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

**ORIGINAL APPLICATION NO. 438 OF 2018
(IA No. 46/2024, IA No. 622/2023)**

IN THE MATTER OF: -

ARTI

.....APPLICANT

VERSUS

CENTRAL GROUND WATER AUTHORITY

.....RESPONDENT(S)

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THROUGH COUNSEL



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Date: 20.04.2026

Place: Noida

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PRINCIPAL BENCH, NEW DELHI**

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TRIBUNAL**

BACKGROUND OF THE MATTER

1. That, the applicant in the present Original Application has alleged grievances regarding the unauthorized withdrawal of ground water by hotels situated in

Ghaziabad District, resulting in rapid depletion of ground water levels across all four blocks of the district.

2. That, in continuation of the proceedings, the Hon'ble Tribunal in the present matter passed orders dated **17.10.2022 in O.A. No. 438/2018, 17.01.2023 in I.A. No. 339/2022 (in O.A. No. 438/2018), and 01.02.2023 in R.A. No. 05/2023 (in O.A. No. 438/2018)**, against which **Civil Appeal (Diary) No. 25711/2023** titled **Hotel Rishabh v Arti & Ors.** has been preferred before the Hon'ble Supreme Court.

Copies of the orders dated **17.10.2022, 17.01.2023 and 01.02.2023** are annexed herewith and collectively marked as **Annexure-1, Annexure-2 and Annexure-3** respectively.

SUBMISSIONS ARE AS FOLLOWS

I. HON'BLE SUPREME COURT ORDER DIRECTING STAY ON THE IMPUGNED ORDERS AND TAGGING WITH CIVIL APPEAL NO. 2864/2022

3. That, in **Civil Appeal (Diary) No. 25711/2023** titled **Hotel Rishabh v. Arti & Ors.**, the Hon'ble Supreme Court vide order dated **22.09.2023** was pleased to stay the operation of the aforesaid orders passed by this Hon'ble Tribunal

and directed tagging of the matter with Civil Appeal No. 2864/2022. The relevant part is reproduced hereinbelow for kind perusal:

“...6. Delay condoned.

7. Issue notice.

8. Pending further orders, there shall be a stay of the operation of the impugned orders dated 17 October 2022, 17 January 2023 and 1 February 2023 of the National Green Tribunal in OA 438 of 2018, IA 339 of 2022 in OA 438 of 2018 and Review Application No 5 of 2023, respectively.

9. Tag with Civil Appeal No 2864 of 2022...”

A copy of the order dated **22.09.2023** is annexed herewith and marked as *Annexure-4*.

II. SUBSEQUENT DEVELOPMENTS IN CIVIL APPEAL NO. 2864/2022

4. That, **Civil Appeal No. 2864/2022** titled *M/s C.L. Gupta Export Ltd. v. Adil Ansari & Ors.* arose out of **O.A. No. 220/2019** titled *Adil Ansari v. M/s C.L. Gupta Export Pvt. Ltd.*, wherein the appellant challenged the judgment dated **25.02.2022** passed by this Hon’ble Tribunal. The relevant portion of the said judgment is reproduced hereinbelow for kind consideration:

“...570. In view of the discussions made above, we find it appropriate to issue following directions:

(a) Respondent 1 i.e., M/s. C L Gupta Exports Pvt. Ltd. shall deposit environmental compensation of Rs. 50 crores with CPCB within two months.

(b) The divisions of PP, which continue to fail in compliance of environmental norms, shall be closed till requisite steps are taken by PP to comply prescribed standards.

(c) The amount of compensation shall be utilised for restoration of ground water, remediation of damage already caused to ground water, and remediation of damage to environment etc. For this purpose, we constitute a joint Committee comprising CPCB, CGWA, UPPCB, UPGWD and District Collector, Amroha. Committee shall prepare restoration plan within 3 months, execute the same in next 6 months and submit compliance report to Registrar General NGT immediately after expiry of above period.

(d) The Member Secretary, UPPCB is directed to make inquiry as to how respondent 1 could continue to violate environmental laws and norms for years together and fix responsibility of the erring officers of UPPCB. The role of Regional Officer concerned shall be inquired.

(e) The Statutory Regulators would also take other remedial and punitive measures as per law including prosecution.

(f) The Enforcement Directorate may examine the matter in the light of the observations made in the judgment along with provisions of PMLA

Act, 2002, wherein environmental laws, i.e., Water Act, 1974 and EP Act, 1986 have been included in Part-A of Schedule I and take appropriate action.

(g) Compliance reports by respective bodies/authorities/Committee in respect of directions contained in the judgement shall be submitted to Registrar General, NGT, PB. If any further directions are required, Registrar General shall place the matter before the Tribunal.

571. With above directions, this OA and all pending I.A.s are disposed of.

572. A copy of the order be forwarded to Chief Secretary, State of Uttar Pradesh, Director of Enforcement Directorate, CPCB, CGWA, UPPCB, UPGWD, MoEF&CC, Ministry of Jal Shakti and D.M., Amroha by e-mail by way of information and compliance...”.

A copy of the Order/Judgment dated 25.02.2022 is annexed herewith and marked as *Annexure-5*.

5. That, the Hon’ble Supreme Court in the matter, *Civil Appeal No. 2864/2022*, titled *M/S C.L. Gupta Export Ltd. v Adil Ansari & Ors.* passed order dated **31.07.2025** wherein the aforementioned matter was de-tagged from all other matters, including the *Civil Appeal (Diary) No. 25711/2023*.

A copy of the order dated 31.07.2025 is annexed herewith and marked as *Annexure-6*.

6. That, the Hon'ble Supreme Court subsequently pronounced Judgment dated **22.08.2025** in **Civil Appeal No. 2864/2022** and set aside the impugned order dated **25.02.2022** passed by this Hon'ble Tribunal, to the extent noticed therein. The relevant extract is reproduced hereinbelow for kind consideration:

“...13. We have to necessarily set aside the directions issued other than that which permits a continuous monitoring and audit of the pollution control measures to ensure a pollution free, compliance regime. Before we leave the matter, with some anguish, we cannot but indicate that application of mind is not proportionate to the number of pages. The impugned judgment deals elaborately with the environmental law, the numerous pollution prevention measures, the guidelines and publications issued by various States as also decisions in that regard. It also extracts the various reports filed by the Joint Committee, the interim orders of the NGT and the objections raised by the industry; which would be Page 15 of 15 Civil Appeal No. 2864 of 2022 anyway be available in the records of the case. In the context of the last of the reports having found complete compliance, we cannot but observe that unfortunately this was an exercise in futility. Judicious consideration is the sum and substance of adjudication and the Courts/Tribunals should restrain themselves from engaging in mere rhetoric by stating the law in general without particular reference to the facts. We say nothing more and allow

the appeal setting aside the order of the NGT to the extent noticed above...”

A copy of the Judgement of the Hon’ble Supreme Court in *Civil Appeal No. 2864/2022* is annexed herewith and marked as *Annexure-7*.

III. PRESENT STATUS OF CIVIL APPEAL (DIARY) NO. 25711/2023

7. That, it is humbly submitted that, as stated in *paragraph 5 hereinabove*, **Civil Appeal (Diary) No. 25711/2023** titled *Hotel Rishabh v. Arti & Ors.*, preferred against the orders dated **17.10.2022** in **O.A. No. 438/2018**, **17.01.2023** in **I.A. No. 339/2022 (in O.A. No. 438/2018)**, and **01.02.2023** in **R.A. No. 05/2023 (in O.A. No. 438/2018)**, has been de-tagged and is presently pending for final hearing before the Hon’ble Supreme Court. It is further submitted that the stay granted by the Hon’ble Supreme Court vide order dated **22.09.2023**, referred to in *paragraph 3 above*, continues to remain in operation.

8. That, as per the records available at the Hon’ble Supreme Court website, the current status of *Civil Appeal (Diary) No. 25711/2023* is as follows:

“...Pending-(Final Hearing)-List after service of notice is complete-Ord dt:31-07-2025...”

Copy of the Case Status available at the Hon'ble Supreme Court website is annexed herewith and marked as *Annexure-8*.

9. That, the submissions made in this affidavit have been derived from records available at the Hon'ble Supreme Court website.

10. Hence, these submissions are respectfully submitted for the kind perusal of this Hon'ble Tribunal.

THROUGH COUNSEL

A handwritten signature in black ink, appearing to read 'Bpsjadon', with a horizontal line extending to the right from the end of the signature.

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Date: 20.04.2026
Place: Noida

Revised order
corrected on 24.04.2023

Item No. 03

Court No. 1

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

(By Video Conferencing)

Original Application No. 438/2018

Arti

Applicant

Versus

Central Ground Water Authority & Ors.

Respondent(s)

Date of hearing: 17.10.2022

**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
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: None

Respondent: Mr. Ajay Kumar Sharma, Member Secretary with Mr. Pradeep Misra and Mr. Daleep Dhyani, Advocates. for UPPCB
Mr. A.K. Agrawal, Member Secretary, CGWA
Mr. I.K. Kapil, Advocate for UP Jal Nigam
Mr. Divjot Singh Bhatia, Advocates for R - 10
Mr. Anand Kumar V. and Mr. Aditya Kishor Tyagi, Advocates for R - 51, 53 & 67
Mr. Dalip Singh and Ms. Radha Singh Dhavni, Advocates for R - 84
Mr. Jitesh Singh, Adv. for R - 99
Mr. Gaurav Prakash Pathak, Advocates for R - 100
Ms. Preeti Gupta, Ms. Henna George, Mr. Arvind Kumar Gupta and Ms. Shivani Sharma, Advocates for R - 126

ORDER

The Issue

1. Issue for consideration is the compliance of judgement of the Hon'ble Supreme Court in MC Mehta v. UOI, (1997) 11 SCC 312 for regulation of indiscriminate boring and withdrawal of ground water for sustainable water resource management. Regulatory measures expected in terms of the

said judgement are water conservation, rainwater harvesting, recycling and reuse of water, afforestation, protection of water bodies, awareness and education. This includes mapping/survey, regulated extraction ensuring replenishment. While a specialised regulatory agency – CGWA has been created with powers of Central Government under section 5 of Environment Protection Act, 1986, other statutory regulators, including the District Magistrates and the Pollution Control Boards have to play their respective roles.

2. While in the application as originally filed grievance raised was against unauthorized withdrawal of ground water by 122 hotels in Ghaziabad - Respondents No. 5 to 126 herein, the Tribunal took up the larger issue of such problem in major cities of the UP. It has been found that there is large scale illegal extraction of groundwater in the entire State, including in areas which are scarce in availability of groundwater. It is well known that depletion of ground water results in alkalinity and salinity of soil remediation of which can be at huge cost to the environment. Precautionary principle requires, careful appraisal for permitting such withdrawal and prohibiting unregulated withdrawal. Groundwater has been held to be mineral vested in State and its withdrawal without permission held to be theft, the statutory authorities have to perform their duty of protecting the scarce natural resource under public trust doctrine and proceed against the violators as per law.

3. Case set out in the application is that the water level in all the four blocks of Ghaziabad District is depleting rapidly and at locations of hotels, marriage halls, party lawns, the water level is depleting faster. Several hotels are located in 'Notified over exploited area' of Ghaziabad. They are mostly dependent on ground water extraction. The worst condition of District Ghaziabad in this regard is clear from the Hydro geological report

of CGWA, 2011 and 2013. It is further stated that the Hotels are operating without any consent under the Water (Prevention and Control of Pollution) Act, 1974 and the Air Water (Prevention and Control of Pollution) Act, 1981. Reference has also been made to an earlier order of this Tribunal on the subject, dated 13.04.2017 in O.A. No.190/2016, Sushil Raghav & Anr. v. Central Ground Water Authority & Ors., as follows:-

“For the present, we would like to proceed to ensure compliance to our directions date 15-04-2015 and in this regard, direct as follows:

1. *CGWA shall forthwith seal all the borewells run by the existing and/ newly established industries and to be established from for extraction of ground water, which are not granted consent as on the date of the order passed by this Tribunal on 15-04-2015.*
2. *2. Extraction of water by such of the industries who have applied to CGWA for grant of permission and consent and whose applications are still pending, shall also be prevented from extraction of ground water from the borewells till their applications are objectively examined individually.*
3. *CGWA shall review the consents so far granted to the industries in the area in question and the private individuals/ or any person till 15-04- 2015 on merit of each case and take a final decision as to whether the consent so granted is valid in law or requires revocation. If that be so, all the licenses/ consents shall be revoked. Of course, after granting opportunity to the recipients of such.*
4. *Apart from the industries who are brought into the mischief of our order, we further direct extraction of ground water by, private individuals, any person or builders without permission or having valid permission, shall face the same consequences and CGWA shall seal all their borewells.*
5. *CGWA shall ensure that no private water supplier through tankers is allowed extraction of water whether within or beyond the limits of the Municipal Corporation with authorization of CGWA.*
6. *The CGWA shall list out such of the water suppliers who are supplying water for any purpose and ascertain the sources of acquiring of water by the suppliers. If the same is being done after obtaining consent then ascertain the quantity of water so far extracted.*
7. *The District Magistrate who is described as the authorized officer under the notification referred to above, shall ensure that any direction issued by CGWA in this regard, is enforced.*

8. *The CGWA is directed to pass appropriate orders and get it executed through the authorised officer named in the notification. If need be obtain, necessary assistance from the local jurisdiction police for this purpose. The CGWA and District Magistrate to issue appropriate directions /instructions to the jurisdiction police for this purpose.*
9. *The report about compliance of this report shall be filed with regards the condition nos. 1 2 and 3 within one week after sealing of borewells. The report shall be filed within a period of one week from today after serving copy on the applicants counsel.*
10. *As regard the other directions are concerned the CGWA is granted three weeks time to file the report of compliance in the Registry after serving copy on the applicant counsel.”*

4. It is further stated that according to the news article dated 07.07.2018 published in the Dainik Jagran newspaper, against the demand of 245 MLD water, the Ganga Water Plant is working on half the capacity. It cannot be installed in Khoda Colony because of ground water quality of the Colony being poor.

Procedural History

5. The matter has been dealt with by the Tribunal in the last four years by several orders. Apart from orders dated 31.7.2018, 24.9.2021, 25.2.2022 and 25.8.2022 in the present matter, orders dated 23.4.2015, 26.7.2018, 28.8.2018, 22.11.2018, 3.1.2019, 7.5.2019, 11.9.2019, 20.7.2020 and 25.2.2022 were passed in connected matter OA176/2015, apart from orders in other connected matters. It will suffice to refer to orders in the current matters and order dated 20.7.2020 in OA176/2015 for purposes of this order.

6. Vide order dated 31.07.2018, statement was made on behalf of the CGWA that except one no other hotel out of 122 parties to the application had permission for withdrawal of ground water. The Tribunal, accordingly, directed that on verification of factual aspects, remedial action be taken

and a compliance report filed by January, 2019. Vide order dated 24.09.2021, report of CGWA was considered and finding that the same was incomplete, the Tribunal directed CGWA to place complete information about the compliance status by all the parties, after interaction with the District Magistrate and State PCB. Vide order dated 25.02.2022, the matter was further considered in the light of report of the CGWA dated 03.12.2021 after visiting 121 units mentioned therein, to the effect that there were large scale violations. In view of the said report, the Tribunal found it necessary to issue notice to the concerned hotels before determining their liability. Further report was sought about the remedial action taken by the CGWA, State PCB and U.P Jal Nigam. It was further directed that apart from the named establishments, violations by similar other establishments in nine major cities of U.P - Lucknow, Kanpur, Agra, Meerut, Gautam Buddha Nagar, Bareilly, Varanasi, Jhansi, and Gorakhpur may be verified. By last order dated 25.08.2022, the Tribunal granted further opportunity for compliance and required the presence of the Member Secretary, UPPCB, Member Secretary, CGWA and Chairman, UP Jal Nigam.

Consideration today – in the light of factual reports CGWA, UP PCB, UP Jal Nigam, response of violating establishments and legal position

7. In pursuance of above, UP PCB and CGWA have filed their respective reports dated 24.09.2022, 26.09.2022, followed by further submissions dated 14.10.2022 and 15.10.2022. Some of the establishments have filed their respective versions including, Rurban Resort, Muradnagar, District Ghaziabad, Fortune Inn Grazia, Ghaziabad and Lemon Tree Hotel, Kaushambi, Ghaziabad.

8. We have heard the Member Secretaries, UPPCB and CGWA present in person by video conferencing and counsel appearing for UP Jal Nigam and some of the establishments.

Stand of the UPPCB

9. Stand of the UPPCB is that inspections have been carried out to verify legality of extraction of ground water by hotels, resorts, marriage halls and guest houses in nine Districts in which major cities of UP fall. District wise comprehensive report has been prepared by CGWA which has been sent to the concerned District Magistrates for remedial action against the establishments extracting ground water without valid NOC. It has been directed that the tube-wells/bore-wells may be sealed and environmental compensation calculated as per CGWA Guidelines dated 24.09.2020.

Stand of the CGWA

10. Stand of the CGWA is that public notice dated 23.10.2017 was issued that District Magistrates were authorized to inspect whether ground water was being extracted without NOC and to take remedial action for sealing such illegal wells and launching prosecution. Reminders were sent but no communication was received from the concerned District Magistrates. In terms of order of this Tribunal dated 25.02.2022, joint Committees were constituted on 15.03.2022 comprising of:-

- (i) Regional Director, CGWB, Northern Region/ or his Representative;
- (ii) Officer(s) from Uttar Pradesh Pollution Control Board not below the rank of or his representative;
- (iii) Concerned District Magistrate/ or his representative

11. The said Committee conducted inspections in all the nine cities. Remedial action has been initiated by DM, Bareilly and other DMs have been requested to take similar action.

12. Summary of inspected hotels/guest house/marriage halls, etc is as follows:-

“Table: Summary of inspected Hotels/ Guest House/ Marriage Halls etc.

| Sl. No. | District/ City | Total No. of Hotel/ Banquet Hall/ etc. (targets) | No. of Hotels who have not obtained NOCs | No. of Hotel who have obtained NOCs | No. of Hotel could not be located | No. of Hotels do not exist | No. of Hotels who have not provided the data | No. of Hotels repeated in the list | No. of Hotels which do not require NOCs due to having supply through water supplying agencies. |
|---------|----------------|--|--|-------------------------------------|-----------------------------------|----------------------------|--|------------------------------------|--|
| 1. | Agra | 424 | 386 | 10 | 0 | 18 | 0 | 0 | 10 |
| 2. | Bareilly | 117 | 44 | 27 | 27 | 0 | 0 | 4 | 15 |
| 3. | G.B. Nagar | 34 | 20 | 0 | 2 | 0 | 0 | 0 | 12 |
| 4. | Gorakhpur | 131 | 119 | 1 | 0 | 10 | 0 | 0 | 1 |
| 5. | Jhansi | 86 | 75 | 0 | 3 | 2 | 3 | 0 | 3 |
| 6. | Kanpur | 233 | 145 | 0 | 0 | 73 | 6 | 9 | 0 |
| 7. | Lucknow | 333 | 148 | 7 | 58 | 97 | 15 | 0 | 8 |
| 8. | Meerut | 132 | 106 | 0 | 0 | 3 | 3 | 0 | 20 |
| 9. | Varanasi | 413 | 364 | 10 | 3 | 0 | 17 | 4 | 15 |
| | Total | 1903 | 1407 | 55 | 93 | 203 | 44 | 17 | 84 |

Analysis and finding by the Tribunal

13. From the above table compiled by the CGWA with the assistance of District Magistrates, it is patent that more than 70% of establishments have been found to be extracting ground water illegally. Verified compliance status is said to be only for 55 units out of 1903, which is less than 3%. Thus, situation is alarming as shown by rampant violations, defeating the directions of the Hon'ble Supreme Court in *M.C. Mehta v. Union of India & Ors. (1997) 11 SCC 312* requiring control and regulation of groundwater extractions. While a specialized body has been constituted in the form of CGWA, it is difficult to say that it is effective as expected.

Observations of the Hon'ble Supreme Court that management of water resources is to achieve overall aspirational goal of sustainable development on principles of inter and intra generational equity, the precautionary principle, conservation of natural resources and environmental protection appear to have been completely ignored.

14. The Authority directed to be constituted by the Hon'ble Supreme Court was for the following mandate:-

“7. ... The mandate of the authority needs to include the following:

- * To deploy river basins as the basis for regional planning for sustainable water resource management (along with commensurate land use).*
- * To prepare medium and long-term national land use plans inter alia including agricultural practices, human settlement patterns and industrial typology in consultation with Ministries/Departments concerned **based on the regional water supportive capacity.***
- * To assess the present irrigation practices and cropping patterns, with respect to high water consuming crops and lay down National Agricultural Water Use Policy to **encourage judicious use of water resources.***
- * **To keep under review groundwater levels and quality, and surface water quantity and quality to devise and implement pragmatic strategies at plan and programme levels.***
- * **To ensure maintenance of minimum flows in the rivers so as to fulfil the riparian rights, to protect the flood plains, to as also to protect the vital ecological functions of the rivers.***
- * To ensure techno-economic feasibility and to implement programmes on **reuse of appropriately treated sewage for agriculture, reuse of industrial wastewaters as industrial process water**, use of treated sewage in social forestry and public parks in municipal areas and **reuse of treated wastewater in new housing complexes for non-consumptive usages.***
- * **To protect, conserve and augment traditional water retaining structures.***
- * **To protect, conserve and augment natural and manmade wetlands in the country.***

- * ***To promote rain water harvesting in human settlement practices, particularly in cities with more than 10 lakh population in arid/semi-arid regions.***
- * ***To promote and implement modern and traditional water harvesting technologies to ensure minimal expenditure in groundwater harnessing.***
- * ***To design and implement programmes to **arrest alarming rates of decline in snowline in the country.*****
- * *To ensure catchment area treatment, including construction of check dams, contour bunding, control of river bank erosion and plantation of endemic fast-growing tree species to arrest soil and water loss in all river basins.*
- * *To ensure implementation of afforestation programmes for achieving a minimum of 33% forest cover as per the National Forest Policy, 1988.*
- * ***To prepare and implement guidelines on water rate structure for various water usages commensurate with the production and scarcity value of the resource.***
- * *To ensure **community participation** with a view to harnessing traditional knowledge at all stages in the holistic approach to water resource management.”*

15. With evidence of large-scale illegal extraction of ground water and data of depleting ground water levels, stringent measures are required for sustainable water management. **We have no other option but to hold that there is all round failure of the statutory authorities in complying with the mandate of judgement of the Hon’ble Supreme Court.**

16. This Tribunal has been dealing with the issue since 2012. In spite of monitoring for ten years, the rampant non-compliance is continuing. There is unwillingness or neglect by the Authorities in performing their statutory functions which has also been recorded in earlier orders referred to above. There is consequential adverse effect on flow of river and streams which is obviously leading to disruption of aquatic ecosystems and food security. Salinization of soil is another well-known adverse consequences.

17. It remains patent that CGWA is ill-equipped to handle the problem. Statutory framework is required to be revamped to give effect to the

directions of the Hon'ble Supreme Court. The appraisal process, essential component of regulatory powers, stands delegated to the District Magistrates or other authorities, without such authorities being equipped or mandated to conduct necessary appraisal. The result is that either groundwater extraction is taking place without any permission and with no adverse consequences or such approvals are being granted mechanically as a matter of course unconditionally or with conditions which are not monitored. Alternatives to ground water extraction in the form of re-use of treated water for secondary purposes are not being adequately considered. This is resulting in shortage of potable water for drinking purposes.

18. Vide order dated 20.07.2020 in Original Application No. 176/2015, *Shailesh Singh v. Hotel Holiday Regency, Moradabad & Ors.*, the situation was reviewed exhaustively. The Tribunal expressed disappointment with the approach of the Authorities contrary to the mandate as per judgement of the Hon'ble Supreme Court. Some of the observations in the said order are:-

*“27. In terms of the Tribunal’s previous orders (dated 03.01.2019, Paras 29 and 31¹, and dated 11.09.2019, Para 24²), **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;**

¹ Quoted supra, Para 20

² Quoted supra Para 23

- 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.”

Paras 31 to 35...xxx.....xxx.....xxx

Review of pertinent case law re. Sustainable Development

36. The principle of sustainable development is well established. We may refer to certain well-known decisions. In (1996) 3 SCC 212, *Indian Council for Enviro-Legal Action and Ors. v. Union of India & Ors.*, the Hon'ble Supreme Court considered and explained the principle and laid down that compensation has to cover cost of remediation.³ The report in the present case is not compliant with this principle as observed above. The principle of sustainable development, as a balancing concept, has been further discussed and explained in (1996) 5 SCC 647, *Vellore Citizen's Welfare Forum v. Union of India & Ors.*⁴ The Public Trust Doctrine has been discussed and explained in (1997) 1 SCC 388, *M.C. Mehta v. Kamal Nath & Ors.*⁵ There **can be no exemption to industries against sustainable development principle** as held in (2001) 2 SCC 62, *A.P. Pollution Control Board II v. Prof. M.V. Nayudu (Retd.) & Ors.*⁶ In (2004) 10 SCC 201, *State of W.B. v. Kesoram Industries Ltd. & Ors.*, there are observations to the effect that **deep underground water belongs to the State and is governed by the Public Trust Doctrine** (Para 387). Use of water for irrigation purpose may be permissible but it cannot affect reuse of water by others. Reference was made to the judgement of the Kerala High Court in (2004) 1 KLT 731 restraining *Hindustan Coca Cola Beverage* from using groundwater for its plant. It was observed that the State was under duty to protect ground water against excessive exploitation (para 389). The issue involved therein was justifiability of levy of cess on minor minerals by the Central Govt which was upheld by majority. These observations are in the minority judgement but on this issue, there is no contra view in majority judgement. In (2006) 3 SCC 549, *Intellectual Forum, Trupathi v. State of A.P. & Ors.*, the said principles have been reiterated.⁷ We may refer to the need for impact assessment to give effect to sustainable development and precautionary principle. In recent judgement in (2019) 15 SCC 401, *Hanuman Laxman Aroskar v. Union of India*⁸, the environmental rule of law has been discussed as follows:

“35. The Constitution (Forty-second Amendment) Act, 1976, which came into force with effect from 3-1-1977, inserted Article 48-A to the Constitution which mandates that the State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51-A(g) of the Constitution places a corresponding duty on every citizen

³ ¶ 67, 68 & 70

⁴ ¶ 11 to 15

⁵ ¶ 25 & 34

⁶ ¶ 44

⁷ ¶ 68 to 82

⁸ ¶ 35, 42, 144, 149 & 150

to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. Following the decisions taken at the United Nations Conference on the Human Environment held at Stockholm (the Stockholm Conference) in June 1972 in which India participated, Parliament enacted the Environment (Protection) Act, 1986 to protect and improve the environment and prevent hazards to human beings, other living creatures, plants and property.

144. **The environmental rule of law** provides an essential platform underpinning the four pillars of sustainable development — economic, social, environmental and peace [United Nations Environment Programme, First Environmental Rule of Law Report.... The environmental rule of law becomes a priority particularly when **we acknowledge that the benefits of environmental rule of law extend far beyond the environmental sector**. While the most direct effects are on protection of the environment, it also strengthens rule of law more broadly, **supports sustainable economic and social development, protects public health**, contributes to peace and security by avoiding and defusing conflict, and protects human and constitutional rights.... Similarly, the rule of law in environmental matters is **indispensable “for equity in terms of the advancement of the Sustainable Development Goals (SDGs)**, the provision of fair access by assuring a rights-based approach, and the promotion and protection of environmental and other socioeconomic rights

149. In 2015, the International Community adopted the 2030 Agenda for Sustainable Development and its 17 SDGs. These 17 goals are:

- (i) Eradication of poverty;
- (ii) Eradication of hunger;
- (iii) Good health and well-being;
- (iv) Quality education;
- (v) Gender equality;
- (vi) **Clean water and sanitation;**
- (vii) Affordable and clean energy;
- (viii) Decent work and economic growth;
- (ix) Industry, innovation and infrastructure;
- (x) Reduced inequalities;
- (xi) Sustainable cities and communities;
- (xii) Sustainable consumption and production;
- (xiii) Climate action;
- (xiv) Protecting life below water;
- (xv) Life on land;
- (xvi) Peace, justice and strong institutions; and
- (xvii) Partnerships to achieve the goals.

150. Each of these goals has a vital connection to the others. Together, they provide an agenda for human development: development in a manner which accords adequate protection to the environment. UNEP recognises that the natural environment—forests, soils and wetlands—contributes to the management and **regulation of water availability and**

water quality, strengthening the resilience of watersheds and complements investments in physical infrastructure and institutional and regulatory arrangements for water access and disaster preparedness.”

37. In a recent judgement, Madras High Court⁹ considered the issue of regulation of the groundwater¹⁰. It was also observed that drawal of groundwater without authority will be criminal offence of theft and mischief under Section 379 and 425 IPC. Such extraction must be scientifically monitored District wise with punitive consequences against violations. Following order was passed:

- (1) The impugned order of regulation issued by the 1st respondent in G.O.Ms.No.142, dated 23.07.2014 is confirmed.
- (2) The respondents are directed not to grant licence, No Objection Certificate (NOC) or permission for the commercial establishments / person to extract ground water for commercial usage in the absence of fixation of water Flow Meter on the Board outlet, which is to be inspected.
- (3) The respondents are directed to inspect the functional quality and other established standards of the Flow Meters fixed by the persons, who all are applying for permissions / No Objection Certificate (NOC) and at the time of granting permission / No objection Certificate (NOC), the Flow Meter should be sealed properly by the respondents / Public Works Department (PWD) officials.
- (4) The Flow Meter must be sealed in such a way to prevent any tampering by any person. Quantum of Water to be extracted by individuals, are to be fixed periodically as per the assessment to be made by the P.W.D. Authorities as per the Regulations.
- (5) The respondents are directed to measure the quantum of water extracted by the establishments / persons by taking meter reading every Month and accordingly, the same is to be regulated.
- (6) The respondents are directed to follow all other terms and conditions fixed for grant of licence / permission for Extraction of Ground Water for commercial usage as per the guidelines issued in G.O.Ms.No.142, Public Works Department dated 23.07.2014.
- (7) **The respondents are directed to register the Police complaint in the event of identifying any excess Extraction of Ground Water by tampering the Flow Meters sealed or by any other means by any person. The case must be registered Under Section 379 of Indian Penal Code (IPC). In addition, if the water is wasted for causing wrongful loss, then Section 425 of the Indian Penal Code (IPC) will also attract.**
- (8) **The respondents are directed to suspend the licenses by issuing show cause notices and by**

⁹ Dated 03.10.2018, M/S. Sarooja Agro Foods v. The Chief Engineer

¹⁰ ¶ 69 to 82

- providing an opportunity to the persons, who have involved in the offence of theft or violation of all other conditions stipulated in the Government Regulations, or if a criminal case is registered. If any person is convicted, then he shall be permanently debarred from getting licence for Extraction of Ground Water.**
- (9) **The District Collectors of all the Districts in the State of Tamil Nadu are directed to issue suitable directions / orders to the Revenue Divisional Officer, Tahsildars and all other officials concerned to inspect and monitor the Extraction of Ground Water by the persons for commercial usage.**
- (10) The District Collectors of all the Districts are directed to constitute monitoring committees to monitor the Extraction of Ground Water by the individuals for commercial purposes.
- (11) Each Monitoring Committee appointed by the District Collector concerned, shall consists minimum of five persons and the Committee is empowered to monitor the Extraction of Ground Water for commercial purposes by the individual persons and commercial establishments.
- (12) **The Monitoring Committee shall consist of the following persons:**
- (i) **The District Environmental Engineer from Pollution Control Board of the State of Tamil Nadu.**
 - (ii) **One qualified Public Works Department (PWD) Engineer from Water Resources Department.**
 - (iii) **The Assistant Director of Zoology and Mining of the State Government.**
 - (iv) **The Revenue Divisional Officer of the concerned locality.**
 - (v) **One nominee from the office of the Chief Engineer, Central Ground Water Board of the Government of India.**
- (13) The Monitoring Committee is entitled to collect proofs and documents in respect of the Extraction of Ground Water illegally and excessively by any person and submit a complaint / report to the District Collector concerned, who in turn, after verifying the same, shall register a complaint with the Jurisdictional Police for registering a criminal case under the provisions of Indian Penal Code (IPC).
- (14) It is needless to State that, only in the event of compliance of the regulations and conditions imposed in this order, the persons / establishments shall be allowed to extract the Ground water for commercial usage or for commercial purposes.
- (15) The 1st respondent / Secretary, Public Works Department is directed to issue consolidated instructions in this regard based on the order passed in the present

writ petitions to all the District Collectors, enabling them to implement the Court orders promptly.”

19. Directions issued by the Tribunal in the said order are:-

“

39. *In the light of the above discussion, we direct as follows:*
- a. *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.*
 - b. *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.*
 - c. *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).*
 - d. *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.*
 - e. *As observed in para 0(a) and 29(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.”

20. The Tribunal further considered the matter vide order dated 25.02.2022 as noted earlier. Earlier directions were reiterated and compensation levied in some matters but in the present matter, notice to the affected establishments was issued so that principles of natural justice are followed.

21. In the light of rampant violations as found above, further question is what further course of action is to be adopted. As already observed, extent of compliance is only to the extent of 3 % and established non-compliance is more than 70%. There is a grey area of about 25% for want of information being furnished or collected.

Conclusion and directions

22. Under the circumstances, case appears to be made out for directing sealing of all establishments operating without mandatory consents to operate as per Water Act, till compliance and registering criminal cases for theft of groundwater against owners of the establishments. We have already referred to, in para 18 above, the law on the point that ground water vests in the State and extraction is not permissible without consent of the State. Further, such extraction can only be on payment of laid down charges. There is also need to recover compensation for illegal drawal of groundwater equal to the cost of such water with deterrent element with reference to the turnover of such establishment and also equal to the cost of restoring the environment. We leave this course to be adopted as per law by concerned statutory authorities.

23. However, we find it necessary to direct deposit of interim compensation atleast at the floor level. We called upon learned Counsel to assist as about the quantum of interim compensation.

Quantum of interim compensation and basis thereof

24. Learned Counsel for UP Jal Nigam suggests that interim compensation may be as per guidelines dated 24.09.2020 (though found to be inadequate by the Tribunal in earlier judgement dated 25.2.2022 in OA176/2015). According to him, such interim compensation should be for atleast five years prior to filing of this application as per section 15 of the NGT Act but in any case from 1.10.2017 to 30.9.2022. It works out to Rs. 50 lakhs per establishment having more than 100 rooms, Rs. 25 lakhs per establishment having 50-100 rooms and Rs. 10 lakhs per establishment having upto 50 rooms. This is calculated at the rate of Rs. 80 per KL/cubic metre, taking consumption to be 350 liters per room per day, which comes to be Rs. 10,000 per room per year. For 100 rooms, it will be Rs. 10 lakhs per year and for five years Rs. 50 lakhs. Same basis applies to other calculations. No other basis is suggested by any learned Counsel. We find the suggestion to be acceptable.

25. After hearing learned Counsel for the appearing establishments, we direct interim compensation at above rate be deposited by all the establishments identified as extracting groundwater without permission as well those not having consents to operate under the Water Act. Any earlier deposit will be adjusted in the interim compensation, subject to verification by the District Magistrate. This will be without prejudice to further action by statutory regulators as per law. Deposit may be made within one month with the respective District Magistrates, failing which theft cases be registered against the concerned establishments and borewells sealed. The

compensation deposited will be kept in separate accounts by the District Magistrates for utilisation in accordance with the respective District Environment Plans within six months for improving water quantity and quality, restoring water bodies and taking other relevant measures in their respective Districts. This task may be given specifically to an officer of level of ADM, who may report to the District Environment Committee already constituted as per directions of this Tribunal dated 26.09.2019 in OA No. 360/2018, *Shree Nath Singh vs. Union of India & Ors.*

26. We also direct the joint Committee constituted by CGWA, mentioned in para 11 above, to assess final compensation as per above guidelines, after giving opportunity to the concerned establishments, within three months. Any party aggrieved by such orders can take their statutory or other remedies as per law. This order may be served by the Committee by email on all the identified violators individually within one week.

27. We further direct the Committee constituted by CGWA as mentioned above in para 11 may verify the compliance status in respect of establishments for whom such status has not been so far verified either on account of such establishments being closed or having not furnished the information. This may be done within one month. On such verification, above course of action may be followed for them.

28. Action may also be taken for the establishments having not taken requisite consents under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

29. We further direct that while granting consents, requirement of installing digital water metres connected to central servers may be laid down. Concerned establishment may be required to furnish an 'Appraisal report' with regard to the quantity of ground water available for extraction

in the area and replenishment measures proposed by the concerned establishment such as rain water harvesting, sewage treatment, use of treated sewage. Such Appraisal report may be duly verified by the State PCB by an appropriate mechanism. Such project proponents may also undertake measures to compensate environment, particularly augmenting water quantity and improve water quality by afforestation, education and other measures which may be mentioned in the consent conditions and NOCs for extraction of ground water. Further, in respect of establishments having water supply from the local bodies and also extracting ground water, there should be separate digital metres in respect of both sources.

30. We also direct the concerned statutory regulators to look into and regulate use of potable water for non-contact purposes for which non potable water can be used to augment availability of potable water for drinking. If consents/NOCs are not applied for within one month, the establishments may be closed by the State PCB. If filed, such applications may be examined within next one month. Consent mechanism may also cover conditions in terms of order of this Tribunal dated 23.07.2020 in O.A. No. 400/2017, *Westend Green Farms Society vs. Union of India & Ors.* applicable to such establishments.

31. The States other than Uttar Pradesh may also study above directions and take further action by issuing necessary SOP through their Water Resources Departments and State PCBs within one month from today.

32. Though opportunity of hearing was available to all the affected parties as they have been issued notices by PCB/DMs about present proceedings and will also have opportunity to present their respective cases before the joint Committee, any party aggrieved by the above order, who claims that opportunity of being heard was not given by the Tribunal, is

free to avail such opportunity by moving an application in the present matter, apart from statutory remedies against assessment/recovery of compensation.

33. Report of status of compliance as on 30.04.2023 may be filed by the UP State PCB, after compiling the relevant data from the concerned District Magistrates by 15.05.2023 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.

List for further consideration on 03.07.2023.

A copy of this order be forwarded to Chief Secretaries of all the States/UTs by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

October 17, 2022
Original Application No. 438/2018
AB

Item No. 02

Court No. 1

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

(BY VIDEO CONFERENCING)

I. A. No. 339/2022
IN
Original Application No. 438/2018

Arti Applicant
Versus
Central Ground Water Authority & Ors. Respondent

Hotel and Restaurant Association
of Northern India:

Applicant in I. A. No. 339/2022

Date of hearing: 17.01.2023

**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. Dhruv Mehta, Senior Advocate with Mr. Talha Abdul Rahman,
Advocate for Applicant (Hotel & Restaurant Association of Northern India)
in I.A 339/2022

ORDER

1. The application has been filed by "Hotel and Restaurant Association", claiming to be a 'Section 8 Company' with 322 Members from UP, for recall of the order of this Tribunal dated 17.10.2022 in *OA No. 438/2018, Arti vs. Central Ground Water Authority & Ors.*
2. By the said order, the Tribunal dealt with the issue of compliance of judgement of the Hon'ble Supreme Court in *MC Mehta v. UOI, (1997) 11*

SCC 312 requiring regulation of withdrawal of ground water for sustainable water resource management. The Tribunal noted that while a specialised regulatory agency – CGWA has been created with powers of Central Government under section 5 of Environment Protection Act, 1986, other statutory regulators, including the District Magistrates and the Pollution Control Boards have yet to perform their respective roles effectively. Regulation of groundwater extraction remained far cry and depletion of groundwater continues unabated which may result in irreversible situation, unless stringent regulation is enforced.

3. With regard to individual grievance in the application, the Tribunal observed that though the grievance was against unauthorized withdrawal of ground water by hotels in Ghaziabad, larger issue of the problem in major cities of the UP was required to be looked into. On enquiry by the fact finding regulators, it was found that there is large scale illegal extraction of groundwater in the entire State, including in areas scarce in terms of availability of groundwater. The Tribunal observed that depletion of ground water results in alkalinity and salinity of soil, remediation of may be difficult except at very huge cost. Precautionary principle requires prohibiting unregulated withdrawal and careful appraisal for permitting such withdrawal subject to ensuring replenishment. Further, groundwater being mineral vested in State, its withdrawal without permission was theft for which action under criminal law was called for. Statutory authorities have to perform their duty of protecting the scarce natural resource under public trust doctrine.

4. Considering the initial factual report from CGWA, State PCB and U.P Jal Nigam, it was directed that apart from named establishments, violations by similar other establishments in nine major cities of U.P - Lucknow, Kanpur, Agra, Meerut, Gautam Buddha Nagar, Bareilly,

Varanasi, Jhansi, and Gorakhpur may be verified. Verification reports dated 24.09.2022, 26.09.2022 filed in pursuance of the said directions were considered vide order dated 17.10.2022 which were to the effect that almost 70 % of establishments were non compliant. In view of the said factual position, the Tribunal found it necessary to issue directions for remedial action of recovery of interim compensation at floor level for illegal drawl of ground water equal to the assessed approximate cost of water so drawn. It was further directed that final compensation be fixed after giving opportunity to the affected parties. Apart from opportunity to represent their grievance to the authorities, the Tribunal gave liberty to any aggrieved party to move this Tribunal with their grievance. Operative part of the order is reproduced below:-

“12. Summary of inspected hotels/guest house/marriage halls, etc is as follows:-

“Table: Summary of inspected Hotels/ Guest House/ Marriage Halls etc.

| Sl. No. | District/ City | Total No. of Hotel/ Banquet Hall/ etc. (targets) | No. of Hotels who have not obtained NOCs | No. of Hotel who have obtained NOCs | No. of Hotel could not be located | No. of Hotels do not exist | No. of Hotels who have not provided the data | No. of Hotels repeated in the list | No. of Hotels which do not require NOCs due to having supply through water supplying agencies. |
|---------|----------------|--|--|-------------------------------------|-----------------------------------|----------------------------|--|------------------------------------|--|
| 1. | Agra | 424 | 386 | 10 | 0 | 18 | 0 | 0 | 10 |
| 2. | Bareilly | 117 | 44 | 27 | 27 | 0 | 0 | 4 | 15 |
| 3. | G.B. Nagar | 34 | 20 | 0 | 2 | 0 | 0 | 0 | 12 |
| 4. | Gorakhpur | 131 | 119 | 1 | 0 | 10 | 0 | 0 | 1 |
| 5. | Jhansi | 86 | 75 | 0 | 3 | 2 | 3 | 0 | 3 |
| 6. | Kanpur | 233 | 145 | 0 | 0 | 73 | 6 | 9 | 0 |
| 7. | Lucknow | 333 | 148 | 7 | 58 | 97 | 15 | 0 | 8 |
| 8. | Meerut | 132 | 106 | 0 | 0 | 3 | 3 | 0 | 20 |
| 9. | Varanasi | 413 | 364 | 10 | 3 | 0 | 17 | 4 | 15 |

| | | | | | | | | | | |
|--|-------|------|------|----|----|-----|----|----|----|---|
| | Total | 1903 | 1407 | 55 | 93 | 203 | 44 | 17 | 84 | ” |
|--|-------|------|------|----|----|-----|----|----|----|---|

Analysis and finding by the Tribunal

13. ***From the above table compiled by the CGWA with the assistance of District Magistrates, it is patent that more than 70% of establishments have been found to be extracting ground water illegally. Verified compliance status is said to be only for 55 units out of 1903, which is less than 3%. Thus, situation is alarming as shown by rampant violations, defeating the directions of the Hon’ble Supreme Court in M.C. Mehta v. Union of India & Ors. (1997) 11 SCC 312 requiring control and regulation of groundwater extractions. While a specialized body has been constituted in the form of CGWA, it is difficult to say that it is effective as expected. Observations of the Hon’ble Supreme Court that management of water resources is to achieve overall aspirational goal of sustainable development on principles of inter and intra generational equity, the precautionary principle, conservation of natural resources and environmental protection appear to have been completely ignored.***

14. The Authority directed to be constituted by the Hon’ble Supreme Court was for the following mandate:-

“7. ... The mandate of the authority needs to include the following:

- * To deploy river basins as the basis for regional planning for sustainable water resource management (along with commensurate land use).
- * To prepare medium and long-term national land use plans inter alia including agricultural practices, human settlement patterns and industrial typology in consultation with Ministries/Departments concerned **based on the regional water supportive capacity.**
- * To assess the present irrigation practices and cropping patterns, with respect to high water consuming crops and lay down National Agricultural Water Use Policy to **encourage judicious use of water resources.**
- * **To keep under review groundwater levels and quality, and surface water quantity and quality to devise and implement pragmatic strategies at plan and programme levels.**
- * **To ensure maintenance of minimum flows in the rivers so as to fulfil the riparian rights, to protect the flood plains, to as also to protect the vital ecological functions of the rivers.**
- * To ensure techno-economic feasibility and to implement programmes on **reuse of appropriately treated sewage for agriculture, reuse of industrial wastewaters as industrial process water**, use of treated sewage in social forestry and public parks in municipal areas and **reuse of**

treated wastewater in new housing complexes for non-consumptive usages.

- * *To protect, conserve and augment traditional water retaining structures.*
- * *To protect, conserve and augment natural and manmade wetlands in the country.*
- * *To promote rain water harvesting in human settlement practices, particularly in cities with more than 10 lakh population in arid/semi-arid regions.*
- * *To promote and implement modern and traditional water harvesting technologies to ensure minimal expenditure in groundwater harnessing.*
- * *To design and implement programmes to **arrest alarming rates of decline in snowline in the country.***
- * *To ensure catchment area treatment, including construction of check dams, contour bunding, control of river bank erosion and plantation of endemic fast-growing tree species to arrest soil and water loss in all river basins.*
- * *To ensure implementation of afforestation programmes for achieving a minimum of 33% forest cover as per the National Forest Policy, 1988.*
- * ***To prepare and implement guidelines on water rate structure for various water usages commensurate with the production and scarcity value of the resource.***
- * *To ensure **community participation** with a view to harnessing traditional knowledge at all stages in the holo-logical approach to water resource management.”*

15. *With evidence of large-scale illegal extraction of ground water and data of depleting ground water levels, stringent measures are required for sustainable water management. **We have no other option but to hold that there is all round failure of the statutory authorities in complying with the mandate of judgement of the Hon’ble Supreme Court.***

16. ***This Tribunal has been dealing with the issue since 2012. In spite of monitoring for ten years, the rampant non-compliance is continuing. There is unwillingness or neglect by the Authorities in performing their statutory functions which has also been recorded in earlier orders referred to above. There is consequential adverse effect on flow of river and streams which is obviously leading to disruption of aquatic ecosystems and food security. Salinization of soil is another well-known adverse consequences.***

17. ***It remains patent that CGWA is ill-equipped to handle the problem. Statutory framework is required to be revamped to give effect to the directions of the Hon’ble Supreme Court. The appraisal process, essential component of regulatory powers, stands delegated to the District Magistrates or other authorities,***

without such authorities being equipped or mandated to conduct necessary appraisal. The result is that either groundwater extraction is taking place without any permission and with no adverse consequences or such approvals are being granted mechanically as a matter of course unconditionally or with conditions which are not monitored. Alternatives to ground water extraction in the form of re-use of treated water for secondary purposes are not being adequately considered. This is resulting in shortage of potable water for drinking purposes.

18. *Vide order dated 20.07.2020 in Original Application No. 176/2015, Shailesh Singh v. Hotel Holiday Regency, Moradabad & Ors., the situation was reviewed exhaustively. The Tribunal expressed disappointment with the approach of the Authorities contrary to the mandate as per judgement of the Hon'ble Supreme Court. Some of the observations in the said order are:-*

“27. In terms of the Tribunal’s previous orders (dated 03.01.2019, Paras 29 and 31¹, and dated 11.09.2019, Para 24²), 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?***

¹ Quoted supra, Para 20

² Quoted supra Para 23

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.”

Paras 31 to 35...xxx.....xxx.....xxx

Review of pertinent case law re. Sustainable Development

36. The principle of sustainable development is well established. We may refer to certain well-known decisions. In (1996) 3 SCC 212, Indian Council for Enviro-Legal Action and Ors. v. Union of India & Ors., the Hon'ble Supreme Court considered and explained the principle and laid down that compensation has to cover cost of remediation.³ The report in the present case is not compliant with this

³ ¶ 67, 68 & 70

principle as observed above. The principle of sustainable development, as a balancing concept, has been further discussed and explained in (1996) 5 SCC 647, *Vellore Citizen's Welfare Forum v. Union of India & Ors.*⁴ The Public Trust Doctrine has been discussed and explained in (1997) 1 SCC 388, *M.C. Mehta v. Kamal Nath & Ors.*⁵ There **can be no exemption to industries against sustainable development principle** as held in (2001) 2 SCC 62, *A.P. Pollution Control Board II v. Prof. M.V. Nayudu (Retd.) & Ors.*⁶ In (2004) 10 SCC 201, *State of W.B. v. Kesoram Industries Ltd. & Ors.*, there are observations to the effect that **deep underground water belongs to the State and is governed by the Public Trust Doctrine** (Para 387). Use of water for irrigation purpose may be permissible but it cannot affect reuse of water by others. Reference was made to the judgement of the Kerala High Court in (2004) 1 KLT 731 restraining *Hindustan Coca Cola Beverage* from using groundwater for its plant. It was observed that the State was under duty to protect ground water against excessive exploitation (para 389). The issue involved therein was justifiability of levy of cess on minor minerals by the Central Govt which was upheld by majority. These observations are in the minority judgement but on this issue, there is no contra view in majority judgement. In (2006) 3 SCC 549, *Intellectual Forum, Trupathi v. State of A.P. & Ors.*, the said principles have been reiterated.⁷ We may refer to the need for impact assessment to give effect to sustainable development and precautionary principle. In recent judgement in (2019) 15 SCC 401, *Hanuman Laxman Aroskar v. Union of India*⁸, the environmental rule of law has been discussed as follows:

“35. The Constitution (Forty-second Amendment) Act, 1976, which came into force with effect from 3-1-1977, inserted Article 48-A to the Constitution which mandates that the State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51-A(g) of the Constitution places a corresponding duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. Following the decisions taken at the United Nations Conference on the Human Environment held at Stockholm (the Stockholm Conference) in June 1972 in which India participated, Parliament enacted the Environment (Protection) Act, 1986 to protect and improve the environment and prevent hazards to human beings, other living creatures, plants and property.

144. **The environmental rule of law** provides an essential platform underpinning the four pillars of sustainable development — economic, social, environmental and peace [United Nations Environment Programme, *First Environmental Rule of Law Report*.... The environmental rule of law becomes a priority particularly when **we acknowledge that the benefits of environmental rule of law extend far beyond the environmental sector**. While the most direct effects are on protection of the environment, it also strengthens rule of law

⁴ ¶ 11 to 15

⁵ ¶ 25 & 34

⁶ ¶ 44

⁷ ¶ 68 to 82

⁸ ¶ 35, 42, 144, 149 & 150

more broadly, **supports sustainable economic and social development, protects public health**, contributes to peace and security by avoiding and defusing conflict, and protects human and constitutional rights.... Similarly, the rule of law in environmental matters is **indispensable “for equity in terms of the advancement of the Sustainable Development Goals (SDGs)**, the provision of fair access by assuring a rights-based approach, and the promotion and protection of environmental and other socioeconomic rights

149. In 2015, the International Community adopted the 2030 Agenda for Sustainable Development and its 17 SDGs. These 17 goals are:

- (i) Eradication of poverty;
- (ii) Eradication of hunger;
- (iii) Good health and well-being;
- (iv) Quality education;
- (v) Gender equality;
- (vi) **Clean water and sanitation;**
- (vii) Affordable and clean energy;
- (viii) Decent work and economic growth;
- (ix) Industry, innovation and infrastructure;
- (x) Reduced inequalities;
- (xi) Sustainable cities and communities;
- (xii) Sustainable consumption and production;
- (xiii) Climate action;
- (xiv) Protecting life below water;
- (xv) Life on land;
- (xvi) Peace, justice and strong institutions; and
- (xvii) Partnerships to achieve the goals.

150. Each of these goals has a vital connection to the others. Together, they provide an agenda for human development: development in a manner which accords adequate protection to the environment. UNEP recognises that the natural environment—forests, soils and wetlands—contributes to the management and **regulation of water availability and water quality**, strengthening the resilience of watersheds and complements investments in physical infrastructure and institutional and regulatory arrangements for water access and disaster preparedness.”

37. In a recent judgement, Madras High Court⁹ considered the issue of regulation of the groundwater¹⁰. It was also observed that drawal of groundwater without authority will be criminal offence of theft and mischief under Section 379 and 425 IPC. Such extraction must be scientifically monitored District wise with punitive consequences against violations. Following order was passed:

- “(1) The impugned order of regulation issued by the 1st respondent in G.O.Ms.No.142, dated 23.07.2014 is confirmed.

⁹ Dated 03.10.2018, M/S. Sarooja Agro Foods v. The Chief Engineer

¹⁰ ¶ 69 to 82

- (2) *The respondents are directed not to grant licence, No Objection Certificate (NOC) or permission for the commercial establishments / person to extract ground water for commercial usage in the absence of fixation of water Flow Meter on the Board outlet, which is to be inspected.*
- (3) *The respondents are directed to inspect the functional quality and other established standards of the Flow Meters fixed by the persons, who all are applying for permissions / No Objection Certificate (NOC) and at the time of granting permission / No objection Certificate (NOC), the Flow Meter should be sealed properly by the respondents / Public Works Department (PWD) officials.*
- (4) *The Flow Meter must be sealed in such a way to prevent any tampering by any person. Quantum of Water to be extracted by individuals, are to be fixed periodically as per the assessment to be made by the P.W.D. Authorities as per the Regulations.*
- (5) *The respondents are directed to measure the quantum of water extracted by the establishments / persons by taking meter reading every Month and accordingly, the same is to be regulated.*
- (6) *The respondents are directed to follow all other terms and conditions fixed for grant of licence / permission for Extraction of Ground Water for commercial usage as per the guidelines issued in G.O.Ms.No.142, Public Works Department dated 23.07.2014.*
- (7) ***The respondents are directed to register the Police complaint in the event of identifying any excess Extraction of Ground Water by tampering the Flow Meters sealed or by any other means by any person. The case must be registered Under Section 379 of Indian Penal Code (IPC). In addition, if the water is wasted for causing wrongful loss, then Section 425 of the Indian Penal Code (IPC) will also attract.***
- (8) ***The respondents are directed to suspend the licenses by issuing show cause notices and by providing an opportunity to the persons, who have involved in the offence of theft or violation of all other conditions stipulated in the Government Regulations, or if a criminal case is registered. If any person is convicted, then he shall be permanently debarred from getting licence for Extraction of Ground Water.***
- (9) ***The District Collectors of all the Districts in the State of Tamil Nadu are directed to issue suitable directions / orders to the Revenue Divisional Officer, Tahsildars and all other officials concerned to inspect and monitor the Extraction of Ground Water by the persons for commercial usage.***
- (10) *The District Collectors of all the Districts are directed to constitute monitoring committees to monitor the Extraction of Ground Water by the individuals for commercial purposes.*
- (11) *Each Monitoring Committee appointed by the District Collector concerned, shall consists minimum of five*

persons and the Committee is empowered to monitor the Extraction of Ground Water for commercial purposes by the individual persons and commercial establishments.

(12) **The Monitoring Committee shall consist of the following persons:**

- (i) **The District Environmental Engineer from Pollution Control Board of the State of Tamil Nadu.**
- (ii) **One qualified Public Works Department (PWD) Engineer from Water Resources Department.**
- (iii) **The Assistant Director of Zoology and Mining of the State Government.**
- (iv) **The Revenue Divisional Officer of the concerned locality.**
- (v) **One nominee from the office of the Chief Engineer, Central Ground Water Board of the Government of India.**

(13) *The Monitoring Committee is entitled to collect proofs and documents in respect of the Extraction of Ground Water illegally and excessively by any person and submit a complaint / report to the District Collector concerned, who in turn, after verifying the same, shall register a complaint with the Jurisdictional Police for registering a criminal case under the provisions of Indian Penal Code (IPC).*

(14) *It is needless to State that, only in the event of compliance of the regulations and conditions imposed in this order, the persons / establishments shall be allowed to extract the Ground water for commercial usage or for commercial purposes.*

(15) *The 1st respondent / Secretary, Public Works Department is directed to issue consolidated instructions in this regard based on the order passed in the present writ petitions to all the District Collectors, enabling them to implement the Court orders promptly.”*

19. *Directions issued by the Tribunal in the said order are:-*

“

39. *In the light of the above discussion, we direct as follows:*

- a. *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.*
- b. *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.

- c. 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).
- d. 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.
- e. As observed in para 0(a) and 29(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.”**

20. The Tribunal further considered the matter vide order dated 25.02.2022 as noted earlier. Earlier directions were reiterated and compensation levied in some matters but in the present matter, notice to the affected establishments was issued so that principles of natural justice are followed.

21. In the light of rampant violations as found above, further question is what further course of action is to be adopted. As already observed, extent of compliance is only to the extent of 3 % and established non-compliance is more than 70%. There is a grey area of about 25% for want of information being furnished or collected.

Conclusion and directions

22. ***Under the circumstances, case appears to be made out for directing sealing of all establishments operating without mandatory consents to operate as per Water Act, till compliance and registering criminal cases for theft of groundwater against owners of the establishments. We have already referred to, in para 18 above, the law on the point that ground water vests in the State and extraction is not permissible without consent of the State. Further, such extraction can only be on payment of laid down charges. There is also need to recover compensation for illegal drawal of groundwater equal to the cost of such water with deterrent element with reference to the turnover of such establishment and also equal to the cost of restoring the environment. We leave this course to be adopted as per law by concerned statutory authorities.***

23. *However, we find it necessary to direct deposit of interim compensation atleast at the floor level. We called upon learned Counsel to assist as about the quantum of interim compensation.*

Quantum of interim compensation and basis thereof

24. ***Learned Counsel for UP Jal Nigam suggests that interim compensation may be as per guidelines dated 24.09.2020 (though found to be inadequate by the Tribunal in earlier judgement dated 25.2.2022 in OA2015). According to him, such interim compensation should be for atleast five years prior to filing of this application as per section 15 of the NGT Act but in any case from 1.10.2017 to 30.9.2022. It works out to Rs. 50 lakhs per establishment having more than 100 rooms, Rs. 25 lakhs per establishment having 50-100 rooms and Rs. 10 lakhs per establishment having upto 50 rooms. This is calculated at the rate of Rs. 80 per KL/cubic metre, taking consumption to be 350 KL per room per day, which comes to be Rs. 10,000 per room per year. For 100 rooms, it will be Rs. 10 lakhs per year and for five years Rs. 50 lakhs. Same basis applies to other calculations. No other basis is suggested by any learned Counsel. We find the suggestion to be acceptable.***

25. *After hearing learned Counsel for the appearing establishments, we direct interim compensation at above rate be deposited by all the establishments identified as extracting groundwater without permission as well those not having consents to operate under the Water Act. Any earlier deposit will be adjusted in the interim compensation, subject to verification by the District Magistrate. This will be without prejudice to further action by statutory regulators as per law. Deposit may be made within one month with the respective District Magistrates, failing which theft cases be registered against the concerned establishments and borewells sealed. **The compensation deposited will be kept in separate accounts by the District Magistrates for utilisation in accordance with the respective District Environment Plans within six months for improving water quantity and quality, restoring water bodies and taking other relevant measures in their respective Districts. This task may be given specifically to an officer of level of ADM, who may report to the District Environment Committee already constituted as per directions of***

this Tribunal dated 26.09.2019 in OA No. 360/2018, Shree Nath Singh vs. Union of India & Ors.

26. We also direct the joint Committee constituted by CGWA, mentioned in para 11 above, to assess final compensation as per above guidelines, after giving opportunity to the concerned establishments, within three months. Any party aggrieved by such orders can take their statutory or other remedies as per law. This order may be served by the Committee by email on all the identified violators individually within one week.

27. We further direct the Committee constituted by CGWA as mentioned above in para 11 may verify the compliance status in respect of establishments for whom such status has not been so far verified either on account of such establishments being closed or having not furnished the information. This may be done within one month. On such verification, above course of action may be followed for them.

28. Action may also be taken for the establishments having not taken requisite consents under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

29. **We further direct that while granting consents, requirement of installing digital water metres connected to central servers may be laid down. Concerned establishment may be required to furnish an 'Appraisal report' with regard to the quantity of ground water available for extraction in the area and replenishment measures proposed by the concerned establishment such as rain water harvesting, sewage treatment, use of treated sewage. Such Appraisal report may be duly verified by the State PCB by an appropriate mechanism. Such project proponents may also undertake measures to compensate environment, particularly augmenting water quantity and improve water quality by afforestation, education and other measures which may be mentioned in the consent conditions and NOCs for extraction of ground water. Further, in respect of establishments having water supply from the local bodies and also extracting ground water, there should be separate digital metres in respect of both sources.**

30. We also direct the concerned statutory regulators to look into and regulate use of potable water for non-contact purposes for which non potable water can be used to augment availability of potable water for drinking. If consents/NOCs are not applied for within one month, the establishments may be closed by the State PCB. If filed, such applications may be examined within next one month. Consent mechanism may also cover conditions in terms of order of this Tribunal dated 23.07.2020 in O.A. No. 400/2017, Westend Green Farms Society vs. Union of India & Ors. applicable to such establishments.

31. The States other than Uttar Pradesh may also study above directions and take further action by issuing necessary SOP through their Water Resources Departments and State PCBs within one month from today.

32. ***Though opportunity of hearing was available to all the affected parties as they have been issued notices by PCB/DMs about present proceedings and will also have opportunity to present their respective cases before the joint Committee, any party aggrieved by the above order, who claims that opportunity of being heard was not given by the Tribunal, is free to avail such opportunity by moving an application in the present matter, apart from statutory remedies against assessment/recovery of compensation.***

33. *Report of status of compliance as on 30.04.2023 may be filed by the UP State PCB, after compiling the relevant data from the concerned District Magistrates by 15.05.2023 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."*

5. In the application now filed, case of the Association is that scale of compensation laid down by this Tribunal is without any scientific basis and all hotels have been wrongly treated at par which amounts to treating unequals as equals, to the detriment of very small units, exempted as per Government Notification dated 24.09.2020. Interim compensation is adhoc, unrelated to actual consumption of water. There is no basis for assuming that water used is 350 KL per day per hotel room and that all rooms were occupied. COVID period has not been excluded. The rate for water assessed by the Tribunal @ Rs. 80 per KL (8 paise per litre) is excessive.

6. We have heard Shri Dhruv Mehta, Senior Advocate appearing in support of the application. Apart from averments in the application summed up above, Shri Mehta submitted that many of the members of the Association may be very small with hotels of 5 to 7 rooms, consuming less than 10 cubic mtr. water per day, falling in exempted category. According to data mentioned in the report submitted to this Tribunal, many hotels were drawing only 4 KL water per day.

7. On due consideration, we do not find any merit in the application. The Association has deliberately withheld details and particulars of the

Members it represents though such information is readily available with it for which adverse inference has to be drawn. While withholding such information, case is sought to be built that its members are too small, not using much water and they be assumed to be of exempted category. For building such case, there is no factual foundation. Further, no meters have been installed by the hotels to ascertain the quantum of water drawn and in absence of it, there cannot be presumption in their favour, as sought to be drawn. Thus, there is no option but to make best judgment assessment of the quantum of water drawn. It is reasonable to take the figure of 350 KL per room (taking double occupancy per room) which is based on estimated assessment of water consumption of 180 KL per head in hotels as per "Indian Standard Code of Basic Requirements for Water Supply, Drainage and Sanitation", Annexure A-4 to the application, which is part of Estimation of water requirement for drinking and domestic use (Source: NBC 2016, BIS) published by Central Ground Water Authority Jam Nagar House, New Delhi. Scale of compensation is reasonable being @ Rs. 80 per KLD, 8 paisa per litre. Further, compensation fixed is @ Rs. 10,000 per room per year (Rs.800 per month and Rs.30/- per day). This rate can by no stretch of imagination be held to be excessive particularly for those who have deliberately avoided having any meters and record which itself may call for more deterrent action for which liberty has been reserved after giving due opportunity.

8. There is thus neither any violation of natural justice nor any arbitrariness in direction for interim compensation by the Tribunal which may need to be recalled, as prayed for in the application. As noted earlier, the applicant has not come with clean hand with due disclosure of the information available with it. Its members are acknowledged violators in terms of not maintaining record and not installing meters and drawing

groundwater without any regulation – statutory or even voluntary. Conduct of the applicant cannot, in any manner, be held to be consistent with the directions of the Hon'ble Supreme Court and Fundamental Duty under Article 51 (A) (g) of the Constitution. There is fast depletion of ground water in the area in which the hotels are located which calls for stringent remedial measures. No hardship is caused to the members of the applicant association by paying nominal charges for the water extracted illegally which is a resource vested in the people and required to be managed by the State under the doctrine of 'Public Trust'. Compensation fixed is at bare minimum level though violations are immense. Even if covid period benefit is not extended to violators, the amount fixed being minimum, no hardship is caused. Violations have gone on and are continuing to the illegal benefit of violators at the cost of society and even next generation which cannot remain unchecked for ever.

The application is accordingly dismissed.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

January 17, 2023
I. A. No. 339/2022 In
Original Application No. 438/2018
SN

Item No. 02

Court No. 1

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

Review Application No. 05/2023

In

Original Application No. 438/2018
(I.A. No. 31/2023 & I.A. No. 32/2023)

Arti

Applicant

Versus

Central Ground Water Authority & Ors.

Respondent(s)

Good Luck Resort

Review Applicant

Date of hearing: 01.02.2023

**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
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

IN CHAMBER BY CIRCULATION

ORDER

1. This application seeks review of order of this Tribunal dated 17.10.2022 in the main matter. By the said order, the Tribunal considered remedial action against non compliance of judgment of the Hon'ble Supreme Court in MC Mehta v. UOI, (1997) 11 SCC 312 for regulation of indiscriminate boring and withdrawal of ground water for by hotels named in the said order. On verification of facts, finding that more than 70% establishments were illegally extracting water and there was failure to enforce the mandate of judgment of the Hon'ble Supreme Court, the Tribunal directed coercive measures for compliance of norms including recovery of compensation on 'Polluter Pays' principle at scale mentioned in the order. The operative part of the order is reproduced below:-

“Conclusion and directions

22. Under the circumstances, case appears to be made out for directing sealing of all establishments operating without mandatory consents to operate as per Water Act, till compliance and registering criminal cases for theft of groundwater against owners of the establishments. We have already referred to, in para 18 above, the law on the point that ground water vests in the State and extraction is not permissible without consent of the State. Further, such extraction can only be on payment of laid down charges. There is also need to recover compensation for illegal drawal of groundwater equal to the cost of such water with deterrent element with reference to the turnover of such establishment and also equal to the cost of restoring the environment. We leave this course to be adopted as per law by concerned statutory authorities.

23. However, we find it necessary to direct deposit of interim compensation atleast at the floor level. We called upon learned Counsel to assist as about the quantum of interim compensation.

Quantum of interim compensation and basis thereof

24. Learned Counsel for UP Jal Nigam suggests that interim compensation may be as per guidelines dated 24.09.2020 (though found to be inadequate by the Tribunal in earlier judgement dated 25.2.2022 in OA2015). According to him, such interim compensation should be for atleast five years prior to filing of this application as per section 15 of the NGT Act but in any case from 1.10.2017 to 30.9.2022. It works out to Rs. 50 lakhs per establishment having more than 100 rooms, Rs. 25 lakhs per establishment having 50-100 rooms and Rs. 10 lakhs per establishment having upto 50 rooms. This is calculated at the rate of Rs. 80 per KL/cubic metre, taking consumption to be 350 KL per room per day, which comes to be Rs. 10,000 per room per year. For 100 rooms, it will be Rs. 10 lakhs per year and for five years Rs. 50 lakhs. Same basis applies to other calculations. No other basis is suggested by any learned Counsel. We find the suggestion to be acceptable.

25. After hearing learned Counsel for the appearing establishments, we direct interim compensation at above rate be deposited by all the establishments identified as extracting groundwater without permission as well those not having consents to operate under the Water Act. Any earlier deposit will be adjusted in the interim compensation, subject to verification by the District Magistrate. This will be without prejudice to further action by statutory regulators as per law. Deposit may be made within one month with the respective District Magistrates, failing which theft cases be registered against the concerned establishments and borewells sealed. The compensation deposited will be kept in separate accounts by the District Magistrates for utilisation in accordance with the respective District Environment Plans within six months for improving water quantity and quality, restoring water bodies and taking other relevant measures in their respective Districts. This task may be given specifically to an officer of level of ADM, who may report to the District Environment Committee already constituted as per directions of this

32. *Though opportunity of hearing was available to all the affected parties as they have been issued notices by PCB/DMs about present proceedings and will also have opportunity to present their respective cases before the joint Committee, any party aggrieved by the above order, who claims that opportunity of being heard was not given by the Tribunal, is free to avail such opportunity by moving an application in the present matter, apart from statutory remedies against assessment/recovery of compensation.*

33. *Report of status of compliance as on 30.04.2023 may be filed by the UP State PCB, after compiling the relevant data from the concerned District Magistrates by 15.05.2023 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."*

2. In the present application filed by M/s Good Luck Resort, Respondent No. 124 in the Original Application, it is stated that compensation levied by the Tribunal is excessive.

3. We do not find any merit in the Review Application as the matter has been duly considered and rehearing is not permissible.

4. Compensation has been levied at a conservative floor level rate at a uniform scale based on number of rooms in the hotel.

5. Similar grievance was considered and rejected recently vide order dated 17.01.2023 in I.A. No. 339/2022 in O.A. No. No. 438/2018 with following observations:-

"5. In the application now filed, case of the Association is that scale of compensation laid down by this Tribunal is without any scientific basis and all hotels have been wrongly treated at par which amounts to treating unequals as equals, to the detriment of very small units, exempted as per Government Notification dated 24.09.2020. Interim compensation is adhoc, unrelated to actual consumption of water. There is no basis for assuming that water used is 350 KL per day per hotel room and that all rooms were occupied. COVID period has not been excluded. The rate for water assessed by the Tribunal @ Rs. 80 per KL (8 paise per litre) is excessive.

6. We have heard Shri Dhruv Mehta, Senior Advocate appearing in support of the application. Apart from averments in the application summed up above, Shri Mehta submitted that many of the members of the Association may be very small with hotels of 5 to 7 rooms, consuming less than 10 cubic mtr. water per day, falling in exempted

category. According to data mentioned in the report submitted to this Tribunal, many hotels were drawing only 4 KL water per day.

7. On due consideration, we do not find any merit in the application. The Association has deliberately withheld details and particulars of the Members it represents though such information is readily available with it for which adverse inference has to be drawn. While withholding such information, case is sought to be built that its members are too small, not using much water and they be assumed to be of exempted category. For building such case, there is no factual foundation. **Further, no meters have been installed by the hotels to ascertain the quantum of water drawn and in absence of it, there cannot be presumption in their favour, as sought to be drawn. Thus, there is no option but to make best judgment assessment of the quantum of water drawn. It is reasonable to take the figure of 350 KL per room (taking double occupancy per room) which is based on estimated assessment of water consumption of 180 KL per head in hotels as per "Indian Standard Code of Basic Requirements for Water Supply, Drainage and Sanitation", Annexure A-4 to the application, which is part of Estimation of water requirement for drinking and domestic use (Source: NBC 2016, BIS) published by Central Ground Water Authority Jam Nagar House, New Delhi. Scale of compensation is reasonable being @ Rs. 80 per KLD, 8 paise per litre. Further, compensation fixed is @ Rs. 10,000 per room per year (Rs.800 per month and Rs.30/- per day). This rate can by no stretch of imagination be held to be excessive particularly for those who have deliberately avoided having any meters and record which itself may call for more deterrent action for which liberty has been reserved after giving due opportunity.**

8. There is thus neither any violation of natural justice nor any arbitrariness in direction for interim compensation by the Tribunal which may need to be recalled, as prayed for in the application. As noted earlier, the applicant has not come with clean hand with due disclosure of the information available with it. Its members are acknowledged violators in terms of not maintaining record and not installing meters and drawing groundwater without any regulation – statutory or even voluntary. Conduct of the applicant cannot, in any manner, be held to be consistent with the directions of the Hon'ble Supreme Court and Fundamental Duty under Article 51 (A) (g) of the Constitution. **There is fast depletion of ground water in the area in which the hotels are located which calls for stringent remedial measures. No hardship is caused to the members of the applicant association by paying nominal charges for the water extracted illegally which is a resource vested in the people and required to be managed by the State under the doctrine of 'Public Trust'. Compensation fixed is at bare minimum level though violations are immense. Even if covid period benefit is not extended to violators, the amount fixed being minimum, no hardship is caused. Violations have gone on and are continuing to the illegal benefit of violators at the cost of society and even next generation which cannot remain unchecked for ever.**

In view of above, there is no merit in the Review Application which is accordingly dismissed.

All pending I.A.s also stands disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

February 01, 2023
Review Application No. 05/2023
In Original Application No. 438/2018
(I.A. No. 31/2023 & I.A. No. 32/2023)
SN

ITEM NO.7

COURT NO.1

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 Diary No(s).25711/2023

(Arising out of impugned final judgment and order dated 01-02-2023 in RA No. 05/2023, 17-01-2023 in IA No. 339/2022 and 17-10-2022 in OA No. 438/2018 passed by the National Green Tribunal)

M/S. HOTEL RISHABH & ORS.

Petitioner(s)

VERSUS

ARTI & ORS.

Respondent(s)

(WITH IA No.180706/2023-CONDONATION OF DELAY IN FILING and IA No.180704/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.180705/2023-STAY APPLICATION and IA No.180700/2023-EXEMPTION FROM FILING O.T. and IA No.181555/2023-INTERVENTION/IMPLEADMENT and IA No.180699/2023-PERMISSION TO FILE APPEAL and IA No.180707/2023-CONDONATION OF DELAY IN REFILEING / CURING THE DEFECTS and IA No.180701/2023-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.181553/2023-APPROPRIATE ORDERS/DIRECTIONS and IA No.180696/2023-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 22-09-2023 These appeals were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Kavin Gulati, Sr. Adv.
Mr. Avi Tandon, Adv.
Ms. Meghna Tandon, Adv.
Mr. Anish Agarwal, AOR
Mr. Sumit Tandon, Adv.
Mr. Srinivas Vishven, Adv.

For Respondent(s)

**UPON hearing the counsel the Court made the following
O R D E R**

1 In Civil Appeal No 2864 of 2022, on 13 April 2022, the following order was passed (Annexure A-25):

“1. Taking into consideration the Joint Inspection Report dated 24.12.2022, which is duly signed by the members of the Committee including the representatives of the U.P. Pollution Control Board, we are inclined to admit the appeal.

2 The appeal is admitted.

3 Until further orders, the operation of the impugned order as well as the proceedings before the learned Tribunal shall stand stayed.”

2 Thereafter, in the same matter, on 25 April 2022, the following order (Annexure A-21) was passed:

“Issue notice.

There shall be stay of following directions issued by the National Green Tribunal, Principal Bench, New Delhi:

(a) Respondent 1 i.e. M/s. C L Gupta Exports Pvt. Ltd. shall deposit environmental compensation of Rs.50 crores with CPCB within two months and

(f) The Enforcement Directorate may examine the matter in the light of the observations made in the judgment along with provisions of PMLA Act, 2002, wherein environmental laws, i.e., Water Act, 1974 and EP Act, 1986 have been included in Part-A of Schedule I and take appropriate action.”

3 In Civil Appeal No 2901 of 2022, on 19 May 2022, stay of the impugned order was granted (Annexure A-22).

4 In Civil Appeal No 5517-5519 of 2022, on 29 August 2022, the following order was passed (Annexure A-23):

“Issue Notice. To be heard along with Civil Appeal No.2901/2022. There shall be interim stay.

5 In view of the above, the following order is passed:

6 Delay condoned.

7 Issue notice.

8 Pending further orders, there shall be a stay of the operation of the impugned orders dated 17 October 2022, 17 January 2023 and 1 February 2023 of the National Green Tribunal in OA 438 of 2018, IA 339 of 2022 in OA 438 of 2018 and Review Application No 5 of 2023, respectively.

9 Tag with Civil Appeal No 2864 of 2022.

(SANJAY KUMAR-I)
DEPUTY REGISTRAR

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR

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

**ORIGINAL APPLICATION NO. 220/2019
(I.A. No. 184/2021)**

IN THE MATTER OF:

Adil Ansari

S/o Mohd. Naushad Ansari
Add: 2 New Silampur, Garhi Medhu,
New Delhi- 110053

Applicant

Verses

1. M/s C.L Gupta Export Ltd.

18 Km. Stone, Delhi road, Vill- Jivai,
Jyotibaphule Nagar (Amroha),
Uttar Pradesh-244221

2. Uttar Pradesh Pollution Control Board (UPPCB)

Through Its Chairman/Secretary
Building No. TC-12V, Vibhuti Khand,
Gomti Nagar, Lucknow, Uttar Pradesh-226010

3. Central Pollution Control Board (CPCB)

Through Its Chairman/Secretary,
"Parivesh Bhawan" East Arjun Nagar,
Near: Karkarduma Court, Shahdara, Delhi.

4. Central Ground Water Authority (CGWA)

West Block-2, Wing-3, R.K. Puram, Sector-1,
New Delhi-110066

5. District Magistrate

Dist: Amroha,
Uttar Pradesh

Respondent(s)

Counsel for Applicant(s):

In Person

Counsel for Respondent(s):

Mr. A.K. Prasad, Advocate for CGWA
Mr. Pradeep Misra & Mr. Daleep Dhyani, Advocates for UPPCB
Mr. Raj Kumar, Advocate for CPCB
Mr. Sushil Kumar Jain, Senior Advocate with Mr. Umang Mehta, Advocate for
M/s C.L. Gupta Exports

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 PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

Reserved on: 19th January, 2022
Pronounced on: 25th February, 2022

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JUDGMENT

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

1. This Original Application (hereinafter referred to as '**OA**') has been filed under Section 14 and 15 (b) (c) read with Section 18 (1) (2) of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act 2010**') by Adil Ansari, claiming himself a spirited person, concerned with environmental degradation and pollution allegedly caused by respondent 1 i.e. M/s. C. L. Gupta Exports Pvt. Ltd., 18 km. Stone, Delhi road, Village Jivai, Amroha, Uttar Pradesh (hereinafter referred to as '**Project Proponent i.e. PP**') alleging that it is a metal industry and in collusion with other respondents, namely Uttar Pradesh Pollution Control Board

(hereinafter referred to as 'UPPCB'), Central Pollution Control Board (hereinafter referred to as 'CPCB'), Central Ground Water Authority (hereinafter referred to as 'CGWA') and District Magistrate, Amroha, UP, by illegal extraction of ground water and discharge of untreated hazardous effluent waste water with solid wastes into open *Kachha* drains which ultimately fall in river Ram Ganga, a tributary of river Ganga, causing massive pollution and damaging environment.

2. Applicant has prayed that this Tribunal should direct respondent 1 to stop illegal and unregulated withdrawal of ground water and discharge of harmful untreated hazardous effluent waste water and sludge into open drains; direct UPPCB, CPCB and CGWA to make spot inspection of the premises of respondent 1 and file a report indicating environmental pollution and degradation caused by him; direct PP to pay environmental compensation for causing irreparable damage and degradation to environment; impose heavy cost/penalty/compensation on PP for continued non-restricted, non-regulated over-extraction of ground water for commercial purpose without permission of authorities under Principle of 'Polluter's Pay' and 'inter-generational equity' and/or direct Government authorities to make ground water consumable/usable for local residents.

Pleadings in OA

3. The facts stated in OA are that respondent 1 i.e., PP has a metal factory on National Highway-24 in District Amroha. It is located at 140 kms from Delhi, between holy river Ramganga and river Ganga, and at 18 kms Stone at Delhi Road, village Jiwai, Amroha. PP is causing pollution for the last more than 30 years, affecting ground water table which is falling probably in Dark Zone/Over-Exploited Area. It is unauthorizedly extracting and consuming mammoth quantity of water from ground without any permission from CGWA, without any consent from UPPCB

and discharging hazardous effluent/waste water directly into open drains leading to holy rivers Ram Ganga and Ganga. The metal industry of PP is under 'Red category' water polluting industry. Illegal operations/activities of PP industry are adversely affecting environment and overall ecology of area, the monitoring authorities/respondents either have colluded with PP or negligent towards their responsibilities and there have arisen substantial questions relating to environment towards implementation of Scheduled Acts under NGT Act 2010, wherein public at large is affected by environmental consequences which has to be considered by Tribunal.

4. Land area covered by PP is 280000 square feet and spread over 50 acres of land. It is manufacturing products in Brass, Aluminium, Copper, Zinc, Alloy, Stainless steel, Mild steel, Wrought iron, Wood and Glass. It is specially engaged in polishing, brushing, electroplating of metal products. PP is unauthorizedly extracting huge quantity of water through bore wells from ground without permission from CGWA. It is a large industry, consuming and extracting thousands kilo litre of water from ground as there is no provision of water supply by any other agency and local body. The area where PP is extracting ground water is declared as Dark Zone/Over-Exploited.

5. In Pre and Post Monsoon, Ground Water Level Data, 2016-2017, uploaded on the website of UP Ground Water Department (hereinafter referred to as '**UPGWD**'), level of ground water in most blocks of Amroha was mentioned as "Dry and Choke" but no action has been taken to maintain water level till date; respondent 1 i.e. PP is discharging most part of hazardous effluent/waste water without any treatment, into open drains leading into main municipal drain which is highly polluted, dirty and full of sludge; condition of chimney is pathetic; it is emitting excessive harmful gases with fly ash/dust particles which spread over a large area and is

visible; the gases emitted are harmful for the health of villagers and animals and also for crops; PP industry is sole industry located in the area concerned which has resulted in bad air quality index; quality of water in the area concerned is very pathetic and causing various diseases due to polluted water in the area; the activities of PP unit are spreading diseases in the form of infection to nearby residents; area has no sanitation and hygiene; foul smell exists all the time; and State Authorities have utterly failed in safeguarding environment in the area concerned.

6. Report of Ministry of Drinking Water and Sanitation shows that ground water has already been contaminated/non-consumable but concerned agencies are not taking any steps for improvement. Contaminated ground water and polluted air is affecting health of local residents, the reason being discharge of trade effluents by industries and smoke coming out from chimney of unit of PP. The loss caused by environmental pollution is affecting, in various ways, local residents who are spending substantial money on their health rather than for other comforts of life and neither Government is taking any interest in improvement of the situation nor condition of villagers is getting improved. Harmful chemicals used for electroplating, painting, alloy making and in production of wrought iron releases nitrogenous, sulphuric and carbon mixed gases like carbon dioxide, sulphur dioxide etc. causing several health diseases to the people residing in nearby areas and it is polluting environment also. PP unit has a continuous tank furnace with a capacity of 35 tonnes per day and an automatic 16 station press in addition to furnace with a capacity of 50 tonnes per day which releases large quantity of harmful gases. Further, respondent 1's metal industry generates 6MW electricity through big high-speed boilers and generator sets which continuously release harmful gases in environment. Chimney of

respondent 1 industry releases lot of smoke and dust which are mixed with air and cause health hazardous to the people residing in nearby areas.

7. **OA was entertained on 08.03.2019.** Considering facts stated in the application, Tribunal found it appropriate to obtain a factual and action taken report. It accordingly constituted a joint Committee comprising CPCB and UPPCB and directed to submit report.

Report dated 07.05.2019 by UPPCB pursuant to Tribunal's order dated 08.03.2019

8. Joint Committee **inspected premises of PP on 28.03.2019** and submitted report through Shri Amit Chandra, Chief Environment Officer, UPPCB. In respect of PP, report said:

- (i) M/s. C. L. Gupta Exports Pvt. Ltd. is engaged in production of wood artwares, metal artwares, glass artwares and marble artwares;
- (ii) It's consented **production capacity** of **metal** artwares is **200 TPM**, **glass** artwares is **250 TPM** and **wood** artwares is **150 TPM** by electroplating process;
- (iii) UPPCB granted Consent to Operate under Section 25/26 of Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as '**Water Act 1974**') vide letter dated **09.05.2018** and consent under Section 21/22 of Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as '**Air Act 1981**') vide letter dated **11.05.2018**. These consents were **valid till 31.12.2019**;
- (iv) In the consent letter dated 09.05.2018, issued under Water Act 1974, a condition was imposed that PP unit shall treat industrial/domestic effluent through Effluent Treatment Plant/Sewage Treatment Plant (hereinafter referred to as '**ETP**' and '**STP**') and **recycle treated water in process/gardening/flushing**;

- (v) Further condition was imposed that PP unit shall maintain Zero Liquid Discharge (hereinafter referred to as '**ZLD**') outside the premises and **Cyanide plating or use of Cyanide in the process was not allowed;**
- (vi) UPPCB issued authorization under Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 (hereinafter referred to as '**HWMTM Rules 2016**') for disposal of ETP sludge through authorized Treatment, Storage, and Disposal facility (hereinafter referred to as '**TSDF**').
9. The observations of Committee are:

"6- In the joint inspection report following major observations made by the joint inspection team –

- *At the time of inspection, it was found that **inside drains of industry connected with Kachha drain outside behind the factory which ultimately meet to kachha pond near village-Ambheda.** Due to that one sample has been collected from the kachha pond near village-Ambheda.*
- *The distance of Ram Ganga River from M/s C.L. Gupta Export ltd. is about 20 Km. and there is no any local drain/Nalah are found in this area which connect to Ram ganga/Ganga River.*
- *The Industry has obtained **authorization** for disposal of Hazardous waste (**ETP sludge**) under Hazardous Waste (Management, Handling and Trans- Boundary Movement) Rules having **validity up to 18.01.2021.** At the time of inspection, it was found that **other type of hazardous waste also stored in the premises like empty containers of paint, lacquer, electroplating chemicals, oil soaked cotton rags, used oils etc.** Hence industry is directed to dispose other Hazardous waste through TSDF and obtain authorization from U.P. Pollution Control Board for total Hazardous waste generated. A **Notice has been sent** to industry to comply the provision of Hazardous Waste (Management, Handling and Trans- Boundary Movement) Rules vide letter no-1781/Haz.-34/Amroha-19 **dated-30-03-2019.***
- *At the time of inspection, it was found that **industry is involved in the expansion/modification in premises and Thermocol manufacturing unit was found operational without having consent to establish/operate.** A notice has been sent to the industry to comply the provision of Air and water act vide letter no.-1782/C-9/Amroha-19 **dated30.03.2019.** Copy attached.*

- The **ETP treated effluent** analysis report of **wood case division** shows pH- 6.59 as against 5.5-9.0; **COD-6200 mg/l as against 250 mg/l; BOD-1985 mg/l as against 30 mg/l; TSS-60 mg/l as against 100 mg/l; PO4-P- 0.15 mg/l as against 5.0 mg/l; Oil & Grease- 06 mg/l as against 10.0 mg/l; NH3-N- 05 mg/l as against 50 mg/l; and Cyanide - 1.6 mg/l as against 0.2 mg/l** as per general discharge norms E(P) rules, 1986.
- The **ETP treated effluent** analysis report of **metal division** shows pH- 7.17 as against 5.5-9.0; COD-41 mg/l as against 250 mg/l; BOD- 08 mg/l as against 30 mg/l; TSS- 06 mg/l as against 100 mg/l; PO4-P- 0.33 mg/l as against 5.0 mg/l; Oil & Grease- BDL mg/l as against 10.0 mg/l; NH3-N- 08 mg/l as against 50 mg/l; and **Cyanide - 0.49 mg/l as against 0.2 mg/l** as per general discharge norms E(P) rules, 1986.
- The **ETP treated effluent** analysis report of **glass division** shows pH- 7.44 as against 5.5-9.0; COD- 86 mg/l as against 250 mg/l; BOD- 18 mg/l as against 30 mg/l; TSS- 35 mg/l as against 100 mg/l; PO4-P- 0.13 mg/l as against 5.0 mg/l; Oil & Grease- BDL mg/l as against 10.0 mg/l; NH3-N- BDL mg/l as against 50 mg/l; Cyanide - BDL mg/l as against 0.2 mg/l and **Zn- 7.28 mg/l as against 5.0 mg/l** as per general discharge norms E(P) rules, 1986.
- The analysis report of **glass division STP** shows pH- 6.49 as against 5.5-9.0; COD- 88 mg/l as against 250 mg/l; BOD- 23 mg/l as against 30 mg/l; TSS- 55 mg/l as against 100 mg/l; and PO4-P- 0.21 mg/l as against 5.0 mg/l as per general discharge norms E(P) rules, 1986.
- The analysis report of **metal division STP** shows pH- 7.15 as against 5.5-9.0; COD- 18 mg/l as against 250 mg/l; BOD- 05 mg/l as against 30 mg/l; TSS- 23 mg/l as against 100 mg/l; and PO4-P- 0.14 mg/l as against 5.0 mg/l as per general discharge norms E(P) rules, 1986.
- The lab analysis report of sample collected from ground water (handpump) behind the premises of M/s C. L. Gupta Export Ltd; shows **TDS- 534 mg/l as against 500 mg/l; Total alkalinity as CaCO₃ - 637 mg/l as against 200 mg/l; Total hardness as CaCO₃ - 440 mg/l as against 200 mg/l; and Colour 12 Hazen as against 05 Hazen** as per IS 10500:2012 for drinking water.
- The lab analysis report of **sample collected from pond behind the premises** of M/s C. L. Gupta Export Ltd; shows **COD- 330 mg/l; colour - 142 Hazen.**

A copy of report submitted by the Joint Inspection Team is annexed at Annexure No.1.

- 7- Considering above observations of Joint Inspection Team, U.P Pollution Control Board vide its **letter dated 22-04-2019** has issued **Show Cause Notice under section 33A of Water Act,**

1974 for the closure of the unit and also imposed an Environmental Compensation of Rs. 10 Lakh (Rs. Ten Lakh Only). Besides unit has been directed not to operate the expansion/modification component of the production process made in premises and Thermo-coal manufacturing unit without obtaining prior Consent to Establish followed by Consent to Operate for the said activity under the provisions of Pollution Control Laws. The Letter dated 22-04-2019 is annexed as **Annexure No. 2.** A copy of compliance of closure direction submitted by the unit is annexed at **Annexure No. 3.**

8- U.P. Pollution Control Board has **initiated proceedings for prosecution** against M/s C.L. Gupta Exports Pvt. Ltd., 18 K.M. Delhi-Moradabad highway, N.H. 24, Village Jiwai, Amroha under section 44 of Water Act, 1974.”

10. Report further said that **PP informed** Regional Officer, UPPCB by **letter dated 02.05.2019**, in reply to show cause/closure notice **that it has closed Thermocol Plant** until further orders, no expansion activity is in process and anything further shall be done after approval from UPPCB.

11. The aforesaid report also accompanied a **notice dated 30.03.2019** issued by UPPCB to PP seeking its clarification/rectification on following points:

- (i) **For treatment of domestic effluent** generated from residential colony of industrial unit, **no STP has been established** and the said **effluent is being discharged in a pond through kacha drain;**
- (ii) There was a condition no. 3 in consent letter that **no industrial or domestic effluent outside the premises of industry, shall be discharged;**
- (iii) For conservation and recharge of rain water, **12 rain water harvesting units were to be established but the same were not completed;**
- (iv) As per consent letter, condition no. 8, **unit was to install electromagnetic flow meter for measurement of ground water** through bore wells but **it has established only Kranti Make water flow meter which are of mechanical type;**

- (v) **6 bore wells were found** in the premises of industry though as per permission granted by CGWA, extraction of ground water of 330KL/day from **2 bore wells was permitted;**
- (vi) At the time of inspection, it was found that **record of only 2 bore wells was maintained and about remaining 4 tube wells, it was informed that the same are not in use** but they were neither dismantled nor disconnected and earlier prepared log book was also not made available for verifying as to what period the aforesaid tube wells were operated;
- (vii) The boilers with the capacity of 1 ton per hour and 2 ton per hour were established in the unit before but at the time of inspection, **one boiler with 4 ton steam capacity was established against earlier 2 ton per hour capacity** boiler and two ton per hour capacity boiler was being used as standby;
- (viii) **No sanction was obtained for establishment of 4 ton per hour capacity boiler;**
- (ix) On the side of metal section, in wood section, industry has **established a Thermic Fluid Heater** with capacity of 10 lakhs kcal. In this regard, **no air pollution control arrangement** was made and **neither consent for establishment nor for operation thereof, was obtained from UPPCB;**
- (x) No arrangement was made for control of dust in the buffing section situated near glass furnish division in the industry;
- (xi) Near glass division, unit is also manufacturing Thermocol slabs with the capacity of 1 ton/day. The industry is in Orange Category but no consent for establishment or operation with regard to air pollution, has been obtained;

(xii) The unit is engaged in **expansion by construction of new sheds** but no information in this regard, has been given to UPPCB and **no consent for establishment has been obtained.**

12. Another notice dated 30.03.2019 was issued by Regional Officer, UPPCB to respondent 1 under HWMTM Rules 2016, stating that **authorization was given on 18.01.2016 for disposal of dry sludge of 20km/day** but at the time of inspection, empty containers of paint, thinner, lacquer, electroplating chemicals were lying in the factory premises and the production process involved metal buffing dust, oil soaked cotton rags, discarded paint, paint/lacquer sludge, used lubricant oil etc. for disposal whereof, no authorization was obtained from UPPCB and the same were kept in factory premises but no information for disposal was given in Form-10.

Objections dated 28.08.2019 filed by applicant to the joint inspection report dated 07.05.2019

13. Applicant, Adil Ansari filed objections to the joint inspection report on 28.08.2019, stating that report shows that respondent 1 unit is violating environmental norms and causing air and water pollution and it is a non-complying unit. Earlier also, in **OA No. 301/2016, Shailesh Singh vs. M/s. C.L. Gupta Exports Pvt. Ltd. & Others**, which was **disposed of on 01.02.2017** wherein it was found that there exist 6 tube wells, installed in the premises of PP who sought permission from CGWA to extract ground water therefrom but CGWA by **order dated 27.12.2016**, after evaluating possible adverse impact on environment and criticality of the area, got satisfied that depletion of water is not to such an extent as to refuse consent, hence **granted permission to extract ground water from 2 bore wells** only. From 2 bore wells, PP was allowed to extract 330m³/day ground water but not exceeding 99000m³/year. Though, there was dispute

as to when these 6 bore wells were installed in as much as **PP claimed that 2 bore wells were existing prior to 2001 and 4 were dug in the year 2016**. Tribunal did not adjudicate on this disputed question, held that since existence of 2 bore wells in 2001 was admitted, mere digging of bore well is not relevant but extraction of ground water therefrom was relevant, PP has extracted ground water for commercial benefits hence environmental compensation must be determined and consequently, it imposed environmental compensation of Rs.15 lakhs which was earlier also proposed by interim order and maintained. An additional compensation of Rs. 5 lakhs was imposed making total environmental compensation of Rs. 20 lakhs. Tribunal also directed CGWA to ensure that out of 6 bore wells, since permission has been granted only for 2, rest are not allowed to function but be sealed. Amount of environmental compensation was directed to be paid to CGWA so as to be utilized for any activity with regard to ground water extraction in the area concerned.

14. Applicant further stated that the team has not examined various aspects including damage caused to rivers and drains, to nearby area, agriculture field of local residents; no health check-up of villagers has been undertaken; no sample of drinking water and soil has been collected; no complaint has been filed under Water Act 1974 and Air Act 1981; the condition with regard to implementation of rain water harvesting system has not been complied with, still concerned Regulators have not rejected NOC/Consent issued to respondent 1.

Report dated 16.07.2019 by UPPCB

15. Another report was submitted vide letter dated 16.07.2019 showing that **another inspection was made** by Shri S.K. Tripathy, Scientist Assistant and Mr. A.K. Sharma, Assistant Environment Engineer **on**

01.06.2019 under the instructions of Headquarter of UPPCB and the observations made are:

- (i) Unit was permitted disposal of ETP sludge of 20km/day but empty containers of paint, thinner, lacquer, electroplating chemicals were found in the premises. It was also using oil-soaked cotton rags, discarded paint, paint/lacquer sludge, used lubricant oil etc. were also found as hazardous waste generated from production activity for which no authorization has been obtained from UPPCB;
- (ii) Unit was manufacturing Thermocol slabs with the capacity of 1 ton/day in respect whereof notice was issued on 22.04.2019 and thereupon the said production was closed by unit;
- (iii) An online application for permission to restart the said production was submitted by PP in respect whereof concerned office of PCB sent its comments to Head Quarter by letter dated 13.06.2019;
- (iv) In the premises, **at metal division**, trade effluents emanating from pickling, phosphating, electroplating processes were being treated in a treatment plant and it was found functional at the time of inspection;
- (v) The discharge effluent after treatment was sealed and sample was taken. Various components were found as per prescribed standards;
- (vi) The percentage of the various components in the sample were found as under:
 - a) pH- 7.56,
 - b) BOD-26mg/1 ,
 - c) COD-91mg/1,
 - d) SS-23.5mg/1,
 - e) Zn-0.204mg/1,
 - f) Cu-BDL, Ni-Nd;
- (vii) Unit has treatment plants for effluents generated from coating/paint coating process. Sample was collected and examined and results are as under:

- a) pH- 7.23,
- b) BOD-28mg/1 ,
- c) COD-244mg/1,
- d) SS-22mg/1,
- e) Zn-0.293mg/1,
- f) Cu-0.859mg/1,
- g) Ni-0.969mg/1
- h) Phosphate-0.265mg/1

The aforesaid result is in accordance with prescribed standards;

- (viii) In **glass division** of unit from phosphating and electroplating, generated trade effluents are being treated in a plant which was found functional. There also, the sample was taken and the result is as under:

- a) pH- 7.74,
- b) BOD-8.2mg/1 ,
- c) COD-92mg/1,
- d) SS-4.8mg/1,
- e) Zn-0.620mg/1,
- f) Cu-0.149mg/1,
- g) Ni-0.031mg/1
- h) Phosphate-0.329mg/1

The aforesaid result is also in accordance with prescribed standards;

- (ix) Out of 6 tube wells established in the premises, only 2 were allowed to be used for extraction of ground water wherein **mechanical type Kranti Make water flow meters were installed** and remaining 4 tube wells were found disconnected;
- (x) For civil treatment generated pump, the residential part of unit, 2 STP of 60 KLD capacity are installed since before and **1 STP of 60 KLD was found in the process of construction whereof 70% of the work was completed at the time of inspection;**
- (xi) Water samples at different places of nearby villages collected and sent to the Central Laboratory, UPPCB at Lucknow. The samples were found as per the prescribed standards.

Tribunal's order dated 29.08.2019

16. The aforesaid two reports were considered by Tribunal on 29.08.2019. Summary of report dated 07.05.2019 was referred in the order. Tribunal observed that the unit, contrary to authorization under HWMTM Rules, 2016 is storing hazardous waste like empty containers of paint, thinner, lacquer, electroplating chemicals, oil-soaked cotton rags, discarded paint, paint/lacquer sludge, used lubricant oil etc.; found involved in expansion/modification in premises and Thermocol manufacturing unit was found operational without consent to establish or operate. The **effluent analysis report of wood division and metal division was not found as per parameters hence unit was directed to pay Rs. 10 lakhs as environmental compensation and not to operate expansion/modification components without CTO and CTE.** Thus Tribunal approved report dated 07.05.2019 but gave no weight to report dated 01.06.2019 since neither the said report was in furtherance of Tribunal's order nor it was made clear as to what prompted inspection on 01.06.2019 when a report was already submitted just about 25 day back, to Tribunal and pending consideration. The clumsy report shows more an attempt to give certificate to PP on discharge of polluted effluent found in inspection made on 28.03.2019. This is evident from the fact that report based on inspection dated 01.06.2019 said that STP of 120 KLD capacity were already installed while subsequent report dated 03.12.2019 said that new 120 KLD STP were made operational on 14.06.2019. Further total discharge of domestic waste water being 175 KLD, still 55KLD effluent remained untreated and was being discharged outside the premises.

17. Tribunal said that a further updated status report shall be submitted by joint Committee and it will also make an assessment of compensation to be recovered for the damage caused which should cover

the **entire period of damage, be deterrent having regard to financial capacity of the unit and the nature of violations.**

Report dated 03.12.2019 pursuant to Tribunal's order dated 29.08.2019

18. This report showed that **inspection** was conducted by joint Committee on **16.10.2019**. Compliance status in para 9 of the report is given as under:

“9.0 Compliance Status of the Recommendations provided in the last Joint committee inspection report

Table 14 Compliance status of the recommendations provided in the last Joint committee inspection report

| Sr. No. | Recommendation in the last Joint committee Inspection report | Remarks | Compliance Status (Complying/non-complying/ partial complying) |
|----------------|---|---|---|
| 1 | Total domestic waste water Generated from industry/colony is about 175KLD. The industry has installed 120 KLD capacity of STPs and rest sewage passes through septic. The tank Industry must install STP for remaining capacity of 55 KLD. | The unit has constructed new STP of 120 KLD capacity at the residential colony for Treatment of sewage generating from the residential colony and started its operation from 14th June, 2019. | Complying |
| 2 | It should be ensured by the Industry that drain/outlets, carrying industrial/domestic Wastewater which are connected with Kacha pond are to be dismantled or sealed and no water or wastewater from the premises reach the pond at any time outside the premises. | A Leakage was observed from the peripheral wall of residential colony's STP, which was going into the Kachha Pond, which is located behind the unit. The unit has not Dismantled open drain, which is carrying domestic wastewater at the residential colony behind the installed STP. | Non-complying |
| 3 | As per the permission from CGWA only 02 bore wells are allowed for abstraction of groundwater. The | At the time of inspection remaining 04 borewells were found just covered with the help of red cloth and all the | Non-complying |

| | | | |
|---|--|---|----------------------|
| | remaining 04 borewells installed in premises should be dismantled immediately. | other connections were observed along with the borewells. | |
| 4 | The industry must be strictly followed ZLD process. | A Leakage was observed from the Peripheral wall of residential colony's STP, which was going into the Kachha Pond, which is located behind the unit. Industrial effluent was being mixed with the domestic effluent and was being used in gardening, which is not acceptable to establish ZLD. | Non-complying |
| 5 | At the time of inspection, it was found that industry is involved in the expansion/modification in premises hence industry must be obtained CTE from UPPCB before expansion /modification. | The unit has obtained CTO under section 21/22 of the Air (Prevention & Control of Pollution) Act, 1981 from UPPCB for Thermocol Block Manufacturing plant dated 27.09.2019 , which is valid up to 31.12.2019. | Complying |
| 6 | The industry has obtained the authorization for disposal of Hazardous waste ETP sludge only. At the time of inspection, it was found that other type of hazardous waste also stored in the premises like empty containers of paint, lacquer, electroplating chemicals, oil- soaked cotton rags, used oils etc. The industry must be obtained authorization for all types Hazardous waste generated from the factory and it should be ensured to dispose of through authorized TSDF only. | The industry has obtained the authorization (No. 8531, issued dated 16.07.2019) for disposal of hazardous waste like empty containers, cotton waste, used cloth mask, rubber gloves, old batteries, booth sludge, oily rags, used oil, empty corrugated cartons, melting furnace ash, asbestos gloves/cloth, filter and air filter, polishing dust and ETP sludge from UPPCB, which is valid upto 16.07.2024. Authorization No. 8531 is placed at Annexure-7. | Complying |

| | | | |
|----|--|---|----------------------|
| 7 | The industry should install an electromagnetic flow meter on all the water supply system as well as inlet and outlets of the ETPs and STPs and proper record/logbooks should be maintained. | The unit has not installed electromagnetic flow meter on all the water supply system as well as inlet and outlets of the ETPs and STPs. The unit is maintaining logbook for flow meter reading only and not for daily sludge generation , hence it can be concluded that the unit is partially maintaining the record/logbooks. | Non-complying |
| 8 | Flow meters installed at the outlet pipeline of the wood case ETP and outlet of STPs should be relocated to any suitable outlet position having easy access for getting the flow details of treated effluent. | The unit has not yet relocated the flow meters which are installed at the outlet pipeline of the wood case ETP and outlet of STPs to other suitable outlet position having easy access for getting the flow details of treated effluent. | Non-complying |
| 9 | The performance of wood case division ETP is poor and not meeting the general effluent discharge norms for inland surface water . The unit must upgrade and augment ETP to meet the standards. The ETP treated wastewater strictly should not be used for irrigation/horticulture purposes till up-gradation of ETP system. | Analysis result of samples collected from ETP outlet of Wood division showed BOD-43mg/l against the General Standard of 30mg/l and NH₃-N 68mg/l against the General Standard of 50 mg/l for discharge to inland surface water, which is non-complying (refer Table 7). | Non-complying |
| 10 | Cyanide value of metal and wood case division ETP is on higher sight so, unit should operate and maintain CN (Cyanide) removal unit Properly to meet the standards. | Cyanide value of metal and wood case division ETP was observed BDL and 0.09 mg/l respectively against the standard for discharge to Inland surface of 0.2 mg/l, which was within the limit. | Complying |

19. Joint Committee recorded its conclusions in para 10 as under:

“10.0 Conclusion

10.1 Ground water withdrawal

1. The unit is **not having valid NOC from CGWA** for withdrawal of groundwater, the **NOC has been expired on 20.12.2018**.
2. As per expired CGWA NOC, the unit was permitted to extract 330 KLD of ground water from 02 nos. of borewells only. However, the **unit has extracted 8.45 KLD of ground water apart from 02 borewells (from borewell no. 6-refer Table-3) from July-2019 to 15th Oct-2019**, which is violation of CGWA NOC. Hence, Environmental Compensation for illegal extraction of ground water shall be calculated and levied on the unit.
3. Analysis result of samples collected from Borewell No. 3 & 4 found complying with the permissible limit of drinking water quality standard while, **sample collected from handpump (inside Masjid) showed Fe-1.94 mg/l against 0.3 mg/l and Mn-0.35 mg/l against 0.3 mg/l of the permissible limit of drinking water quality standard**.

10.2 ETP/STP Adequacy and Effluent Discharge Norms

1. The unit does **not have valid consent to operate for separate ETPs and STPs, which are provided at Wooden Artware mfg. division, Glass Artware mfg. division, Metal Artware mfg. division and Residential colony**.
2. The unit **has not provided adequate requisite biological treatment facility at ETPs installed at Wooden Artware mfg. division and Glass Artware mfg. division**.
3. The unit has **not installed Secondary/biological treatment facility in any STPs installed in the unit**.
4. During visit, **no ETP sludge has been found** at ETP areas of Glass division, Wood division and Metal division, which **indicates that the unit is not operating the ETP continuously**.
5. During visit, **no STP sludge has been found** at STP areas of Glass division, Wood division and Residential Colony, which **indicates that the unit is not operating the STP continuously**.
6. The **unit is not maintaining logbook for ETP/STP for daily dosing of chemicals in physico-chemical treatment**, flow meter reading at inlet and recycling point, daily sludge generation from the ETPs/STPs at Glass division, Wood division and Metal division.

Wood Division:

- i. The ETP at Wood division found **non-complying w.r.t BOD and NH₃-N** and the unit is **not maintaining MLSS concentration in the Aeration tank of ETP**, hence it can be concluded that, the **unit do not have adequate ETP at wood division**.
- ii. The unit is **not operating and mainaining properly the Secondary/biological treatment facility in ETP and reduction of BOD from 3240 mg/l (at inlet) to 43 mg/l (at**

outlet) clearly indicates dilution with fresh water addition at wood division.

- iii. **No flow meter is provided at inlet and recycled pipeline of ETP.**

Glass Division:

- i. Analysis result of samples collected from ETP outlet of Glass division found **non-complying w.r.t NO₃-N, Cr, Fe, Ni, Se and Zn for discharge to inland surface water.**
- ii. **The unit has not installed secondary treatment unit while as per the analysis result of collected sample of ETP inlet, it is having COD concen. of 754 mg/l, which practically not possible without biological treatment, hence dilution or by-pass cannot be ruled out.**
- iii. No flow meter is provided at inlet and recycled pipeline of ETP.
- iv. **The unit is mixing grinding effluent of Glass division with the domestic effluent and treating the same in STP provided for Glass division and analysis result of samples collected from STP outlet of Glass division found non-complying w.r.t pH-3.08, TSS-230 mg/l and BOD-81 mg/l, hence it can be concluded that mixing of grinding effluent with the domestic effluent is leading to the non-compliance of the Glass division's STP discharge norms as prescribed in the unit's consent and the unit cannot be allowed to utilize the treated domestic effluent for gardening purpose.**
- v. The characteristics of the STP effluent (pH-2.58, COD-475 mg/l) at inlet of STP establish the fact that the **unit is treating industrial effluent along with the domestic effluent in STP.**

Metal Division:

- i. **No flow meter is provided at inlet and recycled pipeline of ETP.**
- ii. Analysis result of samples collected from ETP outlet found complying w.r.t stipulated norms for discharge to inland surface water.
- iii. Analysis result of samples collected from outlet of STP found noncomplying w.r.t **BOD-104 mg/l and COD-267 mg/l against effluent discharge standards to all mode of disposal.**

10.3 Haz. Waste Management

- i. **The unit do not have valid agreement with Transport Storage and Disposal Facility (TSDF) for lifting, transportation, treatment, storage and disposal of hazardous waste generated at M/s C. L. Gupta Exports Ltd., Amroha, Uttar Pradesh. It was expired on 31/03/2019.**
- ii. **The unit could not provide details of remaining categories of hazardous waste except ETP sludge, Gloves/masks and old batteries sent to TSDF facility from year 2017 to 2019.**
- iii. As stipulated under the Guidelines for storage of incinerable hazardous wastes, the unit have not provided automatic water sprinkling arrangements, fire alarming systems, flame arresters, smoke/ heat detectors, fire extinguishers and other necessary provisions in the storage area.

- iv. As prescribed in Form 8 of the HOWM Rules, 2016, the unit is required to label the bags with requisite details, while there was no labeling on bags stored with hazardous wastes as per the Rule 17(1) of the HOWM Rules.
- v. The unit has not mentioned the details of other haz. Waste apart from ETP sludge, Gloves/ masks and Old battery in the annual return of year 2017-18 and 2018-19. Also, annual return before the year 2016-17 could not be provided by the unit.
- vi. The unit is maintaining daily records of the hazardous waste generated and disposed, however, such daily record is not as per the Form 3 prescribed under Rule 20(1) of the HOWM Rules, 2016.
- vii. **The unit has not provided the process flow chart including material balance for production of each of the products, hence, the relationship between products manufactured and quantity waste generated, which may be utilized in the process or sent to the TSDF cannot be establish.**

In view of the above violations w.r.t haz. Waste management, Environmental Compensation has been calculated to be levied on the unit.

11.0 Recommendations based on the above observations

11.1 Water Consumption of the unit & Analysis result of ground water samples

1. The unit shall obtain NOC from CGWA for withdrawal of groundwater, as the CGWA NOC have already been expired on 20.12.2018.
2. All the fresh water consumption points and treated effluent recycling points should be metered and logbook shall be maintained against each flow meter.
3. All existing meters should be periodically calibrated and records to be maintained.
4. The unit shall engage expert institute to carry out detailed Water Audit for detailed study of total water consumption and recycling for reduction of the withdrawal of the ground water.

11.2 For Wooden Art ware mfg. Section

1. The unit shall modify/upgrade the ETP and shall operate properly to comply with the norms stipulated in CTO.
2. The unit shall provide sampling point at approachable location for collection of ETP outlet sample.
3. The unit shall install flowmeter at inlet of ETP and at recycled water pipeline.
4. The unit shall install primary clarifier in the ETP provided at Wood division and shall maintain MLSS concentration in Aeration tank-1 and Aeration tank-2.
5. The unit shall maintain ETP log book record for daily dosing of chemicals in physico-chemical treatment, flow meter reading at inlet and recycling point, daily sludge generation from the ETP and ETP sludge disposal.
6. The unit shall operate ETP regularly and shall have trained ETP operator with environment background, who is able to operate the ETP properly.

7. The unit shall discard the extra pipelines which are connected with the final HDPE treated tank.
8. The unit shall obtain consent to operate for separate ETP provided at Wooden Artware mfg. division.

11.3 For Glass Art ware mfg. Section and for STP at Glass Section

1. The unit shall stop mixing of industrial effluent in STP and shall stop using treated effluent in gardening within the premises.
2. The unit shall keep and maintain ETP and STP log book record for daily dosing of chemicals in physico-chemical treatment, flow meter reading at inlet and recycling point, daily sludge generation from the ETP/STP and ETP/STP sludge disposal.
3. The unit shall install flowmeter at inlet of ETP and at recycled water pipeline.
4. The unit shall display the actual flow chart of the actual unit processes being followed in the ETP,
5. The unit shall have trained operator for ETP and STP with environment background, who is able to operate the ETP and STP properly.
6. **The unit shall stop the practice of treatment of mixed effluent of grinding section and domestic waste water in the STP and shall treat domestic effluent separately.**
7. The unit shall install Secondary/biological treatment facility in the STP installed at Glass division for treatment of sewage and to use the same for toilet flushing/gardening within the premises.
8. The unit shall obtain consent to operate for separate ETP provided at Glass Artware mfg. division,

11.4 For Metal Art ware mfg. Section and for STP at Metal Section

1. The unit shall operate ETP as well as STP properly & continuously.
2. The unit shall keep and maintain ETP and STP log book record for daily dosing of chemicals in physico-chemical treatment, flow meter reading at inlet and recycling point, daily sludge generation from the ETP/STP and ETP/STP sludge disposal.
The unit shall install flowmeter at inlet of ETP and at recycled water pipeline.
3. The unit shall have trained operator for ETP and STP with environment background, who is able to operate the ETP and STP properly.
4. The unit shall install Secondary/biological treatment facility in the STP installed at Metal division for treatment of sewage and to use the same for toilet flushing/gardening within the premises,
5. The unit shall obtain consent to operate for separate ETP provided at Metal Artware mfg. division.

11.5 For STP provided at Residential Colony

1. As Leakage was observed on the periferrial wall of residential colony's STP, hence it can be concluded that, the **unit failed to comply with the consent condition of reuse of treated domestic effluent in flushing/gardening within the premises.** The unit shall seal/close the leakage and shall ensure that in any condition, the treated/untreated domestic/industrial effluent shall not go outside of the unit's

premises and shall strictly follow the ZLD condition as per the consent to operate.

2. The unit shall keep and maintain STP log book record for daily dosing of chemicals in physico-chemical treatment, flow meter reading at inlet and recycling point, daily sludge generation from the STP and STP sludge disposal.
3. The unit shall operate STP regularly and shall have trained STP operator with environment background, who is able to operate the STP properly.
4. The unit shall seal all the open drains which transfer the treated STP and shall install proper closed pipe system for the same.
5. The unit shall obtain consent to operate for separate STP provided at Residential colony.

11.6 For Hazardous Waste Management

The unit shall:

1. **Send hazardous waste to the TSDF with valid agreement with TSDF;**
2. Maintain **daily records** on generation, storage, management of hazardous wastes in compliance with Rule 20(1) of the HOWM Rules, 2016;
3. Submit the **Annual return** w.r.t. generation and management of each of the hazardous waste to Uttar Pradesh Pollution Control Board, as required under Rule 20(2) of the HOWM Rules, 2016.
4. **Package and label the hazardous waste** in accordance with provisions stipulated under Rule-17 of the HOWM Rules, 2016;
5. **Install** automatic water sprinkling arrangements, fire alarming systems, flame arresters, smoke /heat detectors, fire extinguishers and other necessary provisions as stipulated under the Guidelines for storage of incinerable hazardous wastes;
6. **Install** necessary slope, channelization drain and collection pit for management of spilled oil; and
7. **Install** display board outside the factory gate displaying details of hazardous wastes being handled by the unit.

11.7 For Recommendations provided in the last Joint committee inspection report

1. **The unit has failed to comply with the recommendation mentioned at para 10 at point 2, 3, 7, 8 & 9 and** shall, taken necessary action immediately. In addition following are recommended.
2. The unit shall dismantle the channel carrying effluent from STP located at residential colony.
3. The unit shall seal illegal 04 borewells properly and shall dismantle all the electrical and pipeline connections along with the same and shall not withdraw ground water from the illegal borewells.
4. The unit shall maintain ETP & STP log book record properly for flow meter reading, daily sludge generation and sludge disposal.
5. As per the Analysis result of samples collected from ETP outlet of Wood division, it **found non-complying w.r.t BOD-43 mg/l and NH₃-N-68 mg/l for discharge to inland surface water.** Hence, the unit shall operate ETP properly and treated effluent must meet the discharge norms as mentioned in the granted CTO. Treated wastewater should not be used for

irrigation/horticulture purposes, if the quality of treated effluent is not meeting with the stipulated discharge norms.

11.8 For NGT order dt. 29.08.2019 in O.A. No. 220/2019 Principal Bench, New Delhi

1. Hon'ble NGT vide order dated 29.08.2019 directed that, "The joint Committee may also make an assessment of the compensation to be recovered for the damage caused which should cover the entire period of damage and should be deterrent having regard to financial capacity of the unit and the nature of violations."

Assessment of the compensation to be recovered for the damage caused covering the entire period of damage needs detailed survey through expert institutes. Hence, expert institute may be engaged for the detailed study of environmental damage caused by the unit for the entire period to cover the environmental compensation from the unit.

2. However, the committee has been calculated Environmental Compensation for illegal extraction of ground water, for ZLD condition violation and for not managing Haz. Waste as per management as per the HOWM Rules, 2016 in the following section (Section 12.0).

12.0 Environmental Compensation

12.1 EC for illegal extraction of ground water

1. EC has been calculated as per the Report prepared by CPCB on "Assessment of Environmental Compensation in case of illegal extraction of Ground water" dated 26 June, 2019 which was submitted in compliance to Hon'ble NGT order dated 07/05/2019 in O.A. No. 327/2018 in the matter of Shailesh Singh Vs Central Ground Water Board & Others. The copy of the Report is placed at Annexure-11.

2. The **EC has been calculated for the period** beyond the expiry of CGWA NOC that is **20.12.2018 to 16.10.2019** and also for **illegal annual extraction of 99,691 m³ for the period of 01.10.2017 to 30.09.2018**, which is higher than the permitted ground water extraction of 99,000 m³/annum as below:

$$\text{ECGW} = \text{Water consumption per day} \times \text{EC rate for illegal extraction of ground water (ECRGw)} \times \text{No. of days} \times \text{Deterrent Factor}$$

(A) Year: 2018-19

$$\text{EC}_{\text{GW}} = 330 \text{ (m}^3\text{/day)} \times 120 \text{ (Rs/m}^3\text{)} \times 300^* \text{ (days)} \times 1 = \text{Rs. 1,18,80,000/-} \dots \dots \dots \text{(I)}$$

*CGWA NOC was valid up to 20.12.2018. Hence days calculated from the date of NOC expiration to the Joint inspection date (21.12.2018 to 16.10.2019=300 days)
- As per the above detailed calculation, the unit is liable to pay Rs. 1,18,80,000/- of EC for illegal ground water extraction.

(B) Year: 2017-18

$$\text{ECGW} = 2.30 \text{ (m}^3\text{/day)} \times 120 \text{ (Rs/m}^3\text{)} \times 365^* \text{ (days)} \times 1 = \text{Rs. 1,00,740/-} \dots \dots \dots \text{(II)}$$

*As per the compliance status of CGWA NOC prepared by CGWA (placed at **Annexure-12**), the unit extracted **99,691 m³/annum during 01.10.2017 to 30.09.2018**, which is higher than the permitted ground water extraction of 99,000 m³/annum. Hence days calculated from 01.10.2017 to 30.09.2018=**365 days**

3. As per the above detailed calculation, the unit is liable to pay Rs. 1,00,740/- of EC for illegal ground water extraction.

(C) In addition, the unit have total 06 borewells, while CGWA have issued NOC for extraction of ground water from 02 borewells only. Hence, **illegal extraction of ground water from illegal 04 borewells could not be exceeded as the unit has not installed flow meter**, Hence environmental compensation for the same could not be calculated.

-The unit is liable to pay total Environmental compensation amount of Rs. 1,19,80,740 (Rs. 1,18,80,000 + Rs. 1,00,740) for illegal ground water extraction for the period of 01.10.2017 to 16.10.2019.

12.2 Environmental Compensation for violation of effluent discharge/ inadequate ETPs/ZLD norms as per CTO

1. As per the valid consent to operate issued under section 25/26 of The Water (Prevention and Control of Pollution) Act, 1974 it is mentioned that the **domestic effluent shall be treated and reused in flushing/gardening within the premises.**

2. But during inspection, a Leakage was observed from the peripheral wall of residential colony's STP, which was going into the Kachha Pond, which is located behind the unit. This is violation of effluent discharge/ inadequate ETPs/ZLD norms as per CTO. Hence the following EC has been calculated as per the "Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund" acknowledged by Hon'ble NGT vide order dated 19.02.2019 in the matter of Paryavarana Suraksha Samiti & Anr. Vs. Union of India & Ors in O.A. No. 93/2017:

Environmental Compensation (EC) = PI x N x R x S x LF

Where,

PI = Pollution index of industrial sector (here-80, for red category industrial sector),

N = Number of days of violation took place (here-203 days, from date of inspection carried out by the joint team and found violation of ZLD norms dated 28.03.2019 to date of inspection of 2nd inspection of the joint team dated 16.10.2019)

R = A factor in Rupees for Penalty (R to be taken as 250)

S = Factor for scale of Operation of the facility (here-1.5, for large scale industry)

LF = Location factor (Here-1, for less than 1 million population)

Here,

Date of last inspection: 28.03.2019

Date of current inspection: 16.10.2019

As per the EC formula, EC has been calculated as follows:

A). 28.03.2019-25.06.2019
 $(EC=PI*N*R*S*LF)$
 $=80*90*250*1.5*1$
=27,00,000/-

B). 26.06,2019-23.09.2019
 $(EC=PI*N*R*S*LF)*2$
 $=80*90*250*1.5*1*2$
=54,00,000/-

C). 23.09.2019-16.10.2019
 $(EC=PI*N*R*S*LF)*4$
 $=80*23*250*1.5*1*4$
=27,60,000/-

Total EC (A+B+C)= Rs. 1,08,60,000/-(III)

The unit is liable to pay total Environmental compensation amount of Rs. **1,08,60,000** /- for violation of ZLD norms for the period of 28.03.2017 to 16,10.2019.

12.3 Environmental Compensation for not managing Haz. Waste as per management as per the HOWM Rules, 2016

As per the methodology prepared by CPCB on "Determination of Environmental Compensation for violation of Hazardous waste and other Waste (Management and Transboundary Movement) Rules, 2016" financial penalty and Environmental Compensation have been calculated as follows:

1. Financial Penalty

The **unit was found violating 07 provisions (at Sl. No. 2, 3, 5b, 6(B)d, 8, 7 and 31) of HoWM Rules, 2016 for which 07 lakhs financial penalty may be imposed.**

2. Environmental Compensation

The following violations have been considered for calculation of EC
a) When hazardous and others wastes is disposed at unauthorised place or handed over or sold to unauthorised party and b)Waste found stored beyond the stipulated period (refer Rule 8 of the HOWM Rules, 2008)

a) When hazardous and others wastes is disposed at unauthorised place or handed over or sold to unauthorised party

Hazardous Waste

During inspection, it was observed that about 914 Kg of ETP sludge was found stored in the covered shed which is considered to be generated during the period from 1st April, 2019 to 15th October, 2019 i.e. in 6.5 months.

Whereas, as per the information provided by the unit, annual average ETP sludge generation during 2017-18 & 2018-19 is 4.567 MT and therefore during 6.5 moths ETP sludge is estimated 2968 kg.

The **estimated quantity of ETP sludge disposed to unauthorized places is 2968914 = 2054 kg ~ 2.05 tonnes in 6.5 months.**

Environmental Compensation = $Q \times ERF \times R$
 Q = Quantity in tonnes/year = 3.15 tonne/year
 ERF = Environmental Risk Factor = 1.5
 R = Environmental Compensation factor = Rs. 30,000
 $= 3.15 \times 1.5 \times 30,000 = \text{Rs. } 14,17,750 \sim \text{Rs. } 14.17 \text{ lakhs}$

Other waste

Estimated other waste stored is 551kg in 6.5 months
 Environmental Compensation = $Q \times ERF \times R$
 Q = Quantity in tonnes/year = 0.847 tonne/year
 ERF = Environmental Risk Factor = 0.3
 R = Environmental Compensation factor = Rs, 30,000
 $= 0.847 \times 0.3 \times 30,000 = \text{Rs. } 7623$
 b) Waste found stored beyond the stipulated period (refer Rule 8 of the HOWM Rules, 2008)

Environmental Compensation for Hazardous Waste = $Q \times ERF \times R$
 $= 1.406 \times 0.1 \times 30000 = \text{Rs. } 4218$

Environmental Compensation for Other Waste = $Q \times ERF \times R$
 $= 0.551 \times 0.05 \times 30000 = \text{Rs. } 826$

Total amount determined for Environmental Compensation and Penalty for violation of Hazardous waste and other Waste (Management and Transboundary Movement) Rules, 2016 is [7,00,000 + (14,17,750+7,523+4,218+826)]
= Rs. 21,30,417/-.....(IV)

12.4 Total Environmental Compensation

1. As per the available methodology, Environmental Compensation has been calculated for illegal extraction of ground water, for ZLD condition violation and for not managing Haz. Waste as per management as per the HOWM Rules, 2016 however for assessment of the compensation to be recovered for the damage caused, covering the entire period of damage needs detailed survey through expert institutes. Hence, expert institute may be engaged for the detailed study of environmental damage caused by the unit for the entire period to cover the environmental compensation from the unit.
2. Total Environmental Compensation for illegal extraction of ground water, for ZLD condition violation and for not managing Haz. Waste as per management as per the HOWM Rules, 2016 is as below:

=(I) + (II) + (III) + (IV)
= Rs. 1,18,80,000 + Rs. 1,00,740 + Rs. 1,08,60,000 +
Rs. 21,30,417 = Rs. 2,49,71,157

The unit is liable to pay total Environmental compensation amount of **Rs. 2,49,71,157/-.**"

Tribunal's order dated 04.12.2019

20. Joint Committee report dated 03.12.2019 was examined by Tribunal on 04.12.2019 and having noticed the observations and conclusions, Tribunal, in para 7 said:

*“7. Thus joint report concludes that the industry is non-complying and the treated effluents from ETP and STPs are not complying with the prescribed norms. It has been observed that **even highly acidic effluents are disposed, constantly posing threat of ground water contamination and also to the vegetation.** The Effluent Treatment Plants for wood, glass and metal division requires upgradation and will have to work on complete ZLD System and no effluent be allowed to dispose on land. It is also clear that the Hazardous Waste is not properly managed and the unit is not having valid agreement with transport storage and disposal facility. **The unit is not having permission from Ground Water Board and thus illegally withdrawing the ground water.** Compensation of rupees 2,49,71,157 has been assessed which is on account of non-compliance of ETP and STP norms, improper Hazardous Waste Management and Illegal drawal of ground water.”*

21. PP relied on a letter issued by CGWA that unit was allowed to extract ground water validly but Tribunal observed that in view of order dated 10.10.2019 passed in **OA No. 176/2015, Shailesh Singh vs. Hotel Holiday Regency, Moradabad & Others** such permission in over-exploited category area cannot be allowed. Para 6 of order passed in **OA No. 176/2015 (supra)** was quoted in para 8 of order dated 04.12.2019, which reads as under:

*“6. Since the OCS areas have been found to be seriously affected by overdrawal of ground water, regulation of such drawal 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.***

22. Tribunal also noticed from the report that Block Joya, district Amroha where PP unit is situated was in the category of 'semi-critical' in 2011 but due to continued indiscriminate abstraction of ground water, the level has gone down, bringing the area in question in the category of '**over-exploited' in 2013 and that has continued in the report of 2017 also.** In view of above observations, Tribunal did not approve the defence of PP and stand of Regulators; instead directed Statutory Regulators to take follow up action in accordance with due process of law.

Reports dated 22.02.2020, 10.07.2020 and 05.08.2020 pursuant to Tribunal's order dated 04.12.2019

23. **Report dated 22.02.2020** was submitted by UPPCB through Chief Environment Officer. It is said that a meeting of joint Committee was held on 26.12.2019 and minutes of the meeting were issued by CPCB vide letter dated 02.01.2020. The minutes show following observations of Committee:

- “1. *The unit has 04 nos. of manufacturing sections namely, Metal Art ware, Glass Art ware, Wood Art ware and Thermocol Block.*
2. *Wooden Art ware manufacturing section with 15 Ton/Month consented capacity has one Effluent Treatment Plant (ETP) of 25 KLPD capacity to treat the industrial effluent. However, the **ETP is in-adequate as it does not have Primary Clarifier.** Further, **Aeration tank was also found un-stabilized during inspection.** Also the **treated effluent from ETP was found noncomplying w.r.t the stipulated discharge standard of BOD and NH₃-N.***
3. *Glass Art ware manufacturing section with 150 Ton/Month consented capacity has one Effluent Treatment Plant (ETP) of 100 KLPD capacity and one Sewage Treatment Plant (STP) of 60 KLPD capacity to treat the industrial effluent and domestic effluent respectively. Both **ETP as well as STP are in-adequate as both treatment plants do not have secondary biological treatment system** which is required to provide requisite treatment to the effluent. The **treated***

effluent of ETP was found noncomplying w.r.t the stipulated discharge standard of NO₃-N Cr, Fe, Ni, Se and Zn. The treated effluent from STP was also found non-complying w.r.t the stipulated standard of pH, TSS and BOD.

4. *Metal Art ware manufacturing section with 30 Ton/Month consented capacity has one Effluent Treatment Plant (ETP) of 175 KLPD capacity and one Sewage Treatment Plant (STP) of 60 KLPD capacity to treat the industrial effluent and domestic effluent respectively. **Both ETP as well as STP are inadequate as both treatment plant do not have requisite secondary biological treatment system. The treated effluent from STP was found non-complying w.r.t the stipulated standard of BOD and COD.***
5. *The unit has one Sewage Treatment Plant (STP) of 120 KLPD capacity at Residential colony to treat the domestic effluent. The STP is found inadequate as it **does not have requisite secondary biological treatment system. The treated effluent from STP was found non-complying w.r.t the stipulated standard of BOD.***

24. Committee observed that in absence of secondary biological treatment system/Primary Clarifier, installed ETPs/STPs are inadequate and would not provide requisite treatment to the effluent/wastewater to meet stipulated effluent discharge standards. In absence to requisite treatment systems in ETPs/STPs, dilution of these ETPs/STPs through fresh water could not be ruled out. Consequently, Committee made following recommendations:

- a. *The UPPCB shall issue **directions following appropriate procedure within 30 days for closure of the manufacturing operations** excluding Thermocol manufacturing section **till installation and commissioning of adequate ETPs/STPs by the unit.** The unit shall be directed to **install and commission two stages (Physical primary treatment followed by secondary biological treatment of adequate capacity) ETPs and STPs to provide requisite treatment to effluent and ensure to meet the prescribed effluent discharge standards.** The unit shall set the time bound Action plan approved by UPPCB.*
- b. *UPPCB shall also levy Environmental Compensation (Rs. 2,49,71,157/-) as calculated by the Joint committee in its inspection report dated 03.12.2019 accepted by the Hon'ble NGT vide order dated 04.12.2019.*
- c. *UPPCB shall also issue appropriate direction within 30 days for compliance of the recommendations of Joint inspection*

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). 2864/2022

M/S C.L. GUPTA EXPORT LTD.

APPELLANT(S)

VERSUS

ADIL ANSARI & ORS.

RESPONDENT(S)

(IA No. 54395/2022 - EX-PARTE STAY
 IA No. 54397/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
 JUDGMENT, IA No. 54398/2022 - EXEMPTION FROM FILING O.T.
 IA No. 9725/2023 - EXEMPTION FROM FILING O.T.
 IA No. 101542/2022 - EXEMPTION FROM FILING O.T.
 IA No. 101541/2022 - PERMISSION TO FILE ADDITIONAL
 DOCUMENTS/FACTS/ANNEXURES, IA No. 9724/2023 - PERMISSION TO FILE
 ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

Diary No(s). 25711/2023 (XVII)
 (FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA
 180696/2023, FOR PERMISSION TO FILE APPEAL ON IA 180699/2023
 FOR EXEMPTION FROM FILING O.T. ON IA 180700/2023
 FOR PERMISSION TO FILE LENGTHY LIST OF DATES ON IA 180701/2023
 FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA
 180704/2023, FOR STAY APPLICATION ON IA 180705/2023
 FOR APPROPRIATE ORDERS/DIRECTIONS ON IA 181553/2023
 FOR impleading party ON IA 181555/2023
 FOR INTERVENTION/IMPLEADMENT ON IA 181555/2023
 FOR impleading party ON IA 86282/2024
 FOR INTERVENTION/IMPLEADMENT ON IA 86282/2024
 FOR EXEMPTION FROM FILING O.T. ON IA 86285/2024
 IA No. 181553/2023 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 180704/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
 JUDGMENT, IA No. 180700/2023 - EXEMPTION FROM FILING O.T.
 IA No. 86285/2024 - EXEMPTION FROM FILING O.T.
 IA No. 86282/2024 - INTERVENTION/IMPLEADMENT
 IA No. 181555/2023 - INTERVENTION/IMPLEADMENT
 IA No. 180696/2023 - PERMISSION TO FILE ADDITIONAL
 DOCUMENTS/FACTS/ANNEXURES
 IA No. 180699/2023 - PERMISSION TO FILE APPEAL
 IA No. 180701/2023 - PERMISSION TO FILE LENGTHY LIST OF DATES
 IA No. 180705/2023 - STAY APPLICATION)

Diary No(s). 11257/2024 (XI)

(IA No. 94810/2024 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 83322/2024 - CONDONATION OF DELAY IN FILING
 IA No. 83319/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
 JUDGMENT, IA No. 83320/2024 - EXEMPTION FROM FILING O.T.
 IA No. 83318/2024 - PERMISSION TO FILE ADDITIONAL
 DOCUMENTS/FACTS/ANNEXURES)

IA No. 83321/2024 - PERMISSION TO FILE LENGTHY LIST OF DATES)

Date : 31-07-2025 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE K. VINOD CHANDRAN

For Appellant(s) :

Mr. Vikas Singh, Sr. Adv.
Mr. Rahul Kaushik, Sr. Adv.
Mr. Siddharth Mridul, Sr. Adv.
Mrs. Madhurima Mridul, Adv.
Ms. Bhuvneshwari Pathak, AOR
Mr. Varun Bhasin, Adv.
Mr. Shivam Parashar, Adv.
Mr. Garv Vikas, Adv.
Mr. Gaurav Choudhary, Adv.
Mr. Minnat Ullah, Adv.
Mr. Deepak Chhikara, Adv.
Mr. Sohil Batra, Adv.
Mr. Deepika Kalia, Adv.
Mr. Sudeep Chandra, Adv.
Ms. Vasudha Singh, Adv.

Mr. Vishwajit Singh, Sr. Adv.
Mr. Avi Tandon, Adv.
Mr. Sumit Tandon, Adv.
Ms. Meghna Tandon, AOR
Mr. Pankaj Singh Bisht, Adv.
Mr. Ami Tandon, Adv.

Mr. Anish Agarwal, AOR

For Respondent(s) :

Mrs. Aishwarya Bhati, A.S.G.
Mr. R. Bala, Sr. Adv.
Rajesh Kr.singh, Adv.
Apoorv Kurup, Adv.
Vanshaja Shukla, Adv.
Amit Sharma-(ii), Adv.
Rajeshwari Shankar, Adv.
Vijay Lakshmi, Adv.
Dr. N. Visakamurthy, AOR

Ms. Preeti Singh, AOR

Mr. Pradeep Misra, AOR
Mr. Daleep Dhyani, Adv.
Mr. Suraj Singh, Adv.

Mr. Saurabh Mishra, AOR

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Mr. Shrimay Mishra, Adv.

Mr. Kapil Kaushik, Adv.

Mr. Rakesh Chander, Adv.

Mr. Gunnam Venkateswara Rao, AOR

UPON hearing the counsel, the Court made the following
O R D E R

CIVIL APPEAL NO(S). 2864/2022

1. Arguments heard, which remained inconclusive.
2. For further arguments, list on 14.08.2025 as part heard.
3. De-tag C.A.Nos. 2864/2022 from rest of the matters.

REST OF THE MATTERS

List these matters after service of notice is complete.

(NARENDRA PRASAD)
DEPUTY REGISTRAR

(ANJU KAPOOR)
ASSISTANT REGISTRAR



2025 INSC 1035

REPORTABLE**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 2864 OF 2022****M/s C.L. Gupta Export Ltd.****...Appellant****Versus****Adil Ansari & Ors.****...Respondents****J U D G M E N T****K. VINOD CHANDRAN, J.**

The respondent no.1, the applicant before the National Green Tribunal (for brevity, 'NGT') alleged that the appellant, the respondent no.1 before the NGT, as an industry was actively perpetrating environmental degradation and pollution as also extracting ground water; thus polluting the surroundings and also releasing effluents into the nearby river which is a tributary of the Ganga. It was also alleged that the other official respondents, the Pollution Control Board of the State &

the Centre, the Central Ground Water Authority and the District Collector were mute spectators to the activities of the appellant and often colluding, in polluting and damaging the environment. The proceedings before the NGT extended over a period of three years in which various reports were called for from a Joint Committee constituted by the NGT and eventually based on the reports, the matter was disposed of with certain directions, with which the appellant is aggrieved.

2. Sh. Vikas Singh, learned Counsel appearing for the appellant would point out that the environmental compensation (for brevity, 'EC') as determined by the statutory bodies were paid up by the appellant. The appellant also had brought about all the mitigating measures, eventually leading to a report of complete compliance of the statutory conditions and the terms imposed by the Pollution Control Board (for brevity, 'PCB'). Despite that last report of 30.07.2021, clearly

recording compliance, the NGT went ahead and imposed a compensation of Rs. 50 crores based on the allegedly admitted turnover of the appellant. There is no rational nexus in thus computing the penalty, which has also been deprecated by this Court in ***Benzo Chem Industrial (P) Ltd. v. Arvind Manohar Mahajan***¹. The NGT also directed the Enforcement Directorate (for brevity, 'ED') to examine the matter in the light of the observations made in the judgment and take appropriate action under the Prevention of Money Laundering Act, 2002² wherein the environmental laws are also included in Part-A of Schedule I. The said measure has also been frowned upon in ***Waris Chemicals (P) Ltd. v. U.P. Pollution Control Board***³. The contours of maintainability of a Public Interest Litigation (for brevity, 'PIL') is explicitly declared in ***Ashok Kumar Pandey v.***

¹ 2024 SCC OnLine SC 3543

² for brevity, "PMLA"

³ 2025 SCC OnLine SC 1261

*State of W.B.*⁴; within which contours the present litigation does not fall.

3. None appears for respondent no.1 who was the applicant before the NGT. It is to be observed at the outset that we are not inclined to consider the question of maintainability of the PIL, at this stage especially when the initial reports of the Joint Committee constituted by the NGT clearly indicate violations of the environmental laws which led to the penalisation by imposition of EC. The proceedings were commenced by the applicant in the year 2019 and it was only in the year 2021 that a modicum of compliance was reported.

4. Mr. Saurabh Mishra, learned Advocate-on-Record, appearing for the Pollution Control Board submits that as of now there is full compliance of the environmental laws. However, it is urged that the NGT was within its power in enhancing the penalty since it is

⁴ (2004) 3 SCC 349

a deterrent measure. It is also pointed out that the calibration of the quantum of penalty could also be with reference to multipliers under CPCB, 2019 methodology, instead of a flat turnover percentage. It is also sought that structural directions in paragraph 569-571 of the NGT judgment may be upheld.

5. The appellant was earlier engaged in four manufacturing activities when the proceedings commenced, which were Metal Art Ware, Glass Art Ware, Thermocol Blocks which later, were expanded with two additions; Marble Art Ware and Corrugated Boxes. There was also a residential area where 500-600 people, the employees of the appellant, resided. The appellant is said to be an exporter of handicraft items and has employed around 7,000 workers.

6. On the allegation raised, the NGT had first constituted a Joint Committee comprising of the Central Pollution Control Board (for brevity, 'CPCB'), the

respondent no.3 and the Uttar Pradesh Pollution Control Board (for brevity, 'UPPCB'), the respondent no.2. A report dated 07.05.2019 was filed which noticed ineffective effluent treatment, storage of hazardous wastes and the Thermocol manufacturing unit having not been granted the consent to establish/operate, among other defects. The report proposed a show cause notice under the Water Act, 1974, the closure of the unit and imposition of EC of Rs.10 lakhs. This was followed up with a notice dated 30.03.2019 by the UPPCB to which objections were filed.

7. Further reports dated 16.07.2019 and 03.12.2019 were placed before the NGT in which EC was computed based on the "Assessment of Environmental Compensation in Case of Illegal Extraction of Groundwater" dated 26.06.2019 brought out by the CPCB in compliance with the orders of the NGT. A total EC of Rs.2,49,71,157/- was imposed. The appellant is said

to have deposited an EC of Rs.1,16,39,727/-; after the waiver effected on representations made.

8. Subsequently, yet another report dated 30.07.2021 was submitted before the NGT which even according to the NGT as is seen from page 145 of the order confirms full compliance with all prior recommendations/suggestions. This report was also partly accepted by the NGT in paragraph 466. The reservation expressed by the NGT seems to be of the amount of compensation determined/recommended by the Committee being not consistent with the directions of the NGT, issued in various other matters. Finding that the appellant had violated environmental laws including the provisions relating to extraction of groundwater, the NGT went ahead to discuss the provisions of the PMLA, various decisions with respect to that statute and also those decisions of the NGT, imposing compensation with reference to the turnover of the polluter on the principle:

“polluter pays”. The NGT thus imposed the compensation, issued directions including that with reference to PMLA as also made a sweeping direction for the closure of the divisions of the appellant, in which requisite steps are not taken to comply with the prescribed standards.

9. As has been correctly pointed out by the CPCB, the order of the Tribunal relating to fresh water audit, monitoring and restoration has to be retained. Insofar as, the compliance is concerned we refer to the following in the written submissions made :

“5. Pursuant to the above directions, a joint inspection was undertaken between 23-25.08.2022 and a report dated 24.12.2022 was filed before this Hon’ble Court. The said report records inter alia that soil parameters were normal; yellowing of stored groundwater was attributable to oxidation of iron and manganese; there was no crop damage within a 2.5 km radius as per the District Horticulture Officer, Amroha; OPD records from the Chief Medical Officer, Amroha did not show any air-borne disease burden requiring oxygen or ventilator support; and that other industries in the vicinity also

contributed to environmental load. The report further records that the Appellant has installed extensive flow-meters and piezometers, that reconciliation between fresh water abstraction and consumption shows negligible variance (approximately 0.39% over a five-month period), and that a common STP/ETP with advanced treatment systems has been put in place.”

The directions in the impugned judgment relating to audit, monitoring and restoration are necessarily within the powers of the NGT and is a continuing process. We also notice the submissions of CPCB that restoration measures should focus on aquifer recharge, continuous water balance monitoring and area wide environmental load management. Recycling of treated water, reduced usage of ground water withdrawal, continuous and robust monitoring would definitely guide the design of a prospective compliance regime.

10. We cannot for a moment dispute that if there is non-compliance of any of the statutory conditions or that imposed by the PCBs in mitigation of the unit specific

pollution, then such action sanctioned by the statute could be taken, including notice for closure by the jurisdictional PCB. We are also convinced that there could be constant monitoring of the unit especially looking at the past violations. But, we are not convinced that having accepted the report of compliance, there was any warrant for a sweeping direction to close such of the divisions of the appellant which are falling short of the compliance. Reserving the right of the jurisdictional PCBs to proceed against any violation of statutory or other conditions imposed, the direction issued by the NGT has to be set aside and we do so.

11. ***Benzo Chem Industrial (P) Ltd.***¹ was a case in which one of us (B. R. Gavai, J, as he then was) considered the question of imposition of penalties on a reference to the annual turnover wherein the NGT having noticed the revenue range of the polluter to be between 100-500 crores imposed a penalty of Rs.500 crores. This Court

first noticed the huge disparity in the range noticed by the NGT, also taken from the public domain which would have clearly indicated the exact figure. It was categorically held that generation of revenue, or its quantum, would have no nexus with the amount of penalty to be ascertained for environmental damages. The methodology adopted by the NGT for imposition of penalty was held to be totally unknown to any principle of law. We fully agree with the observation and add that rule of law does not permit State or its agencies to extract a 'pound of flesh', even in environmental matters. Though in the present case there is an observation made that there was admitted turnover of Rs.550 crores; we still notice the absence of nexus between the turnover and the pollution alleged. In fact the penalty imposed on the appellant, by the statutory body was on the basis of a methodology framed by the CPCB, on the directions of the NGT. If at all the NGT was of the opinion that the EC

imposed was minimal or low, it could have referred to the methodology framed by the CPCB and not merely looked at the revenue generation of the alleged polluter. We hence strike out the imposition of compensation of Rs.50 Crores by the NGT. However, we make it clear that we have not considered the maintainability of the EC imposed by the PCBs and the statement regarding the penalty paid by the appellant, has not been verified. If the appellant has avenues to challenge the same, they would be left liberty, subject to the laws of limitation. The PCB would also be entitled to recover any shortfall or impose any further EC on non-compliance being detected.

12. **Waris Chemicals (P) Ltd.**³ dealt with a similar direction to invoke the provisions of the PMLA as in this case. It was held, following **Vijay Madanlal Choudhary v. Union of India**⁵ that Section 3 of the PMLA is dependent

⁵ (2023) 12 SCC 1

on illegal gain of property as a result of the criminal activity relating to a scheduled offence. As in the facts of the cited case, here, neither is there registration of FIR for any scheduled offence nor any complaint is filed alleging such offences under the various environmental protection statutes scheduled under the PMLA and coming within its ambit. This Court had also raised serious doubts about the jurisdiction of the NGT to direct the prosecution of individuals under the PMLA; which we fully subscribe to. The NGT should act within the contours of the powers conferred on it which is Section 15 of the NGT Act of 2010. Though such power would be available to a Court constituted under the PMLA or to constitutional courts, it would not be available for exercise by the NGT, constituted to ensure effective and expeditious consideration of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right and

giving relief and compensation for damages to persons and properties. We hence set aside the direction issued to the Enforcement Directorate; but say nothing on whether there is an offence made out or not, which at this stage is not within our ken.

13. We have to necessarily set aside the directions issued other than that which permits a continuous monitoring and audit of the pollution control measures to ensure a pollution free, compliance regime. Before we leave the matter, with some anguish, we cannot but indicate that application of mind is not proportionate to the number of pages. The impugned judgment deals elaborately with the environmental law, the numerous pollution prevention measures, the guidelines and publications issued by various States as also decisions in that regard. It also extracts the various reports filed by the Joint Committee, the interim orders of the NGT and the objections raised by the industry; which would

anyway be available in the records of the case. In the context of the last of the reports having found complete compliance, we cannot but observe that unfortunately this was an exercise in futility. Judicious consideration is the sum and substance of adjudication and the Courts/Tribunals should restrain themselves from engaging in mere rhetoric by stating the law in general without particular reference to the facts. We say nothing more and allow the appeal setting aside the order of the NGT to the extent noticed above.

14. Pending applications, if any, shall stand disposed of.

..... **CJI.**
(B. R. GAVAI)

..... **J.**
(K. VINOD CHANDRAN)

NEW DELHI;
AUGUST 22, 2025.

2944

Diary number

Diary Number

Case Number

CNR Number

AOR Code

Party Name

Court

Back

DIARY NO. - 25711/2023

M/S. HOTEL RISHABH VS. ARTI

| Case Details | |
|------------------------|--|
| Diary Number | 25711/2023 Filed on 01-07-2023 01:07 PM [SECTION: XVII] PENDING |
| Case Number | C.A. No.(Verified On 11-09-2023) |
| CNR Number | SCIN010257112023 |
| Present/Last Listed On | 31-07-2025 [HON'BLE THE CHIEF JUSTICE and HON'BLE MR. JUSTICE K. VINOD CHANDRAN] |
| Status/Stage | Pending[] (Final Hearing) List after service of notice is complete-Ord dt:31-07-2025 |
| Admitted | [ADMITTED ON : 10-01-2024] |
| Category | 2002-Environmental Laws : Appeal under Section 22 of the National Green Tribunal Act, 2010 |
| Petitioner(s) | 1 M/S. HOTEL RISHABH 2 M/S. HOTEL TULSI 3 M/S. HOTEL RAJ PALACE 4 M/S. HOTEL THE MARVELLOUS 5 M/S. HOTEL NAND PALACE 6 M/S. HOTEL SHEELA SHREE PLAZA 7 M/S. NATRAJ SAI HOTELS LLP 8 M/S. HOTEL YATRIK GUEST HOUSE |

2945

| | |
|---------------|---|
| | <p>9 M/S. HOTEL K3 CLUB RESIDENCY 10 M/S. HOTEL SHRI NATH</p> |
| Respondent(s) | <p>1 ARTI 2 CENTRAL GROUND WATER AUTHORITY THROUGH ITS CHAIRMAN 3 DISTRICT MAGISTRATE, GHAZIABAD 4 JAL NIGAM, UTTAR PRADESH 5 GHAZIABAD DEVELOPMENT AUTHORITY 6 RADISSON BLU KAUSHAMBI 7 COUNTRY INN AND SUITES 8 MAHAGUN SAROVAR PORTICO SUITESA SAROVAR HOTEL THROUGH ITS AUTHORISED SIGNATORY 9 GOLDEN TULIP VASUNDHARA HOTEL AND SUITES 10 CLARKS INN 11 FORTUNE INN GRAZIA GHAZIABAD 12 CITRUS HOTEL GHAZIABAD 13 HOTEL FRANK INN 14 ANAND RETREAT 15 ROUSHA INN 16 CRYSTAL PALACE HOTEL 17 HOTEL PARTH INN 18 HOTEL KRISHNA SAGAR NH24 19 HOTEL SAMRAT KAUSHAMBI 20 HOTEL RAINBOW 21 OYO 12764 GRAND INN 22 HOTEL 12807 AMAIRA HOTEL AND BANQUETS, 23 OYO 8826 HOTEL CITY GARDEN 24 OYO 9301 HOTEL REDBURY 25 OYO 9385 INDIRAPURAM 26 AT RESIDENCY THROUGH ITS AUTHORISED SIGNATORY 27 OYO 058 GHAZIABAD 28 OYO TOWNHOUSE 012 KAUSHAMBI METRO GHAZIABAD THROUGH ITS AUTHORISED SIGNATORY 29 OYO FLAGSHIP 046 VAISHALI MAX HOSPITAL 30 HOTEL ABHAY PALACE 31 OYO 421 ONE HOTEL 32 OYO 13576 HOTEL RESIDENCY 33 OYO 13758 XS RESIDENCY 34 OYO FLAGSHIP 061 OPULENT MALL 35 OYO 8349 D 36 CLARKS INN KAUSHAMBI 37 OYO 1299 HOTEL MUKUT REGENCY</p> |

- 38 OYO 10591 HOTEL PARKTEL THROUGH ITS AUTHORISED SIGNATORY,
- 39 OYO 10887 HOTEL WEST VIEW
- 40 OYO 11407 HOTEL ROYAL KING
- 41 OYO 11452 GOLDEN CASTLE LODGE
- 42 OYO 12833 CENTURY GRAND THROUGH ITS AUTHORISED SIGNATORY,
- 43 OYO 1391 HOTEL PUSHPA VILAS THROUGH ITS AUTHORISED SIGNATORY
- 44 OYO 6772 HOTEL MUKUND THROUGH ITS AUTHORISED SIGNATORY
- 45 OYO 9178 HOTEL NEW CENTRAL PARK THROUGH ITS AUTHORISED SIGNATORY
- 46 OYO 11629 HOTEL SUNSHINE INN THROUGH ITS AUTHORISED SIGNATORY
- 47 OYO 947 HOTEL PALAZZO DI LARA THROUGH ITS AUTHORISED SIGNATORY
- 48 SRI SRI RESIDENCY THROUGH ITS AUTHORISED SIGNATORY
- 49 HOTEL TARU INN
- 50 HOTEL KRISHNA SAGAR THROUGH ITS AUTHORISED SIGNATORY,
- 51 MAIDEN RESIDENCY
- 52 VAISHALI INN
- 53 TREEBO ASHIRWAD
- 54 LE CRESCENT
- 55 HOTEL MINAR
- 56 HOTEL GRAND TUSHAR
- 57 HOTEL SHRI DRONA
- 58 HOTEL RAGHAV
- 59 HOTEL SUNSHINE PARK
- 60 ANU DA RENDEZVOUS
- 61 HOTEL PRITHVI PALACE
- 62 HOTEL IMPERIAL
- 63 RAJPATH RESIDENCY
- 64 HOTEL PARTH PARADISE
- 65 WEST VIEW HOTEL
- 66 S.R. HOTEL
- 67 REDBURY HOTEL
- 68 HOTEL BLUE STONE
- 69 FINESTAYS HOMESTAY
- 70 HOTEL ROYAL PALACE
- 71 HOTEL TUSHAR ELEGANT
- 72 HOTEL SKYLARK THROUGH ITS AUTHORISED SIGNATORY

- 73 MADHU REGENCY
- 74 HOTEL SUPREME
- 75 HOTEL SHUBHAM
- 76 HOTEL SHARDA GHAZIABAD
- 77 HOTEL R.K. RESIDENCY
- 78 HOTEL HEAVEN
- 79 HOTEL EMBASSY
- 80 DARSHAN HOTEL
- 81 BHARAT GUEST HOUSE
- 82 HOTEL MARINA
- 83 HOTEL AASHIYANA
- 84 CITY LODGE
- 85 LEMON TREE HOTEL, EAST DELHI MALL, KAUSHAMBI
- 86 THEAP HOTEL
- 87 HOTEL KOHINOOR PALACE SK
- 88 OYO 8349 HOTEL CROWN PALACE
- 89 BANANA TREE HOTEL
- 90 HOTEL QUIZZ @ RAILWAY STATION (1 MIN WALKING DISTANCE)
- 91 OYO 13602 HOTEL THE TOWN HOUSE
- 92 CITRUS HOTEL GHAZIABAD THROUGH ITS AUTHORISED SIGNATORY
- 93 OYO 12779 5 SEAS HOTEL AND BANQUET
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| Petitioner Advocate(s) | MEGHNA TANDON[P-1] |
| Respondent Advocate(s) | GUNNAM VENKATESWARA RAO[R-5] N. VISAKAMURTHY[R-2] |

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