

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL WESTERN ZONE**BENCH, PUNE, AT PUNE****ORIGINAL APPLICATION NO. 54/2020**

Shashikant Vitthal Kamble

... **APPLICANT**

V/s

M/s. Nakshatra I Land and others

... **RESPONDENTS****INDEX**

SR NO	ANNEXURE	PARTICULARS	PAGE NOS.	
			From	To
1.		Index	---	115
2.		Reply on behalf of Respondent No. 1	116	130
3.		Affidavit in Support	---	131
4.	R-1	Copy of the certificates of registration of the Societies alongwith the English Translations	132	138
5.	R-2	Copy of the application for grant of Environmental Clearance to the Respondent No.7 dated 12.12.2011	---	139
6.	R-3	Copy of show cause notice dated 09.01.2014		140
7.	R-4	Copy of the reply to the show cause notice dated 14.10.2014.	---	141
8.	R-5	Copy of the minutes of meeting	142	158
9.	R-6	Copy of the Environmental Clearance finally came to be granted on 31.12.2019.	159	170
10.	R-7	Copy of the judgment of the Hon'ble JMFC	171	174
11.	R-8	Copy of the judgments of Hon'ble Supreme Court and Madras High Court	175	218
12.		Vakalatnama	---	219
		Last Page		219

PUNE**DATE:28-03-2022**

ADVOCATE FOR RESPONDENT NO. 1

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE, AT PUNE

ORIGINAL APPLICATION NO. 54/2020

Shashikant Vitthal Kamble ... **APPLICANT**

V/s

M/s.Nakshatra I Land and others ... **RESPONDENTS**

REPLY ON BEHALF OF
RESPONDENT NO.1
(M/s.NAKSHATRA EYE
LAND.)

MAY IT PLEASE BE THE HON'BLE TRIBUNAL

(I) PRELIMINARY OBJECTIONS

1. At the outset, the present Respondent No.1 states that, the statements, averments and prayers, made by the Applicant are not admitted to the present Respondents and are denied in toto, expressly so far as they are admitted herein. The Respondent No.1 submits that, the present application has been filed by the Applicant with a view to harass the present Respondent and is not maintainable before this Hon'ble Tribunal.

2. At the outset, the Respondent No.1 submits that, this Hon'ble Tribunal does not have jurisdiction to try, entertain and dispose of

the present application, as the same is not within limitation. The present Respondent states that, the Hon'ble Bombay High Court and Supreme Court had on the interpretation on various Statues, held that, when a statute prescribes a shorter period of limitation and difference scheme of the limitation, the provision of Limitation Act is excluded and the Court/Tribunal must apply the period of limitation as prescribed in the specific statute while exercising the powers. In view of this, the application preferred by the Applicant is totally misconceived and liable to be dismissed.

3. The present Application filed by the Applicant upon plain reading of Section 15 of the said act is barred by law of limitation. On bare perusal of section 15 of the said Act, an Application raising substantial question relating to environment seeking restitution, remediation and compensation (including enforcement of legal right relating to environment) has to be filed within a period of 5 years from date on which the cause of action for such dispute "first arose" provided that ,this Hon'ble Tribunal may, if it is satisfied that the Applicant was prevented by sufficient cause from filling the Application within the said period allow it to be filed within a further period not exceeding sixty days. In the present case the

application is totally barred by Limitation, as the cause of action for filing the present Application first arose on 7th February 2011, when the Original Building Permission was sought and on 12th December 2011, when the Respondent No.1 sought Environmental Clearance. The present Application is filed on 30th June 2020.

4. The present application is filed after almost 8 years after accrual of cause of action and also after 1.5 years after receipt of Environmental Clearance being received. The Applicant is unnecessarily hampering the execution of construction and denying the benefits to numerous flat buyers and their families for his vested interest. Hence, on this ground the present application be rejected. It is submitted that the present application is barred by limitation u/s 15 and 16 of the NGT Act, 2010 which prescribes a period of 5 years for filing an application from the date on which the cause of action for such dispute “first” arose, extendable by a further period of 60 days thereafter, provided that the Applicant may show by a sufficient cause that the Applicant was prevented from filing such an application in time. Further, the Applicant has also sought to file an application under section 15 of the said act

which also provides for the aforesaid words “the date”, “cause of action” and “first arose”.

5. The application was filed on 30th June 2020. The averment in the application relating to limitation is reproduced herein below:

“LIMITATION

that the Applicant got the copy of documents which has been asked under RTI in March 2020 thereafter the lockdown I has been announced by the central government quarter Covid and Corona situations which has emerged. Once the honourable terminal has been announced to be available for hearing then and there the applicant has filed the present application. hence the application is being filed within the limitation period as per national Green Tribunal act 2010 hello as well as the rules and procedures.”

6. It is submitted that the date of knowledge has absolutely no application while interpreting the provisions of Section 15 of the NGT Act. The said Act is a special enactment and hence, there is a statutory prescription of the special period of limitation under Sections 15(3) of the said Act, which will certainly exclude general law of limitation.

7. Further, the application of the principles of recurring and/or continuing cause of action for the purposes of disputes under Section 15 of the said Act would lead to serious anomalous and undesirable consequences. That the Legislature while enacting the statute purposely used the words "first" for "cause of action" to file an action before the Tribunal. That the Hon'ble Supreme Court in the case of L.C. Hanumanthappa vs H.B. Shivakumar (2016) 1 SCC 332 has held that the word 'first' has been used between the words 'sues and 'accrued'. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.

8. That in a catena of cases, this Hon'ble Tribunal has also taken the view that limitation period begins to run from the date when the cause of action first arose including in Application No. 33 of 2016 *Jai Javan Jai Kisan and Ors. Vs Vidarbha Cricket Association and Ors.*; O.A. NO. 179 of 2016 Graminee Environment Foundation vs. Balaji Infrastructures Ltd. and Ors, OA No. 95 of 2014 Mr. Suresh WamanDhavale and ors. vs MOEF and Ors

9. Similarly, section 15(3) of the act contemplates that no application for grant of compensation or relief or restitution of property or environment shall be entertained unless the same has been made

within a period of five years from the date on which the for such compensation or relief first arose.

10. It is submitted that cause of action for filing an application under the provisions of the Green Tribunal Act, 2010 cannot accrue on the day when a person discovers the act of environmental damage. This Hon'ble Tribunal has rejected the proposition of 'Discovery Rule' being applicable to patent event perceptible to the public at large and therefore by no stretch of imagination can the cause of action for filing an application under the provisions of the said act could accrue on the day when such environmental damage is discovered by the party. The Applicant has thus approached this Hon'ble Tribunal with the sole intention to overcome the difficulty of limitation under the act, has approached this Hon'ble Tribunal with unclean hands. Therefore, the present Application under section 15 of the NGT Act, 2010 is clearly barred by limitation.

11. The Respondent No.1 submits that the Respondent No.7 had granted Environment Clearance to the Respondent No.1 on 31.12.2019. The challenge to the EC can be made only by filing an Appeal u/s 16 of the NGT Act, 2010. The limitation provided u/s 16 of the Act is 30 days from the date of the receipt of the order and further period of 60 days can be granted by explaining the reasons for delay on the part of the person preferring the appeal. In the present case, the Applicant has not challenged the EC and thus, to forgo the said bar of limitation, the Applicant has preferred the present Original Application u/s 15 of the NGT Act. It is trite law

that, if the Litigant cannot do directly before the Court or Tribunal, he cannot do the same indirectly. The OA is in effect a challenge to the EC dated 31.12.2019, and the same is evident from the pleadings, as also from the findings of the NGT. Such a challenge, being an order specified as an appealable order under Sec. 16, was necessarily to be challenged only under the said Section. However, if the Applicant had done so, the same would be hopelessly barred by limitation, as it has to be filed within 60 days from the date on which the order was passed. The Original Applicant, therefore to get over the bar of limitation preferred the said OA which was otherwise not maintainable

12.The Applicant herein has not joined the necessary parties to the present application, as the Respondent No.1 had constructed 4 buildings and has created third party rights by selling flats to the intended purchasers by executing agreements with the said purchasers. Not only that, the Respondent No.1 has also formed a Co-operative Housing Society of the said flat purchasers, registered with the Registrar of Co-operative Societies, Pune. The respective wings have formed societies and the same have been registered on 10th February 2020, 3rd December 2021 and 26th February 2021. The respective certificates are annexed hereto and marked as **ANNEXURE – R-1 colly.**

13.The Respondent No.1 had on 12.12.2011 applied to the Respondent No.7 for an *ex post facto* clearance for its sanctioned plan No.BP/Moshi/Layout/03/2011 dated 07/02/2011. The

Respondent No.7 vide its letter dated 08.12.2014 noted the violations and directed the Respondent No.2 to file a case for violation. Accordingly, the Criminal Case under section 15 read with 16 under the Environment Protection Act, 1986 was filed. The Respondent No.1 was convicted by order dated 23.05.2018. The Respondent No.1 was directed to pay an amount of Rs.1,80,000/- towards fine. The Respondent No.7 then granted the Environmental Clearance on 31.12.2019 with a condition to deposit a sum of Rs.2.31 crores towards the violation. The Respondent No.1 has submitted a Bank Guarantee to that effect. The Consent to Establish was granted to the Respondent No.1 29.05.2020. The Respondent No.1 was directed to furnish a Bank Guarantee of Rs.10 lakhs. The same has been submitted. The Consent to Operate has been granted on 31.12.2020.

14. The Respondent No.2 has filed an Affidavit dated 4th February 2022. Vide the said affidavit it is submitted that the Respondent No.1 is liable to pay a sum of Rs.8,16,30,000/-. However, if the said Affidavit is accepted, it would amount to double jeopardy for the Respondent No.1.

15. CPCB Guidelines have over-simplified the methodology for computation of Environmental Compensation. The formula evolved in 'Chapter-I: Environment Compensation to be levied on INDUSTRIAL Units' is applied across all scenario, matters, types of projects, etc. without any application of mind. The "Report of the CPCB in-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund"

was evolved in the matter before Hon'ble National Green Tribunal (NGT), Principal Bench in the matter of OA No. 593/2017 (WP (CIVIL) No. 375/2012, Paryavaran Suraksha Samiti &Anr. Vs. Union of India & Ors. directed Central Pollution Control Board (CPCB) that: "The CPCB may take penal action for failure, if any, against those accountable for setting up and maintaining STPs, ETPs and ETPs. CPCB may also assess and recover compensation for damage to the environment and said fund may be kept in a separate account and utilized in terms of an action plan for protection of the environment. Such action plan may be prepared by the CPCB within three months"

16.CPCB has further mentioned the pre-conditions where this needs to be used and applied. Those are under Point No. 1.3 " It was deliberated for developing a formula for imposing environmental compensation on industrial units for violation of directions issued by regulatory bodies and this is the first attempt made. The committee discussed that environmental compensation should be based on "Polluter Pay Principle".

17.CPCB itself mentioned the limitations of the Report and also as to when it should be used. However, overlooking these limitations and restrictions, stated by the CPCB itself, these Guidelines are used for Assessing Damage to Environment and Compensation for Remedial plans.

18. Guideline's forward states in the first line itself that "*Environmental compensation is a policy instrument for the*

protection of the environment which works on the Polluter Pay Principle”. However, the same is not approved even by the Board of CPCB. It has no approval by MoEF&CC. It is not formally notified or incorporated in the Rules. PP submits that ‘polluter pays principle’ is laid down and upheld by Hon’ble Supreme Court by making the party responsible for pollution, also responsible for paying for the damage done to the natural environment. This is for the civil liability.

19. The formula is totally ignorant about the substantia compliance done, data of actual pollution done, control of pollution done, no. of parameters fully complied out of total dozens of criteria pollutants. It is also indifferent to the potency of the pollutant to damage the environment, vis-à-vis the existing background level of the recipient bodies.

(II) FACTS OF THE CASE

20. The Respondent No.1 herein had purchased the land bearing Gat No.669, Plot No.A, Moshi Alandi Road Tal. Haveli Dist. Pune vide Agreement No. 1543/2011 dated 23/02/2011. The said plot is totally admeasured 46,614 Sq. mtrs.

21. The Respondent No.1 submits that on 07.02.2011, the Respondent No.1 sought for building permission for construction of a Residential and Commercial Building on a plot of land admeasuring 11,716.84 sq. m., known as ‘Nakshatra I Land’ from the Building Permissions Department.

22. The Respondent No.1 submits that the same came to be granted by the said Department, and which, while granting the same recorded that there was no ongoing construction on the land. The Respondent No.1 submits that on 31.08.2012, the PCMC issued sanction for the Revised Plan sanctioning the Respondent No.1's Revised layout plan for BUA 19,643.84 FSI and Non FSI Area for EC 22,527.04 Sq. Mtrs. The total proposed construction was 42,170.88 sq.mtrs. The Respondent No.1 was directed to apply for the Environmental Clearance for the said project.
23. The Respondent No.1 submits that the Respondent No.1 preferred an application for grant of Environmental Clearance to the Respondent No.7 on 12.12.2011. Copy of the application is annexed hereto and marked as **ANNEXURE – R-2**. The Application was considered time and again and on 06.11.2012, the Respondent No.1 was directed to resubmit the revised Form I and I-A. During the second meeting held on 14.12.2013, the violation was noted and accordingly a show cause notice dated 09.01.2014 was issued to the Respondent No.1. Copy of the show cause notice is annexed hereto and marked as **ANNEXURE –R-3**. The Respondent No.1 replied the show cause notice vide its detailed reply on 14.10.2014. Copy of the reply is annexed hereto and marked as **ANNEXURE – R-4**. The directions were issued to the Respondent No.1 after granting personal hearing on 08.12.2014. The Respondent No.2 filed Criminal Case being RCC No.241/2015. The case of the Respondent No.1 was thereafter

considered in the meeting held on 12.01.2016 and it was recommended to SEIAA by SEAC. Copy of the minutes of meeting are annexed hereto and marked as ANNEXURE – R-5. The application for grant of environmental clearance was considered as per the SOP issued by the MoEF in March 2017. The Application was thus considered in the amnesty scheme and the Environmental Clearance finally came to be granted on 31.12.2019. Copy of the Environmental Clearance is annexed hereto and marked as ANNEXURE – R-6. The Respondent No.1 has submitted a bank guarantee amounting to Rs.2.31 crores. The Respondent No.1 was also found guilty of the offence under Section 15 r/w 16 of the Environment Protection Act, 1986 and the Respondent No.1 has paid the fine of Rs.1,80,000/- before the Hon'ble JMFC. Copy of the judgment of the Hon'ble JMFC is annexed hereto and marked as ANNEXURE – R-7.

24. The Respondent No.1 submits that on 30.06.2020, the Applicant, filed OA No.54/2020 (WZ) before the NGT falsely stating therein, *inter alia*, that the Respondent No.1 had not obtained a mandatory prior environmental clearance from the SEIAA, and that it was operating without a consent to establish and operate from the MPCB. Thereafter the Respondent No.1 submits that the Hon'ble Tribunal constituted a committee comprising of Collector, Maharashtra, MPCB and PCMC vide its order dated 11.09.2020. The Committee constituted by this Hon'ble Tribunal caused a visit

to the site of the Respondent No.1 and submitted its detailed report dated 18.12.2020. The Committee observed that the Respondent No.1 had obtained the Consent to Establish, Consent to Operate and further observed that the STP, OWC, Rain Water Harvesting and Solar Systems were in accordance to the permissions granted. The Committee also observed that the Respondent No.1 had obtained all permissions and the same were valid and subsisting. The Committee observed that the Environmental Clearance granted to the Respondent No.1 was a violation case and that the amount as directed in the EC was deposited by way of Bank Guarantee. The Respondent No.1 is also in receipt of the order dated 4th February 2022 from the Maharashtra Pollution Control Board directing it to deposit a sum of Rs.8,16,30,000/- towards Environmental Compensation. The said order is in complete contradiction to the judgments of the Hon'ble Supreme Court in *Electrosteels* and the Madras High Court in *Puducherry Environment Association*. The Committee have noted the compliance and there is no pollution and hence there is no question of paying additional compensation. The Hon'ble Supreme Court in the judgment of *Pahwa Plastics* have noted that The Respondent No.1 has already furnished the Bank Guarantee and has been penalised. Additional punishment will

amount to double jeopardy. Copy of the judgments of Hon'ble Supreme Court and Madras High Court are annexed hereto and marked as **ANNEXURE – A-8 colly.**

25. The Applicant has no locus/legal right to file such Application, as the Applicant is not owner, flat purchaser, developer of the said scheme. The Applicant is a third person to the entire scheme floated by the undersigned. The Applicant has tried to obtain document relating to the scheme mentioned in the Applicant from various government/semi-government bodies under the provisions of the RTI act and misinterpreted the same to its convenience and has filed the present Application with a view to harass the Respondent No.1. The Applicant has malafide intentions in filling the present complaint and hence, the act of filling of the Applicant before this Hon'ble Tribunal is abuse of process of law. The allegations of the Applicant in the complaint are wild, baseless, and reckless and moreover, the same are defamatory in nature. The Respondent No.1 denies each and every allegation mentioned in the Application. The Respondent No.1 has filed the present reply thereby reserving rights to take appropriate criminal as well as civil action against the Applicant.

26. The allegations made by the Applicant are not admitted by the present Respondent No.1 and are denied in toto and therefore, in view of the facts mentioned herein above, the Original Application, filed by the Applicant is liable to be rejected with heavy cost.

PUNE
DATE:28/03/2022



ADVOCATE
FOR THE Respondent No.1

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**WESTERN ZONE BENCH, PUNE, AT PUNE****ORIGINAL APPLICATION NO. 54/2020**

Shashikant Vitthal Kamble

... **APPLICANT****V/s**

M/s.Nakshatra I Land and others

... **RESPONDENTS****AFFIDAVIT IN SUPPORT****MAY IT PLEASE THE HON'BLE TRIBUNAL**

I, Mukesh Punjabhai Patel, Aged : 46 years, Occu.: Business, having address at Nakshatra i-Land, Gat No. 669, Moshi Alandi Road, Moshi, Pune - 412105, do hereby state on solemn affirmation as under :-

I am Mukesh Punjabhai Patel of the Respondent No.1 and responsible for day to day administration of the Respondent No.1's business. As such, I have gone through the Reply and annexures thereto being filed today. I find that the contents therein are true and correct to the best of my knowledge and belief and which may be treated as part and parcel of the present affidavit.

WHATEVER STATED ABOVE is true and correct to the best of my knowledge and belief.

In witness whereof I have signed hereunder at Pune on 16th day of March, 2022.

Noted & Registered
at Serial Number A-1605
Date: 16/3/2022



(Mukesh Punjabhai Patel)

**BEFORE ME**

BALASAHEB T THOPATE
NOTARY GOVT OF INDIA
BHOSARI, PUNE-39

16 MAR 2022



सत्यमेव जयते

जा.क्रं.पीएनए/पीएनए(६)/एचएसजी

(टीसी) / 29025 / सन २०२०

दिनांक - १० / ०२ / २०२०

महाराष्ट्र शासन

सहकार, पणन व वस्त्रोद्योग विभाग

नोंदणी प्रमाणपत्र

या प्रमाणपत्राद्वारे प्रमाणित करण्यात येत आहे की,

नक्षत्र आयलँड सी विंग सहकारी गृहरचना संस्था मर्यादित,

स.नं.६६९ पै, मोशी-आळंदी रोड, मोशी, पुणे.

ही संस्था महाराष्ट्र सहकारी संस्थांचे अधिनियम १९६० मधील (सन १९६१ चा महाराष्ट्र अधिनियम क्रमांक २४) कलम ९ (१) अन्वये नोंदण्यात आलेली आहे.

उपरिनिर्दिष्ट अधिनियमाच्या कलम १२ (१) अन्वये व महाराष्ट्र सहकारी संस्थांचे नियम, १९६१ मधील नियम क्रमांक १० (१) अन्वये संस्थेचे

वर्गीकरण "गृहनिर्माण संस्था" असून

उपवर्गीकरण "भाडेकरू सहभागीदारी गृहनिर्माण संस्था" असे आहे.



(उज्वला माळशिकारे)

उपनिबंधक सहकारी संस्था,

पुणे शहर (६) पुणे

स्थळ : पुणे

दिनांक : १० / ०२ / २०२०



पीएनए/ पीएनए(६)/ एचएसजी /
(टीसी) / २२५६५/२०२१-२०२२
दिनांक : ०३/१२/ २०२१.

सत्यमेव जयते

महाराष्ट्र शासन
सहकार, पणन व वस्त्रोद्योग विभाग

नोंदणी प्रमाणपत्र

या प्रमाणपत्राद्वारे प्रमाणित करण्यात येत आहे की,

नक्षत्र आयलँड आय विंग सहकारी गृहरचना संस्था मर्यादित.,

स नं.६६९, मोशी-आळंदी रोड, मोशी, पुणे.

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वर्गीकरण	गृहनिर्माण संस्था	असून
उपवर्गीकरण	भाडेकरु सहभागीदारी गृहनिर्माण संस्था	असे आहे.



स्थळ : पुणे

दिनांक : ०३/१२/२०२१

श्री. शीतल पाटील

(डॉ. शीतल पाटील)

उपनिबंधक, सहकारी संस्था,

पुणे शहर(६), पुणे



सत्यमेव जयते

पीएनए/ पीएनए(६)/ एचएसजी /
(टीसी) 122830/2020-2021
दिनांक : 26/02/2021.

महाराष्ट्र शासन
सहकार, पणन व वस्त्रोद्योग विभाग
नोंदणी प्रमाणपत्र

या प्रमाणपत्राद्वारे प्रमाणित करण्यात येत आहे की,

नक्षत्र आयलॅण्ड जी विंग सहकारी गृहरचना संस्था मर्यादित.,

स नं. ६६९, मोशी-आळंदी रोड, मोशी, पुणे.

ही संस्था महाराष्ट्र सहकारी संस्थांचे अधिनियम १९६० मधील (सन १९६१ चा महाराष्ट्र अधिनियम क्रमांक २४) कलम ९ (१) अन्वये नोंदण्यात आलेली आहे.

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वर्गीकरण

गृहनिर्माण संस्था

असून

उपवर्गीकरण

भाडेकरु सहभागिदारी गृहनिर्माण संस्था

असे आहे.



स्थळ : पुणे

दिनांक : 26/02/2021

(उज्वला माळशिकारे)

उपनिबंधक, सहकारी संस्था,
पुणे शहर(६), पुणे

Outward No. PNA/PNA/6/HSG/
(TC)/21724/Year 2020
Dated 10/02/2020

GOVERNMENT OF MAHARASHTRA

Cooperation, Marketing and Textile Department

REGISTRATION CERTIFICATE

This is to certify vide this certificate that -

NAKSHATRA I-LAND H WING COOPERATIVE HOUSING SOCIETY LIMITED S.No. Out of 669, Moshi-Alandi Road, Moshi Pune,

Is a Society registered under Section 9(1) of The Maharashtra Cooperative Societies Act, 1960 (Maharashtra Act of 1961).

The Society has been classified as 'HOUSING SOCIETY' and sub-classified as Tenants Co-Partnership Housing Society under Section 12(1) of above mentioned Act and Rule 10(1) of The Maharashtra Cooperative Societies Rules 1961.

XXX/-sd
(Ujwala Malshikare)
Deputy Registrar Cooperative Societies
Pune City (6) Pune

/Round Seal of/
Dy. Registrar Coop Societies,
Pune City (6), Pune

Place - Pune
Dated - 10/02/2020

Outward No. PNA/PNA/6/HSG/
(TC)/21725/Year 2020
Dated 10/02/2020

GOVERNMENT OF MAHARASHTRA

Cooperation, Marketing and Textile Department

REGISTRATION CERTIFICATE

This is to certify vide this certificate that -

NAKSHATRA I-LAND C WING COOPERATIVE HOUSING SOCIETY LIMITED S.No. Out of 669, Moshi-Alandi Road, Moshi Pune,

Is a Society registered under Section 9(1) of The Maharashtra Cooperative Societies Act, 1960 (Maharashtra Act of 1961).

The Society has been classified as 'HOUSING SOCIETY' and sub-classified as Tenants Co-Partnership Housing Society under Section 12(1) of above mentioned Act and Rule 10(1) of The Maharashtra Cooperative Societies Rules 1961.

XXX/-sd
(Ujwala Malshikare)
Deputy Registrar Cooperative Societies
Pune City (6) Pune

/Round Seal of/
Dy. Registrar Coop Societies,
Pune City (6), Pune

Place - Pune
Dated - 10/02/2020

Outward No. PNA/PNA/6/HSG/
(TC)/22565/Year 2020-2021
Dated 03/12/2021

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XXX/-sd
(Dr. Sheetal Patil)
Deputy Registrar Cooperative Societies
Pune City (6) Pune

/Round Seal of/
Dy. Registrar Coop Societies,
Pune City (6), Pune

Place - Pune
Dated - 03/12/2021

Outward No. PNA/PNA/6/HSG/
(TC)/22437/Year 2020-2021
Dated 26/02/2021

GOVERNMENT OF MAHARASHTRA

Cooperation, Marketing and Textile Department

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Pune City (6), Pune

Place - Pune
Dated - 26/02/2021



ANNEXURE -R-2

NAKSH
Land

Moshi - Alandi Road

Date: 12/12/2011

To,

The Secretary,
 State Environmental Impact Assessment Authority,
 Environment Department,
 New Administration Building,
 15th floor, Mantralaya, Mumbai
 State: Maharashtra.

Subject: Application for Environmental Clearance for our proposed project Nakshatra Land at Moshi - Alandi Road, Pune.

Dear Sir,

With reference to above mentioned subject we are submitting herewith the application Form and Form 1A alongwith all necessary plans, drawings and annexure as per your requirement.

We request you to acknowledge the same and oblige.

Thanking you,

Yours faithfully,

For, Ellora Buildwell Pvt. Ltd.

Shaneel Zhanuher

AUTHORIZED SIGNATORY

Encl: As above

Received on

12/12/2011

H. P. S. Clerk

S, E. A. C. Cell



Ellora Buildwell Pvt. Ltd., Moshi-Alandi Road, Off. Pune-Nashik Highway, Moshi, Pune - 412 105
 Mo - 73040 99111 / 222 / 333, nakshatrailand@gmail.com

show cause 9/1/2014.

GOVERNMENT OF MAHARASHTRA

Tel. No. : 2279 3132

Fax No. : 2281 3947

No. SEAC- 2011 /CR-825 /TC-2

Environment Department,

217(Annex), Mantralaya, Mumbai - 400 022

Date : 09 /01/ 2014

By Fax/ RPAD / speed post

To,

M/s Ellora Buildwell Pvt. Ltd.

Ellora Fiesta, Plot No.8,

Sector - 11, Opposite Juinagar,

Navi Mumbai

Sub. :- Proposed Directions u/s 5 of the Environment (P) Act, 1986
r.w. EIA Notification dtd. 14.9.2006

WHEREAS, it was obligatory on your part to obtain prior Environment Clearance from the Competent Authority, as per the EIA Notification dtd. 14.9.2006, before starting any building construction activity.

AND WHEREAS, you have applied for Environment Clearance for proposed Nakshatra I Land 669 at Village Moshi, Alandi, Tal. Haveli Pune. During the 2nd meeting of the State Level Expert Appraisal Committee held on 12th to 14th December, 2013, it was observed that you have started the construction activity without obtaining prior Environment Clearance from the Government of Maharashtra. This amounts to violation of the EIA Notification 2006.

NOW THEREFORE, in view of the above non-compliance, you are hereby directed to show cause as under :-

- Why your building construction activity shall not be stopped forthwith for the violation of Environment Impact Assessment Notification dtd. 14.9.2006, issued by the Ministry of Environment & Forest, Government of India, for not obtaining prior Environmental Clearance from the Competent Authority / Government of Maharashtra?
- Why further legal action shall not be initiated against you under the provisions of the Environment (Protection) Act, 1986 and Rules made there under?

You are also directed to submit your reply within 15 days from the receipt of this Proposed Directions, failing which, this office has no option than to initiate stringent legal action against you including stoppage of your construction activity, which please be noted.

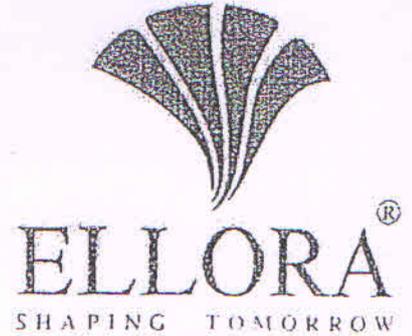


(R.A. R
Principal Se
Environment D

ANNEXURE -R-4

S. 141

A-V



Date: 14.10.2014

To

Additional Chief Secretary
Environment Department
117 (annex) Mantralaya
Mumbai-400032

10/10/14
मानक विभाग
स्वास्थ्य विभाग
पुणे-४११००५

Subject: Your show cause notice dated 09/01/2014 bearing no. SEAC-2011/CR-825/TC-2.

Ref: Environmental clearance for Project - "Nakshatra I Land" situated at survey no. 669, Nakshatra I Land, Moshi Afandi Road, Off Pune Nashik Highway, Pune-41105.

Respected Sir

With reference to the above subject, we, Ellora Buildwell Pvt. Ltd., the Project Proponent had attended a meeting of 2nd SEAC-III on 14th December 2013 for the Environmental clearance of our above referred project. Our Project was not considered for environment clearance during the meeting as there was an alleged violation of the Environment Protection Act. The Copy of your letter dated 9/1/2014 is attached herewith as Annexure A and Copy of extract of item no 28 of 2nd SEAC III dt. 14/12/2013 is attached herewith as Annexure B.

We beg to make our humble submission in the subject matter as follows.

- 1) The details of Project in the given format is attached herewith as Annexure C.
- 2) The Collector Pune granted the Non Agricultural (N.A.) order vide its Letter No. pmh/NA/SR/1138/2010 dated 28/1/2011 to the Previous Owners. (Copy of NA order attached herewith as Annexure D).
- 3) The Pimpri Chinchwad Municipal Corporation (PCMC) sanctioned 8143.85 sq.mtrs of FSI for the said project for previous owner vide commencement certificate no. BPA/Moshi/Layout/ 03/ 2011 dt. 7/2/2011 (Copy of commencement certificate dt. 7/2/2011 attached herewith as Annexure E).
- 4) We, Ellora Buildwell Pvt. Ltd. the project Proponent/Owner are developing the project "Nakshatra I Land" with Ellora Homemakers Pvt. Ltd. (Developer).
- 5) We, Ellora Buildwell Pvt. Ltd. were incorporated on the date 12/3/2010. The Ellora Hom... were incorporated on the date 10/9/2009.
- 6) Ellora Buildwell Pvt. Ltd. Registered sale deed with the previous owner on 22.2.2011 by... it became the owners of the land (Copy of Index II attached herewith as Annexure F). Ellora Buildwell Pvt. Ltd. registered a joint venture agreement with the previous owners of the land on 2... Index II attached herewith as Annexure G).



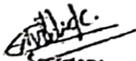
5

Page 179 of 386

Item No.34 M/s.Ellora Buildwell Pvt.Ltd.

Application for prior Environmental clearance for proposed Nakshatra I Land 699 at Village Moshi, Alandi. Taluka Havell, Pune.

1.	Name of Project	"Nakshatra I Land"
2.	Name, Contact number & Address of Proponent	Mr. Mahesh Chaudhari Ellora Buildwell Pvt. Ltd. (Owner) Ellora Home Makers Pvt. Ltd. (Developer) Ellora Fiesta, Plot No. 8, Sector-11, Opposite Juhuagar, Navj Mumbai- E-mail ID:ellora118@gmail.com
3.	Name, contact Number & address of Consultant	M/s. Ultra-Tech (Environmental Consultancy & Laboratory) Saudamini Commercial Complex, Building C-3, 2nd Floor, Right Bhusari Colony, Paud Road, Kothrud, Pune.411038. Phone No. 020-25286109/06
4.	Accreditation of consultant (NABET Accreditation)	Ultra-Tech Environment consultancy and Lab (Lab. MoEF gazetted). Gazetted by MoEF & CC - Govt. of India NABET Certificate No. NABET/EIA/1417/RA010
5.	Type of project: Housing project /Industrial Estate /SRA scheme/ MHADA /Township or others	Mixed Use Development
6.	Location of the Project	Gat No. 669, Moshi Alandi Road, Off. Pune Nashik Highway, Pune- 412105
7.	Whether in Corporation /Municipal/other area	PCMC
8.	Applicability of the DCR	PCMC
9.	IOD/IOA/Concession document or any other form of document as applicable (Clarifying its conformity with local planning rules & provision)	Applied
10.	Note on the initiated work (If applicable)	As per issue direction vide letter no. SEAC-2011/CR-825/TC-II we have constructed total built up area of 34,126.05 m ² CC. no. received is 241/2015
11.	LOI/ NOC from MHADA /Other approvals (If applicable)	N.A.
12.	Total Plot Area (sq. m.)	46,614.00 m ²


Secretary

Minutes of the 40th meeting of the SEAC - III (NoN-MMR) held from 12th to 15th January 2016


Chairman

	Deductions	6,765.02 m ²																																							
	Net Plot area	39,843.98 m ²																																							
13.	Permissible FSI (including TDR etc.)	54,273.13m ²																																							
14.	Proposed Built-up Area (FSI & Non-FSI)	FSI : 52,894.45 m ² Non FSI : 55,506.58 m ² Total BUA : 1,08,401.03 m ²																																							
15.	Ground-coverage Percentage (%) (Note: Percentage of plot not open to sky)	11,526.49m ² (29% of Net plot area)																																							
16.	Estimated Cost of the Project	Rs. 131 Cr																																							
17.	No. of building & its configuration(s)	<p>2. Residential</p> <table border="1"> <thead> <tr> <th>Building Type</th> <th>No. Of Floors</th> <th>No. Of Flats</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>P+12</td> <td>70</td> </tr> <tr> <td>B</td> <td>P+12</td> <td>94</td> </tr> <tr> <td>C</td> <td>P+12</td> <td>94</td> </tr> <tr> <td>D</td> <td>P+12</td> <td>94</td> </tr> <tr> <td>E</td> <td>LP+UP+12</td> <td>94</td> </tr> <tr> <td>F</td> <td>LP+UP+12</td> <td>94</td> </tr> <tr> <td>G</td> <td>P+12</td> <td>94</td> </tr> <tr> <td>H</td> <td>P+12</td> <td>94</td> </tr> <tr> <td>I</td> <td>P+12</td> <td>94</td> </tr> <tr> <td>J</td> <td>P+12</td> <td>94</td> </tr> <tr> <td>K</td> <td>G+11</td> <td>61</td> </tr> <tr> <td>Total</td> <td></td> <td>977</td> </tr> </tbody> </table> <p>3. Club House: 1</p>	Building Type	No. Of Floors	No. Of Flats	A	P+12	70	B	P+12	94	C	P+12	94	D	P+12	94	E	LP+UP+12	94	F	LP+UP+12	94	G	P+12	94	H	P+12	94	I	P+12	94	J	P+12	94	K	G+11	61	Total		977
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[Signature]
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Minutes of the 40th meeting of the SEAC - III (NoN-MMR) held from 12th to 15th January 2016

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		4. Commercial building:			
		Building Type	Floors	Shops	Offices
		K Building	Ground	10	-
		Amenity	Ground	18	-
			First	15	02
			Second	-	02
			Third	-	01
		Total		43	05
18.	Number of tenants and shops	977 Tenements, 43 shops and 5 offices			
19.	Number of expected residents/users	Residential Users: 4885 Nos. Commercial Users: 657 Nos			
20.	Tenant density per hectore	245 tenant/Ha			
21.	Height of the building(s)	Maximum Height: 42 m			
22.	Right of way (Width of the road from the nearest fire station to the proposed building(s))	Nearest Fire Station: PCMC Fire Station at Bhosari 6.45 km away from proposed site and existing width of the road from the nearest fire station to the proposed building is 6 mt and proposed to be 24 m wide.			
23.	Turning radius for easy access of fire tender movement from all around the building excluding the width for the plantation	9 m			
24.	Existing structure(s)	4 Buildings completed and 1 building (first floor completed)			
		RESIDENTIAL BUILDINGS	NO. OF FLOORS	WORK COMPLETED	
		C	P+12	Full	
		G	P+12	Full	
		H	P+12	Full	
		I	P+12	Full	

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		D		First slab done	
25.	Details of the demolition with disposal (if applicable)	NA			
26.	Total Water Requirement	<p>Residential: Dry season: Source: PCMC Freshwater: 449 m³/day</p> <ul style="list-style-type: none"> • Recycled water (Flushing): 225 m³/day • Recycled water (Gardening): 55 m³/day • HVAC Makeup: NA • Total water Requirement : 729 m³/day • Excess treated water: 326 m³/day • Swimming Pool: NA • Fire fighting (m³): 550 m³ <p>Wet Season: Freshwater: 449 m³/day</p> <ul style="list-style-type: none"> • Recycled water (Flushing): 225 m³/day • Recycled water (Gardening): 0 • HVAC Makeup: NA • Total water Requirement : 674 m³/day • Excess treated water: 381 m³/day • Swimming Pool: NA • Fire fighting (m³): 550 m³ <p>Commercial: Dry season: Source : PCMC</p> <ul style="list-style-type: none"> • Freshwater: 9 KLD • Recycled water (Flushing): 11 KLD • Recycled water (Gardening): NA • HVAC Makeup: NA • Total water Requirement : 20 KLD • Excess treated water: 7 KLD • Swimming Pool: NA • Fire fighting (Cum): Included in residential <p>Wet Season: Source : PCMC</p>			

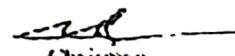
[Signature]
Secretary

[Signature]
Chairman

		<ul style="list-style-type: none"> • Fresh water: 9 KLD • Recycled water (Flushing): 11 KLD • Recycled water (Gardening): NA • HVAC Makeup: NA • Total water Requirement : 20 KLD • Excess treated water: 7 KLD • Swimming Pool: NA • Fire fighting (Cum): Included in residential
27.	Details about Swimming Pool:	<p>Dimension of Swimming Pool: NA Total water Requirement in m³: NA Water requirement for makeup in m³: NA Details of Plant & Machinery used for treatment of Swimming pool water : NA</p> <p>Details of quality to be achieved for swimming pool water and parameters to be monitored: NA</p> <p>Budgetary allocation (Capital cost and O&M cost): Capital cost: NA O & M Cost: NA</p>
28.	Rain Water Harvesting (RWH)	<ul style="list-style-type: none"> • Level of the Groundwater table: 5.5 Mtr. to 7.1 Mtr. BGL • Size and no. of RWH tank(s) and Quantity: NA • Capacity of RWH tank: NA • Location of the RWH tank (s): NA • No. of recharge pits: 15, • Size of pits: 3×3×4 mt. <p>Commercial: NA</p> <ul style="list-style-type: none"> • No. of RWH Tanks: NA • Capacity of RWH tanks: NA • Location of the RWH tank(s): NA • No. of recharge pits: NA <p>Budgetary allocation (Capital cost and O&M cost): Capital cost: Rs. Rs.45 Lacs (approx.) O & M Cost: Rs.0.90 Lacs per annum (approx.)</p>
29.	UGT tanks	<p>Residential: Domestic UG tank Capacity: 723 m³ Flushing UG tank Capacity: 280 m³</p>


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Minutes of the 40th meeting of the SPAC - III (NoN MMR) held from 12th to 15th January 2016


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		<p>Fire UG tank Capacity: 550m³</p> <p>Commercial: Amculty</p> <p>Domestic UG tank Capacity: 14 KLD</p> <p>Flushing UG tank Capacity: 12 KLD</p> <p>Fire UG tank Capacity: Included in residential</p>
30.	Storm water drainage	<ul style="list-style-type: none"> • Natural water drainage pattern: South to North West • Quantity of storm water: 24 m³/min • Size of SWD: Internal storm water 900 mm wide.
31.	Sewage and Wastewater	<p>Residential:</p> <ul style="list-style-type: none"> • Sewage generation (m³/day): 606 • Capacity of STP (m³/day): 650 • STP technology: MBBR • Total area provided : 301 m² • Location of STP: Near Building J <p>Commercial:</p> <ul style="list-style-type: none"> • Sewage generation (m³/day): 18 • Capacity of STP (m³/day): 20 • STP technology: MBBR • Total area provided : 41 m² • Location of STP: Near Building A. <p>DG sets (during emergency):</p> <p>2 no. of 200 kVA</p> <p>1 no. of 62.5 kVA</p> <p>Budgetary allocation (Capital cost and O & M cost):</p> <ul style="list-style-type: none"> • Capital Cost: <ul style="list-style-type: none"> STP 1-650 KLD: Rs. 90 lakhs STP -20 KLD: Rs. 27 Lakhs • O & M Cost: <ul style="list-style-type: none"> STP 1: Rs. 21.29 Lakhs annually STP 2: Rs. 5.61 Lakhs annually
32.	Solid Waste Management	<p>Waste generation in the pre Construction and Construction phase:</p> <ul style="list-style-type: none"> • Waste generation: 30 kg/day • Quantity of the top soil to be preserved: 500 m³ • Disposal of the construction waste debris: Used for land filling

Secretary
Secretary

Chairman
Chairman

		<p>Waste generation in the operation phase Residential & commercial:</p> <ul style="list-style-type: none"> • Residential: Biodegradable: 1605 Kg/day Non- Biodegradable: 687 Kg/day • Commercial: Biodegradable: 80 Kg/day Non- Biodegradable: 34 Kg/day • E-waste: Negligible • Hazardous waste: NA • Biomedical waste (Kg/month) (If applicable): NA • STP sludge: 128 kg/day (Residential and Commercial) <p>Mode of Disposal of waste:</p> <ul style="list-style-type: none"> • Dry waste: Will be handed over to SWACH • Wet waste: Treated in Samruddhi OWC (2 no.) • Hazardous waste: NA • Biomedical Waste (Kg/month) (If applicable): NA • STP sludge: Used as manure after treating it in OWC <p>Area requirement:</p> <p>1. Location(s): OWC 1: Near Building H OWC 2: Near Building A</p> <p>2. Total area provided for the storage & treatment of the solid waste: OWC 1: 180 m² OWC 2: 12 m²</p> <p>3. Budgetary allocation OWC 1 : 1825 Kg/day</p> <ul style="list-style-type: none"> • Capital Cost: Rs. 21.50 lakhs • O&M Cost: Rs. 9 Lakhs per annum Rs. 5.75 lakhs/annum + 3.25 lakhs (collection) <p>OWC 2 : 105 Kg/day</p> <ul style="list-style-type: none"> • Capital Cost: Rs. 6.25 lakhs
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[Signature]
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Minutes of the 40th meeting of the SEAC - III (NUN-MMR) held from 12th to 15th January 2016

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• O&M Cost: Rs. 1.25 lakhs per annum

33. Green Belt Development
 Total RG area: 4229.60 m²
 3. RG area other than green belt (Please specify for playgrounds etc) :1355.74 m²
 4. RG area under green belt:
 • RG on the ground (sq.m.) : 4229.60m²
 • RG on the podium (sq.m.) : 3518m²
 • Number & list of trees species to be planted in the ground RG: 389Nos

List of Proposed Plantation for the schema

SR. NO.	NAME OF TREE	COMMON NAME	QUANTITY	USES
01.	<i>Cassia fistula</i>	Amaltus / indian laburnum.	25	Medicinal tree, fruits, seeds & leaves are used for medicinal purpose.
02.	<i>Cassia javanica</i>		22	Pollution Free.
03.	<i>Lagerstromea spectosa</i>		15	It is very good for indian weather. Required less water. Color is flower is violet.
04.	<i>Murraya koenigii</i>	Curry leaves	12	Medicinal /herbal tree. Leaves also used for culinary purpose.
05.	<i>Azadirachta indica</i>	Neem	03	Medicinal tree, deciduous.
06.	<i>Plumeria alba</i>	Champa	42	Deciduous tree, perennial flowering, leaves & bark used for medicinal purpose.

[Signature]
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Minutes of the 40th meeting of the SEAC - III (NoN-MMR) held from 12th to 15th January 2016

[Signature]
Chairman

07.	<i>Anthocephalus codamba</i>	Kadamba	10	Evergreen tree, fruits eaten either raw or cooked, bark & leaves used as medicine.
08.	<i>Wodyetia bifurcata</i>		5	Create green environment. May planted area having strong winds and moderate amount of salt spray.
09.	<i>Tabebuia aracea</i>	Rosy trumpet	34	Deciduous tree, flowery, control soil erosion.
10.	<i>Tabebuia argentea</i>	Golden trumpet	35	Flowery tree, strong resistance property against wind, control soil erosion
11.	<i>Bauhinia blakeana</i>	Kanchan	21	Astringent, Decoction of roots prevents obesity.
12.	<i>Pithecolobium saman</i>	Raintree	20	Root Decoction is use in hot bath of stomach cancer. Traditional remedy for cold and diarrhea.
13.	<i>Guava Tree</i>	Guava	04	Guava leaves are considered as a natural pain reliever. Aid in Weight Loss. Beneficial for Diabetic, Lower Cholesterol, in Treatment of Diarrhea and Dysentery. Aids in Digestion.
14.	<i>Ficus arica</i>	Fig	03	Fig is a great fruit to relieve toothache, treat digestive problems, and even strengthen the nails. Its fruits useful to anemia, for people who suffer from digestive problems. Figs are used to get rid of toxins. Dried figs are suitable for treating gastric ulcers and heartburn.
15.	<i>Syzygiuma marangense</i>	Water Apple	03	A decoction of the astringent bark is a local application on thrush. The appeal being largely its thirst-relieving character. The wood is hard and is fashioned into small pieces of handicraft.


Secretary

Minutes of the 40th meeting of the SEAC - III (NoN-MMR) held from 12th to 15th January 2016


Chairman

Total		237																				
<table border="1"> <thead> <tr> <th>S.No.</th> <th>Scientific Names</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td><i>Rhapis excelba</i></td> </tr> <tr> <td>2.</td> <td>Lilies</td> </tr> <tr> <td>3.</td> <td><i>Alpinazerumbet</i></td> </tr> <tr> <td>4.</td> <td><i>Ophlopon</i></td> </tr> <tr> <td>5.</td> <td><i>Petra</i></td> </tr> <tr> <td>6.</td> <td><i>Ailamonda</i></td> </tr> <tr> <td>7.</td> <td><i>Pennisetum</i></td> </tr> <tr> <td>8.</td> <td><i>Ixoraduffi</i></td> </tr> <tr> <td>9.</td> <td><i>Ophlopogonjaburanvittatus</i></td> </tr> </tbody> </table>			S.No.	Scientific Names	1.	<i>Rhapis excelba</i>	2.	Lilies	3.	<i>Alpinazerumbet</i>	4.	<i>Ophlopon</i>	5.	<i>Petra</i>	6.	<i>Ailamonda</i>	7.	<i>Pennisetum</i>	8.	<i>Ixoraduffi</i>	9.	<i>Ophlopogonjaburanvittatus</i>
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9.	<i>Ophlopogonjaburanvittatus</i>																					
<ul style="list-style-type: none"> • Number & list of shrubs & bushes species planted in the ground RG: • Number & list of shrubs & bushes species planted in the podium RG: 248 nos • Number & list trees species to be planted around the border of nallah/steep/pond (If any): NA 																						
<ul style="list-style-type: none"> • No. of Existing Trees: No • Number, Size, Age and Species of trees to be cut, trees to be transplanted: No • NOC for the tree cutting/ transplantation/ Compensatory plantation, if any: No <p>Budgetary allocation: Capital Cost- Rs. 125 Lakhs approx O&M Cost: Rs. 42 lakhs per annum</p>																						
34.	<p>Energy</p> <p>Power Supply:</p> <ul style="list-style-type: none"> • Connected load: 4379 KW • Maximum demand: 3892.4 KVA • Source: MSEDCL • No Of Transformer : 22KV/630 KVA - 7 No's • Total DG power consumption for residential buildings & Common Amenity is 323 KVA So 2 no's of 200 KVA With AMF + Load Sharing Panel • Total DG power consumption for commercial building is 47 KVA So 1 no. of 62.5 KVA With AMF Panel <p>Energy saving measures</p> <ul style="list-style-type: none"> • Solar water heating systems will be done for bathrooms. • Solar lights will be provided for common amenities like Street lighting & Garden lighting. • CFL & LED based lighting will be done in the common areas, landscape areas, signage's, entry gates and boundary compound walls etc. 																					

Amilak
Secretary

Minutes of the 40th meeting of the SEAC - III (NoN-MMR) held from 12th to 15th January 2016

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- Auto Timer switches will be provided for Street lights, Garden lights, Parking & staircase Lights & other common area Lights, for saving electrical energy.
- Water level controllers with timers will be used for Water pumps.
- To create awareness to end consumer or flat owner, for using energy efficient light fittings like CFL, T5 Lamps & LED lights.

Detail calculations & % of saving : 3.51 %

Compliance of the ECBC guidelines:

Section No	Requirement	Remark.
6.2.1	Solar water heating for minimum 20% design capacity	Complies
6.2.2	Equipment efficiency standards	Complies
7.2	Lighting controls to be controlled by photo sensor or time switch	Complies
7.2.1.4	Exterior lighting to be controlled by photo sensor or time switch	Complies
7.3	Interior lighting power to be within specified limits	Complies
7.4	Exterior lighting power to be within	Complies

[Signature]
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		specified limits	
8.2.1.1	Maximum allowable power loss from transformer		Complies
8.2.3	Power factor be maintained between 0.95 and unity		Complies
8.2.4	Check metering		Complies
8.2.5	Power distribution system losses to be maintained less than 1%.		Complies

• Budgetary allocation (Capital cost and O &M cost):

Capital Cost: Rs. Rs 146.90 Lacks

O &M Cost: Rs 3.42 Lacks annually

Number and capacity of the DG sets to be used:

- DG Set 200 KVA – 2 No's With AMF +Load Sharing Panel.
- DG Set 62.5 KVA – 1 No With AMF Panel.

Stack Height :

- 6.82 Meter (For 200 KVA DG Set)
- 5.58 Meter (For 62.5 KVA DG Set)

Electricity requirement from MSEDCL:4379 KW

HT line passing through the plot if any:No

35.	Environmental Management plan		
	Budgetary Allocation:		
	During Construction Phase:		
	Attributes	Paramete	Cost Rs (In lacks)

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Minutes of the 40th meeting of the SEAC - III (NoN-NMR) held from 12th to 15th January 2016

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	r	
Air Environment	Water For Dust Suppression	0.64
	Air & Noise monitoring	1.34
Water Environment	Tanker water for construction	1.60
	Water monitoring	0.42
Land Environment	Site Sanitation	12.93
Biological Environment	Gardening Set Up	13.25
Socio- Economic Environment	Disinfection Pest Control	0.24
	First Aid facilities	0.14
	Health Check Up	1.92
	Creche for children	9.13
	Personal protective equipment	1.44
Energy Conservation	CFL lamps for labor hutments	0.10
	LPG	1.20
	Total	36.00

Total :Rs. 36.00 Lakhs per annum

During Operation Phase:

Sr. No.	Parameter	Set up cost (Rs in In Lakhs)	Operational & Maintenance Cost (Rs in In Lakhs. per annum)
1	STP Cost	90 27	1.77 0.47
2	Rain Water Harvesting	45	0.90
3	Environmental Monitoring	As per MoEF	15.47
4	Gardening	125	42

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Minutes of the 40th meeting of the SEAC - III (NoN-MMR) held from 12th to 15th January 2016

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5	Solid waste	6.25	1.25
		21.50	9.00
6	Solar Water Heater	97.70	1.95
7	Solar Street Lightning	33.00	0.66
	Solar Power Pack	16.20	0.81
TOTAL		461.65	74.28

Capital cost- Rs.461.65 Lakhs
 O & M Cost - Rs. 74.28 Lakhs per annum

36. **Traffic Management**

Parking details:

Criteria	Required Parking			Provided parking		
	Car	Scooter	Cycle	Car	Scooter	Cycle
Tenements having carpet area upto 80sq.m (For 2 tenements)	01	04	04	-	-	-
For 977 tenements	489	1954	1954	489	1954	1954
COMMERCIAL						
Required for every 100 sq.m	02	06	02	-	-	-
For proposed area 619.93 sq. m	12	36	12	12	36	12

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Minutes of the 40th meeting of the SEAC - III (Non-MMR) held from 12th to 15th January 2016

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AMENITY						
Required for every 100 sq.m	02	06	02	-	-	-
For proposed area 2255.97	46	138	46	46	138	46
Total	547	2128	2012	547	2128	2012

No. of car parking provided: 547

Types of parking (Open/Stilt/Basement): Open / Stilt

Total Parking area : 24,865.80 m²

Area per car including driveway provided for car parking:

Parking efficiency statement					
Level	Required Equivalent Car Space as per MoEF	Proposed car parking nos. 4W	Required area for Total proposed park as per MoEF norms (sq. m.) B x C	Proposed Parking Area (sq.mt)	Provided Equivalent Car Space (sq.mt) E/C
A	B	C	D	E	F
Stilt	30	398	11940	11940	30.00
Open	25	149	3725	3725	25.00
Total		547		15665	

Width of all Internal roads (m): Internal road 12m wide and 6m wide driveway

37.	CRZ/RRZ clearance obtain, if any	NA
38.	Distance from Protected Area rear/Critically Polluted area	NA

S. K. Singh
Secretary

Minutes of the 40th meeting of the SEAC - III (N-N-MMR) held from 12th to 15th January 2016

S. K. Singh
Chairman

	ens/Eco-sensitive areas /Inter-State boundaries			
39.	Check list for the other necessary approvals			
40.		Status of the approval	Name of the competent authority	Date of the issued letter
41.	CFO NOC for the above said building structure(s)	Received	CFO , Pune	24.11.2015
42.	HRC NOC for the above said building structure(s)(If applicable)	NA	--	--
43.	NOC for the above said building structure(s) from the Aviation authority (If applicable)	NA	--	--
44.	Consent for the water for the above said detail(s)	Applied	PCMC	--
45.	Consent for the drainage for the above said detail(s)	Applied	PCMC	--
46.	Consent for the electric supply for the proposed demand	Received	MSEDCL	
47.	Pre-certification for Green Building from Indian Green Building Council and other recognized institutes (If applicable)	NA	--	--
48.	Court Order (If applicable)	NA	--	--
49.	Other approvals (If any) Dry Garbage NOC	Received	SWACH	3.08.2015

PP submitted their application for total plot area of 46614.00 Sq. Mtrs, BUA of 108401.03 Sq. Mtrs and FSI area of 52894.45 Sq. Mtrs. PP proposes to construct 11 nos. of residential buildings having maximum height of 42 Mtrs. 10 nos. of shops and a club house.

The case was earlier discussed in the 62nd meeting of the SEAC held from 6th to 8th November, 2012, 2nd meeting of the SEAC - III held from the 12th to the 14th December 2013 when the case was referred to the Environment Department for the verification of the issue of violation. Credible action has been initiated against the PP vide letter dated 21.01.2015. (Case No. 241/2015 in the court at Pune). Hence SEAC - III decided to appraise the project. PP remained absent in 26th meeting of the SEAC - III held from 24th to 27th February 2015. The case was appraised in 38th meeting of the SEAC - III held from 23rd to 27th November 2015. This

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Minutes of the 49th meeting of the SEAC - III (NoN-NMIR) held from 12th to 15th January 2016

Chairman
Chairman

Page 195 of 386

committee took up the compliance report and other documents submitted by the Project Proponent for examination. The proposal is appraised as category 8 (a) B2.

During discussion following points emerged:

1. PP to submit IOD/TOA/Concession Document/Plan Approval or any other form of documents as applicable clarifying its conformity with local planning rules and provisions there under as per the Circular dated 30.01.2014 issued by the Environment Department, Govt. of Maharashtra.

SEAC decided to recommend the proposal for Prior Environmental Clearance, subject to the PP complying with the above conditions.





सत्यमेव जयते

STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY

Environment department,
Room No. 217, 2nd floor,
Mantralaya, Annexe,
Mumbai- 400 032.
Date: December 31, 2019

To,
Mr. Mukesh Patel Ellora Buildwell Pvt. Ltd. (Owner) Ellora Home Makers Pvt. Ltd. (Developer) Ellora Fiesta,
Plot No. 8, Sector-11, Opposite Junagar, Navi Mumbai
at Gat No. 669, Plot A Moshi Alandi Road, Off. Pune Nashik Highway, Pune- 412105

Subject: Environment Clearance for proposed residential & commercial project "Nakshatra I Land", at Gat No. 669,
Plot A, Moshi Alandi Road, Off. Pune Nashik Highway, Pune- 412105, by M/s. Ellora Buildwell Pvt. Ltd.

Sir

This has reference to your communication on the above mentioned subject. The proposal was considered as per the EIA Notification - 2006, by the State Level Expert Appraisal Committee-III, Maharashtra in its 95th meeting and recommend the project for prior environmental clearance to SEIAA. Information submitted by you has been considered by State Level Environment Impact Assessment Authority in its 181st meetings.

2. It is noted that the proposal is considered by SEAC-III under screening category 8 (a) B2 as per EIA Notification 2006.

Brief Information of the project submitted by you is as below :-

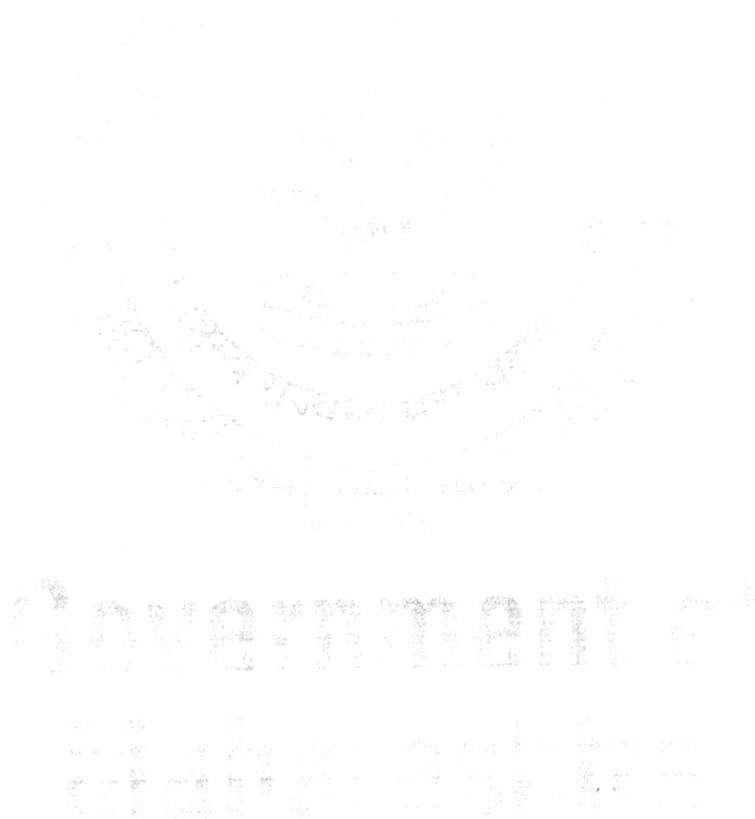
1.Name of Project	"Nakshatra I Land"
2.Type of institution	Private
3.Name of Project Proponent	Mr. Mukesh Patel Ellora Buildwell Pvt. Ltd. (Owner) Ellora Home Makers Pvt. Ltd. (Developer) Ellora Fiesta, Plot No. 8, Sector-11, Opposite Junagar, Navi Mumbai
4.Name of Consultant	Goldfinch Engineering System Private Limited
5.Type of project	Residential & Commercial Development
6.New project/expansion in existing project/modernization/diversification in existing project	New Project
7.If expansion/diversification, whether environmental clearance has been obtained for existing project	Not applicable
8.Location of the project	Gat No. 669, Plot A Moshi Alandi Road, Off. Pune Nashik Highway, Pune- 412105
9.Taluka	Haveli
10.Village	Moshi
Correspondence Name:	Ellora Buildwell Pvt. Ltd. Ellora Home Makers Pvt. Ltd. Ellora Fiesta, Plot No. 8, Sector-11, Opposite Junagar, Navi Mumbai
Room Number:	Plot No. 8, Sector-11
Floor:	-
Building Name:	Ellora Fiesta
Road/Street Name:	-
Locality:	Opposite Junagar
City:	Mumbai
11. Whether in Corporation / Municipal / other area	Pimpri Chinchwad Municipal corporation
12.IOD/IOA/Concession/Plan Approval Number	B.P. ENV. MOSHI 05.2018 DT.29.10.2018 IOD/IOA/Concession/Plan Approval Number: B.P. ENV. MOSHI 05.2018 DT.29.10.2018 Approved Built-up Area: 118314.69
13.Note on the initiated work (If applicable)	We have constructed total built up area of 34,126.05 m2 Court order dated 23.05.2018 received against Criminal court case no 241/2015
14.LOI / NOC / IOD from MHADA/ Other approvals (If applicable)	MHADA
15.Total Plot Area (sq. m.)	46,614.00 m2
16.Deductions	13553.35 sq.mt.

SEIAA Meeting No: 181 Meeting Date: November 15, 2019 (SEIAA-STATEMENT-0000001575)
SEIAA-MINUTES-0000002752
SEIAA-EC-0000002220

Page 1 of 12

Shri. Anil Diggikar (Member Secretary SEIAA)

17. Net Plot area	33060.65 sq.mt.
18 (a). Proposed Built-up Area (FSI & Non-FSI)	FSI area (sq. m.): 59,333.10 sq.mt.
	Non FSI area (sq. m.): 58,981.59 sq.mt.
	Total BUA area (sq. m.): 118314.69
18 (b). Approved Built up area as per DCR	Approved FSI area (sq. m.): 59,333.10 sq.mt.
	Approved Non FSI area (sq. m.): 58,981.59 sq.mt.
	Date of Approval: 29-10-2018
19. Total ground coverage (m2)	11055.66 sq.mt.
20. Ground-coverage Percentage (%) (Note: Percentage of plot not open to sky)	33.44 %
21. Estimated cost of the project	1310000000



22. Production Details

Serial Number	Product	Existing (MT/M)	Proposed (MT/M)	Total (MT/M)
1	Not applicable	Not applicable	Not applicable	Not applicable

23. Total Water Requirement

Dry season:	Source of water	PCMC
	Fresh water (CMD):	466.71
	Recycled water - Flushing (CMD):	255.5
	Recycled water - Gardening (CMD):	55
	Swimming pool make up (Cum):	2.0
	Total Water Requirement (CMD) :	779.21
	Fire fighting - Underground water tank(CMD):	550
	Fire fighting - Overhead water tank(CMD):	20 KLD / building
	Excess treated water	339.49
Wet season:	Source of water	PCMC
	Fresh water (CMD):	466.71
	Recycled water - Flushing (CMD):	255.5
	Recycled water - Gardening (CMD):	-
	Swimming pool make up (Cum):	-
	Total Water Requirement (CMD) :	722.21
	Fire fighting - Underground water tank(CMD):	550
	Fire fighting - Overhead water tank(CMD):	20 KLD / building
	Excess treated water	394.49
Details of Swimming pool (If any)	Dimension of Swimming Pool : Main pool: 19.40 mt. x 6.4 mt. with 1.20 mt. in depth & Kids pool: 3.80 mt. x 3.80 mt. with 0.60 mt. in depth. Total Water Requirement in KLD : 136 KLD Water requirement for make up in KLD : 2.00 KLD Capital Cost : 40.60 Lacs O & M cost : 2.33 Lacs/yr	

24. Details of Total water consumed

Particulars	Consumption (CMD)			Loss (CMD)			Effluent (CMD)		
	Existing	Proposed	Total	Existing	Proposed	Total	Existing	Proposed	Total
Fresh water requirement	Not applicable	466.71	466.71	Not applicable	46.67	46.67	Not applicable	420	420
Domestic	Not applicable	255.5	255.5	Not applicable	0	0		255.5	255.5
Gardening	NA	0	0	NA	55	55	NA	0	0

25. Rain Water Harvesting (RWH)	Level of the Ground water table:	5.5 Mtr. to 7.1 Mtrs BGL
	Size and no of RWH tank(s) and Quantity:	NA
	Location of the RWH tank(s):	NA
	Quantity of recharge pits:	15
	Size of recharge pits:	3x3x4 mt
	Budgetary allocation (Capital cost):	Rs. 45 Lacs
	Budgetary allocation (O & M cost):	Rs 0.90 Lacs per
Details of UGT tanks if any:	Domestic Capacity (Lit) -687.41 Cum (Resi. & Comm.) 15.66 Cum (Amenity), Flushing UG Tank Capacity (Lit) : 446.18 Cum (Resi. & Comm.) 19.58 Cum (Amenity), Fire Fighting Capacity (Lit) : 550.00 Cum	

26. Storm water drainage	Natural water drainage pattern:	As per contour plan
	Quantity of storm water:	24 m ³ /min
	Size of SWD:	900 mm pipe

27. Sewage and Waste water	Sewage generation in KLD:	628.85 KLD (Residential & commercial building), 21.14 KLD (Amenity building)
	STP technology:	MBBR
	Capacity of STP (CMD):	STP 1 - 640 KLD, STP 2 - 25 KLD
	Location & area of the STP:	As per drawing
	Budgetary allocation (Capital cost):	STP 1 - 90.00 lacs & STP 2 - 11.00 lacs
	Budgetary allocation (O & M cost):	STP 1 - 14.61 lacs/yr & STP 2 - 6.66 lacs/yr

28.Solid waste Management

Waste generation in the Pre Construction and Construction phase:	Waste generation:	Total excavation - 19347.405 cum
	Disposal of the construction waste debris:	Top soil - 8844.528 cum use for gardening, Murrum - 10502.877 cum use for filling in plinth& road
Waste generation in the operation Phase:	Dry waste:	(Res. + Comm.) 727.35 kg,(Amenity) 39.15 kg = (Total) 766.50 kg
	Wet waste:	(Res. + Comm.) 1697.15 kg, (Amenity) 91.35 kg = (Total) 1788.50 kg
	Hazardous waste:	NA
	Biomedical waste (If applicable):	NA
	STP Sludge (Dry sludge):	50.175 kg/day
	Others if any:	-
Mode of Disposal of waste:	Dry waste:	Dry waste will be sent for recycling to SWACH
	Wet waste:	Wet waste will be converting to composting for by OWC
	Hazardous waste:	NA
	Biomedical waste (If applicable):	NA
	STP Sludge (Dry sludge):	STP sludge sent to SWM site for converting in to compost
	Others if any:	-
Area requirement:	Location(s):	Res. & Comm.OWC Near Building H, Amenity OWC Near Amenity Building
	Area for the storage of waste & other material:	(Res. + Comm.) 128.51 m2, (Amenity) 10.53 m2, (Total) 139.04 m2
	Area for machinery:	(Res. + Comm.) 44.92 m2, (Amenity) 4.42 m2, (Total) 49.34 m2
Budgetary allocation (Capital cost and O&M cost):	Capital cost:	(Res. + Comm.) 34.03 Lacs+ (Amenity) 9.48 Lacs = 43.51 Lacs
	O & M cost:	(Res. + Comm.) 5.26 Lacs/yr + (Amenity) 2.34 Lacs/yr = 7.60 Lacs/yr

29. Effluent Characteristics

Serial Number	Parameters	Unit	Inlet Effluent Characteristics	Outlet Effluent Characteristics	Effluent discharge standards (MPCB)
1	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Amount of effluent generation (CMD):		Not applicable			
Capacity of the ETP:		Not applicable			
Amount of treated effluent recycled :		Not applicable			
Amount of water send to the CETP:		Not applicable			
Membership of CETP (if require):		Not applicable			
Note on ETP technology to be used		Not applicable			
Disposal of the ETP sludge		Not applicable			

30. Hazardous Waste Details

Serial Number	Description	Cat	UOM	Existing	Proposed	Total	Method of Disposal
1	Not applicable						

31. Stacks emission Details

Serial Number	Section & units	Fuel Used with Quantity	Stack No.	Height from ground level (m)	Internal diameter (m)	Temp. of Exhaust Gases
1	200	43 Lit/hr	2	6.82	162.5 mm	50
2	62.5	13.7 Lit/hr	1	5.58	62.5mm	50

32. Details of Fuel to be used

Serial Number	Type of Fuel	Existing	Proposed	Total
1	Diesel	Not applicable	Diesel	Diesel
Source of Fuel		Diesel - Authorised vendor		
Mode of Transportation of fuel to site		by road		

33. Energy

Power requirement:	Source of power supply :	MSEDCL
	During Construction Phase: (Demand Load)	30 KW
	DG set as Power back-up during construction phase	40 KVA
	During Operation phase (Connected load):	6526.18 KVA
	During Operation phase (Demand load):	3626.06 KVA
	Transformer:	22KV / 630 KVA - 6 Nos. & 22KV / 315 KVA - 1 No
	DG set as Power back-up during operation phase:	62.5 KVA - 1 No., 140 KVA - 1 No. & 200 KVA - 1 No.
	Fuel used:	Diesel
	Details of high tension line passing through the plot if any:	No

34. Energy saving by non-conventional method:

Energy saving by non-conventional method:
 1 By LED lights in common area (parking, lobby, staircase, landscape light & etc) - 163.67 KWH per day
 2 Energy Saving by Solar Hot Water System - 3573.75 KWH per day
 3 Solar Power System - 23494.24 KWH per day

36. Detail calculations & % of saving:

Serial Number	Energy Conservation Measures	Saving %
1	Annual savings in KWH for solar power, hot water & led lighting details	18.81 %
2	Total annual savings in KWH for solar power & solar hot water details	14.73 %

37. Details of pollution control Systems

Source	Existing pollution control system	Proposed to be installed
Sewage	Not applicable	STP

Solid waste	Not applicable	OWC
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Budgetary allocation (Capital cost and O&M cost):	Capital cost:	208.30 Lacs
	O & M cost:	6.57 Lacs/yr

38.Environmental Management plan Budgetary Allocation

a) Construction phase (with Break-up):

Serial Number	Attributes	Parameter	Total Cost per annum (Rs. In Lacs)
1	Water	Dust Suppression	1.8
2	Site Sanitation, Health Check Up & Safety	Health & Safety	2.0
3	Environmental Monitoring	Air, Water, Noise Soil	0.86
4	Disinfection	Disinfection	0.6
5	Health Check up	Health Check up	2.4

b) Operation Phase (with Break-up):

Serial Number	Component	Description	Capital cost Rs. In Lacs	Operational and Maintenance cost (Rs. in Lacs/yr)
1	Sewage Treatment Plant	Sewage Treatment Plant	90 + 11 = 101	14.61 + 6.66 = 21.27
2	Rain Water Harvesting	Rain Water Harvesting	45	0.90
3	Solid Waste Management	Solid Waste Management	43.51	7.60
4	Green Belt Development	Green Belt Development	165.00	25.00
5	Energy Use (Solar water heating)	Energy Use (Solar water heating)	208.30	6.57
6	Environmental Monitoring	EMP costing	MoEFCC approved laboratory	0.125
7	Basement Ventilation	Basement Ventilation	20	1

39.Storage of chemicals (inflammable/explosive/hazardous/toxic substances)

Description	Status	Location	Storage Capacity in MT	Maximum Quantity of Storage at any point of time in MT	Consumption / Month in MT	Source of Supply	Means of transportation
Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable

40.Any Other Information

No Information Available

	CRZ/ RRZ clearance obtain, if any:	No
	Distance from Protected Areas / Critically Polluted areas / Eco-sensitive areas/ inter-State boundaries	None within 10 Km
	Category as per schedule of EIA Notification sheet	8 (a) B2
	Court cases pending if any	No
	Other Relevant Informations	-
	Have you previously submitted Application online on MOEF Website.	No
	Date of online submission	-

3. The proposal has been considered by SEIAA in its 181st meeting & decided to accord environmental clearance to the said project under the provisions of Environment Impact Assessment Notification, 2006 subject to implementation of the following terms and conditions:

Specific Conditions:

I	The committee noted that Cost of remediation plan and natural & community resource augmentation plan as per revised approach paper is estimated as Rs. 2.31 Cr. The Committee also noted that the amount of CER as per MoEF & CC circular dated 1/05/2018 is Rs. 1.96 Cr which is less than the remediation / augmentation plan. Therefore committee decided to obtain Bank Guarantee of Rs 2.31 Cr for the project completion period.
II	PP to submit a bank guarantee of Rs. 2.31 Cr to Maharashtra Pollution Control Board towards effective implementation of the EMP comprising remediation plan and Natural and Community Resource augmentation Plan.
III	PP to submit CER as applicable as per MOEF & CC circular dated 1.5.2018 in consultation with Municipal Corporation.
IV	PP Shall comply with Standard EC conditions mentioned in the Office Memorandum issued by MoEF & CC vide F.No.22-34/2018-IA.III dt.04.01.2019.

General Conditions:

I	E-waste shall be disposed through Authorized vendor as per E-waste (Management and Handling) Rules, 2016.
II	The Occupancy Certificate shall be issued by the Local Planning Authority to the project only after ensuring sustained availability of drinking water, connectivity of sewer line to the project site and proper disposal of treated water as per environmental norms.
III	This environmental clearance is issued subject to obtaining NOC from Forestry & Wild life angle including clearance from the standing committee of the National Board for Wild life as if applicable & this environment clearance does not necessarily implies that Forestry & Wild life clearance granted to the project which will be considered separately on merit.
IV	PP has to abide by the conditions stipulated by SEAC & SEIAA.
V	The height, Construction built up area of proposed construction shall be in accordance with the existing FSI/FAR norms of the urban local body & it should ensure the same along with survey number before approving layout plan & before according commencement certificate to proposed work. Plan approving authority should also ensure the zoning permissibility for the proposed project as per the approved development plan of the area.
VI	If applicable Consent for Establishment* shall be obtained from Maharashtra Pollution Control Board under Air and Water Act and a copy shall be submitted to the Environment department before start of any construction work at the site.
VII	All required sanitary and hygienic measures should be in place before starting construction activities and to be maintained throughout the construction phase.
VIII	Adequate drinking water and sanitary facilities should be provided for construction workers at the site. Provision should be made for mobile toilets. The safe disposal of wastewater and solid wastes generated during the construction phase should be ensured.
IX	The solid waste generated should be properly collected and segregated. dry/inert solid waste should be disposed off to the approved sites for land filling after recovering recyclable material.
X	Disposal of muck during construction phase should not create any adverse effect on the neighboring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in approved sites with the approval of competent authority.
XI	Arrangement shall be made that waste water and storm water do not get mixed.
XII	All the topsoil excavated during construction activities should be stored for use in horticulture / landscape development within the project site.

XIII	Additional soil for leveling of the proposed site shall be generated within the sites (to the extent possible) so that natural drainage system of the area is protected and improved.
XIV	Green Belt Development shall be carried out considering CPCB guidelines including selection of plant species and in consultation with the local DFO/ Agriculture Dept.
XV	Soil and ground water samples will be tested to ascertain that there is no threat to ground water quality by leaching of heavy metals and other toxic contaminants.
XVI	Construction spoils, including bituminous material and other hazardous materials must not be allowed to contaminate watercourses and the dumpsites for such material must be secured so that they should not leach into the ground water.
XVII	Any hazardous waste generated during construction phase should be disposed off as per applicable rules and norms with necessary approvals of the Maharashtra Pollution Control Board.
XVIII	The diesel generator sets to be used during construction phase should be low sulphur diesel type and should conform to Environments (Protection) Rules prescribed for air and noise emission standards.
XIX	The diesel required for operating DG sets shall be stored in underground tanks and if required, clearance from concern authority shall be taken.
XX	Vehicles hired for bringing construction material to the site should be in good condition and should have a pollution check certificate and should conform to applicable air and noise emission standards and should be operated only during non-peak hours.
XXI	Ambient noise levels should conform to residential standards both during day and night. Incremental pollution loads on the ambient air and noise quality should be closely monitored during construction phase. Adequate measures should be made to reduce ambient air and noise level during construction phase, so as to conform to the stipulated standards by CPCB/MPCB.
XXII	Fly ash should be used as building material in the construction as per the provisions of Fly Ash Notification of September 1999 and amended as on 27th August, 2003. (The above condition is applicable only if the project site is located within the 100Km of Thermal Power Stations).
XXIII	Ready mixed concrete must be used in building construction.
XXIV	Storm water control and its re-use as per CGWB and BIS standards for various applications.
XXV	Water demand during construction should be reduced by use of pre-mixed concrete, curing agents and other best practices referred.
XXVI	The ground water level and its quality should be monitored regularly in consultation with Ground Water Authority.
XXVII	The installation of the Sewage Treatment Plant (STP) should be certified by an independent expert and a report in this regard should be submitted to the MPCB and Environment department before the project is commissioned for operation. Discharge of this unused treated effluent, if any should be discharge in the sewer line. Treated effluent emanating from STP shall be recycled/refused to the maximum extent possible. Discharge of this unused treated effluent, if any should be discharge in the sewer line. Treatment of 100% gray water by decentralized treatment should be done. Necessary measures should be made to mitigate the odour problem from STP.
XXVIII	Permission to draw ground water and construction of basement if any shall be obtained from the competent Authority prior to construction/operation of the project.
XXIX	Separation of gray and black water should be done by the use of dual plumbing line for separation of gray and black water.
XXX	Fixtures for showers, toilet flushing and drinking should be of low flow either by use of aerators or pressure reducing devices or sensor based control.
XXXI	Use of glass may be reduced up to 40% to reduce the electricity consumption and load on air conditioning. If necessary, use high quality double glass with special reflective coating in windows.
XXXII	Roof should meet prescriptive requirement as per Energy Conservation Building Code by using appropriate thermal insulation material to fulfill requirement.
XXXIII	Energy conservation measures like installation of CFLs /TFLs for the lighting the areas outside the building should be integral part of the project design and should be in place before project commissioning. Use CFLs and TFLs should be properly collected and disposed off/sent for recycling as per the prevailing guidelines/rules of the regulatory authority to avoid mercury contamination. Use of solar panels may be done to the extent possible like installing solar street lights, common solar water heaters system. Project proponent should install, after checking feasibility, solar plus hybrid non-conventional energy source as source of energy.
XXXIV	Diesel power generating sets proposed as source of backup power for elevators and common area illumination during operation phase should be of enclosed type and conform to rules made under the Environment (Protection) Act, 1986. The height of stack of DG sets should be equal to the height needed for the combined capacity of all proposed DG sets. Use low sulphur diesel. The location of the DG sets may be decided with in consultation with Maharashtra Pollution Control Board.
XXXV	Noise should be controlled to ensure that it does not exceed the prescribed standards. During nighttime the noise levels measured at the boundary of the building shall be restricted to the permissible levels to comply with the prevalent regulations.
XXXVI	Traffic congestion near the entry and exit points from the roads adjoining the proposed project site must be avoided. Parking should be fully internalized and no public space should be utilized.
XXXVII	Opaque wall should meet prescriptive requirement as per Energy Conservation Building Code, which is proposed to be mandatory for all air-conditioned spaces while it is aspiration for non-air-conditioned spaces by use of appropriate thermal insulation material to fulfill requirement.
XXXVIII	The building should have adequate distance between them to allow movement of fresh air and passage of natural light, air and ventilation.

XXXIX	Regular supervision of the above and other measures for monitoring should be in place all through the construction phase, so as to avoid disturbance to the surroundings.
XL	Under the provisions of Environment (Protection) Act, 1986, legal action shall be initiated against the project proponent if it was found that construction of the project has been started without obtaining environmental clearance.
XLI	Six monthly monitoring reports should be submitted to the Regional office MoEF, Bhopal with copy to this department and MPCB.
XLII	Project proponent shall ensure completion of STP, MSW disposal facility, green belt development prior to occupation of the buildings. As agreed during the SEIAA meeting, PP to explore possibility of utilizing excess treated water in the adjacent area for gardening before discharging it into sewer line. No physical occupation or allotment will be given unless all above said environmental infrastructure is installed and made functional including water requirement in Para 2. Prior certification from appropriate authority shall be obtained.
XLIII	Wet garbage should be treated by Organic Waste Converter and treated waste (manure) should be utilized in the existing premises for gardening. And, no wet garbage will be disposed outside the premises. Local authority should ensure this.
XLIV	Local body should ensure that no occupation certification is issued prior to operation of STP/MSW site etc. with due permission of MPCB.
XLV	A complete set of all the documents submitted to Department should be forwarded to the Local authority and MPCB.
XLVI	In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Department.
XLVII	A separate environment management cell with qualified staff shall be set up for implementation of the stipulated environmental safeguards.
XLVIII	Separate funds shall be allocated for implementation of environmental protection measures/EMP along with item-wise breaks-up. These cost shall be included as part of the project cost. The funds earmarked for the environment protection measures shall not be diverted for other purposes and year-wise expenditure should reported to the MPCB & this department.
XLIX	The project management shall advertise at least in two local newspapers widely circulated in the region around the project, one of which shall be in the Marathi language of the local concerned within seven days of issue of this letter, informing that the project has been accorded environmental clearance and copies of clearance letter are available with the Maharashtra Pollution Control Board and may also be seen at Website at http://ec.maharashtra.gov.in .
L	Project management should submit half yearly compliance reports in respect of the stipulated prior environment clearance terms and conditions in hard & soft copies to the MPCB & this department, on 1st June & 1st December of each calendar year.
LI	A copy of the clearance letter shall be sent by proponent to the concerned Municipal Corporation and the local NGO, if any, from whom suggestions/representations, if any, were received while processing the proposal. The clearance letter shall also be put on the website of the Company by the proponent.
LII	The proponent shall upload the status of compliance of the stipulated EC conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the Regional Office of MoEF, the respective Zonal Office of CPCB and the SPCB. The criteria pollutant levels namely: SPM, RSPM, SO ₂ , NO _x (ambient levels as well as stack emissions) or critical sector parameters, indicated for the project shall be monitored and displayed at a convenient location near the main gate of the company in the public domain.
LIII	The project proponent shall also submit six monthly reports on the status of compliance of the stipulated EC conditions including results of monitored data (both in hard copies as well as by e-mail) to the respective Regional Office of MoEF, the respective Zonal Office of CPCB and the SPCB.
LIV	The environmental statement for each financial year ending 31st March in Form-V as is mandated to be submitted by the project proponent to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently, shall also be put on the website of the company along with the status of compliance of EC conditions and shall also be sent to the respective Regional Offices of MoEF by e-mail.
LV	This EC is issued subject to the condition that the implementation of EMP, remediation plan and Natural and Community Resource Plan will be completed during the period for which the Bank Guarantee is given, otherwise the BG should be suitably extended up to implementation of EMP.

4. The environmental clearance is being issued without prejudice to the action initiated under EP Act or any court case pending in the court of law and it does not mean that project proponent has not violated any environmental laws in the past and whatever decision under EP Act or of the Hon'ble court will be binding on the project proponent. Hence this clearance does not give immunity to the project proponent in the case filed against him, if any or action initiated under EP Act.

5. In case of submission of false document and non-compliance of stipulated conditions, Authority/ Environment Department will revoke or suspend the Environment clearance without any intimation and initiate appropriate legal action under Environmental Protection Act, 1986.

6. The Environment department reserves the right to add any stringent condition or to revoke the clearance if conditions stipulated are not implemented to the satisfaction of the department or for that matter, for any other administrative reason.

7. Validity of Environment Clearance: The environmental clearance accorded shall be valid as per EIA Notification, 2006, and amendments by MoEF&CC Notification dated 29th April, 2015.

8. In case of any deviation or alteration in the project proposed from those submitted to this department for clearance, a fresh reference should be made to the department to assess the adequacy of the condition(s) imposed and to incorporate additional environmental protection measures required, if any.

9. The above stipulations would be enforced among others under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986 and rules there under, Hazardous Wastes (Management and Handling) Rules, 1989 and its amendments, the public Liability Insurance Act, 1991 and its amendments.

10. Any appeal against this Environment clearance shall lie with the National Green Tribunal (Western Zone Bench, Pune), New Administrative Building, 1st Floor, D- Wing, Opposite Council Hall, Pune, if preferred, within 30 days as prescribed under Section 16 of the National Green Tribunal Act, 2010.

Shri. Anil Diggikar (Member Secretary SEIAA)

Copy to:

1. SHRI JOHNY JOSEPH, CHAIRMAN-SEIAA
2. SHRI UMAKANT DANGAT, CHAIRMAN-SEAC-I
3. SHRI M.M.ADTANI, CHAIRMAN-SEAC-II
4. SHRI ANIL .D. KALE. CHAIRMAN SEAC-III
5. SECRETARY MOEF & CC
6. IA- DIVISION MOEF & CC
7. MEMBER SECRETARY MAHARASHTRA POLLUTION CONTROL BOARD MUMBAI
8. REGIONAL OFFICE MOEF & CC NAGPUR
9. MUNICIPAL COMMISSIONER PUNE
10. MUNICIPAL COMMISSIONER SATARA
11. REGIONAL OFFICE MPCB PUNE
12. REGIONAL OFFICE MIDC PUNE
13. MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO. LTD
14. COLLECTOR OFFICE PUNE
15. COLLECTOR OFFICE SATARA
16. COLLECTOR OFFICE SOLAPUR



1

R.C.C No. 241/2015 Judgment.
GNR No-MHPU04-002628-2015Free of CostPresented on : 13/01/2015
Registered on : 13/01/2015
Decided on : 23/05/2018
Duration : Y. M. D.
03 04 10IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, PUNE
(Presided Over by Satyasheela T. Katare)REG.CRIMINAL CASE NO. 241/2015Exh. No.31Maharashtra Pollution Control Board
3rd and 4th Floor, Kalpataru Point Building,
Sion (East), Mumbai- 400022.(Represented by Mr. A.D. Mohekar
Regional Officer-Pune
Maharashtra Pollution Control Board
3rd Floor, Jog-Centre Building,
Wakadewadi, Mumbai-Pune Highway,
Pune- 411 003.....COMPLAINANT**-VERSUS-**

- 1] Ellora Buildwell Pvt. Ltd.,
Ellora Fiesta, Plot No.8, Sector-11
Opposite Juninagar, Navi Mumbai,
(Summons served upon)
Mr. Mahesh Ramesh Choudhari,
Project Coordinator of
M/s. Ellora Buildwell Pvt. Ltd.,
Ellora Fiesta, Plot No.8, Sector-11
Opposite Juninagar, Navi Mumbai,
- 2] Shri Mahesh Ramesh Choudhari,
Project Coordinator of M/s. Ellora Buildwell Pvt. Ltd.,



- 3] Shri Krishna Harishchandra Salvi,
Site incharge, M/s. Ellora Buildwell Pvt. Ltd.,
Ellora Fiesta, Plot No.8, Sector-11
Opposite Juninagar, Navi Mumbai, ...ACCUSED

Offence under section 15 read with section 16 of the Environment (Protection) Act, 1986 and the Environment Impact Assessment Notification, 2006 (EIA Notification, 2006).

Appearances

Ld. Adv. Natu -Gadre for the Complainant.

Ld. Adv. Muksale for the accused.

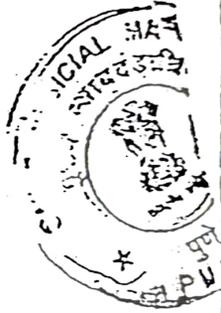
JUDGMENT

(Delivered on 23rd day of May, 2018)

01. The complainant Mr. A.D. Mohekar, Regional Officer of the Maharashtra Pollution Control Board, at Pune [For short "MPCB"] alleging that accused have committed the offence under section 15 read with section 16 of the Environment (Protection) Act, 1986 and the Environment Impact Assessment Notification, 2006 (EIA Notification, 2006) [For short "MPCB Board"]. He is authorized to file complaint under the Provisions of the Environment (Protection) Act, 1986.

Following are the facts in nutshell:-

02. It is contended that accused no. 1 is a private company constituted under the provision of the Companies Act, 1956. The accused No.1 company is



represented by accused No. 2 who is the Project Coordinator of accused No.1- Company and by accused no.3, who is site incharge of accused No.1 company. Accused are engaged in the development of construction project namely "Nakshatra I Land 669" , located at village Moshi, Alandi, Tal. Haveli, Dist. Pune. Accused No. 2 and 3 directly in-charge of and responsible to the company for the conduct of business of the company as well as the company and responsible for the above project and compliance of various provisions of the above Environmental Laws including the EIA, Notification, 2006. It is contention of the complainant that accused have carried out excess construction of total built up area admeasuring 34126.05 M2 at the site without prior permission of the complainant board.

03. It is further contended that the complainant board has filed the complaint against accused No. 1 to 3 for the offence under section 15 read with section 16 of the Environment (Protection) Act, 1986 and the Environment Impact Assessment Notification, 2006 (EIA Notification, 2006). Hence, the complainant filed this complaint against accused.

04. Accused No.2 and 3 appeared before the Court. Today they remained present before the Court. The charge has been framed against them, to which they pleaded guilty and submitted that this is their first offence and they want to voluntarily plead guilty for the offence leveled against them on behalf of the company as well as themselves. They submitted separate application in respect of plead guilty before the Court at Exh.27. Consequences of plead guilty were narrated to accused No. 2 and 3. However, the said accused remained firm on their decision to confess the guilt with prayer for minimum punishment.

05. The learned advocate for the complainant board submitted that accused Nos. 1 to 3 be punished with maximum fine. Accused submitted that this is the first case filed against them. They do not have antecedents. So also, they submitted that leniency be shown while passing the sentence and prayed for minimum fine. As accused voluntarily pleaded guilty, it appears to be first offence of accused. Therefore, in my opinion it is just and proper to direct accused to pay maximum fine amount. Hence, I pass the following order:

ORDER

1. Accused No. 1 to 3 are hereby convicted vide section 246(3) of the Code of the Criminal Procedure for the offence under section 16 punishable under section 15 of the Environment (Protection) Act, 1986 and the Environment Impact Assessment Notification, 2006 (EIA Notification, 2006) and sentenced to pay fine of Rs.60,000/- (Rs. Sixty Thousand Only) each in default simple imprisonment for 40 days each.

The copy of judgment be supplied to the accused free of cost.

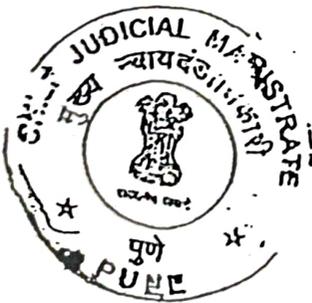
(Pronounced in open Court.)

SH/

(Satyasheela T. Katare)

Chief Judicial Magistrate, Pune.

Date : 23/05/2018



TRUE COPY
[Signature]
 Assu Suptd.
 Chief Judicial Magistrate
 Pune.

23.5.2018
 23.5.2018



W.P. No. 11189 of 2017

Puducherry Environment Protection Association v. Union of India

2017 SCC OnLine Mad 7056 : (2017) 8 Mad LJ 513 : AIR 2018 (NOC 422) 148 :
(2018) 1 LW 7 : (2018) 1 CWC 324 (DB)

In the High Court of Madras
(BEFORE INDIRA BANERJEE, C.J. AND M. SUNDAR, J.)

Puducherry Environment Protection Association, rep by its
Honorary President R. Kothandaraman, No. 18, S.V. Kovil
Street, Koodapakkam and Post, Puducherry-605 602
Petitioner

v.

The Union of India, rep by its Secretary to the Government,
Ministry of Environment, Forest and Climate Change,
Paryavaran Bhawan, Jor Bagh, New Delhi-110 003
Respondent

W.P. No. 11189 of 2017

Decided on October 13, 2017, [Reserved on: 23.08.2017]

Environmental Laws — Constitution of India — Arts. 14 and 21 — Notification making provision for grant of ex post facto environmental clearance for project proponents, who have commenced, continued or completed project without obtaining clearance under Environment Protection Act and Environment Impact Assessment, challenged — Whether establishment contributing to economy of country and providing livelihood to hundreds of people should be closed down only because of failure to obtain prior environmental clearance — Held that Central Government is well within scope of its powers under S. 3 of Act to issue directions to control and/or prevent pollution including directions for prior environmental clearance before project is commenced — Further held that one time relaxation in cases where projects are otherwise in compliance with or can be made to comply with pollution norms not impermissible — Hence impugned notification not to be interfered with

(Paras 32 and 33)

For Petitioner: Mr. A. Yogeswaran

For Respondent: Mr. G. Rajagopalan, Additional Solicitor General assisted by Mr. S. Rathnasabapathy

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration declaring the impugned notification dated 14.3.2017 issued by the respondent in S.O. 804(E) as arbitrary, illegal and violative of Articles 14 and 21 of the Constitution of India and the Environment (Protection) Act, 1986.

ORDER

M. SUNDAR, J.:— This writ petition has been filed as a Public Interest Litigation. In the instant writ petition, a notification dated 14.03.2017 bearing reference S.O. 804 (E) made by the Union of India (hereinafter referred to as 'UOI' for brevity) has been assailed.

2. Bare minimum facts essential for understanding and appreciating this order are set out infra under the caption 'Facts in a nutshell'.

Facts in a nutshell:

3(a) Notification dated 14.03.2017 bearing reference S.O. 804(E) made by the UOI which has been assailed in the instant writ petition, is hereinafter referred to as the

'impugned notification'.

3(b) The impugned notification has been made by the UOI under Section 3(1) and 3(2)(v) of the Environment (Protection) Act, 1986 (29 of 1986) (hereinafter referred to as 'E.P. Act' for brevity) read with Rule 5(3) of the Environment (Protection) Rules, 1986 (hereinafter referred to as 'E.P. Rules' for the sake of brevity). To simplify and encapsulate the core issue, it can be stated that vide the impugned notification, UOI has made a provision for grant of ex post facto environmental clearance for project proponents, who have commenced, continued or completed a project without obtaining clearance under the E.P. Act and the Environment Impact Assessment (hereinafter referred to as 'EIA for brevity) notification issued under it.

3(c) The petitioner contends that when originally the notification was issued on 27.1.1994, the cut-off date to permit the violators to set their house in order was extended three times. Firstly upto 31.3.1999, secondly upto 30.6.2001 and thirdly upto 31.3.2003 by successive notifications dated 5.11.1998, 27.12.2000 and 14.5.2002 respectively.

3(d) The petitioner would contend that the second notification was issued on 14.9.2006. Under this notification, again the dates for project proponents who have violated various provisions of the E.P. Act and EIA notification thereunder, was successively extended on 16.11.2010, 12.12.2012, 27.6.2013, 10.5.2016 and now vide the impugned notification dated 14.3.2017. In other words, the impugned notification is the fifth opportunity for project proponents to set their house in order.

3(e) The petitioner has predicated the instant writ petition on the pivotal point that 'prior' clearance is imperative and non negotiable, whereas the impugned notification provides for ex post facto clearance, which according to the writ petitioner is impermissible.

3(f) We now proceed to discuss the submissions and contentions under the head discussion'.

Discussion:

4(a) As the impugned notification provides for ex post facto clearance, the same is being assailed by the writ petitioner primarily on three grounds and the same are as follows:

- (i) Public hearing which is non negotiable has been given a go-by;
- (ii) Scoping leading to EIA has been given a go-by; and
- (iii) Environmental clearance is based on precautionary principle and the impugned notification militates against this basic principle.

4(b) In support of the above said challenge to the impugned notification on the aforesaid three points, learned counsel for the writ petitioner Mr. Yogeswaran relied on several judgments and judgments pressed into service are as follows:

- (i) *Sreeranganathan K.P. v. Union of India* [Appeal Nos. 172, 173, 174 of 2013 (SZ) and Appeal Nos. 1 and 19 of 2014 (SZ), dated 28.5.2014] (Before the National Green Tribunal, Southern Zone, Chennai); public hearing;
- (ii) *Indian Council for Enviro-Legal Action v. Union of India* [(1996) 3 SCC 212];
- (iii) *S. Nandakumar v. Secretary to Government of Tamil Nadu* [W.P. Nos. 10641 to 10643 of 2009, etc., dated 22.4.2010] (Madras High Court); public hearing;
- (iv) *Utkarsh Mandal v. Union of India* [W.P.(Civil) No. 9340 of 2009, dated 26.11.2009] (Delhi High Court);
- (v) *S.P. Muthuraman v. Union of India* [Original Application No. 37 of 2015 and another, dated 7.7.2015] (National Green Tribunal, Principal Bench, New Delhi);
- (vi) *Research Foundation for Science Technology National Resource Policy v. Union of India* [(2005) 10 SCC 510];
- (vii) *Consumer Action Group v. State of Tamil Nadu*. [(2000) 7 SCC 425]: and

(viii) *Lafarge Umiam Mining Private Limited v. Union of India* [(2011) 7 SCC 338]

4(c) Judgments that were pressed into service are to buttress the aforesaid three points of attack. While *Sreeranganathan K.P., S. Nandakumar, Utkarsh Mandal, Research Foundation for Science Technology National Resource Policy and Consumer Action Group* judgments were pressed into service to buttress the submission that public hearing is extremely sanctus and non negotiable, *S.P. Muthuraman* judgment was pressed into service to buttress the submission that ex post facto clearance takes away scoping and the resultant EIA. *Lafarge Umiam Mining Private Limited* judgment was pressed into service for both the above points, namely, public hearing is sanctus/non negotiable and ex post facto clearance takes away scoping and the resultant EIA. All judgments proceed on the premise that such environmental clearances are based on precautionary principle. Indian Council for *Enviro-Legal Action* judgment was pressed into service for polluter pays principle.

4(d) We heard the learned Additional Solicitor General Mr. G. Rajagopalan.

4(e) Learned Solicitor submits that the writ petitioner has misread the impugned notification qua public hearing and scoping leading to EIA point. In support of his submission, learned Solicitor took us through the impugned notification and submitted that the EIA authority, being the Expert Appraisal Committee would assess the project and the work done by the project proponent. In case of the finding/opinion of the Expert Appraisal Committee being in the negative, all actions as per law, including penal action under Section 19 of the E.P. Act would be initiated and no consent to operate or occupy will be issued and closure of the project will be ensured.

4(f) Only in cases where findings of the Expert Appraisal Committee are in the affirmative, projects will be referred under appropriate terms of reference for undertaking assessment of environment impact, ecological damage, etc., In support of this submission, learned Solicitor laid emphasis on paragraph 5 of the impugned notification.

4(g) For the sake of convenience, we deem it appropriate to extract paragraphs 3, 4 and 5 of the impugned notification, which read as follows:

"(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.

(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law.

(5) In case, where the findings of the Expert Appraisal Committee on point at sub-para (4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be

done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of a Council of Scientific and Industrial Research institution working the field of environment.”

4(h) We put it to learned Solicitor that paragraph 5 does not specifically provide for public hearing. To this, it was represented by learned Solicitor that when EIA is done, it will include public hearing and that it can be read into paragraph 5. We record this submission. Therefore, this puts to rest the point of public hearing and scoping leading to EIA.

4(i) With regard to precautionary principle, faced with the situation that ex post facto clearance and regularization dates have been repeatedly extended time and again by series of notifications, learned Additional Solicitor General at the bar, on instructions, submits that this impugned notification shall clearly and certainly be only a one time measure. We record this submission also. Notwithstanding the above submissions, learned Additional Solicitor General pressed into service a judgment of a learned Single Judge of this court in *Hyundai Motors India Ltd. v. Union of India* [2015 -2-L.W. 641] to drive home the principle that ex post facto approvals are permissible in law.

4(j) The aforesaid case law does not help the respondent as it was rendered on an entirely different realm qua facts. That would be evident from the fact that the aforesaid *Hyundai* judgment refers to the celebrated *Escorts Ltd. judgment in Life Insurance Corporation of India v. Escorts Ltd.* [(1986) 1 SCC 264] in paragraph 32 *Hyundai Motors India Ltd.'s case*. To be noted, *Escorts* judgment is a judgment of a Constitution Bench. To put it in nutshell, the ratio laid down in *Escorts* judgment is when the law provides for some form of consent, it can either be ‘prior consent’ or ‘ex post facto consent’, but when the law specifically uses the expression ‘prior consent’, the consent cannot be ex post facto. It is clearly articulated in paragraph 63 of the *Escorts* judgment, which reads as follows:

“63. We have already extracted Section 29(1) and we notice that the expression used is “general or special permission of the Reserve Bank of India” and that the expression is not qualified by the word “previous” or “prior. While we are conscious that the word “prior or “previous” may be implied if the contextual situation or the object and design of the legislation demands it, we find no such compelling circumstances justifying reading any such implication into Section 29(1). On the other hand, the indications are all to the contrary. We find, on a perusal of the several, different sections of the very Act, that the Parliament has not been unmindful of the need to clearly express its intention by using the expression “previous permission” whenever it was thought that “previous permission” was necessary. In Sections 27(1) and 30, we find that the expression “permission” is qualified by the word “previous” and in Sections 8(1), 8(2) and 31, the expression “general or special permission” is qualified by the word “previous”, whereas in Sections 13(2), 19(1), 19(4), 20, 21(3), 24, 25, 28(1) and 29, the expressions “permission” and “general or special permission” remain unqualified. The distinction made by Parliament between permission simpliciter and previous permission in the several provisions of the same Act cannot be ignored or strained to be explained away by us. That is not the way to interpret statutes. The proper way is to give due weight to the use as well as the omission to use the qualifying words in different provisions of the Act. The significance of the use of the qualifying word in one provision and its non-use in another provision may not be disregarded. In our view, the Parliament deliberately avoided the qualifying word previous in Section 29(1) so as to invest the Reserve Bank of India with a certain degree of elasticity in the matter of granting permission to non-resident companies to purchase shares in Indian companies. The object of the Foreign Exchange Regulation Act. as already

explained by us, undoubtedly, is to earn, conserve, regulate and store foreign exchange. The entire scheme and design of the Act is directed towards that end. Originally the Foreign Exchange Regulation Act, 1947 was enacted as a temporary measure, but it was placed permanently on the Statute Book by the Amendment Act of 1957. The Statement of Objects and Reasons of the 1957 Amendment Act expressly stated, "India still continues to be short of foreign exchange and it is necessary to ensure that our foreign exchange resources are conserved in the national interest". In 1973, the old Act was repealed and replaced by the Foreign Exchange Regulation Act, 1973, the long title of which reads: "An Act to consolidate and amend the law regulating certain payments, dealings in foreign exchange and securities, transactions indirectly affecting foreign exchange and the import and export of currency and bullion, *for the conservation of foreign exchange resources of the country and the proper utilisation thereof in the interest of the economic development of the country.*" We have already referred to Section 76 which emphasises that every permission or licence granted by the Central Government or the Reserve Bank of India should be animated by a desire to conserve the foreign exchange resources of the country. The Foreign Exchange Regulation Act is, therefore, clearly a statute enacted in the national economic interest. When construing statutes enacted in the national interest, we have necessarily to take the broad factual situations contemplated by the Act and interpret its provisions so as to advance and not to thwart the particular national interest whose advancement is proposed by the legislation. Traditional norms of statutory interpretation must yield to broader notions of the national interest. If the legislation is viewed and construed from that perspective, as indeed it is imperative that we do, we find no difficulty in interpreting "permission" to mean "permission", previous or subsequent, and we find no justification whatsoever for limiting the expression "permission" to "previous permission" only. In our view, what is necessary is that the permission of the Reserve Bank of India should be obtained at some stage for the purchase of shares by non-resident companies."

4(k) The above proposition laid down by the Constitution Bench of Hon'ble Supreme Court in the celebrated *Escorts* judgment governs the field and is therefore clearly indisputable.

4(l) This takes us back to the impugned notification. It is the fervent submission of the learned Solicitor that this is only an attempt to balance development on one hand and environment protection on the other. Learned Solicitor, as set out supra would assert that this will clearly and certainly be a one time measure.

4(m) After meeting the matter on merits qua challenge to the impugned notification on the above said three points, learned Solicitor did assail the locus of the writ petitioner. Considering the nature of the matter and the wider ramifications it has, coupled with the fact that this is a public interest litigation and in the light of the trajectory the hearing has taken, we are not going into the aspect of the locus of the petitioner entity.

4(n) We are convinced that paragraphs 3, 4 and 5 of the impugned notification alluded to supra coupled with the two undertakings made on instructions by learned Additional Solicitor General that (a) public hearing can be read into paragraph 5 of the impugned notification and (b) this shall certainly and clearly be a one time measure, this writ petition can be closed and disposed of recording the above submissions. We do so.

CONCLUSION:

5. We record the submissions of the learned Additional Solicitor General that (a) public hearing can be read into paragraph 5 of the impugned notification and (b) this shall certainly and clearly be a one time measure.

DECISION:

6. This writ petition is disposed of on the above terms. No costs.

INDIRA BANERJEE, C.J.:— I have gone through the draft judgment prepared by my esteemed brother, Sundar, J. and I am in full agreement with him.

7. This writ petition has been filed by way of public interest, *inter alia*, challenging a notification, being S.O.804(E), dated 14.3.2017 to the extent the said notification provides:

"13. (1) to (3) ...

(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under subsection (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law."

8. The grounds on which the notification has been challenged have elaborately been enumerated by Sundar, J. and the same are not reiterated, to avoid prolixity. The thrust of the objection to the impugned notification is to the decision to recommend closure of the projects only in case the Expert Appraisal Committee is of the view that the project has not been constructed at a site, which, under prevailing laws, is permissible or expansion that has been done cannot be run sustainably in compliance with the environmental norms and with adequate environmental safeguards.

9. There is increasing concern over environmental degradation the world over. Pollution and consequential concentration of harmful chemicals in the atmosphere by reason of emission of green house gases by reason of use of motors and machines are assuming alarming proportions. Pulmonary disorders as a result of pollution have become a life threatening health hazard.

10. The anxiety to protect the environment has led to deliberations and discussions at the National as also International levels. Under the aegis of the United Nations, a Conference on the Human Environment was held in Stockholm way back in June, 1972.

11. The Environment (Protection) Act, 1986, hereinafter referred to as "*the 1986 Act*", has been enacted as a consequence of decisions taken at the United Nations Conference on Human Environment held in Stockholm in June, 1972, in which India participated, with a view to take appropriate steps for protection and improvement of environment.

12. The statement of objects and reasons for enactment of the 1986 Act declares that the Act has been prompted by concern over the state of environment that has grown the world over since the sixties. The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentration of harmful chemicals in the ambient atmosphere, growing risks of environmental accidents and threats to life support systems.

13. The resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972. Government of India participated in the conference and strongly voiced the environmental concerns. While measures had been taken before and after the conference, the need for a general legislation to implement the decisions of the conference was felt.

14. Section 3(1) of the 1986 Act empowers the Central Government to take all such measures as it might deem necessary or expedient for the purpose of protecting and

improving the quality of the environment and preventing, controlling and abating environmental pollution.

15. Sub-section (2) of Section 3 of the 1986 Act enables the Central Government to take, *inter alia*, the following measures:

- "(i) co-ordination of actions by the State Governments, officers and other authorities-*
- (a) under this Act, or the rules made thereunder; or*
 - (b) under any other law for the time being in force which is relatable to the objects of this Act;*
- (ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;*
- (iii) laying down standards for the quality of environment in its various aspects;*
- (iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever: Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;*
- (v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;*
- (vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;*
- (vii) laying down procedures and safeguards for the handling of hazardous substances;*
- (viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;*
- (ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;*
- (x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;*
- (xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;*
- (xii) collection and dissemination of information in respect of matters relating to environmental pollution;*
- (xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;*
- (xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act."*

16. Sub-section (3) of Section 3 of the 1986 Act provides as follows:

Section 3(3). The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the

provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures."

17. Subject to the provisions of the 1986 Act, the Central Government has power under sub-section (1) of section 3 to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environment pollution.

18. Section 5 of the 1986 Act provides that notwithstanding anything contained in any other law, but subject to the provisions of the 1986 Act, the Central Government may in exercise of its powers and performance of its functions under the 1986 Act issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

19. In exercise of such power conferred on the Central Government, the Ministry of Environment, Forest and Climate Change issued Office Memoranda dated 12th December 2012 and 27th June 2013 requiring environmental clearance in respect of projects.

20. By an order dated 28th November 2014 in the case of *Hindustan Copper Limited v. Union of India*, being W.P.(C) No. 2364 of 2014, the High Court of Jharkhand held that the conditions laid down under Office Memorandum dated 12th December 2012 in paragraph 5(i) and 5(ii) were illegal and unconstitutional.

21. The High Court held that action for the alleged violation would have to be an independent and separate proceeding. Consideration of a proposal for environment clearance could not await initiation of action against the project proponent. The High Court also held that the proposal for environment clearance must be examined on its merits, independent of any proposed action for the alleged violation of the environmental laws.

22. It appears that National Green Tribunal (Principal Bench) also passed an order dated 7th July 2015 in Original Application No. 37 of 2015 and Original Application No. 213 of 2015 holding that the Office Memoranda dated 12th December 2012 and 24th June 2013 with regard to consideration of proposals for Terms of Reference or Environment Clearance or Coastal Regulation Zone Clearance involving violations of the 1986 Act or Environment Impact Assessment Notification, 2006, Coastal Regulation Zone Notification, 2011 could not alter or amend the provisions of the Environment Impact Assessment Notification, 2006 and quashed the same.

23. The Ministry of Environment Forest and Climate Change and the State Environment Impact Assessment Authorities had been receiving proposals under the Environment Impact Assessment Notification, 2006 for grant of Terms of Reference and Environmental Clearance for projects which had started the work on site, expanded production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance.

24. The Ministry of Environment, Forest and Climate Change deemed it necessary that all entities not complying with the environmental regulation under Environment Impact Assessment Notification, 2006, be brought to comply with the environmental laws in expedient manner, for the purpose of protecting and improving the quality of the environment and reducing environmental pollution.

25. The Ministry of Environment, Forest and Climate Change deemed it necessary to bring such projects and activities in compliance with the environmental laws at the earliest point of time, rather than leaving them unregulated and unchecked, which would be more damaging to the environment.

26. In furtherance of this objective, the Government of India deemed it essential to establish a process for appraisal of cases of violation of norms, and prescribing such

adequate environmental safeguards that would deter violation of the provisions of Environment Impact Assessment Notification, 2006 and ensure that damage to environment was adequately compensated for.

27. In *Indian Council for Enviro-Legal Action v. Union of India*, reported in (1996) 3 SCC 212, the Supreme Court analyzed relevant provisions of environmental laws and concluded that damages might be recovered under the provisions of the 1986 Act, inter alia, to implement measures that were necessary or expedient for protecting and promoting the environment. The Supreme Court affirmed that the power of the Central Government under Section 3 of the 1986 Act was wide and included the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry. The question of liability of the respondents to defray the costs of remedial measures could also be looked into from the principle "polluter pays".

28. This principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution.

29. In exercise of power under Section 3(1)(a)(i) and Section 3(2)(v) of the 1986 Act read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986, the Central Government has issued the impugned notification directing that the projects or activities or the expansion of modernization of existing projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 entailing capacity addition with change in process or technology or both, undertaken in any part of India without obtaining prior environmental clearance from the Central Government or by the State Level Environment Impact Assessment Authority, as the case might be, duly constituted by the Central Government under sub-section (3) of section 3 of the 1986 Act shall be considered a case of violation of the Environment Impact Assessment Notification, 2006 and would be dealt with strictly as per the procedure specified in the said notification.

30. Paragraphs 13(2) to 13(7) read as follows:

"(2) In case the projects or activities requiring prior environmental clearance under Environment Impact Assessment Notification, 2006 from the concerned Regulatory Authority are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernization, and change in product-mix without prior environmental clearance, these projects shall be treated as cases of violations and in such cases, even Category B projects which are granted environmental clearance by the State Environment Impact Assessment Authority constituted under sub-section (3) Section 3 of the Environment (Protection) Act, 1986 shall be appraised for grant of environmental clearance only by the Expert Appraisal Committee and environmental clearance will be granted at the Central level.

(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.

(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under subsection (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along

with other actions under the law.

(5) In case, where the findings of the Expert Appraisal Committee on point at sub-para (4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment.

(6) The Expert Appraisal Committee shall stipulate the implementation of Environment Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.

(7) The project proponent will be required to submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with the State Pollution Control Board and the quantification will be recommended by Expert Appraisal Committee and finalized by Regulatory Authority and the bank guarantee shall be deposited prior to the grant of environmental clearance and will be released after successful implementation of the remediation plan and Natural and Community Resource Augmentation Plan, and after the recommendation by regional office of the Ministry, Expert Appraisal Committee and approval of the Regulatory Authority."

31. There can be no doubt that the need to comply with the requirement to obtain environmental clearance is non-negotiable. Environmental clearance ensures compliance of environmental laws. A project can be set up or allowed to expand subject to compliance of the requisite norms. The environmental clearance is subject to the satisfaction of the existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect the future generations, it is imperative that pollution laws be strictly enforced. Under no circumstances, can industries which pollute be allowed to operate and degrade the environment?

32. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down only because of failure to obtain prior environmental clearance, even though the establishment may not otherwise be violating pollution laws or the pollution, if any, can conveniently and effectively be checked. The answer necessarily has to be in the negative.

33. The Central Government is well within the scope of its powers under Section 3 of the 1986 Act to issue directions to control and/or prevent pollution including directions for prior environmental clearance before a project is commenced. Such prior environmental clearance is necessarily granted upon examining the project from the angle of environmental pollution. However, one time relaxation and that too only in cases where the projects are otherwise in compliance with or can be made to comply with the pollution norms is, in my view, not impermissible. The notification ought not to be interfered with.

34. It is reiterated that protection of environment and prevention of environmental

pollution and degradation are non-negotiable. At the same time, the Court cannot altogether ignore the economy of the Nation and the need to protect the livelihood of hundreds of employees employed in projects, which as stated above, otherwise comply with or can be made to comply with norms.

35. The impugned notification does not compromise with the need to preserve environmental purity, but only allows those industries and/or projects which might otherwise have been given prior environmental clearance, but omitted to obtain environmental clearance to operate, on the conditions imposed by the authorities concerned, including their liability under the principle "polluter pays".

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2021 SCC OnLine SC 1247

In the Supreme Court of India
(BEFORE INDIRA BANERJEE AND J.K. MAHESHWARI, JJ.)

Electrosteel Steels Limited ... Petitioner(s);
Versus

Union of India and Others ... Respondent(s).

Civil Appeal Nos. 7576-7577 of 2021 [Arising out of SLP (C.) Nos. 11226-11227 of 2020]

Decided on December 9, 2021

The Judgment of the Court was delivered by

INDIRA BANERJEE, J.: — Leave granted.

2. These Appeals are against an order dated 16th September 2020 passed by a Single Bench of the High Court of Jharkhand in W.P. (C) No. 1873 of 2018 and W.P. (C) No. 4850 of 2018, discontinuing the interim orders earlier passed by the High Court, allowing the Appellant to operate its unit under the supervisory regulatory control of the Respondent - Jharkhand State Pollution Control Board, hereinafter referred to as "JSPCB", which had been in force for over two years.

3. The Appellant owns and runs a 1.5 MTPA integrated steel plant in Bokaro District in Jharkhand. The said steel plant in Bokaro, which employs 3,000 regular employees and 7000 contractual employees, produced steel worth Rs. 4,200 crores in the financial year 2019-20.

4. The Appellant claims that about 30,000 persons other than those actually employed by the steel plant as regular or contractual employees depend on the steel plant for their livelihood.

5. Corporate Insolvency Resolution Process (CIRP) had commenced against the Appellant under the Insolvency and Bankruptcy Code 2016. As successful Resolution Applicant, Vedanta Ltd. took over the Appellant on or about 4th June 2018 upon payment of Rs. 5,320 crores for discharge of its debts.

6. Pollution and consequential deterioration of environment has been assuming alarming proportions, and has become a cause of universal concern. Fumes, smoke, emission of green house gases by use of motors and machines and operation of mills, factories and plants cause environmental degradation.

7. Under the aegis of the United Nations discussions and deliberations have been held to protect and improve environment and prevent pollution.

8. In 1972, the United Nations Conference on the Human Environment was convened in Stockholm to work out ways and means to protect and improve the environment. In course of deliberations, it was felt that there was need to enact law to tackle environmental pollution. India participated in the conference and strongly voiced environmental concerns.

9. The Environment (Protection) Act, 1986, hereinafter referred to as "*the 1986 Act*", has been enacted as a consequence of decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972.

10. The statement of objects and reasons for enactment of the 1986 Act declares that the Act has been prompted by concern over environment, that has grown the world over, since the sixties.

11. Sub-Section (1) of Section 3 of the 1986 Act empowers the Central Government to take all such measures as it might deem necessary or expedient for the

purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

12. Sub-section (2) of Section 3 of the 1986 Act enables the Central Government to take, *inter alia*, the following measures:

"(i) co-ordination of actions by the State Governments, officers and other authorities—

(a) under this Act, or the rules made thereunder; or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act."

13. Sub-section (3) of Section 3 of the 1986 Act provides as follows:

"The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under Section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred

to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures."

14. Subject to the provisions of the 1986 Act, the Central Government has power under sub-section (1) of section 3 to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

15. Section 5 of the 1986 Act provides that notwithstanding anything contained in any other law, but subject to the provisions of the 1986 Act, the Central Government may, in exercise of its powers and performance of its functions under the 1986 Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

16. In exercise of powers conferred by Sub-Section (1) and clause (v) of sub-section (2) of Section 3 of the 1986 Act read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986 the Central Government issued the Environmental Impact Assessment Notification dated 27th January 1994 directing that on and from the date of publication of the said notification in the Official Gazette, expansion or modernisation of any activity or a new project listed in Schedule I of the Notification shall not be undertaken in any part of India, unless it has been accorded Environmental Clearance (EC) by the Central Government in accordance with the procedure specified in the Notification.

17. Under Clause (2)(1) of the said Notification, any person who desires to undertake any new project listed in Schedule I is required to submit an application to the Secretary, Ministry of Environment and Forests (MoEF), New Delhi in the pro forma specified in Schedule II, accompanied by a project report which is to include the EIA (Environmental Impact Assessment) Report/Environment Management Plan (EMP) prepared in accordance with the guidelines issued by MoEF. Another Environmental Impact Notification was issued in 2006, for grant of Terms and Environmental Clearance *inter alia* for projects which had started work on site.

18. The EIA Report submitted with the application of the project proponent is to be evaluated and assessed by the Impact Assessment Agency (IAA), that is MoEF, and if deemed necessary, it may consult a Committee of Experts constituted in the manner prescribed in Schedule III. The Committee of Experts shall have full right of entry and inspection of the site. The Impact Assessment Agency is to prepare a set of recommendations based on technical assessment of documents and data, furnished by the project proponent, supplemented by data collected during visits to sites, interaction with the affected population and environmental groups, if necessary. The summary of the reports, the recommendations and the conditions, subject to which EC is given shall, subject to public interest, be made available to the parties concerned or environmental groups on request. The IAA may solicit comments of the public within the specified period by arranging public hearings for that purpose. The public shall, subject to public interest, be provided access, to the summary of the EIA Report/Environment Management Plan (EMP). The clearance granted for commencement of the construction or operation of the plant, is to be valid for five years. Clause IV of the Environmental Impact Assessment Notification provides for the monitoring of the implementation of the conditions of EC and/or the recommendations and conditions laid down by IAA.

19. A minor amendment was made to the said Environmental Impact Assessment Notification dated 27th January 1994, by a Notification dated 10th April 1997, which

prescribes a detailed procedure for public hearing.

20. By a notification being S.O. 327(E), dated 10th April 2001, published in the Gazette of India, Extra., Pt.II, Sec.3(ii), dated 12th April 2001, the Central Government has delegated the powers vested in it under Section 5 of the 1986 Act, to the Chairpersons of the respective State Pollution Control Boards/Committees to issue directions to any industry or any local or other authority for the violations of the standards and rules relating to biomedical waste, hazardous chemicals, industrial solid waste and municipal solid waste including plastic waste notified under the Environment (Protection) Act, 1986 subject to the condition that the Central Government may revoke such delegation of powers or may itself invoke the provisions of Section 5 of the said Act, if in the opinion of the Central Government such a course of action is necessary in the public interest.

21. On or about 8th January 2007, the Appellant applied to the Ministry of Environment, Forest and Climate Change, Government of India, hereinafter referred to as "MoEF&CC" for grant of EC to establish 3 MTPA integrated steel plant at Mauza South Parbatpur of Chandankiyari Block of Bokaro District.

22. In its application, the Appellant stated that 1350 acres of land were required for establishing the said plant at the Mauza South Parbatpur of Chandankiyari Block of Bokaro District and that no forest land was involved in the project.

23. By a letter No. F. No. J-11011/137/2006-1A-II (i) dated 21st February 2008, the Appellant was granted EC. After obtaining EC, the Appellant applied to the JSPCB, for grant of 'Consent to Establish' (CTE) under the Air (Prevention and Control of Pollution) Act, 1981, hereinafter referred to as the Air Pollution Act, and Water (Prevention and Control of Pollution) Act 1974, hereinafter referred to as the Water Pollution Act.

24. On 5th May 2008, the JSPCB granted CTE to the Appellant to establish the 3 MTPA integrated steel plant at Mauza South Parbatpur of Chandankiyari Block of Bokaro District. The CTE was granted on the basis of the EC granted by the MoEF&CC.

25. The CTE was extended from time to time till 4th May 2011. Even though CTE was granted to the Appellant to establish a steel plant at Mauza South Parbatpur of Chandankiyari Block of Bokaro District, the Appellant established steel plant in Mauza Bhagabandh in the Chas Block in Bokaro District, 5.3 Kms away from the site for which EC and CTE had been granted.

26. A Circular No. J-11013/41/2006-1A.2(i) dated 22nd January, 2010 was issued by the Ministry of Environment and Forest (MoEF) of the Government of India which provided as follows:

"Instances have come to the notice of this Ministry wherein the project proponents have changed the project site after the said project has been granted environmental clearance or after the public hearing has been held. The project proponents have approached this Ministry to revalidate the environmental clearance so granted without undergoing afresh the procedure prescribed for obtaining environmental clearance. The matter has been considered in the ministry. The change in project site would lead to change in project affected people as well as the change in study area and the impact zone. As such the Environment Impact Assessment Report and Public Hearing conducted for a particular location cannot be taken valid for the changed location.

Accordingly, it has been decided that any shift in project site location after holding of public hearing will be deemed to be a new proposal and will be appraised afresh as per the procedure prescribed under EIA Notification 2006 provided the respective Expert Appraisal Committee is satisfied that the shift is so minor as to have no change in EIA/EMP, duly recorded in the minutes and prior approval of advisor (In-charge)/SEIAA for Category 'A'/Category 'B' projects respectively is

obtained for not holding the public hearing for the changed location afresh.

This issues with the approval of the Competent Authority."

27. By a communication being Reference No. 1142 dated 4th May 2010, the District DFO (District Forest Officer) Bokaro requested JSPCB to take action against the Appellant for setting up its integrated steel plant on forest land in Mauza Bhagabandh of Chas Block of Bokaro District, in violation of the Forest Conservation Act 1980 and Indian Forest Act 1927. The DFO, Bokaro reported encroachment of 220.88 acres of notified forest land by the Appellant to JSPCB.

28. It appears that cases had been initiated against the officials of the Appellant under the Indian Forest Act, 1927, Forest Conservation Act, 1980 and the Bihar Public Land Encroachment Act, 1955 which have been quashed by the Jharkhand High Court, by an order dated 25th January 2011.

29. On or about 23rd September 2010 the Appellant applied for Consent to Operate (CTO) under the Air Pollution Act and the Water Pollution Act for its 350 m³ blast furnace. Later on 9th September 2011, the Appellant applied for CTO in respect of its entire plant.

30. By a letter dated 2nd December 2011, addressed to the Appellant, the MoEF confirmed that the lay out of the Appellant's 3 MTPA Integrated Steel Plant was well within the Environment Impact Area and that the affected people had the opportunity to participate in a public hearing.

31. By letter dated 18th May 2012, the JSPCB reported encroachment by the Appellant upon forest land and alleged violation by the Appellant of the Forest Conservation Act, 1980 to the MoEF&CC, New Delhi. The MoEF&CC was also informed of the unauthorized shifting of the integrated steel plant from Mauza South Parbatpur of Chandankiyari Block of Bokaro District to Mauza Bhagabandh of Chas Block of Bokaro District in violation of the conditions of Environment Clearance granted by the MoEF&CC.

32. Pursuant to the report of JSPCB, MoEF&CC issued a Show Cause Notice dated 6th June 2012 to the Appellant under Section 5 of the 1986 Act. The Appellant submitted its reply to the Show Cause Notice on 20th June 2012.

33. On 10th September 2012, the Appellant once again applied to JSPCB for CTO for one year under the Water Pollution Act and Air Pollution Act. According to the Appellant, several reminders were sent to MoEF&CC requesting MoEF&CC to intimate JSPCB of the outcome of the Show Cause Notice issued to the Appellant. However, JSPCB has not been informed of the decision of MoEF&CC.

34. The Appellant filed a Writ Petition being W.P. No. 2247/2012 in the Jharkhand High Court for orders on JSPCB to grant the Appellant CTO. The said writ petition was disposed of by an order dated 5th November 2012, the operative part whereof is set out hereinbelow:—

"Respondent 1& 2 to consider the petitioner's application and as assured by them, if so required, give an opportunity of hearing to the petitioners and after taking into consideration the facts and provisions of law and the related decisions, shall dispose of the petitioner's application within five weeks from the date of receipt/production of a copy of this order."

35. On or about 27th November 2013, the application of the Appellant for CTO was rejected on the ground that the Appellant had shifted the site of its steel Plant and had encroached upon forest land in violation of the Forest Conservation Act, 1980. The operative part of the order dated 27th November 2013 reads:—

"at this stage subject to final outcome of the decision of MoEF&CC, New Delhi with respect to show cause notice dated 6.6.2012, we dispose the application for CTO in exercise of power conferred u/s 21(4) of Air (Prevention and Control of

Pollution) Act, 1981 & u/s 25(4) of Water (Prevention and Control of Pollution) Act, 1974 by "refusing" the CTO to the unit for the reason aforesaid."

36. The Appellant filed an application for contempt being Contempt Case (C) No. 939 of 2013 in W.P.(C) No. 2247 of 2012 in the Jharkhand High Court. Pursuant to an order dated 29th November 2013 in the Contempt Petition, the JSPCB disposed of the applications for grant of CTO to the Appellant.

37. By a letter dated 17th April 2013, the MoEF&CC had called for a status report from the State of Jharkhand in respect of forest land encroached by the Appellant. The Forest Department submitted a report to the MoEF&CC on 13th May, 2014.

38. Thereafter, by a letter dated 20th October 2014, the MoEF&CC, New Delhi directed the Department of Forest, Environment and Climate Change, Government of Jharkhand to take action against the Appellant for violating the provisions of Indian Forest Act, 1927 and Forest Conservation Act, 1980. In compliance with the aforesaid order, JSPCB directed the Appellant to close down its plant under Section 31(A) of the Air Pollution Act and Section 33(A) of Water Pollution Act.

39. By a Memo No. 521 dated 6th February 2015, the Department of Forest, Environment and Climate Change, Government of Jharkhand directed the DGP, Jharkhand, Ranchi and the Deputy Commissioner, Bokaro to take action against the Appellant in the light of the letter dated 20th October, 2014 of the MoEF&CC, Government of India and to submit an action taken report.

40. The aforesaid order of JSPCB was challenged by the Appellant by filing a Writ Petition being WP(C) No. 2033 of 2015 in the Jharkhand High Court. By an order dated 5th February 2016 the High Court set aside the order of the JSPCB holding that the same had been passed in violation of principles of natural justice. The High Court however, held that JSPCB would be at liberty to pass an order in accordance with law after giving the Appellant an opportunity of hearing.

41. Thereafter, a show cause notice dated 25th April 2016, was issued to the Appellant. The Appellant replied to the show cause notice on 28th September 2016, contending that the Appellant had not set up its plant on any forest land and that all pollution control measures had been taken. However, the Principal Chief Conservator of Forests (PCCF), Jharkhand had by a communication No. 2966 dated 8th August 2016 informed JSPCB that the Appellant had encroached forest land. Thereafter JSPCB once again called upon the Appellant to show cause in the light of information provided by the PCCF, Jharkhand. The Appellant by a letter dated 28th September 2016 reiterated that there was no forest land in the plant premises.

42. JSPCB passed an order No. B-319 dated 13th February 2017 disposing of the show cause notice in the light of the direction dated 5th February 2016 of the Jharkhand High Court and the applications for CTO. JSPCB granted CTO to the Appellant which was valid till 31st December, 2017.

43. The MoEF&CC and the State Environment Impact Assessment Authorities had, in the meanwhile been receiving proposals under the Environment Impact Assessment Notification, 2006 for grant of Terms of Reference and Environmental Clearance for projects which had started the work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance.

44. The MoEF&CC deemed it necessary that all entities not complying with the environmental regulation under Environment Impact Assessment Notification, 2006, be brought to comply with the environmental laws in expedient manner, for the purpose of protecting and improving the quality of the environment and reducing environmental pollution.

45. The MoEF&CC deemed it necessary to bring such projects and activities in compliance with the environmental laws at the earliest point of time, rather than

leaving them unregulated and unchecked, which would be more damaging to the environment.

46. In furtherance of this objective, the Government of India deemed it essential to establish a process for appraisal of cases of violation of norms, and prescribing such adequate environmental safeguards that would deter violation of the provisions of Environment Impact Assessment Notification, 2006 and ensure that damage to environment was adequately compensated for.

47. In *Indian Council for Enviro-Legal Action v. Union of India*¹, the Supreme Court analyzed relevant provisions of environmental laws and concluded that damages might be recovered under the provisions of the 1986 Act, inter alia, to implement measures that were necessary or expedient for protecting and promoting the environment. This Court affirmed that the power of the Central Government under Section 3 of the 1986 Act was wide and included the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry. The question of liability of the respondents to defray the costs of remedial measures could also be looked into from the principle "polluter pays."

48. In exercise of power under Section 3(1) and Section 3(2)(v) of the 1986 Act read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986, the Central Government has issued a Notification being S.O. 804(E) dated 14th March 2017 which provides for grant of ex post facto EC for project proponents who have commenced, continued or completed a project without obtaining EC under the 1986 Act or the EIA notification issued under it.

49. Paragraphs 3, 4 and 5 of the said notification, read as follows:

"(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.

(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under subsection (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law.

(5) In case, where the findings of the Expert Appraisal Committee on point at sub-para(4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment."

50. On or about 24th August 2017, the Appellant applied for CTO for five years. On

13th November 2017, JSPCB issued a Show Cause Notice to the Appellant pointing out alleged contraventions of the conditions of Consent to Operate (CTO) earlier granted to the Appellant. The Appellant was called upon to show cause whether conditions of the CTO had been contravened while the application of the Appellant for CTO for five year was pending.

51. On 23rd November 2017, the Appellant submitted its online reply to the Show Cause Notice showing compliance of the conditions of the CTO.

52. By a communication No. 2105 dated 18th December 2017 JSPCB requested MoEF&CC to inform JSPCB of the decision on the show cause notice issued to the Appellant under Section 5 of the 1986 Act for revocation of the EC for non compliance of the conditions for grant of EC for the integrated plant at Parbatpur, Jharkhand.

53. Aggrieved by the failure of JSPCB to issue/renew the CTO to the Appellant, pursuant to its application made on 24th August 2017, the Appellant filed a writ petition being W.P.(C) No. 1873 of 2018 in the Jharkhand High Court on or about 12th April 2018 seeking directions on the JSPCB to issue CTO to the Appellant.

54. By an order dated 16th July 2018, the High Court directed the JSPCB to take a final decision on the application of renewal/grant of CTO filed by the Appellant on 24th August 2017 within the time stipulated in the said order.

55. The High Court further passed an interim order directing that the Appellant be allowed to operate its unit under the supervisory and regulatory control of the JSPCB, who might carry out periodical check as to adherence by the Appellant of pollution control laws.

56. JSPCB passed an order dated 21st August, 2018, rejecting at that stage the request of the Appellant for CTO, subject to the decision of MoEF&CC on the show cause notice issued to the appellant. The operative part of the said order is set out hereinbelow:

"at this stage subject to final outcome of the decision of MoEF&CC, New Delhi with respect to show cause notice dated 6.6.2012, we dispose the application for CTO in exercise of power conferred u/s 21(4) of Air (Prevention and Control of Pollution) Act, 1981 & u/s 25(4) of Water (Prevention and Control of pollution) Act, 1974 by "refusing" the CTO to the unit for the reason aforesaid."

57. The Appellant, thereafter approached the High Court with a prayer for amendment of Writ Petition No. 1873 of 2018. By an order dated 25th August 2018, the High Court allowed the application for amendment of the Writ Petition and directed the respondent to file their response to the amended writ petition. The High Court further directed:—

"10. So far as interim relief is concerned, this court finds that the order passed by the respondent-Jharkhand State Pollution Control Board dated 23.08.2018 appears to be directly dependent on the final decision which is yet to be taken by the Ministry of Environment, Forest & Climate Change on the show cause issued to the petitioner as back as in the year 2012. As per the submission made by the counsel appearing on behalf of Union of India, they are shortly going to take a final decision in the matter after hearing the petitioner. Accordingly the operation, implementation and execution of the order dated 23.08.2018 passed by Jharkhand State Pollution Control Board is hereby stayed till 27.09.2018 and the interim order dated 16.07.2018 is hereby extended till 27.09.2018.

11. So far as decision of the Ministry of Environment, Forest & Climate Change are concerned, considering the fact that the unit of the petitioner is running unit and large number of employees are working in this unit of the petitioner, this court consider it appropriate that the issue regarding the environmental clearance of the petitioner should be decided at the earliest.

12. It is further observed that it is open to the petitioner to approach the Union

of India with their proposal/application for regularization of the alleged violation, without prejudice to their rights (including right, title, interest, possession and nature of property of the petitioner) and advance submissions before the respondent authority of Union of India pursuant to the show cause notice issued to them dated 6.6.2012 and the appropriate authority may, if possible, simultaneously consider the aforesaid application of the petitioner for regularization along with the show cause reply of the petitioner such that entire dispute is decided and the petitioner may also have a clarity about the fate of its unit. The decision which is to be taken by the Union of India be brought on record by either of the parties by filing supplementary affidavit latest by 25.09.2018.

13. I.A. No. 7610 of 2018 and I.A No. 7613 OF 2018 are hereby disposed of.

14. *It is made clear that this court has not gone into the merits of the claim of the petitioner and it will be open to the respondent no 3 to take decision as per law."*

58. By the aforesaid order dated 25th August 2018, the High Court directed MoEF to take a decision on the application of the Appellant for EC as also a decision regarding violation by the Appellant of the provisions of EC by encroachment upon forest land by shifting the location of the plant.

59. On 31st August 2018, MoEF&CC issued a show cause notice No. F. No. J-11011/137/2006-1A Pt.II (i) dated 31st August 2018 to the Appellant for violating the provisions of the EC by shifting the location of its plant and encroaching upon forest land.

60. The Respondent No. 1 was also accorded personal hearing on 10th September 2018. On 12th September 2018 Mr. Gyanesh Bharti who presided over the personal hearing was transferred from MoEF&CC.

61. On 20th September 2018 the Respondent No. 1 issued an order bearing No. F. No. J-11011/137/2006-1A.II(I) revoking the EC of the Appellant on the ground that the Appellant had encroached upon 220 acres of forest land and had shifted the location of its plant from Parbatpur to Bhagabandh, violating the conditions stipulated in the EC.

62. The Appellant filed Writ petition being W.P. (C) No. 4850 of 2018 in the Jharkhand High Court challenging the revocation of the EC granted to the Appellant.

63. On 27th September 2018 the High Court passed an interim order staying the operation, implementation and execution of the impugned order dated 20th September 2018. The Court prima facie found that the impugned order, passed in violation of principles of natural justice, had serious repercussions on the unit of the Appellant which was a running unit, and had caused prejudice to the Appellant.

64. On 4th October 2018, the Appellant applied for ex post facto Forest Clearance (FC) without prejudice to its rights and contentions. On 27th November 2019 the Appellant applied for a "revised" EC without prejudice to its rights and contentions. In the meanwhile, the Interim order passed by the High Court on 27th September 2018 was extended from time to time. Such extensions were granted on 10.10.2018, 5.11.2018, 11.12.2018, 8.1.2019, 23.1.2019, 16.5.2019, 25.7.2019 and 17.10.2019.

65. On 17th December 2019, MoEF&CC passed an order according ex post facto in principle approval for the forest diversion/clearance proposal of the Appellant. The operative part of the said order reads:—

"After careful examination of the proposal of the State Government and on the basis of the recommendations of the Forest Advisory Committee and approval of the same by the competent authority of the MoEF&CC, New Delhi, the Central Government hereby accords ex-post facto 'in-principle' approval under Section-2 of the Forest (Conservation) Act, 1980 for diversion of 184.23 ha of forest land

(174.39 ha encroached (ex-post facto) and 9.84 ha virgin land) in favour of M/s Electrosteel Steels Limited in the State of Jharkhand subject to fulfilment of following conditions:—

(i) Legal status of the diverted forest land shall remain unchanged;...”

66. By an order dated 26th February 2020, the Jharkhand High Court directed that the pendency of W.P. (C) No. 4850 of 2018 and W.P. (C) No. 1873 of 2018 would not come in the way of consideration by the MoEF&CC of grant or refusal of restoration of EC and it would be open to the Ministry to take appropriate decision in accordance with law. The interim orders in force were extended.

67. Thereafter by a letter dated 2nd March 2020, the Appellant requested MoEF&CC to consider the application of the Appellant for revised EC. In the meanwhile, the interim orders passed by the High Court were further extended. The interim orders were extended by orders passed on 26.2.2020, 7.4.2020 and 29.5.2020.

68. The Writ Petition was called for hearing on 19th June 2020 whereupon it was submitted on behalf of the Respondent No. 1 that the revised EC application of the Appellant would be placed before the Expert Appraisal Committee (EAC) for consideration on merit and Violation Committee would decide on the action to be taken against the Appellant for violation of Environment (Protection) Act, 1986.

69. On 6th August 2020 and 7th August 2020, the case of the Appellant was placed before the EAC at its 35th meeting. The Appellant was invited to present its proposal online before the Committee.

70. After detailed deliberation, the EAC appraised the proposal on merits and recommended issuance of Standard Terms of Reference along with Specific Terms of Reference for undertaking Environmental Impact Assessment (EIA) and preparation of Environment Management Plan (EMP). The EAC noted that the plant was a running unit and the EC was subject to the conditions imposed in the Terms of Reference.

71. On 4th September 2020, the Jharkhand High Court extended the interim orders till 8th September 2020 while awaiting response from the Respondents. On 8th September 2020, the High Court reserved orders on the extension of interim orders dated 16th July 2018 and 27th September 2018 while listing the writ petitions for final hearing on 16th September 2020.

72. On 15th September 2020, the Respondent No. 1 filed an affidavit stating that it had no objection to extension of the interim orders considering that the steel plant employed a large workforce. At the hearing on 16th September 2020 JSPCB also consented to extension of the interim order. However, the High Court passed the impugned order dated 16th September 2021 dis-continuing the earlier interim orders on, *inter alia*, the following grounds:

- (i) The Expert Appraisal Committee of the MoEF&CC had, after detailed deliberations, found that the Appellant had been in violation of the EIA Notification 2006 and general condition no. (ii) of the EC dated 21.02.2008.
- (ii) The MoEF&CC had while issuing ToR for grant of EC recommended action against the Appellant under Section 19 of the 1986 Act for past violations. Extension of the interim orders would amount to staying action.
- (iii) In *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati*², this Court had deprecated ex post facto Ecs but passed certain directions in exercise of powers under Article 142 of the Constitution.

73. By an Office Memorandum, being F. No. 22-21/2020-1A III, dated 7th July 2021, the MoEF&CC issued Standard Operating Procedure (SOP) for Identification and Handing of violation cases under EIA Notification 2006.

74. The said Office Memorandum, *inter alia*, reads:

“The Ministry had issued a notification number S.O.804(E), dated the 14th March,

2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.

2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.

3. Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. v. Synochem Organics Pvt. Ltd. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar v. Central Ground Water Authority, vide order dated 03.06.2021 held that "(...) for past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process".

4. Further, the Hon'ble National Green Tribunal in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire v. Chief Secretary, Government of Maharashtra, vide order dated 24.05.2021 has directed that "... a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country".

5. Therefore, in compliance to the directions of the Hon'ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn. The Ministry is also seized of different categories of 'violation' cases which have been pending for want of an approved structural/procedural framework based on 'Polluter Pays Principle' and 'Principle of Proportionality'. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.

6. In the list of the above directions of the Hon'ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations/decisions of the Hon'ble Courts wherein principles of proportionality and polluters pay have been outlined."

75. The Standard Operating Procedure formulated by the said Office Memorandum dated 7th July 2021 refers to and gives effect to various judicial pronouncements including the judgment of this Court in *Alembic Pharmaceuticals* (supra).

76. In terms of the Standard Operating Procedure, the proposal for grant of EC in cases of violation are to be considered on merits, with prospective effect, applying principles of proportionality and the principle that the polluter pays and is liable for costs of remedial measures.

77. By an interim order passed on 15th July 2021 in WP(MD) 11757 of 2021 in *Fatima v. Union of India*, the Madurai Bench of Madras High Court has stayed the operation of the Standard Operating Procedure.

78. By an order dated 25th August 2021, MoEF&CC rejected the application of the Appellant for the time being. The application has, in effect, been kept in abeyance.

79. The MoEF apparently did not take any decision on the application of the Appellant for EC, since the Standard Operating Procedure issued by it has been stayed by the Madurai Bench of Madras High Court, by the said order dated 15th July 2021, citing the judgment of this Court in *Alembic Pharmaceuticals* (supra).

80. The Appellant has filed an application being I.A No. 125221 of 2021 in this appeal seeking directions on the Respondent No. 1 to process the Appellant's application dated 5th August 2020 for revised EC.

81. There can be no doubt that the need to comply with the requirement to obtain

Environment Clearance is non-negotiable. A project can be set up or allowed to expand subject to compliance of the requisite norms. Environmental clearance is granted on condition of the suitability of the site to set up the project from the environmental angle, and existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect future generations, it is imperative that pollution laws be strictly enforced. Under no circumstances, can industries which pollute be allowed to operate unchecked and degrade the environment.

82. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down for the technical irregularity of shifting its site without prior environmental clearance, without opportunity to the establishment to regularize its operation by obtaining the requisite clearances and permissions, even though the establishment may not otherwise be violating pollution laws, or the pollution, if any, can conveniently and effectively be checked. The answer has to be in the negative.

83. The Central Government is well within the scope of its powers under Section 3 of the 1986 Act to issue directions to control and/or prevent pollution including directions for prior Environmental Clearance before a project is commenced. Such prior Environmental Clearance is necessarily granted upon examining the impact of the project on the environment. Ex-Post facto Environmental Clearance should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of Notifications under the 1986 Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of a running steel plant.

84. The 1986 Act does not prohibit ex post facto Environmental Clearance. Some relaxations and even grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in over view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.

85. As held by a three Judge Bench of this Court in *Lafarge Umiam Mining Private Limited v. Union of India*³ ("Lafarge") reported in (2011) 7 SCC 338:

"119. The time has come for us to apply the constitutional "doctrine of proportionality" to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilization of natural resources have to be tested on the anvil of the well-recognized principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of "margin of appreciation" in favour of the decision-maker would come into play."

86. In *Alembic Pharmaceuticals* (supra) this Court observed:—

"27. The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994. It is, as the judgment in Common Cause holds, detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an ex post facto clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC can be issued only after various stages of the decision-making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development.

87. In *Alembic Pharmaceuticals* (supra), this Court deprecated ex-post facto clearances, but this Court did not pass orders for closure of the three industries concerned, on consideration of the consequences of their closure. This court proceeded to observe and held:—

44. The issue which must now concern the Court is the consequence which will emanate from the failure of the three industries to obtain their ECs until 14 May 2003 in the case of Alembic Pharmaceuticals Limited, 17 July 2003 in the case of United Phosphorous Limited, and 23 December 2002 in the case of Unique Chemicals Limited. The functioning of the factories of all three industries without a valid EC would have had an adverse impact on the environment, ecology and biodiversity in the area where they are located. The Comprehensive Environmental Pollution Index⁴ report issued by the Central Pollution Control Board for 2009-2010 describes the environmental quality at 88 locations across the country. Ankleshwar in the State of Gujarat, where the three industries are located showed critical levels of pollution⁵. In the Interim Assessment of CEPI for 2011, the report indicates similar critical figures⁶ of pollution in the Ankleshwar area. The CEPI scores for 2013⁷ and 2018⁸ were also significantly high. This is an indication that industrial units have been operating in an unregulated manner and in defiance of the law. Some of the environmental damage caused by the operation of the industrial units would be irreversible. However, to the extent possible some of the damage can be corrected by undertaking measures to protect and conserve the environment.

45. Even though it is not possible to individually determine the exact extent of the damage caused to the environment by the three industries, several circumstances must weigh with the Court in determining the appropriate measure of restitution. First, it is not in dispute that all the three industries did obtain ECs, though this was several years after the EIA notification of 1994 and the commencement of production. Second, subsequent to the grant of the ECs, the manufacturing units of all the three industries have also obtained ECs for an expansion of capacity from time to time. Third, the MoEF had issued a circular on 5 November 1998 permitting applications for ECs to be filed by 31 March 1999, which was extended subsequently to 30 June 2001. On 14 May 2002, the deadline was extended until 31 March 2003 subject to a deposit commensurate to the investment made. The circulars issued by the MoEF extending time for obtaining ECs came to

the notice of this Court in Goa Foundation (I) v. Union of India². Fourth, though in the context of the facts of the case, this Court in Lafarge Umiam Mining Private Limited v. Union of India¹⁰ ("Lafarge") has upheld the decision to grant ex post facto clearances with respect to limestone mining projects in the State of Meghalaya. In Lafarge, the Court dealt with the question of whether ex post facto clearances stood vitiated by alleged suppression of the nature of the land by the project proponent and whether there was non-application of mind by the MoEF while granting the clearances. While upholding the ex post facto clearances, the Court held that the native tribals were involved in the decision-making process and that the MoEF had adopted a due diligence approach in reassuring itself through reports regarding the environmental impact of the project."

(Emphasis supplied)

46. After advertent to the decision in Lafarge, another Bench of three learned judges of this Court in Electrotherm (India) Limited v. Patel Vipulkumar Ramjibhai¹¹, dealt with the issue of whether an EC granted for expansion to the appellant without holding a public hearing was valid in law. Justice Uday U. Lalit speaking for the Bench held thus:

"19...the decision-making process in doing away with or in granting exemption from public consultation/public hearing, was not based on correct principles and as such the decision was invalid and improper."

47. The Court while deciding the consequence of granting an EC without public hearing did not direct closure of the appellant's unit and instead held thus:

"20. At the same time, we cannot lose sight of the fact that in pursuance of environmental clearance dated 27-1-2010, the expansion of the project has been undertaken and as reported by CPCB in its affidavit filed on 7-7-2014, most of the recommendations made by CPCB are complied with. In our considered view, the interest of justice would be subserved if that part of the decision exempting public consultation/public hearing is set aside and the matter is relegated back to the authorities concerned to effectuate public consultation/public hearing. However, since the expansion has been undertaken and the industry has been functioning, we do not deem it appropriate to order closure of the entire plant as directed by the High Court. If the public consultation/public hearing results in a negative mandate against the expansion of the project, the authorities would do well to direct and ensure scaling down of the activities to the level that was permitted by environmental clearance dated 20-2-2008. If public consultation/public hearing reflects in favour of the expansion of the project, environmental clearance dated 27-1-2010 would hold good and be fully operative. In other words, at this length of time when the expansion has already been undertaken, in the peculiar facts of this case and in order to meet ends of justice, we deem it appropriate to change the nature of requirement of public consultation/public hearing from pre-decisional to post-decisional. The public consultation/public hearing shall be organised by the authorities concerned in three months from today."

(Emphasis supplied)

48. Guided by the precepts that emerge from the above decisions, this Court has taken note of the fact that though the three industries operated without an EC for several years after the EIA notification of 1994, each of them had subsequently received ECs including amended ECs for expansion of existing capacities. These ECs have been operational since 14 May 2003 (in the case of Alembic Pharmaceuticals Limited), 17 July 2003 (in the case of United Phosphorous Limited), and 23 December 2002 (in the case of Unique Chemicals Limited). In addition, all the three units have made infrastructural investments and employed significant numbers of

workers in their industrial units.

49. In this backdrop, this Court must take a balanced approach which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord with the principle of proportionality. At the same time, the Court cannot be oblivious to the environmental degradation caused by all three industries units that operated without valid ECs. The three industries have evaded the legally binding regime of obtaining ECs. They cannot escape the liability incurred on account of such noncompliance. Penalties must be imposed for the disobedience with a binding legal regime. The breach by the industries cannot be left unattended by legal consequences. The amount should be used for the purpose of restitution and restoration of the environment. Instead and in place of the directions issued by the NGT, we are of the view that it would be in the interests of justice to direct the three industries to deposit compensation quantified at Rs. 10 crores each. The amount shall be deposited with GPCB and it shall be duly utilised for restoration and remedial measures to improve the quality of the environment in the industrial area in which the industries operate. Though we have come to the conclusion, for the reasons indicated, that the direction for the revocation of the ECs and the closure of the industries was not warranted, we have issued the order for payment of compensation as a facet of preserving the environment in accordance with the precautionary principle. These directions are issued under Article 142 of the Constitution. Alembic Pharmaceuticals Limited, United Phosphorous Limited and Unique Chemicals Limited shall deposit the amount of compensation with GPCB within a period of four months from the date of receipt of the certified copy of this judgment. This deposit shall be in addition to the amount directed by the NGT. Subject to the deposit of the aforesaid amount and for the reasons indicated, we allow the appeals and set aside the impugned judgment of the NGT dated 8 January 2016 in so far as it directed the revocation of the ECs and closure of the industries as well as the order in review dated 17 May 2016."

88. The Notification being SO 804(E) dated 14th March, 2017 was not an issue in *Alembic Pharmaceuticals* (supra). This Court was examining the propriety and/or legality of a 2002 circular which was inconsistent with the EIA Notification dated 27th January, 1994, which was statutory. Ex post facto environmental clearance should not however be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of ex post facto approval outweigh the consequences of regularization of operation of an industry by grant of ex post facto approval and the industry or establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. Ex post facto approval should not be withheld only as a penal measure. The deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.

89. We are of the view that the High Court erred in passing the impugned order, vacating interim orders which had been in force for two years. The impugned order is not in conformity with the principle of proportionality. This is not a case where the steel plant was started without environmental clearance or consent of JSPCB. The Appellant had applied for and obtained environmental clearance to set up an integrated steel plant (3MTPA) on 1350 acres of land at Mauza South Parbatpur, as observed above. Environmental Clearance had been granted on 21st February 2008 and Consent to Operate had been granted by JSPCB on 5th May 2008.

90. The Appellant established its steel plant in Mauza Bhaadband. 5.3 kms away

from the site for which EC and CTE had been granted. It is the contention of the Appellant that the shift is minor and makes no change in the EIA/EMP on the basis of which EC has been granted. The shift did not require fresh public hearing in terms of the Circular dated 22nd January 2010 of the MoEF.

91. As aforesaid, by a letter dated 2.12.2011 addressed to the Appellant, the MoEF confirmed that the steel plant of the Appellant was within the Environment Impact Area and the affected people had the opportunity to air their views in a public hearing. The question is whether the Petitioner was required to obtain fresh prior clearance for shifting or was covered by the exemption under the said Notification dated 22nd January 2010.

92. The Appellant has all along asserted that no part of the premises of the integrated steel plant is in any forest. As such there was no violation of the Indian Forest Act, 1927 or the Forest Conservation Act, 1980. The MoEF had also confirmed that the steel plant in question was well within the Environment Impact Area and the affected people had the opportunity in a public hearing. Be that as it may, whether the shifting of the site has really made any difference from the environmental impact angle requires consideration by the appropriate authority/forum.

93. In any case, the Appellant has duly applied for ex post facto forest clearance approval without prejudice to its rights and contentions that its steel plant is not on forest land and also applied for revised EC. On 17th December 2019, MoEF&CC accorded ex post facto in principle approval to the forest clearance proposal on the recommendations of the Forest Advisory Committee. The application for revised clearance is pending consideration. No final decision has however been taken, ostensibly in view of the interim order passed by the Madras High Court staying the operation of the Standard Operation Procedures issued vide Memorandum dated 7th July 2021.

94. The interim order passed by the Madras High Court appears to be misconceived. However, this Court is not hearing an appeal from that interim order. The interim stay passed by the Madras High Court can have no application to operation of the Standard Operating Procedure to projects in territories beyond the territorial jurisdiction of Madras High Court. Moreover, final decision may have been taken in accordance with the Orders/Rules prevailing prior to 7th July, 2021.

95. In passing the impugned order the High Court overlooked the consequences of closure of an integrated steel plant with a work force of 300 regular and 700 contractual workers. The High Court also failed to appreciate that the judgment of this Court in *Alembic Pharmaceuticals* (supra) was distinguishable on facts. Furthermore, continuance of the interim orders allowing operation of an industrial establishment or even the grant of revised EC to the industrial establishment cannot stand in the way of action against that establishment for contraventions, including the imposition of penalty, on the principle 'polluter pays'. The scope and effect of Section 32A of the IBC is a different issue. This Court need not examine into the question of whether penal action can be initiated against the Appellant or, whether compensation can be recovered from the Appellant, at this stage. The issue may be decided by the appropriate authority at the appropriate stage when it adjudicates an action for penalization of the Appellant or recovery of compensation from the Appellant. The application of the Appellant for revised EC, CTO etc. shall be considered strictly in accordance with environmental norms.

96. The appeals are allowed. The impugned order is set aside. The Respondent No. 1 shall take a decision on the application of the Appellant for revised EC in accordance with law, within three months from date. Pending such decision, the operation of the steel plant shall not be interfered with on the ground of want of EC, FC, CTE or CTO.

¹ (1996) 3 SCC 212

² 2020 SCC OnLine SC 347

³ (2011) 7 SCC 338

⁴ "CEPI"

⁵ CEPI score - 88.50

⁶ CEPI score - 85.75

⁷ CEPI score - 80.93

⁸ CEPI score - 80.21

⁹ (2005) 11 SCC 559

¹⁰ (2011) 7 SCC 338

¹¹ (2016) 9 SCC 300

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2022 SCC OnLine SC 362

In the Supreme Court of India
(BEFORE INDIRA BANERJEE AND J.K. MAHESHWARI, JJ.)

Pahwa Plastics Pvt. Ltd. and Another ... Appellants;
Versus

Dastak NGO and Others ... Respondents.

Civil Appeal No. 4795 of 2021

Decided on March 25, 2022

The Judgment of the Court was delivered by

INDIRA BANERJEE, J.:— This appeal under Section 22 of the National Green Tribunal Act, 2010, is against an order dated 3rd June 2021 passed by the Principal Bench of the National Green Tribunal (NGT) in O.A No. 287/2020 at New Delhi, *inter alia*, holding that establishments such as the manufacturing units of the Appellants, which did not have prior Environmental Clearance (EC) could not be allowed to operate.

2. The question of law involved in this appeal is, whether an establishment employing about 8000 workers, which has been set up pursuant to Consent to Establish (CTE) and Consent to Operate (CTO) from the concerned statutory authority and has applied for ex post facto EC can be closed down pending issuance of EC, even though it may not cause pollution and/or may be found to comply with the required pollution norms.

3. With increasing industrialization and the establishment of factories which emitted smoke and other pollutants, there was worldwide concern for protection of environment. In June 1972, the United Nations Conference on the Human Environment was held in Stockholm, where decisions were taken to take appropriate steps for preservation of the natural resources of the earth, which, among other things, included preservation of the quality of air and water by controlling pollution.

4. In 1974, Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974, with a view to prevent and control water pollution and to maintain and restore wholesomeness of water.

5. In furtherance of the decisions taken at Stockholm, Parliament enacted the Air (Prevention and Control of Pollution) Act, 1981, hereinafter referred to as "the Air Pollution Act", to provide for prevention, control and abatement of air pollution.

6. The Air Pollution Act provides for the constitution of a Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCB) to deal with the problem of air pollution. Section 16 of the Air Pollution Act enables the Central Pollution Control Board to take steps to improve the quality of air and to prevent, control or abate air pollution in the country. Section 17 of the Air Pollution Act enables the State Pollution Control Boards to plan comprehensive programmes for the prevention, control or abatement of air pollution, *inter alia*, by laying down standards for emission of air pollutants.

7. Section 18 of the Air Pollution Act enables the Central Government to give directions by which the CPCB is to be bound. Similarly, every SPCB is to be bound by directions in writing as might be given by the CPCB or the State Government.

8. Where a notification is issued under the Air Pollution Act, placing an area within the control area of air pollution, permission is necessary to set up and operate any factory or plant thereat. No person operating any factory or plant in any air pollution control area is to discharge or cause or permit to be discharged the emission of any air pollutants, in excess of the standards laid down by the SPCB under Clause (g) of sub-

Section (1) of Section 17.

9. The Environment (Protection) Act, 1986, hereinafter referred to as "the EP Act" was also enacted pursuant to the decisions taken at the United Nations Conference on the Human Environment, held in Stockholm in June, 1972. As per the Statement of Objects and Reasons for enactment of the EP Act, the said Act has been prompted by concern over the environment, that has grown all over the world since the 60s.

10. Sub-section (1) of Section 3 of the EP Act empowers the Central Government to take all such measures as it might deem necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and reducing environmental pollution.

11. Sub-section (2) of Section 3 of the EP Act enables the Central Government to take, inter alia, the following measures:

"(i) co-ordination of actions by the State Governments, officers and other authorities—

(a) under this Act, or the rules made thereunder; or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions

of this Act.”

12. Sub-section (3) of Section 3 of the EP Act provides as follows:

“3. Power of Central Government to take measures to protect and improve environment.—

...

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under Section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.”

13. Subject to the provisions of the EP Act, the Central Government has power under sub-Section (1) of Section 3, to take all such measures, as it deems necessary or expedient, for the purpose of protecting and improving the quality of environment and preventing, controlling or reducing environmental pollution.

14. Section 5 of the EP Act provides that notwithstanding anything contained in any other law, but subject to the provisions of the EP Act, the Central Government may, in exercise of its powers and performance of its functions under the EP Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

15. In exercise of powers conferred by Sections 6 and 25 of the EP Act, the Central Government has made the Environment (Protection) Rules, 1986, hereinafter referred to as “the EP Rules”.

16. The Central Government issued an Environmental Impact Assessment Notification dated 27th January 1994 in exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the EP Act read with clause (d) of sub-rule (3) of Rule 5 of the EP Rules, directing that on and from the date of publication of the said notification in the Official Gazette, expansion or modernization of any activity or a new project listed in Schedule I to the said notification shall not be undertaken in any part of India, unless it has been accorded EC by the Central Government in accordance with the procedures specified in the said notification.

17. In exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the EP Act read with clause (d) of sub-rule (3) of Rule 5 of the EP Rules and in supersession of notification number S.O. 60 (E) dated 27th January 1994, except in respect of things done or omitted to be done before such supersession, the Central Government issued a notification dated 14th September 2006, being Notification S.O. 1533 (E) requiring prior environmental clearance from the Central Government or as the case may be, by the State-Level Environment Assessment Authority, duly constituted by the Central Government under sub-section (3) of Section 3 of the EP Act.

18. In terms of the said notification dated 14th September 2006, the process of environmental clearance for new projects was to comprise of a maximum of four stages, all of which might not apply to particular cases. The stages were (1) Screening, (2) Scoping, (3) Public Consultation and (4) Appraisal.

19. In the meanwhile, by a notification being S.O. 327 (E) dated 10th April 2001, published in the Gazette of India on 12th April 2001, the Central Government has

delegated the powers vested in it under the EP Act, to the Chairpersons of the respective State Pollution Control Boards/Committees to issue directions to any industry or any local or other authority to prevent violation of the Rules.

20. The Appellants carry on business, *inter alia*, of manufacture and sale of basic organic chemicals, namely, Formaldehyde. The Appellant No. 1, M/s. Pahwa Plastics Private Limited has two manufacturing units, one at village Kharawar in Rohtak, hereinafter referred to as the "Rohtak Unit" and the other at village Jathlana, Jagadhri in Yamuna Nagar in Haryana, hereinafter referred to as the "Yamuna Nagar Unit". The Appellant No. 2 has a manufacturing unit at village Ghespur in Yamuna Nagar, Haryana which is hereinafter referred to as the "Yamuna Nagar Unit". The manufacturing units established, run and operated by the respective Appellants fall in the category of Micro, Small and Medium Enterprise (MSME) as defined under the Micro, Small and Medium Enterprises Development Act, 2006, hereinafter referred to as "the MSME Act".

21. On or about 31st March 2014, the Appellant No. 1, M/s. Pahwa Plastics Ltd. applied for Consent to Establish (CTE) its Yamuna Nagar unit for manufacture of Formaldehyde.

22. By a communication No. HSPCB/Consent/ : 2846616YAMCTE 3087415 dated 2nd June 2016, the Haryana State Pollution Control Board (HSPCB) granted Consent to Establish (CTE) to the Appellant No. 1 M/s. Pahwa Plastics Private Limited in respect of its Yamuna Nagar Unit. The CTE was to remain valid for 60 months from the date of its issue, to be extended for another year at the discretion of the Board or till the time the unit started its trial production, whichever was earlier.

23. Some of the terms and conditions on which CTE was granted are set out hereinbelow:

"3. The officer/official of the Board shall have the right to access and inspection of the industry in connection with the various processes and the treatment facilities being provided simultaneously with the construction of building/machinery. The effluent should conform the effluent standards as applicable.

4. That necessary arrangement shall be made by the industry for the control of Air Pollution before commissioning the plant. The emitted pollutants will meet the emission and other standards as laid/will be prescribed by the Board from time to time.

5. The applicant will obtain consent under section 25/26 of the Water (Prevention & Control of Pollution) Act, 1974 and under section 21/22 of the Air (Prevention & Control of Pollution) Act, 1981 as amended to-date-even before starting trial production.

6. The above Consent to Establish is further subject to the conditions that the unit complies with all the laws/rules/decisions and competent directions of the Board/Government and its functionaries in all respect before commissioning of the operation and during its actual working strictly.

8. The Electricity Department will give only temporary connection and permanent connection to the unit will be given after verifying the consent granted by the Board, both under Water Act and Air Act.

12. That there is no discharge directly or indirectly from the unit or the process into any interstate river or Yamuna River or River Ghaggar.

13. That the industry or the unit concerned is not sited within any prohibited distances according to the Environmental Laws and Rules, Notification, Orders and Policies of Central Pollution Control Board and Haryana State Pollution Control

Board.

* * *

17. *In case of change of name from previous Consent to Establish granted, fresh Consent to Establish fee shall be levied.*

18. *Industry should adopt water conservation measures to ensure minimum consumption of water in their Process. Ground water based proposals of new industries should get clearance from Central Ground Water Authority for scientific development of previous resources.*

19. *That the unit will take all other clearances from concerned agencies, whenever required.*

20. *That the unit will not change its process without the prior permission of the Board.*

21. *That the Consent to Establish so granted will be invalid, if the unit falls in Aravali Area or non conforming area.*

22. *That the unit will comply with the Hazardous Waste Management Rules and will also make the non-leachate pit for storage of Hazardous waste and will undertake not to dispose off the same except for pit in their own premises or with the authorized disposal authority.*

23. *That the unit will submit an undertaking that it will comply with all the specific and general conditions as imposed in the above Consent to Establish within 30 days failing which Consent to Establish will be revoked."*

24. By another communication No. HSPCB/Consent/ : 2846618YAMCTO3098246 dated 26th March 2018, HSPCB granted consent to the Appellant No. 1 to operate its Yamuna Nagar Unit from 8th February 2018 to 31st March 2022.

25. By an order No. HSPCB/YMN/2242, dated 31st March 2010, the Appellant No. 2, M/s. Apcolite Polymer Private Limited was granted CTE to establish its Yamuna Nagar Unit for manufacture of Formaldehyde with the manufacturing capacity of 80 tonnes per day.

26. By another communication Nos. HSPCB/Consent/ : HSPCB/YMN/DLC/2011/4027 & HSPCB/YMN/DLC/2011/4029 dated 16th January 2012, HSPCB granted the Appellant No. 2, M/s. Apcolite Polymers Private Limited, Consent to Operate (CTO) its Yamuna Nagar Unit. The CTO has been extended from 1st April 2016 till 31st March 2026, by a letter dated 13th March 2016. The CTO is valid till March 2026.

27. By a communication No. HSPCB/Consent/ : 2846616YAMCT OHWM2630357 dated 13th March 2016, HSPCB granted consent for emission of AIR to Appellant No. 2, M/s. Apcolite Polymers Private Limited in respect of its Yamuna Nagar Unit on, inter alia, the terms and conditions specified in the said letter, some of which are extracted hereinbelow:—

"10. The air pollution control equipment of such specification which shall keep the emissions within the emission standard as approved by the State Board from time to time shall be installed and operated in the premises where the industry is carrying on/proposed to carry on its business.

11. The existing air pollution control equipment if required shall be alerted or replaced in accordance with the direction on the Board.

12. All solid wastes arising in the factory premises shall be properly graded and disposed of by:—

(i) In case of Land fill material, care should be taken to ensure that the material does not give rise to leachate which may percolate in ground water of carried away with storm run off.

(ii) Composting in case of bio degradable materials.

(iii) *If the method of incineration is used for the disposal of solid waste the consent application should be processed separately and it should be taken up which consent is granted.*

13. *The industry shall submit an undertaking to the effect that the above conditions shall be complied with by them.*

14. *The applicant shall submit its undertaking to the effect that the above conditions shall be complied with by them.*

15. *The applicant shall make an application for grant of fresh consent at least 90 days before the date of expiry of this consent.*

18. *There should not be any fugitive emission from the premises.*

19. *The liquid effluent arising out of the operation of the air pollution control equipment shall also be treated in a manner and to the standards stipulated in the consent granted under Water (Prevention & Control of Pollution) Act, 1974 by this Board.*

21. *If the industry fails to adhere to any of the condition of this consent order the consent so granted shall automatically lapse.*

33. *The industry shall submit Environment Audit report once in a year.*

38. *In case of by passing the emissions, the consent shall be deemed revoked."*

28. It is the case of the Appellants that at the time when CTE was granted to the Appellants, it was thought that EC was not required for units which manufactured Formaldehyde. Even HSPCB itself was not sure of whether EC was required for such units.

29. Mr. Gupta argued that the Appellants were *bona fide* under the impression that the Appellants were not required to obtain prior EC for setting up this establishment to manufacture Formaldehyde. On the basis of CTE granted by HSPCB, the Appellants set up their units taking huge loans from banks for which repayments have to be paid in installments.

30. In exercise of power under Section 3(1) and Section 3(2)(v) of the EP Act read with Rule 5(3)(d) of the EP Rules, the Central Government issued a notification being S.O. 804(E) dated 14th March 2017 which provides for grant of *ex post facto* EC for project proponents who had commenced, continued or completed a project without obtaining EC under the EP Act/EP Rules or the Environmental Impact Notification issued thereunder. Paragraphs 3, 4 and 5 of the said notification, read as hereunder:

"(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.

(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law.

(5) In case, where the findings of the Expert Appraisal Committee on point at

sub-para(4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment."

31. The Notification of 2017 is a valid statutory notification issued by the Central Government in exercise of power under Sections 3(1) and 3(2)(v) of the EP Act read with Rule 5(3)(d) of the EP Rules in the same manner as the EIA Notification dated 27th January 1994 and the Notification dated 14th September 2006.

32. Section 21 of the General Clauses Act, 1897 provides that where any Central Act or Regulations confer a power to issue notifications, orders, rules or bye-laws, that power includes the power, exercisable in like manner, and subject to like sanction and conditions, if any, to add to, amend, vary or rescind any notification, order, rule or bye-law so issued. The authority, which had the power to issue Notifications dated 27th January 1994 and 14th September 2006 undoubtedly had, and still has the power to rescind or modify or amend those notifications in like manner. As held by this Court in *Shree Sidhali Steels Ltd. v. State of Uttar Pradesh*¹, power under Section 21 to amend, vary or rescind notifications, orders, rules or bye-laws can be exercised from time to time having regard to the exigency.

33. Puducherry Environment Protection Association filed a Writ Petition being W.P. No. 11189 of 2017 in the High Court of Madras assailing the said notification dated 14th March 2017. By a judgment and order dated 13th October 2017, a Division Bench of the High Court refused to interfere with the said notification, holding that the impugned notification did not compromise with the need to preserve environmental purity.

34. The Ministry of Environment, Forest and Climate Change (MoEF&CC) issued a draft notification dated 23rd March 2020 which was duly published in the Gazette of India Extraordinary Part II. The Notification was proposed to be issued in exercise of powers conferred by subsection (1) and clause (v) of sub-section (2) of Section 3 of the EP Act for dealing with cases of violation of the notification with regard to EC. It was proposed that cases of violation would be appraised by the Appraisal Committee with a view to assess whether the project had been constructed or operated at a site which was permissible under prevailing laws and could be run sustainably on compliance of environmental norms with adequate environmental safeguards. Closure was to be recommended if the findings of the Appraisal Committee were in the negative. If the Appraisal Committee found that such unit had been running sustainably upon compliance of environmental norms with adequate environment safeguards, the unit would be prescribed appropriate Terms of Reference (TOR) after which the procedure for grant of EC would follow.

35. On 10th November 2020, the Department of Environment and Climate Change of the Government of Haryana issued an order which is extracted hereinbelow for convenience:

"Whereas the process of manufacturing of Formaldehyde is covered under the provisions of 5(f) of Schedule of Environment Impact Assessment Notification (EIA),

2006 of Government of India, and requires the prior Environmental Clearance (EC) from the competent authority State Environment Impact Assessment Authority (SEIAA)/Ministry of Environment, Forest and Climate Change, Government of India, before establishment and operation of such units, besides other mandatory clearance, as applicable;

Whereas, it has come to the notice of Government that around 15 such units have been permitted to establish/operate in the State of Haryana, without obtaining the necessary Prior Environmental Clearances, but with the Consent of the Haryana State Pollution Control Bureau (HSPCB), which misinterpreted the category of such units and on realising the requirement of EC in these cases, has revoked its consents issued earlier to these units recently;

Whereas, some of these units approached the Government explaining their hardship due to such sudden revocation of their consents and have sought time for obtaining the necessary EC from the competent authority as the process is likely to take a minimum of 6 months to one year period, and to allow them to operate with all pollution control measures, following the pollution control norms applicable, and,

Whereas, the Government has carefully considered their request and the competent authority has decided that these units shall be allowed to continue their operations for a period of six months, without prejudice to any legal action taken against the violations committed by them, by the competent authorities, with the conditions that they will immediately apply for Environmental Clearance from the competent authority and provide the proof of such application within 60 days from the issuance of this communication to Environment and Climate Change Department and to Haryana State Pollution Control Board.

Therefore, it is ordered accordingly."

36. Referring to the Counter Affidavit filed by HSPCB before the NGT, Mr. Gupta pointed out that, since HSPCB itself was under the misconception that prior EC was not necessary for units such as the Yamunanagar units of the Appellants Nos. 1 and 2 respectively. HSPCB took a policy decision to allow the units which did not have prior EC to operate for six months, on condition that they would apply for EC within sixty days.

37. The Appellants duly applied for EC in respect of their manufacturing units. After scrutinizing their applications and after finding the units suitable for grant of EC in terms of the prevailing guidelines, the Expert Appraisal Committee constituted by the MoEF&CC conducted a public hearing to finalize the cases of the Appellants for issuance of Terms of Reference (TOR).

38. By an Office Memorandum, being F. No. 22-21/2020-1A III, dated 7th July 2021, the MoEF&CC issued Standard Operating Procedure (SOP) for identification and handling of violation cases under EIA Notification 2006.

39. The said Office Memorandum, inter alia, reads:

"The Ministry had issued a notification number S.O.804(E), dated the 14th March, 2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.

2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.

3. Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. v. Synochem Organics Pvt. Ltd. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar v. Central Ground Water Authority, vide order dated 03.06.2021 held that "(...) for past

violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process".

4. Further, the Hon'ble National Green Tribunal in O.A. No. 34/2020 WZ in the matter of Tanaji B. Gambhire v. Chief Secretary, Government of Maharashtra, vide order dated 24.05.2021 has directed that "... a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country".

5. Therefore, in compliance to the directions of the Hon'ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn. The Ministry is also seized of different categories of 'violation' cases which have been pending for want of an approved structural/procedural framework based on 'Polluter Pays Principle' and 'Principle of Proportionality'. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.

6. In the light of the above directions of the Hon'ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations/decisions of the Hon'ble Courts wherein principles of proportionality and polluters pay have been outlined."

40. The SOP formulated by the said Office Memorandum dated 7th July 2021 refers to and gives effect to various judicial pronouncements including the judgment of this Court in *Alembic Pharmaceuticals Ltd. v. Rohit Prajapat*².

41. In terms of the SOP, the proposal for grant of EC in cases of violation are to be considered on merits, with prospective effect, applying principles of proportionality and the principle that the polluter pays and is liable for costs of remedial measures.

42. By an order dated 9th July 2021, the MoEF&CC confirmed the minutes of an earlier meeting of the Expert Appraisal Committee and recommended issuance of terms of reference to the Appellant No. 1, M/s. Pahwa Plastics Private Limited for expansion of its Formaldehyde Manufacturing unit from 60 TPD to 150 TPD.

43. In the meanwhile, on or about 26th November 2020, the Respondent No. 1, a Non-Governmental Organisation (NGO) hereinafter referred to as "Dastak" filed an application being O.A. No./287/2020 before the NGT praying that the order dated 10th November 2020 passed by the State of Haryana be quashed and units which were operating without EC be closed. The NGT disposed of the said application of Dastak by the impugned order dated 3rd June 2021.

44. A Public Interest Litigation being W.P. (MD) No. 11757 of 2021 (*Fatima v. Union of India*) was filed before the Madurai Bench of the Madras High Court challenging the said Memorandum dated 7th July 2021. By an interim order dated 15th July 2021 a Division Bench of the Madras High Court admitted the Writ Petition and stayed the said memorandum.

45. The Madurai Bench of the Madras High Court observed and held:—

"This writ petition has been filed as a public interest litigation challenging the validity of the office memorandum dated 07.07.2021, issued by the respondent.

2. We have heard Mr. A. Yogeshwaran, learned counsel appearing for the writ petitioner and Mr. L. Victoria Gowri, learned Assistant Solicitor General of India, accepts notice for the respondent.

3. The impugned office memorandum is challenged as being wholly without jurisdiction, contrary to the Environment Impact Assessment Notification, 2006, ultra vires the powers of the respondent under the Environment (Protection) Act, 1986 and violative of the various principles enunciated by the Hon'ble Supreme

Court, while interpreting Article 21 and Article 48-A of the Constitution of India.

4. Further, it is submitted that the impugned notification is in gross violation of the undertaking given before the Hon'ble Full Bench of this Court in W.P. No. 11189 of 2017, wherein, the Court took note of the submissions made on behalf of the Government of India, that the notification impugned therein is only a one-time measure. Further, it is submitted that the respondent failed to see that concept of ex-post facto approval is alien to environment jurisprudence and it is anathema to the Environment Impact Assessment Notification, 2006.

5. Further, it is submitted that the impugned notification is in gross violation of the judgment of the Hon'ble Supreme Court in the case of Alembic Pharmaceuticals Ltd. v. Rohit Prajapati, 2020 SCC OnLine SC 347 and the orders passed by the National Green Tribunal, Principal Bench, New Delhi, in the case of S.P. Muthuraman v. Union of India, 2015 SCC OnLine NGT 169.

6. Identical grounds were considered by us in a challenge to an office memorandum dated 19.02.2021, which provided a procedure for granting post facto clearance under Coastal Regulation Zone (CRZ) Notification 2011, on the ground that despite no such provisions in the notification and being contrary to the earlier judgments and undertaking. The said writ petition in W.P(MD). No. 8866 of 2021 was admitted and by order dated 30.04.2021, the said office memorandum dated 19.02.2021 has been stayed.

7. The core issue in this writ petition is whether the Government of India could have issued the office memorandum and brought about the Standard Operating Procedure for dealing with violators, who failed to comply with the mandatory condition of obtaining prior environment clearance under the Environment Impact Assessment Notification 2006, read with the provisions of Environment (Protection) Act, 1986. This issue was considered by the Hon'ble Supreme Court in Alembic Pharmaceuticals Ltd. (cited supra), and it was held that such office memorandum in the nature of circular is without jurisdiction. The operative portion of the judgment reads as follows:

"...What is sought to be achieved by the administrative circular dated 14 May 2002 is contrary to the statutory notification dated 27 January 1994. The circular dated 14 May 2002 does not stipulate how the detrimental effects on the environment would be taken care of if the project proponent is granted an ex post facto EC. The EIA notification of 1994 mandates a prior environmental clearance. The circular substantially amends or alters the application of the EIA notification of 1994. The mandate of not commencing a new project or expanding or modernising an existing one unless an environmental clearance has been obtained stands diluted and is rendered ineffective by the issuance of the administrative circular dated 14 May 2002. This discussion leads us to the conclusion that the administrative circular is not a measure protected by Section 3. Hence there was no jurisdictional bar on the NGT to enquire into its legitimacy or vires. Moreover, the administrative circular is contrary to the EIA Notification 1994 which has a statutory character. The circular is unsustainable in law."

8. Despite the above decision, once again the Government of India, Ministry of Environment, Forest and Climate Change have chosen to adopt the route of issuing the office memorandum and virtually setting at naught the provisions of the Environment Impact Assessment Notification and the Environment (Protection) Act.

9. Before the Hon'ble First Bench, a public interest litigation was filed by the Puducherry Environment Protection Association, challenging the notification dated 14.03.2017, on identical grounds and the Hon'ble First Bench by judgment dated 13.10.2017, recorded the submissions of the learned Assistant Solicitor General of India that the said notification was a one-time measure and accordingly, disposed

of the writ petition.

10. Once again, the Ministry of Environment, Forest and Climate Change have issued the impugned office memorandum. Thus, from what we have noted above, we are of the clear view that the petitioner has made out a prima facie case for entertaining the writ petition. Accordingly, the writ petition is admitted and there shall be an order of interim stay."

46. It is true that in the case of *Puducherry Environment Protection Association v. Union of India*³, the Division Bench of Madras High Court took note of and recorded the submission made on behalf of the Union of India that the relaxation was a one time relaxation. In view of such submission, this Court held that a one time relaxation was permissible.

47. It is, however, well settled that words and phrases and/or sentences in a judgment cannot be read in the manner of a statute, and that too out of context. The observation of the Division Bench that a one time relaxation was permissible, is not to be construed as a finding that relaxation cannot be made more than once. If power to amend or modify or relax a notification and/or order exists, the notification and/or order may be amended and/or modified as many times, as may be necessary. A statement made by counsel in Court would not prevent the authority concerned from making amendments and/or modifications provided such amendments and/or modifications were as per the procedure prescribed by law.

48. The Division Bench of Madras High Court fell in error in staying the said office memorandum, by relying on observations made by this Court in *Alembic Pharmaceuticals Ltd.* (supra), in the context of a circular which was contrary to the statutory Environment Impact Notification of 1994. The attention of the High Court was perhaps not drawn to the fact that the notification of 7th July 2021 was in pursuance of the statutory notification of 2017 which was valid. The judgment of this Court in *Alembic Pharmaceuticals Ltd.* (supra), was clearly distinguishable and could have no application to the office memorandum dated 7th July 2021 which was issued pursuant to the notification dated 14th March 2017.

49. The Appellants have already applied for EC. The Expert Appraisal Committee of the MoEF&CC has, after scrutinizing the application of the Appellants and finding them eligible for grant of EC, recommended their cases for grant of Terms of Reference (ToR). ToR was granted to the Appellants and a public hearing had also been conducted. Only last procedural step of issuance of EC is left.

50. It is claimed that the units of the Appellants are totally non-polluting units having "Zero Trade discharge". They have been in operation for many years. In the reply affidavit filed by the State before the NGT, it was mentioned that the units were operating in good faith with valid CTOs granted by the HSPCB. It was stated that the units were not causing pollution hazards. The only thing against the units was the procedural lapse of not obtaining EC.

51. By a communication No. F. No. IA-J-110011/185/2020-IA-II(I) dated 20th July 2021 issued to the Appellant No. 1, the MoEF&CC rejected the proposal for terms of reference on the purported ground that the activity of the Appellant No. 1 was covered under category "A" of item 5(f) "Synthetic Organic Chemicals" of the Schedule to the EIA Notification, 2006. A similar communication was issued in respect of M/s. Apcolite Polymers Pvt. Ltd. Significantly, by an order dated 9th July 2021, the MoEF&CC had confirmed the minutes of an earlier meeting of the Expert Appraisal Committee and recommended issuance of ToR to the Appellant No. 1, as observed above. The proposal for Terms of Reference has obviously been rejected at the final stage after the public hearing, by reason of the impugned order dated 3rd June 2021 passed by the NGT on the application of Dastak, which is under appeal.

52. This appeal was listed for admission on 30th September 2021, along with an

application for interim relief being I.A. No. 110064 of 2021 praying for orders permitting the Appellants to operate their units during the pendency of the appeal. The appeal was heard at length at the admission stage and reserved for judgment along with the interim application by an order dated 30th September 2021.

53. After receiving the communication dated 20th July 2021 rejecting the proposal for Terms of Reference, the Appellants requested HSPCB to forward to the Appellants the proceedings of public hearing in respect of the manufacturing units of the Appellants. By a communication No. HSPCB/YR/2021/2830 dated 15th February 2022, HSPCB forwarded proceedings of the public hearing in respect of the Yamuna Nagar unit of the Appellant No. 1. By another Communication No. HSPCB/YR/29021/2829 dated 15th February 2022 the HSPCB forwarded to the Appellant No. 2 the proceedings of the public hearing held on 3rd February 2022 in connection with the Yamuna Nagar Unit of the Appellant No. 2.

54. The manufacturing units of the Appellants appoint about 8,000 employees and have a huge annual turnover. An establishment contributing to the economy of the country and providing livelihood ought not to be closed down only on the ground of the technical irregularity of not obtaining prior Environmental Clearance irrespective of whether or not the unit actually causes pollution.

55. In *Electrosteel Steels Limited v. Union of India*⁴, this Court held:—

"82. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down for the technical irregularity of shifting its site without prior environmental clearance, without opportunity to the establishment to regularize its operation by obtaining the requisite clearances and permissions, even though the establishment may not otherwise be violating pollution laws, or the pollution, if any, can conveniently and effectively be checked. The answer has to be in the negative.

83. The Central Government is well within the scope of its powers under Section 3 of the 1986 Act to issue directions to control and/or prevent pollution including directions for prior Environmental Clearance before a project is commenced. Such prior Environmental Clearance is necessarily granted upon examining the impact of the project on the environment. Ex-Post facto Environmental Clearance should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of Notifications under the 1986 Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of a running steel plant.

84. The 1986 Act does not prohibit ex post facto Environmental Clearance. Some relaxations and even grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in over view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.

* * *

88. The Notification being SO 804(E) dated 14th March, 2017 was not an issue in Alembic Pharmaceuticals (supra). This Court was examining the propriety and/or legality of a 2002 circular which was inconsistent with the EIA Notification dated 27th January, 1994, which was statutory. Ex post facto environmental clearance should not however be granted routinely, but in exceptional circumstances taking

into account all relevant environmental factors. Where the adverse consequences of ex post facto approval outweigh the consequences of regularization of operation of an industry by grant of ex post facto approval and the industry or establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. Ex post facto approval should not be withheld only as a penal measure. The deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.

* * *

96. *The appeals are allowed. The impugned order is set aside. The Respondent No. 1 shall take a decision on the application of the Appellant for revised EC in accordance with law, within three months from date. Pending such decision, the operation of the steel plant shall not be interfered with on the ground of want of EC, FC, CTE or CTO."*

56. As held by this Court in *Electrosteel Steels Limited* (supra) *ex post facto* Environmental Clearance should not ordinarily be granted, and certainly not for the asking. At the same time *ex post facto* clearances and/or approvals and/or removal of technical irregularities in terms of a Notification under the EP Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of mines, running factories and plants.

57. The 1986 Act does not prohibit *ex post facto* Environmental Clearance. Grant of *ex post facto* EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in our view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.

58. As held by a three Judge Bench of this Court in *Lafarge Umiam Mining Private Limited v. Union of India*⁵: —

"119. The time has come for us to apply the constitutional "doctrine of proportionality" to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognized principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of "margin of appreciation" in favour of the decision-maker would come into play."

59. In *Alembic Pharmaceuticals Ltd.* (supra), this Court observed: —

"27. The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification

dated 27 January 1994. It is, as the judgment in Common Cause holds, detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an ex post facto clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC can be issued only after various stages of the decision-making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development."

60. Even though this Court deprecated ex post facto clearances, in *Alembic Pharmaceuticals Ltd.* (supra), this Court did not direct closure of the units concerned but explored measures to control the damage caused by the industrial units. This Court held:—

"However, since the expansion has been undertaken and the industry has been functioning, we do not deem it appropriate to order closure of the entire plant as directed by the High Court."

61. The Notification being SO. 804(E) dated 14th March 2017 was not in issue in *Alembic Pharmaceuticals Ltd.* (supra). In *Alembic Pharmaceuticals Ltd.* (supra) this Court was examining the propriety and/or legality of a 2002 circular which was inconsistent with the EIA Notification dated 27th January 1994, which was statutory. The EIA Notification dated 27th January 1994 has, as stated above, been superseded by the Notification dated 14th September 2006.

62. There can be no doubt that the need to comply with the requirement to obtain EC is non-negotiable. A unit can be set up or allowed to expand subject to compliance of the requisite environmental norms. EC is granted on condition of the suitability of the site to set up the unit, from the environmental angle, and also existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect future generations and to ensure sustainable development, it is imperative that pollution laws be strictly enforced. Under no circumstances can industries, which pollute, be allowed to operate unchecked and degrade the environment.

63. *Ex post facto* environmental clearance should not be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of denial of *ex post facto* approval outweigh the consequences of regularization of operations by grant of ex post facto approval, and the establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. The deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.

64. The question in this case is, whether a unit contributing to the economy of the country and providing livelihood to hundreds of people, which has been set up pursuant to requisite approvals from the concerned statutory authorities, and has

applied for *ex post facto* EC, should be closed down for the technical irregularity of want of prior environmental clearance, pending the issuance of EC, even though it may not cause pollution and/or may be found to comply with the required norms. The answer to the aforesaid question has to be in the negative, more so when the HSPCB was itself under the misconception that no environment clearance was required for the units in question. HSPCB has in its counter affidavit before the NGT clearly stated that a decision was taken to regularize units such as the Apcolite Yamuna Nagar and Pahwa Yamuna Nagar Units, since requisite approvals had been granted to those units, by the concerned authorities on the misconception that no EC was required.

65. It is reiterated that the 1986 Act does not prohibit *ex post facto* EC. Some relaxations and even grant of *ex post facto* EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with environment norms, is not impermissible. As observed by this Court in *Electrosteel Steels Limited* (supra), this Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the units and dependent on the units in their survival.

66. *Ex post facto* EC should not ordinarily be granted, and certainly not for the asking. At the same time *ex post facto* clearances and/or approvals cannot be declined with pedantic rigidity, regardless of the consequences of stopping the operations. This Court is of the view that the NGT erred in law in directing that the units cannot be allowed to function till compliance of the statutory mandate.

67. Accordingly, the appeal is allowed. The impugned order is set aside in so far as the same is applicable to the units of the Appellants established and operated pursuant to CTE and CTO from the HSPCB in respect of which applications for *ex post facto* EC have been filed. The Respondent shall take a decision on the applications of the Appellants for EC in accordance with law within one month from date. Pending decision, the operation of the Pahwa Yamuna Nagar Unit and the Apcolite Yamuna Nagar Unit, in respect of which consents have been granted and even public hearing held in connection with grant of EC, shall not be interfered with.

68. The Appellants will be allowed to operate the units. Electricity, if disconnected, shall be restored subject to payment of charges, if any. If the application for EC is rejected on the ground of any contravention on the part of the Appellants, it will be open to the Respondents to disconnect the supply of electricity.

69. The Union of India had proceeded with the application for EC and even public hearing had been held. Counsel appearing on behalf of the Union of India contended that the Appellant had not submitted its final application for EC, after public hearing. It is not clear what more was required of the Appellants. Be that as it may, the Union of India shall, within three working days from the date of receipt of a copy of this judgment and order, inform the Appellants in writing of whether anything further is required to be done by the Appellants, and if so what is required to be done. The Appellants shall, within a week thereafter do the needful. The final decision on the application of the Appellants for EC shall be taken within three weeks thereafter.

70. The application being I.A. No. 110064/2021 and other pending applications, if any, in this appeal are disposed of accordingly.

¹ (2011) 3 SCC 193

² 2020 SCC OnLine SC 347

³ 2017 SCC OnLine Mad 7056

⁴ 2021 SCC OnLine SC 1247

⁵ (2011) 7 SCC 338

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VAKALATNAMA

IN THE COURT OF NATIONAL GREEN TRIBUNAL, AT PUNE.

Original Application NO. 54 OF 2020.

Shashikant Vitthal Kamble } Appellant / Applicant
Complainant /
Petitioner / Plaintiff

VERSUS

Nakshata Eye Land & other. } Respondent /
Opponent /
Accused / Defendant

I / We, the undersigned Mukesh Anjabbhai Patel,
Gat No. 669, Moshi Mandi Road,
Moshi, Pune - 412105. Partner.
the Respondent No. above-named hereby appoint & authorise

Saurabh Kulkarni, Advocate
420, Shanivar Peth, Near Anilya Devi School,
Pune - 411030.
Ph(0) 24459027
Email: saikadvocate@gmail.com.

to appear and plead for me / us as my / our Advocate/s in the matter.

In witness whereof, I / we have signed below this 15thday of February 2022

Witness

Accepted and filed on 15/02/2022

Signature of Advocate/s

I am not member of the Maharashtra Advocates Welfare Fund
& I have not affixed the required stamp.

SAURABH D. KULKARNI
ADVOCATE

420, SHANIVAR PETH,
NEAR ANILYA DEVI SCHOOL,
NEXT TO SUDARSHAN HALL, PUNE-411030.
PH. 020 - 24459027, 91-7276134758



Ms. Ajalun
15/2/2022
[Signature]