

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Execution Application No. 18 OF 2017
IN
Original Application No. 16 OF 2014

IN THE MATTER OF:

Sh. Hazi Arif ...Applicant

VERSUS

State of UP & Ors. ...Respondents

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Place: New Delhi

Date: 05 January 2022

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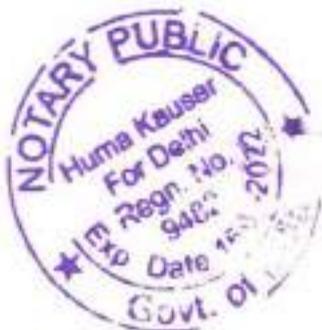
VERSUS

State of UP & Ors. ...Respondents

OBJECTION / RESPONSE TO THE REPORT DATED 23 APRIL 2014 SUBMITTED BY A COMMITTEE HEADED BY MS. PARUL GUPTA, ADVOCATE, ON BEHALF OF RESPONDENT NO. 14, i.e., M/S TATA STEEL LIMITED (M/S TATA STEEL BSL LIMITED HAS NOW AMALGAMATED INTO AND WITH TATA STEEL LIMITED)

Most Respectfully Showeth:

1. The present Objections are being filed by the Respondent No. 14, in reply to the Report dated 23 April 2014 submitted by a committee headed by Ms. Parul Gupta, Advocate ("**Parul Gupta Committee**") and report submitted by the Parul Gupta Committee is referred to as "**Parul Gupta Committee Report**"). The Parul Gupta Committee was appointed by this Hon'ble Tribunal, through its order dated 03 March 2014, in the Original Application No. 16/2014. The present objections are being filed by the authorized signatory of Tata Steel Limited, Ms. Meena Lall, who has been authorized by a Power of Attorney dated 12

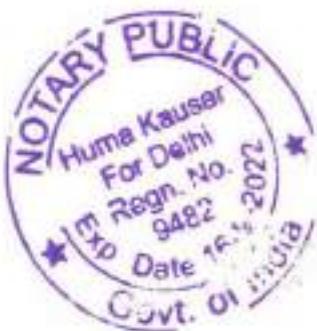


November 2013. A copy of the Power of Attorney dated 12 November 2013 is annexed herewith as **Annexure A**.

Brief Background of Respondent No. 14

2. It is submitted that the corporate insolvency resolution process (“CIRP”) of erstwhile Bhushan Steel Limited was initiated by the State Bank of India, one of its lender banks under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) before the National Company Law Tribunal, Principal Bench, New Delhi (“Adjudicating Authority”). By virtue of the order dated 26 July 2017 passed by the National Company Law Tribunal, Principal Bench, the CIRP commenced against erstwhile Bhushan Steel Limited.

3. Subsequently, Tata Steel Limited (“TSL”) submitted a resolution plan for taking over Bhushan Steel Limited, which was approved by the Adjudicating Authority, Principal Bench, on 15 May 2018. True copy of the order dated 15 May 2018 passed by the Adjudicating Authority, Principal Bench, is annexed herewith as **Annexure B**. Therefore, TSL [through its wholly owned subsidiary namely Bamnival Steel Ltd (“Bamnival”)] acquired the control and business of Bhushan Steel Limited with effect from 18 May 2018. Subsequent to the approval of the resolution by TSL, the name of erstwhile Bhushan Steel Ltd. was changed to Tata Steel BSL Limited



("TSBSL") with effect from 27 November 2018. A copy of the certificate of incorporation pursuant to change of name dated 27 November 2018 is annexed herewith as **Annexure C**.

4. Thereafter, managements of TSL, Bamnipal and TSBSL considered the amalgamation of TSBSL, Bamnipal into, and with, TSL. Accordingly, a Composite Scheme of Amalgamation ("**Scheme**") was approved by the Board of Directors of TSL, Bamnipal and TSBSL on 25 April 2019. Pursuant to the approval of the Scheme, various applications were filed under Sections 230-232 of the Companies Act, 2013, before the Adjudicating Authorities, both at New Delhi and Mumbai. By virtue of the order dated 29 October 2021, passed by the Adjudicating Authority, Mumbai Bench, Tata Steel BSL Limited was amalgamated into and with Tata Steel Limited. A true copy of the order dated 29 October 2021 passed by the Adjudicating Authority, Mumbai Bench, is annexed herewith and marked as **Annexure D**.
5. Subsequently, after completing the procedural formalities with the Registrar of Companies, Tata Steel BSL Limited and Bamnipal amalgamated into and with Tata Steel Limited from 11 November 2021.

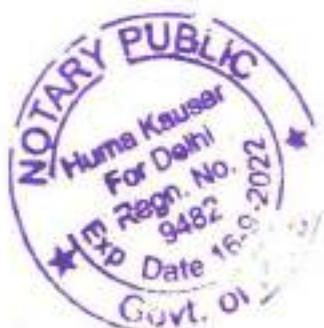


6. Clause 15.1 of the approved Scheme provides, that all legal proceedings in which TSBSL was a party to will now be contested/filed by TSL. The said clause is extracted and placed below for reference:

“15.1 Upon coming into effect of this Scheme, if any suit, appeal or other legal proceeding including quasi-judicial, arbitral and other administrative proceedings, if any, of whatsoever nature by or against the Transferor Company 2 be pending and/or arising on or before the Appointed Date, the same shall not abate or be discontinued or be in any way prejudicially affected by reason of the transfer of the Undertaking 2 or anything contained in this Scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced, as the case may be, by or against the Transferee Company in the same manner and to the same extent as it would be or might have been continued, prosecuted and enforced by or against the Transferor Company 2, if this Scheme had not been made.

The Transferee Company undertakes to have all legal or such other proceedings specified in this Clause 15.1, initiated by or against the Transferor Company 2, transferred to its name and to have such proceedings continued, prosecuted, and enforced by or against the Transferee Company, as the case may be. Following the Effective Date, the Transferee Company may initiate any legal proceedings for and on behalf of the Transferor Company 2.”

7. Thus, Respondent No. 14 must be considered as Tata Steel Limited. The said Respondent craves leave of this Hon'ble Tribunal to file an appropriate application for the change in the identity of the Respondent if required or so ordered by this Hon'ble Tribunal.



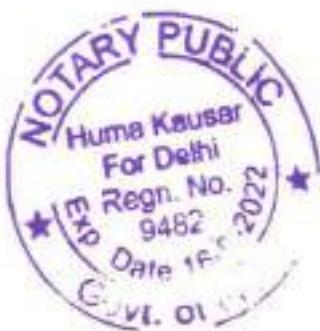
Supreme Court Proceedings

8. It may be pertinent to note that Respondent No. 14 had approached the Hon'ble Supreme Court against an order dated 26 February 2020 passed by this Hon'ble Tribunal, in the present matter. By its order dated 22 October 2021, the Hon'ble Supreme Court held as follows:

“...
 Consequently, we set aside all proceedings subsequent to the submission of the Report dated 23.4.2014. The affected parties are given liberty to file objections to the report so submitted. It is only thereafter, an order can be said to have been passed by the NGT, which can be said to be an executable order.
 Consequently, the appeals are allowed. The order passed by the NGT on 26.02.2020 is set aside. The matter is remitted back to the NGT from the stage of submission of the Report dated 23.4.2014.
 ...”

A copy of the order dated 22 October 2021 passed by the Hon'ble Supreme Court is annexed herewith and marked as **Annexure E**.

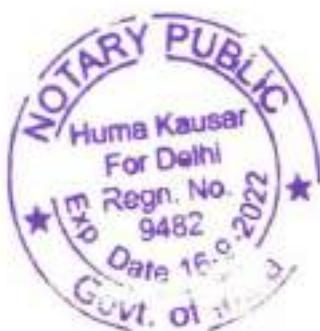
9. Therefore, in terms of the above order passed by the Hon'ble Supreme Court, this Hon'ble Tribunal was to consider fresh objections to the Report dated 23 April 2014 submitted by the Parul Gupta Committee. Accordingly, in terms of the order dated 22 October 2021 passed by the Hon'ble Supreme Court and the order dated 16 December 2021 of this Hon'ble Tribunal, various private respondents, including Respondent No. 14 herein, were permitted to file objections to the Parul Gupta Committee Report.



Objections to the Parul Gupta Committee Report

10. By an order dated 03 March 2014, this Hon'ble Tribunal appointed a four-member committee, comprising of Ms. Parul Gupta, Advocate; Mr. N.K. Gupta, Senior Environmental Engineer, CPCB; Regional Officer of UPPCB, Ghaziabad; and one of the Forest Experts to be nominated by the MoEF, Government of India. The Parul Gupta Committee was formulated to carry out an inspection of the Green Belt at Zone No. 5, Vaishali and water drainage from Sahibabad Drain No. 1 to its natural original position including the discharge of untreated industrial waste into the drainage. This Hon'ble Tribunal held that the following shall be the terms of reference:

1. *"The Committee shall visit the entire area of Zone-5 in so far as it relates to the maintenance of drainage system by the Municipal Corporation of Ghaziabad and find out the real physical position including the slabs, whether they are put up permanently or are removable, etc.*
2. *The Committee shall also find out the extent of the drainage in the area, which are covered and proposed to be covered and shall also indicate the places where constructions are made and also used as parking area, including encroachments.*
3. *The Committee shall also in its report state as to whether untreated waste, either from the industry or otherwise, are discharged into the drainage system.*
4. *The Committee shall also find out the green belt area in the Zone-5, Vaishali and whether they are preserved or being destroyed by the Municipal Corporation of Ghaziabad and shall furnish proposal for preservation of the green belt area.*

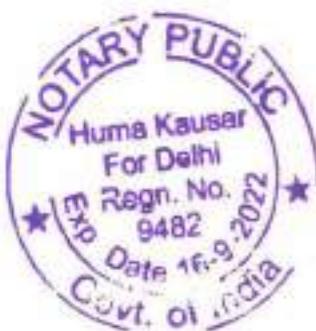


...
 7. *It will be open to the Applicant as also the Respondents to be present and express their views to the Committee at the time of inspection.*"

A copy of the order dated 03 March 2014 passed by this Hon'ble Tribunal is annexed herewith and marked as **Annexure F**.

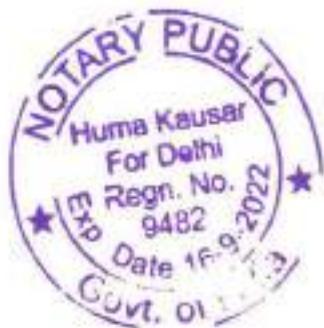
11. The Parul Gupta Committee placed its report before this Hon'ble Tribunal on 23 April 2014. It is pertinent to note that this report prepared and submitted by the Parul Gupta Committee entails factual inaccuracies and is devoid of scientific study or data. Further, it may also be noted that the Parul Gupta Committee Report has been prepared without a detailed investigation of the entire Sahibabad Drain. The suggestions given by the Parul Gupta Committee are not supported by any conclusive documents and scientific analysis. It is also submitted that an affidavit dated 07 August 2014 containing objections to the Parul Gupta Committee Report were filed earlier. A copy of such affidavit dated 07 August 2014 is annexed herewith and marked as **Annexure G**.

Observation 1: The drainage network of Sahibabad Industrial Area is connected with Sahibabad drain and as a result entire waste waters from the industrial area is



ultimately reaching to this drain at various locations.

12. At the very outset, it is most respectfully submitted that Respondent No. 14 does not release untreated waste waters into the Sahibabad Drain.
13. Respondent No. 14 has installed an Effluent Treatment Plant (“ETP”) with a capacity of 800 Kilo Liters per Day (“KLD”) in its premises and all waste discharge is released only after the same is treated by such ETP. Respondent No. 14 has also installed a Sewage Treatment Plant (“STP”) with a capacity of 60 KLD. The domestic wastewater is not discharged outside the plant premises but is utilized within premises for gardening, sprinkling, floor washing, dust suppression, etc.
14. In fact, the inspection report dated 04 August 2014 of Uttar Pradesh Pollution Control Board (“UPPCB”) with respect to Respondent No. 14, appended to the Parul Gupta Committee Report, states that “*During Inspection sample collected after ETP, which is achieving norms*”. A copy of the Inspection Report dated 04 August 2014 of the UPPCB is annexed herewith as **Annexure H.**

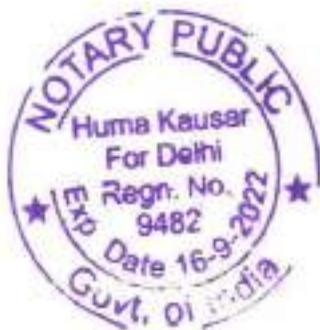


15. The analysis report, which is also a part of the Parul Gupta Committee Report clearly states that Respondent No. 14 is “achieving norms”. Further, perusal of the analysis report as attached to the Inspection Report reflects that all parameters are within the range, so prescribed by UPPCB. Therefore, the Parul Gupta Committee Report is self-contradictory and cannot be relied upon with respect to Respondent No. 14. The findings of the Parul Gupta Committee Report are not correct and therefore, they must be struck down.

16. Further, it would be pertinent to mention that the Parul Gupta Committee has itself recorded that “*After joint inspection by CPCB & UPPCB and regular follow-ups such industries have rectified their pollution control practices*” and therefore, the observation that the untreated industrial waste water is being discharged into the Sahibabad Drain is completely incorrect.

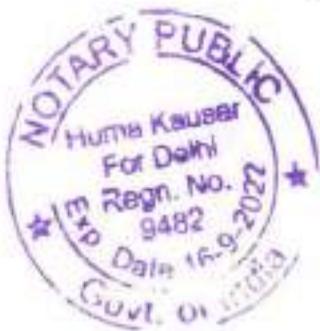
Observation 2: These covering of drain is made-up of reinforced cement concrete (“RCC”) and purely permanent in nature.

17. On 20 August 2000, the Chief Municipal Officer, Ghaziabad Municipal Corporation approved the revised drawing of the covers of the Drain, i.e., by using 1 meter wide pre-casted slabs, at periodical distances, instead of total RCC slab for easy access



to the Sahibabad Drain, thereby accorded permission to cover the Drain. Hence, Respondent No. 14 has covered the Drain as per the approved drawing by use of pre-casted slabs and not by using RCC slabs. It would be further pertinent to mention that the Respondent No. 14, at regular intervals, undertakes cleaning of the Drain by removing such covers. The above observation as made by the Committee that the covers are made-up of RCC and is permanent in nature is factually incorrect and cannot be relied upon by this Hon'ble Tribunal.

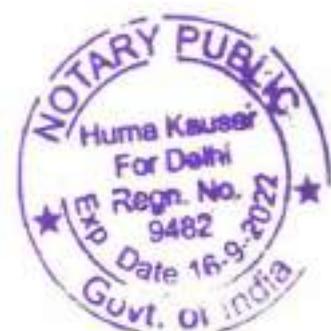
18. As a responsible entity, Respondent No. 14 regularly cleans the portion of the Sahibabad Drain in front of its factory, at its own expense, and updates the Ghaziabad Nagar Nigam about such regular cleaning.
19. Further, Respondent No. 14 has also contracted various companies/agencies that undertake cleaning of the drain by removing the covers of the Sahibabad Drain.
20. Thus, the observation that the slabs are permanent in nature is wrong and incorrect. Therefore, such an observation cannot be relied upon by this Hon'ble Tribunal.



Observation 3: Major Defaulters in respect of covering of drain, improper cleaning facilities and encroachment of adjacent land:

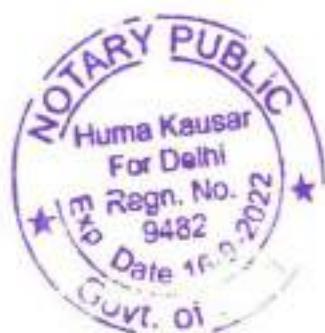
iv. ^{...} M/s Bhushan Steels

21. It is submitted that the Parul Gupta Committee had made the above observation without any basis/evidence and therefore, this must be struck down. In fact, contrary to the observation of the Parul Gupta Committee Report, the inspection report dated 04 August 2014 of UPPCB that has been appended with the Parul Gupta Committee Report itself, categorically states that Respondent No. 14 is "achieving norms". Further, perusal of the analysis report as attached to the Inspection Report reflects that all parameters are within the range, so prescribed by UPPCB.
22. Even otherwise, Respondent No. 14 can neither be considered as a defaulter in respect of covering of drain, improper cleaning facilities nor can be considered as an encroacher of land adjacent to its factory. As noted hereinabove, Respondent No. 14 has covered the Drain by using pre-casted removable slabs, after obtaining due permission from the concerned regulatory authority.
23. Further, on 18 January 2010, a License Deed was executed between Respondent No. 3 and Respondent No. 14 ("License



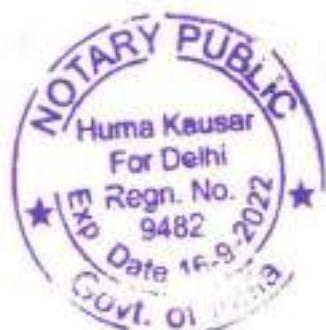
Deed") in relation to covering the Sahibabad Drain. As per the terms of the License Deed, Respondent No. 14 was given a license over the covered drains, for the purpose of using the covered part as car parking, outside its factory. Therefore, Respondent No. 14 covered the Sahibabad Drain only after obtaining the requisite permission from the concerned authority and thus, it cannot be termed as a defaulter or encroacher in respect of covering of drain.

24. Moreover, Respondent No. 14 also complies with all its obligations under the License Deed. It is pertinent to note that one of the obligations under the License Deed is regular payment of license fee. It is submitted that Respondent No. 14 always pays the license fee well within the stipulated period. Therefore, the observation in the Parul Gupta Committee Report that Respondent No. 14 is one of the 'Major Defaulters in respect of covering of drain' is completely baseless. Such an observation has been made without proper analysis of the facts and therefore, such observation of the Committee cannot be sustained.
25. It is submitted that the license fee has been paid until 18 January 2023. A copy of the letter dated 30 December 2021 sent by Respondent No. 14 for payment of lease rent of INR 3,14,805 (Rupees Three Lakhs Fourteen Thousand Eight Hundred Five only), in terms of the License Deed dated 18 January 2010, for



period from 19 January 2022 to 18 January 2023, along with the demand draft bearing no. 366294 dated 29 December 2021 towards payment of the lease rent is annexed herewith as **Annexure I**.

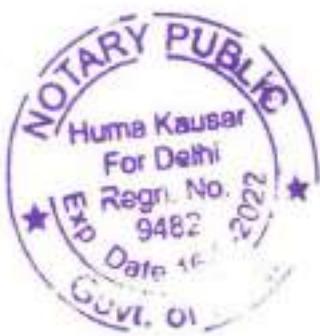
26. Respondent No. 14 also complies with its other obligations under the License Deed, one of which is regular cleaning of the portion of the Sahibabad Drain that was in front of the factory. It is submitted that Respondent No. 14 regularly cleans and maintains the drain. In this regard, Respondent No. 14 has given the contract for the cleaning and maintaining of the Drain to third party agencies. True copies of the invoices/purchase orders given to third party agencies are annexed herewith as **Annexure J**. In this relation, it is also stated that Respondent No. 14 has not received a default notice from any statutory authority.
27. It may also be noted that Respondent No. 3 regularly inspects the drains to verify if the drains were properly maintained or there was any foul stink from the drains. It is pertinent to state that Respondent No. 3 has never found any lapses on the part of Respondent No. 14 since the drain is regularly cleaned.
28. Lastly, the observation made by the Parul Gupta Committee that Respondent No. 14 has encroached the adjacent land is completely erroneous and is liable to be struck down. Further, a



similar observation at Annexure 3 of the Parul Gupta Committee Report is also completely baseless as the Parul Gupta Committee in its report has not placed any evidence in this regard and there is no encroachment on any adjacent land. It is reiterated that any coverage of the Drain by Respondent No. 14 has been done after taking all requisite permissions and as per the License Deed.

Observation 4: Conditions of the 'Agreement' are violated.

29. It is submitted that the observation made in Annexure 3 of the Parul Gupta Committee Report that various "*Conditions of the 'Agreement' are violated*" is completely baseless and deserves to be struck down.
30. Respondent No. 14 vehemently denies the above observation as it has not received any notice/ communication from any authority that the terms of the License Deed have been violated.
31. It may be noted that the License Deed also contemplates that it can be terminated in case there is a breach of the obligations (under the License Deed) by Respondent No. 14. Since the License Deed has been continuously operating since 2010, the observation that terms of the License Deed have been violated is wholly misconceived and incorrect.



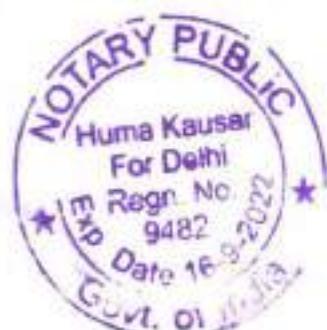
32. Further, it is submitted that even Respondent No. 3 has affirmed that Respondent No. 14 has complied with all its obligations under the License Deed. Such affirmation is reflected in the Counter Affidavit filed by Respondent No. 3 in *Tata Steel BSL Limited v. Hazi Arif & Others*, Civil Appeal No. 2700/2020, filed before the Hon'ble Supreme Court of India. Respondent No. 3 has stated as follows:-

"...maintaining the cleanliness of the drain and are completely complying with the terms and conditions laid down in the Licence/Agreement."

A copy of the Counter Affidavit filed by Respondent No. 3 in *Tata Steel BSL Limited v. Hazi Arif & Others*, Civil Appeal No. 2700/2020, is annexed herewith as **Annexure K**.

Observation 5: It is also observed that in many cases the actual covering/construction over the drain is much more than the permission granted by Nagar Nigam, Ghaziabad.

33. It is submitted that the covering/construction over the drain is in accordance with License Deed and as per the permission granted by Respondent No. 3. Further, the Parul Gupta Committee has not put forth any evidence to substantiate its observation regarding the coverage being more than the permission granted.



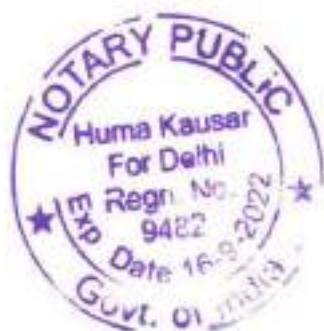
Observation 6: It is a natural storm water drain and the average width of the drain in the Sahibabad Industrial Area Site IV is around 50-60 feet.

34. It is submitted that the Parul Gupta has wrongly concluded that the Sahibabad Drain is a natural storm water drain. Respondent No. 3, in its affidavit filed before the Hon'ble Supreme Court, has clearly stated that "*...it is important to bring to the notice of this Hon'ble Court that the said drain is a Manmade Drain and not a Natural Storm Water Drain*". Therefore, the observation of the Parul Gupta Committee is incorrect and is liable to be struck down.

Submissions made by other Statutory Authorities

35. It is submitted that even Respondent No. 3 has affirmed that Respondent No. 14 has complied with all its obligations under the License Deed. Such affirmation is reflected in the Counter Affidavit filed by Respondent No. 3 in *Tata Steel BSL Limited v. Hazi Arif & Others*, Civil Appeal No. 2700/2020, filed before the Hon'ble Supreme Court of India.

36. It is most respectfully submitted that Respondent No. 3 has categorically stated that it has "*removed all encroachments and covers that were done without the requisite permission and licenses. ... [and] only those Covers have not been*

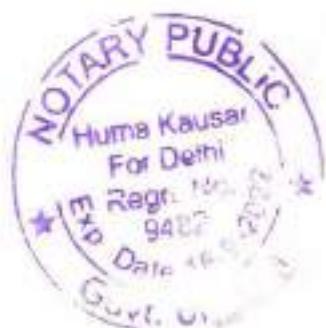


demolished/removed wherein requisite licence/permission has been granted by the Ghaziabad Nagar Nigam on the specific condition that the licensee would ensure to keep the Sahibabad Drain absolutely clean and no untreated sewage or industrial effluent shall be allowed to be discharged into it". Respondent No. 3 did not remove the covers of the Drain in front of Respondent No. 14's factory since Respondent No. 14 has a valid license and is also complying with the various conditions of the License Deed. Respondent No. 14 also has the requisite permission to cover the drain, as granted by letter dated 20 August 2000 issued by the Chief Municipal Officer Ghaziabad Municipal Corporation, by placing of 1 meter wide pre-casted slabs, at periodical distances, for easy access to clean the drain.

37. Further, Respondent No. 3 has categorically stated that Respondent No. 14 has been "*...maintaining the cleanliness of the drain and are completely complying with the terms and conditions laid down in the Licence/Agreement*".
38. Moreover, in its affidavit filed before the Hon'ble Supreme Court, Respondent No. 3 has also noted:

"7. ...

- i. *If the concrete slabs covering the drain are removed as per the recommendation of the Expert Committee, then the open drain would pose serious health and safety threats to the public at large. Moreover, the open drain would lead to emissions of toxics and*



hazardous gases which could cause long lasting and irreversible damage to the health of the inhabitants of the various residential colonies surrounding the area. It would also result in foul smell engulfing the entire area which would make the living conditions worse. Moreover, the inhabitants and the public at large would dump untreated garbage and household waste in the drain which in turn would lead to clogging the drain and obstructing the free flow of water. This obstructed flow of water would further result in water logging and moreover the stagnant water at various places will become the breeding grounds for mosquitoes and other diseases. The important aspect to be taken note of is that the open drain would also result in causing fatal accidents as in the past, as per news-reports many children had fallen in the drain and lost their lives. It would also result in leaching of pollutants into the earth.

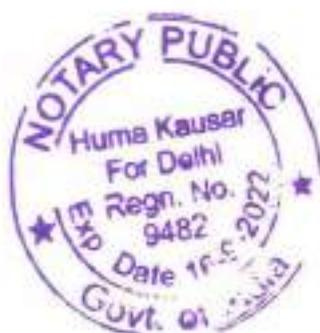
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39. Hence, any contrary observation by the Parul Gupta Committee is devoid of any merit.

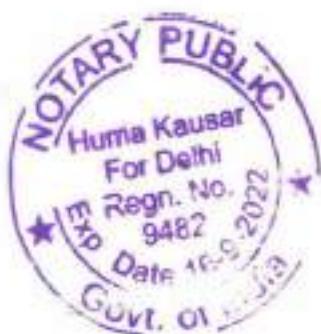
Other Environmental initiatives and activities undertaken by

Respondent No. 14

40. Respondent No. 14 has always cooperated with and followed the environmental norms and protocols prescribed thereto. In fact, Respondent No. 14 has undertaken various steps to improve the environment and is conscious of all its duties towards the environment.



41. It is submitted that the Respondent No. 14 has consistently endeavored to protect and preserve the environment. It has organized various other environment-related activities, in and around Sahibabad, to raise awareness about environmental issues. In this regard, it is pertinent to state that the land outside Respondent No. 14's factory has been developed into Green Zone through landscaping and plantation, under CSR initiatives. The land is covered with more than 3000 plants. The plantation helps in making the environment better by not only purifying the air but also conserves water. Further, it also preserves soil and benefits the overall environment in several other ways.
42. Further, Respondent No. 14 has planted more than 40,000 saplings in nearby areas to promote green initiatives. It has also developed rain water harvesting structure from which approximately 5,70,000 cubic meters of rain water is recharged annually from the Sahibabad Plant premises of Respondent No. 14 and from the adopted ponds in nearby villages. Pictures of the green initiatives undertaken by Respondent No. 14 are annexed herewith as **Annexure L (Colly)**.
43. Moreover, Respondent No. 14 had launched a six-month long campaign on Save Water on 01 August 2019 to sensitize the community and the school children around its plant at Sahibabad in Ghaziabad district of Uttar Pradesh. During the six-month long



campaign volunteers interacted with the community and students at nearby schools sharing various methods of water conservation, rainwater harvesting, best practice on efficient use of water, etc.

44. Respondent No. 14 also organizes various webinars to sensitize school students and teachers and encourage students to save and conserve energy in their day to day life. Therefore, Respondent No. 14 undertakes various activities in order to promote and protect environment in any manner whatsoever and therefore, the findings of the Parul Gupta Committee that it has added to polluting the Sahibabad Drain is completely incorrect.
45. Respondent No. 14 has not done any act which is *de hors* law or for which adequate permission was not taken. The Parul Gupta Committee, without considering any of the above factual aspects came out with its report. The Parul Gupta Committee has even failed to support its recommendation with any scientific study or data.
46. It is submitted that Respondent No. 14 has not violated any of the conditions of the License Deed, as detailed in the previous paragraphs. Therefore, the recommendation of the Parul Gupta Committee of cancellation of the permission for covering of the Sahibabad Drain is completely baseless and cannot be accepted.



47. It is submitted that the Parul Gupta Committee has failed to conduct the empirical study and has prepared the report in an extremely hasty manner. It is, therefore, submitted that the Parul Gupta Committee Report needs to be set aside.



Filed By

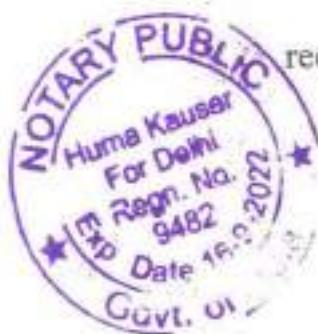
P&A
LAW OFFICES

P&A LAW OFFICES
DR. GOPAL DAS BHAWAN
1ST FLOOR, 28, BARAKHAMBA ROAD
NEW DELHI -110001
PHONE: +91-11-4139-3939
FACSIMILE: +91-11-2335-3761

Place: New Delhi
Date: 05 January 2022

VERIFICATION

I, Meena Lall, aged about 57 years, working as Chief Legal Officer (Industrial and Litigation) with the Respondent No. 14, having its office at Jeevan Bharti Building Tower-1, 10th Floor, 124, Connaught Circus, New Delhi – 110 001, do hereby verify that contents of paragraph nos. 1 to ___ of the reply are true to my knowledge, based upon the official records of the Respondent No. 14, maintained in the usual and ordinary



course of its business. No part of it is false and nothing material has been concealed or suppressed therefrom.

Place: New Delhi
Date: 05 January 2022



ATTESTED
hb
NOTARY PUBLIC, DELHI
05 JAN 2022



महाराष्ट्र MAHARASHTRA
 प्रधान न्यायिक कार्यालय, मुंबई
 प. नं. विठोबा टाक. ६२४
22 MAY 2013
 सक्षम अधिकारी

H.C.I.
12 JUN 2013
HL 323399
 दि. १२ जून २०१३
 को. ऑफिस नं. ३२, मुंबई - ४०० ००१
 एम. एम. सी. स्ट्रीट - २४
 फोर्ट, मुंबई - ४०० ००१
TATA STEEL LIMITED
BOMBAY HOUSE
24 HOMI MODY STREET
FORT, MUMBAI - 400 001
 मुंबई विवेका

Guri P. P. Kenjale

POWER OF ATTORNEY

मेना बापू गोगाकरबाई

TO ALL TO WHOM THESE PRESENTS SHALL COME THE TATA STEEL LIMITED (original named as The Tata Iron and Steel Company Limited), a company duly incorporated under the Indian Companies Act, 1882, and having their Registered Office situated in Bombay House, 24, Homi Mody Street, Fort, Mumbai – 400 001 and hereinafter called the 'the Company' **SEND GREETINGS**

WHEREAS the Company are desirous of appointing Ms Meena Lali, Chief-Legal (Corporate Matters) as their Attorney to act for the Company in the manner and to the extent hereinafter appearing and for this purpose have resolved by Circular Resolution No. 17 dated September 30, 2013

Ms. **ROSHAN M. MASTER** 1
 NOTARY, GREATER BOMBAY
 2403, ORCHID TOWER A
 BELLASIS ROAD,
 MUMBAI- 400 008.

NOW THESE PRESENTS WITNESS that the Company do hereby nominate, constitute and appoint the said Ms Meena Lall, Chief-Legal (Corporate Matters) (hereinafter unless otherwise designated called 'the Attorney') to be the true and lawful Attorney of the Company for and on behalf of and in the name of the Company to do and perform all or any of the following acts, deeds, matters and things hereinafter specified.

1. To sign all correspondence in the ordinary course of business of the Company.
2. To appear for and represent the Company in all Courts: Civil, Criminal, High Court, Supreme Court, Tribunals and other fora: Mining, Revenue, Provident Fund, ESI, Electricity Board, Consumer Protection, Municipal, Administrative, Industrial or otherwise and before customs, revenue, sales tax, VAT and excise authorities and Government officials, Committees or Assessing Officers in any State or the Centre, relating to any matter in which the Company may be interested or concerned and to produce the documents connected therewith;
3. To sign, verify and present all necessary applications, plaints, petitions, written statements, affidavits, vakalatnamas, tabular statements, or any other documents expedient or necessary;
4. To sign, execute and deliver documents, returns and declarations forms of any kind required under any Sales Tax Law, Value Added Tax Law of any State, Service Tax, Excise or Customs Law, Mining Law or any other such returns and forms, as may be required for the ordinary course of business of the Company;
5. To commence, prosecute, abandon, defend, compound, compromise or submit to arbitration and carry to appeal and final execution of all suits, writ proceedings, execution proceedings or any other judicial or quasi-judicial proceedings or meetings held by Government authorities on legal issues (the list is illustrative) in any judicial or quasi-judicial forum, Tribunal, Court, Arbitration Panel, Government authority, etc to which the Company may be a party or interested in any manner whatsoever and to sign, verify and present all plaints, written statements, petitions, affidavits, tabular statements, consent orders, letters or any other documents whatsoever found expedient and necessary;
6. To carry on all correspondence and also apply for extension of time, accept notices, summons and other processes, assessment orders, judgments and decrees on behalf of the Company;

Ms. ROSHAN M. MASTER
NOTARY, GREATER BOMBAY
2403, ORCHID TOWER A
BELLASIS ROAD,
MUMBAI - 400 008.

7. To apply for and obtain copies of returns, assessment orders, complaints, petitions, written statements and other documents on behalf of the Company;
8. To apply for and receive refund orders arising from any orders of any authorities;
9. To appoint, engage and remove from time to time any attorneys, advocates or lawyers for any purposes and cause payment of fees to be made to them for the services performed;
10. With the previous consent in writing of the Managing Director or any Whole-time-Director to sign and execute all leases related to land and mining (whether as Lessors or Lessees) Licences (whether as Grantors or Grantees) and conveyances and assurances whatsoever;
11. To delegate with the previous consent of the Managing Director or any Whole-time-Director to any officer of the Company the powers vested in her under these presents but the said Attorney or any officers of the Company to whom the said powers or any part thereof may be delegated shall at all times be subject to the supervision or control of the Company and its Directors or the Managing Director or Whole-time Director.
12. To authorise any officer of the Company to appear as a witness on behalf of the Company, in any judicial or quasi-judicial proceedings or to appear and plead a particular case on behalf of the Company in any quasi-judicial forum.

The powers delegated herein are to be exercised by Mrs. Meena Lall strictly according to the delegation of powers granted by the Company and/or its Managing Director / Executive Director, from time to time.

This Power of Attorney shall be valid and remain in force so long as the Attorney is in the employment of the Company. It is further hereby agreed and declared that notwithstanding the cessation of employment of the Attorney in the Company, the Substitute Power of Attorney granted under Clause No. 11 will continue to be effective and valid so long as the substitute(s) is/are in the employment of the Company or hold the functional profile at the time of grant of substitute authority;

And the Company hereby ratifies and confirms and agrees to ratify and confirm all and whatsoever the said Attorney shall lawfully do in and about the premises by virtue of these presents.

Ms. ROSHAN M. MASTER
 NOTARY, GREATER BOMBAY
 403, ORCHID TOWER A
 BELLASIS ROAD,
 MUMBAI - 400 008.

IN WITNESS WHEREOF THE TATA STEEL LIMITED have hereunder caused their Common Seal to be affixed in the presence of two Directors of the Company this day of 12th Nov. Two Thousand and Thirteen.

The Common Seal of Tata Steel Limited was hereunto affixed pursuant to the Circular Resolution No CR - 17 dated September 30, 2013 passed by the Committee of Directors of the Company in the presence of:



- 1. Mr. B. Muthusuman x *Muthusuman*
- 2. Mr. Koushik Chatterjee *Chatterjee*

Directors

Photograph of Mrs Meena Lall:



R.

Specimen signature of Mrs. Meena Lall

M. Lall

Mr. ROSHAN M. MASTER
NOTARY, GREATER BOMBAY
2403, ORCHID TOWER A
BELLASIS ROAD,
MUMBAI - 400 008.

*Before me
R M Master*

Reg. No. 404

S. no 9615

12. 11. 2013

NOTARY :



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.A No.244(PB)/2018, C.A. No. 186(PB)/2018,
C.A. No. 217(PB)/2018 & C.A. No. 176(PB)/2018
in C.P. (IB)-201(PB)/2017

IN THE MATTER OF:

State Bank of India Applicant/petitioner
vs.
Bhushan Steel Limited Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016

Order delivered on 15.05.2018

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

Sh. S.K. Mohapatra,
Hon'ble Member (T)

Presents:

For the Resolution Applicant: Mr. A.S. Chandhiok, Senior Advocate
-TSL Mr. Amit Chadha, Senior Advocate
Mr. Rajiv Nayar, Senior Advocate
Mr. Virendra Ganda, Senior Advocate with Mr. Gopal
Jain, Mr. V.P. Singh, Mr. Sahil Monga, Ms. Ruby
Singh, Ms. Tahira, Ms. Pallavi Kumar, Ms. Shweta
Kakkad, Mr. Angad Baxi, Mr. Sumesh Dhawan, Mr.
Rishi Mongia and Ms. Tanya Baranwal, Advocates
for Resolution Applicant-TSL

For Tata Capital Mr. Ramji Srinivasan, Senior Advocate with Mr.
Siddharth Sharma and Mr. Tushar Bhardwaj,
Advocates

For K.M.P.S. Ms. Ranjana Rai Gawai, Ms. Vasudha Sen and Mr.
Vivek Kumar, Advocates

For the RP Mr. Ravi Kadam, Senior Advocate with Mr. Manmeet
Singh, Ms. Anjali & Ms. Geetanjali, Advocates.

CTM

For Larsen & Tourbo	Mr. Mukul Rohatgi, Senior Advocate Mr. Anand Chibbar, Senior Advocate with Mr. Gaurav Malhotra, Mr. Rajeev Kumar & Ms. Aastha Mehta, Advocates
For CoC	Mr. Tushar Mehta, Senior Advocate
For Bhushan Energy Ltd.	Mr. Rajeeve Mehra, Senior Advocate with Mr. Mayank Mishra, Mr. Ritunjay Gupta & Ms. Niti Arora, Advocates

M.M.KUMAR, PRESIDENT

JUDGMENT

1. This order shall dispose of the following CA's:
 - (i). C.A. No.244(PB)/2018 filed by Resolution Professional (for brevity 'RP') under Section 30 & 31 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a principal prayer of accepting the resolution plan approved by the Committee of Creditors (for brevity 'CoC') submitted by H1 Resolution Applicant. The resolution plan has been filed by TATA Steel Limited (for brevity 'TSL') in the Corporate Insolvency Resolution Process (for brevity 'CIR Process') of the Corporate Debtor. A further relief has also been sought to grant various concessions as envisaged in the resolution plan and approved by the CoC. These concessions have been duly extracted in Annexure-8.
 - (ii). C.A. No. 186(PB)/2018 filed by Larsen & Toubro Limited with a prayer that the applicant therein shall be treated as secured

creditor as against their assigned status of unsecured/operational creditor.

(iii). C.A. No. 217(PB)/2018 filed by the Bhushan Employees seeking direction to the RP to decide the objection raised by them and;

(iv). C.A. No. 176(PB)/2018 filed by RP under Section 19(2) of the Code.

2. Brief facts of the case necessary for disposal of the controversy raised in the present proceeding may first be noticed. The State Bank of India filed C.P. No. (IB)-201(PB)/2017 against Bhushan Steel Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code'). After issuance of notice and considering the reply of the Corporate Debtor we admitted the petition on 26.07.2017(Annexure-2). As a consequence, the CIR process commenced and moratorium in terms of Section 14 was imposed. In pursuance of Section 15 of the Code the Interim RP invited claim on 28.07.2017 (Annexure-3). It is pertinent to mention that Interim RP received claims of Rs. 56,080 crores from fifty three (53) financial creditors and further claims of Rs. 2846.52 crores from seven hundred and fifty one (751) operational creditors (including workmen, employees and statutory creditors) and Rs. 0.22 crores from two (2) other

creditors by 20.03.2018. The RP has convened 10 meetings of the CoC upto 20.03.2018.

3. It is also pertinent to mention that RP issued an advertisement which was published on 09.10.2017 and invited prospective resolution applicants to put forward their resolution plans in respect of the Corporate Debtor. A copy of thereof has been placed on record (Anneuxre-5). In response to the publication twenty two (22) potential resolution applicants expressed their interest to submit the resolution plans for the Corporate Debtor. A total number of nineteen (19) potential applicants also executed confidentiality undertakings with the RP. A Virtual Data Room (VDR) was set up wherein relevant documents, data and information in relation to the Corporate Debtor and the ongoing CIR process were provided to potential resolution applicants. The RP prepared an information memorandum in accordance with the provisions of the Code and uploaded the same on the VDR, for ready reference. There were total seventeen (17) potential resolution applicants who sought access to the VDR, in order to carry out necessary due diligence on the Corporate Debtor.
4. The RP has further disclosed that in obedience to Regulation 35 of the CIR Regulations, he appointed two registered valuers, namely (i) Duff and Phelps India Private Limited, and (ii) PWC, to

ascertain the liquidation value of the Corporate Debtor, after reviewing and comparing the quotations received from six valuation agencies. The CoC approved the process and evaluation criteria for evaluating a resolution plan in compliance with the requirements of the Code, in order to ensure a fair and transparent system of evaluation and also to ensure that the best resolution plan for the Corporate Debtor is selected in the most transparent manner. The CoC at its 4th meeting held on 27.11.2017 appointed KPMG India Private Limited ('KPMG') as the evaluator of the resolution plans ('CoC Evaluator') and Shardul Amarchand Mangaldas & Co. as its legal counsel ('CoC Legal Advisor'). A process document dated 27.12.2017 amended and clarified from time to time for submission of resolution plans for the Corporate Debtor was issued to the prospective resolution applicants by the RP on behalf of the CoC.

5. In the 6th meeting held on 15.12.2017 the CoC decided to seek extension of time beyond the period of 180 days for the CIR Process to facilitate interested resolution applicants to submit their resolution plans in respect of the Corporate Debtor. The aforesaid resolution was voted and carried by 99.17% e-voting (by voting share) held on 18.12.2017 and 19.12.2017. Accordingly, we had granted extension vide order dated 21.12.2017 (Annexure-4).



6. The RP had received three resolution plans as on 03.02.2018 which was the final deadline fixed. It is appropriate to mention that the initial deadline for receipt of resolution plans was 23.12.2017 which was later extended from time to time. Eventually the deadline was fixed at 03.02.2018. Even the promoter of the Corporate Debtor sent an envelope which was not opened on account of the doubt entertained by the RP with regard to the eligibility of the promoter to submit a resolution plan. The RP sought clarifications which were submitted by TSL and JSW Living Private Limited by providing certain addendum/clarification/confirmations. However, no clarifications/confirmations were received from the third resolution applicant i.e. Bhushan Employees. Consequently, only two resolution plans of TSL and JSW Living Private Limited were found compliant with the requirements of the Code and the CIRP Regulations. In the 9th CoC meeting held on 06.03.2018 the aforesaid resolution plans were discussed in consultation with CoC evaluators and Legal Advisors. Accordingly, on the recommendation of the CoC, TSL was notified as the highest scoring resolution applicant (H1 Resolution Applicant) in the CIR Process vide email dated 07.03.2018 (Annexure-6). Having being determined as the H1 Resolution Applicant, the CoC has held extensive negotiations and consultations with the H1 Resolution



Applicant, to improve and clarify its resolution plan. Pursuant to the negotiations, the H1 Resolution Applicant submitted a second addendum on 21.03.2018 after the first addendum dated 24.02.2018. The CoC approved the resolution plan with an affirmative voting share percentage of 99.80% which is much more than the minimum threshold of 75% as required by Section 30 (4) of the Code. A copy of the CoC approved resolution plan of H1 Resolution Applicant-TSL along with the voting pattern of financial creditors approving the resolution plan has been placed on record [Annexure-7 (Colly)]. In accordance with the process document, the H1 Resolution Applicant was issued a letter of intent subsequently. The aforesaid resolution plan approved by the CoC has now been placed before us for seeking our acceptance and approval in terms of the Code and CIRP Regulations.

7. The RP has also ascertained that in Part 10 of the CoC approved resolution plan the Resolution Applicant has sought certain reliefs and concessions and submission has been made that this Tribunal may approve and direct the grant of the reliefs and concessions envisaged in the CoC approved resolution plan (Annexure-8).
8. The RP states that from the date of the approval of the Resolution Plan by this Tribunal, this would be regarded as



effective date and until the date on which all the steps for the implementation set out in Annexure 5 would be completed (closing date). The plan envisaged *inter alia* the following:

“(a). that the RP, along with certain representatives of Deloitte Touche Tohmatsu India LLP shall be appointed by this Hon’ble Tribunal as the monitoring agency for the Corporate Debtor (“**Monitoring Agency**”). The Monitoring Agency shall have the same functions, powers and protections as ascribed to the RP under the Code. The CoC shall continue with its roles and responsibilities, and have protections, as set out in the Code including approving the matters as are being approved during the period prior to the Effective Date. The powers of the board of directors of the Corporate Debtor shall remain suspended until the Closing Date, and shall be exercised by the Monitoring Agency; and (b) the Corporate Debtor and all its facilities shall continue to receive supply of essential supplies, goods and services (as defined in the Code and regulations made thereunder) on an uninterrupted basis, and shall not for any reason be shut down or restricted in its activities in any manner. The steps set out in Annexure 5 of the CoC Approved Resolution Plan are extracted and set out in **Annexure-9.**”



9. The RP has also made a reference to C.A. No. 176(PB)/2018 which he had filed under Section 19(2) of the Code. We have issued notice and has recorded an assurance in the order dated 06.03.2018 given on behalf of the Corporate Debtor that every assistance was to be provided (Annexure-11).
10. The RP has appointed Deloitte Touche Tohmatsu India LLP as Forensic Consultant to assist in identifying suspect transactions involving the Corporate Debtor which may be preferential, undervalued, extortionate credit, and/or fraudulent, as mandated under Section 25(j), 43 to 51 and 66 of the Code (Avoidable Transactions). In that regard C.A. No. 176(PB)/2018 has been filed by the RP to seek certain reliefs including the avoidance of suspect transactions identified by the Forensic Consultant. A reference has also been invited to C.A. No. 186(PB)/2018 filed by Larsen & Toubro Limited which is awaiting disposal after the filing of reply. We have already observed in preceding para that C.A. No. 217(PB)/2018 filed by the Bhushan Employees is also pending and same shall also be disposed of with this order. The objection raised by the Bhushan Employees on the eligibility of the H1 Resolution Applicant and JSW Living Private Limited were discussed and deliberated upon. The RP has clarified that after receiving objections from Bhushan Employees he has sought clarifications



from both the Resolution Applicants on the objections raised by Bhushan Employees prior to 9th meeting of CoC held on 06.03.2018. Both the Resolution Applicants namely TSL and JSW Living Private Limited responded to the clarifications sought by the RP. The H1 Resolution Applicant-TSL has also submitted legal opinions/advice obtained from various Legal Firms from India and Abroad and the opinion of Hon'ble Justice Mr. Deepak Verma (Retd.), Mr. Mukul Rohatgi, Senior Advocate and Former Attorney General of India and Mr. Ravi Kadam, Senior Advocate, on the eligibility of H1 Resolution Applicant-TSL. Both the Resolution Applicants submitted affidavits specifically declaring and affirming their eligibility under Section 29A of the Code. After considering the objections, the clarifications, legal opinions and the legal advice independently obtained by the RP he has reached the conclusion that H1 Resolution Applicant-TSL and JSW Living Private Limited were not ineligible under Section 29A of the Code on the grounds put forward by the Bhushan Employees. It was only after fully satisfying itself, the CoC reached the conclusion that no ground to disqualify the Resolution Applicant were made out in the objections raised by Bhushan Employees and JSW Living Private Limited. The decision of the CoC has been intimated to the authorized representative of Bhushan Employees and a copy of the order

dated 09.03.2018 has been placed on record (Annexure-13). It is in the aforesaid facts and circumstances that the RP has made the prayer recorded in the opening para of this order.

11. Replies to the application have been filed by Bhushan Energy Limited, Bhushan Employees and TSL.

Reply by Bhushan Energy Limited

12. In the reply filed by the Bhushan Energy Limited which itself is under CIR Process it has been submitted that the resolution plan adversely effect the rights of BEL which arise under the power purchase agreements dated 29.03.2007 as amended on 30.06.2014 and dated 26.10.2010 as amended on 05.05.2014 (PPA-1 & PPA-2). These agreements were entered into between BEL and the Corporate Debtor. The objection raised is that the resolution plan submitted by TSL seeks to terminate the said power purchase agreements unlawfully and the reply has been filed objecting to the resolution plan filed by the Resolution Applicant.
13. It has been pointed out that BEL is a group company of the Corporate Debtor and its sole business is to own and operate a coal-based thermal power project (300 MW and 185 MW). These projects have been set up within the premises of the Corporate Debtor's integrated steel plant at Meramandali, Dhenkanal District, Odisha. It was established to meet the demand of the

Corporate Debtor's integrated steel plant and the Corporate Debtor and BEL had entered into the aforesaid two PPAs. The main salient features of the PPAs have been listed with the emphasis that there was no provision for their early termination.

Main features have been highlighted as under:-

- "i. The term of supply under PPA-1 is from April 1, 2014 till September 30, 2024, and the term of supply under PPA-2 is from April 1, 2013 till December 31, 2024. Pertinently, there is no provision for early termination of the PPAs.
- ii. The recitals of the PPAs record that the Corporate Debtor's industrial unit requires power to run, and can consume the entire net electricity output of the CPP. In this regard, under Clause 3 of the PPAs, the Corporate Debtor has agreed and undertaken to mandatorily purchase the entire power generated by BEL. Clause 3(h) of the PPAs stipulates that, in the event the Corporate Debtor fails to consume the entire output generated, the Corporate Debtor is liable to be compensate BEL:
 - a. for the shortfall in units purchased by the Corporate Debtor;

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b. in the event that BEL sells any such power to a third party, for the unsold units as well as any inferior price realized by BEL pursuant to such sale.

The compensation is to be decided on the basis of the amount that ought to have been received/realized by BEL had there been no default on the part of the Corporate Debtor. Furthermore, in case of any shortfall in offtake, the Corporate Debtor is required to provide BEL with the necessary transmission facility to transport power to the grid.

- iii. In terms of Clause 3(i) of PPA-1, the power is to be supplied to the Corporate Debtor at the cost of generation or INR 2.50 per Kwh, whichever is higher. In terms of Clause 3(i) of the PPA-2, the power is to be supplied to the Corporate Debtor at grid rate or INR 3.35 per Kwh, whichever is earlier.
- iv. Clause 3(i) expressly states that the lenders of BEL have agreed to provide funds to BEL for implementation and operation of the CPP on the basis of the PPAs. Further, the Corporate Debtor is contractually bound to make good any shortfall on



the part of BEL in meeting its obligations to its lenders on account of the above rate(s).

- v. Under Clause 3(i) of the PPAs, the Corporate Debtor is contractually bound to make minimum payment to BEL towards supply of power under the PPAs that will be sufficient for BEL to meet its expenses, taxes and debt-service obligations to the lenders. Such minimum payments are to be adjusted by the Corporate Debtor against future payments to be made to BEL.”

14. On account of financial stringency and to meet lenders' obligations BEL sought to revise its price for supply of power from 01.04.2017 and it sent a letter dated 06.06.2017 to the Corporate Debtor (Annexure R-1). However, a petition under Section 7 of the Code thereafter was admitted on 26.07.2017 and the CIR Process was initiated. BEL being an operational creditor submitted its claim on 09.08.2017 in Form B to the RP for a sum of Rs. 1,14,59,83,000. This amount was owed by the Corporate Debtor to BEL under the PPAs. Form B submitted on 09.08.2017 has been placed on record (Annexure R-2). The allegation of the objector-BEL is that the RP failed to respond despite repeated reminders by emails and failed to consider its Form B. Subsequently BEL was inducted as an operational



creditor as could be seen from the list of creditors dated 17.01.2018 uploaded on the Corporate Debtor's website. The claim of the BEL is stated to be rejected by the RP.

15. It is further asserted that RP of BEL also wrote to the RP of the Corporate Debtor as a follow up action on 22.02.2018 to enquire about the reasons for rejection of BEL's claim. While various resolution plans were being considered for the Corporate Debtor the RP of BEL wrote to the RP of the Corporate Debtor reminding him of contractual obligations of the Corporate Debtor towards BEL under the PPAs and keeping in view the contractual relationship between them a request was made to keep the interest of the BEL in mind while assessing and analysing resolution plans received for Insolvency resolution of the Corporate Debtor. Even the revised plan was filed on 20.03.2018 in Form B again by BEL by increasing the claim amount. On account of revised rates per unit, the price of power supply pursuant to the tariff arrived at was based on a study conducted by a power sector expert appointed by the RP of BEL. Despite that the RP failed to induct BEL as an operational creditor, despite the claim being filed within time as per Regulation 12 of the CIRP Regulations. A copy of Form B submitted on 20.03.2018 has been added as Annexure R-3. The prayer made in the application which the Resolution Applicant of BEL seeks



through this Tribunal is the non-enforcement of clauses of the Resolution Plan which adversely affect the claims of BEL and its rights under the PPAs. The RP of the BEL claims that he is saddled with the duty to preserve and protect its assets (Section 20(1) read with Sections 25(1) and 23(2) of the Code). It has been asserted that the power purchase agreements must not be permitted to be terminated being onerous and if at all it is permitted then the same shall take effect from the expiry of three months of the closing date on the completion of CIR Process of BEL. According to further averments such a clause in the resolution plan is illegal and unenforceable. Reference has been to the provisions of Section 30 of the Code and Regulations 37 and 38 of the CIRP Regulations which set out the contours within which a resolution plan may be approved and given effect to. There is no power with the RP or CoC to annul contractual arrangements entered into by the Corporate Debtor with a 'related party'. According to BEL it is different matter that provision has been made to avoidance of transaction which might be qualified as either 'preferential transactions' under Section 43 of the Code or 'under value transactions' under Section 45 of the Code. The contractual rights are recognized and protected under Article 300A of the Constitution and cannot be abrogated, superseded or taken away without due process of

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law. The claim has been unfairly rejected by the RP without due consideration without even acknowledging the claim which was filed on 20.03.2018. Reliance has also been placed on Regulation 37 of the CIRP Regulations and prayer has been made that the RP of Corporate Debtor must accept BEL's claim of Rs. 438,32,00,00,000 submitted to him on 20.03.2018 and he should ensure that the claim of the BEL as an operational creditor are duly recognized and provided for in the resolution plan.

16. Apart from filing reply to the application of the RP, the Bhushan Employees have also filed C.A. No. 237/2018 as part and parcel of this reply. The employees have taken support of Section 31 of the Code that this Tribunal must be satisfied before according approval to the resolution plan. It has also been highlighted that every resolution plan received by the RP must be examined threadbare by him and after confirming the eligibility the process can be advanced. The affidavit filed in support of the application C.A. No. 244/2018 is vague as the verification is to the best of his knowledge and belief. The Bhushan Employees have also asserted that their locus standi has been questioned by the RP when the employees raised objections on the eligibility of the resolution applicant by filing objection dated 22.02.2018 sent by email on 23.02.2018. A decision on their objections was taken

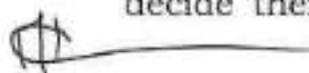


but no minutes of the meeting dated 06.03.2018 showing the ground of rejection has been communicated nor it could be shown that on what basis the locus of the employees has been questioned.

17. The Employees have submitted that the application filed by the RP is incomplete as there is non compliance of Section 30(6) of the Code which mandates the RP to submit the resolution plan as approved by the CoC before the Adjudicating Authority-NCLT. It is alleged that the resolution plan filed by the RP along with the instant application is incomplete as many of the annexures have not been placed before the Adjudicating Authority with the instant application which have vital information and bearing on the resolution plan. Reference has been made to Regulation 38 of the CIRP Regulations to submit that it is mandatory on the part of the RP to provide the details of the resolution applicant and other connected persons and many annexures relating to mandatory information have not been filed. It is prayed that the application must be dismissed on that ground alone. A reference has been invited to Annexure 6 which contains details relating to compliance of Section 29A of the Code which has been withheld from the Tribunal. Despite information given to the RP and its counsel the documents have not been supplied.



18. There are further allegations of misrepresentation of facts and reference has been made to the averments made in para 23 of the application and order dated 19.03.2018 has been deliberately misquoted. Likewise, objection has been raised that there is no compliance of order dated 21.12.2017 and 19.03.2018 passed by this Tribunal. In the order dated 21.12.2017 we have directed the RP to bring to the notice of the CoC about the latest developments which have emerged from the issuance of ordinance on 23.11.2017. As the ordinance requires fulfilment of additional conditions it has to be taken into account during the progress of the CIR Process (Annexure R-2).
19. The stand taken in the reply is that examination of the resolution plan involves a serious public interest, as most of the members of the CoC belong to Public Sector Undertakings and fall within the purview of State as defined under Article 12 of the Constitution. Therefore, the proceedings before the Tribunal has to be regarded as adversarial in nature. However, it has been stated that Bhushan Employees are in the favour of the rehabilitation of the company as it is in their own interest and in the interest of all other stakeholders.
20. In C.A. 217(PB)/2018 filed under Section 60(5)(a) & (c) of the Code the Bhushan Employees have sought direction to the RP to decide their objections dated 22.02.2018 filed by them and no



decision has been taken [Annexure R-3 (colly)]. The application was heard by the Adjudicating Authority on 19.03.2018. A submission was made before us by the counsel for the RP that the decision was to be taken by the CoC in the meeting which was held on 20.03.2018 (Annexure R-4) which according to the RP were discussed in the meeting of the CoC held on 20.03.2018. TSL also submitted various legal opinions before the RP/CoC to show its eligibility in terms of Section 29A of the Code. Their allegation is that the resolution applicants are not ineligible as per the requirements of Section 29A of the Code. It also does not fulfil ostensibly mandate of qualifications. The opinions of the Foreign Law Firms or Indian experts would be useless in the face of prima-facie satisfaction of its requirements. It has also been asserted that the decision taken by the RP/CoC on 20.03.2018 is not an informed decision as were directed by the Adjudicating Authority in its order dated 19.03.2018 (Annexure R-4).

21. Substantiating the allegations, it has been pointed out by Bhushan Employees that the RP should have insisted on TSL to disclose all facts, circumstances including orders passed by the Court at the United Kingdom and the bankruptcy proceedings against Mr. C. Shiva Shankaran who continues to be an undischarged insolvent. The 100% subsidiary of TSL suffered a

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disability which is covered by the ambit of Section 29-A of the Code on account of conviction of its wholly owned subsidiary company as it been convicted under Section 33(1)(a) of the Health and Safety at Work Act 1974 by Crown Court at Kingston upon Hull, United Kingdom vide the judgment dated 02.02.2018. Equally reference has been made to the declaration given by Hon'ble the Supreme Court of Seychelles in August, 2014 declaring Mr. C. Shiva Shankaran as bankrupt which has more than 10% shareholding in the group companies of Corporate Debtor i.e. Tata Teleservices Limited a company connected with and part of the resolution applicant-TSL. The TATA Sons executed an enforceable guarantee in favour of the creditor of the said company. Mr. Shankaran having been declared bankrupt and TSL being a related party would attract disqualification of TSL. In terms of schedule under Regulation 7(2)(g) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, the Resolution Professional must ensure that he maintains contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. The decision taken by the RP pertaining to the eligibility of the resolution applicants patently violated the Code of Conduct by which the RP is bound. The decision of the RP/CoC is also liable



to be set aside being pre-meditated. According to RP if the decision on the eligibility under Section 29A of the Code was to be taken by the CoC in the meeting held on 20.3.2018 then how TSL was declared as compliant H1 Resolution Applicant in the CoC meeting held on 06.03.2018. The relief sought in the form of Annexure-8 can also not be granted.

22. According to the averments made the principles of natural justice stand violated. The objections have not been considered with the seriousness it deserves. It was not an empty formality and from the Minutes of Meeting dated 20.03.2018 what was stated before this Tribunal was a mere farce and there was already an impenetrable wall of pre-judged opinion. Such a procedure is a negation of principles of natural justice and unfair.
23. The resolution plan has also been attached and it appears that it is full of conditions and contrary to the interest of other stake holder especially the CoC and Employees. There is no provision to grant relief which has been claimed by the RP as set forth in Annexure-8 which seeks waiving of taxes, duties etc. The resolution plan which is conditional cannot be regarded as complete.
24. Parawise reply on merits has also been given and there is no new fact which may be worth notice.



25. CoC has also filed affidavit in reply. The affidavit firstly notes the facts as narrated by the RP and then supported in letter and spirit all that the RP has submitted in the application. It has been highlighted that on 06.03.2018 in the ninth meeting of the CoC the RP informed that the plans submitted by TSL and JSW Living Private Limited were the only plans which were found compliant with the provisions of the Code and CIRP Regulations. The one submitted by Bhushan Employees was found to be non-compliant with the Code *inter alia* for the reasons that the mandatory contents as prescribed under Regulation 38 of the CIRP Regulations were not fulfilled by the aforesaid resolution plans. There was no disclosure made with regard to source of funds, bid bond, identity of resolution applicant as well as connected persons, details of convictions, investigations pending etc. despite meetings and follow ups conducted by the RP. A copy of the minutes of the meeting of the CoC dated 06.03.2018 has been placed on record (Annexure-1). The aforesaid two resolution plans submitted by TSL and JSW were evaluated extensively by the CoC advisor on the evaluation criteria set forth in the process document. The plan submitted by TSL emerged as the highest evaluated plan and after discussion by CoC in accordance with the provisions of the process document and negotiations held with TSL being the highest bidder. The



resolution plan submitted by TSL was also amended on various dates which have now been annexed with the application filed by the RP. A copy of the process document and evaluation conducted in respect of two plans in the light of the criteria set up in the process document have been placed on record in a separate sealed cover. All other averments are the repetition of what the RP has stated in the application.

Reply of Resolution Applicant-TSL

26. Reply to the objections raised by Bhushan Employees has also been filed Resolution Applicant-TSL. It has been urged that Bhushan Employees have no locus standi to challenge the decision taken by the CoC with respect to the eligibility of the Resolution Applicant as a successful bidder. The Bhushan Employees has not challenged the decision of the RP rejecting its resolution plan on the ground that Bhushan Employees failed to disclose its source of fund despite repeated clarifications sought.
27. It has also been submitted that the resolution plan submitted by Resolution Applicant-TSL contemplates that all employees on the roll of the BSL-Corporate Debtor would continue to be employed with the Corporate Debtor w.e.f. the date of transfer of the management/control of the Corporate Debtor to the Resolution Applicant. The interest of the employees of the Corporate Debtor have been taken care of and there is no conflict of interest at any



stage. The dues of the employees are paid off although liquidation value as computed by the valuer under Regulation 35 of the CIRP Regulations read with Section 53 of the Code does not mandate the same.

28. TSL also has questioned the locus standi of BEL under Section 30 and 31 of the Code. Referring to an order dated 28.03.2018 directing the RP to supply a copy of the application to BEL and Bhushan Employees, the Resolution Applicant-TSL has submitted that the resolution plan contains certain confidential and business proprietary information pertaining to the Resolution Applicant which cannot be put in public domain. It has been shared by the TSL with the RP under the cover of confidentiality in accordance with the provisions of Section 29 of the Code. It has therefore been suggested that the RP is duty bound to maintain confidentiality by not sharing the resolution plan of TSL in any manner whatsoever with a third party. Accordingly, a direction has been sought to the RP, BEL and Bhushan Employees to refrain from sharing the resolution plan belonging to the TSL and/or the information contained therein in any manner whatsoever with any party who is not present before this Tribunal and is not entitled to receive the same under the provisions of the Code.



C.A. No. 186(PB)/2018-Larsen & Tourbo Limited

29. Larsen & Tourbo Limited has filed C.A. No. 186(PB)/2018 under Section 60(5)(c) of the Code asserting that it must be regarded as a secured creditor and the resolution plan must provide for its full dues. It has sought directions to the RP and the CoC to accord L&T the same priority which is accorded to secured creditors in respect of its due amounting to Rs. 961,56,79,356 (Rupees nine hundred and sixty one crores fifty six lakhs seventy nine thousand three hundred and fifty six only) owed by the Corporate Debtor for supply and erection of the steel plant. As a consequence of its treatment as secured creditor direction be issued to the RP and CoC to provide payment of full dues to L&T in the resolution plan.
30. This application has been contested and reply has been filed by the RP citing various provisions of the Code. The RP has questioned the locus standi of the L&T to file such an application and has averred that the provisions of Section 60(5) of the Code are completely misinterpreted and misused which is abundantly clear in its intent. The applicant-L&T is trying to seek the relief which it should have sought in arbitration proceedings prior to the commencement of the CIR Process. The status of the L&T is clearly that of a supplier of goods and services and it would fall in the category of Operational Creditor of the Corporate Debtor.



By no stretch of imagination, it could be regarded as a secured creditor which is patently against the provisions of the Code and invocation of Section 55(4)(b) of the Transfer of Property Act is wholly misuse of the process which has no relationship with the issue arising for consideration. Even the claim made by the L&T in its quantum and nature has been disputed. In the parawise comments similar reply has been tendered by the RP. The RP has also filed lists of documents.

31. The L&T has reiterated its assertions by filing a rejoinder.

Submissions made by Shri Ravi Kadam, Learned Senior Advocate and Mr. Tushar Mehta, Learned Senior Advocate on behalf of RP and CoC.

32. Opening the arguments on behalf of the RP & CoC, Mr. Kadam & Mr. Mehta learned Senior counsel respectively have highlighted various steps taken by Mr. Vijay Kumar V. Iyer as an IRP/RP which culminated into an approval of resolution plan by CoC submitted by TSL as a highest scoring resolution applicant (H1 resolution applicant) (Annexure-6). The CoC considered in its 9th meeting held on 06.03.2018 and identified the Resolution Applicant-TSL whose resolution plan supports the highest score in terms of the evaluation parameters set out by the CoC in the evaluation matrix. It was accordingly notified as the highest scoring resolution applicant. On its determination as H1

resolution applicant, the CoC held engaged discussions with H1 resolution applicant, to seek further clarifications concerning the resolution plan. A second addendum dated 21.03.2018 in addition to the resolution plan dated 03.02.2018 as amended and supplemented, was submitted by the Resolution Applicant. The e-voting process was conducted for the 10th meeting of the CoC held on 22.03.2018 with an affirmative voting percentage of 99.80%. The Tata Capital Financial Services Limited, IndusInd Bank and ING Bank NV, which were members of the CoC could not vote but subsequently sent their affirmative vote supporting the CoC approved resolution plan. An application by the IndusInd Bank being C.A. No. 250(PB)/2018 was filed with a prayer to this Tribunal that the affirmative vote of the IndusInd Bank on the CoC approved resolution plan be considered and included. The Tribunal passed an order on 28.03.2018 and accepted the explanation tendered. The Tata Capital Financial Services Limited also filed a similar application on 09.04.2018 for recording their consent to the CoC approved resolution plan for including the final voting percentage in favour of the CoC approved resolution plan. Thus, the Resolution Plan of Resolution Applicant-TSL has backing of 100% share voting of the members of the CoC. The resolution plan and the e-voting pattern is annexed [Annexure-7 (Colly)].



33. Mr. Kadam & Mr. Mehta have then highlighted salient features of the CoC approved resolution plan. The resolution debt amount based on claims received from various creditors as on 20.03.2018 has been specified. The total outstanding financial debt of the Corporate Debtor received as on 20.03.2018 and admitted has also been specified along with outstanding operational debt of its workmen. The total claims received from other Creditors as on the aforesaid date has also been noted and the liquidation value of the Corporate Debtor is stated to be Rs. 14541,00,00,000/-.
34. The H1 Resolution Applicant has offered upfront payment of Rs. 35,200 crores in respect of the Financial Debt owed to the Financial Creditors and admitted by the RP. In addition, the H1 Resolution Applicant has also provided for the following equity to the Financial Creditors in respect of the Financial Debt admitted by the RP, as a consequence of which, the Financial Creditors shall hold 12.27% (in the event that the erstwhile promoter group shareholding is not counted towards promoter shareholding for the purposes of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 or 13.43% of the equity shares of the Corporate Debtor (in the event that SEBI does not allow the erstwhile existing promoter group shareholding to be counted towards public shareholding. The



claims of the Operational Creditors admitted by RP is approximately Rs. 1,332 crores and the Resolution Applicant has offered to pay Rs. 1,200 crores to the Operational Creditors (other than Employees, Workmen and Related Parties) over a period of one year post completion of transaction. The liquidation value entitlement of the Operational Creditors as per the provisions of Section 30(2)(b) of the Code is nil. It has further been pointed out that Rs. 200 Crore is to be paid to all operational creditors on a pro-rata basis and Rs. 1000 Crores is to be paid to them based on critically vis-a-vis the continued business viability of the Corporate Debtor. Significantly the Resolution Applicant intends to retain all employees on-roll of the Corporate Debtor. The admitted claims of the employees amounting to Rs. 0.29 crore as against the claimed amount of Rs. 1.89 crore has been set out. A sum of Rs. 0.27 crores towards the workmen and employees claims based on the claims admitted by the RP till 08.01.2018 is to be paid. Any additional dues of the employees would be adjusted from the amount payable to the Financial Creditors i.e. Rs. 35,200 crores in case the amount cannot be met through cash flows of the Corporate Debtor. It is thus clear that the entire dues of employees and workmen, are proposed be paid to the extent admitted by the RP. Allocation has also been made to other Creditors and the

amount admitted is Rs. 59,50,11,151.21 and nothing is payable under the resolution plan to other Creditors. The funding mechanism has also been provided.

35. It has also been requested that the monitoring agency may be appointed by this Tribunal to perform with the same functions, powers and protections as the RP under the Code. In that regard the continuation of the present RP along with its delegates as the Monitoring agency from the effective date until the closing date in accordance with the terms of the plan be made. The CoC should also continue with its roles and responsibilities, and have protections, provided in the Code.
36. In the resolution plan reliefs and concessions have been claimed which are listed in Annexure-8. The resolution plan is not made subject to the condition of grant of reliefs and concessions as clarified in Section 8.9 and 10.2 of the CoC approved resolution plan. The RP has annexed his compliance report with the written submissions (Annexure-A). Certain annexures/sub-annexures of the resolution plan of TSL which were inadvertently missed out while filing the resolution plan with C.A. No. 244(PB)/2018 have since been filed in a sealed cover supported by an affidavit.
37. Mr. Kadam & Mr. Mehta, learned Senior counsel have also emphasized that the RP has certified in para 13 of C.A. No. 244(PB)/2018 and para 3 of the affidavit filed by Diary No.



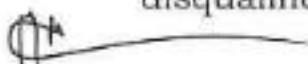
1946/2018 and para 3 of the Diary No. 1923/2018 that the contents of the resolution plan meet all the requirements of the Code and the CIRP Regulations.

38. Mr. Kadam & Mr. Mehta, learned Senior counsel have then replied the objections raised by Bhushan Employees in their application No. 237(PB)/2018 and also in reply to the RP's application C.A. No. 244(PB)/2018. It has been submitted that the application and objections are not maintainable and it is a malafide obstruction to derail the time sensitive CIR Process of the Corporate Debtor which is nearing imminent fruition. Learned counsel highlighted that the objections have been signed by one Mr. Rahul Sengupta alone. The objections raised by the Bhushan Employees vide its email dated 23.02.2018 do not contain any power of attorney/letter of authority/vakalatnama authorizing Mr. Sengupta to file any such application and objections on behalf of unnamed 352 employees of the Corporate Debtor. Therefore, the application is severely defective and is liable to be dismissed in limine. C.A. No. 217(PB)/2018 filed by Bhushan Employees is without any vakalatnama and an attempt was made to provide a separate PDF file along with purported resolution plan of the Bhushan Employees in a pen drive. In para 4 (d) of the cover letter it was stated that Mr. Nittin Johari, CFO who is the former member of



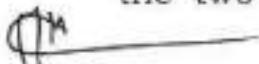
the suspended Board, Mr. Rahul Sengupta and Mr. Pankaj Batra are the contact person for the purposes of resolution plan and Mr. Rahul Sengupta is a director on the board of directors of the Corporate Debtor since 2005, along with the promoters of the Corporate Debtor who are barred by virtue of provisions of Section 29A of the Code. Thus, he is a part of the management which has overseen the degeneration of the Corporate Debtor setting in the current situation showing that their loan account with the banks is one of the largest NPA in the entire banking sector in India.

39. According to the record the RP and the CoC had duly considered the objections raised by Bhushan Employees regarding H1 Resolution Applicant and JSW Living Private Limited before concluding that the two resolution applicants were not ineligible under Section 29A of the Code on the ground alleged by the Bhushan Employees. In order to confirm compliance with Section 29A of the Code, the RP and the CoC sought and obtained affidavits from the Resolution Applicants specifically declaring and affirming their eligibility under Section 29A of the Code which have been duly submitted by H1 Resolution Applicant and JSW Living Private Limited as part of their respective resolution plans confirming that they were not disqualified by virtue of the provisions of Section 29A of the Code



(affidavit of the H1 Resolution Applicant is at page 1481 of Diary No. 1923).

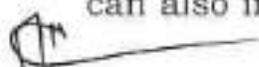
40. The Bhushan Employees insisted by email dated 23.02.2018 on the RP that both the aforesaid Resolution Applicants were not eligible. The H1 Resolution Applicant-TSL sent its response on 27.02.2017 along with legal opinions/ advice obtained from AZB & Partners and also Herbert Smith and Norton Rose, English Solicitor Firms and opinion from Hon'ble Justice Shri Deepak Verma, Former Judge of the Hon'ble Supreme Court, and Mr. Mukul Rohatgi, Learned Senior Advocate and Former Attorney General of India. Separate opinion was sought from Mr. Ravi Kadam, a Former Advocate General, State of Maharashtra and an English Solicitor Firm, Burges Salmon LLP. Accordingly, both the Resolution Applicants were found eligible without suffering from any disability contemplated by Section 29A of the Code. C.A. No. 217(PB)/2018 was filed by the Bhushan Employees which was disposed of vide order dated 19.03.2018 with direction to the RP to consider the objections of the Bhushan Employees in accordance with the law and the CoC in its 10th meeting held on 20.03.2018 thoroughly deliberated upon the objections on the eligibility of the two resolution applicants and it concluded that there were no grounds to disqualify either of the two Resolution Applicants on the basis of the objections



raised by the Bhushan Employees. Accordingly, the RP provided an update to the Bhushan Employees vide his email dated 23.03.2018 (Annexure R-4 at page 75 of the RP's reply).

Conviction of Tata Steel UK and disability of TSL

41. The Bhushan Employees raised an objection that a wholly owned subsidiary of TSL-Resolution Applicant is a connected person and the entity is known as Tata Steel UK. The aforesaid connected person has been found guilty on two counts under the Health and Safety at Work Act, 1974 (for brevity 'HSW Act') vide an order dated 02.02.2018 for failing to discharge its duties under Section 2(1) of the HSW Act, UK. The objection raised is that since Tata Steel UK has been convicted by order dated 02.02.2018 passed by the Crown Court at Kingston Upon Hull of an offence punishable with imprisonment for two years or more it attracted disqualification under Section 29A of the Code. Mr. Kadam & Mr. Mehta have argued that on the language of Section 29A (b) read with explanation (iii) of the Code no such disqualification is contemplated. It has firstly been argued that under the sentencing guidelines in respect of offences under the HSW Act, the English Court cannot impose a sentence of imprisonment on a company and thereby the only available penalty is that of a fine which has actually been done. A Court can also impose a fine and/or a custodial sentence on a Director

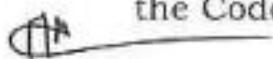


of the Company if the Director is being prosecuted in addition to the Company which is not the position in the present case. Highlighting the distinction between the provisions of Section 33 of HSW Act and 29A (b) of the Code Mr. Kadam & Mr. Mehta have argued that the Indian Law only talks of imposition of sentence of two years or more in order to attract disability whereas under the English Law both have been provided. It has accordingly been argued that where sentence and fine are envisaged the Courts have the discretion to impose fine and where the imprisonment is the only punishment a company cannot even be prosecuted as imposition of custodial sentence is a legal impossibility. In support of his submissions learned counsel has placed reliance on the observations made by Hon'ble the Supreme Court in the case of **Standard Chartered v. Directorate of Enforcement and Ors.**, (2005) 4 SCC 530.

42. It has then been submitted that the expression 'punishable' must be interpreted to mean capable or liable to punishment. In other words, the punishment must be capable of being inflicted by punishing by law and reliance has been placed on the observations made in the case of **Sube Singh and Ors. V. State of Haryana and Ors.**, 1989(1) SCC 235 to argue that a company is not capable of suffering punishment by imprisonment. Therefore, in the present case also where the

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sentence of imprisonment could not be imposed and was a legal impossibility and therefore, the offence committed by Tata Steel UK was not capable of being punished by imprisonment at all. Referring to the provisions of Section 29A (d) of the Code, learned counsel have submitted that it is to be presumed that the legislature was aware of the legal position on the issue of impossibility of awarding of a custodial sentence to a company yet it prescribed only for sentence and had the legislature intended to cover a juristic person like a company within the scope of Section 29A (d) of the Code in addition to natural persons, it would have expressly specified punishment by imposition of a fine. Having not done that Section 29A (d) of the Code is inapplicable to juristic persons and would only cover natural persons. It was then contended that Section 3(23) of the Code which defines the term 'person' also includes the term 'company' and the same has been made subject to the term 'unless the context otherwise requires'. In this regard, reference has also been made to Section 29A (e) of the Code which too *ex facie* applies to natural persons and not to corporate persons. It has also been submitted that conviction under the provisions of Section 33 (1) (a) of the HSW Act, UK cannot be categorized and treated equivalent to the one contemplated by Section 29A (d) of the Code as the UK Act provides for 'imprisonment for a term not



exceeding two years, or a fine, or both'. It thus prescribes a maximum term of two years whereas Section 29A (d) of the Code contemplates offence punishable with imprisonment for two years or more. It has thus been argued that it cannot be concluded that TATA Steel UK was convicted for an offence punishable with imprisonment for two years or more.

43. Explaining the allegations of concealment, learned counsel have clarified that the proceedings regarding Tata Steel UK were disclosed when the judgment was received on 02.02.2018 by the Resolution Applicant-TSL after the submission of its resolution plan on 03.02.2018. Accordingly, conviction could not have been disclosed earlier. However, the factum of proceedings pending against TATA Steel UK were disclosed.

Allegations of Bhushan Employees in respect of Mr. C.

Sivasankaran and reply by the RP/CoC

44. Another allegation levelled by the Bhushan Employees was that TSL had a relation with Mr. C. Sivasankaran who was declared bankrupt by the Supreme Court of Seychelles in August, 2014. Mr. Sivasankaran through his company, Sterling Infotech Private Limited had purchased shares in Tata Teleservices Limited. It was alleged that he had taken a loan of Rs. 650 crores from Standard Chartered Bank and the Resolution Applicant-TSL

stood guarantee. It was also alleged that Mr. Sivasankaran made a post-bankruptcy composition offer and came out of the bankruptcy in 2016 which would not cure the embargo imposed by the provisions of Section 29A of the Code. In that regard Bhushan Employees has placed reliance on a newspaper report in support of the allegation.

45. Mr. Kadam and Mr. Mehta have argued that no fact have been brought on the record to show that Mr. Sivasankaran or Sterling Infotech Private Limited would qualify as a 'related party' or 'associate company' or otherwise a 'connected person' of the Resolution Applicant. In that regard reference has been invited to the letter dated 22.02.2018 sent to the RP, employees application and objections. Learned counsel have submitted that even during oral arguments no reference has been made to any material nor there is anything on record. There is no imputation that Mr. Sivasankaran and/or Sterling Infotech Private Limited are acting jointly or in concert with TSL-Resolution Applicant in submitting the resolution plan. The H1 Resolution Applicant-TSL specifically clarified that neither Mr. Sivasankaran nor Sterling Infotech Private Limited as a 'related person' or 'connected person' of the Resolution Applicant-TSL. As per Annual Report 2016 for Tata Teleservices Limited only 0.52% shares were held by Sterling Infotech Private Limited at the end of Financial Year

2016-17. It has also been clarified that Sterling Infotech Private Limited had taken a loan from SCB and pledged its shares in Tata Teleservices Limited to SCB. In order to prevent the shares from being sold to an undesirable entity, Tata Sons provided an undertaking to SCB that it would purchase the shares at a pre-determined price in the event of an invocation and did not guarantee any repayment of loan taken by Sterling Infotech Private Limited from SCB. It was only seeking to purchase the shares which were in the nature of a pre-emption right and the undertaking lapsed almost nine years ago as it ceased to operate in March 2009 and was not acted upon by SCB. In any case that Seychelles Bankruptcy Order was subsequently revoked in 2016 and current status of Mr. Sivasankaran or Sterling Infotech Private Limited has not been placed on record. Therefore, the argument is liable to be rejected.

46. Learned counsel then argued that principles of natural justice in respect of Bhushan Employees have been religiously complied with and the Bhushan Employees have no locus standi in the present matter as they have on their own accord, withdrawn from the CIR Process. They have thus no right to object to the resolution plan which is otherwise compliant. No resolution applicant with a defective plan is permitted to attend the CoC meetings where the compliant resolution plans are being

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discussed. Each of the two resolution applicants whose plans were found to be compliant were provided with an opportunity to present their respective resolution plans to the CoC, in accordance with the provisions of Section 30(5) of the Code and no preferential treatment was accorded to any of the aforesaid two applicants. In any case there is no right of personal hearing and no vested right has been violated.

47. Dealing with the objection filed by the BEL, learned counsel have argued that the objection raised by BEL is that the RP should accept its claim for outstanding dues against the Corporate Debtor and ensure that adequate provision is made for the same in the resolution plan as per the BEL objections filed vide Diary No. 3078/2018. The objections have been duly replied by the RP vide its reply registered at Diary No. 1927/2018. Learned counsel has submitted that the objections are liable to be rejected for the following reasons:

- A. The Adjudicating Authority has to act in accordance with the requirements of Section 31(1) of the Code and considered a resolution plan submitted for its approval. The BEL has sought redetermination of its claims rejected by the RP. Such a redetermination is not envisaged under Section 30 and 31 of the Code.



- B. The objections were rejected by the RP in January, 2018 and the present application was filed on 03.04.2018 which suggests that it lacks bonafide and is aimed at extract an advantage by delaying and obstructing the CIR Process of the Corporate Debtor.
- C. The basis of rejection of claim for Rs. 114.59 crores made on 09.04.2017 was that the basis of the claim amount was a unilateral and retrospective increase of the tariff under the two power purchase agreements entered into with the Corporate Debtor dated 29.03.2007 and 26.10.2010 respectively. The rates were unilateral increase from Rs. 5 per unit to Rs. 6.5 per unit w.e.f. financial year 2015 by way of a debit note dated 01.07.2017.
- D. No proof was provided showing approval from the Corporate Debtor regarding the revised billing and Debit Note nor any invoices were provided by the objector-BEL for the financial years 2015-2016 or 2016 corresponding to the Debit Note. It also failed to take note of Rs. 90,00,00,000 paid towards security deposit by the Corporate Debtor to BEL during the financial year 2015 which was over and above the aforementioned advance of Rs. 228.225 crores.



E. Reliance has been placed on clause 3(i) of the tariff provision of the PPA-2 to argue that the tariff rate under the PPA was to be the rate equivalent to the grid rate or Rs. 3.35 per unit, whichever is higher. The unilateral revision is evidently not on account of any change in the grid rate as BEL has not so far claimed that the grid rate is higher than the tariff under the PPAs. It was further submitted that the treatment of PPAs under the resolution plan has been duly considered and approved by CoC in its commercial wisdom while approving the resolution plan and there cannot be any treatment different than the one provided in the resolution plan could be given to the PPAs by virtue of the provisions of Section 31 read with Regulation 37 of the CIRP Regulations. Accordingly, the termination of PPAs under Section 10.1.16 and 10.1.17 of the Resolution Plan form part of the specific reliefs and concessions sought by the Resolution Applicant from the Adjudicating Authority. Although such concessions and reliefs have not made a condition for implementation of the Resolution Plan as provided under Section 8.9 of the second addendum to the Resolution Plan. Replying to the arguments of the BEL that the performance of the PPAs cannot be avoided

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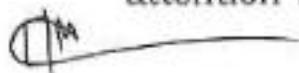
on account of provisions of Section 20 of the Specific Relief Act, 1963. It has been submitted that it amounts to effectively seeking specific performance of the PPAs which cannot be accepted. It has been submitted that commercial contracts are, by their nature, determinable even if there is no specific provision in the contract authorising/enabling with a party terminate the contract. It can be terminated without assigning any reason for the same by serving a reasonable notice and the contract which are determinable cannot be specifically enforced as provided by Section 14(1)(c) of the Specific Relief Act. In that regard, specific reliance has been placed on para 11 of the judgment rendered in the case of *Indian Oil Corporation Limited v. Amritsar Gas Service and Ors.*, (1991) 1 SCC 533 and on the observation made by Hon'ble Delhi High Court of the judgment rendered in the case of *Rajasthan Breweries Limited v. The Stroh Brewery Company*, AIR 2000 Del 450.

48. Learned counsel have also replied the submissions made on behalf of L&T by arguing that there is no possibility of altering the status of L&T from that of unsecured creditor into a secured creditor. According to the learned counsel a supplier of goods is

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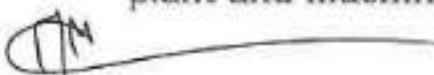
covered by the meaning assigned to it by Section 5(21) which deals with operational debt and Section 5(20) which defines operational creditor. Therefore, they would fall in the category of operational creditor who are the unsecured creditors.

49. Mr. A.S. Chandhiok has placed reliance on proviso to Section 30(4) of the Code and argued that the CoC should not have approved a resolution plan submitted before the commencement of the IBC (Amendment) Ordinance, 2017 where the Resolution Applicant is ineligible under Section 29A of the Code and it would require the RP to invite a fresh resolution plan where no other resolution plan is available with it. According to the learned counsel the resolution plan in this case have not been submitted in accordance with the provisions of Ordinance and amended Section 25(2)(h) of the Code. The order passed by this Tribunal in C.A. No. 237(PB)/2018 on 19.03.2018 have also not been complied with as there is not a word in the application with regard to the aforesaid decision. Learned counsel has maintained his objection with regard to conviction of Tata Steel UK under the provisions of HSW Act, UK and insisted that disqualification would be attracted by virtue of provisions of Section 29A (d) of the Code. Highlighting the lapse on the part of the Resolution Professional, learned counsel has drawn our attention to the Code of Conduct in the first schedule appended



to the IBBI (Insolvency Professional) Regulations, 2016 in as such much as no informed decision has been taken as per the direction issued by this Tribunal in the order dated 19.03.2018 nor any of the opinion expressed by legal firms have been discussed. According to the learned counsel para 16 of the Code of Conduct under the first schedule an obligation on the RP is contemplated to maintain written contemporaneous records in such a manner as to sufficiently enable a reasonable person to take a view on the appropriateness of his decision and actions. By not discussing the opinions on the issue of conviction of a 'connected person' the RP has violated the aforesaid provision of the Code.

50. On behalf of L&T, Mr. Rohatgi and Mr. Chibbar, Learned Senior Counsel have reiterated their arguments that they are for all intents and purposes secured creditor as there is a charge created on the plant and machinery. It has also been argued that the charge is in respect of immovable property within the meaning of Section 55(4) (b) of the Transfer of Property Act. On query raised by the Bench it could not be substantiated by relying on any document that the charge has been created in accordance with S. 132 of the Companies Act, 2013 and how the plant and machinery could be regarded as immovable property.



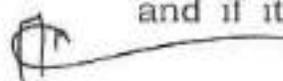
Submissions made on behalf of the Resolution Applicant-TSL

51. Mr. Rajiv Nayar, learned Counsel for the Resolution Applicant-TSL has at the outset submitted that all the submissions made by RP and the CoC may also be regarded as submission of Resolution Applicant-TSL. In addition learned counsel has submitted that after the RP has find the resolution plan of TSL as compliant with the provisions of the Code and the CIRP Regulations he forwarded the same to CoC for its consideration. The CoC independently evaluated the resolution plan with the help of consultants engaged by it in accordance with the well-defined evaluation criteria laid down in the process document and approved the same in its 10th meeting held on 20.03.2018. Learned counsel has prayed that the same be approved by the Adjudicating Authority as it has backing of 100% vote share of the CoC.
52. In respect of Bhushan Employees it has been argued that they have no locus standi. There are approximately 5,546 employees on the rolls of the Corporate Debtor and the applicant Mr. Rahul Sengupta, a Former Executive Director has failed to provide any list of these employees, much less an authority or approval from such employees to file C.A. No. 237 on their behalf. The argument is that once the employees have been given full protection by the resolution plan then there was hardly any



scope for making grievances. It appears that Mr. Sengupta is aggrieved by the fact that he has been working as Executive Director of the Corporate Debtor since 25.07.2005 and on account of loss of office as a director, he has an axe to grind. Accordingly, he suffered disqualification in terms of Section 29A(c) of the Code. In that regard reliance has also been placed on the observations at page 364 of the judgment rendered in the case of **Balco Employees Union (Regd.) v. Union of India**, (2002) 2 SCC 333 and argued that the Bhushan Employees' group has no locus standi to raise objection to the resolution plan submitted by TSL.

53. Mr. Nayar has also submitted that the application C.A. No. 237 in fact goes against the interest of the employees and an attempt has been made to drive the Corporate Debtor into liquidation by raising frivolous objection so that the period of 270 days expires. In case there is liquidation then the large number of employees would be on the road as they would lose their jobs and livelihood whereas the resolution plan has ensured that they received their huge dues and also to continue to work in the company. It has also been submitted that the Adjudicating Authority is only to examine whether the resolution plan meets the statutory requirements contemplated by Section 30 and 31 of the Code and if it is satisfied then to approve the same. In that regard



reliance has been placed on the observations made in para 33, 58 and 59 of the judgment of Hon'ble the Supreme Court rendered in the case of **Innoventive Industries Ltd. v. ICICI Bank**, (2018) 1 SCC 407

54. In respect of the objections raised by the Bhushan Employees regarding the disability under Section 29A (d) of the Code on account of conviction, Mr. Nayar has adopted the arguments of Mr. Kadam and Mr. Mehta and has submitted that no disability would be attracted. Learned counsel has referred to Sentencing Guidelines relating to Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guidelines issued by the Sentencing Council in accordance with Section 120 of the Coroners and Justice Act, 2009. The aforesaid guidelines prescribed for offences committed by Corporate Organization only the imposition of fine and no imprisonment has been prescribed for such offences. Therefore, the order passed by the Court in United Kingdom cannot be regarded as an order of conviction for any offence punishable with imprisonment for two years or more. Learned counsel has placed reliance on a judgment of Hon'ble Madras High Court rendered in the case of **S.P.K. Dhamodhar v. Narayanaswamy & Anr.**, 2010-4-L.W. 897, Madras High Court. Learned counsel has adopted the submissions made on behalf of the RP and the CoC



with regard to Mr. C. Sivasankaran and disqualification of TSL-Resolution Applicant on that basis under Section 29A (a) of the Code.

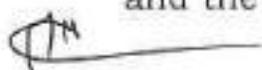
55. Referring to the observations made by the Principal Bench in the case of Clutch Auto Limited, C.P. (IB) No. 15(PB)/2017 decided on 15.02.2018 learned counsel has argued that the decision of the CoC and RP ought not to be interfered with as the interference is exception and approval is the rule. According to the learned counsel the commercial wisdom of the CoC cannot not be subject matter of judicial review and the Bhushan Employees are absolutely denuded of any right to seek confidentiality material. In that regard reliance has been placed on the observations made by Hon'ble the Supreme Court in the case of **Innoventive Industries Limited** (supra) where the report of the Bankruptcy Law Review Committee has been regarded as a basis for interpretation of provisions of the Code. In that regard reference has been made to the UNCITRAL Guide to argue that the commercial decision of the CoC should not be interfered with and law should not permit the Court to review the economic and commercial basis of the decision. According to the learned counsel by virtue of the resolution plan the financial creditors would be able to get back about 67% of their loans and all the employees would continue to work and even otherwise the



plan meets all requirements of Section 30 & 31 of the Code and also all the requirements of the Regulations. Learned counsel has prayed that the resolution plan be approved by the Tribunal.

Submissions made on behalf of the Bhushan Energy Limited

56. Mr. Rajeeve Mehra, learned Senior counsel has appeared on behalf of the RP of BEL and has argued that right in property cannot be snatched even by an act of Parliament as has been held in the case of *ICICI Bank Limited v. SIDCO Leathers Ltd.*, (2006) 10 SCC 452. Elaborating his stand, learned counsel has submitted that valid contracts are 'property' within the meaning of Article 300A of the Constitution and no person can be deprived of his property save by authority of law. Article 300A provides that property includes valid contracts and intangibles such as intellectual property. According to the learned counsel vested right created in favour of a party under a valid contract cannot be taken away. Highlighting another aspect, learned counsel has submitted that Insolvency Code does not enable termination of valid contracts by way of a resolution plan. Nor there is any provision under Section 30 and 31 read with Regulations 37 and 38 of the CIRP Regulations. The termination on the ground that the PPAs are onerous is wholly unsustainable and the resolution plan cannot avoid the transaction on account



of increase in the rates merely because it is a contract between related parties. Even for a related party transaction Section 188 of the Companies Act, 2013 provides for fulfilment of certain pre-conditions and there is no absolute bar. According to the learned counsel Section 25(1) of the Code provides that the RP of the Corporate Debtor-BEL is under a legal obligation to preserve and protect the assets of the Corporate Debtor and must run it as a going concern. The RP can represent and act on behalf of the Corporate Debtor in judicial proceedings. The liquidation value available to the Operational Creditor like the BEL is stated to be nil in clauses 8.2.1 & 8.2.2 and there are no liability owed to related parties as per clause 8.6.8. Learned counsel has placed reliance on the terms of both PPAs. PPA-1 is to operate from 01.04.2014 to 30.09.2024 and PPA-2 is to operate from 01.04.2013 to 31.12.2024. According to the learned counsel there is no clause warranting termination whereas on the contrary the Corporate Debtor has undertaken to buy the entire power generated from BEL's Power Plant and there are clauses which provide for compensation to BEL for any shortfall in consumption of power and the Corporate Debtor has to make minimum payment to BEL towards power supply sufficient to meet expenses, taxes and debt service obligations etc. Therefore,

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it has been argued that the resolution plan in so far as takes away the right of BEL to terminate the contract be rejected.

57. Having heard the learned counsel for the parties at a considerable length in many sessions we are of the view that it would be first necessary to study the provisions of the Code and CIRP Regulations in order to find out whether the requirements of the statute and subordinate legislation have been fulfilled or not. Section 30 and 31 of the Code are set out in ex tenso which read as under:-

“Section 30

Submission of resolution plan. (1) A resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;

(b) provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the



operational creditors in the event of a liquidation of the corporate debtor under section 53;

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

(4) The committee of creditors may approve a resolution plan by a vote of not less than seventy five per cent of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to

invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A.

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority."



“Section 31

Approval of resolution plan. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),—

- (a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and
- (b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.”

58. According to the scheme of the Code a resolution applicant is required to submit a resolution plan to the RP prepared on the basis of information memorandum. The information

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memorandum is a document envisaged under Section 29 and it is required to contain such relevant information as may be specified by the Insolvency and Bankruptcy Board of India. Accordingly, in Regulation 36 of the CIRP Regulations details have been provided with regard to the contents of information memorandum. On the submission of resolution plan the RP is under mandatory obligation to examine each resolution plan received by him under Section 30(2) of the Code and he is to confirm that each resolution plan provides for all item listed under Section 30(2) (a) to (f). If the aforesaid conditions as envisaged by Section 30(2) are fulfilled then such a resolution plan is to be presented to the CoC. The CoC may then approve a resolution plan by a vote of not less than seventy five percent of voting share of the financial creditors, after considering its feasibility and viability along with other requirements as may be specified by Board. Under Section 30(6) the RP is obliged to submit the resolution plan as approved by the CoC to the Adjudicatory Authority.

59. When the resolution plan as approved by the CoC is placed before the Adjudicatory Authority-NCLT then it is to record its satisfaction as to whether the requirements as referred to in sub-section 2 of section 30 are fulfilled. On its satisfaction the Adjudicatory Authority-NCLT is to approve the resolution plan



which is to be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. As per section 31(3) of the Code a further provision has been made that after the approval of a resolution plan the moratorium order passed under Section 14 would cease to have effect and the RP is under obligation to forward the whole record relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Insolvency and Bankruptcy Board of India to be recorded on its database. The conclusion of the aforesaid discussion is that Adjudicatory Authority-NCLT must feel satisfy with a resolution plan that it answers the requirements given in Section 30(2) of the Code.

60. It is pertinent to notice the mandatory requirements of Section 30(2) of the Code for a resolution plan to fulfil. Firstly, the resolution plan approved by the CoC must provide for payment of insolvency resolution process cost in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor. (i) With his application i.e. C.A. No. 244(PB)/2018 the RP has placed on record a copy of the CoC approved resolution plan (Annexure-7) of the highest bidder i.e. H1 Resolution Applicant-TSL. Under the sub title 'Mandatory Contents of the Plan' (para 5) the RP has clarified that in



accordance with the provisions of Section 30(2) and Regulation 38 of the CIRP Regulations and as per the requirements of paragraphs 1.11 and 1.11.1 of the process document the resolution plan provides for payment of CIRP cost in priority to the repayment of any other debts of the company and identifies the specific sources of fund that would be used for such payment. In that regard reference has been made to Section 6.4 and 8.1.2 (i) of Annexure-3 and Annexure-5 of the plan. Therefore, this condition stands satisfied. Indly The resolution plan must provide for repayment of the debts of operational creditors in such a manner as may be specified by the Board which are not to be less than the amount to be paid to the operational creditors in the event of liquidation of the corporate debtor under section 53. It is appropriate to mention Section 53 of the Code envisaged the waterfall and the priorities in which distribution of assets of a Corporate Debtor is to take place in case of liquidation. The RP in the resolution plan (supra) has stated that it provides for the repayment of the liquidation value due to operational creditors within the period prescribed under Regulation 38 (1) (b) of the CIRP Regulations. The plan also identifies the specific sources of funds which are to be used for such payment. Reference in that regard has been made to Section 6.2, 6.3, 6.5, 8.2 and 8.3 of Annexure-3 as well as to

Annexure-5. The resolution plan also provides for payment of the liquidation value due to dissenting financial condition in priority to the financial creditor who voted in favour of the plan and also identifies the specific sources of fund that would be used for such payment. In that regard reference has been made to Section 6.3, 6.5 and 8.1.2 (iv) Annexure-3 and Annexure-5 of this plan. It also specifies the term of the plan and its implementation schedule in Section 4.2 of this plan. Therefore, we find that the second condition stand fulfilled.

61. The (iii) third requirement is that resolution plan must provide for the management of the affairs of the corporate debtor after approval of the resolution plan. There is specific provision made for the management and control of the company after the approval of the resolution plan by the Adjudicating Authority. A reference in that regard has been made to Section 4.1 and paragraph 10, 11 and 12 of Annexure-13 of the plan. The manner and implementation of the supervision of the plan and adequate means for implementation have also been provided in Section 4 of this plan. Therefore, the third condition stand fully complied with.

62. The (iv) fourth condition envisaged by Section 30(2) is that it must provide for implementation and supervision of the



resolution plan. Section 4 of the plan adequately takes care of this aspect and the fourth condition stand also satisfied.

63. The fifth condition also requires the RP to confirm that the resolution plan does not contravene any of the provisions of the law for the time being in force. In Annexure-6 of the plan the resolution applicant has confirmed that the resolution plan is not in contravention of the provisions of the law for the time being in force and fully complied with the provisions of the Code and the CIRP Regulations. In that regard the RP has also stated in para 13 of the application (C.A. No. 244(PB)/2018) that the resolution plan of TSL and JSW Living Private Limited were found compliant with the requirements of the Code and the CIRP Regulations and on the recommendation of the CoC resolution applicant-TSL was notified as the H1 resolution applicant. An affidavit by RP has also been filed on 10.04.2018 vide Diary No. 1923 of 2018 and para 3 of Annexure-A appended therewith certifies that the contents of the resolution plan meet all requirements of the Code and CIRP Regulations. Likewise, in para 3 of another affidavit filed vide Diary No. 1946 of 2018 same facts have been reiterated. Therefore, we find that the fifth requirement has also been fulfilled.

64. The resolution applicant also confirms that the resolution applicant and its connected person are not disqualified to from

submit a resolution plan under Section 29A of the Code and any other law applicable which further shows that the resolution plan conforms to the provisions of the law for the time being in force and does not contravene any such provision.

65. The sixth requirement is that it conforms to all such requirements which may be specified by the Insolvency and Bankruptcy Board. The aforesaid statement has been made by the RP in para 23 of the written statements filed on 13.04.2018 vide Diary No. 2112. In view of the above we are satisfied that all the requirements of Section 30(2) are fulfilled and no provision of the law for the time being in force has been contravened.

66. However, it is necessary to refer to the provisions of Regulation 38 & 39 of CIRP Regulations to conclude that the requirements specified therein are also fulfilled and the same reads as under:-

Regulation 38

Mandatory contents of the resolution plan. (1) A resolution plan shall identify specific sources of funds that will be used to pay the –

(a)

(b)

(c)

(2)



(3) A resolution plan shall contain details of the resolution applicant and other connected person to enable the committee to assess the credibility of such applicant and other connected persons to take a prudent decision while considering the resolution plan for its approval.

Explanation.- For the purpose of this sub-regulation,-

- (i) 'details' shall include the following in respect of the resolution applicant and other connected person, namely :-
- (a) identity;
 - (b) conviction for any offence, if any, during the preceding five years;
 - (c)
 - (d)
 - (e)
 - (f)
 - (g)

Regulation 39

Approval of resolution plan. (1) A resolution applicant shall submit resolution plan(s) prepared in accordance with the Code and these Regulations to the resolution professional within the



time given in the invitation made under clause (h) of sub-section (2) of section 25.

(2) The resolution professional shall submit to the committee of resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him:-

- (a) preferential transactions under section 43;
- (b) undervalued transactions under section 45;
- (c) extortionate credit transactions under section 50;
- and
- (d) fraudulent transactions under section 66;

and the orders, if any, of the adjudicating authority in respect of such transactions.

(3) The committee may approve any resolution plan with such modifications as it deems fit.

(4) The resolution professional shall submit the resolution plan approved by the committee to the Adjudicating Authority with the certification that:

- (a) the contents of the resolution plan meet all the requirements of the Code and the Regulations; and
- (b) the resolution plan has been approved by the

the committee.

(5) The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.

(6) A provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained.

(7) No proceedings shall be initiated against the interim resolution professional or the resolution professional, as the case may be, for any actions of the corporate debtor, prior to the insolvency commencement date.

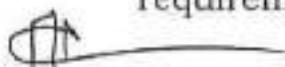
(8) A person in charge of the management or control of the business and operations of the corporate debtor after a resolution plan is approved by the Adjudicating Authority, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan.

67. A perusal of Regulation 38 would clearly show that by virtue of mandatory contents of the resolution plan discussed under



Section 30 and 31 of the Code the requirement of Regulation 38 stand fulfilled. However, the objections raised under Section 29A (a) and (d) of the Code which are discussed separately. Even the requirement of Regulation 39 stand fulfilled as the RP has submitted the resolution plan of H1 resolution applicant as approved by the CoC to this Tribunal with the certification that the contents of the resolution plan meet all requirements of the Code and the CIRP Regulations and that the resolution plan has been duly approved by the CoC. There is no scope for argument left that shareholder, or parties to joint venture agreement or anyone holding similar document need to accord sanction in view of the provisions of Regulation 39(6) of the CIRP Regulations. Regulation 39 (6) clarifies that the resolution plan as approved by the CoC must take effect notwithstanding the requirement of consent of the members or partners of the Corporate Debtor under the terms of the constitutional documents of the Corporate Debtor, shareholders' agreement, joint venture agreement or other document of a similar nature.

68. As per the requirement of Section 29 of the Code read with Regulation 36 of the CIRP Regulations an information memorandum is required to be prepared in accordance with the requirement of Regulation 36 of the CIRP Regulations providing



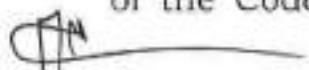
that document has been duly prepared and a certification by the RP was furnished to the CoC as well as before this Tribunal.

69. Now we proceed to deal with two objections raised under S. 29A of the Code by Bhushan Employees. The first objection is based on Section 29A (a) of the Code. It has been alleged that Mr. C. Sivasankaran is an undischarged insolvent and he must be treated as a 'connected person' within the meaning of Explanation (i) of Section 29A of the Code as he is in control of the resolution applicant. According to the allegation Mr. C. Sivasankaran through his company Sterling Infotech Private Limited had purchased shares in Tata Teleservices Limited (TTL) which constitute 0.52% of the shares. It was alleged that Mr. C. Sivasankaran had taken a loan of Rs. 650 crores from Standard Chartered Bank and the Resolution Applicant-TSL had furnished guarantee. In the reply it has been explained that Sterling Infotech Private Limited has merely pledged its shares in Tata Teleservices Limited to SCB and in order to prevent the shares from being sold to an undesirable third party, the Resolution Applicant-TSL provided an undertaking to Standard Chartered Bank that it would purchase the shares at a pre-determined price in the event of an invocation. It never furnished any guarantee for repayment of loan taken by Sterling Infotech Private Limited from Standard Chartered Bank. The Resolution



Applicant-TSL merely sought to purchase the shares which were in the nature of pre-emptory rights. Even that undertaking had lapsed nine years ago as it ceased to operate in March 2009 and has not been acted upon by Standard Chartered Bank. In any case the order of Bankruptcy issued by Supreme Court of Seychelles has been subsequently revoked in 2016. Therefore, it cannot be concluded firstly that Sterling Infotech Private Limited qualifies as a 'connected person' or 'related party' or 'associated company'. There is not even an imputation that Mr. Sivasankaran and/or Sterling Infotech Private Limited are acting jointly or in concert with TSL-Resolution Applicant in submitting the resolution plan. Moreover, there are serious doubt with regard to the locus standi of Bhushan Employees as the application has been filed only by Mr. Rahul Sengupta who has been the Executive Director of the Corporate Debtor since 2005. The application has not been filed by the Bhushan Employees authorizing anybody. The allegation even otherwise on facts is not sustainable. Accordingly, it is held that the objection is frivolous and the same is hereby rejected.

70. The second issue pertains to prosecution and conviction of Tata Steel UK which is a 100% subsidiary of H1 Resolution Applicant-TSL and obviously is a 'connected person' under Section 29A (d) of the Code and explanation (iii). The Tata Steel UK has been



convicted under Section 33(1)(a) of the HSW Act 1974 by Crown Court at Kingston upon Hull, United Kingdom. It is an offence punishable in U.K. with imprisonment for two years or more or fine. However, on account of the sentencing guidelines issued the Court has imposed fine proceeding on the age old principle that the Corporate Entity cannot be visited with the sentence of imprisonment. We could have rejected this argument raised by Bhushan Employees as their locus standi is in doubt. However, we have proceeded to deal with the arguments as somewhat serious allegation has been brought to the notice of this Tribunal. Section 33 of HSW Act 1974 applies to both juristic and natural person and makes a provision for custodial sentence as well as imposition of fine.

71. Mr. Ravi Kadam and Mr. Tushar Mehta have vehemently argued that Section 29A (d) of the Code only talks of an offence punishable with imprisonment for two years or more and does not provide for fine. The provision of Section 29A (d) of the Code read as under:-

Section 29A

Persons not eligible to be resolution applicant.- A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person,-



- (a)
- (b)
- (c)
- (d) has been convicted for any offence punishable with imprisonment for two years or more;
- (e)
- (f)
- (g)
- (h)
- (i)
- (j)

72. A perusal of the aforesaid clause (d) would show that the expression used is 'punishable with imprisonment for two years or more' whereas under Section 33(1) (a) of the HSW Act the expression used is 'imprisonment for a term not exceeding two years or a fine or both'. The provisions of Section 29A (d) of the Code would not be applicable to cover a juristic person and could be applied only to a natural person because it contemplates visiting the convict with imprisonment for two years or more. As there is no provision for imposition of fine and a corporate body like a company cannot be visited with imprisonment/custodial sentence. In that regard we find that



reliance has been rightly placed on the majority view taken by Hon'ble the Supreme Court in the case of **Rakesh Kumar Paul v. State of Assam**, (2017) 15 SCC 67. In paragraph 25 the relevant observations have been made which reads thus:-

"While it is true that merely because a minimum sentence is provided for in the statute it does not mean that only the minimum sentence is imposable. Equally, there is also nothing to suggest that only the maximum sentence is imposable. Either punishment can be imposed and even something in between. Where does one strike a balance? It was held that it is eventually for the court to decide what sentence should be imposed given the range available. Undoubtedly, the Legislature can bind the sentencing court by laying down the minimum sentence (not less than) and it can also lay down the maximum sentence. If the minimum is laid down, the sentencing judge has no option but to give a sentence "not less than" that sentence provided for. Therefore, the words "not less than" occurring in Clause (i) to proviso (a) of Section 167(2) of the Cr.P.C. (and in other provisions) must be given their natural and obvious meaning which is to say, not below a minimum threshold and in the case of Section 167 of the Cr.P.C.

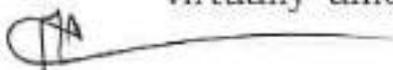
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these words must relate to an offence punishable with a minimum of 10 years imprisonment.”

73. According to the aforesaid view if minimum sentence is provided (not less than) then the Sentencing Court is bound to award that sentence and it has no option. However, in cases where no minimum or maximum sentence is provided then it is eventually for the Court to decide what sentence should be imposed. Learned counsel has rightly argued that in order to suffer inability by the Resolution Applicant could have used the expression not less than two years whereas to the contrary it says two years or more. On that basis it appears to us that Mr. Kadam and Mr. Tushar have rightly urged that there is difference in drafting of statute. The offences have been categorized accordingly by use of the word in English statute which provide for ‘imprisonment for a term not exceeding two years’. In that regard further reliance have been rightly placed on the judgment of Hon’ble the Supreme Court rendered in the case of **Rajeev Chaudhary v. State (N.C.T.) of Delhi**, (2001) 5 SCC 34 and a judgment of Hon’ble the Andhra Pradesh High Court rendered in the case of **Amarnath Vyas v. State of A.P.**, (2007) CriLJ 2025. The Hon’ble High Court held that the expression “punishment for a term which may extend to

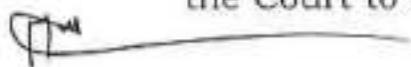
three years" is certainly not similar to the expression "punishment for three years and upwards". However more plausible argument by the learned counsel of the RP and CoC was the one which is based on the judgment of Hon'ble the Supreme Court rendered in the case of **Standard Chartered Bank (supra)**. In that case Hon'ble the Supreme Court held that a Corporate Entity might be prosecuted but if the sentence of imprisonment alone is provided then no sentence could be awarded. In such a case it is to be visited with custodial sentence and we find that a Corporate Entity like a company cannot be visited with custodial sentence and therefore, sentence could be awarded. In that regard we place reliance on the observations made in para 63 and 64 of the said judgment which read as under:-

"63. There appears to be a difference of opinion amongst the learned counsel assailing the correctness of majority view in *Valliappa* as to whether the task of the Court in the case on hand is one of statutory interpretation. Some counsel have argued that it is open to the Court to read the words 'imprisonment and fine' as 'imprisonment or fine'. In our view, such a construction is impermissible. First, it virtually amounts to rewriting of the section. The Court



would be reading the section as applicable to different situations with different meanings. If the offender is a corporate entity, then only fine is imposable; if the offender is a natural person, he shall be visited with both the mandatory term of imprisonment and fine. The exercise would then become one of putting a fluctuating or varying interpretation on the statute depending upon the circumstances. That is not permissible for the Court, either on principle, or on precedent. While it may be permissible for the court to read the word 'and' as 'or', or vice versa, whatever the interpretation, it must be uniformly applied to all situations. If the conjunction 'and' is read disjunctively as 'or', then the intention of Parliament would definitely be defeated as the mandatory term of imprisonment would not be available even in the case of a natural person. We have not been shown any authority for the proposition that it is open to the Court to put an interpretation on a statute which could vary with the factual matrix.

64. Secondly, when a statute says the Court shall impose a term of 'imprisonment and a fine', there is no option left in the Court to say that under certain circumstances it would



not impose the mandatory term of imprisonment. It is trite principle that punishment must follow the conviction.

74. In view of the above we find that Section 29A (d) does not provide for imposition of fine and therefore, it would not be applicable to the facts in the present case because a Corporate Entity cannot be subjected to any custodial sentence which is the only provision made by sub section (d) of Section 29A of the Code.
75. We do not feel persuaded by the argument advanced by Mr. Chandhiok that the expression punishable should mean that conviction alone is sufficient as the word punishable is immaterial and does not contemplate whether there is actual sentence or not. We are afraid that such an argument would not be sustainable. Hon'ble the Supreme Court in the case of **Sube Singh and Ors. V. State of Haryana and Ors.**, (1989) 1 SCC 235 has held that the word 'punishable' would ordinarily mean deserving of or capable of punishment. Therefore, conviction alone would not attract any disability. In para 8, 9, 10 & 11 of the judgment in **Sube Singh's case** the following observations have been made:

"8. In Bouvier's *Law Dictionary*, the meaning of the word 'punishable' has been given as 'liable to punishment'. In



'Words and Phrases-Permanent Edition', the following meaning has been given:

The word 'punishable' in a statute stating that a crime is punishable by a designated penalty or term of years in the state prison limits the penalty or term of years to the amount or term of years stated in the statute.

9. The word 'punishable' is ordinarily defined as deserving of or capable or liable to punishment, punishable within statute providing that defendant may have ten peremptory challenges if offence charged is 'punishable' with death or by life imprisonment; means deserving of or liable to punishment; capable of being punished by law or right, may be punished, or liable to be punished, and not must be punished.

10. *Corpus Juris Secundum* gives the meaning as:

Deserving of, or liable to, punishment; capable of being punished by law or right; said of persons of offences. The meaning of the term is not 'must be punished', but 'may be punished', or 'liable to be punished'

In the absence of a definition of 'punishable' we have referred to these for gathering the exact meaning of the



word. In the sense given to the word, as above, there can be no doubt that the offence of murder is punishable with death even though the punishment awarded is not death but imprisonment for life.

11. An earlier decision of this Court in *Kunwar Bahadur and Ors. v. State of Uttar Pradesh* : 1980CriLJ831 , where a two-Judge Bench dealt with the provisions of the United Provinces Borstal Act 7 of 1938 was also relied upon. The judgment is a short one. Detailed reference to the provisions of the United Provinces Act has not been made but Section 7 of the Act was referred to and it was observed: (SCC p.340, para 2)

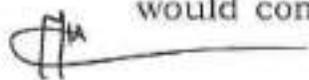
Under this Section where a prisoner is sentenced for transportation i.e. life imprisonment and is below the age of 21 years he should be sent to Borstal School where he cannot be detained for more than five years. The law thus contemplates that for such an offender the sentence of five years will be equivalent even to a higher sentence of life imprisonment.

Obviously in the United Provinces Act, there is no definition of 'offence' as available in the Punjab Act.

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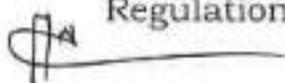
Therefore, the decision in *Kunwar Bahadur's* case (supra) is not really material for our purpose.

76. It is true that the argument raised by Mr. Chandhiok has arisen on account of the language used in Regulation 38(3) explanation (i) (b) of the CIRP Regulations (supra). The argument based on the aforesaid regulation completely ignores the substantive provisions of the Principal Act made in Section 29A (d) of the Code. It is well settled that subordinate legislation like CIRP Regulations cannot run contrary to the Principal Act and the expression 'punishable with imprisonment for any offence for two years or more' has to be implied in the aforesaid Regulation. It is for the aforesaid reason we regret our inability to accept the objection raised by Mr. Chandhiok.
77. We also find that when a resolution plan is submitted and the rights of employees are protected by such a plan then raising objections by the Employees is a self-defeating proposition. The resolution plan retrieves about 67% of the NPA's and takes care of the existing employees by continuing their employment and also provide for payment of their back wages. In such a situation the argument of Mr. Rajiv Nayar based on the judgment rendered in the case of ***Balco Employees Union (Regd.)*** (supra) would commend to us. Discarding the grievance made by Balco



Employees Hon'ble the Supreme Court held that if by disinvestment in a public sector company employees of a company are adversely affected then they have to accept it as an incidence of service. It is not permissible to tinker with the resolution plan which protect the rights of all employees and there cannot be any possible grievance. Moreover, it is at the instance of one person alone namely Mr. Rahul Sengupta that a hue and cry has been raised. It appears to us that over 5000 employees appear to be satisfied with the resolution plan as rightly contended by Mr. Nayar and as a matter of right no objection to the resolution plan could be raised which is otherwise binding on all the stakeholders including the employees by virtue of provisions made in Section 31(1) of the Code once it is approved by the Adjudicating Authority-NCLT.

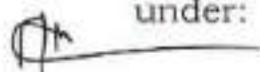
78. The objections raised by BEL would also not be sustainable it has also been made clear by Regulation 39(6) of the CIRP Regulations (supra) that a resolution plan which would otherwise require consent of members of the Corporate Debtor under the terms of the constitutional document, shareholders' agreement, joint venture agreement or other document of a similar nature shall take effect notwithstanding that such consent has not been obtained. Regulation 39(6) of the CIRP Regulations in fact takes care of the provisions made for



termination of PPAs which were entered into between the Corporate Debtor and the BEL. Sub regulation 6 of Regulation 39 is couched in very wide language and provides in categorical terms that no consent from the BEL or its RP is required. The case of the RP would fall within the expression of 'or other document of a similar nature'. If the Resolution Applicant has found the terms of PPAs as onerous and it has been approved by the CoC then it is no ground for the BEL to argue that it is a constitution right conferred by the Article 300A and the same cannot be taken away without due process of law. The IBC Code provides for due process of law. As a matter of fact, the provisions of Regulation 39 (6) fully back up the claim of the Resolution Professional and therefore, we have no hesitation to reject the objection raised by BEL.

79. On behalf of L&T argument was advanced by Mr. Mukul Rohatgi and Mr. Anand Chibbar, learned Senior counsel claiming that L&T must be treated as secured creditor within the meaning of Section 30(2) and 31 of the Code. In that regard reliance has been placed on Section 55(4) (b) of the Transfer of Property Act, 1882. The expression 'immovable property' has been used in the opening part of S. 55 and all sub-sections must first fulfil the requirements of opening part. The aforesaid provision reads as

under:



55. Rights and liabilities of buyer and seller.—In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:—

(1) The seller is bound—

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(2).....

(3).....

(4) The seller is entitled—

(a)

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, [any transferee without consideration or any transferee with notice of the non-payment], for the amount of the purchase-money,

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or any part thereof remaining unpaid, and for interest on such amount or part [from the date on which possession has been delivered].

A perusal of the aforesaid provision shows that it applies to 'Immovable property'. The plant and machinery cannot be regarded as immovable property. Moreover, to attract application of sub-section 4 (b) a charge must be shown to be created. It is not disputed that L&T has supplied plant and machinery and a feeble attempt has been made to argue that any property which is attached to earth must be regarded as immovable property as has been defined in Section 3(26) of the General Clauses Act. It has been claimed that charge has been created by supply, erection and installation of the plant and machinery on the respondent premises.

80. We are afraid that the claim made on behalf of L&T on the face of it appears to be wholly unsustainable. There is no document placed on record showing any creation of charge or security warranting a view that the L&T should be regarded as a secured creditor and not as the operational creditor. The charge is created by execution of a document as per the requirements of S. 132 of the Companies Act, 2013. In the absence answering the basic description of S. 55(4)(b) of Transfer of Property Act no

benefit could be gained by L&T. It is well settled that any supplier of goods and services would fall within the meaning of expression 'operational creditor' and the claim made by L&T would amount to rewriting the provisions of the statute which is an impossible proposition. Therefore, we do not find any substance in the aforesaid argument and same is hereby rejected.

81. In view of the above we accept and approve the CoC approved resolution plan of H1 Resolution Applicant-TSL. We also approve the appointment of monitoring agency from the date of the approval of the CoC approved resolution plan to function until the closing date i.e. the date on which the implementation of the steps set out in Annexure-5 of the CoC approved resolution plan would be completed. The monitoring agency shall have the same function, power and protection as conferred on the resolution professional under the Code and the CoC shall continue with its role and responsibility and have protection as set out in the Code including approving the matter as has been approved during the period prior to effective date.
82. In respect of the relief and concession as set forth in Annexure-8 it is not possible for us to issue any directions except to say that the monitoring agency along with the resolution applicant may make a claim before the authorities which shall be considered in



accordance with law. Moreover, these reliefs and concessions are also not condition precedent for the acceptance of resolution plan and would not be any impediment for us to accept the Resolution Plan.

83. As a sequel to the above discussion we pass following directions:-

- (i) C.A. No. 244(PB)/2018 - The application filed by the Resolution Professional for accepting the resolution plan approved by the CoC submitted by Resolution Applicant-TSL is accepted and it is clarified that the relief and concession set forth in Annexure-8 must abide by the directions issued in the preceding paras. The Monitoring Agency and the Resolution Applicant-TSL may file appropriate applications before the Public Authorities/Government Authorities and it is needless to say that their applications would be duly considered in accordance with law. We make it clear that we are not expressing any opinion on the claim concerning reliefs and concession nor any part of this order shall be understood in that spirit.
- (ii) C.A. No. 186(PB)/2018 filed by Larsen & Tourbo Limited is dismissed with cost of Rs. 1/- lakh. The cost be deposited in the account of Corporate Debtor.



- (iii) C.A. No. 217(PB)/2018 filed by Bhushan Employees is also dismissed with cost of Rs. 1/- lakh to be paid by Mr. Rahul Sengupta personally. The cost be deposited in the account of Corporate Debtor.
- (iv) The objection raised by the BEL are rejected and it is held that the claim made by BEL is wholly frivolous and cannot be sustained.
- (v) C.A. No. 176(PB)/2018 – The Ex-Management is directed to cooperate in all respects during the implementation of the resolution plan. Liberty is granted to the Monitoring Agency to apply for any further direction against the Ex-Management, its Directors or any other officers, if such a necessity arises.

All other applications are also disposed of.

84. The sealed covers which have been furnished during the course of hearing shall be returned after re-sealing by the Bench Officer to the learned Counsel for the RP and acknowledgment of receipt may be obtained.

Sd-

(M.M. KUMAR)
PRESIDENT

Sd-

(S.K. MOHAPATRA)
MEMBER(TECHNICAL)

15.05.2018
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ANNEXURE C

सत्यमेव जयते
GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

Office of the Registrar of Companies
4th Floor, IFCI Tower 61, New Delhi, Delhi, India, 110019

Certificate of Incorporation pursuant to change of name
[Pursuant to rule 29 of the Companies (Incorporation) Rules, 2014]

Corporate Identification Number (CIN): L74899DL1983PLC014942

I hereby certify that the name of the company has been changed from BHUSHAN STEEL LIMITED to TATA STEEL BSL LIMITED with effect from the date of this certificate and that the company is limited by shares.

Company was originally incorporated with the name JAWAHAR METAL INDUSTRIES PRIVATE LIMITED.

Given under my hand at New Delhi this Twenty seventh day of November two thousand eighteen.

DS Ministry of
Corporate Affairs -
(Govt of India) 23

Digitally signed by DS Ministry of Corporate Affairs -
(Govt of India) 23
DN: c=IN, o=Ministry of Corporate Affairs - (Govt of
India), ou=DS Ministry of Corporate Affairs - (Govt of
India), email=ds@nic.in, cn=DS
Ministry of Corporate Affairs - (Govt of India) 23
Reason: I am the issuer and integrity of this
document
Date: 2018.11.27 14:54:37 +05'30'

MANJIT SINGH

Registrar of Companies

RoC - Delhi

Mailing Address as per record available in Registrar of Companies office:

TATA STEEL BSL LIMITED

B - 9 to 12, OKHLA INDUSTRIAL AREA, PHASE- 1,, NEW DELHI, South Delhi, Delhi, India,
110020



ANNEXURE D

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, MUMBAI, COURT-II**

CA 156 of 2021 and CA 261 of 2021

In

CP (CAA) No. 70/MB/2021

Connected with

**CA (CAA) No. 3083/MB/2019 &
CA(CAA) No 129/MB II/2019**

In the matter of:

The Companies Act, 2013;

And

Petition under Sections 230 – 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

And

Composite Scheme of Amalgamation of Bamnipal Steel Limited and Tata Steel BSL Limited into and with Tata Steel Limited.

Tata Steel Limited

[CIN: L27100MH1907PLC000260]

...Petitioner Company 1/

Transferee Company

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, MUMBAI, COURT-II**

CP (CAA) No. 70/MB/2021 Connected with

CA (CAA) No. 3083 of 2019 CA(CAA) No 129 of 2019

Bamnival Steel Limited	...Petitioner Company	2/
[CIN: U27310MH2018PLC304494]	Transferor Company 1	
Tata BSL Steel Limited	...Petitioner Company	3/
[CIN: L74899DL1983PLC014942]	Transferor Company 2	

Order delivered on 29.10.2021

Coram:

Hon'ble Member (Judicial) : Mr. Ashok Kumar Borah
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances (via video conferencing):

For the Financial Creditor : Senior Advocate Mr. Gaurav Joshi, Senior Advocate Mr. Zal Andhyarujina, Adv. Karan Bhide, Adv. Shashank Gautam, Adv. Vijay Purohit, Adv. Priya Patwa, Adv. Devna Arora i/b. AZB & Partners and P&A Law Offices, Advocates.

For the Regional Director : Ms. Rupa Suttar, Assistant Regional Director (Western Region) Ministry of Corporate Affairs.

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. The court convened via videoconferencing.
2. Heard the Learned Senior Counsels for the Petitioner Companies, the Officer of the Regional Director, Western Region, Mumbai (“**RD, Mumbai**”) and Regional Director, Northern Region, New Delhi (“**RD,**

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, MUMBAI, COURT-II

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New Delhi”). No Objections have been filed qua Petitioner Companies 1 and 2 before this Tribunal to oppose the Company Scheme Petition. Petitioner Company 3 has received certain representations from some of its shareholders and unsecured creditors in respect of the Scheme, and Petitioner Company 3 has dealt with such objections by filing requisite responses which are on record.

3. The Petitioner Companies have jointly filed the present Company Scheme Petition seeking sanction of this Tribunal to the Composite Scheme of Amalgamation of Bannipal Steel Limited and Tata Steel BSL Limited into and with Tata Steel Limited (“**Scheme**”) under Sections 230 to 232 of the read with other applicable provisions Companies Act, 2013 (“**Act**”).
4. The Learned Senior Counsels for the Petitioner Companies stated that the Petitioner Company 1 is engaged in the business of manufacturing steel and offers a broad range of steel products including a portfolio of high value-added downstream products such as hot rolled, cold rolled and coated steel, rebars, wire rods, tubes and wires. The Petitioner Company 1 also has a well-established distribution network. The Petitioner Company 2 is a wholly owned subsidiary of Petitioner Company 1 and was incorporated *inter alia* for the purpose of completing the acquisition of the

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MUMBAI BENCH, MUMBAI, COURT-II

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Petitioner Company 3 pursuant to corporate insolvency resolution process of Petitioner Company 3 (“**CIRP**”) undertaken in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”). Petitioner Company 2 doesn’t carry out any business. The Petitioner Company 3 is engaged in the business of manufacturing steel and steel products such as hot rolled, cold rolled and coated steel, cold rolled full hard, galvanized coils and sheets, high tensile steel strips, color coated tiles, precision tubes, large diameter pipes, etc.

5. The Learned Senior Counsels for the Petitioner Companies stated that the Scheme provides for amalgamation of Petitioner Company 2 and Petitioner Company 3 into and with Petitioner Company 1, and consequent dissolution of Petitioner Company 2 and Petitioner Company 3, without winding up.
6. The Learned Senior Counsels for the Petitioner Companies stated that the background, circumstances, rationale and benefits of the Scheme are that:

(a) **Commercial rationale for amalgamation of the Petitioner Company 2 with the Petitioner Company 1**

- (i) The Petitioner Company 2 is a wholly owned subsidiary of the Petitioner Company 1 and

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
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was incorporated *inter alia* for the purpose of completing the acquisition of the Petitioner Company 3, by way of the CIRP as prescribed under the IBC.

- (ii) The Petitioner Company 2 holds the equity investment in the Petitioner Company 3 and is its holding company. Pursuant to the completion of the proposed amalgamation of the Petitioner Company 3 into and with the Petitioner Company 1, there would no longer be a requirement for the Petitioner Company 2 to exist as a separate legal entity. This amalgamation would also result in simplification of the group structure of the Petitioner Company 1.
- (iii) The amalgamation would result in significant reduction in the multiplicity of legal and regulatory compliances required to be carried out by the Petitioner Company 2 and the Petitioner Company 1.
- (iv) The Petitioner Company 2 being a wholly owned subsidiary of the Petitioner Company 1 is under the management of the Petitioner Company 1 and it would be advantageous to amalgamate the two entities to ensure focused

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management in the Transferee Company,
thereby resulting in efficiency of management
and maximizing value to the shareholders.

- (v) This amalgamation will also result in significant reduction of administrative, operational, financial, and managerial and such other costs.

**(b) Commercial rationale for amalgamation of the
Petitioner Company 3 with the Petitioner
Company 1**

- (i) The Petitioner Company 3 and the Petitioner Company 1 are engaged in the business of manufacture and sale of steel and steel products. The amalgamation will ensure focused management in the combined entity, thereby resulting in efficiency of management and maximizing value for the shareholders. Such restructuring will lead to simplification of group structure by eliminating multiple companies in similar business.
- (ii) The proposed amalgamation of the Petitioner Company 3 with the Petitioner Company 1 in accordance with the terms of this Scheme would enable both the companies to realize benefits of greater synergies between their

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businesses, yield beneficial results and pool financial resources as well as managerial, technical, distribution and marketing resources of each other in the interest of maximizing value to their shareholders and the stakeholders.

(iii) The proposed amalgamation will be beneficial to both the Petitioner Company 3 and the Petitioner Company 1 in the following manner:

- **Operational integration and better facility utilisation:** The amalgamation in accordance with this Scheme will provide an opportunity for reduction of operational costs through transfer of intermediary products between the companies, better order loads for the business through pooling of orders, synergies from sales and production planning across the businesses.
- **Efficient raw material procurement and reduced procurement costs:** Synergy of operations will be achieved as a result of sustained availability of raw materials as well as reduced procurement costs for the Petitioner Company 3. The proposed

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amalgamation would ensure iron ore security for the Petitioner Company 3 from the captive mines of the Petitioner Company 1. Similarly, combined sourcing of other raw materials such as coke, coal, pellet, and limestone by both the Petitioner Company 3 and the Petitioner Company 1 would result in reduction in overall costs of procurement for the amalgamating companies. Besides, certain requirements of the Petitioner Company 3 such as ferro alloys and scrap could be directly met by the Petitioner Company 1 production and procurement arms.

- **Operational Efficiencies:** The amalgamation would result in synergy benefits arising out of single value chain thereby reducing costs and increasing operational efficiencies. Centralization of inventory, from raw material to finished goods and spares, may enable better efficiency, utilization and overall reduction in working capital. The proposed amalgamation would likely result in optimized power consumption, reduced costs, sharing of best practices, cross-

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functional learnings, better utilisation of common facilities and greater efficiency in debt and cash management.

- **Rationalization of Procurement & Logistics costs:** Consolidation and optimization of stockyards could significantly reduce logistics and distribution costs for both the Petitioner Company 3 and the Petitioner Company 1. Clubbing of shipments may help reduce shipping costs, port terminal charges and ocean freight.
- **Enhancing Value in Marketing:** With an overlap in products across the Petitioner Company 3 and the Petitioner Company 1 the combined entity would be better positioned to service customer needs. The Petitioner Company 3 could expand its existing core market in North-India using the strong distribution channel and dealer network of the Transferee Company. Further, the Petitioner Company 3 could also have access to the Petitioner Company 1's branded product portfolio and marketing capabilities. The Petitioner Company 1 would benefit from

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complementary product offerings of the Petitioner Company 3, resulting in a strong presence across market segments. The proposed amalgamation will result in access to new markets and product offerings as well as increased export volumes.

- **Improving Customer Satisfaction and Services:** The proposed amalgamation would make it easier to address needs of customers by providing them uniform product and service experience, on-time supplies, and improved service levels thereby improving customer satisfaction. With common credit management, the customers are expected to benefit from the channel financing benefits from the combined entity.
- **Improved safety, environment and sustainability practices:** Increased coverage of plant automation can be achieved across plants of the Petitioner Company 3, by using the Petitioner Company 1's information technology applications and systems.

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Thus, the proposed amalgamation is beneficial, advantageous and not prejudicial to the interests of the shareholders, creditors and other stakeholders of the Petitioner Company 3 and the Petitioner Company 1 and is beneficial to the public at large.

7. The Board of Directors of the Petitioner Company 1, Petitioner Company 2 and Petitioner Company 3 have approved the Scheme by passing their respective Board Resolutions all dated April 25, 2019, which are annexed to the Company Scheme Petition at Exhibit “P-2”, Exhibit “Q” and Exhibit “R-2”, respectively.
8. The Learned Senior Counsels for the Petitioner Companies further stated that the equity shares of the Petitioner Company 1 and Petitioner Company 3 are listed on the BSE Limited (“**BSE**”) and National Stock Exchange of India Limited (“**NSE**”). The BSE and NSE *vide* their letters dated August 26, 2019 have provided “No-Objection” / “No Adverse Observation” letters to Petitioner Company 1 and Petitioner Company 3, to file the Scheme with this Tribunal and thereafter, the Petitioner Companies have approached this Tribunal seeking its sanction to the Scheme.
9. Learned Senior Counsels appearing on behalf of the Petitioner Companies state that the Petition is filed in consonance with the orders dated February 20, 2020,

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January 11, 2021, January 19, 2021 and February 5, 2021 passed by this Tribunal in the Company Scheme Applications CA (CAA) 3083 / MB / 2019 and CA (CAA) 129 / MB II / 2019 (collectively hereinafter referred as the “**CSA Orders**”).

10. The Learned Senior Counsels for the Petitioner Companies submitted that the Petition was admitted by this Tribunal *vide* an order dated May 10, 2021. Further, Petitioner Companies have complied with all the requirements as per the directions of this Tribunal and have filed necessary Affidavits proving such compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with the applicable statutory requirements, if any, as required under the Act and rules made thereunder, the Securities and Exchange Board of India, 1992, and regulations made thereunder, as and when applicable. The said undertakings given by the Petitioner Companies are accepted.
11. The Regional Director, Western Region, Mumbai, (“**RD, Mumbai**”) has filed his report dated June 17, 2021 in respect of Petitioner Company 1 and Petitioner Company 2 (“**P1 and P2 RD Report**”) with this Tribunal, *inter alia*, stating therein that this Tribunal may consider the observations made at Serial No. IV (a) to (r) of the said Report, and pass such other order

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or orders as deemed fit and proper in the facts and circumstances of the case. The observations made by the RD, Mumbai, in paragraph IV of the Report are, reproduced hereunder, for sake of ready reference:

“IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT are as under:-

(a) In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc.;

(b) As per Part-I-Definitions Clause 111(1.4), 111(1.9) & 111(1.18) of the Scheme

“Appointed Date” means April 1, 2019 or such other date as approved by the NCLT;

“Effective Date” means the date on which the last of conditions referred to in Clause 25.1 hereof have been fulfilled. Any reference in this Scheme to the date of “coming into effect of the/this Scheme” or Scheme becoming effective” shall be construed accordingly;

“Record Date” means the date to be mutually fixed by the Board of Directors of the Transferor Company 2 and the Transferee Company, for the purpose of determining the shareholders of the Transferor Company 2 who shall be entitled to receive fully paid up equity shares of the Transferee Company pursuant to and as contemplated under this Scheme;

In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the

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appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.

Further, the Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.

- (c) *The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.*
- (d) *Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy/any change/changes are made, for changes if any, liberty be given to Central Government to file further report if any required;*
- (e) *The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Amalgamation. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).*
- (f) *Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.*

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- (g) *The Petitioner Company may be directed to submit undertaking that the petitioner company shall ensure compliance of the all provisions of the Income Tax Act, 1961 including provisions of section 2(1B) of the Income Tax Act.*
- (h) *As per Part-II - (Amalgamation of The Transferor Company 1 into and with The Transferee Company) Clause 7(7.1) of the Scheme (Accounting Treatment). Upon coming into effect of this scheme, the transferee company shall account for the amalgamation of the transferor company 1 in its books of accounts in accordance with pooling of interest method of accounting as laid down in Ind AS 103 (Business Combinations) and relevant clarifications issued by institute of chartered accountants of India (ICAI).*
In this regards it is stated that in Indian Accounting Standard (Ind AS) 103 - prescribes application of pooling of Interest Method to account for common control business combinations. Under this method: ... Any difference, whether positive or negative, shall be adjusted against the capital reserves (or “Amalgamation Adjustment Deficit Account” in some cases). In view of the above it is submitted that the difference so credited to “Capital Reserve arising out of Amalgamation” shall not be available for distribution of dividend and other similar purposes.
- (i) *As per Part-III- (Amalgamation of The Transferor Company 2 into and with The Transferee Company) Clause 14 (14.1) of the Scheme (Accounting Treatment). Upon coming into effect of this scheme, the transferee company shall account for the amalgamation of the transferor company 2 in its books of accounts in accordance with “pooling of interest method” of accounting as laid down in Ind AS 103 (Business Combinations) and relevant clarifications issued by institute of chartered accountants of India (ICAI).*

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In this regards it is stated that in Indian Accounting Standard (Ind AS) 103 - prescribes application of pooling of Interest Method to account for common control business combinations. Under this method: ... Any difference, whether positive or negative, shall be adjusted against the capital reserves (or "Amalgamation Adjustment Deficit Account" in some cases). In view of the above it is submitted that the difference so credited to Capital Reserve arising out of Amalgamation" shall not be available for distribution of dividend and other similar purposes.

- (j) *As per Part-IV-(General Terms and Conditions) Clause 21(21.1 to 21.4) of the Scheme (Amendment to Memorandum of Association of the Transferee Company, Validity of the Existing Resolutions ETC); In this regard it is submitted that Hon'ble Tribunal may kindly direct the petitioner to comply with provisions of Section 13 and Section 232(3)(i) of the Companies Act, 2013 further if any stamp duty is payable the same should be paid in accordance with applicable laws of the State;*
- (k) *The Registered Office of **Tata Steel BSL Limited**, the Transferor Company 2 is situated Delhi is outside the jurisdiction of this Hon'ble Tribunal and falls within the jurisdiction of Hon'ble NCLT, at New Delhi Bench. Accordingly, necessary orders be obtained by the Transferor Company 2 from Hon'ble NCLT, at **New Delhi Bench**.*
- (l) *Since the Transferee Company limited by shares, is listed on the Bombay Stock Exchange and the National Stock Exchange, the Petitioner Companies be directed to place on record whether necessary approval from **SEBI and the concerned Stock Exchange** have been obtained and whether the meeting of the Shareholders/class of shareholders have been convened as per the listing/SEBI guidelines.*

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- (m) *Since the Transferee Company listed on **Luxembourg Stock Exchange and the London Stock Exchange**, the Petitioner Company de directed to undertake to comply with all Rules and Regulations as stipulated by London Stock Exchange.*
- (n) *The Petitioner Companies to place on record and to provide details regarding meeting of Shareholders other than Promoters, has been convened or not.*
- (o) *Since the Transferor Company 2 and The Transferee Company have foreign/nonresident shareholders, therefore, it is subject to the compliance of section 55 of the Companies Act, 2013 the **FEMA Regulations/RBI Guidelines by the Transferee Company.***
- (p) *As regards the complaints indicated at para 21 above, under the head -Complaint received against the propose **Scheme**, it is submitted that the petitioners be directed to mention all the facts in this regard about complaints and explain about the allegations made therein, before approval of the scheme.*
- (q) *In view of the observation raised by the ROC Mumbai, mentioned at para 22 above Hon'ble NCLT may pass appropriate orders/ orders as deem fit;*
- (r) *The Petitioner Company be directed to place on record whether necessary NOC/ approval from Competition Commission of India (CCI) have been obtained or not.”*
12. In response to the observations made by the RD, Mumbai in its Report, the Learned Senior Counsels submit that the Petitioner Company 1 and Petitioner Company 2 have filed a joint affidavit dated July 6, 2021 dealing with the observations of the Regional

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Director as contained in its Report (“**P1 and P2 RD Response**”) with this Tribunal on July 6, 2021, and also served a copy of the Affidavit upon the office of the RD, Mumbai. The responses of the Petitioner Company 1 and Petitioner Company 2 to the observations made by the RD Mumbai in its Report, as contained in the P1 and P2 RD Response are as under.

13. So far as the observation in paragraph IV (a) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 i.e. Transferee Company undertakes to pass such accounting entries as may be necessary in connection with the Scheme, in compliance with Ind AS-103 and with other applicable Accounting Standards.
14. So far as the observation in paragraph IV (b) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 and Petitioner Company 2 submit that the Appointed Date i.e. April 1, 2019 has been clearly indicated in Clause 1.4 of the Scheme in accordance with Section 232(6) of the Act and the Scheme shall take effect from the Appointed Date. Petitioner Company 1 and Petitioner Company 2 further submit that they have already complied with the requirements and clarification of Circular No. F. No. 7/12/2019/CL-I dated August 21, 2019 issued by the Ministry of Corporate Affairs by clearly specifying the

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Appointed Date in the Scheme. Thus, the requirements of the said circular are duly complied with.

15. So far as the observation in paragraph IV (c) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 and Petitioner Company 2 submit as under:

(a) Petitioner Company 1: Pursuant to the directions of this Tribunal passed *vide* the CSA Orders and in terms of Section 230 (1) read with Section 230 (3) to (5) of the Act, the NCLT convened meeting of equity shareholders of the Petitioner Company 1 was duly held on Friday, March 26, 2021 at 11:00 a.m. (IST), when the Scheme has been approved by an over-whelming majority of the equity shareholders (99.99% of the equity shareholders present and voting at the NCLT convened shareholders' meeting) of the Petitioner Company 1. The report of the Chairperson appointed by this Tribunal, setting out the result of the meeting, along with the Affidavit in support thereof, has been filed with this Tribunal on April 13, 2021, and is annexed to the Company Scheme Petition as Exhibit "X". Learned Senior Counsels further submit that are the minutes of the NCLT convened meeting of equity shareholders of Petitioner Company 1 held on March 26, 2021 are annexed as Exhibit "A" to the

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P1 and P2 RD Response, and in terms of the CSA Orders, the convening and holding of meeting of the creditors of the Petitioner Company 1 was dispensed with.

(b) Petitioner Company 2: In terms of the CSA Orders, there was no requirement of convening of meeting of the equity shareholders of the Petitioner Company 2, in view of the consent affidavits obtained from its equity shareholders, and the question of convening and holding of meetings of the creditors of the Petitioner Company 2 didn't arise since Petitioner Company 2 didn't have any creditors as on September 30, 2020.

16. So far as the observation in paragraph IV (d) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 and Petitioner Company 2 undertake that the copy of the Scheme annexed as Exhibit "A" to the Company Scheme Application filed by the Petitioner Company 1 and Petitioner Company 2, viz. CA (CAA) 3083/MB/2019 and the copy of the Scheme annexed to the captioned joint Company Scheme Petition filed by the Petitioner Companies, as Exhibit "A" are one and the same, and there is no discrepancy and deviation. Further, a statement to this effect has also been made in paragraph 18 of the joint Company Scheme Petition filed by the Petitioner Companies.

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17. So far as the observation in paragraph IV (e) of the P1 and P2 RD Report is concerned, it is stated that Petitioner Company 1 and Petitioner Company 2 have served the notices under Section 230(5) of the Act upon all the concerned authorities, as directed by this Tribunal pursuant to the CSA Orders. The Petitioner Company 1 and the Petitioner Company 2 further submit that the issues of the concerned authorities, if any, arising after giving effect to the Scheme shall be addressed subject to the final decision of the concerned authorities in accordance with applicable law and the decisions of the concerned authorities, upon attaining finality, shall be binding on the Petitioner Companies.
18. So far as the observation in paragraph IV (f) of the P1 and P2 RD Report is concerned, Petitioner Company 1 states that there is no need to increase the authorized share capital of the Petitioner Company 1 pursuant to the Scheme, and therefore, the provision of Section 232 (3) (i) of the Act in respect of setting-off of fee payable by the Petitioner Company 1 (Transferee Company) for an increase in the authorized share capital, is not applicable. The Petitioner Company 1 clarifies that the existing authorized share capital of the Petitioner Company 1 is sufficient to issue equity shares to the shareholders of Petitioner Company 3, pursuant to the Scheme.

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19. So far as the observation in paragraph IV (g) of the P1 and P2 RD Report is concerned, Petitioner Company 1 and Petitioner Company 2 undertake to comply with the applicable provisions of Income Tax Act, 1961 including provisions of Section 2 (1B) thereof, as applicable and to the extent required.
20. So far as the observations in paragraphs IV (h) and (i) of the P1 and P2 RD Report are concerned, the Petitioner Company 1 undertakes that the Capital Reserves, if available, with the Transferee Company, shall not be utilized for distribution of dividends and other similar purposes.
21. So far as the observation in paragraph IV (j) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 states that the Petitioner Company 1 is not undertaking any amendment to its memorandum of association, pursuant to the Scheme, and Clause 21 is merely an enabling provision in the Scheme to facilitate such amendment, in case required. In this regards, the Petitioner Company 1 undertakes to comply with the applicable provisions of the Act, if and when such need arises. Petitioner Company 1 further undertakes to pay applicable stamp duty payable in accordance with the applicable laws.

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22. So far as the observation in paragraph IV (k) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 and Petitioner Company 2 submit that since the registered office of the Petitioner Company 3 (Transferor Company 2) is situated at Delhi, the Petitioner Company 3 had filed its Company Scheme Application viz. CA (CAA)-129 (ND)/2019 before New Delhi Bench of this Tribunal. On September 9, 2019, the Petitioner Company 3 filed an application before the Principal Bench of this Tribunal viz. CA 1955 (PB)/2019, seeking transfer of the said application from New Delhi Bench to Mumbai Bench of this Tribunal, on the ground that the registered office of the Transferee Company is situated at Mumbai. By way of an order dated September 27, 2019, passed by the Principal Bench of this Tribunal, the said application was allowed, the Company Scheme Application CA(CAA)-129 (ND)/2019 was transferred to Mumbai Bench of this Tribunal and was renumbered as CA(CAA) 129/MB - II/2019. Thereafter the Company Scheme Application filed by Petitioner Company 1 and 2, was heard together with transferred application CA (CAA) 129/MB II/2019 of Petitioner Company 3, and this Tribunal *vide* CSA Orders passed direction in respect of holding/ dispensing with the meetings of shareholders and creditors of the Petitioner Companies.

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Subsequently, the Petitioner Companies (including the Petitioner Company 3) jointly filed the above Company Scheme Petition seeking sanction of this Tribunal to the Scheme. In view thereof, Petitioner Company 1 and Petitioner Company 2 submit that there is no requirement to seek further orders/ directions from the New Delhi Bench of this Tribunal.

23. So far as the observation in paragraph IV (l) of the P1 and P2 RD Report is concerned, Petitioner Company 1 and Petitioner Company 2 submit that the BSE and NSE vide their letters dated August 26, 2019 have respectively provided “No-Objection”/ “No Adverse Observation” to the Petitioner Company 1 (Transferee Company) for filing of the Scheme with this Tribunal in accordance with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The Petitioner Company 1 further submits that all the observations made by the Stock Exchanges in their respective “No-Objection” / “No Adverse Observation” have been duly complied with by Petitioner Company 1. The Petitioner Company 1 further submits that the meeting of its equity shareholders was convened in accordance with the listing/ SEBI guidelines, and as required under SEBI guidelines, the number of votes cast by the Public Shareholders of the Petitioner Company 1 in favour of

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the Scheme, was more than the number of votes cast by its Public Shareholders against the Scheme.

24. So far as the observation in paragraph IV (m) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 (i.e. Transferee Company) states that the Global Depository Receipts of the Transferee Company are listed on the Luxembourg Stock Exchange and the London Stock Exchange. In this regard, Petitioner Company 1 undertakes to comply with applicable rules and regulations as stipulated by Luxembourg Stock Exchange and the London Stock Exchange pertaining to matters in relation to the Scheme.
25. So far as the observation in paragraph IV (n) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 submits that pursuant to the CSA Orders, the meeting of equity shareholders of Petitioner Company 1 was held on Friday, March 26, 2021 at 11:00 a.m. (IST) to seek their approval to the Scheme. The resolution proposed for the Scheme was passed with requisite majority of the equity shareholders (which also included the public shareholders of Petitioner Company 1). The Petitioner Company 1 further clarifies that the provisions of paragraph 9(b) of Annexure I of the Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017 issued by the Securities and Exchange Board of India

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(“SEBI”) as amended from time to time (“SEBI Schemes Circular”) require a listed company to seek approval of majority of public shareholders to the Scheme only if it falls within any of the specific cases mentioned under the SEBI Schemes Circular. For such approval, no separate meeting of public shareholders is required to be convened either under the SEBI Schemes Circular or Sections 230 to 232 of the Act. Petitioner Company 1 submits that at the said meeting, 4,592 public shareholders (fully paid-up and partly paid-up) representing 43,96,87,826 equity shares (Fully paid-up and Partly paid-up) of the Petitioner Company 1 voted in favour of the Scheme and 196 public shareholders (fully paid-up and partly paid-up) representing 45,407 equity shares (fully paid-up and partly paid-up) voted against the Scheme. Therefore, as required under the SEBI Schemes Circular, the number of votes cast by the public shareholders of the Petitioner Company 1 in favour of the Scheme is more than the number of votes cast by its Public Shareholders against the Scheme.

26. So far as the observation in paragraph IV (o) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 undertakes to comply with the applicable guidelines of Foreign Exchange Management Act, 1999/ Reserve Bank of India, as applicable and to the extent required. Further, the Transferor Company 2

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issued preference shares only to the Transferee Company (which is an Indian company), which shall stand cancelled on account of the merger of Transferor Company 2 into Transferee Company, pursuant to the Scheme. In view thereof, Section 55 of the Act is not applicable to the present Scheme.

27. So far as the observation in paragraph IV (p) of the P1 and P2 RD Report is concerned, Petitioner Company 1 states that as mentioned in paragraph 21 of the Report, the RD has received two complaints viz. one each from Mr. Paras Mal Bhutoria and Mr. Jatinder Singh Ahuja in respect of the Scheme. As regards the complaint of Mr. Paras Mal Bhutoria, the Petitioner Company 1 states that by its letter dated June 25, 2021, Petitioner Company 1 has appropriately responded to the said complaint. It is pertinent to mention that Mr. Paras Mal Bhutoria also filed a similar complaint before the SEBI, which has been disposed off by the SEBI. Further, as regards the complaint filed by Mr. Jatinder Singh Ahuja, Petitioner Company 1 states that in spite of the fact that the said complainant is not a shareholder of the Petitioner Company 1, Petitioner Company 1 responded to the said complaint by its letter dated May 24, 2021 enclosed to an e-mail dated May 28, 2021 sent to the Registrar of Companies, Mumbai ("ROC") and RD. The copies of the letter

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dated June 25, 2021 and the e-mail dated May 28, 2021 along with a copy of the letter dated May 24, 2021, both sent to the ROC, are annexed to the P1 and P2 RD Response as Exhibit “B” and Exhibit “C”, respectively. In any event, the above complainants have also filed an Application before this Tribunal, on the same subject matter which is on the records of this Tribunal. It is pertinent to mention that the Scheme has been approved by an overwhelming majority of equity shareholders of the Petitioner Company 1 (99.99% of the equity shareholders present and voting at the NCLT convened shareholders’ meeting) at the NCLT convened meeting held on March 26, 2021.

28. So far as the observations in paragraph IV (q) of the P1 and P2 RD Report is concerned, the Petitioner Companies state as under:

(a) Petitioner Company 1 states that as mentioned in paragraph 22 of the P1 and P2 RD Report, ROC had received 10 complaints in respect of the Petitioner Company 1 *vide* SRN Numbers mentioned therein, which are pending. Petitioner Company 1 states that all such complaints as reported by the ROC, have been adequately responded to by the Petitioner Company 1, by way of its letter dated July 2, 2021 sent to the ROC. In the said letter, the Petitioner Company 1 has *inter*

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alia intimated the ROC that each of such complaints were adequately responded by the Petitioner Company 1, while briefly setting out a response to the respective complaints, and requested the ROC to treat the said complaints as closed. A copy of the letter dated July 2, 2021 sent by the Petitioner Company 1 to the ROC in respect of the said 10 complaints (along with Annexures) is annexed as Exhibit "D" to P1 and P2 RD Response.

(b) As regards the interest of the creditors, Petitioner Company 1 submits that pursuant to the directions of this Tribunal, the Petitioner Company 1 has sent notices to its secured and unsecured creditors having outstanding amount of ₹10,00,000/- (Rupees Ten Lakh) or more as on September 30, 2020, stating therein that representations, if any, may be submitted to this Tribunal within a period of 30 (thirty) days from the date of receipt of the notices with a copy to the Petitioner Company 1. Pursuant to such notices, none of the creditors have filed any representation. The Petitioner Company 2 states that Petitioner Company 2 doesn't have any creditors. In view of the above, the interests of the aforesaid creditors for Petitioner Company 1 are duly protected.

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29. So far as the observation in paragraph IV (r) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 and Petitioner Company 2 state that approval of Competition Commission of India (“CCI”) is not required in terms of the applicable laws and rules. The amalgamation contemplated under the Scheme is benefitted from the intra-group exemption set out under Item 9 to Schedule 1 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 and therefore no approval is required to be obtained from the CCI. In view of the above, the approval of CCI has not been obtained by the Petitioner Companies.
30. Upon perusal of the responses of the Petitioner Companies as contained in the P1 and P2 RD Response, as detailed in paragraphs 12 to 29 hereinabove, the office of RD, Mumbai filed a supplementary report dated July 13, 2021 with this Tribunal (“**Supplementary Report**”). The Supplementary Report, *inter alia* states that the Petitioner Company 1 and Petitioner Company 2 have submitted their replies by way of the P1 and P2 RD Response, and a copy of the same was annexed as Annexure A to the Supplementary Report. As regards the replies of the Petitioner Company 1 and Petitioner

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Company 2 to paragraphs (IV) (a), (b), (d), (e), (g) to (j), (l) and (m), the officer appearing for the RD submits that the replies submitted by the Petitioner Companies in P1 and P2 RD Response are satisfactory. As regards the replies of the Petitioner Companies 1 and 2 to paragraphs (IV) (c), (f) (k), (n) (o) (p) (q) and (r) of the P1 and P2 RD Report, the Supplementary Report states that the Tribunal may pass appropriate orders as deem fit.

31. The observations made by the RD, Mumbai in its report dated June 17, 2021, have been reproduced in paragraph 11 above. The clarifications and undertakings given by the Petitioner Company 1 and Petitioner Company 2 to the P1 and P2 RD Report have been explained in paragraphs 13 to 29 above. The clarifications and undertakings of the Petitioner Company 1 and Petitioner Company 2 are accepted by this Tribunal, and the said Petitioner Companies are directed to comply with the same.

32. The Regional Director, Northern Region, New Delhi (“**RD, New Delhi**”) has filed his report dated July 16, 2021 in respect of Petitioner Company (“**P3 RD**”

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Report”) with this Tribunal, *inter alia*, stating therein that this Tribunal may consider the submissions made in paragraph 1-3 of the P3 RD Report and consider such orders as may be deemed fit and proper in the circumstances of the case. The observations made by the RD, New Delhi in paragraph 11 of the Report are, reproduced hereunder, for sake of ready reference:

“11. That as per the report of Registrar of Companies, the Transferor Company No.2 has filed its Annual Return and Balance Sheet up to 2019-20 and the Transferee Company has filed its Annual Return and Balance Sheet up to 2019-20. No prosecution has been filed & no inspection or investigation has been conducted in respect of the Petitioner Companies. As per the ROC Report dated 23.06.2021, the following observations are made :-

- 1. In the attached scheme, there is no clause regarding addition of authorized share capital of Transferor Company No.2 with the authorized share capital of Transferee Company. Hence it is clarified from the petitioners whether any authorized share capital of Transferor Company No. 2 has to be increased into the authorized share capital of Transferee Company and, if so, Transferee company may kindly be directed to comply the provisions of section 232(3)(i) of the Companies Act, 2013.*
- 2. As per record, the SFIO has conducted investigation in the matter of Company Bhushan Steel Limited (now known as Tata Steel BSL Limited), hence directorate may seek NOC from the SFIO in this regard.*
- 3. As per the MCA portal, this office has received a complaint from one of the shareholder Mr. Vijesh*

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, MUMBAI, COURT-II**

CP (CAA) No. 70/MB/2021 Connected with

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Vishwanathan which is in reference to the proposed scheme of Amalgamation of Tata Steel BSL Limited with the Tata Steel Limited in regard to share swap ratio of 15:1. He stated in the complaint that he is a public shareholder of Tata Steel BSL Limited, with current shareholding of 164205 shares. The said scheme was beneficial for all parties involved, when it was approved on 25.04.2019. But the Scheme could not be implemented due to reasons beyond the control companies involved. A gap of almost 2 years is enough for the change of matrices of the Valuation report, which is being relied upon now. The said scheme now is against the public/ minority shareholdings interest holding 27.35% equity share in Tara Steel BSL Limited f or the following reasons.

A. Fair Exchange ratio of 15 Tata Steel BSL Limited (FV Rs. 21/-) for 1 share of Tata Steel Limited (FV Rs. 101/-), is based on valuation reports which is almost 2 years old and hence cannot be the basis as on date. And as an icon group Tata 's cannot accept the valuation report which his more than 6 month old, which is against all norms of Corporate Governance.

B. Public /Minority shareholding 27.35% share capital of Tata Steel BSL Limited as on date will be left with only 1.6285% of holding in amalgamated company Tata Steel Limited. The Scheme, if implemented as such will cause huge loss to the Public/ Minority shareholders of Tata Steel BSL Limited.

The complainant has requested that as fresh swap ratio should be computed by considering recent valuations of the company so that the interest of public shareholders is safeguarded.

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Another Complaint dated 28. 04. 2021 is received from Sh. Jatinder Singh Ahuja in regard to share exchange ratio.”

33. In response to the observations made by the RD, New Delhi in its Report, the Learned Senior Counsels submit that the Petitioner Company 3 has filed affidavit dated July 18, 2021 dealing with the observations of the RD, New Delhi as contained in its Report (“**P3 RD Response**”) with this Tribunal on July 18, 2021, and also served a copy of the Affidavit upon the office of the RD, New Delhi. The responses of the Petitioner Company 3 to the observations made by the RD, New Delhi in its Report, as contained in the P3 RD Response are as under.
34. So far as the observation in paragraph 11(1) of the P3 RD Report is concerned, Petitioner Company 3 states that there is no need to increase the authorized share capital of the Petitioner Company 1 (Transferee Company) pursuant to the Scheme, and therefore, the provision of Section 232 (3) (i) of the Companies Act, 2013 in respect of setting-off of fee payable by the Petitioner Company 1 (Transferee Company) for an increase in the authorized share capital, is not applicable. The Petitioner Company 3 clarifies that the existing authorized share capital of the Petitioner Company 1 is sufficient to issue equity shares to the

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shareholders of Petitioner Company 3, pursuant to the Scheme.

35. So far as the observation in paragraph 11(2) of the P3 RD Report is concerned, Petitioner Company 3 states that the SFIO basis order of the MCA filed a criminal complaint before the Ld. Special Court, Dwarka which took cognizance and summoned Petitioner Company 3 as one of the accused. However, the Hon'ble Delhi High Court vide order dated March 16, 2021 set aside the cognizance order and quashed the criminal complaint relying on Section 32A of the Insolvency and Bankruptcy Code, 2016.
36. So far as the observation in paragraph 11(3) of the P3 RD Report is concerned, the Registrar of Companies, New Delhi, ('RoC') in their report has stated that their office is in receipt of two complaints viz. one each from Mr. Vijesh Viswanathan and Mr. Jatinder Singh Ahuja in respect of the Scheme. As regards, the complaint of Mr. Vijesh Viswanathan, the Petitioner Company 3 states that vide email dated June 29, 2021, the RoC had forwarded the complaint of Mr. Vijesh Viswanathan and sought a response from the Petitioner Company 3 on the same. The Petitioner Company 3 vide its letter dated July 11, 2021, Petitioner Company 3 has appropriately responded to the said complaint. Further, as regards the complaint filed by Mr. Jatinder Singh

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Ahuja, Petitioner Company 3 states that it is not in receipt of the representation dated April 28, 2021 from Mr. Jitender Ahuja, through the RoC. However, apart from the aforesaid letter, Mr. Jitender Ahuja has written several representations regarding the Scheme and the share exchange ratio to various regulators including SEBI, and the Petitioner Company 3 has appropriately responded to such representations on numerous occasions. Vide email dated June 10, 2021 in response to the reply of the Petitioner Company 3 dated May 31, 2021 to the complaint of Mr. Jitender Singh Ahuja on the SCORES platform dated May 12, 2021, SEBI affirmed that the response of the Petitioner Company 3 was satisfactory and closed the complaint.

37. The observations made by the RD, New Delhi in its Report have been reproduced in paragraph 32 above. The clarifications and undertakings given by the Petitioner Company 3 to the P3 Report have been explained in paragraphs 34 to 36 above. The clarifications and undertakings of the Petitioner Company 3 are accepted by this Tribunal, and Petitioner Company 3 is directed to comply with the same.
38. In respect of the Petitioner Company 2, the Official Liquidator, High Court, Bombay has filed his report dated

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July 7, 2021 *inter alia*, stating that the affairs of the Petitioner Company 2 (Transferor Company 1) have been conducted in a proper manner.

39. In respect of the Petitioner Company 3, the Official Liquidator, High Court, Delhi has filed his report dated July 12, 2021 *inter alia*, stating that the affairs of the Petitioner Company 3 (Transferor Company 2) do not appear to have been conducted in a manner prejudicial to the interest of its members or public interest as per the provisions of the Companies Act, 1956/ Companies Act. 2013, whichever is applicable.
40. Learned Senior Counsels for the Petitioner Companies submitted that the Petitioner Company 3 has received certain representations from its shareholders and creditors pursuant to the notices issued by the Petitioner Company 3. The Petitioner Company 3 received representations from certain shareholders holding 7,64,791 equity shares which is approximately 0.0699% vide Company Application No. 156 of 2021 and Company Application No. 261 of 2021 in respect of the share exchange ratio in relation to the Scheme which was appropriately responded to by the Petitioner Company 3 vide response dated June 15, 2021. The Petitioner Company responded that as per Proviso to Section 230(4) of the Companies Act, 2013 (“**CA 2013**”) any objection to Compromise or arrangement

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shall be made only by person holding not less than ten percent of shareholding or having outstanding debt amounting to not less than five per cent of the total outstanding debt as per the latest audited financial statement. The Petitioner Company 3 has also received objections from creditors regarding claims pertaining to the pre-CIRP period. The Petitioner Company 3 has filed appropriate responses to the said claims of the objecting creditors. In response to Creditors objections, Counsel for Petitioner company submitted that clause 18(e) of the scheme provides the definition of undertaking 2 to include all undertaking and business of the Company as a going concern including the assets, properties, investments, rights, approvals, licenses and powers, leasehold rights and all its debts, outstanding liabilities, duties, obligations and employees. Clause 18(i) of the Scheme provides that upon the Scheme coming into effect, the Undertaking 2 shall without any further act, instrument or deed be and stand transferred to and vested in and/or be deemed to have been and stand transferred to and stand vested in the Transferee company, as a going concern, so as to become the undertaking of the Transferee Company, with effect from the Appointed Date.

41. Therefore, as per above submissions and clear position of law the grievances of the objector is addressed

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accordingly and nothing survives in CA 156 of 2021 and CA 261 of 2021, Accordingly both CA 156 of 2021 and CA 261 of 2021 disposed of as dismissed.

42. From the material on record and after perusing the clarifications and submissions of the Petitioner Companies to the Reports filed by the Regional Directors, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
43. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition filed by the Petitioner Companies is made absolute in terms of prayer clauses (a), (b), (c), and (d) of the joint Company Scheme Petition. The Scheme is hereby sanctioned with the 'Appointed Date' as April 1, 2019.
44. Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with e-Form INC-28, within 30 days from the date of receipt of the certified copy of this order along with the sanctioned Scheme from the Registry duly certified by Deputy/ Assistant Registrar of the National Company Law Tribunal, Mumbai Bench.

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45. The Petitioner Company 1 (Transferee Company) to lodge a copy of this Order along with a copy of the Scheme duly certified by Deputy/ Assistant Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days of receipt of the certified copy of this order.
46. All concerned authorities to act on certified copy of this order along with the sanctioned Scheme, duly certified by Deputy/ Assistant Registrar of the National Company Law Tribunal, Mumbai Bench.
47. Any person interested is at liberty to apply to this Tribunal in these matters for any directions or modifications that may be necessary.

Dated the 29th day of October, 2021

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

29.10.2021

SAM

Sd/-

ASHOK KUMAR BORAH
Member (Judicial)

1

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2700 OF 2020

M/S TATA STEEL BSL LIMITED

Appellant(s)

VERSUS

HAZI ARIF & ORS.

Respondent(s)

WITH

CIVIL APPEAL NO. 2727 OF 2020

CIVIL APPEAL NO. 2927 OF 2020

CIVIL APPEAL NO. 3076 OF 2020

O R D E R

The challenge in the present appeals is to an order passed by the National Green Tribunal (in short, "the NGT") on 26.02.2020. The learned NGT held that in execution proceedings, the order passed by the Tribunal on 07.10.2016 cannot be disputed.

The NGT has appointed an Expert Committee on 03.03.2014 under the Chairmanship of Ms. Parul Gupta, Advocate. The said committee submitted report on 23.4.2014. The NGT passed an order on 7.10.2016 whereby the Respondent Ghaziabad Development Authority was directed to remove all such encroachments on green belt area as per GMPD 2021 in Vaishalli Zone -5 in accordance with law. The order dated 7.10.2016 is being treated as final order though the report of Committee of Ms. Parul Gupta was accepted by NGT after giving an opportunity of hearing to the affected parties.

Validity unknown
Digitally signed by
Jayant Kumar Jora
Date: 2022.10.23
12:34:47 IST
Reason:

Another Expert Committee was ordered to be constituted comprising of Professor C.R. Babu Centre, Professor for Environment Management of degraded ecosystem, School of Environment study University of

Delhi, Dr. Brij Gopal, Professor JNU, Professor A.K. Gosain Professor of Civil Engineering IIT, Delhi to carry out study of Sahibabad drain No. 1 Ghaziabad. The said Committee had given its report on 09.10.2017.

The appellant and other affected parties filed applications for impleadment in the Original Application pending before the NGT before it passed an order on 7.10.2016. Objections to the Report were also submitted. However, the NGT, in the impugned order, held that *"as an executing court, the jurisdiction of the Court is limited as it cannot go behind the original order passed in respect of which execution proceedings have been initiated."*

We find that the entire basis of the order of the NGT is the Report of the Expert Committee dated 23.4.2014 leading to the alleged executable order dated 7.10.2016. Such Report was never accepted on the basis of which any executable order was passed by the NGT. The argument raised that such report was taken on record does not mean acceptance of report. Still further none of the affected parties, such as the appellants were before the NGT and no order could be passed without hearing the affected parties.

Consequently, we set aside all proceedings subsequent to the submission of the Report dated 23.4.2014. The affected parties are given liberty to file objections to the report so submitted. It is only thereafter, an order can be said to have been passed by the NGT, which can be said to be an executable order.

Consequently, the appeals are allowed. The order passed by the NGT on 26.02.2020 is set aside. The matter is remitted back to the NGT from the stage of submission of the Report dated 23.4.2014. The NGT

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shall decide all questions of law and fact after hearing the affected parties in accordance with law.

The interim order(s) passed by the NGT and by this Court after the submission of the Report stand vacated.

Pending interlocutory application(s), if any, is/are disposed of.

.....J.
[HEMANT GUPTA]

.....J.
[V. RAMASUBRAMANIAN]

New Delhi;
OCTOBER 22, 2021.

ITEM NO.23 Court 11 (Video Conferencing) SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 2700/2020

M/S TATA STEEL BSL LIMITED

Appellant(s)

VERSUS

HAZI ARIF & ORS.

Respondent(s)

IA No. 57892/2020 - EX-PARTE STAY
IA No. 44888/2021 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 57894/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 57893/2020 - EXEMPTION FROM FILING O.T.)

WITH

C.A. No. 2727/2020 (XVII)
(IA FOR STAY APPLICATION ON IA 61938/2020
FOR EXEMPTION FROM FILING O.T. ON IA 61939/2020
FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA
61940/2020
FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 61942/2020
IA No. 61942/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 61940/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT
IA No. 61939/2020 - EXEMPTION FROM FILING O.T.
IA No. 61938/2020 - STAY APPLICATION)

C.A. No. 2927/2020 (XVII)
(IA FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA
74088/2020
FOR EX-PARTE STAY ON IA 74089/2020
FOR EXEMPTION FROM FILING PAPER BOOKS ON IA 74091/2020
FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 74092/2020
FOR EXEMPTION FROM FILING O.T. ON IA 74093/2020
FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA
75682/2020
IA No. 74089/2020 - EX-PARTE STAY
IA No. 74092/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 74088/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT
IA No. 74093/2020 - EXEMPTION FROM FILING O.T.
IA No. 74091/2020 - EXEMPTION FROM FILING PAPER BOOKS
IA No. 75682/2020 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

C.A. No. 3076/2020 (XVII)

(FOR EX-PARTE STAY ON IA 86643/2020
 FOR EXEMPTION FROM FILING O.T. ON IA 86644/2020
 FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA
 86645/2020
 IA No. 86643/2020 - EX-PARTE STAY
 IA No. 86645/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
 JUDGMENT
 IA No. 86644/2020 - EXEMPTION FROM FILING O.T.)

Date : 22-10-2021 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA
 HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

Counsel for the
 parties

Mr. Jaideep Gupta, Sr. Adv.
 Mr. Akshat Hansaria, Adv.
 Mr. Shashank Manish, Adv.
 Ms. Samridhi Hota, Adv.
 Ms. Nidhi Sahay, Adv.

Mr. S. B. Upadhyay, Sr. Adv.
 Mr. Pawan R. Upadhyay, Adv.
 Mrs. Sharmila Upadhyay, Adv.
 Mr. Sarvjit Pratap Singh, Adv.
 Mr. Nishant Kumar, Adv.
 Mr. Varun Sharma, Adv.
 Mr. Gaurav Prakash Pathak, Adv.
 Ms. Tanzeela Mubashsharah, Adv.
 for M/s. Unuc Legal Llp, AOR

Mr. Arvind Kumar, Adv.
 Mr. Vikrant Singh Bais, AOR

Mr. R. Venkat Raman, Adv.
 Ms. Aswathi M. K., AOR

Mr. Santosh Kumar, AOR
 Mr. Vikarn Singh, Adv.
 Mr. Aayushman Vatsayanana, Adv.
 Mr. Chitvan Singhal, Adv.

Mr. Vishwajit Singh, AOR
 Mrs. Veera Kaul Singh, Adv.
 Mr. Pankaj Singh, Adv.
 Ms. Ridhima Singh, Adv.
 Mr. Vignesh Singh, Adv.

Mr. Pradeep Misra, Adv.
 Mr. Daleep Dhyani, Adv.
 Mr. Suraj Singh, Adv.
 Mr. Manoj Kumar Sharma, Adv.
 Mr. Bhuwan Chandra, Adv.

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Mr. Raman Yadav, Adv.
Mr. Syed Mehdi Imam, AOR

Mr. Rajeev Sharma, Adv.
Ms. Nandita Sharma, Adv.
Mr. Deepak Goel, AOR

Mr. Tahir Ashraf Siddiqui, AOR

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

The Civil Appeals are allowed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed
of.

(JAYANT KUMAR ARORA)
COURT MASTER

(RENU BALA GAMBHIR)
COURT MASTER

(Signed order is placed on the file)

Notification of 2006 issued by the Ministry of Environment & Forests (MoEF). He would also submit that State Pollution Control Board is taking survey of the same, even though it has no control over the properties as such. From the submissions made by the learned Counsel, it is clear that it is the Municipal Corporation of Ghaziabad as well as the Ghaziabad Development Authority (GDA) who have not taken any precautionary steps before permitting such private parties to put up slabs above the drainage.

The GDA cannot escape from its responsibilities saying that it is only the Municipal Corporation of Ghaziabad which has got the duty of maintaining the drainage system. Therefore, *prima facie*, we are satisfied that all is not well with the Municipal Corporation of Ghaziabad as well as GDA. In such cases of serious issues, the public authorities should have in co-ordination, decided the future development of the places before giving any permission, even if such power is within their limit.

On the face of the record, we find that no authorities have applied their mind on the environmental issue relating to the drainage system. In such view of the matter, we are of the view that an Expert Committee headed by Ms. Parul Gupta, learned advocate of this Tribunal, with other scientific experts is to be appointed to make a thorough study about the physical features of the place in question, so as to enable us to pass appropriate orders.

Accordingly, we appoint a Committee of Experts consisting of the following members:

1. Ms. Parul Gupta, learned Advocate.
2. Mr. N.K. Gupta, Sr. Environmental Engineer, CPCB.
3. Regional Officer of UPPCB, Ghaziabad.
4. One of the Forest Experts to be nominated by the MoEF, Government of India.

The above said Committee shall inspect the Green Belt at Zone No. 5, Vaishali and the water drainage from Sahibabad Drain No. 1 to its natural original position including the discharge of untreated industrial waste into the drainage and file its report before this Tribunal by the next date of hearing.

The following shall be the terms of reference:

1. The Committee shall visit the entire area of Zone-5 in so far as it relates to the maintenance of drainage system by the Municipal Corporation of Ghaziabad and find out the real physical position including the slabs, whether they are put up permanently or are removable, etc.
2. The Committee shall also find out the extent of the drainage in the area, which are covered and proposed to be covered and shall also indicate the places where constructions are made and also used as parking area, including encroachments.
3. The Committee shall also in its report state as to whether untreated waste, either from the industry or otherwise, are discharged into the drainage system.
4. The Committee shall also find out the green belt area in the Zone-5, Vaishali and whether they are preserved or being destroyed by the Municipal Corporation of Ghaziabad and shall furnish proposal for preservation of the green belt area.
5. We make it clear that the MoEF, Government of India shall nominate the Forest Expert as its representative, within a period of one week from today. The learned Advocate who is heading the Committee shall be paid an initial remuneration of Rs. 20,000/- by the Municipal Corporation of Ghaziabad.

6. The Municipal Corporation as well as GDA shall extend all assistance to the Committee Members so as to enable them to complete their work and file their report.

7. It will be open to the Applicant as also the Respondents to be present and express their views to the Committee at the time of inspection.

We make it clear that Senior Superintendent of Police, Ghaziabad shall provide necessary assistance to the Committee. Ms. Savitri Pandey, learned Counsel representing UP Government undertakes to instruct to provide necessary police assistance to the Committee so as to complete their work.

We expect that the Committee shall submit its detailed report before the Tribunal by the next date of hearing.

Interim order already passed shall continue to be in operation till the next date of hearing.

Learned Counsel appearing for the Applicant as well as Respondents are directed to give copies of entire papers to Ms. Parul Gupta, learned Advocate who is heading the Committee by today itself.

A copy of this order shall be served on the MoEF today itself.

Copy of Dasti order allowed.

Stand over to 31st March, 2014.

....., JM
(Dr. P. Jyothimani)

....., JM
(M.S. Nambiar)

....., EM
(Dr. G.K. Pandey)

....., EM
(Prof. (Dr.) P.C. Mishra)

....., EM
(Ranjan Chatterjee)



IN THE NATIONAL GREEN TRIBUNAL PRINCIPAL BENCH,

NEW DELHI

O.A No. 16 OF 2014

IN THE MATTER OF

SHRI HAZI ARIF

... APPLICANT

VERSUS

STATE OF UP & ORS.

... RESPONDENT

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THROUGH

Lushita Ghosh

ADVOCATES FOR BHUSHAN STEEL LTD.

for RANJANA ROY GAWAI

RRG & ASSOCIATES
ADVOCATES AND SOLICITORS

C-14, LOWER GROUND FLOOR,

CHIRAG ENCLAVE,

GREATER KAILASH-I

NEW DELHI-110048

PLACE: *New Delhi*

DATED: *07-08-14*

IN THE NATIONAL GREEN TRIBUNAL PRINCIPAL BENCH,

NEW DELHI

O.A No. 16 OF 2014

IN THE MATTER OF

SHRI HAZI ARIF

... APPLICANT

VERSUS

STATE OF UP & ORS.

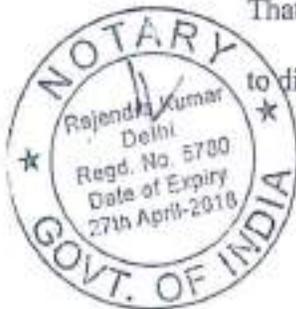
... RESPONDENT

AFFIDAVIT ON BEHALF OF M/S BHUSHAN STEEL LTD.,
PURSUANT TO ORDER DATED 11.07.2014 PASSED BY THE
HON'BLE NATIONAL GREEN TRIBUNAL.

I, Ravindra Rehani, S/o Late Shri. B.K. Rehani, aged about 52 years having my residence at M-1/116 Gulmohar Enclave, Nehru Nagar-3rd, Ghaziabad, presently in New Delhi, do hereby solemnly state and affirm as under:

I am the Deputy General Manager (Liasion) of M/s Bhushan Steel Ltd. ("the Company") and I am aware of the facts and circumstances of the case and am competent to swear and affirm the present Affidavit. That I have been duly authorized by the Company in this regard *vide* Power of Attorney dated 21.03.2008.

That *vide* Order dated 30.05.2014, this Hon'ble Tribunal has been pleased to direct as under:



" Let the UPSIDC also issue Notice to all the persons stated under heading D and F of the report of the Committee constituted by the Tribunal directing them to appear before the

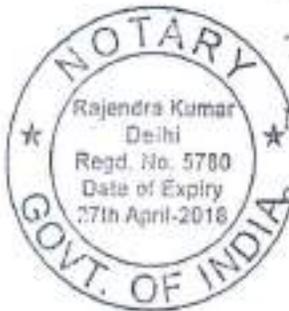
Tribunal and showcause why an appropriate direction be not issued for demolition of the construction made restoration of drain and awarding of compensation, if they are found to be faulting and their constructions are contrary to the law in force, including the Environmental Acts."

That since the name of the Company is stated under heading D of the report of the Committee, therefore in compliance of the Hon'ble Tribunal's above directions, I state as under:

1. That in the year 2000, there were discussions between the Chief Engineer, Nagar Nigam, Ghaziabad and officials of the Company for covering of the Nallah flowing in front of the Company's factory on link road. That the Chief Engineer visited the factory premises to inspect the site on 20.05.2000 to discuss proper arrangements of the cleanliness of the Nallah.
2. That as per the advice of the Chief Engineer given to the company on 20.05.2000, the company revised the drawing for covering of the Nallah making provisions for construction of 1 meter wide pre casted slabs at periodical distances instead of total RCC slab for easy access to the Nallah with the help of JCB. The revised drawing was sent to the Chief Engineer for his approval under the cover of a letter dated 15.07.2000. A true copy of the letter dated 15.07.2000 alongwith the revised drawing is annexed herewith and marked as **Annexure- A.**



3. That the said revised drawing was duly approved by the Nagar Nigam, Ghaziabad by an approval dated 20.08.2000 and the Nagar Nigam permitted the Company to cover the Nallah in accordance with the approved drawing. A true and correct copy alongwith the true translated copy of the approval dated 20.08.2000 is annexed herewith and marked as Annexure- B.
4. That the Nallah in front of the factory premises was covered in accordance with the drawing approved by the Nagar Nigam. That for the covering of the Nallah, the Company incurred a cost to the tune of Rs.30,00,000/- to 40,00,000/- during the period of year 2001-2002.
5. That the total length of covered Nallah by the Company in front of the factory premises is 81.50 Meters. In the Committee report dated 23.04.2014, it is incorrectly mentioned in the column related to the Company that the total length of the covered Nallah is 240.00 Meters.
6. That the Company took proper measures for cleaning and maintenance of the Nallah flowing in front of the factory premises. That a work contract for cleaning and maintenance was given to M/s M.K. House Keeping Contractor on 14.08.2002, and the same contract is still continuing till date. A true and correct copy of the



letter dated 14.08.2002 is annexed herewith and marked as Annexure-C.

7. That in the year 2008, in view of the scarcity of parking space for the visitors to the factory premises, the Company requested the Nagar Nigam for allotment of parking space. That the Nagar Nigam proposed the Nallah covered area in front of the factory premises on lease rent basis.
8. That by a letter dated 30.10.2008, the Company gave its consent for allotment of space on Nallah covered area for parking and requested for execution of a lease agreement. A true and correct copy of the Letter dated 30.10.2008 is annexed herewith and marked as Annexure-D.
9. That subsequently, the Nagar Nigam proposed beautification of the Nallah covered area.
10. By a letter dated 11.06.2009, the Nagar Nigam proposed the following three areas:

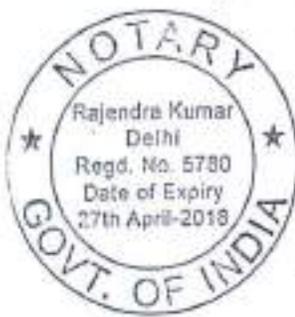


1.	Nallaha covered area	1461 Sq. Meters
2.	Lease rent for covered area	1065 Sq. Meters
3.	Green Belt area	2325 Sq. Meters

A true and correct copy alongwith the true translated copy of the letter dated 11.06.2009 is annexed herewith and marked as Annexure- E.

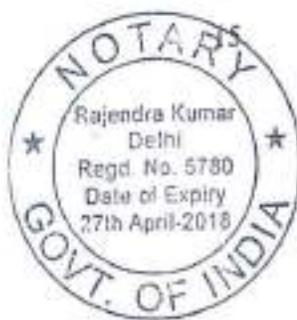
11. That by the said letter dated 11.06.2009 the Nagar Nigam also proposed a lease rent of Rs. 1,75,380/- for the covered Nallah area of 1461.50 sq. Meter @ Rs. 120 per Sq. Meter per year and Rs. 1,27,800/- for Pakka Area of 1065 Sq. Meter @ Rs. 120/- per Sq. Meter per year and Rs. 11,625 for 'Green Belt' of 2325 Sq. Meter @ Rs. 5/- per Sq. Meter per year. By the said letter, the Nagar Nigam also proposed Rs. 1,00,000/- as one time premium and Rs. 1,50,000/- as one time security (refundable).

12. That the Company accepted the Nagar Nigam's proposal in the above letter 11.06.2009. A cheque bearing no 620090 dated 04.06.2009 drawn on IndusInd Bank, Nehru Place Branch in favour of Nagar Nigam Ghaziabad for Rs. 1,50,000/- on account of refundable security and another cheque bearing number 620091 dated 04.06.2009 drawn on IndusInd Bank, Nehru Place Branch in favour of Nagar Nigam Ghaziabad for Rs. 7,29,610/- on account of one time premium and lease rent for two years were delivered to the Nagar Nigam under the cover of a letter dated 04.07.2009. A true and correct copy of the letter dated 04.07.2009 alongwith a copy of each of the cheques bearing number 620090 and 620091 are annexed herewith and marked as Annexure-F (Colly).



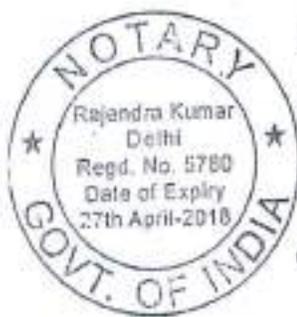
13. Eventually, on 18.01.2010, a License Deed was executed between the Nagar Nigam Ghaziabad through its Chief Engineer and the Company for a period of twenty eight years for the areas mentioned hereinabove at the above rates as agreed between the Nagar Nigam and the Company. That clause 15 of the said License Deed records that the Licensee (the Company) has already covered the Nallah portion in front of their plot as per the approved drawing of Nagar Nigam. A true and correct copy of the License Deed is annexed herewith and marked as **Annexure- G**.

14. That the Company has been regularly undertaking cleaning of the Nallah particularly before monsoon. By a letter dated 20.06.2013 written to the Executive Engineer (Traffic), Nagar Nigam, the Company confirmed that cleaning work of Nallah before Monsoon has been completed. Photographs of cleaning of Nallah were also enclosed in the said letter. A true and correct copy of the letter dated 20.06.2013 alongwith the photographs of cleaning of Nallah is annexed herewith and marked as **Annexure- H**.



That by a letter dated 25.02.2014, the Nagar Nigam directed the Company to inform the Nagar Nigam in respect of the arrangement for cleaning of the Nallah and if needed to present its case before this Hon'ble Tribunal. A true and correct copy alongwith the true translated copy of the letter dated 25.02.2014 are annexed herewith and marked as **Annexure- I (Colly)**.

16. That the Company duly informed the Nagar Nigam that it is regularly undertaking cleaning of the Nallah. A true and correct copy of the letter dated 26.02.2014 is annexed herewith and marked as **Annexure J**.
17. That the Company deposited the agreed lease rent in terms of the License Deed dated 18.01.2010 to the tune of Rs. 9,44,415/- for three years (from 18.01.2012 to 18.01.2015) by a cheque bearing number 033761 dated 07.03.2014. The cheque was delivered under cover of a letter dated 08.03.2014. A true and correct copy of the letter dated 08.03.2014 alongwith with a copy of cheque are annexed herewith and marked as **Annexure- K (Colly)**.
18. That the Company has not violated any term of the License Deed dated 18.01.2010 nor any provision of law however by a letter dated 15.05.2014 the Nagar Nigam, giving reference to the Report dated 23.04.2014 of the Committee constituted by this Hon'ble Tribunal that in the said Report in the column relating to the company, the Committee has commented that the Company has encroached the Green Belt which is in violation of the terms of the License Deed, the Nagar Nigam sought to impose a penalty of Rs. 2,00,000/- and directed removal of the alleged encroachment. A true and correct copy alongwith a true translated copy of the letter dated 15.05.2014 is annexed herewith and marked as **Annexure-L**.



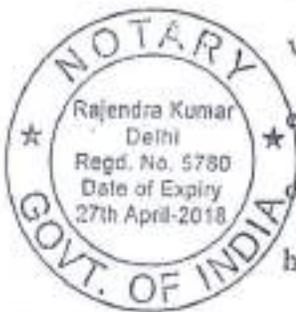
19. That as per the Ghaziabad Master Plan, there is no Green Belt in Sahibabad Industrial Area. The factory premises of the Company is situated entirely in the Sahibabad Industrial Area. A true and correct copy of the Master Plan of Ghaziabad Development Corporation (GDA) is annexed herewith and marked as Annexure-M.
20. That the Green Belt area mentioned in the License Deed dated 18.01.2010 is a green patch for beautification purpose. That the Company has never tampered with the green patch area mentioned in the License Deed.
21. The above correct position was duly conveyed by the Company to the Nagar Nigam by a letter dated 20.05.2014 in response to Nagar Nigam's letter dated 15.05.2014. That since the officials of the Nagar Nigam misdirected the Company that this Hon'ble Tribunal has required the Company to remove tiles from the 'Pakka Area' (which is not part of the green patch mentioned in the License Deed), the Company removed the tiles from the 'Pakka Area' and converted the same in green patch. To the letter dated 20.05.2014, photographs to evidence converting the 'Pakka Area' to green patch were also enclosed. However the Company clarified that there is no violation of the Company's License Deed and therefore the allegation of encroachment or violation of any term of the License Deed is incorrect. Accordingly the Company requested the Nagar Nigam to drop the penalty of Rs. 2,00,000/-. A true and correct



copy of the letter dated 20.05.2014 alongwith the photographs are annexed herewith and marked as Annexure-N.

22. That by a letter dated 09.06.2014, the Nagar Nigam, giving reference to the order dated 30.05.2014 of this Hon'ble Tribunal, directed the Company (amongst other parties) to ensure that there is no hindrance in the natural flow of the Nallah. The Nagar Nigam also informed that since the monsoon is about to arrive therefore cleaning of the Nallah before advent of monsoon is part of the Company's responsibility. A true and correct copy alongwith a true translated copy of the letter dated 09.06.2014 is annexed herewith and marked as Annexure-O.

23. That in response to the letter dated 30.05.2014 of the Nagar Nigam, the Company wrote a letter dated 24.06.2014 informing the Nagar Nigam that the Company is regularly cleaning the said Nallah and that during the month of March,2014 also, the Company has cleaned the covered portion of the Nallah between 12.03.2014 and 15.03.2014 and that intimation for the same was conveyed to the Nagar Nigam by the Company's letter dated 20.03.2014. The Company requested the Nagar Nigam to depute its Engineers to verify the position. Latest Photographs of cleaned Nallah were also enclosed with the letter dated 20.03.2014. A true and correct copy of the letter dated 24.06.2014 alongwith the Photographs is annexed herewith and marked as Annexure- P.



24. That, I have read through and understood the contents of the accompanying appeal and find the same to be true and correct to the best of my knowledge and are based on records.
25. That the annexures are the true copies of their respective originals.

DEPONENT

I state that I have read the contents of the present Affidavit. I state that the facts contained hereinabove are true and to the best of my knowledge and belief, and the submissions are based on the legal advice received and believed to be true and nothing material has been concealed thereof.

I state that the said Affidavit has been drafted under my instructions and are true and correct to my knowledge.

I state that the Annexures are true and correct copies of the original documents.

[Signature]
DEPONENT

VERIFICATION:

Verified at New Delhi on this 7th day of August, 2014 that the contents of Paras _____ to _____ of the Affidavit are true and correct to my own knowledge. No part of it is false, nothing material has been concealed there from.

Identified
[Signature]
Vidyanjay Singh
12/8/2014

[Signature]
DEPONENT



DEPONENT READ AND UNDERSTOOD EXPLAINED TO THE DEPONENT EXECUTANT WHO IS SEEMED PERFECTLY UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT DELHI ON 07.08.2014 IDENTIFIED BY *[Signature]* IDENTIFY THE EXECUTANT/DEPONENT WHO SIGNED IN MY PRESENCE

ATTESTED
[Signature]
RAJENDRA KUMAR
NOTARY, DELHI-R-5780
GOVERNMENT OF INDIA
SUPREME COURT OF INDIA
COMPOUND, NEW DELHI
Register Pg./Sl. No. 07.08.2014

080212

**BHUSHAN**

Works :

23, Site-IV, Sahibabad Industrial Area,
Sahibabad, Uttar Pradesh - 201010 INDIA
Tel. : (0091-575) 4770601 (8 LINES)
Fax : (0091-575) 4770509, 4773602
E-mail : bslsbdl@psnsdl.01.vsnl.net.in
Grams : BHUSHAN IND.

BSSL/ADMN/2000
15TH JULY, 2000

✓ The Chief Engineer
NAGAR HIGAM
GHAZIABAD.

Kind Attn : MR. Shukla

SUB : covering of Nallah flowing in front of our factory
M/s Bhushan Steel & Strips Limited .

Please refer to the discussions the undersigned had with you during your visit to our factory to inspect the site on 20.5.2000 regarding the revision of drawings by making proper arrangements for cleanliness of Nallah through JCB .

As per your advice we have revised the drawing for covering of Nallah, making provisions for constructions of 1 MTR wide pre casted slabs at periodical distances instead of total RCC slab for easy access to clean the Nallah with the help of JCB .

We hope you will find the changes incorporated in the drawing in order and accord your requisite permission for covering of Nallah .

Thanking You,

Yours faithfully
M/s BHUSHAN STEEL & STRIPS LIMITED


AUTHORISED SIGNATORY

Encl : As above .

cc TO : The Mulhya Nagar Adhikari
Nagar Higan, Ghaziabad.

2A 17/7/2000
20 8/12/00 cut
Revised
18/7

Logo

Municipal Corporation, Ghaziabad

Office of the Chief Municipal Officer, Municipal Corporation,
Ghaziabad,

Letter No./Secy.-Mun.Off./371
Dated: 20-08-2000

M/s. Bhushan Steel & Streep Limited
23, Site-4, Sahibabad Industrial Area
Ghaziabad.

In response to your letter/application dated 15-07-2000 annexed therewith the site plan, related to covering the Drain, opposite to M/s. Bhushan Steel & Streep Limited, 23, Site-4, Sahibabad Industrial Area, it is to be informed that according to the site plan filed by you, the Ghaziabad Municipal Corporation has no objection to cover the Drain.

Chief Municipal Officer
Ghaziabad Municipal Corporation.

BSSL/ADMN/2002
14th August, 2002

M/s M.K.House Keeping Contractor
Rajeev Colony, Near Railway Station
Sahibabad, Ghaziabad.

H.O. & Works :
23, Site-IV, Sahibabad Industrial Area,
Sahibabad, Uttar Pradesh - 201010 INDIA
Tel. : (0091-120) 4770601 (8 LINES)
Fax : (0091-120) 4770509, 4773602
E-mail : bsslbd@bhushansteel.com

Kind Attention : Prop.Harish Prasad.

Sub : Work Contract for cleaning and maintenance of nallah flowing
In front of our factory premises at plot no.23, Site -IV, Ind Area
Sahibabad, Ghaziabad.

Dear Sir,

Please refer to your quotation dated 12th August, 2002 regarding cleaning and maintenance of nallah flowing in front of our factory premises. We are pleased to place a work order for cleaning and maintenance of nallah covered with RCC and flowing in front of our factory premises as per terms and conditions agreed as under :-

1. Job Specification : You will inspect the nallah first week of every month and in case it is require to clean the nallah it will be get done immediately. However you shall clean the nallah with help of equipments and manual through your workmen after every three months.

2. Equipments & Man power : All the equipments related to cleanliness of nallah will be provided by the company including JCB . However work men will be deputed by you for cleaning the nallah .

3. Job Supervision : All the inspections, cleaning and maintenance shall be done under your own supervision only.

4. Escalation : - This is a Rate Contract and no escalation shall be payable in any case.

5. Laibilities of Man Power : All the laibilities related to man power shall be born by you and Company will not be responsible in any manner.

6. Payments :- You shall be paid Rs.2000/per month which shall be paid after every 3 months after raising your work Bill.

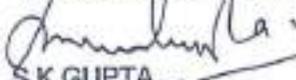
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17

All the work shall be carried out diligently and faithfully and to the entire satisfaction of our Civil Engineer and you shall be reporting the status of work to Mr. S.K.Jain.
You are requested to kindly receive the copy of work contract as a token of acceptance of terms and conditions.

Thanking You,

Yours faithfully,
For Bhushan Steel & Strips Limited


S.K.GUPTA
Asstt.General Manager (P&A)

मि. सुकेश कुमार
को प्रेषित किया

(no)
14/01/2012

BSL/ADMN/2008
30th October, 2008**The Municipal Commissioner
NAGAR NIGAM
GHAZIABAD.**23, Site - IV, Sahibabad Industrial Area,
Sahibabad, (U.P.), (Pin 201010) INDIA
Tel. : +91 120 2770601-2770604
Fax : +91 120 2770509-2773602
Web Site : www.bhushansteel.com**Kind Attn : Shri.Ajay Shanker Pandey.****Sub : Request for allotment of parking space in front of our
factory premises at nallaha covered area on lease rent basis.**

As you are aware we have covered the nallah flowing in front of our factory on link road vide Nagar Nigam permission letter no.sachiv/mna/37 dated 20.08.2000. During discussion with yourself, you have conveyed the proposal for parking space, on lease rent basis.

We hereby give our consent for allotment of space on nallaha covered area for parking for our visitors. Since the Nallaha is covered by us at our own cost.You are therefore, requested to kindly allot the above space to us for parking purpose. We are ready to pay the lease rent as per the norms fixed by your goodself with the Sahibabad Link Road Enterprneur Association .

Kindly provide the details for executing the lease Agreement.An early action in this regard shall be highly appreciated.

Thanking You,

Yours faithfully,
For Bhushan Steel Limited
Authorised Signatory
Ajay
1-16-08

कार्यालय अधिशासी अभियन्ता, गाजियाबाद नगर निगम

पत्रांक ३४३ - निर्माण/2009-10

दिनांक : 11/6/09

मैसर्स-भूषण स्टील लि०
23, साईड - 4, औ०धे०
साहिबाबाद।

विषय:- 23, साईड-4 औ०धे० साहिबाबाद में नाले को कवर कर सीवर को सुरक्षित करने के सम्बन्ध में।

महोदय
कृपया उपरोक्त विषयक के सम्बन्ध में इस कार्यालय के पत्रांक 32/निर्माण/2009-10 दिनांक 28.04.2009 का संदर्भ ग्रहण करने का कष्ट करें। गाजियाबाद नगर निगम द्वारा प्रो. विमान्ड पर आपकी प्रतिनिधि द्वारा आपसि व्यक्त की गई थी। जिसके क्रम में, आपके प्रतिनिधि द्वारा नगर निगम के अभियन्ताओं द्वारा संयुक्त निरीक्षण कर नुदियां को संशोधित करते हुये, पुनः निष्ठागसार निर्माण प्रेषित किया जा रहा है:-

अवकाश नाले का क्षेत्रफल - (पार्ट - A):

70 x 18.50 = 1295.0 M2

37 x 4.50 = 166.50 M2

@ 120/- per year 1461.50 M2

प्रयोग का लीज रेन्ट @ 120/- per m2 per year 175380.00

निर्माण का लीज रेन्ट 175380.00

अवकाश क्षेत्रफल (जो प्रयोग में लाया जा रहा है) -

70 x 2 = 140.0 M2

37 x 25 = 925.0 M2

@ 120/- per year 1065.0 M2

प्रयोग का लीज रेन्ट @ 120/- per m2 per year 127800.00

निर्माण का लीज रेन्ट 127800.00

* ग्राउंड रेंट - (पार्ट - B)
 70 x 20 = 1400.0 M2
 37 x 25 = 925.0 M2

@ 5/- 2325.0M2

* ग्राउंड रेंट का लीज रेंट @ 5/-
 * ग्राउंड रेंट का लीज रेंट

11625.00

11625.00

62960.00

100000.00

150000.00

87960.00

* One Time Premium
 * One Time Sececurity (Refundable)

उपरोक्त धनराशि के साथ 100-100 रु के Non Judicial P2 स्टाम्प पेपर के साथ
 प्रमाण की रजिस्ट्री, प्राधिकरण द्वारा स्वीकृत मानचित्र एवं गाले के ऊपर गूडे स्लैब की
 Technical Sefty के समन्वय में वास्तविक डिजाईनर का सर्टीफिकेट प्रस्तुत करवाया फाट करे,
 जिसमें ध्वज स्टील एवं गाजियाबाद नगर निगम के मध्य अनुबन्ध की कार्यवाही नियमानुसार
 समाहित की जा सके।

(ए.के.सिंह)

अधिसारी अभियन्ता
गाजियाबाद नगर निगम

(ए.के.सिंह)

अधिसारी अभियन्ता

1. नगर अभियन्ता महोदय को सूचना।
2. मुख्य अभियन्ता महोदय को सूचना।

Mr. Prakash Tiwari

two
 Please arrange cheques for Rs 8,79,610/-
 in favour of NAGAR NIGAM, Ghaziabad

2/9/09

- Rs 729,610/- of
 Rs 1150,000/- of

Rs 8,79,610/-

on

✓

BHUSHAN STEEL LIMITED

BSL/ADMN/2009
4th July, 2009



The Executive Engineer (Construction)
Nagar Nigam
Navyng Market
Ghaziabad (U.P)

23, Site-IV, Sahibabad Industrial Area,
Sahibabad, (U.P), Pin 201010 INDIA
Tel. +91 120 2770601-4, 3028000-03
Fax +91 120 2770509, 2773602
Web Site www.bhushansteel.com

Ref : Our letter no.01/11/08 regarding Lease Agreement for
beautification on nallaha covered area.

Sub : Your letter no.282/construction/2009-10 dated 11/06/09.

Dear Sir,

We are in receipt of your above said letter no.282/construction/2009-10 dated 11/06/09 regarding demand notice for lease agreement of beautification at nallaha covered area in front of our factory premises .

We are sending herewith one cheque no.620090 dated 4th June,2009 for Rs.1,50,000/- on account of refundable security and another cheque no.620091 dated 4th June,2009 for Rs. 7,29,610/- on account of one time premium and lease rent for two years.

Two Non Judicial Stamp Papers worth Rs.100 each has already been delivered to you and rest of the documents also has already been submitted alongwith our letter dated 1.11.08 .

You are therefore requested to kindly inform us the date of execution of lease Agreement . However you may revert back to us for further information or documents if any required by you.

Thanking You,

Yours faithfully,
For Bhushan Steel Limited

[Signature]
Authorised Signatory
Encl : As above.

२२

IndusInd Bank  Not over Rs. Twenty five Lacs only 4/7/2009

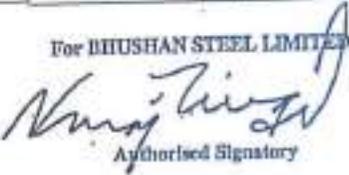
PAY Nagar Nigam Ghaziabad. OR ORDER

RUPEES Seven Lacs twenty Nine thousand Rs. 7,29,610/-
Six hundred ten only

A/C No. 0012-B25715-020

IndusInd Bank Limited
 Nehru Place Branch
 F Block, Gr. Flr.,
 International Trade Tower,
 Nehru Place, New Delhi - 110 019.
 IFSC : INDB0000012

AG PAYEE'S ONLY

For BHUSHAN STEEL LIMITED

 Authorized Signatory

Payable At Par At All Branches

620091 0002340001 000056* 29

IndusInd Bank  Not over Rs. Twenty five Lacs only 4/7/2009

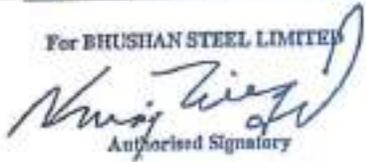
PAY Nagar Nigam Ghaziabad. OR ORDER

RUPEES One Lac fifty thousand only Rs. 1,50,000/-

A/C No. 0012-B25715-020

IndusInd Bank Limited
 Nehru Place Branch
 F Block, Gr. Flr.,
 International Trade Tower,
 Nehru Place, New Delhi - 110 019.
 IFSC : INDB0000012

AG PAYEE'S ONLY

For BHUSHAN STEEL LIMITED

 Authorized Signatory

Payable At Par At All Branches

620090 0002340001 000056* 29

@ 120 per year	1065.0 M2	
Lease rent for first year: @ 120/- per m2 per year		: 127800.00
Lease rent for second year		127800.00
* Green Belt (Part B)		
	70 x 20 = 1400.0 M2	
	37 x 25 = 925.0 M2	
@ 5/- per year	2325.0 M2	
Lease rent for first year: @ 5/-		: 11625.00
Lease rent for second year		11625.00

		629610.00
* One Time Premium		100000.00
* One Time security (Refundable)		150000.00

		879610.00

Please produce the original Architect's Certificate in respect of technical Safety of upper slab of Nala alongwith aforesaid sum, non-judicial stamp paper of Rs.100-100, registry of land and the sanctioned plan issued by the Authority, so that the process of contract between Bhushan Steel and Ghaziabad Municipal Corporation can be executed.

Sd/-
(A. K. Singh)
Junior Engineer- Transport

CC:

1. Municipal Corporation for information

BHUSHAN STEEL LIMITED

BSL/ADMN/2009
4th July, 2009

**BHUSHAN**

The Executive Engineer (Construction)
Nagar Nigam
Navyug Market
Ghaziabad (U.P)

23, Site-IV, Sahibabad Industrial Area,
Sahibabad, [U.P], Pin 201010 INDIA
Tel. +91 120 2770601-4, 3028000-03
Fax +91 120 2770309, 2773602
Web Site www.bhushansteel.com

Ref : Our letter no.01/11/08 regarding Lease Agreement for
beautification on nallaha covered area.

Sub : Your letter no.282/construction/2009-10 dated 11/06/09.

Dear Sir,

We are in receipt of your above said letter no.282/construction/2009-10 dated 11/06/09 regarding demand notice for lease agreement of beautification at nallaha covered area in front of our factory premises .

We are sending herewith one cheque no.620090 dated 4th June,2009 for Rs.1,50,000/- on account of refundable security and another cheque no.620091 dated 4th June,2009 for Rs. 7,29,610/- on account of one time premium and lease rent for two years.

Two Non Judicial Stamp Papers worth Rs.100 each has already been delivered to you and rest of the documents also has already been submitted alongwith our letter dated 1.11.08 .

You are therefore requested to kindly inform us the date of execution of lease Agreement . However you may revert back to us for further information or documents if any required by you.

Thanking You,

Yours faithfully,
For Bhushan Steel Limited

[Signature]
Authorised Signatory
Encl : As above.

IndusInd Bank  Not over Rs. 100000/- 4/7/2009 189

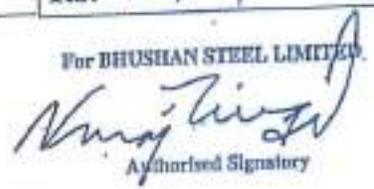
PAY Nagar Nigam Ghaziabad. OR ORDER

RUPEES Seven Lacs Twenty Nine Thousand Rs. 7,29,610/-
Six hundred for only

A/C No. 0012-B25715-020

IndusInd Bank Limited
 Nehru Place Branch
 F Block, Gr. Flr.,
 International Trade Tower,
 Nehru Place, New Delhi - 110 019.
 IFSC : INDB0000012

A/C PAYEE'S ONLY

For DHUSHAN STEEL LIMITED

 Authorized Signatory

Payable At Par At All Branches

⑈62009⑈ 000234000⑈ 000056⑈ 29

IndusInd Bank  Not over Rs. 100000/- 4/7/2009

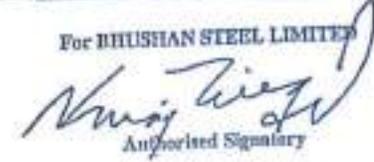
PAY Nagar Nigam Ghaziabad. OR ORDER

RUPEES One Lacs fifty thousand only Rs. 1,50,000/-

A/C No. 0012-B25715-020

IndusInd Bank Limited
 Nehru Place Branch
 F Block, Gr. Flr.,
 International Trade Tower,
 Nehru Place, New Delhi - 110 019.
 IFSC : INDB0000012

A/C PAYEE'S ONLY

For DHUSHAN STEEL LIMITED

 Authorized Signatory

Payable At Par At All Branches

⑈620090⑈ 000234000⑈ 000056⑈ 29



दिल्ली DELHI

K 093323

License Deed

This License deed agreement is made on this 18-1 day of 2018 two thousand and nine between Nagar Nigam Ghaziabad through its authorized signatory Chief Engineer, Nagar Nigam, Ghaziabad, a body corporate constituted under the Nagar Nigam Act (herein after called the LICENSOR which expression shall unless the context does not so admit include its assignee and successors) of the one part and M/S BHUSHAN STEEL LTD. A company incorporated under companies' act 1956 through its authorized signatory shree P.K AGRAWAL Vice President Commercial affairs herein after called the LICENSEE who is carrying business over the plot no. 23 Site-iv Sahibabad Industrial Area, Sahibabad which is towards West of drain(nala).

For Bhushan Steel Limited


मुख्य वित्तियोगी


P.K. Aggarwal
(Vice President)

WHERE AS the nala herein after described, forms part of the nala belongs to the LICENSOR, Nagar Nigam, Ghaziabad has the right and is the competent authority to enter in to this LICENSE agreement with LICENSEE.

and without providing passage to the LICENSEE it is not possible to use the plot No 23 Site-iv Sahibabad Industrial Area, Sahibabad which is on Where as the LICENSEE has already covered the said portion of nala with prior approval of Nagar Nigam and now the Licensee has agreed to take the nala on License basis for a period of twenty-Eight Years on the terms and condition hereinafter appearing, for the purpose of using as parking which is in East north of Licensee's plot/premises whose area width are about 107.0 Mt or 1461.50 Sq Mtrs. the West side of nala. The plot/premises of the LICENSEE is surrounded by plot / premises of other persons and the only way is towards West and the LICENSEE is using the same passage for going to his plot/premises.

That the LICENSEE is desirous to use already covered/constructed portion of covered nala (RCC cover on entire length & width in front of premises) for reaching his property, that the nala was covered for safety, to avoid bad smell (which is harmful for the health)and is unhygienic for the persons coming to the Licensee plot/premises.

NOW THE INDENTURE WITNESSETH AS UNDER :

That in consideration of the licensee fee hereby reserved and the covenants, conditions and agreements here in after contained and on the part of the LICENSEE'S to be paid, observed or performed, the LICENSOR do here by demise into the LICENSEE the property, more particularly described in the schedule hereto, hold the same unto the LICENSEE.


मुमुन अशिरवता

For Bhushan Steel Limited


P.K. Aggarwal
(Vice President)

LICENSEE consents to do as under in consideration to permission from LICENSOR to use already covered portion of nala permanently:-

1. That the LICENSEE has and area of ~~1065.0 M² @ 120/- per Sq Mtr~~ in front of their plot of land / premises. The licensee fee of ~~1,27,800/-~~ paid in advance each year. At the time of executing of agreement, LICENSEE is to deposit Rs 3,50,760/- As two year LICENSEE fee.
2. LICENSEE shall pay a security deposit of Rs. 1,50,000 /- to LICENSOR by way of Demand Draft / Cheque. This security is refundable after the LICENSE period and this security deposit does not attract any interest.
3. That the security deposit amount will be forfeited if the LICENSEE vacates the nala before the LICENSE period.
4. LICENSEE shall pay a one time premium fee of Rs. 100000/- by way of Demand Draft / Cheque.
5. LICENSEE shall pay a LICENSE fee has and area of 1065.0 M² @ 120/- per Sq Mtr per year of the LICENSOR. The licensee fee of Rs. 1,27,800/- is to paid in advance each year. At the time of executing of agreement, LICENSEE is to deposit Rs 2,55,600/- As two year LICENSEE fee.
6. LICENSEE shall pay a LICENSE fee has and area of 2325.0 M² @ 5/- per Sq Mtr per year of the LICENSOR for Green Belt. The licensee fee of Rs. 11,625/- is to paid in advance each year. At the time of executing of agreement, LICENSEE is to deposit Rs 23,250/- As two year LICENSEE fee.
7. LICENSEE will pay this LICENSE fee with in 30 days of due date and payment beyond this period will attract interest @ 15% per annum.
8. LICENSEE has to pay this LICENSEE fee only by way of Demand Draft or Cheque and in no way cash will be accepted.
9. That the LICENSEE is liable to maintain the LICENSE property and has to bear the expenses of beautification over the LICENSE hold property.
10. That the LICENSEE is to, bear-entire cost of covering the nala and bear all expenses for construction of a permanent guard room or other temporary construction, as per his necessity on the LICENSE property.
11. Detail of plot is shown as A, nala is shown as B, Kachhi road as shown as C, main road is shown as E in enclosed sketch. That the place of LICENSE is shown in the enclosed map by letter B with passage to approach by two 25 ft. wide passage shown as letter E (This approach shows as E can not be encroached by



सुदर सिंह

For Jushan Steel Limited



P.K. Aggarwal
(Vice President)

- LICENSEE or allotted for parking or other purpose by the LICENSOR. That the land lying between nala and road in front of the LICENSEE plot shown as C also be given to the LICENSEE (till road widening is done) at present green belt rates, charges and condition fixed by LICENSOR.
12. That the LICENSEE shall bear the expenses of stamp on LICENSE deed and registration of this agreement.
 13. That the lessee and sub-lessee (Owner and Tenant as per UPSIDC) will not have the right to sub-LICENSE the covered nala without permission from Nagar Nigam GHAZIABAD.
 14. That if LICENSEE fail to deposit LICENSE fee for one year, then a notice under section 111 of Transfer of Property Act may be given by LICENSOR and this LICENSE will stand cancelled. Only after pay of unpaid LICENSE fee, interest there on and processing fee of Rs. 50,000/- LICENSE may be restored on same terms and conditions.
 15. The Licensee has already covered the nala portion in front of their plot as per the approved drawing of Nagar Nigam
 16. The LICENSEE will bear all cost of such construction and have full right and title of the construction thereon.
 17. That LICENSEE will keep the nala in front of the premises clean, maintain its flow, width and to stop floating and solid waste coming from previous source.
 18. The LICENSEE can only display advertisement related to his business (LESSEE and SUB-LESSEE of UPSIDC) without any charges. In case if any other advertisement is entertained by LICENSEE that LICENSOR would have advertisement revenue rights.
 19. In case LICENSEE is discharging any harmful effluent in the nala then the same has to be tested and treated before the same is discharged by LICENSEE.

→ P.K.
पुस्तक विक्रेता

For Chughan Coal Limited


P.K. Aggarwal
(Vice President)

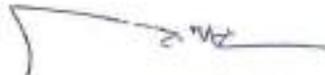
The LICENSOR consents to do as under in consideration of LICENSE fee received by them:

1. That the LICENSOR will not damage the coverage portion constructed by LICENSEE on nala during the period of LICENSE.
2. That the LICENSOR will facilitate and issue recommendation letter to LICENSEE in case of any requirement from concerned authorities or government bodies.
3. LICENSOR will give preference to LICENSEE for allotment of parking rights in lieu of consideration in front of the LICENSED nala during the period of LICENSE.
4. In case of any natural calamities, i.e. over-raining or nala choking, the LICENSOR may under take to get the nala cleaned by removing slabs.

Now LICENSOR and LICENSEE together consent as under:

1. That in any case this LICENSE agreement cannot be terminated before the period of twenty eight year by either party, unless there is breach of and condition of this license agreement.
2. That expiry of LICENSE period of twenty eight years, LICENSEE has an option to take the LICENSEE property further and if the LICENSEE his consent to the licensor than the LICENSOR has the right to deny or further let-out the LICENSE property on the new terms settled between LICENSOR and LICENSEE.

Witness:


मुख्य अधिकारी

For Essar Steel Limited



P.K. Aggarwal
(Vice President)

BHUSHAN STEEL LIMITED**BHUSHAN**

BSL/UPSIDC/2013

20th June, 2013

The Executive Engineer(Traffic)
Nagar Nigam
Ghaziabad (U.P)

23, Site-IV, Sahibabad Industrial Area,
Sahibabad, (U.P), (Pin 201010) INDIA
Tel: +91 120 2770601-2770604
Fax: +91 120 2770509, 2773602
Web Site : www.bhushan-group.org

Sub : Cleaning of drains before monsoon in terms of Agreement
executed between Bhushan Steel Limited and Nagar Nigam,
Ghaziabad.

Dear Sir,

This is in reference to your letter no.16/construction/BOT/2013-14 dated 15.06.2013 conveying us to clean the drain flowing in front of our factory in terms of Agreement.

In this regard we would like to bring into your kind notice that the cleaning work of nallaha has been completed by us, flowing in front of our factory and as well as Link road thana side also. Photographs of cleaning of Nallaha are enclosed for your reference. You are therefore, requested to kindly depute your Engineer to verify the cleaning work.

This is for your information and necessary advise please.

Thanking You,

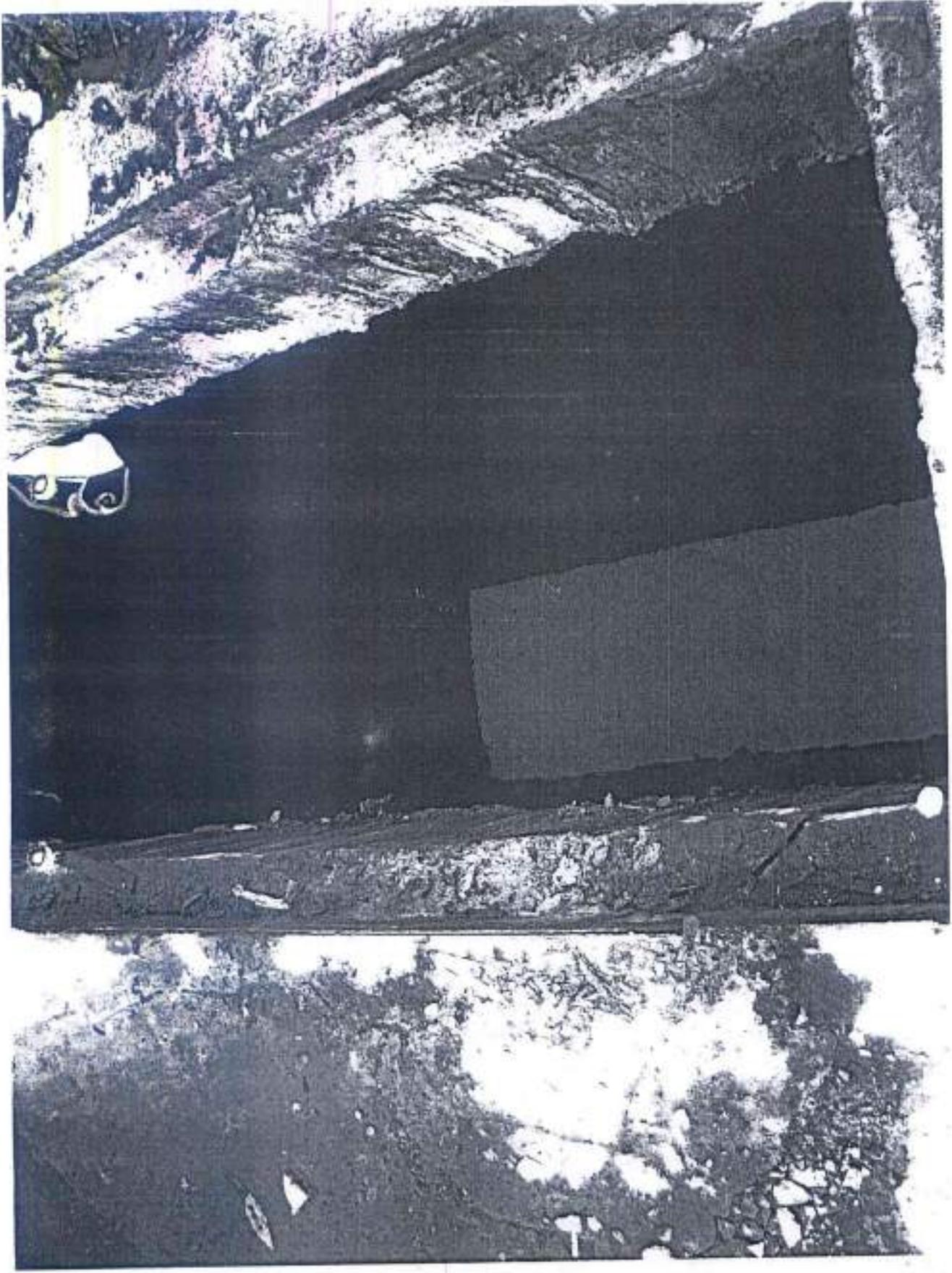
Yours faithfully,

For Bhushan Steel Limited

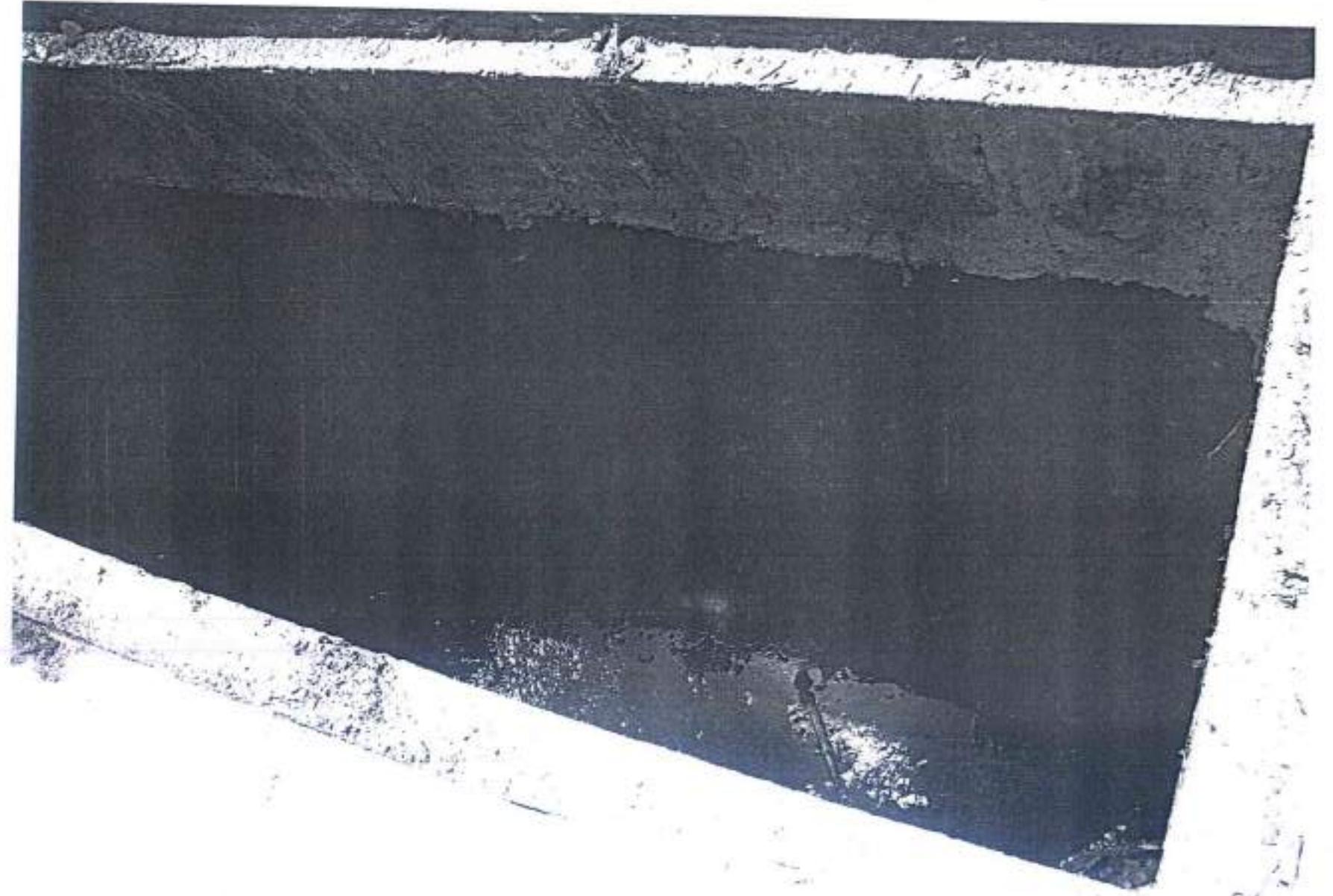
[Signature]
Authorised Signatory

Encl : As above.

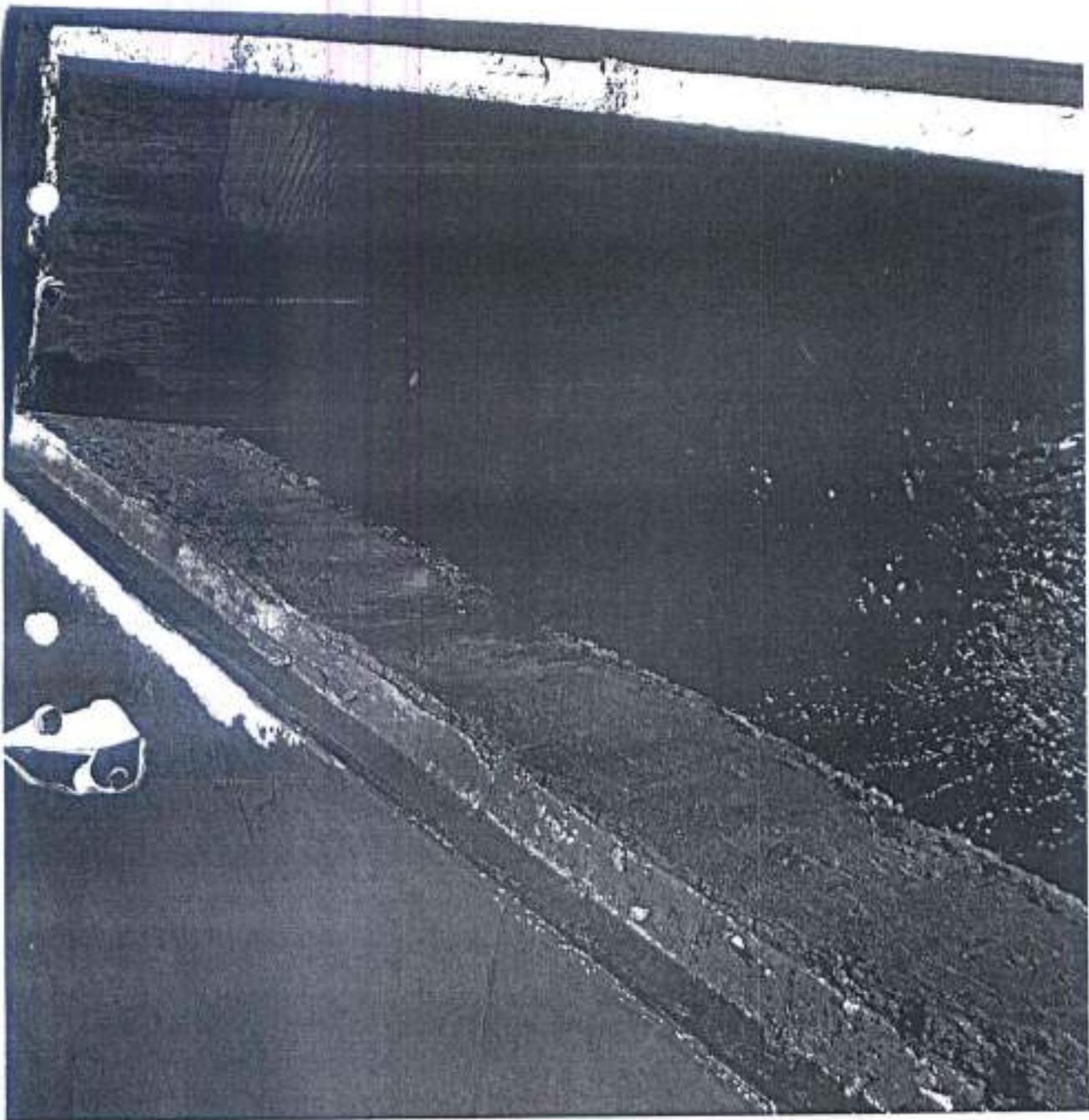
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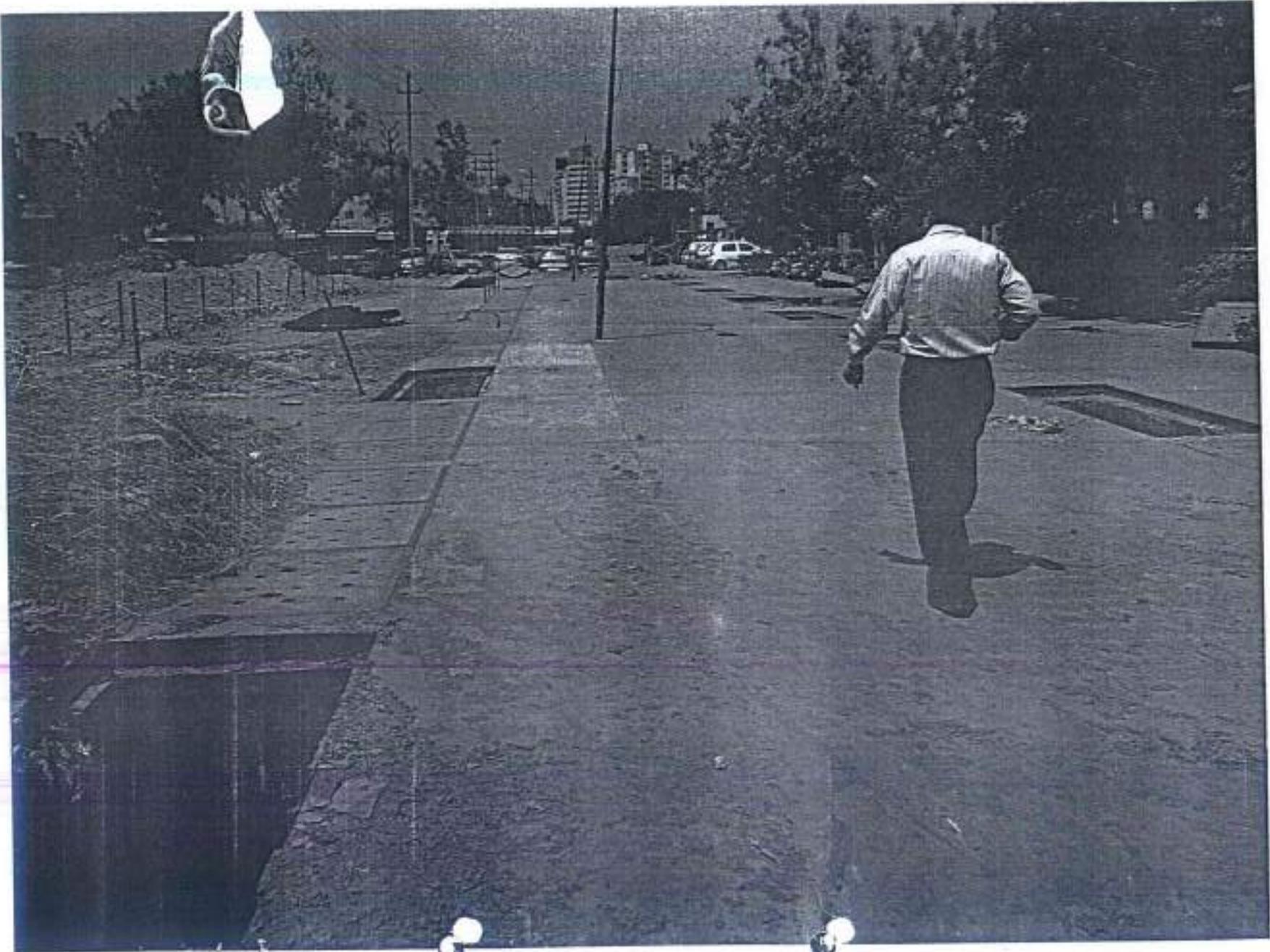
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गाजियाबाद नगर निगम, गाजियाबाद

(I.S.O. 9001, 14001 व 18001 प्रमाणित संस्था)

प्रेषक,

अधिसासी अभियन्ता-यातायात
गाजियाबाद नगर निगम
गाजियाबाद।

सेवा में,

मैसर्स भूषण स्टील लि०
प्लॉट नं० 23 साईड-4 औ०के०
साहिबाबाद, गाजियाबाद

पत्रांक 99/निर्माण/यातायात/2013-14

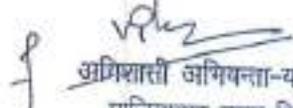
दिनांक : 25.02.2014

विषय:- नाले को कवर किये जाने के सापेक्ष मान० नेशनल ग्रीन ट्रिब्यूनल के समक्ष प्रस्तुत प्रार्थना पत्र सं० 16/2014 श्री हाजी आरिफ अध्यक्ष, राष्ट्रीय किसान विग्रेड बनाम उत्तर प्रदेश सरकार व अन्य के सम्बन्ध में।

महोदय,

उपरोक्त विषयक के सम्बन्ध में आप अवगत है कि आपके एवं नगर निगम गाजियाबाद के मध्य दिनांक 18.01.2010 को निष्पादित अनुबन्ध की शर्तों के अधीन प्लॉट नं० 23 साईड-4 औ०के० साहिबाबाद, गाजियाबाद पर नगर निगम द्वारा नाला कवर किये जाने की अनुमति प्रदान की गई थी। जिसमें समय-समय पर नाले की सफाई कराने का सम्पूर्ण दायित्व आपका है। इस सम्बन्ध में मान० नेशनल ग्रीन ट्रिब्यूनल के समक्ष प्रस्तुत प्रार्थना पत्र सं० 16/2014 श्री हाजी आरिफ अध्यक्ष, राष्ट्रीय किसान विग्रेड बनाम उत्तर प्रदेश सरकार व अन्य प्रस्तुत की गई है, जिसमें नाला सफाई संतोषजनक न होने की आपत्ति की गई है।

अतः आप द्वारा नाला सफाई के सम्बन्ध में क्या व्यवस्था की गई है, उससे नगर निगम को अवगत कराते हुये आवश्यकतानुसार अपने स्तर से भी मान० नेशनल ग्रीन ट्रिब्यूनल के समक्ष अपना पक्ष प्रस्तुत करने का कष्ट करें।


अधिसासी अभियन्ता-यातायात
गाजियाबाद नगर निगम

प्रतिलिपि:-

1. नगर आयुक्त महोदय को सूचनाार्थ।
2. अधिसासी अभियन्ता, यू.पी.एस.आई.डी.सी, गाजियाबाद को सूचनाार्थ।

अधिसासी अभियन्ता-यातायात
गाजियाबाद नगर निगम

**Ghaziabad Municipal Corporation,
Ghaziabad**

(I. S. O. 9001; 14001 & 18001 Certified Organization)

From:

Junior Engineer - Transport
Municipal Corporation of Ghaziabad,
Ghaziabad.

To

M/s. Bhushan Steel & Streep Limited
23, Site-4, Sahibabad Industrial Area, Sahibabad,
Ghaziabad.

Letter No.99/Construction/2013-14

Dated: 25-02-2014

Subject: In respect of Application No.16/2014, Shree Haji Arif, President, Rashtriya Kisaan Brigade vs. state of Uttar Pradesh and others, presented before the National Green Tribunal, with regard to the covering the Drain.

Sir,

You are aware of the above mentioned subject matter that you had been granted permission by the Municipal Corporation to cover the drain on the basis of the terms of the Agreement dated 18-01-2010, arrived at between you and the Municipal Corporation of Ghaziabad. According to the agreement, you have the responsibility of cleaning the drains from time to time.

In this regard, an Application No.16/2014, titled as Shree Haji Arif, President, Rashtriya Kisaan Brigade vs. state of Uttar Pradesh and others, has been preferred before the National Green Tribunal, in

which the objection with regard to the unsatisfactory cleaning of drains has been raised.

Therefore, you are requested to inform about the steps taken by you for cleaning the drain to the Municipal Corporation and in this regard, you may also file your response before Hon'ble the National Green Tribunal.

sd/-
Junior Engineer- Transport
Ghaziabad Municipal Corporation

C

Copy to:

1. Municipal Commissioner, for information.
2. Junior Engineer, UPSIDC, Ghaziabad, for information.

sd/-
Junior Engineer- Transport
Ghaziabad Municipal Corporation

C



B/c

BHUSHAN STEEL LIMITED



BHUSHAN

BSL/UPSIDC/2014

26th February, 2014

The Executive Engineer(Traffic)
Nagar Nigam
Ghaziabad (U.P)

23, Site-IV, Sahibabad Industrial Area,
Sahibabad, (U.P), [Pin 201016] INDIA
Tel: +91 120 2770601-2770604
Fax: +91 120 2770509, 2773602
Web Site : www.bhushan-group.org

Sub : Cleaning of drains before monsoon in terms of Agreement
executed between Bhushan Steel Limited and Nagar Nigam,
Ghaziabad.

Ref : Your letter no.99/construction/traffic/2013-14 dated 25/02/2014.

Dear Sir,

This is in reference to your letter no.99/construction/traffic/2013-14 dated 25.02.2014 asking us to give the cleaning status of Nallaha flowing in front of our factory in terms of Agreement.

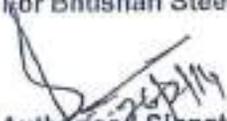
In this regard we would like to bring into your kind notice that as per terms of Agreement we are regularly cleaning the said nallaha. Last year also ~~cleaning~~ of Nallaha was cleaned between 16th June,2013 and 19th June,2013, intimation for which was conveyed to you vide our letter dated 20th June,2013 (copy again enclosed) for your reference.

This is for your necessary information please.

Thanking You,

Yours faithfully,

For Bhushan Steel Limited


Authorised Signatory

Encl : As above.

E/c

BHUSHAN STEEL LIMITED



23, Site-IV, Sahibabad Industrial Area,
Sahibabad, (U.P.), Pin 201010 INDIA
Tel: +91 120 2770601-2770604
Fax: +91 120 2770509, 2773602
Web Site : www.bhushan-group.org

BSL/Nagar Nigam/2014

8th March, 2014

The Executive Engineer(Traffic)
Nagar Nigam
Ghaziabad (U.P)

Sub : Payment towards Agreement dated 18/01/2010 executed between
Bhushan Steel Limited and Nagar Nigam, Ghaziabad,

Dear Sir,

As per clause 1,5,and 6 of Agreement dated 18/01/2010 executed between Bhushan Steel and Nagar Nigam we have to deposit the Lease Rent for use of Nallaha covered area as parking and other purposes i.e. as green belt in front of our factory premises . Details are given as under :-

Details of charges :-

Nallaha covered area	1461x120 = 175380 x3	Rs.5,26,140/-
Lease rent for covered area	1065 x120= 127800 x3	Rs. 3,83,400/-
Green Belt area	2325 x 5 = 11625 x3	Rs. 34,875/-
Total		<u>Rs.9,44,415/-</u>

We are sending herewith a Cheque no.033781 dated 07/03/2014 for Rs.9,44,415/- towards the above charges for the period from 18/01/2012 to 18/01/2015. Kindly acknowledge receipt the same and issue official receipt for the same.

Thanking You,

Yours faithfully,

For Bhushan Steel Limited

Authorised Signatory
Encl : As above.

IndusInd Bank

Industrial Bank Limited
General Manager's Office
10-20 Greater Kailash I, (Main Market) New Delhi - 110 048
IFSC: INDB0000013

Not over Rs. 10 Lacs

07032014
D D M M Y Y Y Y

by order of Nagar Nigam Chozibad

OR BEARER
या धारक को

उपरोक्त रुपये Nine Lacs forty four Thousand four hundred fifteen only

₹ 944415/-

A/c No. 650001653761

Cash Credit Account
Payable At Par To All Branches

A/C PAYEE ONLY

(Signature)

DRISHAN STEEL LIMITED
Please sign above

92 *10001 *EOD4E2011 *19EED0*



कार्यालय: गाजियाबाद नगर निगम, गाजियाबाद

पत्रांक :- 200 / निर्माण / 2014

दिनांक : 15/5/14

श्रेयक,

प्रभारी प्रवर्तन,
गाजियाबाद नगर निगम,
गाजियाबाद।

✓
C
सेवा में,

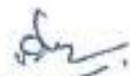
मेसर्स भूषण स्टील लि0,
प्लॉट नं0-23, लिंक रोड साईड-4,
औधे0 साहिबाबाद, गाजियाबाद।

विषय :- मा0 राष्ट्रीय ग्रीन ट्रिब्यूनल नई दिल्ली द्वारा नियुक्त विशेषज्ञ समिति के दिशा-निर्देशों के सम्बन्ध में।

महोदय,

उपरोक्त विषयक का सन्दर्भ ग्रहण करने का कष्ट करें। मा0 राष्ट्रीय ग्रीन ट्रिब्यूनल नई दिल्ली के दिशा-निर्देशों के क्रम में गठित तकनीकी समिति द्वारा साहिबाबाद डैन नं0 01 का निरीक्षण दिनांक 12.04.2014 को किया गया। निरीक्षण समिति द्वारा अपनी रिपोर्ट दिनांक 23.04.2014 को प्रस्तुत की गई। निरीक्षण समिति द्वारा अपनी निरीक्षण आख्या में यह टिप्पणी की गई है कि आपकी फर्म द्वारा ग्रीन बैल्ट पर अनाधिकृत रूप से अवैध कब्जा किया हुआ है, जो अनुबन्ध की शर्तों का उल्लंघन है।

अतः इस पत्र के माध्यम से आपके ऊपर घनांक रू0 2.0 लाख का अर्थात् दण्ड लगाते हुये निर्देशित किया जाता है कि आप तीन दिन के अन्दर उक्त अतिक्रमण को हटा लें, अन्यथा आपको अनुबन्ध निरस्त करते हुये, नगर निगम द्वारा आपके हर्जे-भर्जे से उक्त अवैध अतिक्रमण को हटाने की कार्यवाही की जायेगी। जिसकी समस्त जिम्मेदारी आपकी स्वंय की होगी।


प्रभारी प्रवर्तन
गाजियाबाद नगर निगम

प्रतिलिपि:-

1. नगर आयुक्त महोदय, गाजियाबाद नगर निगम, गाजियाबाद को सूचना के लिये।


प्रभारी प्रवर्तन
गाजियाबाद नगर निगम

Logo

**Office of: Municipal Corporation, Ghaziabad,
Ghaziabad**

Letter No.200/Construction/2014

Dated: 15/5/2014

From:

Authorized Officer
Municipal Corporation of Ghaziabad,
Ghaziabad.

To

M/s. Bhushan Steel & Streep Limited
Plot No.23, Link Road Site-4,
Sahibabad Industrial Area,
Ghaziabad.

Subject: In respect of Guidelines for Expert Committee, appointed
by Hon'ble National Green Tribunal, New Delhi

Sir,

Kindly refer to the above mentioned subject. The Technical Committee constituted by Hon'ble National Green Tribunal, New Delhi, in compliance of its guidelines, conducted an inspection of Sahibabad Drain No.1 on 12-04-2014. Inspection Committee has submitted its report dated 23-04-2014. Inspection Committee, in its report has Reported that your firm Has unauthorisedly encroached upon the green belt, which is in violation of agreed terms and conditions of the Agreement.

Accordingly, by this letter, it is hereby informed that a fine of Rs. 2 lacs is imposed upon you with directions to release the land from

your unauthorized encroachment within 3 days. Otherwise, by terminating your contract, the Corporation shall proceed to take action for removing unauthorized encroachment at your own risks and costs. And for which, you will be held solely responsible.

sd/-
Authorized Officer
Ghaziabad Municipal Corporation

Copy to:

1. Municipal Commissioner, Ghaziabad Municipal Corporation, Ghaziabad, for information.

sd/-
Authorized Officer
Ghaziabad Municipal Corporation

8f
BHUSHAN STEEL LIMITED



23, Site-IV, Sahibabad Industrial Area,
Sahibabad, (U.P.), (Pin 201010) INDIA
Tel.: +91 120 2770601-2770604
Fax: +91 120 2770509, 2773602
Web Site : www.bhushansteel.com

BSL/Nagar Nigam/2014
20th May, 2014

To,
The Enforcement Incharge
Nagar Nigam
Ghaziabad.

Re: Compliance report in the original application no.16 of 2014 (M.A no. 102 of 2014) Hazl Arif V/s State of UP & others .

This is reference to your letter no.200/Construction/2014 dated 15/05/2014 received by us on 20th May, 2014 vide which you have conveyed that as per report dated 23/04/2014 of Joint Committee constituted by NGT it is observed that we have encroached covered the area of Green Belt which is in the violations of Agreement executed between Nagar Nigam and Bhushan Steel and we have been directed to remove the encroachment from the Green Belt within three days. Further you have imposed penalty of Rs.2 lacs for aforesaid violation.

In this regard we would like to bring into your kind notice that as per order of Hon'ble National Green Tribunal we have already removed the tiles from the (पक्का एरिया) so called encroached area and converted the said area into Green Belt, which can be verified from the enclosed photographs.

Whereas, we would like to clarify that there is no violation of Agreement dated 18/01/2010 executed between Nagar Nigam and Bhushan Steel, as such so called encroachment area was approved/regularised vide letter no:282/construction/2009 dated 11/06/2009 issued by your good office (copy enclosed) in which an area of 1065 Sq Mtrs (पक्का एरिया) was shown on and you are also charging lease at amount of Rs.120/- per sq mtrs mentioned in the agreement at point no. 5 and recovering an amount of Rs. 1,27,800/- per annum which is being paid regularly since 2010.

Green Belt, which can be verified from the enclosed photographs.

Continued 2nd page...

In this regard we would like to clarify that there is no violation of Agreement dated 18/01/2010 executed between Nagar Nigam and Bhushan Steel, as such so called encroachment area was approved/regularised vide letter no:282/construction/2009 dated 11/06/2009 issued by your good office (copy enclosed) in which an area of 1065 Sq Mtrs (पक्का एरिया) was shown on and you are also charging lease at amount of Rs.120/- per sq mtrs mentioned in the agreement at point no. 5 and recovering an amount of Rs. 1,27,800/- per annum which is being paid regularly since 2010.

Thus, it is evident that construction done by BSL is as per the approval letter no. 282/construction/2009 dated 11/06/2009 and Agreement dated 18/01/2010. However, even in order to Honor the directions of the Hon'ble National Green Tribunal based on the Joint Committee report, we have already removed the so called encroachment. In view of above explanation & clarification given above penalty is not leviable, therefore, it is requested penalty of invoked Rs.2 lacs may kindly be dropped in the interest of Justice.

Thanking You for that construction done by BSL is as per the approval letter no. 282/construction/2009 dated 11/06/2009 and Agreement dated 18/01/2010. However, even in order to Honor the directions of the Hon'ble National Green Tribunal based on the Joint Committee report, we have already removed the so called encroachment. In view of above explanation & clarification given above penalty is not leviable, therefore, it is requested penalty of invoked Rs.2 lacs may kindly be dropped in the interest of Justice.

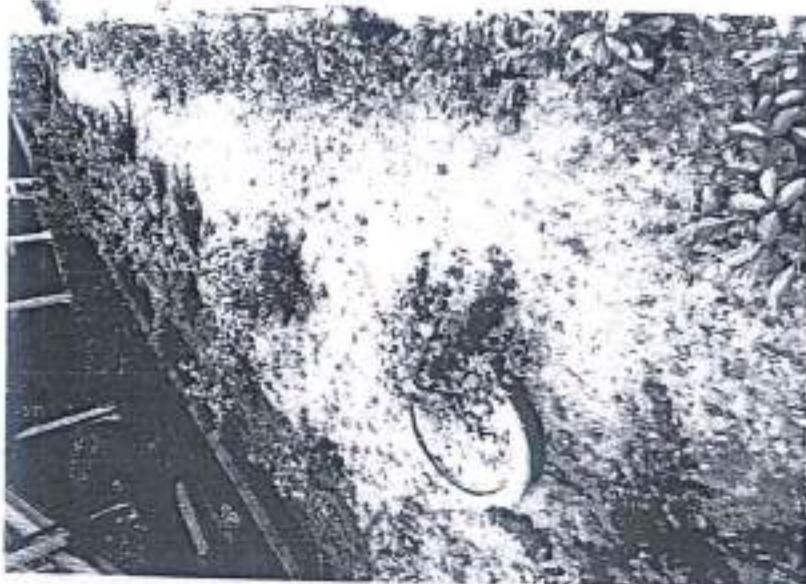
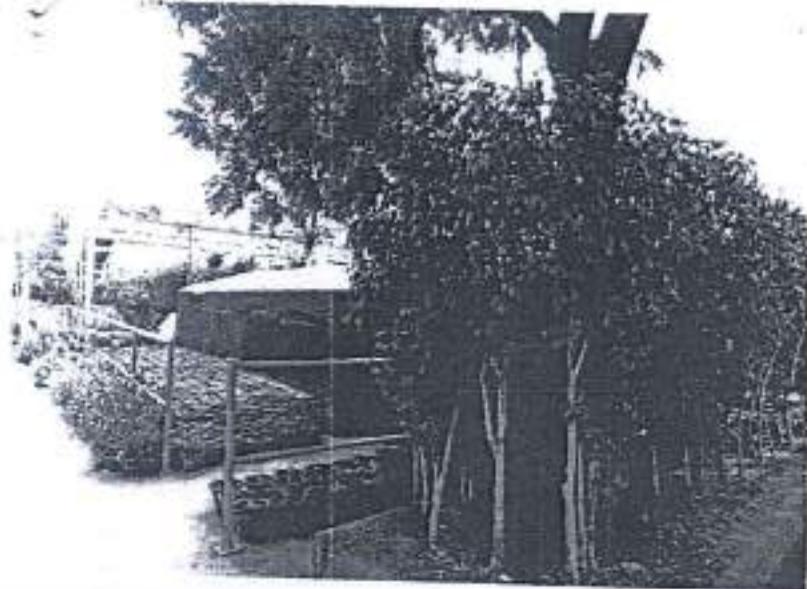
Authorized signatory

For Bhushan Steel Limited
Authorized signatory

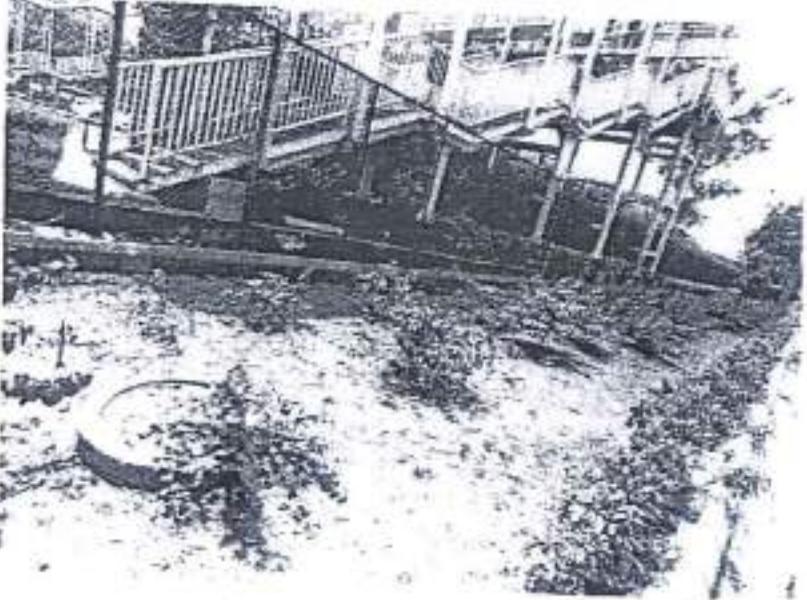
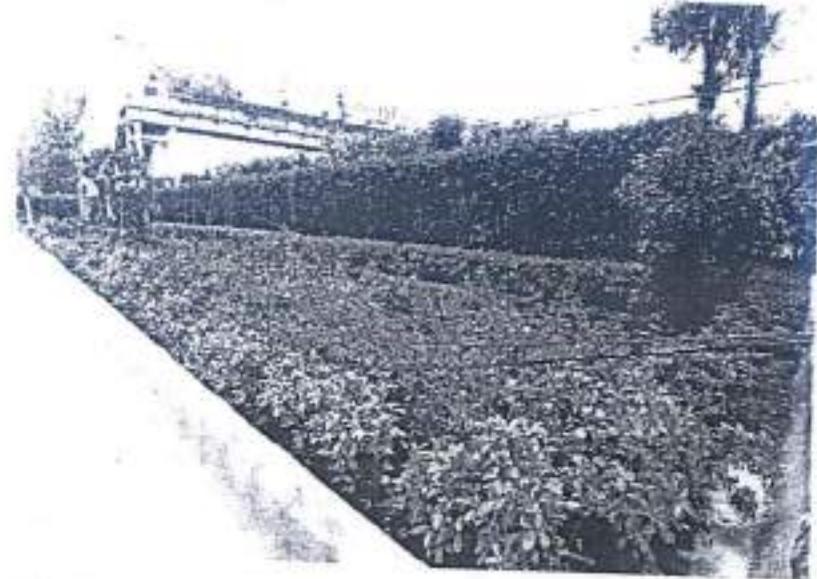
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प्रेषक,

प्रभारी बी.ओ.टी
गाजियाबाद नगर निगम
गाजियाबाद।

सेवा में,

मैसर्स भूषण स्टील लि०
प्लॉट नं० 23 साईड-4 औ०के०
साहिदाबाद, गाजियाबाद।

फनांक ५८६ /बी.ओ.टी/2013-14

दिनांक : 09/06/14

विषय:- मान० ग्रीन ट्रिब्यूनल द्वारा पारित आदेश 30.05.2014 के सम्बन्ध में।

महोदय,

उपरोक्त विषयक का संदर्भ ग्रहण करने का कष्ट करें। आप अवगत है कि साहिदाबाद ड्रेन का लेकर मान० ग्रीन ट्रिब्यूनल में गौ० हाजी आरिफ बनाम यू.पी.स्टेट व अन्य अपील सं० 16/2014 विचाराधीन है। सुनवाई के दौरान मान० न्यायाधीकरण द्वारा दिनांक 30.05.2014 को निम्नवत् आदेश पारित किये गये है:-

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Original Application No. 16/2014

(M.A. No. 102/2014)

Shri Hazl Arif & Ors. Vs. State of UP & Ors.

CORAM: HON'BLE MR. JUSTICE U.D. SALVI, JUDICIAL MEMBER

HON'BLE DR. G.K. PANDEY, EXPERT MEMBER

HON'BLE MR. RANJAN CHATTERJEE, EXPERT MEMBER

Present: Applicant / Appellant : Mr. R. Venkataraman & Mr. Adesh Kumar, Advs.

Respondent No. 1,6&7 : Ms. Savitri Pandey, Adv.

Respondent No. 2 : Mr. Avijit Bhushan, Adv.

Respondent No. 3 : Mr. Sudhir Kulehreshtha & Ms. Sushma Singh,

Advs.

Respondent No. 4 : Mr. Daleep Kr. Dhayanl, Adv. for Mr. Pradeep

Mishra, Adv.

Respondent No. 5 : Mr. Devesh Kumar, Adv.

Date and

Remarks

Orders of the Tribunal

Item No. 4

May 30, 2014

Heard, Perused.

Learned Counsel appearing on behalf of the intervenors submit that they are seeking intervention in these proceedings as the orders passed by the NGT are likely to affect them. They seek liberty to move applications for intervention. Liberty is granted. The applications be moved in the usual course. Registry to number the applications and issue Notices in the intervention applications. Service of notices is waived. Notices are accepted. Replies be tendered by the next date of hearing.

Original Application No. 16/2014

Heard, Perused.

Learned Counsel appearing on behalf of Respondent No. 5 seeks liberty to tender status report as well as additional affidavit to clarify the facts further. Liberty is granted. Copies of the status report as well as additional affidavit be furnished to the applicant. Learned Counsel appearing on behalf of Respondent No. 3 (Ghaziabad Municipal Corporation) files affidavit in response to the suggestions made in the inspection report dated 23.04.2014. Affidavit is taken on record. A copy of the affidavit be furnished to the applicant. The Applicant tenders additional affidavit dated 29.05.2014 along with the coloured copy of the Ghaziabad Master Plan 2021 which is taken on record. The inspection report dated

23.04.2014 of Ms. Farul Gupta Committee reveals that there has been covering of the Sahibabad drain which is a natural storm water drain with and without permission of the Ghaziabad Municipal Corporation. It further reveals that there have been encroachments on the river portion of the drain and natural flow of the drain, is also hindered particularly at Plot No. 60/1. It further reveals that the drain is further blocked by the dumping of garbage and industrial waste. Keeping aside the question whether it is a natural drain or otherwise, it can very well be seen that it is meant for draining the storm water and not for any other purposes. Learned Counsel appearing for Respondent No. 3 (Ghaziabad Municipal Corporation) invited our attention to the section 114 and section 228 of the UP Municipal Corporation Act, 1959 and submits that it is an obligatory duty of the Corporation to make reasonable and adequate provisions for the construction, maintenance and cleansing of drains and drainage works and similar conveniences as per the section 114(v) of the said Act, and it is obligatory on the Municipal Commissioner under section 228 of the Act to carry out maintenance and keep in repair all Corporations drains. These provisions of law cast obligation on the Municipal Corporation to keep all those drains clean and properly maintained and nothing more. They have no liberty to tinker with the drain and flow of the storm water through the drain. It does not give any freedom to the Municipal Corporation to grant permissions to allow constructions within the drains. It is true that section 231 of the said Act permits the Commissioner to make alterations etc. and also to discontinue the use of drains in the following words:

"Section 231. Alteration, etc., and Discontinuance of drains. - The (Municipal Commissioner) may enlarge, alter the course of, deepen, lessen, arch over or otherwise improve any Corporation drain, and may discontinue, close up or destroy any such drain which has, in his opinion, become useless or unnecessary, or prohibit the use of any such drain either entirely or for the purpose of foul water drainage or for the purpose of surface drainage: Provided that, if by reason of anything done under this section any person is deprived of the lawful use of any drain the Municipal Commissioner shall, as soon as may be, provide, at the cost of the Corporation for his use some other drain as effectual as the one which has been discontinued, closed up or destroyed or the use of which has been prohibited.

However, it can be seen that its object is to improve the drains and/or to discontinue, close up or destroy the drains which have become useless or unnecessary. It is nobody's case that this drain is either useless or unnecessary. In our considered view, therefore, impeding the natural flow of the drainage is not the duty of the Municipal Commissioner or Ghaziabad Municipal Corporation. There could not have been therefore any construction within the drain. We, therefore, order the Ghaziabad Municipal Corporation to take all such measures which are necessary to forthwith stop any construction within the drain and to take such measures as are necessary for removal of all such construction which impedes free flow of the storm water through the entire Sahibabad drain, particularly Sahibabad drain no. 1 at Plot No. 60/1 (Site - IV) and further to clean the drains. Status report shall be filed by the UP Pollution Control Board on the next date of hearing. List the matter on 11th July, 2014.

सतः उपरोक्त आदेशों के क्रम में यह सुनिश्चित कर ले कि नाले के सामान्य चारा प्रवाह में कोई बाधा न हो। साथ ही आप अवगत है कि वर्षा ऋतु प्रारम्भ होने वाली है तथा इससे पूर्व नाले की सफाई करनी ज़रूरी है। आपकी जाँच के माध्यम से जानी आपके दायित्वों में सम्मिलित है।

उपरोक्त के क्रम में मानव न्यायाधीकरण के निर्देशों एवं अनुबन्ध की शर्तों के अन्तर्गत में क्वार्टर सफाई कराते हुये, उसके फोटोग्राफ के साथ अधोहस्ताक्षरी को तत्काल अवगत कराने का कष्ट करें।

अधिकृत को सूचनाार्थ एवं आवश्यक कार्यवाही हेतु -

अध्यक्ष महोदय

अधिकृत

अधिकारी

अध्यक्ष/अवर अधिकारी

f प्रभारी बी.ओ.टी
गाजियाबाद नगर निगम
९/८

f प्रभारी बी.ओ.टी
गाजियाबाद नगर निगम
९/८

Logo**Ghaziabad Municipal Corporation,
Ghaziabad**

(I. S. O. 9001; 14001 & 18001 Certified Organization)

From:

The Authorized officer
Municipal Corporation of Ghaziabad,
Ghaziabad.

To

M/s. Bhushan Steel & Streep Limited
Plot No. 23, Site-4, Industrial Area, Sahibabad
Ghaziabad.

Letter No.486/B. O. T./2013-14

Dated: 09-06-2014

Subject: In respect of Order dated 30.05.2014 passed by the
Hon'ble Green Tribunal.

Sir,

Kindly refer to the above mentioned subject. You are aware of the fact that the Appeal No.16/2014, Mohd. Haji Arif vs U.P. State and others, is pending consideration before the Hon'ble National Green Tribunal, in respect of Sahibabad Drain. After hearing, Hon'ble the National Green Tribunal has passed the following orders on 30.05.2014:

"BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 18/2014
(M.A. No.102/2014)

S'S

Shri Hazi Arif & Ors. Vs. State of U.P. & Ors.

CORAM: Hon'ble Mr. Justice U.D. Salvi, Judicial member
Hon'ble Dr. G.K. Pandey, Expert Member
Hon'ble Mr. Ranjan Chatterjee, Expert Member

Present: Applicant/Appellant: Mr. R. Venkataraman & Mr. Adesh Kumar, Advocates.

Respondent No.1, 6 & 7: Ms. Savitri Pandey, Advocate

Respondent No.2: Mr Avijit Bhushan, Advocate

Respondent No.3: Mr. Sudhir Kulshreshtha and Ms. Sushma Singh, Advocates

Respondent No.4: Mr. Daleep Kr. Dhyani, Advocate for Mr. Pradeep Misra, Advocate

Respondent No.5: Mr. Devesh Kumar, Advocate

Date and remarks

Orders of the Tribunal

Item No.4

May 30, 2014

Heard. Perused.

Learned counsel appearing on behalf of the intervenors submit that they are seeking intervention in these proceedings as the orders passed by the NGT are likely to affect them. They seek liberty to move applications for intervention. Liberty is granted. The applications be moved in the usual course. Registry to number the applications and issue Notice in the intervention applications. Service of notices is waived. Notices are accepted. Replies be tendered by the next date of hearing.

Original Application No.16/2014

Heard. Perused.

Learned counsel appearing on behalf of respondent No.5 seeks liberty to tender status report as well as additional affidavit to

clarify the facts further. Liberty is granted. Copies of the status report as well as additional affidavit be furnished to the applicant. Learned counsel appearing on behalf of respondent No.3 (Ghaziabad Municipal Corporation) files affidavit in response to the suggestions made in the inspection report dated 23.4.2014. affidavit is taken on record. A copy of the affidavit be furnished to the applicant. The applicant tenders additional affidavit dated 29.5.2014 alongwith the coloured copy of the Ghaziabad Master Plan 2021 which is taken on record. The inspection report dated 23.4.2014 of Ms. Parul Gupta Committee reveals that there has been covering of the Sahibabad drain which is a natural storm water drain with and without permission of the Ghaziabad municipal Corporation. It further reveals that there have been encroachments on the river portion of the drain and natural flow of the drain, is also hindered particularly at Plot No.60/I. It further reveals that the drain is further blocked by the dumping of garbage and industrial waste. Keeping aside the question whether it is a natural drain or otherwise, it can very well be seen that it is meant for draining the storm water and not for any other purposes. Learned counsel appearing for respondent No.3 (Ghaziabad Municipal Corporation) invited our attention to the Section 114 and Section 228 of the UP Municipal Corporation Act, 1959 and submits that it is an obligatory duty of the corporation to make reasonable and adequate provisions for



the construction, maintenance and cleaning of drains and drainage works and similar conveniences as per the section 114 (v) of the said Act, and it is obligatory on the part Municipal Commissioner under Section 228 of the Act to carry out maintenance and keep in repair all Corporations drains. These provisions of law cast obligation on the Municipal Corporation to keep all the drains clean and properly maintained and nothing more. They have no liberty to tinker with the drain and flow of the storm water through the drain. It does not give any freedom to the Municipal Corporation to grant permission to allow constructions within the drains. It is true that section 231 of the said Act permits the Commissioner to make alterations etc., and also to discontinue the use of drains in the following words:

"Section 231. Alteration, etc., and Discontinuance of drains. – the (Municipal Commissioner) may enlarge, alter the course of, deepen, lessen, arch over or otherwise improve any Corporation drain, and may discontinue, close up or destroy any such drain which has, in his opinion, become useless or unnecessary, or prohibit the use of any such drain either entirely or for the purpose of foul water drainage or for the purpose of surface drainage: Provided that, if by reason of anything done under this section any person is deprived of the lawful use of any drain the Municipal Commissioner shall, as soon as may be, provided, at the cost of the Corporation for has use some other drain as effectual as the one which has been discontinued, closed up or destroyed or the use of which has been prohibited."

However, it can be seen that its object is to improve the drains and/or to discontinue, close up or destroy the drains which have become useless or unnecessary. It is nobody's case that this drain is either useless or unnecessary. In our considered view,

therefore, impeding the natural flow of the drainage is not the duty of the Municipal Commissioner or Ghaziabad Municipal Corporation. There could not have been therefore any construction within the drain. We therefore, order the Ghaziabad Municipal Corporation to take all such measures which are necessary for removal of all such construction which impedes free flow of the storm water through the entire Sahibabad drain, particularly Sahibabad Drain No.1 at Plot No.60/I, (Site IV), and further to clean the drain. Status report shall be filed by the UP Pollution Control Board on the next date of hearing.

List the matter on 11th July 2014."

Therefore, in response to the above order, you are directed to ensure that there should to by any obstruction in water flow. Besides this, you are also aware that the rainy season has come and before rain commence, it is your responsibility to clear the drains.

Therefore, in response to the above directions passed by Hon'ble National Green Tribunal, you are directed to submit a photograph of cleaning the covered drain before the undersigned.

Officer, BOT
Ghaziabad Municipal Corporation

CC: to the following officers for information and necessary action.

1. Municipal Commissioner
2. Authorized officer
3. Junior/Executive Engineer

Officer, BOT
Ghaziabad Municipal Corporation

BHUSHAN STEEL LIMITED



BHUSHAN

BSL/UPSIDC/2014
24th June, 2014

23, Site-IV, Sahibabad Industrial Area,
Sahibabad, (U.P.), (Pin 201010) INDIA
Tel.: +91 120 2770601-2770604
Fax: +91 120 2770509, 2773602
Web Site : www.bhushan-group.org

The Executive Engineer(B.O.T)
Nagar Nigam
Ghaziabad (U.P)

Sub : Cleaning of drains before monsoon in terms of Agreement
executed between Bhushan Steel Limited and Nagar Nigam,
Ghaziabad.

Dear Sir,

This is in reference to your letter no. 486/bot/2013-14 dated 9th June,2014 received by us on 23rd June,2014 vide which you have conveyed to us that an appeal no.16 of 2014 of Hazi Arif V/s U.P & others is pending before Hon,ble Green Tribunal in which as per order dated 30/05/2014 and there should not be any hindrance in free flow of the drain and you have also directed us to clean the covered portion of drain before monsoon which is flowing in front of our factory premises .

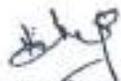
In this regard we would like to bring into your kind notice that as per terms of Agreement we are regularly cleaning the said nallaha and during the month of March,2014 also we have cleaned the covered portion of drain between 12th March,2014 & 15th March,2014. Intimation for which was conveyed to you vide our letter dated 20th March, 2014 (copy again enclosed) has already been given to you .You are once again requested to kindly depute your engineers to verify the same. Latest photographs of cleaned nallaha are enclosed for your reference. We shall be happy to follow the further suggestions if any are required for free flow of the drain .

This is for your necessary information please.

Thanking You,

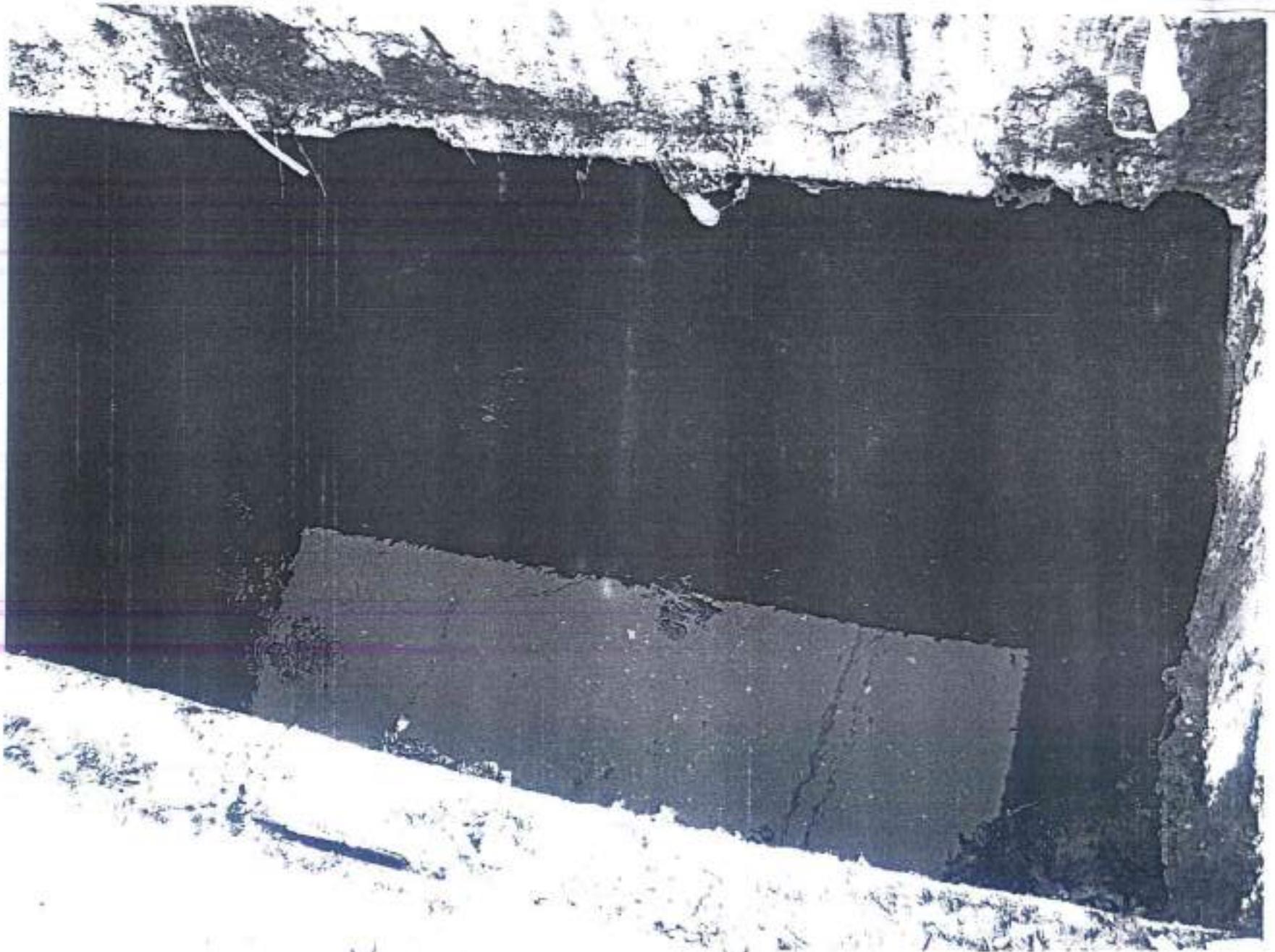
Yours faithfully,

For Bhushan Steel Limited,

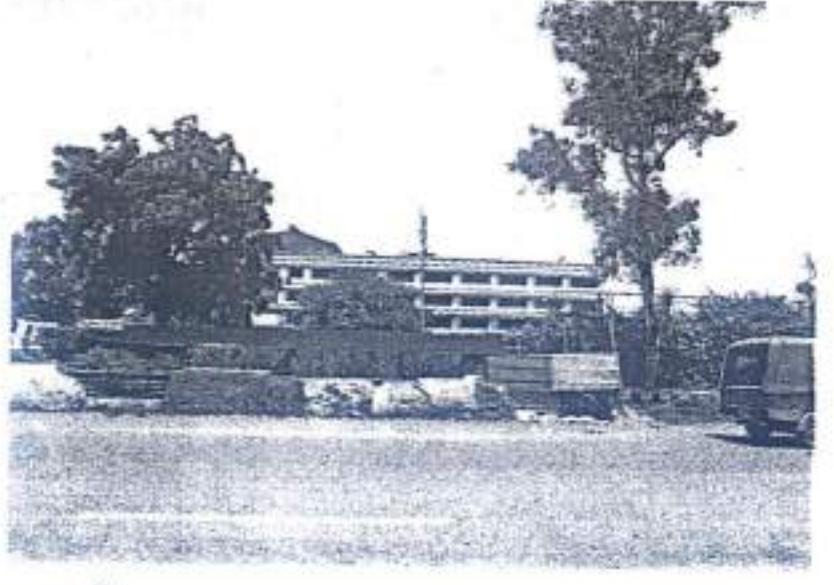

Authorized Signatory
Encl : As above.

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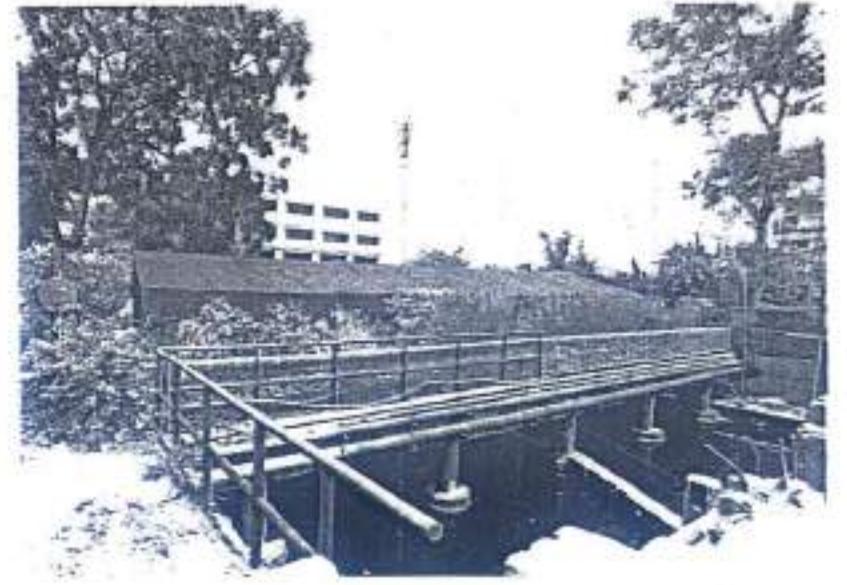
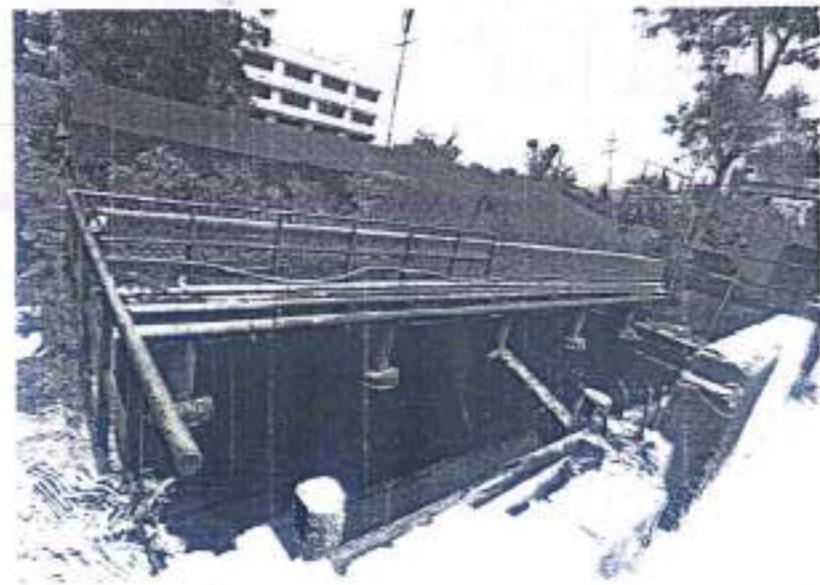
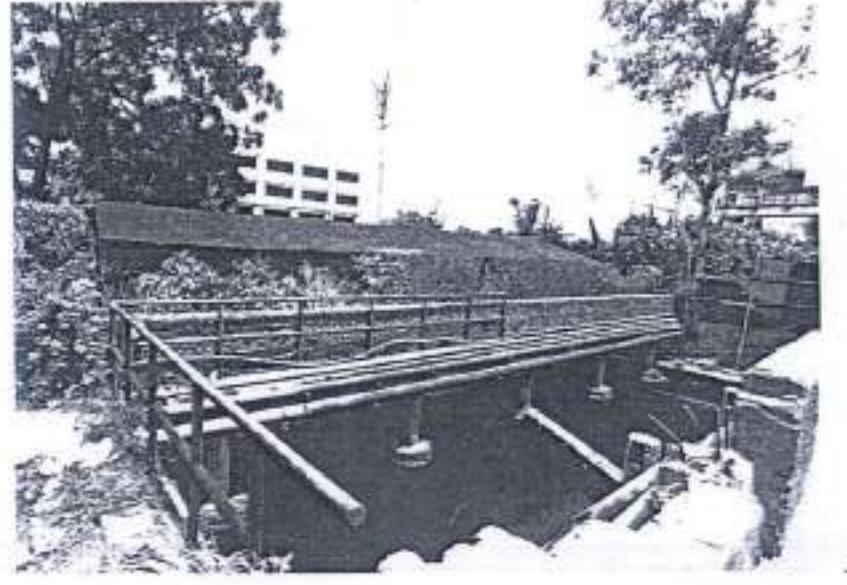
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ANNEXURE H Inspection Report

941 ~~225~~

1.	Name & Address of the Industry	M/s Bansari Steel Ltd. 23, Site-4 Industrial Area, Sahibabad, GHAZIABAD.
2.	Date of Inspection	30.08.2014
3.	Nature of Industry	Galvanizing
4.	Operational Status	Operational
5.	Factory Representative at time of Inspection	Sh. M.K. Rawat, Asstt. Manager
6.	Category of Industry	Large
7.	Product & Capacity	Cold Rolled Strips & Sheets- 800 MT/Day & G.I. Plain Corrugated Sheet 400 MT/Day
8.	Whether Ground Water being used for Industrial purpose	Yes
9.	Water Meter Installed	Yes
10.	Water consumption KLD	Approx. 1800 KLD
11.	Whether Water Cess being charged	Being Charged.
12.	E.T.P Installed	Yes. Equalization Tank, Neutralization Tank, Reception Tank, Clarifier, Filter Press & Acid Re-Generation Plant
13.	A.P.C.S Installed	Yes. Dust Collector & Alkali Wet Scrubber for acid fumes.
14.	Alternative Power Source for Pollution Control System	Captive Power Plant 2 No's each 12.5 MW installed in closed room with Acoustic.
15.	Whether Bypass Arrangement found for discharge of Untreated Effluent/Emission	No
16.	Consent Water (Granted/ Refused)	Granted
17.	Consent Air (Granted / Refused)	Granted
18.	Haz. Waste Generated	Yes
19.	TSDF Membership taken	Yes
20.	H.W. Auth. Status	Granted
21.	Remark	Industry was covered in original App. No. 36/2012 in M.A. No. 340/2013 and finally disposed on dt. 04.07.13 During inspection sample collected after ETP, which is achieving norms. Analysis report is attached.

(Signature)
04-8-14
(D.K. Gupta)
J.E.

(Signature)
(R.S. Singh)
A.E.E

Regional Officer
(Signature)
5/8/14



REGIONAL LABORATORY

UTTAR PRADESH POLLUTION CONTROL BOARD

Sector-16, VASUNDHARA, GHAZIABAD (U.P.)

INDUSTRIAL WASTE WATER SAMPLE ANALYSIS REPORT

1. Sample Code No. 994 A / 5 / 14
2. Name of the Industry (Mrs. Bhushan street Ltd. Plot No. 23, 2nd Ind Area, Ghaziabad)
3. Sample Collected by Shri R.S. Singh S. K. Gupta
A.E.E. J.E.
4. Date & Time of Sample Collection 30 May 2014
5. Sampling Point After E.T.P.

S.No.	Parameters	Values in mg/l except pH	Standards prescribed by U.P.P.C.B.
1.	Colour	<u>10.6</u>	Colourless
2.	Odour	<u>Odourless</u>	Odourless
3.	pH	<u>7.6</u>	5.5 to 9.0
4.	Total suspended Solids	<u>80.2</u>	1000 mg/l
5.	Total dissolved Solids	<u>120.0</u>	
6.	Total Solids	<u>200.0</u>	
7.	Biochemical Oxygen Demand (5 days incubation at 27°C)	<u>26.2</u>	300 mg/l
8.	Chemical Oxygen Demand (Dichromate reflux method)	<u>210.0</u>	250.0 mg/l
9.	Oil and Grease	<u>6.5</u>	10.0 mg/l
Specific Parameters			
10.	Chromium (Hexavalent) (Cr ⁶⁺)	<u>/</u>	0.1 mg/l
11.	Total Chromium (Cr)	<u>/</u>	2.0 mg/l
12.	Zinc (as Zn)	<u>3.5</u>	5.0 mg/l
13.	Nickel (as Ni)	<u>/</u>	3.0 mg/l
14.	Iron (as Fe)	<u>5.3</u>	3.0 mg/l
15.	Copper (as Cu)	<u>/</u>	3.0 mg/l
16.	Cobalt (as Co)	<u>/</u>	3.0 mg/l
17.	Cadmium (as Cd)	<u>/</u>	2.0 mg/l
18.			
19.			
20.			

Remarks :

994 A / 5 / 14
Scientific Assst.

994 A / 5 / 14
Asst. Scientific Officer

994 A / 5 / 14
Regional Director



TSSL / Nagar Nigam /2021

30th December, 2021

Nagar Ayukta
Nagar Nigam , Navyug Market
Ghaziabad (U.P)

**Sub : Payment towards Agreement dated 18/01/2010 executed between
Bhushan Steel Limited and Nagar Nigam , Ghaziabad**

Dear Sir,

As Per clause 1,5,and 6 of Agreement dated 18/01/2010 executed between formerly known as Bhushan Steel Limited (now Tata Steel Limited) and Nagar Nigam we have to deposit the Lease Rent for use of Nallah covered area as parking and other purposes ie. as Green Belt in front of our factory premises. Details are given as under: -

Details of Charges:-

Nallah covered area	1461 x 120 =175380/-	Rs.1,75,380/-
Lease rent for covered area	1065 x 120 = 127800/-	Rs. 1,27,800/-
Green Belt area	2325 x 5 = 11625/-	Rs. 11,625/-
Total		Rs. 3,14,805/-

We are sending herewith a Demand Draft no . 366294 Dated 29th December , 2021 for Rs. 3,14,805/- of HDFC Bank towards the above charges for the period from 19/01/2022 to 18/01/2023 . Kindly acknowledge receipt the same and issue official receipt for the same. Payment upto 18/01/2022 has already been deposited.

With Regards

[Authorised Signatory]



TATA STEEL LIMITED

23 Site IV Sahibabad Industrial Area Ghaziabad 201010 Uttar Pradesh Tel 91 120 3028001 99 Fax 91 120 2770509/410057475
Registered Office: Bombay House, 24 Homi Mody Street, Fort, Mumbai 400 001, India Tel 91 22 66658282 Fax 91 22 66657724
Corporate Identity Number: L27100MH1907PLC000260 Website: www.tatasteel.com

HDFC BANK

PAYINST DRAFT

VALID FOR THREE MONTHS FROM THE DATE OF ISSUE

2 9 1 2 2 0 2 1

NAGAR NIGAM GHAZIABAD

ON DEMAND PAY

RUPEES THREE LAKH FOURTEEN THOUSAND EIGHT HUNDRED FIVE ONLY **

OR ORDER

₹ 3,14,805.00

PURCHASER TATA STEEL BSL LTD

FOR HDFC BANK LTD.

HARSHA BHAVAN, DELHI

Cent. Cg - Delhi

HARSHA BHAVAN, DELHI

DRAWEE BRANCH 366294

ISSUING BRANCH

AUTHORISED SIGNATORIES

[Handwritten Signatures]
B3477 A0228

⑈ 366294 ⑈ 000240000⑈ 999998 ⑈ 16

भारतीय रिजर्व बैंक द्वारा जारी किया गया है



**GNS HOUSEKEEPING SERVICES
(OPC) PRIVATE LIMITED**

Quality In Services & Priority To Customer

Reg. Office: Plot No. 50, F-3 Vikram Encalave, Shalimar Garden Extn.1, Ghaziabad.-201005

SE-10-3262
13/03/18

PO → 3100003262
dt - 12/3/18

Invoice For Services being Provided between 09.02.2018 TO 28.02.2018	Date	10.03.2018
Invoice no . GNS/2017-2018/BSL,128	Previous Balance	: NIL
M/S Bhushan Steel Limited.	Total Payment Received	: NIL
Site - IV, Industrial Area Sahibabad Ghaziabad .	This Month Charge	
U... NUMBER: 09AAACB1247M1ZN	Amount Payable by	
contact person : MR S.K. GUPTA		
E-MAIL ID : skgupta@bhushan steel.com		
Contact no : +919873055506	Total Outstanding as On	: NIL

Sl NO.	DESCRIPTION	AMOUNT
	NALA CLEANING INFRONT OF FACTORY PREMISE AND WASTAGE DESPOSAL	150,000.00
	SUB TOTAL	150,000.00
	CGST @ 9%	13,500.00
	SGST @ 9%	13,500.00
	G. TOTAL	177,000.00

GSTIN 09AAGCG4882NIZU

RUPEES Rs. ONE LAC SEVENTY SEVEN THOUSAND ONLY.

BANK DETAILS:

KINDLY MAKE ALL PAYMENT THROUGH CHEQUE /DD/PAY ORDER IN FAVOUR OF

"GNS HOUSEKEEPING SERVICES(OPC) PRIVATE LIMITED" OR MAY TRASFER IN TO BELOW MENTION ACCOUNT OF THE COMPANY

BANK NAME : INDIAN BANK, SECTOR-15-A VASUNDHARA GHAZIBAD

ACCOUNT NO . CA6511976625

IFSC CODE : IDBI000V118

THANK YOU FOR YOUR BUSINESS!
FOR GNS HOUSEKEEPING SERVICES(OPC) PRIVATE LIMITED

(AUTHORED SIGNATORY)

IF YOU HAVE ANY QUERY FOR THE SAME ,PLAEASE FEEL FREE TO CONTACT AT +919899025301

ORIGINAL BILL RECEIVED

Authorised Signatory

5106178304

25/7/25

CUSTOMER CARE NO : 8800760227

TRANSFER VOUCHER

TATA STEEL BSL LIMITED.
UNIT - II

Doc. Type : Invoice - gross

Doc. Date : 03.09.2019

Page No. : 1

Doc. No. : 2500059933

Posting Date : 18.09.2019

User ID. : 930357

A/c Code	Name / Particulars	Debit	Credit
242400	Sundry Creditors - Services		
404910	SBST GNS HOUSEKEEPING SERVICES (OPC) P L , PAN NO:AAGCG4982N GST NO : 09AAGCG4982N12U W.T. BA 200 dt 03.09.19		226,200.00
272320	SBST GR / IR Clearing Services Account Assign. : 414000084500010 C.C. : SA0115 Administration Overheads- Unallocable	195,000.00	
180724	CGST Recoverable - Input Services	17,550.00	
180725	SGST Recoverable - Input Services	17,550.00	
251000	SBST T.D.S Payable on Contractors A3		3,900.00
		=====	=====
		230,100.00	230,100.00
		=====	=====

TWO LAKH THIRTY THOUSAND ONE HUNDRED Rupees


 Prepared by

Checked by

Authorised Signatory

SG-10-42942
18/09/19

PO-4140000845

BILL BOOK

GSTIN : 09AAGCG4982N1ZU

**GNS HOUSEKEEPING SERVICES
(OPC) PRIVATE LIMITED**

Quality In Services & Priority To Customer

Regd. Office: Plot No. 50, F-3 Vikram Enclave, Shalimar Garden Extn.1, Ghaziabad.-201005

Bill No. : 023/19/20/200

Invoice Date : 03/09/2019

State : UTTAR PRADESH

State Code : 09

M/s TATA STEEL BSL LTD
2314 Site IV Sahibabad
UP
State : U.P State Code : 09

Buyer's GSTIN : 09AAACR1247M2Z1

G.R. No. : Date :

Through :

S. No.	Description of Goods	HSN/SAC Code	Quantity	Unit Price or Rate	Amount Rs.	P.
	front Nala Cleaning factory premises and west bilateral	995511	09	195000-	195000 = 10	

Job verified by DDP 17/09/19

25/50000

Handwritten note: The DO is attached with the job and has been verified by Return of...

Rupees in Word: 195000 = 10

OUR BANK DETAILS
BANK NAME : INDIAN BANK
BRANCH : SECTOR-15-A, VAUNDHARA GZB.
ACCOUNT NO. : Ca6511976625
IFSC CODE : IDIB000V118

SGST @ 09%	17550 = 10
CGST @ 09%	17550 = 10
IGST @ %	
GRAND TOTAL	230100 = 10

THANKS FOR YOUR BUSINESS
For GNS HOUSEKEEPING SERVICES (OPC) PRIVATE LIMITED
Terms & Conditions :-
1. All disputes are subject to Ghaziabad Jurisdiction.

E. & O. E. For GNS HOUSEKEEPING SERVICES (OPC) PRIVATE LIMITED
510646116
Authorized Signatory


TATA STEEL BSL LIMITED

(Formerly Bhushan Steel Ltd.)

23, Ckt-IV, Sahibabad Industrial Area, Sahibabad, Dist. Ghaziabad-201010, U.P., INDIA Tel: +91-120-3026000-99

Fax: +91-120-2774610, 4100675, Email: procurement@tatasteelbsl.co.in, Web: www.tatasteelbsl.co.in

UPSI No. 0000005116-0-03 CSTR No. 00 118830160-0-03 HCC No. AAAC01241000002 TN No. 0000000150 CR No. L7463DL1063PL011942

GST No: 09AAACB1247M1ZN

PURCHASE ORDER
PURCHASE ORDER NO.: 4140000845 Date: 19.07.2019
Vendor Code 404910
Vendor Name GNS HOUSEKEEPING SERVICES (OPC) P L
 F 3 PLOT 50, VIKRAM ENCLAVE, SHALIMA
 GHAZIABAD Uttar Pradesh 201005
 Tel. 8800760337

Cost Centre: ADMIN./PERSONNEL(HRD) SECTION

Our Ref :
Vendor Ref :
PAN NO. : AAGCG4962N

GST NO. : 09AAGCG4962N1ZU

S.No	Item Code	Item Description	Unit	Qty	Net Rate Unit (INR)	Total Value (INR)
1		front sala cleaning factory premises and Item Text: and waste disposlNOTE-MAN POWER, JCB, DUMPER, GROUP INS. OF MANPOWER, SHIFTING OF MATERIAL TO MUNICIPAL YARD, GPS VIDEOGRAPHY INCLUDED IN THE RATE. EMPLOYMENT SERVICES INCLUDING PERSONNEL (Qty) (UNIT) (Rate) 1.000 AU 195000.00	AU	1.000	195,000.00	195,000.00
SAC:008511		CGST @9% SGST @9% Net Rate +Tax = 230100 Delivery Date : 23.07.2019				

Total (INR) : 195,000.00
Total Net value + Tax : 230,100.00

Rupees : ONE LAKH NINETY-FIVE THOUSAND AND ZERO PAISE ONLY

Price Basic: Free on Redcpt-TATA BSL SAHIBABAD

Payment: 100% WITH IN 30DAYS

Validity: 31.08.19

Rel. Cond. : N/A

ght :
KISHOR SINGH DEV

for Tata Steel BSL LTD.

Authorised Signatory
Prepared By
Checked By

KINDLY CREATE INVOICE AS PER PURCHASE ORDER ONLY. IF, THERE IS ANY DISCREPENCY, KINDLY CONTACT THE CONCERNED BUYER ACCORDINGLY, BEFORE RAISING THE INVOICE.

TEST CERTIFICATE/ INSPECTION REPORT MUST ACCOMPANY WITH SUPPLY.

ANY REJECTION SHOULD BE LIFTED WITHIN 7 DAYS. OTHERWISE BSL WILL NOT BE RESPONSIBLE FOR MATERIAL.

ALWAYS QUOTE OUR VENDOR CODE, P.O.NO, DATE & ITEM CODE NO. ON ALL CHALLANS, INVOICE & CORRESPONDENCE TO ENSURE PROMPT ATTENTION.

FOR ALL QUERIES RELATED TO THIS PURCHASE ORDER, MATERIAL DEPT. AT WORKS MAY BE CONTACTED.

ORIGINAL INVOICE SHOULD ACCOMPANY THE MATERIAL & ACKNOWLEDGEMENT OF THE SAME TO BE TAKEN FROM OUR STORES.

Ground Floor, Mira Corporate Suites, Plot No. 162, Mathura Road, Inder Nagar, New Delhi-110065.

OTHER TERMS & CONDITIONS AS PER ANNEXTURE ATTACHED

SE: 1000030588
DT: 22/7/20

PO-3099961549/505

BILL BOOK

GSTIN : 09AAGCG4982N1ZU	Bill No. : GNS 80/21 246
GNS HOUSEKEEPING SERVICES (OPC) PRIVATE LIMITED	Invoice Date : 21/07/2020
Quality In Services & Priority To Customer	State : UTTAR PRADESH
Regd. Office: Plot No. 50, F-3 Vikram Enclave, Shalimar Garden Extn.1, Ghaziabad.-201005	State Code : 09

M/s. <u>TATA STEEL RSL LTD</u> <u>22/04 NITD Ghaziabad</u> <u>G2B U.P</u>	Buyer's GSTIN : <u>09AAACD1247M12N</u>
State : <u>U.P</u> State Code : <u>09</u>	G.R. No. : Date :
Through :	

S. No.	Description of Goods	HSN/SAC Code	Quantity	Unit Price or Rate	Amount Rs.	P.
	Cleaning of front Nala of Our factory Pan + etc.	998511	02	180000	180000-	W
<p>RG 23-A Part-I No. DL</p> <p>RG 23-A Part-II No. <u>3033</u> Dt. <u>18/8/20</u></p> <p>B.E.D. Rs.</p> <p>E. Cess Rs.</p>						
<p><i>[Signature]</i></p> <p>5105682636</p>						

Rupees in Word Two lakhs + two thousand + two hundred + only 180000 - W

OUR BANK DETAILS	SGST @ <u>09</u> %	16200 - W
BANK NAME : INDIAN BANK	CGST @ <u>09</u> %	16200 - W
BRANCH : SECTOR-15-A, VAUNDHARA GZB.	IGST @ %	
ACCOUNT NO. : Ca6511978625	GRAND TOTAL	212400 - W
FSC CODE : IDIB000V118		

HANKS FOR YOUR BUSINESS
For GNS HOUSEKEEPING SERVICES (OPC) PRIVATE LIMITED

E. & O. E. For GNS HOUSEKEEPING SERVICES (OPC) PRIVATE LIMITED

Terms & Conditions :-
1. All disputes are subject to Ghaziabad Jurisdiction.

[Signature]
Authorised Signatory

80-3099903302

GSTIN: 09AAGCG4982N1ZU

WHITE Original RED Duplicate YELLOW Triplicate

TAX INVOICE

GNS HOUSEKEEPING SERVICES (OPC) PRIVATE LIMITED

Quality In Services & Priority To Customer

Regd. Office: Plot No. 50, F-3 Vikram Encalave, Shalimar Garden Extn-1, Ghaziabad-201005

Bill No.: GNS20/21/2B3 ✓

Invoice Date: 11/03/2021 ✓

State: UTTAR PRADESH ✓

State Code: 9

M/s TATA STEEL BSL LTD

22/4 Site IV Ghaziabad

92R

State: U.P. State Code: 09

Buyer's GSTIN: 09AAACB1243M32N

G.R. No.: Date:

Through:

S.No.	Description Of Goods	HSN/SAC Code	Quantity	Unit Price or Rate	Rs Amount P.
01	Forout mala Cleaning of factory	998511	01	25000	25000-00
G.S.T. PART II NO. 15493 For TATA STEEL BSL LIMITED Signature: [Signature] 12 MAR 2021					
S105809509 12 MAR 2021					

Rupees In Word: Twenty five thousand only Total 25000-00

OUR BANK DETAILS		SGST	CGST	IGST	Grand Total
BANK NAME	INDIAN BANK	09%	09%		2250-00
BRANCH	SECTOR-15-A, VASUNDHARA GZB.				2250-00
ACCOUNT NO. :	Ca6511976625				
IFSC CODE :	IDIB000V118				
					29500-00

THANKS FOR YOUR BUSINESS For GNS HOUSEKEEPING SERVICES (OPC) PRIVATE LIMITED
 TERMS & CONDITIONS
 1. All Disputes Are Subject To Ghaziabad Jurisdiction
 Mob: 7303451746

E.&O.E. For GNS HOUSEKEEPING SERVICES (OPC) PRIVATE LIMITED
 Auth. Signatory [Signature]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2700 of 2020

IN THE MATTER OF:

M/s Tata Steel BSL Ltd.

...Appellant

Versus

Shri Hazi Arif & Ors.

...Respondents

INDEX

SL NO.	PARICULARS	PAGE NOS.
1.	Counter Affidavit on behalf of Respondent No.4 Ghaziabad Municipal Corporation, Ghaziabad	1 - 13

ADVOCATE FOR THE RESPONDENT NO.4: VISHWAJIT SINGH

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2700 OF 2020

IN THE MATTER OF:

M/s Tata Steel BSL Ltd.

... Appellant

Versus

Shri Hazi Arif & Ors.

... Respondents

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO.4
GHAZIABAD MUNICIPAL CORPORATION, GHAZIABAD

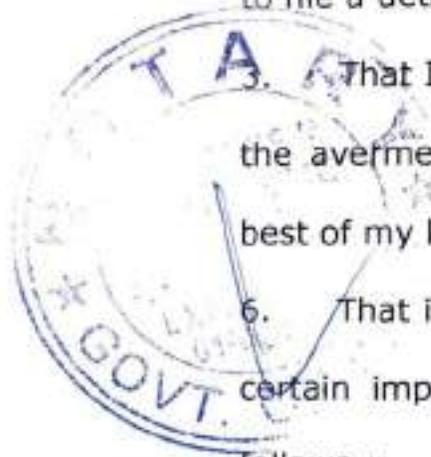
I, Deshraj, son of Sri Sri Chohal Singh, aged about 48 years, posted as Executive Engineer, Construction Department, Ghaziabad Nagar Nigam, Ghaziabad, U.P. presently at New Delhi do hereby solemnly affirm and state as under:

1. That the deponent is working as the Executive Engineer, Ghaziabad Nagar Nigam and is well conversant with the facts and circumstances of the case and hence, competent to swear this affidavit.
2. That the respondent is filing this short counter affidavit with liberty to file a detailed Counter Affidavit if it be necessary at all.

3. That I have read and understood the contents of the Civil Appeal and the averments made therein in reply to the Civil Appeal are true to the best of my knowledge and belief.

6. That it would be relevant to bring to the notice of this Hon'ble Court certain important facts pertaining to the present matter, which are as follows :-

follows :-



PRELIMINARY SUBMISSION:

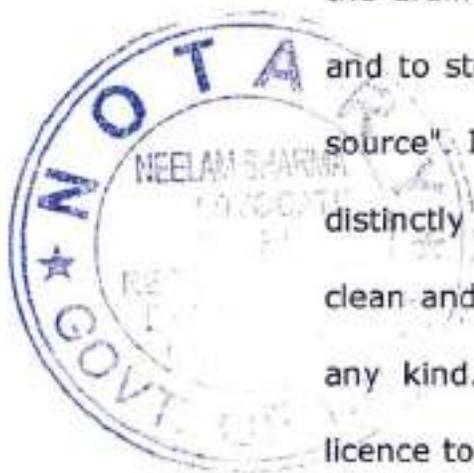
1. That the present Civil Appeal has been filed against the impugned interim order dated 26.2.2020 passed in Execution Application No. 18/2017 in Original Application No. 16/2014 passed by the National Green Tribunal, New Delhi. The aforesaid Execution Application was filed for compliance of the judgment dated 7.10.2016 passed on O.A. No. 16/2014. By the aforesaid order dated 7.10.2016, certain observations were made and directions passed for the Statutory Authorities to comply with the same. Consequently, an Expert Committee was constituted vide order dated 7.10.2016 and the said Committee had to submit a report with regard to the directions issued by the Hon'ble Tribunal. Accordingly, the aforesaid constituted Committee filed a report 12.10.2017 wherein it made certain recommendations with an observation that necessary action may be taken in accordance with such recommendation.
2. That the first recommendation as per the aforesaid report was to the effect that "All covers and encroachments of the drain including those of the five specific licencees should be removed and demolished. The entire Sahibabad Drain should be restored as a Natural Storm Water Drain and no sewage or industrial effluent should be allowed to be discharged into it. That the Answering Respondent, namely, Ghaziabad Nagar Nigam, in response to the aforesaid recommendation removed all encroachments and covers that were done without the requisite



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permission and licenses. These were demolished and the original shape was restored by the Answering Respondent. It is important to submit here that only those Covers have not been demolished/ removed wherein requisite licence/permission has been granted by the Ghaziabad Nagar Nigam on the specific condition that the licensee would ensure to keep the Sahibabad Drain absolutely clean and no untreated sewage or industrial effluent shall be allowed to be discharged into it.

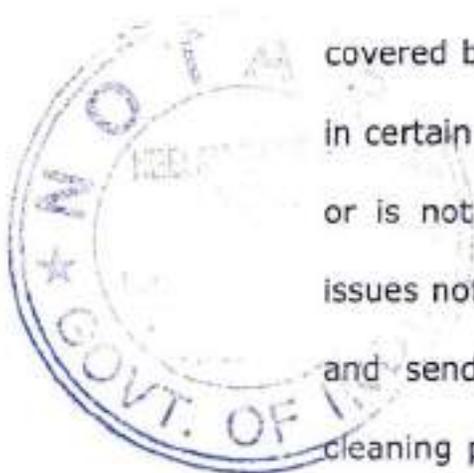
4. It is important to bring to the notice of this Hon'ble Court that the Answering Respondent, namely, Ghaziabad Nagar Nigam has taken the following necessary steps in this direction:-
 - i. The Ghaziabad Nagar Nigam has granted the Petitioners herein licence through separate Written Agreements with certain specific terms and conditions wherein Clause 17 (annexed as Annexure A-6 to main paper book of the civil Appeal No.2700 of 2020) contains the main condition and is read as "The licensee will keep the drain in front of his premises clean, maintain its flow, width and to stop floating and solid waste from coming from previous source". It is pertinent to mention here that the aforesaid clause distinctly enumerates that the licensees would keep the drain clean and maintain regular flow of water without construction of any kind. In other words, the primary condition for granting licence to the parties such as petitioners was to ensure that they cover the drain and keep the premises clean in front of their



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establishment, maintain its flow and completely stop solid waste entering into it.

- ii. Similarly, Clause 19 of the said Agreement stipulates "in case licensee is discharging any harmful effluent in the nala then the same has to be tested and treated before the same is discharged by licensee".
- iii. A perusal of the aforesaid Agreement would also show that the Licensor was also constrained from damaging the Coverage Portion constructed by the Licensee on nala during the period of licence.
- iv. The Ghaziabad Nagar Nigam has always made sincere and best efforts to maintain the drain by ensuring that untreated effluents are prohibited from being discharged in the drain and therefore, the aforesaid crucial conditions in terms of Clause 19 was enumerated.
- v. The Ghaziabad Nagar Nigam also conducts inspections at regular intervals of the entire area of the drain which have been legally covered by the parties such as the petitioners and if it finds that in certain areas the condition of grant of licence has been flouted or is not being maintained then, the Ghaziabad Nagar Nigam issues notices to such licensees and asks them to clean the drain and send a report along with the photographs showing the cleaning process to the Answering Respondent. It is pertinent to mention here that the Licensees such as the petitioners on receiving such notices do the needful and send their responses



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along with the photographs thereby evidently depicting that they have been maintaining the cleanliness of the drain and are completely complying with the terms and conditions laid down in the Licence/Agreement.

vi. The Ghaziabad Nagar Nigam, therefore, has continuously been making sincere efforts to ensure that the Licensees have acted in accordance with the terms and conditions of the license and have thereby maintain the sanitation of the said drain. Nevertheless, if the Ghaziabad Nagar Nigam, during the inspection conducted by it, notices that the conditions of the license are either not being complied with or followed by the parties such as the petitioners in violation of the conditions of the Agreement/License, may take strict action against such defaulters by issuing notice and warning to them to strictly maintain the terms and conditions of the License failing which the same shall be cancelled and stringent action would be taken as per law.

vii. So far as the recommendations of restoring the entire Sahibabad Drain as a Natural Storm Water Drain is concerned, the Ghaziabad Nagar Nigam has left no stone unturned to ensure that the said drain is kept absolutely neat and clean and no untreated sewage or industrial effluent is allowed to be discharged into it. However, it is important to bring to the notice of this Hon'ble Court that the said drain is a Manmade Drain and not a Natural Storm Water Drain. This factum can further be verified by the perusal of the judgment dated 7.10.2016 passed

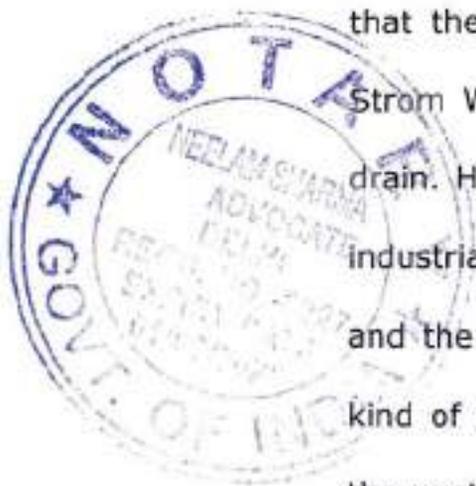


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in O.A. No. 16/2014 wherein the Hon'ble National Green Tribunal gave a specific finding to the effect that the drain under consideration can be viewed as Manmade Storm Water Drain. A perusal of Para 37 of the aforesaid judgment quoted at page 211-213 of the main paper book would clearly show the reasoning on which the aforesaid conclusion was reached by the Hon'ble Tribunal. The relevant portion reads as follows:

"The record reveals that the drain Sahibabad Drain No.1 came into existence following the land acquisition of the agriculture lands in 1960's for the purposes of development of the said area and the U.P.S.I.D.C. Plan pertaining to the year 1971 described the said drain as 100 WD Proposed Drain". The judgment further observed "One can very well see from the reply of U.P.P.C.B. and the Layout Plan at Annexure-2 thereto that the drain came into existence following the acquisition of agricultural land for development of U.P.S.I.D.C. Industrial Area at Sahibabad; and thus seemingly the Sahibabad Drain No.1 is a manmade drain."

viii. Therefore, the recommendation of the Committee to the effect that the entire Sahibabad Drain should be restored as Natural Storm Water Drain is contrary to the actual nature of the said drain. However, so far as the discharge of untreated sewage or industrial effluent are concerned, it must be strictly prohibited and the drain has to be kept absolutely clean and without any kind of obstruction. Hence, the factual position remains that in the vastly domestically and industrially populated dense region, the said drain is the only Man-made Drain to carryout effluent

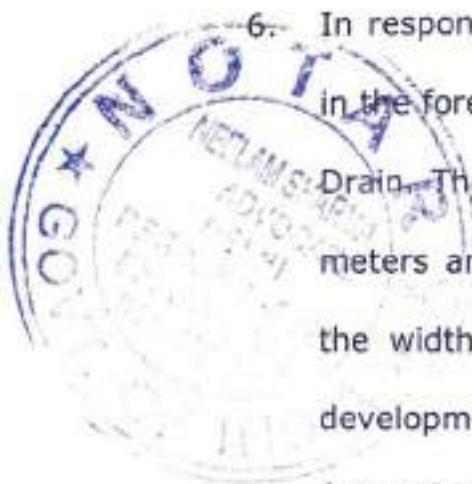


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and discharge and a change in the nature of said drain from Man-made to Natural Storm Water Drain is totally impossible and unfeasible. It would also lead to total chaos and would be highly impractical in the absence of any other alternative of discharging the effluent from the domestic and industrial area. Hence, the aforesaid recommendation of the Expert Committee was not only impractical and unachievable but was also against the findings and directions of the Hon'ble N.G.T. in its judgment and order dated 7.10.2016 passed in O.A. no. 16/2014.

5. That the Second Recommendation of the aforesaid Expert Committee was "As a first step to restoration, all concrete covers over the drain and other constructions, if any, should be removed/demolished. Then, the entire stretch of the drain should be thoroughly de-silted with proper slopping banks to its natural cross-sections. The banks of the drain should be protected by developing green cover with trees and tall grasses. All encroachments on to the road or the drain should be completely removed".

6. In response to the aforesaid Second Recommendation, as mentioned in the foregoing paragraphs, the Sahibabad Drain No.1 is a Man-made Drain. The width of the drain near Brij Vihar and Country Inn is 15 meters and from Country Inn to Vaishali, it is 10 meters. Whereas, the width in Vaishali itself is 21 meters. The said drain has been development by the U.P.S.I.D.C. and thereafter handed over to the Answering Respondent, namely, Ghaziabad Nagar Nigam for proper maintenance and well being. The Ghaziabad Nagar Nigam has been

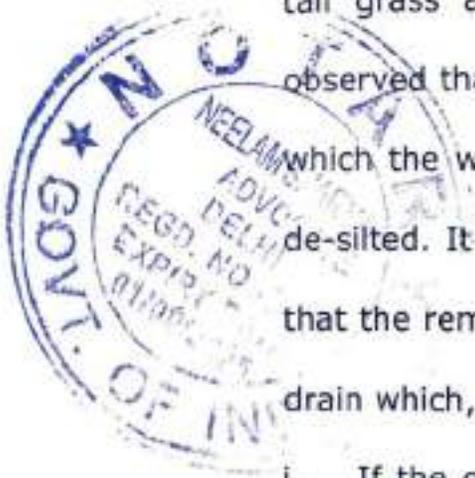


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efficiently and successfully carrying out the work of maintaining the drain and has granted license to private parties such as the petitioners under separate Agreements which enumerates various conditions. The private parties such as the petitioners, in compliance of the aforesaid terms and conditions so enumerated are most importantly required to keep the drain clean, maintain a regular flow of water and prevent any untreated sewage and industrial effluent from being discharged into the drain. In furtherance of the aforesaid Agreements, all those concrete covers that were made after obtaining proper valid license/permission from the Ghaziabad Nagar Nigam by the private parties such as the petitioners, have not been removed or demolished by the Ghaziabad Nagar Nigam. It is pertinent to mention here that the Licensees in accordance with the terms and conditions of the Agreements clean the drain regularly by lifting up the grill covers that have been installed intermittently for the purpose of cleaning the drain.

7. It is relevant to submit here that the banks of the drain are lined with tall grass and trees. The concerned Executive Engineer has also observed that the drain is equipped with proper sloped banks due to which the water flows down unobstructed and consequently remains de-silted. It is important to bring to the notice of this Hon'ble Court that the removal of the concrete slabs would make the drain as open drain which, in turn, would lead to other problems such as follows:

- i. If the concrete slabs covering the drain are removed as per the recommendation of the Expert Committee, then the open drain

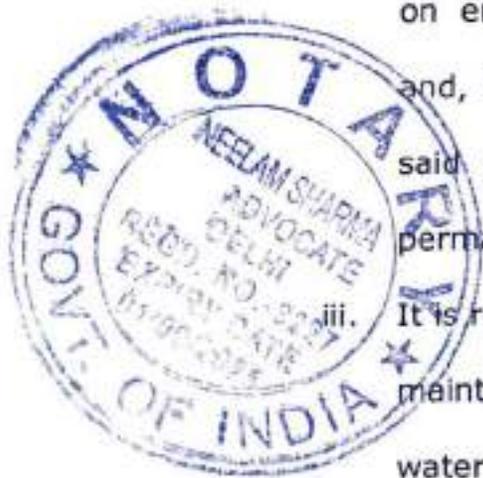


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would pose serious health and safety threats to the public at large. Moreover, the open drain would lead to emissions of toxics and hazardous gases which could cause long lasting and irreversible damage to the health of the inhabitants of the various residential colonies surrounding the area. It would also result in foul smell engulfing the entire area which would make the living conditions worse. Moreover, the inhabitants and the public at large would dump untreated garbage and household waste in the drain which in turn would lead to clogging the drain and obstructing the free flow of water. This obstructed flow of water would further result in water logging and moreover the stagnant water at various places will become the breeding grounds for mosquitoes and other diseases. The important aspect to be taken note of is that the open drain would also result in causing fatal accidents as in the past, as per news-reports many children had fallen in the drain and lost their lives. It would also result in leaching of pollutants into the earth.

- ii. The Ghaziabad Nagar Nigam has been authorized to keep a check on encroachment and unauthorized construction on the drain and, therefore, has removed all such illegal constructions. The said demolitions have been carried out with regard to both permanent and temporary illegal encroachments.

- iii. It is relevant to submit here that even otherwise, if the drains are maintained as closed drains and the drainage slop of the storm water drain is sustained then even during the rainy season it



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would be far more efficient resulting in no overflow or flooding of the drain on to the roads of Ghaziabad. More importantly, the covered drains do not allow the municipal solid waste and wind driven dust, garbage and debris to deposit in the drain thereby ensuring cleanliness of the drain and also reducing the expense of maintenance to a considerable extent.

- iv. It is important to bring to the notice of this Hon'ble Court that an FIR dated 12.3.2018 was lodged in Police Station at Ghaziabad against the officials working for Ghaziabad Nagar Nigam under Sections 277 and 304A IPC, since a four-years old boy residing in Gulzar Society fell into the open drain on 11.3.2018 and lost his life. In the aforesaid FIR, it was clearly mentioned that the Society Members, on several occasions, had complained to officers of Ghaziabad Nagar Nigam to cover the drain as it being an open drain had lead to children losing their lives. Similarly, a case numbered as 6966/24/31/2017/M-1 was filed in the Human Rights Commission on the basis of a complaint received from Rajiv Kumar Sharma, a Human Rights Activist from Delhi with regard to the death of one girl child namely Nagma who had fell in the open drain on 6.3.2017 at Sudamapuri Colony, Ghaziabad (U.P.). All the aforesaid incidents clearly point out to the conclusion that demolishing the covering of the drain and converting it into an open drain will only further lead to more fatal accident and loss of lives as the drains cannot be effectively barricaded since it is huge and runs into several kilometres.



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8. That the Third Recommendation of the Expert Committee reads as under:

"All sewage and industrial effluents should be segregated and not allowed to flow into the natural drain. We understand that the Ghaziabad Nagar Nigam is planning to implement a Sewerage Network in the unsewered areas of the Ghaziabad also. As far as the industrial effluents are concerned, the industrial area should be provided a separate Common Effluent Treatment Plant as per C.P.C.B. Norms".

9. It is relevant to submit here that in response to the aforesaid recommendation, it is submitted that one STP with 74 MLD capacity in Indirapuram was commissioned in February 2019 and now is being operated under the supervision of U.P. Jal Nigam. Similarly the other two STP of 56 MLD have also been transferred under the supervision of U.P. Jal Nigam w.e.f. 16.12.2019 for long term operation and maintenance of the sewage treatment system and sewage network. The 74 MLD capacity STP is based on Sequential Batch Reactor (SBR) Process Technology which is substantially capable of removing heavy metals, generally found in industrial effluents, within acceptable threshold range.

10. The Fourth Recommendation of the Expert Committee reads as follows:

"After the restoration of natural drain, a single access of appropriate width may be provided over the drain from the main road to each of the respective plots. The width of the access over the drain should not exceed 6 meters that shall permits proper maintenance of the drain below it."



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11. It is important to submit here that in response to the aforesaid fourth recommendation of the Expert Committee that after the restoration of the natural drain, a single access of width not exceeding 6 mtr. may be provided to the drain from the main road to each of the respective plots. Since the parties including the petitioners are in possession of adjoining plots with each other wherein the distance is very less between the said plots, therefore, to build a 6 mtr. access road to each respective plot is neither practically feasible nor possible.
12. The other recommendation of the Expert Committee was that "while construction of the Sewerage Network in the area may take some time, demolition of the cover of the drain should be undertaken immediately as it would help in regular cleaning of the drain and the free flow in the entire drain should be restored along with distillation and removal of solid wastes."
13. In response, it is submitted that admittedly there are many residential colonies/ societies that have come up along the drain making the entire area very densely populated. Hence, it would be the residents of such societies/colonies who would have to encounter direct consequences of demolishing the covering of the drain, as the outcome of an open drain would not only result in extremely unhygienic condition but would also be dangerous for the children staying around that area. Moreover, so far as the cleaning of the drain is concerned, as mentioned in the foregoing paragraphs, each licensee including the petitioners are responsible for the maintenance of the drain area used by them and the Ghaziabad Nagar Nigam conducts



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inspections on regular intervals to ensure that the sanitation and cleanliness of the drain is maintained thereby making the entire procedure highly efficient. It is important to mention here that one of the licensee namely Country Inn has already installed a Treatment Plant in its respective area for the up-keeping of the drain and the Answering Respondent would pray to this Hon'ble Court to issue similar directions for installing such treatment plants to all other licensees of the Ghaziabad Nagar Nigam.

14. That in the light of what has been stated herein above, the Ghaziabad Nagar Nigam would abide by the directions issued by this Hon'ble Court towards the maintenance and upkeep of the Sahibabad Drain No.1 and other environmental protection would be taken thereof which falls within its authority and jurisdiction.

I say and submit that no new facts have been pleaded in the Counter Affidavit which have not been taken before the court below.

DEPONENT

Identify the Deponent who has signed/put T - in my presence
VERIFICATION:

I, the deponent above named do hereby solemnly swear and verify that the contents of above mentioned paragraphs of this affidavit are true to my knowledge; and are based on the perusal of record and on legal advice which all I believe to be true and no part of it is false and nothing material has been concealed.



Verified at New Delhi on 26th day of February, 2021.

26 FEB 2021

ATTESTED
NOTARY (Govt. of India)
Neelam Sharma
Advocate
20, No.165A, Gali No. No. 11,
Patiala House Courts,
New Delhi-110001
(M) 9899408301

DEPONENT

26 FEB 2021

























Akshat Hansaria

From: Akshat Hansaria
Sent: 05 January 2022 18:30
To: 'venkat1advocate@gmail.com'
Cc: Amit K. Mishra; Etisha Srivastav
Subject: Hazi Arif v. State of UP - Objections of Respondent No. 14 to the Parul Gupta Committee Report

Dear Mr. Venkataraman

We, on behalf of Respondent No. 14 are filing objections to the Parul Gupta Committee Report. Since the objections were large in size, we have uploaded the same on our server. You can download the objections by clicking on the link and following the steps below:

 [Hazi Arif v. State of UP - NGT](#)

Please follow below mentioned step to access the documents:

1. Copy the link received.
2. Open link in incognito / private mode of browser.
3. Sign in using your e-mail credentials (credentials of authorized individual will only work).
4. You will receive a unique code on your email which will be the OTP to open the document.
5. Then it will redirect you to data page where you can access or download data.

Please treat this email as service of the objections on behalf of Respondent No. 14.

Best regards,

Akshat Hansaria