

**BEFORE THE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH, PUNE**

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

APPEAL NO. 66 OF 2019

IN THE MATTER OF:

Larsen & Toubro Limited

....Appellant

Versus

Sanghi Industries Limited & Ors.

....Respondents

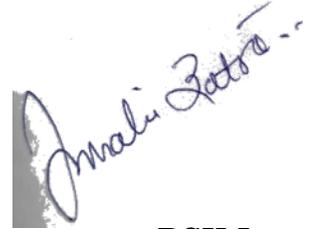
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APPELLANT

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COMPREHENSIVE REJOINDER ON BEHALF OF APPELLANT IN RESPONSE

TO THE REPLIES FILED BY RESPONDENT NO. 1, 3, 4, AND 5

MOST RESPECTFULLY SHOWETH:

1. That the present comprehensive rejoinder is being filed by the Appellant against the replies filed by the Respondent 1, 3, 4, and 5. Accordingly, the Appellant reiterates its submissions made in the Appeal and reserves its right to make submissions before the Tribunal on all such matters during the hearing.

2. That the rejoinder is confined to only those parts of the replies/counters filed by the respondents 1, 3, 4, and 5 which deserve a positive or an affirmative response from the Appellant in reply to the case set up in the Appeal and therefore, does not deal with each and every paragraph of the replies/counters, as that would lead to an unnecessarily lengthy rejoinder. The Appellant therefore states that absence of specific non-traverse in this rejoinder of any part of the replies should not constitute an admission but should be deemed to be a denial by the Appellant of that part of the replies. The Appellant further reserves its right to add or amend its Rejoinder hereinafter.

3. It is respectfully submitted that the Replies/Counters filed by the Respondents are ex facie untenable, baseless, vexatious and not maintainable either in facts or in law. They are being filed and pursued with mala fide intentions and ulterior motives by suppressing vital and material facts and with an intention to wriggle out of the environmental regulations. That the Appellant reserves its right to supplement the documents which it intends to rely upon or submission of evidence, production of witness statements/experts at the relevant stage of the proceedings.

I. INCONSISTENCIES AMONG FORM 1, EIA REPORT AND ENVIRONMENTAL CLEARANCE AND SUBMISSION OF FALSE/INAUTHENTIC INFORMATION IN FORM 1 BY RESPONDENT NO. 1

4. The Appellant has time and again reiterated and substantially validated the fact that the EIA report suffers from serious discrepancies and is based on concealed and misrepresented facts. It is relevant to note here that there was a gross mismatch between the information submitted by the Respondent No.1 in Form-1 (as available online) and the EIA Report. Incorrect information has been submitted with respect to fuel, pollution index, sewage treatment plant, land allotment, trucks deployment etc. and the same has been captured in detail in the Appeal.
5. The said report also fails to provide for land allotment for finished products storage loading and unloading area, product transfer area, parking area of used trucks, security office, canteen area and other amenities as are required by the Factories Act, 1948.
6. It is submitted that following are the Discrepancies in the EIA Report:-
 - Mangroves & Forest data table 3.12, Page No. 27 of the EIA report, where as it has been concealed by the Respondent No. 1. As per the EIA Report

of the Respondent No. 1, on Page No. 2, Chapter 1, no such data related to Mangroves is given under Table 1.1. Also, on Page No. 167, Chapter 11, no Forest/ no Defence installation data is given under Table 11.1.

- It is submitted that as per the EIA Manual sensitive receptor should be covered as isopleth and presence of mangrove should be considered as ecological. As per EIA, GLC is affected maximum upto 1.3KM. But, it will also affect beyond that and the baseline study is not done. There's no evidence to substantiate or assure that mangroves will not be affected at a distance more than 1.3 km.
- The Respondent No.1 has misled Respondent No.2 and 3 by falsely and malafidely stating in its Environmental Impact Assessment (EIA) report submitted in March 2019, that there are no mangroves within the radius of 10 kms;
- The facts stated by Respondent No. 1 in reply with respect to deployment of trucks are not valid as Impact of truck movement through modelling study is not carried out.
- It is submitted that no permission of water pipeline can be given as it will severely impact the water requirements and will have grave impact on environment. Moreover, even otherwise, the route of water pipeline is not given. The Respondent No.1 is 18kms away from the source of water. The Respondent No.1 has not provided sufficient details of procuring 278,000 litres water /day. The Respondent No.1 has no information of any approval being given from the irrigation department for providing water till date.
- It is also relevant to point out that the enormous amount of coal being utilized every day for the cement manufacturing plant would produce humongous amount of fly-ash. It is submitted that fly ash generation will lead to increase in PM which eventually will may lead to serious health hazards to people in close vicinity. The said concern has also been highlighted by the local villagers who have sought impleadment in the present appeal by way of an Intervention Application (IA 28 of 2020)

7. It is to be noted that the local villagers of the said gram panchayat have raised serious objections against the proposed cement plant. In a letter written to the Collector, Surat, the said villagers have made the following prayer:

“On coming up of this plant, it will have a great impact on the people and other living beings because of its pollution, and it will increase air pollution. It will cause a permanent problem of traffic of heavy vehicles on account of transportation of materials of this project. Moreover, about 1100 children are studying in Navchetan Vidhyalaya in our village near this plant, and that will also cause adverse effect on them. Hence, the people of our village has strong protest against this plant.”

8. Moreover, it is submitted that “the legal pursuit of the remedy, suit, appeal & second appeal are really but steps in a series of proceeding all connected by an intrinsic unity & are to be regarded as one legal proceeding” . It is submitted that an Appeal is a continuation of a suit and the Appellate Court is the final authority regarding facts and controversy between the party.

9. That it submitted that Rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order to secure ends of justice. Rule 24 gives wide power to the Tribunal to secure the ends of justice. Rule 24 vests special power to the Tribunal to pass orders and issue directions to secure the ends of justice. Use of words “may”, “such orders”, “gives such directions”. “as may be necessary or expedient”, “to give effect to its orders”, “order to prevent abuse of press”, are words which enable the Tribunal to pass orders and the above words confer wide discretion.

10. It is pertinent to appreciate that any decision of the Hon’ble Tribunal regarding the impact on the environment by the proposed setting up of

plant by Respondent would have the bearing on the health and well-being of the villagers. Hence the applicant intervenor is a necessary and proper party to be impleaded in the present proceedings.

11. That the Respondent No. 1 has submitted incorrect information with respect to the Draft EIA Report made available for public perusal. It is pertinent to appreciate that transparent nature of public hearings not only requires timely information dissemination, but also accuracy and authenticity of the information so provided. In *M P Patil v. Union of India (Appeal 12 of 2012)*, Hon'ble National Green Tribunal observed that while submitting a draft EIA report and for public consultation, the proponents should ensure that the information in the reports is authentic. The proponents are required to disclose all material issues like R&R policy, land to be acquired, quality of raw material, details of compensation, project affected persons, etc, to the public in their reports. This disclosure of adequate and authentic information is very significant on account of its likely impact on public opinion.

II. LAPSES IN THE PUBLIC HEARING PROCESS

12. A public hearing was scheduled on 22.03.2019 where the Appellant and other participants raised several detailed queries. While some queries were vaguely answered by the Respondent no. 1, some were totally evaded to be answered.
13. The contention of the Respondent no. 3 that no procedural defect or fault has been pointed out by the Appellant is totally misplaced and incorrect. Further, it is incorrect to say that reasonable opportunity was given to the Appellant in getting its concerns addressed.

14. During the public hearing scheduled on 22.03.2019, Respondent submitted various points which were evaded to be answered or insufficiently answered. Some of the questions are listed below: -

S.No.	Concerned	Question	Response
1.	Shri Bhagubhai Manibhai Patel (Sarpanch – Shivrampur)	What action will be taken for deposition of dust in cement plant, on the road and surrounding area? At present 700-800 trailers are running on 20-30 feet road. There is only one approach road for L&T. Since 2 million tonnes materials will be brought in an year to this plant, there are no roads for the same. What does the Sanghi plan to do for that?	No satisfactory response Our requirement is of 2 million tons per annum and it will be transported once a month. So it will not create any effect.
2.	Avani Joshi, Environmental Engineer	As a fuel pet-coke, coal and lignite is mentioned, so out of that which fuel will be used more?	We will use mix fuel on which there will be 10% pet-coke, 40% lignite and remaining will be imported coal.
3.	Written Representation by Hashmukh Vora	Disclose status of application made to Kakrapur Canal Department for obtaining 278kld water? Disclose from where and in what way coal will be transported? Disclose the show-cause notices under Air and Water Act by GPCB to Sanghi existing plant at Kutch?	No satisfactory response

15. It may be noted that multiple letters dated 05.04.2019, 13.04.2019, and 22.04.2019 were sent to Respondent No. 1 and Respondent No. 3 after

the conclusion of the public hearing to highlight the environmental concerns of the Appellant with respect to the grinding unit. However, none of these letters were responded to by Respondent No. 1 or Respondent no. 3. It is pertinent to mention that the Appellant is not raising any such grounds in this appeal which were never raised or were beyond the knowledge of Respondent no. 1 or Respondent no. 3. Even otherwise there is no bar in raising all issues relevant to environment in an appeal. It is vehemently denied that the Appellant has resorted to concealment of facts at any stage in these proceedings.

III. NO SATISFACTORY CONSIDERATION OF INFORMATION AFTER PUBLIC HEARING

16. The Environmental Impact Assessment Notification of 2006 clearly points out the necessity of consideration of responses given to the concerns of the participants present in the public hearing by the authorities after the public hearing.
17. The appraisal committee, as per the Environmental Impact Assessment Notification of 2006, is required to evaluate the project during the four stages for Prior Environmental Clearance. During the public consultation, the applicant is supposed to 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, has to be submitted by the applicant to the concerned regulatory authority for appraisal.
18. This is followed by the appraisal stage. 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, DPR, outcome of the public consultations including

public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance.

19. It is important to point out that the step of public participation is not a mere mechanical process or a formality. It is imperative that there is meaningful participation of all the involved stakeholders and consideration of their points. In *Ossie Fernandes v. Ministry of Environment & Forests (Appeal 12 of 2011)*, the Hon'ble National Green Tribunal issued certain supplemental guidelines for improving the procedure of public hearing. One of the guidelines specifies that EAC minutes should incorporate detailed reasons, in writing, for acceptance, or otherwise, against each issue arising out of the public hearing and brought before it. In the present case, in gross violation of the said direction, no detailed reasoning was given against any issue raised by the local villagers and the Appellant. Moreover, the letters to them regarding the environmental concerns were not even responded by the Respondent No.1
20. That procedurally, on completion of a public hearing, people must be informed about the final decision by a regulatory authority. To prevent it from being reduced to a mere ritual, it is mandatory that valid reasons be provided by authorities for acceptance/ rejection of public concerns. However in the present case, firstly evasive answers were given by the representatives of Respondent No.1 during the public hearing and thereafter, the letters pointing out the concerns, were blatantly ignored, both by the project proponent and the concerned statutory authorities.
21. It is humbly submitted that Respondent No. 3 was well aware of the inconsistencies in the draft EIA Report as well as the fact that the Respondent No. 1 had paid no heed to the concerns expressed by participants during the public hearing. As Respondent No. 3 was hands

in gloves with Respondent no. 3, without addressing these inconsistencies, the impugned environmental clearance was given

22. That with respect to the Respondent No. 3, it is pertinent to highlight that the evaluation of the objections has been done to say the least, in a perfunctory fashion and fails to disclose the reasons upon which the recommendation for granting the impugned EC has been made. That the Respondent No. 3 has proceeded merely on the reply furnished by the Respondent No. 1 to the queries, which prima facie shows non-application of mind by the statutory authority designated for the said purpose.

23. The Delhi High Court in *Utkarsh Mandal v. Union of India*, 2009 SCC OnLine Del 3836, stated:

“We therefore hold that in the context of the EIA Notification dated 14th September 2006 and the mandatory requirement of holding public hearings to invite objections it is the duty of the EAC, to whom the task of evaluating such objections has been delegated, to indicate in its decision the fact that such objections, and the response thereto of the project proponent, were considered and the reasons why any or all of such objections were accepted or negated. The failure to give such reasons would render the decision vulnerable to attack on the ground of being vitiated due to non-application of mind to relevant materials and therefore arbitrary.”

24. It is submitted that the Appellant has placed sufficient material on record to prove that the proposed unit of Respondent No. 1 is prohibited under law to be set up under these circumstances. The EIA Report has failed to address the environmental norms relating to air, water and land that would be severely impacted by the establishment of the Respondent No.1 cement manufacturing unit. It is also to be noted that the relevant material and factors were not placed before the SEAC, Gujarat and the SEIAA along with Form-1, for meticulous environmental evaluation and audit. Further, both the SEAC, Gujarat and SEIAA without application of

applicable laws and regulations on the environmental consequences and apparently recommended the grant of EC in a mechanical manner.

25. It is submitted that by relying on the erroneous EIA report and public hearing proceedings, the SEAC Gujrat vide their letter dated 15.07.2019 had recommended to the SEIAA to grant the EC for the Grinding Project on its meeting held on 12.06.2019 and the impugned EC was granted on 23.08.2019. Moreover, the final EIA report considering comments of SEAC has not been prepared along with impact identification and uploaded on the website. As per 'EIA Guidance Manual for Cement Industry' prepared for Ministry of Environment and Forests by IL & FS, the direct, indirect, and cumulative impact assessment should form an integral part of the EIA process at all levels and steps.
26. That recently, in *H.P. Ranjana v. Union of India*, M.A. No. 49/2020 in O.A. No. 602/2019, this Hon'ble Tribunal was dealing with a project where there was no proper appraisal by the Expert Appraisal Committee (EAC) as per Environment Impact Assessment (EIA) Notification. Further, the SIEAA in this case granted the clearance in violation of Wetlands Rules 2017 and Hon'ble Supreme Court's judgments. All relevant details were not mentioned by the EC Applicant in Form I and the same was accepted by the SIEAA without any due diligence and independent evaluation solely on the incomplete and incorrect information provided by the Applicant. The Hon'ble NGT, in light of such irregularities on part of SIEAA ordered an independent report by a joint committee constituted by Hon'ble NGT.

IV. RE: THE APPELLANT IS SEEKING ADJUDICATION OF COMMERCIAL INTERESTS WHICH FALL OUTSIDE THE JURISDICTION OF THIS HON'BLE TRIBUNAL AND THE APPEAL IS NOT BONAFAIDE

27. The contention of the Respondent No. 3 that the appeal challenging the environmental clearance issued by the regulatory authority is not *bona-fide* is baseless. The contention that the appeal has been filed for vested commercial interests of the Appellant is completely baseless and ill-founded.
28. It is humbly submitted that non-consideration of vital issues has led to the invocation of the statutory remedy available to the Appellant under Section 16 of the NGT Act 2010. Vague aspersions on the intention of public-spirited entities does not constitute an adequate response to those interested in the protection of the environment.
29. It is pertinent to note that the dispute is of a larger environmental concern and the well-being of the local villagers of the Shivrampur and surrounding villages. The local villagers have even approached this Hon'ble Tribunal seeking intervention in the present appeal and have made a valid case of being affected directly by the proposed cement plant of the Respondent No1. Apart from the grave environmental danger and health hazard to the local villagers, the dispute is regarding the inconsistencies in the Form -1 and the fact that the impugned Environmental Clearance was given in violation of the statutory rules and regulations and on the basis of incorrect and deceiving information. The dispute is with respect to the lapses in the process of granting the impugned environment clearance and the factors responsible for the same. The dispute is regarding the deliberate concealment of vital information on part of the Respondent No.1 while applying for environmental clearance and the blatant obliviousness on part of Respondent 2, 3, 4 & 5 to such concealment apart from making no attempt whatsoever to examine the actual site and circumstances.

30. The Respondent No. 1's contention that the appeal has been preferred by the Appellant solely to agitate narrow commercial interests and the appeal has no basis in "Environmental Law" is totally baseless and lacks merit. It is humbly submitted that the plea of the Appellant is against environmental clearance granted to the Respondent No. 1 on the basis of concealed and misrepresented facts. The proposed cement plant will cause emission which will critically affect the environment around it considering the location of the Grinding unit and modelling study of air emission.
31. The contention of Respondent no. 1 that the Appellant itself operates various red and orange category units surrounding the land where the grinding plant of Respondent No. 1 is proposed to be set up is based on an incomplete understanding of the categorisation of units into red, yellow, green, and white categories by the CPCB. Moreover, none of the Appellant's units are using coal/pet coke etc. as a fuel and instead use fuels such as electricity/PNG for manufacturing process which does not result in emission of any Particulate Matter (PM) affecting the quality of the products. The forging unit has a 220KVA receiving/switching station.
32. Further, Respondent no. 1 has contended that the Appellant had made attempts to buy the property, where the grinding plant is situated, for its operations. However, upon failing in the same, the Appellant has filed the appeal with vexatious motives. It is important to state that the understanding of Respondent no. 1 is based on wrong facts and is an attempt to mislead the Hon'ble Tribunal.

It is further submitted that the Appellant has already surrendered 220 Acres of government land for business expansion in the year 2010. At present, more than 50 Acres of land belonging to farmers/developers, adjoining the area wherein Respondent No. 1 has proposed to set up its unit is available. Hence, the allegation that the Appellant has commercial interest in land purchased by the Respondent No. 1 is baseless. Moreover,

it is pertinent to mention here that presently, the Appellant is not involved in any cement business as a manufacturer or in any other capacity at all.

33. It is denied that the Appellant's case is not based on infringement of environmental rights. It is baseless to make that allegation in view of the fact that the appeal is entirely based on environmental concerns and has been filed to challenge the invalid environmental clearance given to Respondent no. 1.

34. Further, it is wrong to state that the Appellant is trying to stop industrial activity in the area. It is submitted that the Appellant has not objected to setting up of any other industry in nearby area. It is pertinent to note here that M/s. Mahesh oil refinery and Adani Willmar are about to start their commercial production quite near to Appellant's boundary which is less than 500 meters from Respondent No. 1's plot. This is sufficient to prove that the Appellant has no ulterior motive of preventing any industrial development in this zone.

V. RE: THE APPEAL HAS NOT BEEN FILED WITHIN THE LIMITATION PERIOD AND IT WAS AMENDED TO INCLUDE FRESH GROUNDS

35. It is humbly submitted that amending the appeal was well within the rights of the Appellant and the Appellant has sufficiently substantiated the validity and applicability of various laws and legislations and most importantly the order of this Hon'ble Tribunal dated 10.07.2019 in its 'amended appeal'. Thus, it is incorrect to state that the appeal was amended to include baseless allegations and pleadings.

36. It is humbly submitted that it is wrong to suggest that the Appellant sought to alter its case and circumvent the statutory period of limitation

of thirty days. Further, it is totally disputed that the Appellant has raised fresh grounds which were not raised in the original appeal.

37. It is humbly submitted that the Impugned EC has been granted on 23.08.2019 and the Appellant filed the appeal within limitation and in time as prescribed under Section 16 of the Act. The matter was heard before this Hon'ble Tribunal on 26.09.2019 wherein liberty to file the amended appeal was granted to the Appellant. Pursuant to the said direction, the Appellant has filed its Amended Appeal within the limitation period.
38. Further, it is humbly submitted that the appeal was amended to clearly elaborate facts on which the appeal was based. It is disputed that new facts and grounds were added to the appeal. The amendment was intended to add better elaboration of the facts for the convenience of this Hon'ble Tribunal.
39. Moreover, now that the amendment of the appeal has been allowed by the Hon'ble Tribunal and the amended appeal has been taken on record, the contention with respect to limitation does not hold ground.

VI. RE: THE APPELLANT'S CHALLENGE IS PRE-EMPTORY AND NO CAUSE OF ACTION HAS ARISEN IN FAVOUR OF THE APPELLANT

40. It is incorrect to state that the entire appeal is based on assumptions that conditions prescribed in the clearance will be breached. The Appellant has not based its appeal on the presumption that there will be a breach of the conditions specified in the environmental clearance but the inconsistencies in the EIA Report and the Environmental Clearance and non-application of mind while granting the Environmental Clearance.

41. It is submitted that the Appellant has furnished sufficient evidences and substantiated its argument by proper facts which proves that the grinding unit of the Respondent No. 1 possess very viable acute threats to the environment. Further in reply, the submissions made in the Appeal are reiterated and are not repeated herein for the sake of brevity.
42. As per 'EIA Guidance Manual for Cement Industry' prepared for Ministry of Environment and Forests by IL & FS, the direct, indirect, and cumulative impact assessment should form an integral part of the EIA process at all levels and steps. The said impacts have been overlooked by Respondent no. 3 and the analysis is based on the information furnished by the Respondent No. 1 alone.

VII. RE: THE RESPONDENT NO 1 IS ONE OF THE LEADING ESTABLISHMENTS IN THE CEMENT INDUSTRY HAVING AN IMPECCABLE REPUTATION OF EMPLOYING WORLD CLASS AND ENVIRONMENTAL FRIENDLY TECHNOLOGY

43. It is the duty of the Appellant to put forth the track record of Respondent no. 1 before this Hon'ble Tribunal. It is pertinent for the tribunal to note that show-cause notices have been issued to the Respondent no. 1 by the CPCB multiple times due to its highly polluting operations. Respondent No. 1's grinding unit at Village Akari, District Kutch-370511, Gujarat has been issued multiple show cause notices by the CPCB for its polluting activities. Thus, the claim of Respondent No. 1 that it uses environment friendly technology holds no ground.
44. Further, several grinding units of Respondent No. 1 in Gujarat have received public backlash. In 2015, the Gujarat High Court directed the Union Government to reconsider the permission given to Respondent no. 1 with respect to a captive jetty in the reserved forests of Kutch, Gujarat.

The judgment reveals the legal loopholes shrewdly exploited by Respondent No. 1 to get their Rs 1,000-crore project cleared. The judgement also reveals the way the government gave up the issue without even bothering to verify the details submitted by Respondent No. 1. The Respondent no. 1 had submitted doctored plans to the forest authorities to get the clearance.

45. It is denied that the Appellant has relied on the order dated 10.07.2019 in a selective manner without placing the true import of the said Order. It is humbly submitted the clarification order dated 23.08.2019 relied upon by the Respondent no. 1 is of no utility to them and an incorrect reliance has been placed on the order by the Respondent no. 1.

It is humbly submitted that to understand the observations of the Hon'ble Tribunal in the clarificatory order, it is necessary to understand the clarification which was sought from the Hon'ble Tribunal which was the premise of the observation. As it is said, the ratio of a decision cannot be read in isolation from the facts of the case.

46. The clarification sought from the Hon'ble Tribunal was whether the units which have already been granted the EC are to be covered by the order of the Hon'ble Tribunal. However, it is pertinent to note that Respondent No. 1's unit was not given the environmental clearance till 23.08.2019. It is imperative to note here that in the 253rd Meeting of SEIAA on 16.07.2019, based on the recommendation of SEAC, it was decided to grant the impugned Environmental Clearance to the Respondent No.1. Thereby following this, in complete violation of the NGT order and ignorance of the objections raised and Letters addressed by the Appellant, the Respondent No.3 on 23.08.2019 issued Environment Clearance for the Grinding Unit Project to Respondent No.1. The clarifications on severely polluted industrial area were given by GPCB on 11.11.2019.

47. Further, it is submitted that the order dated 10.07.2019 gives clarification that two areas i.e. GIDC Pandesara and GIDC Sachin of Surat District are declared as SPA. The Respondent No. 1 is claiming that proposed plant is located at considerable distance of 14Km after buffer 5Km of that polluted area. It is submitted that there is no uniform criteria to measure such a considerable distance at first and the Respondent hence fails at this point. It is pertinent to mention here that earlier entire Surat including proposed site was declared as SPA by this Hon'ble Tribunal by the order dated 10.07.2019.
48. The impugned EC was issued to Respondent No. 1 on 23.08.2019. Thereafter, on 11.11.2019, GPCB clarified about the areas of Surat which will be included under SPA. Moreover, according to the earlier SPA criteria, EC should not be issued by Respondent no. 3 without a proper mechanism.

VIII. RE: THE APPELLANT'S ALLEGED THAT APPELLANT'S 'ARMoured SYSTEM COMPLEX' IS NOT A DEFENCE INSTALLATION AND THERE IS NO PROHIBITION IN LAW IN SETTING UP OF THE PROPOSED UNIT

49. It is submitted that on 08.09.2014, the Department of Defence Production under the Ministry of Defence categorised the Appellant's unit as a Category A establishment, as per the Security Manual for Defence Installation. It is relevant to note here that Category A includes the most highly classified and crucial defence installations. Thereby vide its letter dated 08.09.2014, the Ministry of Defence directed the Appellant to undertake security measures as prescribed in the Security Manual for Category A establishments.
50. It is submitted that on 18.06.2018, a Lifetime Arms License was issued to the Appellant to manufacture Artillery, Howitzer guns, vehicle mounted guns etc. including associated subsystems; tanks and armoured fighting

vehicles; infantry combat vehicles and non-armoured combat vehicles; weapon launchers and launch system and air defence guns and systems. It is important to reiterate here that the Armoured System Complex is currently executing an order for K9 Vajra-T Tracked Self Propelled Howitzers for the Indian Armed Forces. It is also submitted that the critical equipment of this project shall be manufactured & maintained in Dust free environment. Dust exposure may affect the reliability & functionality of these equipment.

51. It is submitted that on 09.02.2016, Respondent no. 4 vide a Gazette Notification as required under the Officials Secrets Act, 1923, defined the boundaries of prohibited area with respect to the HZMC, the defence manufacturing establishment. Respondent no. 4 in exercise of power conferred by sub-clause (d) of clause (8) of section 2 of the Official Secrets Act, 1923 declared the place of HZMC (longitudes , latitudes given in the notification) to be a prohibited place for the purposes of the said Act.. Further, as per the Security Manual, the Appellant's plant is a Category-A establishment and requires the highest level of security. The approval granted to the cement grinding plant of the Respondent No.1 is ultra vires to such notification of the Government of Gujarat, in light of the fact that the Respondent No.1 has written in the Form-1 that no defence installation within 10km area range.
52. It is pertinent to point out that the Respondent No.1 has procured the Environmental Clearance for its Cement Grinding Plant by concealing the fact that Appellant premises is used in manufacturing defence equipments and is a licensed defence company.
53. It is imperative to reiterate here that although the Appellant operates 'Red' and 'Orange' Category units at HZMC, none of these units are using coal/pet coke etc. as fuel throughout the process and have been using

fuels such as electricity/PNG for manufacturing process which does not result in emission of any Particulate Matter (PM) affecting quality of the products. It is submitted that the Appellant has an establishment just 1 km away from the proposed grinding unit project, which manufactures ultra-critical and sophisticated equipment comprising of Super Critical Turbine Generators, Nuclear Equipments and K9 Vajra self-propelled howitzer guns. The details have already been mentioned in the amended appeal and are not reiterated here for the sake of brevity. The Respondent has purchased the private land in between the huge project area of the Appellant and has acquired the impugned EC to establish the proposed cement manufacturing plant right in the middle of the establishment of the Appellant. Moreover, there is no industry within 4 Km of the Appellant's project which can cause dust pollution resulting into harm to the Appellant's dust sensitive products. The details of the Appellant's units located around the 'Defence Establishment' are as follows:-

S.No.	Name of Industry	Aerial Distance from Appellant's Armour Unit - KM	Direction	Note
1	L&T Defence	-	-	-
2	L&T Heavy Engineering	1.81 km	-	None of these units are using coal/pet coke etc. as fuel throughout the process and have been using fuels such as electricity/PNG for manufacturing process which does not result in emission of any Particulate Matter (PM) affecting quality of the products.
3	L&T MHPS Turbine Generators Pvt. Ltd.	0.90 km		
4	L&T Special Steel and Heavy Forging	1.01 km		
5	L&T Piping	0.33km		
6	Reliance	3.25 km		
7	NTPC	4.70km	N E	Gas based thermal power plant hence there is no PM emission.
8	KRIBHCO	6.40km	E N E	Fertilizer manufacturing company

9	GAIL	6.00km	E N E	L P Gas Terminal and does not cause significant PM emission.
10	ONGC	8.70km	E	Oil & natural gas production company
11	CAIRN India	1.80km	N	Oil and gas exploration and production company and does not cause significant PM emission.
12	Adani Wilmar	1.30 km		Edible Oil manufacturing unit and does not cause significant PM emission.
13	Essar Steel	5.07 km	S	Primary Steel Manufacturing Company
14	Adani Port	7.20 km	S	Port and Harbour
15	Hazira LNG & Port	6.56 km	S S W	Port and Harbour
16	ABG Cement	4.7 km	E N E	Cement Grinding unit
17	Ultratech Cement	8.6 km	E	Cement Grinding unit
18	Ambuja Cement	9 km	E	Cement Grinding unit
19	Sanghi Industries Ltd.	1.25 km		

54. It is submitted that the Appellant has already substantiated the fact that the Armoured System Complex is a 'defence installation' through various facts, notifications and directions issued by the concerned authority and would not reiterate the same for the sake of brevity. Hence, there has been no concealment, whatsoever, on the part of the Appellant and instead it's the Respondent who has deliberately concealed many material facts which led to the erroneous EIA Report, which has been dealt in detail by the Appellant in the amended appeal.

55. It is submitted that the Appellant has been executing some of the key defence and nuclear projects which are of primary national importance. It was issued the necessary industrial license for the same in 2007 and has

been operating smoothly since then. It was only when the public hearing notice was published in the newspaper, that the Appellant became aware of the proposed Grinding unit project of the Respondent No.1 which is only within 1 km radius of HZMC Project and is located in the midst of HZMC Project.

56. The EIA Report has failed to address the environmental norms relating to air, water and land that would be severely impacted by the establishment of the Respondent No.1 cement manufacturing unit. It is also to be noted that the relevant material and factors were not placed before the SEAC, Gujarat and the SEIAA along with Form-1, for meticulous environmental evaluation and audit. Further, both the SEAC, Gujarat and SEIAA could not have applied their mind on the environmental consequences and apparently recommended the grant of EC in a mechanical manner. The said EC under the circumstances is void as it is without jurisdiction.

IX. RE: THE IMPUGNED EC HAS BEEN GRANTED AFTER DUE APPLICATION OF MIND

57. The Appellant has time and again reiterated and substantially validated the fact that the EIA report suffers from serious discrepancies and is based on concealed facts and truth. It is relevant to note here that there was a gross mismatch between the information submitted by the Respondent No.1 in Form-1 (as available online) and the EIA Report. It is pertinent to note here that the EIA Report had multiple errors and patent concealments of facts.

58. It is submitted that by relying on the erroneous EIA report and public hearing proceedings, the SEAC Gujrat vide their letter dated 15.07.2019 had recommended to the SEIAA to grant the EC for the Grinding Project on its meeting held on 12.06.2019 and the impugned EC was granted on

23.08.2019. Moreover, the final EIA report considering comments of SEAC has not been prepared along with impact identification and uploaded on the website.

X. RE: THE APPELLANT CANNOT BE PERMITTED TO AGITATE FRESH GROUNDS DESPITE GRANT OF ADEQUATE OPPORTUNITY

59. It is incorrect to state that the Appellant has challenged the grant of the Impugned EC on fresh grounds. It is denied that these grounds were not stated at the stage of public hearing or letters sent to Respondent no. 1 & 3 or the personal hearing. The case of the Appellant has been the same since the very beginning and the same was put forth by the Appellant in front of Respondent no. 1 and 3 sufficiently. It is humbly submitted that Respondent No. 1 has not been taken by surprise by the grounds in the Appeal and was well versed with them even before the Appeal was filed.

XI. REJOINDER TO REPLY OF RESPONDENT NO. 5 i.e. MINISTRY OF DEFENCE

60. It may be noted that the Ministry of Defence was impleaded in the present appeal on the direction of the Hon'ble Tribunal vide order dated 26.09.2020. That the sole purpose for impleading the Ministry of Defence was to provide clarity whether the defence manufacturing facility of the Appellant would qualify to be a defence establishment / installation in terms as mentioned in 7th row of the (III) heading i.e. Environmental Sensitivity in Report 1 Form B i.e. Appendix 1 (See paragraph 6).

61. It may be noted that point 7 in the third heading of Form -B provides for the party seeking environmental clearance to inform if the proposed project is within the aerial distance of 15kms from any Defence Installation. That Sanghi Industries Limited i.e. the Respondent No.1 herein the present appeal has answered this particular point in negative,

i.e. there is no Defence Installation within 15kms of aerial distance from the proposed project site.

62. It is the case of the Appellant that its Armoured Systems Complex (ASC) is a Defence Installation for the purposes of Environmental Sensitivity as is mentioned in Report 1 Form B. In light of the above, it is to be considered whether the Appellants' Armoured Systems Complex (ASC) would qualify to be a Defence Installation for the purposes of Environmental Sensitivity as is mentioned in Report 1 Form B. The following points fall for consideration while examining whether the ASC qualifies for a Defence Installation:

- a. Appellant's ASC is Indian Licensed Defence company (ILDC) categorised under having Category A Licence as per Security Manual and Industrial Licence policy of Ministry of Defence.
- b. The Arms Licence no. DIL(A):09(2018) is issued on 18.06.2018 under Arms Act 1959 to Appellant's ASC for design, development and manufacturing of Firearms and Ammunitions.
- c. Appellant's ASC is manufacturing full-fledged defence product i.e. K9 VAJRA-T Gun. These guns are being delivered directly at Army Store. It is pertinent to note that direct delivery of finished products from the Appellant's ASC to Army Store is at par with ordinance factories under the aegis of the government.
- d. Apart from this, Appellant's ASC is also executing classified defence projects which cannot be disclosed because of national security.
- e. These defence projects require stringent quality standards during production for their required performance. This is monitored by Directorate General of Quality Assurance (DGQA) at defence production site.

63. That certain other points which also fall for consideration are as follows:

- f. Appellant's Armoured Systems Complex (ASC) was inaugurated by the Hon'ble Prime Minister Narendra Modi in presence of the then Defence Minister Mrs. Nirmala Sitharaman on 19.01.2019.
 - g. Hon'ble Defence Minister Shri Rajnath Singh flagged-off the 51st K9 VAJRA-T Self-propelled Tracked Howitzers Gun from Appellant's Armoured System Complex (ASC) on 16.01.2020.
 - h. Many senior defence officials visited from Appellant's Armoured System Complex (ASC) inter-alia Chief of Army, Directorate General of Quality Assurance (DGQA) etc.
64. It may be noted that the Ministry of Defence i.e. Respondent No. 5 was impleaded in the present appeal on the direction of the Hon'ble Tribunal vide order dated 26.09.2020. That the sole purpose for impleading the Ministry of Defence i.e. Respondent No. 5 was to provide clarity whether the defence manufacturing facility of the Appellant would qualify to be a defence establishment / installation in terms as mentioned in 7th row of the (III) heading i.e. Environmental Sensitivity in Report 1 Form B i.e. Appendix 1 (See paragraph 6).
65. It may however be noted that for this specific case the Appellant's ASC can be treated as a Defence Installation. The Ministry of Defence i.e. Respondent No. 5 has miserably failed at providing the requisite clarity.
66. The contention of Respondent no. 5 with respect to Works of Defence Act, 1923 is incorrect and a miserable attempt to mislead the Hon'ble Tribunal and thereby vehemently denied. It may be noted as per provision 3.1 of chapter-3 of the Security Manual for Licensed Defence Industries published by Ministry of Defence, Government of India, all defence related installation automatically fall under category of "Prohibited Place" under the Official Secrets Act, 1923. The Ministry of Defence has vaguely tried

to misrepresent the entire case to further complicate the issue in order to benefit the cement industry of Respondent No.1.

67. It is pertinent to note that the prohibition of area was done under the Official Secrets Act and not the Works of Defence Act, 1903. It is to be appreciated that while the Ministry of Defence admits that the Appellant is a defence manufacturing facility, it fails to appreciate that the applicable legislation will be the Official Secrets Act, 1923 and not the Works of Defence Act, 1903. It is also to be noted that defence manufacturing license, as admitted by the Ministry of Defence i.e. Respondent No. 5 as well, was given to the Appellant on the recommendation of the Department of Defence Production under the Ministry of Defence i.e. Respondent No. 5 by the Department of Industries and Internal Trade.
68. In view of the aforementioned, the purpose of impleadment of the Ministry of Defence i.e. Respondent No. 5 and the failure at providing clarity vide the present affidavit / reply filed by the Ministry of Defence, has made the present reply filed by the Ministry of Defence as non-maintainable on grounds of lacking relevant particulars. The said reply therefore should be rejected and the Ministry of Defence should be directed to file a fresh reply / additional affidavit, clarifying in detail whether the Appellant's establishment is a Defence Installation for the purposes of Environmental Sensitivity as is mentioned in Report 1 Form B or not.
69. It may also be noted that the argument on the Works of Defence Act, 1903 is merely to mislead and confuse the Hon'ble Tribunal and an attempt to evade answering the direct question for consideration as had fell from the Hon'ble Tribunal.

XII. REJOINDER TO REPLY OF RESPONDENT NO. 4 i.e. GOVERNMENT OF GUJARAT

70. It is pertinent to point out that the Respondent No.1 has procured the Environmental Clearance for its Cement Grinding Plant by concealing the fact that Appellant premises in manufacturing defence equipments and is a licensed defence company. Moreover the Respondent No.1 also failed to disclose that the State Government has vide notification No.GG/ 15/ 2016 / SB-I / OSA / 102015 / 5407 dated 09.02.2016, declared the Revenue Survey No.148 /A. 230 + 241 as prohibited area under the Official Secrets Act, 1923. It is pertinent to point out that one complex of the Appellant has been declared prohibited area and the other complex will be declared a prohibited area shortly.
71. It is pertinent to point out that all information provided by the State of Gujarat has been blatantly concealed by the Respondent No.1 at the time of securing the impugned environmental clearance. Moreover, it is pertinent to state that distance measured by the State Government is not from the boundary wall and hence not the exact distance. The actual distance is lesser than the one presented by the State Government. It may be noted that the actual distance is in fact 700-800 meters.
72. It is pertinent to point out that once the notification under the Official Secrets Act, 1923, the area of Village Shivrampur and Suvali will also be prohibited under the Official Secrets Act, 1923. However, the said eventuality was neither presented by the Respondent No.1 while applying for the impugned environmental clearance, nor was it considered by the Respondent No.3 while granting the impugned environmental clearance.
73. It is incorrect to state that the Appellant has challenged the grant of the Impugned EC on fresh grounds. It is denied that these grounds were not

stated at the stage of public hearing or letters sent to Respondent no. 1 & 3 or the personal hearing. The case of the Appellant has been the same since the very beginning and the same was put forth by the Appellant in front of Respondent no. 1 and 3 sufficiently. It is humbly submitted that Respondent No. 1 has not been taken by surprise by the grounds in the Appeal and was well versed with them even before the Appeal was filed.

74. It is humbly submitted that Respondent no. 1 is trying to mislead this Hon'ble Tribunal just like it misled Respondent no. 3 by giving inauthentic information. It is reiterated that the grant of the EC is against the NGT Order dated 10.07.2019 (as modified by order dated 23.08.2019). It is further humbly submitted that relevant factors were not placed before Gujarat-SEAC and Respondent no. 3 in the Form 1 (available online), Draft EIA Report, and Final EIA Report. It is reiterated that the Impugned EC has been given to the Respondent no. 1 in a mechanical manner without application of mind.
75. The Appellant craves opportunity to reiterate and rely on the grounds as provided under the Appeal filed before this Hon'ble Tribunal.

PRAYER:

- a) Allow the present appeal of the Appellant and the Hon'ble Tribunal may be pleased to cancel / revoke the Impugned Environmental Clearance granted to the Respondent No.1;
- b) Any other just and equitable order in the interest of the justice may kindly be passed;

APPELLANT

Through

Rimali Batra / Mahip Singh



DSK Legal

Counsel for the Appellant

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New Delhi – 110024

Place : New Delhi

Date : 14.09.2020

E-mail: rimali.batra@dsklegal.com

BEFORE THE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH, PUNE

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

IA NO. _____ OF 2020

IN

APPEAL NO. 66 OF 2019



IN THE MATTER OF:

Larsen & Toubro Limited

....Appellant

Versus

Sanghi Industries Limited & Ors.

....Respondents

AFFIDAVIT

I, Hiren Shah, aged 43 years s/o Kiribhai Shah address at Larsen & Toubro Limited, Hazira Manufacturing Complex, P.O.-Bhatha Dist-Surat 394510 authorized representative of the Appellant herein, presently in SURAT do hereby solemnly affirm and declare as under:-

1. That I am the authorized representative of the Appellant herein and as such am duly competent to swear the present affidavit on behalf of the Appellant.
2. That I have read the contents of the accompanying comprehensive rejoinder and state that the facts contained therein are true and correct and based on the records of the case as available with the Appellant and that the legal submissions made therein are based on legal advice received by me and believed to be true and correct and that nothing material has been concealed therefrom.
3. That the contents of the present affidavit are true to my best knowledge and belief. No parts of the same are false and nothing material or relevant has been concealed therefrom.

x
Hiren Shah
DEPONENT

VERIFICATION

Verified at SURAT on this 14th day of Sept- 2020 that the contents of the present affidavit are true to the best of my knowledge and belief. No parts of the same are false and nothing material or relevant has been concealed therefrom.

DEPONENT



X *[Signature]*

Sr. No. 656/20
Date 14 SEP 2020

Identified by
X *[Signature]*
Solemnly affirmed before me by Himanshu who is identified by Shri.....
X *[Signature]* Rajiv whom I personally know.



**SOLEMNLY AFFIRMED
BEFORE ME**

[Signature]
14-09-2020

HARISH K. CHAUHAN
NOTARY
SURAT CITY (GUJ.)
GOVT. OF GUJARAT

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