

Item No. 02

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 16/2021

Vinit Kumar

Applicant

Versus

DSM Sugar Mills Ltd. & Ors.

Respondent(s)

Date of hearing: 11.02.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Mr. Rahul Choudhary, Advocate

Respondent(s): Mr. Pradeep Misra & Mr. Daleep Dhyani, Advocates. for UPPCB
Mr. Pinaki Misra, Senior Advocate with Ms. Jyoti Dastidar,
Advocate for DSM Sugar Mills Ltd

ORDER

1. Grievance in this application is against causing of pollution by DSM Sugar Mills Ltd., operating in Mansurpur, Muzzafarnagar, Uttar Pradesh in violation of environmental norms. Violations include untreated industrial effluent being discharged into the storm drain/nullah and Gram Sabha pond, and eventually into the river Kali, in violation of the Water (Prevention and Control of Pollution) Act, 1974 and Environment (Protection) Act, 1986 absence of safeguards in storing hazardous chemicals and scrap, not having flow meter for water discharged for irrigation, inadequate treatment of effluent, not having enclosures to reduce noise, exceeding consented capacity. On verification by statutory regulators, these violations were found in the report filed on

29.6.2021 which led to direction of this Tribunal for remedial action. Some of the violations have persisted even after directions of this Tribunal, as found in the report dated 31.12.2021. Compensation has been assessed for past violations. The applicant has raised objections to the adequacy of remedial action and compensation assessed while the PP claims compliance and disputed the report dated 31.12.2021. This is the precise scope of consideration in today's hearing. Details follow.

Procedural History

Orders dated 28.1.2021, report dated 29.6.2021 and consideration vide order dated 29.6.2021

2. Vide order dated 28.01.2021, the Tribunal sought a joint factual and action taken report from Central Pollution Control Board (CPCB) and the State PCB. The matter was thereafter considered on 18.08.2021 in the light of report of the State PCB dated 29.06.2021, confirming the violations, particularly discharge of untreated effluents in the drain and pond and not maintaining record of the waste generated and disposal. The Tribunal accordingly directed remedial action for compliance and also assessment and recovery of compensation for past violations on 'Polluter Pays' principle. The operative part of the order is reproduced below:-

“

3. *Accordingly, the State PCB has filed report dated 29.06.2021. The report is based on inspection conducted on 09.03.2021. At the time of inspection, samples were taken from appropriate locations and results of the samples were analysed as per Table 1 in the report which is reproduced below:*

***“Table 1. Analysis results of samples collected from Drain inside unit near bagasse storage, Drain behind unit near railway track, Downstream of Mansurpur drain, Drain near Kali River and Gram Sabha Pond After ETP.*”**

Parameters, mg/l except pH, Color in Hazen and Conductivity in $\mu\text{mho/cm}$							
Sample Analysis	pH	COD	BOD	TSS	TDS	Phosphate	Ammonia
<i>Drain located within unit's premises near bagasse storage</i>	7.0	1357	563	222	3744	5.37	-
<i>Drain behind unit near railway track</i>	7.3	737	307	92	3964	3.65	-
<i>Gram Sabha Pond after ETP</i>	5.4	1110	597	205	1708	1.45	2.3
<i>Downstream of Mansurpur drain at NH-58</i>	6.0	1210	571	382	1376	2.36	14
<i>Drain near Kali River</i>	7.2	704	254	420	1232	2.82	29
Notified standards for land disposal	5.5 to 8.5	250	100	100	2100	-	-

The above analysis results of the drain samples collected from various locations depict the following:

- The analysis results of the Gram Sabha pond show pH=5.4, COD=1110 mg/l, TSS=205 mg/l, TDS=1708 mg/l, and Ammonia=2.3 mg/l which indicates the characteristics of untreated/partially treated effluent and the presence of ammonia indicates presence of domestic sewage.
- The analysis results of the Downstream of Mansurpur drain at NH-58 show pH=6.0, COD=1210 mg/l, TSS=382 mg/l, TDS=1376 mg/l, and Ammonia=14 mg/l which indicates the characteristics of untreated/partially treated effluent and the presence of ammonia indicates presence of domestic sewage.
- The analysis results of the Drain near Kali River show pH=7.2, COD=704 mg/l, BOD=254 mg/l, TSS=420 mg/l, TDS=1232 mg/l, and Ammonia=29 mg/l which indicates the characteristics of domestic sewage.”

4. The conclusions and recommendations in the report are as follows:

5.0 CONCLUSION:

1. The unit has installed Ion Exchange technology for decoloring sugar syrups. 90% of Brine solution reject is recovered and rest 10% is being used to spray on Bagasse, however the same is not observed by the team on the day of inspection. The team observed a drain carrying dark colored effluent with high COD and BOD values at the backside of refinery near bagasse storage area.
2. The analysis of samples collected from drain located within premises of the unit near bagasse storage (pH-7.0, COD-1357 mg/l, BOD- 563 mg/l, TSS- 222 mg/l, TDS- 3744 mg/l), Gram Sabha Pond (acidic pH- 5.4, COD- 1110 mg/l, BOD- 597 mg/l, TSS- 205 mg/l

Ammonia- 2.3 mg/l) and Downstream of Mansurpur drain at NH-58 (pH- 6.0, COD- 1210 mg/l, BOD- 571 mg/l, TSS-382 mg/l, TDS-1376 mg/l, Ammonia-14) clearly indicate the characteristics of Industrial effluent mixed with domestic sewage. As per Daily Manufacturing Reports (DMRs) provided by the unit, the average actual crush rate (TCD) is 71% TCD (Avg. value as per Form R17(C) for the month of Oct-20, Nov-20, Dec-20, Jan-21, Feb-21 and Daily Manufacturing Report (DMR) for the month of Mar-21), which is more than consented capacity of 7000 TCD.

3. **The unit has not provided isolated area/spot for storage of scraps, empty drums of hazardous waste chemicals in the premises which was uncovered and not fenced, which is violation of the Authorization under the provisions of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 for storage and disposal of hazardous wastes.**
4. **Rotation speed of Oil and Skimmer seems too high, which fails to remove floating oil and grease from effluent.**
5. The analysis results of sample collected from the ETP outlet (pH- 7.4, COD-105 mg/l, BOD- 36 mg/l, TSS- 62 mg/l, TDS- 268 mg/l), Lagoon (pH- 8.0, COD- 35 mg/l, BOD-7.6 mg/l, TSS- 22 mg/l, TDS- 812 mg/l) and Irrigation pipeline (pH- 7.0, COD- 54 mg/l, BOD-14 mg/l, TSS- 32 mg/l, TDS- 748 mg/l) are complying w.r.t the notified standards for land disposal (pH- 5.5-8.5, COD- 250 mg/l, BOD- 100 mg/l, TSS- 100 mg/l, TDS- 2100 mg/l).
6. The unit has applied for renewal of CGWA permission on 16.04.2020 as previous is expired on 07.06.2020 for ground water abstraction from three existing bore-wells. The unit has provided application for renewal of NOC from Ground Water Department, Uttar Pradesh. The unit has abstracted 1637 m³/day fresh water from existing bore-well, which is under permitted value.
7. The analysis results of Groundwater samples, collected from bore-well-03, located inside the unit premises shows results which are within the acceptable limit of Drinking Water Standards (BIS) IS 10500:2012 for pH- 7.6, COD- BDL, Total hardness- 243 mg/l, Total alkalinity- 245 mg/l, SO₄ - 7 mg/l and Phosphate- 0.05 mg/l. The analysis for heavy metal are complying w.r.t the BIS standards.
8. The analysis results of sample collected from Hand-pump outside the unit premises shows that Fe is found 1.06 mg/l against the BIS except Standard of 0.3 mg/l.

9. ***The unit has not installed flow meter to measure amount of treated effluent used for irrigation purpose.***
10. *The unit has installed Sewage Treatment Plant (STP) having capacity of 120KLPD, which is based on MBBR technology for the treatment of domestic waste water generated from its residential colony having population around 200 to 250 people and the samples collected from inlet and outlet of STP for physico-chemical analysis. The analysis results of SIT outlet (pH- 7.8, COD-34 mg/l, BOD- 5.5 mg/l, TSS- 17 mg/l, TDS- 128 mg/l) are complying w.r.t the notified standards for land disposal*

6.0 RECOMMENDATIONS:

1. *The unit shall dismantle all the pipelines/ opening from the boundary wall of the unit towards the outside drain surrounding the mill.*
2. *The unit shall optimize the rotation speed of Oil and Skimmer for proper removal of floating oil and grease from effluent.*
3. *The unit shall stop discharge/seepage of untreated/partially treated effluent in the surrounding drain as well as in Gram Sabha Pond.*
4. *The unit shall maintain and limit its crushing operations as per the consented capacity of 7000 TCD.*
5. *The unit shall establish an isolated area/spot with well concreted surface, covered ceiling and proper fencing exclusively for the storage of scraps, empty drums of hazardous waste chemicals in the premises.*
6. *The unit shall maintain the proper documents w.r.t the scraps and wastes which is being handed over to the third party for the disposal and follow the specific conditions of Authorization under the provisions of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 for storage and disposal of hazardous wastes.*
7. *The unit shall install flow meter to measure amount of treated effluent used for irrigation purpose.*
8. *The unit shall maintain the MISS value and MLVSS/MLSS ratio in the aeration tank for proper microbial activity to reduce the organic load in the effluent. The unit shall analyze samples from aeration tank periodically to analyze the MLVSS/ MISS ratio.*

9. The unit shall maintain the acoustic enclosures to operate pumps in the unit premises to reduce the noise pollution.”

5. The applicant has filed his response to the observation that the source of effluent was domestic sewage. The submission of the applicant is reproduced below:

“xxxxxxxxx

It is submitted that the report has shifted the onus by stating that 'presence of ammonia indicates presence of domestic sewage'. This conclusion of the Joint Committee is faulty for following reasons:

- a) The finding that ammonia in the sample indicates characteristic of Domestic Sewage cannot be a correct conclusion **because Table 3 of the report clearly shows the presence of Ammonia in the ETP Inlet and ETP Outlet of the Unit.** The findings in Table 3 of the Report relates to samples collected from inlet, outlet and various units of ETP and treated effluent storage lagoon including outlet of irrigation pipeline as well as Gram Sabha Pond. Thus, it shows that the effluent discharged by the unit also contains Ammonia.
- b) That the Applicant had also approached this Hon'ble Tribunal in Vinit Kumar vs. Sir Shadilal Distillery & Chemical Works Pvt. Ltd. & Ors., Original Application No. 206 of 2020 against an adjacent distillery, wherein a report was sought from the UPPCB and CPCB as to the pollution caused by the Shadilal Distillery and Chemical Works. The Joint Report submitted by the UPPCB and CPCB dated 26.11.2020 has concluded that the Mansurpur drain had presence of industrial effluent and in the drain:

"The joint team collected water sample from the drain (downstream of the unit). The analysis result of the drain showed pH-11.4.5; BOD-1268 mg/l; COD-2392 mg/l; TSS-294 mg/l and TDS-1828 mg/l.

16. The high BOD & COD and low pH in the drain indicates contamination of the drain through industrial discharge. At the upstream side, two industries are located, one is Distillery (M/s Sir Shadi Lal) and other is Sugar mill (M/s Dhampur Sugar mill). During the visit, the drain was found having substantial amount of sludge also and effluent with high BOD/COD & low pH indicates that the industry intermittently discharging untreated effluent in this drain. The drain requires to be de-sludge at least 3 km from the unit in a scientific manner and cost of the de-sludging & it's disposal shall be borne by the industry."

(emphasis supplied)

That the report clearly indicated the contamination of the drain through industrial discharge. The high BOD/COD &

low pH indicates that the industry intermittently discharging untreated effluent in this drain. That UP PCB has never mentioned about the presence of domestic sewage in it earlier reports. Hence, shifting the onus on the domestic sewage is contrary to their own earlier findings. A copy of the Joint Report of the UP PCB and CPCB dated 26.11.2020 has been annexed as Annexure A-5 in Para 10 in the original application filed.

- iv. It is further submitted that after receiving complaints from the local people, the UP PCB once again conducted an inspection on 8.8.2021. The report says that effluent containing spent wash is discharged in the drain near Molasses tanks of DSM Sugar Mills Mansurpur Campus by Sir Shadilal Distillery & Chemicals Works Pvt. Ltd. The drain near Molasses tanks of DSM Sugar Mills ultimately leads to the Mansurpur Drain. Hence, UP PCB has taken samples from two drains i.e., drain near Molasses tanks of DSM Sugar Mills Mansurpur Campus and Mansurpur drain at NH 58. The results of the samples taken clearly shows the presence of dark brown colour effluent which is much higher than the notified standards, ultimately causing grave degradation of the Kali River which is a tributary to the Hindon River.

Sample Analysis	Colour	pH	COD (mg/l)	TSS (mg/l)
Drain near Molasses Tanks of DSM Sugar Mansurpur Campus	Dark Brown	4.9	28700	14600

Sample Analysis	Colour	pH	COD (mg/l)	TSS (mg/l)
Mansurpur Drain at NH58	Dark Brown	5.2	18400	9300

As the report clearly shows the presence of highly untreated dark coloured effluent in drains, hence, it is absolutely wrong to shift the onus on the presence of domestic sewage and state that higher level of pollutant in the drain and pond is because of domestic sewage.

A copy of the UP PCB report dated 9.08.2021 is annexed herewith as Annexure A-1.

- v. That the results of the analysis of the samples in Table 1 of the report dated 29.06.2021 are much higher than the notified standards. It is submitted that the inspection team has observed the drain near bagasse storage area carrying dark coloured effluent and the analysis result of sample collected are much higher which clearly shows that the unit has failed to comply with the notified standards and causing progressive environment degradation.

- vi. *That Gram Sabha Pond is located in an agricultural field and no sewage is discharged in the Gram Sabha pond. That the report has not provided any proof to show the transport of domestic sewage leading to Gram Sabha Pond. A copy of the Google earth map showing the transport of industrial effluent into the Gram Sabha Pond as well as the absence of any transport of domestic sewage to the Gram Sabha Pond is annexed herewith as **Annexure A-2**.*

Report has given finding that no storage area provided for hazardous waste:

- vii. *The report shows that the unit has failed to provide isolated area/spot for storage of scraps and empty drums of hazardous waste chemicals within the premises was uncovered and not fenced which was in violation of the authorization:*

"The unit has not provided isolated area/spot for storage of scraps, empty drums of hazardous waste chemicals in the premises which was uncovered and not fenced, which is in violation of the Authorization, however the location for storage of hazardous waste chemicals was made near to the bagasse storage area. As informed the unit is giving scraps and Hazardous wastes to third party (Bharat Oil & Waste Management Ltd.) for its disposal on quarterly basis."

Finding that no flow meter in the report:

- viii. *The report shows that the unit has not installed flow meter to measure the amount of treated effluents used for irrigation. It is submitted that the untreated black coloured effluent is directly discharged in the drain along the boundary which further reaches the Gram Sabha Pond and ultimately meets the Kali River. Table 1 of the report clearly shows that the unit has not complied with the notified standards and is persistently causing environmental degradation. Thus, this clearly shows that the improper and inadequate functioning of the ETP.*

Copy of the images showing the black colour effluent in the drain along the boundary and transportation of untreated effluent to the irrigation field taken by the Applicant is annexed herewith as Annexure A-3.

Report failed to highlight the pollution caused by bagasse particles:

- ix. *It is submitted that during the inspection of 08.03.2021, it has been observed that the height of the wall where the bagasse are stored were much shorter and also the green net was found to be destroyed. That the dispersement of the bagasse particles was causing serious pollution in the nearby locality and hence a complaint was lodged via Sameer App. Thus, the Regional Officer, Muzaffarnagar vide letter dated 10.03.2021 directed the unit to increase the height of the wall as well as*

to cover the area with green net to control the further causation of pollution. However, the compliance status of the same has not been highlighted in the report.

A copy of the letter dated 10.03.2021 from the Regional Officer, UP PCB to the DSM Sugar Mills is annexed herewith as Annexure A-4.

- x. That the UP PCB and the CPCB have not taken any strict action against the unit despite knowing that the unit is persistently causing environmental degradation.

4. Thus, in light of the above observations it is clear that the Respondent No. 1 is operating in complete violation of the law and earlier directions of this Hon'ble Tribunal. **The high BOD/COD level of the Mansurpur drain indicates that the industry discharging untreated effluent in this drain which certainly does not meet the notified standards.** Moreover, the UP PCB Report is contrary to their own earlier findings by stating the presence of domestic sewage in the drain. That Respondent No. 1 is causing persistent environment degradation by contributing in the deterioration of the health of the Kali River, which is a major tributary to the Hindon River. Thus, the UP PCB and the CPCB must take strict action against Respondent No. 1. The Hon'ble Tribunal may pass appropriate order considering above submissions of the Applicant.”

6. We have heard learned Counsel for the parties. It is clear that the unit is discharging untreated effluents in the surrounding drain and also in a water body resulting in pollution. It has failed to maintain record of waste generated and its disposal. The unit is liable to compensate for the past violations and also to take remedial action.

7. Though no formal notice was issued as the facts were directed to be verified by the statutory regulators, appearance has been entered on behalf of the industrial unit in question. Learned Counsel for the industrial unit submits that the unit has given its explanation before the joint Committee and its stand will be filed by tomorrow before this Tribunal. Let the same be done.

8. **In view of violations found, the unit has to take remedial action and for the past violations, the unit has to pay compensation on polluter pays principle to be used for restoration purposes. The remedial measures may be taken within one month from today which may be assessed by a joint Committee comprising of CPCB (represented by the level not below Scientist E), State PCB (represented by the level not below Chief Engineer/Regional Officer) and District Magistrate, Muzaffarnagar, UP. The CPCB and State PCB will be the nodal agency for coordination and compliance. The Committee may also assess compensation for the past violations. The joint Committee may meet within 15 days from today. The Committee will be at liberty to associate any**

other expert/institution and consider the viewpoint of the industrial unit also. The action taken report may be filed by the joint Committee to this Tribunal within two 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. The report may inter alia mention the status of compliance and mode of disposal of effluents, considering the circumstances and impact on river Kali. The standards prescribed need to take into account the inherent purpose of the drain - it is not waste water carriage system. There has to be remedial plan for restoration of drain and the water body and cost has to be borne by the polluters.

Joint Committee report dated 31.12.2021 and response of the applicant and the PP

3. In pursuance of above, the joint Committee has filed its report dated 31.12.2021 finding that some of the violations still continue, some have been partly remedied and some have been remedied and also assessing compensation for the past violations. The project proponent (PP) has filed response on 01.12.2021 followed by additional affidavit dated 09.02.2022 denying the violations and disputing liability for the past violations also. The applicant has filed his response to the joint Committee report on 09.02.2022 claiming that the report does not capture all the violations and compensation assessed being inadequate.

4. We have heard learned counsels for the applicant, State PCB and the PP and with their assistance gone through the report of the joint Committee and all other relevant documents on record. We proceed to deal with the matter in the light of the submissions made.

5. The joint Committee has mentioned the inspections conducted on 20.09.2021 and 17.11.2021 and deficiencies complied with, still not complied with and partially complied with. The Committee has also suggested compensation for the past violations apart from remedial action to ensure compliance. Relevant extracts from the report are as follows:-

“3.2 Compliance status of the last joint inspection report Recommendations:

S.No.	Recommendations	Compliance status (as on
1	The unit shall dismantle all pipelines/opening from the boundary wall of the unit towards the outside the drain surrounding the mill.	The Unit has dismantled the pipelines (from the boundary wall) towards the outside drain. However, the opening need to be completely cemented and sealed. The pipeline from the small tank coming towards the drain shall also be dismantled. Partially Complying
2	The unit shall optimize the rotation speed of Oil and Skimmer for proper removal of floating oil and grease from effluent.	The Unit has installed VFD and reduced the rotation speed for removal of oil and grease. Complying
3	The unit shall stop discharge/seepage of untreated/partially treated effluent in the surrounding drain as well as in Gram Sabha Pond.	The common drain during the visit was found dismantled and no effluent was found in it. Complying
4.	The unit shall maintain and limit its crushing operations as per the consented capacity of 7000 TCD.	As per the records, the Unit average actual crushing rate is 6513 TCD Which is within the 7000 TCD capacity. Complying
5.	The unit shall establish an isolated area/spot with well concreted surface, covered ceiling and proper fencing exclusively for the storage of scraps, empty drums of hazardous waste chemicals in the premises.	The Unit has to provide a separate isolated area/spot for the storage of HW chemicals containers/drums, scraps & other H.W material. The MS Scraps were lying openly in haphazard manner and is unsafe for the workers. Not Complying
6	The unit shall maintain the proper documents w.r.t the scraps wastes which is being handed over to the third party for the disposal and follow the specific conditions Authorization under the provisions of Hazardous and other waste (Movement) Rules, 2016 for storage and disposal of hazardous wastes.	The Unit provided Form-10 (manifest) dated 26.06.2020, 25.12.2020, 25.06.2021. The HW logbook record for the scraps and wastes was maintained. The Unit has membership with TSDF facility [BharatOil & Waste Management Ltd.] which is valid upto 10.12.2021 for the safe, legal & scientific disposal of HW. Complying.
7	The unit shall install flow meter to measure amount of treated effluent used for irrigation purpose.	The flow meter was installed at the irrigation pipeline. Complying

8	The unit shall maintain the MLSS value and MLVSS/MLSS ratio in the aeration tank for proper microbial activity to reduce the organic load in the effluent. The unit shall analyze the samples from aeration tank periodically to analyze the MLVSS/MLSS ratio.	The MLVSS in the aeration tank was 4133 mg/l and MLSS was 3242 mg/l. The MLVSS/MLSS Ratio is 0.78. Complying
9	The unit shall maintain the acoustic enclosures to operate pumps in the unit premises to reduce the noise pollution.	The Unit has not maintained the acoustic enclosure to operate pumps to reduce the noise pollution. Non – Complying

3.4 Assessment of Environmental Compensation (EC)

As per the CPCBs methodology for assessing Environmental Compensation (EC), following formula derived for calculation of Environmental Compensation

$$EC = PI \times N \times R \times S \times LF$$

Where,

EC is Environmental Compensation in rupees

PI= Pollution Index of industrial sector = 80 (for red category)

N = Number of days of violation took place

R = A factor in Rupees for EC = 250 (from 100 – 500)

S = Factor for scale of operation; = 1.5 (1.5 for large unit)

LF = Location factor = 1.0 (1 for less than 1 million population)

$$EC = 80 \times 250 \times 1.5 = \text{Rs. } 30,000/- \text{ per day}$$

Calculation of Environmental Compensation (EC) for Sugar Mill

➤ During the last joint visit of CPCB & UPPCB on **09.03.2021**, the Sugar unit was found complying with the effluent discharge standard at ETP, however, the drain (lying within the Sugar mill near baggase storage) showed BOD-563 mg/l, COD-1357 mg/l & TDS-3744 mg/l and drain behind the Sugar mill near railway track showed BOD-307 mg/l, COD-737 mg/l and TDS-3964 mg/l which shows the effluent having characteristic of untreated/partially treated industrial effluent.

➤ UPPCB collected effluent sample from the common drain (lying within the sugar mill premises) on **08.08.2021** and common drain result showed pH-4.9; COD-28,700 mg/l and TSS-14,600 mg/l indicating the characteristic of partially treated distillery effluent and during the visit of UPPCB team, the Sugar mill was closed due to off season.

➤ The Sugar mill closed its operation on **27.06.2021** in the last crushing season of 2020-21.

➤ The Sugar mill resumed its operation on **07.11.2021** during the current crushing season of 2021-22.

➤ During the visit on **17.11.2021**, the common drain was found dismantled and the ETP treated effluent showed compliance with the discharge standards. **However, the Sugar mill was found non-complying with the recommendations of the last joint inspection team such as dismantling of all the pipelines /opening towards the drain outside, establishment of isolated area/spot with well concreted surface, covered ceiling & proper fencing exclusively for the storage of scraps, empty drums of hazardous waste chemicals in the premises. The Mansurpur drain water quality, during the visit, shows contribution of industrial effluent.**

Hence, Environmental Compensation may be imposed to the Sugar mill from the date 09.03.2021 to 27.06.2021 (for 111 days) and also from 07.11.2021 to 17.11.2021 (11 days) for total 122 days.

$$EC = \text{Rs. } 30,000/- \times 122 \text{ days} = \text{Rs. } 36.60 \text{ Lakhs}$$

4.0 CONCLUSIONS

1. The Sugar mill started its operation on 07.11.2021 during the current crushing season (2021-22). The Sugar mill had closed their mill on 27.06.2021 during the last crushing season of 2020-21.
2. The Sugar mill was visited on 20.09.2021, however, the unit was found closed due to off season. The Unit was again visited on 17.11.2021 by the joint team of CPCB, UPPCB and ADM-Muzaffarnagar.
3. During the visit, the Unit was found complying with the effluent discharge standards. The Unit has dismantled the common drain (lying within the Sugar mill) which meets Mansurpur drain onward.
4. However, the Unit is non-complying with the some of the recommendations of the last joint team such as dismantling of pipeline/opening towards the outside drain, isolated covered area for the HW storage, maintenance of proper acoustic enclosure to reduce noise pollution.
5. The Mansurpur drain effluent analysis result on 17.11.2021 showed pH-5.6, COD-1284 mg/l; BOD-843 mg/l mg/1 and TSS - 157 mg/l and TDS-1376 mg/l indicating contribution of industrial discharge in Mansurpur drain.
6. An Environmental Compensation of Rs. 36.60 Lakhs may be imposed to the Sugar Unit from the date 09.03.2021 to 27.06.2021 (closed operation) and from 07.11.2021 (resumed operation) to 17.11.2021 for total 122 days @30,000/- per day.
7. For the Distillery Unit, a separate inspection report is being submitted in respect of another connected matter being O.A.

No. 206/2020, Vinit Kumar Vs Sir Shadi Lal Distillery & Chemical Works Pvt. Ltd. & Ors.

5.0 RECOMMENDATIONS

Based on the present joint visit on 17.11.2021, following are recommended for compliance:

For Sugar Mill (M/s DSM Sugar Mill)

1. The Sugar unit shall dismantle the pipeline from the boundary wall of the unit towards the outside the drain and completely seal the opening from the boundary wall of the unit.
2. The Sugar Unit shall construct pucca drain near the Gram Sabha Pond so that no effluent (treated/untreated) could reach the Gram Sabha Pond.
3. The Sugar Unit shall deposit Environmental Compensation of Rs.36.60 Lakhs for the period of 122 days excluding non-crushing days.
4. The Sugar unit shall establish an isolated area/spot with well concreted surface, covered ceiling and proper fencing exclusively for the storage of scraps, empty drums of hazardous waste chemicals in the premises.
5. The Sugar unit shall maintain the acoustic enclosures to operate pumps in the unit premises to reduce the noise pollution.
6. The Sugar Unit shall install flow-meter with totalizer in the raw-effluent transportation pipeline, within the unit premises, from where the raw-effluent is being pump to ETP and shall maintain the logbook for the same.
7. The Sugar Unit shall de-sludge the outside drain behind the boundary wall of their premises.
8. UPPCB shall conduct monthly monitoring of the Mansurpur drain for one-year period to assess the contamination of drain, if any, and shall take necessary action accordingly.

Stand of the PP

6. Reply of the PP is as follows:-

“7. It is submitted it is imperative that the Respondent No. 1 summarize the correct position of facts which are relevant for adjudication of the present proceedings for the kind consideration of this Hon'ble NGT: **Factual Background**

- (a) DSM Mansurpur Unit is a sugar manufacturing unit. The DSM Mansurpur unit is owned and operated by the Respondent No. 1 which is a publicly listed company with a known track record in the sugar manufacturing sector. DSM Mansurpur Unit has been operating pursuant to valid Consents To Operate issued by the UPPCB under the Water Act and the Air Act, respectively from time to time. The unit also has a valid authorization

dated 20.02.2017 issued under the provisions of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 for storage and disposal of hazardous wastes. The Respondent No. 1 maintains hygienic conditions inside its manufacturing plants at all times and a dense green belt has also been developed within the premises of its manufacturing units in order to maintain ambient air quality at the location of the units. Specifically, for the DSM Mansurpur Unit, the Respondent No. 1 has made sizeable investments to the tune of INR 2,73,76,856/- (Rupees Two Crore Seventy Three Lakhs Seventy Six Thousand Eight Hundred and Fifty Six Only) in ETP used in the unit from 2017-2021. Copy of the authorization issued to the DSM Mansurpur Unit under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 is enclosed as Annexure R-1. Details of the investments made by the Respondent No. 1 in upgradation of pollution control devices is enclosed as Annexure R-2.

- (b) At the outset, the answering Respondent No.1 submits that the Respondent No. 1's DSM Mansurpur Unit and Shadilal Distillery are two separate and distinct entities as detailed below:
- i. DSM Mansurpur Unit is located adjacent to, and in geographical proximity to, the Shadilal Distillery. DSM Mansurpur Unit was initially owned by Swamp Vegetable Products Industries Ltd and was popularly known by the name Sir Shadilal Sugar & General Mills (sugar unit).
 - ii. A Lease Deed was executed on 27.07.1989 between Swamp Vegetable Products Industries Ltd and Dhampur Sugar Mills Limited for lease of the Sir Shadilal Sugar & General Mills (sugar unit) to Dhampur. Later this leased entity was on 18.08.1992, incorporated under the name and the style of Mansurpur Sugar Mills Ltd.
 - iii. Vide order dated 01.04.2005 of the Hon'ble Allahabad High Court, Mansurpur Sugar Mills Ltd. was amalgated into Dhampur Sugar Mills Ltd. and a new unit with the name of DSM Sugar Mansurpur (a unit of Dhampur Sugar Mills Ltd.) came into existence.
 - iv. By this above explanation it was clear that Dhampur Sugar Mills Ltd. was only concerned with the sugar entity of Swamp Vegetable Products Industries Ltd located at Mansurpur or Mansurpur Sugar Mills Ltd. and it was never involved with any business of distillery unit.

- (c) **Although both the Respondent No. 1's DSM Mansurpur Unit and Shadilal Distillery have been distinct entities since 2005, both the entities share a common boundary wall. The DSM Mansurpur Unit and the Shadilal Distillery also have a common drain (hereinafter referred to as "Common Drain") which has been in use for many decades. The said drain originates from the Shadilal Distillery and runs adjacent to, inside and parallel to, the boundary wall near the molasses tank of the DSM Mansurpur Unit and is met by other local drains and further flows into the Gram Sabha Pond of Mansurpur and ultimately flows into River Kali.**
- (d) *It is submitted that DSM Mansurpur Unit does not discharge untreated industrial effluents or untreated domestic sewage into the Common Drain. Further, it is reiterated that the said drain originate from the Shadilal Distillery alone and thereafter receives discharge from multiple other local sewers/ drains as it makes it way to the Gram Sabha Pond and ultimately to River Kali. In addition to the water from the Common Drain, the Gram Sabha Pond also receives discharge from other local drains from within Mansurpur. Water from the Gram Sabha Pond eventually flows into the River Kali. It is the said Common Drain which originates from Shadilal Distillery that forms the basis of the Applicant's case in the 2017 NGT Matter and also against the Shadilal Distillery in the 2020 Shadilal Matter. Importantly, the Shadilal Distillery is operational throughout the year as it is a distillery unit, which is not the case for the DSM Mansurpur Unit which is a seasonal sugar manufacturing unit.*
- (e) *It is submitted that the DSM Mansurpur Unit is fully compliant with effluent handling and discharge norms prescribed under the Water Act. It is further submitted that the DSM Mansurpur Unit has a fully operational ETP for treatment of effluent from the sugar mill as well as a functional Sewage Treatment Plant ("STP") for treatment of domestic sewage. It is further submitted that the DSM Mansurpur Unit does not release any untreated effluent into the Common Drain or any water bodies and does not use any pipeline or drains for releasing untreated effluent/ waste into open drains or water bodies. **The industrial effluent generated by the DSM Mansurpur unit is transferred through pipelines to the ETP of the unit, where the effluent is treated for pollutants and effluents and then stored in a lagoon storage tank within the premises of the unit. The treated effluent stored in the lagoon storage tank is then released for irrigation of fields, as permitted by the CTO issued by the UPPCB under the Water Act. The effluents discharged from the ETP are released over land for irrigation purposes as per the Irrigation Management Plan of the DSM Mansurpur Unit, duly acknowledged by the relevant authorities, and not in any water body, drain or stream. Further,***

domestic waste from housing complexes within the DSM Mansurpur Unit is fully treated within the STP of the unit which then is partially used in factory gardens for watering and the remaining treated water is discharged into the local sewer nullah. The answering Respondent No. 1 craves leave to refer to and rely upon a detailed site map of its DSM Mansurpur Unit and the channel of the Common Drain as it originates from the Shadilal Distillery and makes its journey ultimately to River Kali which is enclosed as Annexure R-3.

- (f) It is further submitted that the effluent from the sugar mill of DSM Mansurpur Unit cannot be dark colored which appears to be distillery spentwash only. Distillery spent wash is the unwanted residual liquid waste generated during alcohol production by a distillery, here the Shadilal Distillery. The spentwash is produced as a result of fermentation and distillation of molasses. In the case of DSM Mansurpur Unit, the end product is sugar and molasses. There is no further distillation of molasses carried by the DSM Mansurpur Unit for production of alcohol and as such there can be no spentwash generated in the ordinary course of production of sugar by the answering Respondent No. 1. It is submitted that distillation of molasses for production of alcohol is carried out only by a distillery in its ordinary course and therefore spentwash is the residual liquid waste generated only by a distillery. In the present instance, it is the Shadilal Distillery that is generating spentwash in its ordinary course of manufacturing even though it is supposed to maintain ZLD norms mandatorily.
- (g) It is submitted that the aforesaid facts are corroborated by the various findings in the joint actions taken reports issued by the CPCB and UPPCB in the 3 matters, as is elaborated below:

Proceedings in the 2017 NGT Matter.

- (h) On 21.12.2017, the Applicant had initiated the 2017 NGT Matter before the Hon'ble NGT alleging that the Shadilal Distillery (joined as first respondent in the matter) and the Respondent No. 1 (joined as second respondent in the matter), were discharging untreated spentwash into the River Kali through nearby drains, in violation of the Zero Liquid Discharge ("ZLD") requirement. Allegations against the Shadilal Distillery were made by the Applicant by placing reliance on past incidents where the Shadilal Distillery was found to have not complied with the ZLD requirement, notably during inspections conducted by the UPPCB on the distillery on 25.08.2015 and 7.10.2016. The Applicant's allegations against the Respondent No. 1 herein/ DSM Mansurpur Unit were primarily on the strength of the allegation that the drain into which the Shadilal Distillery was found to be releasing spentwash also passed through the DSM Mansurpur Unit. Further, the Applicant alleged that spentwash from the DSM Mansurpur Unit were also being released into the said drain without being treated in the ETP of the unit.

- (i) On 13.03.2018, the Respondent No. 1 herein had submitted a reply to the original application in the 2017 NGT Matter. Vide its reply, the Respondent No. 1 herein had categorically submitted that the allegations pertaining to violation of ZLD requirements by the DSM Mansurpur Unit were erroneous since the ZLD requirement applied only to distilleries and not to sugar manufacturing units such as the DSM Mansurpur Unit. Further, the allegation that spentwash was being released by the DSM Mansurpur Unit was also erroneous since sugar mills do not generate spentwash. It is further submitted that the answering Respondent No 1 ' s sugar unit does not, and cannot, release spent wash which is not a by-product or waste from a sugar unit and can originate only from a distillery unit. Copy of the reply filed by the DSM Mansurpur Unit in the 2017 NGT Matter is enclosed as Annexure R-4.
- (j) On 09.10.2018, the Hon'ble NGT passed an order in the 2017 NGT Matter directing the CPCB and the UPPCB to conduct a joint inspection on the Shadilal Distillery and the DSM Mansurpur Unit. Pursuant to the said order, the team from CPCB and UPCB conducted a joint inspection on both the Shadilal Distillery and the DSM Mansurpur Unit on 23.10.2018 and returned their findings by way of an inspection report dated 31.10.2018. The following observations were made in the said joint inspection report in relation to the answering Respondent No. 1 herein:
- i. The DSM Mansurpur Unit had setup an ETP with a capacity of 1600 **KLD**. The unit had setup closed pipelines for transferring effluents from the unit to the ETP. At the time of inspection, the DSM Mansurpur Unit was not discharging any effluents outside its premises. However, no effluent sample testing could be undertaken since the DSM Mansurpur Unit was not operational at the time of inspection (Page 7 of the said inspection report).

A copy of the joint inspection report dated 31.10.2018 is enclosed herein Annexure R-5.

- (k) After considering the findings in the joint inspection report dated 31.10.2018 of the CPCB and the UPPCB, the Hon'ble NGT disposed of the 2017 NGT Matter vide order dated 27.05.2019 as reproduced below:

"3. On commencement of the crushing season of sugar industries, the CPCB and UPPCB shall jointly inspect the unit of DSM Sugar in the first week of November, 2019 and in case it is found to be non-compliant then the same shall be immediately closed.

4. If the units are closed on account of being noncompliant and on removal of the deficiencies, the unit shall start operation, only after order of the Tribunal."

The copy of the order dated 27.05.2019 passed by the Hon'ble NGT in the proceedings for the 2017 NGT Matter is enclosed herein as Annexure R-6.

- (l) Pursuant to the abovementioned order, a team from the CPCB and the UPPCB conducted an on-site inspection of the DSM Mansurpur Unit on 14.11.2019. During the said inspection, the Respondent No. 1 was found to have a functional ETP. It is further submitted that even in the present Original Application, the Applicant admits in paragraph 7 that "the UPPCB and CPCB carried out an inspection on 14.11.2019 however found no violation as the Effluent Treatment Plant on the premises on the unit was functioning at the time". Importantly, the Applicant did not challenge these findings, and the same have attained finality.

Proceedings in the 2020 Shadilal Matter

- (m) Thereafter, on 16.09.2020, the Applicant initiated the 2020 Shadilal Matter before the Hon'ble NGT raising identical allegations of water pollution of the River Kali, but only against the Shadilal Distillery. The said allegations were identical to the allegations raised by the Applicant in 2017 NGT Matter. It is submitted that the answering Respondent was not made a party to these proceedings.
- (n) On considering the controversy in the matter, the Hon'ble NGT vide order dated 24.09.2020 directed for a joint inspection of the Shadilal Distillery by the CPCB and the UPPCB. Pursuant to the Hon'ble NGT's directions, a team of the CPCB and the UPPCB inspected the Shadilal Distillery on 26.11.2020 and returned its findings by way of the Shadilal Joint Report. Notably, the following observations were made against the Shadilal Distillery after the said inspection which was conducted on 26.11.2020:

"During the joint visit, no effluent discharge from the unit premises was found, however, considering the presence of polluted /contaminated drain, 05 lagoons/tanks filled with untreated coloured effluent more than consented storage capacity, presence of flexible pipelines within the premises and past UPPCB visit report regarding untreated effluent discharge into the drain through flexible pipelines, it indicates that the

unit intermittently discharge their untreated effluent into the drain which poses a serious threat to the surrounding environment and River Hindon water quality."

(emphasis supplied)

Copy of the Order dated 24.09.2020 in the 2020 Shadilal Matter is enclosed as Annexure R-7. Copy of the Shadilal Joint Report is already annexed as Annexure A-5 in the Original Application.

- (o) Therefore, the Shadilal Joint Report had unequivocally found that it was the Shadilal Distillery that was discharging untreated coloured effluent into the Common Drain. Pertinently, the report took note that the UPPCB had received various complaints of water pollution and had conducted inspections on the Shadilal Distillery on 21.07.2020, 27.07.2020 and 28.07.2020. As found during the inspection on 21.07.2020, the Shadilal Joint Report categorically stated that the Shadilal Distillery was found discharging untreated coloured effluent through flexible pipelines into the Common Drain near the boundary of the DSM Mansurpur Unit. Please see below the extract of the findings of the Shadilal Joint Report pursuant to the on-site inspection on 21.07.2020:

"The distille unit was found discharging untreated coloured effluent through flexible pipelines into the drain near the boundary of DSM sugar mill. The sample of untreated effluent discharge through flexible pipelines was collected by UPPCB team and analysis results showed pH-4.9, COD-11,000 mg/l, TSS-16500 mg/l which were violating the permitted effluent discharge standards. The covered shed of the bio-composting yard was found totally damaged due to which bio-composting activity is not permissible during rainy season. The lagoons were found filled with spentwash from 60 to 80% of storage capacity."

(emphasis supplied)

- p) It is therefore clear that the lagoons forming part of Shadilal Distillery were found filled with spentwash which is a waste product generated during production of alcohol. In light of the finding of violation of the Water Act by the Shadilal Distillery, the Shadilal Joint Report had recommended an imposition of an environmental compensation of Rs.32.40 Lakhs on the Shadilal Distillery.

- q) *Despite the clear findings of fact in relation to discharge of untreated effluent/ spentwash by Shadilal Distillery on several occasions, nevertheless, the Applicant proceeded to file the third set of proceedings on identical allegations, this time solely against the answering Respondent No. 1.*
- r) *In fact, the answering Respondent seeks to place reliance upon the findings of the recent 2021 Shadilal Report prepared after the UPPCB conducted an inspection on the Shadilal Distillery on 08.08.2021 pursuant to public complaints received. The said report clearly recorded that the Shadilal Distillery was found to be discharging untreated waste into the Common Drain. The relevant translated extracts from inspection report annexed to the 2021 Shadilal Report have been reproduced hereinabove. It is submitted that the said report was filed by the UPPCB in the 2020 Shadilal Matter and were thereafter filed by the Applicant in the present proceedings.*

Proceedings in the present proceedings before the NGT

- s) *From a reading of the Original Application, it appears that the Applicant has filed the present Original Application on the strength of a singular reference to the DSM Mansurpur Unit made in the Shadilal Joint Report solely in connection with its geographical proximity to the Shadilal Distillery. The allegations in the Original Application are speculative inasmuch as mere geographical proximity and adjacent location of the DSM Mansurpur Unit to the Common Drain does not and cannot imply that the DSM Mansurpur Unit was the source of effluents in the said drain, especially when there are clear findings by the regulatory bodies from time to time that the source of the untreated effluents was the Shadilal Distillery. The contents of the Original Application are also contradicted by the findings of fact contained in 2017 NGT Matter, the 2020 Shadilal Matter and the 2021 Shadilal Report, and the said Original Application is liable to be dismissed on this ground alone.*
- t) *It is submitted that despite a clear finding in the 2020 Shadilal Matter and the 2021 Shadilal Report that the water pollution was caused by the Shadilal Distillery and without a single factual finding made against the DSM Mansurpur Unit, the Applicant has filed the present Original Application under reply. The Applicant has also alleged falsely that the answering Respondent No. 1 does not have a functional ETP which is contrary to law as laid down by the Hon'ble NGT and the Hon'ble Supreme Court. It is submitted that the Applicant has persisted in making false allegations against the DSM Mansurpur Unit despite having initiated and having complete knowledge of the proceedings in the 2017 NGT Matter and the 2020 Shadilal Matter that found Shadilal Distillery to be the polluting unit.*

- u) Pursuant to considering the issues in the Original Application under reply, the Hon'ble NGT vide order dated 28.01.2021 directed a joint inspection to be conducted by a team of CPCB and the UPPCB on the DSM Mansurpur Unit. The said inspection was completed on 09.03.2021, and the CPCB and UPPCB issued their Joint Inspection report on 29.06.2021 ("DSM Joint Report").
- v) The DSM Joint Report found that the DSM Mansurpur Unit had a fully functioning ETP which was operating as per the parameters prescribed by law. The DSM Joint Report also did not find the DSM Mansurpur Unit to be releasing any untreated effluents, as was alleged by the Applicant in the present proceedings. In this regard, the following observations were made in the DSM Joint Report:

"9. The unit was found operational with capacity of 7000 TCD and the ETP was also operational at the time of inspection.

.....

12. The unit is having ETP with treatment capacity of 840 KLD for treatment of effluent generated from various sections of sugar mill.

The ETP comprises of Oil skimmer & Bar screen chamber—► Receiving tank—► Oil & Grease trap—► Chemical mixing tank—► Equalization tank—► Primary Clarifier—► Aeration tank—► Secondary Clarifier—► Dual media filter—► Activated Carbon Filter—► Polishing tank—► Lagoon."

(emphasis supplied)

A copy of the DSM Joint Report filed by the UPPCB in the present proceedings is enclosed as Annexure R-8.

- w) It is further submitted that the DSM Joint Report made favourable findings in relation to the sample collected from the ETP outlet, analysis results of groundwater sample located inside the unit premises and installation of STP. The DSM Joint Report made recommendations in connection with certain minor non-compliances by the DSM Mansurpur Unit which were identified during the joint inspection by the CPCB and the UPPCB. It is pertinent to note that the Respondent No. 1 has submitted a status of compliance with the recommendations made in the DSM Joint Report, vide letters dated 29.07.2021 and 11.08.2021, and followed the same with a detailed representation dated 20.09.2021 addressed to the joint committee appointed by the Hon'ble NGT in terms of Order

dated 18.08.2021, highlighting the answering Respondent No.1's compliance with the recommendations in the DSM Joint Report. The latest compliance status has been shared with the UPPCB vide letter dated 17.11.2021 which demonstrate that the Respondent No.1 has complied with all recommendations. In fact, the Respondent No. 1 has since also obtained the NOCs from the Ground Water Department, Government of Uttar Pradesh towards allowable annual extraction of ground water as per rules. Copies of the letters dated 29.07.2021, 11.08.2021, 20.09.2021 and 17.11.2021 are enclosed herein as Annexure R-9(Colly.).

- x) Specifically, in relation to analysis results of samples collected by the UPPCB which findings are recorded in Table 1 of the DSM Joint Report, the answering Respondent No.1 submits as under:
- i. Samples were collected for analysis from 5 locations. These locations are the drain inside unit near bagasse storage, drain behind unit near railway track, downstream of Mansurpur drain near NH-58, drain near Kali River and Gram Sabha Pond after ETP.
 - ii. The drain inside unit near bagasse storage is the Common Drain mentioned hereinabove which originates from the Shadilal Distillery. The finding of COD, BOD in excess of notified standards/parameters is attributed solely to discharge of untreated dark colored effluent/spentwash originating from the Shadilal Distillery being a waste product in the process of production of alcohol. It is reiterated that dark colored effluent / spentwash cannot originate from DSM Mansurpur Unit as waste in the production of sugar and molasses. There is no pipeline or outlet from the Respondent No.1's unit to the drain near the bagasse storage and as such there could be no discharge of effluent from the DSM Mansurpur Unit.
 - iii. Similarly, in relation to the drain behind the railway track, it is the farther point in the channel of the Common Drain which originates from the Shadilal Distillery. It is reiterated that dark colored effluent / spentwash originates from the Shadilal Distillery.
 - iv. In relation to the Gram Sabha Pond after ETP, it is the further point in the channel of the Common Drain which originates from the Shadilal Distillery. In addition, there are other sources of untreated sewage, such as roadside market and residential colonies etc., from where untreated sewage accumulates at the said sample point. It is reiterated that the finding of COD, BOD in excess of notified standards/parameters is attributable to other sources of pollution and cannot be attributed to DSM Mansurpur Unit. It is therefore submitted that the DSM Joint Report therefore found presence of domestic sewage in its analysis of sample collected at this point. It is further submitted that from the DSM Mansurpur Unit there is a single pipeline

(with four outlet points) which distributes only treated effluent from the unit's ETP for use by farmers for irrigation purposes. Copy of the affidavits signed by local farmers confirming use of treated effluent for irrigation purposes shared with UPPCB are part of the representation dated 20.09.2021.

- v. *In relation to the sample collected from downstream of Mansurpur drain near NH-58, there are other sources of untreated sewage, such as shops, residential colonies etc., from where untreated sewage accumulates at the said sample point. It is reiterated that the finding of COD, BOD in excess of notified standards/parameters is attributable to other sources of pollution and cannot be attributed to DSM Mansurpur Unit. It is therefore submitted that the DSM Joint Report therefore found presence of domestic sewage in its analysis of sample collected at this point.*
- vi. *In relation to the sample collected from the drain near River Kali, there are other sources of untreated sewage, such as a village, shops, residential colonies etc., from where untreated sewage accumulates at the said sample point. It is reiterated that the finding of COD, BOD in excess of notified standards/parameters is attributable to other sources of pollution and cannot be attributed to DSM Mansurpur Unit. It is therefore submitted that the DSM Joint Report therefore found presence of domestic sewage in its analysis of sample collected at this point.*
- (y) *From the foregoing, it is clear that it is not the answering Respondent's DSM Mansurpur Unit that is discharging untreated effluent. In relation to domestic sewage generated from the DSM Mansurpur Unit, it is submitted that the same is treated at the functional STP and then discharged as per rules. It is further submitted that 80% of the treated water generated from the STP is utilized by the unit internally for its own use, including use in parking areas and greenbelts etc., and the remaining 20% is discharged after treatment as per rules.*
- (z) *It is further submitted that the answering Respondent has also obtained a videographic evidence of untreated spentwash/dark brown waste being discharged by Shadilal Distillery into the Common Drain which is adjacent and running parallel to the boundary wall of DSM Mansurpur Unit. This demonstrates that even as late as 31.08.2021, the Shadilal Distillery has continued to violate the ZLD/pollution norms applicable to distilleries. Screenshots taken from the videographic evidence, along with a CD-ROM of the video, are enclosed herein as Annexure R10.*
- (aa) *It is reiterated that the UPPCB had conducted an inspection on the Shadilal Distillery on 08.08.2021 pursuant to public complaints received. Pursuant to the said inspection, the UPPCB issued the 2021 Shadilal Report, wherein it clearly recorded that the Shadilal Distillery was found to be discharging untreated waste*

into the Common Drain. Notably, the DSM Mansurpur Unit, being a seasonal sugar unit, was not operational at time of the inspection since it was off-season. Hence, the UPPCB made an unequivocal finding that it was only the Shadilal Distillery which was discharging untreated effluents in the Common Drain. Copy of the 2021 Shadilal Report which was part of the Respondent No. 1 's representation dated 20.09.2021 addressed to UPPCB is enclosed herein as Annexure R-11.

8. It is therefore apparent from the factual background set out above that the DSM Mansurpur Unit has not discharged any untreated effluent as has been falsely alleged. It is apparent from a reading of the following reports issued by the CPCB and the UPPCB that it is the Shadilal Distillery that was releasing untreated effluent/spentwash in the Common Drain, namely (i) Joint inspection report dated 14.11.2019, (ii) Shadilal Joint Report dated 01.01.2021, (iii) DSM Joint Report dated 29.06.2021, and (iv) 2021 Shadilal Report dated 09.08.2021.
9. Despite clear and unequivocal findings that it was only the Shadilal Distillery that was releasing effluents in the Common Drain, the Applicant appears to persist in making wild, untenable and unsubstantiated allegations against the Respondent No. 1, which allegations are contradicted by the findings in the said reports. Further, with respect to the Applicant's allegations that the DSM Mansurpur Unit does not have a functional ETP, the same has been disproved by the contents of the DSM Joint Report.
10. It is further denied that the DSM Mansurpur Unit was causing air pollution that is affecting the lives of the individuals who live near the DSM Mansurpur Unit.
11. The detailed grounds on which the Applicant deserves to be dismissed with costs to the Applicant are discussed below:

The Applicant does not have a locus standi to approach the Hon'ble NGT.

12. The answering Respondent states that the Applicant has no locus standi to file the present Original Application as he has not demonstrated that he is a "person aggrieved" by the actions of the Respondent No. 1, as is required under Section 18(2)(e) of the National Green Tribunal Act, 2010 (hereinafter referred to as "NGT Act"). Even the Original Application does not make a single submission on the manner in which the Applicant has been affected by the actions of the Respondent No. 1, in order

to establish the locus standi of the Applicant as per Section 18(2)(e) of the NGT Act. The contents of the Original Application are speculative and a mere fishing and roving inquiry at the instance of the Applicant, even though joint inspection report dated 14.11.2019 and the Shadilal Joint Report makes a categorical and unequivocal finding that it was the Shadilal Distillery, and not DSM Mansurpur Unit, that was responsible for releasing effluents found in the Common Drain.

13. *It is further submitted that the Applicant has approached the Hon'ble NGT with a malafide intention to harass and bring disrepute to the Respondent No. 1 which is a publicly listed company. The Applicant was the original applicant in both the 2017 NGT Matter and the 2020 Shadilal Matter and had full knowledge of the proceedings and the subsequent events in the said matters. By virtue of being the original applicant, the Applicant is also bound to be aware that in three fact finding exercises undertaken by the UPPCB and the CPCB in the earlier proceedings before the Hon'ble NGT, not a single allegation of environment pollution was found valid against the Respondent No. 1. In fact, even though the nature of allegations in the 2020 Shadilal Matter being the same as in the 2017 NGT Matter, the Applicant himself did not include the Respondent No. 1 as a party in the 2020 Shadilal Matter, knowing fully well that pollution was caused at the instance of Shadilal Distillery and not by the Respondent No. 1 who also had a functional ETP as per rules. However, despite having full knowledge of the proceedings in the 2017 NGT Matter and the 2020 Shadilal Matter, the Applicant has attempted to misconstrue the 2017 NGT Matter and the findings in the Shadilal Joint Report, in order to craft a cause of action against the Respondent No. 1 and abuse the process of the Hon'ble NGT. The competence of the Applicant to approach the Hon'ble NGT is a relevant issue which needs to be addressed at the very threshold.*

The DSM Mansurpur Unit is fully compliant with effluent handling and discharge norms prescribed under the Water Act.

14. *It is reiterated that the DSM Mansurpur Unit is fully compliant with effluent handling and discharge norms prescribed under the Water Act. Contrary to the submissions made by the Applicant, the DSM Mansurpur Unit has a fully operational ETP as well as a functional STP. It is further submitted that all industrial effluent generated by the DSM Mansurpur unit is transferred through pipelines to the ETP of the unit, where the*

effluent is treated for pollutants and effluents and then stored in a lagoon storage tank within the premises of the unit. The treated effluent stored in the lagoon storage tank is then released for irrigation of fields, as permitted by the CTO issued by the UPPCB under the Water Act. The effluents discharged from the ETP are released over land for irrigation as per the Irrigation Management Plan of the DSM Mansurpur Unit, and not in any water body, drain or stream. Further, domestic waste from housing complexes within the DSM Mansurpur Unit is fully and continuously treated within the STP of the unit which then is partially used in factory gardens for watering and the remaining is discharged after treatment as per rules. Copies of the STP logbook maintained by DSM Mansurpur Unit is enclosed as Annexure R-12.

15. *It is further submitted that even during the proceedings held in the 2017 NGT Matter, the CPCB and the UPPCB had conducted an inspection of the DSM Mansurpur Unit on 14.11.2019 and had found the unit to be operating with a fully functioning ETP. No action was therefore contemplated vis-a-vis the answering Respondent No. 1. this fact is admitted by the Applicant.*

16. *Further, even the DSM Joint Report filed in the instant proceedings corroborates that even as on 09.03.2021 that the DSM Mansurpur Unit was operating with a fully functional ETP and it is therefore fully compliant with the effluent discharge norms under the Water Act. The following findings have been made in paragraphs 4, 5, 8, 9, 12, 15, 18, 19, 20 and 23 of the DSM Joint Report in connection with the DSM Mansurpur Unit:*
 - a) *The DSM Mansurpur Unit has an ETP with treatment capacity of 840 KLD for treatment of effluent generated from various sections of sugar mill. The ETP was operational at the time of inspection.*
 - b) *The DSM Mansurpur Unit has a valid CTO under Sections 21 and 22 of the Air Act, and Sections 25 and 26 of the Water Act, both of which are valid up to 31.12.2024.*
 - c) *The DSM Mansurpur Unit has a valid authorization under the provisions of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 for storage and disposal of hazardous wastes valid up to 19.02.2022.*
 - d) *At the time of inspection, the Mansurpur Unit was found to be compliant with respect to final treated effluent discharge volume norms.*
 - e) *The analysis results of sample collected from the ETP outlet of the DSM Mansurpur Unit shows that the treated effluent is being released as per the notified standards for land disposal.*

- f) *The treated effluent of the DSM Mansurpur Unit is being released from lagoon and irrigation pipeline as per the notified standards for irrigation purposes.*
- g) *The DSM Mansurpur Unit has maintained the ETP logbook for daily analysis of effluent parameter.*
- h) *The DSM Mansurpur Unit has installed Online Continuous Effluent Monitoring System ("OCEMS"). OCEMS is connected with the server of the CPCB and the UPPCB.*
- i) *Pursuant to its Irrigation Management Plan, the DSM Mansurpur Unit had provided affidavit copy of 09 farmers confirming use of treated effluent for irrigation in fields."*

7. Additional affidavit filed on 09.02.2022 by the PP in response to report dated 31.12.2021 is as follows:-

"5. I state that the afore-stated observations and findings contained in the latest Joint Report dated 31.12.2021 are erroneous and contrary to the record of the case, as is elaborated herein below:

- i. *The DSM Mansurpur Unit is having ETP with installed capacity of 1600 KLD for treatment of effluent generated from various sections of sugar mill. The ETP was found operational at the time of inspection [Points 3-4, Page 6].*
- ii. *The DSM Mansurpur Unit is having valid consent to operate under the Air (Prevention & Control of Pollution) Act, 1981 Water (Prevention & Control of Pollution) Act, 1974 for discharge, both valid up to 31/12/2024 [Point 6, Page 6].*
- iii. *The DSM Mansurpur Unit is also having valid authorization under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 for storage and disposal of hazardous wastes valid up to 19.02.2022 [Point 7, Page 6].*
- iv. *The DSM Mansurpur Unit has four sludge drying bed available for drying process sludge, which dried sludge is then mixed with fly ash and press mud to form bio-manure. Filter press is also installed as a mechanical sludge handling system. [Point 7, Page 5]*
- v. *The DSM Mansurpur Unit has installed flow-meter at main inlet pipeline at ETP, irrigation outlet of ETP and reuse / recycle pipeline to process [Point 10, Page 7].*
- vi. *The DSM Mansurpur Unit is complying with respect to final treated effluent discharge volume norms as the treated effluent generation i.e., 150 Liter/ton of cane*

crushed as against norms of 200 Litre/ ton of cane crushed [Point 11, Page 7].

- vii. *The joint inspection team had collected effluent samples from ETP inlet, ETP Aeration Tank, ETP outlet (after tertiary treatment) and Lagoon (for irrigation purpose) and found them to be compliant with the notified standards for surface water and for irrigation nurmose respectively [Points 10-14, Pages 7- 8]*
- viii. *The DSM Mansurpur Unit has setup environmental laboratory for the analysis of daily parameters, maintained the ETP log book for daily analysis of effluent parameter, has three bore-wells to meet the requirement of its fresh water consumption and also has permission to abstract 2000 m³/ day of groundwater from three existing bore-wells as per No Objection Certificate (NOC) from Central Ground Water Authority (CGWA) for ground water abstraction, which is valid up to 14.09.2026 [Points 15-16 & 18, Page 8]*
- ix. *The DSM Mansurpur Unit has installed Online Continuous Effluent Monitoring System [OCEMS], and the same is connected to the CPCB/SPCB server [Point 16, Page 8].*
- x. *The DSM Mansurpur Unit has installed Sewage Treatment Plant (STP) having capacity of 120KLPD, which is based on MBBR technology for the treatment of domestic waste water generated from its residential colony. The joint inspection team had collected sample from outlet of STP for physico-chemical analysis and found the same to be complying with the notified effluent discharge norms [Points 19-20, Pages 8-9].*
- xi. *Despite not utilizing the common drain for discharge of any effluent from the Unit, the said common drain (lying within the DSM Mansurpur Unit) has been dismantled upon the acquisition of area by Indian Railways / Government. [Conclusions, Point 3, Page 12].*

1. *I state that more importantly the latest Joint Report dated 31.12.2021 clearly and unequivocally records, once again, that the offending polluting unit is not the DSM Mansurpur Unit of the answering Respondent but rather the adjacent distillery unit of Sir Shadilal Distillery & Chemical Works Pvt. Ltd. (hereinafter referred to as "Shadilal Distillery"), with whom the DSM Mansurpur Unit shares a common boundary and a common drain. I state that the DSM Mansurpur Unit and Shadilal Distillery are two separate and distinct entities and the answering Respondent has no relation to the Shadilal Distillery whatsoever, except for the fact that the DSM Mansurpur Unit is located adjacent to, and in geographical proximity to, the Shadilal Distillery. For ease of reference, the answering Respondent has provided details of the findings contained in the various Joint Reports in relation to Shadilal Distillery being the polluting unit:*

S.No.	Details of relevant Report issued in O.A 206 of 2020 (Shadilal Matter)	Findings in relation to Shadilal Distillery using the common drain and being the polluting unit	References
1.	Joint Inspection Report dated 01.01.2021 in O.A 206 of 2020	<p>(a) During the joint visit of CPCB and UPPCB on 26.11.2020, the drain water quality results showed high BOD /COD value and low pH indicating industrial discharge resulting into contamination of the drain.</p> <p>(b) During the joint visit, no effluent discharge from the unit premises was found, however, considering the presence of polluted contaminated drain, 05 lagoons/tanks filled with untreated coloured effluent more than consented storage capacity, presence of flexible pipelines within the premises and past UPPCB visit report regarding untreated effluent discharge into the drain through flexible pipelines, it indicates that the unit intermittently discharge their untreated effluent into the drain</p>	See Report dated 01.07.2021 in OA 206 of 2020 at Pg 37 of present O.A. Internal Pg. 7, para 16 Internal Pg. 9, para 4.3 Internal Pg. 1, para 2.1 [Reiterated in Report dated 30.11.2021 in OA 206/2020 at internal Pg.2]
2.	UPPCB Report dated 09.08.2021 basis public complaints as filed in O.A 206 of 2020	<p>(a) While UPPCB found the DSM Mansurpur Unit to be closed due to off-season, it collected water samples from the common drain and the Mansurpur drain at NH58. Result of sample analysis indicated that the Shadilal Distillery unit bypasses its effluent, through the common drain located within the DSM Mansurpur Unit at night time. The common drain meets the Mansurpur drain which eventually meets River Kali (West).</p> <p>(b) Records presence of dark brown substance in the common drain, which is spent wash, and attributes the same to Shadilal Distillery.</p>	See Report dated 09.08.2021 in OA 206/2020 at Annex. R/11 at Pg. 409 of Addl. Reply. Pg. 418, 419 and 421
3.	Joint Committee Report dated 30.11.2021 in O.A 206 of	The Joint Report recorded that: (a) During the visit conducted by UPPCB on 08.08.2021 in relation to a public complaint, Shadilal Distillery	See Report dated 30.11.2021 in OA 206 of 2020, at internal Pg 13

2020		<p>Was found discharging coloured effluent, into the Mansurpur drain, through a common channel (located within the sugar mill premises).</p> <p>(b) During inspection on 20.09.2021, no effluent was found being discharged into the Mansurpur drain. However, the common drain/channel (lying with the sugar mill) was found having stagnant light coloured effluent, though the DSM Mansurpur Unit was closed.</p> <p>(c) Coloured effluent was found discharged/ disposed on the land adjacent to a tank near bio-compost yard which may pose threat to the groundwater quality.</p>	
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2. I state that even the latest Joint Report dated 31.12.2021 issued in the present matter bearing O.A. No. 16/2021 records specific findings vis-a-vis the role of Shadilal Distillery in discharging untreated effluent [Findings at Internal Pg. 10 of Joint Report, Pictures at Internal Pg. 15-16 of the Joint Report]. The key findings are summarized as under:

- i. Shadilal Distillery has still not treated the entire effluent and sludge from the lagoons.
- ii. Huge amount of coloured effluent was found collected/pooled at bio-compost yard (Picture 8, Page 16 of Joint Report) and on the earthen land adjacent to a tank (Picture 10, Page 16 of Joint Report).
- iii. Shadilal Distillery is required to treat the effluent and sludge stored in the lagoons and bio-compost yard in a scientific manner and thereafter dismantle the additional lagoons so as to restrict the storage
- iv. The common drain (lying within the DSM Mansurpur Unit) was found dismantled. This common drain was the only discharge route from where distillery could discharge their effluent into the Mansurpur drain which meets Kali River (West) onward.

8. I therefore state that the presence of sludge found and recorded in the common drain and recorded in the latest Joint Report dated 31.12.2021 is clearly attributable to Shadilal Distillery. I state that spent wash is a byproduct of a distillery and it is dark colored. Distillery spent wash is the unwanted residual liquid waste generated during alcohol production by a distillery, here the Shadilal Distillery. The spent wash is produced as a result of fermentation and distillation of molasses in distillery process. In the case of Respondent No. 1 's DSM Mansurpur Unit, the end product is sugar and molasses. There is no further distillation of molasses carried by

the DSM Mansurpur Unit for production of alcohol and as such there can be no spent wash generated in the ordinary course of production of sugar by the DSM Mansurpur Unit. The latest Joint Report dated 31.12.2021 clearly gives a finding at Para 3.3 Page 10, and at Page 13, that the Shadilal Distillery is required to treat the effluent and sludge stored in the lagoons and bio-compost yard in a scientific manner and thereafter dismantle the additional lagoons so as to restrict the storage. Further, the Shadilal Distillery is required to maintain zero liquid discharge mandatorily.

9. *I further state that the DSM Mansurpur Unit is a seasonal sugar mill and previous Joint Inspection Reports have clearly recorded that the Shadilal Distillery uses the common drain to discharge spent wash, and untreated effluent has been found in the drain, discharged by the said distillery, at the time when the DSM Mansurpur Unit was closed [Report dated 09.08.2021 in OA 206/2020 at Annex. R/11 at Pg. 409 of Addl. Reply, see Pg. 418, 419 and 421]. I state that the Respondent No. 1 has also produced photographic and videographic evidence of the Shadilal Distillery using the common drain to discharge untreated effluent. Hence, DSM Mansurpur Unit cannot be responsible for the discharge of the spent wash/ dark brown effluent waste/sludge under any circumstances whatsoever.*

10. *With regard to the three alleged partial/non-compliances on the part of the DSM Mansurpur Unit of the answering Respondent as contained at Page 9-10 and the recommendations contained in Paragraph 5.0 at Page 13 of the latest Joint Report dated 31.12.2021, I state as under:*

S.No.	Findings / Suggestions in Joint Report dated 31.12.2021	Compliance / Response by Respondent No. 1
1.	The unit shall dismantle the pipeline from the boundary wall of the unit towards the outside the drain and completely seal the opening from the boundary wall of the unit. The pipeline from the small tank coming towards the drain shall also be dismantled.	<p>All pipelines have been dismantled. There is no possibility of any leakage from the where pipes existed earlier. No photographic proof has been provided by the inspection team in support of these allegations. On the contrary, the answering Respondent is filing on-site photographs as on 09.02.2022 which demonstrate that pipelines towards the outside drain are dismantled. Copies of the photographs evidencing compliance is annexed as Annexure R-4.</p> <p>Further, the earlier recommendations in the Joint Inspection Report dated 09.03.2021 only required dismantling and did not require cementing / sealing of openings. While there was a boundary wall in existence, the same was demolished by the Indian Railways when the area was acquired as per law. As such, the sugar unit is in the process of reconstructing a boundary wall. The opening of the pipeline earlier lay within the boundary wall of the Respondent Unit,</p>

		<p>but now falls outside of the Unit post acquisition of the land by the Indian Railway. The Respondent Unit is in the process of erecting a new boundary wall to demarcate our restructured area. Nevertheless, the cementing work of the opening lying within its territory has also now been completed by Respondent No. 1.</p> <p>The small tank in question is a freshwater storage tank and is used for workers toilets. The tube well water in the small tank is being used in the toilet flushing and cleaning. The joint inspection team were satisfied with the answering Respondent's reply at the time of site visit because they had inspected this tank's inlet and outlet connections at the time. An option was also given to the joint inspection team to collect samples, but they did not feel the same was necessary. In any case, there is no open pipeline. All discharge is taken to the underground STP and the entire area is completely cemented and sealed. Supporting photograph is enclosed with Annexure R-4.</p>
2.	Construct Pucca Drain near Gram Sabha Pond.	<p>The drain in question is a common drain for the village, Shadilal Distillery, and not just DSM Mansurpur Unit. It is situated on Government land. The onus ought not to be upon the answering Respondent, especially since: (a) the Respondent Unit is not the polluting unit, and (b) all inspection reports have clearly found Shadilal Distillery to be the polluting unit discharging untreated effluents in the Gram Sabha Pond.</p>
3.	Deposit Environmental Compensation of Rs. 36.6 lakhs for 122 days.	<p>This is erroneous as</p> <p>(a) The polluting unit in question is the Shadilal Distillery and not the DSM Mansurpur Unit of the answering Respondent. As such, no Environmental Compensation ought to be imposed on the DSM Mansurpur Unit of the answering Respondent.</p> <p>(b) Without prejudice to the foregoing, the Joint Report dated 31.12.2021 has also computed the alleged Environmental Compensation incorrectly. It has wrongly recorded the closing date of 2020-21 sugar season as 27.06.2021 whereas the DSM Mansurpur Unit was closed from 27.05.2021 onwards. Therefore, the computation of EC is not only incorrect but it is also misconceived in the present</p>

		<p>circumstances. Copy of the final manufacturing report (RT 8C) for the year 2020-2021 evidencing the same is enclosed as Annexure R-5;</p> <p>(c) The answering Respondent No. 1 has already complied with recommendations issued by the UPPCB and CPCB from time to time, and is a fully compliant unit. This is also recorded at Pages 4-8 of the latest Joint Report dated 31.12.2021. As such, EC ought not to be imposed.</p>
4.	Establish isolated area for storage of hazardous wastes.	<p>The DSM Mansurpur Unit had an operational isolated area for storage of hazardous wastes in the form of its sports complex converted for this purpose. However, owing to construction of the nearby railway track (pursuant to that land being acquired by the Indian Railway/Government), the sports complex (storage area) stood demolished. The same is being rebuilt again and will be functional by 10.03.2022. It is for this reason that when the inspection was carried out, the joint inspection team found that some packaging materials were kept inside the storage area. In any case, the DSM Mansurpur Unit maintains proper record of hazardous waste and engages a third party (M/s Bharat Oil and Waste Management Ltd.) for the safe legal and scientific disposal of hazardous wastes. This fact has been recorded at Point 6, Page 9 of the Joint Report dated 31.12.2021.</p>
5.	Maintain acoustic enclosures to operate pumps so as to avoid noise pollution.	<p>The DSM Mansurpur Unit has a certificate issued by M/s Newcon Consultants and Laboratories [(recognized/accredited by the Pollution Control Board) who have been assigned the role of regularly collecting samples and analyzing the same from time to time at the Respondent No. I Unit] which verifies that the Unit is not causing any noise pollution. Copy of the latest noise level test report dated 31.01.2022 is enclosed as Annexure R-6.</p>
6.	Flow meter to be installed from the point where effluent is being pumped into ETP.	<p>Requisite ETP Outlet and ETP Inlet already have flow meters. This is also recorded in Para 10, Page 7 of the latest Joint Report dated 31.12.2021 Additional flow meter with a totaliser has been installed. Copies of latest photographs showing additional flow meter with a totaliser is enclosed as Annexure R-7.</p>

7.	De-sludge the outside drain.	Source of sludge is entirely the Shadilal Distillery. This fact is recorded at Pam 3.3, Page 10 of the Joint Report dated 31.12.2021. In these circumstances, the obligation to de-sludge should lie on the polluting unit in question. As far as DSM Mansurpur Unit's ETP sludge is concerned, it is using sludge filter press and sludge drying beds to remove it. After that, it is disposed in a scientific manner, compliant with all requirements. This aspect is also recorded at Point 7, Page 5 of the Joint Report dated 31.12.2021.
8.	The Gram Sabha Pond was not approachable.	On account of standing crops, the joint inspection team could not approach the pond, and water sample could not be taken by the joint team. The Respondent No. 1 cannot be made responsible for the same.

Response of the Applicant

8. The response of the applicant is as follows:-

“(i) The Joint Committee inspected the site on 17.11.2021 when unit was operational, however, they have not inspected Gram Sabha Pond stating that the same was not approachable. It is submitted that the drain coming from the unit of Respondent No. 1 is directly meeting the Gram Sabha pond and this drain further goes on to meet River Kali. One of the main concerns of the Applicant is with respect to the pollution of the Gram Sabha Pond. The Gram Sabha pond was very much accessible when the inspection was done and the explanation given by the Joint Committee to not inspect the pond cannot be accepted.

(ii) The Joint Committee in their report dated 29.06.2021 (at page 55 of the paper book) had inspected the Gram Sabha pond and found PH at 5.4, COD1110, BOD597, TSS205, Phosphate 1.45 and Ammonia 2.3. The result of the report shows that the water quality of the pond is much beyond the permissible limit and the same is coming from the drain from the premises of the unit of Respondent No. 1.

(iii) That the Joint Committee has also not collected samples from all the locations as it was done while submitting the report dated 29.06.2021. The committee has not inspected the drain located Gram Sabha pond and near Kali River.

(iv) The Joint Committee in this report on inspection of Respondent No, 1 M/s DSM Sugar has shifted all the burden with respect to pollution in Mansurpur drain which is behind DSM Sugar Mill on the Distillery unit which is adjacent to the Sugar Mill. It is pertinent to point out that in their report dated

29.06.2021 the committee on the pollution from DSM Sugar has shifted the burden on the pollution coming from the sewage.

(v) That the report has given the finding the drain behind the sugar mill premises near railway track was found having no effluent however, wet sludge was found in the drain. It is submitted that the finding of the committee cannot be relied as the Applicant has taken the photographs on 16.11.2021 and found that the drain was filled with fresh mud and also effluents are being discharged. The copy of the photographs dated 16.11.2021 showing fresh mud and effluent in the drain backside ETP of the sugar mill is annexed herewith and marked as ANNEXURE A/ 1.

(vi) That the Joint Committee has observed in their report dated 29.06.2021 that unit has not installed flow meter to measure amount of treated effluent. Further, in this report dated 31.12.2021 the Joint Committee has again recorded that the unit needs to install flow meter. The relevant observation is reproduced here for reference:

"3.1 (3) The ETP was found operational at the time of inspection. The ETP of the Unit is located outside the unit premises and effluent is transported through pipelines. The Unit needs to install flow-meter with totalizer in the pipeline within the premise from where raw effluent is being pump for ETP and maintain the logbook for the same."

(vii) That the committee has recorded in para 3.2 of the report about non-compliance by the unit with respect to the recommendations in the report dated 29.06.2021. The status of compliance with respect to dismantling of pipeline was found partially complied. The unit was also found non-compliant with respect to providing separate and isolated area for storage of hazardous waste, chemicals container/drums and scraps and other materials which were found lying openly.

(viii) That the calculation with respect to the compensation by the committee is also highly undervalued and is not considering the past violations and non-compliance by the Respondent No. 1. The committee has also not taken into consideration the cost of restoration of the area in the total calculation of the compensation to be paid by the Sugar Mill. It is submitted that the committee has calculated the compensation from 09.03.2021 to 27.06.2021 and 07.11.2021 to 17.11.2021. It is submitted that the total days for which the compensation has been imposed on Sugar Mill is starting from 09.03.2021 on which day the first inspection was done and non-compliance was found. However, it has to be considered that the unit was non-compliant even prior to the day when the Joint Committee inspected the premises. The Joint Committee has not looked into that though the drain was dismantled but there is no

record as to how the effluent are being discharged. Just having affidavits from some farmers about utilisation of effluent from the Sugar Mill cannot be absolved from the liability of proper discharge of the treated effluent.

- (ix) *That the Joint Committee has also failed to give any finding with respect to pollution from the bagasse particle from the Sugar Mill premises. The Hon'ble Tribunal in the order dated 18.08.2021 had recorded that the report failed to highlight the pollution caused by bagasse particle but still the Joint Committee has not given any finding about the pollution caused from the bagasse particle. It is submitted that improper handling of the bagasse is causing air pollution in nearby locality. The U.P. Pollution Control Board in letter dated 16.12.2021 to Respondent No. 1 directed the Sugar Mill to take certain steps to control air pollution however, no steps are taken by Respondent No. 1. The Pollution Control Board in the past also in letter dated 10.03.2021 (Annexure A/4 at page 100) directed the DSM Sugar to take certain steps to control the air pollution. The copy of the photographs showing the storage of bagasse in open and a letter dated 16.12.2021 is annexed herewith and marked as ANNEXURE A/2 (Colly).*
- (x) *The report has failed to look into the requirement of development of green belt by the Respondent No. 1 DSM Sugar. The Respondent No. 1 have no area green belt, but joint committee in this point is salient in this regarding.”*

Analysis, Finding and Direction

9. From the above, it is seen that the non-compliances reported by the joint Committee are in failure to establish appropriate mechanism for storage of scraps and hazardous waste chemicals, not maintaining acoustic enclosures to operate pumps in the unit premises to reduce the noise pollution, not dismantling pipelines from the boundary wall of the unit towards the drain by not cementing and sealing the area from where the pipelines have been dismantled. According to the applicant, water quality of the Gram Sabha pond is beyond norms for which the PP is accountable. The drain had wet sludge and fresh mud from the PP. Flow meter to measure the treated effluent has not been installed. There was no record of discharge of effluents, except some affidavits of the farmers nor was the quality of effluent discharge verified. The stand of the PP is

that it is fully compliant and only adjacent distillery unit with whom the PP shares a common boundary and common drain may be non-compliant. The two have no relation with each other, except geographical proximity.

10. On due consideration, we find that non-compliances recorded by the joint Committee stand established. The PP has not been able to rebut the finding about lack of proper storage of hazardous chemicals and scrap and not maintaining enclosures to reduce noise pollution. Further, while the pipelines have been dismantled, cementing and sealing has still not been done which has the potential of discharge of effluents into the drain. Deficiencies were found in the report of 29.6.2021 and it is not clear when the same were remedied to the extent of compliance recorded by the joint Committee. The plea of the PP that there was acquisition of land for the Railway Project which obstructed compliance cannot exonerate the PP who has 'absolute liability' for the violations.

11. It is further seen that if the conveyance system of influent to the ETP is assured by closed conduit, there should be no chance for disposal of effluents in the drain or to the pond in question. Except one duly consented outlet, multiple pipes/outlets observed on the boundary of the PP are not in any manner permissible. During crushing season, duly complied treated effluents are to be utilized as per well laid out monitorable irrigation plan which necessitates effluent utilization audit. Further, the molasses storage area is required to be well maintained to rule out its disposals into drain passing from the industrial premises. As per standards notified under EP Act, 1986 vide GSR No. 35(E) dated 14.01.2016 on sugar industries, final treated effluent discharge is restricted to 100 liter per tonne of cane crushed. Waste water from spray

pond overflow or cooling tower is to be restricted to 100 liter per tonne of cane crushed. Only single outlet point from the unit is allowed. The standards prescribe that during 'no demand period' for irrigation, the treated effluent is to be stored in seepage proof lined pond having 15 days holding capacity. PP failed to maintain single outlet and follow duly auditable irrigation plan to rule out any doubt about contaminating the pond. It cannot avoid liability to bear the cost of restoration of the drain as well as of the pond.

12. To sum up, the following clear-cut violations are established:

- i. Presence of multiple outlets against single consented outlet outside the premises.
- ii. Deliberate discharge, even if occasional, into the drain.
- iii. Contaminating the Gram Sabha pond.
- iv. Improper operation of acoustic enclosures and
- v. Unscientific management of hazardous waste/drums operating area as well as scattering of scrap.

13. Thus, we are also unable to accept that violations are only by the Distillery in the neighbourhood of the PP and not by the PP. The violations by the Distillery are being dealt with by a separate order. The PP has to be held accountable for its own violations. The consent conditions and subsequent directions issued by the State PCB need to be in consonance with each other. Non-compliances found need to be remedied and compliance verified by the joint Committee. With regard to the past violations, compensation assessed is inadequate as it does not take into account the financial capacity of the PP in terms of the judgements of the Hon'ble Supreme Court *inter alia* in *M.C Mehta & Anr*

*v. Union of India*¹, *Sterlite Industries (India) Ltd. v. Union of India* ² and *Goel Ganga Developers India Pvt. Ltd. v. UoI*³. For continuing violations for a long period, the deterrent element is also required to be incorporated. We note that the annual revenue receipt of the company is in the range of Rs. 3000-4000 crores and have almost equal amount of annual income.

14. Having regard to the entirety of the factual situation, we hold the PP liable to pay Rs. 5 crores on 'Polluter Pays' principle for restoration of the environment. The State PCB may also look into the adequacy of green belt, having regard to locations of the ETPs outside the premises of the PP and the retrofitting of acoustic enclosures at appropriate locations which have potential of pollution. The amount may be deposited with the CPCB within two months to be utilized as per action plan, execution of which may be overseen by the joint Committee in association with the PP and other stakeholders in the area. The plan may be an integrated plan in pursuance of present order and separate order passed today in *Execution Application No. 20/2021 in Original Application No. 206/2020, Vinit Kumar v. M/s Sir Shadilal Distillery & Chemical Works Pvt. Ltd. & Ors.*

15. The Status report inter-alia on the compliance as mentioned above as on 30.04.2022 may be filed by the joint Committee by 15.05.2022 before the Registrar General by email at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of

¹ (1987) 1 SCC 395

² (2013) 4 SCC 575

³ (2018) 18 SCC 257

Image PDF. If any further direction becomes necessary, the Registrar General may place the matter before the Bench.

Subject to above, the application is disposed of.

A copy of this order be forwarded to CPCB, State PCB and District Magistrate, Muzaffarnagar, UP by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. Nagin Nanda, EM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

February 11, 2022
Original Application No. 16/2021
AB