BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE

APPEAL NO. 40 OF 2022

IN THE MATTER OF:

TALOJA MANUFACTURERS ASSOCIATION — APPELLANT

VERSUS

UNION OF INDIA & ORS. — RESPONDENTS

REJOINDER ON BEHALF OF THE APPELLANT TO THE REPLY AFFIDAVIT OF THE PROJECT PROPONENT - RESPONDENT NO.5

I Shekhar Janardhan Shringare, S/o Shri Janardhan Shringare, age about 61 years, MIDC, Taloja, Taluka Panvel, District - Raigad, Maharashtra, President of the Appellant Association, hereby state and submit as under -

That I have perused the contents of the Reply Affidavit filed by Respondent No. 5 and categorically deny the averments made in the said reply.

It is submitted herein that all the averments made in the said reply, if not specifically admitted, shall be deemed to be denied.

PARAWISE REPLY TO THE REPLY AFFIDAVIT OF RESPONDENT NO. 5

1. That the contents of para 1 require no comments.

2. That the contents of Para 2 of the reply are not admitted in the manner submitted, it is stated that bald denial of the averments made in appeal has been done in this para without supporting the said denial with sufficient reasons and documents and it is settled position of law that mere bald denial is of no consequence rather it is considered as an admission on the part of the party.

3. That the contents of Para 3 of the reply are admitted to the extent the same are in consonance with the prayer made in the appeal. With respect to the further contention made by the respondent that the appellant has only challenged the EC, but has not challenged the consent to operate ('C2E') which is still valid and in force, it is stated that the present appeal has been filed under Section 16 of the NGT Act, 2010. Section 16(h) of the NGT Act, clearly provides for the jurisdiction of the NGT in cases of appeal against grant of environmental clearance. It is stated that it is an admitted factual position that the project in question is listed in the schedule attached with the EIA notification which requires a prior environmental clearance. It is stated that the said clearance has been challenged before the Hon'ble NGT in the present appeal on various legal and valid grounds. It is stated that if the EC itself is declared to be invalid by this Hon'ble Tribunal, then the C2E which has been issued based on the EC so granted will be of no consequence.

4. That the contents of Para 4 of the reply are admitted, it is stated that the said work has been stopped after notice given by PMC and it has been done after the inspection of the site by the MPCB.

5. That with regard to the contents of Para 5 of the reply, it is stated that respondent No.5 - Project Proponent itself has admitted that the construction over the site has been stopped as a precautionary action and have admitted that there is a concern about the environment and human health due to the presence of the CHWTSDF. The candid admission on the part of the project proponent clearly shows that they are also of the opinion that the proposed construction in the buffer zone is going to have its adverse impact upon the environment as well as human health and the same grounds have been raised by the appellant in the present appeal. So in view of the said candid admission on the part of the project proponent, this appeal deserves to be allowed.

6. That the contents of Para 6 of the reply do not require any comment from side of appellant because the letters dated 20.10.2022 & 10.11.2022 were sent to Panvel Municipal Corporation ('PMC') & SEIAA and NPCB respectively and no communication in relation to the same has been made to the appellant.

7. That the contents of Para 7 to 9 of the reply are not admitted in the manner submitted hence, the same denied. The respondent No.5 has

tried to dilute his grave inaction in making the true and complete disclosure in the Form-I and has tried to project his wilful concealment as a bona fide escape from mentioning the details whereas, the fact remains that the S.No. 1 of Section III - Environmental sensitivity -at Page No 9 of the Form-1 which have been submitted by the project proponent while seeking the EC clearly requires a disclosure from the applicant that "if the project does not fall within 15kms of an area protected under international conventions, national or local legislation for its ecological, landscape, cultural or other related value". Looking to the said specific details sought by Form-I, it was very much required on the part of the project proponent to make a true disclosure regarding the fact that the project in question is situated within distance 500 meters from the operational CHWTSDF and in view of the guidelines of the CPCB, it was situated on a construction buffer zone. The said form further clearly provides an undertaking on the part of the project proponent as per which if any information is found to be false or misleading, the project will be rejected and clearance given will be revoked.

At the cost of repetition, it is submitted that the Hon'ble Supreme Court has clearly held that where there is a wilful concealment on the part of project proponent then, EC is required is to be cancelled.

8. That the contents of Para 10 of the reply are not admitted in the manner submitted, no proof in support of the said contentions were placed on record by the project proponent. It is stated that even if any such search of survey records was conducted, it is very much clear from the admitted facts of the present case that such search has not been done proper with proper due diligence and therefore, if such a casual search was conducted, the same cannot be a ground for the project proponent to excuse itself from the statutory requirements under environmental laws.

9. That the contents of Para 11 of the reply does not require any specific comments from the appellant as the same relates to the Local Planning Authority ('LPA'). However, the position of law in this regard is very much clear that CHWTSDF has been sanctioned in the year 2001 and the CPCB Guidelines clearly provides that such area within the 500 metres from the outer boundary is no construction buffer zone.

10. That the averments contained in Para 12 of the reply are not admitted in the manner submitted, it is stated that even if no unpleasant incident has happened in last 20 years, however the same does not change the status of land falling within 500 meters from the outer boundary of the operation CHWTSDF and by virtue of the Guidelines on Criteria for Hazardous Waste Landfills, 2001 being issued by the CPCB. The said guidelines were issued by CPCB to facilitate the implementation of the Hazardous waste (Management and Handling) Rules, 1989. Criteria no. 2.0 of the 2001 Guidelines lays about the locational criteria which shall be followed in a HW Landfill site. Criteria 2.0 (e) mentions about minimum distance which is to be maintained between habitation and a landfill site. The said criteria states that:

> *(e) Habitation: A landfill site shall be atleast 500 m from a notified habitated area. A zone of 500 m around a landfill boundary should be declared a no-development buffer zone after the landfill location is finalized.*

On a bare perusal of the above mentioned criteria it is clear that the distance criteria is mandatory to be followed and a zone of 500 m around a landfill boundary shall be declared as a buffer zone. The term used in the guidelines is landfill boundary which clearly means that the distance of 500 meters. would be calculated from the outer boundary of the landfill site.

That Section 6, 8 and 25 of the EPA, 1986 confers powers to the Central Government to lay procedure, guidelines, rules, safeguards for handling of hazardous substance. It is in pursuance of these powers that the Hazardous Wastes (Management and Handling) Rules, 1989 ('1989 Rules') were formed. It is further submitted that CPCB is a statutory organisation, constituted under the Water (Prevention and Control of Pollution) Act, 1974 and was entrusted with the powers and functions under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

That Rule 4B of the 1989 Rules mandated the authorities to perform various duties specified under Column 3 of Schedule 7. Point No 2 (v) of Schedule 7 states that CPCB has the duty to prepare guidelines to prevent/reduce/minimize the generation and handling of hazardous wastes. Relevant excerpt reads as follows -

"(v) prepare guidelines to prevent/reduce/minimize the generation and handling of hazardous wastes"

It is under these provisions, that the said guidelines were issued by CPCB in 2001. Further, even in the Hazardous and other Wastes (Management & Transboundary Movement) Rules, 2016 ('2016 Rules'), similar provisions are prescribed. The Rule 10 of the 2016 Rules clearly provides power to MoEF and CPCB to issue guidelines or standard operating procedures for environmentally sound management of hazardous and other wastes from time to time. Relevant excerpt reads as follows -

"10. Standard Operating Procedure or guidelines for actual users.- The Ministry of Environment, Forest and Climate Change or the Central Pollution Control Board may issue guidelines or standard operating procedures for environmentally sound management of hazardous and other wastes from time to time."

Therefore, in view of the above, said guidelines are statutory in nature and are binding. In view of the fact that the guidelines are very much having the force of law, therefore even by invoking the precautionary principle, such residential project cannot be permitted to be establish in the no buffer construction buffer zone at the vicinity of a hazardous waste management facility.

In addition, the Hon'ble Apex Court while discussing the mandatory nature of the 2001 guidelines in **Research Foundation for Science v. Union of India and Anr. [(2005) 13 SCC 661]** clearly stated as follows -

"9. For design and setting up of disposal facility as provided in Rule 8A of the HW (M&H) Rules, the Criteria for Hazardous Waste Landfills published by CPCB in February 2001 and the Manual for Design, Construction and Quality Control of Liners and Covers for Hazardous Waste Landfills published in December 2002 shall be followed and adhered to.

10. CPCB should issue the requisite guidelines to be followed for the purpose of upkeep of the disposal sites.

11. CPCB shall issue guidelines to be followed by all concerned including SPCB and the operators of the disposal sites for the proper functioning and upkeep of the said sites."

It is also pertinent to mention at this juncture that the Gujarat High Court in **Parth Mahila Utkarsh Mandal (N.G.O.) v. Sradda Developers and others**, while deciding a PIL with similar facts, wherein the Municipal Corporation and the Director (Environment) and Additional Secretary, Forest & Environment Department, State of Gujarat, had granted permission to the project proponent to construct residential flats in the name of Paradise Park adjacent to the Hazardous Waste Landfill Site, held that the 500m no development buffer zone is mandated by the 2001 CPCB Guidelines and the same is to be followed & complied with in letter and spirit as it concerns the health & well-being of the people residing in the vicinity.

It is much evident from the caselaws cited that the guidelines issued by the CPCB in 2001, apart from the statutory force behind the CPCB guidelines there is also a mandate of the hon'ble courts that prescribes that the said 2001 guidelines ought to be followed.

11. That the averments contained in Para 13 & 14 of the reply are not admitted in the manner submitted. It is stated that the proper due diligence with regard to the environmental aspect attached to the land in question were not undertaken by the project proponent. Therefore pleading ignorance cannot be an excuse from the mandatory guidelines in force as on date.

12. That the contents of Para 15 of the reply are not admitted in the manner submitted hence are denied in entirety. The averment made in said para that EC has been obtained after submitting all the information is absolutely false and misleading. As a matter of fact, there is a clear concealment of material facts committed by the project proponent with regard to the details required under Clause 9.4 and under S.No. 1 of Section III - Environmental sensitivity -at Page No 9 of the Form-1.

13. That the contents of Para 16 are not admitted in the manner submitted hence, denied. The appellant in Para 8 to 11 of the memo of appeal has clearly made the averments with regard to the locus standi of the appellant. It is stated that the Taloja Manufacturing Association has been formed for safeguarding the interest of the member industries in the Taloja Industrial Area. It is stated that there are more than 200 chemical industries in the Taloja Industrial Area and the entire

hazardous waste generated from the said chemical industries as well as other industries are being sent to the CHWTSDF and any construction of residential project in the vicinity of CHWTSDF is certainly going to have its adverse impact upon the human health of the people residing there and will cause the further problems in smooth functioning of CHWTSDF in the Taloja Industrial Area and any of obstruction in the functioning of CHWTSDF is in turn going to affect the right of the member industries which are operating in the area. Therefore, the Appellant thus have the locus standi to file the present appeal.

That so far as the locus standi is concerned before the Hon'ble NGT, it is settled position of law as Hon'ble NGT in various judgments have held that any person or firm or body or organization or entity can come forward to raise the substantial question relating to environment and matters connected therewith.

In the judgment of the Principal Bench of Hon'ble NGT dated 14.12.2011 in **Vimal Bhai & Ors v. MoEF & Ors. Appeal No. 5 of 2011 - NGT Principal Bench**, the Hon'ble Bench while doing a conjoint reading of Section 2(j), 16, 18, 20 and the Preamble of the NGT Act, 2010, along with Article 48A & 51A of the Constitution of India, held that the ambit of the term 'person aggrieved' is wide & flexible and needs to be given a liberal interpretation considering the intent of the NGT Act is to safeguard and protect the environment and keeping a check on any activity that can be termed as deterrent to environmental or ecological safety norms. Therefore, there cannot be a question as to the locus of the appellant herein as it squarely falls under the wide and flexible definition of 'person aggrieved'.

14. That the contents of Para 17 are denied in entirety. It is submitted that the facts stated by the project proponent are incorrect and misleading. That the project proponent in its reply at para 17 has stated that the project falls under 8(b) B2 and has a total covered built-up construction area of 65157.55 sq.m. However, in Form-I submitted by the project proponent it is mentioned that the project falls under 8(a) and the proposed built up area is 117027.44 sq.m. and in the impugned EC granted to the project proponent, it is stated that the project falls under category 8(a) with a proposed built up area of 73879.606 sq.m. there is a clear discrepancy and inconsistency in the Form -I submitted, the EC granted and the statements made by the project proponent in para 17 of its reply. it is further pertinent to

submit that that considering the peculiar facts of the case, there ought to be an Environmental Impact Assessment of the said project.

15. That the contents of para 18 to 20 are denied in entirety. It is submitted that the averments made by the project proponent are nothing but a sly attempt to cover up its action of non-disclosure of pertinent information in Form-I. It is an undisputed fact that the CHWTSDF is an area of importance which is safeguarded by all applicable environmental norms and protections including the Guidelines of 2001 and its presence was known to the project proponent. Despite that, the project proponent chose to withheld pertinent information while filling the Form-I for grant of EC. That the project proponent in Form-I under point 9- '*factors which should be considered which could lead to environmental effects or the potential for cumulative impacts with other existing or planned activities in the locality*' and the subhead 9.4 - '*have cumulative effects due to proximity to other existing or planned projects with similar effects*' have answered it as "NO", and have tried to hide/ not-highlight the fact that there was a CHWTSDF facility operating nearby the project site which has definite potential environmental impact on the project and also on the people that will be residing in the project if the same is allowed.

Furthermore, the project proponent also failed to disclose relevant information in S.No. 1 of Section III - Environmental sensitivity -at Page No 9 of the Form-1 under the head - '*areas protected under international conventions, national or local legislations for their ecological, landscape, cultural or other related value*' and answered the same as "NO", whereas it is very much clear the CHWTSDF site and its operation is under statutory mandate as discussed above. It is obvious that if at all the said factual information would have been disclosed, the EC might not have been granted. It is also pertinent here to mention the undertaking in the Form-I submitted by the project proponent, as per which, if the project proponent supressed any material facts or submitted false information (which is the case here), then the said EC would be rejected. In this relation, it is pertinent here to cite Clause 8(vi) of the EIA Notification, 2006 which states as follows -

> *"Deliberate concealment and/or submission of false or misleading information or data which is material to screening*

or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

The Apex Court in **Hanuman Laxman Aroskar v. Union of India, (2019) 15 SCC 401**, while outlining the importance of the information provided in Form-I also held that in cases false or missing information in Form-I it resulted in immediate rejection of the EC granted.

The manner in which the project proponent has tried to explain the intent behind the grant of EC under the EIA Notification, 2006 is a very narrow interpretation of the basic spirit and object of the EIA Notification or concept of the environmental clearance. Project proponent has tried to explain that the whole purpose of the process of grant of EC is to understand the impact of the proposed project upon the surroundings and not to understand or ascertain the impact of the surroundings upon the proposed project. As a matter of fact, the EC is granted after being satisfied about the cumulative environmental impact including on all flora, fauna, humans, on the project etc. So, it is wrong to say that it is only the impact of the project upon the surrounding is to be seen rather a wider implication is to be conducted in a much broader perspective.

16. That the contents of para 21 are replied to in the manner herein. The project proponent has submitted that the presence of the CHWTSDF was known to SEIAA & SEAC, however this is no ground for the project proponent to not disclose the said information in the Form-I. It is further submitted that the project proponent had failed to mention the distance between the project site and the CHWTSDF in the google map.

17. That the contents of para 22 and 23 are denied in entirety. It is submitted that as has been stated above, the project proponent is building a very narrow interpretation of object of the EIA Notification and grant of EC. It is submitted that a wholesome and cumulative approach needs to be implemented while considering grant of EC. It is not restricted only to the effect a project will have on the surrounding rather it also encompasses the effect the nearby surrounding will have

on the proposed project. So, it is wrong to say that it is only the impact of the project upon the surrounding is to be seen rather a wider implication is to be conducted in a much broader perspective.

18. That the averments contained in Para 24, it is stated that MPCB report clearly shows that the location of the proposed projects are at a distance of 200m from the 70 acre part of land and 20m from the 30 acre part of CHWTSDF land. Even, it is presumed that the 30 acre part of land is not being put to be used for that purpose till now will not affect the controversy involved in the present case because even from the 70 acre land where admittedly, a CHWTSDF is operational the distance of the Project is 200m i.e. within the 500 meters radius which is a no-development buffer zone as per the Section 2(e) of the Criteria for Hazardous Waste Landfills, 2001 issued by CPCB. Therefore, even in such case also, the EC granted is not valid and ought to be quashed.

19. That in Para 25 of the reply the project proponent itself admitted that the proposed project is at a distance of 200 meters from the existing CHWTSDF. So in view of the same, it is clear that the proposed project is within the no development buffer zone, therefore the construction permission for a residential project so granted through the said EC is not valid in the eyes of law.

20. That the averments contained in Para 26 of the reply are misconceived hence, denied in entirety. It is submitted that the project proponent has made false averments that the cells situated within the CHWTSDF are under closer and non-operative, rather the correct factual position is that it is still operational and waste material is being transported to the CHWTSDF for treatment. The said facility will remain in operation till the time the agreement and the EC of CHWTSDF is in force. It is submitted that the CHWTSDF is an integrated facility having Hazardous Waste Incinerator, Secured Landfill and the Landfill Cell number 1 to 13 are technically interconnected. Merely because some of the cells are capped for ease of operations, the entire facility can not be declared or treated as a closed permanently to avoid implication of Locational Criteria. It is stated that CPCB has also issued guidelines for Closed TSDF (Annexure - A11) and in view thereof also the contention of the respondent no. 5 is not tenable and is bereft of any merit whatsoever.

The averments made in the para that the distance of the project is at almost 500 meters from the core operative zone of the CHWTSDF

is absolutely misconceived. The requirement of guidelines is very much clear that the distance within which the no development buffer zone is to be marked is from the outer boundary wall of the landfill site. For ready reference, the said clause is quoted below:-

> *"(e) Habitation: A landfill site shall be atleast 500 m from a notified habitated area. A zone of 500 m around a landfill boundary should be declared a no-development buffer zone after the landfill location is finalized."*

21. That with regard to the averments contained in Para 27 of the reply, it is stated that the averments made in the said para are self-contradictory. As a matter of fact, the project proponent itself has admitted that the new proposed area for which the EC has been granted is facing resistance form the local residence. The appellant also in the appeal has clearly stated that they are facing the resistance from the local resident.

It has been seen that wherever there has been a waste management facility and if any residential colony is being permitted then, such facility faced the resistance of the vicinity area. For the reason that such hazardous waste facility may have its adverse impact upon the human health.

In this background, it is stated that if the proposed residential project is permitted to establish on such place, then the future residents of the said colony will also face the same problem and will create the same type of resistance towards the CHWTSDF. In such circumstances, the invocation of the precautionary principle at this stage is very much called for.

It is stated that in this background only, this relevant information is specifically sought under the Form-1 that the area is protected under any international convention or local legislations for their ecological land escape cultural or other related value. In this background, it is stated that theory or the concept which has been proposed by the project proponent that the questionnaire of Form-1 is being prepared only to see the impact of the project upon the surroundings is absolutely irrational and unreasonable rather the questionnaire has been prepared to understand the impact of the entire ecological impact of the project in the area itself.

This clearly fortifies the averments made in appeal that existence of such project is going to have its adverse effect over the operation CHWTSDF and may also have its adverse effect upon the human health of the residence of such residential building if permitted under the EC.

22. That the averments contained in Para 28 are not admitted in the manner submitted are and denied in entirety. The project proponent (respondent no.5) has referred to the Solid Waste Management Rules, 2016 and certain provision of the said rules. It is stated that the present case is relating to the hazardous waste which is not at all covered under the Solid Waste Management Rules since, the entire scheme of the impact and scheme of the hazardous waste is entirely different from the non-hazardous solid waste and since the provisions of the said Rules are not *mutatis mutandis* with the provisions of Hazardous Waste Management Rules, therefore the reference of Solid Waste Management Rule or any provisions thereof is having no impact or relevance and is inconsequential with regard to the present case.

23. That the contents of Para 29 of the reply are not admitted in the manner submitted and are denied in entirety. It is submitted that it is not a ground for allowing the residential colony within the no construction buffer zone of 500m. It is further stated that no residential colony at a such close distance has been permitted till now, but however if the same is being permitted, the same can be ground to perpetuate any action which is against the CPCB Guidelines, 2001. The apprehension of the appellant is well founded as even the project proponent in its reply at para 27 have stated that the said expansion is facing resistance from the local area and thus, it is fit case where the pre-cautionary principles have to be invoked.

24. That the averments contained in Para 30 of the reply are not admitted in the manner submitted herein. The reference of the guidelines giving the buffer zone requirement of 200 meters to 500 meters is absolutely baseless, as the guidelines clearly mandate the requirement of a no development buffer zone of 500 meters and although it has been stated by the project proponent that it should be measured from within the CHWTSDF area, however the guidelines are very much clear that it has to be measured from the outer boundary of the site.

25. That the contents of Para 31 is of no consequence. The averments contained in the said para that in last 22 years, the MIDC and CHWTSDF

has not demanded the buffer zone to be kept and therefore, it cannot be done as of now are in consequential. As a matter of fact, there is no requirement of making any demand for such purpose because the guidelines clearly provides that there would be a no development buffer zone. Such separate demand for the same, as averred by the project proponent, is not required at all.

26. That the averments contained in Para 32 of the reply are not admitted in the manner submitted. It is stated that in view of the fact that proposed project falls within no construction buffer zone and the presence of the CHWTSDF in such close vicinity will have obvious adverse effects upon the health of the residents that are going to reside in future in such colonies nearby the CHWTSDF and non-disclosure of such important and relevant details in the Form-I for grant of EC itself makes the said EC liable to be dismissed. Since, the proposed project is admittedly located within the no development buffer zone therefore, no useful purpose will be served if the matter is remanded back to the SEIAA.

27. That the contents of Para 33 are denied in entirety on account of it being mere conjectures without any justifiable basis. As has been discussed above, the provision of 500m no development buffer zone around the boundary of the CHWTSDF has statutory force and is to be followed in letter and spirit. The project proponent is trying to mislead the Hon'ble Tribunal by stating mere surmises & conjectures just to satisfy its objective even if that might result in heavy risks to the dwellers if the project (and the EC) is allowed to operate within the no development buffer zone.

28. That the contents of para 34 are denied in entirety. It is an admitted fact that CPCB Guidelines are issued in accordance with the Basel Convention. It is further submitted that indeed various buffer zones have been declared but they are with respect to different kind of waste management facility. There is no merit in the contention of the project proponent that all kind of buffer zones have to be considered in the present case because a specific provision of no development buffer zone with respect to the present CHWTSDF is covered by the 2001 Guidelines and the same is to be followed.

It is also submitted that there is no merit in the contention of the project proponent that the 2001 Guidelines has no statutory force. The said Guidelines have been issued by CPCB which is empowered to

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issue such guidelines and derives the power to issue such guidelines. The contents of reply to para 12 squarely covers the aspect of statutory force of the said guidelines and is to be read here as part and parcel of this reply.

It is further submitted that there is no merit whatsoever in the contention of the project proponent that the matter should be remanded back to SEIAA for reconsideration. It is an undisputed fact that the project is within the 500m no development buffer zone and no reconsideration whatsoever can change that fact. Therefore, the only recourse in the present case is to declare the EC so granted by SEIAA as invalid and non est in law.

29. The averments contained in para 35 and 36 of the reply of respondent no. 5 are not admitted in the manner submitted. The respondent no. 5 in the said para has tried to convey that for maintaining a buffer zone / buffer ring, a big part of land i.e. 57 hectare - in case of buffer zone of 200m; and 191 hectare - in case of buffer zone of 500m, would fall within the no development buffer zone. It is stated that the said contention of the respondent no. 5 is absolutely misconceived as mere size/extent of land cannot be a ground to do away with the requirement followed from statutory power for maintaining the buffer zone. It is stated that the requirement/ concept of maintaining no construction zone is also provided in the cases of national parks, wildlife sanctuary, coastal areas, eco sensitive areas etc. which runs in several kms. Looking from that perspective, merely because some part of land is required to be maintained as no development buffer zone would not be a justified ground to question the requirement of maintain the buffer zone which is being provided to avoid any impact or hazard to human health.

The averment made in the said para that cost of such buffer zone should be fastened upon the generator of pollution/hazardous waste is against the settled principles regarding requirement of buffer zone. As a matter of fact, the prohibition of no development/ no construction/ conditional-selective development is not to take away the ownership rights of any land holder but to restrict the use of the same for maintaining the ecology and environment and to avoid any human health hazard. It is also a settled position of law that right to property is not unfettered but subject to just restrictions. Therefore, the reference of principle of EPR and PPP and strict & absolute liability

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principle in the present context is not at all sustainable in the eyes of law.

It is submitted that the Hon'ble Bombay High Court in **TCI Industries Limited v. Municipal Corporation of Greater Bombay 2011 SCC OnLine Bom 1671**, has held as follows -

> *"37. ... Considering the submissions made by the counsel appearing for the parties and considering the material on record, we are of the view that the security aspect which is pressed into service by Navy cannot be said to be a mere bogey or imaginary one, as appropriate material has been placed on record to buttress the stand of the Navy.* ***As pointed out earlier, there are various provisions in various enactments which require that in a particular area certain high rise buildings or developmental activities are not permitted, especially in the vicinity of refinery or chemical industries which may affect health hazards to the persons staying nearby. In the instant case simply because construction activity is not permitted, it cannot be said that such action is violative of Article 300-A of the Constitution of India.*** *Even at the cost of repetition, we may say that under D.C. Regulation 16, no development activity is permissible in certain eventuality which includes public interest also. The said Regulation is not challenged before us. Therefore, in our view, the Corporation has acted within its authority and in view of that it cannot be said that the petitioner is deprived of its property without any authority of law."*

30. The contention raised in para 37 of the reply is not admitted in the manner submitted and are thus denied. As stated above, the ownership rights of the land holders regarding the land falling within the buffer zone are not affected, its only the right to use the land that are being restricted in the buffer zone. The contention of the respondent no. 5 - PP being the bonafide purchaser is not tenable as the same is against the fundamental principle of *caveat emptor* i.e. 'let the buyer beware'. The contention raised in the said para regarding the equity in favour of the purchaser of the land is also not tenable as it is a settled position of the law that there cannot be any equity in contravention of law.

31. The contention raised in para 38 regarding the notification of the land surrounding the CHWTSDF to be a notified buffer zone or no development zone is to be answered by the concerned authority because the locational criteria itself provide that once the site for the hazardous waste management is notified, the zone of 500m around the landfill boundary should be declared as no development buffer zone. In this regard the reference of the communication placed on record along with the reply of respondent no. 3 -MPCB are relevant.

32. That with the contention contained in para 39 of the reply of respondent no. 5, it is stated that since the land in question falls within the no development buffer zone therefore the prayer (b) as made in the Memo of Appeal is very much justified and is to be allowed by the Hon'ble Tribunal.

33. That the averment contained in para 40 of the reply of respondent no. 5 are not admitted in the manner submitted hence denied. It is stated that since the locational guidelines - 2001 issued by the CPCB, clearly requires the area of 500m from the outer boundary of CHWTSDF to be a no development buffer zone therefore remanding the matter back to SEIAA for reconsideration would serve no useful purpose as the requirement of the buffer zone defined under the said Guidelines cannot be done away by any other authority including SEIAA.

34. That the averment made in para 41 of the reply of respondent no. 5 is absolutely misconceived, hence denied. It is an admitted factual position that the impugned EC has been granted on concealed facts and is in clear violation of the locational guidelines -2001 issued by CPCB and therefore the same is liable to be declared illegal and set aside. Thus, the question for keeping the same in abeyance for time being does not arise.

35. That the averment contained in para 42 and 43 of the reply of respondent no. 5 are not admitted in the manner submitted hence denied. It is submitted that the respondent no. 5 has tried to suggest that at present as per the samples collected from the site there is no sign of any environmental damage due to existence of CHWTSDF in last two decades, however the same in itself cannot be the sole ground to do away with the requirement of maintaining the no development buffer zone. The averment/idea sought to be conveyed by the respondent no. 5 is against the fundamental principle of 'precautionary principle'.

36. That the averment made in para 44 of the reply of respondent no. 5 are admitted to the extent the same are in consonance with the provisions of the CPCB Guidelines - 2001.

37. That the averment contained in para 45 and 46 of the reply of respondent no. 5 are related to the Notification issued by the MIDC on recommendation of CPCB, MPCB and IIT professors, thus the appropriate reply to the same can be given by the respondent no. 2 - CPCB, respondent no. 3 - MPCB. However, it is stated that the contention sought to be raised by the respondent no. 5 is against the settled position of law that the illegality (assuming without admitting) if being committed cannot be allowed to be perpetuated.

38. That with respect to the averment contained in para 47 and 48 of the reply of respondent no. 5 it is submitted that no specific comments are necessary from the side of the appellant. It is however submitted herein that the averment/idea sought to be conveyed by the respondent no. 5 is against the fundamental principle of 'precautionary principle'.

39. That with respect to the averment contained in para 49 of the reply of respondent no. 5 it is submitted that the buffer zone of 200m is stipulated with respect to the solid waste landfill sites however the same cannot be made applicable with respect to the hazardous waste management site which is completely different than the solid waste management sites. It is submitted that owing to the gravity and seriousness of the nature of the hazardous waste, if CPCB in its own wisdom has mandated a no development buffer zone of 500m, it cannot be compared to the buffer zone criteria for solid waste sites and challenged based on comparison, which is illogical.

40. That with respect to the averment contained in para 50 of the reply of respondent no. 5 it is submitted that the issue with regard to the existence of CHWTSDF and the requirement of no development buffer zone was not been brought to the notice of SEIAA and SEAC and the same has neither been discussed nor been considered while granting the impugned EC in the present case. The presumption so drawn by the project proponent regarding the knowledge of SEIAA and SEAC is wholly unfounded. With regard to requirement of public hearing as averred by the project proponent, it is stated that as per the EIA Notification there is no requirement for public hearing for a project which is established within the industrial area. It is stated that the reference

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of UDCPR 2020 is of no consequence in the present case as the same operates in a field of law and the same cannot override the requirement/prohibitions provided in the environmental guidelines issued by the CPCB.

41. That the averment contained in para 51 of the reply of respondent no. 5 does not need any reply.

42. That with respect to the averment contained in para 52 of the reply of respondent no. 5 it is submitted that it is mere reiteration of the averments made above which are sufficiently replied. The contents of reply to paras 35 and 36 above should be read as part and parcel of this reply.

43. That the contents of para 53 need no reply.

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For Taloja Manufacturers Association

Authorised Signatories

APPELLANT

VERIFICATION

Verified by Shekhar Janardhan Shringare, S/o Shri Janardhan Shringare, age about 61 years, MIDC, Taloja, Taluka Panvel, District - Raigad, Maharashtra, do hereby verify that above contents are true to my personal knowledge and I have not supressed any material fact.

For Taloja Manufacturers Association

Authorised Signatories

APPELLANT

PLACE: _____

DATE: _____

AFFIDAVIT

Solemnly affirmed before me.
by Shri/Smt. Shekhar Janardhan Shringare
R/o. MIDC Taloja
Tal. Panvel Dist. Raigad
Who is identified by Adv.....
to whom he / she is personally known

TALOJA MANUFACTURERS ASSOCIATION

BEFORE ME

19/8/2023

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NOTED & REGD.
Sr. No. 347 of 2023

19 AUG 2023.