BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

ORIGINAL APPLICATION NO. 64/2016 (WZ)
(M.A. No. 01/2021, M.A. No. 02/2021, M.A. No. 03/2021,
M.A. No. 04/2021, M.A. No. 05/2021, M.A. No. 06/2021,
M.A. No. 08/2021, M.A. No. 11/2021, M.A. No. 12/2021
I.A. No. 31/2021, I.A. No. 33/2021 & I.A. No. 62/2021)

IN THE MATTER OF:

1. **Akhil Bhartiya Mengela Samaj Parishad**
   Mengela Samaj Bhawan,
   At Post Satpati,
   Ta. Dist. Palghar-401 405

2. **Ashok Thakoji Tandel**
   President of the Applicant No. 1,
   C-209, Sagar Samrat, Causeway Road,
   Mahim, Mumbai- 400 016

3. **Narender Purushram Naik**
   Secretary of the Applicant No. 1
   618/D6 Anand Mangal Society
   Sector No. 6,
   Charkop, Chandivali,
   Mumbai-400 067

4. **Vaibhav Ashok Vaze**
   President, Youth Wing of the Applicant No. 1
   Vasgaon, Vazewadi, Post Varor,
   Taluka Dahanu,
   Dist. Palghar-401 503

Applicant(s)

Verses

1. **Maharashtra Pollution Control Board**
   Through its Member Secretary,
   Kalpatru Building, Sion Mumbai

2. **The Maharashtra Industrial Development Corporation**
   Udyog Sarathi, Mahakali Caves Road,
   Andheri East, Mumbai- 400 093
   Marol Industrial Area

3. **Tarapur Environment Protection Society**
   Plot no AM-29/Pt,
   Nr Shivaji Nagar,
   MIDC Tarapur
   Dist Thane- 401 506

4. **The State of Maharashtra**
   Through its Principal Secretary,
   Environment Department, Mantralaya,

Madam Kama Road,
Nariman Point, Hutatma Rajguru Chowk,
Mumbai, Maharashtra-400 032

5. **The Union of India**
Through the Secretary, Ministry of Environment, Forests and Climate Change
Paryavaran Bhavan,
Lodi Road, New Delhi

6. **Central Pollution Control Board**
Parivesh Bhavan
CBD-cum-Office Complex East Arjun Nagar,
Delhi-110 032

7. **Fisheries Department**
Through the Commissioner of Fisheries Department,
Taraporvala Aquarium, Netaji Subhash Marg
Charni Road, Mumbai- 400 002

8. **JSW Steel Coated Products Ltd.**
JSW Centre,
Bandra Kurla Complex,
Mumbai-400 051

Respondent(s)

Counsel for Applicant(s):
Ms. Gayatri Singh, Senior Advocate with Ms. Meenaz Kakalia, Advocate

Applicant in IAs: Mr. Vinod Khera, Advocate in IAs 31/2021, 62/2021 & 77/2021

Counsel for Respondent(s):
Mr. Atmaram N.S. Nadkarni, Senior Advocate with Mr. Devashish Bharuka and Mr. Raghunath Mahabal, Advocates for TIMA (Respondent No. 9)
Mr. Sajan Poovayya, Senior Advocate with Mr. Amit Agashe, Advocate for TEPS (Respondent No. 3)
Mr. Rahul Garg, Advocate for MoEF&CC
Mr. Aman Bhalla, Advocate for CPCB
Mr. Mukesh Verma, Advocate for MPCB

PRESENT:
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Reserved on: 30th September, 2021
Pronounced and uploaded on: 24th January, 2022

JUDGMENT

BY HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER

SYNOPSIS

1. Raising grievance of discharge of untreated effluents into Arabian Sea at Navapur, and into creeks and nallas in the vicinity, in flagrant violations of provisions of Environment (Protection) Act, 1986 (hereinafter referred to as 'EP Act, 1986'), Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as '**Water Act, 1974**') and Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as '**Air Act, 1981**'), by industries established in the industrial area, set up by Maharashtra Industrial Development Corporation (hereinafter referred to as '**MIDC**') at Tarapur, present application has been filed by four applicants namely; Akhil Bhartiya Mangela Samaj, Ashok Thakoji Tandel, Narendra Parushram Naik and Vaibhav Ashok Vaze under Sections 14, 15, 17, 18 (1) and 20 of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act, 2010**'). Applicants have impleaded, besides statutory bodies namely; Maharashtra Pollution Control Board (respondent 1) (hereinafter referred to as '**MPCB**'), MIDC (respondent 2), State of Maharashtra through Principal Secretary , Environment Department (respondent 4) (hereinafter referred to as '**State Government**'), Union of India through Secretary, Ministry of Environment, Forest and Climate Change, (respondent 5) (hereinafter referred to as '**MoEF&CC**'), Central Pollution Control Board (Respondent 6) (hereinafter referred to as '**CPCB**'), Fisheries Department through Commissioner of Fisheries Department (respondent 7) (hereinafter referred to as '**CFD**'), private respondents namely; Tarapur Environment Protection Society (respondent 3) (hereinafter referred to as '**TEPS**') and JSW Steel Coated Products Ltd. (respondent 8) (hereinafter referred to as '**JSWSCPL**'), alleging that they are responsible for causing pollution and damage to environment, on account of discharge of untreated effluent in the nearby rivers, creeks and nallas which of ultimately reach to Arabian

Sea at Navapur, District Palghar, in State of Maharashtra. Respondent 9, an association of industries established at Tarapur Industrial Area was impleaded later on.

2. Respondent 3, i.e., TEPS, is a company incorporated under Section 25 of Companies Act, 1956, formed for exclusively looking after matters relating to environmental protection and pollution control in Tarapur Industrial Area of MIDC (hereinafter referred to as '**TIA MIDC**'). The affected water bodies, as per applicant, included Murbe creek running through Murbe till Mahagoan, Murbe-Satpati creek and Navapur-Dandi creek; and affected villages include Tarapur, Kamboda, Ghivali, Uchchheli, Dandi, Navapur, Alevadi, Murabe, Kharekuran, Satapati, Shirganv, Wadarai, Tembi, Dadara, Mahim and Kelave.

Pleadings in OA

3. Facts in brief, pleaded in the application, are that, Tarapur is a small town in Palghar District, State of Maharashtra. It is more known as "Industrial Town" located about 45 km North of Virar, on the Western railway line of Mumbai Suburban Division. Industrial area of Tarapur, set up by MIDC, is spread in and around 15 villages, having population as per census 2011, of 1,03,208. Broadly, villagers are engaged in traditional fishing which is carried out in varied fresh water resources including lakes, rivers, creeks and also in the sea. The villagers are part of indigenous fishing communities of State of Maharashtra. The grievance is that water resources, providing livelihood to the villagers and local residents, are made subject of grave degradation at the hands of respondents, on account of massive violation of environmental norms and laws, causing damage to environment in general and water bodies including rivers and sea, in particular.

4. MIDC is a statutory body constituted by State of Maharashtra and entrusted with the task of providing infrastructure for industries to operate in designated industrial zones. Such infrastructure includes providing necessary discharge pipelines to carry effluents to the designated points in the saline zones. MIDC is also required to provide water connections and maintain water supply to industries, enabling them to carry out their operations. Industrial area in Tarapur was established by MIDC in 1972. A large number of industries were setup in the said area. It is commonly known as largest chemical industrial estate in State of Maharashtra. Mainly chemical, engineering and textile industries are located, out of which 74 are highly polluting industries. 822 industries come in 'Red Category'.

5. Under Water Act, 1974, discharge of trade effluent directly in the river, etc. is not permissible unless it is treated by the concerned industrial unit by establishing Effluent Treatment Plant (hereinafter referred to as 'ETP'). In the past, there were several small scale industries which did not find it financially feasible, to establish separate ETP and thus a concept of Common Effluent Treatment Plant (hereinafter referred to as 'CETP') came to be evolved sometimes in 1980. CETP was to address problem of water pollution, by providing common facility, by treating, composite effluent, discharged by small scale industries, in a Cost Effective manner, adhering with specified norms. CETP was further expanded to cover even large and medium scale industries which had their own ETP but discharge treated water, in CETP, as a hydraulic load. Such arrangement had distinct advantage of single point control and also compatibility of effluents by 'Homogenization' and 'Neutralization'. This arrangement also facilitates better enforcement of water pollution regulations in its totality *viz-a-viz* impact on environment (receiving water

bodies) by having a single or fixed number of effluent's outlets. Over the years, CETPs have become essential part of environmental infrastructure in industrial areas.

6. TEPS is a body comprised of industries located in TIA MIDC, running, operating and managing a CETP to look after matters related to environmental protection and pollution control in TIA MIDC. CETP was commissioned by TEPS in TIA MIDC in 2006 with the capacity of 20 Millions of Liters, Per Day, (hereinafter referred to as 'MLD'). In 2009, capacity of CETP was enhanced to 25 MLD. 59 km effluent carrying pipelines run through TIA MIDC to dispose treated/partially treated effluent into Arabian Sea at Navapur which is about 8 km away from TIA MIDC. On the one hand, large number of industries were established in TIA MIDC contributing to industrial and commercial development of the country in general and State of Maharashtra in particular, but unfortunately, on the other hand, TIA MIDC also earned a bad name of causing severest pollution in the industrial area. TIA MIDC was identified as 'critically polluted area' in 1996 by CPCB. A performance status of CETPs in India was conducted by CPCB and report was published in October 2005 (Annexure A-2, page 37 of OA), where, in para 3.14, it was mentioned that "*Tarapur CETP (Maharashtra) has four-stage treatment but still these plants were not meeting standards. This reflects gross neglect in operation. If biological treatment units are properly operated and full attention is paid to proper settling and stages of treatment, as explained in Section 3.8 above, performance of these plants could be greatly improved.*"

7. There have been frequent leakages from CETP, run and operated by respondent 3, resulting in high pollution levels in water bodies in vicinity of TIA MIDC and this has been reported time and again in various

reports. One such report published in May 2005 by MPCB, titled as '*Report on Environmental Status of Thane Region',* has been placed on record as Annexure A-3 to OA, (page 45 of OA). As per the said report, TIA MIDC, Tarapur had a total 2034 industries, out of which 15 were large, 63 medium and 1956 small. Further classification, as per pollution level of aforesaid industries, given in the aforesaid report, is as under:

"**Industry Statistics of Thane Region**

Sub-region	Jurisdiction	Scale / Category	Large	Medium	Small	Total
Tarapur-I	MIDC Tarapur and all related issues	Red	15	56	375	446
		Orange	-	5	145	150
		Green	-	2	1436	1438
		Total	15	63	1956	2034

8. Para 4.2 of the said report, said "*there is deterioration of water quality in the vicinity of Tarapur Industrial area but the water quality is below alarming level. Central Ground Water Board has also conducted study for Tarapur industrial area in 2003 and has stressed the need of taking urgent corrective measures to mitigate the impacts of HW dumps and effluent reaching the nalla. The ground water quality observed at some location in MIDC area is presented in Table 5.".*

9. In para 4.3 of the said report with respect to TIA MIDC, it has been said, "*some quantity of the industrial effluent from the Tarapur MIDC area is reaching the Murbe Kaharekuran creek, as the present effluent collection and disposal systems are not adequate to cater the effluent load. Further the leachets from the HW dumps in MIDC area are also reaching the creek through some extent. This has resulted in deterioration of water quality in the creek over the years.*"

10. In 2010, CPCB in association with Indian Institute of Technology, Delhi (hereinafter referred to as '**IIT Delhi**') carried out an environmental assessment of industrial clusters across the country, with the aim of

identifying polluted industrial cluster and prioritizing planning need for intervention to improve quality of environment in these industrial clusters. Assessment was based on Comprehensive Environmental Pollution Index (hereinafter referred to as '**CEPI**'). The CEPI is a rational number that characterizes environmental quality at a given location, following algorithm of source, pathway and receptor. A sub-index score of more than 60 shows a critical level of pollution in the respective environmental component whereas a score between 50-60 shows a severe level of pollution with reference to respective environmental component. Industrial clusters with an aggregated CEPI score of 70 and above, were to be considered critically polluted, those with CEPI score between 60 and 70 were to be considered as severely polluted, to be kept under surveillance and pollution control measures were to be undertaken. In respect of TIA MIDC, the said study found CEPI score as 72.01, i.e., '**Critically Polluted Area**' which is at Sl. No. 36 on page 25 of the report (Annexure A-4 at page 76).

11. In view of above report, an Office Memorandum was issued by MoEF&CC on 13.01.2010, imposing certain temporary restriction on consideration of development projects in TIA MIDC and similar clusters/areas. Restriction says that development projects from industrial clusters with CEPI score above 70, received for grant of Environmental Clearance (hereinafter referred to as '**EC**'), in terms of provisions of Environment Impact Assessment Notification, 2006 (hereinafter referred to as '**EIA 2006**'), (including projects for stage-I clearance, i.e., scoping) which were in pipeline for EC or which would be received later, shall be returned to Project Proponents (hereinafter referred to as '**PP**'). The restriction initially was for a period of 8 months, i.e., up to august 2010, during which time, CPCB along with respective State Pollution control

Boards/Union Territory Pollution Committees, were to finalize a timeline action plan for improvement of environmental quality in the identified clusters/areas. Subsequently vide O.M. dated 26.10.2010, MoEF&CC lifted moratorium on consideration of projects for EC, based on inputs, received from CPCB. However, instead of improvement, pollution level in TIA MIDC deteriorated further, as is evident from annual report 2011-12 published by CPCB (annexure A-8 to OA). CEPI score at TIA MIDC was found 85.24 (at sl. No. 38, page 119 of OA). A Public Interest Litigation was initiated by filing Writ Petition, i.e., ***PIL No. 17 of 2011, Nicholas Almeida and Ors. vs. State of Maharashtra and Ors.*** in Bombay high Court, wherein, Court directed MPCB and MIDC to submit performance reports of various CETPs which shall be examined by listing the matter on third Thursday of every month, by the court. In the said Writ Petition, affidavit was filed on behalf of MPCB, (Annexure A-12) to OA. Affidavit was filed in January 2013 (sworn on 19.01.2013) and therein it was stated that CETP operated and managed by respondent 3 is only 25 MLD, while generation of industrial effluent is more than 33 MLD. Further, generation of effluent increased due to increase in production of some industries but capacity of CETP installed and commissioned by respondent 3, i.e., TEPS, was not increased. The affidavit shows that TEPS was formed on 25.08.2004 and commissioned its primary treatment plant of 20 MLD on 10.01.2006. Secondary and Tertiary treatment facilities for 20 MLD were commissioned in March 2007. The total area covered by CETP was 46,000 sq. meters. It enhanced capacity to 25 MLD, commissioned on 13.11.2009. Affidavit also stated that there was immediate and urgent need of expansion of capacity of CETP, at least to 37 MLD. In reply under Right to Information Act, 2005, to a query made by applicants, MPCB, vide letter dated 15.01.2016, has informed

that 35 to 40 MLD industrial effluent is generally discharged, 500 meters inside sea at Navapur (which included domestic effluent, approximately 5 MLD, from industrial colony from TIA MIDC) while capacity of CETP is only 25 MLD. It was also stated that National Institute of Oceanography (hereinafter referred to as '**NIO**'), has instructed for disposal of treated industrial effluents from Collective Effluent Treatment Centre, into deep sea, at a distance of 7.1 kms. In another query made by applicants, with regard to details of discharge of industrial effluent by industries in TIA MIDC, MPCB has submitted reply dated 09.03.2016 giving analytical results of outlet CEPT sample, surveyed by CPCB, and in respect of Chemical Oxygen Demand (hereinafter referred to as '**COD**'), Biochemical Oxygen Demand (hereinafter referred to as '**BOD**') and suspended solids, results are given, as under:

> *"a. The **Chemical Oxygen Demand (COD)** is the standard method for indirect measurement of the amount of pollution (that cannot be Oxidized biologically) in a sample of water. While the **prescribed standard is 250 mg/ 1,** as can be seen from the survey report of MPCB, the **average COD for the year 2013-2014 is 539.2, for the year 2014-2015 it is 656.4 and 2015-2016 it is 601.143.***
>
> *b. The **biochemical oxygen demand (BOD)** is a standard method for indirect measurement of the amount of organic pollution (that can be Oxidized biologically) in a sample of water. While the **prescribed standard is 100**, the **average BOD** of the TEPS-CETP (the Respondent No. 3 herein) **for the year 2013-2014 is 209.2, for the year 2015-2016 is 239.6 and for the year 2015-2016 is 235.625.***
>
> *c. **Suspended solids** refers to small solid particles which remain in suspension in water and is used as an indicator of water quality. While the **prescribed standard for suspended solids is 100,** the **average suspended solids for the year 2013-2014 is 153.3, for the year 2014-2015 is 179.1 and for 2015-2016 is 136**."*

12. Applicants have placed some photographs as Annexure A-15 to show that at various locations in the vicinity of TIA MIDC, the member industrial units, boldly and with impunity, discharge untreated effluents

into water bodies which has led to devastation of mangrove and wetland eco-system in and around the area but officials of State Authorities and Statutory Regulators are keeping silence and have failed to discharge their statutory obligations, for maintenance and protection of environment. Respondent 1, i.e., MPCB, has statutory responsibility for protection, preservation and control of environmental pollution under the provisions of Water Act, 1974, Air Act, 1981 and EP Act, 1986 and statutory orders issued thereunder but failed to take appropriate regulatory steps for protection of environment.

13. Before establishment of TIA MIDC, water bodies in and around the area of Tarapur, had been habitants of marine life. Discharge of untreated industrial effluent has destroyed marine life in the said water bodies. Rampant and unchecked discharge of untreated effluent in water bodies has destroyed ecology of entire area. Water pollution has affected fishes severely and led to death of aquatic habitants. Improper or partial treatment of industrial effluent and discharge thereof in water bodies has caused serious harm to aquatic ecology. It is a potential life threatening for aquatic flora and fauna. As an illustration, a chart (Annexure A-17) has been filed to show reduction in fishing activities in one of the nearby Village, i.e., Satapati showing that in 1982-83, there were 163 fishing boats which have gone down to 80 in 2013-14 and quantity of fishes, which was plus 5 tons in 1982-83, has come down to 4 in 2013-14. A comparative chart of families engaged in fishing in 16 villages, near TIA MIDC, has been filed as Annexure A-18, which is as under:

Number of families engaged in fishing

	Villages	***1975***	***2000***	***2005***	***2016***
1.	*Kamboda*	*366*	*290*	*152*	*80*
2.	*Ghivali*	*1688*	*832*	*757*	*570*
3.	*Uchchheli*	*1492*	*1030*	*926*	*352*
4.	*Dandi*	*796*	*612*	*512*	*476*

5.	*Navapur*	*575*	*477*	*321*	*191*
6.	*Alevadi*	*480*	*315*	*237*	*100*
7.	*Murabe*	*2260*	*1918*	*1527*	*1040*
8.	*Kharejuran*	*420*	*278*	*115*	*52*
9.	*Satpati*	*10432*	*8365*	*6343*	*4497*
10.	*Shirganv*	*180*	*136*	*137*	*66*
11.	*Wadrai*	*719*	*713*	*595*	*647*
12.	*Tembi*	*313*	*320*	*239*	*174*
13.	*Dadara*	*388*	*326*	*144*	*136*
14.	*Mahim*	*716*	*357*	*319*	*170*
15.	*Kelave*	*694*	*624*	*483*	*463*
16.	*Tarapur*	*236*	*172*	*155*	*171*
	Total	***21755***	***16765***	***12962***	***9185***

14. Besides, it is also stated that the degradation of environment has also caused adverse effect on public health. As per reply given by Medical Superintendent, Rural Hospital, Boisar, on 10.02.2016, incident of skin diseases had increased high in as much as only in Rural Hospital, Boisar, between January 2015 and January 2016, 4000 cases of skin diseases were registered. Ground water resources have also contaminated. Untreated industrial effluents are high in heavy metals and carcinogenic substances like Mercury, Lead, Chromium, Cadmium etc. When released in nallahs and storm water drainages, eventually it flows in sea, get stagnated at several places, leading its percolation into ground, thereby polluting the aquifer. Since this is going on for several decades, the trade effluents, now, is having its adverse effect on water security of society at large. The official respondents and Statutory Regulators are not only bound to prohibit, prevent and take strict measures to protect water bodies from such contamination, but also under statutory obligation to realize appropriate environmental compensation on the principle of 'Polluter Pays' from concerned industrial units as also the operators of CETP, who are responsible for causing pollution and damage to environment by discharging industrial effluent, untreated or partially treated, into water bodies, as detailed above. Several representations have

been made by affected people including the applicants, time and again. One such representation/letter dated 04.12.2015, sent by applicants to Sub-regional officer, MPCB, has been placed on record as Annexure A-20. Another representation dated 26.02.2016 is addressed to Principal Secretary, Environment Department (respondent 4) which is placed on record as annexure A-21. It is stated that a substantial question relating to environment pertaining to statutes mentioned in Schedule I of NGT Act, 2010 has arisen in this matter.

15. Applicants have made number of prayers, to be precise, 19 in number, (some are repetition), in para 38 of OA, under the heading, 'Prayer', but in brief, applicants have prayed, as under:

(i) Respondent no. 1 be directed to take steps for closing down all polluting industries, discharging untreated effluents into Arabian sea at Navapur and creeks and nallas in the vicinity;

(ii) Take stringent action against convened officials of respondent nos. 1, 2 and 6 as also respondent 3 who has failed to maintain CETP effectively and causing pollution;

(iii) Respondent 2 should not issue any new permission or expansion to industries until CETP norms are complied with in TIA MIDC;

(iv) Treated/partially treated water must be reused by industries within TIA MIDC;

(v) Official respondents must take remediate measures to restore ecology including marine life and recover environmental compensation on the principle of 'Polluter Pays' from violators;

(vi) Statutory Regulators must take steps to clear sludge, accumulated along the edge of polluted creeks and coast;

(vii) Monitoring Committee of experts, academic institutions, Statutory Regulators in the area in question be constituted for regular monitoring of polluting industries in TIA MIDC.

Reply dated 30.06.2016 by MPCB (respondent 1)

16. In reply dated 30.06.2016 filed in Tribunal on 01.07.2016, MPCB has stated that TIA MIDC was established by MIDC in 1972 over an area of 1028 hectares. MIDC provided infrastructure facilities including 60 km asphalted road network, fire stations, effluent collection sumps, effluent collection and disposal pipelines. At the time of filing reply, i.e., June, 2016, number of industries operational in TIA MIDC was 1083 whereof 472 were in Red category, 61 in Orange category and 550 in Green category. In 1993, Tarapur Industries Manufactures Association (hereinafter referred to as '**TIMA**') established 2 MLD Industrial Effluent Plant (hereinafter referred to as '**IEP**'), for collection and treatment of industrial effluent, for the benefit of member industries, located in TIA MIDC. Collection of effluent was through tankers, as there was no pipeline for connecting effluent of all Small Scale Industrial units, (hereinafter referred to as '**SSI units**'), to TIMA's CETP. Only such SSI units joined TIMA's CETP which did not have adequate/secondary treatment facility. Later, when TEPS established its CETP in 2006, all industrial units joined the said CETP of TEPS. Since no unit thereafter carried its trade effluent to TIMA's CETP, hence TIMA took a decision to close down its CETP w.e.f. 31.03.2012 and same was communicated to MPCB, vide letter dated 12.01.2013.

17. In respect of CETP established and commissioned by TEPS, MPCB has stated in its reply that society/association was formed on 25.08.2004. It commissioned Primary Effluent Treatment Plant of 20

MLD on 10.01.2006. Secondary and Tertiary treatment facilities for 20 MLD were commissioned and made functional in March 2007. Total operating area of TEPS's CETP is 46,000 sq. meters. Capacity of CETP commissioned by TEPS was enhanced to 25 MLD from 20 MLD on 13.11.2009. MPCB had granted consent to CETP of TEPS, from time to time, with certain terms and conditions. At the time of filing reply, the consent already granted was valid up to 31.12.2016. Copy of consent letter dated 13.04.2016 is on record as Annexure-I to the reply. It was granted for the period from 01.01.2016 to 31.12.2016, for discharge of effluent, description whereof, given in para 4, is as under:

> ***"4. Conditions under Water (P&CP), 1974 Act for discharge of effluents:***
>
> | *S. No.* | *Description* | *Permitted quantity of discharge* | *Standards to be achieved* | *Disposal* |
> |---|---|---|---|---|
> | *1.* | *Trade effluent Treatment* | *25.00 MLD* | *As per Schedule–I* | *Marine Coastal area, at a point to be specified by National Institute of Oceanography.* |
> | *2.* | *Domestic effluent* | *5.00 CMD* | *As per Schedule-I* | *Marine Coastal area, at a point to be specified by National Institute of Oceanography.* |
>
> "

18. The aforesaid consent was granted under Section 26 of Water Act, 1974, Section 21 of Air Act, 1984 and also authorization under Rule 5 of Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008 (hereinafter referred to as '**HWMHTM Rules, 2008**'). **Schedule I** contains various standards which were to be observed by CETP operator, i.e., respondent 3, and we shall deal in detail at later stage, when required. MPCB further explains that small scale waste water generating industries have Primary Effluent Treatment units for treatment of industrial waste water. Primary treated industrial waste

water is disposed to CETP of TEPS for further treatment and disposal. Large scale/medium scale industrial establishments have installed their full-fledged ETPs for treatment of waste water. Apart, treated waste water from large scale/medium scale industries is discharged to CETP of TEPS for further treatment. Treated waste water from CETP of TEPS is discharged through MIDC pipeline in Navapur Sea, i.e., at a distance of 500 meters from the seashore.

19. CETP of TEPS comprised of collection tank, oil and grease removal system, equalization tank (4 nos.), flash mixer, primary clarifloculator (2 nos.), Aeration tank (4 nos.), Secondary clarifier (2 nos.), polishing tank, sand and carbon filter, decanter and sludge drying beds. As per consent granted by MPCB to industries located in TIA MIDC, total generation of industrial effluent from such industries was about 32 MLD, out of which, about 7 MLD was recycled and reused. However, pumping data of MIDC shows that quantum of waste water discharged to Navapur creek, varied from 35 to 40 MLD. MPCB said that excess quantity of waste water pumped to Navapur creek, may be due to domestic waste water generated from nearby vicinity and excel industrial waste water generated from the industries in TIA MIDC.

20. MPCB has also taken action from time to time, and the same includes:

i. Regular Criminal Case bearing No. 338/2010 filed in the Court of Chief Judicial Magistrate, Thane, for non-compliance including violation of Consent standards. Matter is pending.

ii. Directions under Section 33A of Water Act, 1974 were issued vide letter dated 09.09.2015 for exceeding JVS results and Rs. 10 lakhs Bank Guarantee (hereinafter referred to as '**BG**') was forfeited. The

directions contained in the order, (Annexure II to reply), read as under:

> *"**NOW THEREFORE**, in the exercise of the power conferred upon me by Board under section 33(A) of the Water (P&CP) Act, 1974, following directions are hereby issued for immediate compliance.*
>
> *a) You shall operate existing effluent treatment plant efficiently round 'o' clock so as to achieve consented standards. You shall restrict receipt of effluent quantity to CETP for treatment up to 25 MLD only.*
> *b) You shall provide online electronic flow meter at CETP inlet, outlet line with data logger within period of 15 days from receipt of the directions.*
> *c) The Bank Guarantee of Rs. 10,00,000/- (in words Ten Lakhs) submitted by you towards O&M of CETP is hereby forfeited.*
> *d) You shall submit irrevocable top up Bank Guarantee of Rs. 20,00,000/- (in words Twenty Lakhs) in favor of Regional Officer, Thane within a period of 15 days from receipt of these directions."*

iii. Show cause notice dated 03.06.2016 was issued for violation of Consent norms and discharging polluted effluent. Respondent 3 was required to show cause why CETP operation be directed to be discontinued and member industries be directed to close down their manufacturing activities.

iv. Letter dated 22.04.2016 was issued giving direction under Section 33A of Water Act, 1974 and Section 31A of Air Act, 1981 for installation of supervisory control and data acquisition automation control system. The directions contained in the said letter, (Annexure III to reply) are as under:

> *"**THEREFORE,** in the exercise of the powers conferred upon the Board u/s 33A of Water (P&CP) Act, 1974 and u/s 31A of Air (P&CP) Act, 1981, Maharashtra Pollution Control Board hereby issue following directions for immediate compliance:*
>
> *A. Your existing shore discharge shall be converted to marine outfalls, till then you shall achieve stream standards i.e. BOD-30mg/l.*
> *B. The stream standards BOD-30 mg/l shall be achieved within period of 6 months.*

C. *The **revised disposal standards** for other parameters mentioned in notification published by MoEF&CC dated 01.01.2016 **shall be strictly followed**."*

v. An opportunity of personal hearing was given to the respondent 3 by MPCB on 08.06.2016 when respondent 3, i.e., TEPS, assured that it will achieve Consent norms on or before 20.06.2016.

21. MPCB issued directions to MIDC through Chief Engineer, Tarapur vide letter dated 17.04.2014 (annexure IV to reply), as under:

*"**NOW THEREFORE**, in exercise of the powers conferred upon me by the Board, following directions are issued:*

*I. **For Effluent Management**:*

*a) You shall **stop overflow from the chambers in the MIDC Tarapur, immediately** by taking effective steps like curtailing of water supply up to the limits granted under consent issued to the industries by the Board. If necessary to realigned the effluent carrying pipelines, particularly in "D" & "E" Zones of MIDC, Tarapur shall be undertaken and the time bound program for the same shall be submitted within 7 days from the receipt of these directions.*

b) You shall assist to TEPS-CETP to ensure that not more than 25 MLD effluents is generated and taken to the CETP. For this, you shall approach to the water supplying agencies those can provide water meters with the facility of supplying specified quantity of water per day within 15 days.

c) You shall provide flow meter/measuring device at Sump No. before 15.06.2014.

*II. **For Unauthorised Water Supply***

*d) You shall **seal all the bore-wells in MIDC, Tarapur** for which special survey shall be carried out by MIDC authority and action taken in this regard shall be submitted within a period of one month.*

*e) You shall **lodge the FIR against the owner of unauthorized water tankers** and driver of the tanker along with filing of the compliant with RTO for cancellation of registration of such water tankers.*

f) You shall appoint separate personnel at the entry gate/s for preventing unauthorized entry of tankers within 15 days.

*III. **For industrial Estate Operations:***

g) *You shall instal CCTV cameras (day& night) in the MIDC area to keep watch on illegal entry and activities in the MIDC (eg. Water tanker movement & illegal dumps of hazardous wastes/ Municipal Solid Waste etc.) before 30.09.2014.*

h) *You shall* ***immediately prepare a concrete proposal for providing appropriate storm water drain system*** *and a road network in a time bound manner, which shall be under intimation to Regional Officer, M.P.C. Board, Thane & Sub-regional office, M.P.C. Board, Tarapur-I.*

i) *You shall remove old RCC pipelines which was not removed while laying of New HDPE pipelines so as to avoid unauthorized disposal of effluent/waste chemicals, before March 2015.*

IV. ***<u>For Effluent Disposal</u>***

j) *You shall start implementation of the suggestion given by the National Institute of Oceanography for extending the existing pipeline used for the disposal of treated effluent from MIDC Tarapur at Navapur and complete it on or before 31st March, 2015."*

22. MPCB also required MIDC to submit an irrevocable BG of Rs.10 lakhs drawn in favour of Regional Officer, MPCB, Thane, valid for one year period, for timely compliance of directions issued vide letter dated 17.04.2015, and MIDC was also directed to submit progress report on monthly basis. In default, MIDC was informed that action may be taken under Water Act, 1974, against it.

23. Vide letter dated 23.09.2015 (annexure V to reply), MPCB issued further directions under Section 33A of Water Act, 1974 and Section 31A of Air Act, 1981, to Executive Engineer, Division No. 1, MIDC, Wagle Estate, Thane and the said directions are:

*"**NOW THEREFORE**, in the exercise of the power conferred upon me by Board under section 33(A) of the Water (P&CP) Act, 1974, following directions are hereby issued for immediate compliance without extending further opportunity of personal hearing.*

a) *You shall ensure that water supply to effluent discharging industries in MIDC Tarapur shall be curtailed by 25% immediately so as to cope up hydraulic load capacity of*

CETP by providing electronic flow meter with date logger. The daily data of the same shall be submitted to Sub-Regional Office, Tarapur-I with copy to this office.

b) *You shall provide electronic flow meter at inlet and outlet of MIDC sump with online data logger on or before 30/09/2015. The daily data of the same shall be submitted to Sub-Regional Office, Tarapur-I with copy to this office.*

c) *You shall restrict industries from using unauthorised water from sources like Bore well and Water Tanker immediately."*

24. MPCB has also filed a chart showing action taken against various industries in TIA MIDC and the said chart, (Annexure VI to reply), reads as under:

"***Details of Action taken against industries in MIDC Tarapur***

Year	***2014***	***2015***	***2016***	***Total***
Show Cause Notice	*135*	*131*	*41*	*307*
Proposed Direction	*34*	*30*	*21*	*85*
Interim Directions	*29*	*16*	*20*	*65*
Closure Directions	*12*	*2*	*1*	*15*

"

25. From April 2013 to May 2016, MPCB has also forefeited BGs furnished by various industries in TIA MIDC and details given in Annexure VII to reply, are as under:

"Statement of BG forefeited from industries in MIDC Tarapur from April-2013 to May-2016

Sl. No.	***Financial Year***	***No. of Industries for which BG is forefeited***	***Amount of BG forefeited***
1	*April 2013-March 2014*	*7*	*5575000*
2	*April 2014-March 2015*	*24*	*10375000*
3	*April 2015-May 2016*	*17*	*8575000*
Total		***48***	***24,52,5000/-***

"

26. TEPS was required to enhance capacity of its CETP and for the said purpose a proposal was submitted by TEPS for construction of 50 MLD CEPT in TIA MIDC. EC under EIA 2006 was granted by State Level Environment Impact Assessment Authority (hereinafter referred to as 'SEIAA'), Maharashtra, vide letter dated 24.03.2015. MIDC allotted

85,000 sq. meters land to TIMA at Plot No. OS-30(Pt). The said plot was sublet by TIMA to TEPS for setting up new CETP as an extension of existing CETP. MPCB granted Consent to Establish under Section 25 of Water Act, 1974; Section 21 of Air Act, 1981 and also authorization under Rule 5 of HWMHTM Rules, 2008, vide letter dated 05.06.2014 (annexure IX to reply). The construction work had started, and likely to be completed by December, 2016. The parameters of BOD, COD and pH were analyzed and samples collected on 06.04.2015, 25.05.2015, 14.09.2015, 03.12.2015 and 21.03.2016 shown high exceeding value.

27. MoEF&CC issued direction under Section 18(1)(b) of Water Act, 1974, vide letter dated 02.09.2008 for not permitting expansion/establishment of industrial units in areas where associated CETPs are not complying with required standards and/or such CETPs do not have adequate hydraulic load capacity. The officials of MPCB visited TIA MIDC on 04.05.2016 and inspected CETP of TEPS for assessing its performance. They found that recently there was some upgradation by installation of 27 Aspirators in 3 bioreactors. Upgradation of 4th Bioreactor by installing 9 Aspirators had also completed. CETP had replaced internal pipelines of treatment units and going with regular cleaning/desludging of tanks. Pumping capacity at collection tank was increased by installing 100 HP additional pumps so as to avoid untreated waste water from collection in tank. It was also found during visit that direct discharge/overflow/bypass of untreated waste water from CETP was stopped. NIO had recommended disposal of treated waste water from CEPT to inside deep sea at about 7.1 km so as to achieve proper dispersion of pollutants. Maritime Board issued no objection certificate to MIDC for disposal of treated waste water from CETP of TEPS at about 7.1 km in deep sea. Hence, MIDC proposed to install pipeline for disposal of

treated waste water in deep sea, as recommended by NIO. MPCB granted consent to MIDC Tarapur, for laying down pipeline to carry treated effluent from CETP Tarapur to deep sea at Navapur, vide letter dated 16.04.2016. The said consent was subject to various terms and conditions, one of which was that MIDC Tarapur shall not take effective steps without obtaining CRZ clearance.

28. On the issue of CEPT, MPCB stated that CPCB published 88 polluted stretches in India in 2009, wherein CEPI of particular area was calculated, based on various parameters like presence of toxins, scale of industrial activities, pollution concentrations, impact on people, impact on ecology, potential affected population and level of exposure. TIA Palghar i.e., TIA MIDC was enlisted at Sr. No. 36. CEPI of TIA MIDC calculated on prevailing environmental baseline, and was projected as 72.01. CEPI for water, air and land was projected as 51.25, 60.75 and 56.0, respectively. Considering gravity of environmental degradation and associated population problems, CPCB declared ban on setting up of new industrial units and expansion of existing industrial units. MPCB took initiative by preparing action plan including short term and long term measures so as to minimize pollution problems and also CEPI. The action plan included fixing of responsibilities on specific stakeholders. MIDC, Infrastructure providing organization, was given major role for improving existing Infrastructure. MPCB, a Statutory Regulator had to perform its statutory obligations with a specific role of co-ordination amongst various stakeholders like MIDC, CETP, Association of Industries (TIMA) and local Government. MPCB submitted action plan to MoEF&CC and CPCB, with a request to lift ban on setting up of new industrial units. Pursuant thereto, moratorium was lifted, vide letter dated 26.10.2010. MPCB started taking rigorous follow up action with concerned stakeholders so

as to comply short term and long term measures, to minimize CEPI score of TIA MIDC.

29. MPCB was also monitoring water quality of various water bodies including sea water at Navapur and creek water at Dandi, Murbe Kherkuran, Sarawali. The analysis report of water samples of sea water and creek water show results conforming to prescribed standards and DO values were adequate for aquatic growth of organism for living organism and marine life. PH of sea water and creek water samples, collected during 2010 to 2015, was within prescribed norms, as specified for SW-II standards in EP Act, 1986.

Reply dated 01.07.2016 by CPCB (respondent 6)

30. Reply affidavit on behalf of respondent no. 6, sworn on 28.06.2016, by Shri B.R. Naidu, Scientist 'E' & In-charge, Zonal Office (West), CPCB, Vadodara, has broadly stated facts, similar to what has been stated by MPCB in its reply. It is said that TIA MIDC is largest chemical industrial estate in State of Maharashtra which include 74 highly polluting industries and 822 red category industries. In respect of TIA MIDC, it is said that CPCB identified TIA MIDC as critically polluted area in 1996. With regard to performance of CETP, it recorded the factum of improper operation of plant in its report of October, 2005. MPCB also recorded inadequacy of effluent collection and disposal of system to cater load from TIA MIDC and pollution of Murbe Kherkuran due to excess industrial effluent load and leachates from HW dump in TIA MIDC, in its report of May, 2005 published on environmental status of Thane region.

31. CPCB in its report found CEPI of TIA MIDC as 72.01, i.e., critically polluted. In PIL No. 17/2011, filed in Bombay High Court, MPCB filed an affidavit dated 13.01.2013 stating that 33 MLD effluent discharge was

found as compared to 25 MLD capacity of CETP. Besides, it also found non-compliance of standards by CETP and non-operation of CETP during MPCB visit. Broad facts stated by applicant in this regard are corroborated by CPCB in para 8 of its reply. Allegations regarding increase in skin diseases, alleged by applicants in OA, have neither been accepted nor denied, for want of knowledge. Broadly, allegations are against operator of CETP and MPCB, and they must submit their comments, is the stand taken by CPCB. However, with regard to discharge of effluent in deep sea, stand taken in para 19 of reply by CPCB is that such deep sea discharge will further degrade aquatic ecology as it will affect fishery activities, primarily carried out by traditional fisherman in deep sea.

Affidavit dated 30.06.2021 of MPCB (a brief report) filed on 01.07.2016 (considered in order dated 09.09.2016):

32. The affidavit was filed by MPCB in reply to the application with the limited purpose to bring on record steps taken by MPCB in discharge of its duties in the context of TIA MIDC. It says:

(i) There are 1083 industries in MIDC Tarapur out of which 472 are in Red category, 61 in Orange and 550 in Green category.

(ii) Small scale waste water generating industries have primary effluent treatment units for treatment of industrial waste water. The treated water (primarily treated industrial waste water) is disposed to CETP for further treatment and disposal.

(iii) Large scale and medium scale industrial establishments have installed full-fledged effluent treatment plants for treatment of waste water and treated waste water is discharged to CETP for further treatment.

(iv) CETP is discharging water in Navapur Sea which is at about 500 meters from seashore of Arabian Sea.

(v) Existing CETP at TIA MIDC has primary, secondary and tertiary treatment facilities along with sludge handling facilities for treatment and disposal of 25 MLD effluent.

(vi) As per consent granted by Statutory Regulators to industries located in TIA MIDC, aggregate generation of industrial effluent is about 32 MLD whereof 7 MLD is recycled and reused.

(vii) Pumping data of MIDC however shows that quantum of waste discharge to Navapur creek varies from 35 to 40 MLD.

(viii) Besides others, MPCB has directed MIDC to provide flow meter/flow measuring devise at the outlet of sump-2 by 15.06.2014. Again, by letter dated 23.09.2015, MIDC was directed to install flow meter with data logger at inlet and outlet of MIDC sump.

33. MPCB has monitored water quality of water bodies including sea water at Navapur and creek water at Dandi, Murbe-Kharekuran and Sarawali. Analysis reports of sea water and creek water samples for the years 2008-2015 are contained in annexure-XIII to the reply. The said reports show that BOD and fecal coliform in all the years in Navapur sea, Sarawali creek, Dandi creek and Murbe-Kharekuran creek was much beyond the prescribed limits. The average of the various parameters given in annexure-III in respect to above 4 places for the period of 2008-2015 is as under:

Water Body	*Parameter*	*DO*	*pH*	*BOD*	*Fecal Coliform*
	Unit	*Mg/l*	*--*	*Mg/lit*	*No. of Counts per 100 ml (MPN)*
	Standards	*Not less*	*6.5*	*Upto 3*	*100/100*

	for sea (SW-II)	*than 4 mg/lit*	*to 8.5*	*mg/lit*	*ml (MPN)*
Navapur Sea	*2008 to 2015*	*4.64*	*7.84*	*10.53*	*522.5*
Sarawali Creek	*2008 to 2015*	*4.81*	*7.85*	*8.83*	*501.54*
Dandi Creek	*2008 to 2015*	*4.68*	*7.8*	*10.84*	*320.81*
Kharekuran-Murbe Creek	*2008 to 2015*	*4.83*	*7.76*	*10.69*	*366.42*

Reply dated 26.07.2016 by MIDC (respondent 2)

34. In reply affidavit dated 26.07.2016 filed on 27.07.2016, respondent no. 2 has stated that it was established under MIDC Act, 1961. The aim and object of the Act is to make special provisions for securing orderly establishment in industrial areas and industrial estates of industries in State of Maharashtra, and to assist in general, in organization thereof. The primary function of MIDC is to promote and assist in rapid and orderly establishment, growth and development of industries in the State of Maharashtra, to establish and manage industrial estates at places selected by State Governments, develop industrial areas at places selected by State Government, assist those undertakings to establish, financially by loans or to coordinate or corporate with other bodies, Government, local bodies etc. An 'industrial estate' under MIDC Act, 1961 means any site selected by State Government where MIDC builds factories and other buildings and make them available for any industry or class of industries. Development under MIDC Act, 1961 means carrying out of building engineering, quarrying or other operations in, on, over, or under land, or the making of any material change in any building or land, and includes redevelopment but does not include mining operations. 'Amenity' under the Act is defined as to include road, supply of water, electricity, street lighting, drainage, sewerage conservancy and such other conveniences as the State Government, by notification, specify to be

amenity for the purpose of the Act. Broadly, functions and powers of MIDC are; firstly, to develop industrial areas and industrial estates by providing amenities of road, supply of water or electricity, street lighting, drainage, sewerage, conservancy and other conveniences, secondly, to construct works and buildings, factory sheds and thirdly, to make available buildings on hire or sale to industrialists or persons intending to start industrial undertakings and to allot factory sheds, buildings, residential tenements to suitable persons in industrial estates established or developed by MIDC and to lease, sell, exchange or otherwise transfer any property held by MIDC, on such conditions as may be deemed proper by it.

35. Under Section 64 of MIDC Act, 1961, Regulations have been framed, namely, MIDC (Disposal of Land) Regulations, 1975 and regulations 33 thereof provides that allottee of land shall abide by Water Pollution Rules. Thus, after allotment of land to the allottee, MIDC enters into an agreement to lease, with such allottee, on terms and conditions which are standard terms and thereunder allottee is required to construct industry/factory premises in accordance with sanctioned plan within stipulated time. In the said agreement, there is a standard clause regarding environmental protection which clearly says that the lessee shall duly comply with the provisions of Water Act, Air Act and rules made thereunder as also with any condition which may, from time to time be imposed by MPCB, as regards to collection, treatment and disposal or discharge of effluent or waste or otherwise, howsoever, and shall indemnify and keep indemnified the lessor against the consequence of any breach or non-compliance of any such provision or condition, as aforesaid. Thus, MIDC has taken all possible precautions in respect of environmental protection so as to avoid environmental damage to the

area, surrounding industrial areas. It has also referred to the provisions of Water Act, 1974 to demonstrate powers and functions of MPCB and has further stated that MPCB enjoys various powers for the purpose of controlling pollution and taking suitable action against erring industries causing environmental pollution. MIDC has no such statutory powers as are enjoyed by MPCB. However, to the extent possible, MIDC has imposed various conditions on industries set up in specified industrial estates in respect of environmental pollution.

36. Under Water Act, 1974, every industry has to provide adequate treatment to its effluent before disposal, irrespective of whether it is stream, land, sewerage system or sea. SSI are such units where plant and machinery are valued less than Rs. 5 crores and such industries occupy an important place in Indian economy and industrial development. Over the years, it was noticed that SSI units are major contributors to total industrial pollution load of the country. A very few SSI units had installed their own effluent treatment plants to avoid hazards of pollution but mostly due to limited size and scale of operation, find it economically unviable to install dedicated pollution control equipment for the purpose of treatment of effluent. This led to the concept of CETP, being more suitable in such areas where cluster of SSI units exist. This has been accepted by MoEF&CC and it has notified centrally sponsored scheme for enabling SSI units to set up CETPs in India.

37. MIDC has established about 240 industrial areas in the State of Maharashtra for achieving balanced industrial growth. MIDC also encourages industrial associations to establish and operate CEPTs for controlling pollution wherever individual dedicated ETPs by industries are not viable for economic or other reasons. MIDC helps industrial

associations by providing land at very nominal lease rent and contributing monetarily through various schemes floated by Central or State Governments for establishing CETPs. Till the reply filed by respondent 2, there had established 19 CETPs in the State of Maharashtra, maintained by associations of industries or individuals to whom land was allotted by MIDC at subsidized rates and subsidy was also given.

38. Explaining types of Treatment Plants, it is said that it is primary, secondary and tertiary types for individual units to comply with stringent norms and treatment standards.

39. **Primary (mechanical) treatment** is designed to remove gross, suspended and floating solids from raw sewage**.** It includes screening to trap solid objects and sedimentation by gravity to remove suspended solids. This level is sometimes referred to as “mechanical treatment”, although chemicals are often used to accelerate the sedimentation process. Primary treatment can reduce BOD of incoming waste water by 20-30% and total suspended solids by 50-60%. Primary treatment is usually the first stage of wastewater treatment. Many advanced waste water treatment plants in industrialized countries started with primary treatment, and then added other treatment stages as waste water load grown, the need for treatment increased, and resources became available.

40. **Secondary treatment** removes dissolved organic matter that escapes primary treatment. This is achieved through various processes including biological process in which microbes consume the organic matter as food, and convert it to carbon dioxide, water, and energy for their own growth and reproduction. The biological process is then followed by additional settling tanks (‘secondary sedimentation’) to

remove more suspended solids. About 85% of suspended solids and BOD can be removed by a well running plant with secondary treatment. Secondary treatment technologies include basic activated sludge process, variants of pond and constructed wetland systems, trickling filters and other forms of treatment which use biological activity to breakdown organic matter.

41. **Tertiary treatment** is simply additional treatment beyond secondary. Tertiary treatment can remove more percent of all the impurities from sewage. The related technology can be very expensive, requiring a high level of technical know-how and well trained treatment plant operators, a steady energy supply, and chemicals and specific equipment which may not be readily available. An example of a typical tertiary treatment process is the modification of a conventional secondary treatment plant to remove additional phosphorous and nitrogen.

42. TIA MIDC is spread over approximately 1028 hectares. Approximately 1947 plots were carved out, wherein 1477 industries are already established. Out of 1477 industries, only 1226 industries are functioning. Industries are further classified into Red, Orange and Green Categories, based on percentage of chemical effluents discharged by them. As per data furnished by MPCB, approximately 472 industries are in Red category, 155 in Orange and 500 in Green category. Approximately, 627 industries have consolidated to form an association known as TIMA which holds key in maintaining healthy communication between industries at large, including the constituent member industries of association and various government authorities. Members of TIMA have constituted and registered a body under Companies Act, 1956, known as TEPS for setting up a CETP. This body, i.e., TEPS was

incorporated in August, 2004, to enable individual industries to unite together and constitute into an Association of industries for establishment of CETP. For setting up of 20 MLD capacity CETP by TEPS, MIDC allotted plot no. AM-29 admeasuring 46,000 sq. meters and possession was handed over to TEPS on 24.05.2003. The construction of 20 MLD CETP commenced on 01.02.2005. It was commissioned on 10.03.2006 in respect of primary treatment of effluents and commenced entirely in March, 2008. Due to increase in load, capacity was expanded to 25 MLD in September 2009.

43. MIDC has provided collection lines at various locations. These collection lines collect effluents which have already undergone preliminary treatment, as per standards set by MPCB, in their letter of consent, issued in favour of individual industrial units. The collection lines are adjoined with sumps which act as repositories or tanks for collection of all the effluents and in volumes. Through these sumps, effluent is further pumped into CETP for further treatment and processing. After processing, treated effluent is disposed of at the point of disposal.

44. The old disposal line is under process of replacement. MIDC was disposing treated effluent through disposal line of approximately 6.4 kms at 500 meters inside Arabian Sea at Navapur village. It is now under replacement with HDPE pipes of 1200 mm diameter which would ensure smooth disposal of sewage with no chock ups. Administrative approval was received by MIDC on 18.02.2013 and work order to Contractor was issued on 26.11.2013. 60% work of replacement has already completed.

45. TIMA had proposed installation of additional CETP of 50 MLD for which MIDC allotted plot no. OS-30 admeasuring 85,000 sq. meters vide

letter dated 27.12.2010 and possession was handed over on 28.12.2010. There was some dispute between TEPS and TIMA which came to be settled and as a result thereof, possession of plot no. OS-30 was again handed over vide possession memo dated 25.03.2014. MPCB issued consent to establish vide letter dated 05.06.2014 and construction of 50 MLD CETP had started. Vide letter dated 22.07.2016, TEPS informed MIDC that approximately 70% work has been completed. MIDC has also taken further action for disposal of treated effluent in deep sea as suggested by NIO and further action for laying down pipelines is in process. Work order was issued to the Contractor on 26.05.2015 to carry out work of extension of disposal line with an estimated cost of Rs. 1,41,48,71,000/-. MIDC has requested MPCB to take stringent action against defaulting industries in discharge of effluent or partially treated or untreated effluents in CETP, led to ultimate disposal in Arabian Sea, by issuing various letters. It was for MPCB to take appropriate action in the matter, since, it is a Statutory Regulator and empowered to take appropriate action in the matter and also impose fine on the principle of 'polluters pay'.

Reply dated 11.08.2016 by TEPS (respondent 3)

46. Reply dated 11.08.2016 filed on behalf of respondent 3, is sworn by Shri Gajanan S. Jadhav, ETP Manager, TEPS. It is said that TEPS is a non-profit making organization, incorporated under Section 25 of Company's Act, 1956, vide Certificate of Incorporation, dated 25.08.2004, issued by Registrar of Companies, Mumbai, Maharashtra. Respondent 3 is operating existing CETP with the capacity of 25 MLD. Respondent 3 has received consent dated 13.04.2016, issued by MPCB, under Water Act, 1974, Air Act, 1981 and authorization under Rule 5 of the HWMHTM Rules, 2008 for operating CETP, under 'Red' category. The aforesaid

consent was granted for the period from 01.01.2016 to 31.12.2016. In fact, it is renewal of the consent, granted earlier by MPCB for operating CETP in TIA MIDC. Maintainability of application filed by applicants has been questioned on the ground of delay. It is said that applicants have not disclosed many material facts, data, reports and developments that have taken place towards protection of water bodies. Applicants are relying on old findings and figures, relating to environmental and ecological aspects of water bodies, in the vicinity of TIA MIDC.

47. Respondent 3, in operating CETP, is implementing all directions issued by MPCB, CPCB and MIDC and also commissioning a new 50 MLD capacity CETP at TIA MIDC. The construction of new CETP is complete up to 60% and likely to be commissioned in first quarter of 2017. Basic facts regarding requirement of CETP history of TIA MIDC and situation of discharge of effluent, we find, are similar, as stated in the application and also, as replied by respondents 1, 2 and 6 which we have already noted above. Avoiding repetition, in brief, the facts stated by respondent 3 are that in the decade of 1980, industries in TIA MIDC were treating industrial effluent, generated in the process of running industries, at their own end and discharging said effluent to common drainage network, which after receiving at sumps, used to be pumped to Navapur creek (about 500 meters inside the sea shore). Later, MPCB, CPCB, MoEF&CC and MIDC realized that individual setting of industrial effluent treatment plants to satisfy environmental standards may not be technically and feasibly possible, for small scale units and, therefore, they promoted a scheme for setting up CETP with financial assistance from World Bank. TIMA with financial assistance from State and Central Government, commenced CETP with the capacity of 2 MLD, in 1993, at plot No. O/23, TIA MIDC. It was sufficient to satisfy prevailing demand of industries

functioning at TIA MIDC. With subsequent multifold growth of industries in TIA MIDC, quantity of discharge of industrial effluent substantially increased, though gradually. Since existing plant was not able to cope up with the anguished discharge of industrial effluent, resultant pollution also increased going to the extent where CPCB declared TIA MIDC as 'critically polluted area'. The matter attracted attention of Apex Court also. Supreme Court Monitoring Committee was constituted to monitor and report situation of pollution in TIA MIDC. In view of the observations made by the said Committee, CPCB directed MPCB to take necessary steps to cater to effluent's volume received from industries from TIA MIDC. Consequently, MPCB directed TIA MIDC to construct either new CETP or to close down entire industrial units in the area. A show cause notice was issued on 03.02.2005 by MPCB to TIMA. In the meantime, TIMA itself took action to meet the situation and constituted TEPS in 2004 for the purpose of establishing, operating and managing a new CETP with appropriate capacity. Land was allotted by MIDC at Plot No. AM-29, admeasuring 46,000 Sq. Meters, at nominal rate, in MIDC Slump 2. Considering treatment study, conducted in 2005, TEPS decided to construct 25 MLD CETP, in phased manner. First phase of construction of CETP was completed with construction of 25 MLD Primary treatment facility plant. It was commissioned in January 2006. Second part of existing CETP project, i.e., 20 MLD Secondary treatment plant commenced operation in September 2008. 5 MLD enhanced capacity secondary treatment plant became operational from September 2009. After 2009, there has been an extraordinary growth in establishment of industrial units and textile processing in TIA MIDC which has resulted in increased demand of water requirement. TEPS, in order to keep pace with the growing demand, decided to expand and increase effluent treatment

capacity of CETP from 25 MLD to 75 MLD. For the said purpose, MIDC allotted plot No. AM-60, area 39,000 sq. meters. The requisite permissions/clearances were obtained and construction process commenced by TEPS. Contributions of Rs. 1.5 crores were received from member industries. After following due procedure, as per recommendation and approval from NEERI, DPR was approved by MIDC, vide letter dated 15.04.2010. When the process of expansion of CETP was on-going, MIDC abruptly stopped work, in view of agitation of local villagers who had support of some political parties. Letter for stopping work was issued by MIDC on 26.03.2010. Later, respondent 2, vide letter dated 14.09.2010, informed that in view of protest of the villagers, location of expansion of CETP has to be changed. TEPS was required to submit a revised DPR for approval. Possession of alternative land, i.e., OS 30 was given on 29.12.2010. In the meantime, TEPS took steps for improvement of performance of existing CETP of 25 MLD by replacing old fixed type aeration system with mechanical aeration system called Aspirators. These changes/improvements were given effect during December 2012 till June 2014. The above replacement costed approx. 3.25 crores to TEPS. Further, for expansion, after taking possession of alternative site, i.e., OS 30 area 85,000 sq. meters on 28.12.2010, TEPS took further steps. Firstly, it sought permission for cutting of trees, from Forest Department, since sizable number of trees were standing in the allotted land. Forest Department took almost four months to grant permission which was received by TEPS in May 2011. Compensation of Rs. 7.20 lakhs for cutting of trees was paid by TEPS to MIDC in May 2011. MIDC granted permission to cut trees on 20.05.2011. After cutting of trees and land levelling/filling within three months, TEPS applied for permission to bisect storm water nallah diversion and construction of

compound wall around plot OS-30, in the month of September, 2011. Permission was delayed by MIDC, despite several representations and reminders by TEPS. Again, by letter dated 26.06.2012, MIDC informed TEPS that upper side of land in plot OS-30 allotted to TEPS would have to be taken over for industrial purposes by M/s JSW Steels and remaining part of the same plot would be allotted to TEPS. The entire plot OS-30 had area of 1.4 lakhs sq. meters. From the land allotted to TEPS, MIDC re-located CETP by awarding 50,000 sq. meters space, out of the plot OS-30, to M/s JSW Steel. This action of MIDC was objected by TEPS vide letter dated 17.08.2012 but MIDC declined to re-visit its decision. TEPS filed ***Writ Petition No. 2311/2012*** in Bombay High Court. During pendency of matter, parties entered into a compromise/ settlement and Writ Petition was disposed vide judgment dated 20.02.2013 (Annexure R-3/14 page 462), in terms of settlement arrived at between the parties. TEPS then started construction of CETP with 50 MLD capacity at the lower portion of land in plot OS-30.

48. In view of above situation created by MIDC, respondent 3, i.e., TEPS could not take expeditious effective steps towards expansion of CETP. It otherwise could have been completed long back. TEPS has proceeded with pace to setup 50 MLD CETP and completed requisite formalities with TIMA and MIDC. It also applied for consent to establish, to MPCB, which was granted vide letter dated 05.06.2014. EC was granted by SEIAA, Maharashtra vide letter 24.03.2015 (Annexure R-3/16). TEPS applied for DPR approval to National Environment Engineering Research Institute (hereinafter referred to as '**NEERI**'), in May 2014, who suggested to have assessment of pilot plan performance from an Institution like IIT Mumbai. Consequently, TEPS approached IIT Mumbai for pilot plan assessment, in February, 2016. IIT Mumbai

informed TEPS that assessment will take three months to complete. IIT Mumbai submitted its report to NEERI in June 2016 suggesting incorporation of advanced oxidation of ozonation processes. Consequential letter dated 27.06.2016 was issued by NEERI suggesting, that for tertiary treatment scheme, it would be more suitable to use ozonation or other advanced oxidation process, instead of proposed activated carbon filter and pressure sand filter. TEPS agreed to augment ozonation and tertiary plant on 22.07.2016, whereupon NEERI approved DPR vide letter 25.07.2016 with further request to MPCB to ensure that a careful monitoring regime is put in place for input water and treatment capacities provided, to ensure compliance with prevailing standards.

49. Though TEPS was entitled to receive subsidy from Government but looking into the urgency, it proceeded on its own, not only for upgradation of the existing CETP but for installation of additional new CETP of 50 MLD. TEPS is working very diligently, not only for mechanical or system enhancement but also has trained operating staff, which is well experienced and work round the clock to operate CETP. TEPS has given maximum attention over primary treatment by way of batch operation of equalization tank. It has increased decanter operation period from 12 hours to 24 hours which has resulted in removal of almost 63000 MT of semi-dried solid waste in last fiscal year. Future solid waste removal trend will be almost up to 4500 to 5000 MT per year. From May 2016, TEPS has increased frequency of monitoring of inlet impact and operate even in night hours to avoid shock load in CETP. In view of directions issued by MPCB to various industries in TIA MIDC, discharge of effluent quantity at existing CETP inlet has considerably reduced from 45 MLD to 27-28 MLD. TEPS has also issued circulars to member industries to adhere to directives of MPCB and endeavor to reduce effluent quantity at

CETP inlet which would help the existing functional CETP to provide better treatment of effluent. Despite several hurdles and delay, as stated above, TEPS has been able to manage completion of almost 65% of civil work of 50 MLD capacity CETP. All the machines and equipments, necessary to be installed in the plant, have already been ordered and some equipments are being ordered. TEPS has already spent 60 crores in construction of new 50 MLD CETP. Since process of subsidy from government is getting late, TEPS has also decided to take loans from financial institutions for the project, total cost whereof is about 117 crores. TEPS is confident of commissioning of two modules of new plant, i.e., 12.05 MLD, by the end of first quarter of the year 2017. Rest modules will be functional by the second quarter of 2017. Besides, there has been overall improvement on all fronts, resulting in improvement and efficiency of treatment units which has reflected in outed parameters. Upgradation work has completely stopped backflow in underground drainage line, overflow of manholes in industrial area, etc. which is indicative of optimum performance of existing of CETP after upgradation project. CETP upgradation has lowered down environmental (water pollution) issues within industrial area and around disposal point. TEPS and other stakeholders are committed for protection of environment and taking all measures and efforts to achieve the best results. The role of TEPS is limited up to the boundary of its premises, i.e., from inlet CETP to outlet CETP, i.e., to treat effluent received from industries to meet disposal standards as specified by MPCB in consent order. Despite all obstructions, TEPS is taking all possible steps to achieve prescribed standards and upgradation of the existing CETP has resulted in substantial reduction in the level of industrial pollution. Bombay High Court in PIL No.17/2011 has already taken cognizance by directing

respondents and Regulators as well as government authority to take all remedial measures to curb and limit industrial pollution in TIA MIDC. The allegations of dereliction of duty, negligence, etc. against TEPS are incorrect. Round the clock, TEPS and its officials are working to achieve best results, required for maintenance of protection of environment and to achieve the prescribed standards.

Additional Affidavit dated 29.10.2016 by MPCB (respondent 1)

50. Additional affidavit dated 29.10.2016 has been filed on 31.10.2016 on behalf of MPCB (respondent 1). Above affidavit was filed in compliance of Tribunal's order dated 09.09.2016. A meeting was held between officials of MIDC, CETP Association and MPCB. As per discussion and decision taken thereat, different directions were issued to Regional Officer, MPCB, Thane, MIDC and CETP, which are as under:

> *"**Directions to Regional Officer, Thane MPC Board:***
>
> 1. *Directions shall be issued to all individual effluent generating industries to Curtail their water consumption and to reduce effluent by 40 % of their present generation.*
>
> 2. *Directions given to 59 major contributing industries shall be rigorously monitored by Sub Regional Officer, Tarapur-1. Regional Officer Thane to extend all support (manpower & logistic) from his subordinate offices and laboratory.*
>
> 3. *To ensure compliance of earlier directions issued to 59 major effluent contributing industries to install pH, Electronic flow meter with Data Logger System within 3 days. Further to direct Industries to provide positive one point discharge within 15 days.*
>
> 4. *Directions are issued to the CETP and Industries generating effluent more than 100 CMD and above for installation of SCADA. Sub Regional Officer, Tarapur-I to confirm the same and issue directions to Industries generating effluent more than 25 CMD to 100 CMD with time line of three months.*
>
> 5. *SRO Tarapur-l shall monitor CETP performance for 48 hrs. by deputing team of officers for collecting records of pH and flow and 4 hourly samples for the parameters pH, BOD, COD, TDS and SS at inlet and outlet of CETP, Samples will be jointly analysed by Scientific Staff of Regional Laboratory, Thane under supervision of Scientific Officer, I/C R- Lab, Thane at CETP Laboratory. Reports of the same shall be submitted to PSO and JD (WPC) office forthwith. Results of BOD to be submitted within 7 days.*

6. *The effluent generation, treatment and disposal compliance and sludge generation as per consent conditions will be submitted for last two years of 59 major contributing industries (50 CMD and above). Report consisting of JVS analysis reports, actions, compliance of directions, Bank Guarantee status etc. for each industry will be submitted in excel format within 3 days.*

7. *Similarly, Regional officer, Thane shall submit report for industries generating effluent below 25 CMD and industries generating effluent between 25 CMD to 50 CMD.*

Directions to MIDC:

1. *To conduct survey of bore wells (Active and Abounded Bore wells) in MIDC Tarapur and submit the report within 3 days to Regional Officer Thane, MPC Board stating details as name of industry, plot number, status of bore well (s). i.e. active/ abounded, size of borewell etc.*

2. *The* ***leakages and seepages of effluent conveyance line shall be attended immediately to avoid the mixing of the effluent in storm water drain and shall complete the remaining work of HDPE conveyance system on fast track****.*

3. *MIDC shall empanel agency for periodic and incidental sludge removal accumulated in chambers, collection sump and pipelines and ensure the free flow of trade effluent. For this purpose advance mechanical system shall be adopted by MIDC. Sludge removed from conveyance system shall be stored in secured condition, till disposal to CHWTSDF and quarterly record of the quantity of the sludge disposed to common facility should be provided to MPCB.*

4. *MIDC shall investigate quantity of water supply to the industries and quantity of effluent disposed to Navapur Sea and submit the report of the same to MPCB within 15 days.*

5. *MIDC shall install the SCADA system to inlet and outlet of water supply pipeline system to check leakages and seepages in the supply system and shall maintain daily record for water supply and submit the same to the Board every 15 days.*

6. *MIDC Shall appoint two to three agencies for on call sludge removal, to attend leakages pipeline at chambers, in emergency situations.*

7. *MIDC Shall ensure the compliance of the direction issued to 59 major water consuming industries of CETP including directions to provide positive one point discharge within 15 days and report shall be submitted to MPCB.*

Directions to CETP:

1. *Shall* ***comply with disposal standards immediately.***

2. *Shall maintain online data logs of the flow and pH using calibrated flow and pH meter.at inlet and outlet of the CETP with hourly data.*

3. *Shall* ***ensure the inlet flow to the CETP be restricted to 25 MLD only***.

4. *CETP shall maintain with the data having consented effluent generation quantity, effluent generation after directions of 25% curtailment issued by Board, effluent quantity after directions of 40% curtailment of individual member industry."*

51. Further, vide letter dated 07.10.2016 (annexure II to Additional Affidavit), Regional Officer, MPCB, Thane issued directions (ten in number) in exercise of power under Section 33A of Water Act, 1974. Executive Engineer, MIDC, Division-1, Thane, vide reply dated 28.10.2016, in reference to the directions issued vide letter dated 07.10.2016 by MPCB, submitted its compliance to all the ten directions contained in letter dated 07.10.2016, and point wise compliance stated by MIDC is as under:

Sr. No.	*Directions issued*	*Compliances of directions issued*
i.	*You shall carry out survey of MIDC Tarapur to find out Bare wells (active or abounded) and shall Submit its report Comprising name and address of industry. Plot No. N, status of bore wells (Active or Abounded) size of borewell, etc. to the Sub-Regional MPCB, Tarapur-I within Officer, period of three days.*	*As per the directions, the survey of bore wells has been conducted by the MIDC.* ***At present 41 number of bores are detected and closed****. The detailed report is enclosed herewith. (c5)*
ii.	*You shall breakage/leakage/ seepage inspect of effluent carrying pipeline network and it shall be immediately attended so as to arrest leakage/leakage/ overflow of MIDC chambers. The work of replacement of old by conveyance System shall completed track. It shall also*	*MIDC has deployed agency for AMC. The leakages in pipeline are being immediately arrested. The incidental chokes up of drainage pipelines, chambers are attended immediately. Any leakages observed in collection system are attended by MIDC through AMC.* ***Due to release of***

	ensure that the industrial waste is pipeline HDPE be on fast water not being drained/mixed in storm water drain.	***excess quantity of effluent by Industries, overflow of effluent from chambers at low laying areas are observed for some time.*** *The problem is due to short fall of capacity of Existing CETP. At present there are no leakages observed in effluent collection lines.* *MIDC has granted approval for replacement of balance RCC effluent lines by HDPE line for Rs.23.44 crores. The tenders are invited and work will be started very soon.*
iii.	*You shall carryout periodic of cleaning of effluent carrying pipeline, sumps, so as to remove accumulated sludge and shall ensure free flow of trade effluent in the pipeline. You shall adopt advanced automated systems to avoid accumulation of sludge in sumps and effluent carrying pipeline.*	*MIDC has deployed agency for AMC for maintenance of drainage lines, Removing of choke ups, and cleaning of pipelines and chambers throughout the year.* *If the individual industry has treated the effluent as per MPCB norms it is not expected to let out the sludge in the collection system of MIDC. You are requested to take stringent action against defaulting industry.* *As per your directions the proposal for removing the accumulated sludge under preparation.*
iv.	*The sludge removed from sewerage line and MIDC sumps shall be stored at designated place in secured condition till disposal to CHWTSDF. Also, you shall submit quarterly record of sludge generated and disposed to CHWTSDF TO Sub-Regional Officer, MPCB, Tarapur-I along with copy of this office.*	*The tender for removing and transportation of Sludge was invited. Accordingly, the* ***quantity of sludge of 5936.37 MT, accumulated in the MIDC Sumps at various locations are removed*** *and transported to CHWTSDF site at Taloja in the year 2015-16.* *The proposal for the next year is under preparation.*
v.	*You shall appoint 2 to 3 dedicated agencies on call basis, so as to attend emergency situations like*	*The routine preventive maintenance breakdown as well as maintenance of effluent collection and disposal*

	breakage/leakage/seepage effluent to carryin8 of pipeline, sludge removal from pipelines and submit ATR thereof.	*pipelines is done by MIDC's Tarapur sub-division 24 x 7 basis.* *Any leakages/breakages observed are attended on topmost priority*
vi.	*You shall make necessary record of water supply to the industries and quantity of effluent disposed to Navapur sea. The data of water supply and waste water disposed to Navapur Sea for last one year shall be submitted to Sub-Regional Officer, MPCB, Tarapur-I along with copy to this office.*	*The report furnished by DE (maint) is enclosed herewith. (C-9)*
vii.	*You shall install SCADA system at inlet and outlet of water supply pipeline network of flow so as to access leakages/seepages in water carrying pipeline. The daily data of the same shall be maintained and submitted on every 15 days to Sub-Regional Officer, MPCB, Tarapur-I along with copy to this office.*	*The flow meters at starting point and water meters at individual industry are already installed. Leakages are regularly monitored. The data is already handed over by MIDC's DE (maint) to SRO, MPCB.*
viii.	*You shall ensure compliance passed by the. Hon'ble NGT, Pune dt.09/09/2016 in respect of curtailment of waste water generation of order water supply by 40% from whatever present generation.*	*AS per NGT's orders industry should curtail the effluent generation by 40 %. You should take stringent action against the defaulting industry on priority.* *As per your directions, MIDC has already started the curtailment of water supply of Industries by 40% at source i.e. at jackwell. As per DE (maint)'s report the water Supply valves to the major industries is also controlled by 40 %. (C11)*
ix.	*You shall ensure effluent discharge from industries established in MIDC Tarapur through single discharge point for effluent, which shall be connected to MIDC sewerage line. This exercise shall be done within a period of 15 days from the receipt of these*	*The effluent is collected in collection sumps provided in the Industrial Area, through the collection network and pumped to CETP for treatment. After treatment in the CETP the same is collected in the Treated effluent sump provided in the CETP premises and from sump*

	directions.	*it is disposed of into Navapur sea. There is no other outlet to let out the treated effluent. If there is any defaulter industry, please take stringent action from your end.*
x.	*You shall provide electronic flow meter with data logger at inlet and outlet of within 15 days from the receipt of these directions. The daily data of the same shall be submitted to Sub-Regional Officer, and Tarapur-I along with copy to this office.*	*The work of installation of Electronic flow meter for the Treated effluent disposal main is in progress.*

52. Further, MPCB issued letter dated 07.10.2016 under Section 33A of Water Act, 1974 directing 73 major industries to reduce generation of effluent by 40%. A similar direction was issued by MPCB vide letter dated 07.10.2016 to TEPS to communicate member industries about curtailment of waste water generation by 40% from whatever present generation and to operate CETP continuously and efficiently round the clock to meet consented standards and in no circumstances, substandard quality effluent shall be discharged into Navapur sea.

53. MPCB had granted consent to industries in TIA MIDC subject to condition that industry shall provide comprehensive waste water treatment facility for treatment of industrial waste water and treated waste water shall be connected to MIDC sewer only. The treated waste water through MIDC sewer is connected to CETP of TEPS for further treatment.

Affidavit dated 05.12.2016 by MPCB (respondent 1)

54. Affidavit of MPCB dated 05.12.2016 was filed on the same date. This affidavit was filed pursuant to Tribunal's order dated 31.10.2016. The affidavit brings on record consequences of action taken by TEPS in

compliance of MPCB's letter dated 07.10.2016. Vide email dated 02.12.2016, send by MIDC, statement showing pumping of effluent from MIDC sump during the period of 01.10.2016 to 31.10.2016 and 01.11.2016 to 30.11.2016 was communicated showing reduction of average effluent generation from about 33 MLD effluent to 12.81 MLD effluent at the end of October, 2016 which thereafter increased till 08.11.2016 and stabilized at 22.8 MLD w.e.f. 09.11.2016. It is thus said that flow of effluent has reduced to the designed capacity of 25 MLD.

55. Further direction was issued by Chairman, MPCB and pursuant thereto, a scientific and technical officials team visited concerned area on 04.10.2016 for monitoring hourly performance of CETP for 48 hours. The above monitoring was conducted from 15.10.2016 (6:00 am) to 17.10.2016 (6:00 am). BOD, COD, pH, Suspended Solids and Total Dissolved Solids and Flow at inlet and outlet of CETP was measured on four hourly basis and the range of parameters observed during survey is as under:

Sr. No.	*Parameters*	*Sampling location*	*Range*	
			Minimum	*Maximum*
1.	*pH*	*Inlet*	*3.97*	*6.68*
		Outlet	***7.02***	***7.56***
2.	*B.O.D. (mg/l)*	*Inlet*	*1200*	*2500*
		Outlet	***700***	***1400***
3.	*C.O.D. (mg/l)*	*Inlet*	*3240*	*6560*
		Outlet	***1728***	***2560***
4.	*Suspended Solids (mg/l)*	*Inlet*	*260*	*2484*
		Outlet	***161***	***296***
5.	*Total Dissolved Solids (mg/l)*	*Inlet*	*6023*	*11461*
		Outlet	***4267***	***8503***

56. Quantity of effluent received at inlet of CETP and discharged in Navapur Sea as observed in the above survey from 15.10.2016 to 17.10.2016 is as under:

Date	***Inlet effluent Quantity (MLD)***	***Outlet effluent quantity (MLD)***	***Excess Effluent Quantity by passed (MLD)******
15/10/2016 to 16/10/2016	*41.41*	*24.08*	*17.33*
16/10/2016 to 17/10/2016	*32.98*	*25.93*	*7.05*

57. A note is added to para 5 of the affidavit, stating as under:

> *"*** The excess effluent quantity in receipt to CETP was neutralized in equalization cum neutralization tanks (4 Nos) having 16 numbers of floating aerators and then discharged to MIDC Sump No. 2 through emergency exit closed pipeline & then finally to Navapur Sea. Presently, effluent receipt to CETP is below 25 MLD."*

58. The report shows that pH and COD at inlet and outlet are significantly exceeding inlet design standards and outlet discharge standards of CETP. MPCB issued directions to industries in TIA MIDC, having effluent generation of more than 100 CMD (37 nos.), about installation of online flow meter for pH and flow along with electronic data logger, SCADA Automation Control System for pH and flow having server connectivity with CETP. MPCB also issued directions to large and medium industries in red category and SSI with effluent generation more than 25 CMD.

59. Pursuant to the said directions, all industries with effluent generation of more than 100 CMD have installed online flow meter for pH and flow along with electronic data logger. Work of installation of SCADA Automation Control System for pH and flow is in progress and will be completed in next 15 days, and in remaining industries, work for installation of the above equipment is under process. A meeting was held between the officials of MPCB and representatives of textile industries

and it was pointed out that effluents received in sump no. 3 are highly polluting having higher COD values. Thus, it was decided to identify deflating industries discharging high COD stream. Further, vide letter dated 29.11.2016, MPCB issued directions under Section 33A of Water Act, 1974 to MIDC to ensure that leakages and seepages of all effluent conveyance lines shall be attended immediately to avoid mixing of effluent in storm water drain and shall complete remaining work of HDPE conveyance system on fast track. In order to identify defaulting industries, various teams of officials, CETP Member industries and MIDC officials made surprise checking's and JVS sample collection and surveillance of 95 industries was carried out from 23.11.2016 to 02.12.2016. The analysis reports disclosed 46 industries primarily responsible to contribute high COD load or low pH at inlet of CEPT causing total upset of CETP performance. Consequently, notice for closure was issued to 9 large scale/medium scale industries and 22 SSI. Further, show cause notices were issued to 1 large scale/medium scale industry and 3 SSI. In respect of 11 SSI, action is proposed to be taken. Further, MPCB has reviewed performance of 33 industries with Zero Liquid Discharge (hereinafter referred to as 'ZLD') and as per decision taken, MIDC Officials informed disconnection of these 33 units with ZLD from MIDC sewer.

60. MIDC was also directed to restrict illegal water supply by bore wells/tankers and in furtherance thereof MIDC has identified 41 bore wells which are permanently sealed.

Affidavit dated 05.12.2016 filed on behalf of TEPS (respondent 3)

61. Respondent 3 has stated that pursuant to order dated 09.09.2016 passed by Tribunal, TEPS has taken steps to monitor and put existing

CETP to its optimal use, including directions issued to member industries to comply with environmental protection norms. As per directives issued by MPCB and/or MIDC and as per circulars issued by TEPS, effluent quantity has reduced substantially. Water supply to member industries is curtailed by 40% by MIDC, and, it has drastically reduced effluent quantity at CETP inlet which has declined below 25 MLD from 24.10.2016. Levels are maintained till date below 25 MLD i.e., within existing capacity of CETP. A chart giving quantity details for the period of 01.11.2016 to 04.12.2016 is Annexure-A to the affidavit, and reads as under:

"TARAPUR ENVIRONMENT PROTECTION SOCIETY
EFFLUENT RECEIPT & TREATED QUANTITY – NOV – 2016

NOTE – FLOW METER READING (7 AM – 7 AM)

DATE	***FLOW METER READING IN CUM***	***TOTAL EFFLUENT RECEIPT & TREATED QTY IN DAY (CMD)***
	3245486	
01.11.2016	*3262114*	*12584*
02.11.2016	*3274698*	*24188*
03.11.2016	*3298886*	*24772*
04.11.2016	*3323658*	*19919*
05.11.2017	*3343577*	*21812*
06.11.2018	*3343577*	*22179*
07.11.2019	*3387568*	*24227*
08.11.2016	*3411795*	*21201*
09.11.2016	*3432996*	*24709*
10.11.2016	*3457705*	*22442*
11.11.2016	*3480147*	*13266*
12.11.2016	*3493413*	*22408*
13.11.2016	*3515821*	*24075*
14.11.2016	*3539896*	*23511*
15.11.2016	*3563407*	***25793***
16.11.2016	*3589200*	***26441***
17.11.2016	*3615641*	***25743***
18.11.2016	*3641384*	*18461*
19.11.2016	*3659845*	*22202*
20.11.2016	*3682047*	*24256*
21.11.2016	*3706303*	*23019*
22.11.2016	*3729322*	*23864*
23.11.2016	*3753186*	*24475*
24.11.2016	*3777661*	***25262***
25.11.2016	*3802923*	*16861*
26.11.2016	*3819784*	*19137*
27.11.2016	*3838921*	*23299*
28.11.2016	*3862220*	*24951*

29.11.2016	*3887171*	***25227***
30.11.2016	*3912398*	*23823*
	3912398	
01.12.2016	*3936221*	***25235***
02.12.2016	*3961456*	*16129*
03.12.2016	*3977585*	*18166*
04.12.2016	*3995751*	*23242*

"

62. The above chart shows that except 15.11.2016, 16.11.2016, 17.11.2016, 24.11.2016, 29.11.2016 and 01.12.2016, on other days, inlet effluent level was below 25 MLD but during the above-mentioned dates it exceeded existing capacity of CETP.

63. Further, it is said that though hydraulic load received at CETP had reduced, but organic/pollution load at CETP, due to some industries, in particular chemical zone in sump-3 or sump-4 of TIA MIDC, was higher than the designed capacity of CETP. TEPS monitored effluent quality of sumps-3 & 4 and conveyed deviation to MPCB, who took serious note and screened almost entire industries contributing to sumps - 3 & 4 area. Due to constant monitoring, inspection and survey by officials of MPCB and TEPS, acidic effluent receipt has almost stopped and organic load at CETP inlet has started declining. All efforts are being made to reduce and stabilize inlet organic load and bring the same within parameters. TEPS has started reclamation of biological mass by culture development etc., by taking fresh biomass from M/s. LUPIN & M/s. Galaxy Surfactant, who are having biological treatment plants of their own. Biomass development is expected to take not less than 15 to 20 days and process would take at least a month to show effective results. TEPS has also started monitoring of sump effluent and backtracking of source of erratic effluent quality. This monitoring has enabled TEPS to receive stipulated effluent quality at CETP inlet, which in turn will help to better system's efficiency. TEPS has spent about Rs. 2.7 crores over up gradation of its existing plant,

especially, repairs/replacement of corroded pipeline, valves and elbow connectors of tertiary system (PSF followed by ACF). The work is likely to be completed within December 2016. The real hurdle caused due to lack of skilled manpower has also been sorted out and skilled manpower has already been deployed for shift operation of CETP. Operation of CETP has been extended to run round the clock. A full-fledged and accredited laboratory at new location of 50 MLD plant is in process of establishment. By first week of 2017, a new laboratory will start operation. Old laboratories of 25 MLD CETP will continue to work for specific parameter analysis like PH, TSS, TDS, O&G and COD. All these exercises will help for precise monitoring and reduction of CETP outlet parameters within prescribed limit. Project work of TEPS was facing financial issues which have also been sorted out to a reasonable extent. TEPS has spent almost Rs. 54.23 crores over project. It has applied for subsidy to concerned Government agencies. Application for subsidy was submitted at MDIC office on 03.09.2016 under State Scheme; CETP submitted subsidy application at MIDC on 21.10.2016; TEPS submitted subsidy application to MPCB on 26.10.2016; Minister for industry conducted meeting on 28.11.2016 regarding project work and subsidy related mater; issued necessary orders for release of appliable subsidy of CETP project; MIDC (facilitatory body) organized meeting on 05.12.2016; TEPS approached its banker (M/s. Saraswat Cooperative Bank Ltd.) for loan of Rs. 40 crores; member industries of TEPS contributed about Rs. 3.95 crores and more contributions are likely to be received in December 2016 for expediting new 50 MLD CETP.

64. TEPS has also raised issue of parallel power supply with Managing Director of MSEDCL; a meeting was held at Prakash Gadh at Mumbai on 23.11.2016 and Senior authorities of MSEDCL passed necessary

instructions to their Section Head at Palghar to provide power supply to upcoming 50 MLD CETP project by Mid of March-2017 up to 70% and rest power will be made available by April 2017. TEPS is endeavoring to start new 50 MLD CETP project by April 2017, after power supply is received from MSEDCL. Till commencement of new CETP, TEPS would continue to operate existing CETP at its optimal levels and take all precautionary measures to comply with the environmental norms and standards.

65. JSWSCPL filed miscellaneous application for impleadment as respondent in present original application. TEPS has stated that JSWSCPL has made requisite payment as a capital contribution to TEPS against capacity booking at upcoming 50 MLD CETP and it will be accommodated as per capacity booking from member industries, once 50 MLD CETP project becomes operational.

Affidavit dated 16.12.2016 of MIDC (respondent 2)

66. This affidavit has been filed in reply to MA No. 352/2016 filed on behalf of respondent 8, i.e., JSWSCPL for seeking permission for running its industry by ensuring that Tribunal's orders dated 09.09.2016 would operate prospectively. Tribunal had directed MPCB that no fresh Consent to Establish or for expansion in TIA MIDC is granted till further orders. The affidavit states that letter dated 27.05.2014 was issued allotting Plot No. B-6/1/1, area 51866 square meters in TIA MIDC to respondent 8. The said allotment was subject to certain terms and conditions to be complied by the allottee. The conditions include stipulation that allotted land can be used for setting up of a factory premises and not for any obnoxious industry, offensive by reasons as specified in Annexure set out in the schedule to the Agreement to Lease and, emission of odor, liquid

effluvia, dust, smoke, gas, nuisance, vibration or fire hazards. The allotment letter also says, if proposed unit is a chemical unit having possibility of causing pollution, clearance from MPCB is essential. Allottee is supposed to develop plot within two years from the date of taking possession and use 100% FSI as per MIDC Regulations. Possession of plot was handed over to respondent 8 on 30.09.2014. Further, issue of taking membership with TEPS is also mandatory as per condition no. 3 of allotment order. However, as on date, there is no development on the said plot and Respondent 8 has also not applied for building permission so as to carry out constructions, though period within which construction ought to have been completed, has already expired. Respondent 8 made a representation dated 03.02.2016, received in the office of MIDC on 08.02.2016, whereby respondent 8 made a request that plans for building permission be allowed to complete after receiving consent to establish from MPCB. The said representation of JSWSCPL has been rejected by MIDC vide letter dated 24.05.2016.

Affidavit dated 16.12.2016 of MIDC (respondent 2)

67. This affidavit has been filed in reference to MA. No. 400/2016 filed on behalf of M/s. Valsad District Cooperative Milk Products' Union Ltd. MA was filed with a prayer that applicant - M/s. Valsad District Cooperative Milk Products' Union Ltd be allowed some relaxation in use of water to the extent of 325 m^3 per day through a separate temporary connection of 160 mm (6" line) in place of existing 80 mm (3" line). Affidavit of MIDC said that Tribunal, vide order dated 09.09.2016, directed MPCB and MIDC to ensure that waste generated by the industries at that particular time, is reduced by 40%. In order to ensure compliance of the said order, MIDC reduced water supply in TIA MIDC by 40% since 25.10.2016. Reduction in water supply has also resulted in

improvement of quality of effluent discharged in CETP, bringing it within prescribed capacity of CETP. MIDC has acted to comply with the order of Tribunal. However, MIDC did not object the request of M/s. Valsad District Cooperative Milk Products' Union Ltd and said that it may be considered by Tribunal whereupon MIDC will comply.

Affidavit dated 14.02.2017 filed by MPCB (respondent 1)

68. Affidavit dated 14.02.2017 received in Tribunal on 15.02.2017, is filed on behalf of MPCB (respondent 1). This affidavit has been filed pursuant to Tribunal's order dated 19.12.2016. It is said that 49 ZLD industries were directed to be disconnected from sewerage line connection, vide MPCB's letter dated 06.01.2017 (Annexure I to Affidavit). List of these 49 industries, contained in annexure I to letter dated 06.01.2017, is as under:

Annexure-A		
Sr. No	***Name of Industries***	***Address***
1.	*MANDHANA INDUSTRIES PVT LT*	*C-3,MIDC Tarapur*
2.	*JSW STEEL LTD.*	*B-6, MIDC Tarapur*
3.	*JSW STEEL LTD.*	*B-7/1, MIDC Tarapur*
4.	*Zakaria Fabrics Pvt Ltd*	*A-13, MIDC Tarapur*
5.	*First Winner*	*N-66, MIDC Tarapur*
6.	*BOMBAY RAYON FASHION LTD*	*G-95, MIDC Tarapur*
7.	*Manan Cotsyn Pvt Ltd*	*G-4/2, MIDC Tarapur*
8.	*Sunway fashions. Pvt: Ltd*	*G-21, MIDC Tarapur*
9.	*SIYARAM SILK MILL LTD.*	*E-125, MIDC Tarapur*
10.	*Nirvana Silk Mils P.td*	*D-6, MIDC Tarapur*
11.	*Ramdev Chemicals P. Ltd*	*E-41,& E-129, MIDC Tarapur*
12.	*Indrox Global Pvt. Ltd*	*B-11, MIDC Tarapur*
13.	*Loba Chemie Pvt.Ltd*	*D-22, MIDC Tarapur*
14.	*Viraj Profiles Ltd*	*G-1/2,1/3,2, MIDC Tarapur*
15.	*Viraj Profiles Ltd*	*G-1/4, MIDC Tarapur*
16.	*NGL Fine Chem Ltd*	*S-18/3, MIDC Tarapur*
17.	*Samrudha Pharmacare P. Ltd*	*G-16/1,2,3, MIDC Tarapur*
18.	*Sirmaxo Chemicals P. ltd*	*E-130, E130/1, MIDC Tarapur*
19.	*Unitec Inc*	*N-30, MIDC Tarapur*
20.	*M/s Specteochem Pvt. Ltd.*	*E-96,E-97, MIDC Tarapur*
21.	*M/s VAP Industries*	*E-7/4, MIDC Tarapur*
22.	*M/s. Gunjan Chemicals Inds. P. Ltd*	*K-48, MIDC Tarapur*
23.	*M/s. Surya Chemicals Inds.*	*T-41, MIDC Tarapur*

24.	*M/s. Nuhush Textile Inds*	*N-17, MIDC Tarapur*
25.	*Trupti Pharma chem pvt ltd*	*W-11, MIDC Tarapur*
26.	*Darshan Fine fab P. Ltd*	*G-8/1, MIDC Tarapur*
27.	*M/s. S.R Steel Engg.*	*W-80/A, MIDC Tarapur*
28.	*M/s. Balaji Engineeering*	*W-38/8, MIDC Tarapur*
29.	*M/s. Arihant Chemical Co*	*W-167, MIDC Tarapur*
30.	*Aarti Drugs Ltd.*	*S-33/34, MIDC Tarapur*
31.	*D R CoatsInk & Rsin P. Ltd*	*J-51, MIDC Tarapur*
32.	*Indaco Jeans P. Ltd*	*G-21 MIDC Tarapur*
33.	*Shree Rajendra Engg Work.*	*J-139, MIDC Tarapur*
34.	*Satguru Steelwool (1)P. Ltd*	*J-139/1, MIDC Tarapur*
35.	*Arihant Chemical Co.*	*S-29. MIDC Tarapur*
36.	*Nutrapluse Inia Ltd,*	*T-30, MIDC Tarapur*
37.	*Shubham Inks & Chemicals P. Ltd.*	*T-51, MIDC Tarapur*
38.	*Pearle farben Chem P.Ltd*	*N-167, MIDC Tarapur*
39.	*Vivid Global Inds*	*D-21/1, MIDC Tarapur*
40.	*Genial Chemle.*	*L-59, MIDC Tarapur*
41.	*Petrogate Metal Products P Itd*	*W-55/D, MIDC Tarapur*
42.	*Scitech Centre*	*W-2, MIDC Tarapur*
43.	*S.K Inds*	*W-187, MIDC Tarapur*
44.	*Mecoy Pharma P, Ltd*	*IS-8, MIDC Tarapur*
45.	*Sifer Car Care*	*J-40, MIDC Tarapur*
46.	*STS Automobiles*	*J-185/186,MIDCTarapur*
47.	*Spectra MotorsLtd*	*J-240, MIDC Tarapur*
48.	*Jaron Cosmetique P. Ltd*	*T-48, MIDC Tarapur*
49.	*Ciron Drugs & pharmaceuticals P. Ltd*	*N-118/1, MIDC Tarapur*

69. MIDC was also directed to ensure that discharge of effluent to MIDC sewer leading to CETP shall be sealed permanently so that there shall not be discharge of treated/untreated effluent from above 49 ZLD industries. However, no confirmation for compliance of above directions was received from MIDC by MPCB. As per report submitted by TEPS, daily discharge from CETP in December, 2016 and January, 2017 ranges between 16.129 MLD to 26.641 MLD and 13.292 MLD to 28.224 MLD, respectively. MPCB issued closure directions to 31 industries, show cause notices to 4 industries and proposed directions to 11 industries on the basis of their performance, pursuant to survey made between 23.11.2016 to 03.12.2016. Similar survey was continued from 07.01.2017 to 17.01.2017 and details of the survey is given as under:

"1. Duration of Survey : 07.01.2017 to 17.01.2017
2. No. of Effluent generating units monitored : 94 Nos.
3. No. of samples collected from Industries : 275 Nos.

4. No of samples collected from Inlet of CETP : 34 Nos.
5. No of samples collected from outlet of CETP : 34 Nos"

70. MPCB decided to allow re-functioning of industries on the following criteria:

"i. Units having effluent quantity more than 25 CMD, which have upgraded Effluent Treatment Plant to achieve consented discharge standards.

ii. Units having Zero Liquid Discharge or 100% recycling of treated effluent.

iii. SSI CETP member industries having less than 25 CMD can be allowed upto 1000 mg/l COD (Less than CETP inlet design standards i.e. 3500 mg/l). Provided each industry submits adequacy repot of Water Pollution Control/ Air Pollution Control, verified either by Respondent Board or reputed institutes like IIT/NEERI/UDCT.

iv. Trial/ Conditional restart for the units, which have adequate Effluent Treatment Plant as verified and confirmed by the institutes, to be considered for 15 days restart. Each effluent treatment plant to be monitored twice a day, after the seventh day of the restart, to confirm performance.

v. Non complying units given conditional restart, if found with exceedance from 25% even for a single incidence shall be closed forthwith."

71. Based on the above criteria, on 13.02.2010, MPCB allowed conditional restart to following five industries:

"1) Mis. Kriplon Synethics, N-97/98, MIDC Tarapur
2) M/s. Remi Edelstahal Tubulars Ltd., N-211/1, MIDC Tarapur
3) M/s. Aarti Industries, L-5, MIDC, Tarapur
4) M/s. Aarti Drugs, N-198, MIDC, Tarapur
5) M/s. Aarti Drugs, E-120, MIDC, Tarapur."

72. Vide letter dated 13.02.2017, TEPS submitted compliance to directions issued by MPCB vide letter dated 21.01.2017. TEPS also informed to have constituted a vigilance Committee of 12 members constituting member industries for monitoring discharge of effluent by individual industries so as to control the inlet parameter of CETP. This was communicated vide letter dated 10.01.2017, send by TEPS to TIA

MIDC. It is said MPCB has taken all steps to control pollution, i.e., the process to issue direction for closure to 17 industries, show cause notices, proposing closure to 32 industries and proposed directions to 7 defaulting industries.

Affidavit dated 10.04.2017 filed by respondent 9 (TIMA), (impleaded vide order dated 06.12.2016)

73. TIMA is an association of industries established at TIA MIDC, to represent interest and functioning of industries in TIA MIDC. The association itself was impleaded as respondent 9 by Tribunal's order dated 06.12.2016 so as to represent industries in that area. All industries were allowed to place their stand through TIMA.

74. TIMA has filed its reply dated 10.04.2017. The affidavit has been sworn by Mr. Shivranjan Kailashchandra Gupta, Hon. Secretary of TIMA, giving history of industrial estate. Respondent 9 has said that in 1975, State Government approved setting up of industrial estates in various districts of Maharashtra. State Industrial and Investment Corporation of Maharashtra Ltd. (hereinafter referred to as '**SICOM**') selected Biosar-Tarapur to develop as a growth centre and channelled its efforts to make it one of the best Industrial Complex in Maharashtra. Tarapur is a census town in District Thane in State of Maharashtra, located at about 45 km north of Virar, on the Western Railway line of Mumbai Suburban Division (Mumbai Suburban Railway). Locations near Mumbai Port/Mumbai Harbour (BPT) and JNPT as well as proximity to Trans Thane Creek (TTC) MIDC, Vapi GIDC add a great value to the said industrial estate. It is located on important rail-route, Mumbai to Delhi and Mumbai-Ahmedabad Highway, part of Golden Quadrilateral project. Biosar Tarapur Industrial Estate, established in 1972 is known as MIDC Tarapur i.e., TIA MIDC. Initially, a small number of entrepreneurs were

functioning in the said area. They formed an association to take care of common interest of industries related to MIDC, MPCB, etc., and the said association formed, is called 'TIMA', after having registration under Societies Act, 1860 vide registration no. MAH/1038/THANE on 21.02.1983. There are about 1200 industries in TIA MIDC, whereof 915 industries are members of TIMA. Current turnover of TIA MIDC is to the tune of Rs. 40,000 cr. out of which almost 50% is export. It has employment potential of about 2 lakh people. Initially TIMA set up CETP in 1993 with the capacity of 2 MLD for the benefit of member industries. At that time, collection of effluent was through tankers, since no pipeline was provided by MIDC to connect all industrial units to CETP. Only those industrial units who were not having their adequate secondary treatment facility, joined CETP set up by TIMA. In the year 2004, Respondent 9 (TIMA) formed a separate body, TEPS with an objective to construct a high capacity CETP, for treatment of effluents discharged from chemical units and other plants at a centralized point so as to observe environmental norms and to prevent pollution in air, water and ground. Effluent treatment charges are collected by TEPS and MIDC from member industries which presently are to the tune of Rs. 60 lakhs per month.

75. As per order dated 31.10.2016 passed by Tribunal, member industries of respondent 9 cooperated for reduction and discharge of effluent by 40% and it is being complied with, in letter and spirit. The role of MIDC in maintenance and running of proper CETP is crucial, and without its support it is difficult to run a CETP with required achievement of standards. It is the responsibility of MIDC to provide facility for proper establishment and functioning of CETP, through appropriate drainage system. 50 MLD CETP has delayed due to problem of allotment of land at the end of MIDC, in as much as, initially land was allotted to TIMA/TEPS

but later it was allotted to a private party and the allotment made to TEPS was withdrawn. This resulted in a litigation before Bombay High Court. The possession of allotment of land was forcibly taken by MIDC. All this has caused delay. Further, for last so many years, municipal solid waste from nearby villages has been dumped into TIA MIDC. MIDC has not made any policy to allot land for dumping of municipal solid waste. Since protection, reservation and maintenance of environment is collective responsibility of MPCB, MIDC, TIMA and TEPS, hence it was not appropriate on the part of MIDC to withdraw land, already allotted, for establishment of new higher capacity CETP. Now work has already started and almost 60% project of 50 MLD CETP is complete. TIMA has made all efforts to get Tribunal's order complied and made arrangement for requisite finances, needed by TEPS, for establishment of new CETP. The order of Tribunal imposing drastic cut in discharge of effluents is causing serious prejudice to the member industries, affecting their functioning in a larger way and is also going to affect workforce, revenue, etc. Some member industries have also questioned standards to be observed by CETP, applicable to small scale industries vis-a-vis medium and large industries.

76. It is also said that whatever amount has been received by MPCB on account of forfeiture of bank guarantee etc., due to failure of observance of environmental norms, has to be used only for restoration of degraded environment and not for the purpose of its own, by MPCB. Reliance has been placed on Supreme Court's judgment in ***Indian Council for Enviro-Legal Action vs. Union of India, (1996)5SCC281***. In ***Essar Oil vs. Halar Utkarsh Samiti (2004)2SCC392*** it was held that development and environment must go hand in hand. It is necessary to preserve

ecology and environment but simultaneously it should not hamper economic and other developments.

77. Respondent 9 also made a request that it may be allowed to make an application for relaxing standards with regard to applicable norms to SSI industries, pursuant to Tribunal's order passed in ***OA 34/2013(WZ), Tarun Patel vs. GPCB and Others***.

Affidavit dated 04.05.2017 by MPCB (respondent 1)

78. Affidavit dated 04.05.2017, received in Tribunal on 04.05.2017, is filed on behalf of MPCB to bring on record action taken and subsequent events after 13.02.2017. Action taken against various industries, is as under:

Sr No	***Details***	***1st Phase Survey (Nov, Dec-2016)***	***2nd Phase Survey (Jan 2017)***	***3rd Phase Survey (April 2017)***	***Regular Monitoring after 13.02.2017***	***Total***
1.	*Total industries Surveyed*	*153*	*86*	*12*	*Regular visit*	*251*
2.	*CD*	*31*	*20*	*11*	*9*	*71*
3.	*SCN*	*4*	*36*	*1*	*0*	*41*
4.	*PD*	*11*	*13*	*0*	*3*	*27*
5.	*ID*	*0*	*0*	*0*	*2*	*2*
6.	***Total Actions***	***46***	***69***	***12***	***14***	***141***
7.	*Restart given After 13.02.2017*	*13*	*0*	*0*	*1*	*14*
8.	*Restart given After 13.02.2017*	*16*	*7*	*0*	*2*	*25*
9.	***Total Restart Numbers***	***29***	***7***	***0***	***3***	***39***
10.	*Restart not given till 03.05.2017*	*2*	*13*	*11*	*6*	*32*

79. Vide letter dated 29.03.2017, MPCB issued directions under Section 33A of Water Act, 1974 to disconnect underground drainage pipeline, connection of 49 ZLD industries, to ensure that discharge point of industrial waste water from these industries in MIDC underground system is sealed. MIDC also informed, vide letter dated 03.04.2017, that it is proposing to take over control over operation and maintenance of 6 CETPs including CETP of TEPS. Further, it has disconnected drainage line connection of ZLD industries to MIDC drainage. MIDC along with TIMA and TEPS would start desludging of all 4 sumps in phase-wise manner. The desludging of sump no. 3, in first phase, commenced on 28.04.2017 for which 148 member industries agreed not to discharge effluent from 28.04.2017 till desludging is completed.

80. Performance of CEPT is also being monitored and some time it showed improvements but sudden discharge of effluent has caused increase for which 8 defaulting industries were identified and actions were taken. The steps taken by TEPS had shown following results:

> "a. *The volume of industrial effluent is reduced up to 25 MLD by curtailing the water supply of industries through MIDC. The MIDC has blocked the drainage of 49 nos. of ZLD units.*
>
> *b. The inlet quality at CETP is improved and average COD value is 3852.0 mgl/l.*
>
> *c. The outlet of TEPS-CETP, average COD is 973.0 mg/l. COD at outlet, on 24.04.2017 has achieved 488.0 mg/lit."*

Rejoinder dated 30.05.2017 (in reply to affidavit dated 04.05.2017 filed by respondent 1) (page/811)

81. Continuing non-compliant attitude on the part of TEPS and operating CEPT causing pollution has been fortified by referring to letter dated 23.02.2017 sent by TEPS to respondent 1 stating that CETP online monitoring system is already installed at inlet and outlet but outlet system has certain hardware issues which will be overcome shortly.

Another letter sent by TEPS on 23.03.2017 in response to a show cause notice issued by MPCB virtually reiterate the same thing stating "*TEPS installed online monitoring system @ CETP inlet & outlet, but due to some hardware problem, it was not able to link to SCADA".* Despite continuing violations, Statutory Regulators namely MPCB has not taken any effective action exercising its statutory powers, which is not limited to just closure of industries but is much more than that. Referring to para 1(iv) of the affidavit dated 04.05.2017, it is said that the stand taken by respondent 1 that on the basis of defined policy adopted by MPCB, re-start directions were issued to several industries subsequently, but it is not made clear as to what defined policy was which was followed for permitting re-start of industries, though water pollution had continued even earlier and subsequent. The direction issued to disconnect sewage line connection of individual ZLD industries to MIDC sewer shows that there was an existing problem of industries unauthorizedly releasing effluents into the water bodies of the area but respondent 1 did not take any adequate, effective and appropriate prohibitory action by exercising different statutory powers available to it. Even MIDC had failed to carry out its functions of providing infrastructure for CEPT which includes effluent carrying pipelines and action ought to have been taken against it also but respondent 1 has failed. The analysis of inlet and outlet samples collected by MPCB at exhibit K to the affidavit dated 04.05.2017 shows that COD, BOD and suspended solids and TDS continued to remain far above the prescribed standards. Average COD value found was 973 mg/l while prescribed norm as per water rules is 250 mg/l.

Affidavit dated 30.05.2017 filed by respondent 9 (TIMA)

82. This affidavit has been filed to highlight role of MIDC in failing to provide necessary infrastructural support to CETP and also in rebuttal of

report dated 02.12.2016 submitted by Zila Parishad, Palghar. It is said that MIDC is suffering from policy paralysis with respect to environmental issues. A letter dated 24.03.2017 was issued cancelling lease of 2 MLD CETP. Thereafter, possession of plot was forcibly taken and operational 2 MLD CETP was demolished. The site of 2 MLD CETP was being used as a common hazardous waste collection centre for its onward disposal by Mumbai Waste Management Ltd., Taloja. In PIL No. 17 of 2011, before Bombay High Court, MPCB had given an affidavit that the society running 2 MLD CETP will use site for incineration of hazardous waste in future. TIA MIDC is suffering badly due to capacity constraints of CETP. The collective loss is huge, running in thousands of crores of rupees. Capacity of 2 MLD and 25 MLD CETPs could have been increased collectively to 40 MLD in a short timeframe but no such opportunity was given. MIDC gave a unilateral notice and despite reply, chose to forcibly take possession and demolish 2 MLD CETP, ignoring that State Government had given grants and subsidies for the said CETP. The site of 2 MLD CETP is an amenity plot and could not have been taken for any other purposes. Though, TEPS has made attempt and trying to complete commencement of 50 MLD CETP at the earliest but due to financial constraints and non-receipt of subsidy, it is getting delayed. Replying to the report dated 02.12.2016 filed by Zila Parishad, Palghar, it is denied that water standards in villages have got affected due to water pollution caused by TIA MIDC. Further, report of diseases spread to villagers/fishermen is also denied. Fisheries in Maharashtra is facing crisis as per report of Fisheries Department of Maharashtra due to various other reasons mainly over-fishing, destructive fishing practices, declining fish stocks, costal land use changes, sea water pollution, etc. Rise in emission of heat trapping greenhouses is causing increase in

earth's temperature and this is one of the major causes of global warming and a contributing factor to climate change. This climate change has added to the problem of fishing. For marine fisheries, temperature of water is one of the most important environmental variables. Global warming has caused rise in sea surface temperature. Average annual temperature, along Maharashtra Coast, has risen more than 10 centigrade, over the past few decades. This data is submitted by satellite thermal imageries for the past four decades. All these factors contribute to several physical and biological changes which impact coastal marine ecology and fisheries. Displacement or destruction of phytoplankton habitat and coral bleaching have a profound effect on the marine ecosystem. All these have affected fish reproduction and food consumption. They influence metabolic activity of fish and phenology (life cycle events) leading to their migration and extension of the depth where they occur. In Environment Management Plan submitted by M/s. JSW Infrastructure Ltd. in July 2015, an interim survey report on "Assessment of Impact on fish production due to development of the proposed All-Weather Captive Jetty' at Village Nandgaon, Maharashtra by Mumbai Research Centre of ICAR-Central Marine Fisheries Research Institute, was submitted. As per Environmental and physico-chemical parameters analysed by laboratories, the results show that pH range was from 7.94 to 8.35 i.e., within optimum pH range. Similarly, dissolved oxygen level was also within optimum limit i.e., from 2.4 to 4.0 ppm or mg/l. Salinity was fluctuating between 33.48-35.3 ppt; conductivity ranged between 52.4 to 54.87 ms/cm. Colour of the near shore water was black to brown with a strong stinking and chemical odour. Total dissolved solids and total suspended solids content in sea water samples ranged between 47.12 to 50.46 ppt and 0.22 to 0.56 ppt respectively. Sea water

turbidity fluctuated between 28.6 to 45.7 NTU. Nutrients play a crucial role in the primary productivity of sea water. Nutrients such as phosphate, nitrate, nitrite, silicate were analysed from water samples and results have been given in the form of a chart which is as under:

"Table No. 2: Physico-Chemical and biological parameters recorded at proposed project

Parameter	***April 2015***			***May 2015***		
	Alewadi	***Navapur***	***Nandgaon***	***Alewadi***	***Navapur***	***Nandgaon***
Physico-Chemical						
1.Atmospheric Temperature (^{0}C)	*35*	*34.5*	*34.5*	*35*	*34*	*33.8*
2.Sea Surface Temperature (^{0}C)	*34.5*	*33.2*	*34*	*34.9*	*33.48*	*33*
3. pH	*8.15*	*7.94*	*8.3*	*8.31*	*8.28*	*8.35*
4.Salinity x 10^{-3}	*35.3*	*34.8*	*33.49*	*33.6*	*33.48*	*33.64*
5.Conductivity (ms/cm)	*52.51*	*52.4*	*52.95*	*52.91*	*54.87*	*53.18*
6.Dissolved Oxygen (mg/l)	*4.02*	*3.12*	*3.6*	*2.5*	*3.0*	*2.4*
7.Dissolved Oxygen Saturation (%)	*54.5*	*44.3*	*50.3*	*36.8*	*43.3*	*35.2*
8.Total Dissolved Solids (ppt)	*48.93*	*47.12*	*48.47*	*50.46*	*49.66*	*48.67*
9.Total Suspended Solids (mg/l)	*0.22*	*0.35*	*0.56*	*0.36*	*0.23*	*0.38*
10. Turbidity (NTU)	*32.4*	*28.6*	*35.2*	*44.7*	*45.7*	*44.1*
Nutrients						
1.Phosphate (mg/l)	*1.1*	*2.8*	*2.1*	*1.1*	*2.3*	*1.3*
2.Nitrate (mg/l)	*11.2*	*5.8*	*6.2*	*5.3*	*6.2*	*4.8*
3.Nitrite (mg/l)	*1.8*	*0.5*	*0.25*	*1.65*	*0.59*	*0.25*
4.Silicate (mg/l)	*1.12*	*4.31*	*6.42*	*1.37*	*2.56*	*1.87*
5.Ammonia (mg/l)	*0.30*	*0.98*	*0.76*	*0.10*	*0.82*	*0.54*
Biological						
1. Chlorophyll-a (mg/m^3)	*16.39*	*11.83*	*9.31*	*8.57*	*10.17*	*5.05*
2. Total Viable Count (cfu/ml)	*10^6*	*10^3*	*10^3*	*10^3*	*10^3*	*10^3*
3. Total Coliform Forming (cfu/ml)	*Nil*	*10^2*	*Nil*	*Nil*	*10^2*	*10^2*
4. Escherichia coli (cfu/ml)	*Nil*	*Nil*	*Nil*	*Nil*	*Nil*	*Nil*

"

83. Chlorophyll content was estimated and found to be ranging between 8.57 to 16.39 mg/m^3; Escherichia coli, a faecal coliform bacterium, was absent in the samples collected during rapid survey whereas total viable count and total coliform forming ranged between 103 to 106 and absent to 102, respectively. It is further said that phytoplankton diversity and abundance studies were undertaken for the collected water samples from selected locations. Laboratories analysis revealed presence of 12 phytoplankton species in the sea water samples. Species recorded were Thalassioira decipiens, Navicula distans, Skeletonema costatum, Conscinodiscus granii, Scrippsiella trochoidea, Guinardia delicatula, Trichodesmium erythraeum, Odontella sienis, Navicula clavate, Gonyaulax plygramma, Diploneis sp. and Amphora sp. Thalassiosira decipiens, Skeletonema costatum. It is, thus, claimed that report is based on conjectures and surmises and is incorrect. It is lastly stated that water quality status of sea water pollution was conducted by MPCB and study revealed that sea water near Shivaji Park, Chowpatty, Colaba, Dadar, Worly is polluted though no notable industries are situated near that area. Further water quality of Bhayander area and Palghar are of similar quality which shows that the industries are not the only one responsible for sea pollution.

Affidavit dated 30.05.2017 by respondent 3, TEPS (P/786)

84. Affidavit dated 30.05.2017 filed on the same date by TEPS, respondent 3. The affidavit is sworn by Shri Gajanan S. Jadhav, ETP Manager stating that the existing capacity of CETP is 25 MLD and a new 50 MLD CETP is under construction. It is likely to be completed by November 2017 (first phase-25 MLD). Respondent 3 has carried out upgradation work of existing CETP by incurring expenses of Rs. 3.15 crores till March 2016. TEPS has prepared a definitive action plan to

ensure appropriate quality of effluent to be received at CETP for treatment so as to receive prescribed standard. An extensive study of treatability of CETP facility as well as effluent streams received from industrial zone has been undertaken by TEPS and it has suggested MPCB and MIDC to segregate certain streams, like sump 3 and 4 effluent and treat separately. It was found that MIDC's two sumps (sump-3 and 4) receiving high COD were almost filled with sludge (70% capacity) which was required to be desludged. TEPS submitted action plan to MPCB vide letters dated 22.04.2017 (annexure 1-A page 795) and 17.05.2017 (annexure 1-B page 798). Action plan primarily cover following aspects:

a) Monitoring of effluent at source;
b) Desludging of sump- 3 and 4;
c) Segregation of sump-3 and 4 and E-Zone effluent and pre and post treat and thereafter feed to Bioreactor.
d) To install PH meter at sump-3 inlet, capable of sending SMS of deviated online PH;
e) Spray drying to segregated effluent.

85. TEPS started monitoring of effluent and conveying irregularities to MPCB from time to time which has held monitoring authorities to identify defaulter industries discharging effluent at MIDC sumps. This monitoring has minimized/reduced erratic quality of effluent received at sumps. **TEPS also observed acidic effluent discharge by some units**. The irregularities were traced at source and the **defaulting industries identified, as also conveyed to MPCB, were**:

i. M/s **Shrihance Chemicals** (acidic effluent discharge)
ii. M/s **Omega Colours** (acidic effluent discharge)
iii. M/s **Panchamrut Chemicals** (acidic effluent discharge)
iv. M/s **Sunil Grate** (acidic PH, despite closure to industry)

v. M/s **Nutra plus** (acidic PH, despite closure to industry)

vi. M/s **JV Chem Pvt. Ltd.**

86. MPCB issued closure directions to industries i.e. M/s Shriyance Chemicals, M/s Omega Colours, M/s Panchamrut Chemical and M/s JV Chem Pvt. Ltd. The monitoring activity had resulted in almost stopping of discharge of acidic effluent though cleaning of sludge was responsibility of MIDC but they were not responding. TEPS with the co-operation of industries cleaned some and communicated to MPCB and MIODC vide letter dated 09.05.2017. After de-sludging, CETP was receiving effluent having consistent characteristics from sump-3 minimizing/stopping shock loads. TEPS also bought new floating aerators to avoid sludge accumulation and avail pre aeration at sump. Similar aerations are to be installed at sump-3 also. Delay in installation of aerator is due to want of permission from MIDC. Considering number of industries functional in TIA MIDC it is difficult to monitor raw/semi treated effluent discharged by industries in CETP. TEPS decided to first monitor sumps from which CETP received raw material for treatment. Normally such effluent received at CETP at sump-3 and 4 is high in COD. TEPC has decided to identify, separate and pre-treat effluent till primary treatment and then adopt controlled feeding of CETP aeration systems. Consistent quality of effluent feeding will improve performance of CETP. Segregation work is in progress. Pipelines are ready. RCC roads cross over via culverts were prepared. MIDC officials visited on 16.05.2017 instructed TEPS to take permission of MIDC. Consequently, TEPS applied for permission and awaiting the same from MIDC. Within 4 days of receipt of permission from MIDC, TEPS will divert effluent to segregate sump/tanks. TEPS is further ready to install PH meters at sump-3 inlet capable of sending SMS on receiving effluent with lower pH. SMS facility can be provided

to/extended to MPCB and MIDC also. Since sump is located 3-4 km from CETP, the above facility will play important role in attending the problem at short notice on getting alert on low pH at sumps, monitoring staff will be able to rush to locate the source. Pending installation of automatic recording system, TEPS presently is doing 4 hours sampling from sump. Considering high COD of some effluent streams, TEPS and TIMA decided to provide spray drying facility for segregated effluent. Bids/offers were received and under scrutiny by M/s. Aqua Air, a process consultant appointed by CETP. TEPS has strengthened its 25 MLD CETP operation and monitoring staff strength by deploying additional skilled manpower. It has increased to 5 chemist and 5 supervisors who helped to monitor round the clock. Additional measures taken to improve performance of CETP by TEPS are:

a) Strengthening of dosing arrangement by introducing high pressure dosing pumps capable of linking to software support for automatic dose adjustment.

b) All agitators of flocculation zone in operation have been placed and dose mixing point has also changed to bottom of the flash mixer. This exercise helps and improves sludge settlement. Sludge removal was increased in financial year 2016-2017. TEPS sent 5530.07 MT of solid waste and till 2017-2018. It has sent 1192.67 MT solid waste to CHWTSDF (MWML).

87. TEPS submitted Treatment Charges Revision Proposal to MIDC for approval in September 2016 which was approved upto 5 months i.e. February 2017; TEPS struggled in receiving revised treatment charges payment from MIDC, billing as per revised rates has not been brought tin effect till date by MIDC, this has paralyzed almost TEPS-CETP's financial position, no other source of income by TEPS, notice issued by MPCB

requiring to show cause for closure of CETP is disturbing and unjustified since all possible steps were taken by TEPS.

Affidavit dated 21.07.2017 by respondent 2, MIDC (page 817)

88. Affidavit dated 21.07.2021, filed on 24.04.2017 by respondent 2, is in compliance of order dated 30.05.2017 and sworn by Shri Chandrakant Adinath Bhagat, Deputy Engineer, MIDC. Tribunal by order dated 30.05.2017 directed MIDC to arrange for removal of sludge which was dumped by TEPS weighing about 400 MT. The above sludge was removed by TEPS without permission of MIDC, though MIDC has taken all plausible steps for removal of the said sludge. TEPS vide letter dated 27.04.2017 required MIDC to permit storage of sludge removed from sump-3 on plot no. OS 74 with the assurance that the same will be lifted after being dried up and send to MWML. TEPS vide letter dated 09.05.2017 requested to arrange disposal of sludge before onset of monsoon. MIDC also undertook removal of sludge from sump-1 of 83.80 MT and send for disposal by MWML. Further MIDC arranged for disposal of sludge of 1116.99 MT collected from sump-3 from 02.06.2017 and onwards and completed on 17.06.2017. For disposal of sludge 98 trucks were required as is evident from annexure 4 page 825. Representatives of MPCB visited site on 05.06.2017 and found all sludge of sump-1 lifted by MIDC; 50% sludge of sump-3 was lifted. As per inspection report dated 12.06.2017, MIDC has removed 504 MT of sludge.

Additional Affidavit dated 31.07.2017 by respondent 3, TEPS (P/835)

89. Additional affidavit dated 31.07.2017 filed on 01.08.2017 by respondent 3-TEPS. It is stated that TEPS has taken major steps for effective segregation of effluent at CETP of sump-3, 4 and part of E-zone

effluent so as to avoid shock load and also to ensure controlled feeding to CETP. This task involves:

"(a)Monitoring of effluent at source, preparing analysis report and sharing of the same with Pollution Control Board (PCB). As part of its study, CETP also identified that out of 5 streams, 3 streams (Qty = 5.5 MLD) coming from sump–3, 4 & part of E-Zone effluents are having high organic load and if segregated, it will help CETP to perform far better. The fact is informed to MPCB. TEPS laid pipeline to divert sump-3 effluent. Whereas pipeline for diversion of sump-4 & E-zone effluent is ready for assembly at the site. MIDC's approvals for permitting the pumping line diversion, segregation and further interconnection with existing MIDC infrastructure is required and awaited. This Hon'ble Tribunal may pass necessary directions to MIDC for the same.

(b) Desludging of Sump 3 & 4: While MIDC lifted solid waste from the site, TEPS at its own costs and efforts has cleared floating thick layer comprising of plastic and tarry waste (around 2.5 MT) after drying at solar pit and then sending the same to MWML facility. Desludging has resulted in overcoming issue of continuous variation in received effluent quality.

(c) TEPS procured floating aerators for Sump-3 to avoid deposition & help in adding pre-aeration effect. Installation of floating aerators in sump areas is under progress and TEPS is awaiting approval from MIDC as well as awaiting necessary power supply required for operating floating aerators. Necessary directions in that regard to the MIDC may please be issued.

(d) TEPS has also procured online PH meter capable of sending SMS alert/e-mail. Instrumentation and installation of the same along with its weather proof housing work is being carried out. TEPS is expecting MIDC's assistance for providing power supply to the same as well as for the security of installed systems, since it is at MIDC's premises (sump-3). Necessary directions in that regard to the MIDC may please be issued.

(e) CETP is taking steps for installation of Spray Dryers for segregated effluent.

(f) CEPT has increased monitoring activity jointly with MPCB and as a result discharge of acidic effluent from industries has almost stopped. This extensive surprise joint monitoring will further help in improving the received effluent quality.

(g) TEPS had augmented additional manpower from member industries to overcome issue of skilled manpower faced earlier to ensure continued monitoring."

90. TEPS has incurred cost of approximately 6 crores for upgradation of existing CETP and needs requisite finances for which it has requested

MIDC for revisions in billing to industries but it is pending since February 2017 with MIDC. It has required financial assistance from Government for which application was submitted requiring for subsidy under centrally sponsored scheme and subsidy under State sponsored scheme and despite completion of all formalities, the matter is withheld with MIDC. It is not taken any action despite request also made by Member Secretary, MPCB in the meeting held on 14.06.2017. MIDC has also withheld approval for mortgage of plot no. AM-29.

Written submission dated 07.12.2017 by the applicant (P/1222)

91. Applicant has summarized issues in the said submissions as under:

> *"A. The **discharge of unauthorised amounts of effluent** into the Arabian sea at Navapur and water bodies in the vicinity of the Tarapur MIDC;*
> *B. The **release of untreated effluent/inadequately, treated effluent** by the Respondent No.3, which does not meet the standards prescribed by the Respondent No.1, **into the Arabian sea at Navapur and the creeks and nallahs** in the vicinity of the Tarapur MIDC;*
> *C. The **unauthorised dumping of untreated effluent** into the water bodies by the member industries of the Respondent No.2, leading to accumulation of chemical sludge in the water bodies;*
> *D. The **release of chemical effluent from the effluent carrying pipelines into the water bodies** due to the failure of the Respondent No. 2 to ensure the upkeep and maintenance of the effluent carrying pipelines;"*

92. The above issues, it is said, have led to destruction of aquatic life, coastal eco system such as mangroves and wetlands and ultimately, livelihood of fishing communities residing in the area for decades. It has also severely affected health of the villagers residing near around TIA MIDC. Since the date of filing of application, levels of pollutants in water bodies have remained practically unchanged despite several orders passed by this Tribunal and respondent 1 have not been able to do anything effective in the matter. Referring to Expert Committee report on the question of discharge of excess and unauthorized amount of effluent

into Arabian sea at Navapur and water bodies in the vicinity of Tarapur MIDC, applicant has pointed out:

a) Capacity of existing CETP is 25 MLD while 30-45 MLD effluent is being discharged by CETP operated by TEPS (annexure A-13 to OA, page/192).

b) Show cause notices were issued by MPCB to respondents 2 and 3 both on discharge of excess effluent but they have failed to comply and effluent generation of 35-40 MLD has continued against capacity of 25 MLD.

c) MPCB on 17.04.2017 (annexure IV to affidavit in reply filed by MPCB, page 273) directed MIDC to restrict supply of water to industries so that excess effluent may not be discharged. The situation has been continuing since earlier period as is evident from letter dated 23.09.2016 (annexure V to the reply affidavit of MPCB, page 277). MPCB has observed while issuing directions that the excess quantum of waste generation is due to borewell water and water supply by unauthorized tankers. So MIDC was directed to restrict unauthorized water supply by filing FIR against them and deputing security at the gate so as to prevent entry of such tankers. It was also observed by MPCB in its letter that sump-2 was regularly over flowing and untreated waste water from MIDC is being directly discharged to local nalla creating pollution nuisance in nearby area. Noticing failure on the part of MPCB in discharge of its statutory duties and continued discharge of effluent by respondents 2 and 3, Tribunal passed interim order on 09.09.2016.

d) Letter dated 16.02.2017 issued by MPCB (annexure F to affidavit dated 04.05.2017) shows following observations

> *"2. The **CETP is receiving high concentrated streams at odd hours and receiving effluent in haphazard way** which leads to destabilization of unit of CETP.*
> *3. The **effluent quantity receipt at the time of visit was between 26 to 27 MLD which was earlier between 43 to 45 MLD** due to curtailment in the effluent generation and water supply by member industries it has now stabilized nearby 25 MLD plus 2 MLD."*

e) In para 9 of the affidavit dated 30.05.2017 filed by respondent 3, he has admitted that:

> *"Considering the number of industries operating in the MIDC area, it is difficult to monitor the raw/semi treated effluent discharge by the industries CETP."*

f) Even the industries granted consent with ZLD condition were found guilty of discharging waste water of industries in CETP as is pointed out by MPCB in its letter dated 29.03.2017 (annexure B to affidavit dated 04.05.2017 filed by MPCB), stating as under:

> *"…MPC Board is in receipt of complaints from industrial establishments in MIDC Tarapur **about discharge of wastewater from industrial whom the board have granted consent with ZLD conditions**. The possibility of discharge of industrial waste water from the ZLD industries was considered by the Member Secretary and it has been instructed to immediately disconnect sewage line connection of individual ZLD industry to MIDC sewer so that these industries cannot discharge their wastewater to MIDC sewer."*

g) The directions were issued to MIDC to seal connection of industries granted consent with ZLD conditions to disable them from discharging their effluent/waste water in sewer line.

h) All the 3 respondents i.e., 1, 2 and 3 have failed to discharge their duties and obligations and guilty of causing pollution inviting appropriate directions under the statute. Respondent 1 is the Monitoring Authority to ensure compliance of environmental laws but it has failed. Respondent 2 is under an obligation to provide infrastructure for operations, repairs and upgradation of effluent collection system but it has failed to discharge the above obligation resulting in ultimate pollution. Respondent 3 is the proponent

responsible for operation of CETP but it has failed to ensure out flow effluent to meet prescribed standards of environmental norms and thus causing pollution in water bodies etc.

93. The documents are on record to show that standards prescribed for environmental norms are not being maintained in operation of CETP in question by respondents. From various documents, a chart has been prepared by applicant in para 4.1 of the Written Submissions (affidavits dated 05.12.2016, 14.02.2017 and 04.05.2017), showing consistent failure on the part of respondents in maintaining prescribed standards. The said chart reads as under:

"

MPCB TEPS-CETP Sampling Results (OUTLET)							
	Standard		**15.10.2016-17.10.2016**	**07.01.2017-17.01.2017**	**23.01.2017-28.01.2017**	**02.01.2017-29.04.2017**	**04.09.2017**
pH	5.5 to 9	Average	NA	7.6	8.0	7.2	7.1
		Minimum	7.02	7.1	7.6	6.4	NA
		Maximum	7.56	8.0	8.5	7.5	NA
BOD (mg/l)	30 (into inland surface waters) 100 (on land for irrigation and into marine coastal areas)	Average	NA	NA	NA	398	140
		Minimum	700	NA	NA	130	NA
		Maximum	1400	NA	NA	775	NA
COD (mg/l)	250	Average	NA	1544.8	1274.9	973	412
		Minimum	1728	404	800	264	NA
		Maximum	2560	2680	1952	2416	NA
TDS	2100	Average	NA	5802	4969	5918	NA
		Minimum	4267	1412	1447	858	NA
		Maximum	8506	12221	7016	10706	NA
Suspended Solids	100	Average	NA	NA	NA	286	84
		Minimum	161	NA	NA	68	NA
		Maximum	296	NA	NA	708	NA
NA Oil	20	Average	NA	NA	NA	4	NA

and grease		Minimum	NA	NA	NA	1	NA
		Maximum	NA	NA	NA	14.2	NA

”

94. Severity of pollution is evident from the documents filed as annexure A-15 to OA, page 221, showing unauthorized huge dumping of untreated effluent into water bodies by member industries of CETP, leading to accumulation of chemical sludge in water bodies. Pictures show layers of red chemical sludge accumulated in water bodies, untreated effluent being released into water body at Saravali, chemical sludge filled in cement bag and dumped in wetlands etc. This has led to devastation of mangrove and wetland ecosystems in and around the area. Photographs taken in April 2017 filed as annexure A-2 to Written Submissions show that there is no improvement in the situation.

95. A letter dated 03.04.2017 sent by applicant to respondent 2 annexing therewith pictures of dead fishes as a result of unauthorized dumping of sludge in the creek of Ucheli and Dandi in Palghar show huge level of pollution and inaction on the part of respondents.

96. In May 2017, TEPS underwent exercise of desludging of one of the sumps of CETP. 400 MT of chemical sludge was dumped in the open premises of MIDC. It was reported in a newspaper and only after the order passed by Tribunal, directing to take sludge to hazardous waste disposal site at Taloja, MIDC lifted the said chemical sludge and sent it to the designated place.

97. Chemical effluent from effluent carrying pipelines was released into water bodies due to lack of maintenance of the said pipelines by MIDC, causing pollution of water bodies. Respondent 2 in para 19 and 20 of its reply dated 26.07.2016 has acknowledged its role of providing disposal

line of CETP as well as replacement of old disposal lines. It has also acknowledged condition of disposal line, bad enough to warrant replacement but no proper maintenance was kept by it. The documents on record i.e., annexure A-12 to OA, (page 126), and show cause notice dated 17.04.2017, annexure IV to reply of MPCB, (page 273), show frequent leakages in the effluent carrying pipelines. It demonstrates laxity on the part of MIDC and thereby making it vicariously liable for causing pollution. CEPI for the last almost 20 years and more, is continuously going worse and worse demonstrating constant pollution caused by industries operating in the area of TIA MIDC. In 1996, respondent 6 identified area in question as critically polluted area. In 2010, CEPI was 72.01 (critically polluted) which got increased to 85.24 in 2011. Report of 2013 showed aggregate CEPI score of TIA MIDC as 73.30 (critically polluted). Committee's report dated 02.12.2016 revealed shocking state of affairs as is evident from the following:

> *"**2) As per Inquiry Report of the Maharashtra State Public Health Services State-level Laboratory Centre Pune***
> *Dissolved oxygen in the sea water of the laid environ appears to have depleted. Also there is intense increase in the ratio of T.D.S., C.O.D. Due to this the possibility of far-reaching consequences on aquatic animals cannot be ruled out. To add to this, it is observed that water without proper treatment from the Tarapur M.I.D.C. is being released into the sea.*
> ***3) As per the report of notings of the three years by the P.H. Centres, Murbe, Dandi under the Health Department Zilla Parishad Palghar, as well as the Rral Hospital Boisar***
> *It is observed that there is an increase in skin diseases and breathing problems among the residents living around the aforesaid Health Centre and Hospital."*

98. One of the conditions of Consent to Establish was, if CETP would not be able to achieve outlet parameters then all the members and society would be individually and jointly responsible and liable for legal action under Section 47 of Water Act, 1974 but no action has been taken against Violators for committing breach of the above condition.

Additional affidavit dated 30.08.2019, by MPCB (P/853)

99. Additional affidavit dated 30.08.2019, filed by MPCB on 11.09.2019 is in purported compliance of order Tribunal's dated 09.07.2018. Certain facts already noted above have been repeated. It also says that CETP has 25 MLD capacity but total generated capacity received at CETP is about 28 MLD to 30 MLD increasing hydraulic and pollution load on CETP. A meeting of the representatives of CETP, MIDC and Members of CETP was held on 30.01.2019. MIDC was instructed to remove sludge approximately 2000 tons from sump-1, 2, 3 and 4 and final discharge point of sump-2 and cost of de-sludging be recovered from member industries. MPCB officers visited site on various dates from January to July 2019 i.e. 07.01.2019, 14.01.2019, 21.01.2019, 28.01.2019, 04.02.2019, 11.02.2019, 18.02.2019, 25.02.2019, 05.03.2019, 11.03.2019, 18.03.2019, 01.04.2019, 08.04.2019, 15.04.2019, 06.05.2019, 13.05.2019, 20.05.2019, 27.05.2019, 03.06.2019, 10.06.2019, 17.06.2019, 24.06.2019, 01.07.2019, 08.07.2019, 15.07.2019, 22.07.2019, 29.07.2019, 05.08.2019 and 13.08.2019 and collected JVS samples of untreated and treated effluent. The analysis revealed that parameters except pH are exceeding consented limits. TEPS has disposed 1861.08 MT sludge upto 30.06.2019 from CETP and 450.45 MT sludge was removed from sump-3 and disposed. 12149.619 MT sludge was removed and scientifically disposed to CHWTSDF, still 2000 MT accumulated sludge is lying at the bottom of MIDC sump-2. TEPS vide letter dated 10.07.2019 informed that they have installed decanter of $30m^3$/hr. capacity to remove sludge at the bottom of sump-2 and after rainy season entire sludge from sump-2 will be removed. MPCB has already started identification of effluent generating industries as also non-complying industries. It is also initiating action including forfeiture of

bank guarantee of Rs. 66,50,000/- from 22 industries. In the meanwhile, action taken by MPCB against TEPS, stated in para 4, as under:

"(i) The Respondent Board has issued directions u/s 33A of the Water (Prevention & Control of Pollution) Act, 1974 to MIDC vide letter dated 06/03/2017 and directed to take over non-conforming CETPs including TEPS-CETP.

(ii) The Respondent Board has refused consent to Tarapur CETP vide letter dated 28/2/2018. The Respondent Board thereafter has filed Criminal cases bearing No. 196/2018 against the Tarapur CETP before Hon'ble Judicial Magistrate First Class-Palghar. Being aggrieved by the Refusal Order of MPCB issued vide letter dated 28.02.2018, the TEPS-CETP vide dated 28.03.2018 has preferred an Appeal before the Principal Secretary, Environment Department Government of Maharashtra, to review the refusal order and to grant permission to operate and maintain CETP at Tarapur to the TEPS-CETP and they will undertake the up-gradation work of 25 MLD CETP. The Respondent Board in respect of resubmission of application for grant of consent by TEPS-CETP dated 07.11.2018, had once again issued Refusal Order dated 28.02.2019. Being aggrieved by the said Refusal Order dtd. 28.02.2019, the TEPS-CETP has preferred an Appeal dated 15.04.2019 before the Principal Secretary, Environment Department Government of Maharashtra, to review the Refusal Order and to grant permission to operate and maintain CETP at Tarapur to the TEPS-CETP and they will undertake the up-gradation work of 25 MLD CETP.

(iii) Directions u/s 5 of the Environment (Protection) Act, 1986 issued by the Central Pollution Control Board vide letter dated 23/07/2018 to Tarapur CETP and directed to take corrective action and operate properly to meet the stipulated norms, to identify the industries to keep a check on effluent quality of CETP, to install CEMS and provide data connectivity to MPCB and CPCB, to stop mixing and discharging of untreated waste water/effluent etc.

(iv) Prosecution Notice issued u/s 15 of the (Environment) Act, 1986 vide letter dated 21/01/2019 by the Respondent Board for non-performing existing 25 MLD CETP within stipulated period. In response to the said prosecution notice, Tarapur CETP has submitted its reply dated 08.02.2019.

(v) Proposed directions issued u/s 33A of the Water (Prevention & Control of Pollution) Act, 1974 vide letter dated 24/1/2019 by the Respondent Board and directed Tarapur CETP as to why it shall not be directed to deposit an amount of Rs.5,00,000/- per day (i.e. 2 paise per ltr./per day) towards the remediation cost to the environment as per 'Polluters Pay Principle'. The TEPS-CETP vide letter dated 10.02.2019 made submission that they submitted the action plan and the execution on action plan is already started.

(vi)** Directions issued u/s 33A of the Water (Prevention &Control of Pollution) Act, 1974 vide **letter dated 14/02/2019 and directed Tarapur CETP to deposit an amount of Rs.5,00,000/- per day (i.e. 2 paise per ltr./per day) towards the remediation cost to the environment as per 'Polluters Pay Principle'.

(vii) Show cause notices for closure were issued in the month of May, 2019 to 113 industries and directed to submit the details about high COD stream with quantity of effluent generated from their processes and its treatment.

(viii) ***Bank Guarantees of the 23 non-complying industries to the tune of Rs.67 Lakhs have been forfeited***.

(ix) Directions u/s 33A of the Water (Prevention & Control of Pollution) Act, 1974 was issued to Tarapur Environment Protection Society CETP by the Respondent Board vide letter dated 28/6/2019 and directed to get the strainers installed on the discharge point of all the member industries along with the provision of positive discharge of effluent to collection system finally reaching to CETP.

(x) Directions u/s 33A of the Water (Prevention & Control of Pollution) Act, 1974 was issued to Maharashtra Industrial Development Corporation, Mumbai by the Respondent Board vide letter dated 28/6/2019 and directed to get the strainers installed on the discharge point of all the member industries along with the provision of positive discharge of effluent to collection system finally reaching to CETP.

(xi) The Respondent Board has filed Criminal cases bearing Nos.338/2010, 261/2017 and 196/2018 against the Tarapur CETP before the Hon'ble Chief Judicial Magistrate, Thane and Hon'ble Judicial Magistrate First Class-Palghar.

(xii) At present civil and mechanical work of proposed 50 MLD CETP is completed. Bio-culture development in 25 MLD Phase-I out of 50 MLD is in progress.*"*

Orders of Tribunal passed from time to time and reports of committees

100. OA was registered on 18.05.2016 and placed before Tribunal on 19.05.2016 when notices were issued to initially arrayed seven respondents. On 01.07.2016, only respondents 1, 2 and 6 were represented through Counsel while respondents 3 to 5 and 7 remained unrepresented. On the next date i.e., 27.07.2016, Shri Amit A. Agashe, Advocate appeared on behalf of respondent 3. Still respondents 4, 5 and 7 remain unrepresented. Tribunal noted in its order dated 22.08.2016 that respondents 4, 5 and 7 are unrepresented but otherwise pleadings complete, therefore, OA was directed to be posted for final hearing.

101. On 09.09.2016, final hearing could not commence, hence matter for interim relief was taken up. Applicant's Counsel pointed out that existing CETP has limited capacity while discharge of effluents is beyond that and that is how it is causing water pollution, since much of untreated or partially treated effluents generated by industries is being

discharged ultimately in Arabian Sea. Respondent 3 (i.e., TEPS represented through Counsel Shri Amit A. Agashe) admitted that effluent received in CETP is in excess to its treatment capacity. Sri Agashe further stated that steps for up-gradation have been taken. Report of MPCB also showed that about 35 to 40MLD effluent is pumped by MIDC into the sea. In the facts and circumstances, Tribunal drew conclusion that CETP run by Respondent 3 is not functioning with required capacity, and even if, effluent is treated, the treatment is not as per standards. This is undoubtedly having bearing on environment. The factum admitted by Respondent 3 that effluent discharged is beyond the capacity of CETP, also leads to the conclusion that CETP not meeting required standards, treated effluent is not safe and bound to impact adversely on environment and life of the people. Consequently, Tribunal issued following directions:

> *"1. The 3rd Respondent is directed to ensure forthwith treatment of effluent is its parameter and standards prescribed and effluent of treatment should be safe and in terms of standards fixed.*
> *2. MPCB is further directed to ensure that it grants no fresh consent to establish or expansion of any of the industries in that area till further orders from this Tribunal.*
> *3. The CEO, Zilla Parishad, district Palghar, is directed to constitute a Committee comprising of District Health Officer, Tehsildar and officials from department of Women and Child Welfare and Fisheries to inspect the area of Tarapur and surrounding for fact finding about adverse impact on environment and the health of local residents. After assessment of adverse impact, the CEO shall ensure proper health medical facilities made available to the residents.*
> *4. The Deputy Collector of the jurisdiction shall ensure compliance of this order by all concerned indicated herein.*
> *5. All the industries in Tarapur areas are directed to reduce generation of effluent waste from whatever present generation is by 40%.*
> *6. MPCB and MIDC must ensure that waste generated by industries is reduced by 40% as indicated in the above directions.*
> *7. There shall be no discharge of effluent in other areas except in designated locations. If any industry is found doing so, MPCB is directed to take strict action forth with as is permissible in law."*

102. Two M.A. were filed by applicants with a prayer that MPCB should be directed to close down all polluting industries, particularly within TIA

MIDC, since untreated effluent is being discharged by industrial units through CETP, run by Respondent 3, in Arabian Sea at Navapur and creeks and drain in the vicinity, causing serious pollution and affecting the environment.

103. Tribunal found from the record, and in particular, the affidavit dated 09.09.2016 of MPCB, that effluent quantity discharged at TIA MIDC was 38.20 MLD which shows that there was no reduction in the inflow of effluent in CETP of TEPS.

104. M.A. No. 351/2016 filed by JSWSCPL seeking its impleadment as respondent was allowed and that is how Respondent 8 was impleaded in OA M.A. No. 352/2016 was filed by JSWSCPL seeking modification of Tribunal's order on which notice was issued.

105. On 06.12.2016, in order to give representation to the industries at TIA MIDC, Tribunal allowed impleadment of TIMA as Respondent 9 so that industries functioning in the area of TIA MIDC may also place their stand before Tribunal.

106. M.A. 400/2016 was filed by M/s. Valsad District Cooperative Milk Products' Union Ltd. seeking intervention in OA but it was permitted to place its stand through TIMA which was impleaded as respondent 9.

107. In M.A. 352/2016, JSWSCPL sought modification/ clarification of order dated 09.09.2016 but finding that existing CETP was not capable of receiving any further load, applying "Precautionary" principle, Tribunal did not find any reason to modify its order dated 09.09.2016 and consequently rejected M.A. No. 352/2016 by order dated 08.03.2017.

108. M/s. Valsad District Cooperative Milk Products' Union Ltd. in M.A. No. 400/2016 sought a direction to MIDC to supply sufficient quantity of water of 325 m^3/day minimum against 376 m^3/day, approved. Considering the fact that discharge of effluent was directed to be reduced by 40%, the said request of M/s. Valsad District Cooperative Milk Products' Union Ltd. was not proper hence application was rejected vide order dated 13.04.2017.

109. Further, inquiry report dated 02.12.2016 submitted by Committee constituted by CEO Zilla Parishad, District Palghar was sought to be relied by applicants. Tribunal directed it to be placed along with original record.

110. On 30.05.2017, applicants brought to the notice of Tribunal that TEPS has discharged sludge being 400MT, dumped in the open premises of MIDC which is likely to cause serious environmental danger in ensuing monsoon season as the sludge may get washed off and pollute environment. Tribunal issued directions to MIDC to immediately arrange for removal of sludge to hazardous waste disposal site at Taloja.

111. On 24.07.2017, TEPS took stand that increased number of industries in TIA MIDC have brought increased load on CETP and it has to build extra capacity for handling such load. Counsel for TEPS stated that 75 MLD CETP is under construction and full-fledged CETP with increased capacity will be commissioned by 15.01.2018. Learned Counsel appearing on behalf of MPCB informed that no fresh consent had been granted to any industry to be established in TIA MIDC after 2014 and no consent either for establishment of new industry or expansion of existing industries, shall be granted, except ZLD industry, within TIA MIDC. The said statement was recorded by Tribunal in the order dated 24.07.2017.

112. On 08.12.2017, besides respondents 1, 2, 3, and 9, respondent 4 was also represented through Shri Rahul Garg, Advocate. MA 375/2017 filed by TEPS, seeking direction in respect of CETP was taken up, and other parties were permitted to file their response.

113. On 09.07.2018 when matter was taken up, applicants complained that even existing CETP is not being operated efficiently and to its optimal capacity. Consequently, Tribunal directed MIDC and MPCB to verify the above facts and if it is found that CETP is not properly functioning, to take appropriate action. MPCB was also directed to make inspection of individual units in the area and verify whether the same are complying with the specific conditions stipulated in the consent to operate and submit a separate report. Tribunal also observed that, in case, industries are found discharging effluent in excess of the prescribed limits and committing breach of the conditions, MPCB shall be at liberty to take action in accordance with law.

114. On 26.09.2019, Tribunal constituted a Committee to assess extent of damage, cost of restoration of environment, accountability of CETP and polluting industrial units. Committee comprised of CPCB, IIM, Ahmadabad, IIT, Ahmadabad, NEERI and GPCB (wrongly mentioned as GPCB but subsequently corrected as MPCB vide order dated 22.10.2019). Committee was directed to submit report within three months. Tribunal said that Committee will be entitled to take any factual or technical inputs in the manner found necessary and may also suggest steps for restoration of environment. Committee was also directed to give hearing to CETP Operator and the units identified, as polluting environment, by MPCB, for which list was to be supplied by MPCB to the Committee, indicating period and nature of default, within one month. MPCB was

directed to inform defaulting units for compliance of order and State Regulators had to exercise statutory powers of prosecution which power is coupled with duty. Directions contained in Para 7 (vi to x) of the order dated 29.06.2019 (as corrected on 22.10.2019) are as under:

> *"7. xxx ……xxx……xxx*
>
> *(vi) Having regard to the entirety of the fact situation in the present case, we direct that,* ***except for the green and white categories of industries, other category of defaulting industries connected to the CETP, shall deposit with the CPCB the following amounts towards interim compensation within one month:***
>
> ***a) Large Industries – Rs. 1 Crore each.***
> ***b) Medium Industries – Rs. 50 Lakhs each.***
> ***c) Small Industries – Rs. 25 Lakhs each.***
>
> *vii)* ***The CETP on its part shall deposit a sum of Rs. 10 Crores with the CPCB towards interim compensation within one month****.*
>
> *(viii) The amount may be utilized by the CPCB for restoration of the environment.*
>
> *(ix) The CPCB shall undertake jointly with MPCB extensive surveillance and monitoring of the CETP at regular intervals of three months and submit its report to this Tribunal.*
>
> *(x) Copy of the order may be sent to CPCB by email and all reports in pursuance of the above directions be sent to this Tribunal at judicial-ngt@gov.in".*

115. Tribunal also observed that similar matter being ***OA No. 95/2018, Aryavart Foundation vs. M/s. Vapi Green Enviro Ltd. & Others***, was drawing attention of Tribunal in Court No. 1, therefore, present OA be listed in Court No. 1 on the next date.

Report dated 02.01.2020 submitted by Joint Committee

116. Pursuant to order dated 26.09.2019 (as corrected vide order dated 22.10.2019), report dated 02.01.2020 was submitted by joint Committee comprising of the following:

(i) Prof Anish Sugathan, IIM Ahmedabad
(ii) Prof Chinmay Ghoroi, IIT Gandhinagar

(iii) Mr. Hemant Bherwani, Scientist, NEERI Nagpur
(iv) Mr. D. B. Patil, Regional Officer, MPCB-Thane, and
(v) Mr. Bharat K Sharma, Scientist E, CPCB

117. Report shows that MPCB submitted a list of 225 defaulting units including CETP (identified as polluting units in the last 05 years from the date of filing O.A. in Tribunal i.e., 28.4.2016) vide e-mail dated 28.11.2019. Committee afforded individual hearing to aforesaid defaulting units. It also found that in the list of 225, 04 units were not operating; 05 units did not respond to avail opportunity of hearing; and only 216 units availed opportunity of hearing which was provided. Oobjections, raised by aforesaid defaulting units, in general, are noticed in the report *as under:*

> *"(a) In cases* ***where violations were informed about samples collected from their storm water drain, the outlet of ETP having zero liquid discharge facility, etc., the unit denied*** *citing the following arguments:*
>
> *(i) Samples collected from their storm water drain are not being discharged but channelized to collection tank of their ETP;*
>
> *(ii)* ***Seepage/rainwater run-off from other's premises actually enters into their premises due to undulating land terrain and find place in their storm water drain****;*
>
> *(iii) Effluent collection sump is at higher elevation than that of unit's ETP treated storage tank and as a result effluent from* ***the collection sump enters into their ETP treated storage tank****, and;*
>
> *(iv) In cases of units having zero liquid discharge facility, the outlet of ETP (prior to RO/MEE) exceeding the prescribed discharge limits may not be considered as violations since there is no discharge line and the outlet of ETP is further subjected to RO/MEE s;*
>
> *(v) Communication informing the exceedance of prescribed norms in samples collected by Joint Vigilance Survey or show-cause notice/interim direction has not been received by the units in some of the cases. Thus,* ***proper proof is missing with MPCB for few cases****.*
>
> *(b) The SSI units represented that though in their Consent to Operate issued under the Water (Prevention & Control of Pollution) Act, 1974, MPCB has prescribed discharge effluent standard stringent to the design/standard of the CETP but incidences, where*

effluent from their unit have found within the inlet design/standard of the CETP should not be considered as violation for imposing environmental compensation/damage."

118. The above objections were examined and Committee took following decision:

(i) *In view of (a) above and other similar cases,* ***MPCB may furnish the list of only those polluting units*** *for the purpose of environmental compensation/ restoration cost* ***for which due records are available for the violations noticed by MPCB****.*

(ii) ***Incidences of SSI units, where they have discharged into CETP exceeding their prescribed norms but within design/prescribed inlet standards of CETP, may not be included in the list of polluting units for the purpose of environmental compensation/restoration cost recovery****. For if SSI units are required to meet its outlet effluent standard to that of outlet effluent discharge standard of CETP then there remains no role of CETP which has primarily been facilitated for smaller units. However, MPCB may examine the matter and take appropriate decision in exempting such exceedance cases in case of SSI units.*

(iii) ***The violations which are not directly related to effluent discharge into CETP or not causing damage to soil/ surface water/ground water, may not be taken in the list of polluting units.*** *However, MPCB may take appropriate actions for such defaults.*

(iv) *Limiting period of violations*
Taking reference from section 15(3) of the National Green Tribunal Act, 2010*, and limit a period since when the default is to be considered for assessing environmental compensation and cost of restoration, the* ***period of default has been taken into account from five years*** *since the day Original Application No. 64/2016 (WZ) was made before the Hon'ble Tribunal (i.e. 28/4/2016) extended till the date of order of the Hon'ble Tribunal (i.e.26/09/2019) viz. 28/4/2011 to 26/9/2019.*

(v) ***The number of days (N) of violations****:*
   (i) *In cases where closure direction has been issued, the period of default (N in days) may be taken as the date of inspection till the effective date of closure of the unit.*
   (ii) *For other cases including where conditional restart order or show-cause notice/proposed direction/ interim direction issued under the Water (Prevention & Control of Pollution) Act, 1974/ Environment (Protection) Act, 1986, have been issued, the period of default may be taken as the number of days(N) for which violation took place. It may be the* ***period between the day of violation observed/ due date of compliance of directions and***

the day as on which the compliance was verified by MPCB."

119. MPCB was directed to re-examine in the light of above decisions of Committee. Subsequently, MPCB submitted a report in which it added 20 more units to earlier 221 units. Thus, Committee further sought time vide report dated 02.01.2020.

Rejoinder Affidavit dated 03.09.2016 filed on 07.09.2016

120. Applicants have filed comprehensive/single rejoinder affidavit in response to the replies submitted by respondents 1, 2 and 3 which has been sworn on 03.09.2016 and on paper book from page 572 to 592. In reply to the response of respondent 1, applicants have stated that respondent 1 is responsible for monitoring and supervision of environmental and forest matters in the country. It has issued various directives and guidelines for protection of rivers and water resources. It is empowered under Water Act, 1974 and Air Act, 1981 to take necessary actions including but not limited to the closure of industries in case of violation of environmental laws. It is also responsible for monitoring functioning of industries within MIDC. Though, it is said by respondent 1 that it has taken various steps including issue of show cause notices and directions to respondent 2 and 3 but the same are not sufficient, looking to the situation, prevailing at the site in question where effluent discharge in Navapur creek continues to be far above the capacity of CETP resulting in COD, BOD, pH and other values going far above the prescribed parameters. No deterrent and effective action was taken to ensure pruning or elimination of water pollution. Despite sufficient steps by authority and power under law, respondent 1 has not taken appropriate steps to mitigate the problem of pollution in the area in question. One of the conditions contained in Consent to Establish issued by respondent 1

for CETP run by respondent 3 was, if CETP would not be able to achieve outlet parameters, all the members and societies would be individually and jointly responsible and liable for legal actions under Section 47 of Water Act, 1974. Section 47 read with Section 41 of Water Act 1974 makes defaulting bodies guilty of committing offence and liable for punishment which shall not be less than one year and six months but may extend to six years and with fine. In case offence continues, an additional fine which may extend to Rs. 5,000/- per day during such failure continues after conviction for the first failure, can also be imposed. Respondent 1, though may have issued directions and show cause notices under Section 33A of Water Act, 1974 but failed to consider that directions and show cause notices, when not found effective and non-compliance continued, ought to have taken appropriate action by invoking statutory power vested in it, as also to invoke the conditions of Consent to Establish.

121. Giving parawise reply to the response of respondent 1, it is stated that respondent 1, in reply in para 3B shows that discharge of effluent in Navapur creek varies from 35 MLD to 40 MLD, while capacity of CETP is only 25 MLD, meaning thereby that there was excess discharge of effluent and apparent violation of Water Act 1974 and the conditions of Consent to Establish. Mere issue of directions in show cause notices which did not yield in any effective result, cannot justify further inaction on the part of respondent 1, by not invoking a multifarious statutory powers vested in it under different provisions of environmental laws including prosecution etc. Discharging of effluent in deep sea at a distance of 7.1 km, would lead to further degradation of the aquatic ecology and would compound difficulties faced by traditional fishermen to carry out their fishing activities for the cause of industrial units for running their ventures

defines negligence of compliance of environmental laws and have virtually no concern for preservation and protection of environment. Reply in para 6 shows that COD and BOD average value in the year 2015-2016 was above prescribed norms, hence it was admitted case of violation of environmental laws by the concerned industrial units as also the operators of CETP. The averments in para 11 of reply of respondent 1 refer analysis of DO of water samples collected at various creeks which suggests that they are adequate for fish growth. However, average BOD of sea water at Navapur and Dandi creek are 10.53 mg/l and 10.84 mg/l respectively as compared to 3 mg/l standard as specified under EP Act, 1986. Further average annual fecal coliform data for Dandi creek is 320.81/100 (MPN) as against standard of 100/100 (MPN) as specified in EP Acct, 1986. Untreated organic matter contained fecal coliform, can be harmful to environment. Aerobic decomposition of this material can reduce dissolved oxygen levels if discharged into rivers or waterways and may reduce oxygen level enough to kill fish and other aquatic life.

122. Reply of respondent 2 (MIDC) has been dealt with by applicant in para 2 of rejoinder. Respondent 2, though has taken a stand that its functions are limited so far environmental protection measures are concerned but it has not considered that objects of establishment of MIDC is to secure orderly establishment of industries within designated industrial area and the provision of amenities and common facilities; this would include provision of facilities for establishment of Effluent Treatment Plant which in turn would include replacement of damaged pipelines, providing appropriate storm water drainage systems. CETP performed a vital function in waste disposal; hence MIDC was responsible for provision and upkeep of such system as a collaborator with MPCB so far as pollution control measures are concerned. It is responsibility of

MIDC to provide water connections and maintain water supply to the industries so as to enable them to carry out their operations. Discharge of effluent by CETP above its capacity of 25 MLD could have been continued by respondent 2 also by restricting the supply of water to industries so as to limit as per consents issued to such industries by the Board and in this regard, notice and direction was also issued by respondent 1 to MIDC but MIDC failed to observe the obligations and compliance of environmental laws. It is instrumental and has the authority to act for protection and preservation thereof. Even if, role of MIDC is restricted to facilitate orderly establishment and growth of industries in State of Maharashtra, the term 'orderly establishment' would entail providing requisite infrastructure for treatment and disposal of effluent generated by industries in the area developed by MIDC. For the upkeep of CETP, MIDC also had its due obligations and responsibility which it failed to observe. It cannot be said that respondent 2 has no control over industries within its industrial estate in as much as it had power to control water supply to the industries, monitoring activities of industries to ensure that hazardous waste and municipal solid waste etc. is not illegally disposed of. Further in para 19 and 20, respondent 2 has acknowledged its role in providing collection and disposal lines and replacing old disposal lines. Reply contained in para 19 and 20 also shows acknowledgment on the part of MIDC about depleting condition of disposal line warranting immediate repair and/or replacement and other corrective measures. Respondent 2 did not act within time for such replacement or repair of damaged line which abated offence on the part of respective industries and CETP to continue to cause damage to environment by discharge of effluent in creeks and sea water. Replying averments contained in para 21 and 22 of the response of respondent 2,

it is said that MIDC has not yet received CRZ or EC for the treated effluent carrying pipelines from TIA MIDC to deep sea at Navapur, notices issued to defaulting industries became ineffective and for prevention of pollution of water, MIDC ought to have stopped water supply to such industries. Respondent 2 is guilty of negligence by not ensuring that excess water is not supplied to the industries so as to prevent discharge of excess effluent in violation of provisions of Water Act, 1974 and the conditions of consent.

123. In para 3, applicant has responded to the reply of respondent 3 i.e., TEPS. It is denied that applicant has relied on old findings and reports and pointed out that the last report of MPCB, relied by applicant, is of March 2016 which is recent since O.A. itself was filed on 05.05.2016, hence report of March 2016 cannot be said to be an old report. The mere fact that respondent 3 is planning to establish 50 MLD CETP in addition to the existed one, will not be an excuse for discharge of effluent, admittedly in excess to the capacity of existing CETP when discharge is causing serious water pollution. The alleged steps taken by respondent for mitigating pollution have not been proved to be adequate and consistently Proponents have failed to prevent water pollution as long back as in 2011-2012. Aannual Report prepared by CPCB (annexure A-8 to OA) clearly mentions that "*the effluent quality of CETP, Tarapur is not meeting the discharge norms, and immediate action is required to be taken so that CETP achieves the desired discharge norms*". The said report, as evident, is of 2011-2012 and even in March 2016, situation continued to be the same and there was no noticeable improvement. The steps taken for execution of 50 MLD CETP also show apparent irregularities and inconsistencies in as much as EC was granted in March 2015, though Detailed Project Report (hereinafter referred to as 'DPR') in respect to the

said project was approved only on 27.07.2016 i.e. after more than a year and three months, when EC was already accorded. It is really not understandable, how EC was accorded when even DPR was not approved, though DPR is analogous to a pre-feasibility report. The alleged steps taken for improvement of performance of existing 25 MLD CETP have not resulted in any improvement in the situation. The affidavit dated 13.01.2013 filed by MPCB in High Court in ***PIL 17 of 2011*** (annexure A-12 to OA) shows that during the visit of MPCB officials, CETP was not found in operation; untreated effluent from inlet tank was found over flowing into sump-2 and ultimately, leading to Navapur creek causing pollution of creek water. Even in RTI reply dated 15.01.2016, given by MPCB to applicant (annexure A-13 to OA), it is said that "*treated effluent generated by all these companies are collected in the Effluent Treatment Plant of 25 MLD capacity on behalf of Maharashtra Industrial Development Corporation through an enclosed pipeline, thereafter on behalf of M.I.D. Corporation the entire industrial effluents generally* ***35 to 40 MLD*** *are discharged 500 metres into the sea of Navapur".* CETP continuously has discharged excess amount of effluent into water bodies and thus violating environmental laws. There is consistent violation of consent conditions on the part of CETP operator and member industries. The alleged efforts have resulted almost in negligible impact on the ultimate pollution being caused by proponents and it is evident from various reports like annexure A-14 to OA. The alleged remedial measures, if any, taken at a later stage, will not condone the offence already committed by violating environmental laws and, therefore, polluters are labile to face consequences in terms of payment of compensation, prosecution etc. Further claim that new 50 MLD capacity CETP will resolve all environmental issues, is nothing but an expectation and speculation and

cannot be an explanation or reply for consistent and continuing violation of environmental norms by discharging effluents in water bodies causing pollution.

Application dated 01.07.2020 by applicant (page 1130):

124. Applicant filed this application praying an early consideration of the matter stating that Committee was requested to submit report by January 2020 but it has sought further time and, in the meantime, industries in TIA MIDC are continuing to violate pollution norms flagrantly and also releasing untreated effluent into surrounding areas. This is causing serious health problems to the residents of surrounding areas and also fishing activities have been impacted. Untreated effluent has caused death of fauna of water bodies where fishing activities are conducted and the matter is of urgent consideration.

Detailed report dated 18.06.2020 sent by CPCB vide e-mail dated 19.06.2020

125. A detailed report dated 18.06.2020 was submitted by joint Committee through Regional Director, CPCB, Pune. Report summarized the tasks, performed by Committee, as under:

(i) Assessment of extent of damage;
(ii) Restoration measures;
(iii) environmental damage cost and cost of restoration;
(iv) Individual accountability of CETP and polluting industrial units to meet the aforesaid costs after giving hearing to the polluting units identified by MPCB:
(v) Steps for restoration of the environment."

126. Committee adopted following approach to perform above task:

"(a) Visit to the CETP and in and around MIDC Tarapur area.
(b) Data/information collection from CETP operator, MIDC and MPCB.
(c) Assimilation of information on water bodies in and around MIDC, Tarapur.
(d) Sampling of effluents from various components of CETP Tarapur.

(e) Sampling & Analysis of sediments and water samples at various drains, creek and sea shore in and around MIDC Tarapur.
(f) Sampling & Analysis of ground water at various locations in and around MIDC, Tarapur.
(g) Hearing to the polluting units as per list provided by MPCB for the purpose of estimating their individual accountability.
(h) Analysis of various data/information and discussions through meetings/video conferences.
(i) Report preparation."

127. The breakup of categories, scales and sector wise distribution of industries in TIA MIDC given in Table 2.1 and 2.2, is as under:

"Table 2.2: Sector Wise distribution of Industries in MIDC Tarapur

Scale→ Category↓	***Large Scale***	***Medium Scale***	***Small Scale***	***Total***
Red	*69*	*20*	*423*	***512***
Orange	*6*	*13*	*71*	***90***
Green	*32*	*26*	*556*	***614***
Total	***107***	***59***	***1050***	***1216***

Major types of industrial units are bulk drugs manufacturing units, specialty chemical manufacturing units, steel plants and textile plants. *Scale wise distribution of industries as Small-Scale Industries (SSI), Medium Scale Industries (MSI) and Large-Scale Industries (LSI) and sector wise distribution of industries are given in Figure 2.2 and Table 2.2 respectively.*

Fig. 2.2: Scale wise distribution of industries in MIDC Tarapur

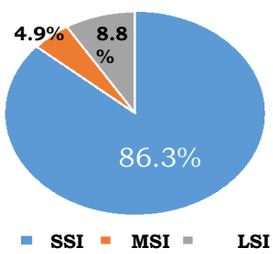

Table 2.2: Sector Wise distribution of Industries in MIDC Tarapur

Sl. No.	***Industry Sector***	***Number***
1.	*Textile Processors*	*40*
2.	*Steel Processors*	*2*
3.	*Chemical*	*298*

4.	*Dyes & Dyes Intermediates*	*25*
5.	*Pharmaceuticals*	*120*
6.	*Pesticides*	*4*
7.	*Others*	*727*
	Total	***1216***

128. Giving other relevant details, report says that TIA MIDC is surrounded by Navapur Dandi Creek in north and Kharekuran Murbe Creek in south direction. Their confluence points into Arabian Sea are separated by about 6.5 Km. Various natural and storm drains are also flowing through TIA MIDC which meets Navapur Dandi Creek in north and Kharekuran Murbe Creek in south, due to natural topography of TIA MIDC. There are 14 natural drains flowing through TIA MIDC and the list given thereof with plot numbers i.e., original location and further progress is as under:

"Table 2.3: List of drains flowing through MIDC, Tarapur

Drain Name	***Drain Origin location***	***Name of the village through which drain meet Creeks***	***Direction towards which Drain flow from the MIDC***	***Creek to which drain meet***
Drain 1	*Starting from Plot No. RB-38*	*Pasthal Village*	*North West*	*Navapur-Dandi Creek*
Drain 2	*Starting from Plot No. C-4/2/2*			
Drain 3	*Starting from Plot No. E-24/2*			
Drain 4	*Starting from Plot No. E-13*	*Salwad Village*		
Drain 5	*Starting from Plot No. T-3*	*Paam Village*		
Drain 6	*Starting from Plot No. T-52*			
Drain 7	*Starting from Plot No. N-48*	*Kumbhavli Village*	*South*	*Kharekuran Murbe Creek*
Drain 8	*Starting from Plot No. N-27*			
Drain 9	*Starting from Plot No. M-7 (Meets with Drain No. 8 near Plot No. N-26)*			
Drain	*Starting from Plot No. OS-13*	*Kolavade Village*		
Drain	*Starting from Plot No. C-2*			
Drain	*Starting from Plot No. C-7*			
Drain	*Starting from Plot No. J-72/2*			
Drain	*Starting from Plot No. J-138*			

129. In para 3.2 of the report, it is said that CETP run by Respondent 3 has 1161 industries as members. The drainage network for CETP has been detailed in para 3.3, as under:

> *"The **Tarapur MIDC areas have been divided into sixteen (16) Zones** namely A, B, C, D, E, F, G, H, J, K, L, M, N, S, T and W.*
>
> *The **effluent from industries in these zones are channelized by gravity to sumps namely Sump 1, Sump 3, Sump 4 and Gravity Main**. **From these, effluent are pumped to CETP except Gravity Main from where effluent is conveyed to the CETP by gravity**. The total drainage collection network is of 59.00 Km which are underground. Most of the drainage network has been converted with HDPE lines.*
>
> *The treated effluent from CETP is conveyed to Sump-2 from where it is pumped for 1.8 km to Break Pressure Tank-2 (BPT-2). The effluent from BPT-2 is conveyed to the On-shore drop chamber which is at 3.36 Km through two pipelines i.e. Line-1 and Line-2. and is **finally released to coastal waters of Arabian Sea at a location with shallow depth**. The submarine outfall of the CETP outlet is at shallow location which is 500 meters from the On-shore drop chamber. Work of converting the existing Pre-stressed Concrete (PSC) with HDPE lines is in progress."*

130. The management of sludge, generated from treatment process, comprised of collection of sludge in a holding tank wherefrom decanter (centrifuge) and Sludge drying Beds, it is sent to Common Hazardous Waste Treatment Storage and Disposal Facility (CHWTSDF), Taloja, District Raigad, for disposal. Annual CETP sludge received at Taloja from CETP at TIA MIDC, since April 2011 to September 2019, given in Table 3.3, is as under:

"Table 3.3: Year wise CETP Sludge received at CHWTSDF, Taloja

Sl. No.	***Financial Year***	***CETP Sludge received at CHWTSDF Taloja from CETP Tarapur***
1.	*2011-12*	*1789.32*
2.	*2012-13*	*2347.38*
3.	*2013-14*	*3795.96*
4.	*2014-15*	*2771.865*
5.	*2015-16*	*6318.375*
6.	*2016-17*	*5533.89*
7.	*2017-18*	*5643.93*

8.	*2018-19*	*3993.08*
9.	*2019-20 (Up To Sept. 2019)*	*1034*

131. Committee noted that authorization dated 29.11.2019, granted by MPCB, having validity from 31.12.2017 to 31.12.2020, allowed CETP 7 M.T./Day Chemical Sludge but it was generating more than the authorized quantity. Committee found about 750 M.T. sludge stored at CETP premises on 13.11.2019. Analyzing COD of CETP, Committee said:

> *"3.4. The data given at Annexure - III and the Figure 3.4 reveals that COD outlet has hardly complied with the standard of 250 mg/l stipulated under the Consent to Operate.* ***Among the 391 outlet samples collected during the said period of April 2011 to Nov. 2019, 379 samples have exceeded the said outlet standard and average COD concentration in CETP outlet has been observed as 813.64 mg/l.***
>
> *The CETP inlet effluent has also not complied continuously to the prescribed standard limit of 3500 mg/l.* ***Among 391 inlet samples collected during the said period of April 2011 to Nov. 2019, 100 samples have exceeded the said inlet standard and average COD concentration in CETP inlet has been observed as 5323.76 mg/l****."*

132. Similarly, analysis results of BOD of CETP inlet and outlet effluent, given in fig. 3.5, are as under:

> *"3.5. The data given at Annexure - III and the Figure 3.5* ***reveals that BOD outlet has hardly complied with the standard of 100 mg/l or 30 mg/l stipulated under Consent to Operate. Among the 391 outlet samples collected during the said period of April 2011 to Nov. 2019, BOD concentration of 390 samples have exceeded the said outlet standard of 100 mg/l or 30 mg/l and having average concentration as 315.6 mg/l.***
>
> *The CETP inlet effluent has intermittently not complied to the prescribed standard limit of 1500 mg/l. A****mong 391 samples collected during the said period of April 2011 to Nov. 2019, 61samples have exceeded the said inlet standard and average BOD concentration in CETP inlet has been observed as 2098.6 mg/l****."*

133. Regarding average inlet effluent quantity, Committee has said:

> ***"...of the 104 months since April 2011 to Nov 2019, the CETP inlet effluent quantity has exceeded for 75 months than the designed capacity of 25 MLD. During such 75 months, the said***

> ***average inlet to the CETP has been reported as 25.27 MLD having maximum monthly average of daily inlet effluent quantity as 26.343 MLD against the said design of 25 MLD.*** *The excess hydraulic load may have resulted into drains as overflow."*

134. Similarly, analysis of waste water samples from inlet and outlet showed results as under:

> *"The analysis results reveal that the CETP did not meet discharge standards. Concentration of COD, BOD, Ammonical Nitrogen, TSS and TDS in CETP outlet exceed the outlet standard prescribed under the Consent to Operate in all the 04 samples.* ***The same exceed more than 4 to 15 times, 5 to 47 times, 1 to 8 times, 1 to 20 times and 40 to 100 times respectively to the said standards. Phenols also exceeded 1.4 to 20 times the outlet standard in two of the samples and Cyanide exceed 5.4 times in one of the samples.*** *In the inlet effluent also, Ammonical Nitrogen exceeded the inlet standard prescribed under the Consent to Operate in all the inlet samples except in two samples. The same exceed to more than 1.4 to 7 times the inlet standard. COD also exceeded (1.08 to 1.5 times) in two of the samples and BOD (1.3 times) in one of the samples."*

135. Further, analysis results in respect of inlet sumps and inlet of CETP, stage wise sampling from inlet to out of CETP and heavy metals showed general failure in maintenance of standards. In Para 3.8.4.1, Committee has recorded its other observations made during site visit on 13.11.2019, as under:

> *"(i) All the treatment units of CETP were found operational except tertiary treatment system (comprising Pressure Sand and Activated Carbon Filter). The tertiary treatment was observed to be defunct since long time.*
>
> *(ii) During the visit,* ***CETP was operational without valid consent. The earlier consent expired on 31.12.2017. MPCB issued consent on 29.11.2019 for the period from 31.12.2017 to 31.12.2020****. This shows the* ***CETP was operational without consent from 31.12.2017 to 29.11.2019 i.e. almost for 23 months****.* ***MPCB granted consent even though CETP is grossly polluting consistently.*** *MPCB has taken various actions against CETP as detailed in Point 3.11.*
>
> *(iii) There were leakages from pipes & pumps, overflow of effluent from some units (equalization tanks/aeration tanks) and overall housekeeping was found to be poor. There was heavy smell of SVOCs/VOCs (solvents/chemicals) near the inlet sumps.* ***Inlet of CETP (with BOD: 3150 mg/l & COD: 5680 mg/l)***

indicating that member industries discharging their untreated/partially treated effluent to CETP without confirming the inlet design norms of CETP. *CETP is not designed for such high strength effluent. There is an urgent need of separate arrangement for High COD and High TDS effluent such as Common MEE and Common Spray Dryer. Such effluent streams are required to be separately collected and transferred to common facilities with identification of such industries.*

CETP has no proper mechanism in place for routine monitoring of individual defaulter member units.

(iv) *The* ***inlet effluent is exceeding the 25 MLD design hydraulic load of CETP****. The inlet flow meter and Online Continuously Monitoring System is not functioning consistently. The* ***CETP operator also informed that inlet effluent quantity exceeds the design hydraulic load of CETP of 25 MLD that too with higher concentration at inlet****. MPCB estimates that CETP inlet effluent quantity may be about 28 MLD against the design/consented capacity of 25 MLD.*

(v) *Inlet Quality Standards are yet to be prescribed by MPCB for BOD & COD in the Consent of CETP as per MoEF&CC Notification dated 01.01.2016. The Consent stipulates that "Only for SSI units (having less than 25 CMD discharge effluent) BOD: 1500 mg/l and COD: 3500 mg/l is allowed and for rest of the industries, treated effluent as per their respective consents standards i.e. COD: 250 mg/l are allowed".*

(vi) ***Significant quantity of sludge is deposited (approx.-2400 MT) in the MIDC Sump-2 (10.56 Million Liters- capacity****) where treated effluent is collected and further transferred to the sea shore through BPTs****. There is also overflowing/leakages from pumps etc. from this sump to nearby natural drain which meets with Navapur Creek and further to the Arabian Sea.*** *It is informed that the operation of this Sump is under MIDC and responsibility lies with MIDC for proper maintenance and removal all the sludge from sump. MIDC needs to be directed to take immediate action for the same.*

(vii) *MPCB has authorized 07 Metric Ton/Day as CETP Sludge in the Authorization under Hazardous Waste (M, H & TM) Rules, 2008 for treatment and disposal of Hazardous Waste.* ***The quantum of sludge generation in the CETP may be more than such specified quantity. MPCB may review the same****. Further dry weight or wet weight should be specified*

(viii) *The stock of sludge about 750 MT stored in the premises needs to be disposed immediately to the CHWTSDF.*

(ix) *CETP needs thorough up-gradation/revamping of its units/processes in terms of capacity, retention time, automatic chemicals dosing, scraping mechanism, aeration tanks, aeration capacity, de-sludging, transfer pumps & pipelines, removal of*

> *corrosion affected equipment/materials, decanters and its capacity, sludge drying beds, etc."*

136. In Chapter 4 of the report, Committee has examined damage to environment in two parts i.e., drain water samples and sediments samples founded. The analytical results of water samples and sediments of creeks passing across TIA MIDC have been examined and observations of Committee, are as under:

> *"Thus, it indicates that the two creeks (Navapur Dandi Creek and Kharekuran Murbe Creek flowing North and South of Tarapur MIDC respectively) receiving polluted effluent from the drains of MIDC Tapaur were found having impact of discharges from such drains. Presence of odour & colour indicate requirement of further analysis which may be carried out during detailed investigation and remediation requirement as suggested under Chapter 8 "Measures for restoration of Environment in and around MIDC Tarapur" of this report."*

137. The above standards have been examined as per CCME Canadian Environmental Quality Guidelines which were recommended in "Guidance document for assessment and remediation of contaminated sites in India" by MoEF&CC. **Committee has concluded that Industries are discharging untreated effluents/solvents /chemicals to the drains.**

138. Similarly in respect of **groundwater**, Committee has said:

> *"The above observations of high TDS and presence of BOD and COD in all the monitored ground water samples and presence of colour, odour, Chlorides, Fluorides, Sulphates, Total Ammonical Nitrogen, Metals (Lead, Copper, Iron and Manganese) in one or more samples of the sampled ground water indicate that* ***the ground water in and around Tarapur MIDC has been contaminated due to the industrial activities****."*

139. As per Committee's earlier directions, MPCB re-examined defaulting units. Out of 221, it had identified earlier, 83 units were re-identified. It further identified 20 units, as defaulting units, making total

103. These 103 units were identified by MPCB by applying following factors:

> *"(i) Inclusion of only those units for which due records are available for establishing the violations;*
>
> *(ii) Exempting SSI units (having effluent discharge less than 25 KLD) who were found discharging effluent to CETP meeting CETP inlet consent norms of COD-3500 mg/l and BOD 1500 mg/l;*
>
> *(iii) Non-inclusion of violations which are not directly related to effluent discharge in to CETP or not causing damage to soil/ surface water/ground water;*
>
> *(iv) Considering the period of default of five years since the date of making Original Application No. 64/2016 (WZ) i.e. 28/4/2011 to 26/9/2019 taking reference from section 15(3) of the National Green Tribunal Act, 2010, with regard to consideration of default for assessing environmental compensation and cost of restoration;"*

140. Committee afforded opportunity of hearing to all 103 units. It has said that out of 20 units, 03 units did not avail opportunity and out of 83 units, besides oral hearing, 27 also submitted written reply. Further, out of 05 units which earlier had not responded, 01 attended hearing. The list of these 103 units is given in annexure-V to the report.

141. Committee has examined environmental damage cost and restoration cost of environment in Chapter 6 of report. It is said that **Environmental Damage Cost Assessment** (hereinafter referred to as '**EDCA**') is a tool that scrutinizes potential loss in monetary terms due to anticipated impacts on the environment due to release of pollutants beyond safety. EDCA is part of economics, mainly emphasize sustainability around the globe. Main purpose of assessment is not to hinder any type of development in the country, but to retain ecosystem in its pristine condition to avail maximum benefits to human. EDCA is generally carried out using following steps:

Identification of pollutants *The flow volume, pollutant type and concentration being discharged beyond the standard is analysed*	→	***Identification of EDCA method*** *Based on the pollutant concentration, the likely occurring damages are scrutinized upon which suitable methodology is selected*	→	***Damages cost assessment*** *Monetary loss due to release of pollutant is quantified*

142. Committee has further observed that due to lack of availability of detailed baseline data related to identified damage parameters, various studies have been referred, to arrive at the damage costs. Approach of Direct Value Transfer is referred for assessment. Direct value transfer estimates the economic value of one location, using the study carried out for another location. The value benefit transfer method is widely used as a technique to calculate economic value of benefits for the environment when an original study for valuation is not feasible. This method calculates the value of damages by transferring the information, which is available from the studies, already conducted from the study site (completed) to the policy site (another location). Committee then referred to et.al. paper formula written in paper, published in 2010, written by Hernandez- Sancho. The formula is as under:

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

143. Committee said that damage cost per kg of the load has been used for the study for each pollutant (which are exceeding the standards as per regular monitoring data of MPCB) individually which is discharged in to the sea and is represented in Table 1. Further, to estimate damages done due to discharge of pollutants to the Sea, effluent discharge standards in

the consent to operate issued by MPCB, were taken into consideration. The damage cost for each pollutant calculated in terms of Euro per Kg for sea in Table 6.1 as under:

*"**Table 6.1:** Damage Cost for Each Pollutant in Euro per Kg for Sea*

Pollutant	***Damage in Euro per Kg (2010)***
Suspended Solids	*0.001*
Biological Oxygen Demand	*0.005*
Chemical Oxygen Demand	*0.010*

"

144. Committee also observed that there are wetlands in the nearby area of discharge point. Wetlands are the transition areas between the shallow water overlying water logged soils as well as interspersed submerged or emergent vegetation. It has its own characteristics ecosystem and diverse habitat. Preservation of wetlands is important to save inland diverse endangered habitat, especially in the light of climate changes. Discharge of pollutants more than the permissible limits leads to the damage of wetland ecosystems. The wetlands and Mangroves for the region were mapped using remote sensing and shown in Figures 6.2 and 6.3. Committee has said that there are wetlands and mangroves available which are affected due to effluent discharge. It is, thus, necessary to evaluate damages related to wetlands and mangroves as well. Damage cost per kg of the load on wetlands which is used for the study for each pollutant individually is represented in Table 6.3. The valuation of damage has been carried out for both the scenarios i.e. for pure sea discharge and pure wetland discharge. Since both sea and wetlands were present in the region, Committee considered combined damages, as per Table 6.3, as under:

"Table 6.3: Damage Cost for Each Pollutant in Euro per Kg for Wetlands

Pollutant	***Damage in Euro per Kg (2010)***
Suspended Solids	*0.010*
Biological Oxygen Demand	*0.117*
Chemical Oxygen Demand	*0.122*

"

145. After converting the value of Euro into Indian Rupees given due consideration to inflation etc., environmental damage cost was calculated from April 2011 to 2019, separately for excess COD discharge, excess TSS discharge, excess BOD discharge, and thereafter, in Table 6.7, total damage for each combining damages of all the pollutants for sea has been computed. Thereafter it has been further computed for wetlands by working out damage for COD discharge, excess BOD discharge and excess Suspended Solid discharge and ultimately in Table 6.1 combined damage for the wetlands has been determined.

146. In Chapter 7, Committee has examined accountability of CETP and defaulting units in meeting environmental damage cost and cost of restoration. In Chapter 8, Committee has recorded its conclusions and measures for restoration of environment.

147. We are deferring details in this regard at this stage since parties have filed their objections to the said report and we will examine and decide objections before taking a view whether Committee report as such has to be accepted or it needs some modification or changes or in some respect any different view is needed.

Report dated 27.07.2020-Quarterly Monitoring report of CETP (P/1136):

148. This report was submitted through Regional Director, CPCB, Pune by a Committee comprising:

i. Shri Bharat Kumar Sharma, Regional Director (Pune),
ii. Shri Saket Kumar, Scientist B, Regional Directorate (Vadodara),
iii. Shri Manish Holkar, Sub-Regional Officer (Tarapur) and
iv. Shri Utkarsh Shingare, Field Officer (Tarapur)

149. This is a quarterly monitoring report submitted in reference to direction of Tribunal contained in para 7 (ix) of order dated 26.09.2019 read with 22.10.2019 directing CPCB and MPCB to jointly undertake extensive surveillance and monitoring of CETP at regular intervals of three months and submit report. Joint inspection was made on 13.11.2019 and report was submitted vide e-mail dated 02.01.2021. Second joint inspection was conducted on 12.03.2020 and samples collected were analyzed at Central Laboratory, MPCB, Navi Mumbai. Location of collection of samples is given as under:

"***Table-1: Sampling locations of CETP and Sumps***

S.N.	***Location Description(s)***
1	*Inlet to CETP (from MIDC Sump-1+ Gravity)*
2	*Inlet to CETP (from MIDC Sump-3)*
3	*Inlet to CETP (from MIDC Sump-4)*
4	*CETP Inlet (mixed influent) (collection tank after O & G trap,)*
5	*Outlet of Equalization Tanks*
6	*Outlet of Primary clarifier*
7	*Outlet of Secondary Clarifier*
8	*Outlet of CETP (from MIDC Sump-2) (premises near CETP)*
9	*Outlet of CETP (MIDC BPT) near Navapur seashore*

"

150. Analytical results of effluent whereof samples were collected at different locations on 12.03.2020 on various parameters is given in Table-2 as under:

"**Table-2: Analysis results of effluent monitoring carried-out at CETP Tarapur – inlet sumps & inlet of CETP (12.03.2020)**

Sampling Locations→ Parameters	**CETP Design value**	**Inlet to CETP (from MIDC Sump 1+ Gravity)**	**Inlet to CETP (from MIDC Sump-3)**	**Inlet to CETP (from) MIDC Sump-4**	**CETP Inlet (mixed influent)**	**Outlet of Equalization**	**Inlet Standard as per the Consent**
pH	5.5-7	**3.6**	**1.2**	**4.7**	**3.3**	5.7	6-9
TSS	300-400	126	518	251	401	664	Refer note below
TDS	--	12572	19660	14763	16313	11152	
BOD	1500	**1650**	**5400**	**2150**	**2400**	1750	Refer note below
COD	3500	**5280**	**25600**	**6720**	**8400**	5400	
Phenols	--	--	**7.98**	**8.99**	**7.99**	10.2	5
Total Ammonical Nitrogen (TAN)	--	**275**	**280**	**271**	**274**	271	50
Total Kjedahl's Nitrogen (TKN)	--	**456**	**1282**	**818**	**924**	512	NS
Phosphate	--	2.15	1.39	1.99	4.33	0.19	NS
Sulphate	--	6705	650	5936	6895	4690	NS
Chloride	--	2769	5598	5648	4914	3089	NS
Fluoride	--	1.3	6.8	5	2.8	1	15

”

151. Table-3 provides results of stage wise effluent sampling from inlet to outlet of CETP, as under:

“**Table-3 Analysis results of stage wise effluent sampling from inlet to outlet of CETP**

S. N	**Sampling Locations→ Parameters**	**CETP Inlet**	**Outlet of Equalisation**	**Outlet of Primary clarifier**	**Outlet of secondary Clarifier**	**Outlet of CETP (MIDC Sump 2)**	**Outlet of CETP (MIDC BPT) near Navapur beach)**	**Outlet Standards MPCB**
1	Ph	3.3	5.7	6.8	7.2	6.7	6.5	**6.0-9.0**
2	TSS	401	664	142	432	**345**	**331**	**100**
3	TDS	16313	11152	8183	9919	10904	10936	**NS**
4	BOD	2400	1750	1525	1200	**1450**	**1350**	**30**
5	COD	8400	5400	4200	3720	**4160**	**4680**	**250**
6	Phenols	7.99	10.2	11.07	11.01	**8.50**	**10.97**	**5**
7	Total	274	271	328	287.5	**184**	**150.5**	**50**

	Ammonical Nitrogen (TAN)							
	Total Kjedahl's Nitrogen (TKN)	924	512	565.6	484.4	**492.8**	**562.8**	**50**
	Phosphate	4.33	0.19	0.15	1.76	1.92	0.23	**NS**
	Sulphate	6895	4690	4300	4172	4162	5366	**NS**
	Chloride	4914	3089	2989.1	2149.3	3324	2179.3	**NS**
	Fluoride	2.8	1	1.1	0.9	0.9	0.9	**15**
	Cyanide	--	--	--		--	**0.39**	**0.2**

152. Comments in para 3 states that the analysis results of CETP inlet samples given at Table-2 and Table-4 vis-a-vis prescribed CETP norms as per consent order reveals that:

(i) **Concentration of BOD and COD are not meeting inlet design norms** of CETP inlet effluent of 1500 mg/l and 3500 mg/l respectively. **The same are exceeding 1.6 and 2.4 times the design norms respectively.**

(ii) **Phenol and TAN at the inlet of the CETP are exceeding the prescribed CETP inlet effluent limit** under Consent to Operate which is 5 mg/l and 50 mg/l respectively. The **limits are exceeding 1.6 and 5.5 times of the prescribed limit respectively.**

(iii) **pH of CETP inlet effluent is not meeting prescribed range** under the Consent to Operate and against prescribed range of 6-9 it is 3.3.

(iv) **Each of 3 inlet effluent sources to CETP** (for example from MIDC sump-1+Gravity; MIDC sump-3 and MIDC Sump-3) **are exceeding permitted parameters of the limits.**

(v) **Even the graphic chart shows that there was virtually no improvement in CETP inlet effluent quality**.

153. Among monitored parameters vis-a-vis prescribed CETP outlet effluent parameters stipulated under Consent to Operate; the analysis showed:

(a) **BOD, COD, TKN, TAN and Phenols are exceeding prescribed CETP** outlet effluent limit under Consent to Operate. It is exceeding 48.3, 16.6, 9.9, 3.7 and 1.7 times the outlet limit respectively.

(b) Concentration of various CETP outlet effluent parameters shows that there is sampling on 12.03.2020 and **there was hardly any improvement in CETP outlet quality of effluent**

(c) There was hardly any improvement in the earlier sampling dated 13.11.2019 and the present one dated 12.03.2020.

154. CETP is designed for 25 MLD capacity but there is continued exceedance of hydraulic load of CETP to the said design/prescribed limit and illegal discharges. Over flow from equalization tank and one aeration tank was found. There was no proper arrangement of flow meter for measuring CETP outlet. Flow meter was operating only in one line of the two lines used for conveying CETP treated effluent to Navapur Marine Outfall. CETP thus was not consistently complying with the prescribed capacity and receiving effluent exceeding thereto. Flow meters were not adequate to monitor inlet and outlet of CETP.

155. Excess effluent, at that time 3 MLD, was being discharged into adjacent Storm Water Drain (originating from Plot No. E-13 and further meeting into Navapur-Dandi creek through Salvad village). About 13 MLD of CETP outlet effluent not conforming to prescribed standard is also discharged through the said storm water drain into Navapur-Dandi creek. Over flow from sump-3 also occurs intermittently and flows into drain originating at Plot No. N-27, MIDC Tarapur and meeting to Murbe-

Kharekuram creek. Committee found poor sludge management and inconsistent information about sludge generation. Committee found 10 numbers of sludge drying beds near sump-4 whereof 4 were empty and 6 were filled with CETP sludge beyond capacity. Further sludge was found indiscriminately scattered in areas across sump-2, equalization tank and sump-4 which may be for poor management of sludge for over flow. In January, February and upto 17th March, 2020, sludge from CETP sent to CHWTSDF was 415.43 tonnes, 328.24 tonnes and 108.93 tonnes respectively. Committee has said that such wide variation indicates inconsistency in CETP sludge sent to CHWTSDF, Taloja and indicative of the fact that either CETP has not operated uniformly/regularly or there is wide variation in CETP inlet effluent quality. None of the major treatment units of CETP was found functioning properly as shown in Table-5 of the report as under:

"Table 5: Observation on working condition of treatment units of the CETP

Treatment Unit	***Observation***
Equalization Tank	• ***One of the four floating mixers*** *provided in the equalization tank for uniform mixing of wastewater* ***was not operational*** *since long.* • *The equalization tank is expected to be accumulated with sludge deposition quantity of which needs to be assessed and removed by the CETP operator.*
Primary Clarifiers (02 nos.)	*(i) Only one of two nos. of Primary clarifiers viz. Primary Clarifier-II was operational during visit. The other* ***Primary Clarifier-I is not operational for more than a year*** *due to sludge accumulation and mechanical damage.*
Aeration Tank (04 nos.)	*(ii) 04 nos. of aeration tank is provided with 09 aspirators in each tank (total 36 aspirators) for aeration and agitation. However,* ***only 04 nos. of aspirators were operational in each of the 04 aeration tanks****. Further, proper* ***air diffusion was observed only in 04 nos. of aspirators***

	out of the said 16 operational aspirators. *(iii)* ***Dissolved oxygen monitoring system was not operational***. *(iv) The aeration tanks are expected to be accumulated with sludge deposition quantity of which needs to be assessed and removed by the CETP operator.*
Secondary Clarifier (02 nos.)	*(v) One of the 02 nos. of Secondary clarifiers (I & II) i.e.* ***Secondary Clarifier no. I was not in operation since past 12 months due to sludge accumulation and mechanical damage***.
Hypo-chlorite Oxidation Tank	*(vi) The* ***oxidation system was not operational*** *since a week.*
PSF and ACF (04 nos.)	*(vii)****The filters are not operational since long and are defunct***.

156. **Online Continuous Monitoring System** (hereinafter referred to as '**OCMS**') provided at CETP inlet and outlet were found non-functional. Further flow meters provided at CETP inlet and outlet effluent measurement were not representing actual inlet and outlet source. Committee found that CETP inlet flow meter was installed after equalization tank and it did not measure actual inlet flow due to over flow of equalization tank. Further CETP outlet flow meter was provided only in one line of the two lines from sump-2 which conveyed effluent to designated marine outfall point. Committee also found certain other inconsistency/irregularities mentioned in para 6 and then it also noted action taken by CETP operators after inspection dated 13.11.2019 and recorded its conclusions in para 9 as under:

> ***9. CONCLUSIONS:***
> *The analysis results of various effluent samples of CETP collected during the joint inspection-cum-monitoring on 12/3/2020 and various observations made under preceding paras reveal that* ***no improvement has been made by the CETP operator to upgrade or improve performance of the CETP since the previous joint inspection conducted on 13/11/2019 except that of on-going de-sludging activities in Sump No. 2.***

Therefore, the ***gross violations, also reported in earlier joint inspection report conducted on 13/11/2019, continue to be occurring in CETP operation as below:***

(a) Continued Non-compliance of CETP Inlet Effluent Quality with the Design Norms/Prescribed Limits

BOD and COD in CETP inlet effluent are exceeding 1.6 and 2.4 times the inlet design norms respectively; Phenol and TAN exceeding 1.6 and 5.5 times respectively and pH is 3.3 against the range of 6-9 prescribed under the Consent to Operate.

Each of the three inlet effluent sources to the CETP (viz. from MIDC Sump 1+ Gravity; MIDC Sump-3, and MIDC Sump-4) are also exceeding the aforesaid parameters in terms of respective CETP inlet design parameters/limit prescribed under the Consent to Operate and the effluent from MIDC Sump-3 contribute maximum exceedances among the three sources. (details given under para 3(a) of this report)

(b) Continued Non-compliance of CETP Outlet Effluent Quality with the Prescribed Limits

BOD, COD, TKN, TAN and Phenols in CETP outlet effluent are exceeding 48.3, 16.6, 9.9, 3.7 and 1.7 times respectively than the outlet limit prescribed under the Consent to Operate

(details given under para 3(b) of this report)

(c) Continued exceedance of Hydraulic Load of CETP to the Design/Prescribed Limit and illegal Discharges

CETP is consistently not complying with design/consented capacity of 25 MLD and receiving excess effluent by about 3 MLD to the said capacity. The excess 3 MLD is being discharged into the adjacent storm water drain (originating from plot No. E-13 and further meeting into Navapur-Dandi creek through Salvad village).

Further, about 13 MLD of the CETP outlet effluent not conforming to the prescribed standard is also discharged through the said storm water drain into the Navapur-Dandi Creek violating to the consent condition that treated CETP effluent to be disposed at the designated Marine outfall point.

Other overflow from Sump No. 3 (used to pump the effluent to CETP) also occurs intermittently and the same flows into the drain originating at Plot No. N-27, MIDC Tarapur and meeting to Murbhe-Kharekuram creek.

The above overflows may be causing further damages to the waterbodies which have been reported along with remediation measures in the report of the Committee submitted to the Hon'ble NGT vide email dated 19/6/2020 in compliance with orders dated 26/9/2019 read with order dated 22/10/2019 in the matter of Original Application No. 64/2016 (WZ); Akhil Bhartiya Mangela Samaj & Ors. Versus Maharashtra Pollution Control Board & Ors.

(details given under para 3(c) of this report)

(d) Poor CETP Sludge Management and inconsistency in CETP Sludge Generation

Inconsistency in CETP sludge sent to common Hazardous Waste Treatment, Storage and Disposal Facility (CHWTSDF), Taloja, indicates that either CETP is not operated uniformly/regularly or

there is wide variation in CETP inlet effluent quality or sludge is not sent to the CHWTSDF regularly.
Further, there is poor management of sludge drying beds and sludge was found indiscriminately scattered in areas across Sump No. 2, Equalisation Tank and Sump No. 4 which may be because of overflows or poor management of sludge.
(details given under para 3(d) of this report)

(e) Continued Improper Operation of all Major Treatment Units of CETP & Sludge Depositions
None of the major treatment units of the CETP (viz. Equalization Tank, Primary Clarifier, Aeration Tank, Secondary Clarifier and Hypo-chlorite Oxidation Tank) are functioning properly whereas Pressure Sand Filter and Activated Carbon Filters are completely defunct. Further, there could be sludge accumulation in equalization tank and aeration tanks due to poor operation.
(details given under para 4 of this report)

(f) Continued Improper CETP Inlet & Outlet Flow Meter Measurement and Non-operational Online Continuous Monitoring System
Online continuous monitoring system (OCMS) provided at CETP inlet and outlet are not in operation and in working condition. The flow meters provided as CETP inlet and outlet effluent measurement are installed at in appropriate places and, hence, not representing actual inlet and outlet flows.
(details given under para 5 of this report)

(g) Other Observations

- *Updated information such as waste water handled, hazardous waste generated and sent to common TSDF, etc. are not being displayed in the display board (installed near entry of the CETP) as per the Hon'ble Supreme Court's order in WP(C) 657/1995 and Hon'ble NGT order in OA 804/2017.*
- *A bore well is installed within the CETP premises without having requisite permission from concerned authority.*
- *About 102 M.T. and 10 M.T. of sludge are accumulated in sump No. 3 and Sump No. 4 (used for effluent inlet to CETP) occupying 60 % & 23 % of the sump capacity respectively. The same needs to assessed and removed.*
- *The Consent to Operate and Authorisation dated 24/12/2019 have been issued by MPCB to the new CETP at Plot No. OS-30(pt), MIDC Tarapur, for 25 MLD of the proposed 50MLD. However, the new CETP has not yet been made operational.*
(details given under para 6 of this report)"

I.A. 93/2020 dated 14.09.2020 filed by respondents 3 and 9 collectively (page 1194)

157. The application has been signed by Sh. Gajanan Sahebrao Jadhav, authorized signatory of TEPS on behalf of respondent 3 and Shivranjan Gupta, honorary Secretary/authorized signatory of TIMA (respondent 9),

and has been filed to challenge reports dated March 2020 and 27.07.2020. It is said that the said reports were neither circulated to respondents 3 and 9 or to another stakeholder nor uploaded on NGT website. Only upon an e-mail request of advocate for applicant, CPCB's advocate shared soft copies of reports on its e-mail dated 01.08.2020. The reports seem to be based on historical and irrelevant data provided by Government agencies like CPCB, MPCB and MIDC and do not reflect correct picture; seems to be biased and depicts only one side of the picture; applicants and their member constituents are being made scapegoats to safeguard other contesting Government agencies like MPCB and MIDC who have shown a total lackadaisical approach in performance of their duties for past years for protection of environment at Tarapur; Committee's report lacked independence, fairness or *bona-fide*. Respondents 3 and 9 after receiving reports, circulated to all their members advising them to submit their individual grievances, if any, against the report.

Application dated 27.08.2020 filed on 07.09.2020 by Maharashtra Organo Metallic Catalysts Pvt. Ltd. (Page 1209):

158. Maharashtra Organic Metals Maharashtra Organo Metallic Catalyst Pvt. Ltd. (hereinafter referred to as 'MOMCPL'), an industry located in TIA MIDC filed objection/representation (addressed to MPCB) with the request that the above unit should be de-listed from table 88 of Committee's report as it was wrongly identified as Large-Scale Industry (hereinafter referred to as 'LSI'). A request was made by means of the above application to take on record the said representation dated 27.08.2020. It is said MOMCPL is at item 88 in the chart prepared by Committee identifying defaulting units. In column 5, scale of unit is shown as LSI though as a matter of fact it is SSI i.e., Small Scale

Industry. Reliance is placed on consent order dated 27.03.2017 wherein the above unit is shown as Red/SSI. The discharge effluent of the unit was shown as 6 CMD and unit upto discharge of 25 KLD (CMD) is within the category of SSI. As per water cess return of April 2018, water consumption from MIDC mains was about 125 KL for the full month which comes to about 4KLD and effluent discharge is much less than that, therefore unit is clearly SSI. COD was found within limit and so far as pH is concerned, report of the officials concerned pursuant to the sample collected on 24.11.2016 is not reliable. In this regard MOMCPL, in para 4 of representation/objection said:

> *"4. That further, Row No. 14 discloses reason for closure/noncompliance stated as discharge of substandard effluent having COD = 1728 & pH = 4.4. As per above criteria, the COD is well within the limit of 3500 as made applicable to SSI, which is our unit category.*
> *Further, the VISIT REPORT of MPCB own Field Officer and SRO-Tarapur-I at the time of said JVS sample collection on 24/11/2016 at 1:15 AM, it was noted that the pH at collection was 6 to 7, and that hence this reading of 4.4 in analysis dated 28/11/2016 being grossly different could not be relied upon over and above that of the SRO-I signed site report.*
> *This was already flagged as disputed by us with the MPCB in 2016-17 during closure issued.*
> *Further, pH was also not a parameter identified to be non-compliant of in the letter of the MPCB (notice No. SROTR/TB-2158 dated 29/11/2016) and the closure was issued on consideration of non-compliance of COD only.*
> *The site visit report and the letter by the SRO dated 29/11/2016 and our letter dated 22/12/2016 are all annexed herewith.*
> *However, notwithstanding the said closure, for the purposes of current assessment of damages, we fall within MPCB own criteria for NOT identifying our unit as a polluting unit as stated in above lines."*

159. It is thus prayed that since MOLCPL's approved quantity of effluent discharge is less than 25 KLD and everything is within norms it should have been excluded/removed from the list of defaulting industries identified by Committee for the purpose of liability of environmental compensation.

160. Respondents 3 and 9 consulted experts/consultants to consider technical, environmental and legal issues and without prejudice to their rights to contest correctness of findings of the reports, have raised certain objections, detailed in para 8, as under:

"(a) The Report dated March 2020 is based on ***perfunctory investigation*** *and relies on old/historic and incorrect data pulled in from database of MPCB. The* ***relevant and current data has not been collected and hence, not taken note of;***

(b) The Committee has turned a blind eye to an unfair discretion used by MPCB in preparing alleged list of polluting units, on the basis of old data and for lack of availability of data of SSI is and many other units. The ***alleged final list of polluting industries*** *as provide by MPCB, is manifestly arbitrary, irrational and* ***prepared in a discriminatory manner*** *(Reference - Chapter V Internal Page 59 to 62 of the Report dated March 2020);*

(c) The Committee has ***neither done any new sampling nor has it carried out any field investigation as of today for verifying or ascertaining sources of effluents or sources from where the CETP is receiving alleged excess effluent load.*** *The methodology applied by the Committee has thus vitiated the very purpose of the constitution of the Committee as a fact-finding body;*

(d) The Committee, relying on sole discretion of MPCB has ***excluded and exempted about 88% of the industries (including SSI and ZLD units) plus 55 non-member industries and also units in respect of which no data is available with the MPCB from any responsibility and has the placed entire burden onto less than 12% of the industrial units*** *at Tarapur MIDC and the CETP managed by TEPS for the alleged environmental damage and restoration costs, which is neither legal nor acceptable for cause of environment protection (Reference Chapter V of the Report dated March 2020 read with Fig. 2.2 on Internal Page 7 read with 8.1.2 Para 7 on Internal Page 90 of the Report);*

(e) The Report is prepared in breach of fundamental principles of natural justice. There was ***no real opportunity of hearing provided by the Committee to the representatives of the industrial units, which were arbitrarily identified as polluting units****. The oral/ written representation made by these units has been totally ignored by the Committee and does not find any place of consideration in the entire Report;*

(f) The Report ***fails to consider new technologies*** *implemented by the industries including setting up of their own ETPs/STPs, and investments made in taking various measures such as forestation drives, installing additional technologies for effluent treatment in their ETPs/STPs, all for the cause of environment protection;*

(g) *The* ***Report further ignores JVS (Joint Vigilance Sample) Reports, and compliances made by the industries from time to time****, which were duly verified by MPCB;*

(h) *Imposing alleged* ***environmental damage and restoration costs without providing evidence of any actual environmental damage at the subject MIDC location,*** *is in itself illegal and strongly objected by the industries and their association at Tarapur;*

(i) *The* ***methodology applied for calculating alleged damage and restoration cost is neither recognized nor legal nor correct****. The period considered for fixing alleged individual liability is grossly erroneous. The Committee has also ignored past penalties paid by the industries and bank guarantees forfeited by the regulators for recovering compensation for alleged environmental violations/non-compliances and has quantified the alleged damages and costs for the same period, causing double jeopardy and violating established principle of law that no person can be penalized twice for the same offence;*

(j) *Despite identifying list of total 14 natural and storm drains flowing through MIDC at Tarapur receiving sewage and human waste from five different villages surrounding the MIDC area,* ***no efforts are made by the Committee to actually measure the impact/ contribution percentile of this sewage mixed in MIDC sewage disposal lines and its weightage impact on the sea waters or any other water bodies/ground water et****c. (See Table 2.3 and Figure 2.3 on Internal page 9 and 10 of the Report);*

(k) *The* ***Report does not bring forth evidence of any actual environmental damage to the water bodies*** *and instead focuses on academic assessment of the same only for purpose of quantification of damages and restoration costs and placing accountability of the same on select industries which is done using theories/formulae having no recognition in the eyes of law nor does the Report cites any precedents in which such assessment has ever been recognized by this Hon'ble Tribunal or any other Courts or Tribunals in India;*

(l) *The* ***Report is totally unfair and biased against the industry****. The Committee is suspiciously* ***silent on role of MPCB*** *(contesting Respondent No.1)* ***and MIDC*** *(contesting Respondent No.2), of their past and continued failure and breach of duties, as also vehemently pleaded by Akhil Bharatiya Mangela Samaj (original Applicant) in O.A. No. 64 of 2016 and also as pleaded by TEPS (Original Respondent No.3) in M.A. No. 375 of 2017 which pleadings and submissions are pending for consideration of this Hon'ble Tribunal;*

(m) *The Committee for the reasons best known to it,* ***has totally ignored completion of the state-of-art 50 MLD (million litres per day) capacity new CETP plant constructed and installed by the Applicants and member industries by investing in excess of Rs.150 Cr****. The Committee is further silent on the fact that said new 50 MLD CETP Plant, once commissioned in addition to existing 25 MLD plant will be able to treat up to 75 MLD of load,*

which is by far more than double the capacity of actual requirement of Tarapur Industrial cluster;

(n) The Committee has erred in not considering the fact that the said new 50 MLD plant is ready to be commissioned immediately on completion of the work of laying a discharge/disposal line by MIDC (Respondent No.2) which is pending for more than 4 years due to lackluster approach and inactions of MIDC;

(o) The Committee has not mentioned the new 50 MLD plant in the chapter dealing with remedial measures, knowing that investment already put in by the industries will have to be factored in and alleged remedial costs and super fund that the Report recommends shall be wiped-off and/or drastically come down;

(p) The Committee has ***not provided any logical reasoning****, or actual calculations or quantification* ***as to how it arrived at and made a provision for 'Super Fund' of INR 75 Crores and*** *how such fund shall be utilized;*

(q) The Committee has irrationally ***held the Applicant-TEPS (Original Respondent No.3) accountable to the extent of bearing 45% of the alleged damage and restoration costs, though TEPS has taken every possible measure in its capacity to deal with the effluent load at the existing CETP plant.*** *The Committee has intentionally ignored the fact that additional effluent load, if any received by CETP beyond its treating capacity is not the failure/violation of the TEPS but is failure attributable to the regulators i.e. MPCB and MIDC who have total controlling powers to decide issuance of consent to operate, permitting expansion of industries, controlling supply of water etc. Despite this, Committee has for reasons unknown and possibly due to the influence and role of these statutory bodies, have refused to hold them responsible and accountable for alleged environmental damage at Tarapur, which in itself exposes false, irrational, arbitrary and discriminatory nature of the Reports submitted by the Committee.*

(r) The Applicants further state that the ***Reports seem to be full of contradictions.*** *First of all, there is* ***no conclusive evidence in the entire Report of any actual environmental damage****. Except for vague statements about restoration measures, Report does not lay any definitive roadmap for protection of environment at Tarapur. Also, the Report has not appreciated water pollution in terms of still or river water vis-a-vis flowing/tidal sea water and its long-time impact. Instead, these* ***Reports are solely focused on quantifying and collecting money under the pretext of penalties****, alleged restoration costs and creating alleged 'super-fund'. The contents of the Reports have no correlation with subject matter involved in the present original application and is unlikely to assist this Hon'ble Court in properly adjudicating this case."*

(Emphasis added)

161. It is ultimately prayed that the objections and comments of respondents 3 and 9 be noted and they be permitted to file reply/counter

statement/affidavit to the report of the Committee and consider M.A. 375/2017 filed by respondent 3. It is also requested that the reports of CPCB be considered only after the above respondents are permitted to submit their replies/objections.

162. Present OA was heard finally on **17.09.2020** and disposed of. Operative part of the order contained in Para nos. 7 to 13, said as under:

> *" xxx ……xxx ……xxx*
> *7. At the outset, learned Counsel for the Respondent Nos. 3 and 9 have referred to orders of the Hon'ble Supreme Court dated 18.11.2019 in Civil Appeal No. 8539/2019, Tarapur Environment Protection Society v. Akhil Bhartiya Mangel Samaj & Ors. and order dated 18.12.2019 in Civil Appeal No. 9409/2019, Tarapur Industrial Manufacturers Association v. Akhil Bhartiya Mangela Samaj Parishad & Ors., staying the interim order of this Tribunal dated 26.09.2019.*
>
> *8. As against above, the stand of learned Counsel for the Applicant, the CPCB and the State PCB is that the said orders being only qua interim compensation, there is no bar to hearing of the matter and further orders being passed. Our attention has been drawn to para 1 of the memo of appeal in Civil Appeal 8539/2019 as follows:*
>
> > *"That the present Civil Appeal is directed against impugned interim order dated 26.09.2019 passed by the Hon'ble National Green Tribunal Principal Bench New Delhi in Original Application No. 64 of 2016 (WZ)* ***whereby, the Hon'ble Tribunal has imposed a penalty of Rs. 10 crores as interim compensation to be paid by the appellant herein who manages and operates the 25 MLD CETP in Tarapur Industrial area."***
>
> *9. We find merit in the contention raised on behalf of the applicant, the CPCB and the MPCB that the grievance raised before the Hon'ble Supreme Court is only against interim compensation and there is no stay against proceedings before this Tribunal for enforcement of environmental norms on consideration of the reports of the Expert Committee constituted by the Tribunal.* ***We thus proceed to deal with the reports of the Committee.***
>
> *10. We find that the reports of the Expert Committee have taken into consideration all relevant data after visit to the site and have considered the view point of the CETP operator and the Association of the industries.* ***We do not find any reason to reject the report and the conclusions and recommendations*** *therein. Application of 'Precautionary Principle' which is part of 'Sustainable Development' requires anticipatory action and scientific certainty before taking such remedial action is necessary, once an Expert Committee has found that there is continuous violation of*

environmental norms causing harm to the environment and health. Credentials of the Committee members and their expertise on the subject is beyond question. We do not find any merit in the objections of the contesting CETP and industries which will stand rejected and the report of the Committee is thus, accepted.

*11. In view of the above**, we direct that the reports of the Committee be acted upon and further steps taken for preventing damage to the environment and for its restoration. The restoration measures will include improvement of quality of environment as well as remedying the health of the inhabitants, including providing healthcare to the affected individuals**. The amount assessed be recovered and if there is non-payment, the statutory regulatory bodies will be free to take coercive measures, including closure of the polluting activities. The same be utilized for restoration of the environment in terms of an action plan.*

*12. **The Committee already constituted will continue to function to oversee the remedial measures and will also include District Magistrate, Palghar**. The nodal agency for coordination will be the CPCB and the District Magistrate. The Committee may prepare a restoration plan within one month. The timeline for execution should be as expeditious as possible. It will be open to the Committee to associate any other expert/institution and decide the mode of execution of the restoration plan. MPCB may, inter-alia, monitor water quality of creeks, water bodies in vicinity and ground water quality particularly of potable sources in use with reference to parameters relevant. The Committee may meet atleast once in a month and in case physical meetings are not viable, virtual meetings may be organized.*

13. The Committee may give a status report of the steps taken after three months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF."

163. Respondent 9 carried the matter in Supreme Court in **Civil Appeal No 3756/2020, *Tarapur Industrial Manufacturers Association (TIMA) vs. Akhil Bhartiya Mangela Samaj & Others***. Challenging order dated 17.9.2020. Appeal was partly allowed by Supreme Court vide **judgement dated 14.12.2020**, which reads as under:

"We have heard learned Senior Advocates for the appellants and the first respondent - Akhil Bhartiya Mangela Samaj Parishad, at length.

Having considered the issues raised, we do not think it would be appropriate and proper to admit the appeals and keep them pending in view of the order we propose to pass, which is as under:

*a) **The appellants will, within 15 days, file ground-wise objections to the report submitted by the Monitoring***

Committee specifically indicating the challenges, including the challenge to the quantum of compensation.

b) *Copy of the objections would be furnished to the Monitoring Committee and Akhil Bhartiya Mangela Samaj Parishad before they are filed before the National Green Tribunal.*

c) *The Monitoring Committee may file reply to objections, if it deems proper and necessary, within such time as stipulated by the National Green Tribunal.*

d) *Akhil Bhartiya Mangela Samaj Parishad would file reply to the objections within 15 days after they are served with the copy of the objections, or within such extended time as granted the National Green Tribunal.*

e) *The* ***appellant, namely Tarapur Industrial Manufacturers Association (TIMA), or the individual units as identified in the report submitted by the Monitoring Committee, shall deposit 30% of the compensation amount within one month from today****. In case of failure to deposit, their objections would not be heard and decided.*

f) ***The appellant - Tarapur Environment Protection Society (TIMA), in Civil Appeal No. 3638 of 2020, would deposit 30% of compensation amount as directed by the impugned order within one month from today.*** *In case of failure to deposit, their objections would not be heard and decided.*

g) *The* ***compensation mentioned in clauses (e) & (f) will include compensation as awarded under the head of 'Super Fund'****.*

h) ***Subject to the aforesaid deposits being made within the time stipulated, directions contained in the impugned order towards compensation would remain in abeyance till the decision on the objections by the National Green Tribunal.***

i) Order dated 17th September, 2020 would stand modified by the order so passed by the National Green Tribunal*. The appellants and other parties, subject to their right to challenge the order on the objections to be filed, would abide by the order of the National Green Tribunal. Similarly, right to challenge order dated 17th September, 2020, remains protected and principle of res judicata would not apply.*

j) ***Directions passed in the present order regarding deposit of compensation by the appellants would also abide by the order of the National Green Tribunal, subject to the right to appeal and challenge.***

k) *The appellants would, within 3 weeks from today, file an affidavit before the National Green Tribunal specifically stating the steps taken, compliance made, shortfalls remaining and the time period required for making requisite compliance.*

l) *National Green Tribunal, if deems appropriate, would direct the Maharashtra Pollution Control Board (MPCB) to submit their status report with regard to compliance, shortfalls and also to*

meet the assertions made against them by the appellant - TIMA in Civil Appeal No. 3638 of 2020.

Recording the aforesaid, the ***appeals are party allowed and disposed of with a request to the National Green Tribunal to consider and decide the specific objections of the appellants as expeditiously as possible, without being influenced by the findings in the order dated 17th September, 2020. We clarify that we have not made any comment either way on merits****."*

M.A. No. 01/2021 dated 29.12.2020 filed by respondent 3, (TEPS)

164. This MA is filed by TEPS, pursuant to Supreme Court's order dated 14.12.2020, raising objections to Committee reports dated 18.06.2020 and 27.07.2020. The objections are made as part of MA as annexure R-3/3. Broad points raised by TEPS are:

a) Committee did not follow mandate of Tribunal and exceeded its authority;

b) 'Polluters Pays' principle is inapplicable to TEPS;

c) Wrong categorization of TEPS as LSI red category;

d) There is non-application of mind and intentional avoidance to touch root cause of excess effluent load and consequent failure to apportion liability amongst stakeholders of effluent management system in TIA MIDC;

e) MIDC has failed to complete infrastructure for additional treatment capacity for which TEPS cannot be made responsible;

f) MIDC failed to stop leakages from drains and effluent carrying pipelines;

g) Over flow/leakages from MIDC sump-2;

h) Non-consideration of external sources of domestic sewage/effluents;

i) No closure directions to TEPS CETP between 2011-2019;

j) Non-consideration of 50 MLD state of art facility created by TEPS;

k) Erroneous inclusion of damages for alleged excess loading pollutant into sea (Rs. 5.9381 crores);

l) Erroneous inclusion of damages for alleged excess loading of pollutant into the wetland (Rs. 79.10426 crores);

m) Duplication i.e. total discharge taken both as discharge into sea and into creeks;

n) BOD is a sub-set of COD but taken separately;

o) Creation for 'Super Fund' for proposed restoration of ground water (Rs. 75 crores);

p) No fiscal discounting has been considered;

q) Lack of baseline data;

r) Erroneous adoption of Hernandez-Sancho et al Paper in 2010;

s) Non-consideration of purchased power parity.

M.A 02/2021: Objections dated 29.12.2020 filed by TIMA (respondent 9) running in more than 3400 pages:

165. Pursuant to liberty granted by Supreme Court vide order dated 14.12.2020 in **C.A. No. 3756/2020**, the said objection has been filed on behalf of itself and for individual members. In para 05, it is stated that the objections are in two parts; **Part A** contained objections raised by TIMA, common to all the industries, and **Part B** comprised of individual objections raised by member industries. In para 07 of the objections, respondent 9 has prayed that Committee's report/recommendations dated 18.06.2020 and 27.07.2020 be rejected and MIDC be directed to ensure overhauling and full maintenance of 59 km drainage system connecting industrial units to existing 25 MLD CETP as also sumps belong to and maintained by MIDC so as to avoid any leakage of effluent therefrom. MIDC be further directed to undertake removal of sludge in the sumps.

166. General objections raised by TIMA, applicable to all member industries contained in part A, *inter-alia* states as under:

(a) The committee made grave errors in assessment of liability of various units and apportionment thereof. The identification of polluting units is based on past records like show cause notice, closure direction, etc.; there was no actual identification of polluting units based on on-site inspection; the committee sought record from MPCB which itself did not provide the same and in turn sought record from respective industrial units; those units who provided record are the only ones identified for assessment and apportionment of liabilities; Units who did not respond at all have been left unaffected and no liability has been fixed thereof; approach of Committee is patently selective and arbitrary.

(b) The committee at page 69 of report admits that number of days of violation was not provided for every units and that be so, only 103 units could not be made scape-goat for the faults contributed by other industries also who have not been included in the list of 103 defaulting units.

(c) Committee was required to undergo a fresh exercise of proper identification of defaulting units so as to bear the burden proportionately and equitably. Several factual errors have been committed by the committee in its report and the same would be detailed further in the objections of individual units. Further, individual units ought to have been given adequate opportunity of hearing separately.

(d) Environmental damage and cost of restoration cost has not been determined validly and by taking into consideration relevant important factors. Report says that Environment Damage Cost Assessment

(**EDCA**) is a tool that scrutinizes potential loss in monitory terms due to anticipated impact on the environment due to release of pollutants beyond safety. Calculation of compensation/cost of restitution of environment must be based on the following environment principles:

i. Actual damage to the environment must be shown based on sampling and analysis of such samples;

ii. Presumed damages cannot be formed on basis of monitory compensation for restitution of environment;

iii. Quantification of compensation cannot be presumpted but rather should be based upon a clear and workable restitution plan;

iv. Restitution plan must defer depending upon the nature of water body being sought to be restituted. For example; a pond, lake river or sea cannot be dealt with by applying same parameters under all circumstances. Further concept of self-cleaning or self-purification of water body has to be considered while framing a restitution plan.

(e) On page 74 of report there is an observation that hundreds of fishes were found dead in the shore of Navapur beach reportedly due to low level of dissolved oxygen. This observation is irrelevant since Committee itself found that the results of sea water sample do not reveal trend of alleviated concentration of measured parameters near Navapur CETP outfall beach and Nandgaon beach where the two creeks confluence into the sea.

(f) Computation of overall damages is based on multiple erroneous parameters and more so, in view of lack of data. Committee admits on page 76 of report lack of availability of detailed base line data related to identified damage parameters. Various studies have been referred, to arrive at the damage cost. It shows that the report is based on other

studies and ignores the analysis of a well measured and accepted base line data for the site in question for which no appropriate study was available.

(g) Committee also considered error in adopting a formula suggested by Hernandez-Sancho *et al* published in 2010. This is on page 76-77 of the report. The said paper does not deal with assessment of cost on account of environmental damage and instead relates to economic value of waste water treatment. It proposed a methodology based on the estimation of shadow prices for the pollutants removed in a treatment process. This value represents environmental benefit (avoided cost) associated with undischarged pollution. 2010 paper in fact is in regard to economic benefits of treatment of effluents rather than damages on account of discharge of untreated effluents. The formula in fact relates to **cost of avoidance of environmental damage** rather than cost of restitution of environment. Spanish formula relied by Committee has not been accepted in India by any statutory authority.

(h) Committee has calculated compensation on page 80 taking damage per kg on the basis of shadow price stated in 2010 paper of Hernandez-Sancho (*supra*). Calculation of shadow price is based on studies in European Countries and quantified in Euros. Report of the Committee simply used European price and convert to Indian price at the exchange rate of 2017 and then applied inflated price for 2019. It has committed a basic mistake in not considering and adopting Power Purchase Cost (average living cost in India) before converting Euro to INR. It is a matter of common knowledge that purchase power parity of European countries comparing to India is quite high. According to one study, local purchase power in Madrid is 44% higher than Mumbai. In

another data, purchasing power index of India is 9.5 whereas in Spain, it is 58.1. Ratio between India and Spain is 9.5:58.1 =1:6.15 in other words, purchasing power of Spain is more than six times than India. Obviously, what was considered in respect of Spain and applied to India, is a manifest error and Committee erred in not giving effect to the aforesaid ratio factor while computing compensation.

(i) The committee also erred in adopting damage cost for each pollutant in Euro per kg in wetlands since damage to wetland itself is presumptive without any sampling or analysis. It is based upon alleged damage to sea water or creek water which has not been proved by the Committee in the report. Adoption of parameter of damage cost for wetlands is erroneous and entire calculation based on this parameter is liable to be rejected.

(j) Committee has also erroneously included damages for alleged excess loading pollutant into sea.

(i) From the report, page 46, 50 para 4.1, it is evident that samples of sea water and sand were collected by Committee near Navapur CETP outfall, Nandgaon beach and Edvan beach which is about 85 kms from Navapur CETP outfall.

(ii) Analysis results of sea water samples (page 62-64 of report) do not reveal trend of alleviated concentration of measured parameters near Navapur CETP outfall beach and Nandgaon beach where two creeks confluence into sea.

(iii) No pollution was found as regard sea water. Still Committee has chosen to impose environmental damage cost of Rs. 5.9381 crores calculating from April 2011 to November 2019 on TSS, COD and BOD. There is no pollutants beyond prescribed standard as is evident from comparison of sample results at

table no. 4.9 (page 63 of the report) and prescribed standards of TSS, COD and BOD noted in table 6.4 to 6.6. The relevant extract of the table quoted in objections is as under:

Sl	Pollutant	Prescribed Parameter	Navapur sea beach	Nandgaon sea beach	Edvan sea beach (85 kms away)
1.	TSS	100	92	78	168
2.	BOD	30	14	14	12
3.	COD	250	236	276	228

(iv) It is said that TIMA and TEPS are not concerned with Edvan sea beach which is about 85 km away from CETP outfall in Arabian Sea. There is no industrial estate around Edvan sea beach, yet, values are quite high.

(v) There is no data of sampling and analysis of sea water between 2011 and 2019. There is no basis for imposing damages for such period based solely upon outlet effluence of CETP. On the contrary, irrespective of the outlet of CETP during the above period on the date of survey or sampling, no such pollution was found in sea water which would justify imposition of compensation.

(vi) It is also to be seen that no damages for restitution of environment can be imposed without any plan for expending the same towards restitution as provided in Section 17 of NGT Act, 2010.

(k) There is erroneous inclusion of damages for alleged excess loading pollutant into wetland by imposing compensation of Rs. 79.10426 crores.

(i) From page 46-59 of report, it is evident that water and sediment samples were collected by Committee from three locations of two

creeks (Navapur Dandi creek and kharekuram Murbe creek flowing north and south of TIA MIDC) in which drains confluence and one location of each of the two streams before meeting the said two creeks. Analysis result of creek water shows concentration of TDS, COD and BOD with increase in trend in both the creeks but the values are within prescribed standards i.e., there is no DO; Phenols are within prescribed standards; colour and odour indicates presence of solvent/chemical; sediments sample show pH presences slightly basic indicating basic effluent discharge to both the creeks; other measured parameters were found below screening values; from the odour of chemical/solvent and sediment sample of creek near dumping, it was concluded that two creeks received polluted effluent from drains of MIDC, Tarapur.

(ii) However, there is no concrete finding with regard to the creek water, warranting imposition of damages with respect of creek water. Hence, Committee has rightly not imposed any damages with regard to the creek water as there was no pollution.

(iii) Despite that, Committee has imposed environment compensation on account of presumptive impact upon wetlands and mangroves. It is only unsustainable. If no compensation was imposed with respect to creek water, Committee had no justification to impose damages/compensation in respect of wetlands.

(iv) Moreover, Committee has noted (at page 77) that discharge of effluent is being made in sea/creek area of Navapur from CETP but there are wetlands in the nearby areas of discharge point. Merely on that basis Committee has presumed damage to wetland eco-system due to discharge of effluents in the creeks. There was

no analysis, no material to show any damage to wetland eco-system and data/figures/analytical results of sea water or other bodies could not have been imported for the purpose of wetland when a study was made in respect of wetland itself.

(v) Moreover, there is no notified wetland in and around TIA MIDC; there is no river, lake or pond within a radius of 5 Km; no ecological park, sanctuary, flora and fauna or any eco-sensitive zone from the boundary of MIDC and, therefore, the imposition of compensation in respect of wetland is only presumptive, unnatural and based on no relevant and valid material. Committee is guilty of duplication by taking discharge of effluent in creek and sea both by way of the same discharge but for both the items, it has been taken separately and thus has resulted in duplication.

(l) While computing damages under heading 6.2, Committee has considered **Biological Oxygen Demand (BOD)** and **Chemical Oxygen Demand (COD)** separately and computed compensation ignoring the fact that BOD is a sub-set of COD. BOD is defined as the amount of oxygen demanded by micro-organism in the sewage for decomposition for biodegradable matter under aerobic condition. It is commonly used parameter to determine strength of municipal or organic quality of water. COD is the amount of oxygen that is required for chemical oxidation of organic and inorganic chemical present in this water by utilizing oxidizing agents. Thus, BOD measures amount of oxygen required by aerobic organisms to decompose organic matter and COD measures oxygen required to decompose organic and inorganic constituents present in this water by chemical reaction. When we add untreated effluent in water, it is

called pollution. Water contains dissolved oxygen. If organic matter is dissolvable, oxygen is used to dissolve the same. In the process of dissolution, water loses oxygen level. BOD is a small circle. In mathematical terms, **COD = BOD + X**. Apparently, BOD is, therefore, part and parcel of COD in terms of water pollution control. If one reduces COD, BOD would also stand reduced. Both move in the same direction. Calculation of damages based upon BOD and COD, therefore, tend to overlap and must be factored at the time of calculation.

(m) Committee has proposed concept of super fund by providing Rs. 75 crores. It has observed in Chapter 4 that ground water is contaminated in the region due to illegal discharge of effluents from industries/CETP. According to the Committee's own volition, these infractions are not recorded and there is lack of information on the sub-surface hydrology of the site to estimate quantum of contaminates of ground water. Committee has, for the cost to be incurred in their detailed assessment (including other water bodies) and their remediation, introduced the concept of '**Super Fund**' to be formed with Rs. 75 crores. This approach of Committee is not justified. Study of ground water was undertaken by MPCB by 2019 and report was submitted to CPCB. Hence, non-availability of data and information regarding ground water is not correct and **cannot be a justified reason to opt for a Super Fund**. MPCB report of 2019 after sampling and detailed analysis does not explicitly mention that the ground water is severely polluted and requires restitution. Though BOD and COD are on higher side, but they can be due to ingress of domestic sewage from nearby population. Thus, it was incumbent upon Committee to have further probe in the matter to

justify imposition of compensation for constituting a superfund for restitution of ground water.

(n) **Concept of Super Fund is alien** to Indian environmental statutory regime. It appears to have been adopted from Comprehensive Environmental Response, Compensation and Liability Act, 1980, also known as Super Fund enacted by United States Congress. This law created a tax on chemical and petroleum industries and provided broad Federal Authority to respond directly to release or threaten releases of hazardous substances which may endanger public health or environment. The tax so collected goes to the Trust Fund for cleaning of abandoned or uncontrolled hazardous waste sites. It is more a common burden upon certain industrial units. **Concept of Super Fund is not recognized by any statute in India**. Under Section 15 and 17 of NGT Act, 2010, compensation towards restitution can be divided under different heads as enumerated in schedule II. None of the above facts of compensation are in the form of tax or a common burden but rather compensatory in nature. Imposition of compensation towards restitution of environment necessarily require a detailed study of actual damage cost, operation to be undertaken for restitution and cost involved. Without undertaking any such exercise, creation of superfund of Rs. 75 crores, is contrary to statute, illegal and impermissible. Under NGT Act, 2010, damages cannot be imposed merely to add to Environmental Relief Fund in general. It must relate to some identified expenses towards restitution based upon restitution plan. This is also evident from Rules 35, 36 and 37 of NGT (Practices and Procedure) Rules, 2011. Before imposing any environment cost, a restitution plan is compulsory and since no such plan has been

suggested or in existence on paper, the assessment of compensation and imposition upon member industry is illegal.

(o) Certain aspects which would have justified **fiscal discounting, has not been done** by the Committee. It ought to have considered fiscal discounting using **Pigouvian subsidy method**. In ***M.C. Mehta vs. Union of India, MANU/GT/0067/2017 (pr.131*)**, Court has taken note that rivers have self-cleaning ability primarily due to flow velocity which permits oxygenation and decomposition of biological waste. Similar is the fact applicable to sea and creeks. Sea itself has also system of self-cleansing. Natural self-purification of sea water takes place as a result of physical, chemical, bio-chemical and biological processes.

(p) Committee has **not measured impact/contribution percentile of sewage mixed in MIDC sewage disposal lines and its weightage impact on sea waters or any other water body/ground water**. There are 14 natural and storm drains flowing through TIA MIDC receiving sewage and human waste from five different villages surrounding MIDC area but Committee has failed to measure impact/contribution percentile of sewage discharge by such habitat area around MIDC.

(q) **Parameters** adopted by Committee for apportionment of liability **are erroneous**. Normally, process of violation reported by MPCB and steps for compliances included following stages: inspection; violation report and issuance of closure notice; denial/acceptance reply; conditional re-start; compliance report by unit; re-inspection/verification of compliance. Committee has made assessment by using the following criteria/factors:

i. Units whose records are available for violations with MPCB shall be included (Page 70-71 of report)

ii. Violations not directly relatable to effluent discharge into CETP or damage to soil/surface water or ground water shall be excluded. (Page 70-71 of report)

iii. Period of violation would be limited from 28.04.2011 to 26.09.2011 (Page 70-71)

iv. Number of days of violation are further modified or altered where closure direction has been issued. In such a case, period of default is taken as date of inspection till effective date of closure of unit. In other matters, the period of violation is between date of violation observed/due date of compliance and the day on which compliance was verified by MPCB.

v. SSI units having effluent discharge of less than 25 KLD are exempted who were found discharging effluent to CETP meeting CETP inlet, consent norms of COD 3500 mg/l and BOD 1500 mg/l.

(r) The formula adopted by Committee on Page 88 of report, for computation of compensation for individual units included pollution index of industrial units (based on industrial unit category), number of days of violation, factor for scale of operation, location factor and deterrent factor based and first and repeated violations. Application of these parameters shows non-application of mind on the part of Committee. It has committed grave errors resulting in substantial adverse impact upon the individual members' liability. The above errors have been pointed out in respect of certain facts taken into consideration by Committee in respect of individual units and sought to be demonstrated as under:

*"i. Regarding the Category (Sl. no. 4 of the Table of units): **In some of the units, the Category adopted is completely wrong** thereby increasing the individual liability of the concerned unit. Unit-wise details of such errors is provided under Part B of these objections.*

*ii. Regarding the Scale (Sl. no. 5 of the Table of units): Firstly, the relevant date for adopting the Scale should be the Scale of the unit on **the date of alleged violation**. Secondly, **in some of the units, the Scale adopted is completely wrong** thereby increasing the individual liability of the concerned unit. Unit wise details of such errors is provided under Part B of these objections.*

iii. Date of inspection and Period of Non-compliance/Violation (Sl. nos. 12 and 13 of the Table of units): There are multiple errors under this heading-

1. *The Joint Vigilance Sample **(JVS**) collected by MPCB at the effluent treatment plant at inlet and outlet are vigilance samples and are not the samples collected in conformity with process prescribed under Section 21 of the Water Act. There was no opportunity for industry to take/receive a division of sample as prescribed in Section 21, in order to verify and cross check/counter the analysis results on their own. As such MPCB data lacks any authenticity and/or admissibility as evidence for adjudication of the case.*

2. *Without prejudice to above, the analysis of such JVS samples can take maximum 3-5 days depending on whether 3-day or 5-day BOD is measured. It was obligatory for MPCB to communicate and share these results with the concerned industry, immediately if MPCB had noticed any major deviation or noncompliance. As seen from the records such reports are either sent after a very long time (ranging from 15 days to 2-3 months) or in some cases are not even shared with industry/units, who were directly issued Closure Notices without any opportunity to raise objection/show-cause for alleged violations.*

3. *Such delay and lapses of delayed analysis of samples and/or delayed issuance of closure directions, first of all is not justified and cannot be attributed to individual industries.*

4. *After Closure Notices, and after issuance of conditional restart orders, most of the industries quickly complied with the conditions and informed MPCB of compliance achieved. However, **MPCB has made a delayed verification of these compliances**. The Tables stated in the Committee Report states some irrelevant/ fictitious dates regarding verification of compliances, ignoring earlier verification dates.*

5. *In order to remove these delays/ anomalies in calculating the number of violation days, and without prejudice to its other contentions, the **following formula is considered***

appropriate by TIMA for calculating the number of alleged violation days.

Total Period - X + Y = [ ] days

where,

X *is [Period between Date of reported violation* **+** *actual days taken by MPCB for issuing Closure Notice/JVS Report* ***OR*** *7 days (whichever lower)] + number of days taken by industry after receiving closure notice till actual closure*

Y *is Number of days between date of Conditional Restart Order and Date of Intimation by industry/unit to MPCB about the compliance made and conditions fulfilled. (Note – In absence of proof of Intimation– actual date of Verification of compliance, is considered)*

6. *It is also relevant to note that* ***MPCB has issued Closure Notices to the units without Show Cause notices****. In some of the cases, the alleged violation is merely relating to submission of Bank Guarantees. In certain cases, the conditions given were recommendations to install technology/equipment, which is in addition to the consent to operate, though BOD-COD parameters of such units were within prescribed norms as per JVS sample analysis reports. In these cases, in absence of any violation, holding such industry/unit as a 'Polluter' and being made liable for compensation is not justified.Such units/industries were forced to shut their plants without there being any violation/fault on their part and without any opportunity of disputing the said forced closures.*

7. *There is a serious* ***error in date of compliance, especially in repeat violations****. The date of compliance has been shown to the date prior to the next date of inspection, even though there is no basis for it and rather, the records show to the contrary.* ***In 17 units out of total 103 units, this error has been committed****. Unitwise details of such errors is provided under Part B of these objections.*

8. *Further, in many cases, the date of compliance has been shown to be 26.09.2019 (which is the date of constitution of the Committee vide order of this Hon'ble Tribunal dated 26.09.2019). This, in humble submission, is completely baseless and arbitrary. In many instances, the compliance of conditional restart order and even verification thereof is 2-3 years prior to the compliance verification date/26.09.2019 as reported in the Committee Report. It is upon the MPCB to ensure compliance inspection and if it has not done, the individual industrial unit cannot be made liable on that count. Once having sent the compliance report, the unit ought to be treated as having deemed to have complied unless an adverse inspection report is available on records.* ***In 33 units***

out of total 103 units, this error has been committed. *Unit-wise details of such errors is provided under Part B of these objections.*

The above errors have led to substantial increase in days of violation against individual units thereby increasing their individual liability.

iv. *Reasons for Closure (Sl. No. 14 of the Table of units): Many of the reasons for closure do not contribute to the water pollution and such units cannot be penalised. In some of the units, this error has been committed. Unit-wise details of such errors is provided under Part B of these objections.*

v. *There are instances where findings recorded in the Tables are contrary to the records / lab reports / MPCB reports. In some of the units, this error has been committed. Unit-wise details of such errors is provided under Part B of these objections.*

vi. *Wrong company data: In Table No. 89, due to similarity in the name, the data of a wrong company has been picked up and the unit noted against the Table has been penalised. If this error is corrected, the unit noted in Table no. 89 would not be penalised at all. There is no violation reported against the industry named in Table No. 89.*

vii. *Absurd figures: In some cases, the figures provided are ex facie absurd. For example, (i) mention of BOD/COD levels of inlet despite outlet figures are well within prescribed norms, (ii) in one instance, BOD-COD levels of outlet are shown 10 times higher than the inlet, which is scientifically impossible. Rectification of these figures would reduce the liability of the individual unit. In some of the units, this error has been committed. Unit-wise details of such errors is provided under Part B of these objections.*

viii. *Quality of Effluent has not been considered as a critera: The quality of effluent generated by each industrial unit is a relevant factor and ought to have to been considered while apportioning the liability. It is the analysis of the quality of effluent, which would actually provide the real data as regards the contribution of a particular industrial unit to the overall pollution generated. This aspect has been completely left out in the Report.*

ix. *Quantity of effluent factor has been applied only by SSI/MSI/LSI and not by the actual water consumption: The* ***amount of effluent generated by an industrial unit is directly proportionate to the water being supplied by MIDC and the actual water consumption of such unit****. In order to reach a realistic figure of apportionment of liability, the Committee ought to have assessed the water consumption of each industrial unit and then, categorised them for the purposes of apportionment of liability rather than merely adopting the scale of operation in terms of SSI / MSI / LSI.*

x. *Identification of erring Zero Liquid Discharge (ZLD) units: Further more, there is always a possibility of even ZLDs discharging*

effluents in violation of the zero-discharge conditions in their respective consent to operate and the Committee ought to have undertaken the exercise of identifying such units as well and apportioning the liability rather than merely granting them a 'whole-some immunity'."

(Emphasis added)

(s) MIDC is largely responsible on account of its inaction, faulty action, negligence, etc. and hence is liable for apportionment of environmental compensation but has not been held so by the Committee. Committee's report appears to be biased against industries and shows favor to statutory authority like MIDC. The report is silent on the role and liability of MIDC. It has ignored past and continued failure and breach of duty on the part of MIDC. Despite the fact that this is also pleaded by applicant in OA itself and TEPS i.e., respondent 3 has also made similar complaints in MA 375/2017. MIDC is vitally responsible in the process of treatment of effluent and its role is quite vital and substantial. Contamination of ground water due to leakage of effluent is referable to laxity on part of MIDC. Water supply is the function of MIDC and it releases water to be used by individual industrial units. Untreated effluents are transported through pipelines, by individual industrial units to CETP through gravity and/or pump machines and MIDC is responsible for laying down and maintaining such pipelines. After CETP treats the effluent, the treated water is transported to MIDC Sump-2 wherefrom it is transported to Navapur sea shore through pipelines maintained by MIDC. These facts have been admitted and noted by Committee, as under:

"*i. A 59 kilometer effluent carrying pipeline runs through the industrial area to convey the industrial effluent of its members industries of Tarapur MIDC to CETP. The outlet from CETP is discharged into a shallow depth of Arabian Sea at Navapur which is about 5.6 km away from the CETP. (para.1.1 at pg.10 of the Report).*

ii. *MIDC provides water to the entire industrial area and residential area inside MIDC as well as adjoining villages (para. 2.3 at pg.17 of the Report).*

iii. *Water supply to industries in the MIDC Tarapur is about 38 MLD by MIDC (para. 2.3 at pg.17 of the Report).*

iv. *Responsibility for the collection and disposal of treated effluent rests with MIDC (para. 2.3 at pg.17 of the Report).*

v. *The total drainage collection network is of 59.00 KM, which is underground. Most of the drainage network has been converted into HDPE lines (para. 3.3 at pg.21 of the Report).*

vi. *Significant quantity of sludge is deposited (approx. 2400 MT) in the MIDC Sump-2 (10.56 MT capacity) where treated effluent is collected and further transferred to the sea shore through BPTs. There is also overflowing/leakages from pumps, etc. from this sump to nearby natural drain which meets with Navapur Creek and further to the Arabian Sea. The operation of this Sump is under MIDC and responsibility lies with MIDC for proper maintenance and removal of all the sludge from sump. MIDC needs to be directed to take immediate action for the same. (Page 42 and 96 of the Report).*

vii. *Directions have issued on account of laxity on part of MIDC to ensure absence of leakage from drainage pipes and sumps/tanks (page 97 of the Report).”*

(t) Thus, role of MIDC show that it is a stakeholder in the matter of treatment of effluent and its discharge. It is also responsible for maintaining a pollution-free environment. It has failed to perform its duty which has contributed largely for contamination of atleast ground water. It has failed to ensure plugging of drains and sumps/tanks to stop leakage which has resulted in contamination of ground water. Committee despite noticing the above failure and flaws on the part of MIDC and issue direction for functioning properly in future has chosen not to impose any compensation on MIDC.

(u) Installation of new 50 MLD CETP which was delayed and still not being able to function with full capacity is on account of laxity on the part of MIDC who is not performing its own duties properly as is evident from the following:

"i. To ensure movement of untreated effluents from the industrial unit to the new 50 MLD CETP, a new drainage system is required to be laid out by MIDC. This new drainage system would ensure movement of untreated effluent either by gravity or by pumping. Presently, due to lack of such new system by the MIDC, the new CETP is working at less than half the capacity and with much difficulty.

ii. As per the report of the National Institute of Oceanography, MIDC was required to construct a new disposal pipeline at a distance of 7.1 km into the Arabian Sea. Again, in spite of repeated requests and reminders, MIDC has miserably failed in completing this line. This again has resulted in under-utilization of the new 50 MLD CETP."

(v) For compelling MIDC to discharge its own duties, TEPS (respondent 3) also filed MA 375/2017 requesting Tribunal to issue specific direction to MIDC but no directions have been issued. Hence, neither new 50 MLD CETP is capable of optimum utilization nor refurbishment of existing 25 MLD CETP is possible and for this, MIDC is responsible and it must have been taken care by Committee. Reliance is placed on Supreme Court's judgment dated 04.11.2019 in ***M.C. Mehta v. Union of India, (2020) 7 SCC 573***, where considering issue of air pollution in Delhi due to stubble burning, **Court observed**:

"3. … … Obviously, it is writ large that the State Governments, Government of NCT of Delhi and civic bodies have miserably failed to discharge their liability as per the directive principles of State policy which have found statutory expression, they are being made statutory mockery and also the directions of this Court and High Courts in this regard are being violated with impunity."

"6. Everybody has to be answerable including the top State machinery percolating down to the level of gram panchayat. The very purpose of giving administration power up to the panchayat level is that there has to be proper administration and there is no room for such activities. The action is clearly tortious one and is clearly punishable under statutory provisions, besides the violation of the Court's order. In the circumstances, as widespread stubble burning has taken place, we direct the States of Punjab and Haryana and adjoining State of Uttar Pradesh where there is blatant violation which has taken place, to halt it. We direct the Chief Secretaries of the States of Punjab, Haryana and Uttar Pradesh to be present in this Court on 6-11-

2019 including Chief Secretary of the Government of NCT of Delhi."

*"**8.** Let the State Governments of Punjab, Haryana and Uttar Pradesh and officials also explain that why they should not be asked to pay the **compensation** for tortious liability as they have acquiesced and due to their failure in preventing stubble burning which is in utter violation of the public trust doctrine, why they should not be held liable to **compensate**, and also the incumbents who are burning the stubble in spite of clear restrictions imposed by this Court and statutory prohibition."*

(w) A similar observation was made by Tribunal in the order dated 14.11.2019 In **Re: News item published in *OA No. 1038/2018*, *"The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels"***, in para 9 and 11, as under:

"*9. … … Inaction by the statutory authorities is also at the cost of Rule of Law which is the mandate of the Constitution and is necessary for meaningful enforcement of legitimate constitutional rights of citizens and basic duty of a welfare State under the Constitution.*"

"*11. The Tribunal has thus no option except to reiterate that meaningful action has to be taken by the State PCBs/PCCs as already directed and action taken report furnished showing the number of identified polluters in polluted industrial areas mentioned above, the extent of closure of polluting activities, the extent of environmental compensation recovered, the cost of restoration of the damage to the environment of the said areas, otherwise there will be no meaningful environmental governance. This may be failure of rule of law and breach of trust reposed in statutory authorities rendering their existence useless and burden on the society. On default, the Tribunal will have no option except to proceed against the Chairmen and the Member Secretaries of the State PCBs/PCCs by way of coercive action under Section 25 of the National Green Tribunal Act, 2010 read with Section 51 CPC. Such action may include replacement of persons heading such PCBs/PCCs or direction for stopping their salaries till meaningful action for compliance of order of this Tribunal. The Tribunal may also consider deterrent compensation to be recovered from the State PCBs/PCCs. … …*"

(x) If the statutory authorities are not performing their part of duty and fails to ensure environmental clearance, they too are responsible for payment of compensation as they are also within the purview of 'Polluter Pays' principle and cannot be left unaffected or untouched.

(y) Raising under the head of other issues, TIMA in its objections said that 'Polluter Pays' principle relates for past conduct of operation which has already resulted in pollution and compensation is required to be imposed for restitution of environment. 'Precautionary' principle deals with action to be taken by units to avoid further pollution. Both these cannot involve imposition of compensation, they can only include regulation of future behavior to ensure avoidance of pollution. The report talks of two actions. One, to safeguard sea and creeks, certain measures have been recommended though no pollution as on the date of report was found either in the sea or creek. The above directions at the best could be within the realm of 'Precautionary' principle. Still, imposition of damages on account of sea water and wetland is without any factual or legal support and deserve to be rejected.

(z) **Compensation for restitution of environment without laying down a restitution plan is only erroneous**. Without assessing cost involved in restitution, an imposition of compensation is impermissible under law. Creation of superfund of Rs. 75 crores is alien to Indian environmental statutory scheme and hence, also deserves to be rejected.

(aa) The committee has also ignored past penalties paid by member industries and also forfeiture of bank guarantees to the tune of Rs. 2.45 crores. The said amount is lying unutilized for several years and still Committee has computed further compensation which amounts to double jeopardy avoiding established principle of law that no person can be penalized twice for the same offence. Here, reliance is placed on Tribunal's judgement in ***State Pollution Control Board, Odisha vs. M/s Swastik Ispat Pvt. Ltd., 2014 SCC OnLine NGT***

13 dated 09.01.2014; wherein Tribunal has held that amount received as **compensation for violation of environmental norms must necessarily be used only for restitution of environment and no other purpose**.

(bb) Respondent 9 therefore has pleaded for rejection of the committee report with respect to environmental compensation.

167. **Part B** of the objections comprised of **individual objections** of various industries filed as annexure-R-9/5. In all, 87 industries have filed objections. We would discuss objections filed by TIMA and individual industries on merits later, after referring to some further subsequent events.

Status report dated 11.01.2021 by CPCB (P/1418)

168. Committee earlier constituted was directed to continue with inclusion of District Magistrate, Palghar and monitor compliance of environmental norms at TIA MIDC by TEPS and individual industries. It was also directed to submit status report. Hence, the above status report was submitted pursuant to order dated 17.09.2020. In the report, action plan to control impact on environment due to partial/untreated effluent discharge and restoration/remediation of contaminated water bodies in and around TIA MIDC, prepared by Committee was given in column 2 and 3 of table in annexure-II to the said report. Further action plan on prohibition of use of contaminated ground water in affected areas and remedying inhabitants health including providing health care to affected individuals in and around TIA MIDC was given in annexure III and IV of the said report. Based on the said annexure, Committee stated in brief, works/remedial measures undertaken as per compliance status by the concerned agencies, as under:

"3.1 Control of further impact on environment due to partial/untreated effluent discharge

Based on compliance status, as reported by MPCB, as given at Annexure-II, the following works/remedial measures have been undertaken to control further impact on environment due to partial/untreated effluent discharge:

(i) ***One module of 12.5 MLD out of the 04 modules (50 MLD) of the new CETP has been commissioned w.e.f. 22/11/2020****. About 1.5-8.4 MLD is being received to the new CETP which currently has pipeline connection for conveying effluent as inlet only through Sump 1 of the existing 04 pipeline connections (i.e. Sump 1, 3, 4 and Gravity Mains) used for conveying effluent to the old 25 MLD CETP.*

(ii) ***The 25 MLD CETP has voluntarily shut down its operation for upgrading/retrofitting w.e.f. 26/11/2020 during which member units connected to this CETP also voluntarily closed their wastewater generation processes. The CETP is expected to start with 07 MLD effluent inlet from 30/12/2020****. Details of water supplied and effluent generation and disposal of treated effluent are given at Appendix A.*

(iii) Reduction of water supply in MIDC Tarapur from 38 MLD to about to 25 MLD during the aforesaid volunteer shut down period of the 25 MLD CETP.

(iv) Besides earlier on-going weekly monitoring by MPCB, daily monitoring of inlet and outlet of the 25 MLD CETP from 26/10/2020 up to 26/11/2020 (till the CETP was in operation) were carried out. Thereafter, samples have also been collected & analysed up to 07/12/2020. The analysis results are given at Appendix B.

(v) MPCB has deployed teams from 18/11/2020 for identification of units not complying with the CETP inlet effluent norms. 226 industries have been monitored so far.

(vi) District Magistrate, Palghar, has issued order on 04.12.2020 under section 144 and 133 under the Criminal Procedure Code 1973, banning water tanker movement in Tarapur MIDC w.e.f. 05/12/2020 to 02/2/2021 except Fire Tender vehicles and in extraordinary situations with written permission from MIDC.

(vii) Completed removal of deposited sludge from various CETP inlet and outlet sumps (Sump 1, 2 and 3) and module 1 (Equalization tank; Primary settling tank; Aeration Tank and Secondary clarifier) of the two modules of the 25 MLD CETP and common Collection tank and common Oxidation tank.

Further, for improvement in overall scientific operation and maintenance of the 25 MLD CETP works such as replacement of old SS-316 sluice gates within equalization tank inlet with new sluice gates; floating aerators to submerged mixers in collection equalization tank and scrapping system in primary floculators and secondary clarifiers with new SS-316 scrapping system, etc. have been completed in the 25 MLD. Other activities are proposed/under process such as installation of SCADA; development of facility to treat high COD and high TDS streams, up gradation of CETP, etc., as given at Annexure-II.

3.2 Restoration/remediation of contaminated ground water and drains and, if applicable, the two creeks (Navapur Dandi Creek and Kharekuran Murbe Creek) and seashore also

The committee's report, which has been accepted and directed to be acted upon by the Hon'ble NGT, outlines – (i) selection of consultant to prepare Detailed Project Report (DPR) and provide consultancy services for remediation of contaminated ground water and drains as well as control impact on the water bodies from the drains/CETP outlet for the Phase-I (detailed investigation, remediation plan, etc.) and Phase-II (execution as per the remediation plan) activities; (ii) execution as per the DPR; (iii) recovery of derived damage and restoration cost from the respective 103 polluting units (who have also been directed to pay the same vide order dated 17/9/2020 of the Hon'ble NGT) to meet the said expenses on remediation expenses. The compliance status given at Sl. No. 16 to 20 of the Table at Annexure-II reveal that:

(h) *Work of finalization of IIT Mumbai as consultant is in progress by MPCB and has already discussed this issue in length with IIT and NGRI, Hyderabad.*

(i) *MPCB has issued the directions on 23/10/2020 to all 103 units for deposition of damage and restoration cost. One unit has deposited damage and restoration cost of Rs. 14.23 lakh. Initiation of necessary action against the 102 units is in progress by MPCB in the light of the Hon'ble Supreme Court order dated 14/12/2020.*

(j) *MPCB has decided to meet the remediation cost from the polluting units in case recovery of the damage and restoration cost from the units is delayed or not met partially or fully due to one or other reasons at any stage.*

3.3 Prohibition of use of contaminated ground water in affected areas

(a) Ground Water Surveys and Development Authorities (GSDA) Palghar, and Sub-divisional Water Testing Laboratory carried out sampling and analysis of 86 water samples from Government marked bore wells or dug wells, and 535 water samples from private bore wells, of that 5 government and 61 private samples were found unfit for consumption due to iron and turbidity. Heavy metals were also tested in 10 randomly selected samples and were found within the prescribed limit for drinking water.

However, the committee observed that limited parameters were carried out during such sampling and analysis and various pollutants expected to be present in the ground water due to industrial activities of Tarapur MIDC were not carried out such as Ammonia, Phenolic compounds, PCB, Pesticide and PAH besides heavy metals.

(b) It was informed that the aforesaid 13 Grampanchayat and 16 village are having regional water supply scheme by MIDC for drinking purpose and it was also observed during their survey that the aforesaid sources are not used for drinking purpose and are used for domestic purpose like washing utensils, clothing, etc.

3.4 Remedying the health of the inhabitants including providing healthcare to the affected individuals of in and around Tarapur MIDC

(a) 16 villages (having 24,815 households with population of 91,016) have been identified which may potentially have health impact on the basis of representation received from applicant of the OA No. 64/2016 (WZ) i.e., Akhil Bhartiya Mangela Samaj to DM Palghar as affected villages.

(b) Training to 129 healthcare officials have been imparted for active and passive health survey, screening and specialist camp.

(c) 55,844 among the aforesaid population of 91,016 have been covered in house-to-house health survey conducted by District Health Officers/Taluka Health Officers. The rest population goes out for work and hence could not be covered in the survey. The following suspected persons have been surveyed:

(i) Skin infection = 361
(ii) Respiratory ailments = 100
(iii) Tuberculosis = 14
(iv) Suspected cancer symptoms = 21

(d) Health screening camps for the surveyed people (planned during December 2020 but could not be done due to other activities of National Programmes) will be arranged in 3rd week of January 2021. Thereafter, Specialist camp for follow up of screened/identifies patients will be conducted in the 4th week January or 1st week of February. Distribution of medicine and patients referral to tertiary healthcare Centre will be carried out as per the requirement with effect from February 2021."

169. Committee, thereafter made recommendations in paras 4.1, 4.2 and 4.3 as under:

"4.1 Control of further impact on environment due to partial/untreated effluent discharge

Although various works/remedial measures have been undertaken, as stated at para 3.1 above, w.r.t. the ***25 MLD (old CETP) which is continuously non-compliant since the reported period from 2011*** *(as mentioned in the committee's report submitted to the Hon'ble NGT) but - (i) continued non-compliance of inlet and outlet effluent of CETP even after the aforesaid order dated 17/9/2020 of the Hon'ble NGT till its volunteer closure for up-gradation/retrofitting on 26/11/2020 (ii) not able to identify/list out units contributing to the higher hydraulic load and/or higher concentrated effluent to the CETP despite surveillance by separate teams of CETP and MPCB during such period, and; (iii) continued effluent discharge to CETP and discharge of effluent from CETP through sumps (though small in quantity of about 01-02 MLD) even during the said volunteer shut-down of CETP; reveal that there may be lack of system/arrangement to identify units who contribute higher concentrated effluent or higher hydraulic load to the CETP occasionally or continuously.*

It is recommended that:

(i) resumption of the 25 MLD CETP expected from 30/12/2020 may not be allowed by MPCB unless – (a) CETP operator or MIDC (who conveys effluent from units to CETP) individually or collectively takes the responsibility that they have mechanism in place to identify and report non-compliant units in the event of every occasion of higher hydraulic load/effluent quality being received at the CETP, and (b) the CETP demonstrates compliance to the prescribed outlet norms.

(ii) If the CETP's volunteer shutdown continues, there is a need to assess supplied water (25 MLD) to MIDC Tarapur. Water intake/usage of individual units connected to the 25 MLD old CETP is to be correctly quantified (during the shutdown period) and compared with the water use pattern during normal operation period. MPCB should properly review the same.

(iii) environmental compensation of Rs. 14,70,000/- (Rupees Fourteen lakhs seventy thousand only), may be imposed (calculation details given at Annexure-V) on the 25 MLD CETP operator and collected by MPCB for violating the prescribed inlet/outlet effluent norms w.e.f. 17/10/2020 (as order dated 17/9/2020 of the Hon'ble NGT). Hon'ble NGT has directed that the reports of the Committee be acted upon and the committee's report outlines. Accordingly, in case the suggested measures are not implemented effectively and CETP (either existing or new) continues to perform non-compliance to the inlet/outlet norms for a month, and that no alternate arrangement is in place for disposal of effluent, MPCB may close operation of CETP including its member units (who discharge their effluent to the CETP) till the compliance is achieved. Whereas the 25 MLD CETP continued the violations till the analysis reported period i.e. 07/12/2020 (except on 28/11/2020). MPCB didn't close the CETP and CETP continues to receive effluent and discharge the same till the reported period of 28/12/2020. MPCB need to take appropriate step as per the Hon'ble NGT order.

(iv) MPCB shall supervise generation of sludge and their proper storage and disposal including record maintenance during desludging of various sumps and treatment units/tanks of CETP in accordance with provisions of the Hazardous and Other Waste (Management and Transboundary) Rules, 2016.

(v) MIDC shall ensure that abandoned old effluent conveying pipeline system in Tarapur is not being used for illegal discharges of effluent. The same be dismantled in time bound manner for which action plan be submitted to MPCB.

4.2 Restoration/remediation of contaminated ground water and drains and, if applicable, the two creeks (Navapur Dandi Creek and Kharekuran Murbe Creek) and seashore also

There is need to expedite selection of consultant by MPCB to prepare Detailed Project Report (DPR) and provide consultancy services for remediation of contaminated ground water and drains as well as control impact on the water bodies from the drains/CETP outlet for the Phase-I (detailed investigation, remediation plan, etc.) and Phase-II (execution as per the remediation plan) activities which has not been completed even after 03 months of order of the Hon'ble Tribunal.

The DPR preparation, detailed investigation/assessment, selection of remediation target level and appropriate remediation technologies and execution thereof will proceed only after selection of suitable consultant. MPCB shall, therefore:

(i) complete selection of consultant on priority within a month and proceed DPR preparation, detailed investigation/assessment, selection of remediation target level and appropriate remediation technologies and execution thereof, etc. as recommended in the committee's report.
(ii) proceed for recovery of the damage and restoration cost from the 103 units of the 102 units who have not yet deposited the same in accordance with order dated 17/9/2020 of the Hon'ble NGT and order dated 14/12/2020 of the Hon'ble Supreme Court.

4.3 Prohibition of use of contaminated ground water in affected areas

Although regional water supply scheme prevails in all the aforesaid 16 village and District Water and Sanitation Mission (DWSM) Palghar, has issued letters to BDO Palghar and concern Gramsevak for not to use the ground water for drinking purposes from the aforesaid 5 and 61 contaminated sources, however, for effective stoppage of use of drinking water from the contaminated ground water sources, there is need to;

(i) Issue order by Zilla Parishad to ban use of ground water for drinking purpose unless water samples are analyzed comprehensively with respect to parameter expected to be contaminated due to industrial activities of MIDC.
Advertisement in the local newspaper may also be issued in this regard as suggested by the committee in its 07th meeting held on 29/12/2020.
(ii) identify villages other than aforesaid 16 villages which may potentially have impact due to industrial activities of Tarapur MIDC by the GSDA Palghar based on aquifer recharging and ground water flow data and, if need be, similar remedial approaches, as above for the said 16 villages, be extended to the identified villages.

4.4 Remedying the health of the inhabitants including providing healthcare to the affected individuals of in and around Tarapur MIDC

(i) Advertisement about the on-going/proposed house-to-house survey, health screening camp and specialist camp, etc. in the aforesaid 16 villages may be done in local newspaper.
(ii) Health impact due to legal discharge from Tarapur MIDC may be in other villages also other than aforesaid 16 villages which were selected as affected villages on the basis of application of the applicant i.e. Akhil Bhartiya Mangela Samaj to the District Magistrate Palghar. To begin with secondary health data from primary health centre/sub-centre in and around Tarapur MIDC population may be analyzed by DHO and the ongoing/proposed house-to-house health survey, health screening camps,

specialist camp, distribution of medicine and patients referral to tertiary care healthcare centre, etc., be extended to the identified affected villages."

Pleadings brought on record after Supreme Court's order dated 14.12.2020

i. Affidavit dated 04.01.2021, by respondent 3, TEPS (P/1315)

170. Reports dated 18.06.2020 and 27.07.2020 submitted by Expert Committee were accepted by Tribunal and OA was disposed of vide order dated 19.09.2020. Civil Appeal No. 3638 of 2020 filed before Supreme court was partly allowed vide judgment dated 14.12.2020 whereby TEPS and industries held liable for payment of compensation were permitted to file ground wise objections to the report of Expert Committee and that was required to be decided by Tribunal.

171. TEPS filed objections as annexure appended to MA 01/2021, on 29.12.2020. It also filed this affidavit in compliance of direction (k) of Supreme Court's order dated 14.12.2020 to bring on record status of compliance on the part of TEPS. It is said that 25 MLD (out of 50 MLD) new CETP has been successfully commissioned. Around 11 MLD effluent received at sump-1 is now being diverted to new CETP for treatment. Though desludging is responsibility of MIDC but to expedite implementation of remediation plan, TEPS, at its own cost/expenses, has removed 5700 MT sludge from Sump-2 and disposed to CHWTSDF. TEPS has also completed desludging work of Sump-3 on 03.12.2020 by removing about 1250 MT from equalization and collection tanks out of which 563 MT sludge has been sent to CHWTSDF and remaining is for drying and thereafter will be send to the above agency. Further compliance measures/actions of TEPS stated in para 11 of the affidavit are as under:

"(a) Revamping of Pressure Sand filter (PSF) = 02 Sets (including conversion of ACF into PSF) in each of the two modules of the CETP. One Module Completed and for second module, work of tale end piping is in progress.

(b) Flow meters were received for installing at Sumps Flow outlets. The ***work of Flow meter installation*** *has started and* ***will be completed by 16.01.2021*** *and the same will be commissioned within 02 days of installation.*

(c) Commissioning of two modules each of 12.5 MLD out of the 04 module (50 MLD) of the new CETP. ***TEPS has diverted about 9 MLD of effluent from Sump-1 to the new CETP for the treatment****.*

(d) For improvement in overall scientific operation and maintenance of the CETP following measures are taken:

i. Replacement of old SS-316 sluice gates within equalization tank inlet with new sluice gates is completed.

ii. E.T. frontal pipe line (MS, 500 MM) was replaced with new one along with its all gate valves and NRV's having SS-316 MOC.

iii. TEPS also replaced MSEP platforms of Equalization all 04 tanks with precast RCC which will sustain as much as 20 years.

iv. Replacement of scrapping system in primary flocculators and secondary clarifiers with new SS-316 scrapping system is completed.

v. For old CETP - conversion of 1st aeration tank into anoxic treatment tank and channelization of effluent into said first aeration tank followed by into second, third and fourth aeration tanks in series having extended aeration for removal of BOD so as to improve BOD removal efficiency is under process.

vi. For old CETP - Installation of new tank where flash mixer will be installed so as to get more retention time for flocculation prior to flocculator tank is under process.

vii. For old CETP - Installation of one new tank for holding primary and secondary sludge separately in two tanks as well as installation of two additional centrifuges along with two new filter presses is under process.

viii. For old CETP - Increase in chemical preparation tank size is under process.

ix. For old CETP - Installation of auto dosing system with flow meter for in the proposed chemical dosing tank prior to flocculation tank is under process.

x. For old CETP- Installation of flow meter for activated sludge recirculation in the first anoxic treatment aeration tank is under process.

xi. Commissioning of OCEMS at inlet and outlet of both CETP with prescribed parameters is in progress and connectivity with MPCB and CPCB servers will be made immediately thereafter.

(e) For adequate analytical facility to keep watch on every stage of operation of TEPS has started new laboratory at new CETP with facilities like sampling and analysis of operational parameters viz.

BOD, DO, pH, TKN, TDS, SS, COD, O&G, Alkalinity, conductivity, heavy metals etc. CETP has also hired a trained manpower and is in process of hiring more.

(f) Laboratory at old CETP is used for general environmental parameter.

(g) Letter of intent issued by TEPS to M/s. Tesla for installation of high COD treatment facility having capacity 250 CMD. Also, additional facility will be commissioned for high TDS stream. Till they are commissioned, the concentrated streams will be disposed to TSDF by member industries.

(h) TEPS has undertaken installation and commissioning of centralized SCADA system of which SCADA platform for 55 industries installed and is under trial. Rest industries SCADA connectivity is planned on or before 31.01.2020. For that help desk is created and weekly one full day the engineers stationed at new CETP, for attending queries with respect to SCADA and industries to connect their hardware to TEPS CETP SCADA."

Response dated 18.02.2021 of applicant to the objections filed by TEPS and TIMA (P/1490)

172. Response dated 18.02.2021 is by applicant to the objections filed by TEPS and TIMA along with M.A. 08/2021 after Supreme Court's order dated 14.12.2020 in Civil Appeal No. 3638 of 2020. **Applicant has given parawise comments to the objections taken by TEPS** to the Expert Committee report, **in para 4 of his response** and read as under:

"a. With reference to paragraph A(i) it is denied that the Committee did not follow the mandate of this Hon'ble Tribunal. It is submitted that the role of the Expert Monitoring Committee was to assess the extent of damage that had been caused by the industries functioning within the Tarapur MIDC as well as the pollution caused due to the persistent failure of the CETP to adhere to the environmental norms and the conditions stipulated under the Consent to Operate issued by the MPCB. Therefore, the committee was well within its mandate to examine the pollution that has been caused to the drains, creeks and the seashore areas within as well as around the vicinity of Tarapur MIDC as long as it could the sourced to the industries functioning from Tarapur MIDC. ***As far as the objection to the Committee relying on Canadian guidelines is concerned, the Respondent No.3 has failed to note the fact that the Committee specifically states that the said standards have been*** *recommended in the "Guidance document for assessment and remediation of contaminated sites in India" prepared by the Ministry of Environment, Forest & Climate Change,* ***Government*** *of India. It is denied that the findings of the Committee reveal that the levels from water and sediment/sand samples collected at the creek and seashore is within the prescribed standards. The* ***Committee found indications of discharge of highly acidic untreated effluent in***

the drains from the industries, elevated concentration of TDS, BOD and COD in all the monitored drains, sediment samples from the drains as well as in the creek water samples (Pg. 45), elevated levels of Phenols in the sea water samples and elevated levels of iron and manganese (Pg. 54)*. The Committee noted that this was caused due to the industries discharging untreated untreated/partially treated effluent into the drains, creek and sea. It is denied that proof of actual damage to the environment is missing from the report and that there is no basis for calculating the damage coast. With regard to the contention that in the absence of there being any notified wetland and therefore no basis for collecting damage costs of 79 crores, it is submitted that* ***merely because the wetlands identified by the Expert Committee are not notified does not mean that it ought not to be afforded protection under the Wetland (Conservation and Protection) Rules, 2017. It is pertinent to note that the Supreme Court by an order dated 8th February 2017 in the matter of M.K. Balakrishnan & Ors. v. the Union of India & Ors. (Writ Petition no.231 of 2001) after noting the fact that several state governments including Maharashtra had failed to notify wetlands within their respective states in terms of the erstwhile Wetlands (Conservation and Management) Rules, 2010, directed the state governments to protect all the wetlands that had been identified under the National Wetlands Atlas, until the process of notification of wetlands was completed. By the order dated 8th February 2017 the Supreme Court directed that Rule 4 of the Wetlands (Conservation and Management) Rules, 2010 shall apply to the wetlands that have been mapped by the Central government in the National Wetlands Atlas using remote sensing technology.*** *This order effectively banned a host of activities in the wetlands identified by remote sensing in the National Wetlands Atlas. Such activities include Setting up of new industries and expansion of existing industries, solid waste dumping, discharge of untreated wastes and effluents from industries, new construction of permanent nature other than boat jetties etc. Hereto annexed and marked as EXHIBIT A is a copy of the order dated 8th February 2017 passed by the Hon'ble Supreme Court.*

b. *The Expert Committee has mapped the wetlands and mangroves in the region using remote sensing as indicated in the Report at Pg. 69 and 70. These wetlands must therefore be protected in terms of the Supreme Court order dated 8th February 2017. Furthermore the Wetland (Conservation and Management) Rules, 2017 ('Wetland Rules') define a wetland as marsh, fen, peatland or water; whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters. It is submitted that the committee was right in describing the concerned areas as wetlands and assessing the damage accordingly inasmuch as they confirm to the definition of a wetland set out under the Wetland Rules.*

c. *With reference to the contents of paragraphs A(ii) and (iii) it is denied that the Expert Committee has not assessed any actual restoration costs. It is submitted that* ***there are two components to the total***

compensation amount proposed by the Committee-the first is punitive and is based on the records before the Committee with regard to the infractions and consequent environmental damage committed by the industries. The second has been provisionally quantified towards the setting up of a 'Superfund'*. The punitive component has been quantified by the Committee at Rs. 85.042 crores and has been arrived at on the basis of the Committee's assessment of the environmental damage caused by the industries. The second component (i.e. towards the Superfund) has been provisionally quantified at Rs. 75 crores. The Committee has proposed that the Superfund be utilized towards: (i) first, a detailed assessment to determine the available remediation options and the cost of restoration based on such options; (ii) then, the actual cost of execution of the restoration plan.*

d. *The reason the Committee has suggested the setting up of the 'Superfund' (and has not, as in the case of the punitive component referred to above, finally quantified this amount) is that: (i) the Committee does not, at present, have the benefit of material to determine the nature and extent of the damage that may have been caused; and (ii) the costs towards remediation would be difficult to assess at present and may increase or decrease depending on the selected remediation option. Thus the contention that the compensation amount was inappropriately fixed before the preparation of a restoration plan is misconceived.*

e. *With reference to the contents of paragraphs A(iv) it is denied that committee discriminated against large scale industries and medium scale industries. Any differentiation in the quantum of compensation ascribed to an industry was based on the scale and size of operation of the industries and the period and nature of default and therefore cannot be said to be discriminatory when there is an intelligible differentia between the 2 categories of industries. This Hon'ble Tribunal also directed the Committee hear the CETP operator and the units identified as polluting by the MPCB. In compliance with aforesaid orders of this Hon'ble Tribunal, the MPCB forwarded the list of 225 defaulting units to the Committee and it was on this basis that accountability was fixed on various industrial units apart from the CETP. With regard to the exclusion of SSI units, the Committee report noted the following justification for excluding the said units-*

> *'Incidences of SSI units, where they have discharged into CETP exceeding their prescribed norms but within design/prescribed inlet standards of CETP, may not be included in the list of polluting units for the purpose of environmental compensation/restoration cost recovery. For* ***if SSI units are required to meet its outlet effluent standard to that of outlet effluent discharge standard of CETP then there remains no role of CETP which has primarily been facilitated for smaller units****. However, MPCB may examine the matter and take appropriate decision in exempting such exceedance cases in case of SSI units.'*

f. *With reference to paragraph A(V) it is denied that the CETP polluting is not a unit. It denies logic to hold that merely because the CETP does not generate effluent it should not be considered to be a*

polluting unit in and of itself. The Respondent No.3 is well aware that ***there are standards that have been specifically prescribed under the Environment (Protection) Rules, 1986 for CETPs****. The said Respondents failure to comply with the prescribed standards has been noted in detail in the Expert Committee Report and therefore the Committee rightly held the CETP accountable in meeting the environmental damage cost.*

g. *With reference to paragraph A(vi) and (vii) it is denied that the Expert Committee exceeded its powers or that it has acted in a non-transparent manner. The Committee has granted a hearing to each industry identified as polluting including the CETP and has acted in a fair and impartial manner in its assessment and in arriving at the environmental damage cost.*

h. *With reference to paragraph B it is submitted that the contention that the Respondent No.3 is not a polluter and therefore cannot be subject to the 'polluter pays' principle is untenable. It is submitted that is far as environmental damage is concerned it is irrelevant whether the CETP generates effluent itself or merely treats effluent that is generated by other industrial units. What is relevant is that the CETP has failed to meet the prescribed standards under the Environmental (Protection) Rules, 1986 and has consistently violated the conditions stipulated under the Consent to Operate issued by the MPCB. The terms and conditions stipulated therein include the permissible quantity of effluent in accordance with the design capabilities of CETP. The Consent to Operate also stipulated standards of inlet effluent quality and outlet effluent quality. TEPS was always aware of these standards, has agreed to subject itself to the same and has never challenged the said consent. Having failed to comply with the conditions of the Consent to Operate, the stand of the Respondent No.3 that the failure to comply with the conditions of the Consent to Operate are attributable to the failure of the individual member industries and not of the CETP itself cannot be countenanced. Furthermore, the* ***Committee Report specifically noted the continued improper operation of all the major treatment units of the CETP (Pg. 10 and 11 of the Second Report of the Expert Committee dated 27.07.2020)****.*

i. *With reference to paragraph C it is submitted that the classification of industries is based on their pollution index which is a function of the emissions (air pollutants), effluents (water pollution), hazardous wastes generated and consumption of resources.* ***CETPs are highly polluting*** *and has on this basis been* ***classified as a red category industry****.*

j. *With reference to paragraph D it is submitted that the denial that the CETP continued to operate without valid Consent to Operate has no basis in fact. As noted by the Committee, the Respondent No.3 continued to operate in spite of the fact that the MPCB did not renew its Consent to Operate due to consistent violation of the stipulated conditions under the previous Consent to Operate. The earlier consent that was granted to the Respondent No.3 expired on 31.12.2017. The MPCB issues a fresh Consent to Operate only on 29.11.2019. The* ***CETP was thus operational without a valid***

consent from 31.12.2017 to 29.11.2019 i.e. almost for 23 months.

k. *With reference to paragraph E (i) to (vii) it is submitted that while the role of the MPCB and MIDC may be critical in managing the pollution and effluent that is caused by the industries, the CETP plays the most significant role in ensuring that the effluent that is generated by the industries is treated and disposed of in compliance with the prescribed standards. The failure of the CETP to meet the design norms and consented capacity has been noted by the Committee detail and no one else but the CETP can be held responsible for these failures. With regard to the excess load of effluent received by the CETP, the Committee noted that online continuous monitoring system (OCMS) provided at CETP inlet and outlet were found not in operation and in working condition. The Committee further observed that the CETP inlet flow meter is installed after equalisation tanks which do not measure actual inlet flow due to overflow from equalization tank, and secondly that the CETP outlet flow meter has been provided in only one of the two 2 lines from Sump No. 2 which convey effluent to the designated marine outfall point. Therefore by failing to adequately monitor the quantity of effluent that it received the CETP was itself responsible for not meeting the consent norms. The* ***Committee observed that none of the major treatment units of the CETP were functioning properly and certain units of the CETP were completely defunct****. The failure of the Respondent No.3 to acknowledge its own liability and responsibility while imputing the actions/failures of the other Respondents is what has caused the alarming situation in Taparpur MIDC and the reason that it continues to be a critically polluted region.*

l. *With reference to paragraph E(ix) it is submitted that the Respondent No.3 has failed to ensure that the effluent outflow meets the prescribed standards before it is discharged into the water bodies, besides failing to ensure that the CETP does not take in more effluent than its designed capacity of 25 MLD. It is therefore difficult to imagine that the very same Respondent that will be responsible for the functioning of the proposed 50 MLD CETP, will be able to ensure compliance of environmental norms. It is submitted that* ***it is not merely a matter of inadequate capacity of the existing CETP as sought to be argued by the said Respondents, but a matter of indifference and ineptitude that has lead to severe environmental degradation in the last three decades****, the same will not be solved by the commissioning of the 50 MLD CETP.*

m. *With reference to paragraph E (x) and (xi) it is submitted that the Committee duly noted the fact that the operation of the sump and the proper maintenance and removal of the sludge from the sump is the responsibility of MIDC and directed MIDC to take immediate action in this regard.*

n. *With reference to paragraphs E(xii) and (xiii) it is submitted that the mandate of the Committee was to determine the individual accountability of the CETP and the polluting units responsible for the pollution in and around Tarapur MIDC and not to determine sources of external sewage.*

o. *With reference to paragraph E (xiv) and (xv) it is submitted that merely the fact that no closure directions were issued by the MPCB cannot be interpreted to mean that no liability arises against the CETP. Nonetheless, the Expert Committee has taken note of the show-cause notices issued to the CETP in the past by the MPCB and the fact that the MPCB has filed a criminal case against the Tarapur CETP before the Judicial Magistrate First Class-Palghar for its consistent failure to meet the stipulated standards and for discharging untreated effluent. The CEPT plays a crucial role in the treating effluent and is responsible for ensuring that the standards stipulated under the Consent to Operate are complied with. As stated before, the Expert Committee report noted in detail the fact that the 25 MLD capacity CETP is discharging higher concentrated effluent which did not meeting the prescribed standards under the Consent to Operate issued by MPCB into coastal water of the Arabian sea besides discharge of partially treated/untreated effluent as overflow from it beyond its hydraulic load of 25 MLD. The* ***Committee noted the fact that such high concentrated effluent as overflow is discharged into natural drain and has impact on creeks and coastal water****. Therefore, the denial of its liability towards meeting the environmental damage cost imposed by the Expert Committee has no basis.*

p. *With reference to paragraph F and G and the contents paragraph H herein are reiterated and are not reproduced for the sake of brevity.*

q. *With respect to Para H(i) of the objections, I deny the contents therein as false, misleading, unfounded and say that it is nothing but is an attempt to misrepresent scientific records as a feeble attempt to discredit the expert report. I say that though the pH levels of the water at seashore exceed prescribed standards, cost of Environmental damage calculated by the Expert Committee is not on the basis of the pollution levels on the day of inspection but admittedly, on the basis of pollution levels determined between April, 2011 to November, 2019. As regards the data of 2011, the Expert Committee Report clearly states that it has taken the 2011 data since 28/4/2011 as part of surveillance undertaken by MPCB and therefore, TEPS' submissions that cost of environmental damage is incorrectly computed are misleading and unfounded. In fact, pollution levels in Tarapur have continued to remain alarmingly high for more than 3 decades and that a calculation of pollution from 2011 in itself is conservative as MPCB had initiated record-keeping of high pollutants only after Tarapur was declared as a Critically Polluted Area by CPCB in 2010. In fact, the Expert Committee Report also noted at Pg. 106 in no uncertain terms, that "the impact on sea water pollution is also very conservative due to lack of better information on pollutants including nitrogen." Therefore, the* ***present cost of environmental damage and restoration imposed against polluters is most conservative as the determination is made only from the year 2011 onwards, despite the release of an excess amount of untreated effluents/partially treated effluent that has continued for decades****.*

r. *With reference to Para H(ii)(1-3) of the objections, I deny the contents therein as false and misleading and say that once again, TEPS has attempted to misrepresent the findings of the Expert Committee*

Report in a manner that is devoid of scientific understanding. I say that in spite of the Expert Committee coming to the finding of extremely high levels of TDS (more than 3000 times the prescribed standards), BOD and COD (more than twice the prescribed standards) TEPS claims that there has been "no concrete finding which would warrant imposition of damages". I reiterate that the present cost of environmental damage and restoration imposed against polluters is most conservative as the determination is made only from 2011 onwards, despite continuing egregious violations of the environmental norms and the Consent to Operate.

s. *With respect to paragraph H(ii)(4) it is submitted that due to the lack of availability of detailed baseline data related to identified damage parameters, various studies have been referred to arrive at the damage costs. The direct value transfer method was used for assessment of environmental damage. Direct value transfer estimates the economic value of one location using the study carried out another location. The value benefit transfer method is widely used as a technique to calculate the economic value of benefits for the environment when an original study for valuation is not feasible.*

t. *With respect to Para H(iii) I deny that there is any error by duplication by the Expert Committee Report as creeks and seawater are two distinct natural ecosystems with different aquatic ecology. Any impact/damage to the creek and to the seawater, even if the origin of such damage is common, will have to be ascertained and determined separately for creek and for seawater, as rightly undertaken by the Expert Committee. In fact, the determination of environmental damage is made only from 2011 despite large-scale pollution continuing for several decades by the CETP and its associated industrial units.*

u. *With respect to Para H(iv) of the Objections, I deny the contents therein as absolutely baseless, unfounded, false and absurd. The contents of the said para fall afoul of the conclusive science on this subject. I say that* ***BOD (Biochemical Oxygen Demand) is not a subset of COD (Chemical Oxygen Demand). BOD is a biological oxidation process and COD is a chemical oxidation process. COD levels is used to determine capability of degrading industrial sewage alone and therefore, is an important constituent to determine and identify the chemical levels, whereas BOD is used to separately determine organic untreated sewage and effluents that may have a non-chemical source such as waste arising from manure, food processing plants, wastewater treatment plants, failing septic systems and pulps and paper mills among others****. Annexed and marked hereto as EXHIBIT B is a copy of a research article setting out the difference between BOD and COD levels.*

5. *The Expert Committee undertook a detailed analysis of the pollution being caused by the industrial units as well as the CETP over a protracted period of time due to the failure of both the Respondent No.3 and the member industries of the Respondent No.8 to comply with the stipulated consent terms and due to the brazen violation. Not only has the livelihood of the traditional fishermen been affected by the polluting of the waterbodies, but the degradation of the quality of the*

environment has had obvious adverse effects on public health. As such the Respondents No. 3 and 8 must be held accountable for causing damage to the environment and liable under the "polluter pays principle"."

(Emphasis added)

ii. Affidavit dated 18.03.2021, by respondent 3, TEPS (P/1522)

173. Referring to Supreme Court's order dated 14.12.2020 in Civil Appeal No. 3638 of 2020, TEPS has stated that seeking extension of time for deposit of amount, MA 62/2021 (page-1523& 1532) in Civil Appeal no. 3638/2020 was filed in Supreme Court which was partially allowed, granting 30 days' extension and directing TEPS to deposit 30% of the compensation amount with Authority established under Environment Relief Fund Scheme, 2008 (hereinafter referred to as 'ERF Scheme, 2008') as per Section 24 of NGT Act, 2010. The order reads as under:

"We have heard learned counsel for the parties.
In our order dated 14th December, 2020, clause (e) and (f) read as under:

e) The appellant, namely Tarapur Industrial Manufacturers Association (TIMA), or the individual units as identified in the report submitted by the Monitoring Committee, shall deposit 30% of the compensation amount within one month from today. In case of failure to deposit, their objections would not be heard and decided.

f) The appellant - Tarapur Environment Protection Society (TIMA), in Civil Appeal No. 3638 of 2020, would deposit 30% of compensation amount as directed by the impugned order within one month from today. In case of failure to deposit, their objections would not be heard and decided.

Under Clause (e) and (f), we had directed the parties to deposit 30 per cent of the compensation amount within a period of one month from the date of the said Order. Having regard to the submissions of the learned senior counsel appearing for the applicants, time for deposit of the amount is extended by 30 days.

***The deposit shall be made with the authorities indicated in Section 24 of the National Green Tribunal Act, 2010**.*

The miscellaneous applications stand disposed of."

(Emphasis added)

174. TEPS has deposited Rs. 10,90,00,000/- with United India Insurance Company Ltd. (Chennai Head Office) which is established as a Fund Manager/Authority under ERF Scheme, 2008 read with Section 24 of NGT Act, 2010. TEPS again approached Supreme Court filing M.A. 380 of 2021 seeking further extension of time to deposit the amount. By order dated 04.03.2021, Supreme Court permitted payment of Rs. two crores on 04.03.2021 itself and a week's further time for payment of balance Rs. 8,79,44,100/-. The order reads as under:

> *"Mr. C.A. Sundaram, learned senior counsel appearing for the applicant- Tarapur Environment Protection Society submits that the applicant will deposit a sum of Rs. 2,00,00,000/- (Rupees two crores) today. The statement is taken on record.*
>
> *He further prays for some time for payment of balance amount of compensation of Rs. 8,79,44,100/- (Rupees eight crores seventy-nine lakh forty-four thousand and one hundred).*
>
> *As a last chance, one week's further time is granted to the applicant to pay the balance of Rs. 8,79,44,100/-(Rupees eight crores seventy nine lakh forty four thousand and one hundred).*
>
> *Application for direction is disposed of accordingly."*

175. Thus, entire balance amount was deposited by TEPS on 12.03.2021 with Fund Manager/Authority. As such, TEPS deposited 30% compensation i.e., Rs. 21,69,44,100/-. TEPS has further said that it has successfully commissioned 25 MLD CETP out of 50 MLD CETP which is running successfully.

iii. Affidavit dated 22.03.2021, by respondent 9, TIMA (P/1545)

176. It has also referred to Supreme Court's order dated 14.12.2020 and has filed objections registered as MA 02/2021. Out of 102 industrial units, 92 have deposited their respective 30% of compensation amount. 88 units deposited money with United India Insurance Company Ltd. (Chennai Head Office) i.e., Fund Manager/Authority under ERF Scheme, 2008 read with Section 24 of NGT Act, 2010 while 4 units, by mistake,

have deposited amount with MPCB. Collectively, 92 industries have deposited a total sum of Rs. 23,48,35,420/-. List of industries who had deposited 30% of the compensation amount, is given as annexure-C, as under:

Sl. No	***Name and address of industry***	***Plot No.***	***Penalty amount paid***	***Date of Deposit***
1.	*Aarti Drugs Ltd.*	*G-60*	*13,74,000*	*11-02-2021*
2.	*Aarti Drugs Ltd.*	*N-198, 199*	*3,12,67,250*	*11-02-2021*
3.	*Aarti Drugs Ltd.*	*E-21, 22*	*46,91,000*	*11-02-2021*
4.	*Aarti Industries Ltd.*	*E-50*	*13,62,180*	*11-02-2021*
5.	*Aarti Industries Ltd.*	*K-17, 18, 19*	*13,67,880*	*11-02-2021*
6.	*Aarti Industries Ltd.*	*L-5,8,9*	*34,16,700*	*11-02-2021*
7.	*Bombay Rayon Fashion Ltd.*	*C-6,7*	*19,83,420*	*10-02-2021*
8.	*Siyaram Silk Mills, (Balkrishna Synthetics)*	*H-3/1*	*26,39,000*	*06-02-2021*
9.	*Camlin Fine Chemicals*	*D-2/3*	*1,54,97,000*	*10-02-2021*
10.	*Ciron Drugs & Pharmaceutical Pvt. Ltd.*	*N-113, 118, 119 & 119/2*	*3,42,000*	*10-02-2021*
11.	*Dicitex Home Furnishing Pvt. Ltd.*	*G-7/1 & 7/2*	*23,14,000*	*10-02-2021*
12.	*Dicitex Furnishing Pvt. Ltd.*	*G-58*	*5,07,000*	*10-02-2021*
13.	*DC Polyester Pvt Ltd.*	*E-26/2*	*13,91,000*	*10-02-2021*
14.	*D C Textile*	*E-26/1*	*51,300*	*12-02-2021*
15.	*JSW Steel Ltd*	*B-6*	*42,40,000*	*10-02-2021*
16.	*M/s Kriplon Synthetics Pvt Ltd*	*N-97/1/2, 97, 98*	*38,19,000*	*12-02-2021*
17.	*Mandhara Dyeing*	*E-25*	*4,39,000*	*16-02-2021*
18.	*E-Land Fashion*	*D-1*	*86,63,000*	*10-02-2021*
19.	*Nipur Chemical*	*D-17*	*14,43,900*	*08-02-2021*
20.	*Manan Costyn Pvt Ltd*	*G-4/2*	*1,52,12,000*	*10-02-2021*
21.	*Resonance Speciality Ltd.*	*T-140*	*52,13,000*	*10-02-2021*
22.	*Silvester Textiles P Ltd*	*E-24*	*57,56,000*	*10-02-2021*
23.	*Sarex Overseas*	*N-129, 130,131, 132*	*46,11,000*	*10-02-2021*
24.	*Valiant Glass P. Ltd.*	*J-85*	*33,00,000*	*10-02-2021*
25.	*Aarti Drugs Ltd.*	*E-9/3-4*	*1,44,400*	*10-02-2021*
26.	*Jakharia Textile*	*A-13*	*75,46,000*	*10-02-2021*
27.	*Pal Fashions Pvt Ltd*	*E-49 &*	*29,87,000*	*10-02-2021*

		E-49/2		
28.	*SD Fine Chemicals*	*E-27/28*	*98,79,000*	*11-02-2021*
29.	*Auro Laboratries Ltd*	*K-56*	*53,84,100*	*11-02-2021*
30.	*Iraa Clothing (P) Ltd (Shagun Clothing P Ltd)*	*B- 7/3*	*32,10,690*	*04-03-2021*
31.	*Abhilasha Texchem Pvt Ltd./Valient Organics Ltd.*	*M-7*	*1,48,000*	*10-02-2021*
32.	*Alexo Chemicals*	*N-174*	*15,84,000*	*10-02-2021*
33.	*Accusynth Speciality Chemical*	*E-29/1-2*	*9,92,000*	*08-02-2021*
34.	*Aarey Drugs & Pharmaceuticals ltd*	*E-34*	*47,490*	*25-02-2021*
35.	*Aradhana Energy Pvt Ltd*	*K-34*	*625000*	*10-02-2021*
36.	*Bajaj Health Care Ltd*	*N-216, N-217*	*1586000*	*12-02-2021*
37.	*BostanPharma*	*E-84*	*1102000*	*10-02-2021*
38.	*Panchamrut Chemical Pvt Ltd (Dragon Drugs Pvt Ltd*	*N-76*	*1284000*	*10-02-2021*
39.	*Diakaffil Chemicals*	*E-4*	*570000*	*10-02-2021*
40.	*DRV Organics,*	*N-184, N-185*	*2557170*	*10-02-2021*
41.	*Dufon Laboratories P ltd,*	*E-61/3*	*5318000*	*10-02-2021*
42.	*D.H. Organic*	*N-89*	*1273000*	*10-02-2021*
43.	*Gangwal Chemical*	*N-5*	*213000*	*10-02-2021*
44.	*Haren Textile Pvt Ltd*	*J-194*	*1512000*	*08-02-2021*
45.	*Indo Amines Ltd (Previously known as Sri SaiIndsutries)*	*K-33*	*1746000*	*12-02-2021*
46.	*Indaco Jeans Pvt Ltd*	*G-21*	*588930*	*10-02-2021*
47.	*Mehta API Pvt Ltd*	*Gut NO-546, 571, 519, 520*	*338160*	*10-02-2021*
48.	*Moltus Research Laboratories,*	*N-59*	*27000*	*10-02-2021*
49.	*K P Chemicals,*	*L-63*	*1780140*	*10-02-2021*
50.	*JPN Pharma,*	*T-108-109*	*967000*	*08-02-2021*
51.	*Khanna & Khanna*	*K-10*	*205170*	*11-02-2021*
52.	*Keshav Organics P ltd*	*T-97,98, 100*	*155790*	*10-02-2021*
53.	*Nayakem Organics Pvt Ltd*	*T-128*	*290670*	*08-02-2021*
54.	*Nirbhay Rasayan Pvt Ltd*	*N-95,96, 96/1*	*2341000*	*11-02-2021*
55.	*Nutraplus India Ltd*	*N-92*	*3108000*	*12-02-2021*
56.	*Sequent Scientific Ltd (PI Drugs Pharmaceuticals)*	*W-136, 137,138, 151*	*1298000*	*11-02-2021*
57.	*Pulcra Chemicals India Ltd*	*D-7/1/1*	*1765000*	*09-02-2021*
58.	*Pentagon Drugs Ltd Plot*	*N-224,*	*767520*	*10-02-2021*

	No.	*225*		
59.	*Paramount Syncot Textile*	*N-13/2*	*787000*	*15-02-2021*
60.	*IPCA Laboratories (Ramdev Chemicals)*	*E-41*	*8587000*	*11-02-2021*
61.	*Tryst Chemicals*	*L-47*	*819000*	*09-02-2021*
62.	*Omtech Chemicals*	*T-12*	*503000*	*10-02-2021*
63.	*Shreenath Chemicals*	*T-54, T-80*	*152000*	*09-02-2021*
64.	*Salvi Chemicals Industries*	*E-90 E-91 E-92, E-93 E-94 E-95*	*4693000*	*05-02-2021*
65.	*Sapna Detergent*	*N-152/ N-153*	*1780000*	*08-02-2021*
66.	*Sagitta P Ltd*	*N-4*	*1774000*	*11-02-2021*
67.	*Surmount chemicals (I) P Ltd*	*N-41*	*194000*	*09-02-2021*
68.	*Shri VinayakChemex India Pvt.Ltd*	*T-11*	*1782000*	*08-02-2021*
69.	*Sunil Great Processers*	*N-47/3*	*2325000*	*12-02-2021*
70.	*Vardhman Dyestuff Pvt Ltd*	*N-33, T-34*	*192000*	*09-02-2021*
71.	*Usha Fashion*	*E-42*	*3776000*	*12-02-2021*
72.	*U. K. Aromatics & Chemicals*	*K-6/3*	*407000*	*06-02-2021*
73.	*Vividh Global Inds Ltd*	*D-21/1*	*1830000*	*08-02-2021*
74.	*Square Chemical*	*N-60*	*760000*	*08-02-2021*
75.	*Shree Chakra Organics Pvt Ltd*	*K-62*	*319000*	*09-02-2021*
76.	*Arti Drugs*	*E-106, 119, 120*	*211000*	*11-02-2021*
77.	*Omega Colurs Pvt Ltd.*	*D-21/2/3*	*336000*	*10-02-2021*
78.	*REMI Edelstahi Tubulars Ltd.(Old Name-RAJENDRA MECHANICAL INDL LTD.)*	*N -211 /1*	*125000*	*12-02-2021*
79.	*Gini Silk Mills Ltd.*	*E-15*	*3579000*	*09-02-2021*
80.	*Rediant Intermediates*	*N-224*	*2526750*	*12-02-2021*
81.	*Premier Intermediate*	*T-55, T-56*	*285000*	*10-02-2021*
82.	*Maharashtra Organo Metalics Pvt. Ltd.*	*N-220 & 221*	*279270*	*10-02-2021*
83.	*Ganesh Benzoplast*	*D-21/2/2*	*5631000*	*11-02-2021*
84.	*Zorba Dyechem*	*W-14,*	*96900*	*10-02-2021*
85.	*Aarviam Dye Chem*	*L-9/2*	*133000*	*10-02-2021*
86.	*Dhanlaxmi Steel*	*J-56*	*1664250*	*22-02-2021*
87.	*Sarswati Steel (Shiv steel)*	*W-88/A*	*174780*	*22-02-2021*
88.	*SR Steel*	*W-80/A*	*397050*	*10-02-2021*

89.	*J V Chem Industries*	*N-111,112*	*484000*	*10-02-2021*
90.	*Shriyans Chemical*	*W-43*	*1621000*	*10-02-2021*
91.	*Union Park Chemicals Pvt. Ltd.*	*E-11*	*43710*	
92.	*Lavino Kapoor Cottons Pvt. Ltd.*	*H-1*	*2325000*	*25-02-2021*

177. List of 10 industries which had not paid amount and flouted Supreme Court's order is also part of annexure-C at page 1563 as under:

Sl. No.	*Name of the industry*	*Plot No.*	*Penalty amount paid*	*Date of Deposit*
1.	*Zeus International Ltd.*	*A-10 & 11*	-	
2.	*Ashwin Synthetics P Ltd.*	*C-8/2*	-	
3.	*Ajmera Organics*	*N-211/2/1*	-	
4.	*Visen Industries Ltd.*	*K-30, T-31, T-32*	-	
5.	*Ujwal Pharam P Ltd.*	*N-52*	-	
6.	*Mayfair Bio tech (Ankit Petro)*	*L-12*	-	
7.	*Anuh Pharma Chem*	*E-17/3 & 4*	-	
8.	*Prabhat Engineering*	*L-50*	-	
9.	*Deep Industries*	*W-146*	-	
10.	*The Pharmaceutical Product of India Ltd.*	*N-24, N-25*	-	

I.A. 31/2021 filed by Ankit Petroproducts Pvt. Ltd.

178. **Objections dated 08.04.2021 along with IA 31/2021** has been filed by **M/s Ankit Petroproducts Pvt. Ltd**., disputing computation of environmental compensation of Rs. 136.027 lakhs by Expert Committee. One of the major grounds is that M/s Ankit Petroproducts Pvt. Ltd. is SSI scale unit but computation of compensation has been made treating it as LSI which is patently illegal. Another ground is that it is Zero Liquid Discharge unit i.e., ZLD and cannot be taken to have caused any

pollution. Number of days taken for computation of compensation is also challenged. It is said that Committee has taken 716 days though at the best it could have been only 13 days therefore, computation of compensation for alleged non-violation for 716 days is incorrect. It is however, submitted that even 13 days is being objected since unit is ZLD. Constitution of Committee comprising of member of MPCB is also challenged on the ground that State PCB is the Regulatory Authority and it being at fault, could not to have been made party or member to the Committee. Further objective is that there are more than 1100 units in the area and only 100 and odd have been selected for imposition of compensation which shows that an arbitrary exercise has been undertaken by Committee. The quantum of effluent discharge taken into consideration is also challenged on the ground that the total load carried out by MIDC pipelines includes domestic waste but no study on this aspect has been conducted. Allegations are also made against TEPS stating that by letter dated 23.02.2021 and 01.04.2021, it has allowed certain units to restart discharge of effluent of 25 MLD CETP upto COD of 2000 ppm, using monitoring devices set up. Ignoring the fact that LSI companies have their own ETPs and ought to discharge effluent only with COD of 250 ppm maximum but if they are allowed with higher concentration, it would be very difficult for SSI units to perform with the permissible limits of 3500 ppm. Reliance in this regard, is placed on Tribunal's judgment dated 01.04.2014 in ***OA No. 34/2013 (WZ), Tarun Patel vs. Chairman, Gujarat Pollution Control Board and others***.

Affidavit dated 01.04.2021 filed on behalf of TEPS (respondent 3)

179. This affidavit has been submitted in response to status report dated 11.01.2021 filed by Committee. The principal objections are, that in the absence of any preparation and finalization of remediation action

plan, status report is inadmissible; issue of excess load on CETP has not been addressed by Committee, therefore, there is no analysis or effort by Committee to identify root of the problem; exemption granted by Committee to all ZLDs and SSI units from liability and providing them an umbrella protection by penalizing TEPS is against the principle of polluters pays; TEPS is taking all steps to install additional CETP; Committee has ignored negligence and lack of discharge of duty on the part of MIDC and shifted entire burden upon TEPS; and no weightage has been given to the fact that TEPS has spent a huge amount for installing additional capacity CETP.

180. **M.A. 12/2021 dated 03.05.2021** has been filed by Regional Director, Shri Bharat Kumar Sharma, CPCB. It has referred to the report dated 11.01.2021 submitted by Committee after inclusion of District Magistrate, Palghar and said that report includes action plan for remedial measures and restoration of contaminated water bodies in and around TIA MIDC. The report, we have already referred above in detail.

Comments/joint reply dated 15.04.2021/13.05.2021 of Committee to the objections raised by TEPS and TIMA to the Committee's report dated 19.06.2020 (page 1664)

181. Supreme Court vide order dated 14.12.2020 while permitting TEPS and TIMA to file objections to the Committee's report dated 19.06.2020 also permitted Monitoring Committee to file its reply to the said objections, if it deemed proper and necessary. Pursuant thereto, TEPS and TIMA filed their objections dated 29.12.2020 and to the said objections, joint Committee has filed its reply/response vide letter dated 13.05.2021. Committee has justified its report and findings recorded therein. We shall discuss reply of Committee while considering objections of TEPS, TIMA and individual industries.

Response/Revised report dated 12.08.2021 submitted by Committee

182. After receiving objections of the association of industries as also individual industries, Tribunal required Committee who had submitted report dated 18.06.2020, to re-examine the matter and submit response. On 7.6.2021, a statement was made that MPCB is examining revision of estimate and in reference thereto Tribunal vide order dated 07.06.2021, required Committee to submit response as a result of revision of compensation. Committee considered various objections raised by TEPS, TIMA, and industries saddled with liability of compensation. Committee gave opportunity to all individual 102 units as also TEPS identified for determination of compensation, considered objections taken by them in writing and they were also given opportunity of oral hearing. Thereafter, Committee submitted its response/revised report vide letter dated 12.08.2021 (hereinafter referred to as '**Revised Report dated 12.08.2021**'). Report is appended with annexure 1 which is revised details of 103 units in respect whereof compensation was determined vide earlier report dated 18.06.2020. In many cases compensation has been revised in respect of most units giving reasons therefor. The objections raised by individual industries have also been mentioned and reasons for their acceptance or rejection is also given in the said report. We also find from the said report that amount of compensation has stood revised for one particular reason in as much as distribution Recovery Cost Factor (hereinafter referred to as 'DRCF') has stood revised to a higher level in view of the subsequent facts brought to the notice of Committee and this has been stated in the revised report dated 12.08.2021. We are giving hereunder a complete chart of 103 units with details including days of violation (earlier and revised), compensation determined (earlier and revised) and DRCF (earlier and revised) as under:

SN	Name and address of industry	Product, Category, Scale	Discharge quantity (m^3/day)	Days of violation (Initial Earlier/ Revised)	Amount of compensation (Initial Earlier/ Revised) in lakhs	Distribution Recovery Cost Factor (DRCF) (Earlier/ Revised)
1	Aarti Drugs Ltd., G-60	Bulk drug, Red, LSI	119	241/ 168	45.786/ 40.517	0.0028609/ 0.0025316
2	Aarti Drugs Ltd., N-198, 199	Bulk drug, Red, LSI	63.1	1999/ 329	1042.241/ 368.749	0.0651229/ 0.0230408
3	Aarti Drugs Ltd., E-1, E-21, E-22	Bulk drug, Red, LSI	88.3	689/ 225	156.355/ 97.191	0.0097696/ 0.0060729
4	Aarti Industries Ltd., E-50	Bulk drug, Red, LSI	55.42 ZLD unit (Earlier it was considered as 119)	239/ 200	45.406/ 48.234	0.0028371/ 0.0030138
5	Aarti Industries Ltd., K-17,18,19	Bulk drug, Red, LSI	318.4	240/ 240	45.596/ 57.881	0.0028490/ 0.0036166
6	Aarti Industries Ltd., L-5,8,9	Bulk drug, Red, LSI	20.0 ZLD unit	600/ 628	113.989/ 151.455	0.0071225/ 0.0094634
7	Bombay Rayon Fashion Ltd. C-6,7	Textile, Red, LSI	6000.0	348/ 305	66.114/ 73.557	0.0041310/ 0.0045961
8	Siyaram Silk Mills, (Balkrishna Synthetics) H-3/1	Textile processing (earlier it was textile), Red, LSI	2000.0	463/ 669	87.962/ 208.612	0.0054962/ 0.0130348
9	Camlin Fine Chemicals, D-2/3	Chemical	20.0	1848/ 1361	516.561/ 428.077	0.0322766/ 0.0267478
10	M/s Ciron Drugs & Pharmaceutical Pvt. Ltd. N-113, 118, 119 & 119/2	Pharma, Orange, LSI	4.5	96/ 96	11.399/ 14.470	0.0007122/ 0.0009042
11	M/s Dicitex Home Furnishing Pvt. Ltd. G-7/1 & 7/2	Textile, Red, LSI	510.0	406/ 498	77.133/ 218.018	0.0048195/ 0.0136225
12	M/s Dicitex Home Furnishing Pvt. Ltd. G-58	Textile, Red, LSI	880.0	89/ 242	16.908/ 58.363	0.0010565/ 0.0036467
13	DC	Textile, Red,	300.0	244/	46.356/	0.0028965/

	Polyester Pvt. Ltd, E-26/2	LSI		244	58.845	0.0036769
14	DC Polyester Pvt. Ltd, E-26/1	Textile, Red, LSI	95.0	9/9	1.710/ 2.171	0.0001068/ 0.0001356
15	JSW Steel Coated Product Ltd (JSW Steel Ltd) B-6	Steel (Engineering) Red, LSI	603	744/ 477	141.347/ 115.038	0.0088318/ 0.0071880
16	M/s Kriplon Synthetics Pvt. Ltd, N-97/1/2, 97, 98	Textile, Red, LSI	497.0	526/ 272	127.288/ 77.416	0.0079534/ 0.0048372
17	Mandhara Dyeing, E-25	Textile, Red, LSI	900.0	77/ 36	14.629/ 8.682	0.0009140/ 0.0005425
18	E-Land Fashion (Mudra Life Style), D-1	Textile, Red, LSI	115.0	953/ 484	288.772/ 140.602	0.0180435/ 0.0087853
19	Nipur Chemical, D-17	Chemical Red, LSI	120.0	76/ 76	14.439/ 18.329	0.0009022/ 0.0011453
20	Manan Costyn Pvt. Ltd. G-4/2	Textile, Red, LSI	225.0 (ZLD)	1344/ 712	507.062/ 281.204	0.0316830/ 0.0175706
21	Resonance Speciality Ltd. T-140	Chemical, Red, SSI	12.0	2170/ 901	173.770/ 118.656	0.0108578/ 0.0074140
22	Silvester Textiles P. Ltd. E-24	Textile, Red, LSI	410.0	650/ 650	191.882/ 243.582	0.0119895/ 0.0152199
23	Sarex Overseas N-129,130, 131,132	Chemical, Red, LSI	400.0	809/ 807	153.695/ 194.624	0.0096034/ 0.0121608
24	Zeus International Ltd, A-10 & 11	Chemical, Red, LSI	400	2328/ 1080	619.341/ 483.063	0.0386986/ 0.0301835
25	Valiant Glass P. Ltd., J-85	Textile, Red, LSI	2000.0	453/ 370	110.000/ 99.603	0.0068732/ 0.0062236
26	Aarti Drugs Ltd., E-9/3-4	Bulk Drug, Red, SSI	30.0	38/ 102	4.813/ 8.200	0.0003007/ 0.0005124
27	Jakharia Textile, A-13	Textile, Red, LSI	378	1324/ 205	251.536/ 49.440	0.0157169/ 0.0030892
28	Pal Fashions Pvt. Ltd, E-49 & E-49/2	Textile, Red, MSI	500	786/ 281	99.551/ 45.179	0.0062203/ 0.0028230
29	SD Fine	Chemical,	16	2185/	329.302/	0.0205760/

	Chemicals, E-27/28	Red, MSI		608	164.478	0.0102772
30	Iraa Clothing (P) Ltd (Shagun Clothing P Ltd), B- 7/3	Textile, Red, MSI	180	845/ 845	107.023/ 135.859	0.0066872/ 0.0084890
31	Auro Laboratories Ltd, K-56	Bulk Drugs, Red, MSI	19	774/ 269	179.470/ 65.437	0.0112139/ 0.0040888
32	Valiant Organics Ltd. (Formerly M/s. Abhilasha Texchem Pvt. Ltd.) M-7	Textile, Red, SSI	6	78/ 55	4.940/ 4.421	0.0003086/ 0.0002763
33	Alexo Chemicals, N-174	Chemical, Red, SSI	0.7	463/ 422	52.815/ 63.749	0.0033001/ 0.0039833
34	Ashwin Synthetics P Ltd, C-8/2	Yarn Dying and textile (Chemicals)Red, SSI	30	547/ 424	41.163/ 42.526	0.0025720/ 0.0026572
35	Accusynth Speciality Chemical, E-29/1-2	Chemical, Red, SSI	2.5	522/ 290	33.057/ 23.313	0.0020655/ 0.0014567
36	Ajmera Organics, N-211/2/1	Chemical, Red, SSI	6	24/ 24	1.520/ 1.929	0.0000950/ 0.0001206
37	Aarey Drugs & Pharmaceuticals Ltd, E-34	Drug intermediate, Red, SSI	40	25	1.583/ 2.010	0.0000989/ 0.0001256
38	Aradhana Energy Pvt Ltd, K-34	Chemicals, Red, SSI	00	329/ 32	20.835/ 2.572	0.0013018/ 0.0001607
39	Bajaj Health Care Ltd, N-216, N-217	Drug Intermediate, Red, SSI	1.3	658/ 662	52.878/ 67.769	0.0033040/ 0.0042344
40	Bostan Pharma, E-84	Chemical, Red, SSI	0.2	580/ 844	36.730/ 67.849	0.0022950/ 0.0042395
41	Panchamrut Chemical Pvt. Ltd (Dragon Drugs Pvt. Ltd), N-76	Chemical, Red, SSI	20	676/ 443	42.809/ 68.814	0.0026749/ 0.0042997
42	Diakaffil Chemicals, E-4	Chemicals, Red, MSI (SSI earlier)	1	300/ 300	18.998/ 48.234	0.0011871/ 0.0030138
43	DRV Organics, N-184, N-185	Drug Intermediate, Red, SSI	1.3	933/ 685	85.239/ 68.653	0.0053260/ 0.0042897
44	Dufon Laboratories P Ltd,	Drug Intermediate Red, SSI	15	1982/ 421	177.253/ 39.391	0.0110754/ 0.0024613

	E-61/3					
45	D.H. Organic, N-89	Bulk drug, Red, SSI	1.8	670/ 29	42.429/ 2.331	0.0026511/ 0.0001457
46	Gangwal Chemical, N-5	Chemical, Red, SSI	0.5	112/ 113	7.093/ 9.084	0.0004432/ 0.0005676
47	Haren Textile Pvt Ltd, J-194	Textile processing, Red, SSI	80	796/ 193	50.409/ 15.515	0.0031497/ 0.0009694
48	Indo Amines Ltd (Previously known as Sri Sai Industries) K-33	Chemical, Red, SSI	5.6	831/ 744	58.198/ 59.810	0.0036364/ 0.0037372
49	Indaco Jeans Pvt. Ltd, G-21	Textile processing, Red, SSI	100	227/ 227	19.631/ 24.921	0.0012266/ 0.0015571
50	Mehta API Pvt. Ltd, Gut No- 546, 571, 519, 520, Vill- Lumbhavali, Tal & Dsit- Palghar	Bulk drug, Red, MSI	7	89/ 89	11.272/ 14.309	0.0007043/ 0.0008941
51	Moltus Research Laboratories, N-59	Chemical, Red, SSI	0.1	14/ 14	0.887/ 1.125	0.0000554/ 0.0000703
52	K P Chemicals, L-63	Chemical, Red, SSI	11	937/ 19	59.338/ 1.527	0.0037076/ 0.0000954
53	JPN Pharma, T-108-109	Bulk drug, Red, SSI	3	509/ 12	32.234/ 0.965	0.0020141/ 0.0000603
54	Khanna & Khanna K-10	Chemical, Red, SSI	1.1	108/108	6.839/ 8.682	0.0004273/ 0.0005425
55	Keshav Organics P Ltd, T-97,98, 100	Chemical, Red, SSI`	4.5	82/ 29	5.193/ 2.331	0.0003245/ 0.0001457
56	Nayakem Organics Pvt. Ltd, T-128	Chemical, Red, SSI	1.0	84/ 87	9.689/ 12.541	0.0006054/ 0.0007836
57	Nirbhay Rasayan Pvt. Ltd, N-95,96, 96/1	Pigment (Dyes), Red, MSI (earlier SSI)	93	1201/ 315	78.019/ 53.861	0.0048749/ 0.0033654
58	Nutraplus India Ltd, N-92	Chemical, Red, LSI (SSI earlier)	5.0	742/ 404	103.603/ 313.039	0.0064735/ 0.0195598
59	Sequent Scientific Ltd (PI Drugs Pharmaceuticals) W-136,137, 138,151	Bulk drug, Red, SSI	37.8	683/ 337	43.253/ 27.091	0.0027026/ 0.0016928
60	Pulcra Chemicals India Ltd D-7/1/1	Chemical, Red, MSI (SSI earlier)	15 ZLD	929/ 98	58.831/ 15.756	0.0036760/ 0.0009845
61	M/s.	Bulk drug,	5.5	404/	25.584/	0.0015986/

	Pentagon Drugs Ltd Plot No. N-224, 225,	Red, SSI		404	32.478	0.0020293
62	M/s. Paramount Syncot Textile, Plot No. N-13/2	Textile, Red, SSI	40.0	414/ 414	26.217/ 33.281	0.0016382/ 0.0020795
63	M/s. IPCA Laboratories (Ramdev Chemicals) Plot No. E-41	Bulk drug, Red, LSI (MSI earlier)	65.64	1374/ 110	285.226/ 26.529	0.0178220/ 0.0016576
64	M/s. Tryst Chemicals, Plot No. L-47	Bulk drug, Red, SSI	2.8	431/ 185	27.294/ 14.872	0.0017054/ 0.0009293
65	M/s. Omtech Chemicals Plot No. T-12	Chemical, Red, SSI	30.0	265/ 82	16.782/ 6.592	0.0010486/ 0.0004119
66	M/s. Shreenath Chemicals, Plot No. T-54, T-80	Chemical, Red, SSI	1.5	80/ 14	5.066/ 1.125	0.0003166/ 0.0000703
67	M/s. Salvi Chemicals Industries, Plot No. E-90, E-91, E-92, E-93, E-94, E-95	Chemical, Red, LSI (SSI earlier)	55.5	997/ 397	156.418/ 311.350	0.0097736/ 0.0194543
68	M/s. Sapna Detergent, Plot No. N-152/N-153	Chemical, Red, SSI	1.5	937/ 545	59.338/ 43.813	0.0037076/ 0.0027376
69	M/s. Sagitta P Ltd, Plot No. N-4	Chemical, Red, SSI	3.5	934/ 18	59.148/ 1.447	0.0036958/ 0.0000904
70	M/s. Surmount Chemicals (I) P Ltd, Plot No. N-41,	Chemical, Red, SSI	0.8	102/ 102	6.459/ 8.200	0.0004036/ 0.0005124
71	M/s. Shri Vinayak Chemex India Pvt. Ltd. Plot No. T-11	Chemical, Red, SSI	1.5	938/ 245	59.401/ 19.696	0.0037116/ 0.0012306
72	M/s. Sunil Great Processers, Plot No. N-47/3	Chemical, Red, SSI	6.0	868/ 868	77.513/ 98.397	0.0048433/ 0.0061482
73	M/s. Vardhman Dyestuff Pvt. Ltd, Plot No. N-33, T-34	Dyes, Red, SSI	52.0	101/ 101	6.396/ 8.441	0.0003996/ 0.0005274
74	M/s. Usha Fashion, Plot No. E-42	Textile, Red, SSI	305.0	1079/ 233	125.895/ 23.635	0.0078664/ 0.0014768
75	M/s. Visen	Chemical,	7.0	210/	13.299/	0.0008310/

	Industries Ltd Plot No. K-30, T-31, T-32	Red, SSI		212	17.043	0.0010649
76	M/s. U. K. Aromatics & Chemicals Plot No. K-6/3	Chemical, Red, SSI	6	156/ 149	13.552/ 16.802	0.0008468/ 0.0010498
77	M/s. Ujwal Pharma P Ltd., Plot No. N-52	Chemical, Red, SSI	4.0	918/ 921	83.275/ 106.115	0.0052033/ 0.0066304
78	M/s. Vividh Global Inds Ltd Plot No. D-21/1	Chemical, Red, SSI	40.0	963/ 965	60.984/ 77.576	0.0038105/ 0.0048472
79	M/s. Square Chemical Plot No. N-60	Chemical, Red, SSI	4.0	400/ 402	25.331/ 32.317	0.0015828/ 0.0020193
80	M/s. Shree Chakra Organics Pvt. Ltd Plot No. K-62	Chemical, Red, SSI	25.0	168/ 170	10.639/ 13.666	0.0006648/ 0.0008539
81	M/s. Arti Drugs, Plot No. E-105, 106, 119, 120	Bulk Drugs, Red, SSI (LSI earlier)	23 CMD	37/ 37	7.029/ 2.974	0.0004392/ 0.0001859
82	Omega Colurs Pvt. Ltd., Plot No. D-21/2/3	Crude pigment green. (Earlier mentioned as Dyes), Red, SSI	82	106/ 435	11.209/ 78.380	0.0007004/ 0.0048975
83	REMI Edelstahi Tubulars Ltd., (Old Name- RAJENDRA MECHANICA L INDL LTD.) Plot No.- N-2011 /1	Engineering, Red, LSI	20	22/ 22	4.180/ 5.306	0.0002612/ 0.0003315
84	Gini Silk Mills Ltd., Plot No.E-15	Textile, Red, LSI	510	628/ 321	119.309/ 77.416	0.0074548/ 0.0048372
85	Mayfair Bio tech (Ankit Petro) Plot No. L-12	Chemical, Red, SSI (earlier LSI)	Nil	716/ 716	136.027/ 57.559	0.0084995/ 0.0035965
86	Rediant Intermediate s Plot No. N-224	Chemical, Red, SSI	1.4	926/ 418	84.225/ 66.081	0.0052627/ 0.0041290
87	Premier Intermediate Plot No. T-55, T-56	Bulk Drugs, Red, SSI (earlier LSI)	5	50/ 50	9.499/ 4.019	0.0005935/ 0.0002512
88	Maharashtr a Organo Metalics Pvt.	Chemical, Red, SSI (earlier LSI)	6	49/ 18	9.309/ 1.447	0.0005817/ 0.0000904

	Ltd., Plot No. N-220 & 221					
89	(Anuh Pharma Chem Plot No. E-17/3 & 4, Anu Pharma Chem, N-183	Bulk drug, Red, LSI	10	266/ 267	50.535/ 64.392	0.0031576/ 0.0040235
90	Ganesh Benzoplast Plot No.- D-21/2/2	Bulk Drug, Red, LSI	5	988/ 988	187.702/ 238.276	0.0117283/ 0.0148883
91	Zorba Dyechem Plot No. W-14	Dyes, Red, SSI	0.3	51/ 51	3.230/ 4.100	0.0002018/ 0.0002562
92	Prabhat Engineering Plot No. L-50	Engineering (Earlier it was mentioned as pickling), Red, LSI	0.75	42/ 42	7.979/ 10.129	0.0004986/ 0.0006329
93	Aarviam Dye Chem Plot No. L-9/2	Dyes, Red, SSI	20	70/ 71	4.433/ 5.708	0.0002770/ 0.0003566
94	Dhanlaxmi Steel Plot No.J-56	Engg., Red, SSI	0.8	47/ 876	55.475/ 3.778	0.0034663/ 0.0002361
95	Sarswati Steel (Shiv steel) Plot No. W-88/A	Engg., Red, SSI	0.5	92/ 92	5.826/ 7.396	0.0003640/ 0.0004621
96	Deep Industries Plot No. W-146	Engg., Red, SSI	0.2	24/ 24	1.520/ 1.929/	0.0000950/ 0.0001206
97	SR Steel, Plot No. W-80/A	Engg., Red, SSI	0.2	209/ 83	13.235/ 6.672/	0.0008270/ 0.0004169
98	J V Chem Industries, Plot No. N-111,112	Chemical, Red, SSI	4 ZLD	255/ 255	16.148/ 20.499/	0.0010090/ 0.0012809
99	Shriyans Chemical, Plot No.W-43	Chemical, Red, SSI	1	853/ 42	54.018/ 3.376	0.0033753/ 0.0002110
100	The Pharmaceutical Product of India Ltd., Plot No. N-24, N-25	Bulk Drug, Red, LSI	63	131	24.888/ 31.593	0.0015551/ 0.0019741
101	Union Park Chemicals Pvt. Ltd., Plot No.E-11	Dyes, Red, SSI	6	23/ 23	1.457/ 1.849	0.0000910/ 0.0001155
102	Lavino Kapoor Cottons Pvt. Ltd., Plot No.H-1	Cotton, Red, LSI	1380	408/ 408	77.513/ 98.397	0.0048433/ 0.0061482
103	M/s. Tarapur Environment	Collection, storage and	25 MLD	First non-compliance=	7231.470/ 9179.894	0.4518483/ 0.5735928

	Protection Society CETP (25 MLD), Plot No. AM-29	treatment of effluent from member industries, Red, LSI		342 First repeated non-compliance= 255 Second repeated non-compliance= 35 Third repeated non-compliance= 250 Fourth repeated non-compliance= 2192		

iv. Additional Affidavit dated 01.09.2021 by R-9, TIMA P/2268

183. The above affidavit has been filed in reply to Expert Committee's comments/response dated 12.08.2021 incorporating revised environmental damages and recovery cost distributed on identified units. It is said that Expert Monitoring Committee while responding to errors in date of inspection, date of compliance, names/identification of units, closures was expected to give opportunity of hearing to all individual units identified but no such opportunity was given. Majority of units were distributed calculation made by MPCB with regard to number of days of violation and there were lapses on the part of MPCB on issue of closure notices and verification of the compliance by the units and suggestion with regard to formula given by respondent 9 but the same has not been paid any attention/consideration by the Committee. In some units, the compensation has increased exponentially without rendering any opportunity of hearing. Several discrepancies were found in MPCB report justifying revised days of working to be examined but instead of undertaking examination of the same by committee it has relied on the information supplied by MPCB whose information itself was disputed by concerned industrial units. The Committee's observations made in para 8

of the response is wholly erroneous. In some units, there were glaring errors for which respondent 9 intended to file additional documents (placed on record as annexure to this affidavit) and request is made to provide opportunity of hearing to all 103 units. The response contained in para 8 to 10 of Committee's documents was denied and it is said that the entire report is based on the inputs and recommendations submitted by MPCB which itself was not legal or tenable.

v. Additional affidavit dated 01.09.2021 by respondent 3, TEPS (P/2308)

184. This affidavit is also to dispute the response dated 12.08.2021 submitted by Committee and contains similar allegations as are raised by respondent 9 in its affidavit dated 01.09.2021. It is stated that earlier Committee had recommended imposition of compensation of Rs. 72,31,47,000/- which has now been enhanced to 91,79,89,400/- (an increase of Rs. 19,48,42,400/-) which has no basis. We are not repeating the assertions made in this affidavit but whenever required may refer during the discussion.

ISSUES

185. The issues involved in the present OA are "(i) W**hether respondents TEPS, TIMA and member industries have committed violations, discharged polluted effluents and caused pollution of water and water bodies and if so, (ii) What liability is to be imposed upon them and other remedial action to be taken**".

186. **ARGUMENTS**: Learned Counsel appearing for applicants has reiterated her submissions as raised in O.A. and written submissions. She urged that reports of Committees appointed by Tribunal have demonstrated beyond doubt that respondents industries have

continuously polluted water bodies by discharging polluted affluent hence strigent measures must be taken. It is argued that besides compensation, polluting industries be directed to be closed. Further, quantum of compensation computed and recommended by Committee is not adequate and do not follow norms laid down by Supreme Court. In fact, environmental compensation be determined on annual turnover of industries and for every year of violation, compensation be determined on the basis of turnover of concerned industries of that year. Statutory Regulators must also initiate criminal action against violators. She also said that there is consistent failure on the part of statutory authorities in managing, monitoring and treatment of industrial effluent which has caused damage to water bodies and environment, hence they are also pollutors and must be held accountable by directing to pay environmental compensation besides criminal action.

187. Per contra, learned Senior Counsels Shri Nadkarni and Poovaya argued on behalf of TIMA and TEPS and individual industries, that Committee's reports should be rejected as it has wrongly held these bodies responsible for alleged pollution and illegally imposed compensation. On behalf of individual industries, learned Senior Counsel Shri N.S. Nadkarni, adopting the arguments advanced for TIMA and TEPS, said that compensation determined is not founded on any valid criteria or formula, highly exhorbitant and based on incorrect facts, hence should be rejected. In fact, detailed objections have been filed by above respondents i.e., TIMA, TEPS and about 90 industries (some through TIMA and some separately) against reports of Committee. Learned Senior Counsels have reiterated those objections during arguments and placed before us part of reports which are also referred in

written objections, hence we propose not to repeat same but would consider every objection threadbare hereinafter.

DISCUSSION ON MERITS:

188. The first issue formulated above involves two aspects, one, whether pollution is being caused in the area in question and second, who is causing pollution, if first aspect is returned in affirmance.

189. So far as first aspect is concerned, we are satisfied that polluted industrial effluent is being discharged in arabian sea and other water bodies as well as man groves in the area for the last several years, continuously, through drains receiving discharge from CEPT and also directly from industries working in TIA MIDC. This is evident from record. As long back as in 1996, CPCB identified TIA MIDC as critically polluted area. In the report published in May 2005, by MPCB, titled as 'Report on Environmental Status in Thane Region' (Ann. A-3 to O.A.), number of industries in TIA MIDC as also pollution level has been given. There were 2034 industries (15 large, 63 medium, 1956 small). All 15 in large scale, 56 medium and 375 small were in RED category. Para 4.2 of report says, there is deterioration of water quality in the vicinity of TIA MIDC. Para 4.3 of report says that present effluent collection and disposal systems are not adequate to cater the effluent load. The report published in October 2005 by CPCB (Ann.2 to O.A.) says that in TIA MIDC, treatment plants are not meeting standards and it reflects gross neglect in operation. In 2010, CPCB and IIT Delhi assessed CEPI score of TIA MIDC as 72.01 i.e., Critically Polluted Area. This situation led to issue of O.M. dated 13.01.2010 by MoEF&CC imposing restriction on registration of development projects in TIA MIDC and similar other industrial estates. Pollution level in TIA MIDC worsened as is evident from annual report

2011-12 published by CPCB finding CEPI score 85.24 (Ann.A-8 to O.A.). The problem of pollution came before Bombay High Court in PIL 17/2011. There, MPCB filed affidavit (Ann. A-12 to O.A.) in January 2013 stating/admitting that capacity of CETP in TIA MIDC was only 25 MLD while industrial effluent discharge was more than 33 MLD. All these facts are self evident to show that industries were discharging polluted effluent exceeding prescribed standards. In fact, respondents' proponents have not at controverted these facts by placing any otherwise material before us. It is also not disputed that effluent ultimately reach Arabian sea at Navapur. MPCB' letter dated 09.03.2016 shows that CPCB survey found level of COD, BOD, and SS extremely high in 2013-14; 2014-15; and 2015-16.

190. We have referred to these details to show that industries in TIA MIDC were polluting water bodies including creeks and sea for the last more than two and half decades. For their own commercial interest, they completely ignored their legal, social and moral obligations in regard of environment and persistently damaged it. They have shamelessly compromised with the health and ecology of flora and fauna in the vicinity including aquatic life. Applicants have shown serious consequences like loss of aquatic life and ecology, adverse effect on local residents' life due to consistent reduction in fishing activities, contamination of ground water etc. Here also no material has been placed to show any discrepancy, by respondents' proponents. When Tribunal took cognizance of the matter, learned counsel appearing on behalf of TEPS admitted before us on 09.09.2016 that CETP at TIA MIDC has limited capacity of only 25 MLD while discharge of industrial effluent is much higher, hence large quantity of untreated or partially treated effluent is reaching Arabian sea. The defence was lack of control over new

establishment of industries adding burden by increasing volume of effluent, delay on the part of statutory authorities in permitting setting of new CETP, non control on member industries on release of volume of effluent etc. All these facts as also fact-finding reports of Committees appointed by us, which we have referred in detail above, leave no manner of doubt that responents proponents have been causing huge pollution by discharging polluted effluent in water bodies in vicinity, causing sever damage to environment and are liable for all legal consequences, jointly and individually. **We answer issue 1 accordingly**.

191. Before answering **issue 2** we find it appropriate to consider **objections raised by TEPS** vide **I.A. 93/2020, dated 14.09.2020**; and **M.A.01/2021 dated 29.12.2020**; **by TIMA** vide **objections dated 29.12.2020 (M.A.2/2021)** filed vide e-mail dated 07.01.2021 alogwith **individual objections raised by several industries.**

192. **ACTUAL QUANTUM OF DAMAGE TO ENVIRONMENT**: The foremost objection taken commonly by above Proponents is that before computing compensation, it was incumbent upon Committee to find out actual quantum of damage to environment, cost of its remediation and only then the Proponents could have been asked to pay compensation. Quantification of compensation can neither be presumptive nor assumptive. It must be based on actual facts and figures.

193. The argument is attractive but shows lack of understating of fundamentals of environmental laws and principles. Here discharge of polluted effluent in water bodies in violations of section 25 of Water Act 1974 and conditions of consent granted by MPCB is not disputed. Individually some proponents have taken defence that they did not discharge polluted effluent and some others are responsible but as a

whole it has not been controverted that through CETP, untreated or partially treated effluent was discharged in creeks and sea and Member Industries are contributibuting by releasing their industrial effluent in CETP. Further, effluent was highly polluted. Whenever polluted air is released in air or polluted water is discharged in water or land, it is bound to cause damage to ecological balance of respective air, water or land. When a drop of ink is mixed in a bucketful of water or a drum, the entire water gets contaiminated, degree may differ. Similarly, a small amount of poison, if enters in a bucketful of water or bigger drum, the entire water would get infected. Release of pollutant in environment would cause damage to environment in all cases, though degree of impact may differ. We can have illustration of air pollution in Delhi and NCR area. Pollutants affects air quality and whosoever inhales such air gets affected adversely, though apparent impact on individual's body would depend upon his level of immunity and other physical conditions. In some cases, reaction may be immediate but in others it may take longer time. Thus, when we talk of assessment of damage to environment, it does not mean a sheer mathematical computation of such damage. Here assessment includes several aspects as also various principles recognized as part of environmental laws. This aspect can more suitably be demonstrated by referring to law laid by Apex Court in a catena of authorities.

194. The issue relating to damages/compensation and further remedial or restorative action for the degradation/loss/damage caused to environment is largely governed by judicial precedents of Apex Court which has acted as a champion for protection of environment in the last almost four decades having considered various activities causing degradation/damage to environment in multi-various manner. It would

be appropriate to have a quick retrospect of such authorities which will be relevant and prove to be a useful guide as also binding precedent for answering questions relating to protection of environment, determination of environmental compensation, further direction necessary for remediation/restoration of environment and also to ensure that no further violation of environmental laws takes place.

195. In ***Municipal Council, Ratlam vs. Shri Vardhichand & Others, AIR*1980SC1622**, non-disposal of waste, stinking open drains and pollution created due to public excretion by nearby slum dwellers was brought to the notice of the court by the residents, by way of filing an application under Section 133 Cr.P.C. Magistrate held that local municipal body was responsible for cleaning and removal of waste. The matter came to Supreme Court. Upholding order of Magistrate, Court said that maintenance of public health is the statutory responsibility of Ratlam Municipality and its defence of lack of funds is of no consequence. Court issued various directions to Ratlam Municipality so as to maintain public health.

196. In ***Rural Litigation and Entitlement Kendra & Others vs. State of U.P. & Others,*** **AIR1985SC652**, issue of indiscriminate limestone quarrying causing ecological disturbance was brought to the notice of Supreme Court. Issues involving environment and development opposing each other were sought to be canvassed. Court preferred primacy to environment through the concept of 'sustainable development' and further said that **whosoever has caused harm to environment, has absolute liability, not only to compensate the victim of pollution, but also to bear cost for restoration of environmental degradation.**

197. In ***Rural Litigation and Entitlement (supra)***, Court said that over thousands of years, man had been successful in exploiting ecological system for his sustenance but with the growth of population, demand for land has increased and forest growth is being cut down. Man has started encroaching upon nature and its assets. Scientific developments have made it possible and convenient for man to approach the places which were hitherto beyond his ken. Consequences of such interference with ecology and environment had now come to be realised. It is necessary that the Himalayas, and Forest growth on mountain range should be left uninterfered with so that there may be sufficient quantity of rain. With regard to **top soil**, Court said that "*the* ***top soil can be preserved without being eroded*** *and the natural setting of the area may remain intact …… tapping of (natural) resources have to be done with requisite attention and care, so that ecology and environment may not be affected in any serious way, (and) there may not be any depletion of water resources and long term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are* ***not intended to be exhausted in one generation***".

198. Court emphasised that **preservation of environment and keeping ecological balance unaffected is a task which not only governments but also every citizen must undertake**. It is a social obligation and every citizen must remind to himself that it is his fundamental duty as enshrined under Article 51A(g) of the Constitution.

199. In ***Sachidananda Pandey vs. State of West Bengal & Others, AIR*****1987SC1109**, dealing with the matter pertaining to environment, Court said that whenever a problem of ecology is brought before it, the Court is bound to bear in mind Article 48A and 51A(g) of the

Constitution. When a court is called upon to give effect to the directive principles of fundamental duties, it cannot shirk its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authorities. The least court must give is, to examine whether appropriate considerations are gone in mind and irrelevancies are excluded. In appropriate cases Court could go further but how much further would depend upon the circumstances of the case. Court may always give necessary directions.

200. In ***M.C. Mehta vs. Union of India,*** **AIR1987SC1086 (Sodium gas leak case)**, issue of gas leak in a chemical factory and its repercussions came to be considered. Court expanded the doctrine of liability by modifying 'strict liability' principle enshrined in *Rylands v. Fletcher* to 'absolute liability; and said, "*enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of persons working in the factory and residing in the surrounding areas, poses an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken-the* ***enterprise must be absolutely liable to compensate for such harm and it should be not answer to the enterprise to say that it has taken all reasonable care****....*".

201. Court also said that **larger and more prosperous enterprise, greater must be the amount of compensation** payable for the harm caused on account of the activity being carried on by the industry.

202. In ***M.C. Mehta vs. Union of India,*** **AIR1988SC1037 (pollution by tanneries in Ganga River)**, Court said that the State is under an obligation to stop exploitation of natural resources.

203. In ***State of Bihar vs. Murad Ali Khan, Farukh Salauddin & Others*** **AIR1989SC1**, dealing with an appeal, concerning protection of wildlife in Kundurugutu Range Forest in Bihar, Court referred to a decree issued by Emperor Ashoka in third century BC, which said "*Twenty six years after my coronation, I declared that following animals were not to be killed; parrots, mynas, the arunas, ruddy- geese, wild geese, the nandimukha, cranes, bats, queen ants, terrapins, boneless fish, rhinoceroses... and all quadrupleds which are not useful or edible....forests must not be burned.*"

204. Having referred to the abovesaid, Court further observed that environmentalist conception of the ecological balance in nature is based on fundamental concept of nature as a series of complex biotic communities of which a man is an interdependent part. It should not be given to a part to trespass and diminish the whole. Larger single factor in depletion of wealth of animal life in nature has been civilized man operating directly through excessive commercial hunting or, more disastrously, or indirectly through invading or destroying natural habitats.

205. In **Vellore Citizens Welfare Forum vs Union Of India & Others (1996)5SCC647**, Court held "*In view of the Constitutional and Statutory Provisions---, "Precautionary" Principle and "Polluter Pays" Principle are part of the Environmental Laws of our country*".

206. Explaining "Precautionary" principle, Court said that it includes (i) environmental issues - by the State Government and statutory bodies – must anticipate, prevent and attempt causes of environmental degradation (ii) where there are threats of serious and irreversible

damage, lack of full scientific certainty should not be used as a reason for proposing cost effective measures to prevent environmental degradation (iii) the 'onus of proofs' is on the actor or the developer/industrialist to show that the action is environmentally benign.

207. "Polluter Pays" principle was interpreted stating that **absolute liability for harm to environment extends not only to compensate victim of pollution but also the cost of restoring environmental degradation**. Environmental protection and prevention of pollution is primarily function of executive but unfortunately, they have failed.

208. In ***Tarun Bharat Sangh, Alwar vs. Union of India, AIR1992SC514***, issue of mines licenses granted in Rajasthan for mining limestone or dolomite stone in Sariska Tiger Park was considered. Court issued various directions for protection of the area. It also observed that a litigation relating to environment initiated by a common person, individually or collectively, should not be treated as usual adversarial litigation. The person(s) is concerned for environment, ecology and wildlife and it should be shared by government also.

209. In ***Virendra Gaur vs. State of Haryana, (1995)2SCC577***, Court said that Government had no power to sanction lease of land vested in municipality for being used as open space for public use. The word 'environment' is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance". It is duty of State and every individual to maintain hygienic environment. State in particular has duty to shed its extravagant unguided sovereign power and to forge in its policy to maintain ecological balance in hygienic environment. Court further said:

> "*Enjoyment of life and its attainment including their **right to life** with human dignity encompasses within its ambit, **the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed,** any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water pollution etc. should be regarded as amounting to violation of Article 21."*

210. Court also held that hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a human and healthy environment. Court further said

> *"Therefore, there is a constitutional imperative on the State Government and the Municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the manmade and the natural environment."*

211. In ***Indian Council for Enviro-Legal Action vs. Union of India, (1996)3SCC212***, Court said that once activity carried on is hazardous or inherently dangerous, a person carrying on such activity is liable to make good, the loss, caused to any other person, by his activity, irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on. It was held that **polluting industries are absolutely liable to compensate for the harm caused by them to the people in the affected area, to the soil and to the underground water.**

212. **Polluter Pays Principles** means absolute liability for harm to the environment, not only to compensate victims of pollution but also cost of restoring environmental degradation. Remediation of damaged environment is part of the process of 'sustainable development'. As such, **polluter is liable to pay cost to the individual sufferers as well as cost of reversing the damaged ecology**.

213. With respect to polluter pays principle, Court in ***Indian Council for Enviro-Legal Action vs. Union of India (supra),*** in para 65, said that **any principle evolved in this behalf should be simple, practical and suit to the conditions obtaining in the country**.

214. In ***Indian Council for Enviro-Legal Action (supra)***, issue of damage to mother earth by industries producing toxic chemicals was brought to the notice of the Court. It was found that water in wells and streams turned dark and dirty rendering it unfit for human consumption or even for cattle and for irrigation. Court issued various directions which included closure of industries.

215. Again issue of pollution from tanneries in rivers including river Ganga was considered by Supreme Court in ***Vellore Citizens' Welfare Forum (supra)***. Recognizing principle of 'sustainable development', Court held that it is a balancing concept between ecology and development and remediation of damage to the environment is part of the process of sustainable development; precautionary principle, polluter pays principle and new burden of proof have become part of environmental law of the country.

216. In ***M.C. Mehta vs. Kamal Nath & Others, (1998)1SCC388*** a two Judges Bench had an occasion to examine, "whether natural resources can be allowed to be used or processed by private ownership for commercial purpose". The background facts giving rise to above issue are, that a news item was published in daily newspaper 'Indian Express', dated 25.02.1996, under the caption "Kamal Nath dares the mighty Beas to keep his dreams afloat". The news item reveals that after encroachment of 27.12 bighas of land which included substantial forest land, in 1990, a Club was built in Kullu-Manali valley by a private

company 'Span Motels Private Limited', which owns a resort- Span Resorts. The land was later regularised and leased out to the company on 11.04.1994. At the time of regularisation, Mr. Kamal Nath was Minister of Environment and Forests. The swollen Beas changed its course, engulfed Span club and adjoining lawns, washing it away. Thereafter, management took steps and by using bulldozers and earth-movers, turned course of Beas by blocking flow of river just 500 meters and creating a new channel to divert River to atleast 1 km downstream. Supreme Court took *suo-moto* cognizance of the matter, and case was registered as W.P. No. 182/1996 under Article 32 of the Constitution. Notices were issued to the company as well as Mr. Kamal Nath. After considering the pleadings and other material, Supreme Court decided vide Judgment dated 13.12.1996 recording a finding that Motel had encroached upon an area of 22.2 bighas adjoining to the lease-hold area. Earlier, 40 bighas 3 biswas land, alongside Kullu- Manali Road on the bank of river Beas, was granted on lease to the above Motel for a period of 99 years with effect from 1.10.1972 to 1.10.2071. Besides above, the motel encroached upon 22.2 bighas of land further. It also built extensive stone, cemented and wire-mesh embankments all along the river bank. Various activities undertaken by motel show a serious act of environmental degradation on its part. Motel tried to defend construction raised by it on the ground that it was to protect lease land from floods. Court held that **motel interfered with natural flow of river by trying to block natural relief/spill channel of the river**. With regard to river, it was observed that Beas is a young and dynamic river, runs through Kullu valley, between mountain ranges of Dhaulandhar in the right bank, and Chandrakheni, in the left. The river is fast flowing, carry large boulders, at the time of flood. When water velocity is not sufficient to carry boulders, those are deposited in

the channel often blocking flow of water. Under such circumstances, the river stream changes its course by remaining within the valley but swinging from one bank to the other. The right bank of river Beas where motel is located, mostly comes under forest; the left bank consists of plateaus, having steep bank facing the river, where fruit orchards and cereal cultivation are predominant. The area is ecologically fragile and full of scenic beauty, should not have been permitted to be converted into private ownership, and for commercial gains. Having said so, Court refers to the right of public to nature and natural resources and said that public has a right to expect certain lands and natural areas to retain their natural characteristic. Court refers to the work of David B. Hunter (University of Michigan) and Professor Barbara Ward where it was stressed upon that major ecological tenet is that the world is finite. Earth can support only so many people and only so much human activity before limits are reached. Absolute finiteness of the environment when coupled with human dependency on the environment, leads to the unquestionable result that human activities will, at some point, be constrained. There is a commonly recognised link between laws and social value but to ecologists, a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened. Historically, we have changed environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important resources-for example, wetlands and riparian forests - can no longer be

destroyed without enormous long-term effects on environmental and therefore social stability. Need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature. Court refers to the legal theory said to be developed in ancient Roman empire, i.e., 'Doctrine of Public Trust' founded on the idea that certain common properties such as rivers, sea-shore, forests and the air were held by Government in trusteeship for the free and unimpeded use of general public. English law as well as American Law on the subject was also referred to and then it is said in para 34 of the Judgment that our legal system includes Public Trust Doctrine as part of the Jurisprudence. State is the trustee of all natural resources which, by nature, are meant for public use and enjoyment. Public at large is beneficiary of the sea- shore, running waters, airs, forests and ecologically fragile lands. State as a trustee, is under a legal duty to protect natural resources. These resources meant for public use cannot be converted into private ownership. Executive, acting under **Doctrine of Public Trust**, cannot abdicate natural resources and convert them into private ownership or for commercial use.

217. Supreme Court while disposing of Writ Petition issued certain directions contained in para 39 of the judgment which included that the motel shall pay compensation by way of cost for restitution of environment and ecology of the area. Pollution caused by various constructions made by motel in river bed and banks of river Beas has to be removed and reversed. NEERI was directed to inspect the area and make an assessment of the cost, likely to be incurred for reversing damage caused to environment and ecology. Further, motel is also required to show cause as to why it be not imposed pollution fine in addition to cost for restoration of ecology which it had to pay.

218. In ***S. Jagannath vs. Union of India & Others, AIR1997SC811***, adverse effect of shrink culture in coastal zones notified under Coastal Zone Regulation Notification dated 19.02.1991 came up for consideration and Court issued directions for closure of shrink culture industries in view of ecologically fragile coastal areas and adverse effect on environment.

219. In ***M.C. Mehta vs. Union of India, (1997)11SCC312*** **(groundwater matter)**, Court issued various directions including constitution of regulatory authorities for management of groundwater i.e., Central Government Ground Water Body as an authority under Section 3(3) of EP Act, 1986.

220. In ***Dr. Ashok vs. Union of India & Others, (1997)5SCC10***, issue of use of pesticides and chemicals causing damage to the health was considered and directions were issued for constitution of a committee of experts and senior officers to collect information and take suitable measures in respect of insecticides and chemicals found to be hazardous for health.

221. The activity of fishing and reservoir within areas of national park in Madhya Pradesh was considered in ***Animal and Environment Legal Defence Fund vs. Union of India, (1997)3SCC549***. Court observed that livelihood of tribals should be considered in the context of maintaining ecology in the forest area and if there is shrinkage of forest area, State must take steps to prevent any destruction or damage to the environment, *flora-fauna* and wildlife keeping in mind Articles 48A and 51A(g) of the Constitution.

222. In ***M.C. Mehta vs. Union of India, (1997)2SCC411*** **(Calcutta tanneries matter)**, Court considered issue of discharge of untreated noxious and poisonous effluents into river Ganga by tanneries at Calcutta, and ultimately issued directions for closure of tanneries, relocation and payment of compensation to the employees.

223. In ***M.C. Mehta vs. Union of India, (1997)11SCC327*** **(hazardous industries in Delhi matter),** Court considered issue of pollution caused in Delhi by various industries engaged in hazardous, noxious products etc. and issued directions for shifting, relocation, closure and utilization of land for protection of environment and payment of compensation.

224. The issue of preservation of forest was considered at length in ***T.N. Godavarman Thirumulpad vs. Union of India & Others, (1997)2SCC267*** and series of orders were passed from time to time for protection of forest and prevention of unlawful felling of trees in forest, encroachment, etc. Court expanded the term 'forest' to include certain areas as deemed forest beyond what was defined in the Statutory Act.

225. In ***M.C. Mehta vs. Union of India, (1997)3SCC715*** **(Badkal and Surajkund lakes matter)**, Court considered the issue of preservation of tourist spots near Delhi at Badkal and Surajkund lakes. Applying principle of 'sustainable development' and 'precautionary principle', Court banned construction activities within the radius of 1 km from the lakes. Court relied on the reports of experts from National Environmental Engineering Research Institute (NEERI) and Central Pollution Control Board (CPCB) stating that it is not advisable to permit large scale construction activities in close vicinity of lakes which would have an adverse impact on local ecology. It could affect water level under the ground and also disturb hydrology of the area.

226. In ***M.C. Mehta vs. Union of India, (1997)2SCC353*** **(Taj Trapezium matter)**, issue of preservation of Taj was considered and Court issued directions for changeover of coal in coal-based industries within Taj Trapezium zone, to the use of natural gas or otherwise industries should stop functioning or shift.

227. In ***M.C. Mehta vs. Union of India, (1998)6SCC60***, issue of vehicular pollution in Delhi City was considered and several orders were issued. Court said that it is the duty of Government to see that air is not contaminated by vehicular pollution since right to clean air also stemmed from Article 21.

228. For protection of environment by making available lead-free petrol supply, directions were issued in ***M.C. Mehta vs. Union of India, (1998)8SCC648*** **(lead free petrol matter**), **phasing out** old commercial vehicles of more than 15 years old was considered and directions were issued in ***M.C. Mehta vs. Union of India, (1998)8SCC206*** **(matter of clean air in Delhi by phasing out old commercial vehicles)**.

229. Issue of poor efficiency of Common Effluent Treatment Plants at Patancheru, Bollaram and Jeedimetla in Andhra Pradesh was considered in ***Indian Council for Enviro-Legal Action vs. Union of India, (1998)9SCC580*** and Court issued directions that **industry should not be allowed to discharge effluent which exceeded permissible limits**. Such industries should install system for release of effluents upto permissible limits. Similar directions in the context of UP industries, discharging effluent beyond permissible limits, were issued in ***World Savior vs. Union of India & Others (1998)9SCC247***.

230. In ***Almitra H. Patel vs. Union of India, (1998)2SCC416***, issue of urban solid waste management was considered and directions were issued.

231. Hazardous waste lying in docks/ports/ICDS and its management was considered in ***Research Foundation for Science vs. Union of India & Others, (1999)1SCC223.*** Court directed authorities to personally monitor waste and not release auction of waste unless matter is examined by Statutory Regulators as per law and appropriate directions are issued.

232. Pollution by discharge of effluents by distilleries attached to sugar industries was considered in ***Bhawani River Sakthi Sugar Ltd. Re: (1998)6SCC335*** and directions were issued for control of pollution and monitoring by Statutory Regulators.

233. The casual approach on the part of Statutory Regulators like State PCBs was examined in ***M.C. Mehta vs. Union of India, (1998)2SCC435*** and criticizing the same, Court issued appropriate directions. The issue of pollution by hot mix plants towards supplying hot mix for runways at airports, causing pollution due to smoke emitted by them was considered in ***M.C. Mehta vs. Union of India, (1999)7SCC522*** **(Hot mix plant matter)** and appropriate directions were issued.

234. The matter of providing clean drinking water for Agra town was considered in ***D.K. Joshi vs. Chief Secretary, State of UP, (1999)9SCC578***.

235. Applying **doctrine of accountability** to the State and Statutory Regulators and its officers, in ***Pollution Control Board, Assam vs.***

Mahabir Coke Industry & Another, (2000)9SCC344, Court held that they are accountable for wrong advice.

236. Liberal attitude of courts in the matter of quantum of punishment in criminal prosecution for offences relating to environmental pollution was criticised in ***UP Pollution Control Board vs. M/s Mohan Meakins Ltd. & Others, (2000)3SCC745***. It was held that courts cannot afford to deal lightly with cases involving pollution of air and water. Courts must share parliamentary concern on the escalating pollution levels of environment. Those who discharge noxious polluting effluents into streams appeared to be totally unconcerned about the enormity of injury which they are inflicting on the public health at large, the irreparable impairment it causes on the aquatic organisms, to deleterious effect it has on the life and health of animals. **Court should not deal with the prosecution for pollution related offences in a casual or routine manner**.

237. A major irrigation project relating to construction of dam on Narmada River came up for consideration in ***Narmada Bachao Andolan vs. Union of India, (2000)10SCC664***. The project involved construction of a network of over 3000 large and small dams. **Explaining precautionary principle and burden of proof, it was held that the same would apply to polluting project or industry where extent of damage likely to be inflicted is not known.** But where effect on ecology or environment on account of setting up of an industry is known, what has to be seen is whether environment is likely to suffer and if so what mitigative steps have to be taken to efface the same. Merely because there will be a change in the environment is no reason to presume that there will be ecological disaster. Once effect of project is known, then principle

of sustainable development would come into play and that will ensure that mitigative steps are taken to preserve ecological balance. Sustainable development means what type or extent of development can take place which can be sustained by nature/ecology with or without mitigation.

238. Where a project is likely to effect environment, a proper study of impact on environment ought to have been conducted and once such a study is conducted and project is found in public interest, necessary for development, the principle of sustainable development requires that the measures mitigating damage to the environment must be observed.

239. Precautionary principle, in the context of municipal laws means (i). Environmental measures, required to be taken by State Government and Statutory Authorities, and they must anticipate, prevent and attack the causes of environmental degradation; (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental depredation; (iii) The onus of proof is on the actor or the developer/industry, to show that his action is environmentally benign.

240. In ***Essar Oil Ltd. vs. Halar Utkarsh Samiti, (2004)2SCC392,*** issue with regard to laying of pipelines passing through a portion of marine national park and marine century came to be decided by a two judges Bench of Supreme Court. M/s Essar Oil Ltd., Bharat Oman Refineries Ltd. and Gujarat Positra Port Company Ltd. intended to lay pipelines to pump crude oil from a single buoy mooring in the gulf across a portion of the marine National Park and Marine Sanctuary to their oil refineries in Jamnagar District. The issue was raised by filing a Public Interest Litigation that it would adversely affect environment in particular destruction or damage to habitate, wildlife etc. Gujarat High Court

restrained State Government from granting any further authorization and permission for laying down any pipeline in any part of Sanctuary or National Park. A number of appeals were filed before Supreme Court not only by oil companies but also by State of Gujarat and Gujarat Positra Port Company Ltd. Supreme Court also transferred Writ Petitions filed by Halar Utkarsh Samiti challenging order passed by State Government granting permission to Bharat Oman Refineries Ltd., pending in Gujarat High Court. Issue for consideration was "can pipelines carrying crude oil be permitted to go through the marine National Park and Sanctuary?". To answer this question, Court, besides EP Act, 1986, also considered Wildlife (Protection) Act, 1972 (hereinafter referred to as 'WL Act, 1972') and Forest (Conservation) Act, 1990 (hereinafter referred to as 'FC Act 1990'). It was an admitted position that there was declaration of Jamnagar National Park as a 'National Park', after following the procedure prescribed under WL Act, 1972. Court also referred to the Notification dated 19.02.1991 issued by Central Government under Section 3 (1), (2) (v) of EP Act, 1986 read with rule 5 of Environment (Protection) Rules, 1996 (hereinafter referred to as '**EP Rules, 1996**') declaring coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action in the landward side, up to 500 metres from the High Tide Lines and land between Low Tide Lines and High Tide Line, as 'Coastal Regulation Zone' (hereinafter referred to as 'CRZ') with effect from the date of Notification 19.02.1991. Notification imposes certain restrictions in CRZ but the same were modified by permitting some activities vide Notification SO 329 (E) dated 12.04.2001. Court held that all the statutes noted above, needed different clearances/permissions and are independent to each other. **Clearances under each of separate statue is essential** before any activity otherwise

prohibited under those Acts may be proceeded with. Court observed that High Court passed order without giving opportunity to the concerned industries and hence, principles of 'Natural Justice' were violated. But instead of remanding the matter, on this alone, it chose to decide on merits considering nature of the stakes involved, which demanded no further delay. Court held that Stockholm Declaration of 1972 is *Magna-carta* of our environmental laws resulting in amendments in Constitution of India in 1976, inserting Article 48 A and 51A (g). The principles containing the resolution aimed at balancing economic and social needs on one hand with environmental considerations on the other hand. However, it is also true that in one sense, development is an environmental threat. The very existence of humanity and rapid increase in pollution together with consequential demands to sustain pollution has resulted in concerting of open lands, cutting down of forest, filling up of lakes and water resources and the very air which we breathe. Therefore, a balance and harmony has to be maintained in development and environment. Section 29 of WL Act, 1972, Court held, has to be construed keeping in mind the above background. There is no presumption of destruction of wildlife on account of laying of pipelines. It is a question of fact which is to be seen in the light of expert's opinion. State Government before granting approval under Section 29 or 35 of WL Act, 1972 should consider whether damage in respect of proposed activity is irreversible or not. If it is irreversible, it amounts to destruction and no permission may be granted unless there is positive proof of betterment of the lot of wildlife.

241. Court also observed that for preventing possible future damage, Government must publish its proposal for knowledge of the public so that the individuals or organizations, working as watchdogs to preserve

environment, may be aware and put forth their views on the matter. Hence all these preventions and precautions are to be taken by State Government. It should ensure that impact on environment is transient and minimized. Court will not substitute its own assessment in place of opinion of persons who are specialist and decide question with objectivity and ability. Supreme Court set aside judgment of High Court observing that ultimate permission was granted by Government of India under WL Act, 1972 and interpretation of High Court of Section 29 and 35, being erroneous, the judgment cannot be sustained. The appeals were allowed. Court directed State Government to issue authorization under the requisite format under Section 29 and 35 of WL Act, 1972. Court also said that once State Government has exercised its powers by application of mind under Section 29 and 35, it was not open to Chief Wildlife Warden to take otherwise decision. In fact, his decision has to be in accordance with the decision of State Government.

242. In ***Karnataka Rare Earth & Another vs. senior Geologist, Department of Mines and Geology & Another, (2004)2SCC783***, certain mining leases for quarry of granite in Government land were granted under Rule 3 of the Karnataka Minor Mineral Concession Rules, 1969. It was contrary to Rule 3A of the said Rules. The leases were challenged in Karnataka High Court in Public Interest Litigation. Writ petitions were allowed by a Learned Single judge and all grants were quashed. Intra Court Appeals were also dismissed by Division Bench. Lessees came to Supreme Court where an interim order was passed in favour of lessees on 19.11.1993. Ultimately, appeals were dismissed vide Judgment dated 18.01.1996 passed in ***Alankar Granite Industries vs. P.G.R. Scindia, (1996)7SCC416***. Lessees, who had continued with the quarry of granite, were issued notices by the Government requiring them

to pay price of granite blocks quarried by them during pendency of the matter. This demand was challenged in Karnataka High Court alleging that quarry was valid, pursuant to the court's order, therefore demand is penal in nature and illegal. Writ petitions were dismissed by High Court upholding demand of price of granite blocks by State Government, and that is how matter came to Supreme Court in ***Karnataka Rare Earth (supra)***. It was contended that quarrying of granite was accompanied by payment of royalty, issue of transport permits, though under interim order of the Supreme Court but was lawful and *bonafide*. Negating the argument, Court said, demand raised by State of Karnataka can neither be said to be penalty nor penal action. It is in the nature of recovering compensation for minerals taken away without any lawful authority. Court explained underlining principle by holding "*a* ***person acting without any lawful authority must not have himself placed in a position more advantageous, then the person raising minerals with lawful authority***". Relying on an earlier judgment in ***South Eastern Coal Fields Limited vs. State of M.P., (2003) 8 SCC 648***, Court said that the doctrine of 'actus curiae neminem gravabit', would apply not only to such acts of court which are erroneous but to all such acts to which it can be held that court would not have so acted had it been correctly apprised of facts and law. The principle of Restitution is attracted. Court said "*when on account of an act of a party, persuading the court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party, then a successful party finally held entitled to a relief, accessible to terms of relief at the end of litigation, is entitled to be compensated in the same manner in*

which the parties would have been if the interim order of court would not have been passed." Demand raised therefore, is not penal. Recovery of price of mineral is intended to compensate for loss of mineral, owned by it and caused by a person who has been held to be not entitled in law to raise the same. There is no element of penalty involved and recovery of prices is not a penal action. It is just compensatory.

243. In ***Deepak Nitride Limited vs. State of Gujarat & others, (2004)6SCC402***, question of determination of compensation of degradation of environment or damage caused to any concern by applying principle of 'Polluter Pays' was up for consideration before a two Judges Bench. A Public Interest Litigation was taken in Gujarat High Court alleging large scale pollution caused by industries located in Gujarat Industrial Development Corporation, Industrial Estate at Nandesari. On the order of High Court, 252 industrial units relating to chemical were also made party in the litigation besides State of Gujarat, CPCB, Gujarat Industrial Development Corporation and Nadesari Industries Association. A common effluent treatment plant (CETP) was erected in the industrial estate with contribution made by industrial units. The complaint was that CETP was not achieving required parameters laid by State PCB. On 9.05.1997, High Court directed industries to **pay 1 percent of maximum annual turnover of any of the preceding 3 years, towards compensation and betterment of environment**. This order was challenged in appeal before Supreme Court. High Court also directed to keep the said amount separate, by Ministry of Environment, and utilize for the work of socio- economic upliftment of people of the affected area, betterment of education, medical and veterinary facilities, agricultural and livestock etc. The imposition of 1 percent compensation was challenged on the ground that court had no power to impose penalty or

fine or make any general levy unless authorized by general statute. It was also said that in any case, award of damages may be by way of restitution to the victim or restoration or restitution and restoration of ecology but for this purpose a finding has to be given that there had been degradation of environment. It was urged that there is no damage to the people in vicinity in as much as CETP had permitted a separate channel to flow effluent into river which ultimately reached the sea and would not cause any damage to the people or villages in the vicinity. After considering the rival submissions, Supreme Court, in para 6, noted that the fact that standard prescribed by State PCB were not observed by industries discharging effluent from CETP to River Mahi and ultimately the sea is not disputed. However, that by itself would not lead to the consequence that such a lapse has caused damage to the environment. Court said, that **compensation awarded must have broad co-relation not only to the magnitude and capacity of the enterprises but also to the harm caused by it**. In a given case, **percentage of turnover itself may be a proper measure because the method to be adopted for awarding damages and the basis of Polluter Pays principle has got to be practical, simple and easy in application**. There has to be a finding that there has been degradation of environment or any damage caused to any of the victims by the activities of industrial units and then certainly damages have to be paid. Court remanded the matter to High Court to examine the aspect of damage to environment and/the people, as the case may be, and thereafter to decide appropriate compensation to be awarded.

244. In ***M.C. Mehta vs. Union of India, (2004)6SCC588 (Industries in residential area in Delhi matter)***, Court considered the question, "whether industrial activities in residential/non- conforming areas is

permissible and what directions should be issued to end such illegal activities". Various orders were passed in 1995 and onwards resulting in closure, shifting etc., of industries, which, by an estimation were about 1,01,000, operating in Delhi in non-conforming zones but illegally permitted by Municipal Corporation of Delhi to operate in residential areas/ non- conforming areas. An application was filed on behalf of Delhi Government that closure of such a large number of industries functioning in residential/non-conforming areas may render about 7 lakh workers unemployed, causing hardship to 7 lakh families. The question considered by Court was, "*whether a Government can plead such a justification for violation of law and throw to the winds norms of environment, health and safety or is it possible to help the workers even without violating law if there is a genuine will to do so*". There was an attempt on the part of the concerned authority for regularization of certain areas having concentration of industries. Deprecating it, Court said, "***Regularization cannot be done if it results in violation of the Right to Life enshrined in Article 21*** *of the Constitution. The question will have to be considered not only from the angle of those who have setup industrial units in violation of the master plan but also others who are residents and are using the premises as allowed by law."* Court also considered the changes proposed/made in the master plan and said, "*The changes in the master plan or its norms to accommodate illegal activities not only amount to getting reward for illegal activities but also resulted in punishing the law abiding citizen."* Commenting upon the authorities, Court said, "*lack of action and initiative by the authorities is the main reason for the industry merely continuing illegal activities.* ***There is total lack of enforcement of law by the authorities concerned.****"* Rejecting an argument that industries were working with the consent of

Government, Court said that **an illegality would not become legality on inaction or connivance of the Government authorities**. It further said "*There cannot be any doubt that non-conforming industrial activities could not have commenced or continued at such a large scale in the capital of the country if the Government and the concerned authorities had performed their functions and obligations under various statutes. But such a situation cannot be permitted to continue forever so as to reach a point of no return, where the chaotic situation in city has already reached.* ***The law-breakers, namely, the industries cannot be absolved of the illegalities only on the ground of inaction by the authorities****."* Court also rejected an argument on behalf of the industries that if they are ready to pay penalty, so long as the same is paid, they are entitled to continue with their activities. Court held "*merely by payment of penalty, continued misuse cannot be permitted.*" Court condemned authorities for inaction and said that growth of illegal manufacturing activity in residential areas has been without any check or hindrance from the authorities. The manner in which such large scale violations had commenced, and continued, leaves no manner of doubt that it was not possible without the connivance of those who are required to ensure compliance and reasons are obvious. Such activities result in putting on extra load on the infrastructure. The entire planning has gone totally haywire. The law abiders are sufferers. All this has happened at the cost of health and decent living of the citizens of the city violating their constitutional rights enshrined under Article 21 of the Constitution of India. Further, it is necessary to bear in mind that the law makers repose confidence in the authorities that they will ensure implementation of the laws made by them. If the authorities breach that confidence and act in dereliction of their duties, then the plea that the observance of law will

now have an adverse effect on the industry or the workers cannot be allowed. Court, in the light of the facts and pleadings, issued various directions including closure of all industries, came up in residential/non-conforming areas in Delhi on or after 01.08.1990. It also constituted a monitoring committee comprising of officials of Delhi Government, Delhi Police, local bodies and said that the said committee shall be responsible for stoppage of illegal commercial activities.

245. In ***N.D. Jayal vs. Union of India, (2004)9SCC362***, issue of safety and environmental aspects arising from Tehri Dam was considered by a 3 Judges Bench and the judgment has been rendered by majority. Looking to the retrospect of events, Court found that investigation for construction of dam at Tehri for hydel power generation commenced in 1961; Planning Commission in 1972 envisaged cost of Rs. 197.92 Crores; Government of U.P. granted administrative clearance to the project in 1976; In March 1980 the then Prime Minister directed authorities to undergo an in depth review of the entire project; Ministry of Science and Technology constituted an experts group which submitted an interim report in May 1980 and final report in August 1986; though 206 crores were already spent, expert committee recommended abandonment of project; recommendation was accepted by MoEF in October 1986; in November 1986 erstwhile USSR offered an administrative, technical and financial assistance on a turnover base and it revived Tehri project as recipient of such aid; and in November 1986 a protocol was signed with USSR for providing technical and financial assistance to the tune of 1000 M Rouble. Thereafter, events proceeded with pace. Government announced clearance of project in January 1987 and for execution of the project instead of irrigation department of Government of UP which had initiated, it was taken over by a joint venture company of Government of

India and Government of UP called "Tehri Hydro Development Corporation" (THDC). In February 1990, Environment Appraisal Committee of MoEF recommended that project does not merit environmental clearance. However, on 19.01.1990, conditional clearance was given. At this stage, matter was brought to Court by filing Writ Petition under Article 32 of the Constitution. It was argued that once project was already decided to be abandoned, how clearance could be given subsequently and that serious consequences of implementation have not been taken note. Court referred to similar issue already considered in relation to Sardar Sarovar Project in ***Narmada Bachao vs. Union of India, (2000)10SCC664***. It was held that once a considered decision is taken, it is for the Government to decide how to do its job. When it has put a system in place for the execution of the project, and such a system cannot be said to be arbitrary then the only role which Court has to play is to ensure that the system works in the manner in which it was envisaged. It further said "*decision that the questions whether to have an infrastructure project or not and what is the type of project to be undertaken and how it has be executed, are a part of policy making process and the courts are ill-equipped to adjudicate on the policy decision.*" Having said so, Court further said, "***courts have a duty to see that in the undertaking of a decision, no law is violated*** *and people's fundamental rights as guaranteed under the Constitution are not transgressed upon except to the extent permissible under the Constitution.*" Various specific aspects of safety and conditional clearance were examined on the basis of material which included safety aspect, and the aspects relating to conditional clearance comprising catchment area treatment, command area development etc. and lastly environmental conditions under head of catchment area, water quality maintenance,

command area Bhagirathi Basin Management Authority, impact on human health, disaster management and rehabilitation, were considered and challenge was negated. Thereafter for monitoring of observance of conditions of environment clearance, Court transferred the matter to Uttaranchal High Court for further consideration.

246. In ***M.C. Mehta vs. Union of India & Others, (2004)12SCC118 (Mining activities on Delhi, Haryana Border and in Aravalli Hills Matter)***, Supreme Court passed order on 20.11.1995 directing Haryana Pollution Control Board to inspect and ascertain the impact of mining operation on Badkal Lake and SurajKund, ecologically sensitive areas, falling within State of Haryana. Report said that rock blasting and mining has caused ecological disaster in the area. It was recommended that the miners must prepare an Environment Management Plan (EMP) and it should be implemented in a time bound manner. Report also recommended stoppage of mining activities within the radius of 5 Km from Badkal Lake and SurajKund. Haryana Government consequently issued an order to stop such mining within radius of 5 Km of Badkal Lake and SurajKund. Objections were filed by mining operators that such prohibition should not go beyond 1 Km radius. Supreme Court, by order dated 12.04.1996, sought opinion of NEERI and considering its report Court came to the conclusion that mining activities in vicinity of tourist resorts were bound to cause serious impact on local people. Court directed to stop all mining activities within 2 Km radius to tourist resorts of Badkal Lake and SurajKund and that mining leases within area from 2 Km to 5 Km will not be renewed without prior NOC from Haryana Pollution Control Board and also CPCB. This order is reported in ***M.C. Mehta vs. Union of India & Others, (1996)8SCC462***. Various conditions imposed by PCB and State PCB, while issuing NOC to mining

operators, were challenged and the issue of compliance of various statutory provisions was also raised in respect of areas of mining falling within the Districts of Faridabad and Gurgaon in Haryana State. Supreme Court considered effect on ecology, of mining activity carried on within an area of 5 Km of Delhi, and Haryana Border on Haryana side in areas falling within district of Faridabad and Gurgaon and in Aravalli Hills within Gurgaon District. The question formulated by Court for consideration was "*whether the mining activity deserves to be absolutely done or permitted on compliance of stringent conditions and by monitoring it to prevent the environmental pollution*". It was admitted that on 7th May 1992, parts of Aravalli range were declared ecologically sensitive under EP Act, 1986. Certain activities including new mining operations and renewal of mining lease were restricted and it was said that permission would be required from MoEF. In August 1992, Forest Department of Haryana had issued a notification under the Punjab Land Preservation Act 1900, banning the clearing and breaking up the land not under cultivation, quarrying of stone in the Badkal area without prior permission of the forest department. This ban was for 30 years. Further Central Government had certain powers under Notification dated 07.05.1992 which it delegated to State of Rajasthan and Haryana, vide Notification dated 29.11.1999, issued by MoEF in exercise of under power Section 23 read with 23 of EPF 1986 read with Rule 5 (4) of EP Rules of 1986. Among other issues, Court also examined circular dated 14.05.1918 issued by MoEF extending time to the units which did not apply for EC under EIA 1994 to obtain *ex-post-facto* EC. Court observed that statutory Notification cannot be notified by issue of circular. Further, if MoEF intended to apply the said circular to mining activities commenced and continued in violation of EIA, 1994 it would also show

total non-sensitivity of MoEF to the principles of Sustainable Development and the object behind issue of EIA 1994. It also said that **EIA 1994 is mandatory and its compliance before commencement of any mining operation is essential and cannot be dispensed with**. Referring to its earlier judgment in ***Subhash Kumar vs. State of Bihar (1991)1SCC598***, Court held that Right to Life is a fundamental right under Article 21 and included right to enjoyment of pollution free water and air for full enjoyment of life; natural resources of air, water and soil cannot be utilized if the utilization results in irreversible damage to environment. Court said that mining operation is hazardous in nature. It impairs ecology and people's right to natural resources. The entire process of setting up and functioning of mining operation requires utmost good faith and honesty on the part of intending entrepreneur for carrying on any mining activity close to township which has tendency to degrade environment and is likely to affect air, water and soil and impair the quality of life of inhabitants of the area, there will be responsibility on the part of the entrepreneur. Regularity authorities have to act with utmost care in ensuring compliance of safeguard norms and standards to be observed by such entrepreneur. Court further said "*where regularity authorities either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to the environment, natural resources and people's life, health and property, the principles of Accountability for Restoration and Compensation have to be applied".* When there is an equilibrium between the interest of environment and development Court said *"protection of environment would have precedence over the economic interest."* Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not necessary that there should always be direct evidence

of harm to the environment. Considering applicability of EIA 1994 to the mining operations where only renewal was under consideration, Court said that a grant of renewal is a fresh grant and must be consistent with law and it must conform to EIA 1994. For this purpose, Supreme Court relied on its decision ***Ambica Quarry Works vs. State of Gujarat, (1987)1SCC213*** and ***Rural Litigation and entitlement vs. State of U.P. (supra)***. It clearly held that no mining operation can be held without obtaining mining EC under EIA 1994. With regard to the areas covered by Notifications issued under Section 4 and/5 of Punjab land Preservation Act, 1900 and also coming under FC Act, 1980, Court said that such areas shall be treated as Forest and for use of it for non-forestry purpose compliance with provisions of FC Act, 1980 would be necessary. The order dated 6.05.2002 of Supreme Court thereafter, was clarified by issuing directions in para 19 of the judgment.

247. In ***Re: Noise Pollution, (2005)5SCC733***, a two judges bench examined issue relating to noise pollution vis-a-vis right to life enshrined under Article 21 of the Constitution. A Public Interest Litigation was filed by one Anil K. Mittal, an engineer by profession, under Article 32, in Supreme Court, raising a serious and disturbing complaint that a minor girl, victim of rape, suffered since her cries for help went unheard due to blaring noise of music over loudspeaker in the neighbourhood. The girl, later in the evening, set herself ablaze and died of 100% burn injuries. It was complained that most modern sound equipments are used in functions, parties and merry making celebrations etc., without giving any regard to the level of sound and also disturbance caused to the people, in the neighbourhood or vicinity. It was prayed that the existing laws restricting use of loud speakers and high-volume sound equipments be directed to be rigorously enforced. In another matter, validity of

amendment made in Noise Pollution (Regulation and Control) Rules, 2000 (hereinafter referred to as 'NP Rules, 2000'), framed by Govt. of India, was challenged before Kerala High Court where petition was dismissed and thereagainst, an Appeal was filed before Supreme Court.

248. Writ Petition and Appeal came up before Supreme Court in 2003. Cognizance was taken and notices were issued to Govt. of India and CPCB. Court observed that Right to Life under Article 21 guaranteed a person, life with human dignity which includes all aspects of life which go to make a person's life meaningful, complete and worth living. No one has right to claim to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours or others. Even Article 19(1)(a) of Constitution does not give fundamental right to create noise by amplifying the sound. While one has a right to speech, others have a right to listen or decline to listen. Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears or mind of others.

249. Supreme Court examined various kinds of noise and source of noise pollution, particularly in the special context of fire-works. Commenting upon the hazardous effect caused by high sounding fire crackers, Court observed that it not only increases ambient noise level but also contributes significantly, an increase in air pollution. Then it also examined methodology adopted in other countries for control of noise pollution and referred to the laws made in United Kingdom, United States of America, Japan, China, Australia and local laws made in Montgomery County, Maryland, USA, and statutory laws in India including NP Rules 2000, Section 268 of I.P.C, Section 133 of Cr.P.C. and provisions in Factories Act 1948, Motor Vehicles Act 1988, Air Act 1981, EP Act 1986

and Law of Torts. It also referred to some judgments of High Courts namely Punjab, Calcutta, Andhra Pradesh and Madras to observe that Indian judicial opinion is uniform in recognizing Right to live in freedom from noise pollution as Fundamental Right protected by Article 21 of Constitution. Noise pollution beyond permissible limits is an in-road on that right. For observance and enforcement of right against noise pollution, Court said that an appropriate legislation is still wanting to cover the menace of noise pollution. Further, there is equal need of developing a mechanism and infrastructure for enforcement of prevalent laws. The matter was disposed of, issuing orders and directions, in general to all the States, requiring to make provisions for seizure and confiscation of equipments/instruments, creating noise beyond the permissible limits. The judgment did not deal with the correctness of Kerala High Court judgment dismissing Writ Petition wherein validity of Rules 5 (3) inserted by Amendment Notification dated 11.10.2002 in NP Rules, 2000 was challenged. This was brought to the notice of Supreme Court by filing an IA. Vide order dated 03.10.2005 (reported in ***(2005)8SCC794)***, Supreme Court reopened Civil Appeal No. 3735/2005, examined correctness of High Court judgment and ultimately decided vide judgment dated 28.10.2005. Court found that power of exemption granted to the Government, permitting use of loudspeakers etc. during night hours (between 10 pm to 12 pm) or during any cultural or religious festive occasions for a limited duration, as such, cannot said to be unreasonable. Court upheld the said amendment, confirmed High Court judgment and dismissed Appeal. This judgment is reported in ***(2005)8SCC796***.

250. In ***Ganapathi Metals vs. M.S.T.C. Ltd. & Others (2005)12SCC169***, a question was raised that in a tender notice, there

was no condition with regard to compliance of Hazardous Wastes (Management and Handling) Rules, 1989 and, therefore, there was no obligation on the part of successful bidder to follow those Rules. Rejecting this argument, Court said that the compliance of statutory rules will not depend on the party's agreement, even if the party is a statutory body or Government and instead statutory rules have to be complied with.

251. In ***Research Foundation for Science vs. Union of India & Others, (2005)13SCC186***, in pending matters, namely, Writ Petition No. 457/1995; SLP(C) No. 16175/1997 and Civil Appeal No. 7660/1997, Supreme Court in its judgment dated 05.01.2005 considered the question, "*how hazardous waste oil imported and lying in 133 containers at Nhava Sheva Port is to be dealt with*". Monitoring Committee constituted by Court categorically found that what was imported is hazardous waste and it was imported illegally in the garb of importing lubricant oil. On behalf of the Importers, reliance was sought on the Basel Convention and standards mentioned therein but Court said that Basel Conventions are only guidelines and individual countries can provide different criteria in their national laws. National law laying stricter condition has to prevail. Imported hazardous material has, therefore, to be wasted and the manner it was to be done, left to be decided by the Government within the prescribed time. Court said:

> *"the liability of the importers to pay the amounts to be spent for destroying the goods in question cannot be doubted on applicability of precautionary principle and polluter pays principle. These principles are part of the environmental law of India. There is constitutional mandate to protect and improve the environment."* In para 28 of the judgment, Court categorically said, *"the national law has to apply and shelter cannot be taken under guidelines of Basel Convention".*

252. On 'polluter pays' principle, Court said,

> "*'polluter pays' principle basically means that the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes.* ***This includes environmental cost as well as direct cost to the people or property, it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately tangible.*** *The principle also does not mean that the polluter can pollute and pay for it. The nature and extent of cost and the circumstances in which the principle will apply may differ from case to case."*

253. Court also distinguished its earlier judgment in ***Deepak Nitrite Ltd. vs. State of Gujarat, (2004)6SCC402***, observing that it was decided on its own facts and in the light of the circumstance that there was no finding of any damage to the environment. Having said so, Court also said that the decision in the ***Deepak Nitrite (supra)*** cannot be said to have laid down a proposition that in the absence of actual degradation of environment by the offending activities, payment for repair on the application of 'polluter pays' principle cannot be ordered. Court reiterated that *"in India the liability to pay compensation to affected persons is strict and absolute and the rule laid down in* ***Rylands vs. Fletcher, (1868) 3HL 330: (1861-73) ALL ER Rep 1, 626: 19 LT 220****, has been held to be not applicable".* Explaining judgment in ***Raylands vs. Fletcher (supra)***, Court said, the judgement was rendered in 19th sanctuary when all the developments of science and technology had not taken place. In modern day society, with highly developed scientific knowledge and technology, law has to grow to satisfy needs to fast-changing society. It has to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy. Court said:

> *"an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes* ***an absolute and non-delegable duty to the community to ensure that no harm results to anyone."***

254. Court further said,

> *"if the enterprise is permitted to carry on a hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such activity as an appropriate item of its overheads."*

255. Referring to its earlier order dated 14.10.2003, in these very matters, Court said,

> *"**principle of good governance** is an accepted principle of international and domestic laws. It **comprises of the rule of law, effective State institutions, transparency and accountability in public** affairs, respect for human rights and the meaningful participation of citizens in the political process of their countries and in the decisions affecting their lives".*

256. Court said that environmental concerns are at the same pedestal as human rights, both being traced to Article 21 of the Constitution. The right to information and community participation for protection of environment and human health are also rights which flow from Article 21. Consequently, Court directed to destroy 133 containers having hazardous substance, as recommended by Monitoring Committee.

257. In ***Chhidda Singh Jat & Others vs. Suresh Chand Tyagi & Another, (2005)13SCC378***, Court gave an order of simple imprisonment and fine, imposed upon Shri Gopal Krishan Yadav, Chairman of Municipality who was found responsible for non-compliance of Court's order to regulate a nalla which was polluting surrounding area but that was not done. There, High Court had imposed above punishment for non-compliance of the order. Supreme Court affirmed the said order and dismissed appeal of Shri Gopal Krishan Yadav and others. The above order shows that **any public authority if found to violate order of the Court, regarding protection and preservation of environment, is accountable and can be imposed punishment**.

258. In ***T.N. Godavarman Thirumulpad vs. Union of India & Others, (1997)2SCC267,*** various writ petitions were filed in Supreme Court involving question about conservation, preservation and protection of forest and ecology. Various orders were passed from time to time, reported in law journals. In ***T.N. Godavarman Thirumulpad vs. Union of India & Others, (2006)1SCC1***, (order dated 23.09.2005), Court considered the question, when forest land is used for non-forest purpose, what measures are required to be taken to compensate for loss of forest land and to compensate the effect on ecology. Court recognized that development of nation undoubtedly involves industrial development but it has to be consistent with protection of environment and not at the cost of degradation of environment. Any programme, policy or vision for overall development must evolve systematic approach so as to balance economic development and environmental protection. Then Court considered the question, "*whether permission to use forest land for non-forest purpose and consequential loss or benefits must cause in imposing liability of payment of 'Net Present Value' (hereinafter referred to as 'NPV') of such diverted land, so as to utilize the amount for getting back in the long run, benefits which are lost by such diversion*?" In this regard, what should be the guidelines for determination of NPV, how to compute it, can there be some exemptions etc., are the aspects, to be considered by MoEF. Referring to earlier orders, Court said that MoEF was directed to formulate a scheme providing for compensatory afforestation, whenever permission for diversion of forest land is granted under Forest (Conservation) Act, 1980 (hereinafter referred to as, the 'FC Act'). MoEF, consequently, submitted a scheme with its affidavit dated 22.03.2002, which was examined by Central Empowered Committee (hereinafter referred to as '**CEC**') along with other relevant material and submitted a

report/recommendation dated 09.08.2002. MoEF, in principle, accepted recommendations of CEC and it was noticed by Supreme Court in its order dated 29.10.2002. MoEF, by Notification dated 23.04.2004, by exercising powers under sub-section (3) of Section 3 of EP Act, 1986, constituted an authority, i.e., Compensatory Afforestation Fund management and Planning Authority (hereinafter referred to as 'CAMPA'. Court suggested that in the said constitution of CAMPA, MoEF should include an expert in the field of forest and another expert in the field of forest economy development. Some other modifications/amendments in the said Notification were also recommended. Then the question, how NPV be determined, was examined in detail. Court observed that there are different factors which may count for determination of biodiversity valuation and it is for the experts in the field to make suggestion for determination of relevant factors for such computation. Environment is not a State Government's property but a national asset. It is the obligation of all to conserve environment and for its utilization, it is necessary to have regard to the principles of "sustainable development" and "inter-generational equity". Further, Court said, NPV is a charge or a fee within Entry 47 read with Entry 20 of List III of the Constitution. It further said *"the Fund set up is a part "of economic and social planning" which comes within Entry 20 of List III and the charge which is levied for that purpose would come under Entry 47 of List III and, therefore, Article 110 is not attracted."* The NPV is not only for compensatory afforestation but for ecology. Compensatory afforestation is only a small portion, in the long-range efforts, in the field of regeneration. Forest Management Planning involves a blend of ecological, economic and social systems with the economic and social sides of planning, often just as complex as the ecological sides. Rejecting contention of State Government that amount of

NPV shall be made over to State Government, Court held, natural resources are not the ownership of any one State or individual, the public at large is its beneficiary. In para 78, Court said

> *"The **damage to environment is a damage to the country's assets as a whole.** Ecology knows no boundaries. It can have impact on the climate. The principles and parameters for valuation of the damage have to be evolved also keeping in view the likely impact of activities on future generation.*

259. Examining various aspects of biodiversity and loss to ecology due to any destruction to biodiversity etc., Court recorded conclusions in para 98 of the judgment, as under:

> *"In view of the aforesaid discussion, our conclusions are:*
>
> *1. Except for government projects like hospitals, dispensaries and schools referred to in the body of the judgment, all other projects shall be required to pay NPV though final decision on this matter will be taken after receipt of Expert Committee Report.*
> *2. The payment to CAMPA under notification dated 23rd April, 2004 is constitutional and valid.*
> *3. The amounts are required to be used for achieving ecological plans and for protecting the environment and for the regeneration of forest and maintenance of ecological balance and eco-systems. The payment of NPV is for protection of environment and not in relation to any propriety rights.*
> *4. Fund has been created having regard to the principles of intergenerational justice and to undertake short term and long-term measures.*
> *5. The NPV has to be worked out on economic principles."*

260. Consequently, Court constituted a Committee of Experts to examine various aspects relevant for determination and computation of NPV and MoEF was directed to modify its Notification dated 23.04.2004.

261. In ***Bombay Dyeing & Mfg. Co. Ltd. vs. Bombay Environmental Action Group & Others, (2006)3SCC434***, a two judges' bench examined, whether development or redevelopment of lands of sick and/or closed cotton textile mills is valid and permissible or should not be allowed on the ground of damage to environment. Upholding statutory regulations, i.e., Development Control Regulation 58, as amended from

time to time, made under Maharashtra Regional and Town Planning Act, 1966, Court said that a balanced view has to be taken. Doctrine of 'sustainable development' indeed is a welcome feature but while emphasizing the need of ecological impact, a delicate balance between it and the necessity for development must be struck. The statute nowhere, *per se,* envisaged any degradation of environment. Before raising construction, if impact on ecology is examined by an expert Committee and it clears construction, unless there is anything *ex-facie* arbitrary, the view of experts has to be respected.

262. In ***M.C. Mehta vs. Union of India & Others, (unauthorised constructions and violation of laws in Delhi matter) (2006)3SCC399***, Supreme Court in its order dated 16.02.2006, dealing with the complaint that officers of State and Statutory Authorities are indulging in illegal activities and must be held accountable, observed:

> *"If the laws are not enforced and the orders of the courts to enforce and implement the laws are ignored, the result can only be total lawlessness**. It is, therefore, necessary to also identify and take appropriate action against officers responsible for this state of affairs. Such blatant misuse of properties at large scale cannot take place without connivance of the concerned officers. It is also a source of corruption. Therefore, action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens.** Those who own the properties that are misused have also implied responsibility towards the hardship, inconvenience, suffering caused to the residents of the locality and injuries to third parties. It is, therefore, not only the question of stopping the misuser but also making the owners at default accountable for the injuries caused to others. Similar would also be the accountability of errant officers as well since, prima facie, such large scale misuser, in violation of laws, cannot take place without the active connivance of the officers. It would be for the officers to show what effective steps were taken to stop the misuser."*

263. In ***Intellectuals Forum, Tirupathi vs. State of A.P. & Others, (2006)3SCC549***, a complaint was raised, in writ petitions filed before Andhra Pradesh High Court, that there is a systematic destruction of percolation, irrigation and drinking water tanks in Tirupathi town,

alienation of Avilala tank bed land to Tirupathi Urban Development Authority and AP Housing board for housing purposes. The writ petitions were dismissed on the ground that the activities were in public interest in view of growing population in the town and need of housing accommodation for the people. In appeal, Supreme Court formulated following four questions of law:

> *"1. Whether the Urban Development could be given primacy over and above the need to protect the environment and valuable fresh water resources?*
>
> *2. Whether the action of the A.P. state in issuing the impugned G.Os could be permitted in derogation of Articles 14 and 21 of the Constitution of India as also the Directive Principles of State Policy and fundamental duties enshrined in the Constitution of India?*
>
> *3. Whether the need for sustainable development can be ignored, do away with and cause harm to the environment in the name of urban development?*
>
> *4. Whether there are any competing public interests and if so how the conflict is to be adjudicated/reconciled?"*

264. Referring to the responsibly of State to protect environment and the principle of sustainable development, Court said,

> *"**merely asserting an intention for development will not be enough to sanction the destruction of local ecological resources**. What this Court should follow is a principle of sustainable development and find a balance between the developmental needs which the respondents assert, and the environmental degradation."*

265. Considering the facts that ground realities are different, huge amount has been spent and natural resource lost is irreparable and beyond the power of Court to rectify, best way was to accept findings of the Committee which suggested some rectification but with change in quantum of the area. Report was accepted by the authorities. Thus Court decided matter on the peculiar facts of the case but issued separate orders in respect to two tanks namely, Peruru tank and Avilala tank,

restraining any further construction in the area and to take other steps for avoiding/preventing any loss/damage to the said tanks.

266. In ***Mullaperiyar Environmental Protection Forum vs. Union of India & Others, (2006)3SCC643***, a three judges' bench of Supreme Court considered the question about safety of the dam if water level is raised beyond existing level of 136 ft. The aforesaid reservoir is surrounded by high hills on all sides with forest and is a sheltered reservoir. Concerned authorities intended to increase its height to 142 ft. from 136 ft. The dam/reservoir was serving two States, i.e., Tamil Nadu and Kerala, in terms of an agreement in 1970. The proposed increase in height by State of Tamil Nadu was objected by State of Kerala also. The dam is an old one having been constructed in 1895. Various aspects have been considered. In respect of FC Act, 1980, Court said that strengthening work of existing dam cannot be termed as non-forestry activity and there is nothing to show that increase in water level will affect flora and fauna. Experts submitted report that apprehension of adverse impact on environment and ecology is unfounded and their opinion was accepted by Supreme Court, in the absence of any material to contradict it.

267. In ***Akhil Bharat Goseva Sandh vs. State of A.P. & Others with Umesh & Others vs. State of Karnataka & Others, (2006)4SCC162***, M/s. Al Kabeer *Exports Limited,* a company engaged in the business of processing meat, mainly for export purposes, applied for permission to construct a factory and other buildings in village Rudraram, Medak district, Andhra Pradesh. On 24.03.1989, Gram Panchayat concerned, issued No Objection Certificate (hereinafter referred to as, 'NOC') and ultimately permission was granted by State Government to run slaughter

house, on the selected site, on 29.06.1989. Andhra Pradesh Pollution Control Board also issued NOC under Water Act, 1974. The company started construction work but thereafter an order was issued by Executive Officer of Gram Panchayat suspending permission, granted for construction of factory and other buildings. Some other organizations also opposed establishment of slaughter house. Initially company filed writ petition but subsequently it was withdrawn and a revision was filed before State Government which was allowed on 15.09.1990. This order was challenged by some organizations and individuals in writ petitions before High Court, wherein an interim order was passed and revisional order was stayed. Company filed writ appeals; wherein single judge's order was stayed. The writ petitions were disposed of by order dated 16.11.1991, wherein authorities were directed to examine the matter with regard to water, air and environment pollution etc. after giving opportunity to all concerned parties and thereafter, pass appropriate order. Consequently, State Government constituted a Committee, i.e., Krishnan Committee which submitted its report that after taking some safeguards/steps and proper monitoring by State PCB, pollution of air and water can be kept within reasonable limit but it concurred with the objections of Food and Agriculture Department, with regard to depletion of cattle wealth. However, it gave recommendation to allow establishment of slaughter house with certain conditions. When final decision on Committee report was pending at the level of the Government, a writ petition was filed by two Environmentalists seeking a direction to restrain Hyderabad Metropolitan Water Supply and Sewerage Board from supplying water to slaughter house. An interim order was passed, therein, by High Court. Some other writ petitions were filed challenging NOC granted by APPCB and also permission granted for running of

slaughter house. The writ petitions were dismissed, giving rise to five appeals in Supreme Court. Among various questions, the issue with regard to sanction of grant of consent by APPCB was examined, whether it was in accordance with law or not. Court took the view that function of company would not result in depletion of buffalo population in the Hinterland of the abattoir and reliance placed on the judgment in ***Mohd. Hanif Quareshi & Others vs. The State of Bihar, (1959SCR629)***, does not help the organizations since in that case there was a complete ban on slaughter of old cattle which was struck down. Further, judgment in ***State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat and Others, (2005)8SCC534***, also did not help since there was a finding that adequate quantity of cattle feed resources was available and, therefore, the question of total ban on slaughter of old cattle does not arise. In ***State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat and Others (supra)***, Court did not hold, that permitting slaughter of bovine cattle by itself is unconstitutional. With regard to grant of consent, Court observed that matter was examined by experts under the statutes and thereafter consent has been granted, therefore, in the absence of anything to show that their satisfaction was arbitrary or illegal, no interference would be called by the Court. Moreover, grant of NOC was challenged on the ground that information was not disclosed but it was repelled observing that no member of public has any legal right to demand any information from PCB prior to issue of NOC. Challenge to NOC on the ground that PCB was not properly constituted was also repelled and for this purpose Court relied on Section 11 of Water Act, 1974, that if there is some defect in the composition of PCB that would not validate consent order.

268. In ***T.N. Godavarman Thirumulpad vs. Union of India & Others (2006)5SCC28*** (Order dated 10.04.2006), an issue raised by Mr. Deepak Agarwal through an Interlocutory Application regarding allotment of land to a company for setting up of a coal washery plant on the ground that it was forest land was examined. Court referred to its earlier order in ***T.N. Godavarman Thirumulpad vs. Union of India & Others (1997)2SCC267***, wherein Court had held, *"FC Act, 1980, must apply to all forests irrespective of the nature of ownership or classification thereof. The word 'forest' must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the FC Act. The term 'forest land' would also include any area recorded as forest in the Government record irrespective of the ownership."*

269. Before proceeding on merits, Court observed that if the person filing a PIL is found not to be a *bona-fide pro bono* litigant, Court has to decline its judicial scrutiny at the behest of that person. However, only in exceptional cases, it may proceed to examine the matter on merit. With regard to Deepak Agarwal, Court clearly recorded its findings that he is nothing but a name lender, application lacks bonafide and has a camouflage of PIL. Thereafter, Court examined issue on merits since it was with regard to forest land and found that land in dispute was not a forest land. Application was dismissed with cost of ₹ 1,11,000/- (Rupees One lakhs) awarded against Deepak Agarwal.

270. In ***T.N. Godavarman Thirumulpad vs. Union of India & Others, (2006)5SCC47*** (**Order dated 10.04.2006**), Court considered whether fish tanks constructed inside Kolleru Wildlife Sanctuary would be permissible or not. Central Empowered Committee had issued directions for

demolition of all fish tanks constructed inside Kolleru Wildlife Sanctuary which included Kolleru lake area extended over 901 sq. km. The lake is largest shallow freshwater lakes in Asia, located between delta of Krishna and Godavari rivers in State of Andhra Pradesh. It is serving as a natural flood, balancing reservoir for the two rivers. It receives water from 67 inflowing drains and channels. However, only 308 sq. km area was declared as wildlife sanctuary. On account of blockage of free flow of water into the lake caused by encroachers, resulting in submergence of delta facility in upstream area, order was issued by CEC for demolition of all fish tanks. Court observed that interest of fishermen for having traditional method of fishing was not obstructed but they were not allowed to raise any construction and also not using pesticides and chemicals for their traditional agriculture. In the circumstances, direction for removal of encroachment has not affected any right of the fishermen. When a bund is found in a sanctuary or a lake it seeks to encapsulate an area which in turn obstructs free flow of water to lake bed area, formation of bund reduces retention capacity of lake. This formation, if allowed, would destroy lake and all commercial activities would also destroy ecology which is prohibited under Section 29 of Wild Life (Protection) Act, 1972. Court further observed that oil cakes used as manure also pollute Sanctuary. It is true that there are other effluents which also pollute the lake hence, destruction of fish tanks is justified. Court also made it clear that use or transportation of inputs for pisciculture shall be stopped immediately.

271. In ***Karnataka Industrial Areas Development Board vs. C. Kenchappa and Others, (2006)6SCC371***, acquisition of agricultural land for industrial purposes was challenged on the ground of adverse impact on environment, depravation of villagers of their fertile

agricultural land etc. for setting up of an industrial establishment by Gee India Technology Centre Pvt. Ltd. Karnataka Industrial Areas Development Board sought to acquire land which was challenged in writ petition. The writ petition was allowed to the extent of acquisition of land which was reserved for grazing cattle, agricultural and residential purpose. High Court also directed that whenever there is an acquisition of land for industrial commercial or non –agricultural purpose, except of residential purposes, authorities must leave one kilometre area from the village limits as a free zone or green area to maintain ecological equilibrium. Consequently, acquiring body, i.e., Karnataka Industrial Areas Development Board came in appeal. Supreme Court examined in the light of several decades continuous degradation resulting in continuous depletion of environment and observed that the entire world is facing a serious problem of environmental degradation due to indiscriminate development. Industrialization, burning of fossil fuels and massive deforestation are leading to degradation of environment. Court said that if we carefully evaluate entire journey of judicial pilgrimage from the decade of 1960 till 2006, one would find that in the decade of 1960, hardly anyone expressed concern about ecology and environment. In the decade of I970, a serious concern about degradation of ecology and environment was articulated and it was realised that for a civilized world both development and ecology are essential. The concern was examined in detail later leading to the principle of sustainable development. Court allowed appeal and disposed the matter by issuing directions which included that *"in future,* ***before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended*** *and the lands be*

acquired for development that they do not gravely impair the ecology and environment."

272. In ***Susetha vs. State of Tamil Nadu & Others (2006)6SCC543***, Court said that **natural water storage resources are not only required to be protected but also steps are required to be taken for restoring the same if it has fallen in disuse**. The same principle cannot be applied in relation to artificial tanks.

273. In ***T.N. Godavarman Thirumulpad (45) vs. Union of India & Others, (2007)15SCC288*** (**order dated 23.11.2001)** passed in (IA No. 295 and 664 in WP (C) No. 202 of 1995), one of the aspects considered by Court is use of money received by various Governments, for compensatory afforestation, from user agencies to whom permissions were granted for using forest land, for non-forest purposes. Court found that substantial amount released was not used by respective Governments. Hence Court directed MoEF&CC to formulate scheme placing responsibility upon the user agency to take steps for compensatory afforestation, from the amount it ought to have paid to the concerned State Government, and for this purpose, State Government must provide land either at the expanse of user agency or State Government, as decided by the concerned State Government. The scheme must ensure that afforestation takes place as per the permission granted, and there should be no shortfall in respect thereto.

274. In ***T.N. Godavarman Thirumulpad (39) vs. Union of India & Others, (2007)15SCC273*** (**order dated 22.09.2000)** passed in (IA No. 424 in WP (C) No. 202 of 1995), Court considered the issue of permission of felling of trees vis-a-vis regeneration. Court noticed, when permission for felling of trees, subject to regeneration is granted, felling of trees part

is executed but other part i.e., regeneration, used to remain unimplemented. Court observed that both activities must co-exist. There cannot be felling without regeneration because that will cover a period of time, and if not observed rigorously, may result in vanishing of forest. If there is shortfall with regard to regeneration, and felling continue, it would result in depletion of forest cover. The authorities responsible under law, must ensure that no further depletion of forest cover takes place, instead, targets for increase in forest cover are met. In other words, **regeneration should commensurate with the felling**. Further, regularization of encroachment in forest area will not be made unless conditions found necessary for regularization are first fulfilled/observed/complied. Court said that eligible conditions for permission to grant regularization of encroachments should be fulfillment beforehand of conditions under the guidelines specially in regard to compensatory afforestation.

275. In ***Research Foundation for Science Technology and Natural Resource Policy vs. Union of India & Others, 2007(15)SCC193*** (order dated 11.09.2007 in IA 34 of 2006 In WP (C) No. 657 of 1995), Court considered the issue, "*whether permission for dismantling of ship "Blue Lady" at Alang, Gujarat should be granted or not*". The ship, a passenger liner, built in France in 1961, was a steam turbine driven vessel, registered as a Barge under the flag of Bahamas. The ship was beached on 15.08.2006/16.08.2006, off the Alang coast which is located on the west coast of Gujarat. Alang is the largest ship recycling yard and one of the choicest ship-scrapping destination for ship owners around the world. Observing that ship breaking is an industry, Court said that **when apply principle of 'sustainable development', one has to keep in mind concept of development on one hand and concepts like generation of**

revenue, employment and public interest on the other hand and here the principle of proportionality comes in. Court examined report of Technical Experts Committee and said that suggestions made by the said Committee, must be observed. It will satisfy the concept of "balance". Permitting Ship breaking, Court also observed that recycling is a key element of sustainable development.

276. In ***State of Madhya Pradesh & Others vs. Madhukar Rao, (2008)14SCC624*** **(order dated 09.01.2008)** in (Civil Appeal Nos. 5196 to 5200 of 2001, SLPs (C) Nos. 2095 & 8024 of 2002 and Criminal Appeal No. 487 of 2006), the question for consideration was, "whether a vehicle or vessel etc., seized under Section 50(1)(c) of Wild Life (Protection) Act, 1972 (hereinafter referred to as 'Act 1972') will put beyond power of Magistrate to direct its release during pendency of trial, in exercise of powers under Section 451 of CrPC 1973. Court held that Section 50 and other provisions in Chapter VI of Act 1972 would not exclude application of any provision of CrPC. Section 51(4) expressly excludes application of Section 360 of CrPC and provisions of Probation of Offenders Act to persons eighteen years or above in age. But it does not mean that Section 50 of Act 1972 in itself or taken along with the other provisions under Chapter VI, constitutes a self-contained mechanism so as to exclude every other provision of the Code. Court, therefore, answered the question stating that Section 50 of Act 1972 and amendments made thereunder, do not in any affect magistrate power to make an order of interim release of the vehicle under Section 451 of CrPC.

277. In ***T.N. Godavarman Thirumulpad (57) vs. Union of India & Others, (2008)16SCC337*** (**order dated 29.10.2002**), question of encroachment of forest area and liability of compensation was examined.

There was some dispute with regard to boundary of forest but for this purpose, Court held that the map drawn by Survey of India must be accepted as it is a body under duty to prepare plan after carrying out surveys hence Survey Report of Survey of India, have to be accepted. Further, it held that all encroachers into forest land have to be evicted. Court said:

> "*if an area which falls within these said forests/forest land and cannot be encroached upon*".

278. Court also directed, that encroachers are liable to compensate for the losses caused due to encroachments, especially when land encroached upon has been utilized for commercial purposes. Taking a lenient view, Court observed that if encroachers voluntarily vacate by the prescribed date, they may not pay compensation but if they continue to remain in possession, they will have to pay Rs. 5 lakhs per hectare per month as compensation which shall be used for forest protection and reutilization. Court also imposed a ban upon mining activity in Aravalli hills specially in the parts which have been recorded as forest area or protected under EP Act, 1986. This order was subsequently modified by order dated 16.12.2002 (***(2008)16SCC401***) and permission/approval under Forest Conservation Act, 1989 and EP Act, 1986 was granted.

279. In ***Gujarat Pollution Control Board vs. Nicosulf Industries & Export Pvt. Ltd. & Others, (2009)2SCC171***, **(order dated 04.12.2008)** in (*Criminal Appeal No. 9 of 2002*), question was, "whether the complainant i.e., the officer of State PCB had authority to file complaint or not". Interpreting Section 49 of Water Act, 1974, Court said that it required State Board to file a complaint or to authorize any of its officers to file complaint. The authorization has to be by State Board. There is no difference between power to sanction a complaint or power to authorize

the complaint in as much as when a sanction to file a complaint is given in law, it amounts to authorize to file the complaint.

280. In ***U.P. Pollution Control Board vs. Dr. Bhupendra Kumar Modi & Another, (2009)2SCC147***, **(order dated 12.12.2008)** in (*Criminal Appeal No. 2019 of 2008*), order of High Court of Judicature at Allahabad, Lucknow Bench, quashing complaint, filed by State PCB under Section 44 of Water Act, 1974 was challenged. High Court quashed proceedings on the ground that there was no material on record to show that Dr. Bhupendra Kumar Modi, at the relevant time, was incharge and responsible to the company for conduct of its business. The only question considered by Court in Appeal, was, "whether the view taken by High Court is justified or not". Court did not find the view of High Court to be correct in view of the averments made in the complaint, read with Sections 25, 26, 44 and 47 of Water Act, 1974 and hence allowed Appeal and set aside the order. Before Supreme Court, an argument was raised that the proceedings commenced in 1985 and long time has passed but rejecting this, Court said that **lapse of long period cannot be a reason to absolve respondents from the trial, considering nature of the matter involving public health**. If it is ultimately proved that the act of accused has affected public health, Court cannot afford to deal lightly with cases involving pollution of air and water. It said,

> *"The message must go to all concerned persons whether small or big that the courts will share the parliamentary concern and legislative intent of the Act to check the escalating pollution level and restore the balance of our environment.* ***Those who discharge noxious polluting effluents into streams, rivers or any other water bodies which inflicts (sic harm) on the public health at large, should be dealt with strictly de hors to the technical objections****. Since escalating pollution level of our environment affects on the life and health of human beings as well as animals, the courts should not deal with the prosecution for offences under the pollution and environmental Acts in a causal or routine manner".*

281. In ***Fomento Resorts & Hotels & Another vs. Minguel Martins & Others, (2009)3SCC571*** **(order dated 20.01.2009)** in (*Civil Appeal No. 4154 of 2000*), a private company approached State Government for acquisition of land comprised in Survey nos. 788, 789, 803, 804, 806 and 807 of Village Taleigao, Dona Paula for construction of Beach Resort Hotel Complex by highlighting its benefits. Acted thereupon, acquisition proceedings were initiated. Acquisition proceeding were challenged but in the meantime hotel project was completed and commenced function. Goa Bench of Bombay High Court allowed writ petition and quashed acquisition notification by judgment dated 26.06.1984. The judgment was reversed in appeal by Supreme Court in ***Fomento Resorts and Hotels Ltd. vs. Gustavo Renato Da Cruz Pino, (1985)2SCC152*** and matter was remitted to High Court. Subsequently, parties compromised and writ petition was withdrawn from High Court. The hoteliers entered into an agreement with the Government. The hoteliers thereafter, applied for extension of hotel building and this issue was raised again in a writ petition filed in High Court which was allowed by observing that extension of hotel building was impermissible. The issue of acquisition was also raised. Supreme Court formulated it as issue one and answered in negative in para 35 of the judgment. Next question was, whether public access to beach, available through survey no. 803 before acquisition, could have been restricted by hoteliers. Court refers to public trust doctrine and said that there is an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof. In para 54 of judgment, Court said,

> "*The* ***heart of the public trust doctrine is that it imposes limits and obligations upon government agencies*** *and their*

> *administrators on behalf of all the people and especially future generations. For example,* ***renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved.*** *The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets*".

282. Elaborating it, in para 55, Court said,

> "***Public Trust Doctrine is a tool for exerting long-established public rights over short-term public rights and private gain****. Today, every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long term and enjoyment by future generations. To say it another way,* ***a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people's rights*** *and the people's long term interest in that property or resource, including down-slope lands, waters and resources*".

283. Referring to ancient Indian heritage and culture which was in harmony with nature, Court said:

> "*The Indian society has, since time immemorial, been conscious of the necessity of protecting environment and ecology. The main moto of social life has been "to live in harmony with nature". Sages and Saints of India lived in forests.* ***Their preachings contained in Vedas, Upanishadas, Smritis etc. are ample evidence of the society's respect for plants, trees, earth, sky, air, water and every form of life****. It was regarded as a sacred duty of every one to protect them. In those days, people worshipped trees, rivers and sea which were treated as belonging to all living creatures. The children were educated by their parents and grandparents about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora fauna and every species of life*".

284. Court reiterated that natural resources including forest, water bodies, rivers, seashore etc. are held by State as a trustee on behalf of people and specially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. State cannot transfer public trust properties to a private party. If such a transfer interferes with the right of the public, Court can invoke public

trust doctrine and take affirmative action for protecting right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural eco-systems. The questions, were answered observing that access road cannot be obstructed. Court also upheld the view taken by High Court that extension of hotel building was illegal and, therefore, it has to be demolished.

285. In ***Nature Lovers Movement vs. State of Kerala & Others, (2009)5SCC373*** **(order dated 20.03.2009)** in (*Civil Appeal No. 2116 of 2000*), Section 2 of Forest (Conservation) Act, 1980 (hereinafter referred to as 'FC Act, 1980') *vis-a-vis* Kerala Forest Act, 1961 were under consideration. Court held that FC Act, 1980 enacted by virtue of list III Seventh Schedule and contains non obstante clause. Section 2, hence, has over-riding effect. The purpose of Act is conservation of forest and to prevent depletion thereof. The Act is applicable to all forests irrespective of the nature of ownership or classification thereof. After 25.10.1980 i.e., date of enforcement of FC Act, 1980, no State Government or other authority can pass an order or give a direction for de-reservation of reserved forest or any portion thereof or permit use of any forest land or any portion thereof for any non-forest purpose or grant any lease, etc. in respect of forest land to any private person or any authority, corporation, agency or organization which is not owned, managed or controlled by the Government. Further user of forest land for non-forest purpose prior to enforcement of FC Act, 1980 will not be a ground to explain tenure of such activity by way of renewal etc.

286. In ***M.C. Mehta vs. Union of India & Others, (2009)6SCC142*** (**Aravalli hills range mining matter**) (order dated 08.05.2009), Court said that the Aravalli is the most distinctive and ancient mountain chain

of Peninsular India, mark the site of one of the oldest geological formations in the world. Due to its geological location, desertification is stopped and it prevents expansion of desert into Delhi. However, Court noticed regular mining activates in violation of law particularly, environmental laws and norms. Since mining was banned by Supreme Court, applications were filed for modification and seeking permission. Disposing all applications, Court said that since statutory provisions have not been complied with, all mining operations in Aravalli hill range falling in State of Haryana within the area of approximately 448 sq. kms. in Districts of Faridabad and Gurgaon including Mewat shall remain stopped till Reclamation Plan duly certified by State of Haryana, MoEF and CEC is prepared with law.

287. In ***Tirupur Dyeing Factory Owners Association vs. Noyyal River Ayacutdars Protection Association and others, (2009)9SCC737*** (order dated 06.10.2009 in ***Civil Appeals No. 6776 of 2009 with 6777 of 2009***), Public Interest Litigation was filed by Noyyal River Ayacutdars Protection Association (hereinafter referred to as 'Association') seeking directions for preservation of ecology and for keeping Noyyal river in Tamil Nadu free from pollution. It was alleged that large number of industries working in Tirupur area had indulged in dyeing and bleaching works and discharging industrial effluents into river causing water pollution to the extent that river water was neither fit for irrigation nor potable. It had also affected Orthapalayam reservoir and other tanks and channels of Noyyal river. Court **directed to set up CETP** with zero liquid discharge trade effluents. Court also directed the industries association to pay an amount compensating damage to ecology for cleaning and desilting operations and for remediation. In Appeal, Supreme Court initially directed industries association to deposit Rs. 25 crores and while

deciding the matter finally, it observed that **there has been unabated pollution by members of industries association. They cannot escape responsibility to meet out the expenses of reversing the ecology**. They are bound to meet the expenses of removing the sludge of the river and also for cleaning the dam. The principles of "polluters-pay" and "precautionary principle" have to be read with the doctrine of "sustainable development". **It becomes the responsibility of the members of the appellant Association that they have to carry out their industrial activities without polluting the water**. Court also held that a number of farmers have suffered because of pollution caused by industries. Farmers could not cultivate any crop in the land and industries have to pay to the farmers also. Court also directed State PCB to ensure that no pollution is caused, giving strict adherence, to the statutory provisions.

288. In ***Tirupur Dyeing Factory Owners Association vs. Noyyal River Ayacutdars Protection Association & Others, (2009)9SCC737***, Court said:

> "*in spite of stringent conditions, degradation of environment continues and reaches a stage of no return, the court may consider the closure of industrial activities in areas where there is such a risk. The authorities also have to take into consideration the macro effect of wide scale land and environmental degradation caused by absence of remedial measures.The right to information and community participation for protection of environment and human health is also a right which flows from Article 21.*

289. In ***T.N. Godavarman Thirumulkpad v. Union of India & Others, (2006)13SCC689*** (order dated 17.10.2016) in (IAs No. 1156, 1192, 756, 1463, 1501 and 1532 in WP(C) No. 202/1995), a complaint was made that in Master Plan, 1962 certain area was earmarked/identified as green area but changing user to urban area under latter Master Plan, i.e., 2001, Delhi Development Authority (hereinafter referred to as 'DDA') has proposed development of International Hotels Complex on such land,

area 315 ha, situated in Vasant Kunj. Court constituted a Committee to examine environment impact assessment of the area and stopped constructions till submission and consideration of report by the said Committee. Latter stand was taken before Supreme Court that out of 315 ha only 220 ha would be used for commercial construction purposes. Committee submitted its report in which it observed that DDA has not exercised adequate environment precaution based on sustainable environmental management approach. It also pointed out that many proponents have raised constructions in a very environmentally unsound manner and DDA had permitted a higher FAR. As damage control by strict implementation of effective Environment Management Plan and resource conservation measures, Committee made certain suggestions/recommendations. Commenting upon the role of DDA, Court said that it ought to have acted with more transparency. Thereafter, Court directed MoEF&CC to consider the stand taken by all the parties concerned and take a decision in the light of the suggestions made by Committee. It also directed MoEF&CC to decide, what remedial measures including imposition of such amount as cost, can be taken.

290. In ***Research Foundation for Science vs. Union of India & Another, (2007)8SCC583,*** (order dated 06.09.2007) in (WP(C) No. 657/1995 with SLP(C) No. 16175/1997, Civil Appeal No. 7660/1997), Court in the matter of ship breaking, examined report of High Powered Committee and noticing the same in para 9 of the order, directed Government of India to formulate a comprehensive code incorporating recommendations and to make the same operative until concerned statues are amended in line with the recommendations. Court also said that till such statutes are enacted, the recommendations shall be operative by virtue of its (Supreme Court) order, aforesaid.

291. In ***Parthiban Blue Metal & Others vs. Member Secretary, Tamil Nadu Pollution Control Board & Others, (2007)13SCC197,*** (order dated 01.02.2007) in (Civil Appeal No. 411/2007) issue of distance of stone crushers from residential area was considered. Various stone crusher units were operating in village Trisoolam, Kanjipuram district, Tamil Nadu prior to 1974. After enactment of Water Act, 1974 and Air Act, 1981, unit operators applied for consent but relying on Rule 36(1) of Tamil Nadu Minor Mineral Concession Rules, 1959, as amended, prohibiting quarrying within a radial distance of 500 metres from inhabited site, State PCB issued notices requiring proponents to shift to alternative sites. Writ Petitions were filed in Madras High court stating that units were operating since 1972 and at that time area was non-urban zone. Writ Petitions were dismissed and, then came to Supreme Court. In the matter of distance, Court did not interfere and said that since there is some dispute about the actual distance, the same be examined and for this purpose remanded the case to High Court.

292. In ***Suresh Estates Private Limited & Others vs. Municipal Corporation of Greater Mumbai & Others, (2007)14SCC439*** (order dated 14.12.2007) in (Civil Appeal No. 5948/2007), a three judges' bench, besides others, also considered the question, "*whether Coastal Regulation Zone (hereinafter referred to as, 'CRZ') will prevail over the provincial municipal laws or vice versa*". The Notification dated 09.02.1991 issued under Sections 3(1) and 3(2)(v) of EP Act, 1986, declaring coastal stretches as CRZ and making regulations for regulating activates in such zone was considered. Court held that the word 'existing regulations' means those which were enforced on the date when CRZ Notification came into force, i.e., 19.02.1991. CRZ Notification referred to the structures which were in existence on the date of Notification and did not

talk of future provisions. After enforcement of CRZ Regulations, building activity permitted under that notification only shall be applicable and any future variation would not have any impact. Court said that in view of Section 3 of EP Act, 1986, any order/notification issued thereunder shall prevail over provisions of any other law which will also include MRTP Act, 1966 and Municipal laws.

293. In ***T.N. Godavarman Thirumulpad (104) vs. Union of India & Others, (2008)2SCC222***, (order dated 23.11.2007) in (IAs No. 1324, 1474 and 2081-82 in WP(C) No. 202/1995), an application was filed on behalf of M/s. Vedanta Alumina Ltd. seeking clearance for use of 723.343 ha of land including 58.943 ha of reserve forest land in Lanjigarh Tehsil of Kalahandi District for setting up alumina refinery. Court proposed certain conditions which if agreeable, it would consider grant of clearance but in the context of principle of sustainable development *vis-a-vis* mining activities, Court said: *"while applying principle of sustainable development one must bear in mind that* ***development which meets the needs of the present without compromising the ability of future generations to meet their own needs is sustainable development****--it is the duty of the State under our Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity."* Court further said that *"mining is an important revenue-generating industry"* but Court cannot allow country's national assets to be placed into the hands of companies without a proper mechanism in place and without ascertaining credibility of the user agency.

294. In ***A. Chowgule and Company Limited vs. Goa Foundation India & Others, (2008)12SCC646,*** (order dated 18.08.2008) in (Civil

Appeal No. 5180/2001), issue of "prior approval", in the context of FC Act, 1980 read with Forest (Conservation) Rules, 1981, was considered. M/s. A. Chowgule & Co. Ltd. (hereinafter referred to as, 'proponent') was engaged in mining, processing and export iron ore. Certain land was allotted to the proponent for establishment of 100% export-oriented unit in Sanguem Taluka in South Goa district. No Objection Certificate was issued by State PCB on 15.04.1991. The allotted land included some part which was claimed to be forest land but for permitting non-forest activities in forest land, no prior approval was obtained from MoEF&CC. A Writ Petition was filed in Goa bench of Bombay High Court wherein lease agreement dated 01.11.1989 was quashed. For holding what forest is, reliance was placed on Supreme Court judgment in ***T.N. Godavarman Thirumulkpad vs. Union of India, (1997)2SCC267***. Court examined Section 2 of FC Act, 1980 and Rules framed thereunder and said that under the provisions, "prior approval" is required for diversion of any forest land and its use for some other purpose. It also said that before promulgation of Act, a lease may be granted as per the then law but for renewal the provisions of subsequent enactment would have to be followed. Referring and relying on earlier decisions in ***Ambica Quarry Works vs. State of Gujarat, (1987)1SCC213***; ***Rural Litigation and Entitlement Kendra vs. State of U.P. (Supra)***; ***T.N. Godavarman Thirumulkpad vs. Union of India, (1997)2SCC267*** and ***M.C. Mehta vs. Union of India, (2004)12SCC118***, Court held *"after the coming into force of the Act, the renewal of a pre-existing mining lease in a forest area can be granted only if the requirements of Section 2 are satisfied."* Considering the arguments that proponent was willing to reforest in identical area if the lease is allowed to be effectuated, Court examined as to what is implied by the term 'afforestation' or 're-forestation'. It is said

"is it merely the replacement of one tree with another or does it imply something a little more complex? "Reforestation is the restocking of existing forests and woodlands which have been depleted, with native tree stock, whereas afforestation is the process of restoring and recreating areas of woodlands or forest that once existed but were deforested or otherwise removed or destroyed at some point in the past"."

295. Court also noticed its experience that re-forestation or afforestation carried out in India does not meet the fundamentals and planting of new trees to match the numbers removed is too simplistic and archaic a solution, as in the guise of compensatory replantation, local varieties of trees are being replaced by alien and non-indigenous but fast-growing varieties such as poplar and eucalyptus which make up the numbers but cannot satisfy the needs of our environmental system. Court cautioned that one must borne in mind that both re-forestation and afforestation envisage a resurrection and re-plantation of trees and other flora similar to those which have been removed and which are suitable to the area in question. Court further elaborated its experience in the light of disappearance of different kinds of birds due to cutting of large scale of trees for widening of roads. In paragraphs 25 and 26 of the judgment, Court said:

> *"25. There is yet another circumstance which is even more disturbing inasmuch as the removal of existing forest or trees suited to the local environment have destroyed the eco system dependent on them. This is evident from the huge depletion of wild life on account of the disturbance of the habitat arising out of the destruction of the existing forest cover. A small but significant example is the destruction of plantations alongside the arterial roads in India. 30 years ago, all arterial roads had huge peripheral forest cover which not only provided shade and shelter to the traveller but were a haven to a large variety and number of birds and other wild life peculiar to that area. With the removal of these plantations to widen the roads to meet the ever growing needs of the traffic, and their replacement by trees of non-indigenous varieties, (which are often not eco or bird friendly) in the restricted and remaining areas bordering the widened roads,* ***the shelter for birds has been***

> ***destroyed*** *and where thousands of birds once nested and bred, there has been a virtual annihilation of the bird life as well.*
>
> *26. Those who live in North India would do well to remember that a drive along the Grand Trunk Road, National Highway No.1, northwards of Delhi, particularly during the hours of dawn or dusk, was as if through an aviary with thousands of birds representing a myriad of species with their distinctive calls reaching a crescendo during early evening and gradually fading into silence as darkness set in. Sadly, all that can now be seen are crows feeding on the decaying and mutilated carcasses of dogs and other animals killed by speeding vehicles. Equally disturbing is the decrease in the reptilian population as the undergrowth in which it lived and prospered has been destroyed, and with the concomitant increase in the rodent population, colossal losses and damage to the farmer and in the storage of food grains."*

296. The widening of roads has destroyed shelter for birds where thousands of birds used to nest and bred and it has resulted in virtual annihilation of the bird life as well. Court, therefore, dismissed appeal of the proponent and said that any subsequent approval will not make good the violation of environmental laws, already committed.

297. In ***News Item Published in Hindustan Times Titled "And Quiet Flows The Maily Yamuna", In Re, (2009)17SCC708*** (order dated 12.04.2005), Supreme Court continued to consider the issue of pollution of river Yamuna, deprecated authorities for their inaction/negligence and said,

> *"**It is for the Government to implement the laws**. It is no answer to say that the master plan, building bye-laws and other laws were observed in breach and the authorities were silent spectators. It seems that there was connivance of officers/officials concerned without which it is quite difficult for such large-scale unauthorized acts to take place".*

298. In para 13 of the order, Court referred to its earlier order dated 10.04.2001 wherein it has said:

> *"...right to life guaranteed under Article 21 of the Constitution would surely include the right to clean water, which is being deprived to millions of citizens of Delhi because of large-scale pollution of River Yamuna".*

299. Court recorded its concern in para 16 of the order, and said:

> *"This is a most unsatisfactory way of tackling the problem which, admittedly as per the Government's perception too, is alarming and emergent. How seriously the measures have been taken is evident from the fact that* ***despite the orders of this Court, there is no assistance or affidavit from the National Rover Conservation Authority. It seems evident that the Government and its functionaries and authorities have failed in their public duty*** *and obligations towards the citizens of Delhi. Despite all these years, they have not been able to provide clean water of Class 'C' category which had been directed years back".*

300. In ***News Item Published in Hindustan Times Titled "And Quiet Flows The Maily Yamuna", In Re, (2009)17SCC545*** (order dated 14.02.2006), Court noticed attempt of the authorities in placing alleged scheme for improvement of water quality, without any clarity, and in para 5 said:

> *"We do not know what are the so-called innovative and convenient ways of which suggestion is given in the affidavit. The* ***authorities have to be clear in their perception*** *and palm of action lest the huge amounts incurred with a view to improve the water quality go down the drain.* ***After clearly laying down the plan of action in consultation with all concerned, there has to be meticulous implementation, then alone some progress can be made in improving the quality of water****."*

301. Further in para 7, Court said, since State/authorities are not in a position to make available the basic services on the pretext of server limitation, there shall be no regularization of unauthorized colonies. Court clarified that regularization should be made only if it is possible for the respondents to make available the basic services.

302. In ***State of Uttaranchal vs. Balwant Singh Chaufal and others, (2010)3SCC402***, Court had a retrospect of the matters filed as Public Interest Litigation and examined its evolution in the backdrop where appointment of L.P. Naithani, Senior Advocate as Advocate General was challenged in a Public Interest Litigation on the ground that he was above 62 years, hence ineligible, though it was already settled in catena

of decisions that the age of superannuation prescribed for High Court Judges was not applicable to office of Advocate General. In para 23, Court said that Public Interest Litigation in question was an abuse of the process, and High Court should not have heard and entertained such petitions since controversy was decided as long back as in 1952 in ***G.D. Karkare vs. T.L. Shevde, AIR1952Nag330***. While going through evolution of Public Interest Litigation, Court said that the origin and development of PIL can broadly be placed in three phases:

> *"*
>
> - *Phase I.- It deals with cases of this Court where directions and orders were passed primarily to protect fundamental rights under Article 21 of the marginalized groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach this Court or the High Courts.*
> - ***Phase II.**- It deals with the **cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments, etc.***
> - *Phase III.- It deals with the directions issued by the Courts in maintaining the probity, transparency and integrity in governance."*

303. Phase II deals with the public interest litigations entertained for issuing directions to preserve and protect ecology and environment and Court referred to some leading cases in paras 76 to 95.

304. In ***M. Nizamudeen vs. Chemplast Sanmar Limited and Others, (2010)4SCC240***, issue of transfer of hazardous substances from ships to ports in CRZ area in the light of the provisions of CRZ Notification dated 19.02.1991 as amended from time to time was considered. One M/s. Chemplast Sanmar Limited (in short 'Chemplast') sought to establish a unit for manufacturing Poly-Vinyl Chloride (in short 'PVC') at Semmankuppam village, SIPCOT Industrial Complex, Phase-II, Cuddalore District, Tamil Nadu. EC was granted by MoEF on 28.11.2005 subject to certain conditions. For manufacturing PVC one of the raw materials was Vinyl Chloride Monomer (in short 'VCM') which was not available

indigenously and had to be imported from international suppliers. Proponent proposed to install Marine Terminal Facility near the seashore at Chitrapettai Village for receiving and transferring VCM from ships to PVC plant through underground pipeline. This proposal was recommended in favour of proponent by District Coastal Zone Management Committee and considered by Tamil Nadu State Coastal Zone Management Authority (TNSCZMA) recommending to State Government to forward proposal to MoEF for issue of CRZ clearance. Government of Tamil Nadu vide letter dated 09.11.2005 informed National Coastal Zone Management Authority its acceptance of the recommendation made by the TNSCZMA and ultimately MoEF also granted EC on 19.12.2005. Consent under Water Act, 1974 was granted by State PCB on 14.09.2006. Thereafter, proponent made an application dated 06.02.2008 to Executive Engineer, PWD seeking permission for carrying seawater and raw-materials through pipelines laid 3.50 meter below the river bed. Initially, permission was granted by Executive Engineer on 27.02.2008 but within less than a month on 19.03.2008, the said permission was cancelled by Executive engineer on the ground that VCM may cause pollution and health hazard to the public. This order of cancellation was challenged by proponent in High court. Writ Petition was allowed on 18.07.2008 setting aside order cancelling permission dated 19.03.2008. Thereafter, one Shri M. Nizamudeen filed a PIL in Madras High Court challenging order dated 27.02.2008 granting permission by Executive Engineer. He did not challenge EC granted by MoEF on 28.05.2005 and 19.12.2005. High Court dismissed writ petition of Shri M. Nizamudeen vide judgment dated 31.10.2008 and thereafter, appeal came up before Supreme Court. The first question raised before Supreme Court was, whether river Uppanar and its drain at the point where

pipeline pass, fall in CRZ tree area and secondly if the first question is answered in affirmative whether pipeline crossing underneath Uppanar would require EC. Another incidental question was whether para 2(ii) of CRZ Notification, 1991 restricts transfer of VCM (hazardous substance) beyond port area to PVC plant through pipelines. Examining CRZ Notification, 1991 along with its amendments dated 29.12.1998 and 21.05.2002, Court observed that the provisions have to be read so as to render them workable and not ineffective, inoperative or redundant. Hence, explaining the expression "in the port areas", court said that it should be read as "in or through the port areas" so that the basic purpose is served effectively and in a workable manner. Court said that there cannot be an intention that hazardous substance though maybe brought into refinery or terminal in the port area from the ship but would remain there and cannot be taken beyond the port area because of the prohibition so as to frustrate the purpose for which the same were brought in.

305. In ***Goan Real Estate & Construction Ltd. & Anr. vs. Union of India, (2010)5SCC388***, writ petition under Article 32 was filed before Supreme Court with a prayer that building plans, sanctions and constructions made and on-going constructions pursuant to CRZ Notification dated 19.02.1991 as amended by notification dated 16.08.1994 are dwelled. Under Notification of 1991, area upto 100 meters from High Tide Line was earmarked as 'No Development Zone' and no construction was permissible within this zone except repairs etc. Vide notification dated 16.08.1994 an amendment was brought in relaxing no development zone from 50 meters to 100 meters pursuant whereto, some people applied for raising construction between 50 meters to 100 meters for which the concerned authorities granted permission and, in some

matters, construction started, and in some cases, it was already completed. Earlier in ***Indian Council for Enviro-Legal Action vs. Union of India, (1996)5SCC281*** a complaint that CRZ Notification 1991 was not being followed by the authorities themselves causing continuous degradation of ecology was made. In that writ petition, Goa Foundation Society filed an application challenging vires of notification dated 16.08.1994 by which notification dated 19.02.1991 was amended. The writ petition in ***Indian Council for Enviro-Legal Action (supra)*** was partly allowed and two amendments introduced by Notification dated 16.08.1994 were strike down. Reduction from 100 meters to 50 meters was not found to be rational and valid and held contrary to the object of EP Act, 1986. The authorities started action in respect of on-going project, in the light of Supreme Court judgment striking down amendment made by Notification dated 16.08.1994 and that is how matter came again before Supreme Court in ***Goan Real Estate and Contraction Limited (supra)***. The question for consideration was whether construction made or on-going pursuant to the plan sanctioned on the basis of Notification dated 16.08.1994 would be affected or not. The question was answered holding that judgment dated 18.04.1996 rendered in ***Indian Council for Enviro-Legal Action (supra)*** will not affect on-going constructions or completed constructions pursuant to plan sanctioned under Notification dated 16.08.1994 till two clauses of the same were set aside by Supreme Court and the said judgment will not affect the completed or the on-going constructions being undertaken pursuant to the amended Notification.

306. In ***James Joseph vs. State of Kerala, (2010)9SCC642***, Section 12-A(1) of Kerala Forest Act, 1961 was considered which provided second appeal. An argument was raised that second appeal would be available

only if there is a substantial question of law like Section 100 CPC and not otherwise. The said argument was rejected observing that an appeal is governed by statute and the Appellant authority can examine correctness of the order appealed on the point of law or fact, both, unless there is any specific requirement provided in the provision providing second appeal.

307. In ***Sansar Chand vs. State of Rajasthan, (2010)10SCC604***, while hearing criminal appeal wherein appellant has challenged his conviction under Wild Life Protection Act, 1972 (WLP Act 1972) on the charges of poaching etc., Court observed that preservation of wild life is important for maintaining ecological balance in the environment and sustaining ecological chain. Directions were issued to Governments and State authorities to ensure preservation of wild life and take stringent action against those who are violating the provisions of WLP Act, 1972.

308. In ***People for Ethhical Treatment of Animals vs. Central Zoo Authority and Others***, W.P. No. 195/2006 was filed in Supreme Court under Article 32 raising the issue of cruelty on animals in unrecognized/derecognized Zoos/Circuses/Rescue Centres etc. On 09.10.2006, Court directed that no zoo shall permit any breeding of animals beyond the numbers specified by Central Zoo Authority in its directive dated 07.02.1995, besides other directions. Ultimately, after noticing the progress resulting in closure of unrecognized/derecognized Zoos/Circuses/Rescue Centres etc., issue of guidelines, framing of rules etc., Court found that the purpose of writ petition has been achieved and disposed the matters vide order dated 10.02.2009 reported in ***(2010)14SCC733***.

309. In ***Re: Construction of Park at Noida near Okhla Bird Sanctuary vs. Union of India and Others, (2011)1SCC744***,

environmental issues arising from development of five parks at Sector 95 at NOIDA by State Government and NOIDA were considered. The project was opposed by applicants who brought the matter in Supreme Court in pending ***W.P. No. 202/1995, T.N. Godavarman Thirumulpad vs. Union of India & Others***, by means of IAs, on the ground that large number of trees were cut down for clearing ground in an area which was 'forest' in terms of judgment in ***T.N. Godavarman Thirumulpad (supra)***, in violation of FC Act, 1980 and EP Act, 1986. Project on its western side lies in very proximity to Okhla Bird Sanctuary which included a large water body and is home to about 302 species of birds. Sanctuary was so declared by Notification dated 08.05.1990 issued under Section 80 of WLP Act, 1972. The stand taken by State Government was that project area does not have naturally grown trees but planted trees; area has neither been notified as "forest" nor recorded as "forest" in Government record and not identified as deemed forest. Court accepted stand of the State and held that project site is not forest land hence does not contravene Section 2 of FC Act, 1980. With regard to application of EIA 2006 to the said project, Court examined provisions of EIA 2006, and said that entries 8(a) and 8(b) of Schedule talk of "building and construction project" and "townships and area development project". Since two kinds of projects are treated separate and differently, it would mean that an 'area development project' though may involve a good deal of construction, would not be a 'building and construction project'. Court also considered the argument that in Category 8(a), there is no mention of the construction activities of more than 1,50,000 sq.m. and, therefore, necessarily, it would be covered by Category 8(b) and said in para 64, 65, 66 and 67, as under:

> *"64. The amicus, also arguing in the same vein, submitted that as far as building and construction projects are concerned there was no*

*qualitative difference in Items 8(a) and 8(b) of the schedule to the notification**. A combined reading of the two clauses of Item 8 of the schedule would show the continuity in the two provisions; 1,50,000 sq m of built-up area that was the upper limit in Item 8(a) was the threshold marker in Item 8(b). This clearly meant that building and construction projects with built-up area/activity area between 20,000 sq m to 1,50,000 sq m would fall in Category 8(a) and projects with built-up area of 1,50,000 sq m or more would fall in Category 8(b)**. The amicus further submitted that though it was not expressly stated, the expression "built-up area" in Item 8(b) must get the same meaning as in Item 8(a), that is to say, if the construction had facilities open to sky the whole of the "activity area" must be deemed to constitute the "built-up area".*

*65. It is extremely difficult to accept the contention that the contention that the categorisation under Items 8(a) and 8(b) has no bearing on the nature and character of the project and is based purely on the built-up area. **A building and construction project is nothing but addition of structures over the land. A township project is the development of a new area for residential, commercial or industrial use. A township project is different both quantitatively and qualitatively from a mere building and construction project**. Further, an area development project may be connected with the township development project and may be its first stage when grounds are cleared, roads and pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other civic infrastructure. Or an area development project may be completely independent of any township development project as in case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park.*

*66. **The illustration given by Mr Bhushan may be correct to an extent. Constructions with built-up area in excess of 1,50,000 would be huge by any standard and in that case the project by virtue of sheer magnitude would quality as township development project. To that limited extent there may be a quantitative correlation between Items 8(a) and 8(b).** But it must be realised that the converse of the illustration given by Mr Bhushan may not be true. For example, a project which is by its nature and character an "area development project" would not become a "building and construction project" simply because it falls short of the threshold mark under Item 8(b) but comes within the area specified in Item 8(a). **The essential difference between items 8(a) and 8(b) lies not only in the different magnitudes but in the difference in the nature and character of the projects enumerated thereunder.***

*67. In light of the above discussion it is difficult to see the project in question as a "building and construction project". Applying the test of "**dominant purpose or dominant nature"** of the project or the "**common parlance" test** i.e. how a common person using it and enjoying its facilities would view it, the project can only be categorised under Item 8(b) of the schedule as a township and area*

> *development project". But under that category it does not come up to the threshold marker inasmuch as the total area of the project (33.43 ha) is less than 50 ha and its built-up area even if the hard landscaped area and the covered areas are put together comes 1,05,544.49 sq m i.e. much below the threshold marker of 1,50,000 sq m. The inescapable conclusion, therefore, is that the project does not fall within the ambit of the EIA Notification S.O. 1533(E) dated 14-9-2006. This is not to say that this is the ideal or a very happy outcome but that is how the notification is framed and taking any other view would be doing gross violence to the scheme of the notification."*

310. On the question of project being within 10 kms of Okhla Bird Sanctuary, it was noticed that Sanctuary is hardly at a distance of 50 meters but unfortunately, neither there was any notification declaring eco-sensitive zone nor Central or State Government have notified buffer zones around Sanctuaries and National Parks to protect sensitive and delicate ecological balance required for the Sanctuaries. However, Court said that absence of statute will not preclude Court from examining project's effects on the environment with particular reference to Okhla Bird Sanctuary. **As per jurisprudence developed by Court, environment is not merely a statutory issue but is one of the facets of the Right to Life guaranteed under Article 21 of Constitution. Environment, therefore, is a matter directly under Constitution** and **if Court perceives any project or activity as harmful or injurious to environment, it would feel obliged to step in**. Consequently, Court issued certain directions for maintaining soft/green landscaping and thick cover of trees of native variety on the side of bird sanctuary.

311. Court also noticed anomaly in EIA 2006 Items 8(a) and 8(b) and in para 84 said:

> *"84. .... **The EIA Notification dated 14-9-2006 urgently calls for a close second look by the authorities concerned. The projects/activities under Items 8(a) and 8(b) of the schedule to the notification need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity***

> ***and vagueness.*** *The question of application of the general condition to the projects/activities listed in the schedule also needs to be put beyond any debate or dispute. We would also like to point out that the environmental impact studies in this case were not conducted either by the MoEF or any organisation under it or even by any agencies appointed by it.* ***All the three studies*** *that were finally placed before the Expert Appraisal Committee and which this Court has also taken into consideration,* ***were made at the behest of the project proponents and by agencies of their choice. This Court would have been more comfortable if the environment impact studies were made by the MoEF or by any organisation under it or at least by agencies appointed and recommended by it****.*"

312. In ***Krishnadevi Malchand Kamathia and Others vs. Bombay Environmental Action Group and Others, (2011)3SCC363***, the matter was taken up in I.A. in contempt. Original proceedings in Civil Appeal No. 4421 of 2010 were decided vide judgment dated 07.05.2010. It was brought to the notice of Court that appellant has damaged mangroves in the garb of repair of bund and violated Court's order. Observing that justice is only blind or blindfolded to the extent necessary to hold its scales evenly, and it is not, and must never be allowed, to become blind to the reality of the situation, lamentable though that situation may be, Court held appellant guilty of contempt and issued directions for restoration of bund by removing all debris/bricks, etc. and restore situation as it existed earlier so as to facilitate natural flow of sea water into land.

313. In ***K. Balakrishnan Nambiar vs. State of Karnataka and Others,*** (***2011)5SCC353***, a question arose '*whether areca nut cultivation can be treated to be a forest activity or not*'. On behalf of appellant, the argument was that areca nut cultivation cannot be treated as a non-forest activity since it does not involve cutting of trees. Rejecting the same, Court dismissed appeal. Reference was made to judgment in ***T.N. Godavarman Thirumulpad vs Union of India & Others, (1997)2SCC267***, where direction was issued to all State Governments to

ensure that all on-going non-forest activities within any forest, without prior approval of Central Government, must seize forthwith. Court also emphasized that every State Government must ensure total cessation of all non-forest activities forthwith.

314. In ***State of Karnataka and Others vs. Janthakal Enterprises and Another, (2011)6SCC695***, continued mining by scrupulous mining lease holders, who got order from High Court, was deprecated and Court said:

> *"The Courts should share the legislative concern to conserve the forest and mineral wealth of the country.* ***Court should be vigilant in issuing final or interim orders in forest/mining/environment matters so that unscrupulous operators do not abuse the process of courts to indulge in large-scale violations or rob the country of its mineral wealth or secure orders by misrepresentation to circumvent the procedural safeguards under the relevant statutes****.....A wrong decision in such matters may lead to disastrous results-in regard to public interest-financially and ecologically. Therefore, writ petitions involving mineral wealth/forest conservation or environmental protection should not be disposed of without giving due opportunity to the departments concerned to verify the facts and file their counter affidavits/objections in writing.*

315. The effect of mining on environment in the context of National Forest Policy, 1988 was considered in ***Lafarge Umiam Mining Private Limited vs. Union of India, (2011)7SCC338***. The company, M/s. Lafarge Surma Cement Ltd. (hereinafter referred to as 'LSCL') was incorporated under the laws of Bangladesh. It had set up a cross-border cement manufacturing project at Chhatak in Bangladesh which *inter-alia* has a captive limestone mine of 100 hectares located at Phlangkaruh, Nongtrai, East Khasi Hills District in State of Meghalaya. Mine was leased out in favour of Lafarge Umium Mining (P) Ltd. (hereinafter referred to as 'LUMPL'), which was a company incorporated under Companies Act, 1956 and wholly owned subsidiary of LSCL. Entire produce of mine was used for production of cement at manufacturing plant at Chhatak under

agreement/arrangement between Governments of India and Bangladesh. There was no other source of limestone available for LSCL except for captive limestone mine situated at Nongtrai. LUMPL conveyed limestone extracted from mines situated at Nongtrai after crushing in a crusher plant to LSCS plant in Bangladesh. LUMPL submitted an application on 01.09.1997 for grant of EC under EIA 1994 for limestone mining project at Nongtrai. The application was returned by MoEF with the direction to seek site clearance as well as project clearance as per amendment made in EIA 1994. Application for site clearance was submitted on 23.09.1998, which was allowed by MoEF vide letter dated 18.06.1999. Thereafter, application was submitted on 17.04.2000 for grant of EC under EIA 1994 for excavation of 2 million tonnes per annum of limestone and transportation thereof to Chhatak in Bangladesh through a conveyor belt. The mining area of 100 hectares was declared as 'barren' land. Divisional Forest Officer issued a certificate on 13.06.2000 certifying that mining site was not forest area nor did it fall under any notified reserved or protected forest. Ultimately, EIA clearance was given by MoEF on 09.08.2001. Chief Conservator of Forest, however, vide letter dated 01.06.2006 informed MoEF that mining area included thick natural vegetation cover with sizable number of tall trees and permission under FC Act, 1980 was necessary, which was not obtained. Project Proponent applied for NOC from Forest Department. On the ground that the area included forest and there was violation of FC Act, 1980, Chief Conservator of Forest requested Government of Meghalaya to stop further mining etc. MoEF consequently issued order dated 30.04.2007 for complete closure of all on-going non-forest activities by Lafarge. This prompted Lafarge to move to Supreme Court by filing I.A No. 1868 of 2007 in ***Lafarge Umiam Mining Private Limited, T.N. Godavarman***

Thirumulpad vs. Union of India and others, (2011)7SCC338 seeking a direction to MoEF to expeditiously process its application under Section 2 of FC Act, 1980. Vide order dated 05.02.2010 (reported in ***T.N Godavarman Thirumulpad vs. Union of India, (2010)12SCC376)*** Court directed proponent to stop all mining activities. MoEF granted EC on 19.04.2010 with certain additional conditions and forest clearance was issued on 22.04.2010. State Government recommended diversion of 116.589 hectare of forest land for limestone mining in favour of project proponent vide letter dated 16.07.2007 which was examined by Expert Appraisal Committee and ultimately, Government of Meghalaya vide letter dated 12.07.2010 made recommendation for grant of formal approval under Section 2 of FC Act, 1980. Answering the issues relating to nature of land and validity of ex-post facto clearance, Court said that universal human dependence on use of environmental resources for the most basic needs render it impossible to refrain from altering the environment. As a natural corollary, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environment protection and the risk which are to be regulated. This aspect is recognized by the concept of 'sustainable development'. Court held it valid on the ground that record show that it was not granted without due consideration and hence it is not vitiated for non-application of mind. Court also held that ex-post facto clearance is based on revised EIA 1994, EIA 2006 has no application. It also observed in para 119 that facts of the case justify application of constitutional 'doctrine of proportionality' to the matters concerning environment as a part of process of judicial review in contradistinction to merit review. In this regard, Court said,

> *"It cannot be gainsaid that utilisation 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-recognised 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."*

316. Further, directions were issued by Supreme Court for future cases. In para 122, Court said that National Forest Policy, 1988 which lays down far-reaching principles, must necessarily govern grant of permissions under Section 2 of FC Act, 1980 as the same provides road map to ecological protection and improvement under EP Act, 1986. Court further said, "*The* ***principles/guidelines mentioned in the National Forest Policy, 1988 should be read as part of the provisions of the Environment (Protection) Act, 1986 read together with the Forest (Conservation) Act****, 1980*". Court also directed Central Government to appoint an appropriate authority in the form of Regulator at State and Central level, for ensuring implementation of National Forest Policy, 1988. Several other guidelines in respect of clearance for non-forest activities in forest area and grant of EC where forest land is involved, were issued in para 122 and 123 of the judgment.

317. In ***Indian Council for Enviro-Legal Action vs. Union of India and Others (2011)8SCC161***, Court examined issue of environmental compensation as also compensation to the individual victims on account of industrial activities carried out by M/s. Hindustan Agro Chemicals

Ltd., Rajasthan Multi Fertilisers, Phosphate India, Jyoti Chemicals and Silver Chemicals. It was an off-shoot of earlier proceedings initiated by same complainant namely; Indian Council for Enviro-Legal Action, where the matter was decide vide judgment dated 13.02.1996, reported in ***(1996)3SCC212***. W.P.(C) No. 967 of 1989 was filed complaining that certain chemical industries were indulged in industrial activities in utter violation of statutory conditions and environment norms; they are recklessly spreading hazardous industrial waste (iron sludge and gypsum sludge) all over the area and do not bother to ensure proper disposal; Toxic substances percolated into earth polluting soil, aquifers and subterranean water supply and also causing ailments and diseases to local villagers. During pendency of Writ Petition, Rajasthan State PCB directed closure of certain industries by issuing an order under Section 33 (A) of Water Act, 1974. This order was also challenged before Supreme Court in W.P.(C) No. 76 of 1994, wherein, an interim order was passed, permitting industry to continue to run with certain conditions. Another W.P.(C) No. 824 of 1993. filed by M/s. Hindustan Agro Chemicals also came up for disposal along with W.P.(C) Nos. 967 of 1989 and 76 of 1994 and decided by judgment dated 13.02.1996 reported in ***(1996)3SCC212 (supra)***. Court held that industries concerned were liable for pollution caused and industries had forfeited all claims for any lenient consideration. Court directed attachment of factories, plant, machinery and all other immovable assets of the said industries and Rajasthan State PCB was directed to seal all the factories and plants. Later, vide order dated 04.11.1997, Court determined cost of remedial measures at Rs. 37.385 crores on the basis of assessment/reports of various authorities and by adjudicating the contentions raised. M/s. Hindustan Agro Chemical Ltd., however, avoided payment by keeping litigation alive for

1½ decade and, thereafter, in I.A. filed, Court, in para 197, laid down certain principles to be observed and followed, as under:

> *"197. The other aspect which has been dealt with in great details is to* ***neutralize any unjust enrichment and undeserved gain made by the litigants.*** *While adjudicating, the courts must keep the following principles in view:*
>
> *(1) It is the bounden duty and obligation of the court to neutralize any unjust enrichment and undeserved gain made by any party by invoking the jurisdiction of the court.*
>
> *(2) When a party applies and gets a stay or injunction from the court, it is always at the risk and responsibility of the party applying. An order of stay cannot be presumed to be conferment of additional right upon the litigating party.*
>
> *(3) Unscrupulous litigants be prevented from taking undue advantage by invoking jurisdiction of the Court.*
>
> *(4) A person in wrongful possession should not only be removed from that place as early as possible but be compelled to pay for wrongful use of that premises fine, penalty and costs. Any leniency would seriously affect the credibility of the judicial system.*
>
> *(5) No litigant can derive benefit from the mere pendency of a case in a court of law.*
>
> ***(6) A party cannot be allowed to take any benefit of his own wrongs.***
>
> *(7)* ***Litigation should not be permitted to turn into a fruitful industry*** *so that the unscrupulous litigants are encouraged to invoke the jurisdiction of the court.*
>
> *(8) The institution of litigation cannot be permitted to confer any advantage on a party by delayed action of courts."*

318. Ultimately, Court directed M/s. Hindustan Agro Chemicals Ltd. to pay Rs. 37.385 crores along with compound interest at 12% per annum and also cost of Rs. 10 lakhs in both I.As.

319. In ***T.N. Godavarman Thirumulpad (2011)15SCC671*** (Order dated 28.11.2006 in I.A. No. 826 and others), Court considered complaint about constitution of Forest Advisory Committee where in Mining and Civil Engineers were brought in as Members. Deprecating the same, Court said that "*extraction of minerals and reclamation strictly does not follow within the domain of Ministry of Environment and Forest and an expert needed for conservation of forest cannot be substituted by alleged experts in the field of mining etc.*" In para 21, Court said, "*mining or other development projects cannot be said to be allied disciplines of forestry.*

Allied disciplines may be like water harvesting, wildlife protection, biodiversity, etc. The composition of these 3 is to strengthen the participation of people in the matter of conservation of forest and to check the degradation of the environment". Again, in para 23, Court said that it is implicit in Rules of 2003 and when seen in the light of 1981 Rules, coupled with the objects of FC Act, 1980 that the persons to be included in the category under consideration are those who are independent experts in the field of conservation of forests and allied disciplines, and have established their credentials in that capacity as opposed to those who may be government servants.

320. In ***Meghwal Samaj Shiksha Samiti vs. Lakh Singh & Others (2011)11SCC800****,* Court shows its concern for protection of water body. In village Raniwara Kalan, District Jalore, Rajasthan, in Revenue records, a village pond as '*gair mumkin nada*' was recorded. After sometime it fell into disuse whereafter District Collector allotted 0.48 hectares of the area of the said pond to Meghwal Samaj Shiksha Samiti on 99 years lease. The said allotment was challenged in a writ petition filed in High Court which was allowed vide judgment dated 20.11.2002. Court said that once the land was recorded as pond, it was incumbent upon the authorities concerned to restore and maintain the same as pond and it could not have been allotted for any purpose or construction. The allottee in Appeal before Supreme Court placed reliance on the report of *Patwari* that there was no water in the pond and hence, it could have been allotted but rejecting the same, Court relied on the judgment in ***Hinch Lal Tiwari vs. Kamala Devi (2001)6SCC496****,* and said that if land was recorded as pond it had to be maintained as it is and the report of *Patwari* will not be of any consequence. In ***Hinch Lal Tiwari (supra)****,* it was found that once a pond is existed and recorded in Revenue records, merely because for

some time or otherwise, it has encroached or dried up, will not change its nature and it has to be protected. In para 13 of the judgment Court said: *"the material resources of the community like forests, tanks, ponds, hillock, mountain, etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution."*

321. Court further said that Revenue Authorities should make all attempts to develop the pond if it is so recorded and cannot take advantage of any encroachment or drying up of the pond. Protection and preservation of the pond would prevent ecological disaster and provide better environment to the people at large.

322. Protection of wild buffaloes mostly found in Western and Eastern *ghat*s of the country in the context of State of Chhattisgarh was considered in ***T.N. Godavarman Thirumulpad vs. Union of India & Others (2012)3SCC277*** (order dated 12.02.2012 in IA Nos. 1433 and 1477 of 2005 in WP (C) No. 202 of 1995). Wild buffalo was declared State animal in State of Chhattisgarh. Referring to the statute enacted for protection of wild life i.e., WP Act, 1972, Court observed that prior to the said act there was a scheme namely "Assistance for the Development of National Parks and Sanctuaries" which used to support only National Parks and Wildlife Sanctuaries. Subsequently with the enactment of Act 1972 and amendment made in 2003, two more categories were added i.e., Conservation Reserves and Community Reserves. Earlier the areas namely Sanctuaries, National Parks and Closed Areas were substituted by the words "protected areas" by Act 16 of 2003 and in view of the 42nd amendment of Constitution and insertion of Entry 17A i.e. "forest" and

Entry 17B i.e. “protection of wild animals and birds”, Central as well as State Government both got mandated with the responsibility of protection and conservation of wild life and its habitants. Steps taken by State were not found satisfactory for protection of wild buffalos and directions were issued for undertaking intensive research and monitor as also training to the officials and maintain sanctuary and other areas whereby buffalos are found, in a more scientific and effective manner.

323. The issue of protection of sandalwood and red sandalwood said to be endangered species was considered in ***T.N. Godavarman Thirumulpad vs. Union of India & Others, (2012)4SCC362*** (order dated 13.02.2012 in IAs Nos. 1287, 1570-71 of 1996 with other IAs). NGO moves Central Empowered Committee for initiating steps to close unlicensed sandalwood industries particularly, in State of Kerala. CEC submitted report. After giving notice, the matter was considered. Court observed that the examination of Statues relating to environment in India as also international convention it found that there was a shift from environmental rights to ecological rights though gradually but substantial. The report was based on anthropocentric ethics which also find ambit in the principle that all humans are equitable access to natural resources meaning thereby all natural resources are treated as property and not alive. Further Precautionary Principle and Polluter Pays Principle followed by this Court, also based on anthropocentric principle since they also cause harm to human as a pre-requisite for invoking these principles. The principle of sustainable development and Inter-Generational equity too pre-supposes the higher needs of humans and lays down that exploitation of natural resources must be equitably distributed between present and future generations. Environmental ethics behind the above principles were human need and exploitation but

have no role when an issue of endanger species come for consideration before this Court. Explaining anthropocentric approach, Court said that it considers humans to be the most important factor and value in the universe. Humans have greater intrinsic value than other species. Under this approach, environment is only protected as a consequence of and to the extent needed to protect human well being. However, there is another approach i.e. ecocentric which stress the moral imperatives to respect intrinsic value, inter dependence and integrity of all forms of life. Thereafter, Court issued directions for conservation of sandalwood.

324. In ***Deepak Kumar & Others vs. State of Haryana & Others, (2012)4SSC629***, effect of mining of minor minerals and its regulation was considered in the context of auction notices issued by Department of Mines and Geology, Government of Haryana. Supreme Court, however, extended its scope of direction, Pan India. Background facts are, that auction notice dated 3.6.2011, issued by Department of Mines and Geology, Haryana proposing to auction extraction of minor minerals, boulders, gravel and sand quarries of an area, not exceeding 4.5 ha in district of Panchkula, was challenged. Further, auction notices dated 8.11.2011, in the district of Panchkula, Ambala and Yamuna Nagar exceeding 5 ha and above, quarrying minor mineral, road metal and masonry stone mines in the District of Bhiwani, stone and sand mines in the district of Mohindergarh, slate stone mines in the district of Rewari, and also in the districts of Kurukshetra, Karnal, Faridabad and Palwal, with certain restrictions for quarrying in the riverbeds of Yamuna, Tangri, Markanda, Ghaggar, Krishnavati River basin, Dohan River Basin etc., were also challenged. It was also brought to the notice of Supreme Court that similar illegal mining is going on in various districts of Rajasthan and Uttar Pradesh. It was pointed out that under EIA 2006, EC is

required only when mining is permitted in an area not less than 5 ha. Auction notices permitting mining in area less than 5 ha were challenged on the ground that in order to escape from environment study under EIA 2006, bigger areas have been divided in smaller areas of less than 5 ha and that is how illegal mining is being permitted causing damage to environment. Supreme Court noticed the stand taken by MoEF in its affidavit dated 23.11.2011 that where mining area is homogenous, physically proximate and identifiable piece of land of 5 ha or more, it should not be broken into smaller sizes to circumvent EIA 2006. There was a Committee of Minor Minerals which had recommended minimum lease size of 5 ha for minor minerals for undertaking scientific mining for the purpose of integrating and addressing environmental concerns. Court said that minor minerals, boulders, gravel and sand quarries etc., in the places notified in auction notices, including the riverbeds of Yamuna, Tangri, Markanda, Ghaggar, Krishnavati River basin, Dohan River Basin etc., would result in environmental degradation and threat to bio-diversity, damage to riverine vegetation, cause erosion, pollute water resources etc. There was nothing on record to come to otherwise conclusion. It further shows that sand mining on either side of river upstream and instream, is one of the causes for environmental degradation and also threat to biodiversity over the years; India's rivers and riparian ecology had been badly affected at alarming rate due to unrestricted sand mining which has caused damage to ecosystem of rivers and safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds. It would also affect fish breeding and migration, spells disaster for conservation of many bird species, and had increased saline water in rivers. Commenting on the loss to the environment due to mining of minerals within or near

streambeds or inside streambeds, Court observed, that extraction of alluvial material from within or near a streambed has direct impact on stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, instream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. If these habitat characteristics are altered, the same can have deleterious impact on both, instream biota and the associated riparian habitat. It is true that demand for sand had continued and would continue to increase, day by day, due to ongoing construction of new infrastructures and expansion of existing ones. It is continuous process, placing immense pressure on the supply of sand resource. This has, and would, encourage mining activity which are bound to go on, legally or illegally, without any restriction. Lack of proper planning and sand management cause disturbance of marine ecosystem and would upset, the ability of natural marine processes to replenish the sand. Court expressed its anguish in the manner auction notices which were published by State of Haryana, permitting quarrying, mining and removal of sand from upstream and instream of several rivers which may have serious environmental impact on ephemeral, seasonal and perennial rivers and riverbeds, and sand extraction may have an adverse effect on biodiversity as well. This may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. Some of the rivers mentioned in the auction notices are on the foothills of fragile Shivalik Hills. Shivalik Hills are the source of rivers like Ghaggar, Tangri, Markand, etc. River Ghaggar is a seasonal river which rises up, in the outer Himalayas, between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes through Ambala and Hissar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal

river like Ghaggar, which also originates from the lower Shivalik Hills and enters Haryana near Ambala. During monsoon, this river swells up into a raging torrent, notorious for its devastating power, as also River Yamuna. Court found that without conducting any study on the possible environmental impact, on/in the riverbeds, and elsewhere, the auction notices were issued. Court said that, when extraction of alluvial material within or near a riverbed has an impact on river's physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that extraction is in blocks of less than 5 ha, separated by 1 km, since their collective impact may be significant, hence the necessity of a proper environmental assessment plan. MoEF brought to the notice of Court that it had come across several instances across the Country regarding damage to lakes, river beds and ground water leading to drying up of water beds and causing water scarcity on account of quarrying/mining leases and mineral concessions granted under rules, by Provincial Governments. State Government paid less attention on environmental aspect of minor minerals on the pretext that area was small but ignored the fact that collective impact in a particular area, over a period of time, was or would be significant. For taking note of these aspects, MoEF constituted, a Core Group under Chairmanship of Secretary (Environment and Forest) to look into the environmental aspects associated with mining of minor minerals, vide order dated 24.3.2009. The Core Group considered matter on following aspects: i.) Need to relook the definition of minor mineral, ii.) Minimum size of lease for adopting eco-friendly scientific mining practices, iii.) Period of lease, iv.) Cluster of mine approach for addressing and implementing EMP in case of small mines, v.) Depth of mining to minimise adverse impact on hydrological

regime, vi.) Requirement of mine plan for minor minerals, similar to major minerals, vii.) Reclamation of mined out area, post mine land use, progressive mine closure plan etc., The Core Group examined the matter and submitted a Draft report to MoEF which was considered and discussed on 29.01.2010 and thereafter final report was circulated to all the State Governments vide MoEF's DO letter dated 1.06.2010. The Ministry of Mines, Government of India also prepared draft rules called "Minor Minerals (Conservation and Development) Rules 2010", and also sent communication dated 16.05.2011, called "Environmental Aspects of Quarrying and of Minor Minerals-Evolving of Model Guidelines" along with a draft model guideline, calling for inputs, before 30.06.2011. In view of above, Court noticed that it is absolutely necessary to have an effective frame work of mining plan which will take care of all environmental issues, evolve a long term rational and sustainable natural resource base and also bio assessment protocol. Quarrying of river sand is an important economic activity of the Country with river sand, forming a crucial raw material for infrastructural development and construction industry, but excessive instream sand and gravel mining causes degradation of rivers. Instream mining lowers the stream bottom of rives which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material from within or near a streambed has a direct impact on stream's physical habitat characteristics. Sand mining, therefore, may have an adverse effect on bio-diversity as loss of habitat caused by sand mining will affect various species of flora and fauna and may also destabilise soil structure of river banks and often leaves isolated islands.

325. In these circumstances, Supreme Court said that Government of India's recommendations made in March 2010 followed by Model Rules 2010 must be given effect so as to inculcate spirit of Article 48 (A), Article 51 (A) (g) read with Article 21 of the Constitution. Court, therefore, issued directions to all States and Union Territories, MoEF and Ministry of Mines to give effect to the recommendations made by MoEF in its Report of March 2010 and the model guidelines framed by Ministry of Mines, within a period of six months from the date of the Judgment i.e., 27.02.2012 and submit compliance. Court also directed Government of India to take steps to bring into force Minor Minerals Conservation and Development Rules, 2010 at the earliest. Various State Governments and Union Territories were also directed to take steps to frame necessary rules under Section 15 of MMRD Act, 1957, taking into consideration recommendations of MoEF in its Report of March 2010 and Model Guidelines framed by Ministry of Mines, Government of India.

326. The details of recommendation made by MoEF are reproduced in para 19 of the judgment and key recommendations contained in MoEF's DO letter dated 1.06.2010 are mentioned in para 22 of judgment. Supreme Court specifically directed that lease of minor minerals including renewal of an area of less than 5 ha would be granted by concerned authorities only after getting EC from MoEF.

327. In ***Samaj Parivartan Samudaya & Others vs. State of Karnataka (2012)7SCC407***, issue of illegal mining in Andhra Pradesh was for consideration. Court constituted a Committee to collect facts and report. Report of Committee was challenged on the ground that no opportunity was given to the parties. Rejecting this argument, Court said that Committee is not discharging quasi-judicial or even administrative

functions with a view to determine any rights of the parties. It was not expected of Committee to give notice to the companies involved in illegalities or irregularities, as it was not determining any of their rights. It was simpliciter reporting matters to the Court as per ground realities, primarily with regard to environment and illegal mining, for appropriate directions. In fact, Committee was conducting a fact finding inquiry. A similar argument was raised in respect to CBI enquiry was rejected by Court observing that there is no provision in CrPC which requires investigating agency to give an opportunity to the affected party before registering an FIR or even before carrying on investigation prior to registration of case against the suspect. Court also commented upon the obligation of State where offences by carrying out illegal mining are being committed. Court said that State cannot escape its liability by stating that private complainant, who made complaint, must bring sufficient material to prove offence. Court also said that whenever and wherever State fails to perform its duties, Court shall step in to ensure that Rule of Law prevails over the abuse of process of law. Such abuse may result from inaction or even arbitrary action of protecting the true offenders or failure by different authorities in discharging statutory or legal obligations in consonance with the procedural and penal statutes.

328. In ***Orissa Mining Corporation Ltd. vs. Ministry of Environment and Forest, (2013)6SCC476***, order of MoEF&CC dated 24.8.2010 rejecting Stage-II Forest Clearance for diversion of 660.749 hectares of forest land for mining of bauxite ore in Lanjigarh Bauxite Mines in Kalahandi and Rayagada Districts of Orissa, was challenged in writ petition filed under Article 32 of the Constitution and decided by a 3 judges bench vide judgement dated 18.04.2013. The brief background facts are that M/s. Sterlite, (parent company of Vedanta), sought EC from

MoEF submitting application dated 19.03.2003 for establishing Alumina Refinery Project (ARP) in Lanjigarh Tehsil of District Kalahandi. The company stated that no forest land was involved within an area of 10 kms. Another application dated 6.03.2004 was filed by M/s. Vedanta seeking clearance for use of 723.343 ha of land (including 58.943 ha of reserve forest land) in Lanjigarh Tehsil of District Kalahandi for setting up an Alumina Refinery. Involvement of forest land rendered State of Orissa to forward a proposal dated 16.08.2004 to MoEF for diversion of 58.90 hectare of forest land which included 26.1234 hectare of reserve forest land. Later, State of Orissa withdrew its proposal. MoEF granted EC on 22.9.2004 to M/s. Sterlite to execute Alumina Refinery Project with 1 million tonne per annum capacity of refinery along with 75 MW coal based CPP at Lanjigarh on 720 hectare land, by delinking it with the mining project. Later, State of Orissa vide letter dated 24.11.2004 informed MoEF about involvement of 58.943 ha of forest land in the project where it was mentioned NIL, in the application for EC. Forest Department issued a show cause dated 5.08.2004 to M/s. Vedanta for encroachment of 10.41 acres of forest land by way of land breaking and levelling. State of Orissa, on 28.2.2005 forwarded proposal to MoEF for diversion of 660.749 ha of forest land for mining bauxite ore in favour of Orissa Mining Corporation in Kalahandi and Rayagada Districts. Central Empowered Committee (CEC), in the meantime, sent a letter dated 2.3.2005 to MOEF stating that pending examination of the project by CEC, no proposal for diversion of forest land be decided. M/s. Vedanta filed I.A. No. 1324 of 2005 seeking direction to MoEF to take a decision on his application for forest clearance which was objected by CEC. Court on 03.06.2006, directed MoEF to consult experts and submit report. Ultimately Forest Advisory Committee (FAC) on 27.10.2006 approved

proposal of Orissa Mining Corporation for diversion of 660.749 ha. of forest land for the mining, subject to the conditions. Vedanta's I.A. was disposed of by Court on 23.11.2007 making certain observations. The suggestions made in the said order were jointly agreed by M/s. Sterlite, State of Orissa and Orissa Mining Company. One Siddharth Nayak filed a Review Petition stating that Court did not pose appropriate question while deciding I.A. and has not examined ecological and cultural impact of mining in Niyamgiri Hills. MoEF agreed in principle for diversion of 660.749 ha of forest land subject to conditions and communicated its decision to Orissa Government vide letter dated 11.12.2008. EC was granted to Orissa Mining Corporation by MoEF vide proceeding dated 28.04.2009, subject to certain conditions. MoEF rejected request for stage-II clearance by order dated 24.08.2010 considering report of Forest Advisory Committee and Saxena Committee appointed by MoEF, and this order was challenged in Court. Since matter involved Tribal area, Court also examined Article 244(1) and 5th Schedule of the Constitution. Referring earlier judgment in ***Samatha vs. State of Arunachal Pradesh, (1997)8SCC191***, Court said that all relevant clauses in the Schedule and Regulations should be harmoniously and widely be read as to elongate Constitutional objectives and dignity of person, to Scheduled Tribes and ensuring distributive justice as an integral scheme thereof. It also referred to Panchayats (Extension to Scheduled Areas) Act, 1996 extending Part IX of the Constitution to the Scheduled Areas and that its validity was upheld in ***Union of India vs. Rakesh Kumar, (2010)4SCC50***. It also examined provisions of Schedule Tribes and other traditional forest dwellers (Recognition of Forest Rights) Act, 2006, a social welfare or remedial statute, enacted to protect a wide range of rights of forest dwellers and Schedule Tribes including customary rights

to use forest land as a community forest resource and not restricted merely to property rights or to areas of habitation. The inter se relationship of Forest Rights Act and Mines and Minerals Development Regulations Act, 1957 was considered and relying on earlier judgement in ***Amritlal Athubhai Shah and others vs. Union Government of India and Another, (1976)4SCC108***, Court held, "*the State Government is the owner of minerals within its territory, and the minerals vest in it and hence power to reserve any particular area for Bauxite mining for a public section corporation"*. However, for deciding nature and extent of individual or community forest rights or both, Court found that it is the Gram Sabha which is the competent authority which can take such a decision and hence directed Gram Sabha to take appropriate decision on the question, whether Schedule Tribes had any religious right of worship over the Niyamgiri hills, and the writ petition was disposed of.

329. In ***G. Sundarrajan vs. Union of India & Others, (2013)6SCC620***, ecological and environmental issues in the context of setting up of a nuclear power plant at Kudankulam in the State of Tamil Nadu were considered. National policy was pronounced by Central Government to develop, control and use of atomic energy for welfare of people of India. Atomic Energy Act, 1948 was repealed and replaced by Atomic Energy Act 1962. In September 1987, Government of India formed a public sector company i.e., Nuclear Power Corporation of India to design, build and operate nuclear reactors in the country. The nuclear power was broadly utilized for generation of electricity and about 20 power reactors were installed with a capacity of 4780 MWe, between 1969 to 2011. Seven more were proposed with a capacity of 5300 MWe which included Kudankulam. Examining the fact that in India bulk of the electricity i.e., 64% is generated from thermal sources, 18% was available

from hydro project and 15% from renewal sources, and only 3% share of electricity generation was attributable to nuclear projects, Court observed that it cannot sit over the judgment/decision taken by Government for setting up of nuclear plant. It is not for Court to determine whether a particular policy or a particular decision taken in fulfillment of a policy is fair or not. In Para 15, Court said, "*It is not for Courts to determine whether a particular policy or a particular decision taken in fulfillment of a policy, is fair. Reason is obvious, it is not the province of a court to scan the wisdom or reasonableness of the policy behind the Statute.*" However, Court proceeded to examine only legal aspects involving Statutes as also the environmental issues. Entire project was examined with the consideration that people's comfort, happiness, prosperity and economic growth of nation is always concern of their representatives in the Parliament. Public opinion, national policy, economic growth, sustainable development, energy security, are all intrinsically interlinked. One cannot be divorced from other, all the same, a balance has to be struck. National policy is that atomic energy has a unique position in the emerging economics in India. Nuclear energy is a viable source of energy and it is necessary to increase country's economic growth. Nuclear energy is considered in India as a sustainable source of energy and country cannot afford to be a nuclear isolated nation, when most of the developed countries consider it as a major source of energy for their economic growth. In this back drop, Court considered, 'whether project had obtained all necessary environmental clearances' and said that the mere fact that project is a nuclear one and has been cleared by Atomic Energy Commission and other bodies related with nuclear establishments, would not be sufficient to confer authority upon Project Proponent to commission a nuclear project unless it conforms to the standards set by

statutory authorities like MoEF and State Pollution Control Board and follow environmental laws. Court found that, when project was sought to be commenced, Regulations relating to Coastal area were not available, EC was granted by competent authority and neither there was any violation of CRZ Notification, 1991 nor there was violation of EIA 1994 since environmental clearance was granted to units 1 and 2 on 19.05.1989. It also held that for units 3 to 6 EC was granted in accordance with EIA 2006. Meeting various objections, Court did not find any legal or otherwise flaw in execution of the project. Serious apprehension expressed by certain section were repelled by observing that apprehensions howsoever, legitimate, cannot override justification of the project. Nobody on this earth can predict what would happen in future and to a larger extent we have to leave it to the destiny. But once justification test is satisfied, apprehension test is bound to fail. Court said that apprehension is something, we anticipate with anxiety or fear, a fearful anticipation, which may vary from person to person. Power generation through a nuclear plant, set up after following all safety standards, rules and regulations, is for welfare of people and economic growth of the country. Nuclear energy assumes an important element in country's energy mix for sustaining economic growth of natural and domestic use which in future has to replace a significant part of fossil fuel like coal, oil, gas etc. Electricity is the heart and soul of modern life, a life, meant not for the rich and famous alone but also for the poor and down trodden. They should also have an adequate means of livelihood, job opportunities for which we have to set up Industries and commercial undertakings in the public as well as private sector and also have to invite foreign investment. Referring to ***Chameli Singh & Others vs. State of U.P. & Another, (1996)2SCC549***, Court reiterated that in an

organized society right to live as a human being is not ensured by meeting only the animal needs of man, but secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. Right to shelter includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and civil amenities like road etc. so as to have easy access to his daily avocation. Nuclear power plant is being established not to negate right to life but to protect the said right guaranteed under Article 21.

330. In concurring judgment, Hon'ble Dipak Mishra, J. in ***G. Sundarrajan (supra)***, referred to the role of welfare state and reminded the concept of *parens patriae* recognised in ***Charan Lal Sahu vs. Union of India, (1991)6SCC613*** and the maxim *salus populi (EST) suprema* lex, i.e., regard for public welfare is the highest law. His Lordship also referred to other maxim that is *salus republicae suprema lex* i.e. safety of State is a supreme law, and said that law has many a mansion and the mosaic of law covers many spectrums so that both the maxims, namely, *solus populi supreme lex* and *salus republicae supreme lex*, can harmoniously coexist. His Lordship also referred to judgment in ***T.N. Godavarman Thirumulpad (supra)***, observing that no development is possible without some adverse effect on the ecology and environment, the projects of public utility cannot be abandoned and it is necessary to adjust interest of people as well the necessity to maintain environment. A balance has to be struck between the two interests. When commercial venture or enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be bye passed.

331. In ***Association for Environment Protection vs. State of Kerala and Others, (2013)7SCC226***, Court considered an appeal arising from judgment of Kerala High Court. Writ Petition raising a question of illegal construction on the banks of river Periyar within the area of Aluva Municipality was dismissed by High Court, not by discussing matter on merit, but only on ground that complainant has questioned construction of a hotel while builder was constructing a restaurant as part of the project for renovation and beautification of Manalpuram Park. Issue was raised by an Association, a registered body, engaged in protection of environment in State of Kerala. In 2005, Aluva Municipality reclaimed a part of Periyar river. District Tourism Promotion Council, Ernakulam decided to construct a restaurant on reclaimed land by citing convenience of public coming on Sivarathri festival. Proposal was forwarded to State Government by including the same in project for renovation and beautification of Manalpuram Park. Administrative sanction was granted by State Government by order dated 20.05.2005. When construction was started by State Promotion Council, ***W.P.(C) No. 436/2006*** was filed in High Court seeking a direction to the respondents restraining from continuing with construction on the bank of river Periyar and to remove construction already made. Writ Petition was dismissed by High Court, after taking cognizance of Government sanction order dated 20.05.2005. The construction was challenged before Supreme Court stating G.O. dated 13.01.1987 mandated a reference to environmental planning and coordination committee for review and assessment where cost of scheme is more than 10 lakhs but no such review and reassessment was made. Court found that construction was sanctioned and proceeded in violation of mandate of Government order dated 13.01.1987. Court also read Government order as power exercised to protect and improve

environment envisaged under Article 48A and thus mandate of the said order could not have been condoned. Accordingly, Court allowed appeal, and while setting aside High Court's order, allowed Writ Petition. It also directed respondents to demolish structures raised in the park. Court resorted to the above direction relying on various earlier orders and specifically referred to the decision in ***M.I. Builders Pvt. Ltd. vs. Radhey Shyam Sahu, (1999)6SCC464***, where decision of Lucknow Nagar Mahapalika permitting construction of an underground shopping complex in Jhandewala Park, Aminabad Market, Lucknow was set aside by High Court and construction made on the park land was directed to be demolished and this was upheld up Supreme Court.

332. In ***Samaj Parivartana Samudaya & Others vs. State Of Karnataka & Others, (2013)8SCC154*** (order dated 18.04.2013 deciding Writ Petitions 562 of 2009, 411 of 2010, 66 of 2010 and 76 of 2012 and other connected appeals), issue of systematic plunder of natural resources by a handful of opportunists seeking to achieve immediate gains in the context of mining of Iron Ore and allied minerals in the State of Karnataka was considered. While deciding, Court referred to its earlier order dated 28.09.2012 wherein resumption of mining was allowed subject to payment of **minimum compensation of Rs. 5 crores per hectare** and further additional amount on the basis of final determination of national loss caused by illegal mining and illegal use of land for overburden dumps, roads, offices, etc. **Court also required guarantee money to be paid by leaseholders, to the extent of 15% of the sale proceeds of the iron ore sold**. Looking to the gravity of situation, Court observed that an extraordinary situation has arisen on account of large scale illegalities committed in the operation of mines in question resulting in grave and irreparable loss to the forest wealth of the

country besides colossal loss caused to the national exchequer. The situation being extraordinary, the remedy, indeed, must also be extraordinary. Illegal mining, apart from playing havoc on the national economy had, in fact, cast an ominous cloud on the credibility of the system of governance by laws in force. It has a chilling and crippling effect on ecology and environment. Thereafter in the light of the joint committee constituted by court, it passed various directions.

333. The issue of protection of Asiatic Lion was considered in ***Centre for Environmental Law, WWF-India vs. Union of India, (2013)8SCC234***. While considering legal framework, Court observed that Bio Diversity Act, 2002 was enacted for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the utilisation of genetic resources. **Article 21 was extended by observing that it protects not only the human rights but also casts an obligation on human being to protect and preserve animals as species are becoming extinct and conservation and protection of environment is an irreparable part to Right to Life.** Consequently, directions were issued for identification of the species which are endangered and take appropriate remedial steps.

334. ***Laxmi Narain Modi vs Union of India & Others, (2013)10SCC227***, Court needed guidelines issued by MoEF for transportation of animal and slaughter Houses for proper implementation of provisions of prevention of cruelty to animals, (Establishment and Registration of Societies for Prevention of Cruelty to Animals) Rules, 2000, the Environment Protection Act, 1986, the Solid Waste (Management and Handling) Rules, 2000, the Prevention of Cruelty to

Animals (Slaughter House) Rules, 2000 and directed all the Governments to follow the said guidelines.

335. In ***Alaknanda Hydro Power Co. Ltd vs. Anuj Joshi & Others (2014)1SCC769***, ecological issue relating Srinagar Hydro Electric Project (SHEP) located in Tehri/Pauri Garhwal on river Alaknanda came up for consideration. Applicability of EIA 1994 with regard to grant of EC when it was already granted long back, also came up for consideration. Central Electricity Authority exercising power under Section 29 of Electricity (Supply) Act, 1948, issued Techno-Economic Approval to establish 200 MW hydro generation project over river Alaknanda, in its meeting dated 6.11.1982, subject to environmental clearance from Ministry of Environment. Initially project was clubbed with some other projects but later it was segregated. A separate Environment Impact Assessment (EIA) was made with regard to SHEP on 9.2.1985. Consequently, MoEF granted EC vide letter dated 03.05.1985. Project involved diversion of 338.38 hectares of forest land which was granted by Forest Department vide letter dated 15.04.1987. Subsequently, Electricity Board proposed to increase capacity from 200 MW to 330 MW which was approved by Central Electricity Authority and Planning Commission also granted investment approval. The project could not make any effective progress due to paucity of funds with State Electricity Board. State Government entered into a Memorandum of Understanding (MOU) with M/s Duncan Industries Ltd. on 27th August, 1994 for development of project. M/s Duncan Industries Ltd. in terms of the MOU established a generating company 'Duncan North Hydro Power Co. Ltd.'. Energy Department of Uttar Pradesh wrote to MoEF vide letter dated 04.09.1997 to transfer EC in favour of the said company. M/s Duncan submitted revised EIA and conveyed that the project of enhanced capacity had to be transferred to

M/s Duncan. MoEF consequently transferred EC to M/s. Dunan on 27.07.1999. Central Electricity Authority also granted Techno Economic Clearance vide letter dated 14.06.2000 to Duncans. M/s. Duncan also gave up project after carrying out some work and then it was substituted by M/s. Alaknanda Hydro Power Company Ltd. (AHPCL) in whose favour also EC was transferred by MoEF vide letter dated 27.03.2006. Writ Petition was filed in 2009 in High Court of Uttarakhand at Nainital challenging order enhancing capacity to 330 MW. Writ Petition was disposed of on 19.04.2011 permitting M/s. AHPCL to approach MoEF for a specific decision as to the clearance for increased capacity of generation and increased height of the dam. MoEF in its turn clarified that transfer letter dated 27.03.2006 was for 330 MW and communicated its decision dated 03.08.2011. It was challenged in Writ Petition no. 68 of 2011 i.e., a PIL which was disposed of by order dated 3.11.2011 directing M/s AHPCL to place the matter before MoEF again and Ministry was directed to hold a public hearing. That is how matter came before Supreme Court in Appeal by AHPCL. Court examined the matter and disposed of by issuing various directions on the subject of safety of dam, safety and security of the people, muck management and disposal Catchment Area Treatment. Court also expressed concern over mushrooming of large number of hydroelectric projects in State of Uttrakhand and its impact on Alaknanda and Bhagirathi river basins. Taking note of recent tragedies/calamities suffered by the people of Uttrakhand, Court issued certain directions in para 52 of the judgment which included that no further EC or forest clearance be granted for any hydro-electricity power project in State of Uttrakhand until further order and on further examination by expert committee to be constituted by MoEF.

336. In ***Godrej & Boyce Mfg. Co. Ltd. & Another vs. State Of Maharashtra, (2014)3SCC430***, a question arose, "*whether disputed land was a forest land*", and further, "*whether constructions already raised in last more than half a century should be directed to be demolished"*. M/s. Godrej & Boyce herein referred to as GBMCL, by registered deed of conveyance dated 30.07.1948, acquired land in Vikhroli in Salsette taluka in Maharashtra. Land belonged to one Nowroji Pirojsha, (successor in interest of Framjee Cawasjee Banaji) who was given a perpetual lease/kowl for the land by Government of Bombay on 07.07.1835. Land was described in the perpetual lease/kowl as "waste land". The dispute raised before Court related to Survey Nos. 117,118 and 120 covering area of 133 acres and 38 gunthas of land. On 27.08.1951, Legislative Assembly of State of Bombay passed Salsette Estates (Land Revenue Exemption Abolition) Act, 1951 which came into force on 1.03.1952. It provided that waste lands granted under a perpetual lease/kowl, not appropriated or brought under cultivation before 14.08.1951, shall vest in and be the property of the State. State Government claimed that disputed property has vested in it under Section 4 of the aforesaid Act which was challenged by GBMCL in Suit No. 413 of 1953, filed in Bombay High Court seeking a declaration that it was the owner of the disputed land. Suit, though contested by Government but ultimately decided by a consent decree on 8.01.1962 to the effect that except for an area of 31 gunthas, all other land was appropriated and brought under cultivation by Godrej before 14.08.1951 and are the property of Godrej. In 1967, a development plan for the city of Bombay was published. Next development plan was published in 1991. In both development plans, disputed land was designated as 'R' i.e. 'Residential'. On publication of the first development plan, Godrej applied

for construction of residential buildings which was allowed. It raised four such buildings. In 1976, Urban Land (Ceiling and Regulation) Act, 1976 came into force. The disputed land became excess land being beyond ceiling limit. Godrej applied for exemption which was allowed by State Government. Again, Godrej applied for further construction of multi storey buildings which was granted and constructions were made resulted in more than 40 multi-storeyed residential buildings on the disputed land. In 1975, State Legislature enacted Maharashtra Private Forests (Acquisition) Act, 1975. In 2006, Forest Authorities issued notices to M/s. Godrej to stop construction on the ground that disputed land was affected by the reservation of a private forest and hence no construction could be carried out without permission of Central Government under FC Act, 1960. This notice was challenged in High Court but Writ Petition was dismissed and then came up in appeal before Apex Court. The first question was, 'whether land is not "forest' within the meaning of Section 2 (c-i) of the Private Forests Act'. The question was answered in favour of M/s Godrej. In Para 48, Court said "*Under the circumstances, by no stretch of imagination can it be said that any of these disputed lands are 'forest' within the primary meaning of that word, or even within the extended meaning given in Section 2 (c-i) of the Private Forests Act.*" Thereafter, question of notice was decided in favour of M/s Godrej. The next question considered was with regard to decision of Government for demolition even if the land held to be forest land. Court said that the broad principle laid down by Supreme Court is not in doubt. An unauthorized construction, unless compoundable in law, must be razed. Court referred to ***MI Builders case (supra)*** where order of demolition was passed; ***Pleasant Stay Hotel And Another vs. Palani Hills Conservation, (1995)6SCC127*** wherein sanction was granted for two

floors but 7 floors were constructed and Court held that 5 floors constructed illegally, should be demolished; and ***Pratibha Co-operative Housing Society Ltd. vs. State of Maharashtra, (1991)3SCC341***, where also 8 floors were constructed in violation of FSI norms and hence **demolition order of 6 floors completely and 7th floor partially was issued.** However, in the case of Godrej, Court held that the above directions had to be given considering various circumstances and practical application of the principle. Municipal authorities and builders conspiratorially join hands in violating laws but the victim is an innocent purchaser or investor who pays for mal-administration; where activities have undergone for several decades, various permissions have been granted by statutory authorities and innocent buyers/purchasers have believed on state sanctions, such innocent buyers deserve to be protected.

337. In ***Municipal Corporation of Greater Mumbai and Others vs. Kohinoor CTNL Infrastructure Company Private Ltd., (2014)4SCC538***, issue of minimum recreational/amenity open spaces and other amenities including safety in respect of high rise/multi storied buildings was considered. Reduction of recreational area, height of the building vis-a-vis width of the roads, population of the area having impact on the traffic and height of the building resulting in fire hazards and safety problem, were all pointed out and non-application of mind and lack of consideration on these aspects by concerned statutory bodies was deprecated. With regard to open space/recreational area, Court said that it cannot be reduced to the minimum provided else it will violate Fundamental Right to Healthy Environment under Article 21 of the Constitution. Similarly, if height is increased causing fire hazard that also cannot be permitted. Court held that the human life cannot be made to

suffer only on the ground that in redevelopment scheme sufficient access cannot be provided for fire engines to enter the plot from one side. **Not providing a minimum space of six meters which makes room for the fire engine to access the building, amounts to violation to Right to Life and equality to the residents of these buildings by not providing the same standard of safety to them which are available to residents of all buildings.** Court directed fire department that it must insist upon the builders of all buildings to get certification of at least once in six months that the access to the building, the internal exits and the internal firefighting arrangements are maintained as per the expectations under the DCR, the norms of the fire department and must check them periodically on its own. Court also deprecated permission of construction of high-rise buildings creating congestions.

338. In ***Goa Foundation vs. Union of India & Others, (2014)6SCC590***, relying on interim report dated 15.03.2012 submitted by Justice Shah Commission to Ministry of Mines, Government of India recording its findings in respect of illegal Mining of iron ore in violation of Forest (Conservation) Act, 1980 (hereinafter referred to as 'FC Act 1980'), Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'MMDR Act, 1957'), Mineral Concession Rules 1960 (hereinafter referred to as 'MC Act, 1960'), EP Act, 1986, Water Act, 1974, Air Act, 1981 and Wild Life (Protection) Act, 1972 (hereinafter referred to as 'WLP Act, 1972'), Goa Foundation came to Court by filing Writ Petition under article 32 of the Constitution, in Supreme Court and made a prayer that direction be issued to the Respondents to prosecute all those who have committed offences under different laws and are involved in pilferage of State revenue through illegal mining activities in State of Goa, including public servants who have aided and abated the offences. Goa

Foundation also prayed that an independent authority be appointed with full powers to take control, supervise and regulate mining operations in State of Goa and to ensure implementation of laws. Lastly, Goa Foundation also prayed for some incidental and consequential reliefs. Entertaining Writ Petition, Supreme Court on 05.10.2012, issued notice directing Central Empowered Committee to submit report on the issues raised in the Writ Petition. Supreme Court further directed that, till further orders, all mining operations in the leases identified in the report of Justice Shah Commission, transportation of iron ore and manganese ore from those leases, whether lying at the mine-head or stockyards, shall remain suspended, as recommended in the said report. Simultaneously, some mining lessees of State of Goa and Goa Mining Association had filed Writ Petition in Bombay High Court, (Goa Bench), seeking a declaration that report of Justice Shah Commission is illegal. They also prayed to quash the order issued by State Government, suspending mining operation in State of Goa, pursuant to the aforesaid report. MoEF's order dated 14th September, 2012, directing to keep Environmental Clearances to mines, in State of Goa, in abeyance, was also sought to be quashed. On the application moved before Supreme Court, Writ Petitions filed before Bombay High Court, were transferred to be heard in Supreme Court, along with ***Writ Petition (Civil) No. 435/2012*** filed by Goa Foundation. Some Background facts, giving rise to the above matter are, that prior to 19.12.1961, when Goa was a Portuguese territory, the then Government granted mining concessions in perpetuity to certain persons (hereinafter referred to as '**concessionaires**'). Goa was liberated on 19.12.1961. MMDR Act, 1957 was made applicable to State of Goa on 1.10.1963. Controller of Mining Leases, on 10.3.1975, issued a notification calling upon every lessee and sub-lessee to file returns under

Rule 5 of Mining Leases (Modification of Terms) Rules, 1956 and sent copies of the notification to concessionaires in Goa. The above notification was challenged by concessionaires in Bombay High Court (Goa Bench). Vide judgment dated 29.09.1983, in ***Vassudeva Madeva Salgaocar vs. Union of India,*** **(1985)1Bom.CR36**, Bombay High Court restrained Union of India from treating concessions as mining leases and from enforcing notification against concessionaires. To overcome difficulty arisen due to above judgment, Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987 was passed which received assent of President of India on 23.05.1987. The said act abolished mining concessions and declared that with effect from 20.12.1961, every mining concession will be deemed to be a mining lease granted under MMDR Act, 1957 and that provisions of MMDR Act, 1957 will apply to such mining lease. The above Abolition Act was challenged by lessees in Bombay High Court wherein an interim order was passed permitting lessees to carry on mining operations and mining business in the concessions for which renewal applications had been filed under 24-A of the MC Rules, 1960. The above ***Writ Petition 177 of 1990, Shantilal Khushaldas and Bros. (P) Ltd. vs. Union of India*** was decided by Bombay High Court vide judgment dated 20.6.1997. The validity of Abolition Act, as such, was upheld, but Court held Section 22(i)(a) of Abolition Act to operate prospectively and not retrospectively. Concessionaires filed appeal in Supreme Court in ***SLP (C) no. 23827 of 1997, Shantilal Khushaldas and Bros. (P) ltd. vs. Union of India*** wherein an interim order was passed on 2.3.983 permitting concessionaires to carry on mining operations and mining business in the mining areas for which renewal applications were made but imposing a condition that lessees would pay to the Government, dead rent from the date of commencement of

Abolition Act. When appeal was pending, Central Government appointed a Commission under Section 3 of Commissions of Inquiry Act, 1952, by notification dated 22.11.2010, to enquire into and determine nature and extent of mining, trade and transportation, done illegally or without lawful authority, of iron ore and manganese ore, and the losses therefrom; and also, to identify the person etc., engaged in such illegal activities. The term of reference contained four aspects. Justice Shah Commission was constituted in view of various reports received from various State Governments regarding widespread mining of iron and manganese ore, in contravention of MMDR Act 1957, FC Act 1980, EP Act 1986 and rules and guidelines issued thereunder. Justice Shah submitted an interim report on 15th March, 2012 to Ministry of Mines, Government of India which was tabled on Parliament along with an Action Taken Report. State Government of Goa passed an order on 10.9.2012, suspending all mining operations in State of Goa, with effect from 11.9.2012. Consequently, District Magistrates in State of Goa, banned transportation of iron ore in their respective Districts. Director of Mines and Geology, ordered verification of mineral ore which was already extracted, and also issued show cause notices on 13.9.2012 to about 40 mining leases. On 14.9.2012, MoEF issued an order keeping in abeyance all ECs granted to mines in State of Goa. In this backdrop, Goa Foundation came in Supreme Court and other litigation arose as already stated. Report of Commission was challenged primarily on the ground of violation of Principles of the Natural Justice. Mining lessees argued that they were not given any opportunity of hearing in the Inquiry conducted by the said Commission and, therefore, Principles of Natural Justice have been violated. Supreme Court recorded stand of Government of Goa that no action will be taken against mining lessees only on the basis of

findings recorded in the report of Justice Shah Commission but it would make its own assessment of facts after giving opportunity of hearing to all concerned parties and in that view of the stand taken by State Government, Supreme Court, in para 14 of judgment, observed that it is not inclined to quash Justice Shah Commission's Report on the ground of violation of Principles of Natural Justice but also would not direct to prosecute lessees only on the basis of findings recorded in the said report. However, looking to the serious dispute raised in the matter pertaining to environment, Supreme Court proceeded to examine legal and environmental issues raised in the Report of Justice Shah Commission. The first issue was regarding continuance of leases, as deemed renewed. Court held, in para 28 of judgment, that deemed mining leases of the then lessees in Goa, expired on 22.11.1987, under sub-section (1) of Section 5 of Abolition Act. The maximum of 20 years renewal period of deemed mining leases in Goa, as provided in sub-section (2) of Section 8 of MMDR Act 1957 read with sub-rules (8) and (9) of Rule 24-A of MC Rules 1960, expired on 22.11.2007. The next question was, dumping of reject, tailing or waste, whether can be kept beyond lease area. This question was answered in negative i.e., against the stand taken by mining lessees. Court said (i) a holder of mining lease does not have any right to dump any reject, tailings or waste in any area outside the leased area of the mining lease on the strength of a mining lease granted under MMDR Act, 1957 and rules framed thereunder. Even if such area is outside the leased area of mining lease, belong to State or any private person, but if mining lease does not confer any right whatsoever on the holder of a mining lease to dump any mining waste outside the leased area, he will have no legal right whatsoever to remove his dump, overburden, tailings or rejects and keep the same in an area

outside the leased area. Dumping of waste materials, tailings and rejects, outside leased area, would be without valid authorisation under the lease deed. In view of Section 9(2) of MMDR Act, 1957, if mineral is removed or consumed from the leased area, holder of mining lease, has to pay royalty. The term 'mineral' includes tailings or rejects, excavated during mining operations. Rule 64-C of MC Rules, 1960, firstly, did not permit dumping of tailings or rejects in any area outside the leased area and even otherwise if a rule goes beyond what the section contemplates, the rule must yield to the statute as held in ***Central Bank of India vs. Workmen, AIR1960SC12***, therefore, Rule 64-C of the MC Rules, 1960, if suggests dumping of tailings or rejects outside the leased area, it must give way to section 4 of MMDR Act, 1957 which does not authorise dumping of minerals outside the leased area. The said Rule must give way to section 9 of MMDR Act, 1957 which does not authorise removal of minerals, outside the leased area, without payment of royalty. Even Rule 16 of Mineral Conservation and Development Rule 1988 (hereinafter referred to as 'MCD Rules, 1988') does not permit dumping of overburden and waste materials, obtained from mining operation, outside the leased area. The lessees also cannot be allowed to dump overburden tailings or rejects in the area owned by them for the reason that most of the land, owned by lessees, is located in the forest area where non-forest activities such as mining is not permissible in view of section 2 of FC Act, 1980 and it also requires prior EC under EP Act, 1986 read with rule 5 (3) of EP Act, 1986. For dumping of mining waste on the private land, Court said that prior clearance of Central Government under notification issued under Rule 5 (3) of EP Rules, 1986 would be necessary. Justice Shah Commission found that despite restriction on mining activities inside National Parks, Sanctuaries and other protected and eco-sensitive areas,

mining activities have been permitted within 10 km and inside the national parks, sanctuaries and protected area. Thus, Court considered next question as to within what distance from the boundaries of national parks and wildlife sanctuaries mining is permissible or not in the State of Goa. Answering this question, Court found that State of Goa has taken a clear stand that no mining operations were allowed inside any National Park or Wildlife Sanctuaries hence question to this extent did not require any adjudication. Next question was ***"whether mining could have been permitted or could be permitted within a certain distance from the boundaries of national park or wildlife sanctuary in the State of Goa"***. Answering it, Court said that the argument advanced on behalf of lessees that until a notification is issued under EP Act, 1986 and rules framed thereunder prohibiting mining activities in an area outside the boundaries of a national park/wildlife sanctuary, no mining can be prohibited, is misconceived. Here Court relied on article 21 of the constitution which guarantees right to life and further refers to a three Judge Bench Judgment in ***Noida Memorial Complex near Okhla Bird Sanctuary, In Re, (2011)1SCC744***, where it was held that environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution. Environment is, therefore, a matter, directly under the Constitution and if Court perceives any project or activity as harmful or injurious to the environment, it would feel obliged to step in. Then, with regard to permissible mining activities, Supreme Court referred to order dated 4.8.2006 in ***T.N. Godavarman Thirumulpad vs. Union of India, (2010)13SCC740***, and 4.12.2006 in ***Goa Foundation vs. Union of India, (2011)15SCC791***, and said that the above orders make it clear that grant of temporary working permits should not result in any mining activities within safety zone, around National Parks and Wildlife

Sanctuaries, and as an interim measure, 1 km safety zone was to be maintained. Since the said orders were not varied subsequently, Supreme Court directed that the said order have to be followed and there will be no mining activity within 1 km safety zone around National Park and Wildlife Sanctuary in State of Goa.

339. The contention advanced on behalf of Goa foundation, that within 10 kms from the boundaries of national park or wildlife sanctuary, no mining activity can be permitted, was returned by Supreme Court holding that no such order was issued either in ***Goa Foundation vs. Union of India (supra)*** or elsewhere. Court further referred to EP Rules, 1986 and said that until Central Government takes into account various factors mentioned in sub-rule 1, follows procedure laid done in sub-rule 3 and issues a notification under rule 5 prohibiting mining operations in a certain area, there can be no prohibition under law to carry on mining activity beyond 1 km of the boundaries of national parks or wildlife sanctuaries. The issue of the distance, with regard to mining activities qua National Park and Sanctuaries, was decided accordingly. The next question was regarding transfer or amalgamation of lease for which Justice Shah Commission observed that Rule 37 and 38 of MC Rules, 1960 were violated. Here State Government took a stand that there was a practice prevailing in State of Goa that a mining lease, by a person other than lease holder, can be operated. Deprecating it, Supreme Court said that rules 37 and 38 clearly prohibit such transfer or amalgamation unless permitted specifically by State Government and directed State Government not to allow such activities in violation of rules 37 and 38. Court also found from CEC's Report that there was no effective checks and measures with regard to production and transportation of mineral from the mining leases in the State of Goa, hence there was every

possibility to believe that excess quantity of minerals were extracted and transported. Court also found existence of Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013 but non-observance thereof by the Authority. It directed State Government to enforce above rules, strictly.

340. The next question related to environment. "To what extent, mining has damaged environment in Goa" and "what measures are to be taken to ensure intergenerational equity and sustainable development". In this regard, Court vide order dated 11 and 12.11.2013 (***Goa Foundation vs. Union of India, (2014)6SCC738***) constituted an Expert Committee to conduct, a macro-EIA study, and propose sealing of annual excavation of iron ore in State of Goa, considering its iron ore resources, carrying capacity, keeping in mind Principles of Sustainable Development, Intergenerational Equity and all other relevant factors. The said Committee submitted report dated 14.3.2014 indicating that economy of Goa depends upon tourism, iron ore mining, besides agriculture, horticulture and minor industries. Commenting upon damage to environment in State of Goa, Expert Committee said that production of iron ore has drastically jumped on, from 14.6 million tons in 1941 to 41.17 million tons in 2010-2011. This has led to massive negative impact on all ecosystems leading to enhanced air, water and soil pollution, affecting quality of life, across Goa. With regard to sustainability of iron ore mining in Goa, Expert Committee opined that mining at the rate of 20 to 27.5 million tons per annum may be sustainable in State of Goa. Supreme Court referred to a report of Indian School of Mines, Dhanbad (hereinafter referred to as 'ISM'), who was entrusted, by MoEF, to carry out regional impact assessment study of mining in Goa region. In the said report, ISM recommended a cap of 24.995 MT per annum on the basis of

carrying capacity of existing infrastructure of State of Goa. Relying on the said report, Court held that a cap between 20 to 27.5 MT per annum should be fixed for excavation of iron ore in State of Goa. Court also found that Goa State Pollution Control Board (Goa PCB) has immense powers under Air Act, 1981 and Water Act, 1974 but despite that, iron ore production in State of Goa has led to massive negative impact on all ecosystem leading to enhanced air, soil and water pollution affecting quality of life across State of Goa, and Goa PCB has miserably failed in discharge of its statutory functions. Supreme Court's observations are, ***"Rather, it appears that the Goa State Pollution Control Board, though conferred with immense statutory powers, has failed to discharge its statutory functions and duties"***. Court directed that Goa PCB would exercise strict vigil and monitor water and air quality and if lessees failed to conform the prescribed norms, Goa PCB must not hesitate in closure of mining operations of such lessees. Further, for restoration of environment, Court directed that **10% of sale proceeds of all iron ore**, excavated in State of Goa, and sold by lessees, would be appropriated towards 'Goan Iron Ore Permanent Fund', constituted for the purpose of sustainable development and intergenerational equity.

341. The next question, "whether mining in future should be allowed by granting leases in auction or otherwise", was answered by noticing observations in ***Centre for Public Interest Litigation vs. Union of India (2012)3SCC1***, that ***"State of the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good."*** Court also noticed observations of constitution bench in ***Natural Resources Allocation, In Re, Special Reference No.***

1 of 2012, (2012)10SCC1 that auction, despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources, and therefore, every method other than auction cannot be struck down as ultra vires of the constitutional mandate. It is for State Government to decide as a matter of policy in what manner leases of mineral resources would be granted but this should be in accordance with statutory provisions i.e., MMDR Act, 1957 and rules framed thereunder by taking a policy decision. Supreme Court also quoted opinion of four Judges out of five Judges, in ***Natural Resources Allocation (supra)***, (in para 149), that alienation of natural resources is a policy decision and the means, adopted for the same, are, thus executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit, maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue, may be arbitrary and face wrath of Article 14 of the Constitution. Hence no hard and fast method ought to be laid by Court but judicial scrutiny of such matter would depend on fact and circumstances in each case. Supreme Court also held that the order issued by Government of Goa suspending mining operations cannot be quashed since in any case renewal of deemed mining leases expired on 22.11.2007 and any mining thereafter was illegal. Therefore, order dated 10.9.2012 of Government of Goa and 14.9.2012 of MoEF, will have to continue till decision is taken by State Government to grant fresh leases and MoEF takes decision for granting fresh EC for mining project in accordance with law. Supreme Court ultimately issued directions which are briefly stated in para 87 and 88 of the judgment. The above judgment

shows that for remedy to the damaged done to environment, 10% of sale proceeds of the subject i.e., goods and in this case mined iron ore, was required to be paid by lessees who excavated the said ore, illegally. The amount collected was to be kept in a separate fund, and to be consumed by appropriate authorities for sustainable development and intergenerational equity. Further, here environment compensation was determined at 10% in view of the fact that mining cannot be stopped, and would continue as providing revenue to Government and heavy profits to illegal minors. Further, environment compensation was determined on the rate of sale proceeds i.e., selling rate of mineral.

342. In ***Animal Welfare Board of India vs. A. Nagaraja & Others, (2014)7SCC547*** (order dated 07.05.2014 passed in Civil Appeals No. 5387/2014 with Nos. 5388/2014, 5389-90/2014, 5391/2014, 5392/2014, 5393/2014 and 5394/2014, Writ Petition (C) No. 145/2011, TCs Nos. 84-86, 97-98 and 127/2013) (commonly known as **Jallikattu matter**), rights of animals under Constitution of India, laws, culture, tradition, religion and ethology arising from the events held in the States of Tamil Nadu and Maharashtra, namely, Jallikattu, bullock cart races etc. came up for consideration. Issue was examined in the light of provisions of Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as 'PCA Act, 1960'); Tamil Nadu (Regulation of Jallikattu) Act, 2009 (hereinafter referred to as "TNRJ Act, 2009") and notification dated 11.7.2011 issued by Government of India under Section 22(ii) of PCA Act, 1960. The leading appeal had arisen from judgment of Madras High Court (at Madurai), dated 09.03.2007 passed in ***K. Muniasamythevar v. Supt. of Police, (2007)5MLJ135.*** Some other Writ Petitions were also filed by some organizations working against cruelty to animals wherein Notification dated 11.07.2011 was challenged and the said Writ Petitions

were transferred to Supreme Court. Another SLP No. 13199/2012, challenged Bombay High Court's order dated 12.03.2012 passed in ***Gargi Gogoi v. State of Maharashtra, PIL(L) No. 28/2012.*** Bombay High Court has upheld MoEF Notification dated 11.07.2011 and corrigendum issued by Government of Maharashtra, dated 24.08.2011 prohibiting all Bullock-cart races, games, training, exhibition etc. A review application was also filed but dismissed by Bombay High Court on 26.11.2012 and this was also challenged in SLP No. 4598/2013. The events of Jallikattu or Bullock-cart races etc., were challenged as constituting cruelty to animals alleging that there is no historical, cultural or religious significance, either in State of Tamil Nadu or Maharashtra and in any case provision of PCA Act, 1960 would supersede such practices and must be observed and enforced strictly. Court reminded a word of caution and concern and said in para 15 that the issue raised had to be examined, primarily keeping in mind welfare and well-being of the animals, not from the stand point of the Organizers, Bull tamers, Bull Racers, spectators, participants or respective States or Central Government, since a welfare legislation of a sentient being, over which human beings have domination, was being dealt with. Court would apply, in deciding the issue, standard of "Species Best Interest", subject to just exceptions, out of human necessity. Referring to PCA, 1960, Court said that it is a welfare legislation, to be construed keeping in mind the purpose and object of the Act and Directive Principles of State Policy laid down in the Constitution. The above Act should be liberally construed in favour of weak and infirm. Court should be vigilant to see that benefits conferred by remedial and welfare legislations are not defeated by subtle devices. Court has got the duty that, in every case, where ingenuity is expanded to avoid welfare legislations, to get behind the smoke-screen,

and discover the true state of affairs. Court can go behind the form and see substance of the devise for which it has to pierce the veil and examine whether the guidelines or regulations are framed so as to achieve some other purpose than the welfare of animals. **Regulations or guidelines, whether statutory or otherwise, if they purport to dilute or defeat welfare legislation and constitutional principles, Court should not hesitate to strike them down so as to achieve ultimate object and purpose of welfare legislation**. PCA Act, 1960, being welfare legislation, would over-shadow or override any tradition and culture, if any. Referring to earlier judgment in ***N.Adithayan v Thravancore Dewaswom Board & Others, (2002)8SCC106 (para 18)***, Court reiterated following extract:

> *"18……. Any custom or usage irrespective of even any proof of their existence in pre-constitutional days cannot be countenanced as a source of law to claim any rights when it is found to violate human rights, dignity, social equality and the specific mandate of the Constitution and law made by Parliament. No usage which is found to be pernicious and considered to be in derogation of the law of the land or opposed to public policy or social decency can be accepted or upheld by courts in the country."*

343. Court also quoted from Isha-Upanishads, saying *"The universe along with its creatures belongs to the land. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species."* Referring to international approach to animal welfare, Court observed that there is no international agreement which ensures welfare and protection of animals. Even United Nations, all the years, has sought to safeguard only rights of human beings and not the rights of other species like animals. Castigating this approach of international community, Court said *"there has been a slow but observable shift from anthropocentric approach to more nature's right centric approach in International Environmental Law, Animal Welfare Laws etc."* This development was noticed to have

proceeded in three stages; (i) First Stage: Human self-interest reason for environmental protection, referring to some instruments executed during the last century, i.e., Declaration of the Protection of Birds Useful to Agriculture (1875), Convention Designed to Ensure the Protection of Various Species of Wild Animals which are Useful to Man or Inoffensive (1900), Convention for the Regulation of Whaling (1931) which had objective of ensuring health of the whaling industry rather than conserving or protecting whale species. Attitude behind the above instruments of the treaties was assertion of an unlimited right to exploit natural resources which derived from their right as sovereign nations; (ii) Second Stage: International Equity-In this stage we saw extension of treaties beyond requirements of present generation to also meet needs to future generations of human beings; and (iii) Third Stage: Nature's own rights- Here Court referred to UNEP Biodiversity Convention (1992). Having said so, it was held that Supreme Court in India had accepted and applied eco-centric principles and for this referred to its earlier orders in ***T.N. Godavarman Thirumulpad vs. Union of India & Others (2012)3SCC77***; ***T.N. Godavarman Thirumulpad vs. Union of India & Others (2012)4SCC362*** and ***Centre for Environmental Law World Wide Fund India vs. Union of India & Others (2013)8SCC234***. Based on eco-centric principles, rights of animals have been recognized in various countries. In the above backdrop, Court said: *"when we look at the rights of animals from national and international perspective, what emerges is that* ***every species has an inherent right to live and shall be protected by law, subject to exception provided out of necessity. Animal has also honour and dignity which cannot be denied arbitrarily, its rights and privacy have to be respected and protected from unlawful attacks****."* Ultimately, Court held that the

events like Jallikattu, bullock cart race, etc. are illegal and violative of Sections 3, 11(1)(a) and 11(1)(m)(ii) of PCA Act, 1960. Court also upheld MoEF Notification dated 11.07.2011.

344. In ***Gulf Goans Hotels Company Limited & Another vs Union of India & Another (2014)10SCC673***, (order dated 22.09.2014 in Civil Appeals No. 3434-35/2001 with Nos. 3436-39/2001), owners of Hotels, Beach Resorts and Beach Bungalows in Goa facing threat of demolition of their properties claiming to be in existence at the respective places for last several decades, approached Supreme Court for protection of their properties. Background facts are that Goa Foundation, a non-Governmental body, claiming to be dedicated to the cause of environmental and ecological, filed a Writ Petition seeking demolition of alleged illegal constructions raised by the above hoteliers, resort owners etc. Simultaneously, some orders of demolition were passed by the Authorities which were challenged by owners of the property in Bombay High Court. Vide judgment dated 13.07.2000, Bombay High Court upheld demolition orders. Hence, matter came to Supreme Court. The orders of demolition were issued on the ground that constructions were raised between 90 to 200 meters from High Tide Line (HTL), though constructions within 500 meters of HTL were prohibited except in rare situations where constructions between 200 to 500 meters from HTL may be permitted by Competent Authority subject to observance of certain conditions. These constructions were raised before 19.02.1991, i.e., enforcement of Coastal Regulation Zone (CRZ) Notification dated 19.02.1991. The owners of property contended that at the time when constructions were raised prohibition was only within 90 meters from HTL and no construction was raised by property owners within the said range. On the contrary, authorities and complainants, justifying

demolition, relied on a letter dated 27.11.1981 issued from the office of Prime Minister, 'Guidelines issued in 1983 (Environmental Guidelines for Development of Beaches, July 1983),' order dated 11.06.1986 of Under Secretary, Ministry of Tourism addressed to Chief Secretary, Government of Goa, constituting an Inter-Ministerial Committee for considering Tourist Projects within 500 meters and Notification dated 22.07.1982 of Governor setting up Ecological Development Council for Goa, for scrutiny of beach construction within 500 meters of HTL. A question was raised '*whether above letter and guidelines satisfy requirement of law, authorizing authorities to demolish disputed property'*. Observing that protection of environment in the light of International conventions and resolutions as also various authorities of Supreme Court, is a matter of prime importance and concern but in the absence of any law, a person cannot be deprived of his property. Court said *"violation of Article 21 on account of alleged environmental violation cannot be subjectively and individually determined when parameters of permissible/impermissible conduct are required to be legislatively or statutorily determined under Sections 3 and 6 of the Environment Protection Act, 1986……"*.

345. In ***B.S. Sandhu vs. Government of India & Others, (2014)12SCC172***, (order dated 21.05.2014 in Civil Appeals No. 4682-83/2005 with Nos. 4684-85, 4798-4800/2005, SLPs(C) No. 19226 and 20235/2013), strictly relying on a Notification under Section 3 of Punjab Land Preservation Act, 1900, Court held that it covers forest and non-forest land and unless a specific finding is recorded that disputed property or non-forest activities are carried out in forest land, a prohibitory order by a High Court was not correct. Court held that FC Act, 1980 was enacted to check further deforestation and would apply to

all forest irrespective of nature of ownership or a classification that the land must be a forest land.

346. In ***State (NCT of Delhi) vs. Sanjay, (2014)9SCC772***, (order dated 04.09.2014 in Criminal Appeals No. 499/2011 with Nos. 2105-12/2013), authority of Police and other law enforcement agencies for prosecution under Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'MMDR Act, 1957') was challenged and considered. Issue for consideration was 'whether Section 21 and 22 of the aforesaid Act would operate as bar against prosecution of a person who has been charged with allegations which constitute offences under Section 379/114 and other provisions of IPC, 1860. In other words, 'whether MMDR Act, 1957, explicitly or impliedly, excludes provisions of IPC when act of an accused is an offence under both statutes. The contention was that the offence, if any, committed under the provisions of MMDR Act, 1957 but no complaint had been made, then no cognizance can be taken in IPC and since the offence is covered by MMDR Act, 1957, provisions of IPC cannot be resorted to. Considering the above question, Court said that mining activity also cause and destruct environment if conducted in absence of proper scientific methodology; **lack of proper scientific methodology for river sand mining have led to indiscriminate sand mining**; and weak governance and corruption have led to widespread illegal mining. Court referred to UNEP Global Environmental Alert Service report, stating in reference to India, that sand trading is a lucrative business, and there is evidence of illegal trading broadly under the influence of sand mafias; **mining of aggregates in rivers has led to severe damage to river, including pollution and changes in level of pH; removing sediment from river causes the river to cut its channel through the bed of the valley**

floor, or channel incision, both upstream and downstream of the extraction site; leads to coarsening of bed material and lateral channel instability; it can change the riverbed itself; removal of more than 12 million tonnes of sand a year from the Vembanad Lake catchment in India has led to lowering of the riverbed by 7 to 15 centimeters a year; **Incision can also cause alluvial aquifer to drain to a lower level, resulting in a loss of aquifer storage; and can also increase flood frequency and intensity by reducing flood regulation capacity.** However, lowering the water table is most threatening to water supply exacerbating drought occurrence and severity as tributaries of major rivers dry up when sand mining reaches certain thresholds. Illegal sand mining also causes erosion. Damming and mining have reduced sediment delivery from rivers to many coastal areas, leading to accelerated beach erosion. Quoting above report of United Nations, impact of sand mining was further discussed in para 34 and 35 of the judgment, as under:

> *"34. The report also dealt with the **astonishing impact of sand mining on the economy**. It states that the tourism may be affected through beach erosion. Fishing, both traditional and commercial, can be affected through destruction of benthic fauna. Agriculture could be affected through loss of agricultural land from river erosion and the lowering of the water table. The insurance sector is affected through exacerbation of the impact of extreme events such as floods, droughts and storm surges through decreased protection of beach fronts. The erosion of coastal areas and beaches affects houses and infrastructure. A decrease in bed load or channel shortening can cause downstream erosion including bank erosion and the undercutting or undermining of engineering structures such as bridges, side protection walls and structures for water supply.*
>
> *35. Sand is often removed from beaches to build hotels, roads and other tourism-related infrastructure. In some locations, continued construction is likely to lead to an unsustainable situation and destruction of the main natural attraction for visitors-beaches themselves. Mining from, within or near a riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, in stream roughness of the bed, flow velocity, discharge capacity, sediment transportation capacity, turbidity, temperature, etc. Alteration or modification of the above attributes may cause*

hazardous impact on ecological equilibrium of riverine regime. This may also cause adverse impact on in stream biota and riparian habitats. This disturbance may also cause changes in channel configuration and flow-paths."

347. Relying on the Doctrine of Public Trust, applied in the context of environment, Court held that natural resources constitute public assets and State is trustee and custodian to protect it, even if proceedings have not been initiated under MMRD Act, 1957, if a person has extracted minerals unauthorizedly and illegally, it amounts to theft and, therefore, offence is covered under Sections 378 and 379 of IPC, wherein police can take cognizance and Magistrate on receipt of police report is empowered to proceed without waiting for a complaint to be filed by an officer authorized under MMRD Act, 1957. Court said that dishonest removal of sand gravel and other minerals from river which is property of the State, out of State's possession without consent, constitutes an offence of theft. Hence, provisions of MMRS Act, 1957 will not debar police from taking action against persons committing theft of sand and minerals by exercising power under Cr.P.C. and submit a report before Magistrate for taking cognizance against such persons. Court said *"any case* ***where there is a theft of sand and gravel from the Government land, the police can register a case****, investigate the same and submit a final report under Section 173 of Cr.P.C before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) of Cr.P.C"*. Further in para 73, Court said that *"we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the river beds without consent, which is the property of the State, is a distinct offence under the IPC. Hence, for the commission of offence under Section 378 Cr.PC, on receipt of the police report, the Magistrate having jurisdiction*

can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorized officer for taking cognizance in respect of violation of various provisions of the MMRD Act."

348. ***Goa Foundation vs. Union of India & Others, (2015)1SCC153***, (order dated 14.10.2014 in IA No. 86/2014 in Writ Petition (Civil) No. 435/2012) is a follow up of earlier decision dated 10.09.2012 reported in ***(2014)6SCC590***. An application was filed by mining proponents claiming that they had extracted 67,285 metric tonnes of iron ore and they should be allowed to lift the same. Referring to the statutory provisions that extracted ore should have been removed within a period of six months, Court did not accept the above request and held that the provisions of Mineral Rules mandate that the excavated mineral ore is liable to be removed by lessee within a period of six months, failing which, after issuance of a notice, same would stand forfeited to the Government. Further, earlier direction of Supreme Court said that all extracted mineral ore contained in the inventory prepared by the Monitoring Committee would vest in the State Government. That being so, the request of mining proponent cannot be accepted.

349. In ***Muneer Enterprises vs. Ramgad Minerals and Mining Limited & Others, (2015)5SCC366***, (order dated 12.03.2015 in Civil Appeal No. 2818/201), an order of transfer of mining lease from original lessee to a third person was challenged on the ground that a lease which was surrendered or found illegal to have not followed law, cannot be allotted by transfer. In para 76 of the judgment, Court said that grant, operation and termination of mining lease is governed by statute, anyone of these factors, i.e., grant of lease or operation of mines based on such grant and termination, either by way of surrender at the instance of

lessee or by way of termination at the instance of State should be carried out strictly in accordance with prescribed stipulations of statutes. Referring to Section 19 of MMRD Act, 1957, Court said that any mining lease granted in contravention of the provisions of the said Act or Rules shall be void and would have no effect. The above provision is mandatory. Further, if a mining lease is granted in violation of Section 2 of FC Act, 1980, in law it can be said that there is no mining lease in existence. In para 104, Court said, *"therefore, for a mining lease to remain valid, twin requirements of the approval of the Central Government under the proviso to Section 5(1) of MMDR Act and Section 2 of the Forest Act of 1980 have to be fulfilled. Therefore, a lessee cannot be heard to contend that such statutory requirements are to be thrown overboard and permitted to seek for such approvals after the expiry of the lease at its own sweet will and pleasure and the time to be fixed on its own and that the operation of the mining lease should be allowed ignoring such mandatory prescription".* That being so, nothing could have been further transferred to anyone. Court also seriously deprecated State Authorities acting in violation of law and observed that strict action needed to be taken against them. In para 118 of the judgment, Court said, *"in this context, it will be more relevant to state that mines and mineral being national wealth, dealing with the same as the largesse of the State by way of grant of lease or in the form of any other right in favour of any party can only be resorted to strictly in accordance with the provisions governing disposal of such largesse and could not have been resorted to as has been done by the State Government and the Director of Mines and Geology of the State of Karnataka by passing the order of transfer dated 16.3.2002.* ***Such a conduct of the State and its authorities are highly condemnable and, therefore, calls for stringent action against*** *them".*

350. In ***M.C. Mehta vs. Union of India & others, (2015)12SCC764***, *a* complaint of pollution of river Ganga and its cleanliness was raised in Writ Petition No. 3727/1985 filed under Article 32 of the Constitution. Subsequently, petition was transferred to this Tribunal vide order dated 29.10.2014, ***(2015)12SCC764***, with the observations made in paras 19 and 20 as under:

> *"19. We are confident that the Tribunal which has several experts as its members and the advantage of assistance from agencies from outside will spare no efforts to effectively address all the questions arising out of industrial effluents being discharged into the river. This will include discharge not only from the grossly polluting industries referred to in the earlier part of this order but also discharge from "highly polluting units" also. As regards the remainder of the matter concerning discharge of domestic sewage and other sources of pollution we will for the present retain the same with us.*
> *20. We accordingly request the Tribunal to look into all relevant aspects and to pass appropriate directions against all those found to be violating the law.* ***We will highly appreciate if the Tribunal submits an interim report to us every six months only to give us an idea as to the progress made and the difficulties, if any, besetting the exercise to enable us to remove such of the difficulties as can be removed within judicially manageable dimensions****. The Registry shall forward a copy of the order to the National Green Tribunal alongwith a copy of the writ petition and the affidavits filed in reply from time to time."*

351. In ***Rajendra Shankar Shukla & others vs. State of Chhattisgarh & others, (2015)10SCC400***, (order dated 29.07.2015 in Civil Appeal No. 5769-70/2015 with Nos. 5771-75/2015), certain land owners whose land was acquired for Town Development Scheme, namely, Kamal Vihar Township Development Scheme No. 4, challenged acquisition of land on various grounds including violation of requirement of EC under EIA 2006. Having lost before Single Judge and Division Bench in High Court, land owners came to Supreme Court. The question relating to EC under EIA 2006 was considered as issue no. (vi) in para 116-126. Court held that since land in question was in 'critically polluted area', the category of the project from 'B1' would be treated as category 'A'

and Competent Authority to grant EC was MoEF&CC not SEIAA. Hence, EC granted by SEIAA was illegal. Court, however, held, if there is any deviation in land use from proposal as disclosed in the application, a fresh EC would have to be sought by the proponent. In the case, there was a change in land use but not such fresh EC was sought. In the circumstances, Scheme could not have allowed to proceed illegally. In para 126, Court said, *"therefore, we are of the opinion that due to the* ***change in the scope of the project, Respondent No. 2 RDA was required to seek sanction for the project from the Central Government. The same has not been done....failed to obtain the environmental clearance requirement which is the mandatory requirement in law*** *for initiating any project by the RDA...****town development scheme prepared through incompetent authorities with blatant violation of legal and environmental procedure cannot be the reason for deprivation of constitutional rights of the appellants****"*. Court thus held that acquisition of land will not be valid for an illegal project.

352. In ***Anirudh Kumar vs. Municipal Corporation of Delhi & Others, (2015)7SCC779***, (order dated 20.03.2015 in Civil Appeal No. 8284/2013), issue of noise pollution was raised where two doctors running a pathological lab in a residential building, were causing noise pollution. A direction was sought to restrain them from running such lab. Court held that running of pathological lab by respondent owners creates air and sound pollution rampantly on account of which public residents' health and peace is adversely affected. Therefore, public interest is affected and there is violation of rule of law. Appeal was allowed. The respondent owners were directed to close down their establishment, i.e., pathological lab. Municipal Corporation as well as Pollution Control

Committee were directed to ensure that no unlawful activities are carried out in residential premises. Commenting adversely upon role of local bodies and environmental regulatory authority, Court, in para 56 and 57, said:

> *"56. Therefore,* ***both the MCD and the DPCC abdicated their statutory duties in permitting the owners to carry on with the unlawful activities*** *which inaction despite persistent request made by the appellant and the residents of the area did not yield any results. The counsel for the MCD made the statement before the courts below and even before this Court that there are no illegal activities on the part of the respondent-owners as they are supported by issuance of a Regularisation Certificate. In this regard as discussed previously in this judgement, the issuance of* ***Regularisation Certificate to run the Pathological Lab in the building is totally impermissible in law*** *even though the respondent-owners have placed reliance upon Mixed Use of the land in the area as per MPD 2021 referred to supra.*
> *57. Further, it is necessary for us to make an observation here that the* ***conduct of the MCD and the DPCC for their inaction is highly deplorable as they have miserably failed to discharge their statutory duties on account of which there has been a blatant violation of the rule of law*** *and thereby a large number of residents of the locality are suffering on account of the unlawful activities of the respondent-owners, whose activities are patronised by both the authorities."*

353. It may be worthy to note that pathological lab was running in the basement, ground floor and first floor of the premises while complainant was residing on the second floor of the said building. Initially, complainant approached High Court but it declined to interfere, hence, he came to Supreme Court, where Appeal was allowed and order noted above was passed. The arguments raised on the plea that mixed use was allowed in residential building, Court deprecated and said, *"a liberalised provision of mixed use in the residential areas has been adopted adhering to the requisites of the environment while achieving better synergy between work-place, residence and transportation"*. Court also found that in the garb of running pathological lab, owners were also running a nursing home in the residential area which was not permissible in law. With regard to mixed use, Court referring to the Master Plan, said, ***"the***

area/street for mixed use activity should be identified by conducting a study of the impact on the traffic in that area/street in which such mixed use activity is likely to take place and also evaluate the environmental needs and impact on municipal services *of the area if mixed use is allowed"*.

354. In ***Union of India vs. Vijay Bansal & Others, (2015)14SCC424***, appeal against Punjab and Haryana High Court, was considered wherein order directing State of Haryana to apply to Expert Appraisal Committee for determining Terms of Reference (TOR) and get Environmental Clearance Impact Assessment Report (EIAR) required for the entire mining area falling within the fragile Shivalik Ranges of the Himalayas and then complete process of public consultation and get a final Environmental Impact Assessment Report prepared, was challenged on the ground that application for grant of EC can be filed only by the party, applying for mining lease, and not by Government as such. Reliance was placed upon MoEF's notification dated 04.04.2011, wherein it was clarified that application for seeking EC shall be made by PP. Even Government of India before Supreme Court took the same stand and consequently, appeal was allowed and High Court's order was set aside to the extent of above direction, issued to State of Haryana.

355. In ***V.C. Chinnappa goudar vs. Karnataka State Pollution Control Board and Another, (2015)14SCC535***, an issue was raised that Government officer/public servant is entitled for protection under Section 197 CrPC and without such sanction, Magistrate cannot take cognizance even if, he is accused of an offence under section 48 of Water Act, 1974. High Court of Karnataka rejected this contention and in

appeal Supreme Court confirmed the above view, observing in para 8 and 9, as under:

> *"8. In this context, when we refer to Section 5 CrPC, the said section makes it clear that in the absence of specific provisions to the contrary, nothing contained in the Criminal Procedure Code would affect any special or local laws providing for any special form or procedure prescribed to be made applicable. There is no specific provision providing for any sanction to be secured for proceeding against a public servant under the 1974 Act. If one can visualise a situation where Section 197 CrPC is made applicable in respect of any prosecution under the 1974 Act and in that process the sanction is refused by the State by invoking Section 197 CrPC that would virtually negate the deeming fiction provided under Section 48 by which the Head of the Department of a government department would otherwise be deemed guilty of the offence under the 1974 Act. In such a situation the outcome of application of Section 197 CrPC by resorting to reliance placed by Section 4(2) CrPC would directly conflict with Section 48 of the 1974 Act and consequently Section 60 of the 1974 Act would automatically come into play which has an overriding effect over any other enactment other than the 1974 Act.*
>
> *9. In the light of the said statutory prescription contained in Section 48, we find that there is no scope for invoking Section 197 CrPC even though the appellants are stated to be public servants."*

356. In ***Vardah Enterpirises Private Limited vs. Rajendra Kumar Razdan and Others, (2015)15SCC352***, issue of construction in the alleged restricted area of Fatehsagar and Pichola Lakes in Udaipur was in question. Rajasthan Government issued a notification dated 17.01.1999 under Section 171 of Rajasthan Municipalities Act, 2009, declaring area around Fatehsagar and Pichola Lakes in Udaipur as "No Construction Zone". Another notification was issued on 10.12.1999, superseding the earlier one, declaring area around Fatehsagar and Pichola Lakes in Udaipur as 'Controlled Construction Area'. ***W.P. (C) No. 427 of 1999*** was filed by one Rajendra Kumar Razdan in Rajasthan High Court at Jaipur, praying that all constructions, in and around lakes specified in Rajasthan Government notification dated 17.01.1997, be stopped and Government agencies be stopped to carry on harmful and dangerous activities, for maintenance of lives of population in the said area. Writ

petition was allowed vide judgment dated 06.02.2007, taking a view that there would be no construction in and around the said lakes and their respective catchment areas; and Statutory Authorities cannot permit any construction activity in the 'Controlled Construction Area'. On the basis of perusal of record, Supreme Court found that the land of appellant which was disputed, did not attract either notification dated 17.01.1997 or 10.12.1999. Consequently, proceedings initiated against appellant *M/s. Vardha Enterprises Private Limited* were set aside. In another connected matter, where issue of wetland under Wetlands (Conservation and Management) Rules, 2010 was raised, Court held, where statutory permission was already granted, the aforesaid Rules of 2010 will not apply. Further, so long as, there is no wetland notified under the Rules, the prohibition/restriction contained therein, would not be attracted.

357. In ***Wildlife Rescue and Rehabilitation Centre and Others vs. Union of India and Others, (2016)1SCC716***, issue of cruelty upon captive elephants in State of Kerala was raised and referring to WLP Act, 1972 and Kerala Captive Elephants (Management and Maintenance) Rules, 2012, Court issued direction that those Rules and Statutory Provisions should be strictly followed, observed and applied and enforced by the concerned Authorities.

358. In ***Electrotherm (India) Limited vs. Patel Vipul Kumar Ramjibhai and others, (2016)9SCC300***, issue of public hearing before grant of EC in the context of EIA 1994 and EIA 2006 was under consideration. Gujarat High Court had set aside EC dated 27.01.2010 granted to appellant and allowed continuance of its unit only till fresh EC was accorded in its favour by MoEF. It was challenged by appellant/PP before Supreme Court stating that PP has set up a steel plant at village

Samakhiyali, for manufacturing various products; NOC was issued by State PCB on 25.02.2005 and Authorization Order was issued on 10.11.2005 for manufacture of Pig Iron, Steel Billets/Slabs, Steel Bars and Rods, etc.; appellant set up his plant and vide letter dated 30.11.2007 applied for grant of EC; it was granted by MoEF on 20.02.2008; appellant thereafter, applied for expansion of steel plant; informed Expert Appraisal Committee that while granting EC earlier public hearing for the project was already held on 12.06.2007 and since expansion would be within the existing industrial premises and no extra land would be required, hence an exemption be allowed for public hearing. Expansion project was granted EC by MoEF vide order dated 27.01.2010. This was challenged in Gujarat High Court on the ground that grant of EC for expansion of plant exempting public hearing was not in conformity with the provisions of EIA 2006. High Court held that grant of EC dated 27.01.2010 without any public consultation or hearing was bad since public consultation/public hearing was mandatory requirement under EIA 2006. In appeal, Supreme Court observed that public consultation/public hearing is one of the important suggestions while considering the matter for grant of EC; record show that exemption was allowed on the ground that no additional land will be required and no additional ground water drawl or other features will be necessary. Further, Court observed that so far as requirement of water is concerned, it is a community resource and when expansion was allowed, use of water would definitely be additional of what it was required earlier and, therefore, expansion of project would have entailed additional pollution load due to larger requirement of water. Court referred to the amendment notification dated 01.12.2009 of EIA 2006, wherein no provision for exemption from public hearing was made for holding that public

consultation/public hearing was mandatory, Supreme Court relied on its earlier decision in ***Lafarge Umiam Mining Private Limited vs. Union of India (supra)***. However, instead of closing the unit, Court permitted unit to continue till public hearing is conducted and observed that if as a result of public hearing, any negative mandate against expansion of the project is to be issued; Competent Authority may ensure scaling down activities to the level which was already permitted by earlier EC dated 20.02.2008. This method was adopted only since expansion had already been undertaken and proponent was working with expended capacity hence in the peculiar facts of the case and not as a general proposition of law, Court allowed indulgence though held that public hearing is mandatory.

359. In ***Anil Hoble vs. Kashinath Jairam Shetye and others, (2016)10SCC701***, judgment of this Tribunal was challenged whereby direction for demolition of construction raised in restricted coastal zone was issued. Background facts are that Anil Hoble, appellant raised a commercial building on plot of land bearing Chalta No.1/PTS No.10, Panjim City and Survey No.65/1-A Village Morombio Grande in Merces Panchayat, Goa without obtaining necessary permission from the concerned Authorities. Alleging that construction is detrimental to the coastal ecosystem and river ecosystem; likely to cause pollution of river water due to commercial activities of the bar and restaurant and the construction was raised with political influence in utter violation of CRZ Notification dated 19.02.1991; an application under Section 14 of NGT Act, 2010 was filed before Tribunal. The defence taken was that structure was in existence prior to 19.02.1991 hence would not attract restriction imposed by notification dated 19.02.1991. Tribunal after perusal of record, recorded findings that the defence taken by appellant that the

structure was prior to 19.02.1991 was not correct and, thereafter, relying on Bombay High Court's judgment in ***Goa Foundation vs. The Panchayat of Condolim & The Panchayat of Calangut, WP No. 422 of 1998***, decided on 13.10.2006, wherein directions were issued to State Authorities to take action against such unauthorized structures and construction put up on the land falling within CRZ-III area in Goa village or town after 19.02.1991, held construction raised by appellant illegal and directed its demolition by the concerned Executive Authority. Appellant was also imposed Rs. 20 lakhs cost of degradation of environment caused due to violation of CRZ Notification dated 19.02.1991. Appellant preferred review which was also rejected by order dated 14.12.2015. In appeal, Supreme Court found that appellant purchased plot vide sale deed dated 03.08.1992 when a small structure at the corner of the said plot was in existence, used as a garage hence the disputed structure admittedly was not there at least upto 03.08.1992 hence, Tribunal rightly found structure post 19.02.1991. Further, CRZ Policy prohibited construction upto 200 metres from High Tide Line as the said zone was treated as 'No Development Zone', except for repairs of existing authorized structures. Court agreed with the findings of Tribunal that construction was post 19.02.1991 and not prior to 19.02.1991 as pleaded by appellant. In that view of the matter, construction admittedly was contrary to CRZ Regulation as also judgment of Bombay High Court in ***Goa Foundation vs. The Panchayat of Condolim (supra)*** and Tribunal in fact, after recording the directions issued by Bombay High Court in ***Goa Foundation vs. The Panchayat of Condolim (supra)*** issued consequent directions in the present case also. Court held that the directions of Bombay High Court were imposed, and Authorities were bound by the same to implement and to prevent any breach thereof. Any

permission given contrary to the said direction, must be viewed as nullity and non-est, having been given in complete disregard of the directions of the High Court. Consequently, Court upheld the directions for demolition, issued by Tribunal.

360. On the issue of assessment of compensation for damage to environment in the matter of illegal mining, recently Supreme Court in ***Bajri Lease LOI holders Welfare Society vs. State of Rajasthan and others, SLP (Civil No.) 10584 of 2019*** (order dated 11.11.2021) has said that compensation/penalty to be paid by those indulging in illegal sand mining cannot be restricted to be value of illegally mined minerals. The **cost of restoration of environment as well as the cost of ecological services should be part of compensation**. 'Polluter Pays' principle as interpreted by this Court means that absolute liability for harm to the environment extends not only to compensate victims of pollution but also cost of restoring environmental degradation. Remediation of damaged environment is part of the process of "sustainable development" and as such the polluter is liable to pay the cost the individual sufferers as well as the cost of reversing the damaged ecology.

361. ***In M.C. Mehta vs UOI (2017)7SCC243 (Vehicular Air Pollution Matter)*** (orders dated 29th March 2017, 13th April 2017 and 20th March 2017 printed together), Supreme Court did not appreciate approach of automobile industries giving primary importance to commercial profit instead of taking proactive steps to reduce vehicular pollution. It is said, "*when the health of millions of our countrymen is involved, notification relating to commercial activities ought not to be interpreted in a literal manner.*"

362. Development vs. Environment paradigm may be debated upon but there cannot be any debate in the development vs. public health paradigm. Polluted air can lead to a variety of health problems as it is evident from a casual visit to website of CPCB and WHO. As per WHO report, when urban air quality declines, risk of stroke, heart disease, lung cancer, chronic and acute respiratory diseases including asthma increases. Office Memorandum dated 3.03.2015 cannot be read as to permit manufacture of BS-III complaint vehicles to go for manufacturing up to last and thereafter permit clearance sale thereof so as to postpone implementation of policy BS-IV complaint vehicles. Such an interpretation will make a mockery of all the efforts in regulating vehicular emissions and virtually would enable vehicle manufacturers to emasculate an important component of Right to Life guaranteed by Article 21 of the Constitution namely entitlement of millions of countrymen and women to breath less polluted air and ignore public health issues in conducting their business. Court therefore, rejected permission sought by Auto manufacturers for permitting clearance of the earlier version of vehicles.

363. Issue relating to illegal mining in State of Orissa in violation of environmental laws was considered in ***Common Cause vs. U.O.I. & Others (2017)9SCC499***. Two Writ Petitions were filed under Article 32 of the Constitution before Supreme Court, one by Common Cause, a public-spirited Organization, and another by Prafulla Samantra and Another complaining heavy illegal mining of iron ore and manganese ore in districts of Keonjhar, Sundergarh and Mayurbhanj in Odisha, national environment and forest and also causing untold misery to the tribals in the area. When Writ Petition were entertained initially on 21.04.2014,

noticing the averments that several mining operations were continuing without clearance under EP Act 1986 and FC Act 1980, Supreme Court directed Central Empowered Committee to make a list of such lessees who are operating leases in violation of law. The report dated 25.04.2014 submitted by CEC was considered on 16.05.2014 and Court found that in the above 3 districts, total leases granted for mining iron and manganese ore were 187 out of which 102 lease holders did not have requisite Environmental Clearance under EP Act, 1986 or approval under FC Act, 1980 or approved mining plan and/or Consent to Operate under the provisions of Air Act 1981 or Water Act 1974. Court directed suspension of such 102 mining leases till they obtain requisite clearances, approvals or consents. The order dated 16.05.2014 is reported in ***Common Cause vs. Union of India & Others, (2014)14SCC155.*** Out of 187 leases, 29 were already determined or rejected or had lapsed and direction was issued for suspension of said 29 mining leases till they commence operation after obtaining requisite statutory permissions etc. 53 iron ore/manganese ore mining leases were operational having necessary approvals under FC Act, 1980, consent to operate under Air Act 1981 or Water Act 1974 and also having approved mining plans but nothing was disclosed about availability of EC. 3 mining leases were located in forest as well as non-forest land, but mining operations were being conducted in non-forest areas. Court also examined above 56 operational mining leases and found that 14 were operating on first renewal basis under Section 8(2) of Mines and Minerals (Development and Regulation) Act, 1957 (hereafter referred to as 'MMDR Act 1957') read with Rule 24-A(6) of Mineral Concession Rules, 1960 (hereafter referred to as 'MCR 1960') and 16 mining leases were operating since lease deeds for grant of renewal were executed in their favour. The

remaining 26 mining leases were operating on second and subsequent renewal basis with renewal applications pending final decision with the State Government. Court allowed 14+ 16 mining leases to continue but in respect of 26 mining leases operating on 2nd and subsequent renewal applications, it found that in view of earlier judgement in ***Goa Foundation vs. U.O.I. (2014)6SCC590*** holding that for a second or subsequent deemed renewal no provision was available in view of Section 8(3) of MMDR Act 1957, Court directed to stop operation of 26 leases until express orders are passed by State Government under Section 8(3) of MMDR Act 1957. There was an amendment in MMDR Act 1957 with effect from 12th January, 2015 in Section 8(3) pursuant whereto remaining 26 leases also restart functioning. CEC in the report, dealt with the following ten topics:

I. *"Production of iron ore and manganese ore without/in excess of the environmental clearance/Mining Plan/Consent to Operate.*
II. *Mining leases operated in violation of the Forest (Conservation) Act, 1980.*
III. *Illegal mining outside the sanctioned mining lease areas.*
IV. *Mining leases acquired in violation of Section 6 of the MMDR Act, 1957.*
V. *Violation of Rule 37 of the Mineral Concession Rules, 1960 by the lessees.*
VI. *Illegalities involved in the mining leases of Essel Mining & Industries Ltd.*
VII. *Illegalities involved in the mining lease of Sharda Mines (P) Ltd.*
VIII. *Massive illegal mining in Uliburu Forest land.*
IX. *Inordinate delays in taking decisions by the State Government regarding renewal of the mining leases.*
X. *Other issues."*

364. Court formulated four issues as under:

I. *Leases lapsed under Section 4-A(4) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as MMDR Act, 1957) (11 leases);*
II. *Violation of Rule 24 of the Minerals (other than Atomic and Hydrocarbons Energy Minerals) Concession Rules, 2016 (hereinafter referred to as MCR, 2016) and Rule 37 of the Mineral Concessions Rules, 1960 (hereinafter referred to as MCR, 1960) (9 leases);*
III. *Illegal mining in forest lands (20 leases); and*
IV. *Iron ore produced without/in excess of the environmental clearance (each of the operating leases involved)."*

365. With respect of issue one, Court found that it was also covered by order dated 04.04.2016 reported in ***(2016)11SCC455*** and therefore did not survive for consideration. The remaining three issues, Court found overlapping with topics I, II and V, dealt with, by CEC. Further topics III, IV, VI, VII identified by CEC were also found worth adjudication but in respect to topics VIII, IX and X, parties did not advance any submissions and hence Court accepted reports on those topics. The judgement deals with the topics identified by CEC from I to VII. CEC also reported volume of mining to the extent of 2130.988 Lakhs MT of iron ore and 24.129 Lakhs MT of manganese ore. The above quantity did not include extraction of ore without Forest Clearance. In terms of value which CEC determined on notional basis, the iron ore extracted worth Rs. 17,091.24 crores while manganese ore worth Rs. 484.92 crores. With respect of illegal mining, Central Government had also appointed Judicial Commission under Commissions of Inquiry Act, 1952 vide notification dated 22.11.2010 appointing Justice M.B. Shah, a retired judge of Supreme Court to inquire on the Terms of Reference mentioned in Para 27 of the judgement. Commission's proceedings were also taken into consideration by Court. The objection raised by lease holders on the report of CEC on its authority was rejected. CEC was earlier constituted by Supreme Court's order dated 09.05.2002 ***((2013)8SCC198)*** and later by notification dated 17.09.2002 issued under Section 3(3) of EP Act 1986. It was constituted conferring a statutory status to the said body. Facts stated by Court regarding CEC were not disputed though there was some challenge to the conclusions drawn by CEC. MMDR Act, 1957 and MCR Act, 1960 were considered in detail and thereafter Court considered EIA 1994. Court said that EIA 1994 clearly contemplated that in the matter of mining operations site clearance shall be granted for sanctioned

capacity and would be valid for a period of five years from the date of commencement of mining operation. It shows that on receipt of an EC, a mining lease holder can extract mineral only from a specified site, upto the sanctioned capacity and only for a period of five years from the date of grant of an EC. This is regardless of the quantum of extraction permissible in the mining plan or mining lease and regardless of the duration of mining lease. Further, a mining lease holder would necessarily have to obtain a fresh EC after every five years and can also apply for an increase in the sanctioned capacity. Court very categorically said ***"There is no concept of a retrospective EC and its validity effectively starts only from the day it is granted****. Thus, the EC takes precedence over the mining lease or to put it conversely, the* ***mining operations under a mining lease are dependent on and 'subordinate' to the EC."*** Explanatory Note was added to EIA 1994 on 04.05.1994 and note one was found relevant which deals with the expansion and modernization of existing projects. Referring hereto, Court said, if any proposed expansion and modernization activity results in an increase in the pollution load than a prior EC is required, Project Proponent should approach concerned State Pollution Control Board (for short 'SPCB') for certifying whether the proposed expansion or modernization is likely to exceed the existing pollution load or not. If pollution load is not likely to be exceeded, Project Proponent will not be required to seek an EC but a copy of such a certificate from SPCB will be required to be submitted to the Impact Assessment Agency which can review the certificate. Note 8 permitted existing mining operations which have obtained NOC before SPCB before 27.01.1994, not to obtain EC from Impact Assessment Agency but this is subject to the substantive portion of EIA 1994 and 1st Note. It was made clear, if existing mining

project does not have a NOC from SPCB, then an EC under EIA 1994 was required. Court then formulated two questions.

a. What is the base year for considering pollution load while proposing any expansion activity?
b. What is the duration for which an EC is not necessary for an ongoing project which does not propose any expansion, or to put it differently, what is the validity period for a no objection certificate from SPCB?

366. First question was answered observing that base year is immediately preceding year that is 1993-94. The arguments of mine holders that annual production even prior to 1994 may be considered to ascertain whether there was an expansion or not was rejected observing that high annual production in any one year is not reflective of a consistent pattern of production and it would also lack uniformity between mining lease holders. Different base years for mining lease holders are not conducive to good governance. However, Court permitted an exception that if there was no production during 1993-94 in that eventuality immediately preceding year would be relevant. Further it is said that EIA is mandatory in character; applicable to all mining operations/expansion of production or even increase in lease area, modernization of the extraction process, new mining projects and renewal of mining leases. A mining lease holder is obliged to adhere to the terms and conditions of a mining lease and applicable laws and the mere fact that a mining plan has been approved does not entitle a mining lease holder to commence mining operations. The approach of MoEF by issuing circular permitting ex post facto EC did not mean that MoEF intended to legalize commencement or continuance of mining activity without compliance of requirement of EIA 1994. It was obligation of everyone to

abide by the law; and the soft approach taken by MoEF cannot be an escapist excuse for non-compliance with the law or EIA 1994.

367. Coming to EIA 2006, Court said that reference to any circular is of no consequence. A statutory notification cannot be over ridden by a circular. With regard to the arguments advanced by the mining lease holders of confusion created by MoEF, rejecting the same, Court said there is no confusion, vagueness or uncertainty in the application of EIA 1994 and EIA 2006 insofar as mining operations commenced on mining leases before 27.01.1994 (or even thereafter). Post EIA 2006, every mining lease holder having a lease area of 5 hectares or more and undertaking mining operations in respect of major minerals was obliged to get an EC in terms of EIA 2006. Court referred to major minerals since in the case in hand issue of major minerals was under consideration. It was also clarified that a mining plan is also subordinate to EC. Another argument that whenever EC is granted it would have retrospective effect from the date of application was also rejected observing that grant of EC cannot be taken as a mechanical exercise. It can be granted only after due diligence and reasonable care since damage to environment can have a long term impact. Rejecting the argument that EC ex post facto can be granted or should be taken to have been granted, Court said *"EIA 1994 is therefore very clear that if expansion or modernization of any mining activity exceeds the existing pollution load, a prior EC is necessary and as already held by this Court in M. C. Mehta* ***even for the renewal of a mining lease where there is no expansion or modernization of any activity, a prior EC is necessary****. Such importance having been given to an EC, the grant of an ex post facto environmental clearance would be detrimental to the environment and could lead to irreparable degradation of the environment. The* ***concept of an ex post facto or a retrospective EC is completely***

alien to environmental jurisprudence including EIA 1994 and EIA 2006*. We make it clear that an EC will come into force not earlier than the date of its grant."*.

368. An issue was also raised as to what illegal mining is? Mining lease holders argued that mining operations outside the mining area would constitute illegal mining. It was rejected by Court observing that this approach would make illegal mining lease centric and this narrow interpretation given by CEC was not acceptable to Court. Explaining as to what would be illegal mining, Court said *"the holder of a mining lease is required to adhere to the terms of the mining scheme, the mining plan and the mining lease as well as the statutes such as the EPA, the FCA, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. If* ***any mining operation is conducted in violation of any of these requirements, then that mining operation is illegal or unlawful. Any extraction of a mineral through an illegal or unlawful mining operation would become illegally or unlawfully extracted mineral****"*.

369. Suggestion of Counsel for mining lease holders that only mining operations outside mining leased area would constitute illegal mining was not accepted in the manner it was suggested but Court said that such activity is obviously illegal or unlawful mining but Illegal mining takes within its fold excess extraction of a mineral over the permissible limit even within the mining lease area which is held under lawful authority, if that excess extraction is contrary to the mining scheme, the mining plan, the mining lease or a statutory requirement. Referring to Section 4(1) of MMDR Act 1957, Court said any person carrying out mining operations without a mining lease is indulging in illegal or unlawful mining. This

would also necessarily imply that if a mining lease is granted to a person who carries out mining operations outside the boundaries of the mining lease, the mineral extracted would be the result of illegal or unlawful mining. Court also rejected argument of deviation stating, under the rules only 20% variation is permissible but it does not mean that mining lease for 5 years is given, a mining lease holder can affect 5 years quantity (with a variation of 20%) in one or two years only. The extraction has to be staggered and continued over a period of five years. Court also clarified letter dated 12.12.2011 of Ministry of Mines, Government of India observing that While mining in excess of permissible limits under the mining plan or the EC or FC on leased area may not amount to mining on land occupied without lawful authority, it would certainly amount to illegal or unlawful mining or mining without authority of law. Construing Section 21(5) of MMDR Act, Court said that whenever any person raises without any lawful authority, any mineral from any land, in such a case the **State Government is entitled to recover from such person the minerals so raised or where such mineral has been disposed of the price thereof as compensation**. The words 'any land' are not confined to the mining lease area. As far as the mining lease area is concerned, extraction of a mineral over and above what is permissible under the mining plan or under the EC undoubtedly attracts Section 21(5) of MMDR Act 1957 being extraction without lawful authority. It would also attract Section 21(1) of the said Act. Further Section 21(5) is not only attracted but not limited to a violation committed by a person only outside the mining lease area – it includes a violation committed even within the mining lease area. With regard to the recovery of price of the illegally mined ore, Court said *"In our opinion,* ***there can be no compromise on the quantum of compensation that should be***

recovered from any defaulting lessee – it should be 100%*. If there has been illegal mining, the defaulting lessee must bear the consequences of the illegality and not be benefited by pocketing 70% of the illegally mined ore. It simply does not stand to* ***reason why the State should be compelled to forego what is its due from the exploitation of a natural resource and on the contrary be a party in filling the coffers of defaulting lessees in an ill gotten manner****".* Section 21(5) does not talk of any penalty and is not penal provision. Referring to *"****Karnataka Rare Earth v. Senior Geologist, Department of Mines & Geology (2004) 2 SCC 783****"* and expressing agreement with the law laid down therein, Court said that **recovery of price of mineral is intended to compensate the State for the loss of the mineral owned by it and caused by a person who has been held to be not entitled in law to raise the same.** There is no element of penalty involved and the recovery of price is not a penal action, it is just compensatory. In para 157 of the judgement Court said that the compensation should be payable by lease holders at 100% of the price of the minerals as rationalized by CEC. With regard to FC Act 1980 referring to "***Ambica Quarry Works v. State of Gujarat and Others, (1987)1SCC213, Rural Litigation and Entitlement Kendra v. State of U.P. 1989Supplement1SCC504*** *and* *"****T.N. Godavarman v. Union of India, (1997)2SCC267****"* Court expressed its view that as held therein, in a forest area, no mining is permissible unless Section 2 of FC Act 1980 is complied with and NOC is obtained from Forest Department. In para 180, Court also observed that any mining activity in forest in violation of Section 2 of FC Act 1980 is unauthorized and illegal and the benefit mining leaseholders have derived from such illegal mining would be subject to Section 21(5) of MMDR Act 1957. Court said "*therefore the price of the iron ore and manganese ore*

mined by the mining lease holders from 07.01.1998 is payable until forest clearance under Section 2 of the FC Act is obtained by the mining lease holders." The suggestion that only 70% of the notional value of the ore mined illegally be recovered, was rejected and in para 185, Court said "*We are of the view that Section 21(5) of the MMDR Act 1957 should be given full effect and so* ***we reiterate that the recovery should be to the extent of 100%.***" In reference to the requirement of EC, in Para 186, Court said *"We make it clear that mineral extracted either without an EC or without an FC or without both would attract the provisions of Section 21(5) of the MMDR Act 1957 and 100% of the price of the illegally or unlawfully mined mineral must be compensated by the mining lease holder. To the extent of the overlap or the common period, obviously only one set of compensation is payable by the mining lease holder to the State of Odisha. We order accordingly. However****, we make it clear that whatever payment has already been made by the mining lease holders towards NPV, additional NPV or penal compensatory afforestation is neither adjustable nor refundable since that falls in a different category altogether****.".*

370. Clarifying an observation in ***T.N. Godavaraman Thirumulpad v. Union of India & Others (2011)15SCC658*** *and (****2011)15SCC681,*** where observation was that violation of FCA is condonable on payment of penal compensatory afforestation charges, Court in para 187 of the judgement, said *"We may note that this Court has held in T.N. Godavarman v. Union of India that a* ***violation of the FCA is condonable on payment of penal compensatory afforestation charges. This obviously would not apply to illegal or unlawful mining under Section 21(5) of the MMDR Act,*** *but we make it clear that the*

mining lease holders would be entitled to the benefit of any Temporary Working Permission granted".

371. Making observations that Government of India should revisite National Mineral Policy 2008, Court referred to the principle of Intergenerational equity and said that there are 3 principles which form the basis of Intergenerational equity, the first one is 'conservation of options' second is 'conservation of quality' and third is 'conservation of access'. Accepting argument based on the principle of Intergenerational equity and rampant mining in the State of Orissa, Court found that there should have been some check and therefore new policy should be evolved by the Government of India.

372. In ***State of Madhya Pradesh & others vs. Kallo Bai, (2017)*****14SCC502**, the question was, whether an order of confiscation of vehicle and forest produce could have been passed before conviction, with reference to Section 15-A to 15-D of Madhya Pradesh Van Upaj (Vyapar Viniam) Adhiniyam, 1969 (hereinafter referred to as 'MP Forest Produce Act, 1969'). Court held that the above Act was enacted with an object to regulate trade of certain forest produce in State of Madhya Pradesh, known for abundant biodiversity which generates minor forest produce such as tendu, harra, sal seeds and gum etc. Scheme of the Act shows that legislature intended to empower authorized officers of Forest Department for proper implementation of the provisions of Statute and to enable them to take effective steps for preserving forest produce. The said enabling power includes power of seizure, confiscation and forfeiture. Court held that confiscation proceedings contemplated under Section 15 of M.P. Forest Produce Act, 1969 is a *quasi*-judicial proceeding and not a criminal proceeding. It proceeds on the basis of satisfaction of Authorized

Officer with regard to the commission of forest offence. It was also held that Authorized Officer is empowered to confiscate seized forest produce on being satisfied that an offence under M.P. Forest Produce Act 1969 has been committed, and that being power under special enactment, general power vested in Magistrate for dealing with interim custody/release of seized material under Cr.P.C. would give way. Magistrate while dealing with a case of seizure of forest produce under M.P. Forest Produce Act 1969, should first examine whether power to confiscate seized forest produce is vested in the Authorized Officer under the Act and if he finds so, then he has no power to pass any order dealing with interim custody/release of seized material. Such ouster of jurisdiction would aid in proper implementation of the statute. If in such cases power to grant interim custody/release of seized forest produce is vested in the Magistrate then it will defeat the very scheme of the Act. Such a consequence is to be avoided. Court further said:

> *"The said section makes it clear that section 15-D subjects itself to confiscation proceedings under Section 15, 15-A, 15-B and 15-C of Act. Further Section 15-D speaks of confiscation of all tools, boats, vehicles, ropes, chains or any other articles upon conviction of the offender for such forest offence. This Section is equivalent to Section 55 of the Indian Forest Act as amended by the State of Madhya Pradesh. In this Section the confiscation after the conviction is subjected to separate confiscation proceedings as contemplated under Section 15, 15-A, 15-C. At the cost of repetition, it should be noted that if a confiscation proceeding under Section 15 has commenced and the confiscation has already occurred, then there is no question of confiscation under Section 15-D again. If the confiscation has not taken place under Section 15, then the Court after final conviction can order confiscation under Section 15-D of the Adhiniyam."*

373. Reiterating and further explaining, Court said, broad scheme of Act is to punish those who are in contravention of law at the hand of criminal Court. Confiscation being incidental and ancillary to prosecution, State of Madhya Pradesh separated process of confiscation from the process of prosecution. The purpose of enactment seems to be that the power of

Criminal Ccourt regarding disposal of property is made subject to the jurisdiction of Authorized Officer with regard to that aspect; jurisdiction of Criminal Court in regard to the main prayer remains unaffected. Recording its conclusion, Court said that Section 15 gives independent power to the authority concerned to confiscate articles, even before guilt is completely established. This power can be exercised by officer concerned if he is satisfied that the said objects were utilized during commission of a forest offence. A protection is provided to the owners of the vehicles/articles if they are able to prove that they took all the reasonable care and precaution as envisaged under Section 15(5) of the Act and the said offence was committed without their knowledge or connivance. Criminal prosecution is distinct from confiscation proceedings. Two proceedings are different, each having a distinct purpose. The object of confiscation proceedings is to enable a speedy and effective adjudication with regard to confiscation of the produce and the means used for committing offence while the object of prosecution is to punish the offender. The scheme of Act prescribes an independent procedure for confiscation. The intention of prescribing separate proceedings is to provide deterrent mechanism and to stop further misuse of the vehicle.

374. Issue of use of fire-crackers causing air pollution, whether should be allowed or not in Delhi and NCR area, was considered in ***Arjun Gopal & Others vs. Union of India & Others, (2017)16SCC280*** (Order dated 12.09.2017 in IA No. 52448 of 2017 in WP (C) No. 728/2015). Here Court referred to a decision of National Green Tribunal in ***Vardhaman Kaushik vs. Union of India, (2016) SCC Online NGT 4176***, observing that there are seven major contributors of air pollution in NCR and these are (i) construction activity and carriage of construction material; (ii)

burning of municipal solid waste and other waste; (iii) burning of agriculture residue; (iv) vehicular pollution; (v) dust on the roads; (vi) industrial and power house emission including fly ash and (vii) emissions from hot mix plants and stone crushers. It was further observed that bursting of fireworks is also one of the causes of air pollution. It was, in fact, due to the use of strontium chromite which is harmful and dangerous to human health, as concluded by CPCB. Consequently, Court observed that it has no option but to prohibit use of the said chemical in the manufacture of fireworks. Reiterating earlier observations, Court said that **Right to Breath clean air is a recognized Right under the Constitution**. Right to Health coupled with Right to Breath in clean air leaves no manner of doubt that it is important that air pollution deserves to be eliminated. Consequently, Court issued several directions as noted in para 70 to 72.2.16 in the judgment.

> *"**70.** But, from the material before us, it cannot be said with any great degree of certainty that the extremely poor quality of air in Delhi in November and December 2016 was the result only of bursting fireworks around Diwali. Certainly, there were other causes as well, but even so the contribution of the bursting of fireworks cannot be glossed over. Unfortunately, neither is it possible to give an accurate or relative assessment of the contribution of the other identified factors nor the contribution of bursting fireworks to the poor air quality in Delhi and in the NCR. Consequently, a complete ban on the sale of fireworks would be an extreme step that might not be fully warranted by the facts available to us. There is, therefore, some justification for modifying the interim order passed on 11.11.2016 and lifting the suspension of the permanent licences.*
>
> ***71**. At the same time, it cannot be forgotten that admittedly there is a huge quantity of fireworks in Delhi and in the NCR and the figure has been provided to us by the applicant. Similarly, there can be no doubt that the Delhi Police had issued a large number of temporary licences in 2016 and it would not be unreasonable to assume that around and during Diwali, there would have been some illegal temporary shops set up, whether known or not known to the police. We do not have the figures with regard to the NCR, but we assume that like in Delhi, a large number of temporary licences have been issued for the possession and sale of fireworks. Therefore, there is a need to regulate the availability and sale of fireworks in Delhi and the NCR.*
>
> ***Directions***

72. As mentioned above, the ***health of the people in Delhi and in the NCR must take precedence over any commercial or other interest of the applicant or any of the permanent licensees*** *and, therefore, a graded regulation is necessary which would eventually result in a prohibition. Taking all factors into consideration, we are of the view that the following orders and directions are required to be issued and we do so:*

72.1 *The directions issued by this Court in Sadar Bazar Fire Works (Pucca Shop) shall stand partially modified to the extent that they are not in conformity with the Explosives Rules which shall be implemented in full by the concerned authorities. Safety from fire hazards is one of our concerns in this regard.*

72.2 *Specifically, Rule 15 relating to marking on explosives and packages and Rule 84 relating to temporary shops for possession and sale of fireworks during festivals of the Explosives Rules shall be strictly enforced. This should not be construed to mean that the other Rules need not be enforced – all Rules should be enforced. But if the fireworks do not conform to the requirements of Rules 15 and 84, they cannot be sold in the NCR, including Delhi and this prohibition is absolute.*

72.3 *The directions issued and restrictions imposed in the order passed by this Court on 18-7-2005 in Noise Pollution (5), In re, (2005) 5 SCC 733 shall continue to be in force.*

72.4 *The police authorities and the District Magistrates will ensure that fireworks are not burst in silence zones that is, an area at least 100 meters away from hospitals, nursing homes, primary and district health-care centres, educational institutions, courts, religious places or any other area that may be declared as a silence zone by the authorities concerned."*

72.5 *The Delhi Police is directed to reduce the grant of temporary licences by about 50% of the number of licences granted in 2016. The number of temporary licences should be capped at 500. Similarly, the States in the NCR are restrained from granting more than 50% of the number of temporary licences granted in 2016. The area of distribution of the temporary licences is entirely for the authorities to decide.*

72.6 *The Union of India will ensure strict compliance with the Notification GSR No. 64(E) dated 27-1-1992 regarding the ban on import of fireworks. The Union of India is at liberty to update and revise this notification in view of the passage of time and further knowledge gained over the last 25 years and issue a fresh notification, if necessary.*

375. In ***Wild Life Warden vs. Komarrikkal Elias, (2018)8SCC114***, a question arose, whether illegally obtained/procured elephant tusk is Government property attracting presumption under Section 69 of Kerala

Forest Act, 1961. A vehicle was seized from a workshop by Forest Officials on the complaint that the respondent had unauthorizedly collected and stored Elephant Tusk, an unlicensed gun and other accessories. In the criminal case initiated against the respondent, he was acquitted. Assistant Wildlife Warden directed for confiscation of seized items and Jeep. The order was challenged before District Judge, Wayanad, who held that elephant tusk was not a forest produce and remanded the matter. There against, revision was preferred but High Court held that presumption under Section 69 of Kerala Forest Act, 1961 was not attracted since elephant tusk was not a forest produce. Reliance was placed on the definition of 'forest produce', in Section 2 of Kerala Forest Act, 1961. Supreme Court referred to Section 39(1) of Wildlife Protection Act, 1972 and particularly, clause (c) which was inserted w.e.f. 02.10.1991 to hold that ivory imported in India and an article made from such ivory in respect of which any offence against 1972 Act or rule or order made thereunder, has been committed, shall be deemed to the property of State Government. Further where such animal is hunted in a sanctuary or national park declared by Central Government, such animal or any animal article, trophy, uncured trophy or meat derived from such animal shall be the property of Central Government. In view thereof, Court held that there is a declaration that elephant tusk is a property of Government and in that view of the matter, High Court erred in observing that Section 69 of Kerala Forest Act, 1961 is not attracted. Whether it is a forest produce or not under Section 2(f) of Kerala Forest Act, 1961 is immaterial.

376. In ***Lal Bahadur v. State of UP & Others, (2018)15SCC407***, change of master plan and converting green area into residential one was considered. The issue was, whether such conversion is conducive to

protection of environment or not. In the master plan of 1995 of Lucknow, area in dispute was reserved as green belt. In master plan 2021, the same area, shown earlier as green belt, was converted as residential. This part of master plan 2021 was challenged before Lucknow bench of Allahabad High Court. Writ petition was dismissed. The matter came in appeal before Supreme Court. Court held in para 12 of judgment that change of area from green belt to residential is in violation of Article 21, 48A and 51A(g) of the Constitution. Reliance was placed on ***Bangalore Medical Trust v B.S. Muddappa & Others, (1991)4SCC54***, wherein Court had said that protection of environment, open spaces for recreation and fresh air, playground for children, promenade for the residents and other conveniences or amenities are matters of great public concern and a vital interest to be taken care of in a development scheme. Public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other use. Court also relied on an American Supreme Court Judgment ***Agins vs. City of Tiburon, [447 us 255 (1980)]*,** wherein Court said: *'... it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant adverse impacts, such as ..... pollution, ... destruction of scenic beauty, disturbance of the ecology and the environment, hazards related geology, fire and flood, and other demonstrated consequences of urban sprawl'.*

377. In para 15, Court said that, "*This Court had clearly laid down that* ***such spaces could not be changed from green belt to residential or commercial one.*** *It is not permissible to the State Government to change the parks and playgrounds contrary to legislative intent having constitutional mandate, as that would be an abuse of statutory powers*

vested in the authorities. Court also observed, when master plan was prepared earlier and authorities found importance of such space, it was their bounden duty not to change its very purpose when they knew very well the importance of this place to be kept as open space. Court said,

> *"The **importance of park is of universal recognition**. It was against public interest, protection of the environment and such spaces reduce the ill effects of urbanisation, it was **not permissible to change this area into urban area as the garden/ Greenbelt is essential for fresh air, thereby protecting against the resultant impacts of urbanization, such as pollution etc**. The provision of the Act of 1973 and other enactments relating to environment could not be permitted to become statutory mockery by changing the purpose in the master plan from green belts to residential one. Authorities are enjoined with duty maintain them as such as per doctrine of public trust."*

378. Ultimately, Court quashed Master Plan 2021 changing use of area in question from greenbelt to residential and said that it shall be held in trusteeship only for the purpose of park in future.

379. Heavily striking upon the officials of Statutory Authorities of Government, in ***M.C. Mehta vs UOI & Others (2018)2SCC14***, (I.A. No.93010 and 93007 of 2017 in WP(C) 4677 of 1995), (order dated 15.12.2017); Court said that invaders have pillaged Delhi for 100 of years but for the last couple of decades it is being ravaged by its own citizens and officials governing Capital city. Court gave details of various unauthorized and illegal constructions and misuse of residential premises for industrial and commercial purposes which was allowed by the local bodies/authorities despite several orders passed by Court. Showing its anguish, Court said that it cannot remain spectator when violations of law affect the environment and healthy living of those who abide by law. When time fixed by Court sought to be extended by legislative exercise, Court did not approve the same and in Para 24, referred to its earlier judgment in ***M.C. Mehta vs. Union of India (2006)7SCC456*** wherein Para 20 Court had said '*there cannot be any*

doubt that the ***legislature would lack competence to extend the time granted by this court in the purported law-making power****. That would be virtually exercising judicial function. Such functions do not vest in the legislature.*'

380. In ***State of Uttaranchal vs. Kumaon Stone Crusher, (2018)14SCC537***, issues relating to transaction fee arising from different districts was considered. One of the issues raised was whether coal (and its various varieties) limestone, dolomite, fly ash, clinker, gypsum, veneer and plywood are 'forest produce'. In Para 71 to 78, Court held that coal, hard coke, soft coke and coal briquettes etc. for all forest produce. Similarly, limestone, dolomite and gypsum are also forest produce. However, fly ash clinker and synthetic gypsum are not forest produce. Veneer and waste ply board are also forest produce. With respect to Forest Act, 1927 and Mines and Minerals Development and Regulations Act, 1947, Court held that both operate in different fields and it cannot be said that one repeals other. With regard to the meaning of the term 'forest', Court relied on the judgment in ***T.N. Godavarman Thirumulpad vs Union of India & Others (1997)2SCC267*** and held that definition of forest cannot be read in a restrictive manner. In the conclusions recorded in para 215, Court said that crushing of stones etc., does not result into a new commodity different from forest produce, the crust materials continue to be stone and retain their nature of forest produce. Similar is the position with regard to coal marbles etc.

381. In ***Goa Foundation vs. Sesa Sterlite Limited and & Others (2018)4SCC218,*** Court observed that once a decision was rendered in Goa Foundation, earlier case, ***(2014)6SCC590*** and it was directed that Government shall grant fresh leases, it means that Government could

have not granted fresh lease by way of renewal. It was observed that though renewal of a lease is virtually the same as grant of the fresh lease but a converse direction to grant a minor lease cannot be understood to mean granting a renewal of a minor lease. Obviously, grant of a fresh lease is not the same as a renewal of a lease. When Court in ***Goa Foundation (supra)*** required state to grant a fresh lease, it did not require State to renew existing (expired lease). On the question, how lease should be granted, Court observed that it is not obligatory, constitutionally or otherwise that natural resource (other than spectrum) must be disposed of or alienated or allocated only through an auction or through competitive bidding. Where distribution, allocation, alienation or disposal of a natural resource is to a private party for a commercial pursuit of maximizing profits, then an auction is a more preferable method of such allotment. A decision to not auction a natural resource is liable to challenge and subject to restricted and limited judicial review under Article 14 of the Constitution. A decision to not auction of natural resource and sacrifice maximization of revenue might be justifiable if the decision is taken inter alia for a social good or the public good or the common good. Unless alienation or disposal of a natural resource is for the common good or social or welfare purpose, it cannot be dissipated in favour of a private entrepreneur, virtually free of cost or for a consideration not commensurate with its work without attracting Article 14 and Article 39-B of the Constitution. Court also said that fresh final leases required to be granted, would require fresh environmental clearances. Relying on earlier decisions in ***Ambica Quarry Works & Another vs State of Gujarat & Others (1987)1SCC213***; ***Rural Litigation and Entitlement Kendra vs State of U.P. 1989(supplement)1SCC504*** and ***State of Madhya Pradesh vs.***

Krishna Das Tikka Ram, 1995 (supplement) 1 SCC 587, Court said that renewal of a lease whether under FC Act, 1980 or otherwise cannot be granted without the lease holder complying with the necessary statutory requirements, particularly, since a grant of renewal is a fresh grant and must be consistent with law. On this aspect, Court also referred to the judgment in ***Common Cause vs. UOI & Others (2017)9SCC499***. In Para 150, Court also said that MoEF has no authority to issue an order or notification or memorandum which is contrary to the judgment of Supreme Court in the context of OM dated 21.08.2013, issued by MoEF. Court held that validity period of EC granted under EIA 1994 is only 5 years and a valid EC is necessary for renewal of mining lease.

382. In ***Techi Tagi Tara vs. Rajendra Singh Bhandari (2018)11SCC734***, observations and directions issued by NGT in respect of appointment/nominations, in State Pollution Control Boards/Pollution Control Committees were considered. In view of constitutional provisions, Court observed that it is the fundamental duty of citizen of the Country to protect and improve environment including forest, lakes, rivers and wildlife and to have compassion for living creatures. Despite that society in the last few decades has seen repeated onslaught against environment on different grounds. Composition of State Pollution Control Board in State of Uttarakhand was challenged on the ground that the persons appointed are not properly qualified. The jurisdiction of Tribunal in giving directions to reconsider appointment of Chairperson and Members of State PCB and to lay down guidelines for their appointment was challenged. Supreme Court held that the issue of appointment was not a dispute and that too which can be said to have arisen relating to environment, constituting a substantial question and hence beyond the

scope of Section 14 and 15 of NGT Act, 2010. Court said that proper qualified experts should be appointed and if such appointments are not made, the same can be challenged in High Court by filing Writ of *quo warranto*.

383. In ***Goel Ganga Developers India Private Limited vs. Union of India, (2018)18SCC257***, judgment dated 27.09.2016 passed by NGT in ***Tanaji Balasaheb Gambhire vs. Union of India, 2016 SCC Online NGT 4213*** was challenged. Tribunal held that the builder/proponent has violated conditions of EC and therefore, liable to pay environmental compensation of Rs. 100 crores or 5% of the total cost of project, whichever is less for restoration and restitution of environment damage and degradation. In addition, it shall also pay Rs. 5 crores for contravening mandatory provisions of environmental laws. Tribunal also imposed fine of Rs. 5 Lakhs upon Pune Municipal Corporation and cost of Rs. 1 lakh each upon the said Corporation, Department of Environment, State of Maharashtra and SEIAA, Maharashtra. Two appeals were filed, one by the proponent and another by Pune Municipal Corporation. The factual background is that the Proponent purchased 79,900 sq. meters or 7.91 hectares of land comprised in six survey nos. 35, 36, 37, 38, 39 and 40 in Vad Gaon, Pune. All these survey numbers were amalgamated to become one plot. Proponent applied for sanction of layout and building proposal plan on 12.03.2017 on an area of 15141.70 sq. meters, originally depicted as plot no. 3. Sanctioned FSI was 515313.16 sq. meters. Thereafter, on 05.09.2007, revised layout plan was submitted for an area measuring 28233.23 sq. meters and sanctioned FSI was 39526.54 sq. meters. Proponent also applied for EC vide proposal dated 27.06.2007. He assured that he would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. 12 buildings were to

have stilts with basements and 11 floors. Total built up area was indicated as 57658.42 sq. meters. EC was granted on 04.04.2008. Defining as to what is the meaning of the term "built up area", Court after referring to EIA Notification, 2006, said in para 16 as under:

> ***16.*** *From a bare perusal of the two hash tags (#) in Column 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines "built up area" to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that* ***under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as "built up area". There is no exception for non-FSI area****."*

384. It also said that the concept of FSI or non FSI has no consonance or connection with the grant of EC. The same may be relevant for the purpose of Building Plans under Municipal Laws and Regulations but has no linkage or connectivity with the grant of EC. The authority while granting EC is not concerned whether area is to be constructed as FSI area or non FSI area. Both will have an equally deleterious impact on environment. Construction implies usage of lot of material like sand, gravel, steel, glass, marble etc., all of which will impact environment. Merely because under Municipal Laws some of the constructions are excluded while calculating FSI, is no ground to exclude it while granting EC. Therefore, when EC is granted for a particular construction, it includes both FSI and non FSI area. Considering correctness of Notification dated 04.04.2011 and clarification dated 07.07.2017, Court said that such memorandums could not or should not have been issued. EIA 2006 is a statutory Notification and such Notifications cannot be set at naught by a Joint Director by issuing any clarificatory letter. In para 22, Court said, "*we are of the view that since such decision has not been notified in the gazette the statutory notification dated 14-9-2006 and its subsequent clarification dated 4-4-2011 could not have been virtually set*

aside by this office memorandum". It was also held that OM dated 07.07.2017 is not clarificatory since EIA 2006 itself was very clear and considering question, whether Proponent has violated conditions of EC, Court found that construction raised was much more than what was approved and permitted in EC. Against the total built up area sanctioned in EC i.e., 57658.42 sq. meters, Proponent has constructed 100002.25 sq. meters which was patently illegal. Then, Court considered as to what order could have been or ought to have been passed. Considering the probability including justification for demolition, Court found that large number of flats and shops are already occupied by innocent people who have paid money. These people are from middle class having invested from their life's earning in the project. Since these persons are not parties, Supreme Court took the view that the demolition is not proper answer in the peculiar facts and circumstances of the case as that would put innocent people at loss. However, Court added in para 54 by observing that PP cannot be permitted to build any more flats than what was permitted but only to complete construction of 807 flats and 117 shops/offices and cultural center including the club house. Court stopped from constructing two buildings and directed to refund the money with 9% interest. In this regard, Court said in para 54, *"There is no equity in favour of these persons since the plan to raise this construction was submitted only after 2014 when the validity of the earlier EC had already ended. Therefore, though we uphold the order of the NGT dated 27-9-2016 that demolition is not the answer in the peculiar facts of the case, we also make it clear that the project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and club house".*

385. Court did not find any ground to award special damages to original applicant/complainant looking into his conduct. For the assessment of damages, **Court observed that it cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles. No such principles have been accepted or established in that case. No assessment in actual terms can be made, though Court can impose damage or cost on principles which have been well-settled by law**. Referring to some earlier matters, where Court awarded damages as 5% of the project cost and also looking to the fact that the case in hand was where severe violations were found and PP was in transient and unapologetic behavior, it imposes damages of 100 Crores or 10% of project cost whichever is more besides, Rs. 5 Crores as damages in addition to above for contravening mandatory provisions for environmental laws. In this regard, the observations of the Court are as under:

> "***64.*** *Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free.* ***This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law****. However,* ***in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponen****t. He has maneuvered and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone upto 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is* ***directed to pay damages of Rs.100 crores or 10% of the project cost whichever is more****. We also make it clear that* ***while calculating the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. The cost of construction shall be calculated on the basis of the schedule of rates approved by the Public Works Department (PWD) of the State of***

> ***Maharashtra for the year 2014. In case the PWD of Maharashtra has not approved any such rates then the Central Public Works Department rates for similar construction shall be applicable. We have fixed the base year as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014.*** *In addition thereto, if the project proponent has taken advantage of Transfer of Development Rights (for short "TDR") with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent* ***shall also pay a sum of Rs. 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws***."

386. In ***M.C. Mehta (Kant Enclave matters) v. Union of India & Others (2018)18SCC397*** (order dated 11.09.2018 in IA No. 2310/2008 and others in WP No. 4677/1985 & IA No. 2310-11 in WP (C) No. 202/1995), a question was raised, whether land notified under Punjab Land (Preservation) Act, 1900 is forest land or is required to be treated as forest land and if so whether construction carried out by R Kant & Co. on the said land is in contravention of notification dated 18.08.1992 issued under the said Act, FC Act, 1980 and the decisions of the Supreme Court. Court answered both the questions in affirmative. However, considering the fact that there were *bona-fide* purchasers, Court observed that it will not be proper to demolish buildings raised before 18.08.1992. However, subsequent constructions were directed to be demolished. On applying the principle of 'Polluters Pay', Court observed that the builder, Kant & Co. has already spent an amount of Rs. 50 crores, must pay 10% more thereof, for rehabilitation of damaged area.

387. **Goel *Ganga Developers India Private Limited vs. Union of India & Others (2019)9SCC288*** is follow up of the judgment reported in ***(2018)18SCC257***. The original matter was decided in *Civil Appeal No.10854 of 2016*. Thereafter, I.A. No. 64665 of 2019 was filed and came to be decided by judgment dated 11.09.2019 reported in 2019. Proponent

filed application stating that three Judges bench judgment in Noida Memorial Complex, i.e., in ***Okhla Bird Sanctuary, In Re: (2011)1SCC744*** has not been considered in recording interpretation of 'built up area' in terms of Item 8 of EIA 2006. The contention advanced on behalf of Proponent was rejected by observing that the main dispute in ***Noida Park (supra)*** was whether project, a building and construction project or a township and area development project. Court answered holding that it is a township and area development project. While answering this, Court felt some ambiguity in Item 8-A and 8-B of Schedule to EIA 2006, but there was no issue raised with regard to the fact about covered area being built up. Court observed that all parties were *ad-idem* in **Noida Park case** that covered construction was built up area and Court also held so. In **Goel Ganga Developers judgment**, Court has held that all covered construction shall be deemed built up area and Municipal Laws regarding Floor Space Index (FSI) or Floor Area Ratio (FAR) have no relevance. Therefore, **Noida Park judgment** has no application as the issue did not arise herein.

388. In ***State of Meghalaya vs. All Dimasa Students Union, Dima-Hasao District Committee & Others (2019)8SCC177***, various appeals arising from judgment of NGT were considered. NGT judgment dated 31.08.2018 in ***O.A. No. 110 of 2012, Threat to life arising out of Coal Mining in South Garo Hill District vs. State of Meghalaya***; judgment dated 10.05.2016 in ***O.A. No. 73 of 2014, All Dimasa Students Union vs. State of Meghalaya***; and judgment dated 25.03.2015 in ***O.A. 73 of 2014 (M.A. No. 92 of 2015), All Dimasa Student Union vs. State of Meghalaya*** and order dated 04.01.2019 in ***O.A. No. 110 of 2012, Threat to life arising out of Coal Mining in South Garo Hill District vs. State of Meghalaya*** came to be considered by Supreme Court and

decided on 03.07.2019 by a two Judges Bench. Court observed that natural resources of country are not meant to be consumed only by present generation of men or women of the region where natural resources are deposited. These features of nature are for all generations to come and for intelligent use of the entire country. Present generation owes a duty to preserve and conserve the natural resources of the nation so that it may be used in the best interest of the coming generations as well as for the country as a whole. The background facts are that Guahati High Court on the basis of a News Item published on 06.07.2012 that 30 coal labourers were trapped inside a coal mine at Nongalbibra in the District of South Garo Hills and 15 of them died inside the coal mine, registered a PIL Suo Moto number (SH) 3 of 2012. By order dated 10.12.2012, Guahati High Court passed order transferring the matter to NGT, where notice was issued on 30.01.2013, registering as *110 (T_{HC}) of 2012*. Another *O.A. 73 of 2014* was filed by All Dimasa Students Union before Tribunal making serious complaints with regard to rat hole mining operations going on in Jaintia Hills in the State of Meghalaya for the last many years without being regulated by law. After hearing the matter, Tribunal on 17.04.2016 passed an order directing Chief Secretary, Meghalaya and Director General of Police, Meghalaya to ensure that rat hole mining/illegal mining is stopped forthwith throughout State of Meghalaya and no illegal transport of coal shall be allowed. Large number of applications, by different Associations and persons carrying interest in the subject matter who have undertaken the above mining, were filed before Tribunal. Both OAs were clubbed together. On 31.08.2018, Tribunal passed order directing that ban on rat hole mining shall continue subject to further order passed by Supreme Court. It also allowed ban on transportation of extracted coal to continue subject to

further orders of the court. For restoration of environment and rehabilitation of victims, Tribunal constituted a Committee headed by Justice B.P. Katakey, former Judge of Guahati High Court with representatives of CPCB, and Indian School of Mines, Dhanbad. The said Committee submitted report dated 02.01.2019, and after considering report, Tribunal passed order dated 04.01.2019 observing that State of Meghalaya had failed to perform its duties to act on the recommendation of the report of Meghalaya State PCB, submitted in 1997 and an interim amount be deposited towards restoration of environment. **Court directed State of Meghalaya to deposit Rs.100 crores** within two months with CPCB. Against the order dated 31.08.2018 & 04.01.2019, appeals were filed. Large number of issues were raised and including that of jurisdiction of Tribunal. The issues raised before Court are formulated in Para 53 as under:

> *"**53.** From the submissions of the parties as noted above and the materials on record in these appeals following points arise for consideration.*
>
> ***53.1** (1) Whether orders passed by the National Green Tribunal are without jurisdiction being beyond the purview of Sections 14, 15 and 16 of the National Green Tribunal Act, 2010?*
>
> ***53.2** (2) Whether provisions of Mines and Minerals Development Regulation Act, 1957 are applicable in Tribal areas within the State of Meghalaya, included in Sixth Schedule of the Constitution?*
>
> ***53.3** (3) Whether for mining the minerals from privately owned/community owned land in hills districts of Meghalaya, obtaining a mining lease is a statutory requirement under the MMDR Act, 1957 and the Mineral Concession Rules, 1960?*
>
> ***53.4** (4) Whether under the MMDR Act, 1957 and Mineral Concession Rules, 1960, it is the State Government, who is to grant lease for mining of minerals in privately owned/community owned land or it is the owner of the minerals, who is to grant lease for carrying out mining operations?*
>
> ***53.5** (5) Whether the State of Meghalaya has any statutory control over the mining of coal from privately owned/community owned land in hills districts of State of Meghalaya?*

53.6 *(6) Whether the power to allot land for mining purposes is vested in Autonomous District Councils?*

53.7 *(7) Whether the order of National Green Tribunal dated 17.04.2014 directing for complete ban on mining is unsustainable?*

53.8 *(8) Whether the complete ban on mining of coal in the State of Meghalaya as directed by NGT deserved to be vacated/modified in the interest of State and Tribals?*

53.9 *(9) Whether NGT had any jurisdiction to constitute committees to submit reports, to implement the orders of NGT, to monitor storage/transportation; of minerals and to prepare action plan for restoration of environment?*

53.10 *(10) Whether the NGT committed error in directing for constitution of fund, namely, Meghalaya Environment Protection and Restoration Fund?*

53.11 *(11) Whether NGT by constituting Committees has delegated essential judicial powers to the Committees and has further encroached the constitutional scheme of administration of Tribal areas under Article 244(2) and Article 275(1) and Schedule VI of the Constitution?*

53.12 *(12) Whether direction to deposit Rs.100 crores by the State of Meghalaya by order dated 04-1-2019 of NGT impugned in C.A.No.2968 of 2019 is sustainable?*

53.13 *(13) Whether NGT's order dated 31-3-2016 that after 15-5-2016 all remaining coal shall vest in the State of Meghalaya is sustainable?*

53.14 *(14) Whether assessed and unassessed coal which has already been extracted and lying-in different Districts of Meghalaya be permitted to be transported and what mechanism be adopted for disposal of such coal?"*

389. Returning question 1, Court observed that in the case there were not mere allegation of environmental degradation by illegal and unregulated coal mining, rather there was material on record including reports of Experts to show degradation of water, air and surface of land. Hence, there was sufficient allegations regarding substantial questions relating to environmental and violation of enactments in Schedule I. Court also distinguished judgment in ***Techi Tagi Tara vs. Rajendra Singh Bhandari (supra)*** and said that the issue raised therein was totally different. It, therefore, answered issue 1 holding that Tribunal

acted within its jurisdiction under Section 14 &15 of NGT Act, 2010. Coming to point two, Court said that it would proceed with the assumption that Tribals are owners of the land. In fact, Court proceeded to examine issue 2 on the premise that in privately owned land or community lands, minerals also vest in the owner that is the private persons. Refering to the provisions of MMDR Act, 1957, Court held that there is nothing in Schedule VI of the Constitution which in any manner excludes applicability of MMDR Act, 1957 in tribal areas of hill Districts of State of Meghalaya and the contentions advanced otherwise are to be rejected. Then question 3 was considered. Court held that District Magistrate had jurisdiction under Mines Act, 1952 to take action and it was also incumbent upon State to ensure compliance of not only MMDR Act 1957 but Mines Act, 1952 and EP Act, 1986. Issue 4 was answered by observing that power to grant mining lease is with owner as per Chapter 5 of Mineral Concession Rules, 1960 and State Government could not have granted mining lease on such private on land. Issue 5 was answered by observing that our country is governed by Constitution of India and all the States are to implement Parliamentary Acts in true spirit. In the present case, State was advised, time and again, by Comptroller and Auditor General and despite of being aware of its statutory obligations, State failed to do so and wrongly contended that there was no requirement of mining lease for winning them minerals. Court said in para 139:

> *"The above stand of the State taken before this Court gives the impression that instead of implementing the Parliamentary enactment and regulatory regime for mineral regulation some vested interests wants to continue the illegal regime of illegal mining to the benefit of the few persons which is unacceptable and condemnable. We, thus, conclude that the State of Meghalaya has jurisdiction and power to ensure that no mining of coal should take place except when a mining lease granted under Mineral Concession Rules, 1960, Chapter V, as discussed above."*

390. Point 6 was answered by holding that District Counsel has no power to make any law with regard to grant of mining lease which have to be governed by MMDR Act 1957 and Rules 1960. Issues 7 and 8 were answered together and Court held that there was no error in the order of Tribunal restraining illegal coal mining but the same would not extend to mining operations undertaken by Tribals or other owners in accordance with MMDR Act 1957 and Rules. Issues 9 and 10 were also answered together with respect to jurisdiction of Tribunal and Court held that under Rule 24, Tribunal has power to issue orders to secure justice and direction to constitute funds is also saved under such power. Court also held that there is no lack of jurisdiction in Tribunal in directing for appointment of Committee or to obtain a report from a Committee in the given facts of the case. Then, point 11 was answered by observing that when a Committee is constituted by Tribunal and Committee over steps its authority, it is always open to Tribunal to take corrective measures and Committee report only for that reason is not to be challenged. Further, it does not amount to delegating essential judicial functions when Tribunal requires Committee to prepare action plan and submit report. It means that Tribunal has kept complete control on all steps which were required to be taken by Committee. Court also held that when Committee examined the matter with regard to environmental degradation and illegal coal mining, it cannot be treated to be an encroachment upon administration of tribal areas by District and Regional Council. Direction of payment of 100 crores as interim compensation was considered in point 12. **Court held that it is neither a penalty nor a fine imposed upon State Government**. The amount was directed to be deposited for carrying out steps regarding restoration of environment. The **direction for payment of 100 crore rupees was**

affirmed, though source of payment was allowed to be taken from environment fund. Issue 13 was in respect of disposal of coal lying in open after being extracted after 15.05.2016. Court held that it will not automatically vest in the State. The owner of the coal or the person who has mined the coal shall have propriety right in the mineral which shall not be lost. Point 4 relates to various IAs which we do not find of relevance for the purpose of issue on merits of law on environment.

391. In ***Tata Power Delhi Distribution Limited vs. Manoj Mishra & Others (2019)10SCC104***, issue of levy of sewerage charges pursuant to order passed by this Tribunal in ***Manoj Mishra vs. Union of India, O.A. No. 06 of 2012*** **decided on 13.01.2015** was considered. In this regard, in an application filed, order was subsequently passed on 11.09.2019 directing Delhi Government, Delhi Jal Board and Delhi Municipal Corporation to introduce **regime of levy of sewerage charges**. Supreme Court disposed of application filed by Electricity Distribution Company by directing that the direction issued on 11.09.2019 shall be implemented.

392. In ***Chander Prakash Budakoti vs. Union of India & Another (2019)10SCC154,*** order of Tribunal dated 05.04.2019, passed in ***O.A. No. 626 of 2016, Chander Prakash Budakoti vs. Union of India*** was challenged. Appellant, a journalist filed application before Tribunal complaining about environmental damage caused by respondents 4 to 8. He alleged that large number of trees were cut illegally and there is usage of forest land for non-forest purpose. After examination, Tribunal found that Khasra No. 512 and 514 were private forest land as recorded in Revenue Records and provisions of FC Act, 1980 were inapplicable. Accordingly, it issued directions to forest authorities to take appropriate action. Supreme Court held that in order to record a finding whether land

in dispute is or not a forest land, reliance can be safely placed on Revenue Records. Refering to an earlier judgment in ***Noida Memorial Complex New Near Okhla Bird Sanctuary, In Re: (2011)1SCC744*****,** Court held that due weight has to be given to Revenue Records especially those pertaining to a period when the dispute regarding land being a forest land did not exist.

393. In ***Kerala State Coastal Zone Management Authority vs. State of Kerala, Maradu Municipality & Others (2019)7SCC248***, judgment of Kerala High Court dated 11.11.2015 passed in *Writ Appeal No.132 of 2013* was challenged. Allegations were made that construction activities were going in critically vulnerable coastal areas notified as CRZ-III; Panchayats had issued permissions in violation of relevant statutory provisions and CRZ Notifications. Vigilance Department of the Government detected violations and directed local bodies to revoke flat building permits whereupon show cause notice was issued under Rule 16 of Kerala Municipality Building Rules, 1999. Writ Petition was also filed in the High Court which was allowed by Single Judge and Division Bench dismissed appeal. Supreme Court constituted a Committee after hearing appeals for sometimes to find out whether area in question is in CRZ Category 3, Category 1 or Category 2. Committee submitted report recording its findings that the area in dispute at the relevant time when objection was raised, was within CRZ III. As per CRZ Notification dated 19.02.1991, in CRZ III area of 200 meters from high tideline is 'No Development Zone' and no construction could have been permitted within this zone except for repairs of authorized structures not exceeding existing FSI. Court finds that in view of the said report, it was impermissible and construction raised within prohibed area was unauthorised. Court referred to its earlier judgments in ***Vaamika Island***

(Green Lagoon Resort) Vs. Union of India & Others (2013)8SCC760 and ***Piedade Filomena Gonsalves vs State of Goa & Others (2004)3SCC445*** *and* held that the direction of High Court for demolition warrants no interference and upheld the same.

394. In ***Pawan Kumar vs. State of H.P. (2019)4SCC182,*** in the matter of prosecution under Section 379 IPC, 41 & 42 of Forest Act, 1927, Court held that mere production of seizure memo is not sufficient. Non-production of seized wood and the vehicle, the primary evidence of the offence, renders prosecution case fragile and unsustainable. Mere production of seizure memo does not tantamount to the production of seized wood sent to the lorry. Unless seized wood was produced, mere production of the sample and when there is no material in support to show that the sample was out of the same 22 logs, conviction of accused cannot be sustained.

395. In ***Sarvepalli Ramaiah (Dead) as per legal representatives and others vs. District Collector Chittoor & Others (2019)4SCC500***, the question was whether an area declared as water body can be leased out or not. Supreme Court said that High Court rightly held that a tank (water body) cannot be alienated, no patta can be granted in respect of tanks and water bodies including those that might have dried up or fallen into disuse. In this regard, Court reiterated and followed its earlier decisions and in Para 49 said:

> *"**49.** This Court has time and again emphasized the need to retain and restore water bodies and held that **water bodies are inalienable. Land comprised in water bodies cannot be alienated to any person even if it is dry**. Reference may be made to the judgments of this Court in:*
>
> *(1) Susetha vs. State of Tamil Nadu, (2006)6SCC543;*
> *(2) M.C. Mehta vs. Union of India, (1997)3SCC715, and*
> *(3) Intellectuals Forum v. State of A.P. (2006)3SCC549."*

396. In ***Vasant Chemicals Limited Vs Managing Director Hyderabad Metropolitan Water Supply and Sewerage Board & Others (2019)4SCC562***, Court upheld levy of sewerage cess on industries which were already getting the effluent treated and also held that charges collected from Effluent Treatment Company as well as cess from industries by Board, does not amount to double taxation.

In para 19 of the judgment, court said:

> *"...Proviso to Section 55 of the Act contemplates that the sewerage cess shall not be levied on the occupier of the premises if such premises is stated to be in an area which is not served by the sewerage system of the Board. The proviso implies that the occupier of such premises cannot use the Board sewer by any means whatsoever. Therefore, the contention of the appellant that it is not liable to pay sewerage cess to the Board as it is not directly letting out sewage effluents into the sewage line of the Board and that it is carrying its effluents in the tanker, lorries and letting out in the effluent treatment plant of JETL and thus not connected with the sewage system of the Board, in our view, is wholly untenable. Since the sewage of the appellant is ultimately let into the sewer line of the Board, the appellant cannot contend that it is not covered under Section 55 of the Act and that it is covered under proviso to Section 55 of the Act."*

397. Describing nature of sewerage cess, Court said that **it aims to recover the cost of treating the effluents of strength stronger than domestic sewage and to make the effluents of acceptable quality**. The payment of sewerage surcharges and other charges by JETL cannot take away the statutory liability of sewerage cess levied on the occupier of the premises who consumes water and lets out the sewerage into the Board Sewer System. The payment of sewerage surcharge and other charges by JETL to respondent-Board will not amount to double levy.

398. In ***Hanuman Laxman Aroskar vs. UOI & Others (2019)1SCC401***, issue of grant of EC for development of Greenfield International Airport at Mopa in Goa was considered. Provisions of EIA Notification, 2006 and the process thereunder were considered in detail.

It was an appeal taken to Supreme Court, from a judgment/order dated 21.08.2018 passed by this Tribunal in ***Appeal No. 5/2018*** (earlier *Appeal No. 61/2015/WZ)*, ***Federation of Rainbow Warriors vs. Union of India & Others*** and ***Appeal No. 6/2018, Hanuman Laxman Aroskar vs. Union of India,*** wherein grant of EC for development of green field International Airport at Mopa, Goa, was challenged. Project was in category 'A' hence as per EIA 2006 'Prior EC' was to be granted by MoEF. EC was granted on 28.10.2015. It was challenged by M/s. Federation of Rainbow Warriors in Appeal No. 61/2015 at Tribunal's Western Zonal Bench, Pune. Another Appeal No. 1/2016 was filed by Hanuman Laxman Aroskar at NGT, Western Zonal Bench, Pune. Both these appeals were transferred to Principal Bench at New Delhi and numbered as Appeal No. 5 and 6 of 2018 respectively. One of the issues raised before Supreme Court was; PP did not give complete information in Form 1 submitted to the Competent Authority for grant of EC; PP is duty bound to make a proper disclosure and highest level of transparency is required; and there was concealment of certain facts by leaving certain columns blank or by not giving required details. It was contended that for these reasons, application for EC ought to have been rejected. Supreme Court also referred and approved two judgments of this Tribunal in ***Save Mon Region Federation vs. Union of India, 2013 (1) All India NGT Reporter 1*** and ***Shreeranganathan K P vs. Union of India 2014 SCC online NGT 15*** wherein, on the basis of information furnished in Form 1, the deficiencies in EIA Report, process of appraisal etc., were considered in detail to find out whether EC was granted in accordance with law or not. Court distinguished an earlier judgment in ***Lafarge Umiam Mining Private Limited vs. Union of India 2011(7)SCC338*** observing that it was the case under EIA 1994 when provisions of EIA 2006 were not

applicable. Court said that decision was based on facts of that case, summarized by Court in ***Hanuman Laxman Aroskar (supra)*** in para 138 of judgment. It was also held that, relevant material, if has been excluded for consideration or extraneous circumstances were brought in mind, there was a failure to observe binding norms under EIA 2006 and consequential serious flaw in the decision-making process, would amount to an illegal exercise and failure of statutory duty, so as to vitiate EC. In para 157 of judgment, importance of the correct and complete disclosure of information by PP in his application, Form 1 and Form 1A, and further consideration by Competent Authority has been discussed, as under:

> *"The 2006 Notification must hence be construed as a significant link in India's quest to pursue the SDGs. Many of those goals, besides being accepted by the international community of which India is a part, constitute a basic expression of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the aspirations of our own Constitution.* ***The fundamental principle which emerges from our interpretation of the 2006 Notification is that in the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive."***
>
> (Emphasis Added)

399. Further, in para 158 of the judgment, in ***Hanuman Laxman Aroskar (supra),*** Court observed:

> *"Repeatedly, it has been urged on behalf of the State of Goa, MoEFCC and the concessionaire that the* ***need for a new airport*** *is paramount with an increasing volume of passengers and* ***consequently the flaws in the EIA process should be disregarded.*** *The need for setting up a new airport is a matter of policy. The role of the decision-makers entrusted with authority over the EIA process is to ensure that every important facet of the environment is adequately studied and that the impact of the proposed activity is carefully assessed.* ***This assessment is integral to the project design because it is on that basis that a considered decision can be arrived at as to whether***

necessary steps to mitigate adverse consequences to the environment can be strengthened.”

(Emphasis Added)

400. Illegal mining by M/s. Sharda Mines Private Limited, and action to be taken there against, was considered by Supreme Court in ***Common Cause vs. Union of India & Others (2019)11SCC674*** (Order dated 12.11.2018 in I.A. 40 & 42 of 2015 etc. in WP (C) No. 114 of 2014). The judgment is a follow up action of the earlier issue decided in ***Pawan Kumar vs. Union of India (2017)9SCC499***. Court examined only validity of EC granted to Sharda Mines Private Limited and production of iron ore without/in excess of EC. In particular, the issue relates to mining lease granted to above Proponent over 947.046 hectare of land for 20 years from 14.08.2001 to 13.08.2021 at Thakurani Mines, Block B village Soyabali, District Keonjhar, State of Odisha. The background facts are that the company was granted permission on 13.07.1999 to extract 1,40,000 MT iron ore per annum. Company did not act upon the said permission till 13.08.2001/14.08.2001. On 22.09.2004, EC for extraction of iron ore (lump) was granted. It allowed extraction of 1.5 lakh ton per annum to 4 million tons per annum. There was a progressive gradation in the production capacity. Court observed that the permission granted on 13.07.1999 was for production of iron ore and not iron ore (lump). EC granting permission to iron ore (lump) introduced something alien to the permission granted on 13.07.1999. Court also found that EC was granted only to the expansion of production of iron ore from 1.5 LTPA to 4.0 MTPA. It was not disputed before Court that EC will not have retrospective effect and would be operational from the date it is granted. In view of the law laid down in ***Common Cause vs. Union of India (2017)9SCC499,*** Court held that to the extent there is mining beyond the permission in EC, it is illegal and the incumbent must be penalized in

terms of judgment in **Common Cause (*supra*).** Differentiating between iron ore and iron ore (lump), Court found that lumps are a by-product of extraction of iron ore. Thereafter, Court permitted Central Empowered Committee to rework quantum of excessive or illegal mining and consequent penalty.

401. **Arjun *Gopal & Others vs U0I & Others (2019)13SCC523*** is a follow up of earlier decision in respect of firecrackers i.e. ***(2017)14SCC488***. I.A. No.6 & 8 of 2016 and others were filed by manufactures of firecrackers as well as some other parties. The arguments were raised that there was no sufficient study as to what extent burning of crackers is contributing towards air and noise pollution and whether it was so serious so as to warrant ban. Second argument was raised with reference to the fact that bursting of crackers during Diwali is a religious factor and therefore, protected under Article 25. In Para 32, Court observed that "*it is an accepted fact that bursting of firecrackers during Diwali is not only the only reason for deterioration of air quality. There are other factors as well. It calls for necessity to tackle the other contributory factors for air pollution and making the air quality as "very poor" and even "poor". Unregulated construction activity which generates lot of dust and crop burning in the neighbouring States are the two other major reasons, apart from certain other reasons, including vehicular pollution etc.*". Dealing with Article 25 Court said that "***Article 25 is subject to Article 21*** *and* ***if a particular religious practice is threatening the health and lives of people, such practice is not entitled to protection under Article 25***."

402. The issue of economic hardship and unemployment was considered and answered in Para 44 and Court observed as under:

> *"...First aspect is that the argument of economic hardship is pitched against right to health and life.* ***When the Court is called upon to protect the right to life, economic effect of a particular measure for the protection of such right to health will have to give way to this fundamental righ****t. Second factor, which is equally important, is that the economic loss to the State is pitched against the economic loss in the form of cost of treatment for treating the ailments with which people suffer as a result of burning of these crackers. Health hazards in the form of various diseases that are the direct result of burning of crackers have already been noted above. It leads to asthma, coughing, bronchitis, retarded nervous system breakdown and even cognitive impairment. Some of the diseases continue on a prolonged basis. Some of these which are caused because of high level of* $PM_{2.5}$ *are even irreversible. In such cases, patients may have to continue to get the medical treatment for much longer period and even for life.* ***Though there are no statistics as to what would be the cost for treating such diseases which are as a direct consequence of fireworks on these occasions like Diwali, it can safely be said that this may also be substantial****. It may be more than the revenue which is generated from the manufacturers of the crackers. However, we say no more for want of precise statistical data in this behalf."*

403. Further Court held that there is no complete ban in as much as there is no ban on green crackers.

404. In ***Municipal Corporation of Greater Mumbai & Ors. Vs. Hiraman Sitaram Deorukhar & Others (2019)14SCC411***, the issue of conversion of a property reserved for garden and development plan prepared earlier for other commercial residential purposes, whether permissible was considered. Relying on the earlier decision in ***Bangalore Medical Trust vs. B.S. Muddappa (1991)4SCC54***, Court said that it cannot be done. It referred to the following observations made in **Bangalore Medical Trust Case (supra**):

> *"23. The scheme is meant for the reasonable accomplishment of the statutory object which is to promote the orderly development of the City of Bangalore and adjoining areas and to preserve open spaces by reserving public parks and play grounds with a view to protecting the residents from the ill-effects of urbanisation. It meant for the development of the city in a way that maximum space is provided for the benefit of the public at large for recreation, enjoyment, "ventilation" and fresh air. This is clear from the Act itself as it originally stood. The amendments inserting Sections 16 (1) (d), 38A and other provisions are clarificatory of this object. The very purpose of the BDA, as a statutory authority, is to promote the*

healthy growth and development of the City of Bangalore and the area adjacent thereto. ***The legislative intent has always been the promotion and enhancement of the quality of life by preservation of the character and desirable aesthetic features of the city. The subsequent amendments are not a deviation from or alteration of the original legislative intent, but only an elucidation or affirmation of the same.***

24. Protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. ***The public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user****. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens.*

25. Reservation of open spaces for parks and play grounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanisation."

405. Thereafter, in Para 7, 8, 9 & 10 of the judgment, Court said:

*"****7.*** *This Court has laid down that public interest requires some areas to be preserved by means of open spaces of parks and play grounds, and that there cannot be any change or action contrary to legislative intent, as that would be an abuse of statutory powers vested in the authorities.* ***Once the area had been reserved, authorities are bound to take steps to preserve it in that method and manner only****. These spaces are meant for the common man, and there is a duty cast upon the authorities to preserve such spaces. Such matters are of great public concern and vital interest to be taken care of in the development scheme.* ***The public interest requires not only reservation but also preservation of such parks and open spaces. In our opinion, such spaces cannot be permitted, by an action or inaction or otherwise, to be converted for some other purpose, and no development contrary to plan can be permitted****.*

8. *The importance of open spaces for parks and play grounds is of universal recognition, and reservation for such places in development scheme is a legitimate exercise of statutory power, with the rationale of protection of the environment and of reducing ill effects of urbanisation. It is in the public interest to avoid unnecessary conversion of 'open spaces land' to strictly urban uses, for gardens provide fresh air, thereby protecting against the resultant impacts of urbanization, such as pollution etc. Once such a scheme had been*

prepared in accordance with the provisions of the MRTP Act, by inaction legislative intent could not be permitted to become a statutory mockery. Government authorities and officers were bound to preserve it and to take all steps envisaged for protection.

9. *It could be legitimately expected of the authority to take timely steps in which they have failed. Their inaction tantamount to wrongful deprivation of open spaces/garden to public. This Court in Animal and Environment Legal Defence Fund v. Union of India & Ors., (1997) 3 SCC 549 has laid down that* ***there is duty to preserve the ecology of the forest area****. This Court has enunciated the doctrine of the public trust based on ancient theory of Roman Empire. Idea of this theory was that certain common property such as lands, waters and airs were held by the Government in trusteeship for smooth and unimpaired use of public. Air, sea, waters and the forests have such a great importance to the people that it would be wholly unjustified to make them a subject of private ownership. The American courts in recent cases expanded the concept of this doctrine. The doctrine enjoins upon the Government to protect the natural resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. The aforesaid concept laid down by this Court in M.C. Mehta v. Kamal Nath & Ors. (1997) 1 SCC 388 and this Court held that the State Government has committed patent breach of public trust by leasing the ecologically fragile land to the Motel management.*

10. *This Court in Vellore Citizens Welfare Forum v. Union of India & Ors., AIR 1996 SC 2715 had laid down that protection of environment is one of the legal duties. While setting up the industries which is essential for the economic development but measures should be taken to reduce the risk for community by taking all necessary steps for protection of environment. In M.C. Mehta v. Union of India (1987) Supp. SCC 131, certain directions were issued by this Court regarding hazardous chemicals. Relying partly on Article 21, it was observed that life, public health and ecology are priority and cannot be lost sight of over employment and loss of revenue. This Court in Subhash Kumar v. State of Bihar & Ors. (1991) 1 SCC 598 has held that right to pollution-free air falls within Article 21. In M.C. Mehta v. Kamal Nath (2000) 6 SCC 213, it was held that any disturbance to the basic environment, air or water and soil which are necessary for life, would be hazardous to life within the meaning of Article 21 of the Constitution. Precautionary principle had been developed by this Court in M.C. Mehta v. Union of India & Ors. (1997) 3 SCC 715 which requires the State to anticipate, prevent and attack the causes of environmental degradation."*

406. Fundamental principles culled out from the above binding precedents, can be summarized as under:

"i. Protection and preservation of environment part of fundamental right to life under Article 21 of the Constitution. It includes right to information and community participation for protection of environment and human health, right to shelter which encompasses adequate living space, safe and decent structure, clean and decent

surroundings, sufficient light, pure air and water, electricity, sanitation, civil amenities like road etc.

ii. *Preservation of environment and maintenance of ecological balance is a social obligation of every person and also a fundamental duty under Article 51A(g) of the Constitution.*

iii. *Enjoyment of life and its attainment including right to life with human dignity encompasses within its ambit protection and preservation of environment, ecological balance, pollution free air and water, sanitation, land etc.*

iv. *A balance and harmony have to be maintained in development and environment. Hence principle of sustainable development is the determining factor. Universal human dependence on use of environmental resources for the most basic needs render it impossible to refrain from altering the environment. As a natural corollary, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environment protection and the risk which are to be regulated. This aspect is recognized by the concept of 'sustainable development'.*

v. *Principle of sustainable development has certain salient features/subsidiary principles namely use and conservation of natural resources; Precautionary principle; Polluter Pay principle; intergenerational equity; new burden of proof; obligation to assist and cooperate, eradication of poverty and financial assistance to the developing countries; doctrine of public trust etc.*

vi. *Natural resources including forest, water bodies, rivers, seashores, etc. are held by State as a trustee on behalf of people and specially the future generation. These constitutes common properties and people are entitled to uninterrupted use thereof.*

vii. *Sustainable development is that which meets the needs of the present without compromising the ability of future generations to meet their own needs. It is the duty of the State under Constitution to devise and implement a coherent and coordinated programme its obligation of sustainable development based on intergenerational equity.*

viii. *Environment is a matter directly under Constitution. Absence of law will not preclude Court from examining issue of environment. If Court perceives any project or activity as harmful or injurious to environment, it would under obligation to step in.*

ix. *Precautionary principle is a fundamental tool to promote sustainable development. It provides for action to avert risks of serious or irreversible harm to the environment or human health in the absence of scientific certainty.*

x. *State government and statutory authorities must anticipate, prevent and attack the causes of environmental pollution. Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

xi. *The onus of proof is on the actor or developer or industrialist to show the actions are environmentally benign.*

xii. *Polluter Pays principle means absolute liability for harm to environment extends to compensate victim of pollution and cost of restoration of environmental degradation. It cannot be restricted to cost of item/subject/material and/or natural resources like water, minerals, etc.*

xiii. Whenever there is violation of environmental norms and environment is degraded, violators must be saddled with liability of payment of environmental compensation besides undergo other proceedings including prosecution."

407. The law discussed above made it clear that degradation of environment has to be seen as a serious violation of law and applying Pollutors Pay Principle, violators must pay, not only for damage to environment but also for remediation/restoration of environment, and loss caused or likely to be suffered by flora and fona and also for breach of statutory obligations. The assessment made by expert's Committee is not to be examined with mathematical precision. The violators can not dispute liability by asserting that despite their act of causing pollution, and breach of law, no liability can be fastened unless with scientific precision quantum of actul damage to environment is assessed. This submission is contrary to what has already been settled by Apex Court in catena of authorities, we have referred above. Court has repeatedly said that principle should be simple and straight like cost of project, annual turnover, sale price of the commodity obtained by causing pollution, damaging environment and flouting statutory obligations and sanctions, etc. However, capacity of pollutors is also to be seen. In the case in hand, discharge of polluted effluent and damage to environment is evident from record. Hence Pollutors are bound to pay compensation. The question of factors to be considered in computation of compensation, we shall discuss in detail later, while dealing direct issue involving this aspect. In view of above discussion, **above objection relating to actual quatum of damage is rejected**.

408. **SAMPLES NOT PROPERLY TAKEN**: A general and common objection taken by all respondents Proponents is regarding the manner of collection of samples by officials of MPCB or the Committee. We find from

documents relating to collection of samples, (some are placed on record alongwith objections by Proponents), that inspections were carried out and samples were collected in the presence of senior officials or representatives of concerned Proponents. In no case any ojection was raised by proponents' representatives regarding the place or point of collection of samples or the manner of collection, at the time of inspection or collection of samples. All the memos of inspections or samples collection, placed before us, contain signatures of such representatives without mentioning any objection. Further, immediately after such inspections, no complaints were made to higher authorities about the manner of collection of samples. Broadly, after issue of closure notice, such plea has been taken either in the reply submitted to officials of MPCB or in the memo of appeals preferred before Chairman or Member Secretary, MPCB. If there was any such complaint regarding Committee appointed by Tribunal, such issue could have been raised before Tribunal by filing an application but that was also not done. Only when reports were submitted, such objections have been taken. Clearly these objections are after thought and not genuine. Moreover, in most cases it has been said that faults found in inspections have been later rectictified which is an admission of the irregularities found in inspections. Later rectification can not condone earlier act of violation. Subsequent improvements or rectifications or remediations by polluting industries/proponents would not nullify or set at naught the pollution already caused and the pollutors would be liable to bear consequences of their act of pollution, damage to environment and sufferance by common people who suffered due to illegal act of pollutors who have given priority to their commercial interests over purity of environment. Hence this objection is **rejected.**

409. **IDENTIFICATION OF ONLY 103 INDUSTRIES; VIOLATIONS CONSIDERED SINCE 2011 AND SOME FACTUAL ERRORS**: The next objection is identification of only 103 units for the purpose of computing compensation/damages on the ground that only those units were taken to task whose record was found available with MPCB showing non-compliance with environmental norms and those whose record were not available have been left and this amounts to arbitrary and selective penalization of a small number of industries comparing to the large number of industries connected with CETP. The previous violations prior to filing of application and also prior to inspections, considered by Committee is illegal and amounts to double penalization. There is another part of objection regarding factual inaccuracy in respect of even 103 selected industries where upon compensation has been determined.

410. So far as factual inaccuracies are concerned, the same have been taken care, not only by Committee in revised report dated 12.08.2021 but by us also wherever such error has been found after perusal of relevant record. Other objections have no merit.

411. Admittedly Member Industries are discharging their effluents in CETP. It is admitted by TEPS, the operator of CETP, that quantity of total discharge was much more than the sanctioned capacity of CETP i.e., between 35 to 40 MLD comparing to 25 MLD capacity of the CETP. This shows an excess discharge to the extend of 45 to 70 %, over and above the capacity of CETP.

412. In various inspection reports and sample surveys it has been found that COD and BOD in CETP outlet was much in excess to the prescribed standards. Reports said that it exceeded more than three, ten and two times to the prescribed standard since long i.e., 2011 to 2019. Pollution

in TIA MIDC and in vicinity, due to violations of environmental laws by respondents' proponents, was continuing even much prior to 2011 but in view of limitation prescribed in Section 15 of NGT Act 2010, Committee has confined itself to, within 5 years from date of O.A. On this approach, learned Senior Counsels and others, appearing on behalf of TEPS, TIMA and individual industries who have filed filed objections before us and contesting the matter, could not point out any infirmity.

413. In para 8.1.1.1 Chapter 8 of the report, Committee has also clarified that earlier period of violation of prescribed standards in respect of COD and BOD has been referred only to show consistency and frequency of violation and not for any other purpose since it was well aware of the period of limitation prescribed in Section 15 (3) of NGT Act 2010 and for the purpose of computation of compensation, it has taken into account the said period of limitation. This is also evident from Chapter 5, Recommendation No. 4 dealing with period of violation with reference to Section 15(3) of NGT Act 2010.

414. Committee has decided to limit period of violation from the date of inspection till the effective date of closure of the unit. In regard of violation of norms, Committee has reported that COD concentration in CETP inlet was not complying continuously to the desired norms. BOD was also intermediately found flouting since 2011. Average exceedances of COD and BOD was found more than two times of the desired norms. Sampling analysis carried by CPCB and MPCB on various occasions show that CETP did not meet discharge standard as under:

> *"(i) The concentration of* ***COD, BOD, Ammonical Nitrogen, Phenols, TSS and TDS in CETP outlet exceed the outlet standard prescribed under the Consent to Operate in all the 02 samples****. The same exceed more than 4 to 15 times, 5 to 47 times, 1 to 8 times, 1.4 to 20 times, 1.28 to 20 times and 40.5 to 100.8 times respectively to the said standards.*

(ii) In the inlet effluent also, Ammonical Nitrogen exceeded the inlet standard prescribed under the Consent to Operate in all the inlet samples except in one sample. The same exceed more than 2 to 7 times the inlet standard. COD and BOD also exceeded 1.5 times and 1.3 times respectively in one of the samples."

415. This is also evident from the table 3.4 wherein non-compliances, with prescribed standards and various inspection jointly made by CPCB and MPCB between 2007 to 2013 and January, 2018 have been demonstrated. We reproduce the said table as under:

"Table 3.4: Analysis result of waste water samples from inlet and outlet

Sampling Locations	**Date of monitoring**	**Parameter(s)**									
		pH	**TSS**	**TDS**	**BOD**	**COD**	**O& G**	**Phenols**	**CN-**	**NH3-N**	**S-2**
Design/Inlet Norms		**5.5-9.0**	**--**	**--**	**1500***	**3500$**	**20**	**5**	**0.2**	**50**	**--**
Inlet to CETP	02.03.2007	5.3	224	2463	696	**3780**	--	--	--	**70**	--
	24.01.2008	2.41	329	2324	883	1877	--	0.54	--	28	--
	12.01.2011	7.1	1021	4122	1263	3147	**--**	5.76	0.26	**123**	--
	29.09.2011	6.27	562	4458	1239	2718	**--**	17.33	--	**281**	--
	28.12.2011	2.37	310	5997	974	2323	62.1	18.6	0.28	**136**	--
	28.12.2011	2.76	452	5781	959	2709	**--**	9.02	0.26	**225**	--
	04.05.2012	4.98	915	3597	956	2914	**--**	4.64	--	**102**	--
	25.09.2012	6.51	436	3972	1000	2082	50.9	10.33	--	40.3	--
	17.04.2013	6.52	604	3551	1052	2460	--	11.8	--	**156**	--
	17.01.2018	5.38	600	9259	**2000**	**5388**	--	63.1	--	**354.5**	--
Design/Outlet Norms		5.5 - 9	100	100	30 (100$)	250	10	5	0.2	50	--
Outlet of CETP	02.03.2007	6.9	**176**	**4419**	**550**	**1554**	2.3	0.59	0.04	**151**	--
	24.01.2008	8.15	**610**	**5434**	**585**	**2229**	--	2.9	**1.08**	**168**	--
	12.01.2011	7.4	**128**	**4031**	**513**	**1036**	11	**7.02**	0.09	**90**	--
	17.02.2018	6.8	**2073**	**10080**	**1410**	**3960**		**100.3**	0.065	**402.7**	52.54

Note: Except pH, all other results are expressed in mg/L.
** The Consent stipulates CETP Inlet norms for SSI industries (discharge up to 25 m^3/day) i.e. Industries' Outlet norms- BOD: 1500 mg/l, COD: 3500 mg/l. The SSI (more than 25 m^3/day), MSI and LSI units, are required to discharge effluent to CETP within stipulated standards in their individual consent (i.e. COD: 250mg/l; BOD 100 mg/l and other parameters & limits specified therein)."*

416. Observations of Committee on the analysis result, reproduced in the table are:

> *"The* ***analysis results reveal that the CETP did not meet discharge standards****. Concentration of COD, BOD, Ammonical Nitrogen, TSS and TDS in CETP outlet exceed the outlet standard prescribed under the Consent to Operate in all the 04 samples.* ***The same exceed more than 4 to 15 times, 5 to 47 times, 1 to 8 times, 1 to 20 times and 40 to 100 times respectively to the said standards. Phenols also exceeded 1.4 to 20 times the outlet standard in two of the samples and Cyanide exceed 5.4 times in one of the samples.*** *In the inlet effluent also, Ammonical Nitrogen exceeded the inlet standard prescribed under the Consent to Operate in all the inlet samples except in two samples. The same exceed to more than 1.4 to 7 times the inlet standard. COD also exceeded (1.08 to 1.5 times) in two of the samples and BOD (1.3 times) in one of the samples."*

417. Committee report also shows that it visited the site on 13.11.2019 and found certain serious illegalities/irregularities/violations which apparently caused pollution. Para 8.1.1.4 of report reads as under:

> *"(a) The* ***tertiary treatment*** *(comprising Pressure Sand and Activated Carbon Filter) was* ***observed to be defunct since long time.***
>
> *(b) The inlet design norms of CETP are BOD: 1500 mg/l & COD: 3500 mg/l. However, with the* ***present way of functioning of CETP comprising primary, secondary and defunct tertiary treatment (Sand & carbon Filtration), meeting of outlet standards (BOD: 30 mg/l, COD: 250 mg/l) prescribed by MPCB is not*** *possible.*
>
> *(c) There were* ***leakages from pipes & pumps and overflow of effluent*** *from some units (equalization tanks/aeration tanks). There was* ***heavy smell of SVOCs/VOCs (solvents/chemicals) near the inlet sumps. Inlet of CETP (with BOD: 3150 mg/l & COD: 5680 mg/l) indicating that member industries discharging their untreated/partially treated effluent to CETP without conforming the inlet design norms of CETP****. There is no separate arrangement for high COD and high TDS effluent. Also, no arrangement for treating the refractory COD. Thus, the* ***operation of CETP is not efficient to meet the prescribed norms.***

CETP is not designed for such high strength effluent. CETP has no proper mechanism in place for routine monitoring of individual defaulter member units.

(d) *The **flow meters and Online Continuously Monitoring System are not functioning consistently**. The inlet flow meter has been provided after equalization tanks which may not take into account of overflow from or before of the equalization tanks.*

(e) ***Significant quantity of sludge is deposited** (approx.-2400 MT) in the MIDC Sump-2 (10.56 Million Liters- capacity) where treated effluent is collected and thereafter conveyed to the sea shore through BPTs. **Overflow/leakages were also observed from this sump to nearby natural drain which meets with Navapur Dandi Creek and further to the Arabian Sea**. CETP operator informed that the operation of this Sump is under MIDC and responsibility lies with MIDC for proper maintenance and removal of sludge from sump.*

(f) *Inlet effluent quality standards are yet to be prescribed by MPCB for BOD & COD in the Consent of CETP as per MoEF&CC Notification dated 01.01.2016. The Consent stipulates that "Only for SSI units (having less than 25 CMD discharge effluent) BOD: 1500 mg/l and COD: 3500 mg/l is allowed and for rest of the industries, treated effluent as per their respective consents standards i.e. COD: 250 mg/l are allowed".*

(g) *MPCB has **authorized 07 Metric Ton/Day as CETP Sludge in the Authorization dated 29/11/2019 under Hazardous Waste (M, H & TM) Rules, 2008** for treatment and disposal of Hazardous Waste. The **quantum of sludge generation in the CETP is more than such specified quantity**.*

(h) *The stock of sludge about 750 MT stored in the premises shows storage of the same beyond the prescribed storage duration stipulated under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. The same require to be disposed immediately to the CHWTSDF.*

(i) *CETP needs thorough up-gradation/revamping of its units/processes in terms of capacity, retention time, automatic chemicals dosing, scraping mechanism, aeration tanks, aeration capacity, de-sludging, transfer pumps & pipelines, removal of corrosion affected equipment/materials, decanters and its capacity, sludge drying beds, etc. Moreover, persons at CETP need to be more sensitized through constant follow up and training."*

418. These facts have not been challenged or disputed or controverted by placing any material, by respondents Proponents in the objections under considerations. Nothing has been placed on record to demonstrate or show that the above facts and observations made by Committee are incorrect.

419. Thus, violation of environmental norms in operating CEPT by TEPS and respondents Member Industries of respondent 9 is well established.

They all are directly responsible, individually as well as collectively. Principle of absolute liability to pay for compensation by application of Principle of Polluters Pay is clearly attracted and onus shifted upon them to show that they have not violated environmental norms and laws which has not even been attempted by the Respondents Proponents in the observations under consideration. Further, it is also admitted by the all the respondents that discharge from CETP goes to drains of MIDC which ultimately leads to Navapur creeks and Arabian Sea causing pollution thereat.

420. Committee has gone ahead and examined even damage to water bodies in Chapter 8 Para 8.2 and has recorded findings which demonstrate contamination of ground water, natural storm drains and surface water impacting creeks and seashores. Water in drains, in and around Tarapur MIDC, was found contaminated with elevated levels of TDS, BOD, COD, TSS, Fluorides and Phenols, besides acidic water in one or more drains. Odour and colour was also observed in drain water. Dissolved oxygen was found absent in four out of nine monitored drains. Ph near M/s Everest Kanto was found highly acidic (PH value was 2.34 at surface and 2.52 at the depth of 30 CM from bed surface) which indicate discharge of acidic effluent. Ph of storm drain near Auro Lab was slightly basic having 8.48 value indicating discharge of basic effluent in the storm drains from industries. Ground water in and around Tarapur MIDC was tested. High TDS and presence of BOD and COD in all monitor samples and presence of colour, odour, Chlorides, Fluorides, Sulphites, Total Ammonical Nitrogen, Metals (Lead, Copper, Iron and Manganese) in one or more samples of ground water, were found. This indicated contamination of ground water due to trade effluent by industrial units in

and around Tarapur MIDC. In respect of Creeks and Seashores around TIA MIDC, report says:

> ***"8.2.1.3 Creeks around Tarapur MIDC***
>
> *The* ***two creeks (Navapur Dandi Creek and Kharekuran Murbe Creek flowing North and South of Tarapur MIDC respectively) receiving polluted effluent from the drains of MIDC Tapaur were found having impact of discharges from such drains****.*
>
> *Elevated levels of COD and TDS at different stretches (where interference of water from Tarapur MIDC area begins). There was no DO in Creeks near Dumping ground (upstream of Navapur Dandi Creek) and Dandi Creek (downstream of Navapur Dandi Creek). Colour and odour were observed at different locations of the both the Creeks. Further, Phenols at downstream location of both the Creeks viz. Dandi Creek (downstream of Navapur Dandi Creek) and Murbe Creek (downstream of Kharekuran Murbe Creek) have been observed higher than other sampling locations of the Creeks and streams though the same are within the aforesaid standards.*
>
> ***8.2.1.4 Seashores around Tarapur MIDC***
>
> *With regard to the seashores i.e. Navapur CETP outfall and Nandgaon, where the two creeks confluence into the sea, the results though do not reveal trend of elevated concentration of measured parameters near to Navapur CETP outfall beach and Nandgaon beach, however,* ***presence of Phenols in both the beaches indicate impact of discharge from Tarapur MIDC****."*

421. In these facts and circumstances, when violation of environmental norms causing pollution in water bodies is evident and proved and nothing has been brought on record by the polluters to discredit the said findings of Committee, it cannot be said that the individual industries who have been found violating environmental norms on the basis of record could not have been settled with liability of environmental compensation by application of Polluters Pay Principle. The mere fact that some other industries have not been included cannot be a ground to absolve the industries who have been found committing the said default. A defaulter cannot seek exemption on the ground that there are some more violators and unless they are also held, the identified defaulter cannot be held liable. Every violator/offender/defaulter is responsible for

his own nefarious activities and is bound to bear all consequences. His liability can not be mitigated, if some others are not identified or proceeded against. It is not a case where someone is identified and despite availability of relevant material against him, no action has been taken against him. All similarly situated are being dealt with in similar manner. Hence plea of discrimination has no substance.

422. One has to keep in mind that in the matter of protection and preservation of environment, it is the principle of absolute liability applicable to all individuals for their own acts and omissions. The contention therefore that identification of only 103 units, leaving others, is arbitrary, is misconceived and has to be rejected. It is something like that the crime is being committed by several others and since all have not been convicted and punished those who are admittedly found guilty could not be punished. This submission is absurd, misconceived and shows a total lack of basic knowledge with regard to application of environmental law. Laws relating to Environmental protection are different and can not be tested by applying principles of criminal jurisprudence. Once violation of environmental norms is there, by application of principle of Pollutors Pay, Absolute liability, and precautionary principle, violators are bound to pay **compensation/damages** for damage to environment, its remediation, breach of conditions of statutory consent, clearance, approvals and NOCs etc. Onus is upon Polluter to show that he had not violated environmental norms which has not been done in the case in hand. **Thus, the above objections are rejected**.

423. **FORMULA FOR COMPUTATION OF COMPENSATION**: The next objection is with regard to application of principle/formula for computation of compensation. This objection has been given real thrust

by Respondent 3 and 9 in as much as substantive part of their objections is contributed to this aspect. Same objection has been raised in different ways by construction of sentences. Even during oral arguments this ground was argued at length.

424. Before coming to merits of this objection, we may place on record that during course of arguments we pointed out to Sri Nadkarni, Senior Advocate that one of the principles applied by Supreme Court is annual turnover of Proponent and we may examine applicability of this principle in present case but unfortunately facts giving details of annual turnover of concerned Proponents are not on record. At this stage learned Senior Counsel assured us to supply requisite details of annual turnover of all concerned industries alongwith his written arguments which request we accepted and allowed. However, no such information has been supplied either by him or proponents represented by him. No application has been filed giving any reason for such withholding of information.

425. We, however, tried to find out probable reason from information available in public domain. **Bombay Rayon Fashion Ltd.** C-6,7, TIA MIDC is one of the industries, recommended for imposing compensation of Rs. 73.557 lacs by Committee, vide revised report dated 12.08.2021. It is a large scale, red category unit. The information in public domain shows that it claims to be the largest single roof processing unit in India at Tarapur with 400000 (4 lacs) meters per day capacity. Its authorized share capital is 200 cr. As on 31.3.2018 (F.Y.2017-18), its total Revenue Receipt was Rs. 3108.59 crores. As on 31.3.2019 (F.Y.2018-19), total Revenue was Rs. 983.34 crores. As per Annual Report 2018-19, drastic reduction was for some exceptional reasons. Without entering into reasons for change in Revenue Receipts, if we take the above figures, and

compute compensation at the rate of just 5% of turnover, it would come to Rs. 155.4245 crores for F.Y. 2017-18 and Rs. 49.167 crores for F.Y. 2018-19. Committee has recommended only Rs.73.557 lacs i.e., just about 0.73557crores which is not even one crore. Similarly, in the case of **SIYARAM SILK MILLS**, Committee has recommended compensation of Rs.208.612 lacs (2.08612 crores). Its annual Revenue Receipts for F.Y.s 2017-18 and 2018-19 are 1729.63 and 1811.32 crores, respectively. That will bring compensation at 5% of turnover to Rs. 86.4815 and 90.566 crores, respectively. These are only illustrations and also show that even 1% of turnover, in most cases would be many times more than what is recommended by Committee.

426. Thus, reason for not providing above information is very obvious. It is not necessary to go into details of all concerned proponents particularly when they, despite statement given by learned Senior Counsel, appearing on their behalf, have chosen to withhold such information. Now it is open for us to draw inference as is justified in the facts of this case. The challenge on the formula adopted by Committee is under various sub heads which we have already reproduced in deatail, above, hence not repeating and proceed to deal with the same on merits hereat.

427. The entire objection is founded on application of relevant formula/criteria for computation of environmental compensation. The **issue in effect is, what should be the appropriate methodology for determining environmental compensation**.

428. This objection, in our view needs consideration at some length. On this aspect we also find reply given by Committee itself, in its reply dated 13.04.2021, as under:

"1 The submissions made by M/s TIMA about the application of Market Exchange Rate (MER) and Purchasing Power Parity (PPP) to estimate environmental damage cost has been noted by the CommittEee. ***The Committee examined the various methods used for environmental damages cost assessment and it is safe to say that each of the methods have their own merits and limitations [1,2].*** *The peer-reviewed literature (https:// www. sciencedirect. com/science /article /pii /S0959652620345650# appsec1) describes the approaches used for environmental damages cost assessment in detail and a copy of the same is given in Appendix- A.*

2. *The* ***guiding principle to be deployed for the choice of the appropriate transfer-cost multiplier (PPP or others) depends on the basis of assessment of commensurate value of damages in the target location vis-a-vis a source location where the estimate was originally conducted*** *[3,4]. Given above, the Committee re-examined and worked out the estimates based on the available data and limitations therein. As an additional measure, the Committee also made an attempt to find direct costs [Cost of Treatment (CoT)*] which would have incurred (other than what has been incurred by M/s TEPS) in treatment of effluent by the CETP operator – M/s TEPS in achieving the prescribed CETP outlet effluent norms during the reported period under reference viz. 2011-12 to 2019-20. The estimates using varied techniques are shown below:*

- *Using MER (As submitted in the original report filed by the Committee) = Rs. 85.042 Crores*
- *Using PPP = Rs. 27.04 Crores*
- *Using CoT* = Rs. 88.6 Crores*

3. *It is to be noted here that* ***damage cost is a function of environmental pollution, its magnitude and intensity and affect generated thereof****. With a view to provide avenues of improvement of environmental infrastructure in Tarapur region, funds can/may be used out of these estimates given above."*

429. Committee in support of its reply, has also made reference to the following:

"1. Hon'ble NGT decision on VOC case of Mahul area of Mumbai: https://www.livelaw.in/pdf_upload/pdf_upload-380054.pdf

2. *PWC, valuing corporate environmental impacts PwC methodology document. https://www.pwc.co.uk/sustainability-climate change/assets/pdf/pwc-environmental-valuation-methodologies.pdf*
3. *Hernández-Sancho, F., Molinos-Senante, M., & Sala-Garrido, R. (2010). Economic valuation of environmental benefits from wastewater treatment processes: An empirical approach for Spain, Science of The Total Environment, Volume 408, Issue 4, 953-957.*
4. *A Study on the Economic Valuation of Environmental Externalities from Landfill Disposal and Incineration of Waste;*

European Commission, DG Environment. https://ec.europa.eu/environment/pdf/waste/studies/econ_eva_landfill_a nnex.pdf"

430. On the question of application of formula and apportionment of liability, Committee has replied as under:

"1.That averments made about formula adopted by the Committee in assessing the individual unit's liability, formulating principles in apportionment of individual unit's liability, etc. resulting into erroneous liability, it is submitted that, as mentioned under Chapter 7 of the Committee's report, ***the methodology recommended in "Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund" has been used by the Committee with addition of some additional features to meet objective of distributing the cost of 160.042 Crore INR among the 103 polluting units. The said methodology adopted is also part of Environmental compensation regime fixed for industrial units which has been accepted by the Hon'ble Tribunal*** *and has also been directed to be acted upon as an interim measure vide order dated 28.08.2019 of the Hon'ble Principal Bench of the Tribunal in the matter of Original Application No. 593/2017 titled Paryavaran Suraksha Samiti & Anr. Versus Union of India & Ors.* ***The adopted methodology takes into account the pollution index depending on pollution hazard, scale of operation, load factor based on the population located around the industrial unit and the number of days for which violation took place for respective polluting unit****.*

2. *The derived* ***Damage Recovery cost for a polluting unit (in lakh INR) = DRC factor x 160.042 Crore x 100,*** *as derived at page 82 under para 7.1 of Chapter 7 of the Committee's report,* ***gives distributed accountability of each of the identified 103 polluting units in recovering the estimated environmental damage cost*** *and restoration cost of 160.042 Crore INR in terms of their respective pollution index depending on pollution hazard, scale of operation, load factor based on the population located around the industrial unit, number of days for which violation took place and also considering deterrence for repeat/habitual violators.*
3. *As mentioned in the report of the Committee (Page 59 - 64 of the report), it is submitted that in compliance of aforesaid order of the Hon'ble Tribunal,* ***MPCB submitted list of 221 polluting units who were individually heard by the Committee during Nov-30, Dec-03, 2019 during which MPCB presented nature and period of violations, etc. to each of the units' representative. The representative of the respective unit was also given opportunity to submit records against such violations presented by MPCB****.*

The Committee, however, observed during the hearing that:

(a) In cases where violations were informed about samples collected from their storm water drain, outlet of ETP having

zero liquid discharge facility, etc., the unit denied citing the following arguments:

(i) Samples collected from their storm water drain are not being discharged but channelized to collection tank of their ETP;

(ii) Seepage/rainwater run-off from others premises actually enters into their premises due to undulating land terrain and find place in their storm water drain;

(iii) Effluent collection sump is at higher elevation than that of unit's ETP treated storage tank and as a result effluent from the collection sump enters into their ETP treated storage tank;

(iv) In cases of units having zero liquid discharge facility, outlet of ETP (prior to RO/MEE) exceeding the prescribed discharge limits may not be considered as violations since there is no discharge line and the outlet of ETP is further subjected to RO/MEEs, and;

(v) Communication informing the exceedance of prescribed norms in samples collected by Joint Vigilance Survey (JVS) or show-cause notice/interim direction has not been received by the units in some of the cases.

(b) The SSI units represented that though in their Consent to Operate issued under the Water (Prevention & Control of Pollution) Act, 1974, MPCB has prescribed discharge effluent standard stringent to the design/standard of the CETP but incidences, where effluent from their unit have found within the inlet design/standard of the CETP should not be considered as violation for imposing environmental compensation/damage.

***In order to rationalize the criteria for identification of polluting units and their nature & period of violation under given varied scenarios, the Committee made the following recommendations to MPCB after detailed discussions**:*

(1) In view of (a) above and other similar cases, MPCB may furnish the list of only those polluting units for the purpose of environmental compensation/restoration cost for which due records are available for the violations noticed by MPCB.

(2) Incidences of SSI units, where they have discharged into CETP exceeding their prescribed norms but within design/prescribed inlet standards of CETP, may not be included in the list of polluting units for the purpose of environmental compensation/restoration cost recovery. For if SSI units are required to meet its outlet effluent standard to that of outlet effluent discharge standard of CETP then there remains no role of CETP which has primarily been facilitated for smaller units. However, MPCB may examine the matter and take appropriate decision in exempting such exceedance cases in case of SSI units.

(3) The violations which are not directly related to effluent discharge in to CETP or not causing damage to soil/ surface water/ground water, may not be taken in the list of polluting units for the purpose of environmental compensation in this matter under

reference. However, MPCB may take appropriate actions for such defaults.

(4) Limiting period of violations
Taking reference from section 15(3) of the National Green Tribunal Act, 2010, and to limit a period since when default is to be considered for assessing environmental damage cost and cost of restoration, the period of default has been taken into account since five years prior to the day Original Application No. 64/2016 (WZ) was made before the Hon'ble Tribunal (i.e. 28/4/2016) and till the date of order of the Hon'ble Tribunal (i.e.26/09/2019) viz. 28/4/2011 to 26/9/2019.

(5) Number of days (N) of violations:
(i) In cases where closure direction has been issued, the period of default (N in days) may be taken as date of inspection till the effective date of closure of the unit.
(ii) For other cases including where conditional restart order or show-cause notice/proposed direction/interim direction issued under the Water (Prevention & Control of Pollution) Act, 1974/ Environment(Protection) Act, 1986, have been issued, the period of default may be taken as number of days(N) for which violation took place. It may be the period between the day of violation observed/ due date of compliance of directions and the day as on which the compliance was verified by MPCB.

4. *MPCB was requested by the Committee to re-examine considering the above and provide revised list of polluting units along with nature and period of defaults to the Committee.*

5. *MPCB re-examined and identified 83 of the said 221 units as polluting units and another 20 units considering observations and recommendations of the Committee for the purpose of imposing environmental damage cost/damage restoration cost. MPCB informed that the following recommendations of the Committee were considered by MPCB in arriving units as the polluting units:*
   (i) Inclusion of only those units for which due records are available for establishing the violations;
   (ii) Exempting SSI units (having effluent discharge less than 25 KLD) who were found discharging effluent to CETP meeting CETP inlet consent norms of COD-3500 mg/l and BOD 1500 mg/l;
   (iii) Non-inclusion of violations which are not directly related to effluent discharge in to CETP or not causing damage to soil/ surface water/ground water;
   (iv) Considering the period of default of five years since the date of making Original Application No. 64/2016 (WZ) i.e. 28/4/2011 to 26/9/2019 taking reference from section 15(3) of the National Green Tribunal Act, 2010, with regard to consideration of default for assessing environmental compensation and cost of restoration;

6. *It was also informed that **period of violations** for the aforesaid 103 identified polluting units for the purpose of imposing environmental damage cost/damage restoration cost were also revised as per recommendations of the Committee that in cases where closure direction have been issued, the period of **default (N in days) has been taken as date of inspection till the***

effective date of closure of the unit. For other cases including where conditional restart issued under W (P&CP) Act, 1974/ EP Act, 1986, the period of default has been taken as no of days (N) for which violation took place. Such N has been taken as the period between the day of violation observed/ due date of compliance of directions and the day as on which the compliance was verified. The period between effective closure of the unit till the date of restart order issued by MPCB has not been considered as violation period.

7. *The aforesaid additional 20 units were also given opportunity of hearing by the Committee on 27/1/2020 and the 103 polluting units were also served with notices by MPCB giving them another opportunity of submitting additional details/records against the said violations, if any.*
8. ***The identified units have thus been given due consideration and the Committee rationalized the criteria for identification of polluting units and their nature & period of violation with best possible logic under given varied scenarios for distributing accountability of CETP and polluting industrial units towards cost of restoration of the environment****.*

431. The issue with regard to methodology for computation of environmental compensation has been considered, time and again since no single methodology can be appropriately made applicable without considering the nature of industry, the nature of pollution and other relevant factors. In this regard it will be useful to refer some relevant statutory and precedential law as also other relevant factors which may provide a guideline as to how environmental compensation should be determined.

Environmental Compensation-Assessment/Methodology

432. The question of **assessment of environmental compensation** includes the principles/factors/aspects, necessary to be considered for computing/assessing/determining environmental compensation. Besides judicial precedents, we find little assistance from Statute. Section 15 of NGT Act 2010 talks of relief of compensation and restitution. It confers wide powers on this Tribunal to grant relief by awarding compensation for

the loss suffered by individual(s) and/or for damage caused to environment. Section 15 reads as under:

> *"**15. Relief, compensation and restitution**-(1) The Tribunal may, by an order, provide:*
> *a) **relief and compensation** to the victims of pollution and **other environmental damage arising under the enactments** specified in the Schedule I (including accident occurring while handling any hazardous substance);*
> ***b)** for **restitution of property damaged;***
> *c) **for restitution of the environment** for such area or areas, as the Tribunal may think fit.*
>
> *(2) The relief and Compensation and restitution of property and environment referred to in clauses (a), (6) and (c) of sub-section of (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).*
>
> *(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:*
>
> *Provided that the Tribunal may, if it is satisfied that the' applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.*
>
> *(4) The Tribunal may, **having regard to the damage** to public **health, property and environment**, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.*
>
> *(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may, be, compensation or relief received from, any other Court or authority.*

433. Sub-section 1 enables Tribunal to make an order providing relief and compensation to (i) the victims of pollution, (ii) other environmental damage arising under the enactments specified in the Schedule I. Tribunal is also conferred power to pass an order providing relief for restitution of property damaged. Section 15(1)(c) enables Tribunal to pass an order providing relief for restitution of the environment for such area or areas, as Tribunal may think fit. Section 15 sub-section 4 says that Tribunal may divide compensation or relief payable under separate heads

specified in Schedules II, having regard to the damage to public health, property and environment so as to provide compensation or relief, (i) to the claimants and (ii) for restitution of the damaged property or environment, as it may think fit.

434. Schedule II of NGT Act, 2010 gives a list of heads under which compensation or relief for damage may be granted. It has 14 heads in total out of which item (a) to (f), (l), (m) and (n) relates to loss, damage etc. sustained to the person or individual or their property. Item (i) to (k) relates to harm, damage, destruction etc. of environment or environmental system including soil, air, water, land, and eco-system. Items (i) to (k) of Schedule II of NGT Act 2010 are as under:

> *"(i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;*
>
> *(j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;*
>
> *(k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;"*

435. Items (g) and (h) relate to expense and cost incurred by State in providing relief to affected person; and loss caused in connection with activity causing damage. The damage to environment covers a very wide variety of nature as is evident from definition of environment under section 2 (c) which is inclusive and says; 'environment includes water, air, and land and the interrelationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property'.

436. Section 20 of NGT Act, 2010 requires Tribunal to apply principles of sustainable development, the precautionary principle and the polluter pays principle.

437. Thus, broad principles of environmental laws are given but the methodology for assessing/determining compensation is not provided in the statute. Even Rules framed under NGT Act, 2010 are silent on this aspect. Issue of determination of EC is significant in the sense that it should be proportionate to or bears a reasonable nexus with the environmental damage and its remediation/restoration. Similarly in case of compensation to be determined for a victim, it needs to co-relate to injury caused or damage suffered by such person as also cost incurred for treatment/remediation.

438. Taking into consideration multifarious situations relating to violation of environmental laws *vis-a-vis* different proponents, nature of cases involving violation of environmental laws can be categorized as under:

(i) Where Project/Activities are carried out without obtaining requisite statutory permissions/consents/clearances/NOC etc., affecting environment and ecology. For example, EC under EIA 2006; Consent under Water Act 1974 and Air Act 1981; Authorisation under Solid Waste Management Rules 2016 and other Rules; and NOC for extraction and use of ground water, wherever applicable, and similar requirements under other statutes.

(ii) Where proponents have violated conditions imposed under statutory Permissions, Consents, Clearances, NOC etc. affecting environment and ecology.

(iii) Where Proponents have carried out their activities causing damage to environment and ecology by not following

standards/norms regarding cleanliness/pollution of air, water etc.

439. The above categories are further sub-divided, i.e., where the polluters/violators are corporate bodies/organisations/associations and group of the people, in contradistinction, to individuals; and another category, the individuals themselves responsible for such pollution.

440. Further category among above classification is, where, besides pollution of environment, proponents/violators action also affect the community at large regarding its source of livelihood, health etc.

441. The next relevant aspect is, whether damage to environment is irreversible, permanent or is capable of wholly or partially restoration/remediation.

442. Determination/computation/assessment of environmental compensation must, not only conform the requirement of restoration/remediation but should also take care of damage caused to the environment, to the community, if any, and should also be preventive, deterrent and to some extent, must have an element of "being punitive". The idea is not only for restoration/remediation or to mitigate damage/loss to environment, but also to discourage people/proponents from indulging in the activities or carrying out their affairs in such a manner so as to cause damage/loss to environment.

443. To impose appropriate 'environmental compensation' for causing harm to environment, besides other relevant factors as pointed out, one has to understand the kind and nature of 'Harmness cost'. This includes risk assessment. The concept of risk assessment will include human-health risk assessment and ecological risk assessment. U.S.

Environmental Protection Agency has provided a guideline to understand harm caused to environment as well as people. For the purpose of human-health risk assessment, it comprised of three broad steps, namely, planning and problem formulation; effects and exposure assessment and risk categorization. The first part involves participation of stakeholders and others to get input; in the second aspect health effect of hazardous substances as well as likelihood and level of exposure to the pollutant are examined and the third step involves integration of effects and exposure assessment to determine risk.

444. Similarly, ecological risk assessment is an approach to determine risk of environmental harm by human activities. Here also we can find answer following three major steps, i.e., problem codification; analysis of exposure and risk characterization. First part encompasses identification of risk and what needs to be protected. Second step insists upon crystallization of factors that are exposed, degree to exposure and whether exposure is likely or not to cause adverse ecological effects. Third step is comprised of two components, i.e., risk assessment and risk description.

445. In totality, problem is multi-fold and multi-angular. Solution is not straight but involves various shades and nuances and vary from case to case. Even Internationally, there is no thumb-rule to make assessment of damage and loss caused to environment due to activities carried out individually or collectively by the people, and for remediation/restoration. Different considerations are applicable and have been applied.

446. In India, where commercial activities were carried out without obtaining statutory permissions/consents/clearance/NOC, Courts have determined, in some matters, compensation by fixing certain percentage

of cost of project. In some cases, volume of business transactions, turnover, magnitude of establishment of proponent have also been considered as guiding factors to determine environmental compensation.

447. Nature is extremely precious. It is difficult to price elements of nature like light, oxygen (air), water in different forms like rain, snow, vapour etc. When nature is exploited beyond its' carrying capacity, results are harmful and dangerous. People do not understand the value of what nature has given free. Recently in Covid-19 wave II, scarcity of oxygen proved its worth. In dreadful second phase of the above pandemic, any amount offered, in some cases, could not save life for want of oxygen. Further, damage to environment, sometimes do not reflect in individuals immediately and may take time but injury is there. In such cases, process of determination of compensation may be different.

448. In an article, *'the cost of pollution-Environmental Economics'* by Linas Cekanavicius, 2011, it has been suggested, where commercial activities have been carried out without consent etc., and pollution standards have been violated, Total Pollution Cost (hereinafter referred to as '**TPC**') can be applied. It combines the cost of abatement of environment pollution and cost of pollution induced environmental damage. The formula comes to **TPC(z)=AC(z)+ED(z)**, where **z** denotes the pollution level. Further, clean-up cost/remediation cost of pollution estimated to be incurred by authorities can also be used to determine environmental compensation.

449. When there is collective violation, sometimes the issue arose about apportionment of cost. Where more than one violator is indulged, apportionment may not be equal since user's respective capacity to produce waste, contribution of different categories to overall costs etc.

would be relevant. The element of economic benefit to company resulting from violation is also an important aspect to be considered, otherwise observations of Supreme Court that the amount of environmental compensation must be deterrent, will become obliterated. Article 14 of the Constitution says that unequal cannot be treated equally, and it has also to be taken care. Determination/assessment/computation of environmental compensation cannot be arbitrary. It must be founded on some objective and intelligible considerations and criteria. Simultaneously, Supreme Court also said that its calculations must be based on a principle which is simple and can be applied easily. In other words, it can be said that wherever Court finds it appropriate, expert's assessment can be sought but sometimes experts also go by their own convictions and belief and fail to take into account judicial precedents which have advanced cause of environment by applying the principles of 'sustainable development', 'precautionary approach' and 'polluter pays', etc.

450. Clean-up cost or TPC, may be a relevant factor to evaluate damage, but in the diverse conditions as available in this Country, no single factor or formula may serve the purpose. Determination should be a quantitative estimation; the amount must be deterrent to polluter/violator and though there is some element of subjectivity but broadly assessment/computation must be founded on objective considerations. Appropriate compensation must be determined to cover not only the aspect of violation of law on the part of polluter/violator but also damage to the environment, its remediation/restoration, loss to the community at large and other relevant factors like deterrence, element of penalty etc.

451. **CPCB Guidelines**: CPCB has suggested in a report methodology for assessment of environmental compensation which may be levied or imposed upon industrial establishments who are guilty of violation of environmental laws and have caused damage/degradation/loss to environment. It does not encompass individuals, statutory institutions and Government etc. Report is titled as "*Report of the CPCB In-house Committee on Methodology for Assessing Environmental compensation and Action Plan to Utilize the Fund*" which was finalized in the meeting held on 27.03.2019. It shortlisted the incidents requiring an occasion for determining environmental compensation. Six such incidents, shortlisted, are:

> ***"Cases considered for levying Environmental Compensation (EC):***
>
> *a) Discharges in violation of consent conditions, mainly prescribed standards/consent limits.*
> *b) Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.*
> *c) Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.*
> *d) Accidental discharges lasting for short durations resulting into damage to the environment.*
> *e) Intentional discharges to the environment -- land, water and air resulting into acute injury or damage to the environment.*
> *f) Injection of treated/partially treated/ untreated effluents to ground water."*

452. For the instances at item (a), (b) and (c), report says that 'Pollution Index' (hereinafter referred to as '**PI'**) would be used as a basis to levy environmental compensation. CPCB had already published Guidelines categorizing industries into Red, Orange, Green and White, based on the concept of **PI**. The **PI** is arrived after considering quantity and quality of emissions/effluents generated, types of hazardous waste generated and consumption of resources. **PI** of an industrial sector is a numerical number in the range of 0 to 100 and is represented as follows:

PI=f (Water Pollution Score, Air Pollution Score and HW Generation Score).

453. Since range of PI is 0 to 100, increase in value of PI denotes increasing degree of pollution hazard from industrial sector. Accordingly, report says, for determining environmental compensation in respect of cases covered by item (a), (b) and (c), it will apply following formula:

> *"EC = PI × N × R × S × LF*
> *Where,*
> *EC is Environmental Compensation in ₹*
> *PI = **Pollution Index of industrial sector***
> *N = Number of days of violation took place*
> *R = A factor in Rupees (₹) for EC*
> *S = Factor for scale of operation*
> *LF = Location factor"*

454. The formula incorporates anticipated severity of environmental pollution in terms of PI, duration of violation in terms of number of days, scale of operation in terms of micro and small/medium/large industry and location in terms of proximity to the large habitations. A note is also given under the aforesaid formula and it reads as under:

> *"Note:*
>
> a. *The **industrial sectors** have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental Compensation for Red, Orange and Green categories of industries, respectively.*
> b. *N, number of days for which violation took place is the period between the day of violation observed/due date of direction's compliance and the day of compliance verified by CPCB/SPCB/PCC.*
> c. *R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of violation.*
> d. *S could be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units.*
> e. *LF, could be based on population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or up to 10 km distance from the municipal boundary of the city/town, following factors (LF) may be used:*
>
> ***Table No. 1.1: Location Factor Values***

S. No	Population* (million)	Location Factor# (LF)
1	1 to <5	1.25
2	5 to <10	1.5
3	10 and above	2.0

*Population of the city/town as per the latest Census of India
#LF will be 1.0 in case unit is located >10km from municipal boundary
LF is presumed as 1 for city/town having population less than one million.

For notified Ecologically Sensitive areas, for beginning, LF may be assumed as 2.0. **However, for critically Polluted Areas, LF may be explored in future.**

f. In any case, minimum Environmental Compensation shall be ₹ 5000/day.
g. In order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2 times on 1st repetition, 4 times on 2nd repetition and 8 times on further repetitions.
h. If the operations of the industry are inevitable and violator continues its operations beyond 3 months then for deterrent compensation, EC may be increased by 2, 4 and 8 times for 2nd, 3rd and 4th quarter, respectively. Even if the operations are inevitable beyond 12 months, violator will not be allowed to operate.
i. Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.

A sample calculation for Environmental Compensation (without deterrent factor) is given at Table No. 1.2. It can be noticed that for all instances, EC for Red, Orange, and Green category of industries varies from 3,750 to 60,000 ₹/day.

Table No. 1.2: A sample calculation for Environmental Compensation

Industrial Category	Red	Orange	Green
Pollution Index (PI)	60-100	41-59	21-40
Average PI	80	**50**	**30**
R-Factor	250		
S-Factor	0.5-1.5		
L-Factor	1.00-2.00		
Environmental Compensation (₹/day)	**10,000-60,000**	**6,250-37,500**	**5,000-22,500**

455. We find that **R** which is a factor in Rupees (₹) is taken to be 100 minimum and 500 maximum. It has suggested that R value be taken as average i.e., Rs. 250/-. On what basis this minimum and maximum has been determined and why average is suggested, beyond any comprehension. We do not find any material in the above report which may throw light for taking value of R as above. Similarly, for determining

value of S i.e. Factor for Scale of Operation from 0.5 to 1.5, we find no Guidelines as to on what basis, it has been determined and only on the size of the industry, divided in small, medium and large, the said factor has been prescribed. The note further says that minimum environmental compensation would be Rs. 5000/- per day. From table 1.2, we find that in the highest case i.e., large industry, depending on the level of PI, maximum environmental compensation would be Rs. 60,000/- per day and minimum Rs. 10,000/- per day. The above determination excludes the actual loss to the environment and cost of remediation including damage to *flora-fauna* and human beings. Moreover, classification of industries for industrial policy, or for some licensing purpose, banking purpose etc. would be wholly irrelevant for environment. A small industry may be capable of causing much more pollution than medium or even large industry. For example, pollution caused by a brick kiln using coal as fuel may be much more than many medium category industries.

456. In respect of items (d), (e) and (f), report says that for determining environmental compensation, one has to consider the matters in two parts, one for providing immediate relief and another long-term relief, such as remediation. In such cases, detailed investigations are required from Expert Institutions or Organizations, based on which environmental compensation will be decided. Second part of report is with regard to utilization of environmental compensation fund. For this purpose, report says that CPCB will finalize a scheme for utilization of fund for protection of environment. Certain schemes identified by CPCB for utilization of the said fund are mentioned in para 1.4.1, as under:

> *"a. Industrial Inspections for compliance verification*
> *a. Installation of Continuous water quality monitoring stations/Continuous ambient air quality monitoring stations for strengthening of existing monitoring network*

b. *Preparation of Comprehensive Industry Documents on Industrial Sectors/clean technology*
c. *Investigations of environmental damages, preparation of DPRs*
d. *Remediation of contaminated sites*
e. *Infrastructure augmentation of Urban Local Bodies (ULBs)/capacity building of SPCBs/PCCs."*

457. All the above, except item (e), relate to establishment/infrastructure for monitoring/prevention of pollution which in fact is the statutory duty and function of officials of State PCB and CPCB. It appears that CPCB has attempted to utilize environment fund to meet expenses which is the responsibility of Government.

458. Chapter II of report deals with determination of environment compensation for violations of **Graded Response Action Plan** (GRAP) in NCR. Here, a fixed amount of environmental compensation has been recommended in table 2.1, as under:

"Table No. 2.1: Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in Delhi-NCR.

Activity	***State Of Air Quality***	***Environmental Compensation***
Industrial Emissions	*Severe +/Emergency*	*Rs 1.0 Crore*
	Severe	*Rs 50 Lakh*
	Very Poor	*Rs 25 Lakh*
	Moderate to Poor	*Rs 10 Lakh*
Vapour Recovery System (VRS) at Outlets of Oil Companies		
i. Not installed	*Target Date*	*Rs 1.0 Crore*
ii. Non-functional	*Very poor to Severe +*	*Rs 50.0 Lakh*
	Moderate to Poor	*Rs 25.0 Lakh*
Construction sites (Offending plot more than 20,000 Sq.m.)	*Severe +/Emergency*	*Rs 1.0 Crore*
	Severe	*Rs 50 Lakh*
	Very Poor	*Rs 25 Lakh*
	Moderate to Poor	*Rs 10 Lakh*
Solid waste/ garbage dumping in Industrial Estates	*Very poor to Severe +*	*Rs 25.0 Lakh*
	Moderate to Poo	*Rs 10.0 Lakh*
Failure to water sprinkling on unpaved roads		
a) Hot-spots	*Very poor to Severe +*	*Rs 25.0 Lakh*
b) Other than Hot-spots	*Very poor to Severe +*	*Rs 10.0 Lakh*

"

459. Chapter III considers determination of environmental compensation where a proponent has discharged pollutants in water bodies or failed to

prevent discharge of pollutants in water bodies and also failed to implement Waste Management Rules. Laying down Guidelines for determination of environmental compensation in this category, report has referred to Tribunal's order dated 06.12.2018 in ***OA No. 125/2017 and MA No. 1337/2018, Court on its own motion vs. State of Karnataka***, stating as under:

> *"Since failure of preventing the pollutants being discharged in water bodies (including lakes) and failure to implement solid and other waste management rules are too frequent and widespread, the* ***CPCB must lay down specific guidelines to deal with the same, throughout India, including the scale of compensation*** *to be recovered from different individuals/authorities, in addition to or as alternative to prosecution.* ***The scale may have slabs, depending on extent of pollution caused, economic viability, etc. Deterrent effect for repeated wrongs may also be provided****."*

460. It is suggested that determination of environmental compensation in this category would have two components, (i) Cost saved/benefits achieved by the concerned individual/authority by not having proper waste/sewage managing system; and (ii) Cost to the environment (environmental externality) due to untreated/partially treated waste/sewage because insufficient capacity of waste/sewage management facility. It further says that Cost saved/benefits achieved would also include interest on capital cost of waste/sewage management facility, daily operation and maintenance (O & M) cost associated with the facility. The determination of environmental compensation, therefore, is suggested, applying following formula:

> *"Therefore, generalized formula for Environmental Compensation may be described as:*
> ***EC= Capital Cost Factor × Marginal Average Capital Cost for Establishment of Waste or Sewage Management or Treatment Facility × (Waste or Sewage Management or Treatment Capacity Gap) + O&M Cost Factor × Marginal Average O&M Cost × (Waste or Sewage Management or Treatment Capacity Gap) × No. of Days for which facility was not available + Environmental Externality****"*

461. Environmental externality has been placed in two categories (i) untreated/partially treated sewage discharge and (ii) improper municipal solid waste management and detailed in table 3.1 and 3.2, as under:

"Table No. 3.1: Environmental externality for untreated/partially treated sewage discharge

Sewage Treatment Capacity Gap (MLD)	***Marginal Cost of Environmental Externality (Rs. per MLD/day)***	***Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)***
Up to 200	*75*	*Min. 0.05, Max. 0.10*
201-500	*85*	*Min. 0.25, Max. 0.35*
501 and above	*90*	*Min. 0.60, Max. 0.80*

Table No. 3.2: Environmental externality for improper municipal solid waste management

Municipal Solid Waste Management Capacity Gap (TPD)	***Marginal Cost of Environmental Externality (Rs. per ton per day)***	***Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)***
Up to 200	*15*	*Min. 0.01, Max. 0.05*
201-500	*30*	*Min. 0.10, Max. 0.15*
501-1000	*35*	*Min. 0.25, Max. 0.3*
1001-2000	*40*	*Min. 0.50, Max. 0.60*
Above 2000	*Max. 0.80*	

"

462. CPCB has further recommend a fixed cap for minimum and maximum cost for capital and O & M component for environmental compensation in table 3.3 and 3.4, as under:

"Table No. 3.3: Minimum and Maximum EC to be levied for untreated/partially treated sewage discharge

Class of the City/Town	***Mega-City***	***Million-plus City***	***Class-I City/Town and others***
Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)	*Min. 2000 Max. 20000*	*Min. 1000 Max. 10000*	*Min. 100 Max. 1000*
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	*Min. 2 Max. 20*	*Min. 1 Max. 10*	*Min. 0.5 Max. 5*

Table No. 3.4: Minimum and Maximum EC to be levied for improper municipal solid waste management

Class of the City/Town	***Mega-City***	***Million-plus City***	***Class-I City/Town and others***
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	*Min. 1000 Max. 10000*	*Min. 500 Max. 5000*	*Min. 100 Max. 1000*
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	*Min. 1.0 Max. 10.0*	*Min. 0.5 Max. 5.0*	*Min. 0.1 Max. 1.0*

"

463. Para 3.3 deals with the method of determining environmental compensation for damage by untreated/partially treated sewage by concerned individual/authority. Under this head, CPCB has considered that for population above 1 lakh, requirement of water supply, would be minimum 150 to 200 lpcd and 85% whereof would result in sewage generation. It takes capital cost for 1 MLD STP ranges from 0.63 crores to 3 crores and O & M cost around Rs. 30,000 per month. Consequently, it suggested to assume capital cost for STPs as Rs. 1.75 crores/MLD (marginal average cost). Expected cost for conveyance system is assumed as Rs. 5.55 crore/MLD and annual O& M as 10% of combined capital coast. Based on the above assumptions, Committee has recommended/suggested environmental compensation, to be levied on urban local bodies, by applying anyone of the two formulae which are as under:

> ***"EC= Capital Cost Factor × [Marginal Average Capital Cost for Treatment Facility × (Total* Generation-Installed Capacity) + Marginal Average *Capital Cost for Conveyance Facility × (Total Generation -Operational Capacity)] + O&M Cost Factor x Marginal Average O&M Cost × (Total Generation-Operational Capacity) × No. of Days for which facility was not available + Environmental Externality × No. of Days for which facility was not available***
>
> *Alternatively;*

EC (Lacs Rs.) = [17.5(Total Sewage Generation – Installed Treatment Capacity) + 55.5(Total Sewage Generation-Operational Capacity)] + 0.2(Sewage Generation-Operational Capacity) × N + Marginal Cost of Environmental Externality × (Total Sewage Generation-Operational Capacity) × N

Where; N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Quantity of Sewage is in MLD"

464. Para 3.4 deals with the method of environmental compensation to be levied on concerned individual/authority for improper solid waste management, chargeable from urban local body. The recommended formula is as under:

"EC = Capital Cost Factor x Marginal Average Cost for Waste Management × (Per day waste generation-Per day waste disposed as per the Rules) + O&M Cost Factor × Marginal Average O&M Cost × (Per day waste generation-Per day waste disposed as per the Rules) × Number of days violation took place + Environmental Externality × N
Where;
Waste Quantity in tons per day (TPD)

N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority
Simplifying;
EC (Lacs Rs.) = 2.4(Waste Generation - Waste Disposed as per the Rules) +0.02 (Waste Generation - Waste Disposed as per the Rules) × N + Marginal Cost of Environmental Externality × (Waste Generation-Waste Disposed as per the Rules) × N"

465. Here also certain assumed figures have been taken by CPCB. Report says that municipal solid waste generation is approximately 1.5 lakh MT/day in India as per MoHUA Report-2016. As per principles of Solid Waste Management Rules, 2016 and PWM Rules, 2016, total cost of municipal solid waste management in city/town includes cost for door-to-door collection, cost of segregation at source, cost for transportation in segregated manner, cost for processing of municipal solid waste and disposal through facility like composting bio-methanation, recycling, co-

processing in cement kilns etc. It is estimated that total cost of processing and treatment of municipal solid waste for a city of population of 1 lakh and generating approximately 50 tons/day of municipal solid waste is Rs. 15.5 Crores which includes capital cost (one time) and Operational and Management cost for one year. Expenditure for subsequent years would be only 3.5 Crores/annum. For arriving per day waste generation, CPCB has referred to a survey conducted by Environment Protection Training Research Institute (EPTRI) which estimated that solid waste generated in small, medium and large cities and towns is about 0.1 kg (Class-III), 0.3-0.4 kg (Class-II) and 0.5 kg (Class-I) per capita per day respectively. The Committee opined that 0.6 kg/day, 0.5 kg/day and 0.4 kg/day per capita waste generation may be assumed for mega-cities, million-plus UAs/towns and Class-I UA/Towns respectively for calculation of environmental compensation purposes.

466. Sample calculation of environmental compensation to be levied for improper management of municipal solid waste has been provided in table 3.6 which reads as under:

"Table No. 3.6: Sample calculation for EC to be levied for improper management of Municipal Solid Waste

City	***Delhi***	***Agra***	***Gurugram***	***Ambala***
Population (2011)	*1,63,49,831*	*17,60,285*	*8,76,969*	*5,00,774*
Class	*Mega-City*	*Million-plus City*	*Class-I Town*	*Class-I Town*
Waste Generation (kg. per person per day)	*0.6*	*0.5*	*0.4*	*0.4*
Waste Generation (TPD)	*9809.90*	*880.14*	*350.79*	*200.31*
Waste Disposal as per Rules (TPD) *(assumed as 25% of waste generation for sample calculation)*	*2452.47*	*220.04*	*87.70*	*50.08*
Waste Management Capacity Gap (TPD)	*7357.42*	*660.11*	*263.09*	*150.23*
Calculated EC (capital cost component) in Lacs. Rs.	*17657.82*	*1584.26*	*631.42*	*360.56*

Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	*Min. 1000 Max. 10000*	*Min. 500 Max. 5000*	*Min. 100 Max. 1000*	*Min. 100 Max. 1000*
Final EC (capital cost component) in Lacs. Rs.	*10000.00*	*1584.26*	*631.42*	*360.56*
Calculated EC (O&M Component) in Lacs. Rs./Day	*147.15*	*13.20*	*5.26*	*3.00*
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./Day)	*Min. 1.0 Max. 10.0*	*Min. 0.5 Max. 5.0*	*Min. 0.1 Max. 1.0*	*Min. 0.1 Max. 1.0*
Final EC (O&M Component) in Lacs. Rs./Day	*10.00*	*5.00*	*1.00*	*1.00*
Calculated Environmental Externality (Lacs Rs. Per Day)	*2.58*	*0.18*	*0.03*	*0.02*
Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. per day)	*Max. 0.80*	*Min. 0.25 Max. 0.35*	*Min. 0.01 Max. 0.05*	*Min. 0.01 Max. 0.05*
Final Environmental Externality (Lacs Rs. per day)	*0.80*	*0.25*	*0.03*	*0.02*

”

467. Chapter IV deals with determination/computation of environmental compensation in case of “illegal extraction of ground water” and for this purpose report has referred to Tribunal’s order dated 03.01.2019 passed in ***OA No. 327/2018, Shailesh Singh vs. Central Ground Water Board & Ors***. The relevant extract of the order, quoted in para 4.1 of the report, is as under:

> *“CPCB may constitute a mechanism to deal with individual cases of violation of norms, as existed prior to Notification of 12/12/2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law.”*

468. Here, broadly, determination of environmental compensation refers to two major aspects i.e., illegal extraction of water as one aspect and illegal use of ground water as second aspect. For determination of environmental compensation for illegal extraction of ground water, formula suggested by Committee is:

> *"**EC_{GW} =Water Consumption per Day x No. of Days x Environmental Compensation Rate for illegal extraction of ground water (ECR_{GW})***
>
> *Where water Consumption is in m^3/day and ECRGW in Rs./m^3*
>
> *Yield of the pump varies based on the capacity/power of pump, water head etc. For reference purpose, yield of the pump may be assumed as given in **Annexure-VI.***
>
> *Time duration will be the period from which pump is operated illegally.*
>
> *In case of illegal extraction of ground water, quantity of discharge as per the meter reading or as calculated with assumptions of yield and time may be used for calculation of EC_{GW}."*

469. Depending on the category of the area for the purpose of ground water i.e., safe, semi-critical, critical and over-exploited and also the purpose for which ground water is used, determination of environmental compensation for illegal use of ground water, has been suggested differently for different purpose/use i.e., for drinking and domestic use; for packaged drinking water units/for mining infrastructure and dewatering projects and for industrial units. Hence all these aspects are separately given in paragraph 4.6.1, 4.6.2, 4.6.3 and 4.6.4 as under:

> *"**4.6.1 ECRGW for Drinking and Domestic use:***
> *Drinking and Domestic use means uses of ground water in households, institutional activity, hospitals, commercial complexes, townships etc.*

Sl. No	*Area Category*	*Water Consumption (m^3/day)*			
		<2	*2 to <5*	*5 to <25*	*25 & above*
		Environmental Compensation Rate (ECR_{GW}) in Rs./m^3			
1	*Safe*	*4*	*6*	*8*	*10*
2	*Semi Critical*	*12*	*14*	*16*	*20*
3.	*Critical*	*22*	*24*	*26*	*30*
4	*Over-Exploited*	*32*	*34*	*36*	*40*

Minimum EC_{GW}=Rs 10,000/- (for households) and Rs. 50,000 (for institutional activity, commercial complexes, townships etc.)

4.6.2 ECRGW for Packaged drinking water units:

Sl. No	*Area Category*	*Water Consumption (m^3 /day)*			
		<200	*200 to <1000*	*1000 to <5000*	*5000 & above*
		Environmental Compensation Rate (ECR_{GW}) in Rs./m^3			
1	*Safe*	*12*	*18*	*24*	*30*
2	*Semi Critical*	*24*	*36*	*48*	*60*
3.	*Critical*	*36*	*48*	*66*	*90*
4	*Over-Exploited*	*48*	*72*	*96*	*120*
Minimum ECGW=Rs 1,00,000/-					

4.6.3 ECRGW for Mining, Infrastructure and Dewatering Projects:

Sl. No	*Area Category*	*Water Consumption (m^3 /day)*			
		<200	*200 to <1000*	*1000 to <5000*	*5000 & above*
		Environmental Compensation Rate (ECR_{GW}) in Rs./m^3			
1	*Safe*	*15*	*21*	*30*	*40*
2	*Semi Critical*	*30*	*45*	*60*	*75*
3.	*Critical*	*45*	*60*	*85*	*115*
4	*Over-Exploited*	*60*	*90*	*120*	*150*
Minimum EC_{GW}=Rs 1,00,000/					

4.6.4 ECRGW for Industrial Units:

Sl. No	*Area Category*	*Water Consumption (m^3 /day)*			
		<200	*200 to <1000*	*1000 to <5000*	*5000 & above*
		Environmental Compensation Rate (ECR_{GW}) in Rs./m^3			
1	*Safe*	*20*	*30*	*40*	*50*
2	*Semi Critical*	*40*	*60*	*80*	*100*
3.	*Critical*	*60*	*80*	*110*	*150*
4	*Over-Exploited*	*80*	*120*	*160*	*200*
Minimum ECGW=Rs 1,00,000/-					

”

470. It is also recommended that minimum environmental compensation for illegal extraction of ground water would be Rs. 10,000/- if it is for domestic purposes, but in other matters, it would be Rs. 50,000/-.

471. These recommendations by CPCB have not been given in the form of a binding statutory provision. Even otherwise, we find that these are only broad suggestions, ignore several relevant aspects which have to be

considered while determining environment compensation in a given case and, therefore, there cannot be taken as readymade application to all situations for determining of environment compensation. Moreover, on some aspects there is no suggestion, but it is deferred.

472. We also find that some crucial relevant aspects requiring application of 'Polluters Pay', have not been considered in the above suggestions. CPCB has failed to consider that the purpose of determination/ computation/ assessment of environmental compensation and levy thereof, involve various factors like (i) cost of damage to environment, (ii) cost needed for restoration/remediation of damage caused to environment, (iii) element of deterrent/provincial, (iv) liability arising for violation of statuary mandatory law relating to environment namely requirement of consent, EC and NOC etc. It is not mere cost of item or subject but computation of something which situation has arisen by an act of PPs due to violation of environmental law causing damage to environment. The loss and its remedy involve complex of components.

473. Nature is precious. The elements of nature like air, water, light and soil in materialistic manner may not be priced appropriately and adequately. Most of the time, whenever price is determined, it may be extremely low or highly exorbitant meaning thereby disproportionate. Still, since some of the assets of nature are marketable, on that basis price may be determined but when such elements are damaged or degraded, restoration thereof, in effect is priceless. Many a times, it may be almost impracticable and improbable to recover and remediate damaged environment to its position as it was. Moreover, its cost might be very high. It also cannot be doubted that once there is a pollution or

damage to environment, it would affect adversely not only the environment but also inhabitants and all biological organisms. Damage is there, only degree may differ whether to the environment or to the inhabitants and other organisms. To find out simultaneously degree of damage and to ascertain the same in many cases may not be possible or practicable. For example, a polluted air causes respiratory diseases but the people do not get infected and starts reflection of the disease immediately but it takes some time. The time taken in reflection of injury on the person or body also differs from person to person depending upon his immunity and other health conditions. In some cases, damage to environment i.e., air pollution may be fatal to a person who already has respiratory problem. For some a minor inconvenience, minor injury to others, and some may not suffer to the extent of showing symptoms of any diseases at all. When we talk of environmental compensation for causing degradation to environment and for its restoration or remediation, it is not a formal or casual or symbolic amount which is required to be levied upon the violator. It is substantive and adequate amount which must be levied for restoration of environment. CPCB in determining values of fixed quotients and rupees etc., has been very lenient as if only symbolically violator is to be held liable and it must pay a petty amount.

474. Statutory Regulators must realize that the amount is needed for remediation and restoration of damaged environment; enough to be deterrent, to provide adequate compensation where inhabitants are affected adversely and where violator has proceeded in violation of Environmental Laws relating to consents, clearances, permissions etc., to penalize him for such violation to prove to be a deterrent to him and others. Unfortunately, the above guidelines laid down by CPCB have not

considered all these aspects and it appears that the same have been prepared in a very casual and formal manner.

475. In respect of computation of compensation for illegal extraction of ground water, CPCB has referred to Tribunal's order in ***Court on its own motion vs. State of Karnataka (supra)*** directing it to lay down guidelines to deal with the scale of compensation but has failed to consider that Tribunal has also observed that its scale may have slabs depending on extent of pollution caused, economic viability etc. and deterrent effect.

476. Statutory Regulators have also failed to consider that environmental compensation is not a kind of fee which may result in profiteering to violators and after adjusting a nominal amount of environmental compensation, a violator may find it profitable to continue with such violations. The objective of environmental compensation is that not only the loss and damage already caused, is made to recover and restore but also in future, the said violator may not repeat the kind of violation already committed and others also have a fear of not doing the same else similar liability may be enforced upon them. Unless amount of compensation is more than maximum permissible profit arising from violation, the purpose of environmental compensation would always stand defeated.

477. Loss caused to surroundings of the environment, may also include *flora-fauna* and human beings. It is in this backdrop that in various matters when the issues were considered by Courts and Tribunal and found necessary to impose environmental compensation upon Proponent/Violator of environmental laws, they have followed different mechanisms. Sometimes, Committee's reports confirming violations have

been referred but for quantum of compensation, directions have been issued in different ways. In some cases, CPCB guidelines have been applied while in many other, project cost has been made basis.

478. CPCB Guidelines have taken care of industries and municipal bodies. Its application in all cases irrespective of other relevant consideration may prove to be disastrous. Individuals, charitable, social or religious bodies, public sector and government establishments etc., may, in given circumstances justify a different approach. Further, there may be cases attracting aggravating factors or mitigating factors, for example in national emergency some activity got performed violating environmental norms or a proponent is resilient to any advice to adhere law to protect environment and so on. In fact, quantum of EC should have nexus with State's efforts for protection and preservation of environment and control of pollution. Compensation regime must be a deterrent to violators and incentivize eco-friendly proponents. No one should get profited by violating environmental laws and community should also not suffer for violation of environmental norms by defaulting proponents. There is no reason, if beside the aspects noticed above, the computation process also incorporates the elements of inflation, quality of life, and economic prosperity.

479. In the context of "violation of disposal of Bio-Medical Waste" and "Non-compliance of Bio-Medical Waste Management Rules, 2016" and determination of environmental compensation for such violations, Tribunal in ***OA No. 710/2017, Shailesh Singh vs. Sheela Hospital & Trauma Centre, Shahjahanpur & Others*** and other connected matters, vide order dated 15.07.2019, accepted report of CPCB, and said:

> *"10. The compensation regime suggested by the CPCB may be adopted. It will be open to the State PCBs/PCCs to adopt a higher*

scale of compensation, having regard to the problems faced in such States/UTs.

11. It is made clear that if even after two months the States/UTs are found to be non-compliant, the compensation will be liable to be recovered from the said States/UTs at the rate of Rs. 1 Croreper month till the non-compliance continues."

480. The above recommendations i.e., in para 10, Tribunal said "*compensation regime suggested by the CPCB may be adopted. It will be* ***open to the State PCBs/PCCs to adopt a higher scale of compensation, having regard to the problems faced in such States/UTs***". It further says that if State Governments and UTs still remain non-complying for two months, compensation will be recovered at the rate of Rs. 1 crore per month till non-compliance continues.

481. In respect of solid waste, sewage effluent, ground water extraction etc., Tribunal in ***OA No. 593/2017, Paryavaran Suraksha Samiti and another vs. Union of India and others***, vide order dated 28.08.2019 has said in para 16, that as regards environmental compensation regime fixed vide CPCB guidelines for industrial units, GRAP, solid waste, sewage and ground water is accepted as an interim measure. Tribunal further observed that recovery of compensation on 'Polluter Pays' principle is a part of enforcement strategy but not a substitute for compliance. It directed all States/UTs to enforce compensation regime latest w.e.f. 01.04.2020 and made it clear that it is not condoning any past violations. Tribunal directed to enforce recovery of compensation from 01.04.2020 from the defaulting local bodies failing which the concerned States/UTs themselves must pay the requisite amount of compensation.

482. In the matter of illegal mining causing damage to environment, methodology for determining environmental compensation was examined in ***OA No. 360/2015, National Green Tribunal Bar Association vs.***

Virender Singh (State of Gujarat) and other connected matters decided on 26.02.2021. Here a report was submitted by CPCB on 30.01.2020, placing on record recommendations made by Committee comprising:

i.) Dr Purnamita Dasgupta, Professor, IEG, Delhi,

ii.) Dr K.S. Kavi Kumar, Professor, MSE, Chennai,

iii.) Dr. Yogesh Dubey, Associate Professor, IIFM, Bhopal,

iv.) Shri Sundeep, Director, MoEF&CC, Delhi and

v.) Shri A. Sudhakar, Additional Director, CPCB, Delhi

483. Report was considered by Tribunal vide order dated 17.08.2020. Report said:

> *"8. The Committee considered two approaches:*
> ***(I) Approach 1: Direct Compensation based on the market value of extraction, adjusted for ecological damages.***
> ***(II) Approach 2: Computing a Simplified NPV for ecological damages.***
>
> *9. In the first approach, the criteria adopted is:*
>
> - *Exceedance Factor (EF).*
> - *Risk Factor (RF).*
> - *Deterrence Factor (DF).*
>
> *10. Approach 1 is demonstrated by Table 1 as follows:*

Table No. 01: Approach 1				
Permitted Quantity (in MT or m^3)	*Total Extraction (in MT or m^3)*	*Excess Extraction (in MT or m^3)*	*Exceedance in Extraction:*	*Compensation Charge (in Rs.)*
X	*Y*	*Z=Y-X*	*Z/X*	*D* (1+RF+DF) Where D=Z x Market Value of the material per MT-or-m^3*
				DF = 0.3 if Z/X = 0.11 to 0.40 DF = 0.6 if Z/X = 0.41 to 0.70 DF = 1 if Z/X >= 0.71
				RF = 0.25, 0.50. 0.75, 1.00 (as per table 2)

11. Approach 2 is demonstrated by following formula:
"Total Benefits (B)=Market Value of illegal extraction: D(refer Table 1)

*Total Ecological Costs (C) = Market Value adjusted for risk factor: D * RF (refer Table 1)."*

12. Final recommendation is as follows:

"Thus, it is recommended that the annual net present value (NPV) of the amount arrived at after taking the difference between the costs and the benefits through the use of the above approach, maybe calculated for a period of 5 years at a discount rate of 5% for mining which is in a severe ecological damage risk zone. ***The rationale for levying this NPV is based on expert opinion that reversal and/or restoration of the ecological damages is usually not possible within a short period of time and rarely is it feasible to achieve 100% restoration, even if the sand deposition in the river basin is restored through flooding in subsequent years****. The negative externalities of the mining activity are therefore to be accounted for in this manner. Ideally, the worth of all such damages, including costs of those which can be restored should be charged.* ***However, till data on site-specific assessments becomes available, this approach may be adopted in the interim.*** *In situations where the risk categorization charged. However, till data on site-specific assessments becomes available, this approach may be adopted in the interim. In situations where the risk categorisation is unavailable or pending calculation, the following Discount Rates may be considered:*

Severity	*Mild*	*Moderate*	*Significant*	*Severe*
Risk Level	*1*	*2*	*3*	*4*
Risk Factor	*0.25*	*0.50*	*0.75*	*1.0*
Discount Rate	*8%*	*7%*	*6%*	*5%*

Here, in both the approaches, element of illegality committed by PP in carrying on mining was not considered at all. For example, if EC and/or consent is not obtained. Similarly cost of remediation/restoration was also not taken into consideration**.**

484. Counsel for applicant gave certain suggestions, which are mentioned in para 13 of order dated 17.08.2020. Tribunal directed Committee to re-examine the matter. Thereafter, further report was submitted on 12.10.2020 wherein earlier report was reiterated. Tribunal in para 12 of judgment dated 26.02.2021 said "**we propose to accept approach-2 in the report**". Further in para 25, Tribunal said:

> *"25. In the light of discussion in para 12 above, having regard to the totality of the situation, we accept the report of the CPCB and direct that the scale of compensation calculated with reference to approach II be adopted by all the States/UTs.* ***Though compensation assessment for damage to the environment is a dynamic concept, depending on variables, floor level formula can be worked out to avoid arbitrariness inherent in unguided discretion. CPCB may issue an appropriate statutory direction for the facility of monitoring and compliance to the Environment Secretaries of all the States/UTs who may forthwith evolve an appropriate mechanism for assessment and recovery of compensation in all Districts of the State****. The recovered compensation may be kept in a separate account and utilized for restoration of environment by preparing an appropriate action plan under the directions of the Environment Secretary with the assistance of such individual/ institutions as may be considered necessary."*

485. Though Tribunal said that determination of environment compensation is a dynamic concept and depends on variables, and also directed CPCB to issue statutory directions to all States/UT so that they may evolve appropriate mechanism for assessment, but nothing has been done in this regard till date. Some States have found it convenient to follow CPCB guidelines. State of Tamil Nadu vide order dated 03.01.2020 and State of Haryana vide order dated 29.04.2019 have adopted CPCB Guidelines.

486. In some cases, compensation has been awarded by Tribunal on lump sum basis without referring to any methodology. For example: (i) *in* ***Ajay Kumar Negi vs Union of India, OA No. 183/2013***, Rs. 5 cr. was imposed. (ii) In ***Naim Shariff vs M/s Das Offshore Application no. 15(THC) of 2016***, Rs.25 cr. was imposed (iii) ***Hazira Macchimar Samiti vs. Union of India***, Rs 25 cr. was imposed.

487. In ***Goa Foundation vs. Union of India & Others (2014)6SCC590***, Supreme Court relied on ***Samaj Parivartana Samudaya & Others vs. State of Karnataka & Others (2013)8SCC209*** and held that **ten per cent of the sale price** of iron ore

during e-auction should be taken as compensation. To arrive at the above view, Court observed that this was an appropriate compensation given that mining could not completely stopped due to its contribution towards employment and revenue generation for the State. Further, Court directed to create a special purpose vehicle, i.e., "Goan Iron Ore Permanent Fund" for depositing above directed compensation and utilization of above fund for remediation of damage to environment.

488. In ***Mantri Techzone Private Limited vs. Forward Foundation & Others, (2019)18SCC494***, Supreme Court affirmed imposition of environmental compensation by Tribunal, considering cost of the project, where there was violation regarding EC/consent and proponent proceeded with construction activities violating provisions relating to EC/Consent. Tribunal determined environmental compensation at 5% and 3% of project cost of two builders. 5% of project cost was imposed where PP had raised illegal constructions while 3% was imposed where actual construction activity was not undertaken by PP and only preparatory steps were taken including excavation and deposition of huge earth by creating a hillock. Besides, Tribunal also directed for demolition and removal of debris from natural drain at the cost of PP.

489. In ***Goel Ganga Developers vs Union of India and Others, (2018)18SCC257***, Tribunal imposed 195 cr. compensation since project was executed without EC. Supreme Court reduced it to **100 cr. or 10% of project cost whichever is higher**. Supreme Court also upheld Rs.5 cr. imposed by Tribunal vide order dated 27.09.2016. **Thus, total amount exceeded even 10% of project cost.**

490. Learned Sr. Counsels appearing for Respondents Proponents have argued that the formula adopted by Committee suggested by Spanish

author, cannot be applied mechanically in India where conditions are totally different. Similar textured arguments were raised in objection under consideration.

491. We find that to some extent the argument that the conditions applicable in European or other Countries are different from India has force and substance. The level of pollution and nature of pollution is much different in India comparing to European Countries and particularly Developed Countries. The problem of dust, air and water pollution and degree of pollution in India is incomparable with European Countries and in particular Developed Countries. Degree of such pollution in India is extremely severe**. As per IQ Air Quality Index of 2020, on the basis of level P.M. 2.5, India is third most polluted country in the world with 51.90 while at top is Bangladesh and second is Pakistan**. This position has been continuing at least since 2018 and onward, though level of pollution, overall, has been shown lesser. In the said list, Spain is shown in green category with 10.40 and is at Sr. No. 80. Obviously, therefore, the standards which are applicable or can be made applicable to Spain and similar other European Countries, are inapplicable for India where much stricter and heavy liability standards and norms have to applied. To this extent, in fact, Committee has dealt with the matter very leniently which has helped Respondents Proponents in limiting liability of compensation to very moderate level which otherwise would have been much higher. Moreover, Respondents Proponents have said in their objections that Spanish formula was designed to meet cases of prevention of degradation of environment which means that all relevant aspects have not been accounted for otherwise quantum of compensation would have been multifold high. Element of damage caused, cost of remediation, element of distress necessary to

prevent persistent violation, cost of recovery of health suffered by people in the area, element of penalty for breach of statutory provisions relating to environment, etc., in true perspective and spirit, stood omitted when above Spanish formula is applied mechanically. The obvious result would be that amount of compensation liable to be determined, in this matter, must be several times high.

492. Here we also find it appropriate to place on record that fortunately on the issue of carbon dioxide emission, position of India is much different and as per United Nations Inter Governmental Panel on Climate Change, in the 10 top most polluting Countries, Spain is at Sr. No. 8 with 6.09 per capita figures. Position of India is much better. Be that as it may, for the purpose of kind of pollution, we are concerned in this matter, i.e., water pollution, we have no manner of doubt that Committee has made an attempt to compute compensation taking into consideration interest of Industrial Units also and it has been very considerate to ensure that compensation may not be very heavy to Industrial Units. Unfortunately, in the above process, Committee has omitted to include certain very relevant factors resulting in assessment of inadequate and insufficient amount which would not serve the purpose appropriately for which the compensation is assessed. In fact, the recommendations of Committee are more in the interest of industries than remediation of degraded environment.

493. On the one hand Committee has undergone a very onerous and burdensome job of taking into consideration different aspects to determine compensation and apportion it, and we place on record our appreciation for this tough task, but on the other hand, simultaneously, we cannot appreciate that law of land relevant for determination of

compensation, laid down by Supreme Court, binding on all, pointing out relevant aspects which must have been accounted for, while determining compensation, have been ignored in fact, though reminded in words in the report of Committee. This is a major flaw and can not be maintained but needs remedial and curative approach on the part of Tribunal.

494. If we follow the simple and straight method based on turnover of Polluters Unit which has been applied time and again by Supreme Court as well as by this Tribunal, situation would have been much different and liability of many member industries of Respondent 9 would have come to several times more than what has been computed and determined by Committee. Moreover, in a case where pollution is continuous, violations of environmental laws and norms are consistent and Industries for their own benefit are carrying on their commercial activities without showing any legal, social and ethical obligations, responsibilities and duties toward society, i.e.,preservation, protection and maintainance of purity of environment, they cannot be allowed to raise any technical plea to take advantage of their own wrong or own practical problems for the reason that the factum of causing pollution by violating environmental norms is sufficient to attract Principle of Polluters Pay and since violation is for commercial interest of industries, they must be required to pay in terms of their volume of business which has been suggested by Supreme Court also as we have already discussed above.

495. Additional and not the least important consideration is that violation of Environmental norms continued for years cannot justify imposition of Environmental Compensation only for a small period of violation. Polluters must account for such liability consistently, persistently and throughout for entire period of industrial activities.

Nothing has been placed on record that till the date of submission of report by Committee, pollution found by Committee had stopped. In fact, computation of pollution ought to have been for the entire period, at least the period which is within limitation under section 15 (3) of NGT Act, 2010 i.e., 5 years earlier from the date of filing Original Application and entire period when the matter has remained pending before this Tribunal. One must appreciate that discharge of polluted effluent may be for certain period but its consequences due to pollution are long term and process of damage may also continue for much longer time. If somebody drops a little amount of sulfuric or hydrochloric acid on a wooden plank, acid continue to burn wooden plank for a long time.

496. The matter can be examined from another angle. It is an accepted fact that any development is bound to affect environment adversely, degree may differ, depending on the nature of industries, kind of effluents or emissions released, ecological conditions in the area etc. Recognising this fact, legislation has provided standards/limits of contents of industrial effluents and emissions. Industries and others are permitted to cause pollution to that extent. This is part of concept of 'sustainable development' where a balance has been attempted to be maintained by Statutes. Whenever statute permits discharge of polluted effluent or emission upto certain level, that means pollution is there but law does not treat it offensive. Pollution within standards/limits is tolerable. Society, to that extent, has agreed to suffer. In other words, pollution within limits may not affect flora and fona noticeably. Any crossing of limits means release of polluting contents beyond toleration causing impermissible damage to environment and ultimately to society. Here, Respondents Proponents have been crossing limits/standards and releasing polluted effluents just for their commercial interests and

thereby compromising ecological sustenance and health of society. Determination of compensation, thus must corelate level of industrial/commercial activities of such Pollutors i.e., volume of business. As we have already said, resondents Proponents were permitted to bring on record information about their annual turnover but they have refrained from giving such iformation.

497. The discussions made above show that objections raised by respondents industries about method adoped by Committee are not justified. Amount of compensation determined by Committee is neither excessive, nor exorbitant nor unreasonable in terms as suggested by Proponents nor arbitrary. On the other hand, Committee, in its wisdom, has followed a principle which is also referred in a publication of Ministry of Environment and Forest, Government of India titled as 'National Program for Rehabilitation of Polluted Sites in India- Guidance document for assessment and remediation of contaminated sites in India', 1st edition, March 2015. Committee was comprised of very senior professionals and experts, i.e., a Professor from Indian Institute of Management, Ahmedabad; another Professor from Indian Institute of Technology, Ghandhinagar; a Scientist from National Environmental Engineering Research Institute, Nagpur; Regional Director, CPCB, Pune; and Regional Director, MPCB. Out of five members, three are from Institute of very high repute. One member is from Central Statutory Regulator. No complaint or allegation of bias has been made against these four members. In textured objections, presence of MPCB official has been objected but during oral arguments before us this issue has not been raised. Even otherwise, official of MPCB is only one out of five members and it can not be believed that he could have influenced all other senior Academicians of repute and a senior official of Central Statutory

Regulator. Moreover, Committee's job is confined to collect facts, examine and submit report to Tribunal. Committee is not empowered to take a final decision in the matter. It is ultimately order of this Tribunal which will adjudicate rights of the parties. If Tribunal accept report, it would become part of order of Tribunal, but on its own, reports of Committee would not impact rights of the parties. This aspect has already been answered by Supreme Court in **State of Meghalaya vs. All Dimasa Students Union (Supra)** while answering issue 11. Court held that despite constitution of Committee entire control remains with Tribunal and any recommendation of Committee is always subject to affirmation by Tribunal and would be enforceable only thereafter. The objection regarding constitution of Committee has no substance and appears to have been raised in desperation.

498. In view of the above, contention advanced on behalf of Respondents Proponents on the methodology adopted by Committee for computation of compenation has no merit and rejected. However, it does not lead to inference that compensation determined by Committee as such stands approved. We still have to examine its adequacy in the light of various components, already pointed out above. In fact, we were inclined to follow the basis of commercial activities undertaken by Proponents by violation of environmental laws and norms and to make computation on the basis of some percent i.e., 5% or around it, of annual turnover of concerned Proponents, but we find that amount environmental compensation would increase multifold, industries had some problems in last one and half years due to pandemic and number of industries in TIA MIDC as a whole has also gone down considerably, hence for the health of industries and their survival, much higher liability may not be conducive. Thus taking a pragmatic view in the matter, consistent with the principle of "sustainable

development", attempting to maintain a balance between the task of preservation and protection of environment and sustained development, we are of the view that **quantum of compensation determined by Committee vide revised report dated 12.08.2021 be enhanced twice where Proponents have been found with single violation, thrice where two violations and tetra (four times) where violations are more than two. The above direction will not apply to TEPS**. This approach will meet the ends of justice, in the peculiar facts of this case. The amount of compensation, determined above shall be utilized for remediation/restoration of environment as also for the benefit of affected people in the area. If any deficiency is found ultimately in the funds while carrying out above directions, shortfall shall be made good by State Government of Maharashtra since these industries are contributing to public exchequer by paying huge amount of taxes etc. **The issue relating to methodology adopted by Committee for determination of compensation is answered accordingly**.

499. With regard to the inaccuracies/errors on certain factual aspects Committee has itself suggested that if there is any error in the information supplied by MPCB, individual industries may point out the same to MPCB and it is open to MPCB to re-examine the quantum of environment compensation. We modify the above direction to the extent that MPCB shall follow process of computation in the light of directions given above.

500. **SUPER FUND AND FISCAL DISCOUNTIND**: On this aspect lot of ojections have been raised. It is said that unless remediation plan is prepared no such fund can be created and the direction for super fund itself is illegal since such fund is alien to environmental laws. It is also

said that remedial measures adopted by Proponents including TEPS have not been given any weightage though such steps taken should have resulted in appropriate discounting in the amount of compensation.

501. On the aspect of superfund and fiscal discounting Committee has submitted its response dated 13.05.2021 and it would be useful to refer relevant extract thereof:

> *"That regarding averment made by TIMA about proposal of the concept of super fund for the pollution which has not even been established or quantified, it is submitted that the CETP Tarapur has been found violating effluent discharge standards as well as CETP inlet design/inlet standards during the reported period of 28/4/2011 to 30/11/2019, as concluded at page 83 of the Committee under the Chapter 8 read with Chapter 3. The report also outlines that the CETP is not adequate to treat the effluent currently being received. Besides, it also operated at beyond its hydraulic load capacity of 25 MLD and resulting into the overflow from the CETP during such duration and such overflow effluent is being discharged into to drains leading to other water bodies (creeks, sea and ground water). Details of exceedance of parameters in inlet and outlet effluent of CETP and hydraulic load exceedance during the said reported period have also been presented in the report.*
>
> 1. *As submitted above under para (1) to (3) (a) - (h) above, it is obvious that illegal discharges of non-complying effluent from the CETP since long time, as above, may have impact on the environment. However, in order to ascertain the impact, if any, the Committee did field sampling & analysis of various surface water bodies (drains passing through MIDC Tarapur and receiving water bodies Creeks and Sea water) and ground water in and around the MIDC area. Based on analysis results of monitoring of the said water bodies, the* ***Committee has arrived at affirmative contamination of - groundwater and drains in and around Tarapur MIDC area due to industrial discharge of untreated effluent/solvent/chemicals, and; impact on Creeks and Seashores around Tarapur MIDC thereto (paras 8.2.1, 8.2.1.1 to 8.2.1.4 at page 91-92 under Chapter 8 read with para 4.2 to 4.5 at page 44-57 under Chapter 8 of the Committee's report may be referred in this regard).***
> 2. *Therefore,* ***contamination due to illegal discharges of non-complying effluent from the CETP and industries and affirmative contamination/impact thereof on water bodies have been established****, as above.* ***Once established, quantification of pollution including delineation of the contaminated areas and areas needing remediation; detailed site investigation & characterization; risk assessment studies & identification of remediation goals/objectives and preparation of remediation plans thereof; selection of remediation criteria; outlining***

remediation options and preparation of detailed technical document with specifications for the selected remediation option; are subsequent steps in scientifically management of contaminated sites*. As part of restoration measures, the Committee has recommended Phase-I work which includes the said activities by preparing Detailed Project Report (DPR) followed by execution of the selected remediation plan as Phase-II work. Preparation of the said DPR and remediation thereto have been recommended by the Committee in line with "Guidance document for assessment and remediation of contaminated sites in India" prepared by the Ministry of Environment, Forest & Climate Change, Govt. of India (para 8.2.2; page 92-93 of Chapter-8 of the Committee report may be referred in this regard).*

Reply to TIMA's objection w.r.t. concept of "Super Fund" is alien

1. *That regarding averments made by TIMA that concept of "Super Fund" is alien to the Indian environmental regulation statutory regime and seems to have been adopted from the Comprehensive Environmental Response and Liability Act (CERCLA) enacted by the United States Congress, the Committee, in addition to comments submitted under para (i) of Para (3) (i) above, submits that the terminology of "Super Fund" has been used by the* ***Committee merely to allocate certain amount of fund to meet the future studies to carry out as the aforesaid Phase-I activities comprising of delineation of the contaminated areas and areas needing remediation; detailed site investigation & characterization; risk assessment studies & identification of remediation goals/objectives and preparation of remediation plans thereof; selection of remediation criteria; outlining remediation options and preparation of detailed technical document with specifications for the selected remediation option, and preparation of DPR on the same as given ; followed by execution of the remediation plan as per the said DPR as Phase-II activities****. Methodologies on the same are also indicated in Annexure-VI of the Committee's report which has been recommended to be implemented by MPCB.*

2. *Without prejudice to regulation of "Super Fund" in United States or other countries or its merits/demerits or its applicability in the country, the Committee has just used the term "Super Fund" so as to meet the aforesaid future expenses in remediating the contaminated sites in and around the Tarapur due to industrial activities and money to the said Super Fund would be deposited based on precautionary principal and polluter pay principal and the aforesaid 103 identified polluting units are the identified polluters who have been identified with systematic and rational approach in compliance with order dated 26-09-2019 of the Hon'ble NGT by the Committee.*

3. *It is also submitted that:*

i. *in the absence of delineation of the contaminated areas and areas needing remediation (which require detailed hydrology, geology, etc. studies and detailed sampling & analysis) and remediation technique required thereof, which will be outlined in the DPR as recommended under Phase-I activities followed by field remediation work as recommended under Phase-II activities in the Committee's report, and;*
ii. *considering that ground water and drains in and around the Tarapur MIDC have been found contaminated;*

the Committee has suggested initial amount for the Super Fund as 75 Crores INR to meet the cost to be incurred in the aforesaid activities of Phase-I and Phase-II in remediation. However, the Committee has also suggested (please refer para 8.2.2.2; page 94 and of Chapter 8 and page 77 of chapter 6 of the Committee's report) that depending upon the selected remediation options, the cost of remediation may increase or decrease to that of Rs. 75 Crores. In such case, the amount may be collected or refunded to each of the said 103 polluting units, as the case may be, in the same proportion as the damage recovery cost has been recommended to be paid using the equation (4) as given at page 82-83 under Chapter 7 of the Committee report.

4. *The Committee, therefore, submits that the proposed 'Super Fund' of INR 75 Crs. is indeed a novel concept for the Indian environmental statutory regime and yet in spirit fully upholds the precautionary principle and the polluter pays principles that are the cornerstones of the Indian environmental jurisprudence.*
5. *Further the expert Committee has taken cognizance of the fact that long procedural delays and direction in remedial/restoration of the environment, especially in critically polluted areas where the carrying capacity of the natural environment is severely tested, exacerbates the degradation of the local ecology. Worse in such cases, the underlying non-linearities of the complex ecosystem may even push the local biosphere beyond a point of no return.*
6. *The concept of 'Super Fund' is proposed in all earnest to endow the regulatory bodies and local governments with sufficient financial resources to expeditiously engage in restoration and remediation action and prevent irreversible damages to the environment.*
7. *It is submitted that the Committee was directed by the Hon'ble NGT to assess the extent of damage and cost of restoration of the environment and individual accountability of CETP and polluting industrial units. The Committee complied with the said directions by performing various activities diligently including field sampling/monitoring and scientific & technical analysis of the various information/data/analysis results which have been presented along with conclusions and recommendations in its report submitted to the Hon'ble NGT.*
8. *It is denied that the Committee erred in imposing Rs. 75 crores under the heading 'Super Fund' upon TIMA members and TEPS, the Committee disagrees such error in recommending creation of Super Fund of Rs. 75 crores and recommends such Super Fund considering immediate remedial measures*

required for remediation of environmental pollution. The comments submitted by the Committee under para (i) to (iii) of the para 3(i) above may be referred in this regard.

Reply to TIMA's objection w.r.t. consideration of fiscal discounting

1. *That averments made by M/s TIMA about fiscal discounting referring self-cleansing ability of water bodies, sewage and human waste attributed by five different villages surrounding the MIDC area, etc., it is submitted that analysis results of all the samples collected from the monitored drains passing through the MIDC Tarapur, the two creeks in which the said drains confluence and 01 location of each of the two streams before confluence of the said drains, and; sea water and sand near to Navapur CETP outfall, Nandgaon beach and the other at Edvan beach about 85 kms from the said Navapur CETP outfall, and; ground water samples from 06 different bore-wells in and around MIDC area; attribute to presence of one or more parameters such as odour, colour, pH, TDS, COD, TSS, Fluorides, Phenols, Total Ammonical Nitrogen, Metals (Lead, Copper, Iron and Manganese), etc. which are signatures of industrial discharges sourced from industrial activities of Tarapur MIDC (please refer analysis results given at Table 4.5 to 4.11, paras 42. To 4.5 at pages 42-58 under Chapter 4 of the Committee's report). Presence of such parameters and elevated concentration of parameters in water bodies to that of as recommended in the "Guidance document for assessment and remediation of contaminated sites in India" prepared by the Ministry of Environment, Forest & Climate Change, Govt. of India, indicate contamination/impact on such water bodies resulting into environmental damage which has obviously occurred after exceeding the self-cleansing ability of the water bodies.*
2. *It is further submitted that the discounting can be defined as the technique used to compare costs and benefits that occur at different points in time. Its main motive is to express in present values the flow of costs and benefits that arise across the full lifetime of a scenario or project. Discounting can be used whenever long-term impacts need to be assessed, and when discount rates can be identified to reflect the opportunity cost of being able to make use of benefits now or defer costs until later. Moreover, immediate impacts of a policy or other intervention are often considered to be valued more highly than the same impacts at some future date and hence it is designed to adjust the value of future impacts to present values, in order to allow cost and benefits to be aggregated and compared in a consistent form.*
3. *The objection regarding fiscal discounting states that the Committee ought to have considered some extent of fiscal discounting in costs based on the following grounds that sea and creek can be considered as public undepletable externality and it has a system of self-cleansing process of a period of time. However self-cleansing property requires time and repeated effluent discharges aggravates the pollution and hence the objection statement "Pollutants like BOD, COD, TSS have the capacity to disintegrate over a period of time so much so that they do not remain harmful" is irrelevant and in ignorance assumes the notion of the sea and natural water bodies as infinite sinks capable of assimilating pollutants for an indefinite period of time. However, the environmental damage cost assessment done by the expert Committee is based on the background of present*

scenario damages (Assessment period) caused due to the pollution and hence the concept of fiscal discounting is not applicable"

502. We entilely agree with the view expressed by Committee. In fact, Proponents or learned Senior Counsels representing them could not advance any substantive argument to support their objections. Moreover, Tribunal' similar direction for creation of a fund to be utilized in future has been upheld in ***State of Meghalaya vs All Dimasa Students Union (supra)***. There, Tribunal required State Government to deposit 100 crores and keep it in a separate fund, i.e., Meghalaya Environment Protection and Restoration Fund and this direction was upheld by Supreme Court. The title or lable will not be a determining factor but substance and objective which matters.

503. Subsequent remedial steps would not condone earlier violations and compensation is determined for what has been done. The concept of fiscal discounting is inapplicable in the process of determination of environmental compensation. The steps taken to prevent pollution in future does not amount restoration or remediation of damage or degradation already caused to environment. The objection regarding fiscal discounting, therefore, is misconceived. **We, therefore, reject both objections regarding Super Fund and fiscal discounting**.

504. **EARLIER PENALTIES, FORFEITURE OF BANK GUARANTEES**: The objection with regard to non-consideration of earlier penalties and forfeiture of bank guarantees etc. is misconceived. Objectives of the said actions were different. Same cannot be clubbed. While considering question of computation of environmental compensation, different penalties/fines/damages etc. relatable to different aspects cannot be clubbed together. Neither any law requires such clubbing nor any

precedent has been shown to us on such aspect. **Therefore, we find no reason to accept the same**.

505. The other objections are more repetitive and in fact covered by what we have discussed above. In fact, during the course of arguments, only two aspects were emphasised by Learned Senior Counsels appearing on behalf of Proponents i.e., selection of only 103 units leaving others for payment of compensation and application of formula for computation of Environmental Compensation. We have already discussed these aspects in detail, above.

Individual objections filed as part B in MA 02/2021 dated 29.12.2020/07.01.2021:

506. Respondent 9 has filed collectively individual objections of member industries, as part B to M.A.02/2021. The affidavit in support has been sworn by Shri Dhanaji Laxman Kakade, Vice President who claims to be authorized representative of M/s. Aarti Drugs Ltd, Plot no. G-60, MIDC Tarapur and also member of TIMA. **These are 85 objections** and we are dealing with the same individually as under:

(i) Objection by M/s. Aarti Drugs Ltd., Plot no. G-60, MIDC Tarapur (at item no. 1 in the list of 103 industries submitted by Committee (in short referred to as 'List-103 of Committee'):

507. This is an LSI scale red category unit, established on 01.10.1994, and manufacture bulk drugs according to consent renewal application dated 21.10.2013 (placed on record on page 149 of MA). Total water consumption for deterrent uses is shown as 802 m^3/day i.e. 552m^3/day for industrial cooling etc., 35 m^3/day for domestic purpose and 135 m^3/day and 40m^3/day for processing whereby water gets polluted and the pollutants are easily bio-degradable. The quantity of waste water generated disposed is 20 m^3/day from domestic, 116 m^3/day from industrial process and 3m^3/day from boiler blowdown. It claims to

discharge treated effluent to CETP for further treatment, disclosing total quantity as 119m^3/day. In the category of fuel consumption, it has disclosed consumption for coal as 12 to 15 MT/day and Brickuette 30MT/day. An inspection was made on 05.09.2013 by MPCB officials pursuant whereto, notice dated 15.10.2013 was issued showing following major and minor non-compliances:-

> *"**Major Non compliances:***
> 1. *Discharge of untreated acidic effluent having pH 3-4 with strong solvent smell and blackish in color into MIDC effluent conveyance system to CETP drain (By pass) and poor O & M of ETP, thereby hampering CETP operation which is confirmed by exceeding JVS results.*
> 2. *Fuel changed from LDO/FO to coal/Briquette without prior permission from Board, thereby leading to excess emission load environment at inadequate height.*
>
> ***Minor Non-Compliance:***
> 3. *Flow & pH meter is not provided, thereby making it difficult to verify the quantity of effluent discharge to CETP."*

508. Proponent replied notice stating as under:

> *"1) Out treated effluent sent to CETP is always within the prescribed limits (as can seen from various JVS reports of last six months).* ***There is possibility of some effluent from MIDC chamber bank mixed in our treated effluent as there is no sufficient gradient to the pipe line connected to MIDC chamber. That may be the reason for acidic effluent found during this visit.***
>
> *2)* ***We will take permission for change over from F.O. to briquette/ coal immediately****.*
>
> *3) Flow meter is already provided in the treated effluent discharge line to CETP.* ***We will also install Ph meter as asked by you."***

509. Reply above shows that broadly, non-compliances reported by MPCB, were not challenged. The closure notice was issued on 15.10.2013 by MPCB. A reply was again submitted by proponent on 18.10.2013 and a conditional restart order was issued on 31.10.2013. Till this date, proponent has not got the change of fuel permitted. Admittedly, application for seeking permission of change of fuel was submitted for the first time on 31.10.2013. Certain relevant conditions mentioned in the restart order dated 31.10.2013 are:

"a) You shall ensure that your production shall be restricted to the generation of effluent as promised by you to the TEPS-CETP by reducing total daily generation of TEPS-CETP effluent from the list of its members submitted with voluntary closure in a staggered manner in the month of November, 2013 for one day of each week and two days of each week in the month of December, 2013 in a week, so as to restrict total generation of TEPS-CETP in a time bound manner to 25 MLD each day, which shall further be continued after December, 2013 also bank guarantee of Rs 2.5 lakhs shall be charges for adhering to staggered schedule and which shall be valid for a period upto the validity of the consent/one year whichever is later, to be submitted within 15 days time from the date of receipt of these directions in favour of Regional Officer, MPCB, Thane.

b) You shall not carry out any excess production or produce new products without consent of the Board and without an Environment Clearance wherever it requires, for which, you shall furnish an irrevocable bank guarantee of Rs. 2.5 lakhs, which shall be valid for a period upto the validity of the consent/one year whichever is later, to be submitted within 15 days time from the date of receipt of these directions in favour of Regional Officer, MPCB, Thane.

c) You shall operate and maintain existing ETP effectively and remove all the bypasses, whereby the mode of disposal prescribed in the consent order is not followed, for which you shall furnish an irrevocable bank guarantee of Rs. 2.5 lakhs, which shall be valid for a period upto the validity of the consent/one year whichever is later, to be submitted within 15 days time from the date of receipt of these directions in favour of Regional Officer, MPCB, Thane.

d) You shall not discharge any effluent in any other source other than the CETP sewerage drain for further treatment and disposal for which you shall furnish an irrevocable bank guarantee of Rs. 5 lakhs, which shall be valid for a period upto the validity of the consent/one year whichever is later, to be submitted within 15 days time from the date of receipt of these directions in favour of Regional Officer, MPCB, Thane.

e) You shall make provision for online flow meter and pH meter, separate energy meter to pollution control devices within 3 months i.e. on or before 31/01/2014, for which you shall furnish an irrevocable bank guarantee of Rs. 1 lakhs, which shall be valid for a period upto the validity of the consent/one year whichever is later, to be submitted within 15 days time from the date of receipt of these directions in favour of Regional Officer, MPCB, Thane.

f) You shall make an application & obtain the amendment in consent for fuel change within two months, for which you shall furnish an irrevocable bank guarantee of Rs. 1 lakhs, which shall be valid for a period upto the validity of the consent/one year whichever is later, to be submitted within 15 days time from the date of receipt of these directions in favour of Regional Officer, MPCB, Thane.

g) You shall properly collect, transport & regularly dispose of the hazardous waste to CHWTSDF, in compliance of the Hazardous Wastes (Management, Handling & Transboundary Movement) Rules,

2006 and keep proper manifest thereof, for which you shall furnish an irrevocable bank guarantee of Rs. 1 lakhs, which shall be valid for a period upto the validity of the consent/ one year whichever is later, to be submitted within 15 days time from the date of receipt of these directions in favour of Regional Officer, MPCB, Thane.

h) *You shall provide lock & key arrangement for treated industrial effluent on or before 30/11/2013, you shall furnish an irrevocable bank guarantee of Rs. 1 lakhs, which shall be valid for a period upto the validity of the consent/ one year whichever is later, to be submitted within 15 days time from the date of receipt of these directions in favour of Regional Officer, MPCB, Thane."*

510. In the backdrop of above facts, amount of compensation has been objected by Proponent broadly on the ground of number of days of violation. According to proponent, it should be only 67 days and not 241 days for which compensation was determined. Proponent has stated that after earlier inspection of 05.09.2013, further inspection was made on 02.01.2014, 03.03.2014 and 07.04.2014. It claims that the number of days of violations should have been computed as under:

"Bifurcation of our calculation of correct number of days is given below:

X + Y = [7 + 60] = 67 days

X– *[Period between Date of reported violation + actual days taken by MPCB for issuing Closure Notice/ JVS Report OR 7 days (<u>whichever lower</u>)] + number of days taken by industry after receiving closure notice till actual closure*

Y – *Number of days between date of Conditional Restart Order and Date of Intimation by industry/ unit to MPCB about the compliance made and conditions fulfilled. (Note – In absence of proof of Intimation – actual date of Verification of compliance, is considered)"*

511. In the revised report dated 12.08.2021, amount of compensation has been revised and reduced to Rs. 40.517 lakhs in place of Rs. 45.786 lakhs. The number of days of violation has been reduced to 241 to 168. After revision of compensation, no objection to Committee report has been filed. In any case, we do not find anything on record to show that non-compliances found in the inspection report dated 12.08.2021, have been removed by applicant at any earlier point of time. Proponent has

claimed in the objection in question that it complied as communicated vide letter dated 30.12.2013, copy whereof is at page 180, and reads as under:

> *"The conditions you have given in the restart order have been completed. As such we are submitting the compliance report of your conditions.*
>
> *a) We had staggered our manufacturing activities on 04/11/13, 05/11/13, 27/11/13 and 28/11/13 in the month of November and on 07/12/13, 08/12/13, 14/12/13, 15/12/13, 21/12/13, 22/12/13, 28/12/13, 29/12/13 in the month of December to reduce the effluent load of 25MLD CETP.*
>
> *b) We are not carrying out any excess production or produce new product without consent of the M.P.C. Board. Production capacities are as per mentioned in consent.*
>
> *c) We are operating and maintaining existing ETP effectively and have removed all the bypasses.*
>
> *d) We are discharging the effluent in 25MLD CETP and not in any other sources.*
>
> *e) We have installed flow meter and on line pH meter to the final effluent discharge line and have also installed separate energy meter to all pollution control devices.*
>
> *f) We are running the steam boiler with the fuel i.e. LDO/FO which is given in the MPCB Consent. We have applied to the SRO, MPCB Officer, Tarapur for LDO/FO/Briquette amendment in the MPCB Consent.*
>
> *g) We have properly collected, transported and regularly disposed off the hazardous waste to CHWTSDF and we have kept properly entry in the Hazardous Waste Manifest (FORM-13).*
>
> *h) We have provided lock and key arrangement for the treated industrial effluent discharge pump's electrical ON/OFF switch on 04/11/13 and we have handed the key to the authorized person."*

512. The Proponent for the first time claimed compliance vide letter dated 31.12.2013. It shows violations on his part as reported in inspection. So long as claim of Proponent about verification of compliance is verified, it is not the case of Proponent that MPCB officials deliberately delayed verification. Reasonable time has to be allowed to Regulators for visit to verify whether there is compliance. Proponent can not blame officials who have their own limitation of infrastructure, manpower etc. In

any case this situation was created by Proponent. Subsequently Proponent cannot expect the official's availability at his volition. Hence view taken by Committee with regard to computation of days of violations cannot be said to be illogical or unreasonable or contrary to any settled legal principle. Objection thus rejected.

(ii) Objection by M/s. Aarti Drugs Ltd., N-198, 199, TIA MIDC (item 2-List 103 of Committee):

513. This is also a bulk drug manufacturing, Red category, LSI scale industry. It was established on 01.04.1994. Facts stated in the objections show that on 4 occasions, closure orders were issued to this Proponent for violation of environmental norms. First inspection was made on 12.04.2012. Permitted quantity of discharge of effluent was 63.1m^3/day. Sample collected in the above inspection shows violation of prescribed standards permissible by more than 100%. It means that Proponent's ETP was not properly functioning and it was discharging sub-standard effluent to CETP. Closure order was issued on 16.05.2012. Proponent submitted letter dated 29.05.2012 in which alleged violation was not disputed. On the contrary, Proponent said that now it will not discharge sub-standard effluent to CETP. Reply dated 29.05.2012 submitted by Proponent with reference to closure order dated 16.05.2012, reads as under:

> *"**We hereby assure that we will operate out ETP so as to not exceed the prescribed standard of treated effluent**. We also assure you that we will not discharge substandard effluent to CETP so as to maintain its performance. All necessary precautionary measures related to ETP shall be taken from our side.*
>
> *We also enclosed herewith Bank Guarantee of Rs. 2,00,000. Therefore kindly give consideration to us and withdraw order of voluntary closure and allow us to continue manufacturing activities."*

514. Considering reply and subsequent compliance report dated 13.06.2012, restart order was passed on 19.06.2012 (page/217). Again,

officials of MPCB visited unit on 05.09.2013 wherein 3 major non-compliances and 1 minor non-compliance were found:

> *"**Major Non-Compliance***
> *1) Untreated effluent having yellow color & strong solvent smell found discharging to nalla back side of ETP (Bypass) thereby you are causing grave injury to environment which is also confirmed by exceeding JVS results.*
> *2) Changed fuel from FO to coal without prior permission of the Board thereby leading to excess emission load to environment at inadequate height.*
> *(**Third non compliance is not legible**)*
> ***Minor Non-Compliance***
> *4) Flow meter is not provided, thereby making it difficult to verify the quantity of effluent discharged to CETP."*

515. Show cause notice dated 15.10.2013 was issued with a direction for closure which was replied by Proponent on 22.10.2013. Thereafter, restart order was issued on 13.11.2013 with a number of conditions mentioned therein. Proponent was permitted manufacturing activities except manufacturing of 2-mithyl1,4,5 nitro Immidazole. Proponent submitted letter dated 30.12.2013 stating that it has complied with the conditions mentioned in restart order dated 13.11.2013. Proponent claimed that thereafter, inspection was made by MPCB officials on 21.01.2014 and they found compliance with restart order. Third inspection was made by MPCB officials on 23.11.2016 and sample was collected. As per analysis report dated 24.11.2016, pH was 7.1 and COD was 1520mg/l. This result shows that pollutants exceeded permissible limit. Closure cum show cause notice was issued on 03.12.2016. Relevant extract thereof is as under:

> *"The **analysis reports show values of pH- 7.1 & COD – 1520 mg/l which is exceeding to the inlet designed parameters of CETP thereby up setting CETP performance**. It is found from vigilance sampling drawn during odd hours that **you are discharging highly polluted stream/chemical load to the CETP and degree to exceedance to COD compared to consented norms is 508%.** The above fact clearly indicates that you have adopted these practices of discharging of high COD steam and your tendency towards not to abide environment norms. The high polluting/ COD steam hamper functioning of CETP operations thereby*

> *discharging substandard quality effluent in Navapur sea and creating adverse impact on nearby environment. After perusing the results, degree of exceedane and tendency of discharge of untreated effluent I am of the opinion that you are willfully/intentionally discharging highly polluting effluent stream thereby violating consent norms and causing severe damage to the environment which needs to be stopped immediately to protect such damage of environment."*

516. Proponent submitted reply dated 07.12.2016 in which high COD value from ETP outlet was admitted and it said that in future it will take care but further try to justify that total inlet parameter of CETP is 3300mg/l COD and, therefore, COD value of 1520mg/l found in the sample of proponent was within the said parameters. Proponent could not have justified its own violation by relying to limits of CETP which are separately sanctioned/approved by MPCB in the consent granted to CEPT.

517. Proponent submitted an appeal dated 09.12.2016 to Member Secretary, MPCB for withdrawal of closure order dated 03.12.2016 wherein also while admitting higher COD found in the sample mentioned above, Proponent assured that in future it shall maintain proper standard. Again, same defense with reference to inlet parameter of CETP was taken. Appeal also shows that despite closure order dated 03.12.2016, received by proponent on 06.12.2016, on the date of filing of appeal, i.e, 09.12.2016, unit was not closed. This is evident from the following averments made in the appeal:

> *"We will close down the direct discharge of emulsified stream which may have high COD, which is the only polluting activity of our production line, by 9th December 2016 as per your direction, by taking necessary safety measures. We are requesting you to issue necessary directions to MIDC and MSDCL for not disconnecting the Water & Power supply, so that we can carry out maintenance and other works as per your directions. Water and power supply is also required for the workers and safety."*

518. Another letter dated 24.12.2016 was submitted by Proponent to Sub Regional Officer, MPCB, MIDC Tarapur wherein, it submitted a proposal for treatment of high COD and high TDS effluent streams. Proponent said that it will install multiple effect evaporator for high COD and high TDS effluent streams which will take about 4 to 5 months. Restart order was issued on 03.07.2017 (page 313).

519. There is fourth closure order dated 25.04.2017 pursuant to the results of inspection made on 22.04.2017. Analysis report of sample collected on 22.04.2017 shows pH 5.1, COD 28000mg/l and Suspended Solids 800mg/l. Again, a team visited site on 23.04.2017 at 02:05 AM and recorded its observations as under:

> *"Industry is found in operation at the time of visit.*
> ***Storm water drain was found to be flown with acidic effluent (1-2) which further collected in collection tank.***
> ***Industry was by-passing effluents into MIDC chamber; which was brought to the notice of industry representative****. JVS of by-pass effluent is collected."*

520. Closure cum show cause notice was issued on 25.04,2017. Proponent submitted appeal dated 28.04.2017. Though it has said that it was not byepassing effluent into MIDC cahmber but nothing has been said as to why no such objection was taken when inspection was made in presence of Sri Anant Ikke and Dhanraj Rane, representatives of Proponent who also signed inspection report. Thus, violation of environmental norms on the part of proponent is duly proved. The defence taken by Proponent was that parameters of CETP were more than the discharge of the effluent with high COD by proponent. This defence is misconceived. CETP was catering to all the member industries and proponent could not have claimed benefit for itself alone ignoring entitlement of other member industries to discharge effluent within their

own permissible quantity of effluent. Restart order was issued on 18.05.2017.

521. Further objection raised is about number of days of violation for which compensation has been determined by Committee. Committee had computed compensation of Rs. 1042.241 lakhs taking 482 days of violation in respect of first closure order, 1150 days in respect to second closure order, 58 days in respect of third closure order and 309 days in respect of fourth closure order. The proponent in his representation has said that correct number of days of violation should have been only 235 and not 1999 (i.e. 12 for first closure, 58 for second closure, 25 for third closure and 140 for fourth closure).

522. As we have already noted that it is a case of repeated non-compliances on the part of proponent. **Committee has already revisited and amount of compensation is reduced to Rs. 368.749 lakhs vide revised report dated 12.08.2021**. The Proponent's objection on number of days of violations is on same grounds as we have already discussed above, and following same reasons, we reject objection with regard to number of days of violations. In the result entire ojections of this Proponent are rejected.

(iii) Objections by M/s. Aarti Drugs Ltd., E-1, E-21,22, MIDC Tarapur (item 3-List 103 of industries):

523. This industry was established on 01.04.1994, engaged in manufacturing of bulk drugs, an LSI unit, Red category. For a total period of 555 for first closure and 134 for second closure (total 689 days) of non-compliance, pursuant to results of the inspection dated 12.04.2012 and 05.09.2013, Committee imposed compensation of Rs. 156.355 lakhs. Here also objection of proponent is basically for number

of days of violations. According to proponent, it ought to be only 65 days instead of 555.

524. In the inspection dated 12.04.2012, samples were collected and analysis report show pH 7.6, BOD 2550mg/l and COD 7440mg/l. Consequently, closure order/show cause notice dated 16.05.2012 was issued stating that analysis show discharge of effluent exceeding prescribed standard by more than 100%. Proponent submitted reply dated 29.05.2012 with assurance that it will abide by the standards, rrelevant extract whereof is as under:

> *"This is in reference to your letter No. MPCB/ROT/1066 Date 16th May 2012.*
>
> ***We hereby assure that we will operate our ETP so as to not exceed the prescribed standard of treated effluent. We also assure you that we will discharge substandard effluent to CETP so as to maintain its performance. All necessary precautionary measures related to ETP shall be taken from our side.***
>
> *We also enclosed herewith Bank Guarantee of Rs. 2,00,000/. Therefore, kindly given consideration to us to withdraw order of voluntary closer and allow us to continue manufacturing activities."*

525. Proponent submitted letter dated 02.06.2012 requesting for permitting restart wherein explaining reason for violation of norms it said as under:

> ***"Last month the agitator of primary clarifier got damaged & hence performance of the ETP was slightly affected****. We immediately took corrective steps & ordered new agitator also which will fitted at the earliest."*

526. The permission for restart was granted by MPCB by order dated 19.06.2012 with the condition that proponent shall maintain and operate existing ETP on record so as to bring all parameters within prescribed standards.

527. Another inspection was made by the officials of sub-Committee constituted by MPCB on 05.09.2013 and following major and minor non-compliances were noticed:

> *"**Major Non-Compliance***
> *1) Water consumption is more than consented quantity, which shows excess load discharged to CETP thereby hampering operation of CETP you are using Bore well water for domestic purpose.*
> *2) Primary Settling tank & Secondary Settling Tank not in operation and also tertiary treatment is by passed, thereby leading to sub standard discharge of effluent to CETP.*
> *3) Fuel changed from FO to Briquette and now coal from Jan 2012 without prior permission of the Board, thereby leading to excess emission load to environment at inadequate height.*
> ***Minor non-Compliance:***
> *4) Domestic Effluent- 40 m^3/Day for which STP is not provided causing injury to environment."*

528. A closure order/show cause notice was issued on 15.10.2013. Proponent submitted reply dated 21.10.2013 wherein findings recorded by MPCB were not disputed. Instead, proponent stated that it has decided to reduce effluent load to around 55m^3/day. Proponent claimed to have closed operations on 21.10.2013 but requested for release of restart order vide letter dated 06.11.2013.

529. Detailed reasons explaining violation given by Proponent are as under:

> "1. **Water consumption is more than consented quantity, which shows excess load discharged to CETP thereby hampering operation to CETP. You are using Bore well water for domestic purpose**.
>
> *i) Internal audit for water consumption has been conducted. In this audit it has been observed that although the water consumption is high, our effluent load remains controlled & does not exceed the sanctioned effluent load of 70 m^3/Day for trade effluent & 40 m^3/Day for domestic effluent. The reason for higher water consumption is that water quantity for industrial cooling & boiler was mistakenly reported at the time of consent application from our side. The water quantity for industrial cooling & boiler required is around 210 m^3/Day while the quantity reported in consent is only 80 corrections (Reference: please refer copy of application submitted to your office). In mean time we assure you that we shall strictly observe the present consent norms for water consumption by reducing our production quantity significantly.*

ii) We have already disconnected & demolished bore well water. We also like to bring to your notice that we were using bore water as a standby arrangement only for domestic purpose only. (which have now been totally stopped).

2. Primarily settling tank & secondary settling tank not in operation & also tertiary treatment is by passed, thereby leading to substandard discharge of effluent to CETP.

Clarification:

We want to bring to your notice that we never bypass tertiary treatment & also keep both primary settling tank & secondary settling tank in operation. ***At the time of visit of your officers, our operating staff mistakenly provided incorrect information****.*

We hereby assure you that we shall operate ETP properly & continuously with all three treatments (primary, secondary & Tertiary*).*
3. Fuel changed from FO to briquettes & now coal from Jan 2012 without prior permission of the board, thereby leading to excess emission load to environment at inadequate height.
Clarification:
We have already made application to your office for replacing FO boiler by Briquette/ coal fire Biole*r.*
4. Domestic Effluent 40 M3/D for which STP is not provided causing injury to environment.
Clarification;
We shall make arrangement for appropriate treatment of domestic effluent eight by providing STP or using the present spare capacity of ETP (since present effluent load is 65 M3/Day against total capacity 110 M3/Day of ETP) after taking expert advice*.*
we hereby make our strong commitment for controlling the water consumption by all means. This shall be achieved by taking following corrective & preventive measures:
1. *Recycling of water washing.*
2. *Reducing production quantities significantly.*
3. *Minimizing the equipment cleaning activities by proper planning."*

530. The above explaination does not dispute correctness of facts noticed in inspection report showing that Proponent was apparently violating conditions of consent and environmental norms.

531. MPCB issued conditional restart order dated 21.11.2013 with number of conditions which Proponent claimed to have complied.

532. Here also we find that in revised report dated 12.08.2021, Committee has reduced compensation to Rs. 97.191 lakhs by taking days

of violation as 47 in respect of first closure and 178 in respect of second closure. Proponent has claimed however that it ought to be 16 days for first closure and 65 days for second closure. We find no reason to accept the manner in which the proponent has sought to compute number of days of violation and as much as when violation is there, it is the responsibility of Proponent to demonstrate that it was not violating environmental norms prior to inspection or even thereafter. In the matter of environment, principle of absolute liability is attracted and once it is found that the proponent is causing pollution, responsibility lies upon it to show that it was not doing so. Similarly, onus lie upon Proponent to show that there was no pollution on certain particular days which have been taken into account for computation of compensation. Further grounds taken on this aspect are same which we have already considered and rejected. The said reasons and conlusion are reiterated hereat also.

(iv) Objection by Aarti Industries Ltd., plot no. E-50, MIDC Tarapur (item 4-list 103 of Committee):

533. It is also a bulk drugs manufacturing unit in Red category and scale LSI. Consented discharge quantity of effluent is 119. Compensation was assessed at 45.406 lakhs treating 239 days of violation vide Committee's report dated 18.06.2020.

534. Basic objection is with regard to number of days. As per proponent, it ought to be 83 instead of 239. Record filed along with objection show that inspection was made by MPCB team on 05.09.2013. Total water consumption was 160 m^3/day. Following major and minor non-compliances were noticed:

> *"**Major Non compliance**:*
>
> *1. Water consumption is more than consented quantity, which shows excess load discharge to CETP thereby hampering operation to CETP.*

2. High TDS and Low TDS effluent stream is not segregated as per consent condition there by affecting the treatment. Also you have not provided secondary & tertiary treatment system for weak stream.

3. The layer of solvent in the collection tank of ETP indicates non recovery of solvents thereby implying non operation/inadequate capacity of solvent recovery system.

***Minor Non-Compliance**:*

4. Hazardous Waste disposal is less as compare with consented quantity, indicates non operation of effluent treatment system regularly.

5. The Hazardous Waste viz filters, cartridges, neon filters is being disposed of unscientifically, also not included in the consent."

535. MPCB issued Closure/show cause notice dated 15.10.2013. Proponent submitted reply dated 18.10.2013 in which excess water consumption was admitted but said that it has not discharged excess quantity of water into CETP. In respect of second and third major non-compliances, reply was as under:

For second violation

"Reply: We have double effect evaporator system: the system is design such way that the neutralilzed High TDS and Low TDS mixed trade effluent is treated completely and recycle this is for the gardening and utility purpose. The residue remaining after double effect evaporator is then incinerated in our in-house incinerator."

For third violation

"Reply: we have carrying out the solvent Recovery in a Reactor which is provided with double condenser to get maximum solvent recovery."

536. In respect of minor non-compliance, reply was as under:

"Reply: As the production is carried is less than consented qty & is produced on campaign basis so hazardous waste generation is less. We have also incinerated some water in our in-house incinerator.

Reply: we are not using cartridge, neon filters & other filters. As per your direction if require very soon we will apply for consent amendment."

537. Reply was considered by MPCB in its restart order dated 31.10.2013 and it held that there was excess discharge in CETP besides consumption of excess water despite directions issued by TEPS so as not

to result in excess discharge of pollutants by CETP. MPCB allowed restart of production with number of conditions mentioned in the said order. Proponent submitted a compliance letter dated 11.01.2014 in respect of other conditions except condition (a) for which it sought exemption giving its reasons.

538. This proponent has also objected days of violation on the same ground as raised by earlier Proponents. According to this Proponent, days of violation should have been 83 only. In general, it has also challenged compensation itself on the ground that it had not violated any condition or consent and therefore no compensation could have been imposed. We fin on merit. Consumption of very high quantity of water then sanctioned is admitted. It is also not shown as to how excess water was dealt with so as not to discharge extra or excess release in CETP. With respect of major non-compliances of 2 and 3, Proponent relied on its double effect evaporator system stating that neutralized high TDS and low TDS mixed trade effluent is treated completely and recycled for the gardening and the utility purposeand residue after double effect evaporator is then incinerated in-house incinerator. No supporting material is placed before us. On the question of non-recovery of solvent based on layer of solvent in collection tank of ETP, reply is that Proponent is carrying out solvent recovery in a reactor which is provided with double concentrator to get maximum solvent recovery. In this regard, Proponent has placed on record consent renewal order dated 09.10.2012. With regard to trade effluent disposal, condition 3(iv) of consent renewal order said:

> *"Trade Effluent Disposal: High TDS effluent should be burnt in the existing incinerator equipped with wet scrubber Low TDS effluent should be treated in the effluent Treatment plant. The treated industrial effluent after conforming to the prescribed standards should be reused/recycled to the maximum extent and remaining should be counented to sewerage system provided by MIC for treatment at CETP for further treatment."*

539. In item 3 of chart at para 6(i), consent renewal order shows quantity of ash from incineration at 60kg/day (page 463). In support of submission that Proponent was achieving what he claimed from the alleged double effect evaporator system, neither any material has been placed to show quantity of ash generated as a result of treatment in the incinerators and how that ash was managed and treated. When process of evaporator system with incineration is adopted, it is bound to result in additional high consumption of electricity but to support thereof nothing has been placed on record. Inspection was made by Committee in the presence of Proponents representatives but no such explanation was given at the time of inspection. It is thus an afterthought. Therefore, the entire defence based on incinerator is uncredit worthy in view of above findings. In respect of days of violation, similar arguments we have already rejected giving reasons and the same is followed here also.

(v) Objection by Aarti Industries Ltd., K-17,18, 19 (item 5-List 103 of Committee):

540. This proponent has not raised any specific objection except saying that it has objection to the amount of compensation and liability in view of larger issue/objection raised by TIMA in the objections filed against report dated 18.06.2020.

541. In the affidavit dated 26.12.2020 sworn by Mr. Suresh L. Khimasia, authorized signatory of M/s Aarti Industries Ltd., it is said that statement of objection has been submitted to TIMA along with affidavit and the same is relied. However, no separate affidavit is on record before us. Available record shows that this industry was established in 1995 for manufacturing bulk drugs, a Red category, LSI scale unit. Under consent order, sanctioned discharged quantity of effluent is 318.4m^3/day. Inspection was made on 05.09.2013 when Proponent was found using

excess water against sectioned quantity and also discharging sub-standard effluent in CETP. Consequently, closure/show cause notice dated 15.10.2013 was issued pursuant whereto unit was closed on 18.10.2013. Conditional restart order was issued on 31.10.2013. Committee computed 240 days of non-compliance and compensation of Rs. 45.596 lakhs vide report dated 18.06.2020. Again, after giving further opportunity of hearing, vide revised report dated 21.08.2021, compensation has been revised to Rs. 57.881 lakhs. The difference of amount has come on account of change of distribution recovery cost factor which earlier was taken as 0.0028490 but subsequently found as 0.0036166. Thus, violation is evident and we find on ground to sustain objection.

(vi) Objections by Aarti Industries Ltd., L-5,8,9 TIA MIDC (item 6-List 103 of Committee):

542. This proponent is also a bulk drugs manufacturing unit in Red category with scale LSI. It was established in 1993 and as per consent order, sanctioned discharge quantity of effluent is 20 CMD. Taking days of violation as 600, Committee vide report dated 18.06.2020 computed compensation of Rs. 113.989 lakhs. The objections raised are:

(i) Proponent is not in category Red and ought to be treated as Orange/Green category.

(ii) It is not LSI scale unit but MSLA.

(iii) Number of days of violation ought to be only 36 (17+19) and not 600 (13+587) as taken by committee.

543. We find from record that consent renewal was given by MPCB on 06.03.2014. It was amended vide order dated 06.11.2015 showing category and scale of proponent as Red/MSI and mentioned its capital investment as Rs. 8.03 crores. Board officials, in the inspection dated

23.11.2016 found from the sample of waste water collected from ETP outlet of proponent, pH 6.2 and COD 840mg/l against 250 mg/l. Thus, level of COD was much more and highly exceeded to the prescribed standard. Consequently, closure/show cause notice dated 03.12.2016 was issued. With regard to high level COD, Proponent admitted this fact in reply dated 09.12.2016 stating, *"The joint vigilance sample of treated effluent taken on 23.11.2016 was shown the COD of* ***840*** *mg/l which is higher than consent limit.* ***During the JVS sampling there was some technical problem in the separate tank & treasury treatment plant operation tertiary treatment plant operation. This problem was notices and immediately rectified*** *& the plant was running smoothly.*

> ***Hence COD was slightly higher than consent limit*** *we have improved our effluent treatment plant operation & treating the trade effluent effectively____ we will run our ETP plant effectively & take almost care to keep the ___ of our treated effluent within the prescribed consented limit. Last JVS report enclosed for your reference.*
>
> *We are in process of upgrading our existing ETP with the help of ETP consultants & try to maintain quality consistently. The up gradation will be done by installing fine bubble diffusers existing Secondary Settling Tank with proper feed well arrangement."*

544. Proponent submitted letter dated 27.12.2016 informing about upgradation proposal for ETP. Another similar letter was submitted on 16.01.2017. Ultimately, restart order was issued by MPCB on 03.02.2017 recording undertaking of Proponent given on 17.01.2017 for modification of existing ETP to meet prescribed standards and time bound programme for ZLD system. Conditional restart order was given. Proponent was issued further consent renewal order dated 13.10.2017 wherein its category and scale was shown as Red and LSI, respectively and capital investment as Rs. 12.55 crores.

545. The objections of Proponent regarding category therefore, has no substance and and rejected since its category was specifically mentioned in consent order as Red throughout and also in the amendment consent order issued on 06.11.2015.

546. Objection with regard of number of days of violations, since grounds are same as propounded by Proponents referred above, hence for the reasons we have discussed above, this contention is also rejected.

547. The third submission regarding scale, in our view has substance. From 23.11.2015 to 03.02.2017, under consent order effective during that period, scale of industry of proponent was MSI, hence to that extent computation of compensation needs to be revised. It also placed on record that Committee vide revised report dated 21.08.2021 has revised compensation to Rs. 151.455 in place of 113.989 lakhs. The reason evident from the revised report is that date of inspection was mentioned wrongly earlier as 23.11.2018 and there was some mistake in respect of date of restart order. Further even distinction recovery cost factor has been modified and earlier it was 0.0071225 which has been found to be 0.0094634. Be that as it may, since scale of Proponent for the period during which compensation has been computed has been taken incorrectly and it has been taken as LSI though during the said period it was MSI, to that extent compensation determined against this proponent needs be revised. **The objection of this Proponent is partly allowed.**

(vii) Siyaram Silk Mills ltd. (earlier known as M/s Balkrishan Synthetics Ltd. (item 8-List 103 of industries):

548. This is a textile processing industry in Red category and LSI scale. It was established in 1981 and as per consent, industrial effluent discharge quantity permitted is 2000 CMD. Committee has computed compensation of Rs. 87.962 lakhs for 463 days of violation. Objection of

this Proponent mainly on the correctness of inspection and sample collected on 06.09.2013 and number of days of violation which according to proponent ought to be 21 only. The inspection conducted on 06.09.2013 found many violations. Closure/show cause notice was issued on 15.10.2013 mentioning major and minor non-compliances as under:

> *"**Major Non-Compliance**:*
> *1. Aeration system of ETP found not in operation final outlet effluent is …. temperature at 40 to 50º C blackish color effluent was discharged to CETP the substandard effluent discharge is hampering operation of CETP which is also confirmed by exceeding JVS results.*
> *2. You have **changed fuel from coal** to … coke **without proper permission of the Board thereby leading to excess emission load to environment at enadequate height.***
>
> *3. You have not provided STP for the treatment of sewage, … CMD and the same is **directly discharged into MIDC drain causing injury to environment.***
>
> ***Minor Non-Compliance**:*
> *4. Flow meter is not provided thereby making it difficult to verify the quantity of effluent discharge to CETP.*
>
> *5. You are disposing off the Hazardous Waste (waste oil) to the unauthorized party."*

549. Proponent submitted reply dated 19.10.2013 in which remarks of Committee were not shown incorrect but it has tried to explain the same. Conditional restart order was passed on 29.10.2013. The inspection was made in the presence of the representatives of the Proponent and no objection was mentioned in the inspection note to the observations noticed by inspection team. Moreover, reply submitted shows almost admission of discrepancies though proponent has tried to explain the same. We therefore find no reason to doubt the said inspection and observations made therein.

550. With respect to the number of days, we do not find any force since proponent has claimed lesser number of days on the same reasons as we have already discussed and rejected.

551. Further, compensation has been revised vide report dated 12.08.2021 in which it has been found that an inspection was made on 22.12.2014 when discharge of sub-standard effluent having COD 1500mg/l (against permitted 250mg/l) besides other major non-compliances were noticed. Committee vide revised report dated 21.08.2021 has computed compensation for 201 further days of violation and total compensation has been computed as Rs. 208.612 lakhs. Nothing has been placed before us to dispute this inspection and violations found therein. In view thereof the objections raised by proponent in entirely are rejected.

(viii) Camlin Fine Sciences Ltd., D-2/3 (item 9-list 103 of Committee):

552. The industry is producing synthetic organic chemical, established in 1984, in category Red and scale LSI. Permitted discharge quantity of effluent is 20 CMD. Committee report dated 18.06.2020 determined compensation of Rs. 516.561 lakhs for 871 days for violation. Factual inaccuracy with respect to date of inspection and restart date has been raised and further objection is about number of days of volation which according to proponent ought to be 189+61=250. Inspection was made at the site on 22.04.2017 and discharge of sub-standard effluent to CETP with COD 23200 mg/l and Suspended solids 385 mg/l was found against prescribed limit of 250 mg/l and 100 mg/l respectively. Closure/show cause notice dated 25.04.2017 was issued. Proponent submitted letter dated 15.05.2017 suggesting some change in the process so as to reduce COD at the ground level. It did not dispute correctness of the facts found

by inspection team in the inspection dated 22.04.2017. Proponent has filed another letter dated 25.04.2017 purported to be reply of notice dated 25.04.2017 and therein also it had assured to maintain proper standard but there is nothing to show any inaccuracy in the report on the basis whereof closure/show cause notice dated 25.04.2017 was issued. Later, conditional restart order was issued on 16.05.2017. Committee made computation of compensation for 871 days at Rs. 516.561 lakhs.

553. However, the matter has been re-examined by Committee after objections were filed before this Tribunal. Committee granted opportunity of hearing to all identified defaulting industries. The number of days of violation has been reduced to 44 instead of 871. Further Committee has found from record two more instances of violation pursuant to inspection dated 16.04.2013 where closure notice was issued on 24.05.2013 and restart order was issued on 24.05.2013 and third inspection dated 11.09.2013 where closure order was issued on 15.10.2013 and restart order was issued on 01.11.2013. In the inspection report dated 16.04.2013, proponent was found discharging treated effluent beyond the prescribed standard by more than 100% and in the inspection dated 11.09.2013, again discharge of sub-standard effluent to sub-standard effluent to CETP was found where COD 1112mg/l, BOD was 800mg/l, increased water consumption and no separate treatment for high COD. In view thereof, the number of violation further was found for 148 and 192 days respectively, hence compensation in all has been revised to Rs. 428.077 lakhs against Rs. 516.561 lakhs. We find nothing from record to contradict above findings. The grounds regarding manner of computation of days of violation are rejected for the reasons we have already given in respect of earlier discussed Proponents.

(ix) CIRON DRUGS AND PHARMACEUTICALS PVT.LTD.(item 10-list of committee)

554. This industry has also filed objection but it does not say anything except that being an Orange category industry, level of pollution it is causing is neglible. Record show that it is LSI scale unit. Approved quantity of effluent discharge is 4.5 CMD. In the inspection dated 30.07.2018 unit was found discharging polluted effluent with COD 396mg/l, no sewage treatment plant for domestic effluent was provided, and contaminated plastic bags disposal was proper. Committee computed 96 days of violations and assessed compensation, vide report dated 18.06.2020 at Rs.11.399 lacs which is revised to Rs.14.470 lacs vide revised report dated 12.08.2021. Discharge of effluent with almost more than 50% high COD qua prescribed limit can not be said to be a neglible pollution. Since Proponent has not mentioned any ground of challenge, objection is rejected.

(x) M/s Dicitex Home Furnishing Pvt. Ltd. G-7/1 & 7/2, MIDC Tarapur (item 11-List 103 of Industries):

555. This industry is engaged in the production and process of textiles, established in 2004. It is Red category and LSI scale unit. Effluent discharge quantity, as per consent is 510 CMD. Committee computed compensation of Rs. 77.133 lakhs for 406 days of violation vide report dated 18.06.2020. Basic objection is regarding number of days of violation and as per proponent, it ought to be 222 only.

556. An inspection was made on 07.10.2017 when it was found that proponent has not provided Multiple effective Evaporator. Closure/show cause notice was issued on 06.02.2018 and restart order was issued on 13.03.2018. Violation noted above has not been shown incorrect and, therefore, we find no reason to interfere. Further, the case of proponent

has been re-examined by Committee vide report dated 12.08.2021. It has found that also an inspection was made on 06.09.2013 where various violations namely poor O&M of ETP, discharge of sub-standard quality effluent and violation of HW Rules were found. For the said violation also, compensation has been determined for 92 days. Compensation has been revised to Rs. 218.018 lakhs vide report dated 12.08.2021. Nothing has been placed to discredit above report. Hence objections are rejected.

(xi) M/s Dicitex Furnishing Pvt. Ltd. (Item 12-List 103 of Committee)

557. This is also a Textile industry, engaged in weaving and dyeing of home furnishing fabric, established in 2001 and its category and scale are Red and LSI, respectively. Sanctioned quantity of effluent discharge is 880 CMD. Committee's report dated 18.06.2020 assessed compensation of Rs. 16.908 lakhs taking days of violation as 89. Basic objection is with respect of number of days of violation and according to proponent it should be 54.

558. As per record, inspection was made on 6.09.2013 and following violations were found by Committee:

> *"1. The industrial operations of Dyeing are not in operation, only activities related to furnished yarn were in operation.*
> *2. The primary damper laundry was observed with growth of spyregyra, the sludge also spirogyra, the sludge also found in launder channel.*
> *3. The sludge is observed in the final chamber before MIDC drain.*
> *4. There is provision of pipeline from primary clarifiers to treat water storage tank.*
> *5. HW generation and disposal is not matching i.e. disposal is very less as compared to consented quantity.*
> *6. The coal consumption is 20 MT/D approx. as compared to 14 MT the consented quantity."*

559. Consequently, closure/show cause notice dated 15.10.2013 was issued referring to following major and minor non-compliances.

> ***"Major non compliances**:*

1. *You have made provision of pipeline from primary clarifier to treated water storage tank, which indicates provision of bypass arrangement to discharge sub standard effluent to CETP which is also confirmed by the exceeding JVS results. Primary clarifier is also not in use for long period as indicated by algal growth.*
2. *The sludge/ slurry arises during treatment of effluent is being discharge in the final chamber before MIDC drain, leading to CETP, which hampers effective functioning of CETP.*
3. *Goal consumption is more than consented quantity, thereby leading to excess emission load to environment at inadequate height.*

***Minor Non Compliance**:*

4. *You have not submitted Bank Guarantee of Rs. 2 lakhs, thereby violating consent condition no. 12.*
5. *Hazardous waste disposal is less compared to consented quantity."*

560. Proponent submitted reply dated 22.10.2013 wherein broadly violations were not disputed. On the contrary, Proponent assured to comply with environmental norms and conditions of consent. MPCB issued order dated 29.10.2013 permitting restart of the unit with number of conditions. Proponent vide letter dated 11.11.2013 assured MPCB of compliance of all the conditions mentioned in the restart order.

561. Before us Proponent has filed a chart as annexure 2 (page 782) to show that from 2011-2019 on 30 occasions samples were taken and parameters were found within limits. Proponent has sought to contend that it was not violating environmental norms and not responsible for excess discharge of untreated/partially treated effluent by CETP. We find that the said chart nowhere refers to inspection dated 06.09.2013 in which admittedly number of violations were found. The said inspection was made in the presence of representatives of proponent who had also signed the report. Proponent was found to have violated environmental norms, particularly direct discharge without treatment by making bypass arrangement. There is nothing to discredit above report. Hence, we find no merit in the objections.

562. So far as dispute with regard to number of days is concerned, the grounds taken are similar as in other matters we have discussed above and for the reasons given, objection with regard to days of violation is rejected.

563. Based on the verification of the compliance date, Committee vide revised report dated 12.08.2021 has found period of non compliance as 242 and amount of compensation has been computed as 58.363. The said amount has been computed not only on the basis of the revised days of violation but also higher distribution recovery cost factor as it is evident from the report dated 12.08.2021.

(xii) M/s DC Polyester Pvt. Ltd. (Item 13-list 103 of Committee)

564. This is also a textile unit in red category and scale LSI. The sanctioned discharge quantity of effluent is 300 CMD. As per report dated 18.06.2020 Committee had assessed compensation of Rs. 46.356 lakhs taken number of days of violation as 244. In the visit of MPCB team on 06.09.2013 following non compliances (major and minor) were noticed.

> *"**Major Non Compliances**:*
> 1. *You have undertaken excess production of grey cloth, texturised yarn & twisted yarn without obtaining prior permission from the Board thereby violated condition No. 2 at the Consent to Operate which might be leading to extra effluent load on CETP.*
> 2. *The JVS sample collected from the outlet of ETP are not confirming to the standards which indicates sub standard effluent discharge to CETP thereby hampering the CETP performance.*
> 3. *Hazardous Waste generated is not disposed to CHWTSDF within stipulated time period thereby violated the provisions of the Haz. Waste (Management, Handing & Transboundary Movement) Rules 2008.*
>
> ***Minor Non-Compliances:***
> 4. *Flow meter is not provided thereby making it difficult to verify the quantity of effluent discharged to CETP."*

565. Consequently closure/show cause notice dated 15.10.2013 was issued. Proponent submitted reply dated 22.10.2013, firstly stating that

Proponents company is D.C. Polyester Pvt. Ltd. while notice is in the name of M/s DC Polymer Pvt. Ltd. and therefore name should be corrected. The allegation of excess production and generation of hazardous waste disposal in concentrate quantity was not disputed by Proponent in its reply dated 22.10.2013 though it has sought to explain the same. It also sought to rely on a private testing report dated 06.09.2013 to show that standards of discharge were within prescribed limits though how when and in what circumstances sample was taken is not clear from this report. This report dated 18.09.2013, therefore, is not reliable and can not discredit inspection report dated 06.09.2013 of MPCB officials. MPCB issued order dated 29.10.2013 permitting restart of unit with certain conditions. Proponent submitted acceptance of conditions mentioned in restart order, vide letter dated 11.11.2013. It was also stated that only one authorized discharge for treated effluent into the collection system of CETP is provided and it has installed flow meter to measure the flow. Vide letter dated 07.04.2014, Proponent clarified that it provided lock and key arrangement in November 2013, and that was not properly functioning and as per advice given by MPCB official it has changed the system and rearranged it. The objection with regard to number of days are on the same ground as raised by other Proponents which we have already dealt and rejected and the same is followed hereat. Mistake in the name of Proponent has not caused any prejudice to this Proponent hence no technical advantage can be given to this Proponent.

(xiii) M/s JSW Steel Coated Products Ltd., (JSW Steel Ltd.) (Item 15-List 103 Committee)

566. This is a Steel (Engineering) industry in red category in LSI Scale. Sanctioned quantity of effluent is 603 CMD. Vide report dated

18.06.2020, Committee computed compensation of Rs. 141.347 lacs. Inspection was made on 03.08.2011 when Proponent was found to have not installed Multiple Effective Evaporator. Closure order was issued on 21.12.2011 and conditional restart order was passed on 23.12.2011. Compensation was revised vide report dated 12.08.2012 to Rs. 115.038. Committee found that there was some error in the date and correcting the same, number of days of violation got reduced from 744 to 477 resulting in reduction of compensation.

567. Proponent has placed on record a letter dated 15.12.2011 whereby renewal of consent under Section 27 of Water Act, 1974 and 21 of Air Act, 1981 was refused by MPCB. Further closure notice dated 21.12.2011 shows that earlier consent to operate was granted subject to condition that Proponent shall provide multiple effect evaporation treatment system but despite expiry of one year it was no provided thus for violation of condition of consent, closure/show cause notice was issued on 21.12.2011. However earlier thereto, renewal of consent was refused by order dated 15.12.2011. Later on, by order dated 23.12.2011, after considering Proponent's letter dated 22.11.2011 assuring for commissioning of multi effect evaporator on or before 15.04.2012, MPCB kept in abeyance closure notice dated 21.12.2011 and consent renewal refusal letter dated 15.12.2011. Proponent's letter dated 23.04.2012 shows that it commissioned multiple effect evaporator on 22.04.2012. Thus, it cannot be said that the period for which compensation has been determined by Committee, there was no violation on the part of Proponent. The objection is accordingly rejected.

(xiv) M/s Kriplon Synthetics Pvt. Ltd. (Item No. 16-List 103 of Committee)

568. This is a textile industry in red category and LSI Scale. Sanctioned quantity of effluent discharge is 497 CMD. Vide report dated 18.06.2020, Committee computed compensation at Rs. 127.288 lakhs for two violations comprising 526 days of violations. Proponent claims that the number of days should have been only 93 and not 526. At the outset we may notice that in the subsequent revised report dated 12.08.2021 Committee has re-determined compensation at Rs. 77.416 lakhs and number of days of violation are also reduced to 172.

569. As per record placed by proponent itself, there was an inspection on 28.11.2016. Proponent was found violating following conditions:

(a) RO and MEE not provided.

(b) Did not submit DG.

(c) Excess discharge to CETP.

(d) STP not provided.

(e) Details of ash disposal not provided.

570. Closure/show cause notice was issued on 03.12.2016 and restart order was passed on 25.01.2017. Proponent submitted letter dated 08.04.2017 showing compliance of conditions stated in restart order wherein it is said that it had reviewed ETP, incorporating requisite adequacy measures to ensure its efficient operation and performance. With regard to installation of RO and MEE, it is said that the matter is under consideration of experts for installation. It also assured to comply with all the norms in future. Another inspection was made on 02.02.2018 wherein also Proponent was found to have not installed multiple effective evaporator. Closure/show cause notice dated 06.02.2018 was issued and conditional restart order was issued on 21.02.2018. Proponent sent letter dated 08.02.2018 whereby it replied closure notice, and said that viability

of ZLD is under consultation with experts. However, it requested the authority, vide letters dated 8.4.2017 15.6.2017 and 20.09.2017, to waive condition of ZLD. It is evident that no order was passed for waiver of the said condition. Hence violations on the part of Proponent are established.

571. However, finding certain actual mistakes in the dates, Committee vide revised report dated 12.08.2021 has reduced days of violation to 172 and compensation amount has also been reduced as stated above. The grounds on which computation of number of days of violation has been disputed, is already rejected above and the same is followed here at also. We may also place on record that objections in question nowhere show that the condition of providing multiple effective evaporator has been complied even now and the said violation is still continuing continuing.

(xv) M/s Mandhana Dyeing (Item No. 17- List 103 Committee)

572. It is also a textile industry, red category, LSI scale with sanctioned quantity of discharge of effluent as 900 CMD. Committee has assessed compensation at Rs. 14.629 lakhs taking days of violation as 77. Proponent has stated that M/s Mandhana Dyeing has become M/s G.B. Global Ltd. since 2018. Basic objection is with respect of number of days of violation.

573. Proponent unit was inspected by MPCB officials on 11.05.2017 and found discharge of polluted effluent, having COD 1016 mg/L. Closure/show cause notice was issued on 17.05.2017 and restart order was passed on 02.06.2017. We do not find anything on record to show that above violation was not caused by Proponent. So far as objection in regard of manner of computation of number of days of violation is concerned, the grounds taken are similar as taken in other matters we

have already discussed and rejected. We, therefore, find no force in the objections.

(xvi) E-Land Fashion (India) Pvt. Ltd. (Mudra Life Style) (Item No. 18-List 103 of Committee)

574. A textile industry, in red category and scale LSI with sanctioned quantity of discharge of effluent as 115 CMD. Inspection was made on 12.04.2016 when discharge of sub-standard effluent to CETP having COD 828 mg/l and SS 142 mg/l was found which was much beyond the permissible limit. Closure/show cause notice was issued on14.10.2016 and restart order on 28.10.2016. Another inspection was made on 12.05.2017 when again similar violations were found i.e. discharge of sub-standard effluent to CETP having COD 976 mg/l and SS 125 mg/l. Closure/show cause notice dated 20.05.2017 was issued and restart conditional order on 23.06.2017. Committee computed compensation of Rs. 288.772 lakhs taking violation days as 386 and 597, respectively for both the inspections. Subsequently vide revised report dated 12.08.2021, number of days have been reduced to 385 and 99, noticing certain error in the dates hence compensation has also reduced to Rs. 140.602 lakhs. In respect to both the inspection basic objection raised by proponent is with regard to computation of the days of violation and according to it the same ought to be 47 and 94, total 141 only. The reasons are same as we have already discussed and rejected. The objection is therefore rejected.

(xvii) M/s Manan Cotsyn Pvt. Ltd. (Item No. 20-List 103 of Committee)

575. It is a textile processing of fabrics industry, red category and scale LSI. Approved quantity of effluent discharge is 225 CMD (ZLD). Consent to operate was given 31.12.2013. However, prior to that, inspection was made on 27.12.2012 when it was found that ZLD was not available,

tanker water was being used and sub-standard quality effluent was being discharged. Consequently, closure/show cause dated 10.01.2013 was issued. Another inspection was made on 11.09.2013 when following violations were found:

(i) ETP not in operation.

(ii) Made by pass arrangement for discharge of sub-standard quality effluent.

(iii) ZLD not provided.

(iv) Use of tanker water.

576. Closure/show cause notice was issued on15.10.2013 and conditional restart order issued on 31.12.2013. In respect of both the violations, compensation was determined at Rs. 507.062 by Committee in its report dated 18.06.2020 taking number of days of violation as 1344. Subsequently, vide report dated 12.08.2021, Committee has found some error in the dates hence number of violation of days have been reduced to 258 and 455 respectively, total 713 and compensation has reduced to 281.204 lakhs. Proponent says that subsequently it has not been found committing any default and category of company has wrongly been taken as LSI though it is SSI unit. Proponent has raised a serious objection about the scale and said that when consent to establish was issued on 21.12.2010 and consent to operate issued on 31.12.2013, Proponent unit was in SSI scale and therefore compensation could not have been computed treating it as LSI. On this aspect we do not find any consideration by Committee in the revised report also. In our view, to this extent, matter needs reconsideration. The objections are partly allowed and Committee would revisit amount of compensation. We make it clear that scale of industry would be such as on the date of violation(s). Rest

objections are rejected as findings of violations could not be contradicted by placing any material.

(xviii)Resonance Speciality Ltd. (Item No. 21-List 103 of Committee)

577. It is a chemical industry, red category, SSI scale, established in 1992. Discharge quantity of effluent permitted is 12 CMD. Compensation of 173.770 lakhs was determined by Committee vide report dated 18.06.2020 taking days of violation as 1596 and 574, respectively, total 2170 in two incidents of violations. Amount of compensation has been revised vide Committee's revised report dated noticing some mistake in the days to 326 and 575 days respectively, total 901, and compensation has been reduced to 118.656 lakhs.

578. Inspection was made on 12.09.2013 when following violations were noted:

i. Manufacturing un-authorized products.

ii. Effluent treatment plant corroded and dismantled condition indicating non-operation of ETP and thereby leading to sub-standard quality of discharge to CETP.

iii. Using pet coke as fuel without permission and causing excess emission load to environment.

iv. Distillation residue is unscientifically stored and burned in industrial premises leading to polluted emission.

v. Smell of ammonia gas was felt all over the industrial premises indicating non-provision of ammonia scrubbing system.

579. Closure/show cause notice was issued on 15.10.2013 and conditional restart order on 07.11.2013. Another inspection was made on 13.02.2018 and following violations were found:

(i) RND facility installed without obtaining consent from MPCB.

(ii) About 10 Mp distillation residuary illegally stored in premises.

(iii) Increase fuel quantity.

(iv) Sample collected show polluted effluent discharge having COD 3536 TDS 4682 mg/l affecting performance of CETP.

580. Show cause/closure notice was issued on18.04.2018 and conditional restart order on 26.09.2019. Objection is to the manner of computation of number of days of violation. As per proponent, the same should have been 382 and 191, respectively, total 573. The grounds for disputing number of days of violation are the same as we have already discussed and rejected and same are followed hereat also. Since pollution found to the caused by Proponent is virtually admitted, therefore, we find no reason to grant any relief to this Proponent.

(xix) Silvester Textiles Pvt. Ltd. (Item No. 22-List 103 of Committee)

581. A textile unit, is red category, LSI scale, has sanctioned quantity of discharge of effluent as 410 CMD. On 04.09.2013, when inspection was made, following violations were found:

(i) Operation without valid consent, applied for renewal.

(ii) Secondary treatment not provided at ETP.

(iii) Poor operation and maintenance of ETP.

(iv) Sub-standard quality of effluent discharged to CETP.

(v) Flow meter not provided.

582. Closure/Show cause notice was issued on 15.10.2013 and conditional restart order on 29.10.2013. Another inspection was made on 9.07.2017 when Proponent was found discharging Sub-standard quality discharge having COD 432 mg. Closure/show cause notice 21.07.2017 was issued and conditional restart order on 18.08.2017. Committee in the report dated 18.06.2020 computed compensation at Rs. 191.882

lakhs taking violation days as 290 and 360, respectively, total 650. In the revised report dated 12.08.2021, amount of compensation has been revised to 243.582 lakhs. Proponent has basically disputed number of days of violation and according to it the same ought to be 45 and 16 days, respectively. The grounds for disputing number of days are same as we have already discussed and rejected and same are fpllowed hereat also.

583. Moreover, violations found by the team are not disputed therefore we find no reason to grant any relief to the Proponent.

(xx) Sarex Overseas (Item No. 23-List 103 of Committee)

584. It is a chemical industry, in red category and LSI scale. Sanctioned discharge quantity of effluent is 200 CMD. In the inspection dated 09.07.2017, Proponent was found operating unit without consent and discharging sub-standard effluent having COD 432 mg/l.

585. Closure/ show cause notice was issued on 21.07.2017. Compensation was determined vide report dated 18.06.2020 as Rs. 153.695 lakhs for 809 days. However, it has been revised to 807 days and Rs. 194.624. Basic reason of increase is change of distribution of recovery cost factor which earlier was 0.0096034 but now revised to 0.0121608. In the objections it is said that initial consent was for a period of 01.03.2013 to 28.02.2018 and it was renewed for five years from 01.03.2018 to 28.02.23. Therefore, report that proponent was operating without consent is incorrect. We find force in this submission. Copy of consent to operate dated 28.08.2013 has been placed on record showing that it was granted for a period upto 28.02.2018. Consent renewal order dated 31.05.2018 is also placed on record showing that it was granted upto 28.02.2023. It cannot be said that Proponent was operating without

valid consent. However, this does help the Proponent. We find that in the inspection report dated 09.07.2017, there are more violations noted by inspection team:

(i) Significant quantity of untreated effluent found flowing outside factory premises, SW drains, spot pH noted 7-8 (as per pH paper)

(ii) Air emission (acidic) from zero section is noticed emanating from mother liquor tank from centrifuge tank (as informed by President)

586. In the closure/show cause notice also violations given are:

(i) Board officials has visited your industry on 09.07.2017 and during visit significant quantity of untreated effluent found flowing outside factory premises through storm water drain.

(ii) JVS from was collected, and after analysis of the same the parameter COD 432 mg/l is which is exceeding the consented limit.

(iii) Acidic fumes from zero section of mother liquor tank near centrifuge area.

587. In respect to discharge of polluted effluent, Proponent in its reply dated 24.07.2017 has said:

(i) We have also mentioned in the inspection report that there was some leakage in our water hydrant line which was going into drain and it was not the untreated effluent.

(ii) You have mentioned in your above referred letter that the COD of joint vigilant sample was found 432 mg/L and that is exceeding the consent limit. **We assure you that we will take abundant care to see that COD remains less than the prescribed limit of MPC Board**. We are attaching herewith results of past JVS where we have successfully complied with the MPCB norms. The copies of JVS results are attached herewith as Annexure "A".

(iii) During the visit of Sub Regional Officer, it was also observed that, at the ground floor of our plant ("0" meter section) there was some fume form the tank of mother liquor. This was due to leakage of the gasket which was immediately rectified and attended during visit of Sub Regional Officer itself and shown to him to his satisfaction. The same was also mentioned by us as 'our note' in the inspection report hence this issue is attended and resolved.

588. Thus, violations noted by the inspection team are admitted. The mere fact that some observations of violations are not correct, would make no difference since computation of compensation is not dependent on the number of violations. The further objection that number of days has been wrongly taken and the same should have been only 13 based on the same reasons which we have already discussed and rejected. Following the same reasons, it is rejected here at also.

(xxi) Zeus International (Item No. 24-List 103 of Committee)

589. It is chemical industry, red category, scale LSI with sanctioned quantity of effluent discharge as 400 CMD. In the report dated 18.06.2020, Committee has determined compensation as Rs. 619.341 lakhs taking days of violation as 2328. In the revised report dated 12.08.2021, noticing some mistakes and factual errors in the dates, days of violations have been revised to 1487. Further another violation based on a third inspection has been found for which 650 days have been taken. The quantum of compensation has been re-determined as Rs. 463.063.

590. There were 3 inspections and violations were noted on 3 occasions. First inspection is dated 11.10.2012. Proponent was found discharging sub-standard effluent, highly exceeding prescribed standards. Closure/

show cause notice was issued on 24.05.2013 but proponent failed to comply therewith and continued to violate closure direction. Second inspection was made on 15.09.2013 and again discharge of sub-standard effluent to CETP was found. Closure/show cause notice was issued on 15.10.2013 and conditional restart order on 07.11.2013. Third inspection was made on 16.01.2017 and again discharge of sub-standard effluent to CETP was found with COD 504 mg/l. Again on 17.01.2017 COD level was found as 252mg/l. Closure/show cause notice was issued 14.02.2017 and conditional restart order on 09.05.2017.

591. Proponent has basically disputed days of violation taken for computing compensation and according to it for violations pursuant to reports dated 11.10.2012 and 16.01.2017, it should have been 163 days and 81 days, respectively. The grounds taken are same as we have already discussed and rejected and followed hereat also. Further this is a clear case where Proponent has repeatedly violated environmental norms and hence we do not find any ground justifying any relief.

(xxii) Valiant Glass Works Pvt. Ltd. (Item No. 25-List 103 of Committee)

592. It is textile unit, red category and scale LSI. Sanctioned discharge quantity of effluent, as per consent order is 2000 CMD. Committee in the report dated 18.06.2020 computed assessment at Rs. 110 lakhs for 327 and 126 days of violation total 453 days. There are two inspections when Proponent was found violating environmental norms. One is dated 11.09.2013. Violations found were noted and based thereon, closure/show cause notice dated 15.10.2013 was issued giving details of violations as under:

"*Major Non-Compliances:*

1. *You have not provided Secondary & tertiary treatment to treat the trade effluent and the operation of primary treatment is observed*

unscientific thereby discharging sub-standard effluent to CETP which is also confirmed by exceeding JVS reports. Further the effluent generated from printing section having pH 9 to 10 is directly connected to final outlet bypassing ETP, thereby discharging sub-standard effluent to CETP which is also confirmed by exceeding JVS reports.

2. *It was noticed that after April, 2013 you have not disposed off the hazardous waste to CHWTSDF. Also, further no hazardous waste was observed stored in premises which indicates non operation of effluent treatment system. Thus, you are discharging sub-standard effluent to CETP, thereby hampering proper functioning of CETP.*
3. *You have change fuel from coal to pet coke without prior permission of the Board, thereby leading to excess emission load to environment at inadequate height.*
4. *Flow meter is not provided thereby making it difficult to verify the quantity of affluent discharged to CETP.*"

593. Proponent did not reply show cause notice and this fact is not disputed in the letter dated 23.10.2013 submitted by Proponent in compliance of the conditions of restart order dated 29.10.2013. Violations noticed by inspection team are virtually not disputed by Proponent.

594. Another inspection was made on 01.12.2018 and pursuant to the violations found, closure/show cause notice dated 24.12.2018 was issued mentioning violations as under:

(i) As per consent conditions, till date you have not installed S.T.P. for treatment of sewage effluent generated from your unit.

(ii) The analysis report JVS collected of outlet of ETP shows parameter (COD-496) exceeding consented limits.

595. The reply dated 25.11.2018 shows admission of both the violations. Proponent has tried to explain the same.

596. Further objection is with regard to manner of computing number of days of violation for which compensation has been determined by Committee on the same ground as we have already discussed and rejected. The said reasoning is reiterated here also.

597. However, in the revised report dated 12.08.2021, Committee has taken days oF violation as 327 and 43, total 370 days, noticing certain factual errors in the dates and compensation has been re-determined as Rs.99.603 lakhs.

(xxiii)M/s Aarti Drugs Ltd. Plot E-9/3-4, MIDC (Item No. 26-List 103 of Committee)

598. It is a bulk drugs manufacturing unit, red category, scale SSI. Sanctioned quantity of effluent is 30 CMD. Proponent was assessed compensation of Rs. 4.813 lakhs for 38 days of violation. Committee treated Proponent as MSI but in the revised report dated 12.08.2021, scale of Proponent has been modified as SSI but number of days of violations areincreased to 102 instead of 38 and compensation has been redetermined as Rs. 8.2 lakhs in place of Rs. 4.813 lakhs.

599. The only objection raised before us is with regard to manner of computation of number of days of violation and according to it the same should have been 37. The grounds are same as we have already discussed and rejected and follow the same hereat also. With respect to violations, we find that inspection was made on 12.09.2013 when Proponent was found committing violations pursuant Whereto closure/show cause notice dated 15.10.2013 was issued giving details of violation as under:

> *"**Major Non-Compliances***
> 1. *The ETP especially secondary & tertiary treatment was not found in operation thereby leading to sub standard discharge of effluent to CETP which is also confirmed by exceeding JVS results.*
> 2. *The provision of By-pass arrangement form collection tank to final outlet and from primary clarifier to outlet have been confirmed during the visit, thereby leading to sub standard discharge of effluent to CETP which is also confirmed by exceeding JVS results.*
> 3. *The high COD stream is not disposed off properly which has also been confirmed by the exceeding JVS results thereby hampering operation of CETP.*
> 4. *You are disposing waste solvent in an unauthorized manner.*

5. *You have increased production of 2-Phenoxy sulphonamide more than consented quantity without obtaining EC & consent from the Board.*
6. *Change of fuel from Briquette to coal without prior permission of the Board, thereby leading to excess emission load to environment at inadequate height.*

Minor Non-Compliances:

7. *Flow meter is not provided, thereby making it difficult to verify the quantity of effluent discharged to CETP."*

600. Proponent by letter dated 21.09.2013 stated to MPCB that it assures to reduce effluent quantity by 25% in future and to comply with norms. The relevant extract of reply given by proponent is as under:

> *"Thus violation is admitted and thus we find no reason to justify any relief to this proponent."*

(xxiv) Jakharia Fabrics Pvt. Ltd. (Item No. 27-List 103 of Committee)

601. A textile unit, red category, LSI scale, andhas sanctioned discharge quantity of effluent, as per consent order is 378 CMD. Committee vide report dated 18.06.2020 determined compensation of Rs. 251.536 lakhs for 1324 days of violation. However, in the subsequent revised report dated 12.08.2021 compensation has been reduced to Rs. 49.440 lakhs reducing days of violation as 205.

602. Inspection was made on 09.03.2013 noticing violations pursuant where to closure/show cause notice dated 15.10.2013 was issued detailing major and minor violations as under:

1. *Production quantity observed more than consented limit which means violating the consent conditions and creating extra pollution load in the environment.*
2. *Board has granted the consent to achieve ZERO effluent discharge whereas you are discharging untreated effluent having (pH 10 to 11) outside the factory premises in MIDC open drain (Bypass) which is causing grave injury to environment which is also confirmed by exceeding JVS results and non operation of ETP as reported during visual inspection.*

   Minor Non Compliances:
3. *Flow meter is not provided, thereby making it difficult to verify the quantity of effluent discharged to CETP."*

603. The violations noted were virtually admitted by Proponent though with some explanation, vide reply dated 18.10.2020. The objection with regard to manner of computation of day of violation is rejected for the same reasons we have discussed above in the case of Proponent at item 1 in the list. We therefore find no reason to grant any relief.

(xxv) Pal Fashions Private Limited (Item No. 28-List 103 of Committee)

604. A textile unit, red category and scale LSI, has sanctioned quantity of effluent for discharge as 500 CMD as per consent order. Committee vide report dated 18.06.2020 determined compensation as Rs. 99.551 lakhs for 786 days of violations. However, in the revised report dated 12.08.2021 compensation has been reduced to Rs. 45.179 lakhs for 281 days noticing some errors in the dates.

605. An inspection was made on 13.09.2013 and based on the violations noted therein closure/show cause notice dated 15.10.2013 was issued giving details of violation as under:

*"**Major Non Compliances**:*

1. *Water consumption is more than consented quantity which shows excess load discharged to CETP thereby hampering operation of CETP.*
2. *No treatment chemicals observed at ETP also ETP was not found in operation, thereby leading to discharge of sub standard effluent having pH 10 to 11 (by pH paper) to CETP which is also confirmed by exceeding JVS reports.*
3. *Algal growth noticed in sludge drying bed which indicates chocking of Sludge drying bed and non operation from long period.*
4. *Fuel consumption is more than consented quantity. One stream boiler (2.5 TPH) and oil fired boiler installed without obtaining permission from the Board thereby leading to excess emission load to environment at inadequate height.*
5. *As per consent condition fly ash arrester/ ESP is not provided thereby violating the consent condition.*

Minor Non Compliances:

6. *Flow meter is not provided thereby making it difficult to verify the quantity of effluent discharged to CETP."*

606. The violations noted on the date of inspection have not been shown incorrect by Proponent though it is relying on some other reports of

different dates to justify that it was not violating the norms. Conditional restart order was issued on 29.10.2013 and in reply thereof Proponent in letter dated 18.11.2013 stated it shall abide by all the conditions mentioned in the restart order. We therefore find no reason to grant any relief to this proponent. Various representations filed by Proponent show that it is trying to justify request for reduction in compensation on the ground of its subsequent efforts to remove violations but subsequent efforts cannot condone earlier violations.

(xxvi) SD Fine Chem Ltd (Item No. 29-List 103 of Committee)

607. A chemical industry, red category, MSI scale, and sanctioned quantity of effluent discharge is 16 CMD for industrial purpose and 2 CMD for domestic purpose. On two occasions violations were noted. Taking days of violation as 1770 in respect of violations of 2013, vide report dated 18.06.2020 compensation was assessed at Rs. 329.302 lakhs. Later noticing error in the dates, days of violation has been revised and subsequent violations have also been taken into consideration. Taking total days of violations as 193 days and 415, total 608 days, compensation has been redetermined at Rs. 164.478 lakhs.

608. Inspection was made on 12.09.2013 and noticing violations, closure/show cause notice dated 15.10.2013 was issued giving details of violations as under:

> "***Major Non Compliances***:
> 1. *Manufacturing various products other than consented products and the total quantity is also very high than the consented quantity which is a violation of consent conditions. Environmental Clearance is not obtained for the additional new products.*
> 2. *Scrubber provided to MPP plant and H & D plant was not in operation, thereby untreated emission are led to environment causing grave injury to environment.*
>
> ***Minor Non-Compliance***:
> 3. *Hazardous Waste disposal is less as compared with consented quantity, indicates non operation of effluent treatment system regularly.*

4. *Flow meter is not provided, thereby making it difficult to verify the quantity of effluent discharged to CETP.*
5. *JVS results are exceeding the stipulated standards implying discharged of sub-standard effluent to CETP.*"

609. The violations have not been disputed in the reply submitted by proponent vide letter dated 18.09.2013 though it has attempted to explain. Conditional restart order was issued on 30.10.2013.

610. Another inspection was made on 28.07.2018 and noticing violations, closure/show cause notice dated 8.08.2018 was issued detailing violations as under:

(i) You are manufacturing un-consented product like Genorool. JPA, Chloform and also increased quantity of some products which violating the consent conditions no. 12 of page No. 3 and 4.

(ii) Your JVS report of samples collected on 28.07.2018 are exceeding the consented limit for COD-408 mg/L and SS 119 mg/L.

(iii) During visit primary clarifier found not in operation uneven flow was, observed in launder which shows your negligence towards operation & maintenance of ETP.

(iv) You are operating multi product plant where ammonia fumes are generated.

(v) You have provided online pH meter & flow meter, but not provided data logger.

(vi) You have stored about 30 MT zinc oxide since from 15 years (as reported by industry representative) generated during manufacturing of product Cupferron.

(vii) You have stored other outdated chemicals such as Nitrobenzene, Phenolcrystence, isopherylether, triacetate in factory premises.

611. Proponent submitted reply dated 13.08.2018 where from we find that the proponent has tried to explain violations in his own way and there is no clear denial. Therefore, we find that substantial violations noted in inspections have not been shown incorrect. Conditional restart order was issued on 23.08.2018. Since violations are writ large, Proponent is not entitled for any relief and objection against computation of compensation is rejected.

(xxvii) Auro Laboratories Limited (Item No. 31-List 103 of Committee)

612. It is a bulk drugs manufacturing unit, red category, MSI scale. Sanctioned effluent discharge19 CMD. In the report dated 18.06.2020 Committee determined compensation of Rs. 179.470 lakhs taking days of violation as 131 and 643, total 774 days, based on two inspections. However, later noticing mistakes in the dates, compensation has been redetermined as Rs. 65.437 lakhs reducing days of violations as 131 and 138, total 269 days.

613. Inspection dated 03.06.2016 shows following violations:

(i) It is not in operation.

(ii) Storm water drain to carry effluent.

(iii) Generation of mother liquor but not shown in consent.

(iv) HW stored near ETP unscientifically.

614. Closure/show cause notice was issued on 28.07.2016 and conditional restart order was issued on 17.05.2017.

615. Another inspection was made on 28.07.2017 noticing following violations:

(i) Discharge of substandard quality effluent having COD 70,000 mg/l.

(ii) ETP not operational

616. Closure/show cause notice dated 08.08.2018 was issued and thereafter restart conditional order on 07.01.2019. In the objections before us we do not find any material to show that the violations noted by inspection team were not correct. The computation of days of violation has been challenged on the same grounds which we have considered and rejected and we reiterate here also. Since violations are admitted, we find no reason justifying any relief to this Proponent.

(xxviii) M/s Valiant Organics Ltd. (Formerly known as M/s. Abhilasha Tex-Chem Pvt. Ltd.) (Item No. 32-List 103 of Committee)

617. The unit is producing para nitro aniline and red category, SSI scale unit. It claims to be ZLD unit, but in the inspection dated 10.11.2016 it was found that ZLD was not at all provided and unit was discharging high COD stream directly to MIDC sewage. Consequently closure/show cause notice dated 29.11.2016 was issued. Proponent's letters dated 21.01.2017 and 01.02.2017 clearly show that ZLD was not provided till that date. However, restart order was passed on 15.02.2017 with certain conditions including that the proponent shall improve/modify existing ETP and operate it continuously. Committee determined compensation of Rs. 4.94 lakhs in the report dated 18.06.2020 taking days of violation as 78. Vide revised report dated 12.08.2021 compensation has been reduced to Rs. 4.421 lakhs on 55 days of violation. The entire objections are rejected, Firstly, proponent was clearly causing pollution and secondly for the reasons we have already discussed above with respect to number of days. we find no merit in the objections raised and the same are rejected.

(xxix) M/s Alexo Chemicals (Item No. 33-List 103 of Committee)

618. It is a Chemical industry, red regory and SSI scale. Sanctioned quantity of effluent is 0.7 CMD. Vide report dated 18.06.2020,

compensation was determined at Rs. 52.815 lakhs for 463 days of violation. The objection is against manner of computation of days of violation. According to Proponent it should have been 171 days.

619. Inspection was made on 28.11.2016 when several violations were noted pursuant whereto closure/show cause notice dated 03.12.2016 was issued mentioning violations as under:

> *"Board officials visited your industry on 28.11.2016 to verify compliance of consent conditions & collection of Joint Vigilance sample from ETP outlet. Sub-Regional Officer, Tarapur-I communicated analysis reports of waste water collected from ETP outlet/V-notch/bypass line/treated effluent sumps of your industry. The analysis reports show values of pH-10.6; & COD-32000 mg/L which is exceeding to the inlet designed parameters of CETP thereby up-setting CETP performance. It is found from vigilance sampling drawn during odd hours that you are discharging highly polluting stream/chemical load to the CETP and degree of exceedance of COD compared to consented norms is 12700%. The above fact clearly indicates that you have adopted this practice of discharge of high COD stream and your tendency towards not to abide environment norms. The high polluting/COD streams hampers functioning of CETP operations thereby discharging substandard quality effluent in Navapur sea and creating adverse impact on nearby environment. After perusing the results, degree of exceedance and tendency of discharge of untreated effluent, I am of the opinion that you are willfully/intentionally discharging highly polluting effluent stream thereby violating consented norms and causing severe damage to the environment which needs to be stopped immediately to protect such damage of environment."*

620. Another inspection was made on 26.07.2018 and pursuant to the violation noted therein, closure/show cause notice dated 08.08.2018 was issued mentioning violations as under:

> "*During visit to your, plant found under maintenance, however discharge of washing effluent was found going outside the factory premises. The sample analysis reports at this effluent are exceeding the consented limit for BOD-23000 mg/L, COD-70400 mg/L & TDS 4884 mg/L."*

621. Conditional restart orders were issued on 17.03.2017 and 08.10.2018, respectively. Vide revised report dated 12.08.2021, compensation has revisited as Rs. 63.749 lakhs by taking 51 days of

violation in respect to first inspection and 371 in respect to second inspection. Nothing has been placed on record by Proponent to show that violations were not caused by it. The objections that number of days should have been only 171 is not acceptable for the reasons already discussed and rejected above. The objections are accordingly rejected.

(xxx) Ashwin Synthetics Private Limited (Item No. 34-List 103 of Committee)

622. It is a chemical industry in red category with SSI scale. Effluent discharge was sanctioned for 30 CMD. Vide report dated 18.06.2020 Committee computed compensation at Rs. 41.163 lakhs for 444 and 103 days of violations, pursuant to two inspections. In the revised report dated 12.08.2021, days of violation have been revised as 319 and 103 noticing some mistakes in the dates and compensation has been re-determined at Rs. 42.526 lakhs.

623. The objection of Proponent is that it is not a chemical industry but a yarn dyeing and textile unit. This aspect is of no consequence since category would remain same. Quantum of effluent discharge is disputed stating that it was sanctioned higher quantum but nothing on record is placed to fortify it. With regard to inspection, it is said that it was conducted hasty and unfair and alleged non-compliance is also disputed. Further even days of violation are disputed.

624. From record we find that inspection was made on 07.12.2016. Proponent was found discharging sub standard effluent to CETP. Closure/show cause notice was issued on 18.12.2016 and conditional restart order was issued on 16.06.2017.

625. Again, inspection was made on 30.08.2018, the violations recorded are:

(i) Violation of closure direction.

(ii) Jeans washing activity without permission.

(iii) Direct discharge in nala.

(iv) Using unathorised water (tanker).

(v) Not disposing hazardous waste to common disposal facility i.e., CHWTSDF.

626. These violations are not shown incorrect by placing any material before us. Therefore, we find that Proponent is not entitled for any relief. Dispute with regard to days of violations since based on the same grounds which we have already discussed and rejected, the same are followed here at also.

(xxxi) Accusynth Specialty Chemicals Pvt. Ltd. (Item No. 35-List 103 of Committee)

627. It is a bulk drugs intermediate manufacturing unit, in red category and SSI scale. Effluent discharge quantity permitted is 2.5 CMD. Committee vide report dated 18.06.2020 computed compensation at Rs. 33.057 lakhs for 522 days of violation. In the revised report dated 12.08.2021, compensation has reduced to 23.313 lakhs due to reduction in days of violation as 290 instead of 522.

628. Inspection was made on 5.1.2018. Number of violations were noted as under:

(i) Increase water consumption.

(ii) Violation of environment clearance.

(iii) Exceeding fuel consumption.

(iv) Illegal transportation of spent acid.

(v) Not disposing hazardous waste timely.

629. Proponent submitted reply to closure/Show cause notice dated 12.01.2018 vide letter dated 17.01.2018 wherein with regard to excess use of water it has said that large quantity of water was used in garden and there was a leakage in condensate reuse line. Some other explanations are also given. With respect to excess production than permitted, Proponent has tried to explain that combined production of different products should be examined and not separately. With respect to violation of EC, it is not disputed that some products manufactured were not permitted in EC but explanation is that the quantity produced was within the limit of production permitted. Use of fuel or material not permitted is also not disputed. Though it is sought to be explained on the ground that it was cost effective and had other advantages. With respect to transportation of acid also we find no satisfactory explanation. All the explanations are lame and flimsy. Proponent has not denied violations but tried to explain the same in a different perspective which is not permissible. Further objection with regard to days of violation, which according to Proponent should have been 127, the grounds are same as we have already discussed and rejected. In the entirety we find no merit and all objections are rejected.

(xxxii) M/s Aradhana Energy Pvt. Ltd. (Item No. 38-List 103 of Committee)

630. It is a chemical industry, red category, SSI scale. Sanctioned discharge of effluent is Nil. Proponent was granted consent to operate by letter dated 11.03.2019 but it already underwent production. Inspection was made on 20.01.2019 when Proponent's unit was found in production without consent to operate. Consequently closure/show cause notice was issued on12.03.2019 and restart order on 04.04.2019. For 329 days of violation, Committee, vide report dated 18.06.2020 computed

compensation at Rs. 20.835 lakhs. However, compensation has been revisited vide report dated 12.08.2021 and has reduced to Rs. 2.572 lakhs based on 32 days of violation noticing some factual errors. Since violations, on the face are evident we find no justification for any relief to Proponent. Further objection is that days of violation should be taken as 88 stands already infructuous since Committee has reduced days of violation as 30. Therefore, nothing survives so far as this Proponent is concerned with respect to issuetion of computation of days of violation.

(xxxiii) Bajaj Healthcare Ltd. (Item No. 39-List 103 of Committee)

631. The unit is engaged in the production of drugs intermediate, a red category, SSI scale industry. Quantity of effluent sanctioned is 1.3 CMD. Based on two inspections where violations were found, Committee, vide report dated 18.06.2020 assessed compensation at Rs. 52.878 lakhs for 481 and 777 days of violations.

632. Inspection was made on 12.04.2012 when violation of discharge of sub-standard discharge of effluent to CETP was found. Closure/show cause notice was issued on 16.05.2012 and conditional restart order on 19.06.2012.

633. Another inspection was made on 05.09.2013 and following violations were noted:

(i) Manufacturing unconsented products.

(ii) Inadequate ETP, discharge of sub-standard effluent to CETP.

634. Closure/show cause notice was issued on 15.10.2013 and conditional restart order on 30.10.2013. From the reply of Proponent, we find that discharge of polluted effluent in CETP was not disputed. On the other hand, explanation was that Proponent's effluents treatment plant was slightly destabilized as blower of aeration tank was under

maintenance. It is also admitted that sample collected on 12.04.2012 showed COD as 642, against permissible standard of 250. Similar admission we find in respect of ETP condition also.

635. Further objection is with regard to days of violation and according to Proponent the same should have been only 14 days. The grounds taken are same which we have already discussed and rejected. The objections are entirely rejected.

636. We may also place on record that in the revised report dated 12.08.2021, Committee has found certain factual mistakes in computation of number of days of violation and the same has been revised as 481 and 188. Amount of compensation has been redetermined as Rs. 67.769 lakhs.

(xxxiv) Boston Pharma (Item No. 40-List 103 of Committee)

637. It is a distillation of solvent plant in red category, SSI scale. Sanctioned quantity of effluent discharge is 0.2 CMD. Committee, vide report dated 18.06.2020 computed compensation at Rs. 36.730 lakhs on 580 days of violation. In the revised report dated 12.08.2021, days of violation have been found 844 (earlier some mistake of date occurred) and therefore compensation has been redetermined as Rs. 67.849 lakhs.

638. Inspection was made on 10.01.2017 when discharge of polluted effluent having COD 18080 mg/l was found was found directly releasing in CETP. Closure/show cause notice was issued on 14.02.2017 and conditional restart order on 14.07.2017. Nothing has been placed on record to show that the above findings are incorrect hence we find no justification to grant any relief.

(xxxv) Panchamrut Chemicals Pvt. Ltd. (Item No. 41-List 103 of Committee)

639. It is a chemical industry, red category, SSI unit with sanctioned effluent quantity of discharge as 20 CMD. Based on two inspection reports, Committee, vide report dated 18.06.2020, computed compensation at Rs. 42.809 lakhs for 676 days of violation. However, in the revised report 12.08.2021, compensation has been enhanced to Rs. 68.814 Lakhs, based on 30 and 413 days of violation, total 443 and also due to revised distribution recovery cost factory.

640. In the inspection dated 30.11.2016, following violation were found:

(i) ETP was not is operation.

(ii) Untreated effluent discharge in MIDC drain (COD 23600mg/l) and pH 1.2.

641. Closure/show cause notice was issued on 18.12.2016 and conditional restart order on 17.03.2017.

642. Another inspection was made on 26.07.2018 and based on the violations found, closure/show cause notice dated 08.08.2018 was issued giving details of violations as under:

1. You have not provided segregation and treatment facility for high COD stream the sample analysis reports of the samples collected from ETP inlet for COD-37600 mg/l and Ss 549 mg/l.
2. The trade effluent was by passing along the periphery leading to nearby nalla.
3. Oil spillages/seepage observed in the premises, due to rain chances of flowing the same to near by nalla cannot be ruled out.
4. You have provided ETP comprising of primary, aeration tank and final collection tank which was filled with seems to be full of fresh water.

5. You have provided scrubber but the same was not in operation.

643. From the reply submitted by Proponent, we do not find any falsity or irregularity in the findings of inspection team. So far as dispute with regard to days of violation in concerned, the grounds are same which we have already discussed and rejected. Hence in our view Proponent is not entitled for any relief.

(xxxvi) Diakaffil Chemicals India Ltd. (Item No. 42-List 103 of Committee)

644. It is a synthetic Organic Chemicals industry, in red category, SSI scale with sanctioned quantity of discharge of effluent as 10 CMD. Committee vide report dated 18.06.2020 assessed compensation at Rs. 18.998 lakhs.

645. Inspection was made on 12.09.2013 and based on the observation/violations found, closure/show cause notice dated 15.10.2013 was issued mentioning violations as under:

*"**Major Non-Compliances**:*

1. *Carried out excess production from 20MT/M to 146 MT/M also taking crude and dilution products without obtaining permission for Board which is causing extra pollution load on CETP.*
2. *Effluent generation from the process is more than consented quantity which shows excess load discharged in CETP thereby hampering …. of CETP.*
3. *Since your capital investment might have increased in view of excess production you have to provide high COD separation followed by……*
4. *Dust collector not in operation O & M of APC's is poor as process fumes noticed in premises.*
5. *Cola consumption is excess than consented quantity thereby leading to excess emission load to environment at inadequate height.*

Minor non compliances:

6. *ETP sludge not disposed in last one year indicates non operation of effluent treatment system regularly.*
7. *Flow meter is not provided thereby making it difficult to verify the quantity of effluent discharged to CETP.*

646. Restart order was issued on 01.11.2013. Nothing has been placed by Proponent before us to show that the findings recorded by inspection team are incorrect.

647. The dispute with regard to number of days of violation, we find, is raised on the same grounds as we have already discussed and rejected.

648. We may also notice that in the revised report dated 12.08.2021, Committee has reexamined the matter in the light of the submissions advanced by the proponent in oral hearing dated 02.12.2019 before Committee and the days of violation are redetermined as 300. Amount of compensation is recomputed as Rs. 48.234 lakhs.

(xxxvii) M/s DRV Organics (Item 43-List 103 of Committee)

649. It is a drugs intermediate manufacturing, red category, SSI scale industry. The approved discharge quantity of effluent is 1.3 CMD. Vide report dated 18.06.2020, Committee assessed compensation of Rs.85.239 lakhs based on two inspections showing days of violation as 516+417=933 days.

650. Unit of Proponent was inspected on 30.11.2016 when Proponent was found discharging sub-standard effluent, COD 6000 and 12460 mg/l. Closure/show cause notice dated 03.12.2016 was issued whereupon proponent submitted an appeal dated 09.12.2016 to Member Secretary, MPCB wherein results of analysis of sample were not disputed. However, Proponent said "*the high COD mentioned in the directions may be due to interference by dissolve solids*". Restart order was given on 04.03.2017.

651. Another inspection was made on 26.07.2018. Again it was found that Proponent's unit was discharging sub standard effluent with COD

11760 mg/l. Closure/show cause notice dated 08.08.2018 was issued which was replied by Proponent by letter dated 12.08.2018 wherein results were not disputed. It only said that results are totally unexpected. Proponent, thereafter said that it would proceed to make some modifications in the management of effluents. Restart order was issued on 11.08.2018.

652. Thus, violation of environmental laws as also discharge of effluent beyond prescribed limits is evident and undisputed.

653. Further manner of computation of days of default/violation is challenged stating that the assessment of compensation should have been for 24 and 52 days =76 days but the reasons for such suggestion are same which we have already discussed and rejected, hence entire objection of Proponent is rejected.

654. We may also notice that noticing some factual errors in dates, Committee, vide revised report dated 12.08.2021 has taken days of violation as 516 and 169=685 days and assessment has been revised and reduced to Rs. 68.653 lakhs.

(xxxviii) Dufon Laboratories Private Limited (Item 44-list 103 of Committee)

655. It is a drugs intermediate manufacturing, red category, SSI Scale unit. Compensation was determined by Committee vide report dated 18.06.2020 as Rs.177.253 lakhs based on two inspections and computing days of violation as 1165+817=1982 days. However, the said compensation has been revised vide report dated 12.08.2021 to Rs.39.391 lakhs taking days of violation as 352 and 69 respectively. Unit of Proponent was inspected on 06.09.2013 when number of violations were noted and, on the basis thereof, closure/show cause notice dated

15.10.2013 was issued. Restart order was issued on 30.10.2013. In the meantime, Proponent submitted letter dated 22.10.2013, stating that it proposes to take certain steps, for reducing pollution in the effluent. We do not find any denial to the factum of violations noted by inspection team on 06.09.2013.

656. Again, samples were collected on 09.01.2017 and 10.01.2017 and level of COD was found 17600 mg/l and 2512 mg/l respectively which highly exceeded to the prescribed limits. Nothing has been placed on record to show that Proponent ever disputed aforesaid sample report.

657. Further objection is in respect of number of days of violation on the same grounds we have already considered and for the same reasons reject hereat also. The mere fact that on certain dates, Proponent was found to have not violated prescribed limits, does not nullify the factum that on other occasions, effluent discharge by Proponent was found highly polluted. Objections are rejected.

(xxxix) M/s D.H. Organics (Item 45 - list 103 of Committee)

658. Industry is manufacturing bulk drugs, red category and SSI scale. The sanctioned quantity of effluent which it can discharge is 1.8 CMD. Committee, vide report dated 18.06.2020 made assessment of Rs.42.429 lakhs taking days of violation as 670. However, vide revised report dated 12.08.2021 compensation has been reduced to Rs.2.331 lakhs and days of violation are reduced to 29, on account of some factual mistake in the dates.

659. Inspection of the unit was made on 24.11.2016 and it was found that the unit was discharging sub standard quality of effluent with pH 8.5 and COD 9760 mg/l. Closure/show cause notice dated 06.12.2016 was

issued and restart order was issued on 17.03.2017. Nothing has been placed on record to show that the above findings are incorrect.

660. The proponent however, claims that the days of violation should have been 19 and not 670. The grounds taken are same as we already discussed and rejected, hence the entire objections are rejected hereat also.

(xl) Gangwal Chemicals Private Limited (Item 46-list 103 of Committee)

661. This is a chemical manufacturing, red category, SSI scale unit. Report dated 18.06.2020 assessed compensation as Rs.7.093 lakhs for 112 days of violation.

662. Inspection was made on 30.11.2016 and unit was found discharging polluted effluent with COD 12960mg/l. This report has been filed by Proponent itself and is on record. Closure/show cause notice was issued on 03.12.2016 and restart order on 04.03.2017. Proponent had not placed anything on record to show that violations found in the above inspection was not correct.

663. Further objection is with regard to number of days of violation and as per proponent it should have been 17 days. The grounds taken by Proponent, however, are same which we have already discussed and rejected and the same followed here at also.

664. Further we may notice that vide revised report dated 12.08.2021, Committee has revised assessment to Rs.9.084 lakhs, taking days of violation as 113 instead of 112 and also revising distribution recovery cost factor.

(xli) Haren Textiles Private Limited (Item 47 –list 103 of Committee)

665. It is a textile, red category and SSI Scale industry. Permitted quantity of effluent it can discharge is 80 CMD. Committee made assessment of compensation of Rs. 50.409 lakhs vide report dated 18.06.2020. Compensation was determined computing 796 days of violations. However, it has been revised and amount of compensation has been reduced to Rs. 15.515 lakhs vide report dated 12.08.2021 and number of days has been reduced to 193 on account of certain error of the dates.

666. Inspection was made on 21.06.2018 when following violations were noted:

"1. You have not sought prior consent for establishing ETP on plot other than mentioned in consent i.e. Plot No.J-169, MIDC Tarapur.
2. You have been granted consent for 50% recycling of treated effluent; however, you have not provided adequate effluent treatment facility for the same.
3. You are exceeding water consumption than the consented quantity i.e., 3952 m^3 to 5092 m^3. 5102 m^3, 4524 m^3, 5170 m^3, 5265 m^3, 6501 m^3& 5049 m^3 for the period Jan to July-2018 which is violation of Board's Direction dtd 07/10/2016 regarding curtailing in water consumption by 40%.
4. You have not provided on-line system along with SCADA system.
5. You are not maintained the record of hazardous waste generated & its disposal.
6. You are exceeded Fuel consumption from consent 6 MT/day to 7 MT/day."

667. Closure/show cause notice dated 17.07.2018 was issued. Reply was submitted by Proponent on 21.07.2018 which shows that at the premises where construction was going on, no consent for establishment was obtained. In respect of other violations also, we find only explanation and no denial. Conditional restart order was issued on 31.07.2018. Since violations have not been shown incorrect, hence, we do not find anything wrong in the findings of Committee.

668. Further objection is with regard to manner of computation of number of days of violations. Proponent claims that the same should have been 16. The grounds taken are same as we have already discussed above and rejected, hence objections of Proponent are rejected in entirety.

(xlii) M/s INDO Amines Ltd. (Item no.48-List 103 of Committee)

669. Proponent is manufacturing fatty amines. The unit is red category and SSI scale. Sanctioned quantity of effluent 5.6 CMD. Vide report dated 18.06.2020, Committee assessed compensation of Rs.58.198 lakhs, based on two inspections, taking days of violation as 743.

670. Inspection was made on 12.01.2017. Proponent was found discharging sub standard effluent having pH 9.8 and COD 13280 mg/l which exceeded much to the prescribed limits. Closure/show cause notice was issued on 14.02.2017 and restart order issued on 31.05.2017.

671. Another inspection was made on 21.01.2019 when again COD in the effluent discharged by Proponent was found 1272 mg/l. Closure/show cause notice was issued on 12.03.2019 and restart order on 04.04.2019. The violations noted by the team during inspection have not been shown incorrect.

672. Proponent has filed some other reports showing that various components therein were within prescribed parameters but that will not nullify the factum in the abovementioned inspections when Proponent was found violating environmental norms.

673. Further objection is with regard to manner of computation of number of days. As per Proponent it should have been 36. The grounds taken are same as we have already discussed and rejected. The objections are rejected.

674. We also notice that vide revised report dated 12.08.2021, Committee has made reassessment of compensation as Rs.59.810 lakhs which is mainly due to addition of one day of violation and change in distribution recovery cost factor.

(xliii) M/s. Moltus Research Laboratories (Item No. 51-List 103 of Committee)

675. It is a chemical industry in red category and SSI scale. Quantity of effluent permitted to be discharged is 0.1 CMD. In report dated 18.06.2020, Committee assessed compensation of Rs.0.887 lakhs for 14 days of violation.

676. Inspection was made on 19.07.2017. It was found that hazardous waste was dumped illegally. Closure/show cause notice was issued on 28.07.2017 and conditional restart order 06.12.2017. We find nothing on record to show that the above findings in the report are incorrect, hence, find no reason to interfere.

677. Further objection with regard to number of days of violation is also rejected since the grounds on which the same is assailed, are same which have already been considered and rejected above.

678. In the revised report dated 12.08.2021, Committee has revised assessment to Rs.1.125 lakhs. Increase is mainly due to change in distribution recovery cost factor.

(xliv) M/s. KP Chemicals (Item 52-List 103 of Committee)

679. It is a chemical industry in red category, SSI Scale and 11 CMD of effluent it can discharge as per consent orders. Committee vide report dated 18.06.2020 computed compensation of Rs. 59.338 lacs for 937 days of violations. Amount of compensation is, however, substantially

reduced as per Committee report dated 12.08.2021 to Rs. 1.527 lakhs since days of violation are also reduced to 19 noticing some error in the days.

680. The inspection was made on 24.11.2016 when Proponent was found discharging sub standard effluent with COD 8560 mg/l. Closure/show cause notice was issued on 03.12.2016 and conditional restart order was issued on 17.03.2017. There is nothing on record to show that violation shown is incorrect. In the appeal dated 09.12.2016, Proponent has referred to other reports but that will not justify report as noted above. We, therefore find no reason to grant any relief.

681. Further manner of computation of number of days has been challenged but on the same ground which we have already discussed and rejected, hence the same are rejected for the same reasons here also.

(xlv) JPN Pharma (Item 53 List 103 of Committee)

682. It is a bulk drug manufacturing industry in red category and SSI scale. Discharge of effluent permitted by the consent order is 3 CMD. In the report dated 18.06.2020, Committee assessed compensation of Rs. 32.234 lakhs taking days of violation as 509. However, finding a mistake in the dates, it has been revised vide report dated 12.08.2021 and number of days have reduced to 12 and compensation to Rs.0.96 lakhs.

683. Inspection was made on 29.11.2016, when Proponent was found discharging sub standard effluent with COD 7280 mg/l. Closure/show cause notice was issued on 03.12.2016 and conditional restart order is dated 17.03.2017. Nothing has been placed on record to show that the above violations found are not correct, hence no interference is called for.

684. Further objection is with regard to number of days raising the same grounds as we have same discussed above hence the same is rejected here at also.

(xlvi) Keshav Organics Pvt. Ltd. (Item 55-List 103 of Committee)

685. It is chemical industry in red category and SSI scale. Approved effluent discharge quantity is 4.5 CMD. Committee, vide report dated 18.06.2020 made assessment of compensation at Rs. 5.193 lakhs taking days of violation as 82. Compensation has been revised and reduced to Rs.2.331 lakhs taking 29 days of violation vide revised report dated 12.08.2021.

686. Inspection was made on 25.11.2016 and Proponent was found discharging sub standard effluent with COD 5720 mg/l. Closure/show cause notice was issued on 03.12.2016 and conditional restart order is dated 20.02.2017. Against closure notice, Proponent submitted appeal dated 09.12.2016 and perusal thereof shows that the blame has been levelled on manner of taking sample ignoring the fact that sample was collected in the presence of Proponent's representative and it did not notice any flaw in the inspection report. Further we find from record that proponent itself has placed on record renewal of consent to operate order dated 02.11.2015 precribing standard of COD 250 mg/l. However, there are certain analysis reports placed on record to show that higher level of COD was found even on 07.03.2017 showing COD as 472mg/l and 392 mg/l based on the different points where samples were taken. So far as the dispute with regard to the number of days, the grounds are same as we have already discussed and rejected, hence proponent's entire objection is rejected.

(xlvii)Nayakem Organics Pvt. Ltd. (Item 56-List 103 of Committee)

687. In the Committee report, it is shown as chemical industry while in the objections Proponent has shown itself as plasticizers in red category and SSI scale unit with approved quantity of effluent as 1 CMD. Both come in red category. Compensation of Rs.9.689 lakhs assessed by Committee vide report dated 18.06.2020 which has been revised to Rs. 12.541 lakhs vide revised report dated 12.08.2021. No substantial objection has been raised by this Proponent.

(xlviii) Nirbhay Rasayan Pvt. Ltd. (Item 57- List 103 of Committee)

688. It is a dye industry (pigment) in red category and SSI scale. Approved quantity of effluent which it can discharge is 93 CMD. Compensation of Rs.78.019 lakhs was assessed vide report dated 18.06.2020 which has been reduced and revised to Rs.53.861 lakhs vide revised report dated 12.08.2021.

689. Proponent unit was inspected on 05.09.2013 when following violations were found:

(i) Discharge of sub-standard quality effluent

(ii) Additional product manufacturing without consent

(i) 50 MT excess production.

690. Another inspection was made on 30.11.2016, when again sub-standard effluent with COD 1248 mg/l was found being discharged.

691. Nothing has been placed on record to show that the above findings are incorrect.

692. Compensation was determined taking days of violation as 1170 and 31 respectively but the same is revised to 295 and 20 respectively vide

report dated 12.08.2021. In the absence of any material to show any discrepancy in the above reports, we find no reason to interfere.

693. With respect to days of violation, Proponent claims that the same should have been 58 but the grounds taken are same as we have already discussed above and rejected and the same are rejected here at also.

(xlix) Nutraplus India Pvt. Ltd. (Item 58-List 103 of Committee)

694. It is a chemical industry in red category and SSI Scale. Approved effluent quantity it can discharge is 5 CMD. Compensation of Rs.103.603 lakhs was assessed by Committee vide report dated 18.06.2020 which has been revised to Rs.313.039 lakhs vide revised report dated 12.08.2021.

695. Inspection was made on 26.11.2016. Proponent was found discharging sub standard effluent with CMD 8560 mg/l. Closure/show cause notice dated 03.12.2016 was issued and conditional restart order is dated 17.07.2017.

696. Another inspection dated 25.07.2018 again show various violations that is:

(i) High COD stream not segregated

(ii) Online monitoring system for pH flow, COD TSS and positive discharge not provided

(iii) Separate storm water drain not provided

(iv) Hazardous waste storage not proper

(v) Fail to curtail 40% water consumption.

697. Closure/show cause notice issued on 08.08.2018 and conditional restart order is dated 09.11.2018.

698. A third inspection was made on 24.12.2018 on account of accident due to improper operation of reactor meta bromo nitro benzene kept aside spilled on floor. Closure/show cause notice was issued on 27.12.2018. No restart order was issued but on 26.09.2019, unit was found operating illegally.

699. Proponent has not placed anything on record to show any discrepancy in the above findings. The issue raised with regard to number of days, we find based on the same grounds as we have already discussed and rejected hence the entire objections are rejected.

(l) Sequent Scientific Ltd. (Item No.59- List 103 of Committee)

700. It is a bulk drugs industry in red category and SSI scale. Quantity of effluent discharge approved is 37.8 CMD. Vide report dated 18.06.2020, Committee assessed compensation of Rs.43.253 lakhs which has been revised to Rs.27.091lakhs vide revised report dated 12.08.2021.

701. Inspection was made on 22.04.2017 when it was found that Proponent has made bye-pass arrangements and discharging sub standard effluent with COD 268 mg/l. Closure/show cause notice was issued on 25.04.2017.

702. Again on 28.04.2017, an inspection was made. Besides other, inspecting body found as under:

> *"Industry has blocked the another discharge point by concrete from inside and outside of factory premise, photographs enclosed. It was collected from that point on 22.04.2017."*

703. Restart order was issued on 04.01.2018. The bye-pass arrangement made by Proponent were in flagrant violation of conditions of consent. Nothing has been placed on record to show above findins incorrect therefore, we do not find any ground for relief to Proponent.

704. Proponent has further raised objection on the manner of computation of days of violation but the grounds are same as we have already considered and rejected and same are followed here also.

(li) Pulcra Chemicals India Ltd. (Item No. 60-List 103 of Committee)

705. It is a chemical industry in red category and SSI scale, effluent quantity approved is 15 CMD. Compensation was determined vide report dated 18.06.2020 as Rs.58.831 lacs but revised to Rs.15.756 lacs vide report dated 12.08.2021. Report also shows that the unit was earlier SSI scale industry but subsequently, came into the scale of MSI. It is a ZLD unit and sanctioned discharge quantity is 15 ZLD.

706. Inspection was made on 12.01.2017 when unit was found discharging sub standard effluent, outlet COD as 32400 mg/l. Closure/show cause notice dated 14.02.2017 was issued and conditional restart order is dated18.04.2017. In the reply dated 20.02.2017 Proponent has said that its ETP was under maintenance since 10.01.2017. This clearly shows that on 12.01.2017, what was found by inspection official team was not incorrect. Further objection that sample was not properly taken, is not worth acceptance inasmuch as sample was taken in presence of the representatives of Proponent but no such objection has been mentioned in the inspection report.

707. The objection has been raised with respect to number of days of violation on similar grounds which we have already considered and rejected.

708. We may notice that Committee, in the revised report has found certain errors in the dates and therefore, days of violation have reduced to 98 as a result whereof compensation has reduced to Rs. 15.756 lakhs.

(lii) Pantagon Drugs Pvt. Ltd. (Item No.61-List 103 of Committee)

709. It is a bulk drug manufacturing unit in red category and SSI scale. Compensation of Rs.25.584 lakhs was computed vide report dated 18.06.2020, which has been revised to Rs. 32.478 lakhs vide report dated 12.08.2021.

710. Inspection was made on 30.07.2018 and the sample shows level of COD as 59200 mg/l and suspended solids as 49. Report dated 30.07.2018 had signature of Mr. Jayesh Sanghi who has filed these objections showing his designation as Managing Director. Closure/show cause notice was issued on 08.08.2018 noticing following violations:

> *"1. You have not provided segregation & treatment facility for high COD stream, the sample analysis reports of the samples collected from ETP inlet for pH-22, COD-59200 mg/l.*
> *2. You have provided collection neutralization, aeration, sand & carbon filters for treatment of effluent generated from your process which is not adequate for treatment of high COD stream."*

711. Conditional restart order is dated 01.09.2018. Proponent has not placed anything on record to show any error in the inspection mentioned above.

712. Further objection is with regard to number of days of violation which according to Proponent, should have been 12 but the grounds taken are the same as we have already discussed and rejected hence the objections are rejected.

(liii) **M/s. Ramdev Chemicals Pvt. Ltd. (Now IPCA Laboratories (Item 63-List 103 of Committee)**

713. It is a bulk drugs manufacturing, red category, MSI scale unit. The revised report dated 12.08.2021 shows that industry is now LSI. Approved quantity of effluent it can discharge is 65.6 CMD. Compensation of Rs.285.226 lakhs was determined vide report dated

18.06.2020 based on two inspections dated 12.04.2012 and 12.04.2017. However, compensation has been revised and reduced to Rs.26.529 lakhs vide revised report dated 12.08.2021.

714. Inspection was made on 12.04.2012. Proponent was found discharging highly polluted effluent in CETP. Closure/show cause notice dated 16.05.2012 was issued mentioning violations as under:

> *"AND WHEREAS, Sub-regional Officer (S.R.O.), Tarapur-1, has communicated analysis results of treated effluent collected from the final outlet of your ETP on 14/04/2012. On scrutiny of the same, it is noted that the* ***analysis results are exceeding the prescribed standards by more than 100****% which clearly shows that you are not operating your ETP properly and are discharging sub-standard effluent to the CETP, thereby disturbing its performance."*

715. Proponent's letter dated 31.05.2012 did not dispute findings of violations during inspection. Conditional restart order was issued on 30.01.2013.

716. Another inspection was made on 22.04.2017 when Proponent was found discharging sub standard effluent with COD 508 mg/l and suspended solids 313 mg/l. Closure/show cause notice was issued on 25.04.2017 mentioning violations as under

> *"AND WHEREAS, JVS from outlet of tertiary treatment was collected and after analysis of the same the parameter COD-508 mg/l & Suspended Solids-313 mg/l are exceeding the consented limit."*

717. Proponent sent letter dated 26.04.2017 as an appeal to Regional Officer, MPCB but we do not find any fault was shown in the inspection report. Conditional restart order was issued on 09.05.2017.

718. We, therefore, find no reason to interfere in view of above facts. Further dispute is raised in respect of number of days of violation but the grounds taken are same, we have already considered and rejected. Compensation of Rs.285.226 lakhs determined vide report dated

18.06.2020 has been revised and reduced to Rs. 26.529 lakhs vide revised report dated 12.08.2021.

(liv) Tryst Chemicals Pvt. Ltd. (Item No. 64-List 103 of Committee)

719. It is a bulk drug manufacturing, red category, SSI scale unit. Compensation of Rs.27.294 lakhs was assessed vide report dated 18.06.2020 which has been reduced to Rs. 14.872 lakhs vide report dated 12.08.2021. In the revised report, days of violation are reduced from 431 to 185 finding certain factual error in the dates.

720. Proponent unit was inspected on 24.11.2016 when it was found discharging highly polluted effluent with COD 488000 mg/l and pH 11.8. Closure/show cause notice dated 03.12.2016 was issued noticing violations as under:

> *"AND WHEREAS, Board officials visited your industry on 24/11/2016 to the compliance of consent conditions & collection of Joint Vigilance sample from ETP Outlet, Sub Regional Officer, Tarapur-I communicated analysis reports of waste water collected from ETP outlet /V-notch / bypass line /treated effluent sumps of your industry. The* ***analaysis reports shows values of pH-11.8, & COD-488000 mg/l*** *which is exceeding to the inlet designed parameters of CETP thereby up-setting CETP performance. It is found from vigilance sampling drawn during odd hours that you are discharging highly polluting stream / chemical load to the CCETP and degree of exceedance of COD compared to consented norms is 195100%. The above fact clearly indicates that you have adopted these practices of discharge of high COD stream and your tendency towards not to abide environmental norms. The high polluting / COD streams hampers functioning of CETP operations thereby discharging substandard quality effluent in Navapur sea and creating adverse impact on nearby environment. After perusing the results, degree of exceedance and tendency of discharging highly polluting effluent stream thereby violating consented norms and causing severe damage to the environment which needs to be stopped immediately to protect such damage of environment."*

721. Proponent submitted appeal dated 09.12.2016 but therein did not give any material to show anything wrong in the above inspection except of disputing the point of sample collections which can not be accepted

since inspection was made in presence of Proponent's representative. Conditional restart order was issued on 17.03.2017. Objection is rejected.

(lv) M/s Omtech Chemicals (Item No. 65-List 103 of Committee)

722. It is a chemical, red category and SSI scale industry. Approved quantity of effluent it can discharge is 30 CMD. Vide report dated 18.06.2020, compensation of Rs.16.782 lakhs was determined which has been reduced vide revised report dated 12.08.2021 to Rs.6.592 lakhs.

723. Inspection was made on 14.09.2013 when it was found that ETP was not in operation, product not consented was being manufactured, scrubber was not in operation and flow meter was not provided. All these violations have been admitted by Proponent in its letter dated 21.10.2013, filed pursuant to closure/show cause notice dated 15.10.2013. Conditional restart order is dated 01.11.2013. In view of proven violations, we do not find that this Proponent is entitled for any relief. The dispute with regard to number of days of violation which according to proponent should have been only 35, is founded on similar grounds which we have already considered and rejected and the same is rejected here also.

(lvi) M/s Shreenath Chemicals (Item No. 66- List 103 of Committee)

724. It is a chemical, red category and SSI scale industry. Approved quantity of effluent it can discharge is 1.5 CMD. Inspection was made on 27.11.2016 when Proponent was found discharging sub standard effluent with COD 4000 mg/l. Closure/show cause notice was issued on 03.12.2016 and conditional restart order is dated 17.03.2017. Nothing has been placed on record to discard the above reports, we find no reason to grant any relief. The dispute with regard to number of days of violation is founded on the same grounds which we have already rejected. The

compensation determined vide report dated 18.06.2020 was Rs.5.066 lakhs but the same has been revised to Rs.1.125 lakhs vide revised report dated 12.08.2021.

(lvii) Salvi Chemicals Industries (Item No. 67-List 103 of Committee)

725. It is a chemical industry, red category, LSI scale. Approved quantity of effluent discharge is 55.5 CMD. Based on 4 inspection reports, Committee, vide report dated 18.06.2020 made assessment of Rs. 156.418 lakhs which has been revised and increased to Rs. 311.350 lakhs vide revised report dated 12.08.2021.

726. Inspection was made on 20.08.2016 when, besides other, Proponent was found discharging sub-standard effluent with very high COD and suspended solids. In closure/show cause notice dated 04.11.2016, violations mentioned are as under:

> *"AND WHEREAS, Board officials visited your industry on 20/08/2016 to verify compliance of consent conditions and directions issued by the Board. Sub-Regional Officer, Tarapur-1 submitted proposal as per Enforcement Policy of the Board for initiation of action against you vide above referred letter at sr. no. 3 and it has been reported that effluent treatment plant provided by you was not in operation thereby untreated acidic effluent is directly discharged into MIDC drain. Aeration and settling tank observed in idle condition indicating poor O & M of pollution control measures. The JVS analysis reports of sample collected from ETP outlet on dtd. 16/07/2015, 24/08/2015, 15/10/2015, 04/1/2016 & 16/2/2016 are exceeding to the consented norms. The* ***analysis reports of sample collected on 16/2/2016 shows BOD, COD, SS, O & G, TDS to the tune of 1,15,000 mg/l, 4,68,000 mg/l, 656 mg/l, 255 mg/l and 5439 mg/l respectively****. It can be concluded from above that there is need of segregation of High COD/SS stream along with further segregation of high TDS stream also."*

727. Proponent submitted letter dated 09.11.2016 but therein we find no denial of above violations except that Proponent had no experience of such high value effluent. Conditional restart order was issued on 12.01.2017.

728. Another inspection is dated 11.04.2018 when violations including sub standard discharge of effluent with COD 12080 mg/l, BOD 5300 mg/l, SS 668 etc. were found. Closure/show cause notice was issued on 17.07.2018 and restart order is dated 24.05.2018.

729. Similar violations were found in the inspection dated 28.08.2018 and 30.10.2019 but nothing has been placed on record to show any discrepancy in the inspection notes prepared by concerned authorities. We therefore, find no reason to grant relief to this Proponent. So far as dispute with regard to number of days is concerned, the grounds taken have already been considered and rejected and the same are rejected here also.

(lviii) M/s Sapna Detergent and Chemicals Pvt. Ltd. (Item 68-List 103 of Committee)

730. This is a laboratory chemical manufacturing, red category and SSI scale unit. Approved quantity of effluent is 2 CMD. Vide report dated 18.06.2020, compensation of Rs. 59.338 lakhs was determined taking days of violation as 937. However, the said amount is revised and reduced to 40.813 lakhs on 545 days of violation vide revised report dated 12.08.2021.

731. Inspection was made on 24.11.2016 when Proponent was found discharging sub-standard effluent with COD 4480 mg/l and pH 4.4. Another inspection was made on 28.11.2016 when also discharge of sub-standard effluent was found with COD 3160 mg/l and pH 6.8. Closure/ show cause notice dated 03.12.2016 was issued mentioning violations as under:

> *"Board officials visited your industry on 24.11.2016 and 28.11.2016 to verify compliance of consent conditions & collected two Joint vigilance samples from ETP outlet. Sub Regional Officer, Tarapur-I communicated analysis reports of waste water collected from ETP*

outlet/V notch/bypass line/treated effluent sumps of your industry. ***The analysis reports show values of pH-4.4, 6.8 & COD 4480 mg/L, 3160 mg/L respectively which is exceeding to the inlet designed parameters of CETP*** *thereby up-setting CETP performance. It is found from vigilance sampling drawn during odd hours that you are discharging highly polluting stream/chemical load to the CETP and degree of exceedance of COD compared to consented norms is 1692 % and 1164% respectively. The above fact clearly indicates that you have adopted these practices of discharge of high COD stream and your tendency towards not to abide environmental norms. The high polluting/COD streams hampers functioning of CETP operations thereby discharging substandard quality effluent in Navapur sea and creating adverse impact on nearby environment. After perusing the results, degree of exceedance and tendency of discharge of untreated effluent, I am of the opinion that you are willfully/intentionally discharging highly polluting effluent stream thereby violating consented norms and causing severe damage to the environment which needs to be stopped immediately to protect such damage of environment."*

732. Proponent submitted letter dated 12.12.2016 as an appeal to Member Secretary, MPCB but therein we do not find any denial of violations noted in the above inspections. On the contrary, Proponent admitted these violations as is evident from the following:

> "*The* ***high COD mentioned in the directions may be due to interference by dissolved solvents***".

733. In view of the above admitted position of violation of environmental norms, we find no reason to grant any relief to this Proponent. Conditional re-start order was issued on 17.03.2017. Proponent has further objected assessment of days of violations stating that the same ought to be 59 only but the grounds on which the said objection has been raised, we have already discussed and rejected hereinabove and the same are reiterated here also. The entire objections are therefore rejected.

(lix) M/s Sagitta Pvt. Ltd. (Item 69-List 103 of Committee)

734. It is a chemical manufacturing, red category, SSI scale industry with approved effluent discharge quantity of 3.5 CMD. Computation of assessment of Rs. 59.148 lakhs was made by Committee vide report dated 18.06.2020 but in the revised report dated 12.08.2021,

compensation is reduced to Rs. 1.447 lakhs. The days of violation earlier were 934 which are reduced to 18 in the revised report due to factual mistake in the dates detected.

735. Inspection was made unit premises on 24.11.2016 when Proponent was found discharging pollutED effluent with pH 11.4 and COD 976 mg/l. Closure/show-cause notice dated 03.12.2016 was issued stating violations on part of Proponent as under:

> *"Board officials visited your industry on 24.11.2016 to verify compliance of consent conditions &collection of Joint vigilance samples from ETP outlet. Sub Regional Officer, Tarapur-I communicated analysis reports of waste water collected from ETP outlet/V notch/bypass line/treated effluent sumps of your industry. The* ***analysis reports show values of pH 11.4.4, 6.8 & COD 976 mg/L which is exceeding to the inlet designed parameters of CETP*** *thereby up-setting CETP performance. It is found from vigilance sampling drawn during odd hours that you are discharging highly polluting stream/chemical load to the CETP and degree of exceedance of COD compared to consented norms is 290 %. The above fact clearly indicates that you have adopted this practices of discharge of high COD stream and your tendency towards not to abide environmental norms. The high polluting/COD streams hampers functioning of CETP operations thereby discharging substandard quality effluent in Navapur sea and creating adverse impact on nearby environment. After perusing the results, degree of exceedance and tendency of discharge of untreated effluent, I am of the opinion that you are willfully/intentionally discharging highly polluting effluent stream thereby violating consented norms and causing severe damage to the environment which needs to be stopped immediately to protect such damage of environment."*

736. Proponent submitted letter dated 08.12.2016 to Member Secretary, MPCB wherein violations noted above, as a matter of fact, are not disputed. Relevant extract of reply is reproduced under:

> *"During the visit of your Officer on 24th November 2016 at our unit, sample was drawn and PH was checked and found to be pH 8 by your Officer and the same was showed in our online Electronic PH meter which is within the limit and is also mentioned in your visit report.*
>
> *However as per report received from your Office for the same sample shows pH 11.40 which we cannot prove, since we don't have the counter sample with us. But COD in your report is shown as 976 which is within the limit of SSI."*

737. Conditional re-start order was issued on 17.03.2017. Since violations found in the inspection have not been shown incorrect by placing any material before us, we find no reason to grant any relief. So far as objection with regard to number of days of violation is concerned, the grounds taken are same as we already discussed above and rejected, hence and entire objection of proponent is rejected.

(lx) Shri Vinayak Chemex (I) India Pvt. Ltd. (Item 71-List 103 of Committee)

738. Proponent is API and intermediate manufacturer, red category and SSI scale industry, with approved quantity of effluent discharge as 7.5 CMD. Assessment of compensation of Rs. 59.401 lakh was made vide report dated 18.06.2020 taking days of violations as 938. It has been revised vide report dated 12.08.2021 and taking days of violation days as 245, compensation amount is reduced to Rs. 19.696 lakhs.

739. Inspection was made on 23.11.2016 when Proponent was found discharging highly polluted effluent with COD 68800 mg/l. Closure/show-cause notice dated 03.12.2016 was issued. Proponent has placed on record various sample reports of different periods but nothing on record is available to show, what was found in the inspection dated 23.11.2016 was incorrect. We find no reason to grant any relief. Further objection is regarding number of days of violations which as per Proponent should be 8. However, grounds taken for the said submission are same which we have ready discussed above and rejected, hence following the same here at also, objections under consideration are rejected.

(lxi) M/s Sunil Great (H.Y.K.) Processors Pvt. Ltd. (Item No. 72-List 103 of Committee)

740. It is a chemical industry with red category with SSI scale and approved quantity of effluent it can discharge is 6 CMD. Vide report dated

18.06.2021, compensation of Rs. 77.513 lakhs was determined with reference to two inspections dated 24.11.2016 and 29.07.2018. Later vide report dated 12.08.2021 compensation is revised and increased to Rs. 98.397 lakhs.

741. Inspection was made 24.11.2016 when Proponent was found discharging highly polluted effluent with COD 16160 mg/l. Closure/show cause notice dated 3.12.2016 was issued and conditional restart order was issued on 17.03.2017. Proponent has placed on record his letter dated 13.12.2016 filed as an appeal before Regional Officer MPCB against closure order wherein, like others, objection with regard to collection of sample has been taken. Inspection was made in presence of representative of Proponent and it has not noted any objection with regard to the sample collected by officials making inspection. Hence different stand taken subsequently is nothing but an afterthought and cannot be believed. Moreover, some kind of explanation is also there in the letter dated 13.12.2016 which shows admission of violations. It says:

> *"There was some spillage in the drain. We have already taken corrective action and filled up the ditches and cleaned the storm water drain. We will take care that this will not happen in future."*

742. It shows that violations found by inspection team, as a matter of fact, were correct and hence we do not find any reason to grant any relief to this Proponent.

743. Another inspection was made on 29.07.2018 and noticing violation found therein, closure/show cause notice dated 08.08.2018 was issued giving details of violations as under:

(i) You have not provided segregation & treatment facility for high COD stream the sample analysis reports of the samples collected from ETP outlet for COD-88800 mg/L and SS 1821

mg/L & phenol-11.6 mg/L which are exceeding the consented limit.

(ii) You have increased water consumption from 11 CMD to 16.5 CMD in the month of April 2018 and 13.5 CMD in the month of May-2018, thus violating the NGT order for curtailing of 40% water consumption & effluent generation.

(iii) You have altered the fuel consumption from coal to wood without prior permission from M.P.C.B.

(iv) You have stored about 25.30 MT of ETP sludge unscientifically in factory premises.

744. Proponent has placed on record letter dated 07.08.2018 sent just one day before closure/show cause notice but pursuant to inspection dated 29.07.2018 wherein it has clearly said that it is going to take action and appropriate steps so as to avoid any mistake in future. This shows that the violations found were in fact correct and in our view no relief would be justified. So far as objection with regard to days of violation is concerned the ground are same which we have already considered above and rejected and the same is followed here also.

(lxii) M/s Vardhaman Dyestuff Industries Pvt. Ltd. (Item 73-List 103 of Committee)

745. It is a dyeing manufacturing, red category, SSI scale unit. Approved quantity of effluent which it can discharge is 52 CMD. Compensation of Rs. 6.396 lakhs was assessed vide report dated 18.06.2020 which has been revised vide report dated 12.08.2021 as Rs. 8.441 lakhs.

746. Inspection was made on 08.05.2012 when it was found that Proponent was discharging sub standard effluent with high COD level. In fact record shows that consistently, on various dates, level of COD was found much beyond the permissible limit as under:

Date of sample collection	COD level	PH	TDS
10.12.2013	336 Mg/L		
02.12.2014	540 Mg/L		
30.05.2015	392 Mg/L		
05.12.2016	1260 Mg/L		
28.01.2014		pH-5	
31.11.2016	364 Mg/L		
14.11.2019			3322 g/L

747. Record shows that virtually Proponent admitted high COD value in the effluent found from time to time. Thus there is nothing to take a different view in the matter. Further objection with regard to days of violation is founded on the grounds we have already considered and rejected. The same is reiterated here also.

(lxiii) M/s Usha Fashion Pvt. Ltd (Item 74-List 103 of Committee)

748. It is a textile industry, red category, SSI scale. Approved quantity of effluent it can discharge is 305 CMD. Compensation of Rs. 125.895 lakhs was determined vide report dated 18.6.2020 but later on vide revised report dated 12.08.2021 compensation has been revised and reduced to Rs. 23.635 lakhs. Computation of days of violation is based on two inspections taking 170 and 909 i.e.,1079 days of violation but the same after noticing some mistakes in the dates, have been reduced to 172 and 61 respectively i.e., 233 days.

749. Inspection was made on 05.09.2013 and several violations were noted. Closure/show cause notice dated 15.10.2013 was issued mentioning violations as under:

> *"Major Non-Compliances:*
> *1. You are not properly operating Effluent Treatment Plant to treat industrial effluent and discharging substandard effluent into CETP thereby hampering its performance.*
> *2. You are using Pet Coke as fuel instead of Coal thereby violated condition No. 7 –(i) of the Consent to Operate.*
> *3. You have not provided adequate air pollution control system i.e., Wet Scrubber to Thermopack thereby violated condition No. 7 (ii) of the Consent to Operate.*

Minor Non Compliances:
4. Flow meter is not provided thereby making it difficult to verify the quantity of effluent discharged to CETP.
5. You have not provided temporary storage facility for storage of hazardous waste and same is being stored on open ground which may lead to soil & surface water contamination."

750. Proponent submitted reply dated 28.10.2013 but violations found in the inspection were not disputed as is evident from the following:

1. During the visit of team of officers of the Sub-Committee constituted by the Board and inspection and sampling of our unit at that time the mechanical stinger at Neutralization tank was under maintenance. Hence, dosing chemicals which were added in it for neutralization purpose was not mixed properly and **lead to show the parameters towards higher side.**

   Whereas, the problem has been rectified soon after & **now the E.T.P. is running smoothly and efficiently to achieve desired limits**. We have provided full-fledged physics-chemical treatment to our plant comprising Neutralization, Primary settling & Tertiary treatment with filtration (Pressure sand & Activated carbon)

   We are also going for upgradation of existing treatment plant within a period of 3 months.

2. Now we are using coal as fuel instead of Pet coke.
3. We have placed the orders for Wet scrubber from thermoplastic end it will get commissioned within a period of 2 months (purchase order annexed)
4. We have provided temporary storage facility for storage of hazardous chemicals.
5. Also, we are self concerned about environment and assure you to take utmost care in future.

751. Conditional restart order was issued on 07.11.2013. Another inspection was conducted on 10.01.2017 when it was found that level of parameters of BOD and COD exceeded the permissible limit. Smples were also collected on subsequent dates which also shows similar violations as under:

Date of sample collection	*level of COD*
13.01.2017	*1552 mg/L*
14.01.2017	*1240 mg/L*
15.01.2017	*560 mg/L*

752. Proponent has not placed anything on record to show the above findings of violations incorrect so as to warrant any interference. The objection has been raised further with regard to days of violation on which the compensation has been determined and according to proponent the same should have been 43+38 i.e., 81 days. However, the grounds taken are same as we have already considered and rejected and the same are reiterated here at also.

(lxiv) M/s Visen Industries Ltd. (Item 75-List 103 of Committee)

753. It is chemical manufacturing industry, red category and SSI scale. Approved quantity of effluent it can discharge is 7 CMD. Compensation of Rs. 13.299 lakhs was determined vide report dated 18.06.2020 but the same is revised to Rs. 17.043 lakhs vide revised report dated 12.05.2021. Earlier days of violations were taken as 210 but after noticing factual mistakes, revised to 212.

754. Inspection was made on 21.01.2019 when Proponent was found discharging highly polluted effluent with pH 9.4, BOD 11000 mg/l and COD 36000 mg/l and O&G 257.6 mg/l. Based on the above violations closure/show cause notice dated 12.03.2019 was issued. Proponent's letter dated 22.03.2019 in fact shows that above violations were not disputed. It says, *"Board official has issued instructions for discharge of*

domestic effluent in MIDC sewage system which is connected to CETP. We were not aware of this but after getting instruction from Board we immediately provided smoke pit and now we are reusing maximum extent of domestic effluent into gardening. We already have submitted a letter to MPCB on 20th February, 2019.

Board official has collected JVS from outside of our unit which after ***analysis shows high COD, BOD and O&G which is neither matching with our untreated nor with treated****. We have full fledged ETP, having primary, secondary and tertiary system and it is working properly. As we said we are chemical manufacturer for textile unit and effluent coming after process having COD around 3000-4000. We do primary treatment first and getting 40-45% reduction in COD there. We also have 3 stages Biological tank and getting good reduction in COD and HO around 90-95% followed by tertiary system comprising PSF and ACF. After all processing COD and BOD is come down to 250 and 100 mg/L which is under MPCB prescribed norms".*

755. Consequently, we find no reason to interfere and grant any relief. Conditional restart order was issued on 22.04.2019. Proponent has also disputed days of violation and according to it the same should have been 57 only but the grounds taken are same which we have already considered and rejected. Hence the same are reiterated here also.

(lxv) M/s U.K. Aromatics & Chemicals (Item 76-List 103 of Committee)

756. It is an aromatics chemicals manufacturing unit, red category and SSI scale. Approved quantity of effluent it can discharge is 6 CMD. Compensation of Rs. 13.552 lakhs was determined vide report dated 18.06.2020 but the same has been renewed and revised vide report dated

12.08.2021 as Rs. 16.802 lakhs. Compensation has been assessed taking into account two inspection reports dated 01.12.2016 and 21.01.2019.

757. In inspection dated 01.12.2016 Proponent was found discharging sub standard effluent with BOD 10320mg/l and pH 4.8. Consequently closure/show cause notice dated 23.02.2017 was issued and conditional restart order was issued on 08.08.2017.

758. In the inspection dated 21.01.2019, again Proponent was found discharging sub standard effluent with BOD 72000 mg/l and COD 224000 mg/l. Proponent has not placed any material on record to show the above findings incorrect or having any discrepancy justifying any interference. Committee computed days of violation as 98 and 58 i.e., 156 days for assessment vide report dated 18.06.2020 but the same has been revised to 89 and 16 vide report dated 12.08.2021. The objection with regard to days of violation are on the same grounds which we have already considered and rejected and the same is followed here at also.

(lxvi) M/s Ujwal Pharma Pvt. Ltd. (Item 77-List 103 of Committee)

759. It is a chemical industry in red category in SSI scale with approved discharge quantity of 4 CMD. Referring to inspection report dated 28.12.2016, assessment of compensation of Rs. 83.27 lakhs was made vide report dated 18.06.2020 but the same has been revised vide report dated 12.08.2021 as Rs. 106.155 lakhs. In two inspections Proponent was found guilty of violation of environmental norms.

760. Inspection dated 28.11.2016 was made when Proponent was found discharging sub standard effluent with COD 11360 mg/l. Closure/Show cause notice was issued on 03.12.2016 and conditional restart order was issued 04.03.2017. Another inspection was made on 30.07.2018 when

again sub-standard discharge of effluent was found with pH 11.6 and COD 296000 mg/l. Closure/show cause notice was issued on 08.08.2018 and conditional restart order on 06.09.2018. Proponent has disputed the manner in which samples were collected but it is not in dispute that samples were collected in the presence of representative of Proponent and no objection with regard to any irregularity in collection of samples was pointed out in the inspection/visit report. The objection therefore is an after thought and cannot be believed. The objection with regard to days of violation are the same which we have already considered and rejected and the same is followed here at also.

(lxvii)M/s Vivid Global Industries Limited (Item 78-List 103 of Committee)

761. It is a chemical manufacturing industry, red category, SSI scale. Approved quantity of effluent discharge is 40 CMD. Assessment of Rs. 60.984 lakhs was made as compensation vide report dated 18.06.2020 which has been revised to Rs.77.576 lakhs vide report dated 12.08.2021. Earlier days of violation were taken as 963 which are revised to 965.

762. Inspection was made on 23.11.2016 when number of violations were noted based whereon closure/show cause notice dated 23.02.2017 was issued giving details of violations as under:

> *"Board officials visited your industry on 23.11.2016 to verify compliance of consent conditions & collection of Joint Vigilance sample from ETP outlet. Sub-Regional Officer, Tarapur-I communicated analysis reports of waste water collected from ETP outlet/V-notch/bypass line/treated effluent sumps of your industry. The* ***analysis reports shows values of pH-2.5 & COD-52000 mg/L which is exceeding to the inlet*** *designed parameters of CETP thereby up-setting CETP performance. It is found from vigilance sampling drawn during odd hours that you are discharging highly polluting stream/chemical load to the CETP and degree of exceedance of COD compared to consented norms is 20700 %. The above fact clearly indicates that you have adopted this practices of discharge of high COD stream and your tendency towards not to abide environmental norms. The high polluting /COD streams hampers functioning of CETP operations thereby discharging*

substandard quality effluent in Navapur sea and creating adverseimpact on nearby environment. After perusing the results, degree of exceedance and tendency of discharge of untreated effluent, I am of the opinion that you are willfully/intentionally discharging highly polluting effluent stream thereby violating consented norms and causing severe damage to the environment which needs to be stopped immediately to protect such damage of environment."

763. In the reply dated 03.03.2017, Proponent claimed that it is a zero-discharge unit and not giving any effluent to CETP. However, we find that at the time of inspection ZLD was not operating and that being so the reply submitted by Proponent without placing anything on record to show that ZLD was functional and actually functioning at the time of inspection, we find no reason to take a different view than what has been taken by the Authority. Conditional restart order was issued 11.05.2017. Inspection report is duly signed by the representative of Proponent and no otherwise observation was made by him therefore dispute about sample collection is an after thought. Infact Proponent has placed on record another order dated 07.05.2018 of CPCB referring to its visit dated 28.03.2018 when officials of CPCB noted following violations:

(i) The unit was operational during the visit. The unit failed to provide the date regarding raw material consumption and product manufactured.

(ii) The unit generates 40 KLPD of trade effluent which is treated in Effluent treatment plant of 50 KLD. The unit has not installed web camera (PTZ) which is requisite as per condition of Consent to Operate.

(iii) Effluent is collected in open channels as well as in pits at several locations. From the pit, effluent is conveyed to main collection tank manually using bucket.

(iv) The unit has 12 reactors for various slops of manufacturing. Leakages from reactors and obnoxious fumes from nutche filter were observed.

(v) Large amount of liquid were found in pits and PVC drums without any identification mark. The effluent was found overflowing in low lying areas near pits due to improper and unlined drainage for effluent which has potential for water and soil pollution.

(vi) Leakage from effluent pumps was abandoned in nearby soil.

(vii) Large amount of solid waste was observed within the premises as well as outside at several locations.

(viii) The unit has two vents, but the approach to stacks for monitoring has not been provided.

(ix) The stack of DG set was situated within the shed of DG set.

764. The point wise reply was submitted by proponent vide letter dated 14.12.2018 and perusal thereof shows that virtually all the observations have been admitted and reply basically is a subsequent attempt of clarification. Further, objection with regard to days of violation are the same which we have already considered and rejected and the same is followed here at also.

(lxviii) M/s Square Chemicals (Item 79-List 103 of Committee)

765. It is a chemical industry, red category, SSI scale with approved effluent discharge quantity of 4 CMD. Compensation of Rs. 25.331 lakhs was determined vide report dated 18.06.2020 which has been revised and increased to Rs. 32.317 lakhs vide report dated 12.08.2021. Inspection was made on 11.02.2018 when several violations were noticed pursuant whereto closure/show cause notice dated 19.03.2018 was issued mentioning violation as under:

(i) You have drained huge quantity of yellow/turmeric colour sludge illegally into MIDC drainage system which gets accumulated and causing choking of two MIDC chambers leading to sump no. 3.

(ii) You are carrying unconsented activity i.e. job work of distillation of solvent form spent mother liquor without obtaining prior permission from the Board.

(iii) You have not provided positive discharge system till the date inspite of Hon'ble NGT order still continued with gravity discharge pipeline.

766. Proponent submitted letter dated 24.03.2018 which is on record and perusal thereof shows that Proponent admitted to manufacture items which were not approved in the consent order and with respect to other violations also there is no denial to the factum but only explanation. Conditional restart order is dated 17.05.2018. Since violations are not shown to be incorrect, we find no reason to grant any relief. With regard to dispute on days of violation the same have already been considered and rejected and the same is followed here at also.

(lxix) Shree Chakra Organics Pvt. Ltd.(Item 80-List 103 of Committee)

767. It is a chemical industry, red category and SSI scale. Approved quantity of effluent which it can discharge is 63.9 CMD. Compensation of Rs. 10.639 lakhs was determined vide report 18.06.2020 finding days of violation as 168. The amount has been revised to Rs. 13.666 lacs for 170 days of violation vide revised report dated 12.08.2021.

768. Inspection was made on 29.01.2018 when Proponent was found discharging sub standard effluent with COD 17440 and SS 3049. Closure/show cause notice was issued on 08.08.2012. Proponent has placed nothing on record to show the above findings incorrect, hence we

find no reason to interfere. Further, objection with regard to days of violation is same which we have already considered and rejected and the same is followed here at also.

(lxx) Aarti Drugs Ltd. E-105,106,109,120 TIA MIDC (Item 81-List 103 of Committee)

769. It is a bulk drug manufacturing industry, red category, SSI scale. Earlier it was LSI unit but subsequently has come in SSI scale. The approved quantity of effluent discharge is 23 CMD. Compensation of 7.029 lakhs was determined vide report dated 18.06.2020 which has been revised and reduced to Rs. 2.974 lakhs vide report dated 12.08.2021.

770. Inspection was made on 25.11.2016 when proponent was found discharging sub standard effluent with COD 704 mg/l. Based on the said violation, closure/show cause notice dated 03.12.2016 was issued. Proponent submitted reply dated 8.12.2016 wherein it sought to explain/justify COD level with reference to capacity of CETP and not on the basis of its own consent order prescribing limits of COD. We therefore find no error or discrepancy in the findings and there is no reason to interfere. Further objection with regard to days of violation is same which we have already considered and rejected and the same is followed here at also.

(lxxi) Omega Colors Pvt. Ltd. (Item 82-List 103 of Committee)

771. It is a dye manufacturing industry, red category, SSI scale. Approved quantity of effluent discharge is 82 CMD. There are two inspections which have been referred by Committee for making assessment of compensation of Rs. 11.209 lakhs vide report dated 18.06.2020 taking days of violation as 35 and 71 total 106. However, after review, vide report dated 12.08.2021, days of violation are revised as

35 and 470, total 505. Consequently, amount of compensation is revised to Rs. 78.380 lakhs. In the Inspections dated 23.11.2016 and 30.11.2016, samples were collected wherein COD level was found as 320 mg/l and 612 mg/l, respectively. Consequently closure/show cause notice dated 03.12.2016 was issued and conditional restart order dated 23.02.2017. Further inspection was made on 05.04.2017 when again discharge of sub-standard quality of effluent was found with pH 4.9 while prescribed standard was 5.5 to 9.0, as per consent order. Closure/show cause notice dated 05.04.2017 was issued and order of conditional restart is dated 01.06.2017. Proponent has not placed anything on record to show anything wrong in the above findings and we find no reason to interfere. Reports of some other period are of no relevance so far as violations noted in the inspections above. Dispute with regard to days of violation, has no merit since similar grounds we have already considered discussed and rejected and the same are followed here at also.

(lxxii)M/s Remi Edelstahl Tubulars Ltd. (Formerly Rajendra Mechanical Industries Ltd) (Item 83-List 103 of Committee)

772. It is an engineering industry, red category and SSI scale. Effluent discharge quantity approved is 20 CMD. Compensation of Rs. 4.180 lakhs was determined for 22 days of violation vide Committee's report dated 18.06.2020. The said amount is revised to 5.306 lakhs vide report dated 12.08.2021.

773. Inspection was made on 28.12.2016 when Proponent was found discharging sub standard effluent with COD 976 mg/L and pH 2.7 which were not in accordance with the limits prescribed in the consent order. Closure/show cause notice was issued on 03.12.2016 and conditional restart order is dated 25.01.2017. Proponent has not placed anything on record to show the above finding incorrect and we find no reason to

interfere so as to grant any relief to the Proponent. Further, objection with regard to days of violation is same which we have already considered and rejected and the same is followed here at also.

(lxxiii) Gini silk Mills limited (item 84-List 103 of Committee)

774. It is textile processing industry in red category and MSI scale. The quantity of effluent it can discharge is 510 CMD. Compensation of Rs. 119.309 was determined vide report dated 18.06.2021 but the same has been revisited and it reduced to Rs. 77.416 lacks vide report dated 12.08.2021. Inspection was made on 23.11.2016 when proponent was found discharging polluted effluent with COD 896mg/l. Closure notice dated 03.12.2016 was issued. Conditional restart order was issued on 03.03.2017. There is nothing on record to show that the violation found in the inspection dated 23.11.2016 was not correct. In view thereof we have no hesitation in holding that the proponent has violated environmental laws and condition of consent and liable for payment of environmental compensation. One of the objections is that earlier, as per consent to operate applicable on 23.11.2016, it was LSI and scale has been modified as MSI vide renewal of consent dated 02.07.2020 in view of MSME Act (Micro, Small and Medium Enterprises Development Act) came into force on 01.06.2020. In our view, subsequent change in the scale is of no relevance since on the date when Proponent was found causing pollution by discharging sub-standard effluent, it was LSI and therefore for the purpose of compensation to be determined it has to be treated as LSI. The objection taken otherwise is rejected. Further objection taken in respect of days of violation founded on the same grounds we have already considered rejected above hence for the same reasons this objection is also rejected.

(lxxiv) M/s. Ankit Petroproducts Ltd.-earlier known as Mainfair biotech (item 85-List 103 of Committee)

775. The unit is manufacturing Poly Vinyl Acetate Thermoset Polymers, ied category and SSI scale. Compensation of Rs. 136.077 lakhs was determined vide report dated 18.06.2020 but the same has been reduced and revised vide report dated 12.08.2021 as Rs. 57.559 lakhs.

776. Inspection was made on 24.11.2016 when Proponent was found discharging sub-standard effluent with pH 7.4 and COD 8880mg/l. Closure/show cause notice dated 03.12.2016 was issued mentioning violations as under:

> *"AND WHEREAS, Board officials visited your industry on 24/11/2016 to verify compliance of consent conditions & collection of Joint Vigilance sample from ETP Outlet. Sub-regional Officer, Tarapur-I communicated analysis reports of waste water collected from ETP outlet/V-notch/bypass line/treated effluent sumps of your industry. The analysis reports shows values of pH-7.4 & COD- 8660 mg/l which is exceeding to the inlet designed parameters of CETP thereby up-setting CETP performance. It is found from vigilance sampling drawn during odd hours that you are discharging highly polluting stream/chemical load to the CETP and degree of exceedance of COD compared to consented norms is 3452%. The above fact clearly indicates that you have adopted this practices of discharge of high COD stream and your tendency towards not to abide environmental norms. The high polluting/COD streams hampers functioning of CETP operations thereby discharging substandard quality effluent in Navapur sea and creating adverse impact on nearby environment. After perusing the results, degree of exceedance and tendency of discharge of untreated effluent. I am of the opinion that you are willfully/intentionally discharging highly polluting effluent stream thereby violating consented norms and causing severe damage to the environment which needs to be stopped immediately to protect such damage of environment."*

777. Conditional restart order was issued on 24.10.2017. First objection taken by Proponent is that inspection was not properly made. We, however find that inspection was made in presence of representatives of the unit and no objection was taken at the time of inspection or immediately thereafter. Second objection is that unit is SSI/ZLD but compensation has been computed by treating it as LSI. We find that this objection stands removed since in the revised report dated 12.08.2021 compensation has been redetermined treating Proponent as SSI unit.

Third objection is with regard to days of violation and according to proponent it should have been 10 days. The grounds taken are same as we have already discussed above and rejected, hence the objection taken by proponent in this regard is rejected here it also.

(lxxv) M/s. Radiant Intermediates Pvt. Ltd. (item 86-list 103 of Committee)

778. This is a chemical manufacturing unit, red category, SSI scale. The approved quantity of effluent it can discharge is 1.4 CMD. Compensation of Rs. 84.225 was determined vide report dated 18.06.2020 based on two inspection reports when Proponent was found violating environmental laws and causing pollution, taking days of violation as 522 and 404 respectively. However, vide revised report dated 12.08.2021 days of violation are reduced to 14 and 404.

779. Inspection was made on 29.11.2016 when Proponent was found discharging sub-standard effluent with COD 15360 mg/l and pH-5. The sample report dated 01.12.2016 is on record filed by Proponent himself. On the date of inspection, sample was collected in the presence of industry's representatives as is evident from report available on record at page 3175. Closure/show cause notice dated 03.12.2016 was issued. With regard to high level of pollution i.e. COD level, Proponent has not denied the same but has sought to explain by observing that since water consumption was reduced, the dilution of effluent may not have been done to the requisite level. This is evident from the following extract of reply submitted by Proponent vide letter dated 08.12.2016:

> *"As you are well aware the working of Small Scale Industries and also the ETP Facilities installed as per the Guidelines by MPCB, we generally Dilute the effluent by Adding water to bring down the COD level.*
>
> *We here want to make a statement that* ***it may have happened that since Water was not available in sufficient quantity, the***

> ***COD level may have gone little up,*** *but not the extent as shown in the result.*
>
> *As we assessed the situation, we were thinking that we have reduced the Effluent Quantity and the same will solve the problems assuming that other parameters will be taken care by CETP*
>
> *Sine this has not happened, so as per the Guidelines, we will have to cut down the Production Activity by 60% to have sufficient water to bring down the COD level to the prescribed limit and thus improve the Quality of Effluent with Reduced Quantity*
>
> *We are committed to this and we Assure you that you will take this as very seriously and reduce the Production Activity till it matches with Effluent of Prescribed Quality in Less Quantity."*

780. In view thereof and admission of Proponent, determination of compensation cannot be faulted and objection there against is rejected.

781. Another inspection was made on 30.07.2018 when also several violations were noticed based whereon closure/show cause notice dated 08.08.2018 was issued mentioning violations as under:

> *"AND WHEREAS, the Board officials visited to your unit on 30/072018. The non-compliances observed during the visit are as follow:*
>
> 1. *You have not provided segregation & treatment facility for high COD stream.*
> 2. *You are treating the effluent generated from M/s Pantagon Drugs plot No. N-225 without prior permission from Board.*
> 3. *You have not provided online monitoring & not connected to MPCB server till date.*
> 4. *You failed to provide details of solvent generation & disposal to the visiting MPCB officials."*

782. Proponent submitted reply dated 13.08.2018 stating that it has made arrangement of segregation on 08.03.2017 but nothing has been placed on record to show that the same had continued or actually was available on the date of inspection i.e. 30.07.2018. The second violation of treating effluent generated by M/s Pantagon Drugs, Plot No. N-225, Proponent explained that it is not doing any such treatment and has further explained that Pantagon is a group company on the adjacent plot and has a separate consent as well as effluent treatment arrangements. Since Proponent and Pantagon are same group company, both shares

drainage connection to MIDC drainage chamber, have only one drainage connection to MIDC chamber; provided combined pH flow meter which shows that the observations made in the report are incorrect. With respect to other faults also, it sought to explain the things but explanation appears to be afterthought. Moreover, no such observation with regard to findings mentioned in report dated 30.07.2018 has been noted by representatives of Proponent who signed inspection report. Further objection is with regard to days of violation and the grounds are same as we have already discussed and rejected hence the same are rejected here at also. Conditional restart order was issued on 01.09.2018. Amount of compensation has been reduced noticing some factual errors in the dates. In view of above discussions, objections raised by Proponent are rejected.

(lxxvi) Premier Intermediate Pvt. Ltd. (Item No. 87-List 103 of Committee)

783. It is a bulk drugs manufacturing, red category, LSI scale unit. The effluent quantity approved as per consent order is 5 CMD. Compensation of Rs. 9.499 lakhs was determined vide report dated 18.06.2020 but the same has been reviewed and reduced to Rs. 4.019 lakhs vide revised report dated 12.08.2021.

784. Inspection was made on 28.11.2016 when proponent was found discharging sub standard effluent with COD 6400 mg/l. Closure/show cause notice dated 03.12.2016 was issued and conditional restart order is dated 17.03.2017. The first objection taken by Proponent is that it was wrongly considered as LSI for the purpose of compensation but we find that as per revised report dated 12.08.2021, compensation has been re-determined by treating Proponent as SSI, therefore, this objection stands removed. Second objection is on the manner of computation of number of

days of violation. According to Proponent it ought to be 9 while Committee has computed as 50. However, the grounds of challenge are same which we have already discussed and rejected, hence the same are rejected here also.

(lxxvii) M/s Maharashtra Organo Metalics Pvt. Ltd. (Item No. 88-List 103 of Committee)

785. It is a chemical manufacturing industry in red category and SSI scale with approved quantity of effluent discharge is 6 CMD. Compensation of Rs. 9.309 lakhs was determined vide report dated 18.06.2020 but the same has been reviewed, revised and reduced to Rs. 1.447 lakhs vide revised report dated 12.08.2021.

786. The inspection was made on 24.11.2016 when Proponent was found discharging polluted effluent with COD 1728mg/l and pH 4.4. Closure/show cause notice was issued on 03.12.2016. Proponent submitted reply on 22.12.2016 referring to a third party testing in which no violation was found but in the absence of collection of sample in the presence of authorised officials, the private testing after collecting samples as per the convenience of Proponent cannot be a valid defence, hence rejected. Next objection is that the unit on the date of inspection was SSI but wrongly taken as LSI. We find that in revised report dated 12.08.2021, this discrepancy has been corrected and compensation has been re-determined by treating Proponent as SSI, hence this objection no more survive.

(lxxviii) Anuh Pharma Chem, N-183, MIDC Tarapur (Item No. 89-List 103 of Committee)

787. It is a bulk drugs manufacturing, red category, LSI scale unit. The quantity of effluent approved for discharge is 10 CMD. Compensation of Rs. 50.535 lakhs was determined vide report dated 18.06.2020 but revised to Rs. 64.392 lakhs vide revised report dated 12.08.2021. A

substantial objection raised is that there is some mistake of identity inasmuch as compensation relates to another industry and not to this Proponent. It appears that compensation order was in the name of **Anu Pharma Chem Plot No. E-17/3 & 4** who filed objection that compensation has wrongly been addressed to it though it appears to be in relation to another industry industry working at plot no. N-183, TIA MIDC. This objection has been accepted by Committee vide revised report dated 12.08.2021 and it has been clarified that compensation of Rs. 64.392 lakhs is in respect of M/s. **Anu Pharma Chem, plot no. N-183 TIA MIDC**. Rectification of error is appreciable but substitution of industry without giving opportunity to the correct Proponent is erroneous. Once Committee found error in respect of identity, it ought to have given opportunity of hearing to Proponent of corrected identity. In our view, to this extent, computation of compensation in respect of **Anu Pharma Chem, Plot no N-183** needs to be revisited after giving opportunity to the above Proponent. **Objection of this Proponent is allowed to this extent.**

(lxxix) M/s Ganesh Benzoplast Ltd. (Item No. 90-List 103 of Committee)

788. It is a bulk drugs manufacturing, red category, LSI scale unit. Approved effluent quantity permissible for discharge is 5 CMD. Compensation of Rs. 187.702 lakhs was determined vide report dated 18.06.2020 but subsequently vide report dated 12.08.2021, it has been revisited and increased to Rs. 238.275 lakhs.

789. Proponent unit was inspected on 07th and 8th January, 2017 when ETP was found not operating and discharging sub standard effluent with COD 260 mg/l.

790. Unit was again inspected on 08.01.2017 when discharge of polluted effluent was found with pH 3.9 and COD 7560 mg/l. Closure/show cause notice dated 14.02.2017 was issued mentioning violations as under:

> *"**AND WHEREAS**, Board officials visited your industry to verify compliance of consent conditions & collection of Joint Vigilance sample from ETP Outlet. Sub-Regional Officer Tarapur-I communicated analysis reports of waste water collection from ETP outlet/V-notch/bypass line/ treated effluent from your industry. The analysis reports of the sample collected are given in the table below which are exceeding to the inlet designed parameters of CETP thereby up-setting CETP performance.*

S.No.	Date of Sample Collection	Point of Sample Collection	Parameters		% Exceedance of COD
			pH	COD	
1	7.1.2017	ETP outlet	**7.7**	**260**	**4**
2	8.1.2017	ETP outlet	**3.9**	**7560**	**2924**

> ***AND WHEREAS**, it is found from the vigilance sampling drawn during odd hours that you are discharging highly polluting stream/chemical load to the CETP and **degree of exceedance of COD compared to consented norms is up to 2924%.** The above fact clearly indicates that you have adopted this practices of discharge of high COD stream and your tendency towards not to abide environmental norms. The high polluting/COD streams hampers functioning of CETP operations thereby discharging substandard quality effluent in Navapur sea and creating adverse impact on nearby environment. After perusing the results, degree of exceedance and tendency of discharge of untreated effluent, I am of the opinion that you are willfully/ intentionally discharging highly polluting effluent stream thereby violating consented norms and causing severe damage to the environment which needs to be stopped immediately to protect such damage of environment."*

791. Proponent submitted reply dated 18.02.2017 in which it simply denied the violations and said it is discharging effluent meeting the norms without placing any material in support thereof. Conditional restart order was passed on 23.02.2017. The objection with regard to inspection report is that Proponent does not admit the same but in absence of any material to show any fault or discrepancy, we find no reason to accept this defence. Further objection is with regard to days of violation on the same grounds which we have already discussed and rejected, hence rejected here also.

(lxxx) Aarviam Dye Chem (Item No. 93-List 103 of Committee)

792. It is a dyes unit in red category and scale SSI. Permitted quantity of effluent it can discharge is 20 CMD. Compensation of Rs. 4.433 lakhs was determined vide report dated 18.06.2020 which has been revised and reduced to Rs. 5.708 lakhs vide report dated 12.08.2021.

793. Inspection was made on 12.01.2017 when Proponent was found discharging sub standard effluent with COD 7400 mg/l and pH 11. Closure/show cause notice was issued on 14.02.2017 and conditional restart order was passed on 18.05.2017. Interestingly, compensation was determined earlier for 70 days and after revision for 71 days but Proponent, in his objection has submitted that days of violation should have been 90. Therefore, we find no real objection in this regard. With respect of violations nothing substantial has been placed on record by the proponent to show any fault with the said report. The objection is therefore rejected.

(lxxxi) Dhanlaxmi Steel (Item No. 94-List 103 of Committee)

794. It is an engineering company in red category and SSI scale. Approved quantity of effluent for discharge is 0.8 CMD. Compensation was determined vide report dated 18.06.2020 as Rs. 55.475 lakhs but reduced vide revised report dated 12.08.2021 as Rs. 3.78 lakhs.

795. Inspection was made on 15.10.2016 when Proponent was found to have started pickling activity, wire drawing, and did not provide ETP. Based on such violations, closure/show cause notice dated 23.11.2016 was issued mentioning violations as under:

> ***"AND WHEREAS**, Board officials visited your industry on 15.10.2016 to verify compliance of consent conditions and investigate complaint matter. Sub-Regional Officer, Tarapur-I submitted proposal as per Enforcement Policy of the Board for initiation of action against you vide above referred letter at sr.no.2. It has been reported that **you have started wire drawing &***

> ***pickling activity without obtaining prior consent from the Board. You have not provided effluent treatment plant thereby untreated waste water generated from pickling activity is directly discharged outside factory premises creating pollution*** *nuisance to the environment. You have* ***not provided air pollution control system to the pickling section thereby off gases/process emissions are being discharged into environment****. You have not obtained membership of CHWTSDF thereby hazardous waste generated from process is being disposed unscientifically creating pollution nuisance in the nearby vicinity."*

796. Conditional restart order was issued on 03.03.2017. Proponent has not placed anything on record to show that the violations found were not correct. In the objections nothing has been said on this aspect. The real objection is with regard to number of violation and according to proponent it should have been 96 days. We find that earlier in the report dated 18.06.2020 days of violation were taken as 876 but now the same are reduced to 47. Quantum of environmental compensation has also been revisited and reduced substantially. Hence basic objection raised by Proponent stands removed.

(lxxxii) M/s S R Steel (Item No. 97-List 103 of Committee)

797. It is an engineering unit, red category and SSI scale with effluent quantity permissible for discharge is 0.2 CMD. Compensation of Rs. 13.235 lakhs was determined vide report dated 18.06.2020 but reviewed, revised and reduced to Rs. 6.672 lakhs by revising the days of violation from 209 to 83.

798. Inspection was made on 01.04.2017 when it was found that proponent's ETP was not operating and untreated effluent was being discharged. Based thereon, closure/show cause notice was issued on 26.04.2017 mentioning above violations. Proponent submitted reply vide letter dated 12.05.2017 which shows that violations found were not disputed. Relevant extract of reply dated 12.05.2017 is as under:

"1.I want to bring to your kind notice that when F.O. visited, my ETP had gone to repair. Now it is proper. I am attaching the bill for the same. ***Now ETP has been made perfect and I will use it in zero discharge.***

2. Scrubbing system was repaired and now in working condition.

3. Kachcha pit has been repaired with RCC Cement.

4. Every month I will give Sludge to Taloja.

5. I had some issue with money so I could not pay the money as bank guarantee. But now I promise to pay it at the earliest.

6. I further request that my family and families of 8 workers under me only on this business."

799. Conditional restart order was issued on 29.09.2017. In view of the fact that violations found are incorrect and on contrary, virtually admitted by Proponent, it cannot be said that Proponent is not liable to pay environmental compensation on the principle of polluter pays. Further objection is with regard to days of violation and as per Proponent it should have been 154 days. We find that earlier compensation was determined vide report dated 18.06.2020 for 209 days of violation but reduced to 83 days vide report dated 12.08.2021 while Proponent himself says that days of violation should have been only 154. It is also mentioned in the objection that if record is fully examined, number of days of violation would only be 81 days but how it comes to this figure, nothing has been said. In any case, this objection substantially stands removed.

(lxxxiii) M/s J V Chem Industries (Item No. 98-List 103 of Committee)

800. It is a chemical industry in red category, SSI scale with approved quantity of effluent it can discharge is 4 ZLD. Compensation of Rs. 16.148 lakhs was determined vide report dated 18.06.2021 but reviewed and revised to Rs. 20.499 lakhs vide revised report dated 12.08.2021. Objection of Proponent basically is that neither it is a red nor orange nor green category unit, hence wrongly included in the list of polluting units.

It a SSI unit and total discharge is less than 25 KLD. It ought to have been excluded. It is also disputing date of inspection stating that on the said date no inspection was made. It has not violated any environmental norms and even otherwise days of violation are wrongly mentioned and correct days of violation should have been 21.

801. Unit was inspected on 05.04.2017 when several violations were found, whereupon closure/show cause notice dated 10.04.2017 was issued mentioning violations as under:

> ***"AND WHEREAS**, TEPS-CETP vide their e-mail dtd. 5/4/2017 reported that **your industry was discharging acidic effluent pH-1.2 and sample of the same was collected by TEPS-CETP and also communicated the analysis report of the same i.e. pH-1.2 and COD-960 mg/l which is exceeding to the permissible limit**. The Sub-Regional Officer, Tarapur-I has communicated the same on dtd.5/4/2017.*
>
> ***AND WHEREAS**, after examining all the reports and records available with this office, I have come to conclusion that you are knowingly and willfully violating the consent conditions thereby provisions of Water (P & CP) Act, 1974 and Air (P & CP) Act, 1981."*

802. Conditional restart order was issued on 04.07.2017. Proponent filed an appeal seeking withdrawal of closure directions vide letter dated 02.06.2017 wherein it has said that sample was not properly taken from the appropriate place and results of sample are also not correct.

803. With regard to the objections for samples it was taken in the presence of representatives of industry. No such objection was taken at that time. Responding Proponent's objection that it is neither red nor orange nor green category industry, Committee has found that in the consent order industry was shows as red category and therefore, objection on this aspect has no substance and rejected. Scale of unit as per consent order is SSI hence Committee has rightly computed compensation treating Proponent unit as red category, SSI scale. Nothing

has been placed on record to show any fault in the findings recorded by Committee. So far as objection with regard to manner of computation of number of days of violation is concerned, the grounds are same as we have already discussed and rejected, hence entire objections are rejected.

(lxxxiv) M/s Shreyans Chemicals (Item No. 99-List 103 of Committee)

804. It is chemical, red category, SSI scale industry with approved quantity of effluent it can discharge is 1 CMD. Compensation of Rs. 54.018 lakhs was determined vide report dated 18.06.2020 which is reviewed and reduced to Rs. 3.376 lakhs vide revises report dated 12.08.2021.

805. Inspection was made on 04.04.2017 (wrongly mentioned in the earlier report dated 18.06.2020 as 05.04.2017) when proponent was found discharging sub standard effluent with pH 3.19 and COD 19680 mg/l. Founded on the said violations, closure/show cause notice dated 05.04.2017 was issued. Proponent has relied on certain reports of other dates showing that no violation was found but that will not be of any relevance with regard to violation found on 04.04.2017 in respect whereto nothing has been placed on record to controvert. One of the objections taken by proponent is that on 04.04.2017, inspection was not made by officials of MPCB or CPCB but by officials of TEPS operating CETP. In our view that will not make any difference inasmuch TEPS is an association of industries themselves. Proponent is also member of TEPS. There is no reason as to why officials of TEPS operating CETP in which Proponent is also discharging its effluent, would have any reason to submit wrong adverse report against Proponent.The purpose is prevention of degradation of environment and for this purpose any reliable information can be acted upon. Further objection is on the

manner of computation of number of days of violation. As per Proponent it should have been 38. Earlier compensation was computed by taking days of violation as 853 which are revised and reduced to 42 days. Substantially, grievance of Proponent has been met out. Even otherwise the grounds taken in respect of days of violation are same as we have already discussed and rejected. Same reasons are followed hereat also.

(lxxxv) M/s Bombay Rayon Fashions Ltd. (item 7-List 103 of Committee)

806. It is a textile industry, red category, LSI scale with approved quantity of effluent it can discharge is 6000 CMD. Compensation of Rs. 66.114 lakhs was determined vide report dated 18.06.2020 which has been reduced and revised as Rs. 73.557 lakhs vide revised report dated 12.08.2021.

807. Inspection was made on 29.04.2016 when Proponent was found committing following violations:

(i) Discharging substandard quality effluent

(ii) Ozonization was not in operation

(iii) Decanter was not in operation

(iv) ETP maintenance and operation was very poor

(v) Excess water consumption and excess effluent generation hampering performance of CETP.

808. Closure/show cause notice was issued on 14.10.2016 and conditional restart order is dated 27.10.2016. Objection raised by Proponent is that there was no discharge of sub-standard effluent since sample collected on 16.01.2017 and 18.01.2017 found meeting norms but the said samples in our view are irrelevant for the violation found in inspection dated 29.04.2016. Further objection is that observations with regard to decanter, ozonisation and ETP are not correct in view of

subsequent reports of 16th and 18th January but the same is also liable to be discarded as irrelevant for the violations found in inspection dated 29.09.2016. Objection with regard to manner of computation of days of violation is founded on the same grounds which we have already considered and rejected. Committee earlier determined compensation taking days of violation as 348 but the same are revised to 305. Compensation however has increased on account of change in distribution recovery cost factor from 0.0041310 to 0.0045961.

MA No. 3/2021 & 4/2021

809. Some MAs have been filed by individual industries referring to their objections on different aspects and seeking permission to intervene. Some of these industries have also filed objections along with MA 2/2021 i.e., through their associations which we have already discussed above. However, we are taking these individual applications also into consideration and wherever any additional objection has been raised, we would consider the same.

810. MA 3/2021 dated 28.12.2021 has been filed on behalf of M/s Maharashtra Organo Metalics Pvt Ltd. (Item 88). Principle objection is that unit is SSI though it has been taken LSI for the purpose of determining compensation. Objection of this unit we have already discussed above and found that scale of unit is rectified in revised report dated 12.08.2021 and compensation has been redetermined treating this Proponent as SSI. MA 3/2021 stands disposed of.

811. MA 4/2021 dated 20.11.2020 has been filed by same proponent. Its objection is with regard to manner of computation of number of days of violation and further that any violation in respect of pH is not relevant for SSI unit. So far as days of violation is concerned, we have already

discussed above that in respect of the concerned Proponent, the same has reduced to 18 from 49, vide revised report dated 12.08.2021 and the amount of compensation has also reduced from Rs. 9.309 lakhs to 1.447 lakhs. Further, once prescribed limit is breached, scale or category of unit would not be relevant for seeking any exemption from such violation and in law, industry is liable to pay compensation for causing pollution on the application of principle of polluters pay. Further objection is that Committee had not given any opportunity of hearing but in the report dated 12.08.2021 we find that this Proponent was given opportunity of hearing on 30.11.2019 and thereafter revised report has been submitted, hence we find no substance in the objection raised in MA 4/2021 and the same is rejected.

MA 5/2021 and 6/2021:

812. These MAs dated 02.02.2021 have been filed on behalf of Anu Pharma Chem, plot no. E-17/3& 4 and E-18, TIA MIDC. Objection of this proponent we have already discussed above. Revised report dated 12.08.2021 also says that compensation determined vide report dated 18.06.2021, revised vide report dated 12.08.2021 is applicable to M/s Anu Pharma Chem, plot no. N-183. Hence grievance of this Proponent does not survive any more. The MAs 5/2021 and 6/2021 stand disposed of accordingly.

MA 08/2021: by Applicant

813. This application dated 08.03.2021 has been filed by applicants with the request to direct officials and respondents to utilize amount deposited by Polluter Proponents in Environment Relief Fund to initiate restoration and remedial steps, outlined in Chapter VIII of Expert Committee report dated 18.06.2020 including remedying health of inhabitants and providing health care to affected individuals. It for the Tribunal to pass

appropriate order and there is no reason to anticipate the tribunal will pass such order.

814. **ISSUE 2** formulated above in para 185, in fact, substantially has been considered and answered above when we considered the objection regarding formula adopted and applied by Committee for computation of compensation. We reiterate above reasons but would add some further crucial angles to support final return to the said issue.

815. This matter has remained pending for almost 5 years before Tribunal. The mischief of Proponents, apathy towards preservation of environment, consistent violation of statutory conditions of consents/approvals granted by Statutory Regulators and provisions of environmental laws, emboldened conduct to justify their act of destruction of ecology, unhesitant attitude to compromise purity of nature in preference of commercial interest etc. has caused almost unmeasurable damage to water bodies including marine ecology and local residents in particular. The matter has been examined at different levels by different Expert Committees as also by Tribunal very meticulously. It is beyond doubt that discharge of polluted effluent by TEPS through CETP had violated capacity norms. Against the capacity of 25 MLD, actual discharge was much higher and also contained pollutants beyond permissible and prescribed limits/standards. Individual member industries are also guilty by discharging polluted effluent, damaging environment and breaching conditions of consent/approvals. Committee has also shown that the land area and water bodies in and around TIA MIDC, where industries which are members to TEPS and TIMA are situated, have suffered huge degradation. Proponents have caused deterioration and damage to environment by affecting not only the land

but also ground water, surface water, and water bodies including Arabian Sea where highly polluted effluents ultimately reach. These facts and findings recorded by Committee have not been controverted either by TEPS or TIMA or the individual members who have submitted their own documents also which we have already discussed. Rather documents submitted by Proponents have proved their fault. Mere denial is not sufficient considering the fact that in the matter of environment when Proponents are found discharging polluted effluents etc. and causing pollution, principle of absolute liability is attracted and it is upon Proponents to demonstrate that they were/are not violating environmental norms/laws, by placing positive material before Court which has not been done in the case in hand.

816. So far as the compensation determined by Committee is concerned, objections raised by Proponents including operator of CETP i.e., TEPS, we have considered above and rejected. However, it does not mean that we have approved the amount of compensation, determined by Committee, as such. Committee has concentrated on the quantum of pollutant and the period for which it was discharged for the purpose of computing compensation but when we talk of environmental compensation for the purpose of causing damage to environment and for remediation/ restoration of environment, it is not only the quantity of pollutant but the severity of damage caused to the environment, sphere of influence, mediums of environment affected and other relevant factors like:

(a) Damage caused to environment

(b) Cost of remediation/restoration of environment,

(c) Deterrence to the polluter for causing violation of environmental norms so that one may not get encouraged to do the same in future, instead scared to repeat,

(d) The act of violation of statutory orders like consent, NOCs, permission etc.,

(e) The loss/damage caused to the inhabitants and their health immediately and likely to cause in future.

817. In **Goa Foundation (*supra*)** Supreme Court awarded compensation on 10% of sale price of the goods. In **Deepak Nitrite (*supra*)** Supreme Court said that in a given case the percentage of the turnover itself may be a proper measure because the method to be adopted in awarding damages on the basis of 'pollutor to pay' principle has got to be practical, simple and easy in application. In **Goel Ganga Developers (*supra*)** Supreme Court allowed 10% of project cost as compensation. As we have already examined probability of computation of environmental compensation based on turn over and we have found that compensation would increase multifold. We have given reference of some units based on their turn over as available on public domain. That approach would place very heavy burden upon Proponents. Interestingly, TIMA in its reply dated 10.04.2017 has said that current turnover in TIA MIDC is 40000 crores. If we take just 1%, it will come to Rs.400 crores. Here Committee has ignored the fact that violation of environmental norms by Proponents by discharging polluted effluent has continued for years together and compensation if determined for one, two or more violations, based only on the date of inspection, it would condone violations continued for years and that is how would allow Proponents to profiteer by continuing business with continued violation of environmental norms, without any liability. In such cases where violation has continued for years together, compensation should be imposed, in the absence of regular periodical inspection report due to lackcity on the part of the officials of Statuary Regulators, atleast on annual basis based on turn over of the unit. We

may point out to an interesting factor that most companies have placed on record inspection reports when an individual official of State PCB made inspection and found everything correct but when surprise checking and particularly by joint Committee is made, violations have been found. This speaks volumes not only about the conduct of industries but also inspecting officials of State PCB.

818. Officials of State PCB have also not taken care of their duties by strict enforcementof law inasmuch as violation of laws in the case in hand causing pollution of water, water bodies etc. is an offence under Section 41 to 45A of Water Act, 1974.

> *"[**41. Failure to comply with directions under sub-section (2) or sub-section (3) of section 20, or orders issued under clause (c) of sub-section (1) of section 32 or directions issued under sub-section (2) of section 33 or section 33A**.—(1) Whoever fails to comply with the direction given under sub-section (2) or sub-section (3) of section 20 within such time as may be specified in the direction shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.*
> *(2) Whoever fails to comply with any order issued under clause (c) of sub-section (1) of section 32 or any direction issued by a court under sub-section (2) of section 33 or any direction issued under section 33A shall, in respect of each such failure and on conviction, be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.*
> *(3) If the failure referred to in sub-section (2) continues beyond a period of one year after the date of conviction, the offender shall, on conviction, be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.]*
> ***42. Penalty for certain acts**. (1) Whoever—*
> *(a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or*
> *(b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or*
> *(c) damages any works or property belonging to the Board, or*

(d) fails to furnish to any officer or other employee of the Board any information required by him for the purpose of this Act, or
(e) fails to intimate the occurrence of any accident or other unforeseen act or event under section 31 to the Board and other authorities or agencies as required by that section, or
(f) in giving any information which he is required to give under this Act, knowingly or wilfully makes a statement which is false in any material particular, or
(g) for the purpose of obtaining any consent under section 25 or section 26, knowingly or wilfully makes a statement which is false in any material particular,
shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to 1 [ten thousand rupees] or with both.
(2) Where for the grant of a consent in pursuance of the provisions of section 25 or section 26 the use of meter or gauge or other measure or monitoring device is required and such device is used for the purposes of those provisions, any person who knowingly or wilfully alters or interferes with that device so as to prevent it from monitoring or measuring correctly shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to 1 [ten thousand rupees] or with both.

43. Penalty for contravention of provisions of section 24*.— Whoever contravenes the provisions of section 24 shall be punishable with imprisonment for a term which shall not be less than 2 [one year and six months] but which may extend to six years and with fine.*

44. Penalty for contravention of section 25 or section 26*.— Whoever contravenes the provisions of section 25 or section 26 shall be punishable with imprisonment for a term which shall not be less than 2 [one year and six months] but which may extend to six years and with fine.*

45. Enhanced penalty after previous conviction. —*If any person who has been convicted of any offence under section 24 or section 25 or section 26 is again found guilty of an offence involving a contravention of the same provision, he shall, on the second and on every subsequent conviction, be punishable with imprisonment for a term which shall not be less than 3 [two years] but which may extend to seven years and with fine:*
Provided that for the purpose of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished. 4
[45A. Penalty for contravention of certain provisions of the Act.—*Whoever contravenes any of the provisions of this Act or fails to comply with any order or direction given under this Act, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or with both, and in the case of a continuing contravention or failure, with an additional fine which may extend to five thousand rupees for every day during which such contravention or failure continues after conviction for the first such contravention or failure.]"*

819. Though there is massive violations by hundreds of industries inTIA MIDC but negligible number of complaints have been filed and that too without any conviction till date. It appears that officials impression is that after filing a complaint, their responsibility is over. Actually, element of accountability is completely missing. Statutory Regulators offices have become decorated power points where anything may matter but not protection and preservation of environment and positive action for enforcement of environmental laws. An individual small industry having single instance of violation may not be prosecuted, but we find no reason for not taking action under Chapter VII of Water Act, 1974 prescribing offences and punishment of such offences against Proponents who have repeatedly committed violations. Further such repeated offences in respect of larger industries like MSI and LSI should have been taken more seriously but nothing of this sort has been done by officials of MPCB/Statutory Regulators who are responsible for ensuring strict compliance of the provisions of environmental norms.

820. Similarly, violation of environmental norms is also an offence under Section 15 of EP Act, 1986. Discharge or emission causing environmental pollution in excess of standard prescribed is prohibited under Section 7 of EP Act, 1986 and an offence under Section 15 but here also nothing has been done by responsible Statutory Regulators and no action of criminal prosecution has been initiated against Proponents violating the said provisions particularly wher such violations are repeated i.e. committed for more than, one found in the inspections conducted by the officials and becomes more serious when such violation is by larger industries like MSI and LSI.

821. Some provisions of IPC also cover these offences and are cognizable but even Police has not touched these violators/offenders. In **State (NCTof Delhi) vs Sanjay (supra)**, Supreme Court, while cosidering an argument whether offences under MMDR Act would exclude action under I.P.C., held that it will not. Illegal mining is an offence under MMDR Act but also amount to theft, an offence under I.P.C. and even if no action was taken under MMDR Act, that does not mean that offender can not be prosecuted under section 379 I.P.C. Hence Police can also take appropriate action but unfortunately, we have never seen them taking offences relating environment, seriously.

Offence under Prevention of Money Laundering Act, 2002:

822. When environmental norms are not observed and in violation thereof there is discharge and/or emission of pollutants causing pollution and thereby commercial activities for commercial gains continue, such activities also attract provisions of Prevention of Money Laundering Act, 2002 (hereinafter referred to as '**PMLA 2002**' as amended from time to time).

823. PMLA 2002 was enacted pursuant to resolution No. S-17/2 adopted by General Assembly of United Nation at 17th Special Sessions held on 23.02.1990 on political declaration and global programme of action; and political declaration adopted by UNGA in the Special Session held on 8th to 10th June, 1998. It came into force however on 01.07.2005. The term "money laundering" and" proceeds of crime" are defined in Section-2(p)&(u) which read as under:

> *2(p). "Money Laundering" has the meaning assigned to it in Section-3.*
>
> *2(u). "**Proceeds of Crime**" means any property derived or obtained directly or indirectly, by any person as a result of **criminal activity** relating to a "**scheduled offence"** or the*

value of any such property or where such property is taken or held outside the country, then the property equivalent in value within the country or abroad.

[Explanation: for the removal of doubts, it is hereby clarified that proceeds of crime include property not only derived or obtained from the "scheduled offence" but also any property which may directly or indirectly be derived or obtained as result of criminal activity relatable to the "schedule offence";''

824. "Scheduled Offence" is defined in Section 2(y) and says;

*2(y). "**Scheduled Offence" means**-*
*(i) The offences **specified under Part-A of the Schedule**; or*
(ii) The offences specified under Part-B of the Schedule, if the total value involved in such offences is one crore rupees or more; or
(iii) The offences specified under Part-C of the schedule.

825. Section 3 of PMLA 2002 talks of offence of money laundering and says:

*"3. **Offence of money laundering**: whosoever directly or indirectly attempts to indulge or knowingly assists or knowing is a party or is actually involve **in any process or activity connected proceeds of crime** including in concealment, possession, acquisition or use **and projecting or claiming it as untainted property** shall be guilty of offence of money laundering."*

826. There is an explanation also inserted by Finance Act, 2019 w.e.f. 01.08.2019, but for the issue under consideration, it is not relevant, hence ommitted.

827. Attachment of property involved in "money laundering" is governed by Section 5 of PMLA 2002 which permits attachment by Director or any other officer not below the rank of Deputy Director authorised by Director for the purpose of such attachment and he has reason to believe (to be recorded in writing) on the basis of material in his possession that **any person is in possession of any proceeds of crime** and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner

which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this chapter (by order in writing), may provisionally attach such property for a period not exceeding 180 days from the date of the order, in such manner as may be prescribed.

828. First proviso of Section 5(1) imposes a condition that no such order of attachment shall be made unless, in relation to the "Scheduled offence", a report has been forwarded to a Magistrate U/s 173 C.R.P.C. or a complaint has been filed by a person authorised to investigate the offence mentioned in that schedule, before a Magistrate or Court for taking cognizance of the "Scheduled offence".

829. There is an exception in 2nd proviso of Section 5(1) authorising Director or the officers authorised by him to attach any property of any person referred to in Sub-Section 1, if he has reason to believe (to be recorded in writing), on the basis of material in his possession that if such property involved in money laundering is not attached immediately, it is likely to frustrate proceeding under PMLA 2002.

830. Section 5 (5) requires the Director or the other officer, who has provisionally attached property under Sub-Section 1 to file a complaint within 30 days from such attachment stating facts of such attachment before Adjudicating Authority which is appointed U/s 6.

831. Section 8 provides the procedure to be observed by **Adjudicating Authority** to pass an order confirming attachment of property U/s 5(1). When such order of confirmation is passed, attached property would remain under attachment till trial completes and if Special Court under PMLA 2002 recorded finding of conviction of commission of offence of money laundering, such property shall stand confiscated to the Central

Government but where Special Court finds that offence of money laundering has not taken place or properties not involved in money laundering, it shall release such property to the person entitled to receive it.

832. Section 5 shows that except the cases covered by second proviso, no attachment is permissible unless report U/s 173 C.R.P.C. submitted to the Magistrate or complaint has been filed before the Magistarte or concerned **to take cognizance of "Scheduled offence"**.

833. Schedule to PMLA 2002 as initially came into force on 01.07.2005, was having Part-A divided in paragraph 1 dealing with Section 121 & 121(A) of IPC; paragraph-2 covering certain offences under Narcotic Drugs and Psychotropic Substances Act, 1985 and Part-B paragraph 1 offences U/s 302, 304, 307, 308, 327, 329, 364(A), 384 to 389, 392 to 402, 467, 489A and 489B of IPC; paragraph 2 contain some offences of Arms Act, paragraph 3 referred to offences under Wild Life Protection Act 1972, Paragraph 4, offences under Immoral Traffic Prevention Act 1956 and Paragraph 5, offences U/s 7, 8, 9 and 10 of PCA 1988.

834. Thus, PMLA 2002, at the time of enforcement in 2005, did not cover Sections 120-B, 468, 420 and 471 IPC and Section 13 of PCA, 1988 and environmental enactments. In other words, offences under these Sections/Statutes were not "Scheduled offences" for the purpose of Section 3 PMLA 2002.

835. The Schedule underwent amendment for the first time vide Prevention of Money Laundering (Amendment) Act, 2009 published in Gazette of India, Extraordinary dated 6.3.2009. In Part A paragraph 1

Section 489A & 489B were inserted. We are not concerned with the offences referred under paragraph 2 of the Schedule, hence amendments made therein are omitted. After paragraph-2, paragraph-3 and paragraphs-4 were inserted relating to offences under Explosive Substance Act, 1908 and Offences Under Unlawful Activities (Prevention) Act, 1967. In Part-B paragraph-1 was substituted and a number of offences of IPC were added and this included Section 120-B, 420, 467 and 471 IPC. Some amendments were made in paragraph 3 and 5 of Part-B and thereafter paragraphs 6 to 25 were inserted covering offences under several inactments which are not relevant for the purpose of issue before us. Part C was also inserted in the schedule to cover cross border offences and the same is also omitted. Even after this amendment, Section 468 IPC and 13 PCA, 1988 were not "scheduled offence" so as to attract offence U/s 3 of PMLA 2002. The amendment was given effect from 01.06.2009.

836. Next amendment was made vide Prevention of Money Laundering (Amendment) Act, 2012 published in Gazette of India, Extraordinary dated 4.1.2013. Paragraph A part-1 of the Schedule was substituted adding some more offences of IPC. In fact, entire Part A was substituted by a new Part-A which had paragraphs 1 to 28 covering offences under various Statutes, some were earlier in Part A and also Part B and some newly added. Paragraph 8 Part 1 as substituted in 2012 covered offences under Sections 7, 8, 9, 10 and 13 of PCA, 1988. Thus, Section 13 was included therein only in 2013. In Part B paragraph 1 to 25 were omitted and in Part C serial No. 2 and entries relating thereto were omitted. This amendment came into force from 15.02.2013.

837. The offences under environmental norms have been included in the Schedule to PML Act, 2002 inasmuch as paragraph 23, 25,26,27 have been inserted by Section 30 of PML (Amendment) Act, 2012 which came into force on 15.02.2013 and said insertion of paragraphs are as under:

"PARAGRAPH 23
OFFENCES UNDER THE BIOLOGICAL DIVERSITY ACT, 2002
(18 of 2003)

Section	Description of offence
55 read with section 6.	Penalties for contravention of section 6, etc.

PARAGRAPH 25
OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986
(29 OF 1986)

Section	Description of offence
15 read with section 7.	**Penalty for discharging environmental pollutants, etc., in section 7 excess of prescribed standards.**
15 read with section 8.	Penalty for handling hazardous substances without section 8 complying with procedural safeguards.

PARAGRAPH 26
OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974
(6 OF 1974)

Section	Description of offence
41(2)	Penalty for pollution of stream or well.
43	Penalty for contravention of provisions of section 24.

PARAGRAPH 27
UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981
(14 OF 1981)

Section	Description of offence
37	Failure to comply with the provisions for operating industrial plant."

838. All these provisions relating to offences under various Environmental Statutes have been placed in part A of the Schedule. Application of PMLA 2002 in respect to the aforesaid offences has to be seen in the light of Section 3 read with schedule as amended vide Amendment Act, 2012.

839. In ***A.K. Samsuddin Vs. Union of India, Writ Petition No. 15378/2016*** **decided on 19.07.2016**, Kerala High Court said that the time of commission of the "scheduled offence" is not relevant in the context of the prosecution under the Act. What is relevant in the context of the prosecution is the time of commission of the Act of money laundering. It has to be established that the money involved are the proceeds of crime and having full knowledge of the same, the person concerned projects it as untainted property.

840. In ***Smt. Soodamani Dorai v. Joint Director of Enforcement, Writ Petition No.8383 of 2013*** **decided on 04.10.2018**, a Single Judge of Madras High Court observed that substratal subject of the Act is to prevent money laundering and to confiscate proceeds of crime.

841. PMLA 2002 brings in a different kind of offence on the statute book. In ***Janta Jha v. Assistant Director (2013) SCC Online (Odisha) 619***, High Court of Odisha held that even if an accused has been acquited of the charges framed against him in Sessions Trial, a proceeding under PMLA 2002 cannot amount to double jeopardy where procedure and nature of proof are totally different from a criminal proceeding under IPC.

842. On the contrary in ***Rajeev Chanana v. Deputy Director (2014) SCC Online (Delhi) 4889***, it was held by Delhi High Court that after acquittal of a person from a "Scheduled offence", trial for an offence U/s 3

of PMLA 2002 will not survive. Court said it is hard to imagine as to how a trial for an offence of money laundering can continue where the fundamental basis, i.e., the commission of a Scheduled offence has been found to be unproved.

843. The question of simultaneous investigation by Police or CBI or any other Investigating Agencies in respect of schedule offences and ED U/s 3 of PMLA 2002 was considered by a Single Judge (Hon'ble S.P. Garg, J) of Delhi High Court in ***Rohit Tandon v. Enforcement Directorate in Bail Application No. 119 of 2017*** **and** ***Crl.M.B. 121 of 2017***. In the judgment dated 05.05.2017, Court found that Delhi Police registered FIR u/s 420, 406, 409, 467, 468, 188 and 120-B on 25.12.2016 and very next date ED registered ECIR on 26.12.2016. Court said that presence of "Scheduled offence" is only a trigger point for initiating investigation under PMLA 2002. Act nowhere prescribes, if ED is debarred from conducting investigation U/s 3 & 4 PMLA 2002 unless investigating agency concludes its investigation in the FIR or charge sheet is filed therein for commission of "Scheduled offence". The proceedings under PMLA 2002 are distinct from the proceedings of the "Scheduled offence". In the Investigation of FIR by Police, ED has no control. The proceedings under PMLA 2002 are not dependent on the outcome of the investigation conducted in the "Scheduled offences". More over to avoid conflicting and multiple opinions of court, section 44 PMLA 2002 provides trial by Special Court in case of "Scheduled Offence" and offence under PMLA 2002. Delhi High Court relied on a judgment of Allahabad High Court in ***Sushil Kumar Katiyar v. Union of India & Ors. (MANU/UP/0777/2016)*** wherein Allahabad High Court said:

> ***"A person can be prosecuted for the offence of money laundering even if he is not guilty of "Scheduled offences" and his property can also be provisionally attached irrespective of***

> ***the fact as to whether he has been found guity of the "Scheduled offences". The prosecution is not required to wait for the result of the conviction for the "scheduled offences" in order to initiate proceedings U/s 3 of the PML Act****. However, the person against whom, there is an allegation of the offence of money laundering, can approach appropriate forum, in order to show his bonafide and innocence that is not guilty of the offence of money laundering and has not acquired any proceeds of crime or any property out of the proceeds of crime."*

844. Against the judgment of Delhi High Court in **Rohit Tandon appeal was filed in Supreme Court and judgment is reported in *(2017) SCC Online SC 1304***. Supreme Court upheld, the order of High Court rejecting Bail. Then meeting further argument raised on behalf of Rohit Tandon that the incriminating material recovered, would not take the colour of proceeds of crime as there is no allegation or the prosecution complaint that un-accounted cash deposited by Appellant was result of criminal activity, it was observed that the expression "criminal activity" has not been defined but very nature of the alleged activities of the accused referred to in the predicate offence are criminal activities. Court observed:

> *".... however, the stated activity allegedly indulged into by the accused named in the commission of predicate offence is replete with mens-rea. In that the concealment, possession, acquisition or use of the property by projecting or claiming it as untainted property and converting the same by bank drafts, would certainly come within the sweep of criminal activity relating to a "scheduled offence". That would come within the meaning of Section 3 and punishable under Section 4 of the Act, being a case of money laundering."*

845. Recently in ***P. Chidambaram v. Directorate of Enforcement (2019) SCC Online SC 1143*** Court considered scheme of PMLA 2002, and observed that **money laundering is the process of concealing illicit sources of money and launderer transferming the money proceeds derived from criminal activity into funds and moved to other institution and transformed into legitimate asset**. It is realized

world around that money laundering poses a serious threat not only to the financial system of the country but also to their integrity and sovereignty. "**Schedule offence" is a sine qua non for the offence of money laundering which would generate the money i.e., being laundered**.

846. In the present case, when environmental norms were not followed by not operating ETP or by discharging partially or totally untreated pollutant or by causing other violations, this resulted in commissioning of Scheduled offence and revenue earned by committing such crime is proceeds of crime as defined in PMLA 2002 and by showing it part of business proceeds in accounts amounts to projecting or claiming it as untainted property. The entire activity is covered by Section 3 of PMLA 2002.

847. It appears that initially PMLA 2002 was enacted so as to cover activities of terrorist, illegal traffic in narcotics, enemies of the country etc., applying to a very limited number of statutes, Enforcement Directorate had been taking action under PMLA 2002 in a narrow sphere. It has forgot to take note of the fact that scope of PMLA 2002 has been enhanced or widened, a lot, at least after amendment Act of 2012 w.e.f. 15.02.2013. More than 8 and half years have passed but not a single action has been taken by Enforcement Directorate against violators committing offences under environmental statutes which have been included in the Schedule, part A of PMLA 2002. The offences under Environmental Acts, as such are non-cognizable but under PMLA 2002, offences are cognizable. Since competent authority has never resorted to proceed against violators of environmental Statutes despite committing offences thereunder, which are included in PMLA 2002, this inaction has

encouraged polluters to continue violation with impunity. Parliament's intention of treating environmental violations as very serious offences is writ large from the fact that, offences under environmental laws as noticed above, have been included in Schedule, Part A of PMLA 2002 yet enforcement machinery has frustrated entire attempt. It is incumbent upon the competent authorities regulating and enforcing PMLA 2002 to take action against such violators, if not against small violators, at least against substantial resourceful bigger proponents whose violations are liable to cause huge damage to environment as also the inhabitants. At least matters of LSI and MSI scale level industries should have been examined by competent authority under provisions of PMLA 2002.

848. We do not intend to delve more on the above aspect. Our endeavour was to highlight inapt attitude and apathy towards enforcement of laws enacted to give teeth to environmental laws but responsible authorities find it convenient to put these laws in hibernation. Now reverting back to **issue 2,** we find that simpler methods of computation of compensation are available but here, in absence of relevant informations, it is difficult to follow any of such method. Proponents's learned Senior Counsels stated during arguments to furnish such informations but have refrained from doing so. In the entirety of the circumstances and also considering the fact that matter is pending for more than five years and it is high time to give it a rest, we find it appropriate to attach finality to our view expressed above in **para 498** and direct that amount of compensation recommended by Committee would be made twice where concerned Proponents are shown with single instance of violation of environmental norms; thrice where there are two violations and tetra where there are more than two violations. However, we make it clear that in respect of TEPS, amount of compensation recommended by Committee vide revised

report dated 12.08.2021 would remain unchanged. **We answer ISSUE 2 accordingly**.

849. MIDC: In the entire matter role of MIDC is very crucial and occupy central place. Admittedly it is a statutory body constituted in 1962 under Maharashtra Industrial Development Act 1961 (MID Act 1961) enacted by Provincial Legislature. Functions of MIDC are provided in section 14 of MID Act, 1961. In MIDC website, it claims to be the highest contributor to nation's economy, industrial growth, exports and FDI attractiveness. Its plan 'Magnatic Maharashtra 2.0' says that MIDC is the nodal Investment Promotion Agency under Government of Maharashtra. It provides land, roads, water supply, drainage facilities and street lights etc. It is owner of largest industrial land bank in Country having more than 2.5 lakh acres. TIA MIDC is said to be one of the best industrial areas situated near Mumbai. In ACTION PLAN FOR TIA MIDC prepared by MPCB in 2010, it is said, area is near Mumbai Port/Mumbai Harbour, JNPT and Trans Thane Creek, MIDC. River surya is main water source for operation of indusrial activities. The effluent generated from industrial area is finally disposed in the Creeks i.e., Navapur sea, Kharekuram murbe creek, Dandi creek, and Sarvalli creek. MIDC had provided 59 kilometers of effluent pipeline throughout industrial area to dispose effluent, treated/partially treated, to Arabian sea at Navapur. In 2009-10, average 45.6 tonnes per day COD was being received whereof only 37 tonnes per day was treated. About 4 MLD of untreated effluent was being collected every day at Sump no.3 of MIDC, giving about 15.04 tons per day COD, discharged in Arabian sea. This situation, more or less has continued. Proponents have said repeatedly that MIDC was not properly maintaining pipelines, not cleaning sludge collected in huge quantity in different sumps maintained by MIDC. Applicants have also said so. Committee

reports certify these complaints. MPCB has taken a stand that several notices were issued to MIDC but they did not respond positively and effectively. Record show that MIDC in general, observed a passive inactive response. Being a statutory body, it had statutory obligation to ensure protection and preservation of environment but it miserably failed. In our view MIDC also has also contributed in causing pollution by failing to ensure its functions of maintenance of pipelines, non clearance of sludge in a regular manner etc. It is also responsible to pay compensation which we compute at Rs. 2 crores. If we apply methodology of Committee or the one, we have referred above, amount of compensation would have been very heavy but we have taken a little considerate approach since MIDC is a statutory non-commercial body.

850. We cannot leave the matter without commenting upon extremely negligent and lax approach, careless aptitude, non bona fide conduct and lack of devotion to duty on the part of officials of MPCB. They are the Regulators and under Statute, bound to ensure compliance of environmental laws. If they would have been vigilant, active, sensisitive to subject, and honest to their duties, the situation we are confronted, would not have arisen. We hope and trust that superior officers including Secretary, department of Environment, Maharashtra and Chairman/Member Secretary MPCB shall look into the matter and take appropriate action, also necessary to repel general perception of top support to wrongdoers.

851. Accordingly, we accept Committee's reports/response dated 18.06.2020 and 12.08.2021 partly i.e, except the amount of compensation recommended as payable by Proponents and to the extent the same are inconsistent to our observations/findings recorded in this

order. Periodical monitoring/compliance reports submitted have been perused, discussed and are accepted.

852. In the light of the above discussions, we dispose of Original Application and all M.A.s and I.A.s. O.A. is partly allowed, with following directions:

(i) Committee shall continue for a period of one year to monitor compliance conditions in TIA MIDC by all stake holders and submit quarterly reports to Registrar General, NGT, PB, who shall, if find necessity of any further directions/instructions etc. ot Tribunal, will place before us.

(ii) The objections of M/S AARTI INDUSTRIES LTD., L-5,8,9; MANAN COSTYN PVT. LTD., G-4/2; ANUH PHARMA CHEM., N-183, TIA MIDC are allowed. Committee shall determine compensation payable by above Proponents afresh after giving opportunity of hearing, within two months from today.

(iii) The Proponents named in column II shall pay environmental compensation mentioned in column IV, in the chart below:

I	II	III	IV
SN	**Name and address of industry**	**Product, Category, Scale**	**Compensation Rs. In lakh**
1	Aarti Drugs Ltd., G-60	Bulk drug, Red, LSI	81.034
2	Aarti Drugs Ltd., N-198, 199	Bulk drug, Red, LSI	1474.996
3	Aarti Drugs Ltd., E-1, E-21, E-22	Bulk drug, Red, LSI	291.573
4	Aarti Industries Ltd., E-50	Bulk drug, Red, LSI	96.468
5	Aarti Industries Ltd., K-17,18,19	Bulk drug, Red, LSI	115.762
6	Bombay Rayon Fashion Ltd. C-6,7	Textile, Red, LSI	147.114
7	Siyaram Silk Mills, (Balkrishna Synthetics) H-3/1	Textile processing (earlier it was textile), Red, LSI	625.836
8	Camlin Fine Chemicals, D-2/3	Chemical	1,712.308
9	M/s Ciron Drugs &	Pharma, Orange, LSI	28.94

	Pharmaceutical Pvt. Ltd. N-113, 118, 119 & 119/2		
10	M/s Dicitex Home Furnishing Pvt. Ltd. G-7/1 & 7/2	Textile, Red, LSI	654.054
11	M/s Dicitex Home Furnishing Pvt. Ltd. G-58	Textile, Red, LSI	116.726
12	DC Polyester Pvt. Ltd, E-26/2	Textile, Red, LSI	117.69
13	DC Textile Pvt. Ltd, E-26/1	Textile, Red, LSI	4.342
14	JSW Steel Coated Product Ltd (JSW Steel Ltd) B-6	Steel (Engineering) Red, LSI	230.076
15	M/s Kriplon Synthetics Pvt. Ltd, N-97/1/2, 97, 98	Textile, Red, LSI	232.248
16	Mandhara Dyeing, E-25	Textile, Red, LSI	17.364
17	E-Land Fashion (Mudra Life Style), D-1	Textile, Red, LSI	421.806
18	Nipur Chemical, D-17	Chemical Red, LSI	36.658
19	Resonance Speciality Ltd. T-140	Chemical, Red, SSI	355.968
20	Silvester Textiles P. Ltd.E-24	Textile, Red, LSI	730.746
21	Sarex Overseas N-129,130,131,132	Chemical, Red, LSI	389.248
22	Zeus International Ltd, A-10 & 11	Chemical, Red, LSI	1,932.252
23	Valiant Glass P. Ltd., J-85	Textile, Red, LSI	298.809
24	Aarti Drugs Ltd., E-9/3-4	Bulk Drug, Red, SSI	16.4
25	Jakharia Textile, A-13	Textile, Red, LSI	98.88
26	Pal Fashions Pvt. Ltd, E-49 & E-49/2	Textile, Red, MSI	90.358
27	SD Fine Chemicals, E-27/28	Chemical, Red, MSI	493.434
28	Iraa Clothing (P) Ltd (Shagun Clothing P Ltd), B- 7/3	Textile, Red, MSI	271.718
29	Auro Laboratories Ltd, K-56	Bulk Drugs, Red, MSI	196.311
30	Valiant Organics Ltd. (Formerly M/s. Abhilasha Texchem Pvt. Ltd.) M-7	Textile, Red, SSI	8.842
31	Alexo Chemicals, N-	Chemical, Red, SSI	191.247

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32	Ashwin Synthetics P Ltd, C-8/2	Yarn Dying and textile (Chemicals)Red, SSI	127.578
33	Accusynth Speciality Chemical, E-29/1-2	Chemical, Red, SSI	46.626
34	Ajmera Organics, N-211/2/1	Chemical, Red, SSI	3.858
35	Aarey Drugs & Pharmaceuticals Ltd, E-34	Drug intermediate, Red, SSI	4.02
36	Aradhana Energy Pvt Ltd, K-34	Chemicals, Red, SSI	5.144
37	Bajaj Health Care Ltd, N-216, N-217	Drug Intermediate Red, SSI	203.307
38	Bostan Pharma, E-84	Chemical, Red, SSI	135.698
39	Panchamrut Chemical Pvt. Ltd (Dragon Drugs Pvt. Ltd), N-76	Chemical, Red, SSI	206.442
40	Diakaffil Chemicals, E-4	Chemicals, Red, MSI	96.468
41	DRV Organics, N-184, N-185	Drug Intermediate Red, SSI	205.959
42	Dufon Laboratories P Ltd, E-61/3	Drug Intermediate Red, SSI	118.173
43	D.H. Organic, N-89	Bulk drug, Red, SSI	4.662
44	Gangwal Chemical, N-5	Chemical, Red, SSI	18.168
45	Haren Textile Pvt Ltd, J-194	Textile processing, Red, SSI	31.03
46	Indo Amines Ltd (Previously known as Sri Sai Industries) K-33	Chemical, Red, SSI	119.62
47	Indaco Jeans Pvt. Ltd, G-21	Textile processing, Red, SSI	74.763
48	Mehta API Pvt. Ltd, Gut No- 546, 571, 519, 520, Vill- Lumbhavali, Tal & Dsit- Palghar	Bulk drug, Red, MSI	28.618
49	Moltus Research Laboratories, N-59	Chemical, Red, SSI	2.25
50	K P Chemicals, L-63	Chemical, Red, SSI	3.054
51	JPN Pharma, T-108-109	Bulk drug, Red, SSI	1.93
52	Khanna & Khanna K-10	Chemical, Red, SSI	17.364
53	Keshav Organics P Ltd, T-97,98,100	Chemical, Red, SSI`	4.662
54	Nayakem Organics Pvt. Ltd, T-128	Chemical, Red, SSI	37.623
55	Nirbhay Rasayan Pvt. Ltd,	Pigment (Dyes), Red, MSI	161.583

	N-95,96,96/1		
56	Nutraplus India Ltd, N-92	Chemical, Red, LSI	1,252.156
57	Sequent Scientific Ltd (PI Drugs Pharmaceuticals) W-136,137,138,151	Bulk drug, Red, SSI	54.182
58	Pulcra Chemicals India Ltd D-7/1/1	Chemical, Red, MSI	31.512
59	M/s. Pentagon Drugs Ltd Plot No.N-224, 225	Bulk drug, Red, SSI	64.956
60	M/s. Paramount Syncot Textile, Plot No. N-13/2	Textile, Red, SSI	66.562
61	M/s. IPCA Laboratories (Ramdev Chemicals) Plot No. E-41	Bulk drug, Red, LSI	53.058
62	M/s. Tryst Chemicals, Plot No. L-47	Bulk drug, Red, SSI	29.744
63	M/s. Omtech Chemicals Plot No T-12	Chemical, Red, SSI	13.184
64	M/s. Shreenath Chemicals, Plot No. T-54, T-80	Chemical, Red, SSI	2.25
65	M/s. Salvi Chemicals Industries, Plot No. E-90, E-91, E-92, E-93, E-94, E-95	Chemical, Red, LSI	1,245.4
66	M/s. Sapna Detergent, Plot No. N-152/N-153	Chemical, Red, SSI	87.626
67	M/s. Sagitta P Ltd, Plot No. N-4	Chemical, Red, SSI	2.894
68	M/s. Surmount Chemicals (I) P Ltd, Plot No. N-41,	Chemical, Red, SSI	16.4
69	M/s. Shri Vinayak Chemex India Pvt. Ltd. Plot No. T-11	Chemical, Red, SSI	39.392
70	M/s. Sunil Great Processers, Plot No. N-47/3	Chemical, Red, SSI	295.191
71	M/s. Vardhman Dyestuff Pvt. Ltd, Plot No. N-33, T-34	Dyes, Red, SSI	16.882
72	M/s. Usha Fashion, Plot No. E-42	Textile, Red, SSI	70.905
73	M/s. Visen Industries Ltd Plot No. K-30, T-31, T-32	Chemical, Red, SSI	34.086
74	M/s. U. K. Aromatics & Chemicals Plot No. K-6/3	Chemical, Red, SSI	50.406
75	M/s. Ujwal Pharma P Ltd., Plot No. N-52	Chemical, Red, SSI	318.345
76	M/s. Vividh Global	Chemical, Red, SSI	155.152

	Inds Ltd Plot No. D-21/1		
77	M/s. Square Chemical Plot No. N-60	Chemical, Red, SSI	64.634
78	M/s. Shree Chakra Organics Pvt. Ltd Plot No. K-62	Chemical, Red, SSI	27.332
79	M/s. Arti Drugs, Plot No. E-105, 106, 119, 120	Bulk Drugs, Red, SSI	5.948
80	Omega Colurs Pvt. Ltd., Plot No.D-21/2/3	Crude pigment green. (Earlier mentioned as Dyes), Red, SSI	235.14
81	REMI Edelstahi Tubulars Ltd., (Old Name-RAJENDRA MECHANICAL INDL LTD.) Plot No.- N-2011 /1	Engineering, Red, LSI	10.612
82	Gini Silk Mills Ltd., Plot No.E-15	Textile, Red, LSI	154.832
83	Mayfair Bio tech (Ankit Petro) Plot No. L-12	Chemical, Red, SSI	115.118
84	Rediant Intermediates Plot No. N-224	Chemical, Red, SSI	198.243
85	Premier Intermediate Plot No. T-55, T-56	Bulk Drugs, Red, SSI	8.038
86	Maharashtra Organo Metalics Pvt. Ltd., Plot No.N-220 & 221	Chemical, Red, SSI	2.894
87	Ganesh Benzoplast Plot No.- D-21/2/2	Bulk Drug, Red, LSI	476.552
88	Zorba Dyechem Plot No.W-14	Dyes, Red, SSI	8.2
89	Prabhat Engineering Plot No. L-50	Engineering (Earlier it was mentioned as pickling),Red, LSI	20.258
90	Aarviam Dye Chem Plot No. L-9/2	Dyes, Red, SSI	11.416
91	Dhanlaxmi Steel Plot No.J-56	Engg., Red, SSI	7.556
92	Sarswati Steel (Shiv steel) Plot No.W-88/A	Engg., Red, SSI	14.792
93	Deep Industries Plot No.W-146	Engg., Red, SSI	3.858
94	SR Steel, Plot No.W-80/A	Engg., Red, SSI	13.344
95	J V Chem Industries, Plot No. N-111,112	Chemical, Red, SSI	40.998
96	Shriyans Chemical, Plot No.W-43	Chemical, Red, SSI	6.752
97	The Pharmaceutical Product of India Ltd.,	Bulk Drug, Red, LSI	63.186

	Plot No.N-24, N-25		
98	Union Park Chemicals Pvt. Ltd., Plot No.E-11	Dyes, Red, SSI	3.698
99	Lavino Kapoor Cottons Pvt. Ltd., Plot No.H-1	Cotton, Red, LSI	196.794
100	M/s. Tarapur Environment Protection Society CETP(25 MLD), Plot No. AM-29	Collection, storage and treatment of effluent from member industries, Red, LSI	9179.894

(iv) MIDC shall pay compensation of Rs. Two crores.

(v) The above amount of Environmental Compensation shall be paid by concerned Proponents/MIDC within three months with MPCB. If any amount is already deposited, the same shall be adjusted. If amount of has been deposited with any other authority, it shall be transferred to MPCB. If any Proponent has paid more amount than what has been determined above, the excess amount shall be refunded within one month.

(vi) The amount of compensation shall be utilised for remediation/restoration of environment, and healthcare activities of people in area under guidance and supervision of a Committee comprising CPCB, MPCB, a senior Mdical Expert nominated by Secretary, Medical and Health Department of Government of Maharashtra, National Institute of Oceanography and Collector, Palghar. MPCB and Collector shall be nodal authorites. Committee may opt for any other expert/authority, if finds necessary. Plan for remediation shall be finalized within three months and would be executed within one year thereafter.

(vii) Enforcement Directorate may examine the matter for appropriate action, in the light of PMLA 2002 as amended from time to time, particularly Amendment of 2012.

(viii) The Proponent(s) whose amount of compensation has been increased in the revised report dated 12.08.2021, would have liberty to request Committee to re-visit, if they have any apporiate ground for the same. If any such application is filed, Committee shall consider the same and take final decision within two months. We make it clear that if there is any alternation or modification in the amount, the same shall ultimately be governed by the direction contained in this judgment with regard to number of violations and enhancement of compensation accordingly, as we have directed.

(ix) A copy of this order shall be forwarded to Chief Secretary, State of Maharashtra, CPCB, MPCB, MoEF&CC and Enforcement Directorate by e-mail for compliance.

Adarsh Kumar Goel,
Chairperson

Sudhir Agarwal,
Judicial Member

Brijesh Sethi,
Judicial Member

Dr. Nagin Nanda,
Expert Member

January 24, 2022
Original Application No. 64/2016 (WZ)