BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
APPEAL NO. 49 OF 2018
(EARLIER APPEAL NO. 4 OF 2017 (WZ))

IN THE MATTER OF:

Conservation Action Trust & Anr. ...Appellants

VERSUS

Union of India & Ors. ...Respondents

BRIEF NOTE ON BEHALF OF THE APPELLANTS

1. The Present Appeal raises substantial questions with respect to the environment and law with respect to the manner in which environmental clearance dated 2.11.2016 has been granted by the Ministry of Environment, Forest and Climate Change for expansion on Ship Breaking in Alang, Gujarat. The approval has been granted for what has been termed as 'Environmentally Sound and Safe' Recycling of Ships. It is intended to be 'improvement' and 'upgradation' from the existing practice of Ship Breaking which involves the 'beaching method' and is regarded as both unsafe and environmentally most polluting. The term '**environmentally sound and safe'** recycling has been borrowed from the Hong Kong Convention International Convention for the safe and environmentally sound recycling of ships, 2009 ("Hong Kong Convention") in order to give an impression that the expansion is in accordance with the requirements of the said Convention. However, it is clear that the Environmental Clearance granted is illegal, improper and both environmentally unsound and unsafe. The decision to allow Shipbreaking through the existing Beaching method, suffers from *Wednesbury unreasonableness*. It is in violation of both the Precautionary Principle as well as the principles of 'sustainable development'. Allowing an activity using the worst possible method which is both unsafe for the environment and people is not in public interest and in national interest.
2. **The Respondent No.1, i.e. Ministry of Environment, Forest and Climate Change ("Ministry") has never responded as to why the 'beaching method' is the most environmentally sound and safe method to recycle the ship**. It never considered the fact that the EIA Report clearly stated that the Beaching Method is the most environmentally polluting, most unsafe from the point of view of labour safety and welfare. It also failed to

address the issue of how it has allowed the activity to be granted Environmental Clearance despite being located in CRZ 1-B

3. At the outset, the Appellants state that the present note may be read in addition to the contents of the Written Submissions dated 18.11.2020 as well as the response to the report of the MoEF&CC dated 18.11.2020 and the same are not being repeated for the sake of brevity. The Appellants would like to highlight the most critical issues in the above titled Appeal which were completely ignored by the EAC and the Ministry of Environment Forest and Climate Change while recommending and granting the impugned clearance. **(Annexure A-1 at page 58-65 of the Appeal)**

Beaching is not the only Method of Ship Breaking

4. **The EIA Report prepared by EIA Consultant, M/ s Mecon itself admits that there are several other methods of ship breaking/recycling.** The relevant extract of the report is reproduced hereunder:

"Table 5.1: Relative Merits / Demerits of Different Ship Recycling Methods

Attribute	**Beaching Method**	**Dry Docking Method**	**Berthing Method**	**Air Bag Method**	**Slip-way Method**
Size of Ship	Restricted only by tidal range at site	Restricted by dimensions and specifications of dry dock	Restricted by navigational constraints & quay length.	Restricted by load bearing capacity of air bags.	Restricted
Infrastructure Requirement	Minimum. Only mechanical material handling eqpt. reqd.	Dry dock and mechanical material handling eqpt. reqd.	Quay & mechanical handling eqpt. reqd. Land for beaching also reqd.	Winches, air bags, air compressors, keel blocks & mechanical handling eqpt. reqd.	Civil infrastructure, winches & mechanical handling eqpt. reqd.
Working efficiency	**Low as mobile machinery have to be withdrawn during high tides. Working during day time only. Recovered materials have to carried / winched across hundreds of m of inter-tidal zone**	Round the clock working possible. Material sorting and storage areas may be located close by.	Round the clock working possible. Material sorting and storage areas may be located close by.	Round the clock working possible. Material sorting and storage areas may be located close by.	Round the clock working possible. Material sorting and storage areas may be located close by.
Time required	Fast	Fast but less than beaching	Slow	Fast	Fast
Effect of stormy weather	Rough seas may restrict deployment of men and machines and increase pollution	No effect	May have some effect	No Effect	No effect
Pollution Potential	**Maximum**	**Minimum**	**May be high but can be controlled to some extent**	**Low**	**Low**
Time for casualty evacuation	**Has to wait till low tide**	**Minimum delay**	**Minimum delay**	**Minimum Delay**	**Minimum Delay**

(Emphasis Added)

5. **From the chart prepared by the EIA Consultant, it is clear that the Beaching method has the 'maximum' pollution potential and also requires maximum time for casualty evacuation**. In *Tata Cellular v. Union of India*, (1994) 6 SCC 651 at page 677, the Hon'ble Supreme Court held that an administrative decision can be questioned on the following ground

   (*i*) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

   (*ii*) Irrationality, namely, Wednesbury unreasonableness.

   (*iii*) Procedural impropriety.

   The decision to allow the beaching to take place in CRZ 1-B is contrary to the provisions of the CRZ Notification, 2011. The decision to continue with the beaching method despite clear finding in the EIA Report is an irrational and unreasonable decision and the lack of consideration by the EAC and MoEF&CC of the options available for ship breaking constitutes procedural impropriety as both these agencies are bound to undertake detailed scrutiny.

6. **That world over, except, India, Bangladesh and Pakistan, countries have shifted to cleaner and safer methods of ship breaking/recycling**. These include recycling facilities at Turkey, China, Europe, etc. The reason why India, Pakistan and Bangladesh is a preferred destination for Ship Breaking is because of two main reasons:

   (i) Ship owning Countries which are mostly economically developed nations specially in the West, do not allow their coastal areas to be polluted due to the hazardous activity;

   (ii) Countries in South Asia including India offer higher prices from old ships because of extremely poor labour standards and conditions, lack of environmental standards and poor enforcement. Low wages coupled with lack of investment in pollution control equipment as well as manual operations makes it more profitable for the ship recyclers.

   In countries other than in South Asia where Ship Breaking takes place, most of these facilities use dry dock method. Photographs showing such facilities are annexed herewith as **ANNEXURE-1.** These photographs make it clear that such facilities do not require the inter-tidal zone for recycling/breaking of ships. It is important to note that dry-docks are well equipped by their nature to allow for complete containment.

(iii) **The reason why Beaching method is preferred is that it there is minimum investment on infrastructure including pollution control equipment.** The GMB during the Proceedings before the Hon'ble Tribunal clearly stated that the reason for opting for Beaching method is because it requires minimal infrastructure cost. The tide is used to clean the ships and therefore the pollution is externalized.

(iv) **Dry Dock Method was initiated in India in Pipavav, Gujarat**. Dry Dock method also selected in Pipavav, India, in the late 1990s when building a new ship recycling facility less than 100 km from the beaching yards in Alang. The dimensions and procedures of the Pipavav facility included two sloping docks each with a length of 680 meters and widths of 60 and 65 meters, respectively. The docking capacity allowed for the dismantling of four vessels simultaneously with an annual dismantling capacity of 400,000 LDT. The facility was, however, not able to compete with the low-cost and substandard beaching yards in Alang and was forced, only a couple of years after its opening in 1999, to convert to ship building and ship repair. It is expected that the increased awareness of the problems of beaching would today provide better market conditions for facilities such as Pipavav. The Appellant has annexed the layout of the Pipavav Yard and the current photograph as **ANNEXURE-II** to show that it is not impossible to shift to dry docking method in India.

(v) **No evaluation of alternatives in the EIA Report or by the EAC/Ministry** : Even though the project is titled "*Upgradation of existing ship recycling yard at Alang Sosiya, Gujarat for undertaking* ***safe and environmentally Sound s****hip recycling operations*" (emphasis added), the GMB and its EIA consultant chose the most polluting and least environmentally sound and safe method of ship breaking, i.e. beaching method for the project in question. From the above extract of the EIA Report, it is clear that the EIA Consultant had concluded that the beaching method is the worst and least environmentally sound method of ship breaking. However, while choosing the method, the EIA Report noted as follows:-

> *"5.2.6 Selected Method*
> ***At Alang the beaching method is followed. The reasons for selecting the same are:***
> *1. High Tidal Range (<10 m) which enables beaching of very large ships including ULCCs and Cape Size Vessels*
> *2. Suitable strata over a continuous long stretch of beach*
> *3. Relatively calm water"*

It is clear that there has been no evaluation of the alternatives, the EIA Consultant merely notes that since Beaching Method has been followed at Alang, the same shall be continued. This is completely in contravention to

the whole rationale behind requiring evaluation and exercise of proper choice of method in the EIA Notification, 2006. Further, it is important to note that the EAC does not consider the issue at all during the time of appraisal. This clearly reflects the complete non-application of mind by the EAC.

(vi) Continuation of using beaching method for ship breaking at Alang is not "environmentally sound and safe: That the Appellants have already placed reliance on extensive literature in the Appeal, Rejoinders as well as the Written Submissions on the adverse impacts of beaching method. However, the Appellants would like to reiterate certain critical issues:

i. The dry-method is defined according to the IMO's Ship Recycling Facility Guidelines, 2012 as follows:

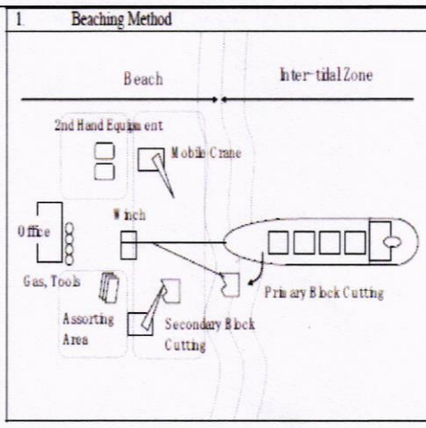
> *"...the method to demolish at a dry-dock or a slipway which has a lock gate and an impermeable floor structure."*

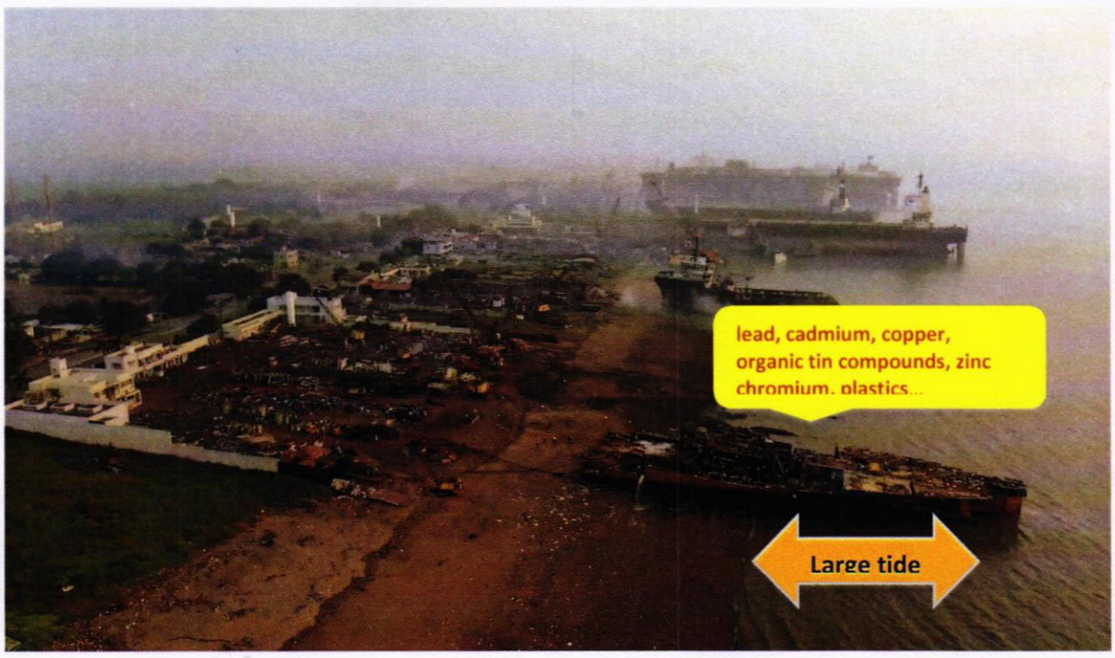
In contrast, IMO's Marine Environment Protection Committee in its resolutuion no. MEPC/56/3/4 has described the beaching method as:

> *"..the method to demolish ships at grounded condition on the intertidal zone. In this method, ships are grounded by themselves to take advantage of difference in the tidal level. Steel blocks and/ or other equipment are cut down to the intertidal zone and no wharf, jetty or quay is used for demolition,"*

The IMO in the said document has and emphasized that it is "*not recommended for newly established facilities*"

MEPC 56/3/4
ANNEX 2
Page 8

1	Beaching Method	
		**"Beaching Method"** is the method to demolish ships at grounded condition on the inter-tidal zone. In this method, ships are grounded by themselves to take advantage of difference in the tidal level. Steel blocks and/or other equipment are cut down to the inter-tidal zone and no wharf, jetty or quay is used for demolition. Strength management requirements are necessary. This method is not recommended for newly-established facilities



ii. Thus, it is clear that the beaching method conducts the primary cutting in the intertidal zone implying direct contact between the vessel during dismantling operations and the intertidal beach sediments and sea, leaving no scope for proper disposal of the toxic heavy metal wastes that would be discharged during the cutting process.

iii. Clearly, there are viable options available other than beaching method. In the Chart prepared by the EIA Consultant – MECON India, five options have been given with respect to dismantling of the ships. Of the five methods, it is clear that the beaching method has the highest pollution potential as well as most unsafe so far as labour safety is concerned. Therefore, to term this project as 'Environmentally Sound and Safe Recycling of Ships' is absolutely incorrect. In fact, as per the EIA Report itself the 'beaching method' is most environmentally polluting and unsafe.

(vii) **Neither the EIA Report nor the EAC and the MoEF&CC has given any reason why the most environmentally unsound and unsafe method has been followed in the expansion** It is further submitted that neither the EIA Report, the EAC minutes and the MoEF&CC specifically given any reason as to why the expansion should follow the beaching method. Infact, the EIA Report only states that in 'Alang Beaching method is followed'. It does not recommend the beaching method for the expansion at all. It is silent on this issue. However, a perusal of the chart shows that in terms of environmental costs and benefit, the beaching method is the worst possible option.

(viii) **EIA Consultant Failed to Examine and Recommend the best Alternatives despite listing the same:** The EIA Report does not recommend option on the basis of its own chart and failed to recommend an environmentally safe and sound method. Further, no reasons were given as to why the other methods were discarded.

(ix) **EAC failed to undertake detailed scrutiny of the EIA report which is mandated under EIA Notification :** The EAC in any of its meeting did not consider the pros and cons of the various options available for ship breaking. No discussion took place as to why the environmentally most polluting method was being opted for. Further, no reasons were given as to why the other methods were discarded. **(Relevant extracts of the EAC minutes at Pages 1316-1317, 1340-1344, and, 1345-1356 of the Written Submissions filed by the Appellant).** The minutes clearly show ow the EAc failed to discharge its statutory duty under Paragraph 7 (IV) read with Appendix V of the EIA Notification, 2006.

(x) **MOEF&CC failed to perform its statutory and constitutional duty**: The MoEF&CC as the Regulatory Authority failed to discharge its statutory obligation under the EIA Notification, 2006 and Constitutional mandate under Article 48 A to critically examine these crucial issues with respect to the chosen beaching method being the most polluting method of ship breaking.

(xi) **The non- recording of reasons by the EAC and the Ministry amounts to an act of arbitrariness.** The EAC failed to give any reason as to how the Beaching method is the most environmentally sound and safe method for breaking a Ship. In the matter of ***S.N. Mukherjee v. Union of India***, reported in ***(1990) 4 SCC 594***, the Hon'ble Supreme Court has held that recoding of reasons for a decision is important as it introduces clarity in the decisions and minimise chances of arbitrariness in decision-making. The relevant part is extracted hereinbelow:

> ***"the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making.*** *The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances.* ***What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case***

where the order is passed at the original stage. *The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."*

(Emphasis Added)

In light of the said dictum of the Hon'ble Supreme Court, it is clear that the EAC and the Ministry failed the above-laid test of arbitrariness.

(xii) **MECHANICAL EXERCISE OF POWER BY EAC AND MOEF** :The EAC has clearly exercised its discretionary powers in a mechanical manner without any application of mind. The following passages from the treatise on Administrative Law by M.P. Jain(Page 1358, Principles of Administrative Law, 8th Ed.) is relevant in the present case:-

"An authority cannot be said to exercise the discretion vested in it by law if it passes an order mechanically without itself considering the facts and circumstances of the case. This may happen because of inertia or the laziness of the Authority or its total reliance on the subordinates..."When discretion has been conferred on an authority, it must itself exercise its discretion after considering the facts and circumstances of the case before it, and come to its own decision thereon. The Authority cannot divest itself of the power given to it; if it does so its action will be invalid"

In the matter of ***Sanchit Bansal v. Joint Admission Board,*** reported in **(2012) 1 SCC 157**, the Hon'ble Court has held as follows with respect to exercise of discretion:

"28. An action is said to be arbitrary and capricious, where a person, in particular, a person in authority does any action based on individual discretion by ignoring prescribed rules, procedure or law and the action or decision is founded on prejudice or preference rather than reason or fact. To be termed as arbitrary and capricious, the action must be illogical and whimsical, something without any reasonable explanation."

(xiii) That the conduct of the EAC and the Ministry also fails the test laid down as per the doctrine of proportionality. The aim of the project was clearly to "upgrade" and "improve" existing ship recycling facilities at Alang to become "environmentally sound and safe". Clearly, by permitting beaching method to continue, this objective has failed. In this regard, the Appellant would like to place reliance on the decision of the Hon'ble Supreme Court in the matter of **from *All India Railway Recruitment Board v. K. Shyam Kumar*,** reported in **(2010) 6 SCC 614,** wherein it was held that:

*"**37.** Proportionality requires the court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision-maker has achieved more or less the correct balance or equilibrium. The court entrusted with the task of judicial review has to examine whether decision taken by the authority is*

proportionate i.e. well balanced and harmonious, to this extent the court may indulge in a merit review and if the court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere."

Further, in the matter of ***Maharashtra Land Development Corpn. v. State of Maharashtra***, reported in **(2011) 15 SCC 616,** the Hon'ble Supreme Court held as follows:

"***61.*** *The principle of proportionality envisages that a public authority ought to maintain a sense of proportion between particular goals and the means employed to achieve those goals, so that administrative action impinges on the individual rights to the minimum extent to preserve public interest. Thus implying that administrative action ought to bear a reasonable relationship to the general purpose for which the power has been conferred. The principle of proportionality therefore implies that the court has to necessarily go into the advantages and disadvantages of any administrative action called into question. Unless the impugned administrative action is advantageous and in public interest such an action cannot be upheld. At the core of this principle is the scrutiny of the administrative action to examine whether the power conferred is exercised in proportion to the purpose for which it has been conferred. Thus, any administrative authority while exercising a discretionary power will have to necessarily establish that its decision is balanced and in proportion to the object of the power conferred.*"

(xiv) That the Hon'ble Supreme Court in the specific context of environmental decision making has laid down the following test in the decision in ***Lafarge Umiam Mining (P) Ltd. v. Union of India***, reported in **(2011) 7 SCC 338:**

"***(d) Summary***

"119. *The time has come for us to apply the constitutional "doctrine of proportionality" to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. 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. Our above view is further strengthened by the decision of the Court of Appeal in R. v. Chester City Council [(2011) 1 All ER 476] reported in All ER paras 14 to 16."*

(xv) There is an absolute prohibition on 'Ship Breaking' in CRZ-1B under the CRZ Notification, 2011 It is submitted that ship breaking in the inter-tidal area is not permissible as per the CRZ Notification, 2011. It is submitted that the Respondents are wrong in stating that there is no other place where ships can be broken. Dry docking method does not require the beach for its operations. In practice, dry docks are made part of existing ports which have harbours to ensure incoming ships to reach the port, and then with the help of machinery the ship is transferred to the dry dock where the breaking is done in a completely safe and environmentally sound manner. It is easier to control leakages of heavy metals and other hazardous pollutants in a dry dock.

(xvi) It is submitted that the provisions of the CRZ Notification must be interpreted strictly keeping in mind the objective of the said notification, i.e., protection of the coastal environment. In this regard, the Appellants place reliance on the judgment of the Hon'ble Supreme Court in the matter of ***S Jagannathan v. Union of India & Ors***. reported in **(1997) 2 SCC 87**, wherein the Court considered the permissibility of shrimp farming and aquaculture in CRZ areas. The Court considered the ambit of the activities permissible in the CRZ, especially the term activities "*directly related to the waterfront*" and activities "*directly needing foreshore facilities*" which are exceptions to the general prohibition of setting up of new industry in the CRZ as per the provision of Paragraph 2 (1) of the CRZ Notification, 1991 and held that shrimp farming could not be considered to be such an activity and therefore did not fall within the exceptions to the NDZ. The Court observed thus:-

> *"25. Annexure 1 to the CRZ Notification contains regulations regarding Coastal Area Classification and Development. The coastal stretches within 500 m of HTL of the landward side are classified into four categories, namely, CRZ-I, CRZ-II, CRZ-III and CRZ-IV. Para 6(2) of the CRZ Notification lays down the norms for the development or construction activities in different categories of CRZ areas. In CRZ-III Zone agriculture, horticulture, gardens, pastures, parks, playfields, forestry, and salt manufacture from sea level may be permitted up to 200 m from the high tide line. The aquaculture or shrimp farming has not been included as a permissible use and as such is prohibited even in this zone. A relevant point arises at this stage. Salt manufacturing process like the shrimp culture industry depends on sea water. Salt manufacturers can also raise the argument*

> *that since they are wholly dependent on sea water theirs is an industry "directly related to waterfront" or "directly needing foreshore facilities". The argument stands negatived by inclusion of the salt manufacturing industry in CRZ-III Zone under para 6(2) of the CRZ Notification otherwise it was not necessary to include the industry therein because it could be set up anywhere in the coastal regulation zone in terms of para 2(1) of the CRZ Notification.* ***It is thus obvious that an industry dependent on sea water cannot by itself be an industry "directly related to waterfront" or "directly needing foreshore facilities". The shrimp culture industry, therefore, cannot be permitted to be set up anywhere in the coastal regulation zone under the CRZ Notification.***"
>
> (Emphasis Supplied)

Thus, the court held that "*The shrimp culture industry/the shrimp ponds are covered by the prohibition contained in para 2(i) of the CRZ Notification. No shrimp culture pond can be constructed or set up within the coastal regulation zone as defined in the CRZ notification."* The Court thus strictly construed the provisions of the CRZ Notification, 1991. In the present case, it is submitted that this Hon'ble Tribunal ought to strictly interpret the provisions of the Notification of 2011.

(xvii) The Project Proponent, GCZMA as well as Ministry of Environment Forest and Climate Change has failed to show how the project in question is permissible under the CRZ Notification.

(xviii) **NIO and MoEF have attempted to mislead the Hon'ble Tribunal by stating that ship breaking is included in Schedule because it requires waterfront facilities.** That the Appellant would like to reiterated that the NIO and the Ministry in its report dated July 2020 have completely misled this Hon'ble Tribunal by stating that ship breaking facilities are permissible under the Schedule of EIA Notification, 2006 as it requires waterfront facilities. A bare perusal of the Schedule would clearly show that no such distinction has been made under the EIA Notification, 2006.

(xix) **No Social and Environmental Benefits Accrue to the Nation as a Result of Beaching Method of Ship Breaking.** That it is submitted that contrary to what the Project Proponent has claimed, there is no social or environmental benefits accrued to India as a result of beaching method of ship breaking. This is made amply clear from the EIA Report (extracted hereinabove) itself which shows low efficiency as well as least safety standards for labour.

(xx) The Project Proponent has heavily relied upon the provisions of the Ship Breaking Code and the newly enacted Ship Recycling Act, 2019. It may be noted that the provisions of the Ship Breaking Code which has been in

existence since 2013 was never fully complied with by the project proponent and its private yard owners. This is clear from the findings of the report of the NIO-Ministry of Environment Forest and Climate Change (at Table 5.1.2) which shows exceedingly high levels of heavy metals including chromium, mercury etc. If the project proponent was indeed complying with the provisions of the Ship Breaking Code, this would not have been the case at all. Further, it is submitted that the procedure mentioned under the Code and the new enactment can still be followed while undertaking "safe and environmentally sound" ship breaking activities.

(xxi) ONLY PROJECTS WHICH ARE EXEMPTED AND PERMISSIBLE UNDER THE CRZ NOTIFICATION CAN BE ALLOWED: The CRZ notification is to be strictly interpreted. Thus projects related to Department of Atomic Energy and Strategic and Defence projects are allowed. Ship Breaking is neither strategic, nor Defence nor related to Department of Atomic energy

(xxii) This Hon'ble Tribunal has consistently held that environmental safeguards cannot give way to economic considerations and loss of employment. In the recent decision dated 9.11.2020 with respect to ban on firecrackers in **Tribunal on its own Motion v. Ministry of Environment, Forest & Climate Change & Ors. (Original Application 249 of 2020),** this Hon'ble Tribunal has held as follows:

> *"29. Financial loss or loss of employment cannot be a consideration not to remedy the situation affecting lives and health of the citizens by pollution, aggravated by Covid. While it is true that any restriction on sale and use of crackers may affect the business and employment, at the same time if use of crackers results in pollution and affects life and health of the citizens and the environment, such use may have to be restricted/prohibited to effectuate the 'Sustainable Development' principle of which 'Precautionary' principle is a part, as per mandate of Section 20 read with Section 15 of the National Green Tribunal Act, 2010. Citizens are entitled to breathe fresh air which right cannot be defeated on the ground that enforcement of such right will lead to closing of such business activity. If authorities, do not take action, the Tribunal has to exercise its jurisdiction."*

Thus, the argument of the project proponent that other methods of ship breaking would result in increased financial costs ought to be rejected outrightly by this Hon'ble Tribunal.

That in conclusion, the Appellant would like to state that the grant of Environmental Clearance to the Ship Breaking facility is an abuse of power by the EAC and the MoEF&CC. All the three respondents have failed to perform their statutory duty. Merely because a body is comprised of experts and people in positions of authority is no reason to uphold their decisions. The approval

reflects a mechanical exercise of mind, non application of mind, non consideration of relevant factors and violation of both the 'Precautionary Principle as well as the Principle of Sustainable Development. It is also opposed to the Environmental Rule of Law. The Environmental Clearance is an aribitrary exercise of executive power. As held in ***Delhi Transport Corpn. v. D.T.C. Mazdoor Congress***, reported in **1991 Supp (1) SCC 600**,

> *""**230.** There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a complacent presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law."*

The Hon'ble Tribunal may consider the above facts while considering the Appeal on merit.

RITWICK DUTTA MEERA GOPAL
ADVOCATES
COUNSEL FOR THE APPELLANT

NEW DELHI
DATE: 26.11.2020

ANNEXURE-1

DRYDOCKING IS USED ACROSS THE WORLD FOR SHIP BREAKING

Grand Port Maritime de Bordeaux, France

Damen Verolme Rotterdam B.V.,Netherlands

Kishorn Port LDT, Scotland

projects completed

Stanley H

in addition to the removal of the Heysham Link-Span Bridge for Peel Ports Group, Swansea Drydocks also assisted with the removal and recycling of Stanley H, an old oil tanker.

Heysham Linkspan Bridge

Swansea Drydocks assisted Peel Ports Group to remove and dispose of a floating bridge.

Atlantic Osprey

In July 2014 SDL won a contract from Serco to recycle the nuclear roro carrier Atlantic Osprey owned by Industrial Nuclear Services (INS). The vessel had been laid up at Ramsden Dock in Barrow-in-Furness since her withdrawal in December 2013. INS is the world leader for marine transport of radioactive material.

Atlantic Osprey left the port in mid-August bound for Swansea dry dock, where she was to be dismantled and recycled.

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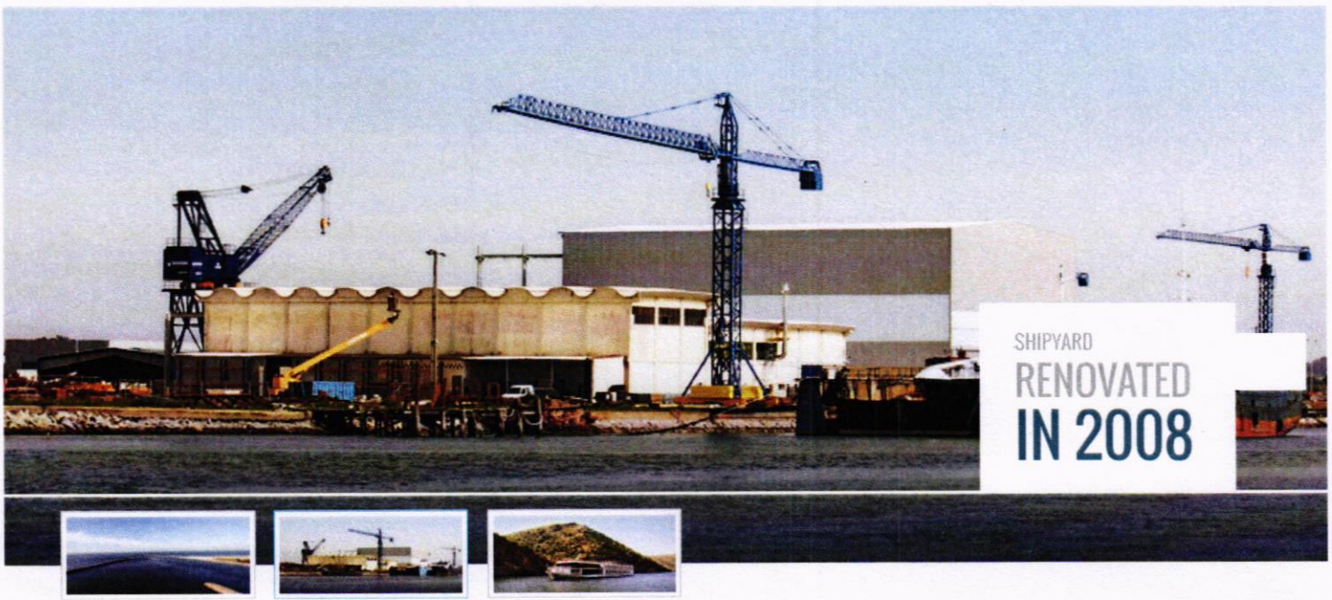
16



ABOUT US

Navalria is a shipyard that develops activity in ship building and repair, and construction of offshore equipment. Located in Aveiro, centre of Portugal, it has already 35 years of experience in the naval sector

THE SHIPYARD

Renovated in 2008, it has a dry dock, floating dock, shiplift and workshops, among other equipment that allow it to build and repair several ships at the same time

MARTIFER GROUP

Martifer SGPS, which holds 100 % of Navalria's share capital, is a multinational industrial group with around 3,000 workers and activity centred in the Metallic construction and solar sectors

MAIN PROJECTS

AmaVida

Construction of hotel ship

Queen Isabel

Construction of hotel ship

Douro Spirit

Construction of hotel ship

Prometeu

Tugboat repairing

CONTACT US

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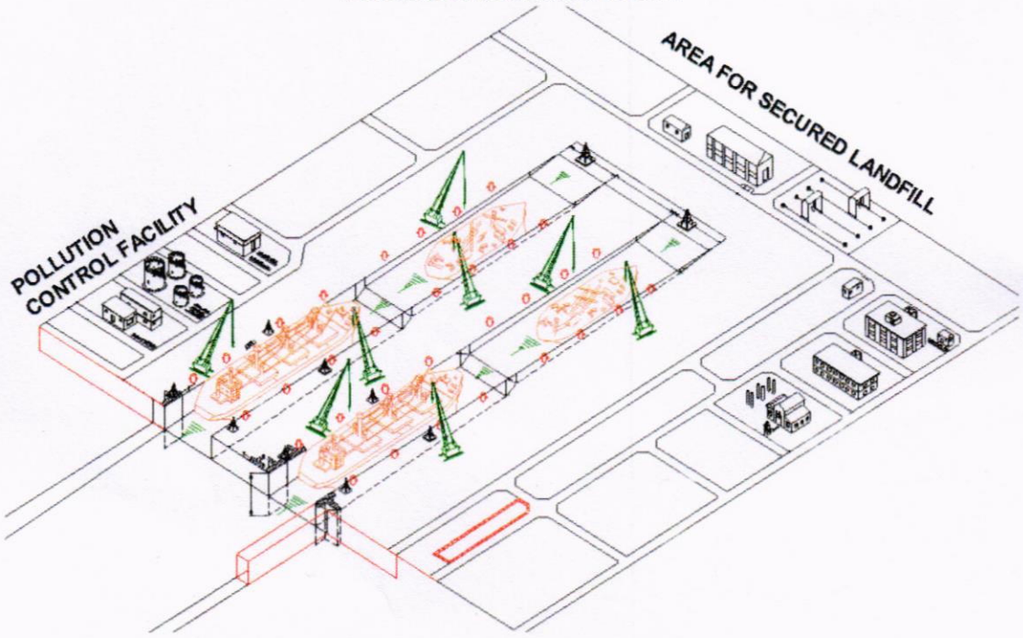
ANNEXURE-II

INFACT, IN 1999, A DRY DOCK FACILITY WAS BUILT FOR SHIP RECYLCING AT THE PIPAVAV PORT IN GUJARAT WITH THE FOLLOWING LAY OUT:



However due to unviability in light of cheaper rates offered by Alang ship breaking yards, this had to be converted into a ship construction yard.

PIPAVAV SHIPYARD TODAY: