

**WRITTEN SUBMISSIONS OF THE GOA FOUNDATION****Application No 107 / 2019****Goa Foundation v/s Dept of Mines & Geology & ors.****Brief Synopsis**

1. Applicant's grievance is that Vedanta Ltd. (R-4) has freshly commenced operation of two beneficiation plants (BP) for processing mineral ore (BPs 2A & 4A), without obtaining mandatory prior Environment Clearance (EC) under the Environment Impact Assessment Notification, 2006. The two BPs commenced operations in November 2019 on the basis of a Consent to Operate order issued in September 2019 by the Goa State Pollution Control Board (GSPCB). The continuing operations of BP nos 2A and 4A violate the provisions of the EIA Notification, 2006 & the EPA.
2. The Company (R-4) admits that BP Nos 2A and 4A do not have an EC. Its defense is that the BPs were constructed and commissioned in 1979, prior to the EIA Notification 2006 and, as there is neither expansion nor modification of the original BPs, no EC is required. Applicant has proved these statements are false.
3. The GSPCB admits to an Inspection Report of its officers in 2012 which observed that in addition to four existing BPs on R-4's then mining lease, "two more BPs of 250 MTH are under construction." Further, "after the installation of the new plants, two existing plants will be dismantled." The SPCB also states in its affidavit that in the year 2012, the existing BP Nos. II & IV were shifted approx. 500-600 mts distance and renamed as 2A and 4A. If the first statement is accepted, the second is false.

### Submissions

- 1. The operation of BP Nos 2A & 4A since November 2019 without an EC violates the provisions of the EIA Notification 2006. The Hon'ble NGT must take serious note of this violation of law for the past one year by the R-4, in brazen defiance of the regulations for protection of the environment.**

Mineral beneficiation is listed at Sr. No 2 (b) in the Schedule of Projects / Activities requiring prior EC. (*pg 129*) The Consent Order dated 19.9.2019 permits the R-4 to process 2.1 MT p.a. (*pg. 30*). As mineral beneficiation operations of > 1 MTPA require prior EC from the MoEF, the R-4 was required to obtain an EC from R-5 before commencing operation of the BPs. Despite the applicant drawing this violation to the attention of the Central and State Govt authorities, none has bothered to halt the operation of the BPs or withdraw the NOCs / approvals for their operations.

The Company has stated in its affidavit dated 26.2.2020, that the subject BP Nos 2A and 4A are existing since 1979 (*pg 65 - 66*), hence they do not require an EC as they were constructed prior to the EIA Notification 2006. This is a false statement; in fact, a blatant lie. Two BPs Nos II and IV were constructed earlier, but these are not the subject matter of this application, which is concerned only with BP Nos 2A and 4A – and that too, their fresh commencement of operations from November 2019.

The documents on record demonstrate that BP Nos 2A and 4A were constructed in 2012 and not in 1979:

- (i) The 2012 Inspection Report (*pg. 149*), produced by the applicant and admitted in the SPCB affidavit, states that while 4 BPs were existing at the time of the inspection in 2012, two more BPs were under construction and it is only after these two under-construction BPs are installed that the two existing BPs, with capacity of 250 MTH, will be

dismantled. In other words, two BPs – Nos 2A and 4A – were admittedly being constructed in 2012, even while the earlier ones were still in operation.

- (ii) The SPCB claims in para 13 of its affidavit (*pg 233*) that BP 2A & 4A are the same plants as BP II & IV which were constructed prior to 2006. This statement is false. The Inspection report records that, as informed, it is only after the two under-construction BPs are installed that two earlier constructed BPs will be dismantled. Hence, BP 2A and 4A cannot be the same plants as BP II and IV. In fact, BP Nos 2A and 4A are entirely independent of BP Nos II and IV.
- (ii) The SPCB states that in 2012, the BP Nos. II & IV were shifted approx. 500-600 mts distance and renamed as 2A & 4A. If this were true, the original names/numbers would have been maintained. However, a BP is not a piece of equipment which can simply be relocated elsewhere, as for eg., a JCB, which moves from place to place. A BP has to be erected – it needs a foundation. BPs involve crushing, washing, screening, construction of tailing ponds, etc. The location of BP 2A and 4A is 500-600 mts away from the BP II and IV. The BP Nos 2A & 4A were also erected before the older plants were dismantled. Hence, they had to be numbered differently from the earlier plants because they were new and different.
- (iv) Google pictures of the site where the two BPs are presently located also show that there was absolutely no construction and no plants at the site prior to 2006.

R-4 has thus committed a fraud on this Tribunal by stating that the two plants were constructed in 1979. R-4 blatantly lied in its first affidavit about date of construction of BP Nos 2A & 4A, where it made no mention of “relocation” of these plants from their old location to the new. It is only after

the applicant produced the Inspection Report and the Google images that R-4 has filed a fresh affidavit, shifted its stance, claiming the plants are “relocated” and admitted that the earlier BPs were Nos. II and IV and not 2A and 4A. The Hon’ble NGT should take serious note of the same and levy appropriate penalty on R-4 in terms of its earlier orders on polluter pays principle.

**2. The Supreme Court Judgment dated 7.2.2018 in Goa Foundation II (Judgment in *Goa Foundation vs Sesa Sterlite Ltd* [(2018) 4 SCC 218]) required the Company to obtain an EC for the operation of the BPs, even if they were the same plants operating earlier.**

As per the directions of the Hon’ble Supreme Court dated 7.2.2018 which set aside both – renewal orders of all mining leases and all ECs – all mining operations, including operation of BPs, were brought to an end on 15.3.2018. The apex court had specifically directed that fresh leases and fresh ECs would have to be granted for any mining operations to resume. In the case of R-4’s Codli mining lease (TC No. 70/52) the land being owned by the government, had already reverted to the government. The R-4 could not re-start any mining operations or mining related activities without fresh orders from the authorities.

R-4 avers that the ban imposed by the Hon. Supreme Court is in relation to ‘mining operations’ and not mineral beneficiation (*pg 62-63*). Even if this interpretation is correct (it is not), the fact that R-4 had to obtain fresh orders from the Director of Mines to operate the BPs (*pg. 23*) and also get a fresh lease of 13.67 ha. of land from the Govt. (*pgs 120-121*), clearly show that none of the permissions prior to the Supreme Court’s judgement survived after 15.3.2018. Hence, to operate the BPs, fresh prior EC was mandatory in 2019.

**3. The SPCB was derelict in its duty as it encouraged the EIA Notification to be violated by issuing “Renewal” of Consent Order when it was aware of the apex court’s order and that R-4 did not have an EC for the BPs. Although the SPCB is not an enforcing authority under the EPA (which is why this issue could not go to the Administrative Tribunal), it is nonetheless responsible to control pollution. Hence, BPs being a polluting activity, the SPCB should have, at the very least, made its consent to operate subject to R-4 obtaining an EC for the BPs.**

The SPCB is not an authority under the EPA. However, it is the primary authority responsible for the control of air and water pollution under the Air and Water (Prevention and Control of Pollution) Acts, 1981 and 1974 respectively. The SPCB is aware that the mineral beneficiation process generates considerable pollution as it involves further refining and winning of the ore. Further, that the consent to operate order is almost always the final licence required to commence mining activity. Hence the GSPCB ought to be especially careful to ensure that unless the industry satisfies all the mandatory requirements for control of pollution, it does not issue consent to operate.

As a body responsible for controlling pollution, the SPCB should have taken the precaution to at least make its consent to operate subject to R-4 obtaining an EC, as all earlier environmental approvals stood cancelled pursuant to judgement dated 7.2.2018. Recognizing this, in fact, R-4 applied for fresh “consent to operate” (p.25) whereas SPCB granted “renewal” (p.30), which it could never do after 7.2.2018.

The Hon’ble NGT may pass appropriate orders to ensure that, in future, Consent to Operate is not issued unless the SPCB is satisfied that all necessary permissions relating to pollution control are obtained or, in the

alternative, operation of consent order is subject to the party obtaining all necessary permissions.

#### **4. Maintainability of the O.A:**

R-4 has raised arguments concerning the maintainability of the “appeal” filed by the applicant since it purportedly impugns the Consent Order against which an appeal lies before the Administrative Tribunal, Goa.

Applicant has responded to this argument vide its Rejoinder dated 31-8-2020 (*pg 137*) and the same is briefly set out here.

(i) OA 107/2019 is not an appeal. It is an application u/s 14, 15 and 18 of the NGT Act. There is no alternative remedy for applications. Only for appeals.

(ii) The Hon’ble High Court gave liberty to the applicant to avail of any alternative remedy available to them and did not restrict liberty only to filing an appeal before the Administrative Tribunal.

(iii) O.A 107/2019 does not seek quashing of the consent order on merits under the provisions of the Air / Water Acts. It seeks implementation of the EIA Notification 2006. The Consent order enables the Resp No 4 to violate the EIA Notification, hence the prayer for its withdrawal. Applicant has also prayed for a direction to the Ministry of Environment to take action against the R-4. In the circumstances, the applicant has no alternative remedy except to file an application (which it has done) before this Hon’ble Tribunal.

**Prayers sought in the application**

- Stay of the operations of BP Nos 2A and 4A
- Direct withdrawal of the Board's Consent to Operate order
- Direct the Ministry of Environment to initiate action against R-4 for violation of EPA, 1986
- Impose penalties on R-4 in terms of the Polluter Pays Principle
- Direct the SPCB not to issue Consent to Operate orders, in future, without ensuring that EC has been granted, if so required.

**Some Dates, Facts and Relevant Page Nos**

- EIA Notification, 2006 - Extract of Schedule. Mineral Beneficiation is at Sr. No 2(b) - *pg. 128-129*
- SPCB Inspection Report dated 2012 - *pg 149-150*
- On 30.7.2019, R-4 requests the Chief Minister for permission to utilise the two BPs to process e-auctioned ore. *pg. 68*
- On 22/23. 8.2019, R-4 purchased 1.44 MT of e-auctioned ore. *pg 68*
- On 10.9.2019, R-1 granted permission to operate the BPs. *pg 68*
- On 19.9.2019, R-2 granted Consent to Operate the BPs. *pg 69*
- On 15.11.2019, R-3 approved a lease of 13.67 ha. of Sy No. 24/1 of Codli village to R-4 for 1 year. *pg 70*
- On 28.11.2019, R-3 handed possession of the land to R-4. *pg 70*
- In November 2019, R-4 commenced operation of BP Nos 2A and 4A *pg 6 para 17 of the O.A*



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