

BEFORE THE NATIONAL GREEN TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

**(Appeal under Section 16 read with Section 18 of the National
Green Tribunal Act, 2010)**

APPEAL NO. 36 OF 2020

IN THE MATTER OF:

Larsen & Toubro Limited

....Appellant

Versus

Sanghi Industries Limited & Ors.

....Respondents

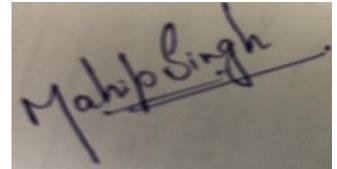
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APPELLANT

Through

**DSK Legal
Advocates and Solicitors
(Counsels for the Appellant)**



Place: New Delhi
Dated: 04.10.2021

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BRIEF NOTE ON THE ISSUE OF SUDABY: SR. ADVOCATE RAJ PANJWANI

1. An order granting prior clearance under the EIA Notification is purely an administrative order.
2. It is an order passed by the authority conferred with the right under a delegated subordinate legislation i.e. The EIA notification.
3. This administrative order is neither a judicial order nor it has the characteristics of the subordinate legislation e.g. Notification prescribing pollution parameters. (It does not create any subordinate right).
4. NGT Act, confers a statutory right of first appeal against such an administrative order under section 16 of the said act. A first appeal is a continuation of the original proceedings. The said administrative order engages on the adjudication and final determination of the appeal with the final order.
5. It can be stated that the order has created a substantive right which is also binding. Consequently, the EC can be said to have been granted on the date of the final adjudication of the appeal in all those cases where an appeal has been filed.
6. Cases where no appeal has been filed, the order granting EC becomes final on the expiry of the prescribed period of limitation.
7. Hence, the validity of the administrative order granting EC is to be determined on the prevailing provisions of law as on the date of its final judicial determination its validity shall not be tested.
8. As on the date when the administrative order granting EC was issued nor as on the date when the application for the grant of EC was presented before the authority.
9. On 08/10/2020 SUDA published the Sanctioned Development Plan, 2035. Under the said plan the area where the project site is located falls under industrial zone general where only non-obnoxious and non-hazardous industries are permitted to be set up. Under the said legislation 2017, manufacture of cement is prohibited due to the resultant discharge of Dust, smoke and solid water.
10. One of the main objects of the Development plan is to contain pollution as on 08/10/2020. However, SIL applied on

07/09/2019 to SUDA for obtaining permission the application has been filed for permission which is pending.

11. The application has been filed for permission for construction of buildings under HIC Code: 410 and not under the applicable code for manufacture of cement i.e. Code:2394 (23941-23942).
12. Even assuming that the said application has been correctly filed, SUDA would decide the said application as per the applicable rules and regulations as on the date when the said application is taken up for consideration.
13. Consequently, a cement manufacturing plant would not be permissible in an Industrial Zone General Area.
14. SIL possibly has yet not applied for “Consent to Establish” under Section 25 of the Water Act, and Section 21 of The Air Act. The said two acts on one hand and EIA notification, 2006 on the other and separate legal regimes have their different objectives. Even if SIL has applied for consent to establish, the same would be decided on the date when it is taken up for consideration for the reasons already stated in Para (ii) above.
15. One of the primary object of the development plan published on 08/10/2020 is to assess and contain pollution at least as on the said date. It is obligatory for all the executive institutions including GPCB to ensure that all their actions are in furtherance of the object and purpose of the said development plans.
16. It is further relevant to point out that Section 26 of the Gujarat Town Planning and Urban Development Act 1976 imposes restriction on development after publication of the Draft Development Plan under section 13 of the Act. That SUDA published the Draft Development Plan 2035 in terms of section 13 of the Act on 10.05.2016. It is pertinent to note that the EC was granted after more than 3 years of publication of the Draft Development Plan, 2035. It is submitted that solely in view of the aforesaid, the Project Proponent applied to SUDA seeking its development permission vide Application dated 07.09.2019.
17. Lastly, it is submitted that as per clause 8.9.6 of the CGDCR, 2017, owners / applicant are required to contribute upto 40% land to SUDA and the said issues finds no mention anywhere in the PFR, ToR, Form 1, EIA or even the EC.
