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

APPEAL NO. 30 OF 2025

IN THE MATTER OF:-

M/S. BAJAJ HINDUSTHAN SUGAR LIMITED **...APPELLANT**

VERSUS

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE (MOEF & CC) & ANR.

...RESPONDENTS

INDEX

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NEW DELHI
DATED: 19.01.2026

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REJOINDER AFFIDAVIT ON BEHALF OF THE APPELLANT TO THE REPLY DATED 19.08.2025 FILED BY THE RESPONDENT NO. 2/CENTRAL POLLUTION CONTROL BOARD.

I, Amit Kumar Pandey, S/o Sh. Suresh Pandey, aged 44 years working with M/s Bajaj Hindusthan Sugar Limited, Bajaj Bhawan, B-10, Sector-3, Noida, Uttar Pradesh, India, 201301. Presently at New Delhi, and do hereby solemnly affirm and state on oath as under:

1. That I am the Authorized Signatory of the Appellant Company in the instant case and am conversant with the facts of the present case and hence I am competent to swear this rejoinder affidavit.

2. That the present Rejoinder Affidavit is being filed by the Appellant Company in response to the Reply dated 19.08.2025 filed by the Respondent No. 2/Central Pollution Control Board. At the very outset, the Appellant Company denies all the averments and/or contentions made by the Respondent No. 2 in its Reply in its entirety except to the extent that it may be matter of record or has been specifically admitted hereunder.

NOTARY PUBLIC NITENDRA KUMAR Advocate NOTARY PUBLIC R. No-19708 NCT DELHI GOVT. OF INDIA

3. That the Appellant Company has narrated the facts on the basis of which the present Appeal arises in their Appeal, which is narrative and exhaustive in nature and as such the

Appellant crave leave of this Hon'ble Tribunal to refer and rely on the contents thereof, as the same are not repeated herein for the sake of brevity and verbosity. That the contents of the Appeal may kindly be read as a part and parcel of the Rejoinder Affidavit being filed by the Appellant Company.

4. That I have understood the contents of the Reply dated 19.08.2025 filed on behalf of the Respondent No. 2/Central Pollution Control Board (hereinafter referred to as **"**the Reply dated 19.08.2025" for the sake of brevity) and as such, I am filing reply to the Reply dated 19.08.2025. The submissions made hereunder are in the alternative and without prejudice to each other.

PRELIMINARY SUBMISSIONS/OBJECTIONS:

5. It is humbly submitted that the impugned direction dated 03.07.2020 ***(Annexure-A-1 of the Appeal @ Pg 53-55)***, whereby, CPCB has purported to demand a sum of ₹1,96,20,000/- towards Environmental Compensation, which is wholly without jurisdiction, arbitrary, and *non-est* in the eyes of law. The Section 5 of the Environment (Protection) Act, 1986 confers power only to issue regulatory directions, such as closure of industry, regulation of process, or stoppage of utilities, and does not in any manner authorize the imposition of pecuniary liabilities. The settled law, as enunciated by the Hon'ble Supreme Court in *Shree Bhagwati Steel Rolling Mills v. CCE (2016) 3 SCC 643, Khemka & Co. v. State of Maharashtra (1975) 2 SCC 22,* and *Delhi Pollution Control Committee vs. Lodhi Property Co. Ltd. Etc. Civil appeal No. 757-760 of 2023;* is that pecuniary penalties or liabilities cannot be imposed without express statutory sanction. In order to impose, levy, calculate or collect either compensation of restorative nature, or penalty for violation an express statutory mandate is an essential

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prerequisite. No such statutory provision presently exists. The demand in question is thus *ex-facie ultra vires.*

6. It is humbly submitted that the very foundation of CPCB's case is defective because the statutory procedure for inspection and sampling, as prescribed under Section 11 of the EP Act, 1986 and Rule 7 of the EP Rules, 1986, was not followed. No prior notice in Form-I was ever served on the occupier or his agent or the person in charge, thereby denying them opportunity to be present and ensure that the samples are indeed collected from the land in possession of the unit, is properly sealed and not tempered with, mark and sign the container. Further no duplicate sealed sample was handed over to the Appellant, and no chain of custody was maintained. It is well settled principle that failure to adhere to mandatory sampling protocol renders the test results unreliable and incapable of forming the basis of any penal or adverse action, thereby becoming inadmissible and the same was reiterated by the Hon'ble Supreme Court in ***Triveni Engineering & Industries Ltd. v. State of U.P., 2025 SCC OnLine SC 1877*** wherein, the Hon'ble Apex Court held:

> *"... 30. Having surveyed the relevant case law on the subject, let us revert back to the present case. From the conspectus of facts and law, it is clearly evident that the impugned orders are in complete violation of the procedures laid down in the Water (Prevention and Control of Pollution) Act, 1974, the Environment (Protection) Act, 1986, more particularly Sections 21 and 22 of the Water Act and the National Green Tribunal Act, 2010, including Section 19 thereof. It is crystal clear that the impugned decisions which entail adverse civil consequences upon the appellant were passed without following the due procedure laid down under the statute as well as the elementary principles of natural justice. We, therefore, have no hesitation in declaring such orders to be illegal and null and void.*
>
> *31. NGT exercises judicial functions. Therefore, it is all the more necessary for the NGT to adhere to a fair procedure which is statutorily laid down of which principles of natural justice are an inalienable part.*

NOTARY PUBLIC GOVT. OF INDIA NITENDRA KUMAR Advocate NOTARY PUBLIC R. No. 19108 DELHI

4

Rigor of Section 19(1) of the National Green Tribunal Act, 2010 is qua the procedure to be adopted by the NGT in conducting its proceedings. It cannot be stretched to abandon the statutory procedure laid down under Sections 21 and 22 of the Water Act and by outsourcing investigation to administrative committees by overlooking the statutory provisions and basing its decisions on the recommendation of such administrative committee. This is not within the remit of NGT....

... 33. Ordinarily, in a case where there is violation of the principles of natural justice, parties are relegated to the adjudicatory forum to re-do the exercise after following the due process. But in this case, the entire exercise has been vitiated because of non-conforming to the laid down procedure contemplated under Sections 21 and 22 of the Water (Prevention and Control of Pollution) Act, 1974. In such circumstances, relegating the parties back to the NGT in our considered opinion would serve no useful purpose. However, we clarify that it will always be open to the UPPCB to carry out inspection and take remedial measures qua the sugar mill of the appellant by following the procedure laid down under the Water Act and after complying with the due process statutorily laid down thereunder, including by adhering to the principles of natural justice..."

Thus, CPCB's reliance on these defective samples cannot form the basis of a multi-crore demand.

7. It is further submitted that the impugned order is vitiated for violation of the principles of natural justice. The Appellant was never served with a show cause notice specifically proposing the imposition of Environmental Compensation, nor was the computation methodology or calculation sheet ever shared for effective rebuttal. The earlier notices only referred to alleged deficiencies violations of ZLD requirements and did not put the Appellant to notice that a monetary liability of crores would be fastened. The denial of an opportunity to contest the computation inputs or the period of alleged violation is a clear infraction of the rule of *audi alteram partem* and violates Article 14 of the Constitution. The earlier notices issued by the Respondent only alleged certain deficiencies relating to ZLD compliance

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Advocate
NOTARY PUBLIC
GOVT. OF INDIA

and operational issues, and at no stage did they put the Appellant to notice that a monetary liability running into crores of rupees would be imposed. The fastening of such a heavy financial burden without prior disclosure of intent, criteria, formulae or computation inputs constitutes a direct violation of the fundamental rule of *audi alteram partem* and violates Article 14 of the Constitution.

8. It is respectfully submitted that the Respondent failed to consider, examine or respond to the detailed compliance reports replies dated 30.01.2019 and 09.08.2019 submitted by the Appellant pursuant to the earlier Show Cause Notices dated 14.01.2019 and 22.07.2019 respectively. Instead, without verifying the corrective actions already undertaken, the Respondent abruptly issued the impugned Show Cause Notice levying Environmental Compensation dated 19.08.2019. Further, the Appellant submitted two detailed replies to the Show Cause Notice dated 19.08.2019, on 04.09.2019 and 06.09.2019. Neither were the replies considered, nor was any opportunity of personal hearing granted, nor were the underlying formulae, operational day calculations, input data, or methodological reasoning ever shared with the Appellant. The impugned demand was thus reached unilaterally, in an opaque, arbitrary and procedurally defective manner, denying the Appellant any meaningful opportunity to contest the computation, the alleged period of violation, or the factual basis of the findings. The demand notice dated 03.07.20220 issued by the Respondent was, therefore, arbitrary, illegal and *non-est* in the eyes of law, being contrary to the principles of natural justice, the doctrine of fairness in administrative action, the principle of proportionality, and Article 14 of the Constitution. Such mechanical imposition of liability, without notice or hearing, is squarely unconstitutional, and renders the entire EC direction null and void.

NOTARY PUBLIC
NITENDRA KUMAR
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NOTARY PUBLIC
R. No-10709
NCT DELHI
GOVT. OF INDIA

6

9. It is further submitted that the computation of EC is arbitrary, mechanical and without application of mind. CPCB mechanically applied a formula devised by a committee and assumed, without any cogent evidence, that the Appellant was in continuous violation for 273 days. There was no individualized assessment of actual environmental damage caused, nor was the Appellant afforded an opportunity to contest the data and parameters used. Even if this Hon'ble Tribunal had, in other matters, provisionally accepted a methodology for assessment, such computation must be subjected to judicial adjudication, and CPCB cannot act as judge in its own cause.

10. It is humbly submitted that not only the no. of days alleged are false, but also the formula adopted by CPCB is completely non-transparent, unscientific, mechanically applied, and not even in conformity with the office order dated 04.09.2019 titled as 'Policy for Levying Environmental Compensation (EC) for Industries', and recommendations of the 'Report of the CPCB In-House Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund' dated 15.07.2019 have not been followed, rendering the entire computation process illegal, arbitrary and unsustainable.

11. That the impugned imposition of Environmental Compensation is ex facie violative of Article 14 of the Constitution of India, as the Respondent No. 2/CPCB has failed to disclose any intelligible differentia or objective criteria for determining either the liability or the quantum of EC. The Applicant has not been informed as to the basis on which it has been classified or distinguished from other similarly situated entities. In the absence of any disclosed classification founded on the nature of activity, scale of operations, duration of alleged violation, or extent of

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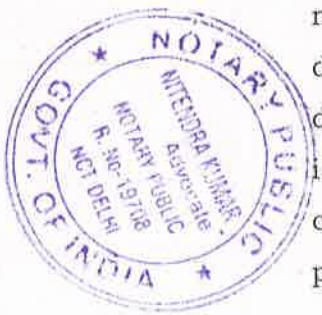
Advocate
NOTARY PUBLIC
R. No-19708
NCT DELHI
GOVT. OF INDIA

environmental impact, the exercise of power by the Respondent remains unguided, arbitrary, and constitutionally impermissible.

12. That even otherwise, the impugned action fails to satisfy the mandatory requirement of proportionality. The Respondent No. 2/CPCB has not demonstrated any rational nexus between the alleged violation and the quantum of Environmental Compensation imposed. No scientific assessment, environmental impact study, or quantification of damage has been undertaken or placed on record. The conduct of the Respondent No. 2/CPCB in imposing the Environmental Compensation, without disclosure of methodology, or supporting material, reflects a complete lack of application of mind and a colourable exercise of power. A regulatory authority vested with significant coercive powers is duty-bound to act with transparency, fairness, and accountability. The impugned direction, marked by opacity, inconsistency, and absence of reasoned justification, undermine the principles of natural justice and erode the credibility of the regulatory framework itself.

13. It is further submitted that no individualized assessment of actual environmental damage caused was ever undertaken, nor was the Appellant afforded an opportunity to contest the data and parameters used. The imposition of a so called 'restorative' Environmental Compensation without first determining the nature, extent, severity or quantifiable impact of any alleged harm vitiates the very basis of such a measure. Restoration presupposes a finding of what was damaged, when the damage was caused, how it was damaged, to what extent, and what quantum of remediation is required, none of which has been assessed in the present case. Even if this Hon'ble Tribunal had, in other matters, provisionally accepted a methodology for assessment, such



8

computation must be subjected to judicial adjudication, and CPCB cannot act as judge in its own cause.

14. It is further submitted that CPCB's conduct is self-contradictory. While it passed a closure direction on 22.07.2019 ***(Annexure-A-14 of the Appeal @ Pg No. 109-113)***, the same was subsequently revoked by CPCB itself on 20.04.2020 ***(Annexure-A-21 of the Appeal @ Pg No. 146-148)*** after being satisfied with compliance. Once compliance was acknowledged and the closure lifted, CPCB cannot in the same breath allege continuous non-compliance for 273 days and impose Environmental Compensation at an arbitrary and non-transparent rate. The revocation order is a statutory acknowledgment of compliance and completely demolishes the edifice of the impugned demand.

15. It is humbly submitted that the respondent's blanket reliance on the Polluter Pays principle is wholly misplaced, legally unsustainable and fundamentally misconstrued. It is a mere principle of environmental jurisdiction and not an independent statute. It is a well settled principle that the power of CPCB to impose EC is subject to the principle of natural justice and through a subordinate legislation and the same has been re-affirmed by the Hon'ble Apex Court in ***Delhi Pollution Control Committee vs. Lodhi Property Co. Ltd. Etc. 2025 SCC OnLine SC 1601***. Moreover, CPCB has misapplied the Polluter Pays principle. The Appellant is a Zero Liquid Discharge unit with three-stage MEE at time of inspection dated 22.10.2018 & 23.10.2018, which subsequently got upgraded to a fully functional five stage MEE with trials scheduled in October post rainy season, a CPU with Ammonia Stripper of 750 m^3/day capacity and 300 MJ/hr. Recirculation Rate, bio-composting with covered shed for storage, three handpumps and additional six piezo wells under construction, and adequate PTZ camera

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R. No-16708
NCT DELHI
GOVT. OF INDIA

9

facilities in place. Further, the Polluter Pays cannot be invoked in the absence of proven pollution supported by admissible evidence and a lawful adjudicatory process. The Hon'ble Supreme Court in *M.C. Mehta v. Kamal Nath (1997) 1 SCC 388 and Indian Council for Enviro-Legal Action v. Union of India (2011) 8 SCC 161* clarified that the principle is enforceable only through competent judicial determination. The unilateral administrative demand by CPCB is, therefore, wholly unsustainable.

16. It is further submitted that the maintainability of the present Appeal is beyond doubt. The Hon'ble Supreme Court, by its order dated 11.08.2020 ***(Annexure-A-25 of the Appeal @ Pg No. 185)***, stayed the operation of the impugned demand, thereby recognizing its prima facie illegality, and by its subsequent order dated 24.02.2025 ***(Annexure-A-26 of the Appeal @ Pg No. 186-190)***, expressly granted liberty to the Appellant to approach this Hon'ble Tribunal. These orders bind the parties and conclusively establish that the present Appeal is competent and maintainable.

17. That this Hon'ble Tribunal in *OA No. 593 of 2017 titled as "Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors."* explicitly empowered the Respondent No. 2/CPCB to assess and recover compensation for environmental damage. However, the authority to levy penalties resides solely with the NGT, as it functions as the adjudicating body in such matters and the Respondent No. 2/CPCB's role, as specified, is limited to assessing damage and recovering compensation, without overstepping into penalty imposition.

18. That a significant portion of the CPCB's Reply consists of non-responsive statements such as "reiterated", "no comments", "already submitted" and "matter of record". None of these constitute a specific traverse of the Appellant's

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R. No-19708
NCT DELHI
GOVT. OF INDIA

10

averments. As per well-settled principles, vague denials and evasive replies are deemed admissions. The CPCB, therefore, must be taken to have admitted the Appellant's assertions regarding non-compliance with statutory procedure, illegality of sampling, absence of notice, absence of section 11 compliance and arbitrariness in EC calculation.

19. It is humbly submitted that the burden of proof to justify the impugned demand lies squarely on CPCB, which has failed to produce any contemporaneous evidence of compliance with statutory procedure or actual environmental damage. The assertions in the Reply dated 19.08.2025 that Form-I notice was issued, samples were taken properly, or continuous violation occurred, are wholly unsubstantiated. Mere repetition cannot discharge CPCB's burden.

20. It is further submitted that if CPCB's interpretation is accepted, it would result in a dangerous precedent whereby regulators, without any statutory backing, may impose multi-crore liabilities on industries at their own discretion. This would amount to rewriting Section 5 of the EP Act, converting it from a regulatory power into a penal provision, which is impermissible in law. The Hon'ble Tribunal must guard against such regulatory overreach and ensure that penalties or compensations are imposed only under lawful authority and through judicial adjudication.

REPLY ON MERITS:

21. That the contents of paragraph 1 of the Reply dated 19.08.2025 are matter of record and hence, need no reply.

22. That the contents of paragraph 2 of the Reply dated 19.08.2025 need no reply.

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R. No-19703
NCT DELHI
GOVT. OF INDIA

11

23. That the contents of paragraph 3 of the Reply dated 19.08.2025 are admitted fact. However, being a regulatory body does not, without specific statutory authority, convert CPCB into an adjudicatory body empowered to impose pecuniary liabilities. The Appellant relies on the statutory scheme and settled constitutional/administrative law principle that penalties and pecuniary liabilities must have clear statutory authority and afford adequate adjudicatory safeguards.

24. The contents of paragraph 4 of the Reply dated 19.08.2025 are admitted. However, it is contended that the legal and factual basis for immediate deposit of a large pecuniary sum must be traced to statute; Section 5 EP Act, 1986 deals with directions to take measures for environmental protection and does not, on its face, vest CPCB with power to *adjudicate* and *demand* monetary compensation.

25. The contents of paragraph 5 & 6 of the Reply dated 19.08.2025 are matter of record.

26. The contents of paragraph 7 are misleading and misconceived and are therefore denied. It is submitted that the facts relied upon by CPCB are controverted by contemporaneous replies and documentary material filed by the Appellant. The Appellant's replies dated 30.01.2019, 04.09.2019 and 06.09.2019 and supporting documents set out the remedial measures undertaken, the steps to reduce lagoon capacity, repair works, installation/relocation of PTZ cameras and application for CGWA NOC.

27. It is further submitted that the CPCB's conclusions about MEE non-operation and leakage into groundwater require admissible, contemporaneous, and properly documented evidence, particularly where CPCB relies on sampling results. The Appellant specifically disputes CPCB's

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R. No-19708
NCT DELHI
GOVT. OF INDIA

characterization of storage lagoons as "untreated katcha lagoons" and relies upon photographic evidence, operational logs and NSI Kanpur laboratory analysis showing the treated & environmental compliant status of effluents during the relevant period.

28. It is further contended that the Appellant submitted detailed replies prior to closure. The closure direction without adequate adjudicatory process and without weighing Appellant's replies and supporting materials is arbitrary. The revocation ***(Annexure-A-21 of the Appeal @ Pg 146-148)*** further indicates that CPCB accepted material compliance on review, underscoring that the closure direction could not form an unassailable basis for the EC demand.

29. That the contents of paragraph 8 of the Reply dated 19.08.2025 are matter of record. However, it is submitted that the CPCB asserts a formulaic computation. But the CPCB Reply does not attach or disclose the detailed computation sheet, inputs used, days of violation counted, or the factual basis for imputing continuous violation for the entire 273 day period to the Appellant. It is further submitted that even if an EC methodology exists, the application of such a methodology to an individual industry requires individualized adjudication and opportunity to be heard. The simple issuance of an administrative "direction" to deposit EC, without the adjudicatory features of hearing and contestable evidence, violates principles of natural justice and the statutory scheme.

30. The contents of paragraph 9 of the Reply dated 19.08.2025 are misleading and misconceived and are therefore denied. It is humbly submitted that the order in OA No.593/2017 ***(Annexure-A-8 of the Appeal @ Pg No. 86-91)*** was passed in the context of systemic failures to set up ETPs/CETPs and created a framework for *assessment* and *utilization* of funds

NOTARY PUBLIC
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Advocate
NOTARY PUBLIC
R. No-19708
NCT DELHI
GOVT. OF INDIA

13

to remediate environmental damage. It did not, and could not constitutionally, convert CPCB into a quasi-judicial monetary recovery tribunal that may impose penal monetary demands without statutory authority and adjudicatory safeguards. It is further submitted that this Hon'ble Tribunal's supervisory direction to CPCB to develop a methodology for assessing compensation (and to prepare action plans for utilizing funds) is not the same as a direction allowing CPCB to make summary monetary demands against specific units without proceedings before a judicial/adjudicatory tribunal. The Appellant objects to CPCB's conflation of "assessment" with "adjudication and immediate recovery."

31. The contents of paragraph 10 of the Reply dated 19.08.2025 are matter of record.

32. The contents of paragraph 11 of the Reply dated 19.08.2025 are misleading and misconceived and are therefore denied. It is humbly submitted that the CPCB's inspection and associated sample results must satisfy the strict requirements of Section 11 of the Environment (Protection) Act, 1986 and Rule 7 (Form 1) of the EP Rules, 1986. The Appellant disputes the procedural regularity of the sampling, no contemporaneous joint sealing, no signed duplicate sample copy provided to the Appellant on site, and no documented chain-of-custody has been produced by CPCB in its Reply dated 19.08.2025. Absent these, sample results are tainted and inadmissible. It is further submitted that the Appellant placed on record the NSI Kanpur analysis and monitoring records which show a different scientific picture for certain parameters. CPCB's Reply ignores or fails to reconcile its high values with the NSI monitoring results. Selective reliance on a single set of readings from a disputed sample cannot sustain a finding of continuous violation.

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Advocate
NOTARY PUBLIC
R. No-19708
NCT DELHI
GOVT. OF INDIA

33. It is further submitted that the Appellant had been undertaking remedial steps and, in any event, had substantially reduced operations as part of the compliance process, these facts must be weighed before characterizing the unit as continuously violating norms for 273 days.

34. The contents of paragraph 12 of the Reply dated 19.08.2025 are matter of record. However, it is submitted that the closure was subsequently revoked after review of Appellant's compliance submissions. The fact of revocation is inconsistent with a claim of un remediated continuous violation and indicates that CPCB itself found substantial compliance upon re-inspection and documentary review.

35. The contents of paragraph 13 of the Reply dated 19.08.2025 are misleading and misconceived and therefore, are denied. It is humbly submitted that adoption of a methodology by this Hon'ble Tribunal for *assessment* of EC is an administrative step to enable quantification of environmental damage and planning of remedial action. It does not transfer adjudicatory authority to CPCB to *impose* and *recover* EC from an individual unit in a summary manner. It is reiterated that a party facing a large monetary demand must be afforded an adjudicatory process, including full disclosure of the mathematical calculations and a hearing on evidence.

36. It is further submitted that the Appellant also objects to the administrative application of formulaic multipliers without assessing unit-specific circumstances. The EC methodology must be applied with due regard to factual matrix of each case and after affording an opportunity to contest data; absent that, the application is arbitrary. The Appellant reserves its right to challenge computation once CPCB produces full working papers.

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NOTARY PUBLIC
R. No-19708
NCT DELHI
GOVT. OF INDIA

15

37. The contents of paragraph 14 of the reply dated 19.08.2025 are matter of record. It is humbly submitted that the Appellant did seek abeyance given the legal question about CPCB's power was then *sub-judice* before the Hon'ble Supreme Court in SLP No. 18356 of 2019. It is further contended that the CPCB's refusal to accede to abeyance was procedurally unfair. The Appellant's request was not frivolous, it raised substantial questions of law about jurisdiction and natural justice which the Hon'ble Supreme Court later acknowledged by granting liberty to approach this Hon'ble Tribunal.

38. That the contents of paragraph 15 of the Reply dated 19.08.2025 are misleading and misconceived and are therefore denied. It is humbly submitted that the Appellant's reliance on the proceedings of SLP (C) No. 18356 of 2019 was not to plead identity of facts but to raise the legal question common to both units; viz. whether CPCB may demand EC as an administrative fiat under Section 5 EP Act, 1986. It is submitted that identical legal issues were involved in both matters; therefore, CPCB's narrow technical distinction is not persuasive. The Hon'ble Supreme Court's later common order dated 24.02.2025 granted liberty to approach this Hon'ble Tribunal on those very CPCB directions, thus validating Appellant's position to seek Hon'ble Tribunal's adjudication.

39. That the contents of paragraph 16 of the Reply dated 19.08.2025 are misleading and misconceived and are therefore denied. It is further submitted that the revocation letter records CPCB's acceptance of compliance subject to certain conditions. If CPCB accepted compliance upon review of records and re-inspection, it is inequitable and unreasonable to treat the period covered by the revoked closure direction as a basis for EC for continuous violation

without fresh, cogent evidence of continuing breach. CPCB cannot have it both ways. It is further submitted where a regulator (CPCB in the present case), after giving directions, accepts compliance and revokes closure, that acceptance must affect subsequent enforcement measures and computations of EC unless CPCB adduces clear contrary evidence showing fresh breaches post-revocation.

40. That the contents of paragraph 17 of the Reply dated 19.08.2025 are misleading and misconceived and are therefore denied. It is humbly submitted that the Appellant accepts the Polluter Pays principle in abstract; but notes it must be applied consistently with statutory scheme and due process. None of the cited Apex Court decisions supplants the need for clear statutory power to impose penal monetary liability by an administrative agency in a summary manner. Those judgments recognize remedial compensation for environmental harm, but the procedure for assessment and recovery must be consistent with the Constitution, statute and principles of natural justice. CPCB's invocation of these cases is therefore analytically flawed.

41. It is further submitted that the Hon'ble Supreme Court decisions distinguish between compensation for remediation and penalties for offence, the mode and forum for determination matters. That is precisely the Appellant's plea: determination of EC must be by a competent forum after a fair hearing.

42. The contents of paragraph 18 of the Reply dated 19.08.2025 are misconceived and hence denied. In reply thereto, it is humbly submitted that the NGT's supervisory direction to frame guidelines is a regulatory exercise to promote uniformity and deterrence. It does not, however, permit CPCB to act as an adjudicatory tribunal imposing monetary demands without statutory authority. Guidelines operate in

the interstice between policy and enforcement and must be applied consistently with statutory limits. CPCB's reliance on these directions cannot be used to bypass adjudicatory safeguards guaranteed by law.

43. The contents of paragraph 19 of the Reply dated 19.08.2025 are misconceived and hence denied. It is humbly submitted that this Hon'ble Tribunal accepted the committee's methodology as an *interim* measure to assess EC and to frame an action plan for utilizing recovered funds. That acceptance did not convert CPCB into an adjudicatory monetary recovery authority. The methodology helps quantify damages but does not dispense with the need for due process. The Appellant reiterates its right to examine and contest the inputs used from CPCB's committee when the formula was applied. No such disclosure has been given to the Appellant in a manner enabling meaningful challenge.

44. The contents of paragraph 20 of the Reply dated 19.08.2025 are misleading and misconceived. In reply thereto, it is humbly submitted that the Appellant does not dispute the need for regulatory accountability. What is contested is the manner in which CPCB purportedly exercised that role in this case. This Hon'ble Tribunal's observation does not dispel the requirement that any monetary demand be made in accordance with statute and after affording the person concerned an opportunity to be heard and to examine the evidence on which the demand is based. CPCB's Reply does not show such due process.

45. The contents of paragraph 21 are misleading and misconceived and hence are denied in toto. It is humbly submitted that the listed instances are generic categories for preliminary screening. Application to a specific unit requires individualized, evidenced findings and an adjudicatory hearing. CPCB's issuance of an EC demand without

NOTARY PUBLIC
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NOTARY PUBLIC
R. No-19708
NCT DELHI
GOVT. OF INDIA

individualized adjudication, simply because the unit fell within some generic category at a point, is arbitrary. The Appellant reserves the right to challenge any specific factual determination by CPCB on admissibility grounds. It is further contended that the CPCB has not alleged that the Appellant tampered with data or OCEMS. Its case rests on the inspection findings and sample results, both of which are contested on procedural and evidential grounds by the Appellant.

46. The contents of paragraph 22 of the Reply dated 19.08.2025 are admitted to the extent of the contents which are matter of record. In reply thereto, it is humbly submitted that the chronology is not in dispute. What is disputed is CPCB's characterization of the facts and the legal consequences it sought to attach to them. The Appellant's contemporaneous replies and documentary submissions directly rebut the assertion of continuous non-compliance during the entire period and demonstrate steps taken to remediate alleged deficiencies. CPCB has not provided any cogent answer to that material.

47. It is further submitted that the show-cause notice relied upon the CPCB committee methodology; however, the show-cause did not provide the Appellant with sufficient particulars of the calculation or the underlying evidence in a form that permitted a meaningful response. CPCB thus denied the Appellant fair opportunity to contest the quantum.

REPLY TO PARAWISE COMMENTS:

48. The contents of paragraph 23 of the Reply dated 19.08.2025 needs no comment.

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49. The contents of paragraph 24 of the Reply dated 19.08.2025 are misconceived and are denied. The Appellant reiterates the contents of the foregoing paragraphs. The Appellant emphatically denies CPCB's legal conclusion. This Hon'ble Tribunal's directions to CPCB to assess and recommend compensation for environmental damage do not equate to a statutory grant of adjudicatory power. The separation between *assessment/recommendation* (administrative/ policy) and *adjudication/penal recovery* (judicial/quasi-judicial) must be maintained. CPCB's heavy reliance on this Tribunal's orders to justify unilateral monetary demands is therefore legally unsound. It is further reiterated that the law is settled that pecuniary liabilities amounting to penalty/exaction must be traceable to clear legislative delegation.

50. The contents of paragraphs 25 & 26 of the Reply dated 19.08.2025 need no comment.

51. The contents of paragraph 27 are wrong and in reply thereto, the contents of paragraph 23 of this Rejoinder Affidavit are reiterated to be true.

52. The contents of paragraph 28 of the Reply dated 19.08.2025 need no comments.

53. That in reply to the contents of 29 of the Reply dated 19.08.2025 the contents of the foregoing paragraphs are reiterated to be true, and the contents thereof are not being repeated herein for the sake of brevity. That the competent State regulator (UPPCB) recognized the unit's compliance with consent conditions as of April 2020. CPCB's Reply does not explain how those State level consents (with their own inspections and monitoring) are to be ignored in favour of CPCB's unilateral findings.

NOTARY PUBLIC
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NOTARY PUBLIC
R. No-13708
NCT DELHI
GOVT. OF INDIA

20

54. The contents of paragraph 30 of the Reply dated 19.08.2025 are misconceived and hence denied. The Appellant stresses the limited scope of this Hon'ble Tribunal's order, and that "assessment" does not equate to unilateral "adjudication and immediate recovery." CPCB must show explicit NGT direction permitting immediate deposit demands on specific units which it has not done.

55. The contents of paragraph 31 of the Reply dated 19.08.2025 are misconceived and hence denied. It is humbly submitted that the inspection occurred, but the Appellant disputes the manner and outcome. The Appellant had been in communication with UPPCB and CPCB and had taken steps to halt certain operations and remedy defects. Evidence of such steps (correspondence, photographs, logs) is on record. CPCB must produce the contemporaneous inspection notes, sampling tags and photographic records as they existed at the time. It is further submitted that a complaint about discharge on one or two dates does not automatically establish continuous gross violation over months. CPCB must show continuous breaches with supporting evidence; otherwise calculating EC for each day in the alleged period is arbitrary.

56. The contents of paragraph 32 are misleading and misconceived and hence denied. The Appellant emphatically denies the averments. The assertion of CPCB that Form–I was served and sampling procedure was duly followed is false, unsubstantiated and contrary to record. It is submitted that there was violation of Section 11 EP Act & Rule 7 of EP Rules:

i. Section 11(3) of the EP Act mandates that when a sample is taken, a portion must be given to the occupier or his agent under seal.

NOTARY PUBLIC
NITENDRA KUMAR
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NOTARY PUBLIC
R. No-19708
NCT DELHI
GOVT. OF INDIA

24

ii. Rule 7 requires that a notice in Form–I be served in advance, stating intention to collect sample.

iii. No such notice was ever served upon the Appellant, nor was any counterpart sealed sample delivered.

57. It is further submitted that CPCB has not produced:

i. A copy of Form–I bearing signature/ acknowledgement of the Appellant's authorized representative.

ii. Proof of handing over duplicate sample bottle under seal.

iii. Chain-of-custody documentation from site to laboratory.

iv. Laboratory receipt registers showing seal integrity. In absence of these, CPCB's assertions remain self-serving and inadmissible.

58. It is further contended that even if CPCB relies on laboratory results, those are vitiated due to non-compliance of statutory safeguards. Further, the Appellant's own NSI Kanpur adequacy report and UPPCB's subsequent consent orders affirm compliance, proving that CPCB's results were unreliable or aberrational.

59. It is further submitted that once Appellant has specifically denied receipt of Form-I and duplicate samples, the burden is on CPCB to produce contemporaneous evidence. Its failure to do so discredits the foundation of its case. The entire edifice of CPCB's case, being based on procedurally defective sampling, collapses. The impugned EC demand must be rendered illegal and arbitrary.

60. The contents of paragraph 33 are mere repetition of the chronology of inspections, notices, and directions already stated earlier in the Reply. The averments are denied in toto save and except those matters that are matters of record. CPCB's repetition of chronology does not strengthen its case;

NOTARY PUBLIC ★ NITENDRA KUMAR Advocate NOTARY PUBLIC R. No-19708 NCT DELHI GOVT. OF INDIA

what is crucial is the legality and evidentiary basis of its findings.

61. The Appellant has repeatedly submitted point-wise compliance to CPCB. These replies detail dismantling of kutcha lagoons, installation of MEE units, PTZ camera installation, groundwater monitoring, and commissioning of CPU. These documentary materials have not been rebutted by CPCB.

62. It is submitted that CPCB's allegation of "continuous violation" is factually incorrect and legally untenable. "Continuous violation" must be demonstrated with contemporaneous, consistent data, properly sampled in accordance with Section 11 EP Act. CPCB's reliance on a single or occasional inspection (23.10.2018, 24.04.2019) cannot sustain a claim of 273 days of violation.

63. It is further submitted that CPCB has suppressed the material fact that it itself revoked the closure direction on 20.04.2020, acknowledging compliance. A regulator that accepts compliance cannot simultaneously claim that the same entity committed uninterrupted violation for the entire preceding period.

64. The Appellant relies on *Shree Bhagwati Steel Rolling Mills v. CCE* (2016) 3 SCC 643, wherein Hon'ble Supreme Court held that penal consequences cannot be visited without express statutory provision and due process. Mere repetition of chronology by CPCB does not confer jurisdiction.

65. In reply to the contents of paragraph 34 it is humbly submitted that it is admitted to the extent it records filing of Writ Petition and orders of Hon'ble Supreme Court dated 11.08.2020 staying operation of the impugned demand, and order dated 24.02.2025 granting liberty to the Appellant to

NOTARY PUBLIC GOVT. OF INDIA NITENDRA KUMAR Advocate NOTARY PUBLIC R. No-19709 NCT DELHI

approach this Hon'ble Tribunal. These Hon'ble Supreme Court orders fortify the maintainability of the present Appeal. The stay order demonstrates that Hon'ble Supreme Court found prima facie illegality in CPCB's action. The liberty order shows that final adjudication must lie with NGT.

66. It is submitted that CPCB has suppressed the effect of the stay order. Once Hon'ble SC stayed recovery, CPCB was estopped from pressing coercive measures. Its reiteration of demand despite SC's protection is arbitrary and amounts to overreach.

67. It is further submitted that CPCB's reliance on pendency of writ as a ground to discredit the Appeal is misconceived. On the contrary, it affirms that the Appellant has consistently pursued legal remedies against an unlawful demand.

68. In reply to the contents of paragraph 35 of the Reply dated 19.08.2025 the Appellant reiterates **Grounds A to L** of the Appeal. CPCB has failed to rebut these substantive grounds, which include:

i. Lack of jurisdiction under Section 5 EP Act or any other statute or subordinate legislation;
ii. Procedural lapses in inspection and sampling under Section 11 EP Act;
iii. Misinterpretation of NGT orders in OA 593/2017;
iv. Ignoring compliance reports and revocation of closure direction;
v. Illegality of retrospective imposition of EC without adjudication.

NOTARY PUBLIC NITENDRA KUMAR Advocate NOTARY PUBLIC R. No-19708 NCT DELHI GOVT. OF INDIA

69. CPCB has not addressed binding judgments of Hon'ble Supreme Court:

a. Shree Bhagwati Steel Rolling Mills v. CCE (2016) 3 SCC 643 (penalties require statutory backing);

b. Khemka & Co. v. State of Maharashtra (1975) 2 SCC 22 (pecuniary liabilities cannot be imposed without law);

c. Kantha Vibhag Yuva Koli Samaj Parivartan Trust v. State of Gujarat (2023) 13 SCC 525 (committees assist, they do not adjudicate).

d. Triveni Engineering & Industries Ltd. v. State of U.P. Civil Appeal No. 8119-8120 of 2022.

e. Delhi Pollution Control Committee vs. Lodhi Property Co. Ltd. Etc. Civil appeal No. 757-760 of 2023.

70. It is further submitted that CPCB's denial is a bald assertion and does not discharge its burden of proving the existence of statutory power to levy EC. It is settled law that **jurisdiction cannot be presumed**; it must be expressly conferred.

71. In reply to the contents of paragraph 36 of the Reply dated 19.08.2025 it is humbly submitted that the allegation of environmental damage is emphatically denied. Appellant is a **Zero Liquid Discharge unit** with three-stage MEE, CPU, bio-composting, and PTZ cameras in place.

72. It is further submitted that the UPPCB granted renewal consents on 29.04.2020. A statutory State Board would not renew consent if gross violations continued.

73. The Polluter Pays principle cannot be invoked mechanically. Liability under this principle must be established by **cogent evidence** of pollution and through **competent adjudication** by the Hon'ble NGT or courts. CPCB, being a regulator, cannot unilaterally impose financial liability. The Hon'ble Supreme Court in *M.C. Mehta v. Kamal Nath* (1997) 1 SCC

NOTARY PUBLIC NITENDRA KUMAR Advocate NOTARY PUBLIC R. No-19708 NCT DELHI GOVT. OF INDIA

388 emphasised that Polluter Pays must operate within the framework of law. In *Indian Council for Enviro-Legal Action v. Union of India* (2011) 8 SCC 161, liability was fixed through judicial determination, not by administrative demand. Thus, CPCB's reliance on Polluter Pays to justify unilateral adjudication is misplaced. Without jurisdiction, the doctrine cannot salvage the impugned order.

74. In reply to the contents of paragraph 37 & 38 of the Reply dated 19.08.2025 it is humbly submitted that the prayer for dismissal is misconceived. The Appeal raises fundamental jurisdictional issues that go to the root of CPCB's power. Unless CPCB establishes statutory authority, the impugned order cannot stand. It is further submitted that the dismissal of the Appeal would result in grave miscarriage of justice and affirm an unlawful precedent of regulators imposing penalties without statutory authority.

75. In view of the foregoing exhaustive rebuttals, the Appellant respectfully submits that the contents/averments of the CPCB's Reply dated 19.08.2025 are unsustainable in law and on facts. The Appeal deserves to be allowed, the impugned demand ***(Annexure-A-1of the Appeal)*** quashed, and CPCB directed not to enforce recovery.

76. That the untenable and misleading objections raised by the Respondent in its Reply dated 19.08.2025 are liable to be rejected and this Hon'ble Tribunal may be pleased to allow the present Appeal and pass appropriate and necessary orders in the interest of justice.

77. The Appellant Company further craves leave to file an additional affidavit along with all such other documents as may be required to further elaborate and buttress its submissions if required by this Hon'ble Tribunal.

NOTARY PUBLIC
NITENDRA KUMAR
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NOTARY PUBLIC
R. No-19708
NCT DELHI
GOVT. OF INDIA

26

78. That the annexures are true copies of their respective originals.

DEPONENT

VERIFICATION:

I, the deponent the abovenamed do hereby verify that the contents of my above affidavit are true and correct to best of my knowledge and beliefs and nothing material has been concealed therefrom. That the contents of the affidavit are true and correct, and the legal submissions are on legal advice received and believed to be correct and no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this ____ day of January, 2026.

DEPONENT

I identified the deponent who has signed in my presence

16 JAN 2026

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Advocate
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CERTIFIED THAT DEPONENT
Ms. ..... Age .....
S/o, D/o .....
identified ..... Delhi
has signed ..... the
contents ..... read
& explained ..... correct to
his/her knowledge.

NITENDRA KUMAR, NOTARY PUBLIC
Govt. of India, DELHI