

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

**Original Application No. 64/2016 (WZ)**

**AND**

**Misc. Application Nos. 3 and 4 of 2021**

**In**

**Original Application No. 64/2016 (WZ)**

Akhil Bhartiya Mangela Samaj and Ors ..... Applicants

V.

Maharashtra Pollution Control Board and Ors..... Respondents

Maharashtra Organo Metallic Catalysts (P) Ltd ..... Intervenor

**WRITTEN SUBMISSIONS IN BRIEF IN ABOVE SAID MATTER AS  
PROVISIONED BY WAY OF ORDER dt 30/9/2021**

1. That I, Maharashtra Organo Metallic Catalysts (P) Ltd am assigned Table No. 88 in the Expert Committee Report dated March 2020 which is the backbone of this cause of action.
2. That I have filed an intervention application now numbered as MA 3/2021 and as well an application for substantial reliefs now

numbered as MA 4/2021 to correct mistakes apparent in the committee's report dated March 2020

3. That vide proceedings so far:

- a. I, was pleased to deposit UNER PROTEST INR 2,79,270/- vide RTGS UTR number MAHBR52021020909303529 dated 9/2/2021 to United India Assurance Company Ltd as 30% pre-conditional deposit of assessed fine of INR 9,30,900/- vide the abovesaid original report of the expert committee.
  
- b. That the committee was pleased to review its report and the revised assessment dated 12/08/2021 reduced the penalty for my company (Table No. 88 in said report on Page Nos. 120 and 121) to INR 1.447 Lakh (Distribution Recovery Cost Factor = 0.0000904) [Earlier it was 9.309 Lakh INR and Distribution Recovery Cost Factor = 0.0005817] based mostly on re-classification from LSI to SSI being a gross error apparent. And also corrected number of penalty days from 49 to 18 days. The said table is reproduced below for convenience.

Table No. 88\*

Sl. No	Item	Details
1.	Name of Industry	Maharashtra OrganoMetalicsPvt. Ltd., Plot No.- N-220 & 221, MIDC Tarapur
2.	Year of Establishment/Commissioning	1995
3.	Product Type	Chemicals

120

120

4.	Category	Red
5.	Scale	SSI (Earlier mentioned as LSI)
6.	Discharge Quantity as per the Consent in cubic meter/day (CMD)	6
7.	Date of Inspection	24.11.2016
8.	Date of Closure Order	03.12.2016
9.	Effective date of Closure of the unit	06.12.2016
10.	Unconditional re-start Order date	NA
11.	Conditional re-start order date	17.03.2017
12.	Date of inspection when the conditions at Sl. No. 11 was verified as compliance	21.03.2017
13.	Period of non-compliance (no. of days)	18 (Earlier it was 44+5=49)
14.	Reason for Closure/non-compliance	Discharge of substandard effluent having COD-1728, pH 4.4. <b>Remarks:-</b> The Board has issued closure direction based on non-compliance reported vide visit dt.24.11.2016, restart direction issued on 17.03.2017, further the compliance of the same was confirmed vide visit dt. 21.03.2017,  Accordingly the non-compliances days was calculated which has reduced from 49 days to 18 days.  As per consent industry falls under Red/SSI. Industry objection is considered.
15.	Liability for Compensation	Yes
16.	Accountability in terms of recovery cost in meeting the environmental damage cost and restoration cost	<b>1.447</b> Lakh INR (Distribution Recovery Cost Factor = <b>0.0000904</b> ) [Earlier it was 9.309 Lakh INR and Distribution Recovery Cost Factor = 0.0005817]
17.	Date of Hearing	30.11.2019

- c. The MPCB was served a copy of the MAs 3 and 4 and the grounds were well before them.
- d. However, they did not address the other ground mentioned on ground of relief in terms of being an SSI and hence allowed special considerations by the export committee considerations themselves as mentioned on Page Nos. 3 and 4 and Paragraph Nos. 3, 4-and 10 exhibited in Exhibits on Page Nos.34 and 36;

amongst others and without prejudice to one another. in MA 4/2021; have been not at all touched upon by the expert committee in this report and have been given a complete pass.

4. That the reason for not dropping the name of my unit from the list of polluting units is that the effluent quality in only one of the JVS reports is noted to be sub-standard being pH=4.4 and COD = 1750 mg/L. However, as far as COD is concerned, by virtue of being an SSI the special consideration of COD less than 3500 mg/l applies (as noted in Paragraph No. 10 a. Page No. 6 in MA 4/2021). And that the pH value recorded in the JVS report is inconsistent n MPCB own reports available at hand and exhibited, and has been disputed variously earlier as well, as the site report by senior officers (SRO-level) of the MPCB was recorded to be 7 (which is benchmark of neutral water as should be) and the later finding of pH = 4.4 is way outside the margin of error in going from site to lab and cannot be justified in any way and the site report has to be trusted and prevail (as also seen and signed by as many as 5 people of which 3 from MPCB). Exhibits provided in the MA.
5. That whereas the MPCB does not follow the mandated practices in **Section 21(3) in The Water (Prevention and Control of Pollution) Act, 1974** of providing notice to the occupier or providing him an informed opportunity to request a second container or of sending the same to a Central Laboratory and hence its JVS reports are one sided and cannot be relied upon exclusively and deserve to be vitiated by such deficiencies and hence bad in law *ab initio*.

6. That hence, whereas, once the classification was corrected to SSI, the expert committee was duty bound to have applied its own constituted rule which apply to industries below 25KLD and dropped the penalty altogether but which has not been done.
7. Further, in so far as the overall report is concerned and its impact on the industrial area is concerned, it is needed to be agitated that:
- a. The formula applied by the expert committee for apportionment of assessed damages to each industry is:

$$RC \text{ Factor} = PI \times N \times S \times LF \times DF$$

**Wherein there is no factor for pH or the COD or the effluent discharge quantity.**

How can this be as these are the “culprit” parameters.

- b. That is to say that a unit discharging highly acidic effluent of pH 1 has been treated same as a unit discharging at pH 4 whereas a lot more damage will be done by pH 1 than pH 4. Similarly a unit with COD 4000 mg/L will have been treated the same as a unit with COD violation of 1,000,000 mg/L. Similarly, a unit discharging 100 or 10,000 KL/D (a typical MSI or LSI) would have been treated the same as unit discharging 4 KL/D (most typical SSIs) which are all highly unscientific and absurd and a highly unjust scheme apportioning a heavy burden on the SSIs or lesser-offending units whereas giving a free pass to the more offending units. How can that be just?

- c. Hence the apportionment is grave injustice, as the CETP scheme itself is a salutary provision by the MoEF to protect the SSI from obliteration by cost demands of Environment Protection and provide them assistance by Govt Funding. However, the apportionment scheme by the expert committee is grossly unjust and would need revision to account for the level of violation of pH, of COD, and of the volume discharge quantity.
- d. That further, the total the total amount of damages is calculated based on EURO amount and mentioned in Chapter 6 starting on Page 74 of the original report dated March 2020 as follows:

*The values estimated by Hernandez- Sancho et.al. paper of 2010 have been used.*

*EDCA (INR) = Damage cost \* loading rate \* exchange rate \* inflation \* 365 ----- (1)*

However, no discounting factor has been applied for currency purchasing power parity (PPP) (and hence of lower costs of labor or materials in India for carrying out said restoration).

Currently as per <https://data.oecd.org/conversion/purchasing-power-parities-ppp.htm> the PPP Factor for India in 2020 was 21.990 Currency Units/ USD (and increasing on yearly basis)

which would reduce the estimate damage restoration assessment from 160 Crores to about  $(160/22 =) 7.3$  Crores.

- e. Further, it is much needed to appreciate that despite the current proceedings going on for many years, the MPCB has shown no intent to prevent any remedial plan for environment restoration which is the projected ultimate goal and hence it stands to defeat this goal and result in just unjust enrichment of the Govt coffers; without the environment winning. Hence, appropriate direction in this regard and oversight of this body to see the fruition of this end is also appropriate before final disposal of the petition.

8. Hence I say that this Hon'able Court consider the overall facts and circumstances and:

- a. As I was not in violation as per adopted standards by the expert committee as the COD is in limit for  $<25\text{KLD}$ , and as measure of pH to count as substandard effluent is inconsistent in MPCB on reports; I don't deserve to be on this list and hence I seek this Court's interference to set the record in order and do justice and drop the name of my unit from this list being in conformance with the parameters set out.
- b. Further, as the collective penalty will be assessed back on the individual units (many of which are SSIs), the overall amount of compensation be adjusted as per PPP (or appropriately otherwise by some order of magnitude to be more just).
- c. Further, as the statutory object of the MoEF for setting up CETP is to protect the SSI units, directions be issued to the expert committee to devise and apportion the final damages

approved by NGT as per the pH, COD and volume effluent discharge.

- d. Further, as the portion of penalty on the CETP will be distributed amongst its members, to protect the SSIs it is much needed that directions also be issued to the TEPS to apportion these collective damages as per volume discharge of industries as it is currently not doing the same; and the MSIs and LSIs are being benefited unjustly at the cost of the SSIs.
- e. Further, the United India Assurance Company Ltd where the 30% Penalty was deposited be specifically directed to refund the monies of industries where made out.

MUMBAI

Dr. Sandeep Todi



06/10/2021

Authorized Signatory

Maharashtra Organo Metallic Catalysts (P) Ltd