

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH

APPEAL NO 36 OF 2020 (EARLIER NO 66/2019 (WZ))

IN THE MATTER OF:

Larsen & Toubro Ltd.

...APPELLANT

v

Sanghi Industries Limited & Ors.

...RESPONDENTS

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WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO 1

1. The instant Written Submissions are being filed on behalf of Respondent No 1 in the present appeal, pursuant to the liberty granted by this Hon'ble Tribunal *vide* the Order dated 05.10.2021.
2. That at the very outset, it is relevant to submit that the Proposed Project of Respondent No 1 is a Standalone Cement Grinding Unit with a capacity of 2.0 million TPA. As such, the Proposed Project is a Category B Project in terms of the Environmental Impact Assessment Notification, 2006 ("EIA Notification") issued under Section 3(1) read with Section 3(2)(v) of the Environment (Protection) Act. It is submitted that under the EIA Notification all activities are classified as either "Category A" or "Category B" based on the extent of their potential impact on the surrounding environment.
3. It is pertinent that in the Schedule to the EIA Notification, at paragraph 3(b), all standalone grinding units are categorized as Category B projects, irrespective of their capacity. Integrated cement plants, on the other hand, are categorized into Category A or B on the basis of their capacity.
4. This is because standalone cement grinding units do not involve the process of clinkerization, which is the foremost cause of pollution and emissions in cement plants. In fact, standalone grinding units such as the Proposed Project primarily only cause fugitive dust emissions, arising out of the handling of raw materials. Process emissions, which are generated from the stacks of various sections in an integrated plant, are absent in a standalone grinding unit for the most part.
5. This can further be clarified from a perusal of the Technical Guidance Manual for the Cement Industry ("**TGM**"), issued in August 2010. This manual is prepared for various different industries with the help of domain experts under the supervision of the Ministry of Environment and Forests ("**MoEF**"), pursuant to its mandate of issuing appropriate guidelines for the categorization of projects under the EIA Notification from time to time.

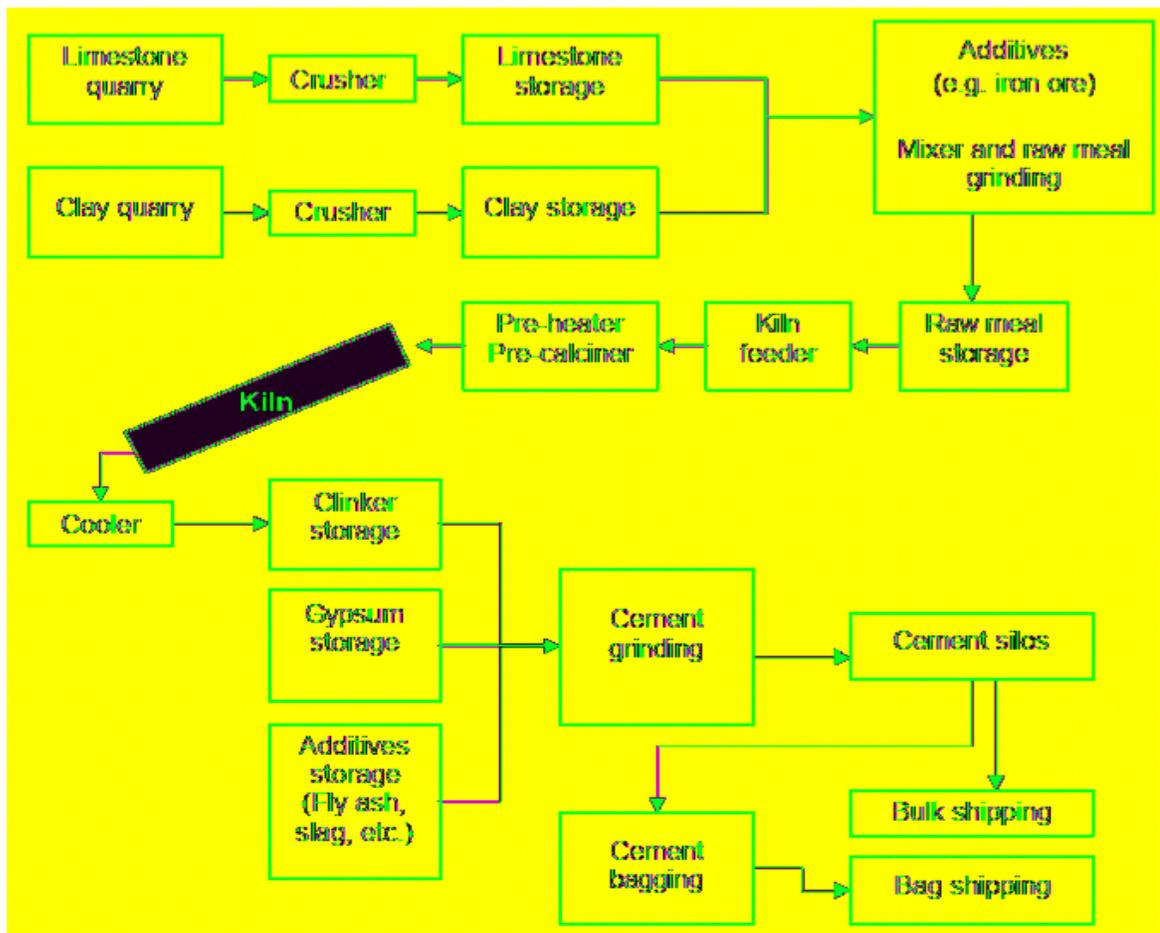


Figure 3-3 – Cement Manufacturing Process

(See: TGM @ p 3-5)

6. It is submitted that in the above figure, the processes which are depicted above the kiln (including the kiln itself), are not part of the Proposed Project. The Proposed Project, as a standalone grinding unit, would only encompass the units displayed below the kiln, and as such, would not cause emission levels of the kind associated with integrated cement plants: *“The main releases from the production of cement are releases to air from the kiln system. These are derived from the physical and chemical reactions involving the raw materials and the combustion of fuels.”* (See: TGM @p 3-9)
7. Furthermore (See: TGM @p3-11): **“Traditionally, the emission of dust particularly from kiln stacks has been the main environmental concern in relation to cement manufacture.** *Dust is generated at all stages in cement manufacturing process. The dust generation in cement plant is basically from the stacks of various sections like crusher, raw mill, coal mill, kiln, clinker cooler, cement mill and packing plant. These are known as process dust or point sources, while dusts arising from material handling, storage and transportation etc., is known as fugitive dust emission.”* (Emphasis supplied)
8. Given that the Proposed Project does not involve a kiln or the other chemical processes involved in the initial stages of cement manufacturing, it will cause

much lower emissions than expected from a standard integrated cement plant. As per the TGM (*See: Table 3-8 in TGM @p 3-11*) the PM emission factor with Air Pollution Control Devices (APCD) is merely 0.21 kg/tonne of Clinker produced.

9. The High-Powered Expert Appraisal Committee (“**High-Powered Committee**”), constituted pursuant to the Order of this Hon’ble Tribunal dated 21.01.2021, took this into account when preparing its Report. As it duly noted in Paragraphs 8(vi) and 8(xi) thereof, the Proposed Project is likely to cause much lower emissions than an integrated cement plant. In fact, the cement manufactured at the Proposed Project is a green cement. It involves the conversion of waste materials such as fly ash and slag, along with clinker brought from outside, into usable cement:

*vi. The proposed project of M/s. SIL involves setting up of stand-alone cement grinding unit of 2 MTPA capacity. **The major source of pollution from this unit will be particulate matter and fugitive dust emissions from handling raw materials which can be mitigated by adopting adequate environmental safeguards.***

[....]

*It may also be noted that the proposed unit is not an integrated cement plant. It is a grinding unit where, **clinker (brought from outside), fly ash and slag (waste materials from power plants and steel plants) are ground and converted to a useful green cement.***

*Clinkerization process makes the cement plants a red category industry due to pollution of particulate matter, SO₂, NO_x and Carbon Monoxide. In grinding units only particulate matter is emitted during grinding and that too much less than that in the clinkerization process. **[Emphasis supplied]***

10. It is respectfully submitted before this Hon’ble Tribunal that for an appropriate adjudication of the instant appeal it would be pertinent to explain the scheme envisaged under the EIA Notification. The said procedure for grant of EC is not only based on the EIA Notification but also the industry specific TGMs issued from time to time.
11. An EC for a project is granted on the basis of the Category in which it falls. The process for Category A projects is conducted at the Central level, by an

Expert Appraisal Committee (“**EAC**”) which recommends whether or not an EC should be granted to the particular project by MoEF. The process for Category B projects is conducted at the State level, by a State Expert Appraisal Committee (“**SEAC**”) which recommends whether or not an EC should be granted to the particular project by the State Environmental Impact Assessment Authority (“**SEIAA**”). A brief summary of the process envisaged under the EIA Notification is as follows:

- i. **Application:** The Project Proponent applies for the grant of an EC by submitting the prescribed Form I annexed to the EIA Notification to the relevant authority, along with a pre-feasibility report or conceptual plan of the project.
- ii. **Screening** (only for Category B projects): Scoping entails a further sub-division of Category B projects into B1 and B2, on the basis of whether or not they warrant a full Environmental Impact Assessment Report (“**EIA Report**”). B2 projects are simply appraised on the basis of their Form I and conceptual plan. On the other hand, B1 projects (such as the Proposed Project) are issued detailed Terms of Reference (“**ToR**”) by the SEAC.
- iii. **Scoping:** This is the process of determination of detailed and comprehensive ToRs by either the relevant authority, addressing all pertinent environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought.
- iv. **Public Consultation:** The process by which the concerns of local affected persons and others who have a stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate.
- v. **Appraisal:** This refers to the scrutiny of the application and other documents like the Final EIA report and the outcome of the public consultations including public hearing proceedings by the relevant authority in respect of the project, based on which the said authority makes its recommendation.

- vi. **Grant or Rejection of EC:** The recommendation of the EAC or the SEAC, as applicable, is considered by the regulatory authority, which then deliberates and conveys its decision for grant of EC for the particular project.
12. The Project Proponent herein duly followed the above procedure as applicable to the Proposed Project, and consequently, the EC was granted to it on 23.08.2019.

CHALLENGES TO THE EC DATED 23.08.2019 IN THE INSTANT APPEAL

13. That it is humbly submitted that the Appellant herein, being one of the largest industrial conglomerates of the country, owns the entirety of the land surrounding the site of the Proposed Project. Furthermore, it is a matter of record that the Appellant had made repeated attempts to purchase Respondent No 1's land on which the Proposed Project is being set up. When the same was not possible, the instant Appeal was filed by the Appellant in order to prevent setting up of any industry in the area.
14. The Appellant's conduct in the instant appeal further evidences the Appellant's *mala fide* motives. The Appellant has consistently been improving its case. In this respect, it is pertinent to submit that the original grounds of the said appeal were entirely premised on the wholly misleading basis that the Appellant's units next to the Proposed Project were "defence installations" executing projects of national importance, and as such, were entitled to special protections. It was only later that the grounds were belatedly expanded to include unfounded assertions regarding the grant of EC to the Proposed Project.
15. Importantly, the Ministry of Defence (Respondent No 5 herein) in its Counter-Affidavit has categorically stated that the Appellant's stand that its units in the vicinity of the Proposed Project are defence installations is wholly inaccurate and misleading, and that the present appeal was actually an adjudication of a private dispute between two private parties:

7. As regards prohibited areas, Works of Defence Act 1903 (WODA 1903) is an act to provide for imposing restrictions upon use and enjoyment of land in vicinity of works of defence in order to ensure safety and security of the works. As per the act, work or work of

*defence means any establishment, installation, assets etc under Ministry of defence. The Land Wing in the Department of defence handles the notification of WODA 1903 around the defence installations of Army and that does not relate to Defence manufacturing facilities. **The L&T facility is a defence manufacturing facility and Works of Defence Act 1903 (WODA 1903) does not relate to defence manufacturing facility.***

*8. It is respectfully submitted that as **it is a dispute between two private companies** it is submitted that the case should be decided on merits. **(Emphasis supplied)***

16. Even so, due consideration has been accorded to the amended grounds taken by the Appellant in the present appeal. In view of the said grounds, this Hon'ble Tribunal was pleased to constitute the High-Powered Committee *vide* the order dated 21.01.2021. Notably, the Committee consists of technical domain experts including erstwhile officers from the MoEF, the Central Pollution Control Board, along with renowned environmental experts and scientists, such as scholars from the National Environmental Engineering Research Institute Nagpur, and the Indian Institute of Technology Mumbai.
17. It is thus *ex facie* evident from the Appellant's conduct that the instant Appeal has not been preferred by the Appellant on any genuine environmental concerns, but is in fact designed to further its own vested commercial motives. **The Appellant is only seeking an adjudication of its own private commercial interests by way of the present appeal.**
18. In addition to the original objections raised (as detailed above), the Appellant also introduced certain new objections to the grant of the impugned EC at different stages in the instant Appeal by way of an afterthought, in order to prolong and protract the proceedings. The said objections can primarily be summarized as follows:
 - i. The Location of the Proposed Project
 - ii. The purported lack of fitness of the Panchayat Road
 - iii. The alleged inadequacy of land allotment
 - iv. The usage of the Coastal Sea Route
 - v. The purported impermissibility of the Proposed Project by SUDA

- vi. The alleged non-application of mind by relevant regulatory authorities
 - vii. The alleged non-disclosure of environmental sensitivities in Form I
19. The responses submitted by the Project Proponent to the aforesaid issues are laid down in detail herein below:

I. Location of the Proposed Project

20. The Appellant has sought to rely on the Hon'ble Tribunal's Orders dated 10.07.2019 and 23.08.2019 (*See: Order in OA No. 1038/2018 @p 797-827 of amended Appeal*) to contend that the grant of EC to the Proposed Project in Surat should not be permitted as it is in violation of the aforesaid orders. The Appellant misleadingly seeks to rely on entry 26 in paragraph 11 of the Order dated 10.07.2019 which provides the CEPI scores for various industrial clusters:

The CEPI Scores in descending order for Industrial Areas/Clusters monitored during 2018

Sl. No.	Name of Polluted Industrial Areas (PIAs)	Air	Water	Land	* CEPI Score	# Status of Environment
26.	Surat (Gujarat)	46.00	68.25	56.00	76.43	An_Wc_Ls

21. It is humbly submitted that this contention is utterly misleading. The Appellant has erroneously sought to contend that the above table implies that industrial activity in the entirety of Surat must be stopped. As is evident from a bare perusal of the aforesaid orders, the hon'ble Tribunal had directed the States to *regulate* industrial activities in the severely/critically polluted industrial clusters within the States by formulating action plans for environmental improvement in such areas.
22. The Gujarat Pollution Control Board ("**GPCB**") accordingly identified certain polluted clusters pursuant to the directions of the Hon'ble Tribunal. The GPCB office order dated 11.11.2019 (*See: Annexure R1/3 of R1 reply @ Pp 1013-1027*) identified GIDC Sachin and GIDC Pandesara among others. These are the only two such identified clusters that constitute the CEPI Score of Surat, and which are remotely in the vicinity of the Proposed Project. Industrial activity within these clusters was sought to be regulated by the GPCB – even within these clusters, no complete prohibition on industrial

activities has been imposed. This regulation has been effected through the imposition of additional conditions in the identified polluted areas. It is extremely pertinent that even both of these clusters are in fact located at a considerable distance of 14 kms (after the buffer zone of 5 kms) from the site of the Proposed Project. The same is evident from the following map (*See: Map @p 1028 of R 1 Reply to Appeal*):



23. Furthermore, it is relevant that the location of the Proposed Project is at the Hazira Industrial Area in Surat, which is one of the most industrialized areas in the country.
24. The contentions of the Appellant in this respect are therefore without any credible basis whatsoever. The Report of the High-Powered Committee took note of this in paragraph 8(i), and also noted that the orders sought to be relied upon by the Appellant had in any event been stayed by the Supreme Court:

i. *As per the available records, Surat with the Comprehensive Environment Pollution Index (CEPI) of 76.43 falls under the category of critically polluted areas (Areas: Pandesara Cluster and Sachin cluster) **The project site of M/s. SIL is located at a distance of 14 km from buffer zone of Pandesara Cluster and Sachin cluster.** The Hon'ble Supreme Court vide its Order dated 22/09/2020 in Civil Appeal Diary number 19271/2020 imposed a stay on the operation of the impugned orders dated 10.07.2019, 23.08.2019 and 14.11.2019*

passed by the National Green Tribunal, Principal Bench, New Delhi with respect to CEPI areas.

(Emphasis supplied)

25. In light of the above submissions, this contention of the Appellant is clearly without any merit and deserves to be dismissed.

II. Panchayat Road

26. The Appellant has impugned the grant of the EC on the ground that the Panchayat Road near the Proposed Project is unsuitable for the said project to proceed. There are three aspects that the Appellant has sought to highlight:

a. Load bearing capacity

27. The Appellant has sought to contend that the Panchayat Road which is part of the transportation route of the Proposed Project is a *kaccha* road without adequate load bearing capacity for the vehicular traffic expected to be caused by the Proposed Project.

28. This is patently false. At the very outset, it may be noted that the transportation route proposed consists of National/State highways, and only the last part of the route (about 1.2 kms) consists of a Panchayat Road, which is also a *pakka* metal tarred road.

29. Furthermore, the Project Proponent has undertaken a detailed Traffic Study in order to address the concerns raised by the Appellant in respect of the Panchayat Road and the same has been submitted before the Expert Appraisal Committee (*See: Traffic Study Report @pp 240-280 of the Committee Report*). The said study undertakes a thorough impact assessment in addition to the assessment already conducted in the EIA Report for the Proposed Project (*See: EIA Report @pp 432-434 of Committee Report*). The High-Powered Committee has observed in this respect that the road has adequate load bearing capacity given the increase in traffic projected. The calculations relied upon by the Committee are reproduced as follows:

xiii. The impact on existing traffic was mentioned in the EIA report at page 97 and additional information was sought by SEIAA with respect to the transportation aspect. The material and finished product quantity along with number of trucks required are as below:

S.No.	Raw Material & Product	Quantity Million TPA	Quantity TPA	Quantity TPD	Source	Mode of Transport	No. of Vehicles (Truck/day)
1.	Clinker	2.0	20,00,000	6061	Captive	Sea	184
2.	Additives like Gypsum, Fly Ash, Slag				Purchase	Road	
3.	Fuel	0.06	60,000	182	Purchase	Road	
4.	Cement	2.0	20,00,000	6061	Captive	Road/Sea	179
Total No. of Trucks Required							363

xiv. As per the written submission made by the project proponent on 15/04/2021, and as per new recommendations of IRC (<https://thelibraryofcivilengineer.files.wordpress.com/2015/09/irc-sp-41.pdf>), the equivalent PCU factor for 4-6 Axle Truck/Trailer (fast moving) vehicle is 4.5. The modified equivalent PCU for proposed project will be as follows:

No. of trucks required per day = 363

Equivalent PCU factor for 4-6 Axle = 4.5

PCU per day for 363 Trucks = $363 \times 4.5 = 1633.5$ per day or 68.06 say 68 PCU per hr. The modified traffic scenario considering 68 PCU per hr presented in table below:

Modified Traffic Scenario in case of 68 PCU and LOS

S.No	Road	Increased PCUs	Modified V (Volume in PCU per hr)	C (Capacity in PCU per hr)	Modified V/C Ratio	LOS (Level of Service)
1.	National Highway 6	$68 \times 60\% = 41$	$1421 + 41 = 1462$	3000	0.48	C
2.	State Highway 168	$68 \times 40\% = 27$	$743 + 27 = 770$	1250	0.62	D
3a.	Approach Road	68	$190 + 68 = 258$	1250	0.21	B
3b.	Panchayat Road*			900	0.28	B

*For considering modified PCU factor of 4.5, the LOS value of Approach road / Panchayat Road (Sr. No. 3.a) will change from A to B i.e. Excellent to Very Good. In this scenario, the impact can be further reduced by utilizing the trucks bringing clinker for cement dispatch to the sea route. As per the present market condition, about 118 trips can be reutilized (same truck will be used for clinker in up and cement in down) which will negate approx. 20 PCU per hour (actual 22). Thus

only 68-20 = 48 PCU per hour will be the net impact as per the previous scenario of traffic.

30. On the basis of the above, the High-Powered Committee also noted:

*xvi. **It has been reported that the Panchayat Road is found to be having a carrying capacity of 1250 PCU per hour on which an average 190 PCUs travel per hour. 48 PCU per hour will be the net additional impact on the existing traffic due to the SIL project.** SIL has submitted a traffic management plan and presented that the approach road (Panchayat Road) is "Pucca" (Metal tarred) and having a current width of more than 15 meters throughout the entire 1.2 kms stretch from the Highway to the plant. **(Emphasis supplied)***

31. As can be seen from a perusal of the above, the increase in traffic contributed by the Proposed Project is well within the permissible capacity of the Panchayat Road. After a detailed analysis of the load bearing capacity of the said road and the impact of expected vehicular traffic, it is evident that the concerns sought to be raised by the Appellant are without any credible basis.

32. It is also relevant in this respect that the Panchayat Road in question was constructed by L&T itself pursuant to an Order of the Hon'ble Gujarat High Court, and is being used regularly for transportation purposes by the various industries that operate in the vicinity of the site of the Proposed Project (including the Appellant's own industries). This was also noted by the High-Powered Committee in its observations:

*xvii. The Panchayat Road of 1.2 km only, for which the load bearing capacity was impugned by the L&T, was constructed by L&T Limited itself pursuant to directions of the Hon'ble High Court of Gujarat in Special Civil Appeal No 10850/2009 titled as "Sukhabhai Bhikhabhai Aahir & 29 others. Vs. Principal Secretary & 3 others". Furthermore, the Panchayat Road has been disclosed and sanctioned to be a 22-meter-long road under the sanctioned SUDA Development Plan. **The Panchayat Road has been constructed pursuant to judicial directions and in accordance with applicable regulations and standards, is a 'Pacca' road and is in fact being used for movement of commercial vehicles such as the 34 tonner trucks proposed to be used by the SIL.***

xviii. The panchayat road under question is also being used by other industries existing in the area mentioned at paragraph 7(xvi) above for several years. It may be noted that this road is being used by heavy industries such as Larsen & Toubro. (Emphasis supplied)

33. It is therefore evident from the foregoing that the grounds sought to be raised by the Appellant are frivolous, and that the Proposed Project will not cause any adverse impact on the Panchayat Road in question on account of increased traffic.

b. Width

34. The plea of the Appellant with respect to the width of the Panchayat Road is baseless. It is submitted that the said road is a proper metal tarred road having a sanctioned width of 22 meters. In this respect, it is important to take note of the width measurement undertaken in the Traffic Study Report. The said measurement has been done manually at 11 points. The total length of the Panchayat Road is 1.62 km from NH-6 (earlier NH-53) to Proposed Project.

35. A map of the points at which the width was recorded and the measurements so obtained are extracted herewith from the Traffic Study Report (*See: Traffic Study Report @p 257 of Committee Report*):

S.No.	Point	Lattitude	Longitude	Width (m)	Width (ft)
1	A	21° 8'59.62"N	72°38'59.80"E	12	38
2	B	21° 8'57.11"N	72°39'0.28"E	12.2	40
3	C	21° 8'56.35"N	72°39'0.54"E	21.45	70.39
4	D	21° 8'51.66"N	72°38'59.47"E	20.05	65.77
5	E	21° 8'47.21"N	72°38'58.41"E	15	49.26
6	F	21° 8'46.73"N	72°38'59.06"E	15.57	51
7	G	21° 8'46.65"N	72°38'56.89"E	9.20	30
8	H	21° 8'47.84"N	72°39'10.75"E	15	49.30
9	I	21° 8'48.59"N	72°39'19.18"E	16	53
10	J	21° 8'52.40"N	72°39'36.18"E	17.38	57
11	K	21° 8'51.47"N	72°39'38.53"E	34.5	113

The capacity of the Panchayat Road as per width of the road is 1250 PCU. However, as per IRC, 1990; the carrying capacity of Panchayat Road notified by Collector of District & having 2- Lane (Two way) for roads with free frontage access, parked vehicle & heavy crossed traffic is 900 PCU. There is a

possibility of additional PCU on this road. **The panchayat road is pucca road (metalled road) and as per SUDA vide letter no. 252927 dtd 08/01/2021, the proposed site falls under industrial zone with 22 m wide road for industrial traffic.**



Figure 10. Measurement of Panchayat Road (1.62 km)

36. It is evident from the above that the Panchayat Road can easily support the movement of additional trucks required for the Proposed Project.

c. Transport route and alleged adverse impact on villages

37. The Appellant has claimed that the transport route along the Panchayat Road would necessarily require the Project Proponent to pass by the adjacent villages for vehicular movement, since the Proposed Project is surrounded by the Appellant's units in a "horseshoe" formation. The Appellant has relied on the following map (*See: Map annexed @p 29 of Additional Written Submissions of R 1*):



38. It is submitted that the actual route and the alternate route available to the Project Proponent are depicted herein (*See: Map Annexed @p 31 of Additional Written Submissions of R 1*):



39. Furthermore, Suvali clearly does not fall on the transportation route that is to be used for the Proposed Project, as is evident from the following map (*See: Traffic Study Report @p 260 of Committee Report*):



Figure 17. Current Scenario of Panchayat Road Linking to Suvali Village

40. It is evident from the above that the Suvali village would not be on the transportation route. A mere perusal of these maps show that the plea of the Appellant is misconceived and is predicated on depicting a false and incorrect

picture as to the transportation routes proposed to be used by the Respondent No 1.

41. Furthermore, the village is anyway not located in a downwind direction from the Proposed Project, and as such, is not likely to be impacted by the emissions from the Proposed Project (*See: Table 3.4 in EIA Report @p 420 of EIA Report*).

42. The High-Powered Committee took note of the same at Paragraph 8(ii):

*ii. The Suvali village is located at a distance of 1.89 kms from the proposed SIL project site. **It does not fall on the transportation route from highway to the SIL plant, nor located in downwind direction from the plant, hence is not likely to be affected by stack emissions from the plant.***

(Emphasis supplied)

43. It is humbly submitted that in light of the aforesaid, the plea of the Appellant is demonstrably false and misleading, and has been taken with *mala fide* motives in order to somehow get the Project Proponent's EC quashed for its own ulterior interests.

III. Adequacy of land allotment

44. The Appellant has sought to raise unsubstantiated grounds regarding the adequacy of the land allotted for the Proposed Project. It is submitted that the EIA Report clearly demarcates the land usage in the Proposed Project (*See: EIA Report @p 539 of Committee Report*):

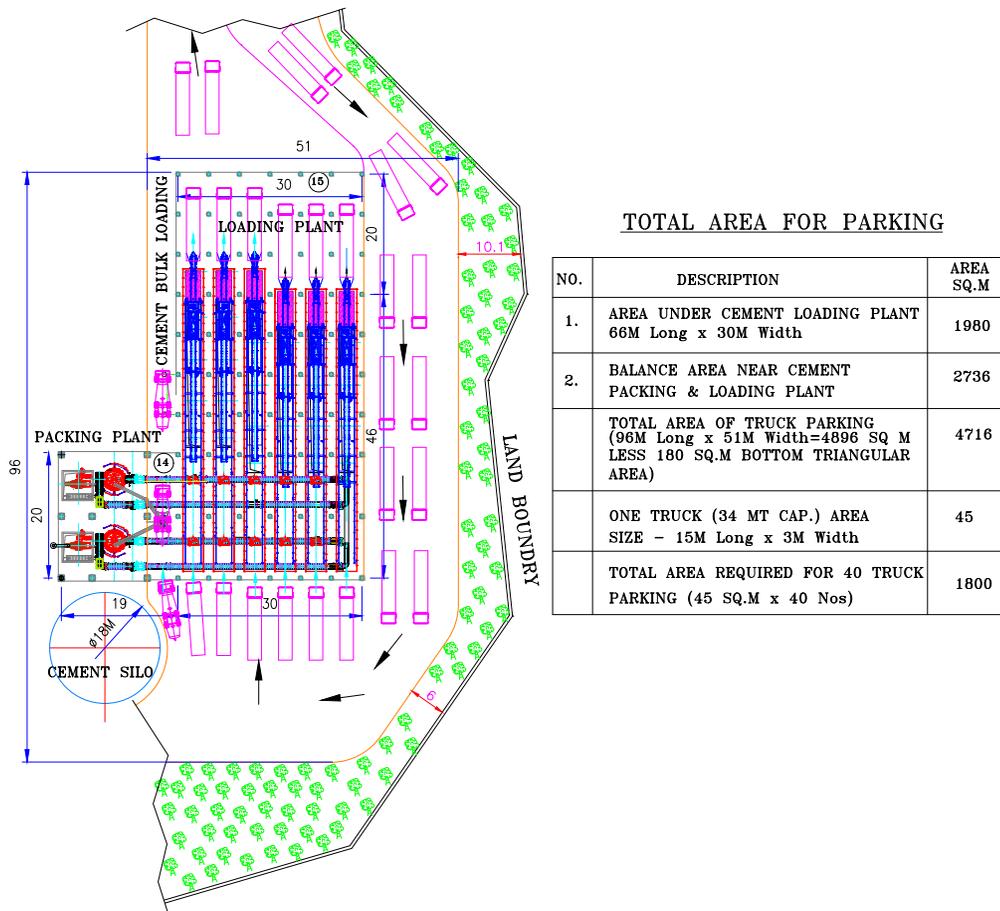
Table 11.3 Bifurcation of Plot area

#	Particulars	Total Area (in Ha.)	Area
1.	Production Plant	0.712	14.66%
2.	Office & Lab Area	0.022	0.46%
3.	Raw Materials Storage Area	0.632	13.01%
4.	Solid Waste Storage Area	0.005	0.10%
5.	Open Space	1.835	37.79%
6.	Green Belt	1.650	33.98%
	Total	4.856	100.00%

45. The EIA Report thus demarcates 37.79% (i.e. 18350 sq. mts.) of the land area of the Proposed Unit to be an 'open space' of which, the Respondent No 1

has since earmarked about 10% (4716 sq. mts.) as dedicated parking space for the Proposed Project which can accommodate about 45-48 trucks.

46. This is evident from the Map showing dedicated 'greenbelt area' and 'parking areas' (See: Slide submitted before the Respondent No 3 (SEIAA) @ P 1200 and @ P 1583 of R 1 Reply):



47. The Committee has also accordingly noted that the space allocated for the Proposed Project is sufficient in Paragraph 8(vii):

vii. The land area envisaged for the project is 4.856 ha and it is sufficient for the proposed project activity of M/s. SIL

48. It is abundantly clear from the above that these are frivolous grounds being agitated by the Appellant only so as to find ways to stop the Proposed Project from coming up, despite the fact that such concerns have been adequately addressed in prior submissions made by the Project Proponent.

IV. Coastal Sea Route

49. At the very outset, it is pertinent to submit that the Appellant's contentions with respect to the transportation route of the raw materials has never been raised at any of the numerous opportunities for raising its concerns that the Appellant has received. It was not even a ground in the amended appeal before this Hon'ble Tribunal. The first time this ground has been raised is in

the proceedings before the High-Powered Committee. In line with the Appellant's continuing conduct with respect to this dispute, this is yet another frivolous ground being raised belatedly so as to further its commercial interests.

50. It is humbly submitted that the said contention is entirely irrelevant to the present proceedings. The question of transportation of raw materials from the sea route is too remote to be assessed under the environmental impact assessment of the Proposed Project or to impact the grant of the EC on this basis, which is always granted specific to the location of the Proposed Project, and is concerned with the impact of the setting up of the said Project on the areas immediately surrounding this location. In any event, the EIA Report duly discloses the sea route to be used by the Project Proponent for transportation. As such, these facts have been duly presented before SEAC and were therefore a part of the appraisal done by the authority. (*See: Para 2.6.3 and Table 4.17 of EIA Report @p 392 and @p 469 of Committee Report*)

V. SUDA

51. It is humbly submitted that the Appellant's averments in relation to the purported prohibition on the setting up of the Proposed Project by the SUDA are misleading.
52. At the outset, it must be noted that the impugned EC was granted prior to the sanction of SUDA Development Plan of 2035 and the Zoning classifications under the SUDA Development Control Regulations (which came into effect on 08.10.2020).
53. The General Development Control Regulations, 2017 were sanctioned for the entire State of Gujarat in 2017. However, these regulations merely prescribe how different zones are to be utilized. The classification of those zones in a particular area is undertaken pursuant to the Development Plan of that area, sanctioned by the appropriate authority – in this case, SUDA. The SUDA Development Plan of 2035 classifying the area into different zones, which the Appellant seeks to rely upon, along with the SUDA Development Control Regulations, came into effect on 08.10.2020 (after the grant of the EC on 23.08.2019 and during the pendency of the present Appeal). It is humbly

submitted that the said notification must not be retrospectively applied. This has been noted by the High-Powered Committee in paragraph 8(xi):

*xi. As per the Surat Urban Development Authority (SUDA) notification dated 8/10/2020, the proposed cement grinding unit project site falls under the General Industrial Zone and red category industry is not allowed to be set up in the area. However, **the EC to M/s. SIL was granted on 23/08/2019 which was prior to 8/10/2020 i.e. issuance of SUDA Notification.** It may also be noted that the proposed unit is not an integrated cement plant. It is a grinding unit where, clinker (brought from outside), fly ash and slag (waste materials from power plants and steel plants) are ground and converted to a useful green cement. Clinkerization process makes the cement plants a red category industry due to pollution of particulate matter, SO₂, NO_x and Carbon Monoxide. In grinding units only particulate matter is emitted during grinding and that too much less than that in the clinkerization process.*

[Emphasis supplied]

54. In any event, it must be noted that the Project Proponent has already applied for requisite approval from SUDA in relation to the Proposed Project, as was also recognized by the Committee at Paragraph 8(xii) of its Report:

xii. PP has submitted an application to SUDA on 7/09/2019 for obtaining requisite permission as per the prevailing regulatory norms. The application is reportedly under process by SUDA and the approval is yet to be accorded.

55. As was explicitly stated by the Ld. counsel present for SEIAA at the hearing on 05.10.2021 before this Hon'ble Tribunal, cement plants such as the Proposed Project are eligible to apply and receive permission from the authority in relation to setting up of an industrial unit. SUDA clearly has the discretion to permit industrial activity in the area, as even the regulations sought to be relied upon by the Appellant only prescribe that there are certain types of development which "may" not be permitted in a certain area. Thus, the discretion to permit or not permit a certain activity in the area would vest with SUDA.

56. Importantly, the Respondent No 1 is in any event bound to comply with all applicable laws, regulations and rules, including *inter alia* any regulations imposed by SUDA, and shall be bound by the same. In fact, even the Impugned EC by way of Condition 'A(e)' requires the Respondent No 1 to comply with all Local bye-laws of concerned authorities.

57. Furthermore, and without prejudice to the above, it is submitted that the zone classifications under the SUDA Regulations on which the Appellant and the Respondent No 6 have placed reliance upon, are not applicable to the Hazira Industrial Zone. This is ex-facie evident from the Surat Masterplan 2035 prepared by the SUDA which states as follows (**See: Relevant extracts of the SUDA Masterplan 2035 @p 120 – 122 of Additional Written Submissions**):

*The Industrial Zone and Obnoxious and Hazardous Industrial Zone existing in DP 2004 **have been continued including the Hazira Industrial Zone as per the erstwhile Hazira Area Development Authority's development plan.***

[Emphasis supplied]

58. The SUDA Masterplan, 2035 further acknowledges the Hazira Industrial Area to be one of the largest industrial zones in the country meant for setting up industrial units, and recognizes the existence inter alia of multiple 'hazardous' petrochemical, heavy-forging, chemical and fertilizer industries within its periphery.

59. Moreover, it is also relevant that the Hon'ble Supreme Court in the recent judgment of *Rajeev Suri v DDA* (2021 SCC OnLine SC 7) has also laid down that the scope of the Hon'ble Tribunal's merits review is not unlimited, and is curtailed by the statutory limits prescribed under section 16 of the NGT Act, 2010, beyond which the Hon'ble Tribunal cannot traverse:

*503. NGT is not a plenary body with inherent powers to address concerns of a residuary character. **It is a statutory body with limited mandate over environmental matters as and when they arise for its consideration.** In a cause before it, NGT cannot directly go on to adjudicate on concerns of violation of fundamental rights and **once the contours of a subject matter traverse the scope of appeal from a grant of EC, the merits review by tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute.***

(Emphasis supplied)

60. Thus, in light of the foregoing, it is submitted that this is not a valid ground for the EC to be vitiated. Moreover, it is submitted that the Project Proponent is willing to obtain the relevant permissions before commencing the Proposed Project, in compliance with all applicable regulations.

VI. Non-application of mind

61. It is relevant to submit at this juncture that the Proposed Project has now gone through multiple layers of scrutiny, and the Appellant's concerns have been addressed before multiple forums.

62. To begin with, the Project Proponent applied for the grant of an EC and submitted the relevant documentation, and detailed ToRs were consequently issued for the Proposed Project by SEAC. In line with the procedure for grant of EC, the Project Proponent conducted a public hearing on 23.03.2019 whereby all objections to the Proposed Project were addressed, including those of the Appellant's, whose representatives were present at the hearing. Thereafter, the EIA Report in respect of the Proposed Project was filed by the Respondent No 1 on 31.03.2019.

63. The Appellant went on to re-agitate its concerns by writing to the State Environmental Impact Assessing Authority ("**SEIAA**") (*See: Letters dated 05.04.2019 and 13.04.2019 and 22.04.2019 @Pp 576-581 of Amended Appeal*). It is noteworthy that at the time, the Appellant's concerns were limited to the purported adverse impact of the Proposed Project on its own units located in the vicinity of the said project. At the meeting held by SEAC on 16.04.2019, and pursuant to the written representations by the Appellant, additional details from the were sought from the Project Proponent, including a point-wise action plan specifically in response to the Appellant's concerns (*See: Extracts of the minutes of the 497th meeting of SEAC dated 16.04.2019 @ pp 1160 of R1 Reply*). It is further pertinent to mention here that the Appellant was called for a meeting with the SEAC on 18.04.2019 to represent their issues/concerns (*See: Minutes of the 498th meeting of SEAC dated 18.04.2019 @ p 1725 of R3 Reply*).

64. These issues were specifically addressed by the Project Proponent as part of the additional information supplied by it to SEAC on 23.05.2019. (*See: (i)*

Transportation Routes and mitigation measures submitted before SEAC @ pp 1203-1206; (ii) Point-wise Reply given by Respondent No 1 to Appellant's queries before SEAC @ pp 1180-1188; and (iii) APCM to control fugitive emission @ pp 1208-1211). A presentation in this regard was also made before the SEAC (See: presentation made before SEAC @ pp 1547-1621). The same was considered by the Respondent No 3 in detail, which is inter alia evident from the Minutes of the 514th meeting held by SEAC on 12.06.2019. (See: extracts of minutes of 514th meeting of SEAC dated 12.06.2019 @ pp 1168-1170 of R1 Reply)

65. Accordingly, it was only after consideration of material by the Respondent No 3 that the decision to grant EC to the Respondent No 1 was taken. In this respect, the relevant test to weigh the factum of application of mind by an authority is the establishment of a reasonable link between the material placed before the decision-making body and the conclusions reached in the decision thereof (See: *Rajeev Suri v DDA 2021, SCC OnLine SC @Para 293*). The mere fact that additional conditions were imposed, in line with the information supplied by the Respondent No 1, *ex-facie* shows due application of mind by the Respondent No 3. (See: (i) *North East Affected Area Development Society (NEADS) & Anr. v Union of India & Ors. (Judgment dated 13.01.2015 in Appeal No 8 of 2011 passed by this Hon'ble Tribunal)*; (ii) *Ramesh Agarwal v. Union of India, MANU/GT/0090/2014*).
66. As such, it is evident from the record that all objections to the impugned EC and the responses of the Project Proponent have been considered in detail, and the said EC has only been granted after meticulous application of mind.
67. The High-Powered Committee has also duly looked into the grant of EC to the Proposed Project, and after applying its mind to the submissions of all relevant stakeholders, arrived at the conclusion that the EC deserves to be upheld, subject to certain additional conditions.

VII. Environmental sensitivities

68. Submissions on behalf of the Appellant have been made to the effect that there was deliberate concealment by the Project Proponent in disclosing certain Eco-sensitivities in its Form I. It is the Appellant's contention that such non-disclosure would vitiate the grant of the EC.

69. It is submitted that this plea is utterly misconceived. In this regard, it is humbly submitted that in adjudicating the issue of non-disclosure of information under Form I, this Hon'ble Tribunal in exercise of its appellate powers may be required to look at the following relevant parameters to determine whether or not a deficiency in information submitted would result in rejection of an EC – (a) **deliberate concealment** of (b) **material information**. It is submitted that in the absence of such parameters being met, an EC may not be quashed for non-disclosure of information, particularly when the same is inadvertent and inconsequential. This is particularly so because if no such threshold is prescribed then no EC could ever be granted keeping in view the sheer magnitude of the information required to be submitted and appraised for the grant of an EC.

70. In light of the aforementioned, it is humbly submitted that to determine whether lapses in information are fatal or not the test may be to examine the following issues:

- i. What is the *nature of the information* in question;
- ii. Whether the information was *deliberately concealed*;
- iii. Whether the *ultimate impact* of the non-disclosure of the said information has adequately been addressed in the Terms of Reference and the EIA Report in respect of the Proposed Project.

71. This is also in line with the Hon'ble Supreme Court's judgment in *Hanuman Laxman Aroskar v UoI* (2019 15 SCC 401) which states that any non-disclosure of information in Form I is likely to have a cascading effect on the framing of the Terms of Reference for the Proposed Project and consequently the EIA Report. Thus, the rationale behind non-disclosure being fatal was linked in the aforesaid case to the impact of the said non-disclosure, and whether or not it would ultimately be crucial in the environmental impact assessment. It follows that when such an impact is not seen on the ToRs or the environmental impact assessment, any inconsequential non-disclosure would thus not be fatal.

72. It is submitted that an examination of the Terms of Reference for the Proposed Project as well as the EIA Report (prepared based on the final Terms of Reference issued by SEIAA) clearly reveal that there has been no

dilution in the eventual environmental impact analysis in the present case, as was the case in *Hanuman Laxman Aroskar*. This is evident from the fact that relevant environmental sensitivities were duly taken into account in the Terms of Reference (@p 88-794 of Committee Report) accorded to the Project Proponent by SEIAA. Term XIII(2) of the aforesaid called for taking into account all environmental sensitivities in the area by the Project Proponent:

2. Project site specific details and site suitability with respect to siting criteria / guidelines. The site specific details should include distance of the project site from the nearest (1) Village (2) Water Body: River / Creek / Nallah / Reservoir / Pond / Canal (3) National Highway (4) State Highway (5) Railway line (6) Heritage site (7) National Park / Wild Life Sanctuary / Biosphere Reserve / Conservation Reserve (8) Reserve Forest / Protected Forest (9) Any other eco-sensitive areas like wetland, mangroves, coral reefs, migratory route of wild animals, turtle nesting ground etc.

73. Moreover, term XIII(27) mandated the Project Proponent to conduct ambient air quality monitoring at different locations within the study area. This air quality analysis was necessarily required to take into account any and all sensitive receptors in the area, including forests:

27. One season (except monsoon) ambient air quality monitoring at minimum 6 locations within the study area along with dates of monitoring. Parameters to be considered shall be in accordance with the revised national ambient air quality standards notified in November, 2009 and other project specific parameters. The monitoring stations shall take into account the predominant wind direction, population zone and sensitive receptors including reserved forests. There should be at least one monitoring station in the upwind direction and one monitoring station at / near the location where maximum ground level concentration is likely to occur.

74. In accordance with these Terms of Reference, the EIA Report of the Project Proponent duly discloses and takes into account all relevant eco-sensitivities near the Proposed Project:

Table 3.12 Land use Statistics (10 km)

(Source: Land use mapping and primary survey of the area)

%	Area sq km	Land Cover	Land Cover	Area sq km	%
6.79	21.96	Agriculture	Crop Land	13.25	4.10
			Fallow Land	8.71	2.69
5.97	19.31	Settlement	Settlement	19.31	5.97
41.42	133.92	Water body	Sea Water	100.65	31.13
			River/Ponds	33.27	10.29
13.91	44.97	Waste Land	Muddy	20.10	6.22
			Barren Land	24.87	7.69
31.68	102.43	Range Land	Grass Land	42.57	13.17
			Scrub Land	29.14	9.01
			Mangroves	30.71	9.50
0.22	0.71	Forest	Reserved Forest	0.71	0.22
100	323.28		Total	323.28	100

(See: Table 3.12 of the EIA Report @ p 429 of Committee Report)

75. In fact, a detailed study of the impact of the Proposed Unit on these factors was also conducted and disclosed in the EIA Report. This is further linked to the fact that the Proposed Project is a standalone cement grinding unit. As elaborated in detail hereinabove, the primary impact of these units on the

surrounding environment is through fugitive dust emissions, and the consequent effect on the ambient air quality and therefore on the surrounding area.

76. The impact assessment necessary for a standalone grinding unit is therefore primarily an analysis of the impact of the said unit on ambient air quality. The ambient air quality modelling study conducted shows that “no significant impact” is anticipated on the ambient air quality of the area due to the proposed project (*See: Chapter 4 of EIA Report @ pp 474-476 of Committee Report*):

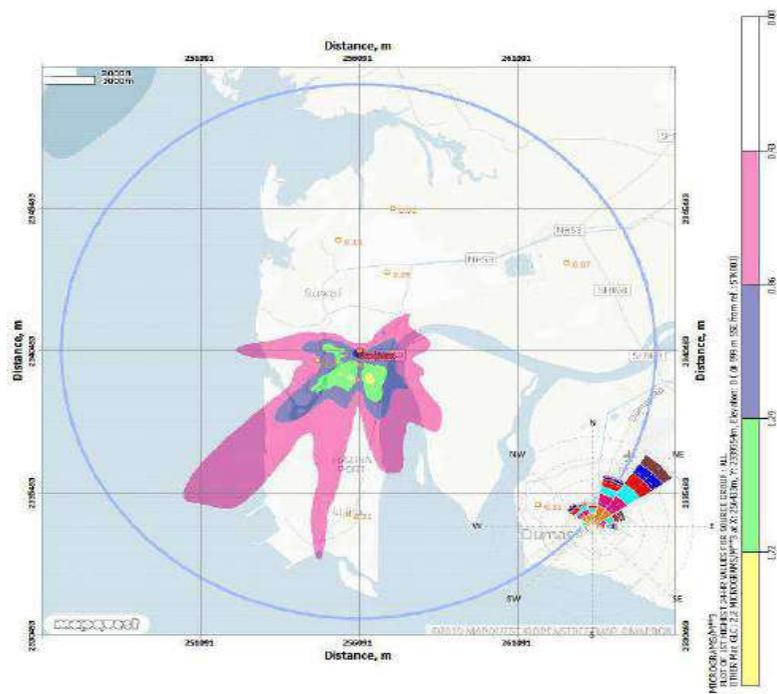


Figure 4.2: Isoleths of PM

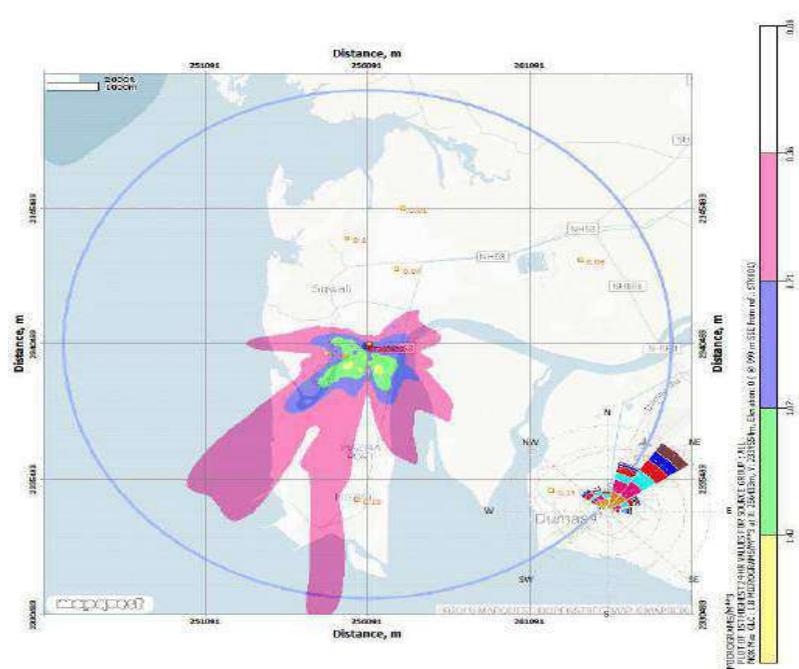


Figure 4.3: Isoleths of NOx

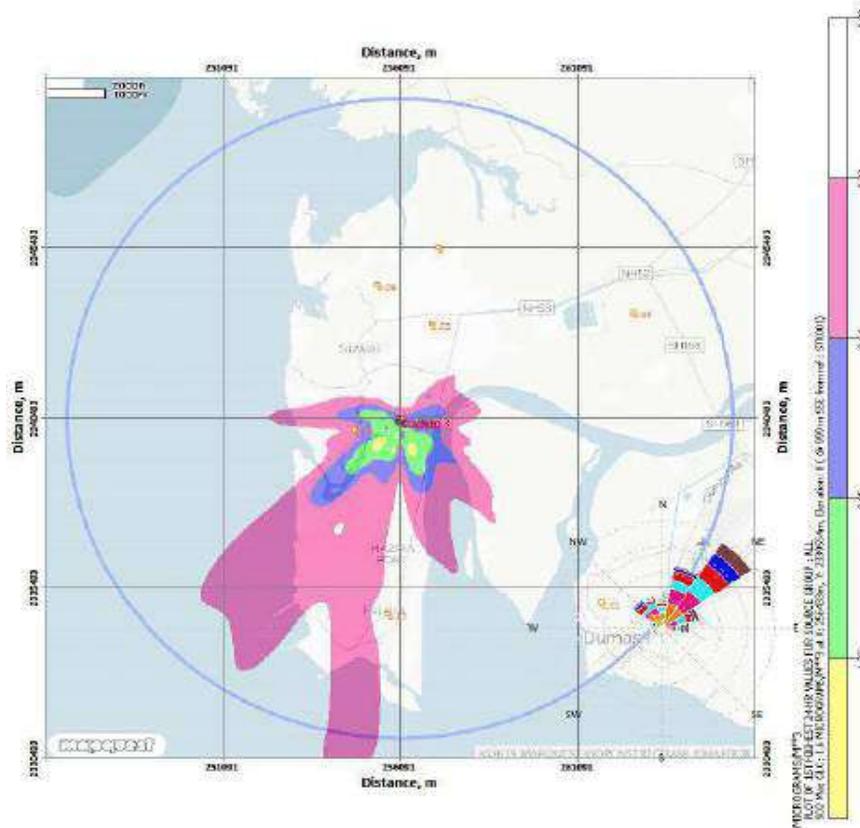


Figure 4.3: Isoleths of SO₂

When predicted 24 hourly ground level concentrations of PM, SO₂, and NO_x, emissions from the source is added to background maximum monitored values, resultant values remain well below the prescribed National Ambient Air Quality Standards at all the location. Hence, there is no significant impact is anticipated on the ambient air quality of the area due to the proposed project. Maximum GLC found at the distance of 1.3km. As part of precautionary measure, to minimize the likely environmental impacts on air environment due to the proposed cement grinding project, necessary mitigation measures are suggested along with APC to negate the air pollution. (**Emphasis supplied**)

77. Eight monitoring stations were chosen for the ambient air study (**See: Table 3.4 of EIA Report @p 420 of Committee Report**):

Table 3.4 Ambient Air Quality Monitoring Locations in the Study area

Code	Location	Distance/Direction from the Project site	Latitude and Longitude	Selection Criteria
A1	Project Site	-	21°08'58.05"N 72°39'04.54"E	-
A2	Sunvali	1.2 km/WSW	21°08'46.44"N 72°38'19.73"E	Crosswind
A3	Mora	2.9 km/NNE	21°10'28.91"N 72°39'34.29"E	Upwind
A4	Damka	5.0 km/N	21°11'41.42"N 72°39'39.73"E	Crosswind
A5	Rajgari	3.8 km/NNW	21°11'05.08"N 72°38'39.66"E	Crosswind
A6	Kavas	7.4 km/NE	21°10'42.01"N 72°42'49.76"E	Upwind
A7	Hazira	5.7 km/S	21°05'51.08"N 72°38'55.54"E	Crosswind
A8	Dumas	7.9 km/SE	21°06'04.42"N 72°42'23.71"E	Crosswind

78. The low incremental concentration levels were also noted in the EIA Report
(See: Table 4.23 @p 472 of Committee Report):

Table 4.23: Resultant Concentrations Value

Location	Background Maximum Conc. ($\mu\text{g}/\text{m}^3$)	Incremental Conc. ($\mu\text{g}/\text{m}^3$)	Resultant Conc. ($\mu\text{g}/\text{m}^3$)
PM₁₀ $\mu\text{g}/\text{m}^3$ (Permissible Limit :100 $\mu\text{g}/\text{m}^3$)			
Project site	82.4	0.00	82.40
Sunvali	86.4	0.77	87.17
Mora	79.1	0.05	79.15
Damka	84.5	0.01	84.51
Rajgari	84.2	0.13	84.33
Kavas	81.6	0.07	81.67
Hazira	82.5	0.21	82.71
Dumas	77.8	0.31	78.11
SO₂ $\mu\text{g}/\text{m}^3$ (Permissible Limit :80 $\mu\text{g}/\text{m}^3$)			
Project site	14.9	0.00	14.90
Sunvali	14.3	0.53	14.83
Mora	13.7	0.03	13.73
Damka	14.9	0.00	14.90
Rajgari	15.3	0.09	15.39
Kavas	14.8	0.05	14.85
Hazira	15.9	0.17	16.07
Dumas	14.1	0.22	14.32
NO_x $\mu\text{g}/\text{m}^3$ (Permissible Limit :80 $\mu\text{g}/\text{m}^3$)			
Project site	20.3	0.00	20.30
Sunvali	20.4	0.61	21.01
Mora	20.8	0.04	20.84
Damka	20.6	0.01	20.61
Rajgari	21.0	0.10	21.1
Kavas	20.6	0.06	20.66
Hazira	22.8	0.19	22.99
Dumas	19.2	0.25	19.45

79. In light of this, it is humbly submitted that there could not have been any deliberate concealment of any material information on part of the Project Proponent. All relevant information has been duly disclosed in the EIA Report, and the impact thereof has been taken into account.

80. In Form I (See: Form I submitted by Project Proponent @p 769-787 of Committee Report), under the heading titled Environmental Sensitivities, serial number (2) and its response are relevant:

(III) ENVIRONMENTAL SENSITIVITY

S. No.	Areas	Name/ Identity	Aerial distance (within 15 km.) Proposed project location boundary
1	Areas protected under international conventions, national or local legislation for their ecological, landscape, cultural or other related value	None	No any
2	Areas which are important or sensitive for ecological reasons - Wetlands, watercourses or other water bodies, coastal zone, biospheres, mountains, forests	None	Arabian Sea @ 3.62 in West direction Tapi River @ 0.89 in East direction

81. As is evident from a bare perusal of the above, the column does not call for the disclosure of mangroves at all. The Project Proponent duly disclosed the presence of the nearby water bodies in response to the question.

82. Furthermore, on the question of wetlands, the High-Powered Committee's observations are extremely noteworthy (at paragraph 8(xxi)):

xxi. No evidence or credible document has been made available by representative of Suvali Gram Panchayat as well as L&T in support of their contentions with respect to existence of notified wetlands in the project area, pollution & health concerns and degradation of agricultural land due to the proposed standalone cement grinding unit of M/s. SIL.

83. It is submitted that the Appellant has not provided a shred of evidence to the effect that any wetlands exist in the vicinity of the Proposed Project. Not just notified wetlands, the Appellant has failed to even provide any evidence to establish that there exist wetlands that have been inventoried by the government in accordance with the orders of the Hon'ble Supreme Court in *MK Balakrishnan v UoI* (2017 7 SCC 810). This is demonstrative of the Appellant's *mala fide* motives with respect to the present appeal. The Appellant's concerns are not substantive grounds with respect to any apprehended harm to the environment, but only a fishing expedition to find any ground that might lead to the EC being quashed so that their commercial interests can be served. As such, there is no merit in the contentions of the Appellant.

84. As mentioned above, as per law, the adverse impact of any non-disclosure in Form I is that the said information then escapes the Terms of Reference and therefore the environmental impact assessment in respect of the Proposed Project. In the present case, the Terms of Reference clearly accounted for all eco-sensitivities, as did the consequent analysis in the EIA Report.

85. Pertinently, in the recent *Rajeev Suri* judgment the Hon'ble Supreme Court has also observed that appropriate recourse in the face of misinformation in Form I is provided for in Paragraph 8(vi) of the EIA Notification (as reproduced hereinabove). In this context, the Court also noted that the Petitioners needed to provide a basis to allege fraud, misrepresentation or concealment of information, and the culling out of a specific fraudulent mental intent would be a prerequisite to establishing fraudulent

concealment in a court of law (See: *Rajeev Suri v DDA 2021 SCC OnLine SC 7 @Paras 479-481*).

86. Furthermore, the Hon'ble Supreme Court in *Rajeev Suri* goes on to distinguish the *Hanuman Laxman Aroskar* judgment in its decision, pointing out the egregious and outrageous facts in that case, which *ex facie* showed active and deliberate concealment of information on part of the Project Proponent which would have had a material and crucial impact on the environment in the area surrounding the Project. Similarly, in the present case, such facts are entirely absent – in fact, the Proposed Project is to be set up in an entirely commercial/industrialized area, and does not involve any ecologically sensitive zones in the vicinity:

495. Once an expert committee has duly applied its mind to an application for EC, any challenge to its decision has to be based on concrete material which reveals total absence of mind. Absent that material, due deference must be shown to the decisions of experts. The facts of the case do not reveal any deliberate concealment of fact/information from the EAC or supply of any misinformation. The petitioners' extensive reliance upon Hanuman Laxman Aroskar is misdirected and will not be of any avail in advancing their cause. We are in complete agreement with the dictum that full and correct disclosure and highest level of transparency are warranted in any application for EC. However, the present case is fundamentally different. The landscape of this project does not involve a greenfield component surrounded by forests and significant wildlife. It does not involve complete non-application of mind regarding a crucial aspect of the project, such as Ecologically Sensitive Zones. The entire basis of scrutiny and appraisal in Hanuman Laxman Aroskar was different. For, it involved a project which mandated compliance with all four stages of EC i.e., screening, scoping, public consultation and appraisal. Whereas, the present project, as already discussed above, is not subject to scoping procedure. In Hanuman Laxman Aroskar, various details in Form I/I-A were left blank, information regarding trees was actively concealed and absence of reasons coupled with cursory analysis of the application raised substantial concerns of

non-application of mind. *The fact situation in that case was enough for shaking the judicial conscience and invocation of powers of review. (Emphasis supplied)*

87. The meaning of the words “deliberate”, “deliberation”, and “premeditated” as provided in *Black’s Law Dictionary (See: 8th edition (South Asia))* are as follows:

DELIBERATE, adj. 1. Intentional; premeditated; fully-considered. 2. Unimpulsive; slow in deciding

[...]

DELIBERATION, n. The act of carefully considering issues and options before making a decision or taking some action;

[...]

PREMEDITATED, adj. Done with willful deliberation and planning; consciously considered beforehand.

(Emphasis supplied)

88. As can be seen from the above, Black's Law Dictionary combines "deliberate" with "premeditated", and defines both as actions that are planned and which have been considered before being carried out. The implication behind “deliberate concealment” is therefore a degree of premeditation. This interpretation has also been favoured by the Allahabad High Court in a different context in *Hari Singh v Dambar Singh*, 2009 SCCOnline All 631:

From perusal of meaning of word deliberate it appears that for holding an act of a person deliberate, there must be satisfaction of the court that the ‘Act’ is premeditated not all of sudden and the statement has been made carefully considering probable consequences of step. Nothing has been brought to my notice by which it can be inferred that mentioning of wrong date was premeditated and was made after considering probable consequences. (Emphasis supplied)

89. In the present case, it is submitted that there is no logical basis behind the allegation resorted to by the Appellant that the Project Proponent deliberately concealed information. A perusal of the EIA Report explicitly shows that all relevant information as detailed in the final ToRs has been duly disclosed by the Project Proponent. The said report was prepared by

independent NABET accredited consultants engaged by the Project Proponent, as notified by the MoEF (*See: Notification dated 03.03.2016, S.O. 648(E)*).

90. Furthermore, the alleged non-disclosure is also inextricably linked with the materiality of the information in question. Non-disclosure of immaterial information, which is not crucial in any manner to the determination of the environmental impact assessment of the Proposed Project, cannot be deliberate by its very nature since there is no logical rationale behind premeditated non-disclosure of such information. The said information would not have changed the outcome of the grant of environmental clearance in the first place.

91. In a different context, the Calcutta High Court (in *Arun Roy Chowdhury v Mr. Andrew W.K. Langstich*, 2017 SCC OnLine Cal 10916) made a similar observation with respect to the materiality of undisclosed facts and the deliberateness (or lack thereof) of the said non-disclosure:

*8. [...] Suppression means a deliberate non-disclosure of a relevant fact which, if disclosed, might have or would have tilted the order in different direction or would have led the Court not to pass the order which it did. Suppression therefore, must necessarily have to be in respect of a material fact which has a bearing on the decision rendered by the Court. **If the nature of the fact omitted or not mentioned is such that the decision of the Court would not have been altered, it cannot be said that it was deliberately suppressed by a litigant in Court.** In a litigation, there might be hundreds of facts which according to somebody's consideration should be brought to the notice of the Court and according to somebody else are irrelevant.*

92. In this respect, it is pertinent that the High-Powered Committee at Paragraph 8(viii) has taken note of the fact that there are some gaps in the Form I submitted by the Project Proponent. However, the Committee after detailed re-appraisal and deliberation has not found that such gaps are fatal to the grant of the EC.

93. It is accordingly submitted that in the present case, there has been no deliberate concealment of any material facts. In fact, the environmental impact assessment undertaken by the Proposed Project sufficiently accounts

for the eco-sensitivities in the surrounding region by virtue of the air quality assessment undertaken thereby. Given that the Proposed Project is a standalone cement grinding unit, the assessment required is primarily an evaluation of the impact on the air quality of the surrounding area. In this regard, the data suggests that all emissions are well within permissible levels, and in fact the ground level concentration is maximum at 1.3 kms from the site of the Proposed Project. It is thus abundantly clear that the Proposed Project would not have any adverse impact on any eco-sensitivities in the area.

94. In light of all of the above, it is submitted that the Appellant's contentions in respect of alleged concealment by the Project Proponent are without any credible basis. No such concealment was perpetrated by the Project Proponent, and there is no material information which has escaped assessment in the EIA Report of the Project Proponent. Thus, this contention is without merit and deserves to be dismissed.

CONCLUSION

95. It is reiterated that the Respondent No 1 has undertaken a detailed analysis of every environmental aspect prior to applying for the EC. The Impugned EC has been granted after due application of mind and contains satisfactory safeguards to mitigate all environmental concerns. It has now been scrutinized on multiple occasions before various forums, which have all concluded that the EC deserves to be upheld. It is humbly submitted that the said EC is sound and provides for adequate environmental protections.

96. In fact, it is relevant that the Proposed Project by the Respondent No 1 will play a key role in furthering socio-economic, industrial and economic development in the area. The Appellant, being the L&T Group, is one of the largest industrial conglomerates in India and has for its own oblique commercial motives filed the instant Appeal and consequently attempted to delay the setting up of the Proposed Project since more than the last two years, on wholly baseless and misconceived grounds.

97. In light of the foregoing, it is humbly submitted that the present Appeal deserves to be dismissed by this Hon'ble Tribunal with exemplary costs and the impugned EC deserves to be upheld.

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