BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE BENCH), PUNE
I.A. NO. 141 OF 2026
IN
ORIGINAL APPLICATION NO. 101 OF 2019 (WZ)

IN THE MATTER OF:

SAYYED MOHAMMED SABIR USMAN &ANR. …APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

INDEX

FILED BY:

Sanita Bhargava

KHAITAN & CO
ADVOCATES FOR RESPONDENT NO.17
1105, ASHOKA ESTATE
24, BARAKHAMBA ROAD
NEW DELHI – 110 001
PHONE NO: + 91 11 4151 5454

NEW DELHI
DATED: 20.06.2026

BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE BENCH), PUNE
I.A. NO. 141 OF 2026
IN
ORIGINAL APPLICATION NO. 101 OF 2019 (WZ)

IN THE MATTER OF:

SAYYED MOHAMMED SABIR USMAN &ANR. …APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

REJOINDER ON BEHALF OF RESPONDENT NO.17 i.e. ULTRATECH CEMENT LIMITED TO THE OBJECTIONS FILED BY ORIGINAL APPLICANT IN I.A. NO.141 OF 2026

MOST RESPECTFULLY SHOWETH

1. That the present Rejoinder is being filed by Respondent No.17, i.e., Ultratech Cement Limited ("Respondent Applicant") in response to the Objections dated 23.03.2026 filed by the Original Applicant in the I.A. No. 141 of 2026. It is pertinent to note that the Application for Modification of Order dated 06 February 2026 passed by this Hon'ble Tribunal was filed by the Respondent Applicant seeking modification of order to the extent that a direction has been passed against the Respondent Applicant to produce the sources of limestone purchases without hearing Respondent No. 17 on its Application for deletion being I.A. 14 of 2023. Vide order dated 09 December 2025, this Hon'ble Tribunal had granted an opportunity to the Applicants to file their objections to the Application filed by Respondent No.17 and other Respondents and thereafter the said Applicants had to be heard on the said Applications.

2. At the outset Respondent No.17 denies each and every averment made by the Original Applicant in its Objections filed, save and except what is specifically admitted to hereinafter.

3. It is prayed that the contents of Application for Modification and Application for Deletion and all other pleadings made by the Respondent Applicant be read as part and parcel for the purpose of the present rejoinder and the contents of the same are not repeated herein for the sake of brevity.

Maintainability of I.A.

4. The Original Applicant contends at para 3 that the present application is not maintainable and the same should be filed as a statutory appeal under section 22 of the NGT Act, 2010 ("NGT Act") or review under section 19(4)(f) of the NGT Act, 2010. The contentions are misconceived for the following reasons:

   a. The direction in the Order dated 06.02.2026 was passed only after hearing Respondent No. 15 (GHCL) and the Original Applicant. The Respondent Applicant was not heard on its Application before the direction to disclose sources of limestone purchase was issued against it. As per Section 19(4)(h) this Hon'ble Tribunal has the power to set aside any order passed by it *ex parte.*

   b. It is submitted that as per Section 19, this Hon'ble Tribunal is not bound by the procedures of Civil Procedure Code, 1908 and has the power to lay down its own procedure.

   c. In view of the same, it is humbly submitted that the present Application is maintainable.

5. It is submitted that the Original Applicant has failed to substantiate the objections with any cogent facts, evidence, or reasoned arguments to effectively counter the submissions made by the Respondent Applicant in its Application for Modification of the Order dated 06 February 2026. Consequently, the averments and contentions raised by the Respondent No.17 remain unrebutted in the objections so filed by the Original Applicant.

The onus to show that the Applicant has purchased Limestone "with the knowledge" that the same was illegally mined is on the Original Applicant

6. It is submitted that the entire case of the Original Applicant is based on the presumption that Respondent No.17 had knowledge that the limestone supplied to them, prior to the filing of the present OA has been mined without Environmental Clearance ("EC"). The Original Applicant has not produced anything to show that the Applicant has purchased illegally mined limestone either on the date of filing or at present.

   The Original Application proceeds solely on a vague and omnibus allegation that Respondent Nos. 14 to 24 "promoted" illegal mining by purchasing limestone, without identifying any specific transaction, particular time period, or any material that could establish knowledge or complicity on the part of Respondent Applicant.

7. The burden of proof to establish that Respondent No. 17 was aware that limestone has been extracted without EC lies on the person making such an allegation.

This is not an environment issue and burden cannot be shifted on the Respondent and that too on the basis of a presumption not substantiated by the Original Applicant. The fact whether the purchaser was aware that limestone purchased was illegally mined or not is not an environmental issue and can only be dealt with after leading of evidence in a civil court or court of evidence and not by way of summary proceedings. It is humbly submitted that the same is beyond the scope of enquiry of this Hon'ble Tribunal.

8. The judgments relied upon by the Original Applicant namely *Vellore Citizens Welfare Forum (supra) and A.P. Pollution Control Board (supra)* pertained to cases where issues of environmental degradation were to be proved and there was lack of scientific certainty to prove the same. It was in this context that it was held that such lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation and this led to the special principle of reversal of burden of proof in environmental cases where burden as to the absence of injurious effect fell on the polluters.

9. The issue as to whether the Respondent Applicant is a Bonafide purchaser of limestone or not is not an environmental issue and in any case the Respondent Applicant cannot be called upon to prove a negative that is "it did not have the knowledge that the limestone purchased was mined illegally"

The Respondent Applicant is not required to undertake any due diligence under the Gujarat Mineral (Prevention of Illegal Mining, Transportation & Storage) Rules, 2017 as contended by the Original Applicant

10. Even under the Gujarat Mineral (Prevention of Illegal Mining, Transportation & Storage) Rules, 2017 framed by State under Section 23 C of the MMDR Act for preventing illegal mining, transportation and storage, restriction on business of buying mineral is to the extent that the same should be in accordance with the Act and the rules including in accordance with registration requirements, mineral concession requirements and other conditions.

11. The only requirement under Rule 3 read with Rule 4 is that an end user should be registered. Further under Rule 6, end user has to ensure mineral is stocked in accordance with provisions of Chapter IV. Monthly returns have to be filed by end user. The format of monthly account to be maintained on account of mineral procurement only requires details of particulars of supporting transit permit and source from which mineral is procured. The transit permit which is to be produced by the concession holder, has to inter alia provide the details of royalty and other payments and other details. The Respondent Applicant, as a private purchaser is not expected to conduct any due diligence whether the transit permit produced by the concession holder is correct or not. As per Rule 5(2) upon due and proper entry of information, the holder of the Mineral Concession shall obtain a digitally signed permit for lawful transportation of minerals known as the transit permit. Thus, if transit permit was produced by the mineral concession holder, there

is no obligation on the Respondent Applicant to conduct any further due diligence.

12. There is no provision that end user can be penalised for violations of mine owner or that end user has to conduct due diligence of the vendor. All that is required under the rule is to give information of source from which mineral is procured or from where it is transported.

    If transit permit is obtained by mine owner by providing information as specified by the Government as provided in Chapter III, there is no reason why the purchaser will doubt the same.

13. The statutory function of checking compliance with norms can never be imposed on a private purchaser. In the objections, Original Applicant is relying on Rule 10(6) to contend that end user is required to conduct due diligence. The said rule only requires declaration of source, quantity and quality of mineral stored and nowhere is the purchaser required to disclose whether the source had EC.

Hon'ble Tribunal has no jurisdiction to rule beyond the Statutes specified under Schedule I of the NGT Act

14. The Respondent Applicant respectfully submits that the Hon'ble Tribunal has no jurisdiction under section 14 of the NGT Act to issue direction of this nature against the Respondent Applicant. The Hon'ble Supreme Court has categorically settled the limits of this Tribunal's jurisdiction in *Auroville Foundation v. Navroz Kersasp*

Mody (2025) 4 SCC 150, wherein the Hon'ble Supreme Court has held that:

> *"30. As transpiring from Section 14, the Tribunal has the jurisdiction over all civil cases where the substantial question relating to environment including enforcement of any legal right relating to environment, is involved and such question arises out of the implementation of the enactments specified in Schedule I. therefore, for the exercise of jurisdiction by the Tribunal under section 14, it has to be shown that (1) a substantial question relating to environment is involved; and (2) such question arise out of the implementation of the enactment specified in Schedule I.*
>
> *34.From the above, it is explicitly clear that every question or dispute raised by an applicant before the Tribunal pertaining to the environment cannot be treated as a substantial question.* ***It has to be a substantial question relating to environment as contemplated in Section 2(1)(m), and such substantial question must arise out of the implementation of any of the enactment/enactments specified in Schedule I. Though strict law of evidence may not be applicable to the cases filed before the Tribunal, the applicant has to raise the substantial question in his application specifically alleging the violation of a particular enactment specified in Schedule I of the NGT Act."***
>
> *44.Such directions clearly fall outside the purview of the jurisdiction of the Tribunal particularly when there was no substantial question relating to the environment was shown to have arisen in implementation of any of the enactments specified in Schedule I appended to the NGT Act. There is no whisper in the impugned order as to which of the provision and which of the enactment specified in Schedule I was violated."*

15. In *Narender Bhardwaj v. M/s 108 Super Complex R.W.A.* (Civil Appeal No. 5921 of 2022), the Hon'ble Supreme Court has held that:

> *"**Thus, under Section 14, the National Green Tribunal has jurisdiction in a case which involves a substantial question of law relating to environment in respect of statutes specified in Schedule I**... The Tribunal, therefore, had no jurisdiction to direct removal of an alleged encroachment and alleged illegal construction which according to Respondent No. 1 was raised in violation of the laws not specified in Schedule I to the Act. The impugned order passed by the Tribunal is, therefore, without jurisdiction."*

16. In *C.L. Gupta Export Ltd. v. Adil Ansari* 2025 SCC Online SC 1812, the Hon'ble Supreme Court held at para 12 that "*The NGT should act within the contours of the powers conferred on it which is Section 15 of the NGT Act of 2010"* and set aside directions issued by the NGT that fell outside these statutory powers. The Court held that powers available to constitutional courts or to courts constituted under specific statutes would not be available for exercise by the NGT.

17. The Respondent Applicant submits that Schedule I does not mention MMDR Act as one of the acts covered under it. Schedule I includes only seven enactments: the Water Act 1974, the Water Cess Act 1977, the Forest (Conservation) Act 1980, the Air Act 1981, the Environment (Protection) Act 1986, the Public Liability Insurance Act 1991, and the Biological Diversity Act 2002.

The allegation against the Respondent Applicant is that it purchased limestone allegedly mined without EC falls under the MMDR Act and the Gujarat Illegal Mining Rules, 2017, neither of which appears in Schedule I. The Original Applicant has not identified which provision of which Schedule I enactment is alleged to have been violated by Respondent No. 17 act of purchasing limestone.

Therefore, based on the aforementioned reasons and judgements, it is humbly submitted that the direction to the Respondent Applicant to disclose the sources of purchase of limestone vide order dated 06.02.2026 is beyond the jurisdiction prescribed under Section 14.

In any event, this Hon'ble Tribunal does not have the jurisdiction to deal with allegations which are criminal in nature, or adjudication of facts which require detailed evidence

18. The ambit of the Original Application cannot be expanded by asking Respondents to submit the records maintained under the Rules. This is not a case of violation of Section 10(6) of the aforementioned Rules. Without prejudice to the above, as per Rule 21 of the Gujarat Illegal Mining Rules, any violation of the rules is punishable as an offence and the issue as to whether there has been illegal mining or not is to be decided as per the procedure provided under the said rules. The same cannot be decided by way of summary proceedings under the jurisdiction of this Hon'ble Tribunal. It is only once adjudication is complete on the said issue which can be said to be in the nature of a criminal allegation can the issue of determining compensation by this Hon'ble Tribunal arise.

It is respectfully submitted that this Hon'ble Tribunal does not have the jurisdiction to decide on issues relating to criminal allegations or which require proving of a fact i.e. whether the Respondent Applicant purchased limestone with the knowledge that it was mined illegally. The said issue can only be decided after a complete adjudication including leading of evidence and not in summary proceedings.

19. The Original Applicant has accepted that the Mines and Minerals (Development and Regulation) Act, 1957 ("MMRD Act") does not contemplate or provide for the imposition of any penalty upon a bona fide purchaser or end user of minerals in circumstances where such purchaser had no knowledge that the minerals were allegedly illegally mined. After perusal of Rule 2(c) of the Minerals (Other than Atomic and Hydrocarbons Energy Minerals) Concession Rules, 2016 and Section 21 of the MMDR Act, it can be said that there is no provision regarding imposition of any civil liability on a *bonafide* purchaser of any alleged illegally mined ore. It is to be noted here that definition for 'illegal mining' does not include anything about the purchaser and therefore the intention of the legislature was not to penalize the Bonafide purchasers such as Respondent No.17.

It is further submitted that in the case of Common Cause vs. Union of India (supra) relied upon by the Original Applicant, the Hon'ble Supreme Court after holding that the mining lease holders carrying out mining without EC, CTO and FC are carrying on illegal mining, did not deem it fit to extend liability to purchasers of such illegally mined minerals.

20. It is submitted that even though the powers of this Hon'ble Tribunal under Rule 24 are wide and expansive with respect to environmental issues, however, the exercise of such power including the power to require discovery and production of documents cannot be extended to issues which are not environmental in nature and for which there is no provision in the statutes mentioned in Schedule I.

21. It is further submitted that in OA 110 (THC of 2012), the issue whether compensation can be levied on Bonafide end users is pending consideration. The objection filed by one of the end users in the said case is annexed hereto and marked as **Annexure R-17/A**.

22. The Environment Protection Act, Water Act, Air Act – laws relating to protection of environment provide for punishment of only those persons who are causing pollution or violating norms, not those who buy products of such industries. This is in consonance with Polluters Pay principle.

23. Moreover, if a bonafide purchaser of limestone is held responsible for purchasing alleged illegally mined ore, same logic would apply to purchaser of cement manufactured from such limestone, which would be an absurdity. The Original Applicant has not provided any answer to this contention.

Double Compensation cannot be imposed, both on mine owners mining without EC and the purchasers

24. The Respondent Applicant submits that in OA No.58 of 2018, no cement manufacturer, end-user, or purchaser of limestone was a

party.

This Hon'ble Tribunal imposed environmental compensation exclusively on the mine operators and issued no direction against any purchaser or end-user of limestone.

25. The Respondent Applicant submits that as a Bonafide purchaser or end user, it has paid full royalty and applicable taxes on all limestone purchased. Accordingly, any further levy would constitute double recovery from separate actors in respect of the same alleged act of illegal mining.

PARAWISE REPLY

26. That the contents of Paragraphs No. 1 and 4 are wrong and denied except to the extent which are the matter of record. It is denied that Respondent No.17 being an end user and is the ultimate beneficiary of illegally mined minerals. It is submitted that Original Applicant proceeded solely on a vague and omnibus allegation that Respondent Nos. 14 to 24 "promoted" illegal mining by purchasing limestone, without providing any material on record that could establish knowledge regarding the absence of EC on the part of suppliers. Hence, the characterisation of Respondent Applicant as an 'ultimate beneficiary' is a sweeping allegation without any documentary material.

27. That the contents of Paragraph No.2 are denied. It is submitted that the Order dated 06 February 2026 was passed after hearing Respondent No. 15 (GHCL) and the Respondent Applicant was not afforded any opportunity of being heard before the said direction was issued against it.

28. That the contents of Paragraph No.3 are denied being false and legally misconceived. The contention that the present application is not maintainable as this Tribunal lacks authority to modify its own order is contrary to the settled law on the jurisdiction of the Tribunal. The contents of the preceding paragraphs in the present rejoinder and the contents of the Application are reiterated in response to the contents of Paragraph 3.

29. That the contents of paragraph No.5 need no reply. The averments made in the foregoing paragraphs and the contents of the Application are reiterated and the same are not being reproduced for the sake of brevity.

30. That the contents of Paragraph No.6 are denied being incorrect and misconceived. It is denied that the Tribunal "rightly directed" Respondent No. 17 to disclose sources of limestone purchase. It is submitted that Rule 10(6) of the Gujarat Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 requires an end-user to certify and declare the source, quantity and quality of minerals stored this is a one-time obligation at the time of registration and does not impose a continuous obligation on end-users to investigate or verify the EC status of their mineral suppliers. The Original Applicant has not pointed to any provision of law that imposes such an obligation on an end-user purchasing mineral through established commercial channels. The averments made in the foregoing paragraphs and the contents of the Application are reiterated and the same are not being reproduced for the sake of brevity.

31. That the contents of Paragraph No.7 and 9 are denied being false, misleading, and unsupported by any documentary evidence. The bare assertion that Respondent Applicant was having knowledge of illegal mining carried out without environmental clearance, is a mere allegation not supported by any document on record. The Original Applicant has made no specific averment that Respondent Applicant had knowledge that any particular consignment of limestone was extracted without a valid EC. The further averment that Respondent No. 14 to 24 are 'still purchasing limestone' from Respondent Nos. 25 to 64 even after the filing of the OA is entirely false insofar as it concerns Respondent Applicant. The averments made in the foregoing paragraphs and the contents of the Application are reiterated and the same are not being reproduced for the sake of brevity.

32. That the contents of Paragraph No.8, 10, 13 to 18 are denied being incorrect and not tenable under the law. It is submitted that Original Applicant has not identified any statutory provision that obligates an end-user to verify or prove whether its mineral supplier holds a valid EC or permits this Hon'ble Tribunal to direct an end user or Bonafide purchaser to disclose procurement records in circumstances where no specific allegation of knowledge or connivance has been established. The averments made in the foregoing paragraphs and the contents of the Application are reiterated and the same are not being reproduced for the sake of brevity.

33. That the contents of Paragraph No.11 and 12 are denied false and misleading characterisation of the proceedings in OA No. 110 (THC) of 2012.

The averments made in the foregoing paragraphs and the contents of the Application are reiterated and the same are not being reproduced for the sake of brevity.

34. That the contents of paragraph No.19 are wrong and denied. The averments made in the foregoing paragraphs and the contents of the Application are reiterated and the same are not being reproduced for the sake of brevity.

35. That the contents of Paragraph 20 of are denied being incorrect and misconceived. It is reiterated that the Applicant's attempt to dilute the analogy drawn with Section 411 of the Indian Penal Code is unsustainable. The very allegation that certain Respondents had "knowledge" of allegedly illegally mined material necessarily brings into question elements of intention and *mens rea*, which are fundamental to such accusations and cannot be presumed in summary proceedings before this Hon'ble Tribunal. The mere assertion of "knowledge" by the Applicant, without cogent evidence, cannot convert the present proceedings into a determination of such disputed factual and legal issues, which are clearly beyond the scope and jurisdiction of this Hon'ble Tribunal. It is further submitted that the Applicant's contention that the matter has environmental implications does not justify bypassing settled legal principles or compelling the Respondents to produce documents so as to establish the Applicant's case. The proceedings

cannot be transformed into a fishing and roving inquiry under the guise of environmental protection.

In absence of any statutory provision fastening liability on bona fide purchasers, and in light of the protections available to the Respondents, including safeguards against self-incrimination, the Applicant's attempt to impose obligations and draw adverse inferences is wholly untenable and liable to be rejected.

36. That the contents of Paragraph No. 21 are denied being incorrect and misconceived. It is reiterated that the reliance placed by the Applicant on Section 17(2) of the NGT Act is wholly misplaced in the facts of the present case. The said provision applies only in situations where environmental damage is the cumulative result of multiple activities under enactments specified in Schedule I, and liability is required to be apportioned amongst responsible parties on an equitable basis. In the present case, the alleged environmental damage arises, if at all, from a singular activity, namely mining without Environmental Clearance, which is solely attributable to the mine owners. The attempt of the Applicant to artificially expand the scope of liability by including purchasers is contrary to the scheme of the Act. Further, the MMDR Act is not a Schedule I enactment, and therefore the invocation of Section 17(2) in the present context is legally unsustainable. It is further submitted that the Applicant's attempt to attribute environmental degradation to the "consumption" of minerals by Respondents No.14 to 24 is wholly erroneous and without any legal basis. Mere purchase or use of a mineral, in absence of any statutory violation or direct role in extraction, cannot be equated with an "activity" causing environmental damage so as

to invoke apportionment of liability under Section 17(2).

37. The submission that liability extends beyond mine owners to downstream purchasers is thus untenable and contrary to settled principles governing environmental compensation.

38. That the contents of Paragraph No.22 are wrong and denied. It is submitted that order dated 06 February 2026 may be recalled as direction was passed after hearing Respondent No. 15 (GHCL) and the Original Applicant. The Respondent Applicant was not heard at all before the direction to disclose sources of limestone purchase was issued against it. It is to be noted here that there is no averment or document placed on record in the Original Application that Respondent Applicant had any knowledge about the limestone allegedly procured from Respondents No. 25 to 64 was illegally extracted or was without a valid EC. The averments made in the foregoing paragraphs and the contents of the Application are reiterated and the same are not being reproduced for the sake of brevity.

39. It is submitted that the Respondent Applicant has duly made a case that it is not a necessary and proper party to the present proceedings and the direction passed vide Order dated 06 February 2026 may be modified qua the Respondent Applicant to the extent that it directs the Respondent Applicant to submit the sources of purchase of limestone in view of the aforementioned reasons.

For the above reasons, the Respondent Applicant humbly submits that the present Application may be allowed.

For, Ultra Tech Cement Limited
Gujarat Cement Works
Authorised Signatory

RESPONDENT NO.17

THROUGH

Sanita Bhargava

KHAITAN & CO
ADVOCATES FOR RESPONDENT NO.17
1105, ASHOKA ESTATE
24, BARAKHAMBA ROAD
NEW DELHI – 110 001
PHONE NO: + 91 11 4151 5454

NEW DELHI
DATED: 20.06.2026

4655 3292

REGD. SERIAL NO 1286
DATE: 20/6/2026

20 JUN 2026

BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE BENCH), PUNE
I.A. NO. 141 OF 2026
IN
ORIGINAL APPLICATION NO. 101 OF 2019 (WZ)

IN THE MATTER OF:

SAYYED MOHAMMED SABIR USMAN &ANR. ...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

AFFIDAVIT

I, Ajay Anant Vaishampayan, son of Shri Anant Shripad Vaishampayan, aged about 58 years, resident of GCW Unit, Village: Kovaya, Taluka Rajula, District: Amreli, do hereby solemnly affirm and state as hereunder:

1. That I am the authorized signatory of Respondent No.17 i.e. Ultratech Cement Limited in the above-mentioned matter and I am well aware of the facts and circumstances of the case. I am therefore competent and authorized to affirm the present affidavit on behalf of Respondent No. 17.
2. That I have read and understood the contents of the accompanying rejoinder, which has been drafted under my instructions and state that the contents of the same are true and correct to my knowledge based on the records maintained by Respondent No.17.
3. I say that the contents of para no. 1 and 2 of the affidavit are true and correct.

NOTARY H. B. JALANDHARA RAJULA DIST. AMRELI (GUJARAT) Regn. No. 43572 Expiry Dt. 24-02-2030 GOVERNMENT OF INDIA

AA Vaishampayan
DEPONENT

VERIFICATION:

I, the Deponent above named, do hereby verify that the contents of foregoing affidavit are true and correct to my knowledge, no part of it is false and no material has been concealed therefrom.

Verified at _____ on this _____ day of June 2026.

A A Vaishampayan

DEPONENT

SOLEMNLY AFFIRMED BEFORE ME

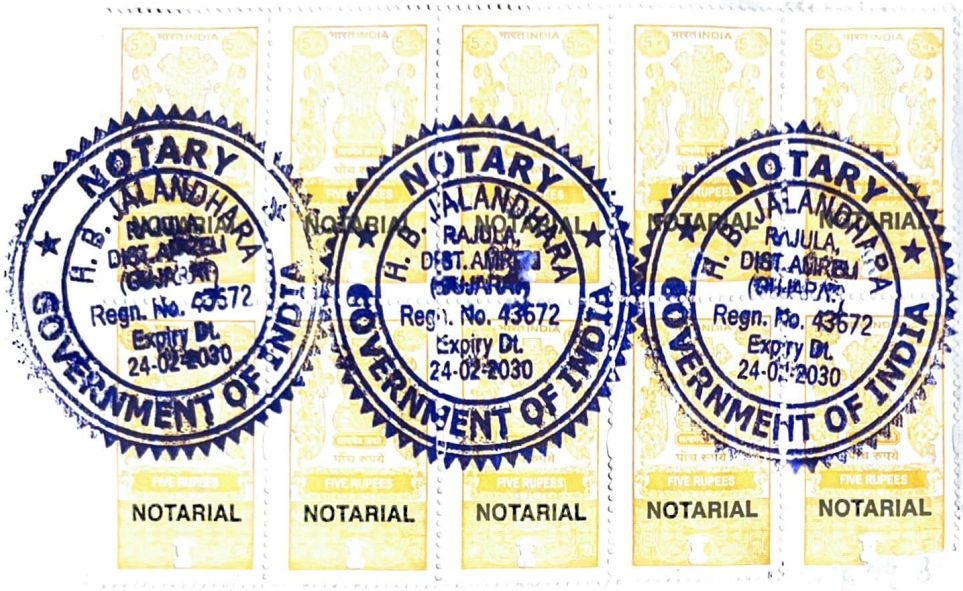
HIMATBHAI B. JALANDHARA
NOTARY
RAJULA, DIST. AMRELI (GUJ.)
GOVT. OF INDIA

REGD. SERIAL NO 3292

DATE: 20/6/2026

The Notary Public does not assume any responsibility liability for legality of any contents of documents, identity of executors / witnessed identifiers and fulfillment of any legal requirements.

20 JUN 2026


NOTARY
H. B. JALANDHARA
RAJULA,
DIST. AMRELI
(GUJARAT)
Regn. No. 43672
Expiry Dt.
24-02-2030
GOVERNMENT OF INDIA
NOTARIAL
FIVE RUPEES

Annexure R 17/A

BEFORE THE NATIONAL GREEN TRIBUNAL,

EASTERN ZONE BENCH, KOLKATA

ORIGINAL APPLICATION NO. 154/2023

IN THE MATTER OF:

Threat to life arising out of coal mining

In South Garo Hills district ... Applicant

Versus

State of Meghalaya & Ors. ... Respondents

AFFIDAVIT ON BEHALF OF MEGHALAYA CEMENTS LIMITED, RESPONDENT NO. 18 IN RESPONSE TO THE 5TH INTERIM REPORT OF THE COMMITTEE HEADED BY JUSTICE B. P. KATAKEY (RETD.) DATED 02.12.2019

I, Mahendra Kumar Agarwal, son of Late Shri Nirmal Kumar Agarwal, aged about 61 years, resident of BE 77, Salt Lake City, Sector-1, North 24 Parganas', Kolkata – 700064, West Bengal, do hereby solemnly affirm and state as hereunder:-

1. That I am the authorized signatory of the Respondent Company No.18 in the above-mentioned matter and I am well aware of the facts and circumstances of the case to the best of my personal knowledge and belief. I am therefore competent and authorized to affirm the present affidavit on behalf of the Respondent Company No.18.

2. That I have read and understood the contents of the 5th Interim Report of the Committee dated 02.12.2019 and I am therefore competent to affirm the present affidavit in response to the same.

3. That pursuant to the liberty granted by the Hon'ble Supreme Court vide order dated 02.05.2023 passed in C.A No. 2355 of 2021, Respondent No.18 is submitting its objections to the 5th Interim Report of the Committee headed by Justice B. P. Katakey (Retd.) dated 02.12.2019.

Background Facts

4. Before proceeding to deal with the findings and recommendations made in the 5th Interim Report, the following background facts may be noted which are necessary for adjudication of the matter:

(a) Respondent No.18 is a public listed Company having an integrated clinker-cum-cement manufacturing plant having installed capacity to produce 2600 TPD cement at Thangskai Village in East Jaintia Hills District of Meghalaya. The Respondent No. 18 also operates a captive thermal power plant having 10 MW installed capacity which is located adjacent to its cement manufacturing plant, to ensure 100% uninterrupted power availability. The Respondent No. 18 operates its cement manufacturing plant as well as its thermal power plant in accordance with the terms and conditions of various licenses and has consistently ensured that the operations at its plants adhere to the environmental norms and laws as well as other applicable laws in the region. The Respondent No.18 is an environmentally conscientious company and has consistently upgraded and updated its technology to

introduce various pollution control equipment in its plants to ensure that all emissions and discharges from its plants are within the permissible limits. It has all the valid regulatory permissions necessary for the operation of its plant.

(b) The captioned proceedings were instituted pursuant to the transfer of a *suo moto* public interest litigation from the Hon'ble High Court of Gauhati in 2012 where the High Court took cognizance of accidents that had occurred due to rat hole mining in the state of Meghalaya. The Transferred matter was registered as Original Application No. 110(THC)/2012.

(c) Separately, the All Dimasa Students Union Dima Hasao District Committee filed OA No. 73 of 2014 before the National Green Tribunal, Principal bench seeking directions with regard to rat-hole mining operations, which had been going on in Jaintia Hills in the State of Meghalaya for last many years without being regulated by any law. It was alleged that in the course of rat-hole coal mining, by flooding of water, several employees and workers had died. The NGT admitted the application and took the view that illegal and unscientific mining neither can be held to be in the interest of people of the area, the people working in the mines nor in the interest of environment.

(d) The National Green Tribunal, Principal Bench *vide* its order dated 17.04.2014 in OA No. 73/2014, directed State of Meghalaya to ensure that rat hole mining is stopped forthwith throughout the State and any illegal transport of coal shall not take place until further orders. Department of mining, State of Meghalaya and Ministry of coal were impleaded. It observed that coal mafias are benefiting from the illegal activities and is controlled by individuals. State of Meghalaya was directed to make an appropriate scheme to bring the activities to an end.

(e) A committee was formed by the NGT vide order dated 09.06.2014, to quantify the extracted coal and its location, to assess its value and to prescribe the mode of transportation of the extracted coal and to carry out other functions. Tribunal permitted transportation of already extracted material lying in open subject to supervision of committee. Copy of order dated 09.06.2014 passed by NGT in O.A. 110(THC)/2012 is annexed hereto and marked as **ANNEXURE R-18/1**. The Same was reconstituted on 01.08.2014.

(f) In the light of the Committee Report, NGT on 07.10.14, noted that 6.3 MT of illegally mined coal valued at Rs.3078 crores was lying in the State on which royalty of Rs.400 crores was assessed. On 26.11.2014, direction was issued for videography of the operation of weigh bridges

and assess the quantum of coal which could be permitted to be transported with the assistance of the Committee.

On 25.03.2015 NGT noted that state has failed to check illegal mining. Joint reports supported factum of illegal mining. Meghalaya Environment Protection and restoration fund was directed to be constituted where penalty recovered from illegal miners was to be credited. There were 308 cases registered.

Further, on 30.3.2015, NGT issued a direction to the state to collect 10% of the market value of coal per metric tonne in addition to royalty to be credited to Meghalaya Environment Protection Restoration fund. The committee directed that checkposts be established apart from setting up royalty collection centres. Copy of the orders dated 07.10.2014, 26.11.2014, 25.03.2015and 30.03.2015 are annexed hereto and marked as **ANNEXURE R-18/2 (COLLY)**.

(g) Vide order dated 31.03.2016, the NGT directed that except the coal already transported prior to 2016, the remaining will vest in the State and disposed of in accordance with law and consistent with the norms of environment. A Committee was constituted to decide steps for restoration of environment and to ascertain if any illegal mining or illegal transportation of coal was being carried on. Copy of order dated 31.03.2016 passed by NGT in O.A. No. 73 of 2014 is annexed hereto

and marked as **ANNEXURE R-18/3.** Vide order dated 10.05.2016, it was further directed by NGT that the State shall place on record exact current quantity of coal and value thereof, status of coal lying and mined as on 1.4.2015 and 16.5.2016 and monthly status thereafter. State was also directed to submit a plan on how to deal with coal vested with state. State was to take action against violators, a list of which was given by the state. Copy of order dated 10.05.2016 passed by NGT in O.A. No. 73 of 2014 is annexed hereto and marked as **ANNEXURE R-18/4.**

(h) In a Civil Appeal number 5272 of 2016 filed by Ka Hima Nongstoin landowners, coal traders and Producers Association versus All Dimasa Students Union against order dated 31.03.2016 and 10.05.2016 passed by NGT, Supreme Court vide order dated 21.09.2016 directed persons who have mined coal are permitted to transport on payment of royalty from 1st October 2016 to 31st may 2017 and no other extraction shall take place. The question whether coal is vested in the State was to be addressed in the Civil Appeal. Copy of order dated 21.09.2016 is annexed hereto and marked as **ANNEXURE R-18/5.**

(i) The Hon'ble Supreme Court vide order dated 28.03.2018 extended the time for transporting already extracted coal up to 31.05.2018. Copy of order dated 28.03.2018 is annexed hereto and marked as **ANNEXURE R-18/6.**

(j) **Appointment of B. Katakey Committee** Subsequently, this Hon'ble Tribunal vide order dated 31.08.2018 constituted an independent committee headed by Justice B P Katakey, Former Judge of the Hon'ble High Court of Gauhati along with representatives from Central Pollution Control Board and Indian School of Mines, Dhanbad ("**the Committee**"). The specific task assigned to the Committee was to examine the question of restoration of the environment and rehabilitation of the victims for which funds are available. This Hon'ble Tribunal directed the Committee to take the following steps:

A. Take stock of all actions taken so far in this regard;

B. Prepare time bound action plan to deal with the issue and ensure its implementation.

The Committee was at liberty to take up incidental issues and was also to supervise issues arising out of receivership/custodianship of already extracted coal including environmental issues arising out of storage and remedial steps. It was inter alia directed that if any further coal not recorded in inventory made till date is available, separate inventory be made and if it is found that it was illegally extracted, royalty in terms of orders already passed may be collected. It was also directed that Secretary, Mining may check if extracted coal is not accounted or is a result of illegal mining.

Copy of the order dated 31.08.2018 passed by this Hon'ble Tribunal in OA No. 110 of 2012 is annexed herewith and marked as **ANNEXURE R-18/7.**

First interim Report dated 02.01.2019

(k) Committee gave its First Interim report on 02.01.2019 which was considered by NGT vide order dated 04.01.2019 with regard to the following questions framed by the Committee:

"(A) Whether coal mining activities, including extraction of coal and the transportation of the same, are going on despite the order passed by the Hon'ble NGT imposing ban on coal mining and transportation?

(B) Quantity of extracted coal as on the date on which the ban was imposed by the Hon'ble NGT and left to be transported?

(C) Quantity of un-inventoried coal which has been extracted before imposition of ban by the Hon'ble NGT?

(D) Whether coal mining activities as well as dumping of coal results in adverse environmental effect, if so, the nature and extent thereof?

(E) What are the steps required to be taken by the Committee for restoration of the environment and rehabilitation of victims of coal mining?

(F) The extent of execution of the Action Plan prepared by the Committee?"

The report stated that illegal mining was still continuing. The assessed quantity of such coal was 23,25,663.54 MT. The mining was resulting in adverse impact on the environment for which a study was required to be undertaken. Action plan was proposed for restoration of the environment. In view of the consistent failure of the State in enforcing the law, NGT held the State to be liable to deposit a sum of Rs.100 Crores with CPCB to be spent for restoration of the environment. NGT also observed that the Committee may consider seizure of equipment used for illegal mining or transportation, to be released only after payment of 50% of the showroom price of such equipment.

It was recorded by NGT that in 6th meeting of committee, notices were issued to cement plants, thermal power plants, limestone mines. It made observations with respect to its visit to Star cement captive power plant. NGT observed that power plants and cement plants are encouraging coal mining activities on the observation of the report that 23,25,663.54 MT of coal was uninventoried and stand of the government that same was minded before ban was un acceptable.

C.A. No.2968 of 2019 filed against order dated 4.1.2019 passed by NGT.

Second Interim Report dated 31.03.2019

(l) The 2nd Interim Report dated 31.03.2019 was considered by the NGT and the NGT vide order dated 11.04.2019 approved the recommendations including those for installation of digital display boards in respect of quality of water of the concerned areas and evolving mechanism for effective action against transportation of illegally mined coal such as electronic manifest system.

It was also directed that Committee may consider audit of sources of coal acquired by power generation and cement plants. Proposal of Committee to use Rs. 96.59 lakh of MEPRF for purchase of six vehicles mounted with water tanks was approved. Copy of the order dated 11.04.2019 is annexed hereto and marked as **ANNEXURE R-18/8.**

Supreme Court order dated 03.07.2019

(m) In the meantime, the State of Meghalaya filed a civil appeal before this Hon'ble Court challenging the above orders passed by the NGT in O.A. No. 73/2014. This Hon'ble Supreme Court vide judgment and order dated 03.07.2019 in the case of *State of Meghalaya v. All Dimasa Student Union*, C.A. No. 10720/2018 reported as (2019) 8 SCC 177 upheld the judgment of the NGT in dealing with the matter and constituting the Monitoring Committee. It held that the ownership of the coal extracted, even after 15.05.2016 does not vest with the State of

Meghalaya but the owner of the coal or the person who mined the coal shall have proprietary rights on the mineral.

It was directed that extracted coal laying at various places was to be taken over by Coal India Limited. It was also directed that the State of Meghalaya and CIL to deliberate with the Committee and finalize plan for transportation and handing over of the coal for disposal as per Rules which may be beneficial for the owners of the mine as well as to the State. CIL was also directed to take steps for receipt of payment for auction of the coal. The State of Meghalaya was entitled to royalty, payment towards MERP Fund and taxes. Out of the sale of the proceeds of the mined coal to be disposed off by CIL, after deducting the applicable royalty, cess, transportation and handling charges, the owners were entitled to the receipts of the balance sale proceeds of the mined coal.

The only exception to this scheme will be the illegally transported coal seized by the state, which shall be dealt with in accordance with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957.

The order of the NGT constituting MEPR fund was also upheld as well as the order dated 04.01.2019 requiring deposit of Rs.100 crores with CPCB for restoration of environment. It was however directed that the

same could be paid out of the Meghalaya Environment Protection and Restoration Fund (MEPRF).

The order of the Tribunal dated 17.04.2014 banning rat hole mining was also upheld. However, it was held that the said ban would not bar legal and scientific mining as per statutory scheme.

Direction of audit on source of coal not under consideration and not raised.

Copy of the judgment of this Hon'ble Court in State of Meghalaya v. All Dimasa Student Union, C.A. No. 10720/2018 is reported in (2019) 8 SCC 177

Resource Audit and representations before the Committee

(n) The Additional Principal Chief Conservator of Forests (Planning Development and Legal Matters), Government of Meghalaya ("**Forest Dept")**, Shillong vide letter dated 08.07.2019 informed various cement Companies including the Respondent herein that the year wise details of coal reported to be purchased was already available in the report submitted to the Committee by the CPCB and that the information on the clinker and power produced by some of these plants were also available in the annual reports, copy of which was available in the public domain.

It was informed that prima facie it appears that the quantity of coal reported to be procured by some of the plants was grossly insufficient to produce reported quantity of cement and/or power by these plants and that the gap in all probability was met by illegally mined coal. To have a preliminary assessment of illegally sourced coal, if any, used by any of these plants/factories after ban on mining of coal was imposed by the NGT in April 2014, the Committee in its sitting dated 28.06.2019 directed that the Managing Directors/Chief Executive officers of all cement factories and thermal power plants in the State shall depute their duly authorized representative(s) to remain present before the Committee in its sitting to be held on 23.07.2019 and produce before the Committee, along with supporting documentary evidence, the following information/documents:

I. *Year-wise details of clinker and/or power produced since imposition of ban on coal mining in the State in April 2014;*

II. *Year-wise details of coal and/or any other alternate fuel procured since imposition of ban on coal mining in the State in April 2014;*

III. *Year-wise details of the quantity of cement/clinker on which transport subsidy, if any, has been claimed by the plant since imposition of ban on coal mining in the State in April 2014.*

IV. *A copy of annual report for each of the years since imposition of ban on coal mining in the State;*

V. *Average estimated quantity of coal and/or any other alternate fuel(s) required to produce one tonne of clinker and/or one unit (kwh) of power; and*

VI. *A copy of Detailed Project Reports (DPRs) submitted to the Bank(s)/Financial Institutions(s) to obtain loan for establishment/expansion/modernization of the plant.*

The Respondent No. 18 Company was, therefore, requested to depute a duly authorized representative(s) to remain present before the Committee in its sitting to be held on 23.07.2019 at Shillong and produce before the Committee the abovementioned documentary evidence.

A copy of the notice dated 08.07.2019 is annexed herewith and marked as **ANNEXURE R-18/9.**

(o) The Respondent herein raised objection to the said notice *vide* its letter dated 22.07.2019 *inter alia* pointing out that the Hon'ble Supreme Court has clarified that the violation, if any, has to be dealt with in accordance with Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 by the State Government and in accordance with law and that the notice was outside the scope of the Committee. Copy of the letter dated 22.07.2019 is annexed hereto and marked as **ANNEXURE R-18/10.**

(p) The authorized representative of the answering Respondent appeared before the Committee on 23.07.2019, submitted the above objection and undertook to furnish the required information supported by the relevant documents provided time is granted for gathering all the information. The Additional Principal Chief Conservator of Forests (Planning Development and Legal Matters), Government of Meghalaya, vide letter dated 05.08.2019, directed the answering Respondent to depute a representative in the next sitting dated 14.08.2019 along with all information. A copy of the minutes of the meeting of the Committee on 22.07.2019 is annexed herewith and marked as **ANNEXURE R-18/11**.

(q) The Respondent No.18, *vide* its letter dated 12.08.2019 submitted all the required information, details and documents to the Committee with respect to *inter alia* the following issues:

1. Capacity Utilization by Cement Plants from 2014-15 to 2018-19.
2. Coal Consumption in metric tonnes from 2014-15 to 2018-19.
3. Capacity utilization by thermal power plant from 2014-15 to 2018-19.
4. Coal consumption by thermal power plant from 2014-15 to 2018-19.

A copy of the letter dated 12.08.2019 of Respondent No. 18 is annexed herewith and marked as **ANNEXURE R-18/12**.

17th Meeting of the Committee

(r) It was observed that the Appellant submitted information relating to one cement plant and one 10 MW capacity captive power plant. (Para 38 @ Pg 370, V.2). The Committee noted without any basis and despite evidence to the contrary that there is a gap of 4,94,415 MT of coal between the coal required by the Appellant and that procured from legal sources, and therefore the gap in all probability has been met from illegally sourced local coal. The Committee based its conclusion on the following:

a. Techno Economic Feasibility Report of the Augmentation of the Clinkerization capacity of the plant from 900 TPD to 2600 prepared by Holtec Consulting Private Limited observes that the plant has been designed to use 100% Meghalaya coal available locally. As per the said report, net calorific value of the local coal to be used in the clinker plants is 5,800 kcal/kg. Specific heat consumption of these plants is 840 Kcal per kg of clinker. The average estimated requirement of coal as per the information given in the said report is 14.66 %.

b. The Committee after examination of the TEFR of the 10 MW capacity Captive Power Plant prepared by AKB Power Consultants Pvt. Ltd., observes that the said plant was envisaged

to use coal sourced from Western Parts of Meghalaya Hills. The Annual requirement of the locally sourced Meghalaya coal at 100 % capacity for the said 10 MW TPP, as per the said report, is 63,072 MT. The specific fuel requirement for the said TPP as per this information given in the said report, is therefore 0.72 kg/kwh. Nowhere, in the said report it has been stated that it will be feasible to run the plant by using any alternate fuel other than coal.

A copy of the minutes of meeting of the 17th meeting of the Committee dated 14.08.2019 is annexed herewith and marked as **ANNEXURE R-18/13**.

(s) In the 4th Interim Report dated 31.08.2019, the Committee considered (a) the mechanism to deal with complaints under Section 21 of the MMDR Act of illegal raising and transportation of coal, (b) procedure for exercise of powers under Section 21(5) of the MMDR Act, (c) action to be taken in new cases of illegal mining/storage and transportation, (d) action for preventing illegal mining and storage, recovery of fresh stock of coal extracted prior to ban, (e) action for violation of Water (Prevention and Control of Pollution) Act, 1974 and Environment Protection Act.

(t) The Respondent No. 18, *vide* its letter dated 10.09.2019 requested the Chairman of the Committee to review the observations made against it

during the 17th sitting of the Committee held on 14.08.2019 for the following reasons:

(1) The objective of TEFR is to determine the technical feasibility and financial viability of the project, assess the risks associated with the project and enumerate imminent actions that are required to be taken.

(2) The same is required by financial institutions to assess the viability, site conditions, availability of resources, background, market etc. and funding of the project within the desired limits. Further, Plant & Machinery is ordered based on inter alia the current technology available, design and technical specifications released by the consultant during project execution. Details and data given in TEFRs would therefore, may vary as per site conditions.

(3) It is very much feasible by Plants of this calibre, to use alternate fuel without any hindrance. Alternate fuels are being successfully used world-wide and usage at the Appellant's plant also, can be verified by a technically competent agency. Several seminars and conferences are being held time to time to promote the use of alternate fuel within the same infrastructure, by Government agencies along with Cement manufacturers Association, PCB, CII etc. aided by research scholars and technology experts. The

Government of India vide its different programs is keen to ensure a seamless transition to Alternate fuel by Cement Industry.

(4) All procurements, including alternate fuel procurements are by banking transactions, duly paid by cheque; Sales tax/GST paid on the same time to time and accounted for.

(5) Royalty have also been paid on the same periodically, from April 2014 to September'2017. Balance payments till March 2019 is under progress.

(6) The use of alternate fuel (Slate/ MuSlate) has duly been reported in Environmental Statements to Meghalaya State Pollution Control Board, Shillong every year as compliance.

A copy of the reply of Respondent No. 18 dated 10.09.2019 is annexed herewith and marked as **ANNEXURE R-18/14**.

(u) The North East Regional Directorate of CPCB, *vide* its letter dated 13.09.2019 ("**CPCB Letter**") affirmed *inter alia* as under:

a) *Prima facie* the use of alternate fuel by cement and power plants is technically feasible and is in fact encouraged by Pollution Control Boards.

b) If the Industries use Pet Coke or slate as alternate fuel resource (ARF) it is not required to modify or attach a new fuel/material feeding system. AFR are generally used together with coal. As the physical characteristics of pet coke and slate are similar to coal

these alternate fuels can be used in the existing coal mills for pulverization before feeding into the kiln or boilers after blending with coal.

c) By using AFR/HW/RDF in kiln/boiler furnace, use of conventional fuel like coal is reduced. This arrangement helps in reducing the consumption of conventional fuel like coal and this brings in reduction in greenhouse gas emission.

This letter was referred to by the Committee in its impugned 5th interim report dated 02.12.2019 but not relied upon. A copy of the letter dated 13.09.2019 of the North East Directorate of CPCB is annexed herewith and marked as **ANNEXURE R-18/15**.

(v) The Committee, without even considering the objections of Respondent No. 18 its earlier observations, submitted the 5th Interim Report to this Hon'ble Tribunal with findings and recommendations on the coal requirements of the cement companies and the feasibility of Slate as an alternate fuel. The findings as regards the Applicant were recorded in Para 3.1 and the recommendations in Para 3.2 of the Report.

(i) The Committee wrongly concluded in the said report that during the years 2014-15 to 2018-19 the coal required by the Applicant herein for producing clinker was 8,39,511 MT whereas the coal procured during this period was 2,95,186 MT and therefore, there was a gap of 5,44,325 MT between the coal required and that procured (the purchase of the entire quantity of Alternate

Fuel/MuSlate was disregarded) and that this gap of 5,44,325 MT has been met from the illegally mined local coal.

(ii) The Committee recommended to the NGT to realize royalty, GST/VAT and contribution to MEPRF amounting to Rs. 84.915 crores from the Applicant herein as per the details given below ***(Refer Para 3.1.4 of the Report)***:

a.	Royalty	-	Rs. 36.742 crores
b.	MEPRF	-	Rs 26.400 crores crores
c.	GST/Vat	-	Rs. 21.773 crores
d.	**TOTAL**	**-**	**Rs. 84.915 crores**

(iii) The above figure of alleged use of illegal coal has been arrived at by the committee by considering that coal requirement is at least 15% of the clinker produced and that no alternate fuel has actually been used at all.

(iv) In addition, the Committee also recommended to this Hon'ble Tribunal that an amount of Rs.400 MT of coal to be utilized by the Applicant herein (and other plants) on or after the date of the order shall be directed to be deposited in the MEPRF. It was further stated that:

> *"3.1.6 Claim of these Cement Manufacturing Plants and Thermal Power Plants that about two-third of their coal requirement have been met by a non-fuel mineral (i.e. slate) without making any change in the design of these plants is*

not tenable. The Committee, based on a detailed analysis given in para 2.2.26 to 2.2.52, is of the view that it is neither technically feasible nor legally permissible for these plants to replace more than two-third of their coal requirement by a non-fuel mineral such as slate."

"3.1.8 Even for the sake of an argument it is assumed that the claim of these plants that more than two-third of their coal requirement during the Audit Period has been met by a non-fuel mineral (viz. slate) without making any change/modification in the design of these plants is true, it would have caused equal, if not more, damage to the flora, fauna, rivers, streams, water bodies and the environment in general in the State of Meghalaya as all such slate has admittedly been mined in an unscientific and haphazard manner without any mitigative measures and without obtaining mandatory mining lease, consent to establish, consent to operate, environmental clearance and authorisation/no-objection certificate from the State Pollution Control Board in a flagrant violation of the existing mining, environmental, pollution control and labour safety laws."

Copy of the 5th Interim Report of the Committee dated 02.12.2019 is annexed herewith and marked as **ANNEXURE R-18/16**.

(w) The 5th Interim Report was accepted by this Hon'ble Tribunal vide order dated 17.01.2020 without giving any opportunity of hearing to Respondent No. 18. In view of the same as stated earlier Respondent No. 18 alongwith other similarly placed Cement companies filed Civil Appeal before the Hon'ble Supreme Court being C.A. No. 2355 of 2021. Vide order dated 02.05.2023 the order dated 17.01.2020 passed by NGT was set aside for consideration of objections of Respondent No.18. It is pertinent to note that during pendency of Civil Appeal, the Advocate General of State of Meghalaya orally assured that no coercive steps will be taken pursuant to demand notices that were issued pursuant to NGT order dated 17.1.2020. It may be noted that since the NGT order dated 17.1.2020 has been set aside the demand notices issued pursuant thereto are now non est and without authority.

Events post order dated 17.01.2020 passed by NGT which has been set aside by the Hon'ble Supreme Court

(x) Pursuant to the 17.01.2020 order, various demand notices were issued to Respondent No. 18 herein, which were responded to by Respondent No.18 as under:

(i) Vide Notice dated 19.02.2020, the Director of Mineral Resources, Meghalaya Shillong directed R-18 to make payment of Rs. 84.915 crores for allegedly using illegally mined coal.

(ii) The Superintendent of Taxes, West Jaintia Hills, Jowai issued a notice dated 12.03.2020 directing R-18 to pay the tax component (MVAT and GST) and outstanding electricity duty to the Government for procuring of 7,41,092 (MT) coal from unknown sources.

(iii) The Office of the Commissioner of CGST, issued a letter dated 18.05.2020 requesting that the following information may be furnished by 05.06.2020:

"(i) Details of payment made as royalty on coal (year -wise and month-wise)

(ii) Details of Service Tax paid on Royalty on coal (year -wise and month-wise). If no Service Tax payment made, reasons thereof with supporting documents to be submitted.

(iii) Details of GST paid on Royalty on coal (year-wise and month-wise). If no GST payment made, reasons thereof with supporting documents to be submitted.

(iv) Details of Cess paid on coal (year -wise and month-wise). If no Cess payment made, reasons thereof with supporting documents to be submitted."

(iv) Vide notice dated 16.07.2020, the Director of Mineral Resources, Government of Meghalaya, Shillong, Meghalaya called upon R-18 to make payment of royalty, MEPRF on allegedly illegally sourced coal in continuation of the earlier letter dated 19.02.2020.

(v) Vide show cause notice dated 21.09.2020, the Director of Mineral Resources, Government of Meghalaya, Shillong called upon R-18 to show cause as to why a case may not be registered under Section 21 (1) of the MMDR Act, 1957.

(vi) A Committee was constituted vide Government Notification MG.48/2020/94 dated 14.10.2020 to review the quantity of clinker and/or power produced by Cement Plant and Thermal power plants and quantity of coal purchased and legal source of coal to comply with the NGT's order dated 17.01.2020. The Committee was chaired by the Chief Secretary to the Government of Meghalaya.

(vii) Vide Reply dated 09.11.2020, R-18 responded to the notices dated 19.02.2020 and 16.07.2020 for payment of royalty, MEPRF to the Director of Mineral Resources, Government of Meghalaya. R-18 denied all allegations that it has used any illegally sourced coal in its cement manufacturing and captive power plants as reported by the committee, and its consequent liabilities to pay any royalty, MEPRF on such alleged illegally sourced coal. It was objected that no opportunity has been given to R-18 to raise objections to the report, either before the independent committee or before the Hon'ble Tribunal. Further, it was explained that the findings of the Committee were erroneous for the following reasons in brief:

1. No concrete evidence whatsoever to establish that R-18 has purchased illegally sourced coal.
2. The committee has taken an erroneous view on the assumption that specific coal requirements of Cement manufacturing plants and Captive Thermal power plant of MCL are same as specific coal requirements of another plant, Star Cement Limited and on that basis has wrongly calculated alleged year wise gap on total coal required and coal procured.
3. R-18 cannot be subjected to a huge penalty based on the assumption that the coal requirement of MCL is 15% of the clinker produced. This is wholly erroneous since the same had to be assessed on the basis of actuals. The Committee failed to take into consideration the technical factors involved while making its assessment and hence, method of calculation adopted by the Committee is inherently wrong which is based on mere surmises.
4. R-18 had informed about the use of alternate fuel which is also recorded in the Fifth Interim Report, however, while assessing the requirement of coal the Committee completely ignored the use of other alternate fuel.
5. R-18 can substantiate its claim that the quantity of coal procured by R-18 as mentioned in the documents submitted

before the Committee along with other alternate fuel was sufficient for running of its plants to produce the reported quantity of clinker and power during the resource audit period. The design of its plants is such so as to support use of other alternate fuel including slate.

(viii) Vide Reply dated 09.11.2020, R-18 responded to the notices dated 21.09.2020 sent by Director of Mineral Resources, Government of Meghalaya for Section 21(1) of the MMDR Act. The following submissions were made :

1. Penal provisions have to be construed strictly and therefore no case can be registered when there is no evidence to show that R-18 has either done illegal mining or transported or stored mineral which has been excavated contrary to the provisions of the Act and thus there is nothing to show that the ingredients that constitute an offence under Section 21 are present.

2. Without prejudice to the above, there is no recommendation made in the Fifth interim report to proceed against the Cement Companies under Section 21(1) of the MMDR Act. It is only the seized coal that had to be dealt with under Section 21 of the MMDR Act. There is no finding that illegally mined coal has been seized from R-18.

(ix) The Committee headed by the Chief Secretary held a meeting on 19.10.2020. The Committee found that there is a gap of 26508 MT for Appellant and 3715 MT for the Appellant's Captive Power Plant between the estimated coal requirement and coal procured for the period of February 2020 to July 2020. The Committee directed the Director of Mineral Resources to issue Show Cause Notice to explain the reason for gap in quantity. It was further noted that R-18 has not produced transport challans for 8476 MT to prove legal sources of coal. The Committee directed all cement plants including R-18 to furnish transport challans issued by the Mining Department of the origin state or documents of Coal India Limited as proof of coal procured during the period. The Committee decided to issue show cause notice to companies who failed to submit the same within one week. The Committee further directed inter-alia R-18 to submit data for August and September 2020.

(x) R-18 replied to the Notice dated 12.03.2020 issued by the Superintendent of Taxes, West Jaintia Hills, Jowai inter alia objecting that the tax liability cannot be imposed only in view of the report of a committee since it is not a situation envisaged under the taxation statutes. The manner of levy of taxes and recovery under different statutes are hedged by various limitations and subject to fulfilment of various pre-conditions. Without there

being any determination of liability and assessment thereof being completed by competent authority after examining books of record, demand and recovery of the levy does not arise. The committee or the Hon'ble NGT have no power to levy taxes and other dues payable under various statutes as mentioned above.

(xi) Vide letter dated 24.11.2020, R-18 replied to the Notice dated 18.05.2020 issued by the Office of the Commissioner of Central Goods & Services Tax. After reiterating the submissions made vide replies dated 20.11.2020 and 09.11.2020, R-18 furnished the information as regards royalty paid on coal procured, service tax on Royalty, GST on Royalty and cess reimbursed to the vendor of the coal.

(xii) Vide Notice dated 11.12.2020, the Directorate General of Goods and Services Tax Intelligence sent a summons under Section 70 of the CGST Act 2017 to R-18. The summons directed R-18 to appear before the DGGI Shillong unit on 18.12.2020 along with the copy of demand notices for payment of royalty, MEPRF issued to R-18, copy of show cause notice for violation of MMDR Act, 1957 and year-wise details of procurement of slate from 2016-17 to 2020-21.

(xiii) Vide reply dated 18.12.2020 to the DGGI, Shillong Regional Unit, R-18 submitted that the documents sought for did not pertain to any tax payment. However, without prejudice, R-18 submitted

all the documents sought by the DGGI and also requested for postponement of hearing in light of the COVID-19 pandemic.

(xiv) R-18 submitted all details regarding procurement of clay/slate and royalty paid upon the same by the vendors, as requisitioned in the hearing held by the DGGI, Shillong on 22.01.2021 for the period 2014-15 to 2019-2020.

(xv) The DMR, Meghalaya issued an SCN dated 08.02.2021 observing that R-18 failed to respond to or furnish documents for explanation of the gap in the quantity of coal required and used/purchased to the above Memo dated 30.11.2020. This observation has been made despite that the memo did not call for any documents or explanation thereto. It was directed that a written explanation for not furnishing an explanation may be given failing which action will be initiated for violation of Section 4(1A) of the MMDR Act, 1957. Similar SCNs dated 08.02.2021 were issued for non-furnishing of transport challans by R-18, and for non-furnishing of the production and coal procured for the months of August and September 2020. It was noted that the clinker/power production and coal procured for the months of November 2020 and December 2020 shall also be furnished within a week. The said SCNs were received by R-18 on 12.02.2021.

(xvi) Vide response dated 25.02.2021 to the notices dated 08.02.2021 issued to R-18, it was explained that the Memo dated 30.11.2020 sought for no explanation and did not direct submission of any documents. However, the response dated 09.11.2020 to the SCN dated 21.09.2020 was enclosed in the letter. It was further mentioned that the reply dated 09.11.2020 contained a detailed explanation to the alleged gaps and the same may be construed as the explanation to the above-mentioned notices.

(xvii) Vide response dated 25.02.2021 to the notices dated 08.02.2021 issued to tR-18, it was informed that R-18 had been submitting the details of clinker and power production and coal procured on monthly basis to the Directorate of Mineral Resources regularly. Copies of such details submitted for the months of August-December were also enclosed.

(xviii) The Committee headed by the Chief Secretary held a meeting on 09.04.2021 wherein it was observed that:

1. The Committee did not accept the explanation for gap in coal required and coal utilized furnished by the respective companies. The Committee noted that only 4 (four) companies have appealed to Hon'ble Supreme Court against Hon'ble NGT Order dated 17.01.2020. The Committee has decided that the actions in this matter in respect of M/s Star Cement Ltd. and its two subsidiaries as well as for M/s

Shyam Century Ferrous Ltd. shall be kept on hold till the case is disposed off.

2. The Committee directed that the remaining cement plants/companies may appeal against the Hon'ble NGT Order dated 17.01.2020 within 15 days, failing of which, it will be deemed that the cement plants have accepted the findings of Hon'ble NGT Committee.

3. A table with the gap between estimated coal requirement and coal used for the months of November 2020- February 2021 was given. For R-18, the gap was ascertained to be 4219.24 MT, 4502.37 MT, 5107.49 MT, 4422.26 MT for the aforesaid months respectively. For Captive Power Plant of R-18, the gap was ascertained to be 1260.72 MT, 1142.29 MT, 1605.34 MT, 846.69 MT for the aforesaid months respectively.

4. The Committee directed DMR to issue direction to the companies who have not submitted Mineral Transport Challans, for domestic coal purchased from Private dealers, to furnish the Mineral Transport Challans for the corresponding period given in these minutes.

5. The Committee directed DMR to issue Show Cause Notice to the companies who have not submitted Custom Clearances for imported coal purchased from Private dealers

and to furnish the Custom Clearances for the corresponding period given in these minutes.

6. The DMR has been further directed to seek explanation from the companies for gap between coal required and coal utilized by them for production of clinker and/ or power production for the corresponding period given in these minutes.

7. The Committee has directed the Director of Mineral Resources to take necessary steps to ensure receipt of Show Cause Notices by the defaulting Companies.

Copy of committee report dated 9.4.2021 is annexed hereto and marked as **ANNEXURE R-18/17**.

(xix) The DMR called upon R-18 provide explanation as to why case should not be registered against the Appellant under Section 21(1) of the MMDR Act, 1957.

(xx) Vide another SCN dated 30.04.2021, the DMR directed cement plants to submit custom clearances for coal imported for the corresponding periods given in the Minutes within a week from the issue of the letter. Another SCN dated 30.04.2021 directed the companies to furnish Mineral Transport Challan issued by Mining Department of origin State or by Coal India Limited for February to July 2020. Another SCN dated 30.04.2021 directed the companies to furnish an explanation for the gap in quantity of coal

required to produce clinker/power and quantity of coal purchased/used within one week from the issuance of the notice.

(y) R-18 challenged the order dated 17.01.2020 before the Hon'ble Supreme Court *vide* Civil Appeal No. 2355 of 2021 and as per the Committee meeting held on 9.4.2021 no action was taken against R-18. However, even after filing of Civil Appeal some notices were received. In any event in view of the setting aside of the order dated 17.12.2020 passed by Hon'ble NGT, all the aforementioned notices are non-est. In any event it is pertinent to note that R-18 has duly replied to all the notices and submitted all information to show that there is no gap between coal sourced and coal used.

(z) In the meantime, report on System Compatibility Study for using Slate as an Alternative Fuel was given by Holtec Consulting Private Limited. Following conclusions were made in the said report :

(1) Introduction of Slate as a low grade alternative fuel has generated the additional volume handling requirement, due to reduced calorific value.

(2) MCL has adequate facilities for handling, storage and processing of Slate and other alternative fuels (Plastic waste, Wood and Tyre chips) at their cement manufacturing plant.

(3) The usage of Slate replacing coal up to ~60 % (wt.%) in fuel mix is possible by necessary changes in Raw mix design to ensure that the quality of clinker produced are as per applicable standards. The proposed raw mix has been verified to be suitable to meet the product requirement.

(4) The Kiln operation with fuel mix (50% Coal+ 42% Slate+ 8% Other AF) was found to be generally operating normally.

(5) Slate is having almost similar physiochemical properties as that of coal.

(6) Using Slate in a state of the art coal based clinkerisation facility does not demand any major changes in plant process and modification/ addition of new equipment.

(7) Cement manufacturing facilities at MCL are suitably equipped to operate with up to 60% Slate in their fuel mix, with suitable change in raw mix design, within the existing system, without any need of alteration/ addition of their existing equipment & facilities

Copy of report dated February 2021 of Holtec Consulting Private Limited is annexed hereto and marked as **ANNEXURE R-18/18**.

(aa) Vide order dated 15.03.2021, the NGT disposed of the proceeding with a direction that ownership of the task of compliance of the judgment of this Hon'ble Court with regard to preventing unscientific and unregulated mining, restoring the environment, rehabilitating the

victims and handling of illegally mined coal should be taken over by the State Authorities, to be overseen by an Oversight Committee of 12 members, headed by Additional Secretary, MoEF & CC. The 8th Interim Report of the Committee which included recommendations for handling the MEPRF, method of coal mining, revised comprehensive plan for transport and auction of coal was also accepted. Copy of order dated 15.3.2021 passed by this Hon'ble Tribunal in OA110/2012 is annexed hereto and marked as **ANNEXURE R-18/19**.

(bb) Counter Affidavit was filed by Meghalaya State Pollution Control Board before the Hon'ble Supreme Court. The MSPCB affirmed that separate consent to operate is not required for the use of alternate fuel by cement and power plants. MSPCB also placed on record the environmental statement in Form V submitted by the Appellant, Part B of which contained the disclosures by the Appellant of the use of High Grade Slate for the concerned year.

(cc) In the meantime, High Court of Meghalaya has also taken suo moto cognizance of illegal mining of coal in State of Meghalaya and registered a PIL being PIL NO.2/2022. This was on the basis of a newspaper article. Various orders have been passed by the High Court to curb illegal mining.

Objections to the 5th Interim Report

I. The Committee did not consider the representation of R-18 and did not give any cogent reason for rejecting the same.

1.1 At the outset, it is submitted that R-18 had duly made representation dated 10.9.2019 against the observations made by the Committee at its 17th Meeting dated 14.08.2019 (which preceded the 5th Interim Report) with regard to alleged use of illegally sourced coal.

1.2 R-18 had made the following submissions in its representation:-

1. The objective of Techno Economic Feasibility Report **(TEFR)** is to determine the technical feasibility and financial viability of the project, assess the risks associated with the project and enumerate imminent actions that are required to be taken. It does not rule out use of alternate fuel.
2. The same is required by financial institutions to assess the viability, site conditions, availability of resources, background, market etc. and funding of the project within the desired limits. Further, Plant & Machinery is ordered based on inter alia the current technology available, design and technical specifications released by the consultant during project execution. Details and data given in TEFRs would therefore, may vary as per site conditions.

3. It is very much feasible by Plants of this calibre, to use alternate fuel without any hindrance. Alternate fuels are being successfully used world-wide and usage at the R-18's plant also, can be verified by a technically competent agency. Several seminars and conferences are being held time to time to promote the use of alternate fuel within the same infrastructure, by Government agencies along with Cement manufacturers Association, PCB, CII etc. aided by research scholars and technology experts. The Government of India vide its different programs is keen to ensure a seamless transition to Alternate fuel by Cement Industry.

4. All procurements, including alternate fuel procurements are by banking transactions, duly paid by cheque; Sales tax/GST paid on the same time to time and accounted for.

5. Royalty have also been paid on the same periodically, from April 2014 to September'2017. Balance payments till March 2019 is under progress.

6. The use of alternate fuel (Slate/ MuSlate) has duly been reported in Environmental Statements to Meghalaya State Pollution Control Board, Shillong every year as compliance.

1.3 The Committee relied on the analysis made of Cement plant of Star Cement Limited and without independent analysis of R-18's Cement plant observed that use of slate as alternate fuel is not technically feasible nor legally permissible. It has only relied on TEFR of augmentation of clinkerization

plant prepared by Holtec Consulting Private Limited to state that plant has been made to use coal only. It may be noted that Holtec Consulting Private Limited has given a report of the system compatibility study for using slate as alternate fuel in February 2021 stating it is feasible for plant of R-18 to use 60% slate in their fuel mix within existing system without any need of alteration of existing equipment but by changing raw material mix proportions.

1.4 Despite bringing to its attention that the observations were technically and scientifically wrong, the Committee did not take any technical assistance or commission any inquiry into the explanation of R-18 and proceeded to draw conclusions only on basis of analysis of Star Cement Limited.

1.5 It is submitted that the capacity of the Cement plant and Thermal power plant of Star Cement is different from that of R-18 and the plant is running on different parameters. Therefore, no comparison could have been drawn between the coal requirements of the two different plants.

1.6 The Committee has wrongly assumed that the coal requirement of the Captive Thermal plant of R-18 would be equal to the coal requirement of the captive thermal plant of Star Cement Limited and therefore wrongly assumed coal requirement at the rate of 0.850 kg/ Kwh for the Applicant as well. The Committee did not take into account the fact that Star Cement had a Thermal Power plant of 43 megawatts and the requirement of Thermal Power plant of 10 MW of R-18 with different plant design cannot be the same. Even

otherwise the requirement of coal at the rate of 0.850 kg/kwh has been assumed by the Committee without any technical basis merely on surmises.

1.7 Therefore, it is submitted that no comparison could have been drawn between the coal requirements of the two different plants, i.e. of R-18 herein and Star Cement Limited. The report is therefore based on assumptions and conjectures and not on basis of actuals. The report completely ignores that R-18 had sufficient coal and other alternate fuel for production of clinker and power during audit period.

1.8 The Committee ignored that there are various factors on which quantity of coal required per unit of power or per tonne of clinker produced is dependent upon, such as plant design, PLF factor, operational efficiency, coal quality, etc. Further, there cannot be any standardization with respect to fuel requirement for all the cement and power plants within the State of Meghalaya as each plant will have different requirement based on the design of their plants and other technical factors as mentioned above. It is further submitted that the quantum of fuel even for the same plant may vary every year.

II. <u>The presumption that use of alternate fuel is technically not feasible is baseless and contrary to technical and scientific evidence</u>

2.1 The entire calculation of use of illegal coal is primarily based on the presumption that use of alternate fuel is technically not feasible. This

presumption is made without any technical analysis or commission of any special inquiry into this aspect. In fact, the said presumptions are made despite the submissions of the authorities of the state and the centre to the contrary. It is further submitted that there is no evidence to show that the Applicant has either been involved in any illegal mining or illegal transporting or has used any such illegally sourced coal.

2.2 It is submitted that unless any evidence is found to the contrary, the details of the use of alternate fuel by the company as recorded in its books of accounts for last many years and as duly confirmed by the State Government and for which royalty has duly been paid to the State Government cannot be disregarded. The R-18 is also placing on record the challans issued for payment of royalty for slate/muslate during the resource audit period, the copies of which are annexed herewith and marked as **ANNEXURE R-18/20 (Colly).** The same has been confirmed by State of Meghalaya in its affidavit dated 8.2.2024.

2.3 It is submitted that while assessing the requirement of coal, the Committee completely ignored the use of other alternate fuel despite the details of the same having been provided to it. In the report it is also incorrectly recorded that year wise quantities of Slate used by the R-18 were not provided to the Committee. It may be noted that in the minutes of the Seventeenth sitting of the Committee held on 14.8.2019 it has been recorded that the R-18 submitted information and documents sought by the Committee. The issue

of non-availability of complete information was never raised in the subsequent meetings.

2.4 In the Background to the Report, it has been recorded at para 1.21 that all cement industries have submitted requisite information. It has also been recorded that the Committee received information sought from MSPCB. It is pertinent to note that R-18 had been submitting their Annual Environment Statement to MSPCB in which the year wise quantity of slate used was also provided. This shows that the committee had all the requisite information regarding use of alternate fuel by R-18.

2.5 The calculation of Gap between coal required and coal procured as calculated by the Committee is incorrect and based on wrong understanding about consumption of alternate fuel. The Committee failed to take into consideration the opening stock of coal as well as the use of other alternative fuel while making its calculation which is an apparent factual error in its assessment.

2.6 The Report is also premised on a wholly misconceived assumption of the Committee that use of two-third amount of slate as alternate fuel is technically not feasible without change or modification in the plant design.

2.7 Further, one of the primary reasons for the Committee to completely disregard the usage of alternate fuels such as slate for production of clinker

was the assumption that all such slate has been mined in an unscientific and haphazard manner without any mitigative measures and without obtaining mandatory mining lease, consent to establish, consent to operate, environmental clearance and authorization/no-objection certificate from the State Pollution Control Board in alleged violation of the existing mining, environmental, pollution control and labour safety laws.

2.8 The above conclusions have been drawn in complete ignorance of the fact that the design of the equipment used in the plant of the Applicant was conducive to the use of alternate fuels for production of clinker as also affirmed by the CPCB in its letter dated 13.09.2019.

2.9 Further, no Consent to Operate, consent to establish, environmental clearance or any authorization is required for the use of alternate fuels by R-18. R-18 is also placing on record the counter affidavit filed by the Meghalaya State Pollution Control Board before the Hon'ble Supreme Court in Civil Appeal No. 2355 of 2021- which corroborates the said submission.

2.10 Further the observations of the Committee are based on the wrong premise that coal requirement is 15% of clinker production and coal requirement for thermal power plant is 0.850kg/MWH. It is worth mentioning that use of alternate fuel is being encouraged by the Government and in fact MoEF & CC of late has been stipulating specific conditions to a few cement mills in Meghalaya to use Hazardous Waste/Refused Derived Fuel/Alternate Fuel

Resources in kilns and even the EC granted to various cement plants in the region stipulates such conditions.

III. <u>The reliance of the Committee on the Techno Economic Feasibility Report is wholly misconceived and baseless and without any consideration of the technical and scientific factors</u>

3.1 The R-18 reiterates that it has been using slate (also locally known as Muslate) as a major alternative fuel (AF) along with minor quantities of other Alternate fuels like Plastic waste, Wood waste and Tyre chips.

3.2 The Committee ignored that the objective of the Techno - Economic Feasibility Report (TEFR) is to determine the technical feasibility and financial viability of the project, assess the risk associated with the project and enumerate imminent actions that are required to be taken. The same is primarily required for financial institutions to assess viability for funding of the project. The statements made in the report are based on the current technology available. They cannot act as an estoppel for adopting any future improved technology other than that mentioned in the report. Further no scientific analysis was done to examine if slate was compatible to be used in the plants or that in fact it was being used without any adverse technological impact on the plants. The finding that slate is not compatible to be used as alternate fuel is clearly based on assumptions and wrong as also affirmed by the CPCB and a later study conducted by Holtec Consulting Private Limited.

System Compatibility Study on use of alternate fuel

3.3 A System Compatibility Study ("**Study**") involving an independent assessment of compatibility of the existing facilities at the Applicant's plant, to partially substitute coal with Slate along with other alternative fuels, was carried out by Holtec Consulting Private Limited ("**Holtec**"), an ISO certified advisory in the global cement industry between December 2020 and February 2021.

3.4 The Study included assessment of existing raw materials at the Applicant's cement plants for their suitability to use Slate and other Alternate fuels in their existing fuel mix and verification of technological suitability of existing facilities, by evaluating the need of any modification/replacement in existing systems to the usage of these Alternative Fuels for cement plant.

3.5 Field visits of Holtec's specialist teams to the plant site in Lumshnong, Meghalaya were carried out between 23rd and 26th December, 2020.

3.6 It was noted that the Applicant is currently consuming 40-44% Slate (wt %) along with coal and other minor Alternative Fuels. The Study concludes that the clinker produced using the raw mix & fuel mix with Slate (up to ~60% by weight) is suitable for cement production as per the applicable standards. It was further affirmed that the type of technology used by the Applicant to

meet fuel handling, storage, grinding & firing requirement are suitable for coal & slate.

3.7 It was accordingly concluded in the Study as under:

a) The Applicant has adequate facilities for handling, storage and processing of Slate and other alternative fuels (Plastic waste, Wood and Tyre chips) at their cement manufacturing plant.

b) The usage of Slate replacing coal up to ~60 % (wt.%) in fuel mix is possible by necessary changes in Raw mix design to ensure that the quality of clinker produced are as per applicable standards. The proposed raw mix has been verified to be suitable to meet the product requirement.

c) The Kiln operation with fuel mix (50% Coal+ 42% Slate+ 8% Other AF) was found to be generally operating normally.

d) Slate is having almost similar physiochemical properties as that of coal.

e) Using Slate in a state of the art coal based clinkerisation facility does not demand any major changes in plant process and modification/ addition of new equipment.

f) Cement manufacturing facilities at MCL are suitably equipped to operate with up to 60%, Slate in their fuel mix, with suitable change in raw mix design, within the existing system, without any need of alteration/ addition of their existing equipment & facilities

3.8 Therefore, it is submitted that the Committee has drawn a wrong inference that use of slate is not technically feasible for use in 10 MW Captive Power Plant merely on the basis of the earlier Techno-Economic feasibility report where it was not specifically stated in positive terms that it will be feasible to use alternate fuel other than coal.

IV. <u>The Committee also disregarded the submissions on the technical aspects by the authorities of the State as well as the CPCB and wrongly held that use of alternate fuel is not legally permissible.</u>

4.1 The Committee failed to appreciate that even the Commissioner & Secretary to the Government of Meghalaya, Mining and Geology Department had stated before it that "*Local suppliers have supplied muslate or slate sourced from overburden of coal mining carried out prior to the ban imposed by the Hon'ble NGT to the cement plant. It was also affirmed that the Cement plants have paid royalty on slate or muslate used*" [Refer to para 2.2.25 of the Fifth Interim Report]. Having already paid royalty on the slate used as alternate fuel which is acknowledged by the State, Committee's assessment of gap in coal consumption ignoring use of slate as alternate fuel and directing the Applicant to pay further royalty and MEPRF on alleged illegally sourced coal is completely unjustified, illegitimate and untenable.

4.2 Further, merely because the royalty may have been paid after a delay, the same does not entail penal consequences as have been imposed by the Committee. The only responsibility of user/ purchaser of a mineral is to purchase royalty paid mineral. Till 2016 slate was produced as an overburden during coal mining and only after framing of Meghalaya Mineral Concession Rules, 2016 slate was included as a minor mineral requiring a mining lease and requiring payment of Royalty. In any event, the issue of non payment of royalty on slate, if any, is a cause of action separate from the allegation of allegedly purchasing illegally mined coal.

4.3 The Applicant has been submitting the quantity of slate used to MSPCB since 2014-15 and at no point of time was an objection raised that the use of raw material was impermissible. It is submitted that the Committee ignored all the above submissions and instead drew its own conclusions without any technical evaluation regarding the gap in coal procured and coal consumed by the Applicant during the resource audit period.

4.4 In this regard, the Applicant refers to Para 1.10 of the 5th Interim Report where the Committee has made a tentative, yet untenable observation that the difference between the quantity of coal reportedly consumed by each of the cement industries and thermal power plants and the quantity of coal required to produce such reported quantity of cement or power each such plant, if any, *could* have been met by illegally mined coal. The deliberations of the Committee recorded at Para 1.15 further disclose that even at that time

there was no record for the Committee to conclude with certainty that the above difference is on account of use of illegally sourced coal.

4.5 In Para 2.2.36 and 2.2.37 of the Report, the Committee has given a completely perverse and erroneous finding that all the cement manufacturing plants and thermal power plants (which includes the R-18 by specific reference in the Report) have been designed to use locally sourced coal from Meghalaya as a fuel. The Committee opined that use of slate which has lower calorific value than coal, would require necessary modifications/changes in the design of the plant, especially such components dealing with handing, processing, grinding and storage of fuel.

4.6 In this regard, it is relevant to note that the Committee had specifically directed the North Eastern Regional Directorate of CPCB to submit a report as to whether the procurement of coal from Meghalaya by the Thermal Power Plants and Cements Industries has violated any condition set forth in the license/permission granted for setting up of such power plants and cement industries and if so, the required action to be taken against those Thermal Power Plants and Cement Industries. The Meghalaya Pollution Control Board in its affidavit dated 02.04.2024 confirmed that consent to operate is not required for use of alternate fuel.

4.7 It is a matter of record that the report subsequently submitted by the North East Regional Directorate of CPCB does not find the Applicant to have

violated any conditions in its licence/permission for setting up of its power plant and its manufacturing unit. On the contrary, the North East Regional Directorate of CPCB *vide* its letter dated 13.09.2019 (defined as CPCB Letter above) addressed to the Committee has specifically stated that the use of alternate fuel by cement and power plants is technically feasible and is in fact encouraged by Pollution Control Board and the letter mentions that

"*prima facie the use of alternate fuel by cement and power plants is technically feasible and is in fact encouraged by Pollution Control Board…*

...if the Industries use Pet Coke or slate as alternate fuel resource (ARF) it is not required to modify or attach a new fuel/material feeding system. AFR are generally used together with coal. As the physical characteristics of pet coke and slate are similar to coal these alternate fuel can be used in the existing coal mills for pulverization before feeding into the kiln or boilers after blending with coal….

...by using AFR/HW/RDF in kiln/boiler furnace, use of conventional fuel like coal is reduced. This arrangement helps in reducing the consumption of conventional fuel like coal and this brings in reduction in greenhouse gas emission." [Refer to para 2.2.17 and 2.2.18 of the Fifth Interim Report]. It was thus pointed out that alternate fuel is generally used along with coal and for such usage it is not required to modify or attach a new fuel/material feeding system. In fact, the CPCB has expressly stated that use of alternate

fuel in place of conventional fuel such as coal helps in reduction in greenhouse gas emission.

4.8 Further, the Meghalaya State Pollution Control Board placed before the Committee the Environmental Statement filed by the Applicant in the statutory Form – V for the years 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19. In Part – B of the said forms, the Applicant has regularly disclosed to the MPSCB about the quantity of High Grade Slate being used as a raw material/fuel at its unit every year. The Copies of the Environmental Statement filed by the Applicant with the Meghalaya State Pollution Control Board for the years 2014-15 to 2018-19 are annexed herewith and marked as **ANNEXURE R-18/21(Colly)**.

4.9 Ignoring all of the above, the Committee has not cited a single source or sought to take an opinion from a technical expert before drawing conclusions contrary to the above submissions with respect to the design and structure of the plant of the Applicant and other companies and the use of slate and other alternate fuel resource to produce the required quantity of clinker. Based on mere conjectures, the Committee has erroneously concluded that it is not feasible to run the cement plants by replacing about three-fourth of their coal requirement by a non-fuel mineral such as slate.

4.10 The Committee, while drawing such conclusions, has even ignored the fact that the Government of Meghalaya has more recently started encouraging the

use of *inter alia* alternate fuel in place of fossil fuels in the industries operating in the state and the fact that the companies such as Applicant have been repeatedly advised to use hazardous waste/refused derived fuel/alternate fuel resources in kilns and even the EC granted to various cement plants in the region stipulates such conditions.

4.11 Clearly, the findings of the Committee are baseless, contrary to the submissions and are not based on any firm and tenable considerations.

V. Recommendations to recover royalty, tax and other monetary payments contrary to statute and in excess of power conferred on this Hon'ble Tribunal

5.1 Without prejudice to the above it is submitted that the Applicant has not been engaged in any coal mining activity and hence the liability to pay royalty and MEPRF on alleged illegal mining cannot be imposed on the user. There is no provision under the MMDR Act, 1957 or any other statute under which the liability, that is being imposed by the committee and that too on mere assumptions and no cogent evidence, is sustainable.

5.2 The Committee has also recommended for payment @ Rs.400/MT of coal to be utilised in future by the companies in Meghalaya. This coal will primarily comprise of coal imported from other countries and states that was purchased in the auction undertaken by the Coal India Ltd. and that may be produced after grant of Mining Lease by the authorities. This is totally arbitrary as such

type of cess can be imposed only under a valid statute and not on the basis of an order without any basis at all.

5.3 Show Cause Notices for recovery of MVAT, GST and electricity duty have been issued to the Applicant basis the recommendations in the 5th Interim Report. In the present case the department has completed the assessment for the relevant years without finding any discrepancy in the returns filed by the Applicant. In any event, if the department is of the opinion that any tax is short paid or not paid and wants to reopen assessment, the procedure prescribed under the MVAT Act, 2002 or CGST Act 2017 or Meghalaya Electricity Duty Act, 2003 will have to be adhered to before initiating any action against the Applicant.

5.4 The tax liability cannot be imposed only in view of the report of the Committee since the manner of levy of taxes and recovery under different statutes are hedged by various limitations and subject to fulfilment of various pre-conditions specified in the respective statutes. Without there being any determination of liability and assessment thereof being completed by competent authority after examining books of record, demand and recovery of the levy does not arise.

5.5 The Committee has no power to levy taxes and other dues payable under various statutes as mentioned above. It is further submitted that the GST on

coal is on a reverse charge basis. In the absence of any evidence of any known supplier, levy of GST based on a hypothesis would cause grave injustice.

5.6 The recommendations of the Committee for recovery of royalty, taxes and other statutory dues from various industries including that of the Applicant company amounts to entrenchment of powers specifically reserved for some other State authorities under some different statutes. Such recommendations are clearly usurpation of powers conferred on the said other authorities under their respective statutes. It is most respectfully submitted that this Hon'ble Tribunal has no jurisdiction to enquire into questions arising out of Meghalaya VAT Act, 2003, the Meghalaya GST Act, 2017 and the Mines and Minerals (Development and Regulation) Act, 1957 under the NGT Act, 2010. Consequently, the Committee constituted by the NGT equally has no power to enquire into questions arising out of the aforesaid Acts inasmuch as the powers have been conferred on specific authority by the said enactments and the Committee and the Tribunal cannot entrench upon the powers and jurisdiction reserved for a particular authority.

5.7 The Committee also failed to take into consideration that the Meghalaya Goods and Service Tax Act, 2017 was enacted and the Meghalaya VAT Act was repealed by the said GST Act. No proceedings for recovery of any VAT for the period prior to enactment of Meghalaya GST Act was pending before any authority at the any point of time and thereby the same is not saved by the provisions of the Meghalaya GST Act and thereby the recovery for

realization of the VAT prior to the enactment of the Meghalaya GST Act without there being any proceeding pending before any taxing authority is absolutely illegal, without jurisdiction and in complete violation of the Meghalaya GST Act and thereby the recommendation of the Committee for recovery of Vat and directing the State for recovery of the same is absolutely illegal, arbitrary and liable to be set aside.

VI. There is no evidence to establish that the Applicant has purchased illegally sourced coal

6.1 It is evident that there is no concrete evidence whatsoever to establish that the Applicant has purchased illegally sourced coal. The entire 5th Interim Report is based on conjectures and premises based on an analysis of another Cement manufacturing plant and Thermal power plant, i.e. Star Cement Limited.

6.2 It may be noted that this Hon'ble Tribunal, vide its order of 4.1.2019 had asked the Committee to look into whether illegal coal mining and transportation is continuing and also directed trucks and cranes found to be involved in illegal mining and transportation be seized. Even the Hon'ble Supreme Court in State of Meghalaya vs. All Dimasa Students Union, Dima Hasao District Committee & Ors [(2019) 8 SCC 177] has held that the coal extracted and lying in open after 15.05.2016 does not automatically vest in the State of Meghalaya and the owner of the coal or the person who has

mined shall have the proprietary right in the mineral which shall not be lost. The Court has further held that only the coal which has been seized by the State in illegal transportation and illegal mining for which separate cases have been registered shall be dealt with in accordance with the provisions of Section 21 of MMDR Act, 1957.

6.3 Therefore, there is no evidence to show that the Applicant has either been involved in any illegal mining or illegal transporting or has used any such illegally sourced coal. In fact, it is submitted that in Meghalaya about 2800 trucks transporting illegal coal have been seized by the concerned authorities. If the Applicant herein were actually involved in the use of illegal coal on a massive scale as has been concluded by the NGT Committee, at least in a few cases the coal being procured by the Applicant herein would have also been seized/detected. There is not even a single reported case, involving Applicant, of seizure/detection of illegal coal in transit by the concerned authorities.

5. The observations of the Committee are clearly based on erroneous presumptions without taking into account the technical and scientific explanations and therefore liable to be rejected.

NOTARY GOVT OF WEST BENGAL SUJATA GHOSH DAS Regn. No. 01/4/2022

6. In view of the aforesaid submissions, it is most respectfully submitted that the recommendations of the Committee in the 5th Interim Report in so far as they relate to the Applicant herein are wholly baseless and liable to be rejected.

7. The annexures annexed to the present affidavit are true and correct copies of their respective originals.

SOLEMNLY AFFIRMED AND DECLARED BEFORE ME ON IDENTIFICATION
S. Ghosh Das
NOTARY

Meghalaya Cements Limited
Mahendra Kumar Agarwal
Managing Director
Mahendra Kumar Agarwal

DEPONENT

VERIFICATION 20 MAY 2024

I, the deponent above named do hereby verify that the contents of foregoing affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed there from.

Verified at Kolkata on this the 20th day of May, 2024.

Identified by Me
Himadri Chakraborty
Advocate
Enrolment No WB/154-A/199
C M Court kolkata

Meghalaya Cements Limited
Mahendra Kumar Agarwal.
Managing Director
Mahendra Kumar Agarwal

DEPONENT

Outlook

Advance Service | Rejoinder in IA 141 of 2026 by Respondent No.17 in OA 101 of 2019 (WZ)

From Vishal Shrivastava <vishal.shrivastava@khaitanco.com>
Date Sun 6/21/2026 12:06 AM
To rahul.garg@mgklegal.com <rahul.garg@mgklegal.com>; nitinlonkar@gmail.com <nitinlonkar@gmail.com>; ngt-pune@gov.in <ngt-pune@gov.in>; maulik@nanavatico.com <maulik@nanavatico.com>
Cc Deepak Singh <deepak.singh@khaitanco.com>; Sushil Dogra <sushil.dogra@khaitanco.com>; Abhay Agnihotri <abhay.agnihotri@khaitanco.com>

1 attachment (10 MB)
Rejoinder by R-17 in IA No 141 of 2026.pdf;

Dear Sir/Ma'am,

We act for and on behalf of the Respondent No.17 in the above captioned matter.

Please find attached the Rejoinder to the Objections filed in IA No. 141of 2026 in OA 101 of 2019 (WZ).

Kindly treat this mail as advance service of the Rejoinder and acknowledge the receipt of the same.

Regards

Vishal Shrivastava
Counsel for Respondent No.17
OA No. 101 of 2019
Mb:7874109190

Vishal Shrivastava
Principal Associate

Max Towers, 7th & 8th Floors, Sector 16B, Noida, Gautam Buddh Nagar 201 301, India

T: +91 120 479 1000 | M: +91 78741 09190 | E: vishal.shrivastava@khaitanco.com | Business Card | www.khaitanco.com