign power and to forge in its policy to maintain ecological balance in hygienic environment. Court further said:

*“Enjoyment of life and its attainment including their **right to life** with human dignity encompasses within its ambit, **the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed**, any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water pollution etc. should be regarded as amounting to violation of Article 21.”*

339. Court also held that hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a human and healthy environment. Court further said

“Therefore, there is a constitutional imperative on the State Government and the Municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the manmade and the natural environment.”

340. In ***Indian Council for Enviro-Legal Action vs. Union of India, (1996)3SCC212***, Court said that once activity carried on is hazardous or inherently dangerous, a person carrying on such activity is liable to make good, the loss, caused to any other person, by his activity, irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on. It was held that **polluting industries are absolutely liable to compensate for the harm caused by them to the people in the affected area, to the soil and to the underground water.**

341. **Polluter Pays Principles** means absolute liability for harm to the environment, not only to compensate victims of pollution but also cost of restoring environmental degradation. Remediation of damaged environment is part of the process of 'sustainable development'. As such, **polluter is liable to pay cost to the individual sufferers as well as cost of reversing the damaged ecology.**

342. With respect to polluter pays principle, Court in *Indian Council for Enviro-Legal Action vs. Union of India (supra)*, in para 65, said that **any principle evolved in this behalf should be simple, practical and suit to the conditions obtaining in the country.**

343. In *Indian Council for Enviro-Legal Action (supra)*, issue of damage to mother earth by industries producing toxic chemicals was brought to the notice of the Court. It was found that water in wells and streams turned dark and dirty rendering it unfit for human consumption or even for cattle and for irrigation. Court issued various directions which included closure of industries.

344. Again issue of pollution from tanneries in rivers including river Ganga was considered by Supreme Court in *Vellore Citizens' Welfare Forum (supra)*. Recognizing principle of 'sustainable development', Court held that it is a balancing concept between ecology and development and remediation of damage to the environment is part of the process of sustainable development; precautionary principle, polluter pays principle and new burden of proof have become part of environmental law of the country.

345. In *M.C. Mehta vs. Kamal Nath & Others, (1998)1SCC388* a two Judges Bench had an occasion to examine, "whether natural resources can be allowed to be used or processed by private ownership for

commercial purpose”. The background facts giving rise to above issue are, that a news item was published in daily newspaper ‘Indian Express’, dated 25.02.1996, under the caption “Kamal Nath dares the mighty Beas to keep his dreams afloat”. The news item reveals that after encroachment of 27.12 bighas of land which included substantial forest land, in 1990, a Club was built in Kullu-Manali valley by a private company ‘Span Motels Private Limited’, which owns a resort- Span Resorts. The land was later regularised and leased out to the company on 11.04.1994. At the time of regularisation, Mr. Kamal Nath was Minister of Environment and Forests. The swollen Beas changed its course, engulfed Span club and adjoining lawns, washing it away. Thereafter, management took steps and by using bulldozers and earth-movers, turned course of Beas by blocking flow of river just 500 meters and creating a new channel to divert River to atleast 1 km downstream. Supreme Court took *suo-moto* cognizance of the matter, and case was registered as W.P. No. 182/1996 under Article 32 of the Constitution. Notices were issued to the company as well as Mr. Kamal Nath. After considering the pleadings and other material, Supreme Court decided vide Judgment dated 13.12.1996 recording a finding that Motel had encroached upon an area of 22.2 bighas adjoining to the lease-hold area. Earlier, 40 bighas 3 biswas land, alongside Kullu- Manali Road on the bank of river Beas, was granted on lease to the above Motel for a period of 99 years with effect from 1.10.1972 to 1.10.2071. Besides above, the motel encroached upon 22.2 bighas of land further. It also built extensive stone, cemented and wire-mesh embankments all along the river bank. Various activities undertaken by motel show a serious act of environmental degradation on its part. Motel tried to defend construction raised by it on the ground that it was to protect lease land from floods. Court held that **motel interfered with natural flow of river by trying to block natural relief/spill channel of the river**. With regard to river, it

was observed that Beas is a young and dynamic river, runs through Kullu valley, between mountain ranges of Dhaulandhar in the right bank, and Chandrakheni, in the left. The river is fast flowing, carry large boulders, at the time of flood. When water velocity is not sufficient to carry boulders, those are deposited in the channel often blocking flow of water. Under such circumstances, the river stream changes its course by remaining within the valley but swinging from one bank to the other. The right bank of river Beas where motel is located, mostly comes under forest; the left bank consists of plateaus, having steep bank facing the river, where fruit orchards and cereal cultivation are predominant. The area is ecologically fragile and full of scenic beauty, should not have been permitted to be converted into private ownership, and for commercial gains. Having said so, Court refers to the right of public to nature and natural resources and said that public has a right to expect certain lands and natural areas to retain their natural characteristic. Court refers to the work of David B. Hunter (University of Michigan) and Professor Barbara Ward where it was stressed upon that major ecological tenet is that the world is finite. Earth can support only so many people and only so much human activity before limits are reached. Absolute finiteness of the environment when coupled with human dependency on the environment, leads to the unquestionable result that human activities will, at some point, be constrained. There is a commonly recognised link between laws and social value but to ecologists, a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened. Historically, we have changed environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven

malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important resources-for example, wetlands and riparian forests - can no longer be destroyed without enormous long-term effects on environmental and therefore social stability. Need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature. Court refers to the legal theory said to be developed in ancient Roman empire, i.e., 'Doctrine of Public Trust' founded on the idea that certain common properties such as rivers, sea- shore, forests and the air were held by Government in trusteeship for the free and unimpeded use of general public. English law as well as American Law on the subject was also referred to and then it is said in para 34 of the Judgment that our legal system includes Public Trust Doctrine as part of the Jurisprudence. State is the trustee of all natural resources which, by nature, are meant for public use and enjoyment. Public at large is beneficiary of the sea- shore, running waters, airs, forests and ecologically fragile lands. State as a trustee, is under a legal duty to protect natural resources. These resources meant for public use cannot be converted into private ownership. Executive, acting under **Doctrine of Public Trust**, cannot abdicate natural resources and convert them into private ownership or for commercial use.

346. Supreme Court while disposing of Writ Petition issued certain directions contained in para 39 of the judgment which included that the motel shall pay compensation by way of cost for restitution of environment and ecology of the area. Pollution caused by various constructions made by motel in river bed and banks of river Beas has to be removed and reversed. NEERI was directed to inspect the area and make an assessment of the cost, likely to be incurred for reversing damage caused to

environment and ecology. Further, motel is also required to show cause as to why it be not imposed pollution fine in addition to cost for restoration of ecology which it had to pay.

347. In ***T.N. Godavarman Thirumulpad vs. Union of India & Others, (1997)2SCC267***, various writ petitions were filed in Supreme Court involving question about conservation, preservation and protection of forest and ecology. Various orders were passed from time to time, reported in law journals. In ***T.N. Godavarman Thirumulpad vs. Union of India & Others, (2006)1SCC1***, (order dated 23.09.2005), Court considered the question, when forest land is used for non-forest purpose, what measures are required to be taken to compensate for loss of forest land and to compensate the effect on ecology. Court recognized that development of nation undoubtedly involves industrial development but it has to be consistent with protection of environment and not at the cost of degradation of environment. Any programme, policy or vision for overall development must evolve systematic approach so as to balance economic development and environmental protection. Then Court considered the question, “*whether permission to use forest land for non-forest purpose and consequential loss or benefits must cause in imposing liability of payment of ‘Net Present Value’ (hereinafter referred to as ‘NPV’) of such diverted land, so as to utilize the amount for getting back in the long run, benefits which are lost by such diversion?*” In this regard, what should be the guidelines for determination of NPV, how to compute it, can there be some exemptions etc., are the aspects, to be considered by MoEF. Referring to earlier orders, Court said that MoEF was directed to formulate a scheme providing for compensatory afforestation, whenever permission for diversion of forest land is granted under Forest (Conservation) Act, 1980 (hereinafter referred to as, the 'FC Act'). MoEF, consequently, submitted a

scheme with its affidavit dated 22.03.2002, which was examined by Central Empowered Committee (hereinafter referred to as '**CEC**') along with other relevant material and submitted a report/recommendation dated 09.08.2002. MoEF, in principle, accepted recommendations of CEC and it was noticed by Supreme Court in its order dated 29.10.2002. MoEF, by Notification dated 23.04.2004, by exercising powers under sub-section (3) of Section 3 of EP Act, 1986, constituted an authority, i.e., Compensatory Afforestation Fund management and Planning Authority (hereinafter referred to as 'CAMPA'). Court suggested that in the said constitution of CAMPA, MoEF should include an expert in the field of forest and another expert in the field of forest economy development. Some other modifications/amendments in the said Notification were also recommended. Then the question, how NPV be determined, was examined in detail. Court observed that there are different factors which may count for determination of biodiversity valuation and it is for the experts in the field to make suggestion for determination of relevant factors for such computation. Environment is not a State Government's property but a national asset. It is the obligation of all to conserve environment and for its utilization, it is necessary to have regard to the principles of "sustainable development" and "inter-generational equity". Further, Court said, NPV is a charge or a fee within Entry 47 read with Entry 20 of List III of the Constitution. It further said *"the Fund set up is a part "of economic and social planning" which comes within Entry 20 of List III and the charge which is levied for that purpose would come under Entry 47 of List III and, therefore, Article 110 is not attracted."* The NPV is not only for compensatory afforestation but for ecology. Compensatory afforestation is only a small portion, in the long range efforts, in the field of regeneration. Forest Management Planning involves a blend of ecological, economic and social systems with the economic and social sides of planning, often just

as complex as the ecological sides. Rejecting contention of State Government that amount of NPV shall be made over to State Government, Court held, natural resources are not the ownership of any one State or individual, the public at large is its beneficiary. In para 78, Court said

*“The **damage to environment is a damage to the country’s assets as a whole.** Ecology knows no boundaries. It can have impact on the climate. The principles and parameters for valuation of the damage have to be evolved also keeping in view the likely impact of activities on future generation.*

348. Examining various aspects of biodiversity and loss to ecology due to any destruction to biodiversity etc., Court recorded conclusions in para 98 of the judgment, as under:

“In view of the aforesaid discussion, our conclusions are:

- 1. Except for government projects like hospitals, dispensaries and schools referred to in the body of the judgment, all other projects shall be required to pay NPV though final decision on this matter will be taken after receipt of Expert Committee Report.*
- 2. The payment to CAMPA under notification dated 23rd April, 2004 is constitutional and valid.*
- 3. The amounts are required to be used for achieving ecological plans and for protecting the environment and for the regeneration of forest and maintenance of ecological balance and eco-systems. The payment of NPV is for protection of environment and not in relation to any propriety rights.*
- 4. Fund has been created having regard to the principles of intergenerational justice and to undertake short term and long-term measures.*
- 5. The NPV has to be worked out on economic principles.”*

349. Applying **doctrine of accountability** to the State and Statutory Regulators and its officers, in **Pollution Control Board, Assam vs. Mahabir Coke Industry & Another, (2000)9SCC344**, Court held that they are accountable for wrong advice.

350. Liberal attitude of courts in the matter of quantum of punishment in criminal prosecution for offences relating to environmental pollution was criticised in **UP Pollution Control Board vs. M/s Mohan Meakins Ltd. & Others, (2000)3SCC745**. It was held that courts cannot afford to

deal lightly with cases involving pollution of air and water. Courts must share parliamentary concern on the escalating pollution levels of environment. Those who discharge noxious polluting effluents into streams appeared to be totally unconcerned about the enormity of injury which they are inflicting on the public health at large, the irreparable impairment it causes on the aquatic organisms, to deleterious effect it has on the life and health of animals. **Court should not deal with the prosecution for pollution related offences in a casual or routine manner.**

351. In ***M.C. Mehta vs. Union of India, (2004)6SCC588 (Industries in residential area in Delhi matter)***, Court considered the question, “whether industrial activities in residential/non- conforming areas is permissible and what directions should be issued to end such illegal activities”. Various orders were passed in 1995 and onwards resulting in closure, shifting etc., of industries, which, by an estimation were about 1,01,000, operating in Delhi in non-conforming zones but illegally permitted by Municipal Corporation of Delhi to operate in residential areas/ non- conforming areas. An application was filed on behalf of Delhi Government that closure of such a large number of industries functioning in residential/non-conforming areas may render about 7 lakh workers unemployed, causing hardship to 7 lakh families. The question considered by Court was, “*whether a Government can plead such a justification for violation of law and throw to the winds norms of environment, health and safety or is it possible to help the workers even without violating law if there is a genuine will to do so*”. There was an attempt on the part of the concerned authority for regularization of certain areas having concentration of industries. Deprecating it, Court said, “**Regularization cannot be done if it results in violation of the Right to Life enshrined**

in Article 21 of the Constitution. The question will have to be considered not only from the angle of those who have setup industrial units in violation of the master plan but also others who are residents and are using the premises as allowed by law.” Court also considered the changes proposed/made in the master plan and said, “The changes in the master plan or its norms to accommodate illegal activities not only amount to getting reward for illegal activities but also resulted in punishing the law abiding citizen.” Commenting upon the authorities, Court said, “lack of action and initiative by the authorities is the main reason for the industry merely continuing illegal activities. **There is total lack of enforcement of law by the authorities concerned.**” Rejecting an argument that industries were working with the consent of Government, Court said that **an illegality would not become legality on inaction or connivance of the Government authorities.** It further said “There cannot be any doubt that non-conforming industrial activities could not have commenced or continued at such a large scale in the capital of the country if the Government and the concerned authorities had performed their functions and obligations under various statutes. But such a situation cannot be permitted to continue forever so as to reach a point of no return, where the chaotic situation in city has already reached. **The law-breakers, namely, the industries cannot be absolved of the illegalities only on the ground of inaction by the authorities.**” Court also rejected an argument on behalf of the industries that if they are ready to pay penalty, so long as the same is paid, they are entitled to continue with their activities. Court held “*merely by payment of penalty, continued misuse cannot be permitted.*” Court condemned authorities for inaction and said that growth of illegal manufacturing activity in residential areas has been without any check or hindrance from the authorities. The manner in which such large scale violations had commenced, and continued, leaves no manner of doubt that it was not

possible without the connivance of those who are required to ensure compliance and reasons are obvious. Such activities result in putting on extra load on the infrastructure. The entire planning has gone totally haywire. The law abiders are sufferers. All this has happened at the cost of health and decent living of the citizens of the city violating their constitutional rights enshrined under Article 21 of the Constitution of India. Further, it is necessary to bear in mind that the law makers repose confidence in the authorities that they will ensure implementation of the laws made by them. If the authorities breach that confidence and act in dereliction of their duties, then the plea that the observance of law will now have an adverse effect on the industry or the workers cannot be allowed. Court, in the light of the facts and pleadings, issued various directions including closure of all industries, came up in residential/non-conforming areas in Delhi on or after 01.08.1990. It also constituted a monitoring committee comprising of officials of Delhi Government, Delhi Police, local bodies and said that the said committee shall be responsible for stoppage of illegal commercial activities.

352. In ***Research Foundation for Science Technology and Natural Resource Policy vs. Union of India & Others, 2007(15)SCC193*** (order dated 11.09.2007 in IA 34 of 2006 In WP (C) No. 657 of 1995), Court considered the issue, “*whether permission for dismantling of ship “Blue Lady” at Alang, Gujarat should be granted or not*”. The ship, a passenger liner, built in France in 1961, was a steam turbine driven vessel, registered as a Barge under the flag of Bahamas. The ship was beached on 15.08.2006/16.08.2006, off the Alang coast which is located on the west coast of Gujarat. Alang is the largest ship recycling yard and one of the choicest ship-scrapping destination for ship owners around the world. Observing that ship breaking is an industry, Court said that **when apply**

principle of ‘sustainable development’, one has to keep in mind concept of development on one hand and concepts like generation of revenue, employment and public interest on the other hand and here the principle of proportionality comes in. Court examined report of Technical Experts Committee and said that suggestions made by the said Committee, must be observed. It will satisfy the concept of “balance”. Permitting Ship breaking, Court also observed that recycling is a key element of sustainable development.

353. In ***Fomento Resorts & Hotels & Another vs. Minguel Martins & Others, (2009)3SCC571 (order dated 20.01.2009)*** in (*Civil Appeal No. 4154 of 2000*), a private company approached State Government for acquisition of land comprised in Survey nos. 788, 789, 803, 804, 806 and 807 of Village Taleigao, Dona Paula for construction of Beach Resort Hotel Complex by highlighting its benefits. Acted thereupon, acquisition proceedings were initiated. Acquisition proceeding were challenged but in the meantime hotel project was completed and commenced function. Goa Bench of Bombay High Court allowed writ petition and quashed acquisition notification by judgment dated 26.06.1984. The judgment was reversed in appeal by Supreme Court in ***Fomento Resorts and Hotels Ltd. vs. Gustavo Renato Da Cruz Pino, (1985)2SCC152*** and matter was remitted to High Court. Subsequently, parties compromised and writ petition was withdrawn from High Court. The hoteliers entered into an agreement with the Government. The hoteliers thereafter, applied for extension of hotel building and this issue was raised again in a writ petition filed in High Court which was allowed by observing that extension of hotel building was impermissible. The issue of acquisition was also raised. Supreme Court formulated it as issue one and answered in negative in para 35 of the judgment. Next question was, whether public access to

beach, available through survey no. 803 before acquisition, could have been restricted by hoteliers. Court refers to public trust doctrine and said that there is an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof. In para 54 of judgment, Court said,

*“The **heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets**”.*

354. Elaborating it, in para 55, Court said,

*“**Public Trust Doctrine is a tool for exerting long-established public rights over short-term public rights and private gain. Today, every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people’s rights and the people’s long term interest in that property or resource, including down-slope lands, waters and resources**”.*

355. Referring to ancient Indian heritage and culture which was in harmony with nature, Court said:

*“The Indian society has, since time immemorial, been conscious of the necessity of protecting environment and ecology. The main moto of social life has been “to live in harmony with nature”. Sages and Saints of India lived in forests. **Their preachings contained in Vedas, Upanishadas, Smritis etc. are ample evidence of the society’s respect for plants, trees, earth, sky, air, water and every form of life.** It was regarded as a sacred duty of every one to protect them. In those days, people worshipped trees, rivers and sea which were treated as belonging to all living creatures. The children were educated by their parents and grandparents about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora fauna and every species of life”.*

356. In **Tirupur Dyeing Factory Owners Association vs. Noyyal River Ayacutdars Protection Association & Others, (2009)9SCC737**, Court said:

“in spite of stringent conditions, degradation of environment continues and reaches a stage of no return, the court may consider the closure of industrial activities in areas where there is such a risk. The authorities also have to take into consideration the macro effect of wide scale land and environmental degradation caused by absence of remedial measures. The right to information and community participation for protection of environment and human health is also a right which flows from Article 21.

357. In **News Item Published in Hindustan Times Titled “And Quiet Flows The Maily Yamuna”, In Re, (2009)17SCC708** (order dated 12.04.2005), Supreme Court continued to consider the issue of pollution of river Yamuna, deprecated authorities for their inaction/negligence and said,

“It is for the Government to implement the laws. *It is no answer to say that the master plan, building bye-laws and other laws were observed in breach and the authorities were silent spectators. It seems that there was connivance of officers/officials concerned without which it is quite difficult for such large-scale unauthorized acts to take place”.*

358. In para 13 of the order, Court referred to its earlier order dated 10.04.2001 wherein it has said:

“...right to life guaranteed under Article 21 of the Constitution would surely include the right to clean water, which is being deprived to millions of citizens of Delhi because of large-scale pollution of River Yamuna”.

359. Court recorded its concern in para 16 of the order, and said:

“This is a most unsatisfactory way of tackling the problem which, admittedly as per the Government’s perception too, is alarming and emergent. How seriously the measures have been taken is evident from the fact that despite the orders of this Court, there is no assistance or affidavit from the National Rover Conservation Authority. It seems evident that the Government and its functionaries and authorities have failed in their public duty and obligations towards the citizens of Delhi. Despite all these years, they have not been able to provide clean water of Class ‘C’ category which had been directed years back”.

360. In ***Indian Council for Enviro-Legal Action vs. Union of India and Others (2011)8SCC161***, Court examined issue of environmental compensation as also compensation to the individual victims on account of industrial activities carried out by M/s. Hindustan Agro Chemicals Ltd., Rajasthan Multi Fertilisers, Phosphate India, Jyoti Chemicals and Silver Chemicals. It was an off-shoot of earlier proceedings initiated by same complainant namely; Indian Council for Enviro-Legal Action, where the matter was decided vide judgment dated 13.02.1996, reported in ***(1996)3SCC212***. W.P.(C) No. 967 of 1989 was filed complaining that certain chemical industries were indulged in industrial activities in utter violation of statutory conditions and environment norms; they are recklessly spreading hazardous industrial waste (iron sludge and gypsum sludge) all over the area and do not bother to ensure proper disposal; Toxic substances percolated into earth polluting soil, aquifers and subterranean water supply and also causing ailments and diseases to local villagers. During pendency of Writ Petition, Rajasthan State PCB directed closure of certain industries by issuing an order under Section 33 (A) of Water Act, 1974. This order was also challenged before Supreme Court in W.P.(C) No. 76 of 1994, wherein, an interim order was passed, permitting industry to continue to run with certain conditions. Another W.P.(C) No. 824 of 1993. filed by M/s. Hindustan Agro Chemicals also came up for disposal along with W.P.(C) Nos. 967 of 1989 and 76 of 1994 and decided by judgment dated 13.02.1996 reported in ***(1996)3SCC212 (supra)***. Court held that industries concerned were liable for pollution caused and industries had forfeited all claims for any lenient consideration. Court directed attachment of factories, plant, machinery and all other immovable assets of the said industries and Rajasthan State PCB was directed to seal all the factories and plants. Later, vide order dated 04.11.1997, Court determined cost of remedial measures at Rs. 37.385 crores on the basis of

assessment/reports of various authorities and by adjudicating the contentions raised. M/s. Hindustan Agro Chemical Ltd., however, avoided payment by keeping litigation alive for 1½ decade and, thereafter, in I.A. filed, Court, in para 197, laid down certain principles to be observed and followed, as under:

*“197. The other aspect which has been dealt with in great details is to **neutralize any unjust enrichment and undeserved gain made by the litigants.** While adjudicating, the courts must keep the following principles in view:*

(1) It is the bounden duty and obligation of the court to neutralize any unjust enrichment and undeserved gain made by any party by invoking the jurisdiction of the court.

(2) When a party applies and gets a stay or injunction from the court, it is always at the risk and responsibility of the party applying. An order of stay cannot be presumed to be conferment of additional right upon the litigating party.

(3) Unscrupulous litigants be prevented from taking undue advantage by invoking jurisdiction of the Court.

(4) A person in wrongful possession should not only be removed from that place as early as possible but be compelled to pay for wrongful use of that premises fine, penalty and costs. Any leniency would seriously affect the credibility of the judicial system.

(5) No litigant can derive benefit from the mere pendency of a case in a court of law.

(6) A party cannot be allowed to take any benefit of his own wrongs.

***(7) Litigation should not be permitted to turn into a fruitful industry** so that the unscrupulous litigants are encouraged to invoke the jurisdiction of the court.*

(8) The institution of litigation cannot be permitted to confer any advantage on a party by delayed action of courts.”

361. In **Goel Ganga Developers India Private Limited vs. Union of India, (2018)18SCC257**, judgment dated 27.09.2016 passed by NGT in **Tanaji Balasaheb Gambhire vs. Union of India, 2016 SCC Online NGT 4213** was challenged. Tribunal held that the builder/proponent has violated conditions of EC and therefore, liable to pay environmental compensation of Rs. 100 Crores or 5% of the total cost of project, whichever is less for restoration and restitution of environment damage and degradation. In addition, it shall also pay Rs. 5 Crores for contravening mandatory provisions of environmental laws. Tribunal also imposed fine of Rs. 5 Lakhs upon Pune Municipal Corporation and cost of Rs. 1 lakh

each upon the said Corporation, Department of Environment, State of Maharashtra and SEIAA, Maharashtra. Two appeals were filed, one by the proponent and another by Pune Municipal Corporation. The factual background is that the Proponent purchased 79,900 sq. meters or 7.91 hectares of land comprised in six survey nos. 35, 36, 37, 38, 39 and 40 in Vad Gaon, Pune. All these survey numbers were amalgamated to become one plot. Proponent applied for sanction of layout and building proposal plan on 12.03.2017 on an area of 15141.70 sq. meters, originally depicted as plot no. 3. Sanctioned FSI was 515313.16 sq. meters. Thereafter, on 05.09.2007, revised layout plan was submitted for an area measuring 28233.23 sq. meters and sanctioned FSI was 39526.54 sq. meters. Proponent also applied for EC vide proposal dated 27.06.2007. He assured that he would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. 12 buildings were to have stilts with basements and 11 floors. Total built up area was indicated as 57658.42 sq. meters. EC was granted on 04.04.2008. Defining as to what is the meaning of the term “built up area”, Court after referring to EIA Notification, 2006, said in para 16 as under:

16. *From a bare perusal of the two hash tags (#) in Column 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines “built up area” to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as “built up area”. There is no exception for non-FSI area.”*

362. It also said that the concept of FSI or non FSI has no consonance or connection with the grant of EC. The same may be relevant for the purpose of Building Plans under Municipal Laws and Regulations but has no linkage or connectivity with the grant of EC. The authority while granting EC is not concerned whether area is to be constructed as FSI area or non FSI area. Both will have an equally deleterious impact on environment.

Construction implies usage of lot of material like sand, gravel, steel, glass, marble etc., all of which will impact environment. Merely because under Municipal Laws some of the constructions are excluded while calculating FSI, is no ground to exclude it while granting EC. Therefore, when EC is granted for a particular construction, it includes both FSI and non FSI area. Considering correctness of Notification dated 04.04.2011 and clarification dated 07.07.2017, Court said that such memorandums could not or should not have been issued. EIA, 2006 is a statutory Notification and such Notifications cannot be set at naught by a Joint Director by issuing any clarificatory letter. In para 22, Court said, *“we are of the view that since such decision has not been notified in the gazette the statutory notification dated 14-9-2006 and its subsequent clarification dated 4-4-2011 could not have been virtually set aside by this office memorandum”*. It was also held that OM dated 07.07.2017 is not clarificatory since EIA 2006 itself was very clear and considering question, whether Proponent has violated conditions of EC, Court found that construction raised was much more than what was approved and permitted in EC. Against the total built up area sanctioned in EC i.e. 57658.42 sq. meters, Proponent has constructed 100002.25 sq. meters which was patently illegal. Then, Court considered as to what order could have been or ought to have been passed. Considering the probability including justification for demolition, Court found that large number of flats and shops are already occupied by innocent people who have paid money. These people are from middle class having invested from their life's earning in the project. Since these persons are not parties, Supreme Court took the view that the demolition is not proper answer in the peculiar facts and circumstances of the case as that would put innocent people at loss. However, Court added in para 54 by observing that PP cannot be permitted to build any more flats than what was permitted but only to complete construction of 807 flats and 117

shops/offices and cultural center including the club house. Court stopped from constructing two buildings and directed to refund the money with 9% interest. In this regard, Court said in para 54,

“There is no equity in favour of these persons since the plan to raise this construction was submitted only after 2014 when the validity of the earlier EC had already ended. Therefore, though we uphold the order of the NGT dated 27-9-2016 that demolition is not the answer in the peculiar facts of the case, we also make it clear that the project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and club house.”

363. Court did not find any ground to award special damages to original applicant/complainant looking into his conduct. For the assessment of damages, Court observed that it cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles. No such principles have been accepted or established in that case. No assessment in actual terms can be made, though Court can impose damage or cost on principles which have been well-settled by law. Referring to some earlier matters, where Court awarded damages as 5% of the project cost and also looking to the fact that the case in hand was where severe violations were found and PP was in transient and unapologetic behavior, it imposes damages of 100 Crores or 10% of project cost whichever is more besides, Rs. 5 Crores as damages in addition to above for contravening mandatory provisions for environmental laws. In this regard, the observations of the Court are as under:-

*“64. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. **This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law.** However, **in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent.** He has maneuvered and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone upto 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats*

*the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area etc.. Therefore, in the present case, we are clearly of the view that the project proponent should be and is **directed to pay damages of Rs.100 crores or 10% of the project cost whichever is more.** We also make it clear that **while calculating the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. The cost of construction shall be calculated on the basis of the schedule of rates approved by the Public Works Department (PWD) of the State of Maharashtra for the year 2014. In case the PWD of Maharashtra has not approved any such rates then the Central Public Works Department rates for similar construction shall be applicable. We have fixed the base year as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of Transfer of Development Rights (for short "TDR") with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs. 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws."***

364. **Goel Ganga Developers India Private Limited vs. Union of India & Others (2019)9SCC288** is follow up of the judgment reported in **(2018)18SCC257**. The original matter was decided in *Civil Appeal No.10854 of 2016*. Thereafter, I.A. No. 64665 of 2019 was filed and came to be decided by judgment dated 11.09.2019 reported in 2019. Proponent filed application stating that three Judges bench judgment in Noida Memorial Complex, in **Okhla Bird Sanctuary, In Re: (2011) 1 SCC 744** has not been considered in recording interpretation of 'built up area' in terms of Item 8 of EIA 2006. The contention advanced on behalf of Proponent was rejected by observing that the main dispute in **Noida Park (supra)** was whether project, a building and construction project or a township and area development project. Court answered holding that it is a township and area development project. While answering this Court felt some ambiguity in Item 8-A and 8-B of Schedule to EIA 2006, but there was no issue raised with regard to the fact about covered area being built up. Court observed that all parties were *ad-idem* in Noida Park case that

covered construction was built up area and Court also held so. In **Goel Ganga Developers judgment**, Court has held that all covered construction shall be deemed built up area and Municipal Laws regarding Floor Space Index (FSI) or Floor Area Ratio (FAR) have no relevance. Therefore, **Noida Park judgment** has no application as the issue did not arise herein.

365. In **Mantri Techzone Private Limited vs. Forward Foundation & Others, (2019)18SCC494**, Supreme Court affirmed imposition of environmental compensation by Tribunal, considering cost of the project, where there was violation regarding EC/consent and proponent proceeded with construction activities violating provisions relating to EC/Consent. Tribunal determined environmental compensation at 5% and 3% of project cost of two builders. 5% of project cost was imposed where PP had raised illegal constructions while 3% was imposed where actual construction activity was not undertaken by PP and only preparatory steps were taken including excavation and deposition of huge earth by creating a hillock. Besides, Tribunal also directed for demolition and removal of debris from natural drain at the cost of PP.

366. Expansion of project without complying with regular procedure was disapproved by NGT vide judgment dated 11.02.2019 in **Appeal No. 122/2018, Anil Tharthare vs. State of Maharashtra** and this was subject matter of consideration before Supreme Court in **Keystone Realators Pvt. Ltd vs. Anil V. Tharthare & Others (2020)2SCC66**. The project prponent i.e. Keystone Realators Pvt. Ltd. proposed residential project i.e. “Oriana Residential Project” at CTS No. 646, 646(Pt), Gandhinagar, Bandra (East), Mumbai. Commencement certificate was issued on 08.06.2010. The total construction area was 8720.32 sqm. The ambit of project was expanded and constructed area was increased to

32395.17 sqm. Under EIA 2006, EC was necessary if total construction area exceeded 20000 sqm. Proponent thus, applied for prior EC under EIA 2006. EC was granted on 02.05.2013 by SEIAA. EC was conditional since it required proponent to obtain a consent to establish from Maharashtra PCB under Water Act 1974 and Air Act 1981. Vide letter dated 24.09.2013, proponent informed Environment Department of Government of Maharashtra that construction area is being further increased by 8085.71 sqm as a result whereof total construction area of the project would stand enhanced to 40480.88 sqm. Proponent sought an amendment to EC dated 02.05.2013 by SEIAA to reflect increase in total construction area. On 13.03.2014, SEIAA allowed amendment to EC dated 02.05.2013 on the ground that there was only a “marginal increase in built up and construction area”. This amended EC dated 13.03.2014 was challenged at Pune Bench of NGT. Proponent filed two applications before NGT Pune Bench challenging locus of the first respondent (applicant before Tribunal) and also the appeal on the ground of limitation. By order dated 04.05.2016, both applications were rejected whereby maintainability of proceedings on the ground of locus and limitation was challenged. Proponent filed Writ Petition before Bombay High Court, challenging order of Pune Bench of NGT which was allowed vide judgment dated 23.08.2016 holding that appeal was not maintainable at the behest of Anil Taharthare and also that the appeal was barred by limitation. By order dated 31.07.2018, passed on administrative side, dispute was transferred from Pune Bench to Principal Bench where it was heard and decided by order dated 11.02.2019. Supreme Court examined in detail the provisions of EIA 2006 and thereafter, formulated following issues

“Whether amended EC dated 13.03.2014 granted by SEIAA without following the procedure stipulated in para 7(ii) of EIA 2006 as valid.”

367. Interpreting paragraphs 2 and 7 of EIA 2006, Supreme Court in para 13, 14, 15 and 19 said as under:

“13. The central controversy between the parties to the present dispute is the manner in which Paras 2 and 7 of the EIA Notification should be interpreted. Clause (ii) of Para 2 of the EIA Notification stipulates that a project proponent shall require an EC prior to the start of construction in the case of an “expansion”. Clause (ii) uses the phrase “expansion...beyond the limits specified for the sector concerned”. The first respondent sought to lay emphasis on this construction to argue that any expansion beyond the lower limit stipulated in the Schedule would attract the requirement of a prior EC under Para 2. However, the above language in clause (ii) is further qualified by the phrase “that is, projects or activities which cross the threshold limits given in the Schedule after expansion or modernisation.” A plain reading of the second half of clause (ii) would indicate that it applies to cases where a project was initially below the threshold limits stipulated in the Schedule but after the proposed expansion, would breach the threshold limits. Clause (ii) of Para 2 of the EIA Notification therefore would not appear to cover a case where a project had already crossed the lower threshold limit set out in the Schedule and the expansion does not cross the upper limit stipulated by the Schedule.

*14. However, clause (ii) of paragraph 2 must be read with Para 7(ii) of the EIA Notification. Para 7(ii) lays down the exact procedure to be followed by a project proponent in the case of an expansion. **Two crucial points must be noted with respect to Para 7(ii). First, it uses the phrase, “expansion with increase in production capacity beyond the capacity for which prior environment clearance has been granted”. Second, the qualifying language referring to breaching the threshold limits “after expansion” is absent.** An “expansion” can occur even after the grant of an EC when the project first crossed the lower limit stipulated in the threshold and it is not necessary for the project to breach the upper limit after the expansion. Therefore, a close reading of Para 7(ii) would support the interpretation put forth by the first respondent – that even after obtaining an EC if the project is expanded beyond the limits for which the prior EC was obtained, a fresh application would need to be made even if the expansion is within the upper limit prescribed in the Schedule.*

15. The dangers effectively articulated by the learned counsel for the first respondent are real. If clause (ii) of Para 2 does not cover a case where the expansion is within the limits stipulated by the Schedule, a project proponent may incrementally keep increasing the size of the project area over time resulting in a significant increase in the project size without an assessment of the environmental impact resulting from the expansion. Such an outcome would defeat the entire scheme of the EIA Notification which is to ensure that any new or additional environmental impact is assessed and certified by the relevant regulatory authorities. In the present case, the lower limit of Entry 8(a) of the Schedule is a built-up area of 20,000 sq m and the upper limit is 1,50,000 sq m. It cannot be doubted that the environmental impact of a construction of 1,50,000 sq m is drastically more than construction of 20,000 sq m. If the appellant’s argument is accepted

in totality, a project proponent could potentially secure an EC for constructing 20,000 sq m and by “amendment” steadily increase the area of construction up to 1,50,000 sq m without submitting an updated Form 1 or any substantive review by the SEAC.

19. *In a case where the text of the provisions requires interpretation, this Court must adopt an interpretation which is in consonance with the object and purpose of the legislation or delegated legislation as a whole. The EIA Notification was adopted with the intention of restricting new projects and the expansion of new projects until their environmental impact could be evaluated and understood. It cannot be disputed that as the size of the project increases, so does the magnitude of the project’s environmental impact. This Court cannot adopt an interpretation of the EIA Notification which would permit, incrementally or otherwise, project proponents to increase the construction area of a project without any oversight from the Expert Appraisal Committee or the SEAC, as applicable. It is true that there may exist certain situations where the expansion sought by a project proponent is truly marginal or the environmental impact of such expansion is non-existent. However, it is not for this Court to lay down a bright-line test as to what constitutes a “marginal” increase and what constitutes a material increase warranting a fresh Form 1 and scrutiny by the Expert Appraisal Committee. If the government in its wisdom were to prescribe that a one-time “marginal” increase (e.g. 5% or 10%) in project size, within the threshold limit stipulated in the Schedule, could be subject to a lower standard of scrutiny without diluting the urgent need for environmental protection, conceivably this Court may give effect to such a provision. This would be subject to any challenge on the ground of their being a violation of the precautionary principle. However, as the EIA Notification currently stands, an expansion within the limits prescribed by the Schedules would be subject to the procedure set out in Para 7(ii).”*

368. Having said as above, and holding that grant of amendment in EC was illegal, Court found that by the time order was passed, the construction had already completed. In that situation, what should be the proper order, was considered by Supreme Court in para 21 and it said as under:

“21. *We further note that as on the date of the impugned order construction at the project site had already been completed. A core tenet underlying the entire scheme of the EIA Notification is that construction should not be executed until ample scientific evidence has been compiled so as to understand the true environmental impact of a project. By completing the construction of the project, the appellant denied the third and fourth respondents the ability to evaluate the environmental impact and suggest methods to mitigate any environmental damage. At this stage, only remedial measures may be taken.* The NGT has already directed the appellant to deposit rupees one crore and has set up an expert committee to evaluate the impact of the appellant’s project and suggest remedial measures. In view of these circumstances, we

uphold the directions of NGT and direct that the committee continue its evaluation of the appellant's project so as to bring its environmental impact as close as possible to that contemplated in the EC dated 2-5-2013 and also suggest the compensatory exaction to be imposed on the appellant."

369. In view of this, appeal filed by proponent was ultimately dismissed.

370. **Wonder Projects Development Private Limited & another vs. UoI**

& Others (2020)9SCC454 was a matter arising from NGT order dated

03.02.2020 passed in **H.P. Ranjana vs. UoI, Appeal No. 54/2018**.

Proponent had undertaken project of construction of new high rise residential building in survey Nos. 61/2, 62 and 63/2 of Kasavanahalli

Village, Varthur Hobli, Bengaluru East Taluk, District Bengaluru.

Construction was proposed on a plot area of 50382.91 sqm with total built

up area of 128193.9 sq.m. EC was granted by SEIAA Karnataka by order

dated 10.01.2018. It was challenged by HP Ranajan on the ground that

construction being undertaken in the buffer zone of Kaikondarahalli Lake,

apart from being on the primary and secondary Rajkaluve and, therefore,

the area being eco-fragile, EC could not have been granted. Bruhat

Bengaluru Mahangara Palike (**'BBMP'**) supported the claim of HP Ranjana

and said that the project was illegal. NGT constituted a joint Committee

who submitted report dated 23.09.2019. Considering the said report and

pleadings and Supreme Court judgment in **Mantri Techzone Pvt. Ltd. vs.**

Forward Foundation & Ors. (2019)18SCC494, Tribunal held that EC

could not have been granted so as to permit construction in buffer zone of

the lake and drain by imposing conditions. This order was challenged on

the ground that order was passed by NGT without giving opportunity to

proponent. Supreme Court found that another matter was pending in

which report was called for and report was filed in another matter which

was considered, hence Tribunal was not justified in deciding matter on the

basis of the said report and remanded the matter.

371. An order dated 21.04.2015 passed by Central Zonal Bench, Bhopal of NGT in **OA 1/2013(CZ)** issuing certain directions to State Government with regard to supply of fuel to vehicles not complying with the condition of display of pollution under control certificate etc. was challenged in **State of Madhya Pradesh vs. Centre for Environment Protection Research and Development & Others (2020)9SCC781**. Following questions were formulated by Supreme Court:

“(i) Whether the learned Tribunal could have directed the appellant State Government to issue orders and/or instructions and/or directions to petrol pumps or retail outlets or dealers not to supply fuel to vehicles not having a valid PUC.

(ii) Whether motor vehicles not complying with the requirement of displaying a valid PUC certificate can be debarred from being provided with fuel by any dealer/or petrol pump or outlet.

(iii) Whether a tribunal constituted under the National Green Tribunal Act, 2010 could have passed orders directing the State Government to make a monetary deposit to secure compliance of an order, and that too in an application for review of an order, which did not contain any such direction.”

372. Concern with regard to environment was reiterated by Supreme Court observing that over the last several decades, there has been a growing concern worldwide, over pollution and the consequential decline in air quality; increase in pollution has led to loss of vegetative cover and ecological/biological diversity, excessive concentration of harmful chemicals in the ambient atmosphere, growing risks of environmental accidents and has posed a threat to life support systems. Referring to the provisions of Air Act 1981 and EP Act 1986, Motor Vehicles Act 1988 and earlier judgments in **MC Mehta (Kanpur Tannery etc.) (1987)4SCC463**, Supreme Court examined in detail the provision of NGT Act 2010. Then Court said,

“43. *For exercise of power under Section 14 of the NGT Act, a substantial question of law should be involved including any legal right to environment and such question should arise out of implementation of the specified enactments.*

44. *Violation of any specific statutory environmental obligation gives rise to a substantial question of law and not just statutory obligations under the enactments specified in Schedule I. However, the question*

must arise out of implementation of one or more of the enactments specified in Schedule I.

45. *The Motor Vehicles Act, 1988 may not be specified in Schedule I to the NGT Act. However, the statutory 1989 Rules framed under the said Act cast statutory environmental obligations on manufacturers, owners and others in control of motor vehicles, as also the State and other statutory authorities under the said Act. The enforcement of the statutory environmental obligations under the 1989 Rules, which is a substantial question relating to environment, arises out of implementation of the 1981 Act and the Environment (Protection) Act and, in particular, Section 20 of the 1981 Act which casts on the State Government the mandatory duty to give instructions to the authorities in charge of Registration of Motor Vehicles with a view to ensure compliance of the standards of emission of our pollutants and Section 7 of the Environmental (Protection) Act, which prohibits any person from carrying on any operation, which would include operation of a motor vehicle, from discharging or emitting any environmental pollutants in excess of prescribed standards or permitting such discharge or emission.*

46. *On a combined reading of Sections 3, 7, 10, 11 and 23 of the Environment (Protection) Act, with particular reference to Sections 3(1), 3(2)(i)(a) and (b), 3(2)(iii), (iv) and 3(2)(x) with Section 20 of the 1981 Act and Section 14, read with 2(1)(c), and 2(1)(m) of the NGT Act and Rules 115 and 116 of the 1989 Rules, the learned Tribunal had the power, authority and/or jurisdiction to direct the appellant State Government to strictly implement the requirement of vehicles to possess and/or display a valid PUC Certificate, and also to direct the appellant State Government and/or the other authorities concerned to take penal action in accordance with law, that is, Rules 115/116 of the 1989 Rules.*

47. *On a purposive reading of Section 20 with Section 17(1)(g) of the 1981 Act, the standards of emission prescribed by Rules 115 and 116 of the 1989 Rules attract Section 20 of the 1981 Act.*

48. *Under the 1989 Rules, it is mandatory for every motor vehicle to carry a valid pollution under control certificate issued by authorized agency after the expiry of period of one year from the date on which the Motor Vehicle was first registered.*

49. *On reading of Rule 115 of the 1989 Rules with Rule 116 the failure to produce a PUC certificate entails the penalty of suspension of the Certificate of Registration.*

50. *Non-production of pollution PUC certificate in contravention of Rule 115(7) & (2), as observed above, entails the penalty of suspension of registration."*

373. Having said so, Court said that penalties are prescribed in the statutes and once a penalty is prescribed, no other penalty is contemplated. Even though strong measures are needed for protection of

environment but blanket orders dehorse the statutory provisions are not justified. The observations made in para 54 to 64 are:

“54. It is well settled that when a statute or a statutory rules prescribed a penalty for any act or omission, no other penalty not contemplated in the statute or a statutory rules can be imposed. It is well settled that when statute requires a thing to be done in a particular manner, it is to be done only in that manner.

55. There can be no doubt that strong measures must be taken to protect the environment and improve the air quality whenever there is contravention of statutory rules causing environmental pollution. Stringent action has to be taken, but in accordance with law.

56. Stoppage of supply of fuel to vehicles not complying with the requirement to have and/or display a valid PUC certificate is not contemplated either in the 1989 Rules or in the NGT Act. Motor vehicles not complying with the requirement of possessing and/or displaying a valid PUC Certificate cannot be debarred from being supplied fuel.

57. In passing blanket direction, directing the appellant State Government to ensure that no dealer and/or outlet and/or petrol pump should supply fuel to vehicles without PUC certificate, de hors the Central Motor Vehicles Rules, the learned Tribunal overlooked the fact that no vehicle can either be repaired to comply with pollution norms, nor tested for compliance with the political (sic pollution) norms upon repair, without fuel.

58. This Court is, therefore, constrained to hold that the learned Tribunal had no power and/or authority and/or jurisdiction to pass orders directing the appellant State Government to issue orders, instructions or directions on dealers, outlets and petrol pumps not to supply fuel to vehicles without PUC certificate. The first two questions are answered accordingly.

59. The orders passed by the learned Tribunal are binding on and enforceable against the appellant State. As observed above, the learned Tribunal had the power, authority and jurisdiction to direct the appellant State to strictly implement compliance with Rules 115 and 116. An order of the Tribunal under the NGT Act is enforceable in the manner provided in Section 25 of the NGT Act.

60. There is no provision in the NGT Act for deposit of security to secure compliance of an order of the Tribunal. The penalty for failure to comply with an order of the Tribunal entails the penalty prescribed in Sections 26 and 28 of the NGT Act.

61. Section 39 of the 1981 Act and Section 15 the Environment (Protection) Act pertain to penalty and/or punishment for contravention of the provisions of the 1981 Act, and/or the Environment (Protection) Act and the rules, orders and directions issued thereunder and Section 41 the 1981 Act and Section 17 the Environment (Protection) Act governs offences by Government Departments. None of the provisions provide for monetary deposit to secure compliance of an order.

62. *The learned Tribunal had no power and/or authority and/or jurisdiction to direct the appellant State to deposit Rs 25 crores to secure compliance with its order. In any case such an order should not have been passed in review when the initial order did not contain any direction for security deposit. The third question is accordingly answered.*

63. *The appeals are thus allowed. The impugned judgments and orders of the learned Tribunal are set aside to the extent that the learned Tribunal has directed the appellant State to make a deposit of Rs 25 crores by way of security and also to the extent that the learned Tribunal has directed the appellant State to issue orders and/or instructions and/or directions on all dealers and/or outlets and/or petrol pumps not to supply fuel to vehicles which do not comply with the requirement of producing and/or displaying valid PUC certificates.*

64. *The appellant State shall, however, strictly implement compliance of Rules 115 and 116 of the Rules and penalize all those who contravene the said Rules in accordance with the provisions of the 1989 Rules. The Registration Certificate of vehicles which do not possess a valid PUC certificate shall be forthwith suspended and/or cancelled, and penal measures initiated against the owner and/or the person(s) in possession and/or control of the offending vehicle, in accordance with law.”*

374. Judicial precedents, therefore, referred and discussed above, very clearly states that where environmental laws and norms are violated causing degradation to environment, the principle of polluters pay has to be applied and violator must be held responsible for payment of compensation considering the loss/damage caused to environment, cost likely to be incurred for remediation, deterrent factors etc. Further remedial action should also be directed considering the precautionary principle into consideration and sustainable development. In the case in hand, the broad violations, noted above on the part of APIL-PP, are:

- (i) Violation of Statutory laws by not obtaining EC, consent to Establish, Consent to Operate and NOC for extraction of ground water;
- (ii) Discharge of untreated sewage or partly treated sewage directly in storm water drain, running of DG sets without observing regulations necessary for protection of air pollution,

encroachment on the land meant for green belt etc. and non-maintenance of the said area as per norms;

(iii) Non-compliance of Construction and Demolition Waste Management Rules, 2016.

(iv) Non-compliance of Solid Waste Management Rules, 2016;

375. CGWA in its reply dated 09.07.2019 has referred to the application dated 13.03.2019 submitted by APIL-PP seeking permission/NOC to extract ground water from 21 tubewells out of 39 installed in Phase I Sushant Lok stating therein that total ground water requirement is 1100 m³/day. However, annual requirement has been shown as 1,01,500 m³/year which is clearly incorrect in as much as water extraction is obviously for the entire year and therefore, for 365 days water requirement would come to 401500 m³/day (1100 m³/day × 365 days). CGWA on the basis of the information submitted by APIL-PP has observed that there is excess withdrawal of 1,68,500 m³/year and has recommended computation of environmental compensation at the rate of Rs. 24 m³/year. It has proposed computation only for smaller period of 15.04.2015 to 16.11.2015 and computed environmental compensation to Rs. 40,44,000.

376. In the status report dated 05.04.2019 submitted by CPCB, environmental compensation for discharge of untreated sewage has been computed only for 178 days i.e. till 28.02.2019 at Rs. 12.18 Crores which comes to Rs. 6,84,269.66 per day. It is alleged that the above computation is as per environmental compensation policy made by CPCB pursuant to Tribunal's order dated 31.08.2018 in **OA 593/2017**.

377. As per Action taken report dated 21.06.2019 submitted by CPCB, it has moderated the amount of environmental compensation to Rs. 14.6962 Crores for discharge of untreated sewage, computed for 281 days i.e. till

17.06.2019. It is also said that computation is as per environmental compensation policy framed pursuant to Tribunal's order dated 31.08.2018 in **OA 593/2017**. Here the amount comes to Rs. 5,22,996.44 per day.

378. Action taken report dated 07.09.2021 submitted by Chief Secretary shows that amount of compensation was revised by CGWA to Rs. 16.729 Crores and recovery proceedings were initiated which is subject matter of Appeal before Supreme Court in **CA No. 3111/ 2020 M/s Ansal Properties and Infrastructure Ltd. vs. Praveen Kakkar & Ors.**, wherein interim order has been passed directing maintenance of status quo with regard to possession of property by the parties.

379. The above report of Chief Secretary also states that Gurugram Metropolitan Development Authority has informed vide letter dated 15.10.2019 that they have stopped untreated sewage flowing from premises of APIL-PP and other areas in storm water drain and connection has been disconnected but it is not stated as to how the said sewage, being generated in the premises regularly is being managed and treated. In absence of any other material, we are justified in drawing inference that authorities have allowed the proponent to discharge sewage by transporting through tankers on open land as alleged by applicants in the OA.

380. Normally, when a project has been undertaken illegally it results in an illegal construction and development, justifying a direction for restoration of the premises to its original position and also to take steps for remediation and restoration of damage caused to environment. However, since construction activities not only have undergone substantially but even third party rights have been created and allotment

of plots/apartments have been made to third parties who are residing thereat, therefore, we follow the doctrine of balancing equity in law, maintaining all requisite steps necessary for prevention of damage to environment, remediation to the damage already caused to environment and steps so that such violation may not recur. In this background, we find it appropriate to apply principle of polluters pay and proceed to assess environmental compensation against PP. The question naturally would arise about factors and fundamental which have to be applied for computation of environmental compensation. Here authorities have referred to the guidelines laid down by CPCB. We find now necessary to examine the methodology for assessment of environmental compensation, hereat:

Environmental Compensation-Assessment/Methodology:

381. The question of **assessment of environmental compensation** includes the principles/factors/aspects, necessary to be considered for computing/assessing/determining environmental compensation. Besides judicial precedents, we find little assistance from Statute. Section 15 of NGT Act, 2010 talks of relief of compensation and restitution. It confers wide powers on this Tribunal to grant relief by awarding compensation for the loss suffered by individual(s) and/or for damage caused to environment. Section 15 reads as under:

“15. Relief, compensation and restitution-(1) *The Tribunal may, by an order, provide,-*

*a) **relief and compensation** to the victims of pollution and **other environmental damage arising under the enactments** specified in the Schedule I (including accident occurring while handling any hazardous substance);*

*b) **for restitution of property damaged;***

*c) **for restitution of the environment** for such area or areas, as the Tribunal may think fit.*

(2)The relief and Compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section of (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the' applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

*(4) The Tribunal may, **having regard to the damage to public health, property and environment**, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.*

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may, be, compensation or relief received from, any other Court or authority.

382. Sub-section 1 enables Tribunal to make an order providing relief and compensation to (i) the victims of pollution, (ii) other environmental damage arising under the enactments specified in the Schedule I. Tribunal is also conferred power to pass an order providing relief for restitution of property damaged. Section 15(1)(c) enables Tribunal to pass an order providing relief for restitution of the environment for such area or areas, as Tribunal may think fit. Section 15 sub-section 4 says that Tribunal may divide compensation or relief payable under separate heads specified in Schedules II, having regard to the damage to public health, property and environment so as to provide compensation or relief, (i) to the claimants and (ii) for restitution of the damaged property or environment, as it may think fit.

383. Schedule II of NGT Act, 2010 gives a list of heads under which compensation or relief for damage may be granted. It has 14 heads in total out of which item (a) to (f), (l), (m) and (n) relates to loss, damage etc. sustained to the person or individual or their property. Item (i) to (k) relates to harm, damage, destruction etc. of environment or environmental system

including soil, air, water, land, and eco-system. Items (i) to (k) of Schedule II of NGT Act, 2010 are as under:

“(i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;

(j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;

(k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;”

384. Items (g) and (h) relate to expense and cost incurred by State in providing relief to affected person; and loss caused in connection with activity causing damage. The damage to environment covers a very wide variety of nature as is evident from definition of environment under section 2 (c) which is inclusive and says; ‘environment includes water, air, and land and the interrelationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property’.

385. Section 20 of NGT Act, 2010 requires Tribunal to apply principles of sustainable development, the precautionary principle and the polluter pays principle.

386. Thus, broad principles of environmental laws are given but the methodology for assessing/determining compensation is not provided in the statute. Even Rules framed under NGT Act, 2010 are silent on this aspect. Issue of determination of EC is significant in the sense that it should be proportionate to or bears a reasonable nexus with the environmental damage and its remediation/restoration. Similarly in case of compensation to be determined for a victim, it needs to co-relate to injury caused or damage suffered by such person as also cost incurred for treatment/remediation.

387. Taking into consideration multifarious situations relating to violation of environmental laws *vis-a-vis* different proponents, nature of cases involving violation of environmental laws can be categorized as under:

- a. Where Project/Activities are carried out without obtaining requisite statutory permissions/consents/clearances/NOC etc., affecting environment and ecology. For example, EC under EIA 2006; Consent under Water Act, 1974 and Air Act, 1981; Authorisation under Solid Waste Management Rules, 2016 and other Rules; and NOC for extraction and use of ground water, wherever applicable, and similar requirements under other statutes.
- b. Where proponents have violated conditions imposed under statutory Permissions, Consents, Clearances, NOC etc. affecting environment and ecology.
- c. Where Proponents have carried out their activities causing damage to environment and ecology by not following standards/norms regarding cleanliness/pollution of air, water etc.

388. The above categories are further sub-divided, i.e., where the polluters/violators are corporate bodies/organisations/associations and group of the people, in contradistinction, to individuals; and another category, the individuals themselves responsible for such pollution.

389. Further category among above classification is, where, besides pollution of environment, proponents/violators action also affect the community at large regarding its source of livelihood, health etc.

390. The next relevant aspect is, whether damage to environment is irreversible, permanent or is capable of wholly or partially restoration/remediation.

391. Determination/computation/assessment of environmental compensation must, not only conform the requirement of restoration/remediation but should also take care of damage caused to the environment, to the community, if any, and should also be preventive, deterrent and to some extent, must have an element of “being punitive”. The idea is not only for restoration/remediation or to mitigate damage/loss to environment, but also to discourage people/proponents from indulging in the activities or carrying out their affairs in such a manner so as to cause damage/loss to environment.

392. To impose appropriate ‘environmental compensation’ for causing harm to environment, besides other relevant factors as pointed out, one has to understand the kind and nature of ‘Harmness cost’. This includes risk assessment. The concept of risk assessment will include human-health risk assessment and ecological risk assessment. U.S. Environmental Protection Agency has provided a guideline to understand harm caused to environment as well as people. For the purpose of human-health risk assessment, it comprised of three broad steps, namely, planning and problem formulation; effects and exposure assessment and risk categorization. The first part involves participation of stakeholders and others to get input; in the second aspect health effect of hazardous substances as well as likelihood and level of exposure to the pollutant are examined and the third step involves integration of effects and exposure assessment to determine risk.

393. Similarly, ecological risk assessment is an approach to determine risk of environmental harm by human activities. Here also we can find answer following three major steps, i.e., problem codification; analysis of exposure and risk characterization. First part encompasses identification of risk and what needs to be protected. Second step insists upon crystallization of factors that are exposed, degree to exposure and whether exposure is likely or not to cause adverse ecological effects. Third step is comprised of two components, i.e., risk assessment and risk description.

394. In totality, problem is multi-fold and multi-angular. Solution is not straight but involves various shades and nuances and vary from case to case. Even Internationally, there is no thumb-rule to make assessment of damage and loss caused to environment due to activities carried out individually or collectively by the people, and for remediation/restoration. Different considerations are applicable and have been applied.

395. In India, where commercial activities were carried out without obtaining statutory permissions/consents/clearance/NOC, Courts have determined, in some matters, compensation by fixing certain percentage of cost of project. In some cases, volume of business transactions, turnover, magnitude of establishment of proponent have also been considered as guiding factors to determine environmental compensation.

396. Nature is extremely precious. It is difficult to price elements of nature like light, oxygen (air), water in different forms like rain, snow, vapour etc. When nature is exploited beyond its carrying capacity, results are harmful and dangerous. People do not understand the value of what nature has given free. Recently in Covid-19 wave II, scarcity of oxygen proved its worth. In dreadful second phase of the above pandemic, any amount offered, in some cases, could not save life for want of oxygen.

Further, damage to environment, sometimes do not reflect in individuals immediately and may take time but injury is there. In such cases, process of determination of compensation may be different.

397. In an article, '*the cost of pollution-Environmental Economics*' by Linas Cekanavicius, 2011, it has been suggested, where commercial activities have been carried out without consent etc., and pollution standards have been violated, Total Pollution Cost (hereinafter referred to as '**TPC**') can be applied. It combines the cost of abatement of environment pollution and cost of pollution induced environmental damage. The formula comes to **TPC(z)=AC(z)+ED(z)**, where **z** denotes the pollution level. Further, clean-up cost/remediation cost of pollution estimated to be incurred by authorities can also be used to determine environmental compensation.

398. When there is collective violation, sometimes the issue arose about apportionment of cost. Where more than one violator is indulged, apportionment may not be equal since user's respective capacity to produce waste, contribution of different categories to overall costs etc. would be relevant. The element of economic benefit to company resulting from violation is also an important aspect to be considered, otherwise observations of Supreme Court that the amount of environmental compensation must be deterrent, will become obliterated. Article 14 of the Constitution says that unequal cannot be treated equally, and it has also to be taken care. Determination/assessment/computation of environmental compensation cannot be arbitrary. It must be founded on some objective and intelligible considerations and criteria. Simultaneously, Supreme Court also said that its calculations must be based on a principle which is simple and can be applied easily. In other words, it can be said that wherever Court finds it appropriate, expert's assessment can be sought but sometimes experts also go by their own

convictions and belief and fail to take into account judicial precedents which have advanced cause of environment by applying the principles of 'sustainable development', 'precautionary approach' and 'polluter pays', etc.

399. Clean-up cost or TPC, may be a relevant factor to evaluate damage, but in the diverse conditions as available in this Country, no single factor or formula may serve the purpose. Determination should be a quantitative estimation; the amount must be deterrent to polluter/violator and though there is some element of subjectivity but broadly assessment/computation must be founded on objective considerations. Appropriate compensation must be determined to cover not only the aspect of violation of law on the part of polluter/violator but also damage to the environment, its remediation/restoration, loss to the community at large and other relevant factors like deterrence, element of penalty etc.

400. Committee in its reports has made certain recommendations determining environmental compensation under certain heads. The computation by Committee is based on certain formulas it has suggested. We have to examine mechanism suggested by Committee and also the value provided to factors like constant quotient and value of "R" i.e., Rupee, to find out whether the same satisfy all aspects necessary to determine appropriate environmental compensation. Applying principle of absolute liability, Polluters Pay alongwith Precautionary Principle and sustainable development, it has to be seen whether PPs are liable to pay environment compensation as suggested by Committee and also to undergo other statutory sanctions provided in the statutes including criminal prosecution, or computation of compensation requires some other method.

401. **CPCB Guidelines:** CPCB has suggested in a report methodology for assessment of environmental compensation which may be levied or

imposed upon industrial establishments who are guilty of violation of environmental laws and have caused damage/degradation/loss to environment. It does not encompass individuals, statutory institutions and Government etc. Report is titled as “*Report of the CPCB In-house Committee on Methodology for Assessing Environmental compensation and Action Plan to Utilize the Fund*” which was finalized in the meeting held on 27.03.2019. It shortlisted the incidents requiring an occasion for determining environmental compensation. Six such incidents, shortlisted, are:

“Cases considered for levying Environmental Compensation (EC):

- a) *Discharges in violation of consent conditions, mainly prescribed standards/consent limits.*
- b) *Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.*
- c) *Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.*
- d) *Accidental discharges lasting for short durations resulting into damage to the environment.*
- e) *Intentional discharges to the environment -- land, water and air resulting into acute injury or damage to the environment.*
- f) *Injection of treated/partially treated/ untreated effluents to ground water.”*

402. For the instances at item (a), (b) and (c), report says that ‘Pollution Index’ (hereinafter referred to as ‘**PI**’) would be used as a basis to levy environmental compensation. CPCB had already published Guidelines categorizing industries into Red, Orange, Green and White, based on the concept of **PI**. The **PI** is arrived after considering quantity and quality of emissions/effluents generated, types of hazardous waste generated and consumption of resources. **PI** of an industrial sector is a numerical number in the range of 0 to 100 and is represented as follows:

PI=f (Water Pollution Score, Air Pollution Score and HW Generation Score).

403. Since range of PI is 0 to 100, increase in value of PI denotes increasing degree of pollution hazard from industrial sector. Accordingly, report says, for determining environmental compensation in respect of cases covered by item (a), (b) and (c), it will apply following formula:

“ $EC = PI \times N \times R \times S \times LF$
Where,
EC is Environmental Compensation in Rs.
PI = **Pollution Index of industrial sector**
N = Number of days of violation took place
R = A factor in Rupees (₹) for EC
S = Factor for scale of operation
LF = Location factor”

404. The formula incorporates anticipated severity of environmental pollution in terms of PI, duration of violation in terms of number of days, scale of operation in terms of micro and small/medium/large industry and location in terms of proximity to the large habitations. A note is also given under the aforesaid formula and it reads as under:

- “Note:
- a. The **industrial sectors** have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental Compensation for Red, Orange and Green categories of industries, respectively.
 - b. N, number of days for which violation took place is the period between the day of violation observed/ due date of direction’s compliance and the day of compliance verified by CPCB/SPCB/PCC.
 - c. R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of violation.
 - d. S could be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units.
 - e. LF, could be based on population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or up to 10 km distance from the municipal boundary of the city/town, following factors (LF) may be used:

Table No. 1.1: Location Factor Values

S. No	Population* (million)	Location Factor# (LF)
1	1 to <5	1.25

2	5 to <10	1.5
3	10 and above	2.0

**Population of the city/town as per the latest Census of India*
#LF will be 1.0 in case unit is located >10km from municipal boundary
LF is presumed as 1 for city/town having population less than one million.

*For notified Ecologically Sensitive areas, for beginning, LF may be assumed as 2.0. **However, for critically Polluted Areas, LF may be explored in future.***

- f. In any case, minimum Environmental Compensation shall be ₹ 5000/day.*
- g. In order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2 times on 1st repetition, 4 times on 2nd repetition and 8 times on further repetitions.*
- h. If the operations of the industry are inevitable and violator continues its operations beyond 3 months then for deterrent compensation, EC may be increased by 2, 4 and 8 times for 2nd, 3rd and 4th quarter, respectively. Even if the operations are inevitable beyond 12 months, violator will not be allowed to operate.*
- i. Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.*

A sample calculation for Environmental Compensation (without deterrent factor) is given at Table No. 1.2. It can be noticed that for all instances, EC for Red, Orange, and Green category of industries varies from 3,750 to 60,000 ₹/day.

Table No. 1.2: A sample calculation for Environmental Compensation

Industrial Category	Red	Orange	Green
Pollution Index (PI)	60-100	41-59	21-40
Average PI	80	50	30
R-Factor	250		
S-Factor	0.5-1.5		
L-Factor	1.00-2.00		
Environmental Compensation (₹/day)	10,000-60,000	6,250-37,500	5,000-22,500

405. We find that **R** which is a factor in Rupees (₹) is taken to be 100 minimum and 500 maximum. It has suggested that R value be taken as average i.e. Rs. 250/-. On what basis this minimum and maximum has

been determined and why average is suggested, beyond any comprehension. We do not find any material in the above report which may throw light for taking value of R as above. Similarly, for determining value of S i.e. Factor for Scale of Operation from 0.5 to 1.5, we find no Guidelines as to on what basis, it has been determined and only on the size of the industry, divided in small, medium and large, the said factor has been prescribed. The note further says that minimum environmental compensation would be Rs. 5000/- per day .From table 1.2, we find that in the highest case i.e., large industry, depending on the level of PI, maximum environmental compensation would be Rs. 60,000/- per day and minimum Rs. 10,000/- per day. The above determination excludes the actual loss to the environment and cost of remediation including damage to *flora-fauna* and human beings. Moreover classification of industries for industrial policy, or for some licensing purpose, banking purpose etc. would be wholly irrelevant for environment. A small industry may be capable of causing much more pollution than medium or even large industry. For example pollution caused by a brick kiln using coal as fuel may be much more than many medium category industries.

406. In respect of items (d), (e) and (f), report says that for determining environmental compensation, one has to consider the matters in two parts, one for providing immediate relief and another long term relief, such as remediation. In such cases, detailed investigations are required from Expert Institutions or Organizations, based on which environmental compensation will be decided. Second part of report is with regard to utilization of environmental compensation fund. For this purpose, report says that CPCB will finalize a scheme for utilization of fund for protection of environment. Certain schemes identified by CPCB for utilization of the said fund are mentioned in para 1.4.1, as under:

- “a. Industrial Inspections for compliance verification
- a. Installation of Continuous water quality monitoring stations/Continuous ambient air quality monitoring stations for strengthening of existing monitoring network
- b. Preparation of Comprehensive Industry Documents on Industrial Sectors/clean technology
- c. Investigations of environmental damages, preparation of DPRs
- d. Remediation of contaminated sites
- e. Infrastructure augmentation of Urban Local Bodies (ULBs)/capacity building of SPCBs/PCCs.”

407. All the above, except item (e), relate to establishment/infrastructure for monitoring/prevention of pollution which in fact is the statutory duty and function of officials of State PCB and CPCB. It appears that CPCB has attempted to utilize environment fund to meet expenses which is the responsibility of Government.

408. Chapter II of report deals with determination of environment compensation for violations of **Graded Response Action Plan** (GRAP) in NCR. Here a fixed amount of environmental compensation has been recommended in table 2.1, as under:

“Table No. 2.1: Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in Delhi-NCR.

Activity	State Of Air Quality	Environmental Compensation
Industrial Emissions	Severe +/-Emergency	Rs 1.0 Crore
	Severe	Rs 50 Lakh
	Very Poor	Rs 25 Lakh
	Moderate to Poor	Rs 10 Lakh
Vapour Recovery System (VRS) at Outlets of Oil Companies		
i. Not installed	Target Date	Rs 1.0 Crore
ii. Non-functional	Very poor to Severe +	Rs 50.0 Lakh
	Moderate to Poor	Rs 25.0 Lakh
Construction sites (Offending plot more than 20,000 Sq.m.)	Severe +/-Emergency	Rs 1.0 Crore
	Severe	Rs 50 Lakh

	Very Poor	Rs 25 Lakh
	Moderate to Poor	Rs 10 Lakh
Solid waste/ garbage dumping in Industrial Estates	Very poor to Severe +	Rs 25.0 Lakh
	Moderate to Poo	Rs 10.0 Lakh
Failure to water sprinkling on unpaved roads		
a) Hot-spots	Very poor to Severe +	Rs 25.0 Lakh
b) Other than Hot-spots	Very poor to Severe +	Rs 10.0 Lakh

409. Chapter III considers determination of environmental compensation where a proponent has discharged pollutants in water bodies or failed to prevent discharge of pollutants in water bodies and also failed to implement Waste Management Rules. Laying down Guidelines for determination of environmental compensation in this category, report has referred to Tribunal’s order dated 06.12.2018 in **OA No. 125/2017 and MA No. 1337/2018, Court on its own motion vs. State of Karnataka**, stating as under:

*“Since failure of preventing the pollutants being discharged in water bodies (including lakes) and failure to implement solid and other waste management rules are too frequent and widespread, the **CPCB must lay down specific guidelines to deal with the same, throughout India, including the scale of compensation** to be recovered from different individuals/authorities, in addition to or as alternative to prosecution. **The scale may have slabs, depending on extent of pollution caused, economic viability, etc. Deterrent effect for repeated wrongs may also be provided.**”*

410. It is suggested that determination of environmental compensation in this category would have two components, (i) Cost saved/benefits achieved by the concerned individual/authority by not having proper waste/sewage managing system; and (ii) Cost to the environment (environmental externality) due to untreated/partially treated waste/sewage because insufficient capacity of waste/sewage management facility. It further says that Cost saved/benefits achieved would also

include interest on capital cost of waste/sewage management facility, daily operation and maintenance (O & M) cost associated with the facility. The determination of environmental compensation, therefore, is suggested, applying following formula:

“Therefore, generalized formula for Environmental Compensation may be described as:
EC= Capital Cost Factor × Marginal Average Capital Cost for Establishment of Waste or Sewage Management or Treatment Facility × (Waste or Sewage Management or Treatment Capacity Gap) + O&M Cost Factor × Marginal Average O&M Cost × (Waste or Sewage Management or Treatment Capacity Gap) × No. of Days for which facility was not available + Environmental Externality”

411. Environmental externality has been placed in two categories (i) untreated/partially treated sewage discharge and (ii) improper municipal solid waste management and detailed in table 3.1 and 3.2, as under:

“Table No. 3.1: Environmental externality for untreated/partially treated sewage discharge

Sewage Treatment Capacity Gap (MLD)	Marginal Cost of Environmental Externality (Rs. per MLD/day)	Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)
<i>Up to 200</i>	75	<i>Min. 0.05, Max. 0.10</i>
<i>201-500</i>	85	<i>Min. 0.25, Max. 0.35</i>
<i>501 and above</i>	90	<i>Min. 0.60, Max. 0.80</i>

Table No. 3.2: Environmental externality for improper municipal solid waste management

Municipal Solid Waste Management Capacity Gap (TPD)	Marginal Cost of Environmental Externality (Rs. per ton per day)	Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)
<i>Up to 200</i>	15	<i>Min. 0.01, Max. 0.05</i>
<i>201-500</i>	30	<i>Min. 0.10, Max. 0.15</i>
<i>501-1000</i>	35	<i>Min. 0.25, Max. 0.3</i>
<i>1001-2000</i>	40	<i>Min. 0.50, Max. 0.60</i>
<i>Above 2000</i>	<i>Max. 0.80</i>	

”

412. CPCB has further recommend a fixed cap for minimum and maximum cost for capital and O & M component for environmental compensation in table 3.3 and 3.4, as under:

“Table No. 3.3: Minimum and Maximum EC to be levied for untreated/partially treated sewage discharge

<i>Class of the City/Town</i>	<i>Mega-City</i>	<i>Million-plus City</i>	<i>Class-I City/Town and others</i>
<i>Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)</i>	<i>Min. 2000 Max. 20000</i>	<i>Min. 1000 Max. 10000</i>	<i>Min. 100 Max. 1000</i>
<i>Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)</i>	<i>Min. 2 Max. 20</i>	<i>Min. 1 Max. 10</i>	<i>Min. 0.5 Max. 5</i>

Table No. 3.4: Minimum and Maximum EC to be levied for improper municipal solid waste management

<i>Class of the City/Town</i>	<i>Mega-City</i>	<i>Million-plus City</i>	<i>Class-I City/Town and others</i>
<i>Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)</i>	<i>Min. 1000 Max. 10000</i>	<i>Min. 500 Max. 5000</i>	<i>Min. 100 Max. 1000</i>
<i>Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)</i>	<i>Min. 1.0 Max. 10.0</i>	<i>Min. 0.5 Max. 5.0</i>	<i>Min. 0.1 Max. 1.0</i>

”

413. Para 3.3 deals with the method of determining environmental compensation for damage/untreated/partially treated sewage by concerned individual/authority. Under this head, CPCB has considered that for population above 1 lakh, requirement of water supply, would be minimum 150 to 200 lpcd and 85% whereof would result in sewage generation. It takes capital cost for 1 MLD STP ranges from 0.63 crores to 3 crores and O & M cost around Rs. 30,000 per month. Consequently, it suggested to assume capital cost for STPs as Rs. 1.75 crores/MLD

(marginal average cost). Expected cost for conveyance system is assumed as Rs. 5.55 crore/MLD and annual O& M as 10% of combined capital cost. Based on the above assumptions, Committee has recommended/suggested environmental compensation, to be levied on urban local bodies, by applying formula and here CPCB has suggested two formulas and any of them may be adopted.

“EC= Capital Cost Factor × [Marginal Average Capital Cost for Treatment Facility × (Total Generation-Installed Capacity) + Marginal Average Capital Cost for Conveyance Facility × (Total Generation -Operational Capacity)] + O&M Cost Factor × Marginal Average O&M Cost × (Total Generation- Operational Capacity) × No. of Days for which facility was not available + Environmental Externality × No. of Days for which facility was not available

Alternatively;

EC (Lacs Rs.) = [17.5(Total Sewage Generation – Installed Treatment Capacity) + 55.5(Total Sewage Generation-Operational Capacity)] + 0.2(Sewage Generation-Operational Capacity) × N + Marginal Cost of Environmental Externality × (Total Sewage Generation-Operational Capacity) × N

Where; N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Quantity of Sewage is in MLD”

414. Para 3.4 deals with the method of environmental compensation to be levied on concerned individual/authority for improper solid waste management, chargeable from urban local body based on the following formula:

“EC = Capital Cost Factor × Marginal Average Cost for Waste Management × (Per day waste generation-Per day waste disposed as per the Rules) + O&M Cost Factor × Marginal Average O&M Cost × (Per day waste generation-Per day waste disposed as per the Rules) × Number of days violation took place + Environmental Externality × N

Where;

Waste Quantity in tons per day (TPD)

N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Simplifying;

$$\text{EC (Lacs Rs.)} = 2.4(\text{Waste Generation} - \text{Waste Disposed as per the Rules}) + 0.02(\text{Waste Generation} - \text{Waste Disposed as per the Rules}) \times N + \text{Marginal Cost of Environmental Externality} \times (\text{Waste Generation} - \text{Waste Disposed as per the Rules}) \times N$$

415. Here also certain assumed figures have been taken by CPCB. Report says that municipal solid waste generation is approximately 1.5 lakh MT/day in India as per MoHUA Report-2016. As per principles of Solid Waste Management Rules, 2016 and PWM Rules, 2016, total cost of municipal solid waste management in city/town includes cost for door to door collection, cost of segregation at source, cost for transportation in segregated manner, cost for processing of municipal solid waste and disposal through facility like composting bio-methanation, recycling, co-processing in cement kilns etc. It is estimated that total cost of processing and treatment of municipal solid waste for a city of population of 1 lakh and generating approximately 50 tons/day of municipal solid waste is Rs. 15.5 Crores which includes capital cost (one time) and Operational and Management cost for one year. Expenditure for subsequent years would be only 3.5 Crores/annum. For arriving per day waste generation, CPCB has referred to a survey conducted by Environment Protection Training Research Institute (EPTRI) which estimated that solid waste generated in small, medium and large cities and towns is about 0.1 kg (Class-III), 0.3-0.4 kg (Class-II) and 0.5 kg (Class-I) per capita per day respectively. The committee opined that 0.6 kg/day, 0.5 kg/day and 0.4 kg/day per capita waste generation may be assumed for mega-cities, million-plus UAs/towns and Class-I UA/Towns respectively for calculation of environmental compensation purposes.

416. Sample calculation of environmental compensation to be levied for improper management of municipal solid waste has been provided in table 3.6 which read as under:

“Table No. 3.6: Sample calculation for EC to be levied for improper management of Municipal Solid Waste

City	Delhi	Agra	Gurugram	Ambala
Population (2011)	1,63,49,831	17,60,285	8,76,969	5,00,774
Class	Mega-City	Million-plus City	Class-I Town	Class-I Town
Waste Generation (kg. per person per day)	0.6	0.5	0.4	0.4
Waste Generation (TPD)	9809.90	880.14	350.79	200.31
Waste Disposal as per Rules (TPD) (assumed as 25% of waste generation for sample calculation)	2452.47	220.04	87.70	50.08
Waste Management Capacity Gap (TPD)	7357.42	660.11	263.09	150.23
Calculated EC (capital cost component) in Lacs. Rs.	17657.82	1584.26	631.42	360.56
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 1000 Max. 10000	Min. 500 Max. 5000	Min. 100 Max. 1000	Min. 100 Max. 1000
Final EC (capital cost component) in Lacs. Rs.	10000.00	1584.26	631.42	360.56
Calculated EC (O&M Component) in Lacs. Rs./Day	147.15	13.20	5.26	3.00
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./Day)	Min. 1.0 Max. 10.0	Min. 0.5 Max. 5.0	Min. 0.1 Max. 1.0	Min. 0.1 Max. 1.0
Final EC (O&M Component) in Lacs. Rs./Day	10.00	5.00	1.00	1.00
Calculated Environmental Externality (Lacs Rs. Per Day)	2.58	0.18	0.03	0.02
Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. per day)	Max. 0.80	Min. 0.25 Max. 0.35	Min. 0.01 Max. 0.05	Min. 0.01 Max. 0.05
Final Environmental Externality (Lacs Rs. per day)	0.80	0.25	0.03	0.02

”

417. Chapter IV deals with determination/computation of environmental compensation in case of “illegal extraction of ground water” and for this purpose report has referred to Tribunal’s order dated 03.01.2019 passed

in **OA No. 327/2018, Shailesh Singh vs. Central Ground Water Board**

& Ors. The relevant extract of the order quoted in para 4.1 of the report is as under:

“CPCB may constitute a mechanism to deal with individual cases of violation of norms, as existed prior to Notification of 12/12/2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law.”

418. Here, broadly, determination of environmental compensation refers to two major aspects i.e. illegal extraction of water as one aspect and illegal use of ground water as second aspect. For determination of environmental compensation for illegal extraction of ground water, formula suggested by Committee is:

“ EC_{GW} = Water Consumption per Day x No. of Days x Environmental Compensation Rate for illegal extraction of ground water (ECR_{GW})

Where water Consumption is in m^3/day and ECR_{GW} in $Rs./m^3$

*Yield of the pump varies based on the capacity/power of pump, water head etc. For reference purpose, yield of the pump may be assumed as given in **Annexure-VI**.*

Time duration will be the period from which pump is operated illegally.

In case of illegal extraction of ground water, quantity of discharge as per the meter reading or as calculated with assumptions of yield and time may be used for calculation of EC_{GW} .”

419. Depending on the category of the area for the purpose of ground water i.e. safe, semi-critical, critical and over-exploited and also the purpose for which ground water is used, determination of environmental compensation for illegal use of ground water, has been suggested differently for different purpose/use i.e. for drinking and domestic use; for packaged drinking water units/for mining infrastructure and dewatering projects and for industrial units. Hence all these aspects are separately given in paragraph 4.6.1, 4.6.2, 4.6.3 and 4.6.4 as under:

“4.6.1 ECR_{GW} for Drinking and Domestic use:

Drinking and Domestic use means uses of ground water in households, institutional activity, hospitals, commercial complexes, townships etc.

Sl. No	Area Category	Water Consumption (m ³ / day)			
		<2	2 to <5	5 to <25	25 & above
		Environmental Compensation Rate (ECR _{GW}) in Rs./ m ³			
1	Safe	4	6	8	10
2	Semi Critical	12	14	16	20
3.	Critical	22	24	26	30
4	Over-Exploited	32	34	36	40
Minimum EC _{GW} =Rs 10,000/- (for households) and Rs. 50,000 (for institutional activity, commercial complexes, townships etc.)					

4.6.2 ECRGW for Packaged drinking water units:

Sl. No	Area Category	Water Consumption (m ³ / day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR _{GW}) in Rs./ m ³			
1	Safe	12	18	24	30
2	Semi Critical	24	36	48	60
3.	Critical	36	48	66	90
4	Over-Exploited	48	72	96	120
Minimum ECGW=Rs 1,00,000/-					

4.6.3 ECRGW for Mining, Infrastructure and Dewatering Projects:

Sl. No	Area Category	Water Consumption (m ³ / day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR _{GW}) in Rs./ m ³			
1	Safe	15	21	30	40
2	Semi Critical	30	45	60	75
3.	Critical	45	60	85	115
4	Over-Exploited	60	90	120	150
Minimum EC _{GW} =Rs 1,00,000/					

4.6.4 ECRGW for Industrial Units:

Sl. No	Area Category	Water Consumption (m ³ / day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR _{GW}) in Rs./ m ³			
1	Safe	20	30	40	50
2	Semi Critical	40	60	80	100
3.	Critical	60	80	110	150
4	Over-Exploited	80	120	160	200
Minimum ECGW=Rs 1,00,000/-					

”

420. It is also recommended that minimum environmental compensation for illegal extraction of ground water would be Rs. 10,000/- if it is for domestic purposes, but in other matters, it would be Rs. 50,000/-.

421. These recommendations by CPCB have not been given in the form of a binding statutory provision. Even otherwise, we find that these are only broad suggestions, ignore several relevant aspects which have to be considered while determining environment compensation in a given case therefore, cannot be taken as readymade application to all situations for determining of environment compensation. Moreover, on some aspects there is no suggestion, but it is deferred.

422. We also find that some crucial relevant aspects requiring application of 'Polluters Pay', have not been considered in the above suggestions. CPCB has failed to consider that the purpose of determination/computation/assessment of environmental compensation and levy thereof, involve various factors like (i) cost of damage to environment, (ii) cost needed for restoration/remediation of damage caused to environment, (iii) element of deterrent/provincial, (iv) liability arising for violation of statutory mandatory law relating to environment namely requirement of consent, EC and NOC etc. It is not mere cost of item or subject but computation of something which situation has arisen by an act of PPs due to violation of environmental law causing damage to environment. The loss and its remedy involves complex of components.

423. Nature is precious. The elements of nature like air, water, light and soil in materialistic manner may not be priced appropriately and adequately. Most of the time, whenever price is determined, it may be extremely low or highly exorbitant meaning thereby disproportionate. Still, since some of the assets of nature are marketable, on that basis price may

be determined but when such elements are damaged or degraded, restoration thereof, in effect is priceless. Many a times, it may be almost impracticable and improbable to recover and remediate damaged environment to its position as it was. Moreover, its cost might be very high. It also cannot be doubted that once there is a pollution or damage to environment, it would affect adversely not only the environment but also inhabitants and all biological organisms. Damage is there, only degree may differ whether to the environment or to the inhabitants and other organisms. To find out simultaneously degree of damage and to ascertain the same in many cases may not be possible or practicable. For example, a polluted air causes respiratory diseases but the people do not get infected and starts reflection of the disease immediately but it takes some time. The time taken in reflection of injury on the person or body also differs from person to person depending upon his immunity and other health conditions. In some cases, damage to environment i.e., air pollution may be fatal to a person who already has respiratory problem. For some a minor inconvenience, minor injury to others, and some may not suffer to the extent of showing symptoms of any diseases at all. When we talk of environmental compensation for causing degradation to environment and for its restoration or remediation, it is not a formal or casual or symbolic amount which is required to be levied upon the violator. It is substantive and adequate amount which must be levied for restoration of environment. CPCB in determining values of fixed quotients and rupees etc., has been very lenient as if only symbolically violator is to be held liable and it must pay a petty amount.

424. Statutory Regulators must realize that the amount is needed for remediation and restoration of damaged environment; enough to be deterrent, to provide adequate compensation where inhabitants are

affected adversely and where violator has proceeded in violation of Environmental Laws relating to consents, clearances, permissions etc., to penalize him for such violation to prove to be a deterrent to him and others. Unfortunately, the above guidelines laid down by CPCB have not considered all these aspects and it appears that the same have been prepared in a very casual and formal manner.

425. In respect of computation of compensation for illegal extraction of ground water, CPCB has referred to Tribunal's order in ***Court on its own motion vs. State of Karnataka (supra)*** directing it to lay down guidelines to deal with the scale of compensation but has failed to consider that Tribunal has also observed that its scale may have slabs depending on extent of pollution caused, economic viability etc. and deterrent effect.

426. Statutory Regulators have also failed to consider that environmental compensation is not a kind of fee which may result in profiteering to violators and after adjusting a nominal amount of environmental compensation, a violator may find it profitable to continue with such violations. The objective of environmental compensation is that not only the loss and damage already caused, is made to recover and restore but also in future, the said violator may not repeat the kind of violation already committed and others also have a fear of not doing the same else similar liability may be enforced upon them. Unless amount of compensation is more than maximum permissible profit arising from violation, the purpose of environmental compensation would always stand defeated.

427. Loss caused to surroundings of the environment, may also include *flora-fauna* and human beings. It is in this backdrop that in various matters when the issues were considered by Courts and Tribunal and found necessary to impose environmental compensation upon

Proponent/Violator of environmental laws, they have followed different mechanisms. Sometimes, Committee's reports confirming violations have been referred but for quantum of compensation, directions have been issued in different ways. In some cases, CPCB guidelines have been applied while in many other, project cost has been made basis.

428. CPCB Guidelines have taken care of industries and municipal bodies. Its application in all cases irrespective of other relevant consideration may prove to be disastrous. Individuals, charitable, social or religious bodies, public sector and government establishments etc., may, in given circumstances justify a different approach. Further, there may be cases attracting aggravating factors or mitigating factors, for example in national emergency some activity got performed violating environmental norms or a proponent is resilient to any advice to adhere law to protect environment and so on. In fact, quantum of EC should have nexus with State's efforts for protection and preservation of environment and control of pollution. Compensation regime must be a deterrent to violators and incentivize eco-friendly proponents. No one should get profited by violating environmental laws and community should also not suffer for violation of environmental norms by defaulting proponents. There is no reason, if beside the aspects noticed above, the computation process also incorporate the elements of inflation, quality of life, and economic prosperity.

429. In the context of "violation of disposal of Bio-Medical Waste" and "Non-compliance of Bio-Medical Waste Management Rules, 2016" and determination of environmental compensation for such violations, Tribunal in **OA No. 710/2017, Shailesh Singh vs. Sheela Hospital & Trauma Centre, Shahjahanpur & Others** and other connected matters, vide order dated 15.07.2019, accepted report of CPCB, and said:

“10. The compensation regime suggested by the CPCB may be adopted. It will be open to the State PCBs/PCCs to adopt a higher scale of compensation, having regard to the problems faced in such States/UTs.

11. It is made clear that if even after two months the States/UTs are found to be non-compliant, the compensation will be liable to be recovered from the said States/UTs at the rate of Rs. 1 Crore per month till the non-compliance continues.”

430. The above recommendations i.e. in para 10, Tribunal said *“compensation regime suggested by the CPCB may be adopted. It will be open to the State PCBs/PCCs to adopt a higher scale of compensation, having regard to the problems faced in such States/UTs”*. It further says that if State Governments and UTs still remain non-complying for two months, compensation will be recovered at the rate of Rs. 1 crore per month till non-compliance continues.

431. In respect of solid waste, sewage effluent, ground water extraction etc., Tribunal in **OA No. 593/2017, Paryavaran Suraksha Samiti and another vs. Union of India and others**, vide order dated 28.08.2019 has said in para 16, that as regards environmental compensation regime fixed vide CPCB guidelines for industrial units, GRAP, solid waste, sewage and ground water is accepted as an interim measure. Tribunal further observed that recovery of compensation on ‘Polluter Pays’ principle is a part of enforcement strategy but not a substitute for compliance. It directed all States/UTs to enforce compensation regime latest w.e.f. 01.04.2020 and made it clear that it is not condoning any past violations. Tribunal directed to enforce recovery of compensation from 01.04.2020 from the defaulting local bodies failing which the concerned States/UTs themselves must pay the requisite amount of compensation.

432. In the matter of illegal mining causing damage to environment, methodology for determining environmental compensation was examined in **OA No. 360/2015, National Green Tribunal Bar Association vs.**

Virender Singh (State of Gujarat) and other connected matters decided on 26.02.2021. Here a report was submitted by CPCB on 30.01.2020, placing on record recommendations made by Committee comprising:

- i.) Dr Purnamita Dasgupta, Professor, IEG, Delhi,
- ii.) Dr K.S. Kavi Kumar, Professor, MSE, Chennai,
- iii.) Dr. Yogesh Dubey, Associate Professor, IIFM, Bhopal,
- iv.) Shri Sundeep, Director, MoEF&CC, Delhi and
- v.) Shri A. Sudhakar, Additional Director, CPCB, Delhi

433. Report was considered by Tribunal vide order dated 17.08.2020.

Report said:

- “8. The Committee considered two approaches:
(I) Approach 1: Direct Compensation based on the market value of extraction, adjusted for ecological damages.
(II) Approach 2: Computing a Simplified NPV for ecological damages.

9. In the first approach, the criteria adopted is:

- Exceedance Factor (EF).
- Risk Factor (RF).
- Deterrence Factor (DF).

10. Approach 1 is demonstrated by Table 1 as follows:

Table No. 01: Approach 1				
Permitted Quantity (in MT or m³)	Total Extraction (in MT or m³)	Excess Extraction (in MT or m³)	Exceedance in Extraction:	Compensation Charge (in Rs.)
X	Y	Z=Y-X	Z/X	D* (1+RF+DF) Where D=Z x Market Value of the material per MT-or-m³
				DF = 0.3 if Z/X = 0.11 to 0.40 DF = 0.6 if Z/X = 0.41 to 0.70 DF = 1 if Z/X >= 0.71
				RF = 0.25, 0.50. 0.75,

				1.00 (as per table 2)

11. Approach 2 is demonstrated by following formula:
“Total Benefits (B)=Market Value of illegal extraction: D(refer Table 1)

Total Ecological Costs (C) = Market Value adjusted for risk factor: D * RF (refer Table 1).”

12. Final recommendation is as follows:
“Thus, it is recommended that the annual net present value (NPV) of the amount arrived at after taking the difference between the costs and the benefits through the use of the above approach, maybe calculated for a period of 5 years at a discount rate of 5% for mining which is in a severe ecological damage risk zone. **The rationale for levying this NPV is based on expert opinion that reversal and/or restoration of the ecological damages is usually not possible within a short period of time and rarely is it feasible to achieve 100% restoration, even if the sand deposition in the river basin is restored through flooding in subsequent years.** The negative externalities of the mining activity are therefore to be accounted for in this manner. Ideally, the worth of all such damages, including costs of those which can be restored should be charged. **However, till data on site-specific assessments becomes available, this approach may be adopted in the interim.** In situations where the risk categorization charged. However, till data on site-specific assessments becomes available, this approach may be adopted in the interim. In situations where the risk categorisation is unavailable or pending calculation, the following Discount Rates may be considered:

Severity	Mild	Moderate	Significant	Severe
Risk Level	1	2	3	4
Risk Factor	0.25	0.50	0.75	1.0
Discount Rate	8%	7%	6%	5%

434. Here, in both the approaches, element of illegality committed by PP in carrying on mining was not considered at all. For example, if EC and/or consent is not obtained. Similarly, cost of remediation/restoration was also not taken into consideration.

435. In some cases, compensation has been awarded by Tribunal on lump sum basis without referring to any methodology. For example: (i) **in Ajay Kumar Negi vs. Union of India, OA No. 183/2013**, Rs. 5 Crores was imposed. (ii) In **Naim Shariff vs. M/s. Das Offshore Application No.**

15(THC) of 2016, Rs. 25 Crores was imposed (iii) **Hazira Macchimar Samiti vs. Union of India**, Rs. 25 crores was imposed.

436. In **Goa Foundation vs. Union of India & Others (2014)6SCC590**, Supreme Court relied on **Samaj Parivartana Samudaya & Others vs. State of Karnataka & Others (2013)8SCC209** and held that **ten per cent of the sale price** of iron ore during e-auction should be taken as compensation. To arrive at the above view, Court observed that this was an appropriate compensation given that mining could not completely stopped due to its contribution towards employment and revenue generation for the State. Further, Court directed to create a special purpose vehicle, i.e., “Goan Iron Ore Permanent Fund” for depositing above directed compensation and utilization of above fund for remediation of damage to environment.

437. In **Goel Ganga Developers vs Union of India and Others, (2018)18SCC257**, Tribunal imposed 195 Crore compensation since project was executed without EC. Supreme Court made it **100 Crores or 10% of project cost whichever is higher**. Supreme Court also upheld Rs. 5 crores imposed by Tribunal vide order dated 27.09.2016. Thus, total amount exceeded even 10% of project cost.

438. In **Mantri Techzone Private Limited vs. Forward Foundation & Others, (2019)18SCC494**, Supreme Court affirmed imposition of environmental compensation by Tribunal, considering cost of the project, where there was violation regarding EC/consent and proponent proceeded with construction activities violating provisions relating to EC/Consent. Tribunal determined environmental compensation at 5% and 3% of project cost of two builders. 5% of project cost was imposed where PP had raised illegal constructions while 3% was imposed where actual construction

activity was not undertaken by PP and only preparatory steps were taken including excavation and deposition of huge earth by creating a hillock. Besides, Tribunal also directed for demolition and removal of debris from natural drain at the cost of PP.

439. In **Goa Foundation vs. Union of India & Others (supra)**, where illegal extraction of minerals was involved and in **Goel Ganga Developers India vs. Union of India (supra)**, where a construction project was carried out without EC in violation of EIA 2006, Supreme Court permitted computation of environment compensation at 10% of the project cost. In fact, in **Goel Ganga** case, exemplary cost of Rs. 100 Crores were imposed, and Court said that developer would pay 100 Crores or 10% of project cost whichever is higher.

440. On the issue of assessment of compensation for damage to environment in the matter of illegal mining, recently Supreme Court in **Bajri Lease LOI holders Welfare Society vs. State of Rajasthan and others, SLP (Civil) No. 10584 of 2019** (order dated 11.11.2021) has said that compensation/penalty to be paid by those indulging in illegal sand mining cannot be restricted to be value of illegally mined minerals. The cost of restoration of environment as well as the cost of ecological services should be part of compensation. ‘Polluter Pays’ principle as interpreted by this Court means that absolute liability for harm to the environment extends not only to compensate victims of pollution but also cost of restoring environmental degradation. Remediation of damaged environment is part of the process of “sustainable development” and as such the polluter is liable to pay the cost the individual sufferers as well as the cost of reversing the damaged ecology.

441. Next question will be whether compensation should be determined at 10% of the project cost or should be higher or lower. We find that in **Goel Ganga case (supra)**, project proponent was found guilty of multiple illegal acts including violation of the laws relating to EC, consent, etc., raised even otherwise illegal construction for the purpose of commercial project. Similarly, in **Goa Foundation (supra)**, also illegal extraction was found by private proponents for commercial gains.

442. The activities/project in question is construction activity. In **Goel Ganga Developers India Private Limited vs. Union of India, (2018)18SCC257**, Supreme Court observed that normal rule is that 5% of project cost should be environmental compensation which can be enhanced if there are some other relevant factors justifying such enhancement. In **Goel Ganga (supra)** as already said, Supreme Court imposed 10% of project cost or 100 Crores whichever is higher as environmental compensation. Rs. 5 crores were imposed for not obtaining EC. In the present case, the project cost of questioned project is not before us. The present estimated cost of the project obviously would be very high. The cost of land in the project in question, as is evident from the information placed on public domain, presently is very high. Therefore, considering all the aspects into consideration, we find it appropriate to follow rates proposed by CPCB and CGWA but the period and amount computed by the said authorities is not justified considering the fact that there is blatant violation for years together and no reason and justification we find for curtailing period of violation even to the extent of what is permissible in law. We, therefore, compute environmental compensation as under:

- (i) **For discharge of untreated or partially treated sewage in storm water drain directly, not complying with the norms-**

This OA was registered on 18.09.2018 and five years period commenced from 19.09.2013. First report confirming violation is dated 16.11.2018 submitted by joint Committee through CPCB. Therefore, we compute compensation under this head for the period of 19.09.2013 to 16.11.2018. The rate on which compensation was determined by CPCB were different at two stages, (a) Rs. 684269.66 per day and (b) Rs. 522996.44 per day. We take up the lower rate and compute environmental compensation as under :

Rs. 522996.44 × 1884 days = **Rs. 985325292/-**

- (ii) **For illegal extraction of ground water** – APIL-PP itself has said that the requirement of ground water is at rate of Rs. 1100 m³/day. Taking this violation also again for the period as mentioned above in (i), the amount is computed as under :
Rs. 1100 m³/day × 1884 days × Rs. 24 = **Rs. 49737600/-**
- (iii) For violation of provisions relating to EC/consent to Establish and consent to operate= **Rs. 30 Crores**
- (iv) Compensation for other violations like encroachment/non-maintenance of green belt, non-observance of Construction and Demolition Waste Management Rules, 2016 and Solid Waste Management Rules, 2016, violation in respect of rain water harvesting system etc., (we collectively assess) - **Rs. 20 Crores.**

443. We, accordingly, dispose of OA 661/2018 with following directions:

- (i) Environmental compensation of Rs. 153,50,62,892/- shall be paid by respondent 11 i.e., APIL-PP and deposited with HSPCB within three months. This amount shall be utilized for rejuvenation/restoration of environment in the area

concerned on the recommendation of a joint Committee comprising CPCB, HSPCB, District Magistrate, and MCG who shall prepare a plan within three months and execute the same within further six months from the date of deposit of environmental compensation by respondent 11. CPCB shall be the nodal authority for this purpose. However, we make it clear that if there is any otherwise order by Supreme Court or High Court in regard to the present matter, the same shall operate and above direction would be subject to final decision by such Court.

- (ii) TCPD Gurgaon (respondent 3) shall pay environmental compensation of Rs. 2 Crores and deposit the same with HSPCB within three months. The above amount shall also be utilized for rejuvenation/restoration of environment in the concerned area on the basis of recommendation of joint Committee referred in direction (i) above.
- (iii) Respondent 11 shall not create any further third party rights in Sushant Lok, Phase I unless and until environmental laws and norms are complied with.
- (iv) APIL-PP (respondent 11) shall not undertake any further activities of development in project in question unless the requisite clearance/NOC/permission under environmental laws from Competent Authorities are obtained and other provisions of environmental laws requisite to be observed before commencement of construction proceedings are complied with.
- (v) SLRWA is directed to take necessary steps in consultation with HSPCB, MCG and HUDA for discharge of sewerage,

complying/maintaining the prescribed standards under Water Act 1974.

- (vi) HSPCB, MCG and District Magistrate, Gurugram are directed to ensure that untreated sewage water generated in the premises of questioned project is not discharged on open lands by transporting the same by tankers.
- (vii) HSPCB shall ensure that the diesel generators are not allowed to run in the questioned area unless the provisions of Air Act 1981 are complied with and all precautions to maintain standard of air are observed/taken.
- (viii) All concerned Statutory Regulators, District Administration and local bodies shall ensure that no ground water is extracted in the questioned project through 39 borewells installed by APIL-PP or any other or lesser number of borewells installed in the said area without permission of Competent Authority.
- (ix) HSPCB shall also take steps for criminal prosecution of respondent 11 and its authorities for violation of environmental laws.
- (x) Since environmental laws are notified and included in schedule I of PMLA 2002 as discussed by Tribunal in **OA No. 64/2016 (WZ), Akhil Bhartiya Mengela Samaj Parishad vs. Maharashtra Pollution Control Board & Ors.** and constitute an offence under the said Act, let a copy of this order be sent to Enforcement Directorate for appropriate action against violators under PMLA 2002.

444. A copy of this order shall be forwarded CPCB, CGWA, HSPCB, TCPD Haryana, Chief Secretary, Haryana, District Magistrate, Gurgaon, MCG

and Directorate of Enforcement headquarter at Delhi by e-mail for information, necessary action and compliance.

Adarsh Kumar Goel,
Chairperson

Sudhir Agarwal,
Judicial Member

Pushpa Sathyanarayana,
Judicial Member

Prof. A. Senthil Vel,
Expert Member

July 04, 2022
OA No. 661/2018
R

Item Nos. 04 to 06

Court No. 1

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

(By Video Conferencing)

Original Application No. 23/2017 (EZ)
(I.A. No. 05/2019, M.A. No. 28/2018 & M.A. No. 29/2018)

Syed Arshad Nasar		Applicant
	Versus	
Union of India & Ors.		Respondent(s)

WITH

Original Application No. 776/2018

Ramchandra Chaurasia		Applicant
	Versus	
State of Jharkhand		Respondent(s)

WITH

Original Application No. 373/2019

Pradeep Kumar Singh		Applicant
	Versus	
State of Jharkhand		Respondent(s)

Date of hearing: 23.08.2022

**CORAM: HON’BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON’BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON’BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

ORDER

1. These matters relate to enforcement of environmental norms in the operation of quarrying and crushing units in Rajmahal hills of the Vindhya Mountains, District Sahebganj, Jharkhand.

2. As noted in earlier orders, the area is rich in mineral resources. The mining companies or other entities are indulging in indiscriminate mining and operating stone crushers without due regard to the environmental norms. In this process, the hills are blown up. To remedy the problem, the Tribunal passed several orders in the last five years, including prohibiting illegal mining and non-compliant stone crushing activities vide order dated 06.07.2017, followed by order dated 17.04.2018 but due to collusion of the authorities in the State or inaction the situation continues to remain unsatisfactory to the detriment of environment and public health.

3. It will suffice to make brief reference to earlier proceedings. The Tribunal constituted a Committee comprising (a) Senior Scientist/Engineer from CPCB; (b) Regional Office, EZ, MoEF&CC, Bhubaneswar and, (c) Experts from SEIAA and Jharkhand State PCB to undertake study and give a report as follows: -

- “i) Undertake Carrying Capacity Assessment of the area viz-a-viz stone mines and stone crushing units.
- ii) Undertake Ambient Air Quality Assessment in atleast 10 representative locations of the area.
- iii) Assess (a) the pollution control devices of the stone mining and stone crushing units in the area and the environmental damage caused and (b) the cost of restoration of such damage.
- iv) Any other relevant studies cognate to the above.

In undertaking the task, the Committee may co-opt expert/experts from any institution identified by it.”

4. The report of the Committee was considered on 07.05.2019 and it was found that, inspite of there being large scale violations, no adequate remedial action had been taken. On 11.09.2019, the Member Secretary, State PCB appeared in person and made a statement that there are 407 stone crushers and 300 stone mines. The specific detail of non-conforming

stone crushers and mines were directed to be complied. Further, as per information given by the Member Secretary, 508 units had applied for Consent to Operate out of which 445 had been granted and the case of 24 had been rejected, while in the case of 39, applications for grant of Consent to Operate were under consideration. 293 stone crusher units and stone mining units were found to be non-compliant during the inspections between 11.11.2019 to 17.11.2019 and show cause notices were issued. Interim environmental compensation was levied on 106 units. Total environmental compensation amount was ₹6,33,57,000/- imposed by the State PCB cumulatively on the stone mines and stone crusher units, out of which ₹2,36,25,000/- was upon 55 stone mines and ₹3,97,32,000/- against 141 stone crushing units. The District Task Force demolished 34 illegal crusher units and sealed and demolished another 107 where illegal storage, processing and dispatch of minerals were being indulged in. 70 such illegal processing units (stone crushers) were sealed and demolished. Apart from lodging FIRs, 47 illegal stone crushers were sealed and demolished, as per the inspection undertaken in January, 2019.

5. Vide order dated 05.12.2019, the Tribunal noted that the State machinery failed to control illegal mining and illegal crusher units resulting in large scale damage to the environment. The Tribunal inferred collusion of the State authorities, including the Member Secretary, State PCB with the violators. The Tribunal inter-alia issued following directions:

“26. We direct the Committee constituted vide order dated 22.01.2019 to place before us a table giving the details of the stone mines and the stone crushers separately containing the following particulars:

- a) Name of the mines and crusher units and its locational depiction on the map of appropriate scale.*
- b) Dates of grant of Consent to Establish, Consent to Operate and, also Environmental Clearance (EC) in respect of stone*

mines. The area of stone mines and distance with adjoining mine(s) may clearly be stated.

- c) Adequacy of pollution control devices of stone crushing units.*
- d) Details of individual violations of conditions of EC/Consent to Operate w.r.t. mining units and details of violation of Consent to Operate w.r.t. Stone Crushing units.*
- e) Action taken against those which do not have EC and Consent to Operate and against those which have violated the conditions of EC/Consent to Operate w.r.t. mining units.*
- f) The amount of environmental compensation assessed and recovered along with the individual computation sheets indicating period of default.”*

6. Further, vide order dated 23.09.2020 in the light of report of the joint Committee dated 21.09.2020, the Tribunal noted continuing violations and replaced the earlier Committee with a four-member joint Committee to be headed by an officer of the rank of Joint Secretary in the MoEF&CC, Government of India. The other three members were to be the nominees of Indian Institute of Technology (IIT), Dhanbad, a Senior Officer of CPCB and Secretary Environment, Government of Jharkhand. The said Committee gave its report dated 29.01.2021 which was found to be unsatisfactory vide order dated 22.12.2021. Concluding part of the said order is reproduced below:

“xxx xxx.....xxx

- 18. The Committee failed to extrapolate PM_{2.5} data to PM₁₀ data as was done in matter of OA 1016/2019 by CPCB. PM_{2.5} data shows clearly that there is no supportive carrying capacity and this data needs to be used for carrying capacity computations. NCF (Non-Compliance Factor) in formula has been designed in such a way that the units with most serious non-compliance will have to pay no or least environmental compensation e.g. unit found to be set up without meeting siting criteria will have to pay no environmental compensation or unit consistently not complying with prescribed norms can escape the environmental compensation by using the proposed formula. Further, units complying with 80% of listed pollution control techniques will have to pay no EC as 20% rebate is with any logic.*

19. *For the reasons already given, the recommendations are unacceptable being based against law and science and is unprofessional and hence rejected. However, to the extent stone crushers and mines are non-compliant even according to the Committee need to be forthwith closed, if not already closed.*
20. *In view of failure of the joint Committee to provide sound basis for assistance of the Tribunal, we have no option except to reject the report of the Committee CPCB may assign the task to the Committee which undertook study and submitted report dated 6.10.2020 in OA No. 1016/2019, Utkarsh Panwar vs. Central Pollution Control Board & Ors. The Committee may be steered by Member Secretary, CPCB, who will be free to take assistance from any other expert. The Committee may give its report 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. The report may also be uploaded on the website of CPCB for any response by any stakeholder before the next date.*
21. *We also direct the State PCB to close the illegally operating stone crushers/mines - those not having valid consents, those not following valid siting criteria and those not maintaining laid down safeguards noted in paragraphs 5.3.1 and 5.3.3 in the above report. This may be ensured by a joint Committee of CPCB, State PCB and the District Magistrate and compliance report filed before the next date. The affected parties are at liberty to move this Tribunal, if they are aggrieved."*

Consideration today and further directions

7. In the light of above, the reconstituted joint Committee headed by Member Secretary, CPCB has filed its report dated 18.08.2022. The report gives details of the stone mining and crushing activities, extent of air pollution and inadequacy of environmental management. Carrying capacity of the area has also been worked out. Relevant extracts from the report are as follows:

"4.2 Calculation and Results

The outcome of the estimations/calculations made by following the above approach is given below;

Out of total 130 grids (i.e., boxes of 4 km x 4 km) in the district, 203 stone crushers and 126 mines are located in 29 grids and 27 grids (i.e. in 32 grids there are crushers or mines) (Figure 8) Grid wise number of stone crushers and minse and their capacity is given in Annexure A1.

- (a) *The **total PM10 emission load from the stone crushers located in 29 grids is estimated to be 168.4 TPD. Total PM10 emission load, due to resuspension of road dust on movement of trucks, from all grids comes out to be 68.8 TPD respectively, with maximum PM10 emissions from Grid 1 (20.7 TPD). Total PM10 emission load from the mining activities is estimated to be 3.2 TPD. Overall total PM10 emission load for 32 grids due to operation of stone crushers, resuspension of dust and mining activities is calculated to be 240.4 TPD. PM10 Emission load from mining activities only comprised of 1.3% of the total PM10 emission load. Estimated grid-wise PM10 emission load from the aforementioned activities is summarised in Annexure A 2.***
- (b) *Subsequently, PM10 concentration for each grid in winter season was estimated using box model, and is summarised in Annexure A 3.*
- (c) *Grid wise PM10 Assimilative Capacity/Load, estimated PM10 emission load using calculated PM10 concentration and the resultant supportive Capacity was assessed and is summarized in Annexure A.*

*It is observed that **supportive capacity is negative in 4 grids, and therefore stone crushing and mining activities need to be controlled in these grids.** Accordingly, the supporting capacity is converted to equivalent crushing & mining capacity using the ratio of net estimated PM10 load and total crushing and mining capacity. This total allowable capacity is further separated to mining and crushing components, using the proportion of contribution of each activity to PM10 emission load in the grid. Thus, **the grid-wise stone crushing and the mining capacity, which may be permitted to operate within the assimilative capacity or available supportive capacity during winter season is computed and is summarized in the Table 14.***

Table 14. Grid wise capacity of stone crushing and mining to be permitted in winters

GRID ID	Stone Crushing Capacity, (TPD)	Allowable crushing capacity (TPD)	Mining capacity, (TPD)	Allowable mining capacity (TPD)
1	11162	6760	5382	5357
2	360	2395	4287	4644
3	8319	6663	6201	6183
4	6980	6742	2656	2655
6	512	2307	NA	NA
7	9582	5283	1135	1128
11	280	5424	NA	NA
12	NA	NA	4017	11673
13	1800	7243	3135	3315
14	51	5335	2277	3573

15	918	7550	1365	1433
16	2639	8946	876	910
17	886	4357	2389	2507
37	3600	7378	2500	2550
47	60	4289	2102	3017
56	NA	NA	958	9213
57	338	5363	NA	NA
64	755	8269	172	195
66	NA	NA	417	8552
88	236	7726	560	727
89	377	8001	1643	2035
98	1018	7870	1906	2112
99	2732	9505	4253	4418
105	270	7460	300	408
107	2640	5909	3693	3773
108	5410	10767	1500	1526
115	158	7456	NA	NA
116	857	7735	547	607
117	5444	7670	7812	7859
118	216	6916	NA	NA
127	550	5232	1041	1144
129	751	8498	834	983

(d) Using **Table 14** above, the **number of stone crushers and mines that can be allowed to operate are estimated based on the capacity of one stone crusher and one stone mine** (Table 15). It is important to note that the crushing capacity for each stone crusher is different, and thus the number of crushers that may be permitted to operate is only indicative in nature, whereas the **overall objective is to achieve reduction in net crushing capacity in the grid to meet the permissible capacity**. List of existing stone crushers and mines (details enclosed as Annexure A 5) and the number of stone crushers and mines that can be allowed to operate, is summarised in following table:

Table 15. No. of stone crushers and mines that can be permitted to operate during winters in 4 grids with negative supportive capacity

GRID ID	Number of stone crushers in the grid	No. of stone crushers that can be allowed to operate [#]	Number of mines in the grid	No. of mines that can be allowed to operate ^{##}
1	61	37	10	10
3	22	18	9	9
4	5	4*	5	5
7	29	16	2	2

* Floor function (largest nearest integer which is less than or equal to a specified value) used in this case

Numbers have been calculated considering average capacity of the crushers hence, actual no. may vary as per the exact capacity of the crushers so that the total capacity does not exceed the capacity indicated at Table 14.

Mining capacity may be proportionately reduced to match with the crushing capacity.

4.3 Summary

The carrying capacity for 4 km×4 km grids in Sahibganj District, Jharkhand was assessed using box model. The analysis was done for the critical winter season, when deterioration of air quality is a major concern.

4 grids were found to have negative supporting capacity, thereby reduction in stone crushing capacity is required in these 4 grids, i.e. Grids 1, 3, 4 and 7. It may also be noted that 58% of the stone crushers in Sahibganj district, considered in the analysis, are located in these four grids. According to the assessment, a total of 42 number of stone crushers, i.e. 24 stone crushers in Grid 1, 4 stone crushers in Grid 3, 1 stone crusher in Grid 4 and 13 stone crushers in Grid 7, may not be permitted to operate.

5.0 Assessment for Environmental Compensation

For assessment of Environmental Compensation (EC) for violators with respect to illegal or non-compliant stone mining and stone crushing operation in Sahibganj district, the following methodology may be considered:

5.1 Illegal or Non-Compliant Stone Mining

For assessing Environmental Compensation for illegal or non-compliant stone mining operation, JSPCB shall follow the methodology accepted by Hon'ble NGT in the matter of O.A. No. 75 of 2019 (CZ) (Vijay Singh Rajput Vs. State of M.P. & Ors.), vide its order dated 5.10.2020 as given below:

The volume of the illegal mining of the stone assumed as "**V**" m³, in the length of '**l**' m, width of '**w**' m and depth of '**d**' m

1. The market value per m³ of the stone is Rs X.
The market value is assessed by District Mining Office or State Pollution Control Board.
2. Therefore, the total market value of the **V** m³ illegal stone mines is calculated as **T** = **V** × **X** Rs
3. The proposed penalty is calculated as four times the market value of illegal mines Stone, Rs. = **4** × **T**

The proposed Environmental Compensation in the Hon'ble NGT matter of O.A. No. 75 of 2019 (CZ) was considered based on the M.P. Land Revenue Code 1956 (as amended) rule 247 (7).

5.2 Illegal or Non-Compliant Stone Crusher

For assessing Environmental Compensation for illegal or non-compliant stone crusher, JSPCB shall follow the methodology prepared by CPCB and accepted by Hon'ble NGT as follows:

- I. Nature of violation** – Discharges in violation of consent conditions, mainly prescribed standards/consent limits.

II. The basis for levying the Environmental Compensation – Pollution Index

III. The environmental compensation is based on the following formula:

EC= PI×N×R×S×LF

Where,

EC- Environmental Compensation

PI- Pollution Index of Industrial Sector, for stone crusher: 50

The industrial sectors have been categorized into Red, Orange, Green and White based on their Pollution Index range of 60 to 100, 41 to 59, 21 to 40, and <20, respectively (Table 16).

Table 16 Category-wise Pollution Index Values

Sl No	Industrial Category	Pollution Index (PI)	Average PI
1	Red	60-100	80
2	Orange	41-59	50
3	Green	21-40	30
4	White	<20	10

Based on the “Revised Classification of Industrial Sectors Under Red, Orange, Green and White Categories” published by the Central Pollution Control Board on February 29, 2016”, the PI for stone crushers is to be taken as 50.

N –Number of days of violation took place.

It is the period between the day of violation observed/ due date of direction’s compliance and the day of compliance verified by CPCB/SPCB/PCC.

As per the available records of previous inspections, JSPCB shall calculate the number of days of violation with respect to the non-compliance.

R – A factor in rupees for EC, to be taken as per CPCB’s guidelines

S- Factor of scale of operation, Scale of operation of stone crusher was taken as defined in CPCB’s Comprehensive Industry Document Series COINDS/ 78/ 2007-08 on Stone Crushers (Feb 2009) (Table 17)

Table 17. Value for Factor of Scale of Operation

Sl No	Scale of Operation	Production Capacity (TPH)	Factor (S)
1	Small Scale	3-25	0.5
2	Medium Scale	25-100	1.0
3	Large Scale	>100	1.5

LF - Location factor.

It could be based on the population of the city/ town and the location of the industrial unit. For the industrial unit located within the municipal boundary or up to 10 km distance from the municipal boundary of the city/ town, the following factors (LF) may be used as mentioned in Table 18.

Table 18. Location Factor Value

Sl No	Population (in Million)	Location Factor (LF)
1	1 - <5	1.25
2	5 - <10	1.5
3	>10	2.0

***LF will be 1.0 in case unit is located >10 km from municipal boundary or city/ town having population less than 1 million.*

LF is to be taken as 1.25 as the total population of Sahibganj district is 11,50,567 as per Census Data 2011.

The Environmental Compensation that would be imposed may be considered as interim. Detailed study on assessment of environmental compensation taking into account the cost of restoration for the damage caused and its apportionment among the violators may be done through the expert institute(s).

6.0 Recommendations

Based on the field visit (3rd-4th March 2022) and the carrying capacity study carried out by the Expert Committee, the following are recommended;

6.1 Measures to be taken for crushers/mines

- I. In the case of stone crushers, the crushing units (both primary & secondary) should be placed in a covered section and the crushing units having capacity more than 100 TPH, shall be provided with bag house as emission control system.*
- II. The Crushers shall install scientifically designed adequate number of sprinklers with requisite hydraulic pressure and shall ensure that the sprinklers remained in operation during crushing period.*
- III. JSPCB along with district administration shall ensure that crushers are not in operation without having requisite pollution control measures through strict vigilance. Priority may be given for the grids where negative supporting carrying capacity has been observed.*
- IV. Conveyor belts should be covered /enclosed to avoid fugitive emission, without side gaps, in enclosure and belts.*
- V. The crushed stones or finished products should be stored in a silo, or the finished goods should be kept lower than the height of wind-breaking walls. Strong structural base and framing should be provided for wind-breaking walls to withstand strong wind conditions. The height of the stockpile should always be kept lower than the height of the wind-breaking wall. The wall can be erected radially with a screen as center point. In addition, proper*

sprinkling arrangement should be provided all around the stockpiles.

- VI. The haul roads/roads within the mines/industry premises used for the transportation of the products from the stone crushers or mines shall be paved and sufficient number of sprinklers be in operation. The concerned crushers shall be responsible for installation and O&M.
- VII. Cleaning of crushing units and railway goods shed shall be performed with only mechanical means on regular basis.
- VIII. JSPCB shall direct the concerned agencies to maintain the national highways and other metalled roads to reduce fugitive emission.
- IX. The stone dusts from the stone crushing/ mines are dumped in the nearby area causing may be utilized for construction activities of the 4-lane highway and Ganga Bridge in the area and filling up the ponds/mine voids which were created during the stone mining or reclamation of the stone mines.
- X. A proper green belt is to be developed surrounding the crushers.

6.2 Measures to be taken for management of railway siding

- XI. Ten railway sidings and eight railway goods sheds are important source of pollution as they deal with 14,25,000 tonnes of materials (Stone Chips, Ballast and Bolder) per month (**Table 11**). Therefore, the railway sidings are recommended to be covered /enclosed with Galvanized Iron (G.I) / Mild Steel (M.S) sheets with proper pollution control system to avoid fugitive emissions. Proper housekeeping should also be maintained.
- XII. The loading/unloading points of the wagons shall be covered if possible or shall be equipped with scientifically designed sprinklers with adequate hydraulic pressure. The sprinklers should be in adequate number to maintain a water curtain along the loading/unloading points.
- XIII. The waste generated from the railway goods sheds/sidings shall be collected and segregated for proper disposal.
- XIV. Since the railway sidings are located near the clusters (**Table 12**), which may impact on human health, these shall be relocated to some safer distance.
- XV. The trucks, as well as the wagons, should be properly covered while transporting the stone chips.

6.3 Surveillance and monitoring

- XVI. Pan-tilt-zoom or PTZ cameras must be installed at all the stone crusher units at appropriate locations to detect fugitive emissions. Feed of the PTZ cameras shall be shared with the JSPCB.
- XVII. The operating capacity of the Stone crusher units may be verified with the monthly electricity bills of the respective unit.

- XVIII. *The units using DG set as power source may only be allowed to operate when the unit is having valid authorization as per Hazardous & Other Wastes (Management and Transboundary Movement) Rules, 2016.*
- XIX. *Random drone surveillance on the bank of river Ganga may be done to prevent illegal dumping of debris generated during stone mining, crushing or allied activities.*
- XX. *Online and manual ambient air quality monitoring stations may be installed in the grids where negative carrying capacity is observed to monitor atleast for measurement of PM10, PM2.5 and NOx. JSPCB may be responsible for operation of these stations however, the expenses incurred for the same may be recovered from the respective stone crushers and mines.*
- XXI. *The environmental management status shall be updated as well as verification of the adequacy of the pollution control devices installed in all the stone mines/ crushing units operating in the region shall be done by JSPCB & DC Sahibganj.*

6.4 Environmental Compensation & Damage Assessment

- XXII. *JSPCB may impose Environmental Compensations (EC) for violators based on methodology as described in para 5.0 till the cost of restoration to the extent of damage including the deterrent element is assessed.*
- XXIII. *The cost of restoration of the actual damage and apportionment assessment may be carried out by technical institutes through JSPCB following the mechanism already developed by CPCB and circulated to all SPCBs/PCC following the direction of Hon’ble NGT in the matter of O.A. No. 739/2018. The copy of the mechanism for “Assessment of Damage to Air Quality”, “Damage Assessment of Health Issues” and “Agricultural Production Loss” w.r.t Stone Crushers" is given in **Appendix 11**.*
- XXIV. *A Comprehensive Environment Management plan may be prepared, for the areas where the stone mines and crushers are located, through the expert institutes like Indian Institute of Technology - India School of Mines (IIT-ISM), Dhanbad or any other reputed agency.”*

8. District Survey Report of Sahibganj District annexed to the report shows contamination of groundwater as follows:

“7.6 Ground Water Quality

xxx xxx.....xxx

The results of ground water samples were analyzed in accordance with the standard (ISI – 1993) for drinking purpose. In general the

quality of ground water in the phreatic aquifer is suitable for drinking and irrigation purpose except few samples, which shows nitrate concentration more than permissible limit. The EC value ranges from 193 – 1687 micro Siemens/cm at 250c. During the Ground Water Management Studies (AAP 2006 – 07), 60 acidified samples were collected from Gangetic alluvium of the district for the study of Arsenic in ground water. As per the analytical results of these samples, the Arsenic concentration is found more than 50 ppb in 20% of the samples and in 16.66% of the samples Arsenic value ranges between 10 – 50 ppb.

xxx xxx.....xxx

7.12 RECOMMENDATION:-

1. *Flouride concentration in ground water (bore well) exceeds the permissible limits in/around villages Dharampur Morh, Amrapara, Bannawgram, Dhekiduba, Jatang Khakhsa and Rajdaha. In fluoride affected area, the ground water must be used after deflouridation through fluoride removal plants. Alternative source may be identified. The existing fluoride affected sources may be sealed.*
 2. *Nitrate concentration in shallow aquifer (dug well) is found more than permissible limit in/around villages Bannawgram (Pakuria Block), Kairachhatar (Maheshpur Block) and Litipara (Litipara Block). The bore well may be a better alternate option for the drinking water purposes for the above villages.*
 3. *The exploration data indicates the poor percentage of successful bore wells in the district. Thus the geophysical surveys may be adopted for selection of suitable sites for ground water exploration.*
 4. *In order to conserve run – off water during monsoon, the water conservation and recharge structure may be constructed in and around Barharwa, Berhait, Borio, Sahebganj and Sakrigali villages where the long term (2002 – 2011) water level trend shows declining trend during post monsoon.”*
9. Separate report has been filed by the joint Committee constituted by this Tribunal through the CPCB and State PCB on 22.08.2022. The report mentions the data compiled during field monitoring as follows:

“2.1. Field Monitoring

- 2.1.1 *Ambient Air Quality Monitoring was carried out by the team covering all the significant points for PM_{2.5}& PM₁₀.*
- 2.1.2 *The strategic locations for measurement of the PM_{2.5}& PM₁₀are tabulated below (Table 1)*

Table 1. Ambient Air Quality Monitoring Location carried out during the field visit

Sl No	Strategic Location	No of Sampling
1	Industry/ Clusters	2
2	Railway Sidings& Residential	2
3	Village	1
4	Township	2

2.1.3 The analysis of the particulate matter is as follows in (Table 2), the analysis results are enclosed as **Annexure III**.

Field monitoring was carried out at following 7 locations covering all the points as directed.

Table 2 Analysis Result of the ambient air quality carried out (for 8 hours based on prevailing situation and feasibility) during the field visit.

S. No.	Location	Lat & long	Monitoring results for parameters (stipulated norm in bracket)		Remarks
			PM10 (100 mg/Nm ³)	PM 2.5 (60 mg/Nm ³)	
1.	Jokmari, Mahadeoganj	N - 25.237361 E-87.574636	135.70	91.75	Not meeting
2.	Mahadeobaran, Mirzachowki	N-25°14'56.40288" E-87°29'36.7242"	217	55	PM10 Not meeting
3.	Sahibganj Railway Siding	N- 25°14'24.58392" E 87°38'29.485232"	137.75	95.80	Not meeting
4.	Mirzachowki Village	N-25°15'39.74436" E-87°29'37.77036"	120.90	70.25	Not meeting
5.	Talbanna, Sahibganj	N-25°14'42.21132" E-87°37'37.48512"	1133	50	PM10 Not meeting
6.	Ratanpur, Barharwa Town	N-24°51'24.76152" E-87°46'13.05912"	112.80	65.75	Not meeting
7.	Hathigarha, Sakrigali	N- 25°14'26.5308" E-87°42'16.97328"	148.75	99.80	Not meeting

Remarks: Ambient air qualities are not meeting the stipulated norms for all the locations for PM₁₀ and PM_{2.5} except Mahadeobaran, Mirzachowki & Talbanna where it is meeting for only PM_{2.5} as above.

2.2 Field inspection

- 2.2.1. When the site was visited many of the crushers were in operation. It was found that a huge quality of dust is generated in the area.
- 2.2.2. Majority of the crushers were running without properly operating the existing emission control system as reported in the Monitoring status report submitted by the District Mining Task Force (DMTF) from 11.12.2020 to 16.02.2021.
- 2.2.3. There is no display board/name plate specifying a particular stone crusher (running without proper ECS) so it could not be specified which specific crushers it were. When the team tried to get the basic information about the crushers (i.e. Name of the crushers, capacity of the crushers, Status of validity of

- CTE/CTO, Name of the proprietor, since how long it has been in operation). Nobody was there to reply even the operator of the Crushers, JCB operator and other labour evolved in stone braking using hammers did not reply. In reply they stopped the operation of the running crushers and ran away.
- 2.2.4. Most of the crushers are running without proper display board in the area (i.e. Name of the crushers, capacity of the crushers, Status of validity of CTE/CTO, Name of the proprietor, since how long it has been in operation).
- 2.2.5. Many of the stone crusher operators do not show the legal document at the time of site inspection.
- 2.2.6. Jharkhand State pollution control board has issued valid CTO for only 192 no of stone crushers(list enclosed as **Annexure IV**),118 no of stone mines (List enclosed as **Annexure V**), 20 no. of Stone Crusher with mines (list enclosed as **Annexure VI**). However following are observed:
- a. A list provided from the District Mining Office enlists that there are 161 crushers which have been demolished since 2017 but many of the stoner crushers mentioned in the list are repeated twice or thrice(**Annexure-VII**).As reported such stone crushers were demolished by the District Administration by demolishing the conveyor system and the hopper but such units start their operation after some days.
 - b. From close verification of the list of 161 stone crushers (**Annexure VII**) status of many of the stone crushers are as follow:-

Particulars	Status of running and non-running crushers as observed by the team				
	Status of running stone crushers				
	Runnin g with valid CTO	Runnin g without valid CTO	Running/existin g crusher without name	Still existing but not running	Existin g but sealed
	30, (116, 64), 87, 90, 148	0	0	26,31,39,40, (112,61)83, 103,105,110, 1 12, 147,149,151, 1 60	161 96
No. of crushers	05	0	0	14	2

- c. Present Status of Stone Crusher/ Stone Mine for which request have been made for cancellation of CTO by District Level Task Force, (Mining) Sahibganj as reported in the meeting with CPCB team dated 3-4th March 2022(List annexed as **Annexure VIII**)
- d. Present Status of stone crushers which have been relocated from their existing location by District Level Task Force, (Mining) Sahibganj as reported in the meeting with CPCB team dated 3-4th March 2022(List annexed as **Annexure IX**)

- e. 33 crushers running without CTE have been dismantled. 24 crusher not having valid CTO have been sealed by District Taskforce committee (DTC) during April 22-June 22. Renewal of consents are being issued with conditions of compliance of conditions mentioned in point 5.3.1 & 5.3.3 of the order dated 22.12.2021.

Overall finding:

- i. The certain dismantling of stone crushers by simply dismantling the conveyor belt has not all resulted into any effective action to prevent illegal stone crushing in the area. As the operators/owners of the units have stated operating the same unit by repairing the dismantled part of the crushers operational.
- ii. When the units are running as benami units it is very difficult to fix the responsibility of the illegal operation of crushers to someone unless the specific persons are identified.
- iii. Ambient air qualities are not meeting the stipulated norms at any of the monitored locations for PM10 and PM2.5 except Mahadeobaran, Mirzachowki & Talbanna where it is meeting for only PM_{2.5}.

3.0 Recommendations:

Based on the above field observations and finding it is proposed as follows:

- 3.1 All stone crushers / stone mines must be provided with display board of adequate size (preferably not less than 1 m × 1 m), mentioning the following details:
 - a) Name of the crusher / Mines with Capacity
 - b) Address and exact location of area with latitude and longitude of all corner points.
 - c) Name of the proprietor with contact no.
 - d) Status of regulatory compliance status with Validity(CTE, CTO, HWA)
 - e) Status of Electricity Power Supply.
- 3.2 All the crushers in the area running without valid CTE/ CTO to be treated as illegal and be demolished. Taking lesson from earlier demolition by dismantling the conveyer system& disconnection of power supply that such crusher start operating after sometime as reported, it is proposed that whenever any crusher is demolished for running without CTE, the whole foundation to be demolished & all the major machineries of the crushers (i.e. primary crusher, secondary crusher, screen, hopper, loader, DG set, etc) should be seized.
- 3.3 The crusher having valid CTE, but running without valid CTO should be sealed with ensuring disconnection of power supply/ seize of DG set.

- 3.4 *All the units using DG sets as power source must have valid authorization as per rule (Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016).*
- 3.5 *Taking into account the scarcity of water in the area (where villagers use **Zaria Nallah** water for drinking, bathing and other domestic purpose) poor conditions effective emission control system, it is proposed that stone crushers with capacity greater than 100 TPH must be provided with bag filters as emission control system for primary crusher, secondary crusher & screen in a time bound manner (preferably in 6 month).*
- 3.6 *Proposed railway siding near the school should be developed keeping safe distance from the school to prevent the children from getting affected by silicosis/respiratory problem.*
- 3.7 *All stone crushers operating using DG set must get valid authorization from Jharkhand State Pollution Control Board as per Rule.*
- 3.8 *Overloading in loaded vehicle carrying stone/fines should be avoided to prevent spillage on the road. The crushing of these spillage under the wheels results in high load of PM 10/PM 2.5. Minimum free board of minimum 6 inch should be left keeping in mind the undulating road condition. The materials should be properly covered to prevent escape of fines under negative draft.*
- 3.9 *Haul roads should be properly maintained. Sprinklers should be installed to suppress the dust.*
- 3.10 *Plantation should be done in both side of the road. Green belt should also be improved in each cluster as well.”*

10. Thus, there is huge and unchecked pollution load by the reckless and unregulated mining and stone crusher activities. There is need for any serious and sincere authority to ascertain how such serious violation of the Air Act, 1981 and norms laid down under the EP Act, 1986 and Rules are continuing, contrary to the mandate of law and to the detriment of environment and public health. Effective appraisal of impact of mining activity appears to be missing before granting EC by SEIAA, as required in terms of *Deepak Kumar vs State*, (2012) 4 SCC 629. In the light of *Goa Foundation v. Union of India & Ors.* (2014) 6 SCC 590, there has to be proper appraisal by the State PCB before granting consents which also does not appear to have been done. It is not clear how blowing of naturally

occurring hills for mining purpose is being allowed. How mining is being allowed to the detriment of hills, which have to be protected. Further, carrying capacity of the area in terms of air quality has been ignored. 'Precautionary' principle of environmental law has been compromised. This calls for high level inquiry and fixing of accountability of concerned government officers responsible for such large scale damage to the environment and motives/reasons for which this has happened. ECs/consents for mining activities and stone crusher activities need to be reviewed to give effect to 'Sustainable Development' principle. Violators need to be brought to justice. There also appears to be no monitoring of compliance of the ECs/consent conditions. The stone crushers have been found to be operating without necessary safeguards, particularly the Air Pollution Control Devices (APDC), to the detriment of environment and public health. The recommendations in the report include safeguards in operation of stone crushing activities, stopping operation of stone crushers till pollution control measures are adopted, management of the railway sidings which are generating pollution, surveillance and monitoring measures and recovery of environmental compensation followed by restoration measures by preparing an appropriate comprehensive Environment Management Plan for the areas where stone mines and crushers are located.

11. Further, the second report by CPCB and State PCB also shows huge air pollution and generation of dust on account of running of the stone crushers without requisite safeguards and without any display boards. Many of the stone crushers do not have legal documents. It is surprising that the Committee has mentioned that responsibility for the illegal operations of crushers could not be fixed as the same were being run *benami*. Even the earlier demolished illegally operating units were found to

have started working which shows lack of continuous vigilance and failure of the monitoring mechanism. Further, CTO mechanism also seems to be faulty as how consent to operate can be granted unless, owner/occupier is known with its location for operation.

12. In absence of any reason not to accept the observations and recommendations in the above reports, we accept the same and direct remedial action in terms thereof. However, statutory bodies need not to wait further and must forthwith proceed against violating miners and crushers on polluter pays principle for past violations in terms of degradation of ambient air, changes in ground water quality and associated environmental aspects and closing violating activities.

13. We also regretfully note that in matter such magnitude, none has cared to appear for the State of Jharkhand or its authorities particularly when appearance in virtual mode is permitted in the Tribunal and it is not difficult for the officers of the State to log in and participate in the matter.

14. Accordingly, we direct the Chief Secretary, Jharkhand to constitute a Monitoring Committee under an Additional Chief Secretary with heads of concerned departments. The Committee may take stock of the situation and prepare an action plan to remedy the air pollution in the area as well as restoring the degraded areas by closing polluting activities (mining and crushing) and fixing accountability for past violations in terms of 'Polluter Pays' principle so that the compensation recovered is utilized for restoration of the environment. The Committee may be constituted within two weeks and hold its first meeting within one month and thereafter prepare its monitoring plan within one month. Further monitoring may be held atleast once in a fortnight. The Committee will be free to take assistance from any other Expert/Agency but not to delay the proceedings

on that ground. The Committee will also be free to undertake visit to the site and interact with the stakeholders. The restoration plan should endeavor to complete restoration measures including restoration of mined areas within three months, including measures to stop the polluting activities with the assistance of the State PCB, State Police and any other regulatory authorities. The Monitoring Committee will take into consideration the findings, observations and recommendations in the reports of the Committees referred to above. The Additional Chief Secretary chairing the Monitoring Committee may remain present in person on the next date. The Committee may also consider interim compensation to begin with in the light of the reports, pending finalisation of such compensation after following requisite procedure speedily. The Tribunal may consider liability of the State later. The Chief Secretary may also file criminal case against violators, after necessary scrutiny, including against erring officers. Since violation of environmental laws involve offences under PMLA Act, 2002¹, Director ED may also look into the matter. Action taken report may be filed within four 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.

15. It is made clear that affected stone crushers/mining units will be at liberty to move this Tribunal, if they are aggrieved by this order or by orders passed in pursuance of order of this Tribunal.

I.A. No. 05/2019, M.A. No. 28 & 29 of 2018 seeking waiver of costs have no merit and are dismissed.

List for further consideration on 10.01.2023.

¹ Scheduled offence as defined under Section 2(y) read with paras 25 to 27 of the Schedule.

A copy of this order be forwarded to the Chief Secretary and Additional Chief Secretary, Jharkhand, State PCB and Director, ED by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

August 23, 2022
Original Application No. 23/2017 (EZ)
(I.A. No. 05/2019, M.A. No. 28/2018
& M.A. No. 29/2018)
Original Application No. 776/2018
Original Application No. 373/2019
DV