

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

MISCELLANEOUS APPLICATION NO-----2023

ARISING OUT OF ORIGINAL APPLICATION NO 82 OF 2022

DISPOSED ON 11/05/2023

IN THE MATTER OF:

Kalinga Nagar Paribesh Surakhya Samiti

APPLICANT

VERSUS

STATE OF ODISHA AND ORS

RESPONDENTS

INDEX

SI NO	PARTICULARS	PAGE NO
1	Miscellaneous Application	1-10
2	Copy of Final Order dated 11/05/2023 is annexed here with as ANNEXURE-1	11-75
3	Email copy of dated 06/06/2023as ANNEXURE-2	76-77
4	Vaklatnama	78

PLACE: Bhubaneswar

DATE: 02/12/2023

SANKAR PRASAD PANI,



ADVOCATES

Plot 2132/4814, NageswarTangi, Bhubaneswar 751002 Cell-9437279278,

Email: sankarprasadpani@gmail.com

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

(Under Section 26 read with Section 18 of the National Green Tribunal Act, 2010)

MISCELLANEOUS APPLICATION2023

**ARISING OUT OF ORIGINAL APPLICATION No 82 OF 2022/EZ
DISPOSED ON 11/05/2023**

IN THE MATTER OF:

1. Kalinga Nagar Paribesh Surakhya Samiti Represented by it's President
Aswini Kumar Dhal At/PO/PS- Jakhapura, Danagadi, Kalinganagar,
Jajpur, Odisha. 755026 **APPLICANT**

VERSUS

1. Chief Secretary, Odisha Cum Chairman,
State Pollution Control Board, Odisha
Secretariat Bldg, Bhubaneswar, Odisha.751001, csori@nic.in
2. Member Secretary, State Pollution Control Board, Odisha
A/118, Nilakanthanagar, Unit VIII, Nayapalli,
paribesh1@ospcoard.org Bhubaneswar, Odisha. 751012
3. Additional Chief Secretary,
Forest and Environment Department, Government of Odisha,
Secretariat Building Bhubaneswar, Odisha. 751001
forestenv2016@gmail.com
4. The Secretary, Ministry of Environment and Forests and
Climate Change, Indira Paryavaran Bhawan, Jorbagh, New Delhi –
110003, Email: secy-moef@nic.in
5. Member Secretary, Central Pollution Control Board

3

Parivesh Bhawan, East Arjun Nagar,

Newdelhi, 110032 email: mscb.cpcb@nic.in,

6. Managing Director, M/s VISA Sun Coke Ltd, **VISA House, 11 Ekamra Kanan, Nayapalli Bhubaneswar , India, 751015**

radhika.agarwal@visasuncoke.com

7. Managing Director, M/s VISA Coke Ltd, **VISA House, 11**

Ekamra Kanan, Nayapalli Bhubaneswar , India, 751015

radhika.agarwal@visacoke.com

8. Managing Director, Odisha Industrial Infrastructure

Development Corporation of Odisha(IDCO), *Idco Tower*,

Janapath *Bhubaneswar* is 751022 Email: cmd@idco.in

RESPONDENTS

MOST RESPECTFULLY SHOWTH:

1. That the original application was filed challenging the operation of Coke Oven Plant in the premises of VISA Steel Ltd Jakhpura without grant of Environment Clearance for the Coke Oven Unit. It is needless to mention that the Coke Oven Plant is granted Consent to Operate (CTO) in the name of **VISA Coke Ltd**, a separate entity incorporated in the year 2012, by the state Pollution control board on 30/03/2013 and thereafter last time on 29/03/2019 with validity up to March 2023. **Visa Coke Ltd engaged in production of LAM Coke squarely covered**

4

under EIA Notification 2006 and hence require prior environment clearance before operation of the unit. Here the unit granted Consent to Operate without insisting for environment clearance, which is a gross violation of EIA Notification 2006 and raises question on the propriety of the state pollution control board that granted the CTO. That no CTO can be granted without Environment Clearance, hence grant of the Consent by SPCB is illegal. In this regard the MoEFCC has issued one order dated 20/09/2021 under Section 5 of EP Act 1986 where in it has clearly stated that **“No CTO shall be granted or renewed unless EC, if applicable has been obtained”**. Further the Standard Operating procedure of 7/07/2021 suggests closure of all such unit operating without environment clearance and levy of environment compensation along with criminal prosecution under section 15 R/w 19 of Environment Protection Act 1986.

2. That the OA No 82 of 2022 was disposed on 11/05/2023 with following directions

Para75- In this view of the matter, the Original Application No.82/2022/EZ is disposed of with a direction to the State Pollution Control Board, Odisha, to re-visit the Environmental Compensation computed by it and carry out fresh computation in the light of the observations and directions given by us hereinabove.

5

76. So far as the additional facts agitated by the Applicant in his subsequent affidavits are concerned, the State Pollution Control Board, Odisha, shall carry out a fresh inspection of the site in question in the light of the directions given by us hereinabove and if there are any environmental violations found, appropriate action shall be taken against the violator in accordance with law.

3. It is submitted that environment compensation has not been computed as on date. Hence para 75 of the Order dated 11/05/2023 has not been complied as on date. Copy of the final order dated 11/05/2023 is here unto annexed as ANNEXURE-1.
4. That the Counsel for the applicant has already communicated to the State respondent and Member Secretary State Pollution Control Board regarding the recomputation of the environmental compensation, but no response has received as on date. Copy of the email letter dated 06/06/2023 is here unto annexed as ANNEXURE-2.
5. That Section 26 in The National Green Tribunal Act, 2010 prescribes for Penalty for failure to comply with orders of Tribunal and same is reproduced as follows

“(1) Whoever, fails to comply with any order or award or decision of the Tribunal under this Act, he shall be punishable with

6

imprisonment for a term which may extend to three years, or with fine which may extend to ten crore rupees, or with both and in case the failure or contravention continues, with additional fine which may extend to twenty-five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention: Provided that in case a company fails to comply with any order or award or a decision of the Tribunal under this Act, such company shall be punishable with fine which may extend to twenty-five crores of rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under this Act shall be deemed to be non-cognizable within the meaning of the said Code.

6. Similarly Section 28 in The National Green Tribunal Act, 2010 prescribes for Offences by Government Department. And same is reproduced as follows

“(1) Where any Department of the Government fails to comply with any order or award or decision of the Tribunal under this Act, the Head of the Department shall be deemed to be guilty of such failure

7

and shall be liable to be proceeded against for having committed an offence under this Act and punished accordingly: Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

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

7. That since the State Pollution Control Board, Odisha, has not executed the order of the Hon’ble Tribunal and deliberately violating the same, appropriated action deemed under section 26 and 28 of the National Green Tribunal Act 2010.

8

Grounds

That, the applicant is therefore approaching this Hon'ble Tribunal in view of the of the Non-Compliance of order of Hon'ble NGT dated 11th May 2023

- a) That the environment compensation has not been computed and recovered as on date
- b) That the non-implementation of the order invokes section 26 and 28 of the NGT Act 2010 where in stricter punishment such as 3years imprisonment or 10crores rupees penalty or both has been prescribed and knowing the same the respondents are willfully violating the order.

LIMITATION

That there is a subsisting cause of action because of the continuing violation of Hon'ble order of NGT dated 11/05/2023 and the respondents did nothing within 6 months of the order, hence this miscellaneous application is not barred by limitation.

PRAYER

In light of the present facts and circumstances it is most respectfully prayed that this Hon'ble Tribunal may be please to

9

- a) Direct the Respondents to show cause why the criminal proceedings shall not be initiated for violation of the Order of the Hon'ble Tribunal
- b) Direct the Respondent to show cause what steps they have taken to implement the order of Hon'ble NGT dated 11th may 2023.
- c) Failure to provide satisfactory explanation the Hon'ble Tribunal may direct for the appropriate proceedings as provided under Section 26 and 28 of NGT Act 2010.
- d) Pass such order /s as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case.

For this act of kindness the applicant shall remain grateful for ever

APPLICANT THROUGH



ADVOCATE

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

MISC APPLICATION NO

ORIGINAL APPLICATION NO 82 OF 2022

IN THE MATTER OF:

Kalinga Nagar Paribesh Surakhya Samiti - -- Applicant

Verses

State of Odisha & Others

Respondents

AFFIDAVIT

I, Aswini Kumar Dhal S/o Amulya Kumar Dhal aged about 39 years, At/po- Jakhapura, Via- Dangadi Dist-Jajpur, Odisha -755026, do hereby solemnly affirm and declare as under:

1. That I am the President of the Applicant Organisation in the abovementioned Application
2. I am fully conversant with the facts and circumstances of the case and therefore competent to swear this affidavit.

Aswani Kumar Dhal

DEPONENT
President

Kalinganagar Paribesh
Surakshya Samittee

VERIFICATION

I, verify that the contents of the Affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed there from. Verified at *Dejpr. Road*... on *1st day of Dec 2023*

Aswani Kumar Dhal

VERIFICANT

President
Kalinganagar Paribesh
Surakshya Samittee

The above named Deponent / Executant
being identified by *Self*
Advocate appears before me on *01/12/23*
at about *01:15 PM* and on oath
states that the above facts are true to
the best of his/ her knowledge and belief

01/12/23
S. KUARNR NOTARY PUBLIC, JAJPUR ROAD



**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

**ORIGINAL APPLICATION NO.82/2022/EZ
(I.A. NO.18/2023/EZ, I.A. NO.23/2023/EZ)**

IN THE MATTER OF:

Kalinga Nagar Paribesh Surakhya Samiti,
Represented by it's President Aswini Kumar Dhal
At/PO/PS – Jakhapura,
Danagadi, Kalinganagar, Jajpur,
Odisha – 755026,

.... Applicant(s)

Versus

- 1. Chief Secretary, Odisha cum Chairman,**
State Pollution Control Board, Odisha,
Secretariat Bldg., Bhubaneswar,
Odisha – 751001,
- 2. Member Secretary,**
State Pollution Control Board, Odisha,
A/118, Nilakanthanagar, Unit-VIII,
Nayapalli, Bhubaneswar,
Odisha – 751012,
- 3. Additional Chief Secretary,**
Forest and Environment Department,
Government of Odisha,
Secretariat Building Bhubaneswar,
Odisha – 751001,
- 4. The Secretary,**
Ministry of Environment, Forests and Climate Change,
Indira Paryavaran Bhawan, Jorbagh,
New Delhi – 110003,
- 5. Member Secretary,**
Central Pollution Control Board,
Parivesh Bhawan, East Arjun Nagar,
New Delhi – 110032,
- 6. Managing Director,**
M/s VISA Sun Coke Ltd,
VISA House, 11, EkamraKanan,
Nayapalli Bhubaneswar,
Pin – 751015,
- 7. Managing Director,**
M/s VISA Coke Ltd,
VISA House, 11, EkamraKanan,
Nayapalli Bhubaneswar,
Pin – 751015,

8. Managing Director,

Odisha Industrial Infrastructure Development Corporation of Odisha
(IDCO),
IDCO Tower, Janapath, Bhubaneswar,
Pin – 751022,

.... Respondent(s)

Date of hearing: 11.05.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s) : Mr. Sankar Prasad Pani, Advocate (in Virtual Mode)

For Respondent(s) : Mr. Nayan Chand Bihani, Advocate a/w
Ms. Papiya Banerjee Bihani, Advocate for 1 & 2,
Mr. Surendra Kumar, Advocate for R-5,
Mr. Sumeer Sodhi, Advocate a/w
Mr. Prannoy Joe Sebastian, Advocate for R-7,
Ms. Amrita Pandey, Advocate in I.A. No.18/2023 (in Virtual Mode)

ORDER

1. Mr. Sankar Prasad Pani, learned Counsel is present for the Applicant in Virtual Mode. Mr. Nayan Chand Bihani, learned Counsel along with Ms. Papiya Banerjee Bihani, learned Counsel appearing for Respondent Nos. 1&2, Mr. Surendra Kumar, learned Counsel appearing for Respondent No.5, Mr. Sumeer Sodhi, learned Counsel along with Mr. Prannoy Joe Sebastian, learned Counsel appearing for Respondent No.7, are present in Court and Ms. Amrita Pandey, learned Counsel appearing for the Applicant in I.A. is present in Virtual Mode.
2. The allegation in the Original Application is that Integrated Steel Plant Project of M/s VISA Steel Ltd. for a capacity of 1.5 MTPA Steel Plant and 100 MW Captive Power Plant (CPP) was granted Environmental Clearance by the Ministry of Environment, Forest and Climate Change on 12.06.2007 for production of steel billets.
3. The learned Counsel for the Applicant submits that the Coke Plant operated by Respondent Nos. 6 and 7, M/s VISA SunCoke Ltd. and

M/s. VISA Coke Ltd. respectively, were never granted Environment Clearance since there is no mention of the same in the original Environmental Clearance given to M/s VISA Steel Ltd.

4. It is also alleged that the Coke Oven Plant of M/s VISA Coke Ltd. was granted Consent to Operate by the Odisha State Pollution Control Board from 2013 to 2019 i.e. from 30.03.2013 to 31.03.2019 and again from 29.03.2019 to 31.03.2023 but the said Coke Oven Plant is operating without Environmental Clearance.
5. The learned Counsel for the Applicant also referred to the Inspection Report of an inspection carried out by the Integrated Regional Office of the Ministry of Environment, Forests and Climate Change, Bhubaneswar, and the State Pollution Control Board on 26.10.2021 and the findings of the Committee are contained in their report under the heading - CONCLUSION which read as under:-

“Conclusion:

1. *The conditions stipulated in the EC letter as well as CTO letter are not being adhered to by the industrial plant. Industrial waste water is being discharged to the outside in violation of the EC letter issued by the Ministry of Environment, Forest and Climate Change.*

2. *Though Environment Clearance has been accorded by the Ministry to the integrated steel plant in 2007 with coke open being an integrated component, the Odisha State Pollution Control Board has issued separate CTO in favour of M/s VISA Coke Ltd. to which no EC has been granted.”*

6. Other conditions of the Environmental Clearance which have allegedly not been complied are also mentioned in the report which read as under:-

“4. Allegations made in the application and the findings

Sl. No.	Allegations Made	Observation
<i>i</i>	<i>Non-compliance of EC and CTO conditions by VISA Steel.</i>	<i>Conditions like ETP and surface run off treatment system is not functional during site visit.</i>
	<p>EC letter dated 12.06.2007 (Specific Condition No.v) <i>Total requirement of water Effluent treatment plant shall be installed for treatment of the processed water. Cooling tower and boiler blow down water will be used for coal quenching. All the waste water generated shall be treated, recycled and reused either in the process or for dust suppression or green belt development. No waste water shall be discharged outside the factory premises and zero discharge shall be adopted.</i></p>	<p>Status of compliance: Not complied. <i>With the discharge of water to outside the plant premises at different locations, this condition is not complied with.</i> <i>It is also observed during the visit that the ETP is non functional. From the observation made at site, it is noted that the ETP has not been maintained and remained non functional for some time.</i></p>
	<p><i>EC letter dated 03.07.2008 (Specific Condition No.vii)“prior permission for the drawl of 1,498 m³/hr from river Kharsua shall be obtained from the concerned department. No effluent shall be discharged outside the plant premises and zero discharge should be adopted”.</i> <i>General Condition No.iv, Industrial wastewater shall be properly collected, treated so as to confirm to the standards prescribed under GSR 422 € dated 19th May, 1993 and 31st December, 1993 or as amended from time to time. The treated</i></p>	<p>Status of compliance: Not complied. <i>It has been noted that continuous discharge of water from the plant is being done from many places.</i> Status of compliance: Not complied. <i>In the plant, there are drains connecting to the</i></p>

	waste water shall be used for plantation purpose.	STP. However, with the non operation of the STP, this condition is not complied with.
ii	Violation of Zero Discharge Conditions as per EC letter dated 12 th June 2007.	The condition is not complied with.
iii	Two Surface runoff Treatment System (SRTS) is not adequate as the yearly rainfall and seepage water much more than SRTS.	As per the report of Regional Officer, OSPCCB, Surface runoff Treatment System (SRTS) is in defunct condition.
iv	ETP not connected with online monitoring.	The ETP has been found to be non functional during the site visit.
v	Continuous Discharge of Black polluted water into agriculture fields causing skin irritation upon contamination	There is discharge of black polluted water from point No.3 and 4 from which samples were collected and analyzed.
vi	Discharge of waste water in violation of EC conditions causing harm to the farmlands.	The condition of Zero effluent discharge has not been complied with by the project. Industrial water has been observed to be flowing into the inland water system.

5. From the records available in office, it is noted that the Ministry has accorded following ECs to the project.

Name of the project	EC letter No. and date
Integrated Steel Plant (1.5 MTPA)	J-11011/133/2007/IA. II (I) dated 12.06.2017
Expansion of Integrated Steel plant by installing Rolling Mill	J-11011/1000/2007/IA. II (I) dated 03.07.2008
Ferro Chrome Plant (1,00,000 MTPA) M/s VISA Bao Ltd.	J-11011/491/2009/IA. II (I) dated 28.10.2009

7. Heard the learned Counsel for the parties and perused the documents on record.

8. Mr. Sankar Prasad Pani, learned Counsel for the Applicant has made submissions with regard to four issues in the present case namely:-

(I) M/s VISA Coke Ltd., Respondent No.7, has no Environmental Clearance in its favour;

(II) Non-compliance of conditions given in the Consent to Operate;

(III) Respondent No.7, M/s VISA Coke Ltd., has no Forest Clearance issued in its favour; and

(IV) Though the State Pollution Control Board, Odisha, computed Environmental Compensation against the Respondent No.7, M/s VISA Coke Ltd., but thereafter it illegally granted exemption to Respondent No.7 against payment of the same.

9. The Respondent Nos. 6&7, Project Proponent, have filed their counter-affidavit dated 26.09.2022 and a preliminary objection has been raised with regard to the maintainability of the Original Application on the ground that the Applicant in the present Original Application is challenging the Consent to Operate granted by the State Pollution Control Board, Odisha, in exercise of powers conferred under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974, (hereinafter referred to as 'the Water Act, 1974') and under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981, (hereinafter referred to as 'the Air Act, 1981'), whereas against the said order, the Applicant has remedy by way of appeal under Section 28 of the Water Act, 1974 as well as under

Section 31 of the Air Act, 1981, and, therefore, the present Original Application is not maintainable. Reliance has been placed on the judgment of the Hon'ble Supreme Court in (2019) 19 SCC 479 (*Tamil Nadu Pollution Control Board Vs. Sterlite Industries (India) Ltd. & Ors.*).

10. So far as the objection with regard to the ground of non-maintainability on grounds of alternative remedy is concerned, we may observe that the Consent to Operate was granted on 30.03.2013 whereas the issue with regard to environmental violations have been raised in 2022 based on the report of the State Pollution Control Board, Odisha, dated 26.10.2021, alleging non-compliance of the conditions of the Consent to Operate.

11. Section 28 of the Water Act, 1974 and Section 31 of the Air Act, 1981, provide that a person aggrieved by an order made by the State Board may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (referred to as Appellate Authority) as the State Government may think fit to constitute. Section 28 of the Water Act, 1974, and Section 31 of the Air Act, 1981 are extracted herein below for proper appreciation of the case:-

Water (Prevention and Control of Pollution) Act, 1974:-

28. Appeals.-(1) *Any person aggrieved by an order made by the State Board under Section 25, section 26 or section 27 may within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the appellate authority) as the State Government may think fit to constitute:*

Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) An appellate authority shall consist of a single person or three persons as the State Government may think fit, to be appointed by that Government.

(3) The form and manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the appellate authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred under sub-section (1), the appellate authority shall, after giving the appellants and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.

(5) If the appellate authority determines that any condition imposed, or the variation of any condition, as the case may be, was unreasonable, then,-

(a) where the appeal is in respect of the unreasonableness of any condition imposed, such authority may direct either that the condition shall be treated as annulled or that there shall be substituted for it such condition as appears to it to be reasonable;

(b) where the appeal is in respect of the unreasonableness of any variation of a condition, such authority may direct either that the condition shall be treated as continuing in force unvaried or that it shall be varied in such manner as appears to it to be reasonable.

.....XXX.....XXX.....XXX.....

Air (Prevention and Control of Pollution) Act, 1981:

31. Appeals.—(1) Any person aggrieved by an order made by the State Board under this Act may, within thirty day from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the Appellate Authority) as the State Government may think fit to constitute:

Provided that the Appellate Authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) The Appellate Authority shall consist of a single person or three persons as the State Government may think fit to be appointed by the State Government.

(3) The form and the manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal

and the procedure to be followed by the Appellate Authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred under sub-section (1), the Appellate Authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.”

12. We may also refer to the provisions of Section 25 of the Water Act, 1974, which is extracted herein below:-

25. Restrictions on new outlets and new discharges.- (1) *Subject to the provisions of this section, no person shall, without the previous consent of the State Board,--*

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or an extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlets for the discharge of sewage; or

(c) begin to make any new discharge of sewage;

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An applications for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.]

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may –

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being—

(i) in cases referred to in clauses (a) and (b) of sub-section (1) of section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order,

and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars or conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and sections 27 and 30,-

(a) the expression "new or altered outlet" means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression "new discharge" means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge."

13. Sub-section (1) of Section 25 of the Water Act, 1974, provides that *"no person shall , without the previous consent of the State Board –*
- (a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which his likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage)....."*
14. The word 'person' used in Sub-section (1) of Section 25 of the Water Act, 1974, refers to the person who is required to apply to the State Board seeking Consent to Operate and has a right to prefer the appeal under Section 28, if he is aggrieved by any of the conditions mentioned in the Consent to Operate or by any order of the State Board refusing to grant the Consent to Operate. Sub-section (5) of

Section 25 of the Water Act, 1974, also refers to notice to be given by the State Board to any industry, operation or process or any treatment and disposal system or any extension or addition thereto without Consent of the State Board to be served on the person who has established or taken steps to establish any industry, operation or process etc. Section 25, therefore, does not contemplate 'person' to include a person who is raising a grievance against an industry, operate, process etc. which is being carried on without the requisite statutory Consent to Operate by the person referred to in Section 25 of the Water Act, 1974.

15. In this view of the matter, we are of the view that the Applicant herein has no remedy of appeal against the order granting Consent to Operate to the Respondent No.7 before the Appellate Authority constituted under Section 28 of the Water Act, 1974, and the only remedy available to him is to approach this Tribunal by way of an Original Application. In our opinion, the judgment of the Hon'ble Supreme Court in Sterlite Industries (India) Ltd. (Supra) has no application to the present case. We, therefore, reject the objection of the Respondent Nos. 6 & 7 on this issue.

16. The next objection raised by the Respondent Nos. 6 & 7 is that the Original Application has been filed beyond the period of limitation. The objection is that the Applicant has not stated when the cause of action first arose and has failed to challenge the Consent to Operate before the competent authority within the period of limitation. Further objection raised by the Respondent Nos. 6&7 is that the Applicant is aggrieved by the Respondent Nos.6&7 operating since 2013 without obtaining Environmental Clearance and this plea has now been raised in the present Original

Application and, therefore, the present Original Application under Section 14 and Section 16 of the National Green Tribunal, Act, 2010 is beyond the period of limitation.

17. The said objection raised by the Respondent Nos. 6&7 is liable to be rejected on the ground that the Applicant among the various reliefs sought, is also seeking computation of Environmental Compensation for environmental violations as observed from time to time by the State Pollution Control Board, Odisha, and the Ministry of Environment, Forests and Climate Change and this aspect of the matter can always be examined by the Tribunal, if violations are established from the records of the case and, therefore, the present Original Application cannot be rejected merely on grounds of limitation. Even otherwise, the stand of the Respondent Nos. 6&7 is that a separate Environmental Clearance was not required by M/s VISA Coke Ltd., since it is covered by the Environmental Clearance granted to M/s VISA Steel Ltd. on 12.06.2007.
18. The next objection taken by the Respondent Nos. 6&7 is with regard to multiple litigations filed by the Applicant Society and reference has been made to Original Application No.19/2019 (EZ) (*Kalinga Nagar Paribesh Surakhya Samiti Vs. Member Secretary, Odisha State Pollution Control Board*), against the group company, M/s VISA Steel Ltd. wherein similar issues, as raised in the present Original Application, have been raised with regard to discharge of effluents by M/S VISA Steel Ltd. It is stated that the proceedings of the said Original Application have been stayed by the Hon'ble Supreme Court in Civil Appeal No. 7440 of 2020 (*M/s Visa Steel*

Ltd. Vs. Kalinga Nagar Paribesh Surakya Samiti & Ors.). It is alleged that the present Original Application is tainted with malafides.

19. The objection of the Respondent Nos.6&7 cannot be accepted for the reason that environmental violations committed by M/s VISA Steel Ltd. are on different grounds as distinguished from the allegations of environmental violations against M/s VISA Coke Ltd. and, therefore, the Applicant cannot be barred from raising environmental issues against alleged violations by M/s VISA Coke Ltd. through separate Original Application.

20. The next objection raised by the Respondent Nos.6&7 is with regard to the antecedents of the Applicant and it is alleged that the former treasurer of the Applicant's Society had filed a W.P.(C) No. 20231 of 2021 (*Alok Kumar Sia Vs. Inspector General of Registration & Ors.*) for cancellation of registration of the Applicant's Society. It is stated that the incorporation of the Applicant's Society is based on forged documents and the Society has no functional office. It is further alleged that the former treasurer has also stated that the Society is being used for extortion in the name of environmental protection and safety and that there are over 12 criminal cases registered against the President of the Society and FIR has been registered on the complaint of Mr. Alok Kumar Sia, treasurer of Applicant's Society against Mr. Ashwini Kumar Dhal, President of the Applicant's Society under Section 341, 294, 323, 307, 506 and 534 of the Indian Penal Code and as per the newspaper reports, Mr. Ashwini Kumar Dhal was absconding since his anticipatory bail was rejected two times by the Hon'ble Odisha High Court and thereafter a proclamation order has also been issued against Mr. Ashwini Kumar Dhal. It is further alleged that the President of the

Applicant's Society is a proclaimed offender and that villagers of Jakhapura Village and adjoining villages have also filed mass objections against the President of the Applicant's Society and the present Original Application is nothing but an attempt to settle a personal vendetta and to blackmail the Respondent Nos. 6&7 under the garb of environment protection and alleged benefit of the local people.

21. Learned Counsel for the Respondent Nos.6&7 in support of his objection has referred to the judgment of the Hon'ble Supreme Court dated 21.10.2022 passed in Civil Appeal Nos. 2407-2412 of 2021 (*The State of Uttar Pradesh & Ors. Etc. Etc. Vs. Uday Education and Welfare Trust and Anr. Etc. Etc.*), and has particularly referred to paras 95, 96, 97, 98 & 99 of the observations made by the Hon'ble Supreme Court which are extracted herein below:-

95. There is another reason, in our view, why the order of the learned NGT would not be sustainable. Though, on the date on which the review applications were rejected, 1215 provisional licenses were already granted and 633 units had already been established and commenced production, the learned NGT has passed the impugned order which adversely affects their interest. Either some of such industries ought to have been impleaded in their representative capacity or a public notice should have been given so that such license holders could have represented their case. However, the said contention is lightly brushed aside by the learned NGT by holding that, since the issue is related to the general decision of the State which is applicable uniformly to all the proposed provisional licensees, it is not necessary to consider the issue raised in the impleadment applications. It is more than a settled law that the principles of natural justice are required to be followed even in administrative actions when such actions adversely affect the rights of the citizens. When the learned NGT exercised its judicial powers, it could not have ignored the principles of natural justice, which, even under Section 19(1) of the NGT Act, it is bound to follow.

96. *Another aspect that needs consideration is that a serious issue was raised before the learned NGT by the appellants herein with regard to the credentials and bonafides of the original applicants.*

97. *When the matter was heard by us, we too made pertinent queries to Shri Mehta and Shri Chahar with regard to the credentials of the applicants before the learned NGT. One applicant is Uday Education and Welfare Trust; the second applicant is Samvit Foundation and the third applicant is U.P. Timber Association. Undisputedly, the U.P. Timber Association was a litigant interested in the litigation. However, insofar as the other original applicants, i.e. Uday Education and Welfare Trust and Samvit Foundation, for whom Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsel are appearing, specific queries with regard to the activities undertaken by the said original applicants were made as to whether they were involved in any activity with regard to the protection of the environment; had they at least been engaged in promoting plantation; what were the aims and objectives of the said original applicants; and what are the sources of funding, etc. Shri Mehta and Shri Chahar, learned Senior counsel, fairly submitted that apart from the fact that they (original applicants) had previously filed some public interest litigations wherein orders were passed in their favour, they had no other information.*

98. *Shri Dhruv Mehta, learned Senior Counsel has rightly relied on the judgment of this Court in the case of Ankita Sinha (supra) to submit that the learned NGT is empowered to take suo motu cognizance. This Court has held that, taking into consideration the nature of functions of the learned NGT, it cannot be equated with other Tribunals and in environmental matters, it will also have a power to take suo motu cognizance. However, when the credentials and bonafides of a litigant approaching the learned NGT are seriously raised, the same cannot be ignored.*

99. *We find that before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and bonafides of the applicants must be tested. In the present case, there is scope to infer that the litigation could be at the behest of the existing WBIs who wanted to avoid competition and continue to get raw material at a cheaper rate. There is also scope to infer that it could be at the behest of the*

WBIs in the adjoining Yamuna Nagar district of Haryana where lakhs of tons of timber is exported from the State of Uttar Pradesh. There is scope to infer that it could be in the interest of middlemen who are engaged in exporting timber from Uttar Pradesh to Haryana. We would, therefore, only request the learned NGT that, when credentials and bonafides of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to adversely affect the rights of many, it should ensure the bonafides and credentials of such litigants.

22. A reading of the said judgment would show that the Original Applicants before the National Green Tribunal (therein) have been:- one Applicant was Uday Education and Welfare Trust; the second Applicant was Samvit Foundation; and the third Applicant was U.P. Timber Association. The Hon'ble Supreme Court has held that undisputedly the U.P. Timber Association was a litigant interested in the litigation but so far as the other Original Applicants, i.e., Uday Education and Welfare Trust and Samvit Foundation, are concerned, specific queries were made to the Counsel with regard to the activities undertaken by the said Original Applicants as to whether they were involved in any activity with regard to the protection of the environment; had they at least been engaged in promoting plantation; what were the aims and objectives of the said Original Applicants; and what are the sources of funding etc. The learned Senior Counsel representing the two Original Applicants fairly stated before the Hon'ble Supreme Court, which has been noted in the judgment, that apart from the fact that they (Original Applicants) had previously filed some public interest litigations wherein orders were passed in their favour, they had no other information. It was in that context that the Hon'ble Supreme Court observed that when credentials and bonafides of a litigant

approaching the National Green Tribunal are seriously raised, the same cannot be ignored and when such a litigant knocks the doors of justice seeking orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and bonafides of the Applicants must be tested.

23. In the case before the National Green Tribunal which has led to the filing of the Civil Appeals before the Hon'ble Supreme Court, some of the Applicants therein were Wood Based Industries (WBIs) in the adjoining Yamuna Nagar District of Haryana where lakhs of tonnes of timber is being exported from the State of Uttar Pradesh and in that context the Hon'ble Supreme Court observed that there is scope to infer that the litigation could be at the behest of the WBIs in the adjoining Yamuna Nagar district of Haryana where lakhs of tonnes of timer is exported from the State of Uttar Pradesh and there is scope to infer that it could be in the interest of middlemen who are engaged in exporting timber from Uttar Pradesh to Haryana.
24. In the present case, whatever be the criminal cases pending against the Applicant's Society or against the President Ashwini Kumar Dhal, the address of the Applicant is Jakhapura, Danagadi, Kalinganagar, Jajpur, Odisha, where the Coke Plant in question is situate as would be clear from the Inspection Report on record and, therefore, it cannot be said that the Applicant has no interest in the matter of alleged violations of environmental norms by the Respondent Nos.6&7. Therefore, the objections of the Respondent Nos.6&7 with regard to non-maintainability of the present Original

Application on the allegations of antecedents of the Applicant are rejected.

25. In view of the above, we dispose of the preliminary objection of the Respondent Nos. 6&7 with regard to the maintainability of the present Original Application.

26. We may now take up the issues argued by the learned Counsel for the Applicant as follows:-

27. So far as Issue No.-I that **'M/s VISA Coke Ltd., Respondent No.7, has no Environmental Clearance in its favour'**; is concerned, we may advert to the Environmental Clearance dated 12.06.2007 (Annexure-1 to the Original Application), which was granted in favour of M/s VISA Steel Ltd. A perusal of para 2.0 of the said Environmental Clearance would show that the Environmental Clearance has been granted by the Ministry of Environment, Forests and Climate Change ('MoEF&CC' for short) on the application and proposal of the VISA Steel Ltd. for an Integrated Steel Plant (1.5 MTPA) and WHRB-CPP (100 MW) at Kalinga Nagar Industrial Complex, Jakhapura, Sukinda, Jajpur, Orissa. It is mentioned in the Environmental Clearance that the site is developed by the IDCO, Government of Orissa, over 486 hectares of un-irrigated agricultural land. No national park, wildlife sanctuary and reserve forest is located within 10 kilometer radius of the project site. Rehabilitation and resettlement is already completed as per the policy of the Government of Orissa. Stainless steel and steel products will be manufactured. Para 2.0 of the Environmental Clearance dated 12.06.2007 is extracted herein below for proper appreciation of the case:-

“2.0 The Ministry of Environment and Forests has examined your application. It is noted that M/s VISA Steel Ltd. have propose for the Integrated Steel Plant (1.5 MTPA) and WHRB-CPP (100MW) at Kalinga Nagar Industrial Complex, Jakhapura, Sukinda, Jajpur, Orissa. The site is developed by IDCO, Govt. of Orissa in 486 he unirrigated agricultural land. No national park, wildlife sanctuary and reserve forest is located within 10 km radius of the project site. Rehabilitation and resettlement is already completed as per the policy of Govt. of Orissa. Stainless steel and steel products will be manufactured as per details given below:

Name of products, by products and Intermediate Products	Total (TPA)
A. Main products:	
1. Mild steel billets	5,00,000
2. Stainless steel billets	5,00,000
3. Alloy steel billets	5,00,000
B. Intermediate products:	
1. Sponge iron	9,00,000
2. Hote metal/pig iron	6,00,000
3. Ferro-chrome	1,50,000

2.0 ESP to WHRB to control emissions within 100 mg/Nm³ and bag filters to DRI kiln, EAF, BF. Submerged Arc Furnace (SAF), Coke Oven Plant, Lime Plant, Dolo Plant will be provided to control air emissions within 50 mg/Nm³. Besides, Gas cleaning system in MBF, FE and DE oven etc. and bag filter in SMS, pulse jet type bag filter system in raw material handling area will also be provided. Total water requirement will be 39,3600 m³/d from River Brahmani Kharsua and ‘permission’ for drawn of 15,528 m³/d from River Brahmani/Kharsua for Phase I has been accorded by the Water Resources Department, Govt. of Orissa. Cooling tower and boiler blow down water will be used for coke quenching. DM plant neutralization pit water will be used for dust suppression. ETP will be installed for the treatment of process water. No wastewater will be discharged outside the premises and will be 100% recycled and reused. Iron ore fines will be sold to sinter plant for reuse. BF slag (granulated) will be sold to cement plants. Coke dust and coke breeze will be reused in the power plant. BF dust; Thickner mud, EAF/LRFD dust, Fines from ESPs and EAF slag will be used for land filling, road construction etc. iron skull, scrap from

CCM and char will be used in EAF. Slag from Ferro chrome unit will be dumped separately in 30 acres.”

28. Para 2.0 of the Environmental Clearance referred to hereinabove further mentions that ESP to WHRB to control emissions within 100 mg/Nm³ and bag filters to DRI kiln, EAF, BF, submerged Arc Furnace (SAF), **Coke Oven Plant**, Lime Plant, Dolo Plant will be provided to control air emissions within 50 mg/Nm³.
29. Mr. Sankar Prasad Pani, learned Counsel for the Applicant submitted that since the Respondent No.7 has a Coke Plant Unit in the name and style of M/ VISA Coke Ltd. and, therefore, in terms of the MoEF&CC, Environment Impact Assessment Notification 2006 it is required to obtain its independent Environmental Clearance and that the application seeking Environmental Clearance has to be submitted by the Project Proponent as per EIA Notification 2006 for all new projects or activities or expansion or modernization of existing projects or activities listed in the Schedule to the Notification of 14.09.2006 (hereinafter referred to as 'EIA Notification 2006').
30. The submission is that in the present case the Respondent No.7 (including Respondent No.6) does not have the requisite Environmental Clearance in its favour, therefore, all the activities of the Respondent No.7 are in violation of the EIA Notification 2006, and, therefore, the said Coke Oven Plant must be closed till the said Unit is granted Environmental Clearance.
31. Learned Counsel further submitted that subsequently M/s VISA Coke Ltd. has applied for Environmental Clearance which matter is still pending before the Ministry of Environment, Forests and Climate Change, Respondent No.4. It is, however, stated that

though the Respondent No.7 does not have the Environmental Clearance in its favour but it nevertheless applied for Consent to Operate before the State Pollution Control Board, Odisha, and the same was granted by the State Board on 30.03.2013 in the name of M/s VISA Coke Ltd.

32. The stand of the Project Proponent, Respondent Nos.6&7, is that M/s VISA Steel Ltd. is a group company and was granted Environmental Clearance by the Ministry of Environment, Forests and Climate Change on 12.06.2007 for its Integrated Steel Plant (1.5 MTPA). The Coke Plant was established as part of the Integrated Steel Plant with the Coke Oven Plant. Subsequently, on 03.07.2008 M/s VISA Steel Ltd. obtained Environmental Clearance from the Ministry of Environment, Forests and Climate Change for expansion of the Integrated Steel Plant by installing a Rolling Mill (1.5 MTPA rolled products) and Captive Power Plant (256 MW).

33. It is further stated by the Project Proponent that M/s VISA Coke Ltd. came into existence on 27.07.2012. M/s VISA Steel Ltd. entered into an agreement for sale of business on 20.11.2012 with M/s VISA Coke Ltd. in terms of which, M/s VISA Steel Ltd. transferred its business of manufacturing and sale of metallurgical coke and associated steam generation Unit (coke business) to Respondent Nos. 6&7. It is stated that M/s VISA Steel Ltd. continued to operate the remaining business (other than the coke business), thus, the existing Coke Plant owned by M/s VISA Steel Ltd. was transferred to M/s VISA Coke Ltd. and there was no new Plant/Unit established by the answering Respondent and merely the operation and production of the Coke Plant were transferred. It is also stated that since there was no expansion or change in area

or change in production of the existing Coke Plant, the Respondent Nos.6&7 were not required to obtain a fresh Environmental Clearance and instead it applied for transfer/re-issuance of Environmental Clearance as per the procedure laid down under para 11 of the EIA Notification, 2006.

34. The stand of the Project Proponent, Respondent Nos.6&7, further is that M/s VISA Steel Ltd. in terms of the requirements of the EIA Notification, 2006, sent a letter dated 08.03.2013 to the Impact Assessment Division, MoEF&CC, seeking transfer or re-issuance of Environmental Clearance dated 12.06.2007 which was duly received by the Respondent No.4 and since the terms and conditions of operation of the Coke Plant remained the same, the Expert Appraisal Committee was not required to consider the transfer of Environmental Clearance. It is stated that the Respondent Nos.6&7 are operating ever since on the same terms and conditions as prescribed in the Environmental Clearance dated 12.06.2007 and have not increased the production capacity. It is also stated that the Project Proponent has obtained a valid Consent to Operate on 30.03.2013, copy of which is already filed at page no. 43 of the Original Application.

35. Further stand of the Project Proponent, Respondent Nos.6&7, is that there is no legal entity in the name of 'M/s VISA SunCoke Ltd.', Respondent No.6. The name of 'M/s VISA SunCoke Ltd.' was changed w.e.f. 08.06.2018 to 'M/s VISA Coke Ltd.' i.e., Respondent No.7 herein. It is stated that M/s VISA Coke Ltd. was incorporated on 27.07.2012 as a subsidiary of M/s VISA Steel Ltd.. The company then formed a Joint Venture with Sun Coke Energy in 2013 and in terms thereof the name of the company was changed to 'M/s VISA

SunCoke Ltd.' w.e.f. 22.04.2013. Subsequently, in 2018 the SunCoke Energy exited the Joint Venture and an application for change in the name from 'M/s VISA SunCoke Ltd.' to 'M/s VISA Coke Ltd.' was submitted to the Registrar of Companies. The said change of name was approved by the Registrar of Companies w.e.f. 08.06.2018 and thus, at present there is no legal entity in the name of 'M/s VISA SunCoke Ltd.'. It is stated that the Respondent No.7, M/s VISA Coke Ltd., did not exceed the consented capacity granted to M/s VISA Steel Ltd. and, therefore, it did not require a fresh Consent to Establish. It is also stated that thereafter the Consent to Operate has been renewed on 29.03.2019 and is valid for the period from 01.04.2019 to 31.03.2023 for production of Lam Coke.

36. So far as Environmental Clearance dated 12.06.2007 is concerned, we find that the same was granted for an Integrated Steel Plant in the name of 'M/s VISA Steel Ltd.' and as already noted hereinabove in para 2.0, the said Environmental Clearance also covered the activity of Coke Oven Plant.
37. The stand of the Respondent M/s VISA Coke Ltd. is that there is no new activity of Coke Oven Plant other than that covered by the Environmental Clearance dated 12.06.2007 nor is there any expansion of the said Coke Oven Plant and, therefore, no fresh Environmental Clearance is required.
38. The contention of the Applicant is that since the Coke Oven Plant has been incorporated in the name of M/s VISA Coke Ltd. which is a registered company, therefore, it is required to apply for Environmental Clearance in its new name as per the provisions of EIA Notification, 2006.

39. We find no merit in the contention of the Applicant for the reason that it is not the case of the Applicant that the Coke Oven Plant in question is a new plant or its operational activity was not covered by the Environmental Clearance dated 12.06.2007. Originally the Environmental Clearance was granted to the Integrated Steel Plant of M/s VISA Steel Ltd. and **Coke Oven Plant** was one of the activities covered by that Environmental Clearance. There is no change in the site or production capacity of the said Coke Oven Plant. May be for administrative purposes or for business interest the existing Coke Oven Plant was incorporated as a separate company under the name and style of M/s VISA Coke Ltd. but so far as its production capacity, site and activities are concerned, the same remain as existing previous to its incorporation as a company. In our opinion, the Plant of Respondent No.7, M/s VISA Coke Ltd., would be covered by the Environmental Clearance dated 12.06.2007 and, therefore, no fresh Environmental Clearance is required by the M/s VISA Coke Ltd.
40. Mr. Sankar Prasad Pani, learned Counsel for the Applicant submitted that on its own showing the Respondent No.7, M/s VISA Coke Ltd. has applied for transfer/re-issuance of Environmental Clearance in terms of para 11 of the EIA Notification, 2006 and, therefore, the conduct of the Respondent No.7 buttresses his contention that M/s VISA Coke Ltd. required a separate Environmental Clearance upon its incorporation as a company under the name and style of M/s VISA Coke Ltd.
41. We may advert to the provisions of para 11 of the EIA Notification, 2006, which are extracted herein below:-

“11. Transferability of Environmental Clearance (EC):

A prior environmental clearance granted for a specific project or activity to an applicant may be transferred during its validity to another legal person entitled to undertake the project or activity on application by the transferor, or by the transferee with a written “no objection” by the transferor, to, and by the regulatory authority concerned, on the same terms and conditions under which the prior environmental clearance was initially granted, and for the same validity period. No reference to the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned is necessary in such cases.”

42. A reading of para 11 of the EIA Notification, 2006, would show that *‘a prior Environmental Clearance granted for a specific project or activity to an applicant may be transferred during its validity to another legal person entitled to undertake the project or activity on application by the transferor or by the transferee with a written ‘no objection’ by the transferor, to, and by the regulatory authority concerned, on the same terms and conditions under which the prior environmental clearance was initially granted and for the same validity period and no reference to the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned is necessary in such cases’.*
43. We may also observe that the word ‘may’ as referred to in para 11 of the EIA Notification, 2006, cannot be construed as imposing a mandatory obligation upon the transferee to obtain Environmental Clearance or apply for transfer of the Environmental Clearance because if that had been the intention of the EIA Notification, 2006, the said Ministry of Environment, Forests and Climate Change Notification would have said so. The word ‘may’ appearing in para 11 of the EIA Notification, 2006, therefore, cannot be read as meaning ‘shall’ to confer a mandatory cloak on a transferee for

obtaining Environmental Clearance where a prior Environmental Clearance for a specific project or activity had already been granted covering the project or activity of the transferee. For the same reason, we may hold that merely because the Respondent No.7, M/s VISA Coke Ltd, has applied for transfer/re-issuance of Environmental Clearance in its favour, the same cannot be construed as a failure on its part to carry on its operations till date without a valid Environmental Clearance and, therefore, the submission made by the learned Counsel for the Applicant is misconceived and is rejected.

44. The next Issue No.-II contended by the learned Counsel for the Applicant is that **'Respondent No.7 is carrying on its operations in violation of the conditions laid down in the Consent to Operate'**;

The allegations with regard to the non-compliance of the Consent to Operate referred to in para 14 of the Original Application have been culled out by the Applicant from the show cause notice dated 21.12.2021 issued by the State Pollution Control Board, Odisha, to the Project Proponent (Annexure-9 to the Original Application) and Inspection Report filed by the Ministry of Environment, Forests and Climate Change under its letter dated 11.01.2022 (Annexure-10 to the Original Application), already extracted herein above.

45. The stand of the MoEF&CC, Respondent No.4, in its counter-affidavit dated 02.09.2022 also confirms that the Environmental Clearance dated 12.06.2007 was granted to the Integrated Steel Plant (1.5 MTPA) and WHRB-CPP (100 MW) at Kalinga Nagar

Industrial Complex, Jakhapura, Jajpur, Odisha, to M/s VISA Steel Ltd. as per the provisions of the EIA Notification, 2006.

46. The State Pollution Control Board, Odisha, Respondent No.2, has filed its affidavit dated 26.09.2022 and its stand is that vide letter dated 22.04.2004, Consent to Establish was granted by the Board to M/s VISA Steel Ltd. for 1.5 MTPA Coke Oven Plant within its premises; another Consent to Establish was granted by the Board on 18.04.2006 for 2.5 LTPA Coke Plant; and by another Office Memorandum dated 06.12.2006 Consent to Establish was granted by the Board for another 4,00,000 T/Yr Coke Oven Plant. It is further stated that an inspection of the site in question was carried out on 05.10.2021 and 26.10.2021 by the Board, the findings of which read as under:-

“INSPECTION REPORT OF M/S VISA COKE LTD (FORMERLY KNOWN AS VISA SUN COKE LIMITED), AT: KALINGANAGAR INDUSTRIAL COMPLEX, AT/PO-JAKHAPURA, DISTRICT-JAJPUR”

<i>Name of Industry</i>	<i>Visa Coke Ltd. Kalinga Nagar, Industrial Complex, Jajpur,</i>
<i>Date of Inspection</i>	<i>05.10.2021 & 26.10.2021</i>
<i>Inspecting Officers</i>	<i>Er P K Behera, RO Er M M Sahoo, AEE</i>

The industry was inspected to verify the complaint made by Sri Aswani Kumar Dhal on Dtd. 20.09.2021 and as well as present environmental management practices of the unit. Sri Bikash Ku Das, Head, Sri Tushar Kanti Mishra, Head Environment & Sri Jitendra Ku Sahu, Asst Manager Environment of the industry were present during inspection. During the day of visit on 26.10.2021, Mr. M Rajeswar Prasad, Scientist B of Integrated Regional Office, MoEF&CC, Bhubaneswar was present & also the complainant was present there while visit the periphery of the unit.

The CTO of the industry for following product is valid upto 31.03.2023.

SL No.	Product	Quantity
1	LAM Coke (Non Recovery Type)	4.0 LTPA

The raw material procured and Lam coke production during 2020-21 & 2021-22 (till September 2021) are as follows:

Year	Coking coal Procured	Lam Coke produced
2020-21	491655 MT	347480 MT
2021-22 (Till September 2021)	284656 MT	201300 MT

OPERATIONAL STATUS:

The unit was under normal operation as observed during visit.

COKE OVEN PLANT:

It is a non recovery type of coke oven plant based on heat recovery technology comprises of following units

- I. Coal Handling Plant
- II. Batteries 08 nos (11 oven in each battery)
- III. Two nos of Boilers

Batteries (1 to 4) is connected to Boiler 1&2 with a common stack of height 70m and Batteries (5 to 8) connected to Boiler 3&4 with a common stack of height 70m. the volatile matters generated during the process of carbonization are burnt with in the oven to provide necessary heat for carbonization. The heat of flue gas is used in Waste Heat Recovery Boiler to generate approx 25 MW power.

Coal Handling Plant:-

Australian Coal is used as Coking coal in the coke oven. Coal is stacked over an area of 12 acres land. About 40% of total coal is stacked under covered shed and remaining was stored openly. Approximately 20,000 MT coke was found to be stored in the stockyard out of which 1000 MT are under covered shed & remaining portion openly.

Coal Handling plant premises of following units-

- Ground Hopper (Four nos)
- Hammer Crusher (Two Nos)
- Intermediate silo (Two Nos, 320 Ton capacity each)

Process Details:-

Coal is fed to coal bunker by conveyer. After the coal is crushed in a coal crusher of capacity 120TPH to -3mm size is taken to coal bunker. Then it is drawn from coal bunker for stamping. After stamping coal coke is charged into the oven and carbonized for 66-68 hours. The coke thus produce is pushed out into a quenching. After quenching it is taken to screening plant 3x100TPH to produce different size of coke named by BF grade (25/30 to 70/90mm), Nut Coke (8/10 to 25/30mm) and breeze coke (0 to 8/10mm). All the ovens are fed with same coal blend from a common coal tower.

Air pollution control measures at coke oven:

- i. There are 12 Nos. of Rain gun type water sprinkler provided at entire coal stock yard area to suppress dust.
- ii. Three no. of high pressurized water sprinkler provided surrounding the ground hopper area to suppress dust.
- iii. Dry fog type water sprinkler arrangement has been provided at hammer crusher unit at the coke oven crusher zone to cater the fugitive dust emission.
- iv. There are 70 no. of fixed type water sprinklers provided at feeding point (Ground hopper) and transfer points of conveyer from coal handling point to the feeding point to suppress dust.
- v. Four No. of 12 Kl water tankers has been engaged for water sprinkling of internal roads of the plant premises for suppression of dust.
- vi. 25 No. of road side fixed type water sprinkler provided from crusher building to learning centre to prevent road side dust during transportation of coal by heavy vehicle.
- vii. Two number of dry fog system provided at KC-3 tail end at Cutter-2.
- viii. Coke oven flue gas is taken to 4x24.5 TPH Boiler for steam generation.
- ix. The unit has installed online stack monitoring system in stack (PM_{10} & SO_2).

Water Requirement:

Water is sourced from Visa Steel Limited as follows.

- A. Waste water used from Visa Steel Ltd.

SL. NO	Purpose of Use	M ³ /Day
1	Cooling water for quenching purpose	600
2	For dust suppression & gardening	2
3	Cooling water	48
	Total	670

Water Pollution Control measures at coke oven:

- i. The unit is a non recovery type Coke Oven. No effluent is generated from the unit as no by product plant is there.
- ii. The unit has adopted wet quenching method & the quenching water is again recycled through sedimentation process in a close circuit through three RCC pits.
- iii. The unit has provided garland drain around the raw material stock yard & plant to collect runoff water. The water is then pumped to be re-utilized in the coke oven quenching process.
- iv. The unit has provided a 250 KLD surface runoff treatment facility which comprises of following units
 - Bar Screen
 - Oil Grease Trap
 - Equalization Tank
 - Flash Mixture
 - Tube Settler
 - Filter feed tank
 - Activated sand & carbon filter
 - Phenol removal tanks

OBSERVATIONS MADE W.R.T. COMPLAINT MADE BY SRI DHAL ON DTD. 20.09.2021 REGARDING NON COMPLIANCE OF CTO CONDITIONS

Sl. No.	NON COMPLIANCES	COMPLIANCES STATUS
1.	As per the CTO condition the industry shall put up sign boards at main gate and nomenclature the approval discharge outlets. However nowhere in the CTO there has been specified the approved discharge outlets. It is not possible by the board as	During inspection it was verified that the unit has already fixed as sign board at main gate indicating nomenclatures of the stacks which is both common to M/s Visa Steel & Visa Coke Ltd. Visa Coke has been set up in an area of 25 AC & the lay out plan

	<i>VISA Coke has been set up in a scattered manner at various location inside VISA Steel premises. It does not have any of its infrastructures. Hence it discharge everything to the drains of VISA Steel. For that reason Phenol and cyanides is found in the approved discharge outlets of VISA Steel.</i>	<i>is attached for reference. Water samples were collected and monitored from two locations near culvert-2 & culbert-3 and found within the standard w.r.t phenol & cyanide</i>
2	<i>A Pucca boundary wall shall be provided around the factory premises and it is not there.</i>	<i>The unit has common boundary wall with M/s Visa Steel ltd around the plant premises.</i>
3.	<i>Coal shall be store under covered shed. Material storage area shall be covered with adequate sprinkling facility and here the storage capacity is inadequate.</i>	<i>The unit has provided two nos. of coal storing shed of capacity ten thousand ton each. Part of unprocessed coal is stored in openly without shed. Rain gun type water sprinklers are installed around the coal storage area. 12 nos. of Rain gun type water sprinklers are installed around the coal storage area.</i>
4.	<i>M/s- VISA Steel Ltd has set up an integrated steel plant by installing Rolling Mill (1.5 MTPA rolled product) and Captive power plant (256 MW) at Kalinga Nagar Industrial complex Total 486 ha. Land has been acquired from industrial Infrastructure Development Corporation (IDCO) Govt. of Odisha at Kalinga Nagar Industrial complex and Environmental Clearance has been granted by the ministry vide letter no.11011/33/207-IA.II (I) dated 1th June, 2007, The EC letter clearly specifies that the</i>	<i>The unit is a non-recovery tube Coke Oven. No effluent is generated from the unit as no by product plant is there. Further the unit has provided a surface run of treatment system of 250 KLD capacity for treatment of run of water. Though there was no rain during visit and no rain since few days before inspection, seepage water from the plant premises was found to be going to outside through culvert 2 & 3 as observed. Water quality monitoring was carried out during visit and as</i>

	<p>plant will operate in Zero Discharge Condition and adhere to the prescribed standards of stack emission.</p>	<p>per analysis report it is revealed that the water quality meets the prescribed standard of the board. The unit should explore the maximum possibility to collect the seepage water & reuse it totally in the plant.</p> <p>Stack monitoring of coke oven (Flue gas tunnel after boiler I & II) was carried out during inspection & monitoring result is presented below. It is revealed from the result that PM is within prescribed standard & SO₂ is also mentioned in the report i.e. 225 mg/m³.</p>
5	<p>That the unit is non-Complaint and polluting the air as well as water since its inspection and in this regards the undersigned has brought to the knowledge of your esteemed organization time and again further the allegation are also found to be true during the inspection carried by the Pollution Control Board and to that effect show cause notices have been issued for closure of the unit.</p>	<p>During the inspection it was verified that the industry has installed two online continuous stack monitoring facility at Coke ovenstack-1 (Flue Gas Tunnel after Boiler-I&II) and at Coke oven stack-2 (Flue Gas Tunnel after Boiler-III & IV) for measurement of PM₁₀ and SO₂ Online monitoring data of both stack transmitted to SPCB and CPCB server on continuous basis.</p> <p>The unit is a non-recovery type Coke Oven. No effluent is generated from the unit as no by product plant is there. Further the unit has provided a surface run of treatment system of 250 KLD capacity for treatment of runoff water. The SRTS was found in functional condition.</p>
6	<p>It is needless to mention here</p>	<p>No comments</p>

	<i>that despite of concrete evidence and observations in the inspection report about the non-compliances of conditions of consent to operate, the unit has been allowed to operate and pollute with full impunity and protection from the SPCB Board.</i>	
7	<i>That in this regards the farmer have also complained time and again regarding the contaminated water and skin irritation when they work in their field. Further the agriculture fields are also damaged with black polluted water from the VISA Industry and VISA Coke for that the yields of the paddy crops are declining.</i>	<i>Seepage water from the plant premises going to outside through culvert 2 & 3 as observed. Water quality monitoring was carried out during visit and as per analysis report it revealed that the water quality meets the prescribed standard of the board.</i>
8	<i>The online monitoring stack emission data of VISA sun Coke for the period of 15th Jan 2020 to 15th Feb 2020 clearly indicates the sulfur dioxide level is always more than 400mg/ltr at times more than 500PPM when the prescribed limit is 50PPM. (annual) and 80 PPM for 25 hr data. In any case the emission level in respect SO₂ is 10 times more than the limit.</i>	<i>Stack monitoring was carried out during visit and monitoring result is presented below for reference w.r.t PM₁₀ SO₂.</i>
9	<i>As you know Sulfur dioxide affects human health when it is breathed in it irritate the nose, throat and always to cause coughing wheezing, shortness of Breath, or a tight feeling around the chest. The effect of Sulfur dioxide are felt very quickly and most people would feel the worst</i>	<i>The unit has provided two stacks at height of 70m attached to Battery I & II and Battery III & 1V. Stack monitoring was also carried out during visit and monitoring report is attached for reference w.r.t PM₁₀ & SO₂</i>

	<p>symptoms in 10 or 15 minutes after breathing it in. Those most at risk of developing problems if they are exposed to sulfur dioxide are people with asthma or similar condition.</p>	
10	<p>The unit has not yet adopted dry quenching system for which the waste water is being generated from the wet quenching process. The waste water contains phenol & cyanide is discharging outside cultivated lands. The industry has not installed primary effluent treatment plant which is also violation of honorable supreme court order 22.02.2017.</p>	<p>The unit has adopted wet quenching method & the quenching water is again recycled through sedimentation process in a close circuit through three RCC pits. During visit there is no discharge quenching water was found.</p>
11	<p>Coal shall be stored under covered shed. Material storing shall be covered with adequate sprinkler facility.</p>	<p>The unit has provided two nos. of coal storing shed of capacity ten thousand ton each. Part of unprocessed coal is stored in openly without shed. Rain gun type water sprinklers are installed around the coal storage area.</p>
12	<p>Dust from approach roads and internal roads shall be removed every day and taken to dump site. The approach road and internal roads shall be cleaned periodically to avoid accumulation of dust and to control of fugitive dust emission during playing of vehicles.</p>	<p>During inspection it was found that part of internal roads found in damaged conditions and accumulation of dust was found near coal transfer points. Fugitive emission was observed during plying of vehicles.</p> <p>Four numbers of water tanker (12Kl-capacity) engaged & 25 nos. of road side water sprinkler provided for water sprinkling on internal roads of the plant premises for suppression of</p>

		<i>fugitive dust.</i>
13	<p><i>Under no circumstances there shall be any discharge of any effluent to outside the factory premises.</i></p> <p><i>The plant should be designed totally for zero discharge of effluent. A detail proposal to this effect shall be submitted to the Board.</i></p>	<p><i>During visit no discharge of process effluent from the plant to outside was observed. Seepage water from the plant premises discharged to outside through culvert 2 & 3 as observed during visit.</i></p> <p><i>The unit has provision for collection of surface run-off in settling pits & subsequently the unit has provided a surface run off treatment system of 250 KLD capacity for its treatment. The runoff water after treatment being utilized in Quenching, dust suppression and plantation activities. However it was observed that some portion of coal at south-west corner of stockyard was stored openly without any dyke wall & garland drain as the same has been damaged and the rain will find its way to outside without channelizing through the treatment system, in case of rain.</i></p>
14	<p><i>The industry shall put sign boards at the main gate and nomenclature the approved discharge out lets stack within one month. The industry shall install electronic display board in front of main gate to display the monitoring data, prescribed standard for public information.</i></p>	<p><i>During inspection it was verified that the unit has already fixed a sign board at main gate indicating nomenclatures of the stacks which is both common to M/s Visa Steel & Visa Coke Ltd.</i></p>
15	<p><i>The runoff water from the factory premises, coal & raw material</i></p>	<p><i>The unit has provided garland drain around the raw material</i></p>

	<p>stack yard and solid waste dumping area shall be adequately treated so as to meet the prescribed standard of the board before discharged to outside/reused.</p>	<p>stack yard & plant area to collect runoff water. The water is then pumped to be re-utilized in the coke oven quenching process. Apart from this the unit has provided a 250 KLD SRTS for treatment of runoff water. A water sample was collected from the outlet of SRTS after making its operational & its quality is meeting the discharge standard. However, it was observed that some portion of coal at south-west corner of stockyard was stored openly without any dyke wall & garland drain as the same has been damaged and the rain will find its way to outside without channelizing through the treatment system, in case of rain. Further the dyke of wall of the drain found to be unreasonably low height near the connecting point with SRTS through which the drain can overflow during rain when drain will carry full flow.</p>
16	<p>Water harvesting structures of adequate numbers at appropriate locations shall be constructed to collect water in ponds for captive consumption. The structures shall be designed based on CPCB guideline.</p>	<p>A rain water reservoir (5 Lakh m³) has been provided near main gate which is outside the premises of M/s VISA coke but inside the M/s VISA steel Ltd.</p>
17	<p>The industry is required to submit a water balance diagram, affix separate water meters at all</p>	<p>The unit has already submitted the details of water consumption to the Board as informed. Water</p>

	<p>intake points and at different consumption purposes.</p> <p>Permanent type of high pressure water spraying system with nozzles shall be installed for regular spraying of water on all roads, work zone and solid waste dumping area.</p>	<p>meter has been provided in two numbers bore well.</p> <p>There are 12 nos. of rain gun type of high pressure installed at coal & Coke yard. The unit has also installed 25 no. of sprinkler all along the road.</p>
18	<p>Surface runoff treatment system consisting of sedimentation through settling tanks/ponds followed by high rate clarification through clarifloculator/tube settlers shall be installed within 3 months to meet the discharge norms and shall be completely recycled during dry season/partly discharged specially during monsoon if unavoidable.</p>	<p>The unit has provided a 250 KLD surface run of treatment facility which comprises of following units</p> <ul style="list-style-type: none"> ➤ Bar Screen ➤ Oil Grease Trap ➤ Equalization Tank ➤ Flash Mixture ➤ Tube Settler ➤ Filter feed tank ➤ Activated sand & carbon filter ➤ Phenol removal tanks
19	<p>Domestic solid waste generated from colony, canteen, office complex etc. shall be processed through mechanically operated waste convertors with facility for recovery of useful products like oil/gas/carbon/metal/compost etc. The products to be used by the industry or sold and the inorganic residues is to be used for captive consumption/sold/disposed in sanitary landfill developed inside the premises.</p>	<p>The unit has not its own colony & canteen facility. Colony and canteen is common for both M/s Visa Steel & Visa Coke Ltd</p>
20	<p>The industry shall strictly implement the plan proposed for green belt and plantation as per</p>	<p>Approximately 2835 trees have been planted within the plant premises over an area of 7.47</p>

	<i>the EIA and CTE condition without any deviation. The progress shall be made under strict supervision of Forest Dept., Govt. of Odisha.</i>	<i>Ac land. During 2021-22 the unit has taken a target of 500 no. of saplings plantation as informed.</i>
21	<i>The industry must constitute a team of responsible and technically qualified personnel who will ensure continuous operation of all pollution control devices round the clock (including night hours) and should be in a position to explain the status of operation of the pollution control measures to the inspecting officers of the board at any point of time</i>	<i>Environment cell has been formed by the unit consist of the plant head & one personnel as informed.</i>

ENVIRONMENTAL MONITORING:**AAQ MONITORING:**

Ambient air quality monitoring was conducted at two locations inside the plant to verify the quality of ambient air inside the industrial premises. The analysis report is presented as below:

SL No.	Location	Parameters
		PM₁₀ ($\mu\text{g}/\text{Nm}^3$)
1	<i>AAQ monitoring near office building of M/s Visa Coke</i>	92
2	<i>AAQ monitoring near CEMS-02</i>	128
Standard		100.0

From monitoring report it revealed that AAQ does not meet the prescribed standard w.r.t PM10 near CEMS-02

STACK MONITORING:

Stack gas monitoring was conducted at common stack attached to Boiler I & II and the analysis report is presented below:

Sl. No.	Location	Particulate matter concentration	SO₂ (mg/m^3)
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1	Common stack of coke oven attached to the Boiler I & II	67	225
Standard		100.0	

From the analysis result it is revealed that the PM concentration within the prescribed standard

WASTE WATER ANALYSIS:

Samples of seepage water at different locations on two different dates & also the samples of treated waste water at outlet of SRTS were collected & the analysis report is present below:

Sl No.	Date of sampling		Parameters				
	Sources of Sampling/Location		pH	TSS (mg/l)	Cr ⁶ (mg/l)	Phenol (mg/l)	Cyanide (mg/l)
1	05.10.2021	Discharge to outside near culvert no. 02 of M/s Visa Coke Ltd	6.97	74	0.017	0.020	0.010
2		Drain Discharge leading to culvert no 02 of M/s Visa Coke Ltd	7.14	53	0.022	0.016	0.008
3		Drain Discharge leading to culvert no 03 of M/s Visa Coke Ltd	7.04	82	0.026	0.034	0.007
4		Outlet of SRTS of M/s. Visa Coke Ltd	7.53	14.0	0.009	0.012	0.006
1	26.10.2021	Drain Discharge leading to culvert no 02 of M/s Visa Coke Ltd	7.41	71	0.013	0.051	0.008
2		Drain Discharge leading to culvert no 03 of M/s Visa Coke Ltd	7.50	49	0.025	0.062	0.011
Prescribed standard at outlet (Inland surface)			5.5-9.0	100.0	0.1	1.0	0.2

It revealed from the analysis result the quality of water discharging outside is meeting the prescribed discharge standard.

RECOMMENDATIONS:

A suitable direction may be issued to the unit for rectification of lapses as indicated in the report.”

47. A further affidavit dated 17.12.2022 has been filed by the State Pollution Control Board, Odisha, Respondent No.2, wherein it is stated that with regard to the environmental violations observed, a notice was issued to M/s VISA Coke Ltd. The Minutes of the Personal Hearing of M/s VISA Coke Ltd. dated 16.12.2022 has been filed as Annexure-R2/13 to the affidavit which reads as under:-

**“MINUTES OF THE PERSONAL HEARING OF M/S VISA
COKE LIMITED, KALINGANAGAR INDUSTRIAL COMPLEX,
JAJPUR**

1.	Name of the Industry	Visa Coke Limited, Kalinganagar Industrial Complex, Jajpur	
2.	Date & Time	06.12.2022 at 4:00 PM	
3.	Venue	Conference Hall, SPC Board, Odisha, Bhubaneswar	
4.	Participation	i) Dr. K. Murugesan, Member Secretary ii) Dr. N. R. Sahoo iii) Er. Sitikantha Sahu, ACEE iv) Er. P. K. Behera, Regional Officer, Kalinganagar v) Er. B K Sethi, EE vi) Shri B. P. Pattajoshi, Legal Consultant vii) Shri S. K. Kuanr, Sr. Law Officer (L-II) viii) Ms. Subhadra Majhi, AES	State Pollution Control Board
		i. Shri Manoj Kumar, Director	M/s Visa Steel Ltd.
		i. Shri Deepak Kumar, Managing Director ii. Shri Vikas Das, Head Operations-cum-Factory Manager	M/s Visa Coke Ltd.

BACKGROUND:

M/s Visa Coke Limited is a non-recovery coke oven plant operating in Kalinga Nagar Industrial Estate with a production capacity of 4.0 Lakh tonne per annum LAM Coke (non-recovery type). This unit is operating within the premises of Visa Steel Limited (Steel Plant). Consent to operate was first granted in the name and style of M/s Visa Coke Limited on 30.03.2013. Subsequently it was renewed in the changed name of M/s Visa

Suncoke Ltd., following due procedure under the provision of Air (PCP) Act, 1981 and Water (PCP) Act, 1974. Again the name has been changed to M/s Visa Coke Ltd. and CTO has been granted to M/s Visa Coke Ltd. with its validity upto 31.03.2023.

A direction under section 25/26 & 33 (A) of the Water (PCP) Act, 1974 and under section 21 & 31 (A) of Air (PCP) Act, 1981 was issued to M/s Visa Coke Ltd., Kalinganagar Industrial Estate on 21.12.2021 based on the inspection report of Regional Officer, Kalinganagar on 05.10.2021 and 26.10.2021 on the following issues:

- 1. Though there was no rainfall during the inspection and in its antecedent period, still effluent was found to be discharged to outside through culvert No.2 & 3 which was reportedly seepage water. Discharge of such effluent is a violation of consent condition Moreover, presence of Phenol and Cyanide in all the drains i.e. i) drains leading to culvert No.2 & 3 and discharge made to outside via culvert No.2 & 3 on 05.10.2021 and dtd. 26.10.2021 is an issue needs satisfactory reasoning since these were reportedly seepage water.*
- 2. Part of internal roads was found to be in damaged condition and accumulation of dust was found near coal transfer points leading to fugitive emission during plying of vehicles.*
- 3. Some portion of the coal at south west corner of the stack yard was found to be stored openly without any dyke wall and garland drain. The same has been damaged and due to this, rain water may find its way to outside without getting channelized to the treatment system in case of rains. Further, the dyke wall of the drain near the connecting point with SRTS was found to be unreasonably low height which can overflow when the drain will carry full flow.*
- 4. a part of the unprocessed coal is stored in open without any cover shed.*

They were also asked to furnish time bound action plan for the above lapses. The industry submitted the time bound action plan on 04.01.2022.

The same was verified by RO, Kalinganagar on 02.03.2022. It was informed that there was no effluent discharge through

culvert No.2 & 3. They have provided one SRTS of 250 KLD for treatment of surface run-off generated from coke over plant premises alongwith one settling pond. There was compliance to other conditions of the direction of 21.12.2021. The stack & AAQ monitoring result meet the prescribed norm.

But subsequent inspection report of 04.07.2022 and 05.07.2022 indicates some of internal road to be in damaged conditions and some coke finds were stored in open area.

As per the order of Hon'ble NGT, EZB, Kolkata of dtd. 28.09.2022, an environmental compensation was computed as per the methodology developed by CPCB to the amount of Rs.82,20,000/- by the Board. It was communicated to the industry on 09.11.2022.

The industry submitted its objection to the environmental compensation calculation by the Board on 15.11.2022. The industry has submitted the objections in following manner:

1. The Guideline of CPCB followed for computation of EC is not fit for the present case, as it is a zero effluent discharge industry. The seepage water may not be treated as effluent and the quality of the wastewater was found to be within permissible limit on the day of inspection i.e. 5.10.2022 and 26.10.2022.
2. The Guideline/methodology is applicable for discharge in violation of CTO conditions mainly to prescribed standard, not complying to the direction such as direction for installation of OCEMS, non-adherence to the action plan submitted, accidental discharges lasting for short durations resulting in damage to environment, intentional discharges. Hence, this case is not fit for the instance.
3. Regarding fixation of the parameters in the calculation.
4. Number of days of violation assumed in the calculation is not correct.

In order to take a decision in the matter of Environmental Compensation, the industry was called for a Personal Hearing on 06.12.2022 at 04.00 PM in the Conference Hall of SPC Board, Odisha, Bhubaneswar to offer their views. The personal hearing was held on scheduled date and time under the Chairmanship of Member Secretary, SPCB, Odisha.

RECORD OF PROCEEDING:

On request of Member Secretary, the representatives of the industry made a power point presentation regarding the action taken as per the direction dated 21.12.2021.

They informed that they have completed all the rectification jobs as per the direction of Board dated 21.12.2021 within the timeline proposed by them vide their letter dated 04.01.2022. These are all non-compliances to the imposed consent conditions, not violation to the Environmental Acts or Rules. Furthermore, they claimed that being a non-recovery coke oven plant there is no generation of process effluent and hence there is no discharge of industrial effluent to outside the plant premises. Hence, the industry is adopting zero liquid effluent discharge norms. However, the surface run-off generated from the coke oven premises is treated in their existing SRTS of 250 KLD capacity of coke oven plant and the treated water is reused in coke quenching and surplus treated water is further channelized to the SRTS of Visa Steel Ltd. before discharging to outside through the permitted culverts. But during heavy rains the excess run-off is discharged to outside through Culvert No.2 & 3 after treatment in the SRTS of coke oven plant. They have also provided two RCC settling pits with proper recirculation system to collect the residual surface run-off getting discharged through Culvert No.2 & 3.

They have admitted that still some coal fine is stored in open area outside the coal shed. The capacity of the coal shed is 20,000 MT whereas the coal stored at outside the shed is 2,000 MT with tarpaulin cover and adequate sprinkling arrangement.

The guideline and methodology formulated by CPCB for computing the Environmental Compensation (EC) on the industry is applicable in case of violation of consent conditions such as operating without valid consent and mainly not complying to the prescribed standards. However, in the present context there was only non-compliance observed during inspection to the consent conditions. The analysis report of the laboratory of SPB Board indicated that the effluent parameters are within the prescribed standard. Hence, they are not violating any Environmental Acts or Rules and as such they are

not falling under the purview of Environmental Compensation as per the CPCB guidelines.

The representative of industry also mentioned that the Chief District Agriculture Officer, Jajpur gave a report that agricultural activity can be taken of successfully in the area. The soil sample and water sample analysis report meet the prescribed standard. It was concluded in the report that it could not be ascertained the result of effluent water in the crop.

They also cited the report of CDMO and Public Health Officer, Jajpur which states that skin irritation may be due to an allergic skin condition or any other reason and not due to contact with discharge of effluent of M/s VISA Steel Ltd., Kalinganagar.

Legal Consultant opined that as per the order of Hon'ble NGT on dated 28.09.2022, SPC Board, Odisha should determine the Environmental Compensation and intimate the same to the industry and if the industry makes any objections, the same shall be considered by the Board. Hence, necessary decision in EC computation shall be taken.

DECISION TAKEN:

After a detail discussion, the following decisions were taken:

1. The industry shall enhance the capacity of coal shed to accommodate the entire coal requirement of the coke oven plant. At no point of time there shall be storage of any coal in open areas outside the coal shed. Hence, the industry shall furnish the time bound action plan in this regard within 15 days from the date issue of the proceeding of personal hearing.
2. The industry shall take necessary action to repair the damaged internal roads and maintain it properly and regularly to devoid of ruts and potholes at any point of time.
3. The Environmental Compensation was calculated based on the following formula as per the CPCB guideline:

$$EC = PI \times N \times R \times S \times LF$$

Where *N* is Number of days of violation took place in the period between the day of violation observed / due date of direction of compliance and the day of compliance verified by SPCB/CPCB/PCC.

The Board issued a direction the industry on 21.12.2021 based on the inspection report of RO, Kalinganagar, SPC Board, Odisha on dated 5.10.2021 and 26.10.2021. The industry was directed to submit a time bound action plan to rectify the non-compliances observed during inspection. The industry submitted the time bound action plan on 4.1.2022. The timeline varied from 31.1.2022 to 31.5.2022 for the four nos. of jobs. The matter was investigated by RO, Kalinganagar, SPC Board, Odisha on dated 2.3.2022 and 5.7.2022. Therefore, N was considered as 274 days from 5.10.2021 as the date of detection of non-compliances to 5.7.2022 as the date of compliance. Accordingly the Environmental Compensation was calculated as Rs.82,20,000/-. However, the earlier inspection report of dated 2.3.2022 reveals that the industry has already completed all the jobs within the timeline except a portion of the internal road near coal stockyard was found in damaged condition. There was no dust accumulation on the road and one 12 KL mobile water tanker was engaged for water sprinkling on road. The ambient air quality of plant premises meet the prescribed norms for PM₁₀. It was also indicated in the report that there was no discharge to outside the plant through Culvert No.2 & 3.

Considering due date of directions complying as the timeline furnished by the industry for completion of each job to Board's direction and the day of compliance verified by the SPC Board as the date of inspection of 2.3.2022, the number of days of violation took place for each jobs is as follows:

Sl. No.	Non-Compliance as per Board's Direction of dated 21.12.2021	Jobs to be carried out for rectification	Timeline as intimated by the industry on 04.01.2022	Compliance Status as observed by RO on 02.03.2022	No. of days of violation took place
1.	Though there was no rainfall on the day of inspection, still seepage water was discharged to outside through	Construction two nos. of RCC settling pits with proper recirculation system to collect the residual surface run-off water	31.05.2022	No effluent discharged to outside and construction of one settling pit was completed.	Since there was no discharge, the days of violation

	<i>Culvert No.2 & 3.</i>	<i>which is getting seeped through Culvert No.2 & 3.</i>			<i>is treated as Nil.</i>
2.	<i>Part of internal roads was found to be in damaged condition and accumulation of dust was found near coal transfer points leading to fugitive emission during plying of vehicles.</i>	<i>Repair of internal road is that part of our up-gradation plan and its maintenance is a regular affair.</i>	<i>31.03.2022</i>	<i>It is the regular practice to construct and repair the internal road. Part of internal road was in damaged condition. No accumulation of dust on road and one 12 KL mobile water tankers was engaged. AAQ monitoring result meets the prescribed norm w.r.t. PM₁₀.</i>	<i>Nil</i>
3.	<i>Some portion of the coal at south west corner of the stack yard was found to be stored openly without any dyke wall and garland drain. The dyke wall of the drain near the connecting point with SRTS was found to be unreasonably low height which may cause</i>	<i>Construction of dyke wall and garland drain as well as height of dyke wall near SRTS will be raised.</i>	<i>31.03.2022</i>	<i>Dyke wall and garland drain construction, height of dyke wall of the drain connecting to SRTS has been increased</i>	<i>Nil</i>

	<i>overflow.</i>				
4.	<i>A part of the unprocessed coal is stored in open without any cover shed.</i>	<i>Covering the coal outside the coal shed with tarpaulin.</i>	<i>31.01.2022</i>	<i>Portion of coal stored outside covered with tarpaulin. Provided 7 nos. of rain guns. AAQ meets the prescribed norm w.r.t. PM₁₀.</i>	<i>Nil</i>

After going through in detail on the methodology of computing the Environmental Compensation based on CPCB in-house Committee Report, the methods applied to compute the EC, objection raised by the industries and the inspection and analysis report of the Regional Officer, Kalinganagar, it is observed that some non-compliances were observed by the Regional Officer. Hence, a direction was issued by the Board and the industry submitted a time bound action plan for remedial action. Subsequent inspections suggested that the industry completed all those actions before the timeline. Moreover, even though when there were non-compliances by the industries, the emission and effluent quality was conforming to the standard.

In view of the above, since the effluent and emission did not exceed the standard (Para-3, Point (a) of the EC Guideline) and as per the report of Chief District Agriculture Officer, Jajpur that there is no damage to agriculture and Chief District Medical Officer has clarified that there is no health implication due to discharge of effluent from M/s VISA Steel Ltd., the Board feels that there is not enough ground for levying Environmental Compensation to this unit.”

48. In the affidavit, it is further stated that the Board issued a direction to the Respondent No.7 on 21.12.2021 based on the previous Inspection Report of 05.10.2021 and 26.10.2021 and the Respondent No.7 was directed to submit a time bound Action Plan to rectify the non-compliances observed during inspection. The

Respondent No.7, M/s VISA Coke Ltd. submitted the time bound Action Plan on 04.01.2022 which varied from 31.01.2022 to 31.05.2022 for the four jobs and, therefore, the matter was investigated by the Regional Officer, Kalinganagar, State Pollution Control Board, Odisha, on 02.03.2022 and 05.07.2022 and N (number of days during which violation took place) was considered as 274 days from 05.10.2021 as the date of detection of non-compliance to 05.07.2022 as the date of compliance and accordingly Environmental Compensation was calculated at Rs. 82,20,000/- (Rupees Eighty Two Lakhs Twenty Thousand only). It is also stated that the earlier Inspection Report of 02.03.2022 revealed that M/s VISA Coke Ltd. had already completed all the jobs within the timeline except a portion of the internal road near coal stockyard which was found to be in damaged condition. It is stated that no dust accumulation on the road was found and one 12 KL mobile water tanker was engaged for water sprinkling on the road. The ambient air quality of the Plant premises met the prescribed norms for PM₁₀. It was also indicated in the report that there was no discharge to outside the Plant through Culvert Nos.2&3.

49. In the affidavit of the Board, it is further stated that considering the due date of directions complying as timeline furnished by the industry for completion of each job to Board's direction and the day of compliance verified by the State Pollution Control Board, Odisha, as the date of inspection of 02.03.2022, the number of days the violation took place for each job are given in chart filed along with the Minutes of the Meeting dated 16.12.2022, already extracted herein above.

50. It is further stated that some non-compliances were observed by the Regional Officer for which a direction was also issued by the Board and the industry has submitted a time bound Action Plan for remedial action. The subsequent inspection suggested that the Respondent No.7 has completed all the remedial actions before the timeline. It is also noted that since the effluent and emission did not exceed the standard as per the report of the Chief District Agriculture Officer, Jajpur, and that there is no damage to agriculture and Chief District Medical Officer has also clarified that there is no health implication due to discharge of effluent from M/s VISA Steel Ltd., the Board was of the view that there was not enough ground for levying Environmental Compensation against the Unit.
51. The Issue No.-III raised by the learned Counsel for the Applicant is that **'M/s VISA Coke Ltd. does not have the requisite Forest Clearance and the Clearance was initially granted in favour of M/s VISA Steel Ltd.'**;
52. We may noted that the land in question has been granted by the Orissa Industrial Infrastructure Development Corporation ('IDCO' for short) on lease to the Project Proponent. The Forest Clearance has been granted to the IDCO on 03.02.1993 by the Ministry of Environment, Forests and Climate Change. The IDCO, Odisha, remains the lessor and, therefore, the question of transfer of Forest Clearance in favour of the Project Proponent does not arise.
53. An identical matter came up before this Court in Original Application No.169/2016/EZ along with M.A. No. 23/2017/EZ (*Manoj Kumar Banara & Ors. Vs. State of Odisha & Ors.*) pertaining to the same land of IDCO. Paras 38, 39, 40, 41 and 42 of the

judgment and order of the Tribunal dated 05.04.2022 are extracted herein below:-

38. Mr. Sankar Prasad Pani next submitted that under the provisions of Rule 6 of the Forest (Conservation) Rules, 2003, it is the user agency who is required to submit an application in Form 'A' for use of any forest land for non-forest purposes. The learned Counsel, therefore, submitted that the Respondent No.5 never applied for seeking Forest Clearance in respect of land in its possession for use for non-forest purposes and, therefore, continuous use of such land by it was in gross violation of the provisions of Section 2 of the Forest (Conservation) Act, 1980.

39. The submission of the learned Counsel is completely misconceived and may be negated by reference to the provisions of Section 2 of the Forest (Conservation) Act, 1980 which reads as under:-

“2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose. – Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing, -

(i) that any reserved forest (within the meaning of the expression ‘reserved forest’ in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest-land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest-land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;

(iv) that any forest-land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.”

Section 2 of the Forest (Conservation) Act, 1980, clearly amplify and state in unambiguous terms that it is the State Government or other authority who shall make an application to

the Central Government for use of forest land for non-forest purposes.

In the present case, we find that the application dated 07.11.1991 the proposal for conversion of 1419.95 hectares of forest land for non-forest purposes was initiated by the State Government. Even if it may be accepted for the moment it was initiated on the proposal of the Managing Director IPICOL and IPICOL having merged in the IDCO after coming into force of the OIIDC Act, 1980, the IDCO which itself is a statutory authority acting on behalf of the State Government under the provisions of the OIIDC Act, 1980 and is, therefore, a 'State' within the meaning of Article 12 of the Constitution of India and, therefore, even if the application had been moved by the IDCO for conversion of forest land 1419.95 hectares for non-forest use, the same would have been valid as an application made by 'other authority' having regard to the language of Section 2 of the Forest (Conservation) Act, 1980.

40. In the present case the undisputed facts, however, are that it was the State Government which had initiated the proposal on 07.11.1991 for diversion of 1419.95 hectares of forest land to non-forest use and, therefore, we find no illegality in any such process of initiations by the State Government or in granting of Forest Clearance by the Ministry of Environment, Forests and Climate Change, Respondent No.2, vide its letter dated 3/4.02.1993.

41. We may also note that once Forest Clearance of the land in question for non-forest use had been granted in favour of the State Government, there was no requirement for again seeking Forest Clearance of the same land by the Respondent No.5. Even otherwise the Respondent No.5 is not 'other authority' for purposes of Section 2 of the Forest (Conservation) Act, 1980.

42. The affidavit of the Respondent No.6, IDCO, Bhubaneswar, dated 08.12.2021 further discloses a reference to the letter of the Special Secretary to Govt., Forest & Environment Dept. Odisha, dated 06.07.2017 addressed to Assistant Inspector General (Forests), MoEF&CC, Govt. of India, that 'transfer of forest land through Deed of Delivery of Possession by IDCO to Tata Steel Ltd. in 2005 appears to have been affected due to lack of awareness', appears to have been expressed without taking the view of the IDCO into account. This has, however, been clarified by the State Government to the Ministry of Environment, Forests and Climate Change vide its letter dated 03.10.2017 addressed to the Assistant Inspector General (Forests), MoEF&CC, Govt. of India, which states that in response to observation made at point (2) of the above letter of Forest and Environment Department with specific reference to application of para 2.8 of Forest (Conservation) Act guidelines in the instant case, the Chief General Manager (Environment) , IDCO, vide his letter No. 18011 dated 15.09.2017 has further indicated that following diversion of forest land to the extent of 1419.95 hectares spread over 9 villages, Collector, Jajpur sanctioned the lease of such diverted forest land vide his order No. 12 dated 04.01.1996 and land was transferred to IDCO through execution of lease deed and possession of land was handed over to IDCO by the concerned Tahasildar. Thus, IDCO is the sole lease holder and owner of the land. Thereafter IDCO had allotted the land to various industrial units for setting up of their industries including 77.14 acres of diverted forest land to M/s Tata Steel Limited for establishment of iron ore based industries there. However, ownership of land remains with IDCO and M/s Tata Steel Limited is only utilizing the land for establishment of their 6.00 MTPA Steel Plant. Thus, IDCO has

observed that para 2.8 of Forest (Conservation) Act guidelines does not seem to be applicable in this case. The Ministry of Environment, Forests and Climate Change was further requested to take note of the above comments of IDCO with regard to application of para 2.8 of Forest (Conservation) guidelines in the present context and communicate their further order, if any, for required compliance at this end. The letter dated 03.10.2017 is extracted in para 17 of the affidavit of the IDCO which reads as under:-

“..... Collector, Jaipur sanctioned the lease of such diverted forest land vide his order no. 12 dt. 04/01/1996 and the land was transferred to IDCO through execution of lease deed and possession of land was handed over to IDCO by concerned Tahasildar. Thus, IDCO is the sole lease holder and owner of the land. Thereafter, IDCO had allowed the land to various Industrial Units for setting of their Industries including Act. 77.14 of diverted forest land to M/s Tata Steel Ltd. for establishment of Iron Ore Based Industries there. However, ownership of land remains with IDCO and M/s Tata Steel is only utilizing the land for establishment of their 6.0 MTPA Steel Plant. Thus, IDCO have observed that para 2.8, FCI Act guidelines does not seem to be applicable in this case. Ministry is requested to take note of above comments of IDCO with regard to application of para 2.8 of FC Act Guidelines in this present context and communicated their further orders, if any for required compliances at this end.”

This also negates the objection of the learned Counsel for the Applicants that para 2.8 of the Forest (Conservation) Act, 1980, having not been complied with and, in fact, the condition for levy of 10% of Net Present Value or Rs. 1,00,000/- (Rupees One Lakh only) of whichever is less as transfer fee for purposes to discourage middle man from processing the proposal and then selling it to others. These guidelines are with regard to mining leases and have no application in the present case. It is a lease

of forest land and in any case there is no transfer of lease by IDCO to Respondent No.5.”

54. In the present case, it is not disputed that the project in question is situated on the same land comprising of 1419.95 hectares of forest land for which the lessor had submitted an application on 07.11.1991 being a statutory authority and ‘State’ within the meaning of Article 12 of the Constitution of India. Therefore, in our opinion, the Respondent No.7 is not required to take fresh Forest Clearance or seek transfer of the same from IDCO Odisha.
55. The next Issue No.-IV raised by the learned Counsel for the Applicant is that **‘though the State Pollution Control Board, Odisha, computed Environmental Clearance against the Respondent No.7, M/s Visa Coke Ltd., but thereafter it illegally granted exemption to Respondent No.7 against the payment of the same’;**
56. The State Pollution Control Board, Odisha, has filed affidavit dated 17.12.2022, stating therein that as per the guidelines of Central Pollution Control Board, Environmental Compensation has been computed at Rs. 82,20,000/- (Rupees Eighty Two Lakhs Twenty Thousand only) for 274 days of violation which was objected to by the Project Proponent in personal hearing given to him and it was explained by him that in the computation of Environmental Clearance as per the Central Pollution Control Board guidelines, the figure N being the number of days violation took place in the period between the day of violation observed/due date of direction of compliance and the day of compliance has not been correctly verified by the Pollution Control Board and, therefore, the matter was re-examined by the State Pollution Control Board and the

during the hearing, in the Minutes of the of the meeting, copy of which has been filed as Annexure-R2/13, dated 16.12.2022 (already reproduced hereinabove), it was noted that some non-compliances were observed and a direction was issued by the Board and the Respondent No.7 industry submitted a time bound Action Plan for remedial action and subsequent inspections showed that the industry in question had completed all the remedial actions even before the time line granted. The State Pollution Control Board was, therefore, of the view that there is not enough ground for levying Environmental Compensation against the Unit. The report of the Chief District Agriculture Officer, Jajpur, was also examined which showed that there was no damage to agriculture and the Chief District Medical Officer also clarified that there are no health implications due to discharge of effluent from M/s VISA Coke Ltd. The effluent and emissions noticed also did not exceed the prescribed standards.

57. The Inspection Report with regard to storage of coal mentions that the Unit has provided two coal storing sheds of capacity 10,000 tonnes each; part of unprocessed coal is stored in open without shed; 12 rain gun type water sprinklers are installed around the coal storage area. The Inspection Report further mentions that during visit there was no rain and few days before the inspection also there was no rain; seepage water from the plant premises was found to be going to the outside through culvert 2&3; water quality monitoring done during visit showed that the water quality met the prescribed standards. However, it was suggested that the Unit should explore maximum possibility to collect seepage water and re-use it totally in the plant.

58. As regards non-adoption of dry quenching system, it was observed during inspection that the Unit has adopted wet quenching method and no discharge quenching water was found and that quenching water was again being recycled through sedimentation process in a close circuit through three RCC pits.
59. It is also stated that during inspection part of the internal roads were found to be in damaged condition and there was accumulation of dust near coal transfer points and fugitive emission was also observed during plying of vehicles. However, four water tankers (12 KL capacity) were found to be engaged and 25 road side water sprinklers were provided for water sprinkling on internal roads of the plant premises for suppression of fugitive dust. It is also stated that no discharge of process effluent from the plant to outside was observed other than seepage water discharge from the plant premises to outside through culvert 2 & 3.
60. The Inspection Report further mentions that during inspection it was also observed that some portion of coal at south-west corner of stockyard was stored openly without any dyke wall and garland drain as the same has been damaged and the rain will find its way to outside without channelizing through the treatment system in case of rain. It was also observed that dyke wall of the drain was found to be unreasonably low in height near the connecting point with SRTS through which the drain can overflow during rain when the drain will carry full flow.
61. So far as the Ambient Air Quality Monitoring is concerned, it is stated that the AAQ monitoring near the office building of M/s VISA Coke Limited was found to be $92 \mu\text{g}/\text{Nm}^3$ for PM_{10} against the standard of $100 \mu\text{g}/\text{Nm}^3$ which is within the prescribed standards.

However, the AAQ monitoring near CEMS-02 was found to be 128 $\mu\text{g}/\text{Nm}^3$ which is higher than the prescribed standard of 100 $\mu\text{g}/\text{Nm}^3$ for PM_{10} . It is also stated that for stack gas, monitoring was conducted at common stack attached to Boiler- I & II and the SO_2 was found to be 67 mg/m^3 and 225 mg/m^3 respectively against the prescribed standard of 100. Thus, findings of 225 mg/m^3 is much higher as against the prescribed standards of 100 mg/m^3 .

62. The Waste Water Analysis shows pH standard to be within the prescribed standards of 5.5-9.0 at the outlet (inland surface). The reading for TSS was found to be within the prescribed standard of 100 mg/l ; Cr^6 was also found to be within the prescribed standard of 0.1 mg/l ; reading of Phenol was also found to be within the prescribed standard of 1.0 mg/l and the reading of Cyanide was also found to be within the prescribed standard of 0.2 mg/l .

63. We also find that the reason given by the State Pollution Control Board, Odisha, in its affidavit dated 17.12.2022 with regard to computation of figure 'N' being the number of days violation took place in the period between the day of violation observed/due date of direction of compliance is wholly misconceived. We may point out that that the formula prescribed by the Central Pollution Control Board for computation of Environmental Compensation is merely a guideline and is not a part of any statutory rules and, therefore, has no statutory force and while computing Environmental Compensation the Board cannot blindly apply the said formula but must apply its own rational mind. The guidelines defining the figure 'N' as the number of days violation took place in the period between the day of violation observed and the due date of direction of compliance, completely overlooks the fact that Environmental

Compensation is to be computed not only for the violations for the period from the date of observation but must take into consideration the past violations also. Merely taking the date of observation as the starting point of violation of environmental norms completely dismisses the fact that the Unit may have been contributing to environmental pollution for a considerable point of time till a complaint is received in the office of the Board and thereafter an inspection is made by the Board. Such a presumption is not only irrational but based upon false premises and hyperbole.

64. Our observations given hereinabove are further buttressed by the fact that the complaint regarding violations was made by the Applicant, Mr. Aswini Kumar Dhal, to the State Pollution Control Board, Odisha, on 20.09.2021 and thereafter the inspection was carried out by the Board on 05.10.2021 and 26.10.2021 which means that in any case the environmental violations observed by the Board on 05.10.2021 and 26.10.2021 were existing even prior to the date of complaint made by the complainant i.e., prior to 20.09.2021. In this view of the matter, even if the violator has complied with the directions issued by the Board in its Inspection Report, he would still be liable for payment of Environmental Compensation for past violations. Therefore, we are of the firm view that the Environmental Compensation as determined by the Board needs to be re-visited and re-computed by it.

65. The Central Pollution Control Board, Respondent No.5, has filed its affidavit dated 06.09.2022 merely stating that the Odisha State Pollution Control Board is the implementing agency and functions under Section 17 of the Water (Prevention and Control of Pollution) Act, 1974.

66. The IDCO, Respondent No.8, in its counter-affidavit dated 31.10.2022 has stated that it entered into an agreement on 16.11.2017 with M/s VISA SunCoke Ltd. under lease deed for grant of land in KNIC, Duburi, over an area of Ac.25 decimal in Jakhapura Mouza under Danagadi Tahasil for Jajpur District, for establishment of Coke Plant and Associated Steam Generation Unit over an area of 25 acres out of the area of Ac.390 decimal (earlier leased out in favour of M/s VISA Steel Ltd.) as per rules and regulations of IDCO following due process of law. It is also stated that the State Pollution Control Board, Odisha, has issued Consent order dated 29.03.2019 for discharge of sewage and trade effluent in favour of M/s VISA Coke Limited (erstwhile M/s VISA SunCoke Ltd.).
67. The Applicant has filed rejoinder-affidavit dated 16.11.2022, reiterating the same allegations as in the Original Application, namely, that M/s VISA Coke Ltd. being a registered company does not have Environmental Clearance in its name and the EIA Notification, 2006, mandates the requirement of obtaining prior Environmental Clearance from the concerned regulatory authority for all new projects or activities listed in the Schedule; or expansion and modernization of existing projects or activities listed in the Schedule; or any change in product mix in an existing manufacturing unit included in the Schedule. However, since the activity of Coke Oven Plant was already covered in the Environmental Clearance dated 12.06.2007 granted to M/s VISA Steel Ltd., we are of the firm opinion that mere creation of another company in the name and style of M/s VISA Coke Ltd. for operating the existing Coke Oven Plant does not require a fresh

Environmental Clearance and even if M/s VISA Coke Ltd. has changed its name from M/s VISA SunCoke Ltd. to M/s VISA Coke Ltd., fresh Environmental Clearance is not required.

68. In addition, the Applicant in his rejoinder affidavit has raised a fresh issue, namely, that the Respondent No.7 is discharging untreated black coloured and oily coated water from three different locations in a stretch of 100 meters through holes in the boundary wall of M/s VISA Coke Ltd. opposite to Hanuman Temple and the same is being discharged into the Gandanalla through agricultural lands. It is also alleged that local farmers have made complaints to the authorities but no action has been taken till date.

Similar facts have been averred by the Applicant in his additional affidavit dated 16.08.2021 but we find that that violation of environmental norms have been re-considered by the State Pollution Control Board, Odisha, in the Minutes of the Meeting held on 16.11.2022 and it was noted that though there were some non-compliances, a direction was issued by the State Board and the industry submitted a time bound Action Plan for remedial action and subsequent inspections showed that the industry had completed all the remedial actions before the timeline granted. However, if there are any fresh environmental violations, it shall be the duty of the State Pollution Control Board, Odisha, to examine the same during regular inspections being the regulatory authority and appropriate action shall be taken against the violator as per law.

69. The Respondent No.7 has also filed its rejoinder affidavit dated 16.11.2022 reiterating the contents of its counter-affidavit that Environmental Clearance was granted in favour of M/s VISA Steel

Ltd. which covered the **Coke Oven Plant** and that M/s VISA Coke Ltd. is the successor company of M/s VISA SunCoke Ltd. after change of name. It is also reiterated that Respondent No.7 has installed a fully functional 250 KLD surface runoff treatment system for treating surface runoff water generated in its entire area. The surface runoff treatment facility is installed with a bar screen, oil grease trap, equalization tank, flash mixture, tube settler, filter feed tank, activated sand, carbon filter and phenol removal tanks which ensure that surface runoff water is within the prescribed environmental norms. However, no observations are required in this regard in view of the subsequent Inspection Report.

70. The Applicant has filed further response affidavit dated 31.03.2023, stating therein that traces of phenol and cyanide were found in the seepage water and, therefore, there is doubt with regard to the credibility of the Inspection Reports submitted by the State Pollution Control Board, Odisha. It is also stated that the Ambient Air Quality of Kalinganagar area was not meeting the prescribed standard of the Board as per the Pollution Control Board Report and, therefore, Ambient Air Quality monitoring should be carried out by an authorized third party. It is alleged that to a question raised in the Odisha Legislative Assembly, it was replied by the Hon'ble Minister of Forest and Environment that M/s VISA Coke Ltd. is not meeting the air quality standard and that concentration of particular matter near learning centre is 109 µg/m while the standard is 100 µg/m. It is also alleged that dyke wall of the drain near the connecting point with SRTS was found low. Doubts have also been raised with regard to the Report of the District Agriculture Officer and Chief District Medical and Public Officer,

Jajpur of 2020 whereas the violations noted by the MoEF&CC and State Pollution Control Board, Odisha, are of 2021 and 2022. It is also alleged that 20,000 MT of coke was found to be stored in stockyard out of which 1,000 MT are under covered shed and remaining portion is stored in the open. It is also stated that the Unit is drawing water from bore wells inside the Brahmani River. It is also alleged that there is waste water inside the **Coke Oven Plant** as per the photographs dated 15.01.2023. It is also alleged that the Unit does not have 33% Green Belt and the claim of Green Belt in an area of 7 acres is unsubstantiated, considering that the coal handling is spread in more than 14.77 acres while the total area is only 25 acres.

71. We find that these allegations have been raised by the Applicant in his response as late as 31.03.2023 and several new facts have been alleged by him and, therefore, in our opinion, these matters can be examined by the State Pollution Control Board, Odisha, in its regular inspections. However, so far as the medical reports and agricultural reports are concerned, we have no reason to doubt the same and if there are any further environmental violations, this matter would, in our expectation, be examined by the State Pollution Control Board.

72. The Applicant has also filed additional affidavit dated 12.04.2023 bringing on record a Monitoring Report submitted to the Scientist-F, MoEF&CC, New Delhi, on 27.03.2023, wherein it is mentioned that Environmental Clearance was issued to M/s VISA Steel Ltd. and the above project has been monitored by one Dr. T. H. Mahato, Scientist-D on 20-21.09.2022. It is also mentioned therein that surface run off treatment system has been shown during the visit,

water discharge was found from discharge point and zero discharge has not been maintained.

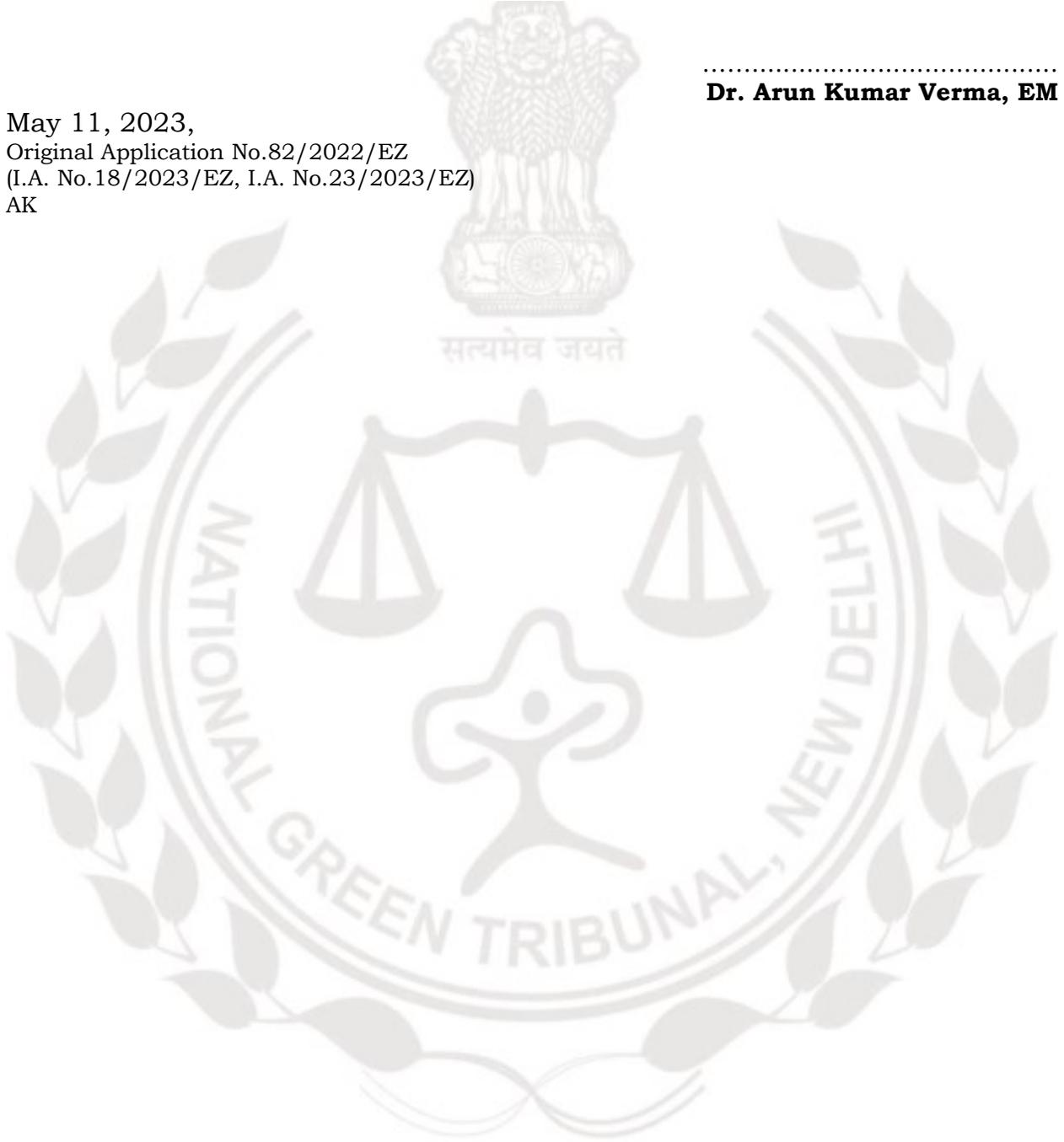
73. We find that this Monitoring Report pertains essentially to M/s VISA Steel Ltd. and the only mention with regard to M/s VISA Coke Ltd. is that the Consent to Operate has been granted to M/s VISA Coke Ltd., though Environmental Clearance has been granted in the name of M/s VISA Steel Ltd. and the coke is being produced as a product in the name of a separate company M/s VISA Coke Ltd.
74. In our opinion, we cannot enter into the findings recorded in this Report dated 27.03.2023 with regard to M/s VISA Steel Ltd. as that matter is not before us nor are those issues involved in the present case. Moreover, any observations with regard to Environmental Clearance granted to M/s VISA Coke Ltd. has already been discussed by us hereinabove and does not call for any fresh reiteration.
75. In this view of the matter, the Original Application No.82/2022/EZ is disposed of with a direction to the State Pollution Control Board, Odisha, to re-visit the Environmental Compensation computed by it and carry out fresh computation in the light of the observations and directions given by us hereinabove.
76. So far as the additional facts agitated by the Applicant in his subsequent affidavits are concerned, the State Pollution Control Board, Odisha, shall carry out a fresh inspection of the site in question in the light of the directions given by us hereinabove and if there are any environmental violations found, appropriate action shall be taken against the violator in accordance with law.
77. I.As. if any, also stand disposed of accordingly.

78. There shall be no order as to costs.

.....
B. Amit Sthalekar, JM

May 11, 2023,
Original Application No.82/2022/EZ
(I.A. No.18/2023/EZ, I.A. No.23/2023/EZ)
AK

.....
Dr. Arun Kumar Verma, EM



NGT



Sankar Pani <sankarprasadpani@gmail.com>

Computation of Environmental Compensation in VISA Coke in OA 82 of 2022

1 message

Sankar Pani <sankarprasadpani@gmail.com> Tue, Jun 6, 2023 at 12:58 PM
To: Murugesan kailasam <murug6994@gmail.com>, SPCB Odisha <paribesh1@ospcboard.org>, csori@nic.in, DM-Jajpur Orissa <dm-jajpur@nic.in>, zokolkatta.cpcb@nic.in, secy-moef@nic.in, roez.bsr-moef@nic.in

Dear Sir,

As you are aware of the OA No 82 of 2022 which was finally heard on 11th May 2023 and the order is available in NGT website and attached with this email too. The order of Honble NGT suggests for a recomputation of the environmental compensation considering the non-compliances are still continuing right from the day of the complaint that is 20/09/2021 and continuing as evident from the inspection report of MoEFCC dated 21/09/2022. Needless to state that the open stacking of coal is still there in addition to discharge of industrial water to outside through different points. Photographs of ongoing violations are also attached here with. The direction in the final order is there for a fresh inspection and in that regard we are prepared to place all the evidence which have been sent to email before and few were filed in form of affidavit in OA 82 of 2022. We are ready to furnish more evidence during inspection if required. We are hopeful that during inspection we will be informed in advance.

Sir, the order dated 11th may 2023 in OA 82 of 2022 is attached herewith for necessary action at your end.

Sincerely

--
Sankar Prasad Pani, Advocate
National Green Tribunal Kolkata & Orissa Highcourt
Res-Plot No 2132/4814(B), Nageswar Tangi,
Bhubaneswar, 751002
Cell- 9437279278
Skype- sankar.pani

6 attachments



25thmay 2023 discharge.jpeg
109K



openstock yard.jpeg
310K

77



coal dust 19thmay.jpeg
109K



coal dust sedimentation.jpeg
156K



final order 11th may 2023.pdf
868K



WhatsApp Video 2023-06-06 at 12.30.38 PM.mp4
3610K

BEFORE THE NATIONAL GREEN TRIBUNAL

Original Application/Appeal No. 82 of 2022
MISC NO- OF 2023
In re:

Kalinga Nagar Paribesh Surakhya Samiti

APPLICANT

V E R S U S

STATE OF ODISHA and Others

RESPONDENTS

KNOW ALL to whom these present shall come – I Mr. Aswini Kumar Dhal, President of Kalinga Nagar Paribesh Surakhya Samiti, At/PO/Ps- Jakhapura, Dist-Jajpur, Odisha. 755026 the above named Appellant do hereby appoint (herein after called the advocate/s) to be my/our Advocate in the above noted case authorized him :- **Sankar Prasad Pani, -----Advocates, Plot—2132/4814, Nageswartangi, Bhubaneswar, 751002** To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Court including High Court subject to payment of fees separately for each Court by me/ us. To sign, file and present pleadings, appeals cross objections or petitions for execution review, revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages. To file and take back documents to admit and/or deny the documents of opposite party.

To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case. To take execution proceedings. The deposit, draw and receive money, cheques, cash and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case. To appoint and instruct any other Legal Practitioner, authorizing him to exercise the power and authority hereby conferred upon the Advocate whenever he may think it to do so and to sign the Power of Attorney on our behalf.

And I/We the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and purposes.

And I/We undertake that I / we or my /our duly authorized agent would appear in the Court on all hearings and will inform the Advocates for appearance when the case is called.

And I /we undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the Court shall be of the Advocate, which he shall receive and retain himself.

And I /we the undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the Advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/We hereby agree that once the fee is paid. I /we will not be entitled for the refund of the same in any case whatsoever. If the case lasts for more than three years, the advocate shall be entitled for additional fee equivalent to half of the agreed fee for every addition three years or part thereof.

IN WITNESS WHEREOF I/We do hereunto set my /our hand to these presents the contents of which have been understood by me/us on this 2ND day of DEC 2023 Accepted subject to the terms of fees.

Sankar Prasad Pani
Advocate

Client

Client

Aswini Kumar Dhal
KALINGANAGAR PARIBESA
SURAKSHA SAMITI
Aswini Kumar Dhal
Authorised Signatory