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BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE,
PUNE

OA NO. 70/2021

IN THE MATTER OF:

Brackish Water Research Centre

... Applicant

Versus

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NDOH 16-5-23

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Acara Law LLP Advocates

PLACE: NEW DELHI
DATED: 16-5-23

BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE, PUNE
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Brackish Water Research Centre

... Applicant

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1. Gujarat Pollution Control Board (R-1/GPCB)
2. State of Gujarat, through Addl. CS, Forest & Env. Deptt. (R-2/Govt. of Gujarat)
3. Principal Chief Conservator of Forests, Gujarat (R-3/PCCF Gujarat)
4. Asst. Conservator of Forests, Bharuch Sub-Division, Gujarat (R-4/ACF Bharuch)
5. Gujarat Coast Zone Management Authority (R-5/GCZMA)
6. Central Pollution Control Board (R-6/CPCB)
7. Ministry of Env. Forests & Climate Change, Govt. of India (R-7/MOEFCC)
8. Hindalco Industries Limited, Birla Copper Unit (R-8/HIL)

... Respondents

NOTE ON BEHALF OF RESPONDENT NO. 8, HINDALCO INDUSTRIES LIMITED

I. Overview:

1. This instant OA raises allegations of environmental pollution against the Birla Copper unit of R-8/HIL located at Dahej, Bharuch District, Gujarat.
2. R-8/HIL has filed reply on 17.11.2021 disputing and denying the allegations in the OA as being without basis and untenable.
3. The Joint Committee constituted by the NGT vide Order dated 05.01.2022 under the Chairmanship of Justice BC Patel (retd.) has conducted site inspection of Birla Copper Unit on 30-31 March 2022 and submitted its Report in May 2022 after assessment of records.
4. As per the Joint Committee Report, R-8/HIL is currently compliant with environmental norms and regulations as well as conditions imposed by regulatory authorities for operating the Birla Copper Unit. R-8/HIL has promptly taken required corrective measures in respect of observations made by R-1/GPCB during inspections.
5. An overwhelming majority of allegations raised in the OA are thus without basis and uncorroborated.
6. R-8/HIL has consistently acknowledged that there are certain historical issues which require remediation, such as **removal of copper slag from the adjoining reserve forest area** which spilled outside the boundary due to water runoff during heavy monsoons in 2009. For this, permission from State Forest Department is required and R-8/HIL has repeatedly sought permission for the same.
7. R-8/HIL is ready to implement the remediation and restoration plan proposed by the Joint Committee and also deposit the compensation of **INR 5,53,79,292/-** towards past violations as determined by the Joint Committee as per scientific methodology.

II. **Background of Birla Copper Unit:** [ref: Vol. I of R-8/HIL Reply @ pg. 6-7, para 11-16]

8. Birla Copper Unit is one of the largest single location custom copper smelters in the world, which meets 43% of the total copper requirement of the country. Refined copper is recognized as a strategic metal and is widely used in sectors such as Power, Automotive, Electronics & Telecommunication, Railways, Construction, Electric vehicle, Renewables and Defence. **Sequitur** – Birla Copper Unit is critical for meeting the country's industrial requirements.
9. Birla Copper unit is located in the Petroleum, Chemicals and Petrochemicals Investment Region at Dahej, Bharuch District, Gujarat. At-least 13 other major industries operate in the region – **Sequitur** – R-8/HIL is not the only industrial unit operating in this region and cannot be made solely responsible for pollutants in air and water in the region without conducting a source study. [ref: R-8/HIL Reply Annexure R8/4 @ P. 89 – list of industries]
10. The Birla Copper Unit comprises integrated and interdependent plants in one complex which are further segregated into industry segments and technologies, and includes two copper smelters, two refineries, two rod plants, a captive power plant, a captive oxygen plant, phosphoric acid plant (PAP) and di-ammonium phosphate plant (DAP), a precious metals recovery plant, captive jetty and other utilities. **The PAP and DAP have been shut down voluntarily by R-8/HIL in April 2020 to reduce environment footprint.**
11. The Birla Copper Unit employs 378 Management Grade Employees, 1110 Operational Grade and Local Management Staff from nearby villages including Lakhigram and Dahej and 3500 Contract Manpower. In addition, the Birla Copper Unit generates ancillary business opportunities for approximately 114 contractors and thousands of contract workers. The Birla Copper Unit also contributes significant revenues to the State in the form of taxes and other dues. During 2016-21, the Birla Copper Unit has deposited INR 12,706 Crores in taxes and statutory dues. **Sequitur: Closure of Birla Copper Unit as sought by Applicant would have severely adverse consequences.**

III. **Primary Submissions:**

12. R-8/HIL has undertaken major investments to overhaul and revamp its systems and operations to reduce air and water emissions and improve waste management. [ref: R-8/HIL Reply @ pg. 8-13, para 19-23]
13. Several allegations in the OA pertain to generation and disposal of phosphogypsum (PG) waste. R-8/HIL disputed these allegations as misrepresentations, as the Phosphoric Acid Plant (PAP) and Di-ammonium Phosphate Plant (DAP) [which generate PG sludge] have been shut down voluntarily since April 2020 and there is no PG sludge generation thereafter. The Joint Committee has also confirmed that there is

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no PG sludge generation presently. [ref: Joint Committee Report @ internal pg. 10, point 17; R-8/HIL Reply @ pg. 13-14, para 24-29; see also pg. 18-19, para 41-42]

14. Allegations regarding disposal of old PG sludge and stock and leaching from the yard have been found by the Joint Committee to be unsubstantiated, as the entire stock of old PG waste is completely covered with HDPE liners. The old PG stock is sent to cement industries and for use as fertilizers [ref: Joint Committee Report @ internal pg. 10, point 17]
15. Allegation that copper slag is currently being dumped in the reserve forest area is a misrepresentation. This is a historical issue which happened in 2009 due to water-run off in heavy monsoons during 2009, and R-8/HIL has paid penalty determined by the concerned authorities. [ref: R-8/HIL Reply @ pg. 16-17, para 36-40]
16. Allegation regarding destruction of mangroves is a misrepresentation. The Joint Committee has observed that dense mangroves exist in the adjoining areas. [ref: Joint Committee Report @ internal pg. 18; R-8/HIL Reply @ Annexure R8/14 @ P. 145-146]
17. Allegations regarding improper disposal of solid waste in Secure Land Fills (SLFs) and leaching have been found to be unsubstantiated by the Joint Committee. [ref: Joint Committee Report @ internal pg. 7-12]
18. Please refer to **Annexure A (@ pg. 8-12)** for a note on observations and findings recorded in the Joint Committee Report.
19. Please refer to **Annexure B (@ pg. pg. 13-16)** for a note on allegations raised in the OA and responses of R-8/HIL thereto.

IV. Procedural History:

S No	Date	Description
1.	18.09.2021	<p>Applicant filed OA No. 70/2021 before NGT, Western Zone Bench Pune alleging: <u>[ref: Vol. I & Vol. II @ pg. 1-800]</u></p> <p>(i) Contravention of environmental norms and regulations on the part of R-8/HIL, allegedly resulting in damage to environment; air, water (surface and groundwater), land and noise pollution, destruction of Dahej reserve forest area and mangroves in CRZ 1A area, on account of operations of Birla Copper Unit by R-8/HIL at Dahej, Bharuch District, Gujarat.</p> <p>(ii) Inaction on the part of official Respondents, particularly R-1/GPCB in taking action against R-8/HIL.</p> <p>The Applicant has cited Inspection Reports of R-1/GPCB and R-6/CPCB during 2018-2021 to contend that violations of environmental norms and statutory approvals granted to R-8/HIL</p>

		<p>continue unabated.</p> <p>Prayers: <u>[ref: Vol. I @ pg. 104]</u></p> <ul style="list-style-type: none"> (i) cancellation of the Consolidated Consent & Authorization dated 30.05.2020 granted by R-1/GPCB to R-8/HIL. (ii) closure of Birla Copper Unit of R-8/HIL for "repeated environmental violations". (iii) setting up of an interdisciplinary technical expert committee to assess and investigate the impact on air, water (surface and groundwater), soil, flora and fauna within Dahej Reserve Forest and health of residents of nearby villages on account of operation of Birla Copper Unit of R-8/HIL at Dahej. (iv) directions for restoration of environment and ecology of impacted area in and around of the Birla Copper Unit of R-8/HIL and preparation of detailed plan for restitution of environment and ecology to be implemented at the cost of R-8/HIL. (v) directions for conducting complete performance assessment audit of Environment Management System of the copper smelter plant operated by R-8/HIL at Birla Copper Unit and recommend corrective measures; (vi) legal action against R-8/HIL for contravention of the Water (Prevention & Control of Pollution) Act, 1974 ("Water Act"), the Air (Prevention & Control of Pollution) Act, 1981 ("Air Act"), and the Environment Protection Act, 1986 ("EPA 1986"). (vii) directions to R-1/GPCB and R-6/CPCB for computation of environment compensation damage for violations of environmental laws by R-8/HIL while operating the Birla Copper Unit. (viii) Directions for segregation of heavy metal bearing waste disposed without encapsulation in hazardous waste storage cells (Secure Land Fills – SLFs) by R-8/HIL, encapsulation of heavy metal bearing waste and preparation of restoration plan for all SLFs.
2.	27.10.2021	<p>NGT passed Order admitting the OA and issued notice to Respondents.</p> <p>NGT observed that the first relief sought by the Applicant, i.e., revocation of the CCA dated 30.05.2020 granted by R-1/GPCB to R-8/HIL was <i>prima facie</i> barred by limitation. <u>[ref: para 4]</u></p>
3.	17.11.2021	<p>Reply filed on behalf of R-8/HIL before NGT. <u>[ref: R-8/HIL Reply, Vol. I & II @ pg. 1-352]</u></p>

		A brief note on specific allegations in the OA and responses of R-8/HIL thereto is annexed herewith as Annexure B .
4.	18.11.2021	R-1/GPCB filed a compilation of documents before NGT, furnishing reports of inspections done just before the next date of hearing on 05.08.2021, 08.11.2021 and Notice for Directions dated 16.11.2021 issued by R-1/GPCB to R-8/HIL. <u>[ref. Vol. – GPCB Documents Compilation @ pg. 1177-1202]</u>
5.	18.11.2021	NGT passed Order directing Respondent Nos. 1, 2, 6 and 7 to file replies and directing the Applicant to file rejoinder to reply filed by R-8/HIL before the next date of hearing, i.e., 05.01.2022.
6.	04.01.2022	R-8/HIL filed Additional Documents before NGT. <u>[ref. Vol. – R-8/HIL Additional Documents - @ pg. 1-113]</u> R-6/CPCB filed reply before NGT. <u>[ref. Vol. – Reply of R-6/CPCB @ pg. 1-68]</u> Applicant filed Rejoinder to reply filed by R-8/HIL before NGT. <u>[ref. Vol. - Applicant's Rejoinder to Reply of R-8/HIL @ pg. 1-22]</u>
7.	05.01.2022	Order passed by NGT directing constitution of a seven-member Joint Committee headed by Justice B.C Patel (retd.) for conducting inspection of Birla Copper Unit and assessment regarding past violations (from 2016-17 onwards) and continuing violations, suggesting remediation and restoration plan and assessment of compensation "on the principle of restoration with element of deterrence, having regarding to the financial capacity of the PP [project proponent] in the light of the law laid down inter-alia in Sterlite Industries (India) Ltd. v. Union of India, (2013) 4 SCC 575 and Goel Ganga Developers India Pvt. Ltd. v. UOI, (2018) 18 SCC 257. " <u>[ref: para 19, 20]</u>
8.	30.03.2022 31.03.2022	The Joint Committee conducted inspection of the Birla Copper Unit.
9.	27.04.2022	NGT passed Order adjourning the hearing in the matter to 06.07.2022.
10.	May 2022	The Joint Committee submitted the Report before NGT. <u>[ref. Vol. – Joint Committee Report @ pg. 1425-1713]</u> A note on observations, findings and recommendations of the Joint Committee is annexed herewith as Annexure A . Briefly, the Joint Committee's observations pursuant to exhaustive

inspection and assessment of records are as follows:

- a) R-8/HIL is currently compliant with all environmental norms and parameters in respect of 31 allegations raised in the OA [@ internal pg. 7-13 of Joint Committee Report]
- b) R-8/HIL is compliant with all conditions and parameters specified under the Consolidated Consent & Authorization dated 30.05.2020 granted by R-1/GPCB to R-8/HIL [Compliance Status of CCA @ internal pg. 47-60 of Joint Committee Report]
- c) During site inspection of all areas of concern, it was found that R-8/HIL has taken sufficient measures for ensuring compliance with environmental norms [ref: Findings and Observations during visit @ internal pg. 13-42 of Joint Committee Report]

The Joint Committee determine that compensation should be payable for two issues:

- (i) **Soil pollution** caused due dumping of copper slag in reserved forest area in the past.
- (ii) **Air and water pollution and historical non-compliances from 2016 till 2021.**

Environment Damage Cost Assessment by the Joint Committee: [ref: Conclusion @ internal pg. 71 of Joint Committee Report]

- a) Compensation payable by R-8/HIL for **soil pollution** on account of dumping of copper slag **as determined by NEERI – INR 2,47,79,292/-**. [internal pg. 61-66 of Joint Committee Report]

The Joint Committee of which NEERI was a member, has employed the **Impact Pathway Analysis Approach** to calculate the external costs of pollution due to the activities carried out in the past. Further, the Joint Committee has adopted **Dutch standards** of solid quality parameters to identify the impact of violations. [internal pg. 61-62 of Joint Committee Report]

- b) Compensation payable by R-8/HIL for **air, water pollution and other non-compliances since 2016** as per CPCB Guidelines – **INR 3,06,00,000/-** [@ internal pg. 66-70 of Joint Committee Report]

		<p>To determine compensation for air, water pollution and other non-compliances since 2016, the Joint Committee has employed the CPCB guidelines for determining environmental compensation for violation of directions issued by regulatory bodies based on polluter pays principle.</p> <p>Total compensation – INR 5,53,79,292/-.</p> <p>The Committee has proposed a Remediation and Restoration Plan. HIL has been directed to remove 11317.38 MT of soil from the forest area and dispose the same in accordance with Hazardous and Other Waste (Management and Transboundary) Movement Rules, 2016 after obtaining prior permission from local forest department and also refill equal volume of fresh soil in the excavated area. HIL will do this at its own costs.– [<u>@ internal pg. 70-71 of Joint Committee Report</u>]</p> <p>Summary of above: The Committee has also recommended that the local forest department should be directed to allow HIL to implement the remediation and restoration plan in the forest area. – [<u>@ internal pg. 71</u>]</p>
11.	06.07.2022	Matter is listed before NGT for consideration of the Joint Committee Report and hearing.

Date: ~~16 July~~ ^{16 May} 2022
Place: New Delhi


COUNSEL FOR RESPONDENT NO. 8