BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Appeal No.36/2020
(Earlier Appeal No. 66/2019 (WZ))

IN THE MATTER OF:

1. Larsen & Toubro Limited
Having its registered office at
L86T House, N.M. Marg
Ballard Estate, Mumbai - 400001
And its Manufacturing unit at
Hazira Manufacturing Complex
Post: Bhatha, Surat - -394510

……**Appellant**

Verses

1. Sanghi Industries Limited
10th Floor, Kataria Arcade, Off SG
Highway, Post Makarba,
Ahmedabad - 380051
Gujarat, India
conapanysecretary@sanghicement.com

2. Gujarat Pollution Control Board
Paryavaran Bhavan, Sector 10-A
Gandhinagar - 382010, Hujarat
Through its Regional Officer
Gpcb.gov.in
ee-haz-gpcb@gujarat.gov.in

3. State Level Environment Impact Assessment Authority
Paryavaran Bhavan, Sector 10-A
Gandhinagar - 382010, Gujarat
indianenvironment@org.in

4. State Government of Gujarat
Through its Chief Secretary Government of Gujarat,
Gandhinagar - 382020,
Gujarat, India.

5. Ministry of Defence
Through Secretary
Contact No.: 23019474
Email id:m.subbarayan@nic.in
Office Address:Room No 234 - South Block,
Ministry of Defence, New Delhi

….**Respondent (s)**

Counsel for Applicant(s):

Mr. Raj Panjwani, Ld. Senior Advocate with Mr. Mahip Singh, Advocate

Counsel for Respondent(s):
Mr. Vivek Chib, Ld. Senior Advocate with Mr. Anirudh Wadhwa and Mr. Aagney Sail for Sanghi Industries Ltd. (R - 1)
Mr. Maulik Nanavati, Ld. Advocate for SEIAA, Gujarat (R-3)
Mr. A.K. Prasad, Ld. Advocate for the Ministry of Defence.
Mr. Raj Kumar, Ld. Advocate for CPCB.

JUDGMENT

PRESENT:

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

Reserved on: 05th October, 2021
Pronounced and uploaded on: 25th February, 2022

BY HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER

1. Vide this judgment, we shall dispose of appeal filed under Section 16 of the National Green Tribunal Act, 2010 (in short "Act"), filed by the appellant challenging the Environment Clearance bearing no. SEIAA/ GUN EC /3 (b)/1155/ 2018, dated August 23rd 2019 ("Impugned EC') granted to the Respondent No.1 for its project of 2.0 Million Metric Tonne Per Annum (MTPA) Standalone Cement Grinding Unit with bulk and bag packing plant at Hazira Industrial Zone, Survey No.125/1, 125/2, 126/1+2+3. Village Shivrampur, Tal. Choryasi, District-Gujarat, Surat (hereinafter referred to as 'proposed unit).

2. The brief facts, as stated in its appeal, are that appellant is an Indian Multinational conglomerate and is one of the first company in the country to be given the responsibility of manufacturing sensitive and highly complicated weapons and defence equipment. It has a facility by

the name of Hazira Manufacturing Complex ***(HZMC)*** at Hazira Industrial Area, situated on a vast plot near Surat in Gujarat. The facility spreads over more than 750 acres of land with a 1.6 km long water front facility. It employs more than 5000 people directly and more than 12,500 people indirectly. The factory buildings cover over 34,500 sq. m. and the complex has a load-out quay on the banks of the river Tapi close to the Arabian Sea. This highly-automated facility, equipped with advanced robotic systems for a very high level of automation, has the capability to produce armoured systems such as India's Futuristic Infantry Combat Vehicles and Battle Tanks on a 'plate-to-platform' basis.

3. It is further submitted that since the manufacturing taking place in the HZMC was highly sophisticated and complex, the Ministry of Defence issued certain directions to the Appellant and the Department of Defence Production under the Ministry of Defence categorized the Appellant's unit as a Category 'A' establishment on 8th September 2014.

4. It is further submitted that the Respondent No.1 in 2018 applied for environmental clearance for setting up a greenfield project of 2.0 Million Tonnes Per Annum (MTPA) Standalone Grinding Unit with Bulk and Bag Packing Plant. The Respondent No.1 had initially shortlisted two sites, however, finalized the one at Hazira Industrial Zone, Survey N0.125/1, 125/2, 126/1+2+3, Village Shivrampur, Tal. Choryasi, District-Gujarat, Surat. The Respondent No.2 i.e. Gujarat Pollution Control Board (in short "GPCB") in its 469th meeting held on 04.01.2019, recommended the said project for grant of 'Terms of Reference (in short "ToR"). Terms of Reference for the EIA were approved after the study period from 01.10.2018 to 31.12.2018 for the Environment Impact Assessment Report (In short "EIA Report') and the detailed EIA Report was released on March 2019 with serious lapses and shortcomings.

There was a gross mismatch between the information submitted by the Respondent No.1 in Form-1 (as available online) and the EIA Report. Incorrect information was submitted with respect to fuel, pollution index, sewage treatment plant, land allotment, trucks deployment etc. The EIA Report had multiple errors and patent concealments of facts. The said report fails to provide land allotment for finished products storage loading and unloading area, product transfer area, parking area of used trucks, security office, canteen area and other amenities as are required by the Factories Act, 1948.

5. It is further submitted that thereafter on 22.03.2019, a public hearing was held for the proposed unit of the Respondent No.1 at the project site, headed by Dr. Dhaval Patel, Collector and District Magistrate, Surat. The Appellant raised several detailed queries during this public meeting such as methods and means which would be undertaken by Respondent No.1 to control the dust emission. It is further submitted that it reflected from the Minutes of the Public Hearing that the Respondent No.1 evaded half of the questions and gave incorrect assurances for the other half. The same has been tabulated below for ready reference:

“

S. No	***Concerned***	***Question***	**Response**
1	*Shri Bhagubhai Manibhai Patel (Sarpanch Shivrampur)* -	*What action will be taken for deposition of dust in cement plant on the road and surrounding area?* *At present 700-800 trailers are running on 20-30 feet road. There is only one approach road for L&T. Since 2 million tonnes materials will be brought in an year to this plant, there are no roads for the same. What does the Sanghi plant to do for that?*	No response Our requirement is of 2 million tons per annum and it will be transported once a month. So it will not create any

			effect.
2	*Avani Joshi, Environmental Engineer*	*As a fuel pet-coke, coal and lignite is mentioned, so out of that which fuel will be used more?*	We will use mix fuel on which there will be 10% pet-coke, 40% lignite and remaining will be imported coal.
3	*Written Representation by Hashmukh Vora*	*Disclose status of application made to Kakrapur Canal Department for obtaining 78 kld water?* *Disclose from where and in what way coal will be transported?* *Disclose the show-cause notices under Air and Water Act by GPCB to Sanghi existing plant at Kutch?*	No response

”

6. It is further submitted that as abundant precaution, the Appellant constantly wrote to the Respondent no. 3 i.e. State Environment Impact Assessment Authority (in short “SEIAA”) highlighting its concerns and the facts that the Appellant is manufacturing critical and sensitive defence equipments in the same vicinity. Vide its letters dated 05.04.2019 and 13.04.2019, the Appellant point out that transportation, loading, storage, transfer, operation and unloading of coal fly ash, clinker and slag will lead to substantial increase in process/non-process related fugitive emissions. The increase in PM exposure may lead to serious health hazards to people in close vicinity. However, there was no response to any of the communication, either from the SEIAA or the Respondent No.1.

7. It is further submitted that thereafter on 22.04.2019, the Appellant again wrote to SEIAA and highlighted the following points:

“a. *Air borne particles will disturb water quality. L&T have 6 open water reservoirs of 25000 KL, cement deposition on water will degrade the water quality;*

b. *Use of low quality grade lignite and pet coke will lead to high emission of Sox, NOx and PM;*

c. *Our developed green belt will be directly exposed to your fugitive emission and your green belt will take 5 years to come;*

d. *Provide data on the level of GLC of SPM, Sox and NOx, considering the downward wind direction;*

e. *The proposed project site is within 500 meters of forest area;*

f. *550 trucks movement in a day, provide your traffic plan since there is only one approach road;*

g. *Proposed Cement unit is in the middle of L&T defence manufacturing area;*

h. *As cement industry falls under Section 17 category of Highly Polluting Industries declared by CPCB, therefore, the plant should be set up somewhere else.”*

8. It is further submitted that relying on the erroneous EIA report and public hearing proceedings, the SEAC Gujarat vide their letter dated 15.07.2019 had recommended to the SEIAA to grant the EC for the Grinding Project on its meeting held on 12.06.2019. The SEIAA in its 253rd meeting dated 16.07.2019 decided to grant environmental clearance to the Respondent No.1. Thereafter, the impugned Environmental Clearance (EC) was granted to the Respondent No.1 on 23.08.2019.

9. It is further submitted that Appellant already has an establishment just 1 km away from the proposed unit of Respondent no. 1, which manufactures ultra-critical and sophisticated equipment comprising of Super Critical Turbine Generators, Nuclear Equipments and K9 Vajra self-propelled howitzer guns. The HZMC has the following manufacturing units spread across the vicinity which covers modular fabrication, defense, nuclear reactors, shipbuilding, power equipment etc:

"a. L&T Piping Centre
b. L&T MHPS Turbine Generators Pvt. Ltd
c. L&T MHPS Biolers Pvt. Ltd.
d. L&T Defence
e. L&T Special Steel and Heavy Forgings
f. L&T Heavy Engineering"

10. It is further submitted that defence installation of the Appellant is spread across a huge area. There is a private land/ village area in middle of these above-mentioned installations of the Appellant. The Respondent has purchased this private land and has acquired the impugned EC to establish the proposed cement manufacturing plant right in the middle of the establishment of the Appellant. It is further submitted that when the public hearing notice was published in the newspaper, the Appellant became aware of the proposed Grinding unit project of the Respondent No.1 which is only within 1 km radius of HZMC Project and is located in the midst of HZMC Project.

11. It is submitted that the EIA Report has failed to address the environmental norms relating to air, water and land that would be severely impacted by the establishment of the Respondent No.1 cement manufacturing unit. The relevant material and factors were not placed before the SEAC-Gujarat and the SEIAA along with Form-1 for meticulous environmental evaluation and audit. Further, both the SEAC-Gujarat and SEIAA could not have applied their mind on the environmental consequences and apparently recommended the grant of EC in a mechanical manner. The said EC, under these circumstances, is void as it is without jurisdiction.

GROUNDS OF APPEAL

12. The grounds of the present appeal are as under:

"a. Grant of the impugned EC is in violation of the NGT order dated July 10th, 2019 (as modified by order dated 23.08.2019) and is perverse, illegal and bad in law;

b. Respondent No.3 has acted beyond its authority by granting the Impugned EC in view of the NGT order dated July 10th 2019;

c. Respondent No.2 has failed to appreciate or consider the concerns raised by the Appellants by their letters which amounts to a violation of the principles of natural justice and equity;

d. The proposed grinding unit project is directly surrounded by various manufacturing units of the Appellant and its hazardous activities will directly impact the Appellants' HZMC Project which is executing key defence and nuclear projects of national importance;

e. It is trite law that when power is coupled with duty upon an authority which is vested with discretion then the authority has an obligation to use it in a manner that does not cause injustice to any party;"

F. Inconsistency in Form 1, EIA Report and Environment Clearance.

a. *It is submitted that in the EIA Report itself, as submitted by the Respondent No.1, it has been stated that the fuel to be used will be Lignite/ Petcoke/ Coal. However, during answering a question during a Public Hearing, the Respondent No.1 stated that the fuel to be used will be a mix of Lignite, coal and petcoke.*

b. *In light of the above it is to be noted that, the Impugned EC states that the fuel to be used will be Imported Coal only. Thereby, the Respondent No.1 has desperately failed to establish the type of coal to be used.*

c. *The Respondent No.1 has misled Respondent No.2 and 3 by falsely and malafidely stating in its Environmental Impact Assessment (ETA) report submitted in March 2019 that there are no mangroves within the radius of 10 kms;*

d. *Further, the fact that there is forest within 6-8 kms radius of the said unit has also been concealed by the Respondent No.1 while applying for the impugned environmental clearance. The area of reserved forest (as per land records-7/12 available online in Gujarati Language) is given as under:*

Reserved Forest Area is within 6-8 kms from Sanghi Cement site:

Revenue Survey Number	***Village***	***Sq. M.***

179A1 /A2	Hazira	862030
306A/1A/1/A2	Hazira	239575
434/A1/2	Hazira	477532
	Total	***1579137***

Therefore, it is submitted that 157 hectares of land is reserved forest area and the same has been concealed by the Respondent No.1, while applying for environmental clearance.

e. *The Environment Impact Assessment Report states that a Sewage Treatment Plant (STP) of 15 KLD capacity will be established. The Impugned Environment Clearance on the other hand directs for an STP of 78KLD capacity. The Respondent No.1 has not allocated any land for setting up a 78 KLD capacity STP.*

f. *In Part III, point 11 of the Form-1 submitted by the Respondent No.1, the Respondent No.1 has malafidely concealed the Pollution Index of Surat. The form asked to state that whether area on which the project is to be set up is already subjected to pollution or environmental damage (those where legal environmental standards are exceeded). The Respondent No.1 falsely answered it as "No", with an attempt to conceal the pollution standards of the Surat.*

g. *The conditions of the Impugned EC i.e. conditions no.91 itself states "submission of any false or misleading information or data which is material to the screening or scoping or appraisal or decision on the application makes this environmental clearance cancelled".*

G. Defense installation as per Official Secrets Act -prohibit area

a. *The Form -1 submitted by the Respondent No.1, as per the EIA Notification, 2006, contains false and misleading information in Part III, point No.7 wherein the Respondent No.1 has answered `No' in respect of Defence Installations within the aerial distance of 15 kms.*

b. *It is relevant to note here that on 09.02.2016, the State Government of Gujarat vide a Gazette Notification as required under the Officials Secrets Act, 1923, defined the boundaries of prohibited area with respect to the HZMC, the defence manufacturing establishment. The State Govt. in exercise of power conferred by sub-clause (d) of clause (8) of section 2 of the Official Secrets Act, 1923 declared the place of HZMC to be a prohibited place for the purposes of the said Act.*

c. *The area around which the said cement grinding plant is approved is a prohibited area. In terms of the Security Manual for Defence Installation, the Appellant's plant is a*

Category-A establishment and requires the highest level of security. The approval granted to the cement grinding plant of the Respondent No.1 is ultra vires to such notification of the Government of Gujarat. It is a threat to the sensitive defence manufacturing taking place at HZMC and should not have been granted clearance by the Respondent No.2&3.

H. Inordinate deployment of Truck

a. *That the present standalone grinding unit is set up to produce 2.0 million tonnes per annum (MTPA) cement. It is submitted that for manufacturing 2MTPA cement, more than two million tonnes of raw material is required including clinker, gypsum, fly ash, slag etc. It is relevant to point out that in accordance with the EIA Report, these raw materials would be required of around 3.50 MTPA (1.90 - Clinker, 0.10-Gypsum, 0.70-Fly-ash, 0.80-Slag) .*

b. *Further, as fuel, the EC specifies imported coal to be used as fuel, however, the EIA Report of the Respondent No.1 states that Coal/Lignite/Petcoke, sourced from Open Market would be used as fuel.*

c. *Furthermore, for running the said plant, water requirement also needs to be addressed. If the water is sourced from water tankers, then to cater the need of 278,000 litres water per day, at-least 55 tankers (5000 litres capacity) would be required every day to supply water.*

d. *The following per day requirement of the raw material and fuel be noted to appreciate the volume of material to be transported:*

S. No.	***Type***	***Per Day requirement (in tonnes)***	***Trucks required per Day (15 ton truck)***
1.	*Gypsum*	*303*	*20*
2.	*Slag*	*3030*	*202*
3.	*Fly-ash*	*1515*	*101*
4.	*Coal*	*252*	*17*
5.	*Water*	*278,000 litres*	*55 (5000 litres tankers)*
6.	*Cement produced*	*6060*	*404*
Total trucks deploying daily			***799***

e. *However, the Environmental Clearance granted to the Respondent No.1 by Respondent No.2 and 3, in its Point*

47 of the impugned EC, has only permitted 363 trucks for trip in and trip out. The Respondent No. 1 has failed to clarify that for transporting more than 4 million tonnes raw material and finished products in a year, how Respondent No 1 can achieve the same with 363 trucks trip in a day. It is also pertinent to note here that the only approach road is approximately 11 metres in width. The huge number of trucks carrying coal, fly-ash and cement, plying on the only road of 11m width will cause every kind of nuisance to the environment and to the local residents.

f. *In light of the above, it is submitted that the said project has not been planned properly and if it is allowed to set-up, it will cause severe amount of pollution of various kinds along with being a huge impediment for the local residents.*

I. Inadequate land allotment –

a. *That as per the EIA Report, the Respondent No.1 has procured 48,563 sq.mt land to develop the stand alone grinding unit. Out of 48,563 sq.mt area, approx. 32,063 sq.mt. will be utilized for proposed project and remaining 16,500 sq.mt. area will be kept for green belt development. Bifurcation of plot area is mentioned in the table below:*

S.No.	***Particulars***	***Total Area (in Ha)***	***Area***
1	*Production Plant*	*0.712*	*14.66%*
2	*Office and Lab area*	*0.022*	*0.46%*
3	*Raw Materials storage Area*	*0.632*	*13.01%*
4	*Solid Waste Storage Area*	*0.005*	*0.10%*
5	*Open Space*	*1.835*	*37.79%*
6	*Green Belt*	*1.650*	*33.98%*
	Total	***4.856***	***100.00%***

b. *EIA Report does not provide for essentials as mentioned in Factories Act - The EIA Report as submitted by the Respondent No.1 does not provide for finished products storage area, loading and unloading area, product transfer area, parking areas for the used trucks and other vehicles, canteen area, security office and other amenities. It may be noted that the land allocation as shown in the*

EIA Report of the Respondent No.1 allocates 0% land to any of the above facilities.

- ***c.*** *The Factories Act, 1948, under various provisions clearly lays down the mandate to have such amenities in any industrial project/factory and allocating no land for the same, puts the Respondent No.1 in violation of the same.*

- ***d.*** *As established above, at least 799 trucks are required to be deployed on daily basis. However, no land has been allotted for the parking of such enormous numbers of truck. It is foreseeable only, that in case this project sees the light of the day, these 799 trucks would be lined up the entire length of the only approach road, only to add up to the air pollution, noise pollution and traffic problems.*

J. 10.07.2019 NGT Order along with the modified order dated 23.08.2019

- ***a.*** *Notwithstanding the above, the Principal Bench, National Green Tribunal, passed an order on July 10th, 2019 for remedial action against polluting industries wherein, inter-alia, Surat was also identified as a Polluted Industrial Area (PIA) where the Comprehensive Environment Pollution Index (CEPI) score was 76.43. Therefore, it is apparent that Surat, where the proposed Grinding Unit Project was proposed to be set up, would be construed to fall in the `red' category due to its high pollution levels based on the CEPI score. The NGT order also inter alia held that no industrial activities or expansion can be allowed until it falls within the prescribed parameters.*

- ***b.*** *In any event, the Grinding Unit Project falls under the `red' category as per the categorization list released for industries in 2016, in view of the Pollution Index (PI) score and therefore, cannot be permitted to be set up and the Impugned EC could not have been granted by the Respondent No.2 and 3.*

- ***c.*** *The Respondent No.2 and 3 have failed to appreciate that the cement industry fall under the 17 (seventeen) categories of Highly Polluting Industries;*

- ***d.*** *The Respondent No.2 has overlooked the mandate it was required to carry under the NGT order dated July 10th 2019 and has proceeded to grant the Impugned EC in violation of the NGT Order dated 10th July 2019;*

- ***e.*** *The EIA report submitted by the Respondent No.1 submitted in March 2019 does not consider various crucial aspects such as air emission calculations and therefore, the grant of the impugned EC is merely on the basis of inadequate and piecemeal information.*

- ***f.*** *That the NGT vide its order dated 23.08.2019 modified their order dated 10.07.2019 to the extent that for 'red' and 'orange' category industries, it would be required to determine their viability on Precautionary Principle' by an appropriate mechanism. The Tribunal further stated that*

the reasons for doing so is that the areas per the data available is polluted, and `red' and `orange' category have higher potential for pollution. There is no absolute bar to such units being set up if they are found to be viable.

g. *It is however submitted that there is no such mechanism defined for ascertaining the polluting viability of the industries under `red' and `orange' category. The categorization of industries is attached as Annexure 20.*

h. *It is thus submitted that no pollution viability of the cement grinding plant has been assessed before granting the impugned EC. It is also to be noted that the relevant material and factors were not placed before the SEAC, Gujarat and the SEIAA along with Form-1, for meticulous environmental evaluation and audit.*

K. Irreparable damage to the sensitive manufacturing done by the Appellant

a. *The Appellant has defence manufacturing facilities of national importance of HZMC i.e. self-propelled guns, nuclear reactors, super critical turbine generators, in that area which require a clean and dust free environment and therefore, the Grinding Unit Project cannot be sanctioned for an area which comprises of facilities which are of national importance;*

b. *The cement and coal dust of the Grinding Unit Project will adversely impact the quality and performance of the Appellant HZMC project which is executing key defence and nuclear projects of national security. The number of trucks plying on daily basis carrying cement, fly-ash, coal would only pollute the air and the environment. Such environment is not suitable and would seriously hamper the quality of the sensitive defence manufacturing done by the Appellant.*

c. *It is also relevant to point out that the enormous amount of coal being utilized every day for the cement manufacturing plant would produce humongous amount of fly-ash.*

d. *The Respondent No.3 has failed to appreciate that the grant of the Impugned EC will affect the community at large due to the hazards caused by the loading and unloading of coal, fly-ash, cement and other hazardous materials in the Grinding Unit Project;*

L. Respondent no.1 has failed to establish the sources of water required

a. *The nearest source of Tapi river water for industries is Singanpur Wier (built on Tapi river) which is 18 Km away from Hazira Zone. The irrigation department is sanctioning water withdrawal from Signanpur weir at present. New industry has to take in-principle approval from Irrigation department, Gandhinagar for source of water as well as supply of water i.e. either use existing pipeline laid by present industries or plan to lay new pipelines with intake*

well. Sanghi has not produced any documents in this regard. In accordance with the Environment Impact Assessment: Report published in. March 2019, the total water requirement as stipulated by the Respondent No.1 is 278 cubic metre/day i.e. 2,78,000 litres per day. It is relevant to note here that the Respondent No.1 has failed to cite any such source from where such large volumes of water can be sourced. The Respondent No.1 in its EIA Report mentioned Local body and Irrigation Department as the sources of water.

b. *It may be noted that the Appellant is using surface water of Tapi River with due permission of the Irrigation department. The water however is being channeled through the pipeline laid down by Essar. The Respondent No.1 is 18kms away from the source of water. The Respondent No.1 has not specified how and from where the 278,000 litres water /day will be sourced. The Respondent No.1 has neither approval from the irrigation department nor any contract with Essar for using their pipeline.*

c. *It may be noted that if the water is brought through water tankers, then for providing 2,78,000 litres of water every day, at least 55 tankers of 5000 litres capacity each would be required to ploy daily to cater to the water needs of the project."*

Written submissions of appellant filed vide email dated 20.01.2021

13. In addition to the above submissions, appellant has filed its additional written submissions and submitted that this Tribunal vide its order dated 10.07.2019 identified Surat as a Polluted Industrial Area (PIA) where the Comprehensive Environmental Pollution Index (CEPI) score was 76.43 *and the* cement plants falls under ***red*** category industry due to its high pollution levels based on the CEPI score. It is further submitted that respondent no. 1 in its Pre-Feasibility Report (PFR) dated December 2018 deliberately fails to disclose the presence of Mangrove Forest, Wetland and migratory Birds in the project area.

14. It is further submitted that Respondent No.1 in its Form-1 states *"proposed project will be established on the land of 12 acres already in possession of SIL acquired for the purpose. The proposed land was*

agriculture land and will be converted for industrial purpose." Respondent No.1 in Form-1 categorically denied the presence of sensitive flora and fauna species within 15 kms of the proposed project location boundary. The same can be seen from Heading (iii) of Form-1 which runs as under:-

"Environmental sensitivity

S. No.	***Area***	***Name/ Identity***	***Aerial distance (within 15 kms) proposed project location boundary***
2.	*Areas which are important or sensitive for ecological reasons – wetlands, water courses or other water bodies, coastal zone, biospheres, mountains forests;*	*None*	*Arabian Sea @3.62 in west direction Tapi River @ 0.89 in East direction.*
3.	*Areas used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting, over wintering, migration.*	*None*	*No*

"

15. It is further submitted that despite there being a specific requirement under the Terms of Reference, the Respondent No.1 had intentionally failed to provide the environment sensitive information. The relevant part of the ToR is reproduced herein for ready reference:

> *"Terms of Reference (ToR) are prescribed as below for the EIA study to be done covering 10 km radial distance from the project boundary*
>
> *2. Project site specific details and site suitability with respect to siting criteria / guidelines. The site-specific details should include distance of the project site from the nearest (7) National park/ Wild life sanctuary / Biosphere Reserve / Conservation Reserve (8) Reserve Forest / Protected Forest (9) Any other eco-sensitive areas like wetland, mangroves, coral reefs, migratory route of wild animals, turtle nesting grounds etc."* ***(Annexure R2/1 of SEIAC (R.2) Reply dated 20.02.2020.***

16. It is further submitted that Respondent No.1 deliberately did not mention presence of Mangroves, which are 2 km from the project site. Thus, as a consequence environment impact evaluation of the same was not evaluated. The relevant part of the EIA is reproduced herein for ready reference:

"Table 1.1 – Environmental Settings (Valued Environmental Components)

S. No.	***Particulars***	***Description***	***Aerial Distance***
16.	*Mangrove*	*None within 10 kms radius of the study area*	---

Table 3.12 Land use statistics (10kms)

Source: Land use mapping and primary survey of the area					
%	Area sq. km.	Land cover	Land cover	Area sq. km.	%
41.42	133.92	Water body	Sea Water	100.65	31.13
			River/	33.27	10.29
13.91	44.97	Waste Land	Muddy	20.10	6.22
			Barren Land	24.87	7.69
31.68	102.43	Range Land	Scrub Land	42.57	13.17
			Mangroves	29.14	9.01
0.22	0.71	Forest	Reserved Forest	0.71	0.22

- *3.8.2 Summary and interpretation*

The area surrounding the project site is largely water body like sea water and River water are covering around 41.42% of the total study area. Settlement is covering around 5.97% of the total study area. Agriculture land is covering around 6.79% of the total study area. Range Land like Scrub land and Grass land are covering around 31.68 %. Proposed project will be set up in industrial zone, therefore. there will be no change in land use.

Summary and Conclusion

- *Respondent No.1 even in the summary and conclusion of the EIA concealed the environment sensitive information and the same is evidences from the extracts of the EIA as reproduced herein below:*

Table 11.1 – Environmental Sensitivity

Particulars	***Description***
Forest & wildlife Sanctuary / National Parks, Biosphere Reserves	*None in the 10 km radius*
Defence Installation	

- *The actual Forest Area is actually 1.7 sq. km as stated in the Appeal and is at a distance of 3 kms, however as per the Respondent No.1, there is no forest within 10 kms radius of the project site."*

17. Ld. Counsel for the Appellant has also referred to the following point in reply dated 18.12.2020 filed by Respondent No. 6-Intervener:

> *"Furthermore, the Respondent No.1 has also failed to disclose the wetlands in the area where the cement plant is being proposed to set up. That pursuant to the Wetland (Conservation and Management) Rules, 2010 which were subsequently modified in 2016, detailed procedure was laid out in order to set up an industry near a wetland. The said process was evaluated by the Hon'ble Supreme Court in Writ Petition(s) (Civil) No(s). 230/2001, M.K. Balakrishnan & Ors.vs Union of India & Ors. The Respondent No.1 has failed to demonstrate in its EIA or the presentation that it has acted in compliance with the said procedure or has taken any step-in order to conserve / protect the wetlands."*

It may be noted that the project site i.e. the Hazira Industrial Area is the city's (Surat) largest wetland and home to at least 68 species of Migratory Birds who spend four months of a year in the area. That Essar came out with an informative book 'High in the Sky at Hazira' wherein pictures of the migratory birds in the area have been published. The said book covers all aspects of Migratory Birds including field characteristics, distribution habits, call and nesting in the wetlands of Hazira.

It is further to be noted that the area of Hazira is approx. 168 sq. km and the Wetlands in the Hazira area are 33.5 sq. km. Moreover, according to the National Wetland Atlas, the area of Surat is 7657 sq.km. and the Wetlands in the district are around 86062 hectares (860.62 sq.km.), majority of which is in the Hazira area. The National Wetland

Atlas @Pg.110 can be accessed at: http://gujenvis.nic.in /PDF/National %20Wetland%20Atlas%2-%20Gujarat.pdf. 41.42% of the area surrounding the project site is wetland. The distance of the proposed cement plant is 3.62 from Arabian Sea and 0.89 from Tapi River, as stated by the Respondent No.1 himself in its Form-1.

Reference may be made to judgment of the Hon'ble Supreme Court in **M.K. Balakrishnan vs Union of India [2018 (2) SCJ 207]** wherein the Hon'ble Court dealt in detail with the Wetlands (Conservation and Management) Rules, 2017 and the principles of Rule 4 of Wetlands (Conservation and Management) Rules 2010

4.9 Submissions of the Appellant

- Environmental Sensitivity and details as mentioned above, not considered in the pre-feasibility report;
- Form-1 which accompanies the PFR again does not disclose the Environmental Sensitivity of the area and particulars thereof;
- The ToR issued by SIEAC, however, mandated the PP to consider the environmental sensitivity as mentioned in para 4.5 above;
- The EIA conveniently omits the presence and neglects to evaluate the adverse impact on mangroves, wetlands, forests and migratory birds. However, the presence thereof in a cursory manner is reflected in the tables. Possibly to avoid the charge of concealment.

5. INADEQUATE LAND ALLOTMENT DONE BY THE RESPONDENT NO.1

Table 2.7 of EIA Report– Land Breakup of Cement Grinding Unit

S. No.	***Particulars***	***Total Areas (in Ha)***	***Area***
1.	*Production Plant*	*0.712*	*14.66%*
2.	*Office and Lab Area*	*0.022*	*0.46%*
3.	*Raw Materials Storage*	*0.632*	*13.01%*
4.	*Solid Waste Storage*	*0.005*	*0.10%*
5.	*Open Space*	*1.835*	*37.79%*
6.	*Green Belt*	*1.650*	*33.98%*

7.	***Total***	***4.856***	***100.00%***

Table 2.2 of EIA Report– Raw Material Requirement*

S. No.	Material	Requirement per Annum – Million Ton Annum			
		100% OPC	100% PPC	100%PSC	Max per annum
1	Clinker-OPC	1.90			1.90
	Clinker-PPC		1.20		
	Clinker-PSC			1.10	
2	Gypsum	0.10	0.10	0.10	0.10
3	Fly Ash		0.70		0.70
4	Slag			0.80	0.80
	Lignite / Coal Petcoke			0.06	0.06
Total quantity					3.56

Refer EIA Para 1.3.6 – Total Cement

"Cement Produced per day = 2,000,000/330
= 6,060 Ton"

"b. The EIA Report as submitted by the Respondent No.1 does not provide for finished products storage area, loading and unloading area, product transfer area, parking areas for the used trucks and other vehicles, canteen area, security office and other amenities. It may be noted that the land allocation as shown in the EIA Report of the Respondent No.1 allocates 0% land to any of the above facilities.
c. The Factories Act, 1948, under various provisions clearly lays down the mandate to have such amenities in any industrial project/factory and allocating no land for the same, puts the Respondent No.1 in violation of the same."

Submissions of the Appellant

It is submitted that the storage and handling of 40,00,00,000 tons raw material / finished products is not feasible in a 12-acre plot of which 4 acres are to be kept for green belt, to provide storage of such huge quantities of raw material, finished product and parking space

of 40 trucks (as submitted by the Ld. Sr. Counsel for R.1 during the course of hearing) of 34 tonnes each, with loading and unloading facilities, to squeezed in an area as mentioned in Table 2.7 reproduced above.

6. INCORRECT INFORMATION ON TRANSPORTATION AND TRUCKS (ROAD)

EIA Report– Table 4.17

Incoming Raw Material Transportation							
S. No.	**Raw Material**		**Quantity TPA**	**Quantity TPD**	**Source**	**Mode of Transport**	**No. of Vehicles (Truck/ day)**
	Clinker				Captive	Sea	
	Additives like Gypsum, Fly Ash, Slag		2000000	6061	Purchase	Road	184
	Fuel		60000	182	Purchase	Road	
Total No. of Trucks deployed/day will be							**184**
Outgoing Product Transportation							
S. No.	**Product**	**Quantity Million TPA**	**Quantity TPA**	**Quantity TPD**	**Source**	**Mode of Transport**	**No. of Vehicles (Truck/day)**
1.	Cement	2.0	2000000	6061	Captive	Road/ Sea	179
Total No. of Trucks deployed / day will be							**363**

Impugned Environmental Clearance–Condition No.47:

- It is submitted that based on the incorrect numbers provided by the Respondent No.1 and the lack of environment impact evaluation of such huge numbers of truck plying on the kaccha road, the Impugned EC was issued which stated as under:

"47. Number of Trips (in & out) shall not exceed 363 nos. per day for transport of cement and raw material during the operations of the grinding unit."

• The project site is linked to the main road that National Highway (NH 53) by a panchayat road the distance of which is around 2.2kms.

• It is an admitted fact that the Panchayat road is a Kaccha Road.

EIA Report– Table 5.1 – Serial No.7

Table 5.1 Alternative for Technology and other Parameters

S. No.	***Site Particular***	***Alternative Option 1***	***Alternative Option 2***	***Remarks***
7.	*Road*	*Metallic Road*	*Kachha Road*	*The road is well furnished. Most of the raw material and fuel will be transported through ships (sea route)*

Submissions of the Appellant

It is submitted that the Panchayat Road which is merely 7.5m in width would not be able to handle 363 trucks of 34 tonnes taking two trips i.e. 726 trips per day.

A normal 34 tonner trucks measures 11 x 2.4 x 3.4m (approx.)
The EIA fails to take into consideration as to where the 363 trucks of 34 tonner each measuring 11 x 2.4 x 3.4 (approx.) would be parked before unloading / loading of raw material / finished product. The layout plan attached with the EIA does not address the issue of parking. The Appellant apprehends that the trucks would eventually be parked on the Panchayat Kachha road and possibly even on the National Highway which would result in severely hampering the normal movement of traffic and consequent pollution.
The impugned EC in pt.47 however stipulates that only 363 trips in and out trips can be undertaken. In other words, even as per the impugned EC, only half the number of trucks is permissible to be used for transport.
The EIA does not consider nor factor in the extent of pollution that will be caused by the movement of 726 [34] tonner trucks.

COASTAL TRANSPORTATION

7.1 It is pertinent to note that the Respondent has only made a cursory mention that it intends to use coastal mode of transportation for supplying raw material and taking finished product. However, no evaluation of the same has been done in the EIA.

• EIA Report- Para 2.6:

“2.6.3 - Sea / Coastal Transportation

The clinker shall be transported from Sanghipuram (IU) to Surat GU mainly by sea. Clinker shall be extracted from the Clinker load out silos at IU, transported to the captive Jetty of SIL by trucks and loaded on to the barges by grab cranes. Barges shall transport the Clinker to the ship stationed at high seas. At Surat, the Clinker shall be unloaded from the ship at nearest port and transported to the Surat GU site by trucks.”

• EIA Report - Para 4.3.2- Air Environment:

The company has planned Coastal Shipping of Cement, accordingly cement terminals have been developed at various locations. This will reduce the load on rail/road network /transportation.

7.2 Submissions of the Appellant

It is submitted that neither the PFR, nor the EIA or the impugned EC has taken into consideration the impact on the environment of transportation of raw material and finished product by Coastal mode of transportation.

8. MISREPRESENTATION OF DEVELOPING THE GREEN BELT

8.1 The Impugned Environmental Clearance “Green Belt and Other Plantation

66. Green Belt shall be developed in an area equal to 33% of the plant area with a native tree species in accordance with CPCB guidelines. The greenbelt shall inter alia cover the entire periphery of the plant;

67. The SIL shall develop green belt within the factory premises as per the CPCB guidelines, consisting of at least three rows of trees of local species on periphery. However, if the adequate land is not available within the premises, the SIL shall take up adequate plantation at suitable open land on road sides and other open areas in nearby locality or schools in consultation with the Gram Panchayat / GPCB and submit an action plan of planation for next three years to the GPCB”;

8.2 SIL Reply to Clarification sought vide letter dated 22.04.2019.

Sl. no	**Particular**	**Concerns/ Impacts**	**Reply**
1	Green Belt Damage	Our developed Green Belt will be	With adoption of the mitigation measures there will

		directly exposed to the Cement dust deposition and other process and non-process related fugitive emission. Besides, green belt development proposed by you will take 5 years to grow, which is very much longer time.	be fugitive emissions due to operations of the plant, which will not affect the developed green belt of L&T as envisaged. SIL will develop 33% Green Belt. However, belt on the periphery of the plant will be developed before commencement of the operations and green belt within the plant will be developed in shortest possible time. On the periphery, green belt width would be approximately in the range of 6 mtr. to 8 mtr. based on selection of species and location in the plant area. Greenbelt within the plant will be developed with width ranging from 20-30 mtrs. Equal distance between the layers will be maintained. Our green belt will help to control fugitive emission.

8. Submissions of the Appellant

It is submitted that the layout plan as submitted by SIL does not support the aforesaid statement of 6mtr x 8mts;

It is submitted that Clause 67 of the impugned EC negates the very purpose and object of providing 33% of the plant area and is consequently bad in law.

9. RESPONDENT NO.1 CONCEALED THAT THERE IS A DEFENCE INSTALLATION

9.1 It is the case of the Appellant that its Armoured Systems Complex (ASC) is a Defence Installation for the purposes of Environmental Sensitivity as is mentioned in Report 1 Form B.

9.2 In light of the above, it is to be considered whether the Appellants' Armoured Systems Complex (ASC) would qualify to be a Defence Installation for the purposes of Environmental Sensitivity as is mentioned in Report 1 Form B. The following points fall for consideration while examining whether the ASC qualifies for a Defence Installation:

a. Appellant's ASC is Indian Licensed Defence company (ILDC) categorised under having <u>Category A Licence</u> as per Security Manual and Industrial Licence policy of Ministry of Defence.

b. The Arms Licence no. DIL(A):09(2018) is issued on 18.06.2018 under Arms Act 1959 to Appellant's ASC for design, development and manufacturing of Firearms and Ammunitions.

c. Appellant's ASC is manufacturing full-fledged defence product i.e. K9 VAJRA-T Gun. These guns are being delivered directly at Army Store. It is pertinent to note that direct delivery of finished products from the Appellant's ASC to Army Store is at par with ordinance factories under the aegis of the government.

d. Apart from this, Appellant's ASC is also executing classified defence projects which cannot be disclosed because of national security.

e. These defence projects require stringent quality standards during production for their required performance. This is monitored by Directorate General of Quality Assurance (DGQA) at defence production site.

f. Appellant's Armoured Systems Complex (ASC) was inaugurated by the Hon'ble Prime Minister Narendra Modi in presence of the then Defence Minister Mrs. Nirmala Sitharaman on 19.01.2019.

g. Hon'ble Defence Minister Shri Rajnath Singh flagged-off the 51st K9 VAJRA-T Self-propelled Tracked Howitzers Gun from Appellant's Armoured System Complex (ASC) on 16.01.2020.

h. Many senior defence officials visited from Appellant's Armoured System Complex (ASC) inter-alia Chief of Army, Directorate General of Quality Assurance (DGQA) etc.

9.3 The Respondent No.1 has concealed the aforementioned facts from every document submitted to the relevant authorities and has secured the Impugned Environmental Clearance by concealing the same and not evaluating the effects/impact of the proposed cement plant on the same;

- Refer Form-1- Heading (iii)

"Environmental Sensitivity:

S. No.	**Area**	**Name/ Identity**	**Aerial distance (within 15 kms) proposed project location boundary**
7.	Defence Installation	No	No

Refer EIA - Report - Summary and Conclusion

9.4 The Respondent No.1 even in the summary and conclusion of the EIA concealed the sensitive information pertaining to the Defence installation of the Appellant in the area. That the same is evidences from the extracts of the EIA as reproduced herein below:

Table 11.1 – Environmental Sensitivity

Particulars	***Description***
Defence Installation	*None in the 10 km radius*

9.5 It is submitted in order to get clarity on whether the premise of the Appellant would qualify to be a Defence Installation for the purposes of Environmental Sensitivity as is mentioned in Report 1 Form B, the Hon'ble Tribunal impleaded the Ministry of Defence as Respondent No.4. The Ministry filed an Affidavit of Reply stating that the Appellants' Armoured Systems Complex (ASC) would not qualify to be a Defence Installation. The Appellant dispute the said erroneous stand taken by the Ministry and submit that the Appellants' Armoured Systems Complex (ASC) is a Defence Installation for the purposes of Environmental Sensitivity as is mentioned in Report 1 Form B.

9.6 Submissions of the Appellant

The Appellant submit that the Appellant is a Defence Installation and the same has been deliberately concealed by the Respondent No.1 while disclosing the environmental sensitivities in the area.

10. <u>SOURCE OF WATER NOT CONSIDERED</u>

10.1 It is extremely critical to highlight that the Respondent No.1 has stated in its EIA that it would require 278 kilo litres of water every day i.e. 278 kl/day. However, no information has been provided about the sourcing or procuring this huge amount of water.

10.2 The Respondent No.1 misrepresented to the authorities and in its filing before them wherein they stated that they would procure the said water from irrigation canals. The Respondent failed to mention that they do not have pipelines in place and no permission from the irrigation department as well for the same.

- <u>EIA Report Para 2.9.3 - Water requirement</u>

"2.9.3 Water

The water requirement in operation phase including industrial and domestic purposes is about 278 KLD out of which 200KLD is fresh. Water is required for equipment cooling, drinking, sanitation, dust suppression, Green Belt etc. Water shall be met through Local body / Irrigation Department, Surat."

- <u>Impugned Environmental Clearance –</u>

"28. Total water requirement for the project shall not exceed 278kl/day. SIL shall reuse 78kl/day of treated effluent for dust suppression and colling tower within premises and hence, fresh water requirement shall not exceed 200kl/day and it shall be met through irrigation department /

private tankers. Necessary permission from concern Authority in this regard shall be obtained.”

10.4 Submissions of the Appellant

It is submitted that till date the source of water and the requisite authorization has not been placed on record.

11. CATEGORISATION OF INDUSTRIAL ZONES AS PER SURAT DEVELOPMENT AUTHORITY (SUDA)

11.1 It is submitted that on 12.08.1996 Hazira Industrial Area was notified vide the GIDC Notification under Section 2(g) Gujarat Industrial Development Act, 1962.

It is further submitted that Surat at that point was about 50kms way from Hazira Industrial Area;

11.2 SUDA thereafter has been notifying the Development Plans. So far it has published the following development plans:

- Development Plans 1986
- Development Plan 2004
- Development Plan 2035

11.3 It is further submitted that it is highly pertinent to note that in the area surrounding the proposed cement plant site, the following major industries are functioning:

SN	Name of Industry	Year of Establishment
1	Reliance	1991
2	NTPC	1992
3	KRIBHCO	1983
4	GAIL	1987
5	ONGC	1984
6	CAIRN India	2002
7	Adani Wilmar	2017
8	ESSAR Steel	1989
9	Adani Port	2010
10	Hazira LNG & Port	2005
11	ABG Cement	2012 (Closed since 3-4 years)
12	ULTRATECH	Approx 1980 to 1985
13	L&T Heavy	1983
14	Ambuja Cement	1989

Most of the aforementioned industries were established prior to the Wetlands Rule, 2010 and the categorization of industrial zones by SUDA.

11.4 It is submitted that respondent no.6 in his reply has stated that on 12.10.2017 the Government of Gujarat issued a notification laying down the Comprehensive General Development Control Regulations, 2017 (CGDCR).

It may be noted that Section C of the CGDCR, 2017 in its heading 7, provides for General Planning and Development Regulations, wherein para 7.1 provides Zone Classification wherein different zones and uses have been conceptualized in Table 7.1.1, reproduced herein below for ready reference:

Sr. No.	Use Zone / Use as per Development Plan of Competent Authority	As Mentioned	
		Conceptualized Use Zone	**Code**
16.	Industrial Zone General, Industrial Zone, Non-Obnoxious & Non-Hazardous Industrial Zone, Light Industrial Zone, Industrial-A, GIDC.	Industrial Zone- 1	IZ1
20.	Heavy Industrial Zone, Industrial Zone- Special, Obnoxious & Hazardous Industrial Zone	Industrial Zone - 5	IZ5

11.5 Furthermore, the said regulations provide details on the different category of industrial zones and the work permitted and prohibited in the said industrial zones.

"7.2.9 Industrial Zone - 1, 2, 3, 4 (IZ1, IZ2, IZ3, IZ4, IZ7)

This zone is intended for the development of all types of light industries that include small scale factories, transport terminals, etc. except hazardous industries. Other non-hazardous uses like residential buildings for industrial workers, commercial and institutional buildings supporting the existing industries are also permitted subject to relevant regulations.

7.2.10 Industrial Zone – 5, 6 (IZ5, IZ6)

This zone is intended for the development of obnoxious and high hazard industries including storage of inflammable goods and petrol, LPG, CNG and eco-friendly fuel Fuelling stations. The residential dwellings in this zone are only for industrial workers having maximum built up area up to 50 sq. mts. per dwelling unit up to a maximum of 20% of the total utilized FSI of the plot area or subject to the relevant regulations. Dumping of solid industrial wastes is permitted subject to N.O.C. and conditions laid down by Pollution Control Board."

11.6 Further, in 2017, SUDA publishes the General Development Control Regulations of the Revised Draft Plan of SUDA Regulation 31 of the same specifies the Zoning and Use Provisions, wherein the "Use Zone Table" prescribes as under:

Sr. No.	Zone	Type of development for which the zone is primarily intended	Type of development which may be permitted by Competent Authority	Type of development, which may not be permitted.
4	General Industrial Zone	All Industries except obnoxious and hazardous industries as mentioned in Appendix- A. All uses mentioned in col. 3 of zone at Sr. No 3 except col. 3of zone at Sr.no.- 1.Hotel, Restaurant, canteen, bank, business building Development activities related to tourism sponsored/ recommended by tourism corporation of Government.	a) Storage of inflammable good such as petrol, diesel, crude oil and kerosene. Residential dwelling only for industrial workers and other public utility service staff working within the industrial premises, querying of gravel, sand, clay and stone. Dumping of solid industrial wastes (subject to N.O.C. and conditions laid down by Pollution Control Board). b) All uses mentioned in Column (4) of zone at Sr. No. 1	Obnoxious and hazardous industries, mental hospital, hospital for infectious & contiguous diseases, jail, dwelling except mentioned in Col. 4 of this zone.

5	Obnoxious and hazardous industrial zone	All obnoxious and hazardous industries as mentioned in Appendix A, storage of inflammable goods.	Residential dwelling only for industrial Worker and other public utility service buildings for staff working within the industrial premises, shops, restaurants, canteen and bank, business building. Quarrying of gravel, sand clay and stone. Dumping of solid industrial wastes, garbage disposal, treatment plant for solid or liquid industrial/ domestic and hospital wastage (subject to N.O.C. and conditions laid down by Pollution Control Board)	Residential dwelling except mentioned in Col. 4 of this zone. Hospital or infectious and contagious diseases, mental hospital, jails.

11.7 It is submitted that Appendix C of the said Regulation gives "list of obnoxious and hazardous industries" wherein Cement is one of the obnoxious and hazardous industry.

Sr. No.	Industrial Groups	Noxious Characteristics
X	Manufacture of Cement & Refractories: 1. Portland cement. 2. Refractories. 3. Thamslling vitreous. 4. Glass furnaces of 4 tonne capacity and above. 5. Mechanical stone crushing Fertilizers: Nitrogenous and phosphatic manufacturing on a large scale except mixing of fertilizer for compounding.	Dust Smoke & Solid wastes Smoke and furnace Fire. Dust, Slurry, Noise. Fire, noise, atmosphere pollution due to obnoxious gases fair and dust.

11.8 It is submitted that on 08.10.2020 SUDA published the Sanctioned Development Plan, 2035 showing various categories including General Industrial Zone and Obnoxious / Hazardous Industrial Zone (Pink – General Industrial Zone and Dark Pink with Textures – Obnoxious / Hazardous Industrial Zone). The land where the Respondent no.1 intends to set-up the proposed cement project falls under the General Industrial Zone.

11.9 Moreover, the concerned authorities at Surat Development Authority have vide their Certificate dated 11.01.2021 confirmed and certified that the area of the proposed cement plant of the Respondent No.1 falls under General Industrial Zone and not Obnoxious and Hazardous Industrial Zone. The site for the cement plant of Respondent No.1 is falling at Revenue / Block Survey No.125 and 126. The Zoning Certificate for Survey No.125 and 126 along with the translation is annexed as **Document-A.**

11.10 The Tribunal on 10.07.2019 in "*Original Application No. 1038/2018, News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels"* noted the CEPI index for Surat at S.No.26 at 76.43 and in para 28 directed as under:

> *"28.....No further industrial activities or expansion be allowed with regard to 'red' and 'orange' category units till the said areas are brought within the prescribed parameters or till carrying capacity of area is assessed and new units or expansion is found viable having regard to the carrying capacity of the area and environmental norms. Pending assessment of compensation, interim compensation be recovered at the scale adopted by this Tribunal in the case of Vapi Industrial area as mentioned in para 22 above."*

11.11 Thereafter on 23.08.2019, the NGT modified the aforesaid order stating as reproduced herein under:

> *"10....Objection to this direction is that there may be 'red' or 'orange' category units which may not in any manner add to the pollution. If it is so, all that is required is to determine viability of such units on 'Precautionary' principle by an appropriate mechanism. Reasons for doing so are that the area as per data available is polluted and 'red' and 'orange' category have higher potential for pollution. There is no absolute bar to such units being set up if they are found to be viable. This clarification should take care of any possible apprehension that the order of the Tribunal will obstruct any legitimate industrial activity."*

11.12 Submissions of the Appellant

The master plan of Surat, keeping in view such exponential growth of the Surat city has included the Hazira Industrial Area and imposed restrictions on the setting up of the establishment and industries in particular 'red category' 'obnoxious and hazardous industries'.

The city limit of Surat is presently only 10kms from the proposed project site of the Respondent No.1.

The precautionary principle as mandated in Section 20 of the NGT Act confers wide jurisdiction on the Hon'ble Tribunal to anticipate and impose restrictions in order to mitigate the impact of environmental degradation.

After the notification of SUDA Development Regulations in particularly after the publication of the aforesaid map, it would be appropriate and in the interest of justice if a red category cement plant (which process is infamous for dust pollution) is not permitted.

12. NON-APPLICATION OF MIND ON PART OF SEIAC IN GRANTING THE IMPUGNED ENVIRONMENTAL CLEARANCE

12.1 Pre-feasibility Report along with EIA Report are the building blocks for the grant of Environmental Clearance. The said reports are to be prepared after extensive research and ground toothing. The said reports are expected to honestly and truthfully reflect the ground topography and take into account all other relevant consideration particularly in relation to environment. In the present case, the said report as detailed above have neglected deliberately or otherwise to do so.

12.2 SEAIC while considering the said reports cannot substitute its wisdom without getting the correct research material and an honest ground toothing. SEIAC had merely called upon the Project Proponent to clarify its doubts, which clarification was obviously tailor-made in the interest of the Project Proponent without any material in support thereof."

Additional written submissions of appellant pursuant to the liberty granted by the Tribunal vide its order dated 05.10.2021

18. In addition to earlier submissions, it is submitted that there is restriction on development on account of Suda Development Plans, 2004 and 2035. It is pertinent to highlight that the issue of SUDA and the restrictions therein for the proposed unit was raised and relevant documents were filed by the Intervener in the present Appeal i.e. the

Suvali Village Gram Panchayat. It is only after the matter was referred to the Committee vide Order dated 21.01.2021 and detailed submissions were prepared by the parties and the Appellant procured the copy of the Notification dated 08.10.2020 vide which the GDCR, 2016 was notified along with the Development Plan of 2035, thereafter, extensive and detailed research was done by the Appellant and the same is being laid out hereunder in the present submissions in absolute bona-fide.

19. It is further submitted that on 12.08.1996 Hazira Industrial Area was notified vide the GIDC Notification under Section 2(g) Gujarat Industrial Development Act, 1962. At that point Surat was about 50 kms away from Hazira Industrial Area. However, in 2015 Hazira was included under the Surat Urban Development Authority (SUDA) due to the exponential growth of Surat City. The SUDA has been notifying the Development Plans [inclusive of General Development Control Regulations (GDCR)] for regulated growth of Surat. SUDA, so far has published the following Development Plans and Regulations i.e. GDCR:]

- Development Plans 1986
- Development Plan 2004
- Development Plan 2035

20. It is next submitted that the Development Plan 2035 and its corresponding GDCR 2016 was only notified on 08.10.2020, prior to which the applicable Development Plan and Regulations was the Development Plan of 2004. The said provides that manufacturing of cement is an obnoxious and hazardous industry and therefore cannot be set up in General Industrial areas that are specifically demarcated for less polluting industries.

21. It is further submitted that on 08.10.2020, SUDA published the Sanctioned Development Plan, 2035 showing various categories including General Industrial Zone and Obnoxious / Hazardous Industrial Zone (Pink–General Industrial Zone and Dark Pink with Textures–Obnoxious / Hazardous Industrial Zone). It is important to note that the land where the Respondent no.1 intends to set- up the proposed unit falls under the General Industrial Zone (shown in Pink colour in the map). Moreover, the Town Planner at Surat Urban Development Authority have vide their Zoning Certificate dated 11.01.2021 confirmed and certified that the area of the proposed unit of the Project Proponent falls under General Industrial Zone and not Obnoxious and Hazardous Industrial Zone. The site for the cement plant of the Project Proponent is falling at Revenue/ Block Survey No.125 and 126. It is pertinent to highlight that in August 2013, the area of the proposed unit was converted from agriculture zone to General Industrial zone.

22. It is next submitted that the Impugned EC was granted on 23.08.2019 i.e. prior to the Notification of Development Plan 2035 and during the applicability of Development Plan 2004. That Appendix C of the Development Plan 2004 provides the "list of obnoxious and hazardous industries" wherein Cement is one of the obnoxious and hazardous industry. Therefore, in view of the aforesaid it is submitted that the grant of the Impugned EC is bad in law in light of the restrictions imposed by the Development Plan of 2004 and the subsequent Draft Development Plan 2035.

23. It is further submitted that the Draft Development Plan-2035 (along with GDCR 2016) published on 10.05.2016 and notified on 08.10.2020 contain a Table with the heading 'Zoning and Use Provisions'. Serial number 5 and 6 are relevant which are extracted herein under:

S. No.	Zone	Type of development for which the zone is primarily intended	Type of development, which may be permitted by Competent Authority	Type of development, which may not be permitted	Remarks
5.	*General Industrial Zone*	*a) All Industries except obnoxious and hazardous industries.* *b) Hotel Restaurant, canteen, bank, business building* *c) Development activities related to tourism sponsored/ recommended by tourism corporation of Government.* *d) Storage-warehouse, godown, cold storage, ice factory, steel stockyard* *e) Residential upto 20% FSI,* *f) Hotel, guest house, lodging, boarding, service apartment Auto-repair workshop, wood workshop, fabrication workshop, garage*	*a) Storage of inflammable goods such as petrol, diesel, crude oil and kerosene. Residential dwelling only for industrial workers and other public utility service staff working within the industrial premises, querying of gravel, sand, clay and stone. Dumping of solid industrial wastes (subject to N.O.C. and conditions laid down by Pollution Control Board)* *b) All uses mentioned in Column (4) of zone at Sr.No.1*	*Obnoxious and hazardous industries, mental hospital, hospital for infectious & contiguous diseases, jail, dwelling except mentioned in Col 4 of this zone.*	*If mixed development is asked regulation relating to industrial zone shall be applicable.*

6.	*Obnoxious and hazardous Industrial zone.*	*All obnoxious and Hazardous industries, storage of Inflammable goods.* *b)Slaughter houses, Meat processing units, leather processing* .	*Residential Dwelling only for Industrial Worker and other public utility services buildings for staff working within the industrial premises, shops,* *Restaurants, canteen and bank business building quarrying of gravel, and clay and stone Dumping of sold Industrial wastes, Garbage disposal, Treatment plant for solid or liquid industrial / Domestic and Hospital wastage (subject to N.O.C) and conditions laid down by Pollution Control Board.*	*Residential dwelling Except Mention in Col.4 of this zone. Hospital for Infectious and contagious diseases, mental hospitals, jails.*	

24. The aforesaid extracted table clearly points out that Obnoxious and Hazardous Industries are not permitted in the General Industrial Zone and for such obnoxious industries, a separate zone has been notified called the Obnoxious and Hazardous Industrial Zone.

25. It is next submitted that cement manufacturing being an obnoxious and hazardous industry, the same cannot be permitted as it

has been notified by CPCB as a Red Category industry with a score i.e. above 73. Secondly, the Directorate General Factory Advise Services and Labour Institutes – Ministry of Labour categorizes Cement Manufacturing under the List of Hazardous Industries. Lastly, as stated above, the Government of Gujarat itself has categorized Cement Manufacturing as an Obnoxious and Hazardous industry under the Development Plan and Regulations 2004.

26. It is further submitted that the Development Plans include the General Development Control Regulations as well and the same is clarified from the Notification dated 08.10.2020 vide which the Development Plan 2035 was notified along with GDCR 2016. The relevant clause of the said Notification dated 08.10.2020 are extracted herein under:

> *"AND WHEREAS, the said Authority prepared a Draft Development Plan – 2035 with General Development Control Regulations (hereinafter referred to as "the said Development Plan") in respect of the lands included within its limit, and submitted to the State Government under the provisions of Section 9 of the said Act, on dated 09.05.2016.*
> .
> .
> *NOW THEREFORE, in exercise of the powers conferred by clause (c) of the sub-section (1) of Section 17 of the said Act, the Government of Gujarat hereby:*
> *(a) Finalize the said modifications;*
> *(b) Sanction the said Development Plan subject to the modifications …*
> *(c) Specify that the final development plant shall come into force from the date of this notification"*

27. In view of the aforesaid, the General Development Control Regulations (GDCR 2016) came to be notified on 08.10.2020. It is pertinent to highlight that the GDCR 2016 in its provision for Applicability specify that anything which is not covered under these Regulations will be governed by the Development Plan of 2004. The relevant part is extracted herein under:-

> *"1.3 Applicability*
>
> *Subject to the provisions of the Gujarat Town Planning and Urban Development Act-1976, these Regulations shall apply to all the developments within the Development Areas of the SUDA including area of Surat Municipal Corporation.*
>
> *Regulations of GDCR-2004, shall be applicable for the provisions which have not been covered under these regulations."*

28. In view of the afore-extracted applicability and savings clause, it is clarified that the 2004 Regulations will apply to any aspect not covered by the 2016 Regulations, including the categorization of industries and zoning of the General Industries and Obnoxious & Hazardous industries. This position is further fortified by the Zone Classification as shown in Table 7.1.1 of the Comprehensive General Development Control Regulations (CGDCR) dated 12.10.2017. Furthermore, the EC was granted on 23.08.2019 i.e. after more than 3 years of publication of the Draft Development Plan, 2035 on 10.05.2016. It is submitted that solely in compliance of Section 26 of the Gujarat Town Planning and Urban Development Act 1976, the Project Proponent applied to SUDA seeking its permission vide Application dated 07.09.2019.

29. It is further submitted that the purported application dated 7.09.2019 stated to be filed by the Project Proponent before SUDA, the NIC Code mentioned therein is 410 i.e. for Construction of Buildings. It is pertinent to highlight the fraudulent act of the Sanghi Cement Ltd. is evident from the aforesaid fact itself wherein the Project Proponent is seeking approval on false and misleading pretexts. The relevant extracts of the NIC Code states that cement manufacturing falls under code 2394 and 410 is a code for building erecting complexes and buildings.

30. It is next submitted that in order to streamline the entire timeline of the publication and notifications Development Plans and General

Development Control Regulations by SUDA, the Appellant has prepared a chronological list of events. The Appellant has also added the significant events in the grant of the Impugned EC in order to present the facts in entirety.

Chronological list of relevant events for the issue of SUDA.

S. No	Date	Event
1.	15.09.2004	Development Plan 2004 and the Development Control Rules for the 2004 under Section 17(1)(c) of the Gujarat Town Planning and Urban Development Act, 1976 vide Notification No.GH/V/100 of 2004/DVP/1403/3307/L dated 02.09.2004 and came into force.
2.	Aug.,2008	The Development Plan 2004 was revised and published again in 2008 including the variations made as per Section19 upto14.09.2007.
3.	December, 2015	Gujarat government added 97 villages to the Surat Urban Development Authority and abolished the Hazira Area Development Authority (HADA) and Kathor Area Development Authority (KADA). Pertinent to note that the proposed projects of the Cement plant which originally lie in the Hazira area came under SUDA.
4.	10.05.2016	Draft Development Plan 2035 was notified under Section13. The said plan specifically demarcates separate area for general industries and for obnoxious and hazardous industries.
		Section 26 of the Gujarat Town Planning and Urban Development Act 1976 prohibits any construction without prior permission of SUDA.
5.	14.02.2017	Draft Revised Development Plan was submitted by SUDA to the State Government for sanction under Section16.
6.	12.10.2017	Govt. of Gujarat under Section116A and 122 of the Gujarat Town Planning and Urban Development Act 1976 Notifies Comprehensive General Development Control Regulations (CGDCR) dated 12.10.2017 applicable to the entire state of Gujarat. The said notification contemplates zone classification at Table No.7.1.1 at S.No.16 and 20 are reproduced hereinunder:

S. No.	Use Zone / Use as per Development Plan of Competent Authority	Conceptualized Use Zone	Code
16	Industrial Zone General, Industrial Zone, Non Obnoxious & Non Hazardous Industrial Zone, Light Industrial Zone, Industrial-A, GIDC.	Industrial Zone-1	IZ-1
20	Heavy Industrial Zone, Industrial Zone-Special, Obnoxious & Hazardous Industrial Zone	Industrial Zone-5	IZ-5

The said notification prescribes the concept of Zones. Para7.2.9 and 7.2.10 are reproduced hereinunder:

7.2.9.-Industrial Zone-1,2,3,4(IZ1,IZ2,IZ3,IZ4,1Z7)
This zone is intended for the development of all types of light industries that include small scale factories, transport terminals, etc. except hazardous industries. Other nonhazardous uses like residential buildings for industrial workers, commercial and institutional buildings supporting the existing industries are also permitted subject to relevant regulations.

7.2.10-Industrial Zone–5,6(IZ5,IZ6)
This zone is intended for the development of obnoxious and high hazard industries including storage of inflammable goods and petrol, LPG, CNG and eco-friendly fuel Fuelling stations. There residential dwellings in this zone are only for industrial workers having maximum built up area up to 50sq. mts per dwelling unit up to a maximum of 20% of the total utilized FSI of the plot area or subject to the relevant regulations. Dumping of solid industrial wastes is permitted subject to N.O.C. and conditions laid down by Pollution Control Board.

		The said development plan as provided for in Section 12(n) of the Gujarat Town Planning and Urban Development Act 1976 makes a provision for preventing or removing pollution of water or air caused by discharge of waste or other mean as a result of land use. SUDA thereafter as provided in Section 13(2)(c) submitted to the State Government the Draft Regulations for enforcing the provisions of the Draft Development Plan and the Draft Regulations.
7.	December 2018	Form 1 under EIA Notification 2006 along with Pre-feasibility Report submitted, wherein false and misleading submissions were made by the Project Proponent wherein despite submitting the Form 1 in 2018, the Project Proponent made no mention or whisper of the applicable Development Plant of 2004 and the Draft Development Plan of 2035.
8.	30.03.2019	Environment Impact Assessment Report submitted by the Project Proponent – information pertaining to the Development Plan-2004 or the Draft Development Plan- 2035 not disclosed.
9.	23.08.2019	Impugned EC granted to the Project Proponent
10.	07.09.2019	The Project proponent applies to SUDA for permission under Section 26 i.e. on the 17th day of the grant of EC.
11.	20.09.2019	Appeal filed by the Appellant challenging the grant of the Impugned EC. Pertinent to highlight that the Project Proponent nowhere in the pleadings or otherwise before the Hon'ble NGT discloses the fact that it has applied for permission before SUDA.

12.	03.10.2019	Common GDCR for the entire state of Gujarat published for laying down the development regulations for all the districts in the State of Gujarat. The said GDCR has been published in three parts and provides for separate areas for Obnoxious and Hazardous Industries, explaining in detail such industries and their development code.
13.	08.10.2020	State Government accords its sanction to the Development Plan 2035 and the Regulations under Section 17(1)(c) of the Gujarat Town Planning and Urban Development Act 1976. Consequently, on the grant of the sanction and notification the Draft Development Plan together with the Regulations became the Final Development Plan.
14.	11.01.2021	SUDA issued a Zoning Certificate wherein it specified that the Revenue Survey number 125 and 126 where the Project Proponent plans to set its Cement Grinding Unit falls in General Industrial Zone.
15.	21.01.2021	NGT constitutes Committee and referred the issue of evaluation of the EIA and the impugned EC to it.
16.	12.03.2021	The Appellant and the Project Proponent filed its submissions before the Committee.
17.	13.04.2021	Hearing before the Committee of the parties
18.	15.04.2021	The Project Proponent for the first time discloses and places on record its Application to SUDA dated 07.09.2019 as Additional Details by email. It may be noted that the said documents were never served to the Appellant. The Application deceptively has been filed under the Code 410 i.e. the code for construction of buildings and nowhere mentions the Code for Cement Manufacturing i.e. 2394.

31. The precautionary principle as mandated in Section 20 of the NGT Act confers wide jurisdiction on the Hon'ble Tribunal to anticipate and

impose restrictions in order to mitigate the impact of environmental degradation. After the notification of SUDA Development Regulations in particularly after the publication of the aforesaid map, it would be appropriate and in the interest of justice if a red category cement plant (which process is infamous for dust pollution) is not permitted.

32. It is next submitted that there are many violation of undertaking given in Form -I and its consequences thereof. It is submitted that Section 3 of the Environmental Protection Act, 1986 empowers the Central Government to take all such measures to protect and improve the environment. The Central Govt. in furtherance of Section 3 and in conformity with rules 5(3) of the EPA Rules 1986, issued a notification imposing restrictions on setting up of specified industries without the prior consent of the designated Authorities. It is submitted that on the publication of the said notification the provisions thereof became a part of the said Rule 5 r/w section 03 of EPA as if it has been bodily incorporated therein. It is ,thus, binding on all and has the force of law. The said notification prescribes Form 1 wherein the Project Proponent has to submit all the possible impacts that the proposed unit may have on the environment. The said Form 1 provides an 'Undertaking' to be tendered by the Applicant / Project Proponent. The said undertaking reads as under :-

> *"(V) Undertaking*
> *I hereby given undertaking that the data and information given in the application and enclosures are true to the best of my knowledge and belief and I am aware that if any part of the data and information submitted is found to be false or misleading at any stage, the project will be rejected and clearance given, if any to the project will be revoked at our risk and cost."*

Reply of Respondent no. 1

33. The Sanghi Industries Limited has filed his reply and submitted that the instant Appeal has been preferred by the Appellant solely to agitate interests which are, at best, in the nature of the Appellant's narrow commercial interests. This has no basis in Environmental Law and is, as such, beyond the jurisdiction of this Tribunal.

34. It is next submitted that the Appellant itself operates various 'red' and 'orange' category units spread over an area of 200 acres(approx.) surrounding the land where the Respondent No. 1 is setting up its proposed unit. Appellant has made various attempts in the past to purchase the land where the proposed unit of the answering respondent is being set up, for its own operations; however, since the same has not been possible in view of the Respondent No 1 having acquired the said land, the Appellant has filed the instant Appeal with oblique and vexatious motives. It is pertinent to note that the appellant in the past was a leading cement manufacturer for many years and was also manufacturing plant and machinery required for cement manufacture. A perusal of the Appellant's case in this context demonstrates that the Appellants case is *ex facie* not premised on infringement of any environmental rights. The Appellant is only attempting to prevent any other *bona fide* party's industrial activity in the said area, by any persons or establishments other than the Appellant. As such, the alleged grievances of the Appellant, if any, are clearly in the nature of commercial conflicts motivated by selfish considerations, none of which are envisaged under the National Green Tribunal Act, 2010. The said commercial interests ought to not, therefore, be raised before this Tribunal.

35. It is next submitted that the amended appeal is beyond period of limitation. The Appellant has sought to abuse the process of law and sought to substantially alter its case and circumvent the statutory period of limitation under the garb of an amendment. In this regard, it may be noted that the Impugned EC was granted to the Respondent No 1 on 23.08.2019 and that the Appellant filed its original Appeal on 20.09.2019. Thereafter, in pursuance of the abovementioned strategy, the Appellant has amended the appeal wherein it has substantially altered and improved its original case and raised fresh grounds which were not raised in the original Appeal dated 20.09.2019. The Appellant resultantly has filed a fresh Appeal in the guise of the amendment application.

36. 1t is further submitted that the limitation of thirty (30) days is prescribed for filing an appeal assailing a grant of an Environmental Clearance under Section 16 of the NGT Act, 2010. However, the Appellant has filed the amendment application only on 16.10.2019, which is ex-facie much beyond the limitation period of 30 days for assailing the impugned Environmental Clearance dated 23.08.2019.

37. It is next submitted that the Appellant is not only seeking to agitate issues which have no nexus to the environmental cause, but has also circumvented the mandatory limitation period of 30 days prescribed under the said Act in an illegal, vexatious and mala fide manner by filing a fresh appeal in the guise of an amended appeal.

38. It is further submitted that Appellant's challenge is pre-emptory and no cause of action has arisen in favour of the appellant. The appellant's challenge is premised on pre-empting violations by the proposed unit of the Respondent No 1 when no such cause exists or reasons having been made out by the Appellant.

39. It is next submitted that the Appellant, in the instant case, has failed to make out a case of any proximate/ possible damage that may arise while the proposed unit operates within the norms and strict conditions imposed upon it in the Impugned EC; or that the proposed unit is otherwise an environmentally unviable unit. As such, it is evident that the Appellant's case, which is premised solely on mere apprehensions, surmises and conjectures without any legitimate concerns, ought not to be countenanced, and the instant Appeal is liable to be dismissed.

40. It is submitted that the respondent no 1 is one of the leading establishments in the cement industry having an impeccable reputation of employing world class and environmental friendly technology. The Respondent No 1 has earned received numerous awards and accolades from the Governmental, National and International institutions inter alia such as the prestigious 'Greentech Environment Excellence Gold Award' in the Cement Sector for the years 2008, 2013 & 2014; the 'Greentech Platinum Award-2018' in Cement Sector for Environment Management, the Green Rating Project Awards - 3 Leaves from Center for Science & Environment (CSE), New Delhi for eco-friendly Industrial Development, First Prize for its captive mines and operations for Mines Environment and Mineral Conservation from the Indian Bureau of Mines, Government of India. The above mentioned facts further show the eco-friendly and 'Green' driven approach of the Respondent No 1.

41. It is further submitted that the Respondent No 1 in compliance of Precautionary Principle, has sought to employ world class manufacturing units with the help of and through equipment provided by one 'Loesche GmBH' which is a leading manufacturer of plants, equipment and logistics provider for cement, mining, power industries

across the globe. It is noteworthy that Loesche is one of the world leading manufacturers of Cement Plants which has, as on date, set up plants in various countries across the globe. Furthermore, the equipment manufactured by Loesche is renowned for adhering to internationally accepted environmental norms. The above demonstrates that the Respondent No. 1 has taken due care to employ state of the art facilities which adhere to environmental norms across the globe in order to operate within prescribed norms and ensure that no harm is caused to the environment. As such, the case of the Appellant that the proposed unit of the Respondent No. 1 is likely to result in environmental pollution is without any basis. It is pertinent to note that stand alone grinding units also are established with permissions near the city limits.

42. It is next submitted that the Appellant has relied on the Order dated 10.07.2019 in a selective manner without placing the true import of the said Order. It is relevant to note that the said Order dated 10.07.2019 was clarified by this Tribunal by way of its subsequent Order dated 23.08.2019. The said Order dated 23.08.2019, clarifies that- (i) the Order dated 10.07.2019 does not, in any manner, apply to industries/ units which were operating in compliance of and well within the effluent and emission norms prescribed by the government under applicable laws; (ii) the said Order dated 10.07.2019 would only apply to existing units which were found to be in violation of environmental norms; and (iii) there was no bar in setting up of new units or expansion of existing units when such proposed plans and scheme of operation of such units was found to be viable at the time of appraisal and grant of EC in favour of such units. As such, the reliance of the Appellant upon this Tribunal's Order dated 10.07.2019 is completely misplaced.

43. 1t is further submitted that the Order dated 10.07.2019 seeks to impose a ban on only erring industrial units which are located in critically/ severely Polluted Areas. The CEPI scores were also only monitored for such critically/ severely polluted areas. In this context, it may be noted that the CEPI score for Surat, which has been reproduced in the Order dated 10.07.2019 only pertain to the industrial clusters of GIDC Sachin and GIDC Pandesara and do not relate to the Hazira Industrial Zone where the Respondent No. 1 seeks to set up the proposed unit. This is borne out from the Office Order dated 11.11.2019 passed by the Respondent No 2 which identified the critically/ severely polluted industrial areas identified by the Respondent No 2 in the State of Gujarat. The table set out below shows that the Hazira Industrial Area is located at a considerable distance from each of the said Industrial Clusters which are considered to be critically or severely polluted Areas.

"

S.No.	***Critically / Severally Polluted Area (CPA/SPA) in the State of Gujarat***	***AerialDistance fromAppellant's proposed Unit***
1.	*Vapi GIDC Estate*	*95*
2.	*Sachin & Pandesara GIDC Estate (Considering monitoring carried out by CPCB in these areas)*	*(17.3 & 14 from the 5 km buffer)*
3.	*Ankeleshwar Cluster (Ankleshwar and Panoli GIDC estate)*	*(61.73 & 50.43)*
4.	*Nandesari GIDC & PCC Area (Considering monitoring carried out by CPCB in these areas)*	*142.67*
5.	*Vatva - Narol*	*(197.57 - 198.62)*
6.	*Aji GIDC estate (Rajkot)*	*224.61*
7.	*Chitra GIDC estate (Bhavnagar)*	*86.69*

"

44. 1t is also submitted that these two polluted industrial areas of Surat, i.e. GIDC Sachin and GIDC Pandesara are located at a considerable distance from the Hazira Industrial Area where the proposed unit is being setup. As such, it is evident that the said Order dated 10.07.2019 does not apply to the Hazira Industrial Area and the case of the Appellant is, therefore, misconceived.

45. 1t is next submitted that the State Environment Impact Assessment Committee (SEAC) has decided to recommend for grant of Environment Clearance to Respondent No. 1 in its meeting dated 12.06.2019 after considering all the environmental aspects of the project which is prior to the passing of the said Order dated 10.07.2019.

46. It is next submitted that the appellant's alleged 'armoured system complex' is not a defence installation and there is no prohibition in law in setting up of the proposed unit. The Appellant's alleged defence equipment manufacturing unit is not a 'Defence Installation'. It is submitted that the plea of the Appellant that its alleged defence equipment manufacturing unit is a 'Defence Installation' is wrong even to its own knowledge. This is evident from the Appellant's own conduct in its attempt to approbate and reprobate on the existence of any such alleged 'Defence Installation'. It is submitted that the alleged defence installation of the appellant is merely an Engineering Unit. The Appellant itself, in Form-1(s) filed by it for expansion of two of its units situated in the same Hazira Industrial Area, namely (i) L&T MHPS Boilers Pvt. Ltd. (Heavy Casting Unit) (Form I dated 05.02.2018); and (ii) L&T Special Steels and Heavy Forgings Pvt. Ltd. (Form I dated 28.01.2014), has stated that there is no 'Defence Installation' within a 15 KM radius. It is submitted the L&T's other units are in more

proximity of the alleged Defence Unit then the Respondent No. 1, which makes it clear that the alleged 'armoured system complex' is not a Defence Installation. In fact, the Form-l, filed by any of the other industrial units located in the Hazira Industrial Area, also do not disclose the presence of any alleged 'Defence Installation'. Furthermore, the Appellant has itself not put forth any material to lend credence to its plea that its alleged 'armoured system complex' is a defence installation and as such, it ought to be put to strict proof of the same.

47. It is further submitted that the Ministry of Defence issued a notification dated 21.10.2016 and bearing No. F. 11026/2011/D(Lands) for revising guidelines for issue of 'No Objection Certificates' for building constructions around Defence Establishments/ Installations (Notification dated 21.10.2016'). Even in terms of the said Notification dated 21.10.2016 the alleged armoured system complex of the Appellant does not qualify as a 'Defence Installation' in as much as the list of Defence Establishments/ Installations thereunder are Military bases and/ or areas established to station armed forces. As such, the armoured system complex of the Appellant cannot be deemed to be a Defence Installation in any manner and in any event, a perusal of the said Notification dated 21.10.2016 makes it clear that there is no prohibition on any construction activities beyond a 100 Meter stretch of the outer wall of Defence Establishments/ Installations mentioned in Annexure 'B' and beyond a 10 Meter stretch of Defence Establishments/Installations mentioned in Annexure 'A' of the said Notification dated 21.10.2016.

48. It is next submitted that even as per the own case of the Appellant, the said L&T unit/ complex has been operating in the Hazira Industrial Area for many years, manufacturing different kinds of

equipment on various temporary licenses for many years. This alleged License also appears to be a temporary license and, at best, entitles the Appellant to manufacture on a (uncertain) contract to contract basis and which is also revocable. This is further evident from the Appellant's own stand and in its representations at the Public Hearing dated 22.03.2019, wherein, as per the Appellant's own statement, the manufacturing of such equipment is only likely to 'continue for a few years'. It is, therefore, evident that the unit of the Appellant is not a 'defence installation' and that the Appellant cannot seek a blanket prohibition of any bona fide industrial activity around such temporary licensed defence equipment manufacturing unit.

49. It is next submitted that in any event, it is relevant to note that a 'Defence Installation' is understood to mean land which is owned by the Ministry of Defence such as bases, forts etc. where armed forces are stationed, ordinance factories established and/or areas of key importance in terms of military strategy. It is submitted that after completing the procedure as per the Section 3 of the Works of Defence Act, 1903, restrictions are imposed on such land as per Section 7 of the Works of Defence Act, 1903 wherein an Outer Boundary of 2000 yards, Second Boundary of 1000 yards and Third Boundary of 500 yards are envisaged within which various restrictions are imposed. No such notifications or restrictions exist in the case of the Appellant's alleged unit.

50. It is further submitted that the Appellant's alleged 'armoured system complex' is also one amongst 379 licenses issued to 230 Indian Companies by the Department of Industrial Policy & Promotion (DIPP) till June, 2018 for manufacture of various licensable defence items. If the Appellant's case were to be accepted, all such 230 companies would

be termed 'defence installations' thereby hampering any industrial development and activity in the vicinity of their respective 'licensed' manufacturing units.

51. It is further submitted that it is evident that the appellant's 'armoured system complex' which allegedly manufactures defence equipment (i) on private land owned by the appellant, (ii) manufactures such equipment on a limited period 'licence'; and (iii) is manufacturing such equipment on a temporary basis (iv) merely an Engineering Unit - cannot and ought not to be considered a 'defence installation' in any manner. As such, any plea of the Appellant on account of its alleged claim of being a 'Defence Installation' ought to be dismissed.

52. It is next submitted that there is no prohibition in law in setting up of the proposed unit of the Respondent No 1. The plea of the Appellant that the setting up of the proposed unit of the Respondent No 1 in proximity of its alleged 'armoured system complex' is prohibited is untenable in law. To buttress the said plea, the Appellant has wrongly sought to rely upon (i) a notification dated 02.09.2016 declaring its unit as a 'prohibited place' under the Official Secrets Act, 1923; and (ii) A Security Manual for the Licensed Defence Industries. In this regard, the following may be noted:

> *"(i) No prohibition under the Official Secrets Act, 1923: The Official Secrets Act, 1923 does not concern itself with prohibiting legitimate industrial activity and construction and/or any environmental cause. The purpose of the Official Secrets Act, 1923 is to protect information within 'prohibited places' as notified under its Section 2(8) by penalizing spying and unauthorized communication related to national secrets and protect security and interest of the State and as such has no bearing or effect on any environmental aspects concerning the setting up of the proposed unit by the Respondent No 1. Resultantly, the Gazette Notification of the Gujarat Government dated 09.02.2016 cannot, in any manner, be construed to prohibit any industrial activity around the alleged 'armoured system complex'. As such, the Appellant's plea that industrial activity around its armoured system complex is prohibited under the Official Secrets Act, 1923 is unfounded in law and is without any basis in law.*

(ii) No prohibition under the Security Manual for the Licensed Defence Industries: A perusal of the Security Manual for the Licensed Defence Industries ("Security Manual") shows that the same does not, in any manner, contain any prohibition on setting up of any industrial concerns/ units around such Licensed Defence Industries and does not regulate any construction activities outside of such units. In fact, a perusal of the said Security Manual reveals that the obligation to take adequate safeguards to prevent any adverse impact on the manufacturing process (including due to environmental factors, if any) is only upon the Appellant itself. As such, it is evident that Appellant's reliance upon the Security Manual is misplaced and without any basis.

(iii) The Notification dated 21.10.2016 also permits construction activity: Without prejudice to the above and in any event, a perusal of the said Notification dated 21.10.2016 makes it clear that there is no prohibition on any construction activities beyond a 100 Meter stretch of the outer wall of Defence Establishments/ Installations mentioned in Annexure 'B' and beyond a 10 Meter stretch of Defence Establishments/ Installations mentioned in Annexure 'A' of the said Notification dated 21.10.2016. Therefore all such claims of the Appellant are untenable in law."

53. It is next submitted that the Appellant's own conduct demonstrates that there is no prohibition in setting up of the proposed unit. The falsity of the Appellant's plea that industrial activity is prohibited in the vicinity of its alleged 'armoured system complex' is further negated by its own conduct. It is noteworthy that the Appellant's alleged 'armoured system complex' itself already operates in a notified industrial area, i.e. Hazira Industrial Area (HIA), where various units already undertake industrial activities (including the Appellant itself, inter alia, running 'Red' and 'Orange' category units).

54. It is further submitted that a table of the various industrial units being run by the Appellant and other industries operating in the vicinity of the Appellant are set out hereunder:

"

Sl. No.	***Name of Industry***	***Aerial Distance from Appellant's Armor Unit-KM***
1	*L&T Defence*	*-*
2	*L&T Heavy Engineering*	*1.81 km*

3	*L&T MHPS Turbine Generators Pvt. Ltd.*	*0.90 km*
4	*L&T Special Steel and Heavy Forging*	*1.01 km*
5	*L&T Piping*	*0.33km*
6	*Reliance*	*3.25 km*
7	*NTPC*	*4.70km*
8	*KRIBHCO*	*6.40km*
9	*GAIL*	*6.00km*
10	*ONGC*	*8.70km*
11	*CAIRN India*	*1.80km*
12	*Adani Wilmar*	*1.30 km*
13	*Essar Steel*	*5.07 km*
14	*Adani Port*	*7.20 km*
15	*Hazira LNG & Port*	*6.56 km*
16	*ABG Cement*	*4.70 km*
17	*Ultratech Cement*	*8.60 km*
18	*Ambuja Cement*	*9.00 km*
19	*Sanghi Industries Ltd.*	*1.25 km*

”

55. It is submitted that a perusal of the above table shows that the said alleged 'armoured system complex' comprises of only one (1) unit which allegedly manufactures defence equipment (and only on a license) and is surrounded, inter alia, by many other 'Red' and 'Orange' category units of the Appellant itself and other industrial units. In fact, the Appellant's own 'Red' and 'Orange' category units are located much closer to the alleged ‘armoured system complex’ than the Respondent No.1’s proposed unit.

56. It is next submitted that despite claiming to have operations since 2002 in the said area, appellant has never challenged the operation of any of the other industrial units being operated in its vicinity on the grounds with which the instant Appeal has been preferred. The said inaction on the part of the Appellant itself lends further credence to the fact that the nature of the Appellant's concern/ interest (if any) is private and commercial in nature which ought not to be countenanced by this Tribunal.

57. It is further submitted that the Appellant's said alleged 'Defence Installation' itself does not contain any disclosure of it being such a 'Defence Installation' and as such, there was no way of the said fact being within the knowledge of the Respondent No 1. As such, even if the armoured system complex of the Appellant were to be considered a 'Defence Installation', it is submitted that there was no 'deliberate concealment' on the part of the Respondent No 1 in any manner.

58. It is next submitted that in terms of Clause VIII of the EIA Notification, 2006, the accidental omission on the part of the Respondent No 1, in not disclosing the presence of the alleged 'Defence Installation' of the Appellant is not, in any manner, material to screening or scoping or appraisal or decision on the application of the Respondent No 1 and the said plea of the Appellant, therefore, ought not to be countenanced. In this context, it is submitted that the factum of the existence of the Appellant's alleged armoured system complex was brought to the knowledge of all concerned authorities by the Appellant itself at the public hearing and through the representations, much prior to the appraisal stage. Reference for the same may be made to letters dated 05.04.2019 and 13.04.2019. Therefore, the accidental omission did not prejudicially affect the appraisal of the Respondent No l's application by the concerned authorities in any manner. As such, it is evident that the case of the Appellant regarding any 'deliberate concealment' of the presence of its alleged 'Defence Installation' is completely unfounded.

59. It is next submitted that even assuming (for the sake of argument) that the alleged unit of the Appellant is an alleged 'Defence Installation', it is submitted that there is no prohibition in law in the operation of the proposed unit of the Respondent No 1. In fact, no material has been

placed on record by the Appellant to even substantiate its plea of an alleged 'prohibition' on the operation of the Respondent No 1's proposed unit.

60. It is next submitted that the impugned EC has been granted after due application of mind. The Appellant has wrongly alleged that the grievances raised by it in respect of the proposed unit at the stage of the Public Hearing and through written representations before the Gujarat SEAC were not considered. In this regard, it is relevant to note that adequate opportunities were granted by the Respondent No 3 and SEAC to the Appellant to present its case in opposition to the proposed unit. In fact, it is also noteworthy that the Respondent No. 1 was specifically required by the Gujarat SEAC to provide an adequate reply, and that the Respondent No 3 has also factored in all of the Appellant's representations while granting the Impugned EC in favour of the Respondent No. 1. It is submitted that the following chronology of facts may be noted:-

> *"a. The appellant first raised the objection at the time of its participation in the Public Hearing held on 22.03.2019 in respect of the Proposed Unit. On the said date, the Appellant raised its concerns and the same were duly answered. It is pertinent to mention that the Appellant's representative who spoke at the public hearing appreciated the Environment Management Plan (EMP) prepared and stated the following:*
>
> *"...the consent received by you from Gujarat Pollution Control Board and according to that EMS APCM, which you have very well included in report ..."*
>
> *b. That thereafter, the Appellant issued two (2) representations dated 05.04.2019 and 13.04.2019 to the Respondent No. 3 in opposition to the setting up of the proposed unit of the Respondent No. 1.*
> *c. Thereafter, at the 497th meeting of the Gujarat SEAC held on 16.04.2019, the Respondent No 1 was presented with the written representation of the Appellant.*
> *d. The representatives of the Appellant were called for a meeting with the Gujarat SEAC on 18.04.2019 and pursuant to the same, the Appellant, on 22.04.2019 submitted a*

detailed written representation in respect of clarifications required by it from the Respondent No. 1.

e. The Respondent No 1 was then required to submit additional documents including inter alia factoring in all concerns of the Appellant. Accordingly, the Respondent No 1 submitted additional information including a point-wise reply to the issues raised by the Appellant, before the Gujarat SEAC on 23.05.2019.

f. That thereafter, the proposal of the Respondent No 1 was considered by the Gujarat SEAC at its 514th meeting held on 12.06.2019 in light of all materials placed before it including the issues raised by the Appellant and the reply and point-wise action plan submitted by the Respondent No. 1 thereto.

g. The Gujarat SEAC, after deliberating on the various issues (including all environmental concerns) raised by Appellant and recording its due satisfaction on the information provided by the Respondent No 1, decided to recommend the project to the Respondent No 3 on 12.06.2019. Accordingly, the Impugned EC was issued to the Respondent on 23.08.2019."

61. It is next submitted that the facts, as set out above, demonstrate that not only did the Respondent No. 3 consider all the issues and environmental concerns raised by the Appellant through its representations, but it also duly applied its mind to factor in all possible environmental implications and also that of the Appellant while deliberating on the grant of the Impugned EC in favour of the Respondent No. 1. The fact that the Respondent No 1 was also require to address all concerns raised by the Appellant before the authorities shows that the Impugned EC ought not to be interfered with at the insistence of the Appellant. As such, it is submitted that the Appellant cannot be permitted to question the grant of the Impugned EC in favour of the Respondent No 1 by the Respondent No 3.

62. It is further submitted that the appellant cannot be permitted to agitate fresh grounds despite grant of adequate opportunity. It is also submitted that by way of the instant 'amended appeal', the Appellant has challenged the grant of the Impugned EC on grounds which were never raised by it at the stage of the Public Hearing dated 22.03.2019 or

even thereafter in its representations dated 05.04.2019, 13.04.2019 and 22.04.2019; and the personal hearing granted to it on 18.04.2019 before the SEAC. However, despite grant of sufficient opportunities, the Appellant failed to raise grounds, which are now sought to be raised by it through the instant amended Appeal.

63. It is further submitted that a comparison of the representations made and fresh/ additional grounds urged by the appellant at each subsequent stage shows that the appellant, despite having sufficient opportunities has failed to agitate issues which were always within its knowledge. It is further submitted that in terms of settled law, the Appellant cannot be allowed to urge fresh grounds at the Appellate stage which though available to it earlier was never raised (for reasons best known to it) before the Gujarat SEAC. As such, the Appellant is deemed to have waived its right to raise such grounds before this Tribunal and cannot be permitted to abuse the due process of law for its own personal commercial benefit.

64. It is next submitted that the EIA of the respondent no 1 discloses all material information. The Appellant's plea that the Respondent No 1 has misled Respondent Nos. 2 and 3 by concealing information in its Environmental Impact Assessment Report (EIA Report) is incorrect. In this regard, the following points to be noted:-

> ***"A. Mangroves.*** *The EIA Report of the Respondent No 1 duly discloses the presence of mangroves and its area in Chapter 3 of such report at table 3.12. Furthermore, the factum of presence of mangroves is clearly shown in the map of the said area, as was annexed by the Respondent No 1 to its EIA Report (Figure 3.1). Be that as it may, there is no concealment by the Respondent No 1. The presence of mangroves and any impact on them has been duly considered. It is relevant to note that all issues regarding the presence of mangroves and any possible impact of the Proposed Unit on such mangroves (which it is submitted is none) was duly discussed in the various presentations given by the Respondent No 1 before the*

Gujarat-SEAC at the stage of appraisal of the project. The data for mangroves was presented to the Gujarat-SEAC and the fact of minimal impact on them beyond the area of 1.3 kms distance of the site (based on isopleths of mathematical models shown in the EIA report) was explained. As such, the case of the Appellant that the Impugned EC does not factor in the presence of mangroves is without any basis.

B. *Without prejudice to the above, it is also submitted that the Proposed Unit of the Respondent No. 1 is located at a considerable distance (>1.3 Kms) from the mangroves. The Proposed Unit does not require any clearance/ felling of the mangroves either; and it has been duly represented before the Gujarat-SEAC that the Proposed Unit does not adversely impact the same in any manner.*

C. Forests. *Similarly the Chapter 3 of the EIA Report (Figure 3.10 and Table 3.12) of the Respondent No. 1 also duly discloses the presence of forest areas around the Hazira Industrial Zone where the Proposed Unit is being set up. Furthermore, the Proposed Unit does not in any manner encroach upon, or fall within a forest area and hence does not require forest clearance. All of the aforementioned factors were also duly disclosed before the Gujarat-SEAC at the appraisal stage and were duly considered by the authorities prior to the grant of the Impugned EC in favour of the Respondent No. 1.*

D. *That even otherwise, the Appellant, in its written representation dated 22.04.2019 had raised queries about the presence of forests in the vicinity of the Proposed Unit, to which the Respondent No 1 had replied in its meetings before the SEAC and to which issue, the SEAC has duly applied its mind prior to the grant of the Impugned EC.*

E. *Furthermore, the presence and measurement of forests and mangroves within a 10 KM radius of the Proposed Unit was mapped through Survey of India Topo-sheet No. F43M12, Google Maps, and Satellite Images, all of which are duly on record in the EIA Report.*

F. *It is submitted that all the above mentioned factors, and the factum of presence of forests and mangroves and the next to negligible impact of the Proposed Unit on the said forests and mangroves were duly discussed before the Gujarat-SEAC and has been duly considered by the Respondent No. 3 prior to the grant of the Impugned EC, and therefore, the plea of the Appellant is without any basis.*

G. *In any event, and without prejudice, it is submitted that the Respondent No 1 is setting up the Proposed Unit within a notified industrial area which is meant for setting up of units such as the Proposed Units. Furthermore, it is also undisputed that the setting up of the Proposed Unit does not, in any manner, require felling and/ or uprooting of any trees, forests, mangroves etc. As such, it is further evident that the Proposed*

Unit of the Respondent No. 1 does not pose any threat towards the degradation of the eco-zone.

H. Deployment of trucks. *The plea of the Appellant that the Respondent No 1 requires more trucks than the Impugned EC permits is wrong. The Appellants claims are premised on incorrect data does not find any basis in the conditions stipulated in the Impugned EC. In any event it is submitted that the Appellant is attempting to pre-empt violations with the assumption that the Respondent No 1 will not adhere to the Conditions of the Impugned EC. The said assumptions are without any basis and ought to be rejected. It may also be toted that the Impugned EC, which permits and restrict the limit of truck trips to 363 trips per day is on the basis of the EIA Report of the Respondent No 1. In any event, the Appellant cannot be permitted to agitate issues solely premised on surmises and conjectures and without even giving an opportunity to the Respondent No 1 to comply with the terms and conditions of the EC.*

I. Sewerage. *The plea of the Appellant that the Impugned EC directs the Respondent No 1 to set up an STP of 78 KLD capacity is also wrong. A bare perusal of the Impugned EC (at clause 31) shows that the same requires the Respondent No 1 to set up an STP of 15 KLD capacity only which again is on the basis of the project capacity and has been duly disclosed in the EIA Report. As such, it is evident that even the said ground of the Appellant is baseless.*

J. Source of Water. *At the outset, the plea of the Appellant that the Proposed Unit requires 278 KL of water/ day is wrong. The requirement of the Respondent No 1 for the proposed unit is 200KL/day of fresh water, with the balance 78 KL/ day of water being met through recycling. This is also adequately borne out from the EIA Report of the Respondent No 1. The Appellant is yet again attempting to pre-empt violations on the part of the Respondent No 1 solely on the basis of mere apprehensions which are also unfounded in law and fact.*

K. *The plea of the Appellant that the Respondent No 1 has failed to establish sources of water is wrong. It is submitted that the Respondent No 1 has already made a request for withdrawal of water to the irrigation department. Furthermore, it is also relevant to note that request of the Respondent No 1 has since been accepted by Krishak Bharati Cooperative Ltd. ('KRIBHCO') and it has forwarded its approval to the usage of such irrigation pipelines by the Appellant to the Irrigation department by way of its letter dated 20.12.2019. In the interim, the Respondent No 1 has also made adequate arrangements to source water through dedicated water tanker suppliers during the construction phase of the Proposed Unit.*

L. Fly-Ash generation. *It is submitted that the plea of the Appellant regarding high residual amounts of fly-ash being*

produced is unfounded. In this regard, it may be noted that while residual fly-ash generation from use of domestic coal is at about 40%, the residual fly-ash generation from use of imported coal is drastically reduced to only about 10.2%. It is for this reason that the Respondent No 1 has given an undertaking before the SEAC to use only imported coal, which is also borne out from the conditions of the Impugned EC. Furthermore, the Respondent No 1 is employing a closed automated handling and feeding system and a closed silo to store the fly ash.

M. *Additionally the fly-ash generated during the manufacturing process at the Proposed Unit is further proposed to be recycled for production of PPC.*

N. *As such, this, again, demonstrates that impugned EC has been granted after due application of mind and after consideration of all possible factors and conditions have been imposed to ensure that the Proposed Unit functions within applicable norms.*

O. *In any event the Appellant's alleged defence equipment manufacturing unit is located at a distance of over 1.25 KMs in the cross-wind direction from the Proposed Unit of the Respondent No 1, whereas the Appellant's own 'red' and 'orange' category units or located much closer to the said unit. As such, any apprehensions of the Appellant regarding its allegedly sensitive equipment being adversely impacted due to fly-ash generation etc is without any basis."*

65. It is next submitted that unit of the respondent no 1 will economically benefit the locality as well as the Government exchequer. As has already been set out above, the Respondent No 1 is setting up a standalone grinding unit in the Hazira Industrial Unit using state of the art and leading environmental friendly technology. This project of the Respondent No 1 is an environmentally sound and economically beneficial unit. The proposed unit of the respondent no 1 will directly provide substantial employment opportunities to the resident residing in the surrounding locality. The proposed unit will generate direct and indirect employment opportunities and livelihood for about 10,000 skilled and unskilled local workers and their families. In this regard, a perusal of the minutes of the public hearing dated 22.03.2019 will show that all local residents have actively participated in the public hearing

and have expressed their support for the construction of the proposed unit and the same has been welcomed by the local population as an opportunity of investment, employment and prosperity.

66. It is next submitted that the Respondent No 1 has also earmarked about Rs. 4.24 Crores towards its Corporate Environmental and Social Responsibility goals for the next 5 years. Under the same, the Respondent No 1 seeks to develop modern infrastructure and undertake activities like providing drinking water facilities, undertake substantial projects on hygiene, plantation, building of parks, community centers, upbringing of educational infrastructure and also provide skill training to the local residents. It is also expected, in terms of projections, that the operation of the proposed unit will generate annual revenue of over Rs. 200 Crores for the Govt. Exchequer by way of direct and indirect taxes including GST, land revenue, utility duties etc. Towards attaining these goals, the Respondent No 1 has estimated the total project cost of the proposed unit at about Rs. 282.82 Crores, out of which, the Respondent No 1 has already invested about Rs. 75 Crores as on date.

67. It is next submitted that the Respondent No 1 is continuing to suffer economic hardship in relation to the said Project as a direct consequence of the Appellant's ex-facie meritless Appeal, which, as set out above, has been preferred to only propagate its own narrow commercial interests. In this regard, it is submitted that many of the Respondent No l's lenders are threatening to pull out of the said Project in lieu of the uncertainty that surrounds the fate of the said Project as a result of the pendency of this mischievous Appeal of the Appellant. In fact, the lenders of the Respondent No 1, in a meeting held with the Respondent No 1, have expressed concerns over the fate of the said

Project and have expressed their doubts over extending term loan facilities and cash credit facilities to the Respondent No 1 on account of the pendency of the instant litigation. This is causing grave prejudice to the Respondent No 1. The Respondent No 1 reserves its rights to place further facts in this regard on record before this Tribunal, as and when required.

68. It is next submitted that appellant miserably failed to establish even a prima facie ground to assail the Impugned EC, interference with the continuance of the proposed Unit at this stage will cause irreparable harm to the Respondent no.1 and also cause substantial losses to various stakeholders including the Government exchequer.

Written Submission on behalf of respondent no.1 dt. 30.07.2020.

69. It is submitted that Respondent No 1, with a view to set up the proposed unit, submitted its Form-1 along with a Pre-Feasibility Report before the SEAC in December 2018 as per the EIA Notification of 2006.

70. It is next submitted that the Respondent No 3 issued the TOR to Respondent No 1. In terms thereof, the Respondent No.1 submitted a draft EIA Report before the Respondent No.2 in respect of the proposed unit and requested for a Public Hearing. A Public Hearing, with due notice to the public, was conducted on 22.03.2019. The Appellant, along with a number of neighboring Gram Panchayat's etc., participated in the said extensive Public Hearing. The issues raised by the Appellant therein, were duly noted and addressed by the Respondent No 1. The Appellant also appreciated the Environment Management Plan of the Respondent No 1 for the proposed unit. Thereafter, Respondent No 1

submitted a comprehensive EIA Report before the Respondent No 3 in respect of the proposed unit.

71. It is further submitted that the Appellant, vide its communications dated 05.04.2019 and 13.04.2019 raised misconceived objections to the proposed unit of the Respondent No 1 before Respondent No.3, which inter alia included the issue in respect of the Appellant's alleged 'Defence Installation'. To this end, another exclusive hearing was granted by the SEAC (being a committee of the Respondent No 3) to the Appellant on 18.04.2019. Pursuant to the same, the Appellant vide its letter dated 22.04.2019, repeated the same objections in respect of the proposed unit. During the Appraisal stage, on 16.04.2019, the SEAC in fact sought additional clarifications from the Respondent No 1 in respect of the proposed unit, in view of the repeated objections of the Appellant. On 23.05.2019, the Respondent No 1 submitted additional documents in response to the clarifications and queries sought by the SEAC, including in respect of the objections raised by the Appellant on 22.04.2019.

72. It is further submitted that on 12.06.2019, the SEAC discussed the Respondent No 1's request for the Impugned EC, and unanimously decided to recommend the same for grant of EC. Pertinently, the Minutes of the meeting dated 12.06.2019 show that the SEAC satisfied itself with respect to the clarifications sought by it from the Respondent No 1. Furthermore, the minutes dated 12.06.2019 further reveal that the SEAC gave due consideration to the Appellant's objections in respect of the proposed unit and considered the adequacy of the Respondent No 1's response to the same. SEAC came to the finding that if the project is permitted with specific conditions, it would sufficiently mitigate adverse environmental impact (if any) of the project and ensure

sustainable development. In fact, SEAC added certain conditions specifically to address the Appellant's concerns. After such exhaustive deliberation by SEAC, the Respondent No 3 finally approved the Impugned EC on 16.07.2019; and the same was granted to the Respondent No 1 on 23.08.2019 after meticulous consideration.

73. It is further submitted that the Respondent No 5, in its Reply, has clarified that the said unit of the Appellant is neither a 'Defence Installation' nor are there any restrictions upon use and enjoyment of the land around the unit of the Appellant.

74. It is next submitted that the Appellant's reliance on the 'Official Secrets Act, 1923' and the 'Security Manual for Licensed Defence Industries' is entirely misconceived. The purpose of the Official Secrets Act, 1923 is to protect information within 'prohibited places' as notified under its Section 2(8) by penalizing spying and unauthorized communication related to national secrets and protect security and interest of the State. There is no prohibition under either the Official Secrets Act, 1923 or under the notification dated 09.02.2016. The Appellant also relies upon the Security Manual for Licensed Defence Industries to claim that the proposed unit of the Appellant is in contravention of the same. In this regard, it is to be noted that, the Security Manual for Licensed Defence Industries sets out guidelines for adequate security measures to be adopted by the Appellant itself at within its own premises; and the same is not applicable to third parties. In fact, the said Security Manual does not, in any manner, prohibit or regulate setting up of any industrial concerns/ units or any construction activities outside of such units.

75. It is further submitted that the Appellant's entire case is premised on mere apprehension of damage that 'may' be caused to the

Appellant's unit. The instant Appeal is premised on a mere apprehension that the proposed unit will impact the running of the Appellant's unit. The Appellant has failed to make out a case of any proximate/ possible damage that may arise if the proposed unit operates within the EC conditions; or that the EC Conditions violate precautionary principles. In fact, such a case has not been pleaded by the Appellant, and the case pleaded is based only on conjectures. It is settled law that the precautionary principle postulates requirement of cogent scientific evidence of likelihood of environmental damage; and therefore, a challenge to an EC cannot be sustained on the mere apprehension that an industry may cause environmental damage. Even otherwise, the apprehension of the Appellant is misplaced as the alleged unit of the Appellant is located within a notified industrial area where various other industrial units, including those belonging to the Appellant itself, are operating. It may be emphasized that these are all 'Red' and 'Orange' category units. Without prejudice to the above, it may also be noted that the Appellant's apprehension of harm to its own commercial interests belies any genuine concern for the environment. Therefore, the instant Appeal which has been prompted only by the Appellant's own commercial interests ought to be dismissed for want of any genuine environmental concerns.

76. It is next submitted that the impugned EC has been granted after due application of mind. At the outset, it is evident that the Impugned EC has been granted by the authorities after meticulous consideration of all concerns including inter alia, those raised by the Appellant. The Appellant's concerns raised vide letters dated 05.04.2019, and 22.04.2019; and clarifications sought by SEAC on 16.04.2019 were addressed by the Respondent No 1, through additional documents filed by the Respondent No.1 on 23.05.2019. Further, the minutes of the

SEAC Meeting dated 12.06.2019 show that the Impugned EC was granted to the Respondent No 1 only after a rigorous and meticulous scrutiny of all environmental concerns raised by the SEAC and also the Appellant. To this end, it is relevant to note that the SEAC minutes record as follows:

> *"Committee asked regarding action plan on representation of L&T Hazira made vide letter dated 05/04/2019 & 22/04/2019/ and reviewed all the points raised by L&T in their representation....*
> *..PP has submitted detailed reply with clarification regarding L&T representation dated 05/04/2019 & 22/04/2019....*
> *...Committee has found that PP has addressed all the points raised in the ADS on 16/04/2019 satisfactorily and also assured to take all necessary mitigation measures to control air pollution at source."*

77. It is well settled that unless judicial conscience is shocked due to findings of SEAC or SEIAA, interference based on a hypothetical question, unfounded apprehension and non-scientific basis will not be sufficient reason to quash the EC as mentioned in the Judgment titled as *"Husain Saleh Mahmad Usman Bhai Kara v. Gujarat SEIAA, MAN U/GT/0055/2013".*

78. It is next submitted that the plea of non-disclosure raised by the Appellant is baseless. The Appellant has raised baseless allegations that Respondent No 1 has misled Respondent Nos. 2 and 3 by concealing information related to the following: (i) Mangroves (ii) Forests (iii) Deployment of trucks (iv)Sewerage (v) Source of water (vi) Fly ash generation. It is relevant to note that the despite grant of sufficient opportunities, the said issues were not raised by the Appellant before the SEAC. It is settled law that failure to raise the said issues during the Public Hearing or before the SEAC would therefore tantamount to

waiver of the right to object as mentioned in the judgment titled as *Himgiri Zee University v. Union of India & Ors., MANU/GT/0203/2015.*

79. It is further submitted that in view of the parameters in the EIA Report, which have undergone meticulous scrutiny by SEAC/SEIAA, the instant Appeal is clearly not maintainable on grounds of alleged concealment or misrepresentation as mentioned in judgments **(i) Cansaulim-Arrossim-Cuelim Civic and Consumer Forum and Ors. v. Competent Automobiles Company Ltd. and Ors., MANU/GT/0024/2019**; **(ii) Ramesh Agarwal v. Union of India, MANU/GT/0090/2014].**

80. It is further submitted that the Appellant's reliance on the Order of the NGT dated 10.07.2019 is selective and misplaced. The Appellant's claim that no industrial activity is permissible in Hazira Industrial Area (site for proposed unit) based on the Order dated 10.07.2019 (modified by Order dated 23.08.2019) ("said orders") passed by this Tribunal in O.A. No. 1038/2019 is misplaced in as much as:

> "a. The said orders do not apply to the Hazira Industrial Area at all, but in fact were meant to tackle the mushrooming of industries in Critically Polluted Areas. In so far as the Industrial Areas of Surat are concerned, the same is only relatable to GIDC Sachin and GIDC Pandesara, which are areas not contiguous to Hazira Industrial Area at all and are at a considerable distance of 17.3 and 14 kms respectively from the 5km buffer.
>
> b. There is no bar in the said orders in setting up of new units which are found to be compliant of prescribed norms; and
>
> c. The said orders do not apply to industries operating in compliance of effluent and emission norms.
>
> (i) Clarificatory Order of NGT dated 23.08.2019;
>
> (ii) Office Order dated 11.11.2019 issued by Respondent No 2;

(iii) Google Map showing the aerial distance between Hazira industrial Area and GIDC Sachin and GIDC Pandesara respectively"

Additional Written Submission on behalf of respondent no.1 filed 20.01.2021 in pursuant to liberty granted by Tribunal vide order dt. 06.01.2021.

81. Ld. Sr. Counsel for respondent no.1 has filed detailed written submission submitting that the instant Appeal of the Appellant was initially predicated on the ground that its licensed armoured system complex was an alleged 'Defence Installation' and the proposed unit of the Respondent No 1 was being set up in a prohibited zone, surrounding such armoured system complex of the Appellant. The Appellant also alleged certain violations of the Official Secrets Act, 1923. It was on this plea that notice was issued in the instant Appeal; and, this Tribunal suo moto impleaded the Ministry of Defence as Respondent No 5 vide Order dated 26.09.2019. However, the Respondent No 5 has since clarified before this Tribunal that the said unit of the Appellant is neither a 'Defence Installation' nor are there any restrictions upon use and enjoyment of the land around the unit of the Appellant.

82. It is further submitted that the location of the proposed unit is at the Hazira Industrial Area in Surat, which is one of the most industrialized areas in the country. Presently the Hazira Industrial Area includes projects such as petrochemicals, fertilizers, heavy engineering, steel, cement, energy, edible oil, LNG Terminal etc. having investment of more than 1.8 lakhs crores. More than 20 super-large and large industrial projects are existing in Hazira Industrial Area since more than 15 years including BPCL, Cairn Energy, Essar Power, Essar Steel, Hindustan Petroleum, L&T, Reliance, NTPC, GSECL, Vadraj Cement (ADG Cement), Ambuja Cement, Ultratech Cement, Adani Wilmer etc.

83. It is next submitted that the instant Appeal has not been preferred by the Appellant on any genuine environmental concerns, but is in fact designed to further its own vested commercial motives. The fact that the instant Appeal is nothing but premised on mala fides and personal commercial motives of the Appellant is further evident from the Order dated 15.09.2020 passed by this Tribunal, whereunder, it was held as follows:

> *"This is a case of business rivalry between two industrial groups. The matter was heard on 2 or 3 days in the previous month and it was continuing day to day basis and at the verge of conclusion and today during the argument a question was raised to provide an opportunity of hearing to the interveners and we also observed that everyone who are aggrieved by the order can argue and counsel present at the time of hearing can argue the case on every point 1 but again it is requested to adjourn the case. The matter was based on two points: (i) want of public hearing and (ii) whether it is within the prohibited zone and it was about to conclude but further adjournment on the ground that certain papers are required to be gone through and request was made to adjourn the case"*

84. It is further submitted that even the Intervention Application by the Respondent No 6 (IA 28/2020) came to be filed in collusion with the Appellant and through the same counsel (i.e. M/s DSK Legal Law Firm), that too after a period of more than 6 months from the grant of the Impugned EC. Furthermore, it is submitted that the Reply filed by the Respondent No 6 contains issues which were never raised by it at any stage prior, i.e. either before the Respondent No 3, or before this Tribunal in the Appeal or the IA 28/2020 (for intervention) filed by the Respondent No 6. In fact, since the intervention application of the Respondent No 6 was never considered by this Tribunal, even the Reply of the Respondent No 6 was never formally taken on record by any Order of this Tribunal. Accordingly, the Respondent No 1 was never afforded an opportunity to file any reply or respond to the same.

85. It is next submitted that once the plea of the Appellant of it being an alleged 'Defence Installation' stood negated in view of the reply filed by the Respondent No 5 (Ministry of Defence), the Appellant (duly supported by the Respondent No 6, and having the same set of lawyers) sought to raise the following feeble arguments to challenge the Impugned EC during the hearing on 06.01.2021.

> **A.** Whether the Impugned EC has been granted after application of mind by the Respondent No 3 (SEIAA)?
>
> **B.** Whether the Respondent No 1 has conducted a traffic study and impact assessment of the 'Panchayat Road' proposed to be used for transportation of material through trucks, to and from the Proposed Unit?
>
> **C.** Whether the impact and air mitigation measures of vehicular movement by road etc., have been assessed?
>
> **D.** Whether the presence of Mangroves and Forest have been disclosed and considered in the EIA Report?
>
> **E.** Whether adequate measures have been taken to ensure supply of fresh water, and towards sewerage treatment plan?
>
> **F.** What is the impact of the Surat Urban Development Authority, Development Regulations on the project and whether the land of the Proposed Unit falls within a 'prohibited zone' for proposed use, as alleged in the Reply of Respondent No. 6?

86. It is submitted that each of the above issues are entirely erroneous and do not in any manner support the case of the Appellant. However, for the sake of completeness, the following submissions may be seen in respect of each of them:

A. Whether the impugned EC has been granted after application of mind by the respondent no 3 (SEIAA)?

87. In this regard, it is submitted that EIA Report in respect of the proposed unit was filed by the Respondent No 1 on 31.03.2019. Thereafter, at the meeting held by SEAC on 16.04.2019, and pursuant

to written representations by the Appellant, the SEAC sought various clarifications in order to address, inter alia, the objections raised by the Appellant. The relevant extract of the minutes of the 497th meeting of SEAC dated 16.04.2019 is reproduced below:

> "*After deliberation, SEAC unanimously decided to consider the proposal after submission of the following details:...*
>
> ***1.*** *Readdress ToR no. 5, 40.*
> ***2.*** *Point wise action plan regarding representation of L&T Ltd. Hazira*
> ***3.*** *Submit raw material and product transportation route, its impact on surrounding area and mitigation measures.*
> ***4.*** *Undertaking regarding no use of Lignite & Petcoke as fuel.*
> ***5.*** *Sound APCM to control fugitive dust emission during raw material transportation, storage, handling, loading, unloading, transfer, fuel grinding etc.*
> ***6.*** *Details of vents/stacks with specific source & Air Pollution Control System.*
> ***7.*** *Compliance of Coal & Ash handling guidelines & its commitment.*"
>
> (*emphasis supplied*)

88. It is next submitted that these issues were specifically addressed by the Respondent No 1 as part of the additional information supplied by it to SEAC on 23.05.2019. In particular, it may be noted that each of the above-mentioned issues raised by the SEAC were addressed by the Respondent No 1. A presentation in this regard was also made before the SEAC. The same was considered by the Respondent No 3 in detail, which is, inter alia, evident from the Minutes of the 514th meeting held by SEAC on 12.06.2019.

89. It is next submitted that accordingly, it is only after consideration of material by the Respondent No 3 that the decision to grant EC to the Respondent No 1 was taken. The mere fact that the Respondent No 3 has imposed conditions in the Impugned EC, in line with the information supplied by the Respondent No 1, ex-facie shows due application of mind by the Respondent No 3, which is supported by these judgments (i) "*North East Affected Area Development Society (NEADS) & Anr. v Union of India & Ors.; Judgment dated 13.01.2015 in*

Appeal No 8 of 2011 passed by this Tribunal &(ii) Ramesh Agarwal v. Union of India, MANU/GT/0090/2014).

90. It is further submitted that it is evident from the record, that the Respondent No 3 has considered each of the above-mentioned queries and the response of the Respondent No 1 in detail; and has granted the Impugned EC only after meticulous application of mind.

B. Whether the respondent no 1 has conducted a traffic study and impact assessment of the 'Panchayat Road' proposed to be used for transportation of material through trucks, to and from the proposed unit?

91. In this regard it is submitted that the Appellant contended that the EIA report in respect of the proposed unit does not contain an impact assessment of the roads proposed to be used by the Respondent No 1. Furthermore, it was also contended that the Respondent No 1 allegedly proposes to undertake transportation of material through trucks on undeveloped/ 'Kuccha' panchayat roads. It is relevant to note that these contentions have not been raised by the Appellant in the Appeal but have only been raised, for the very first time, in the reply filed by the purported Intervener at the behest of the Appellant. As such, it is submitted that this issue ought to be rejected at the very outset, for this reason alone.

92. It is next submitted that even otherwise, the said contention is wholly misconceived. The EIA report as well as the EC conditions adequately considered the environmental impact in relation to vehicular movement through roads to and from the proposed unit. In this regard, the following arguments as advanced by the Appellant and the response of the Respondent No 1 in regard thereto, may be noted:

“

Argument of the Appellant	***Reply of the Respondent No 1***
1. Horseshoe Alignment: *The Appellant claims that the Proposed Unit is surrounded by various L&T units whose boundaries form the shape of a horseshoe (high-lighted in yellow); and that the Respondent No 1 has access to only a single panchayat road (highlighted in red) for vehicular movement, part of which is adjacent to Suvali village Towards this end, the Appellant relied upon a Google image map*	*This plea is utterly wrong and misleading. It is submitted that there are other alternate approach routes available to the Proposed Unit. The route proposed to be used by the Respondent No 1 was represented to the Respondent No 3 (SEIAA) vide the additional information letter dated 23.05.2019. It may be noted that the route proposal was considered by SEAC in its 514th meeting held on 12.06.2019.* *It is relevant to note that the routes available to approach the Proposed Unit are sanctioned transportation routes for the Hazira Industrial Zone, and which is also used by the Appellant as well as other industries.* *A colour copy of the map relied upon by the Appellant; the route map submitted by the Respondent No 1 before the SEAC, and the map depicting the alternative transportation routes to the Proposed Unit are annexed herewith as* ***Annexure 5****.* *A mere perusal of these maps show that the plea of the Appellant is misconceived and is predicated on depicting a false and incorrect picture as to the transportation routes proposed to be used by the Respondent No 1.*
2. Width of Panchayat Road: *The Appellant claims that the ‘panchayat road’ proposed to be used as an approach road to the Proposed Unit does not have the width to support truck movement.*	*This plea is baseless. It is submitted that the said ‘panchayat road’ is a proper metal tarred road having a sanctioned width of* ***22 meters*** *as per the SUDA Development Plan, 2035. As on date, several trucks (including that of the Appellant) ply on the said route. In any event, as stated above, the Respondent No 1 has access to other sanctioned public roads for transportation within the industrial zone as set out above.* *It is evident from the same that there is no change in the level of service (LOS) on the said road due to the Proposed Unit’s transportation activity.*

3. Alleged use of Kaccha Road: *The Appellant, relying upon the pleading of the Respondent No 6 contends that the Panch-ayat Road (forming part of the approach road to the Respondent No 1' sunit) is 'Kaccha' and does not have the carrying capacity for the movement of the trucks required to be deployed.*	*This plea is wrong which is inter alia evident from the following:-* ***a.*** *At the very outset, it may be noted that the transportation route proposed, consists of National/ State highways, and only the last part of about 1.2 kms consists of a State Panchayat Road, which is also a 'Pakka' metal tarred road, and is being used solely as an approach road for the site of the Proposed Unit. In addition, the said approach road is a part of the approved Development Plan for the Hazira Industrial Zone and has a sanctioned width of 22 meters.* ***b.*** *Furthermore, the EIA Report of the Respondent No 1 has undertaken a proper and thorough traffic study and impact assessment of the transportation. Pertinently this study was conducted over a continuous period of 24 hours.* ***c.*** *Moreover, a detailed study of the road infrastructure was undertaken by the Respondent No 1 and it was found that "<u>pakka road is available in all villages within a 10KM radius of the Proposed Unit)</u>".* ***d.*** *Importantly, the present site was chosen for setting up of the Proposed Unit, inter alia due to availability of properly constructed metal tarred approach roads.* ***e.*** *In any event, the Respondent No 1 is annexing herewith a recent traffic study undertaken by it in respect of the approach road to the Proposed Unit, which shows that they are in a good condition to handle the expected vehicular movements.*

4. Deployment of 799 Trucks daily: *The Appellant has wrongly contended, on the basis of an imaginary and baseless calculation that the Respondent No 1 would be required to deploy a total of '799 trucks daily'.*	*The said plea of the Appellant is baseless and imaginary.* *The EIA Report categorically discloses the total number of 'per day' truck trip requirement of the Respondent No 1 to only be 363 trips per day (i.e. 91 trucks X 4 round trips/day).* *More importantly, the Table 4.17 of the EIA Report clarifies that assuming the Respondent No 1 operates at 100% production capacity (which is not always the case), the deployment will not exceed 91 trucks at any given point of time. This was also clarified by the Respondent No 1 vide the letter dated 23.05.2019.* *Furthermore, the Impugned EC has expressly imposed a maximum permissible 363 truck trips 'per day' allowance upon the Respondent No1, and the Respondent No 1 is bound to comply with the said direction. This is in fact less than half the number of the alleged 799 truck trips falsely alleged by the Appellant.*
5. Inadequate parking: *Based on the incorrect calculation of truck trips/day made by the Appellant(above), the Appellant argued that the Respondent No 1 has not provided for adequate parking facility in the Proposed Unit. To this end, the Appellant has argued that any parking provisions would require the green belt area in the Proposed Unit to be used for parking.*	*This is wrong. It is submitted that the EIA Report clearly demarcates the land usage in the Proposed Unit is wrong.* *It is submitted that the EIA Report clearly demarcates the land usage in the Proposed Unit.* *The EIA Report demarcates 33.98% (i.e. 16,500 mts.) out of the total land area (about 48,563 sq. mts.) to be dedicated for greenbelt, and this condition has accordingly been imposed upon the Respondent No 1. The Table 11.3 of the EIA Report also shows 37.79% (i.e. 18350 sq. mts.) of the land area of the Proposed Unit to be an 'open space' of which, the Respondent No 1 has since earmarked about 10% (4716 sq.mts.) as dedicated parking space for the Proposed Unit which can accommodate about 45-48 trucks.* *These details regarding provisions made for parking space of about 45-48 trucks inside the Proposed Unit, was communicated by the Respondent No 1 to the SEAC vide the additional information supplied on 23.05.2019 and also vide a presentation before SEAC on 12.06.2019.* *This is evident from the Map showing dedicated 'greenbelt area' and 'parking areas' submitted before the Respondent No 3 (SEIAA). A colour map of the parking plan and greenbelt area within the Proposed Unit is also annexed herewith collectively as* ***Annexure 12.***

93. It is further submitted that information, including detailed traffic study and traffic management plan including maps in respect thereof, were specifically submitted by the Respondent No. 1 before the Respondent No 3 (SEIAA) pursuant to specific queries raised by the Respondent No 3 in this regard in the 497th meeting of SEAC dated 16.04.2019. The information in respect of all of the above-mentioned issues were also considered by SEAC in its 514th meeting held on 12.06.2019. As such, it is evident that the arguments raised against the Respondent No 1 in this regard are baseless and the Respondent No 1 has undertaken adequate study of all possible factors in respect to the road usage, and traffic management in its proposal for setting up the Proposed Unit which have been presented to SEAC and duly deliberated upon before issuing EC.

C. WHETHER THE IMPACT AND AIR MITIGATION MEASURES OF VEHICULAR MOVEMENT BY ROAD, ETC., HAVE BEEN ASSESSED?

94. It is next submitted that during the course of the hearing on 06.01.2021, a query was put to the Respondent No 1 with respect to the measures proposed to be adopted by the Respondent No 1 to mitigate dust emission during transportation of material to and from the proposed unit. Pertinently, this query was raised in light of the Appellant's misconceived plea that the Respondent No 1 proposes to use the entire stretches of 'kaccha' village roads adjacent to the village. As submitted above, the same is wrong. The entire transportation route proposed to be used by the Respondent No 1 consists of national/ state highways, which are properly constructed 'pakka' (metal tarred) roads and only the last 1.2 km stretch is a State Panchayat Road, which is also a 22 meters wide sanctioned, 'Pakka' metal tarred road; and was wrongly described by the Appellant as a 'kaccha' road during arguments. Furthermore, this is also, admittedly, about 1.15 kms away

from Suvali village. Without prejudice to the above, the following details in this regard, as supplied by the Respondent No 1 may be noted. The Respondent No 1 has undertaken a detailed study with respect to the ambient air quality in the vicinity of the proposed unit, and the impact of the same in all aspects, i.e. during construction, operation and transportation of material to and from the proposed unit, as part of the EIA Report. In fact, the EIA Report specifically deals with mitigation measures to negate any adverse impact of vehicular movement on all environmental aspects. In fact, specific and additional details in this respect were sought by the Respondent No 3 (SEIAA) and were answered by the Respondent No 1 in its presentation before the SEAC on 12.06.2019. (i) Presentation and (ii) detailed APCM/ air pollution mitigation measures submitted by the Respondent No 1 before the Tribunal.

95. It is next submitted that the salient features of the air pollution mitigation steps during transportation, proposed by the Respondent No 1, in the information submitted before SEAC, are as follows:

> ***"a.*** *All raw material (i.e. Clinker and Gypsum), except for fly ash, is in solid form. Such raw material is proposed to be transported in trucks/ automated trippers completely covered in tarpaulin.*
> ***b.*** *Raw Material in powdered form (fly ash), shall be transported to the Project site in specially designed bousers (which are specially designed closed cylindrical container trucks thereby avoiding any impact during transportation).*
> ***c.*** *Finished Product, i.e. bagged cement shall be transported in completely tarpaulin covered trucks/trippers, and loose cement shall be transported in specially designed bousers.*
> ***d.*** *Photographs of the bousers, covered trucks and trippers proposed to be used for transportation of material were submitted by the R-1 before the SEAC.*
> ***e.*** *Respondent No 1 has undertaken to provide water sprinkling systems, and spray water over the roads and material, to negate any remaining possibility of dust emission,*
> ***f.*** *R-1 has undertaken to construct paved roads within its premises; and install automated sweeping machines for the road and land within the premises of the Proposed Unit.*

> ***g.*** *Speed limit of trucks has been limited to a maximum of 10 km/hour on village roads. Respondent No 1 has further proposed to deploy trucks with valid PUC's and which comply with applicable environmental norms. The road within the premises has been proposed to be a one-way system to minimize reversing of trucks.*
> ***h.*** *33.98% of the plot area of the Proposed Unit has been proposed to be developed as a greenbelt along the boundary of the Proposed Unit."*

96. It is next submitted that the Respondent No 1 has proposed to employ state of the art German technology and other facilities such as concrete silos' and covered storage yards, for storing of raw material; completely automated closed loop manufacturing processes; completely enclosed loading and unloading systems, De-dusting bag filters of various capacities, and dust extraction systems having a capacity of 11,000 cubic meters/hour to check and control dust emission.

97. It is further submitted that in terms of the ambient air study conducted as part of the EIA Report, it was observed that "Predominant wind direction is (sic) study region is NE to SW and in downwind direction there is no village. The location of defence unit of L&T is in crosswind direction." The study above-reproduced further clarifies that the proposed unit of the Respondent No 1 will have no significant impact on the Appellant or the Respondent No 6. The impact assessment in respect of the same has also been carried out as part of the EIA Report. The aforesaid reveal that the Respondent No 1 has undertaken sufficient steps to control and mitigate any pollution in all aspects, and that the contentions of the Appellant are absolutely meritless.

D. Whether the presence of mangroves and forest have been disclosed and considered in the EIA report?

98. It is next submitted that the Appellant has wrongly sought to plead that the EIA Report of the Respondent No 1 does not disclose the

presence of mangroves and forest land in the vicinity of the proposed unit. This plea is utterly misconceived. In this regard, the following may be noted:

> ***"a.*** *The EIA Report of the Respondent No 1 duly discloses the presence of mangroves. This is inter alia shown at Figure 3.10 and Table 3.12 of the EIA Report.*
>
> ***b.*** *Similarly, the EIA Report also discloses the presence of the forest land within a 10 KM radius of the Proposed Unit in table 3.12 of the EIA Report.*
>
> ***c.*** *In fact, a detailed study of the impact of the Proposed Unit on these factors has also been conducted and disclosed in the EIA Report. The Air Quality Modeling Study conducted shows that "no significant impact" is anticipated on the ambient air quality of the area due to the proposed project.*
>
> ***d.*** *Pertinently, even the Respondent No 3 has categorically stated that the presence of such mangroves and forests, and the negligible impact of the Proposed Unit on the same were disclosed by the Respondent No 1 in the presentation made by it before the SEAC on 12.06.2019.*
>
> ***e.*** *In any event, it is relevant to note that the Proposed Unit is being set up in an industrial zone, and there are more than 20 medium and large; red and orange category industries including inter alia about 5 industrial units of the Appellant itself, present within a 10 KM radium of the Proposed Unit. As such, any plea of the Appellant that the Proposed Unit is allegedly being set up on forest land is patently false, even to the knowledge of the Appellant."*

E. Whether adequate measures have been taken to ensure supply of fresh water, and towards sewerage treatment plan?

99. It is submitted that the Appellant has incorrectly sought to contend that the Respondent No 1 has not made any provisions for a steady source of supply of fresh water of 278 KLD. Furthermore, the Appellant has further sought to submit that the Impugned EC incorrectly provides for the provision of a 78 KLD STP, whereas the Respondent No 1 has only provided for a 15 KLD STP. It is submitted that both the pleas are incorrect. In this regard the following may be noted:

*“ **a. Fresh Water Sources**: The EIA Report of the Respondent No 1 adequately discloses the sources of water, and that the actual requirement of fresh water is only 200 KLD; and the remaining 78 KLD requirement of fresh water is proposed to be met through water recycling. Furthermore, the Appellant has already sought requisite approvals from the irrigation department to draw such water from pipelines.*

__b. Sewerage__: Project capacity and the requirement of STP of 15 KLD capacity has been duly disclosed in the EIA Report and even the EC only provides for a 15 KLD STP. It is also pertinent to note that an STP of 15KLD is adequate for the needs of the staff of the Proposed Unit in as much as there is no permanently stationed residential staff within the Proposed Unit, and the toilets, etc. are only meant for staff on shift. It is equally relevant to note that the recycled water from the STP is proposed to be used towards development of the greenbelt only.”

100. It is next submitted that the Respondent No 6 has sought to impugn the EC on the ground that the setting up of the proposed unit on its present site, viz. within the heart of the Hazira Industrial Area, is prohibited under the Surat Urban Development Authority General Development Control Regulations (SUDA Regulations). In this regard, the argument of the Appellant is that the proposed unit of the Respondent No 1 ought to fall under the category of an alleged ‘Hazardous and Obnoxious Industry’, and in terms of zonal classifications under SUDA Regulations, the proposed unit cannot be permitted to be set up in the Hazira Industrial Zone.

101. It is further submitted that these contentions have not been raised by the Appellant in the Appeal but have only been raised, for the very first time, in the Reply filed by the purported Intervener at the behest of the Appellant. As such, it is submitted that this issue ought to be rejected at the very outset, for this reason alone. Furthermore, the Respondent No 1 has never been granted an opportunity to address this issue other than by way of these submissions. It is further submitted that even otherwise, it is settled law that any alleged infraction under a State enactment, to which the jurisdiction of this Tribunal does not

extend under Schedule I of the National Green Tribunal Act, 2010 (in short 'NGT ACT'), is beyond the jurisdiction of this Tribunal as discussed in judgment (i) Kehar Singh v. State of Haryana, 2013 SCC OnLine NGT 52; and (ii) The Goa Foundation Anr vs. Union of India Ors. 2013 SCC OnLine NGT 86. If there is any infraction of any such law, as alleged, the remedy lies before another forum and not before this Tribunal.

102. It further submitted that the Respondent No 1 is, in any event, bound to comply with all applicable laws, regulations and rules, including inter alia any regulations imposed by SUDA, and shall be bound by the same. In fact, even the Impugned EC requires the Respondent No 1 to comply with all Local bye-laws of concerned authorities.

103. It is next submitted that the zone classifications under the SUDA Regulations on which the Appellant and the Respondent No 6 have placed reliance upon, are not applicable to the Hazira Industrial Zone. This is ex-facie evident from the Surat Master Plan 2035 prepared by the SUDA which states as follows:

> *"19.11.2 Industrial Zone:*
> *...The Industrial Zone and Obnoxious and Hazardous Industrial Zone existing in DP 2004 have been continued including the Hazira Industrial Zone as per the erstwhile Hazira Area Development Authority's development plan"*

104. It is next submitted that the SUDA Master Plan, 2035 further acknowledges the Hazira Industrial Area to be one of the largest industrial zones in the country meant for setting up industrial units, and recognizes the existence inter alia of multiple 'hazardous' petrochemical, heavy-forging, chemical and fertilizer industries within its periphery.

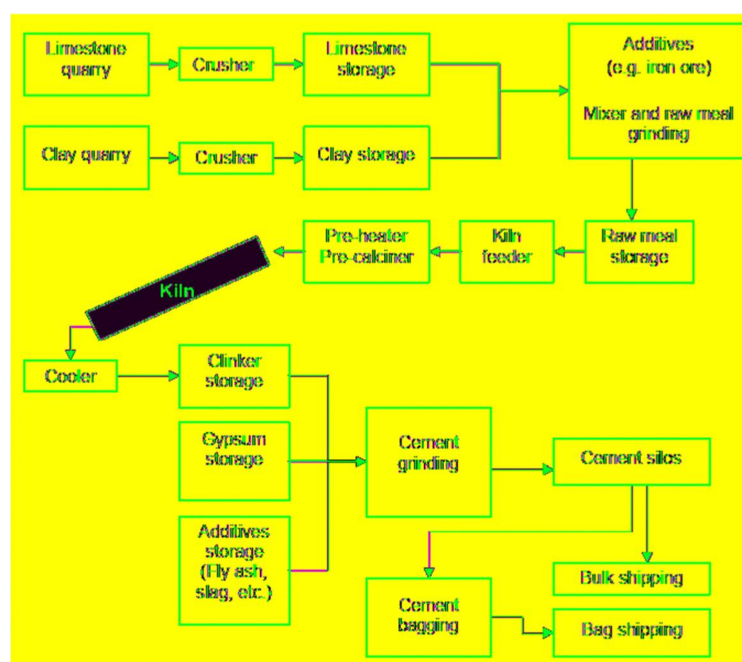
105. As such, it is clear that even this plea of the Appellant is ex-facie misconceived. It is re-iterated that the Respondent No 1 has undertaken a detailed study of every environmental aspect prior to applying for the Impugned EC and proposes to employ state of the art and environment friendly machinery for its proposed unit. Furthermore, the Impugned EC has been granted after due application of mind and contains satisfactory safeguards to mitigate all environmental concerns. In fact, it is relevant to note that the proposed unit by the Respondent No 1 will play a key role in furthering socio-economic, industrial and economic development in the area. The Appellant, being the L&T Group, is one of the largest industrial conglomerates in India and has for its own oblique commercial motives filed the instant Appeal and consequently attempted to delay the setting up of the proposed unit since more than last 1.5 years, on wholly baseless and misconceived grounds. In view of the above, it is prayed that this Tribunal be pleased to dismiss the Appeal with costs.

Additional Written Submission dt. 18.10.2021 on behalf of respondent no.1 in pursuant to liberty granted by Tribunal vide order dt. 05.10.2021.

106. It is submitted that the proposed unit of Respondent No 1 is a Standalone Cement Grinding Unit with a capacity of 2.0 million TPA. As such, the proposed unit is a Category B Project in terms of the Environmental Impact Assessment Notification, 2006 ("EIA Notification") issued under Section 3(1) read with Section 3(2)(v) of the Environment (Protection) Act. It is submitted that under the EIA Notification all activities are classified as either "Category A" or "Category B" based on the extent of their potential impact on the surrounding environment.

107. It is next submitted that in the Schedule to the EIA Notification, at paragraph 3(b), all standalone grinding units are categorized as Category B projects, irrespective of their capacity. Integrated cement plants, on the other hand, are categorized into Category A or B on the basis of their capacity. This is because standalone cement grinding units do not involve the process of clinkerization, which is the foremost cause of pollution and emissions in cement plants. In fact, standalone grinding units such as the proposed unit primarily only cause fugitive dust emissions, arising out of the handling of raw materials. Process emissions, which are generated from the stacks of various sections in an integrated plant, are absent in a standalone grinding unit for the most part. This can further be clarified from a perusal of the Technical Guidance Manual for the Cement Industry ("TGM"), issued in August 2010. This manual is prepared for various different industries with the help of domain experts under the supervision of the Ministry of Environment and Forests ("MoEF"), pursuant to its mandate of issuing appropriate guidelines for the categorization of projects under the EIA Notification from time to time.

Figure3-3–Cement Manufacturing Process



108. It is further submitted that in the above figure, the processes which are depicted above the kiln (including the kiln itself), are not part of the proposed unit. The proposed unit, as a standalone grinding unit, would only encompass the units displayed below the kiln, and as such, would not cause emission levels of the kind associated with integrated cement plants: "The main releases from the production of cement are releases to air from the kiln system. These are derived from the physical and chemical reactions involving the raw materials and the combustion of fuels." Furthermore "Traditionally, the emission of dust particularly from kiln stacks has been the main environmental concern in relation to cement manufacture. Dust is generated at all stages in cement manufacturing process. The dust generation in cement plant is basically from the stacks of various sections like crusher, raw mill, coal mill, kiln, clinker cooler, cement mill and packing plant. These are known as process dust or point sources, while dusts arising from material handling, storage and transportation etc., is known as fugitive dust emission." (Emphasis supplied). Given that the proposed unit does not involve a kiln or the other chemical processes involved in the initial stages of cement manufacturing, it will cause much lower emissions than expected from a standard integrated cement plant. As per the TGM the PM emission factor with Air Pollution Control Devices (APCD) is merely 0.21 kg/tonne of Clinker produced.

109. It is submitted that the High-Powered Expert Appraisal Committee ("High-Powered Committee"), constituted pursuant to the Order of this Tribunal dated 21.01.2021, took this into account when preparing its Report. As it duly noted in Paragraphs 8(vi) and 8(xi) thereof, the proposed unit is likely to cause much lower emissions than an integrated cement plant. In fact, the cement manufactured at the

proposed unit is a green cement. It involves the conversion of waste materials such as fly ash and slag, along with clinker brought from outside, into usable cement:

> *"vi. The proposed project of M/s. SIL involves setting up of stand-alone cement grinding unit of 2 MTPA capacity.* ***The major source of pollution from this unit will be particulate matter and fugitive dust emissions from handling raw materials which can be mitigated by adopting adequate environmental safe guards****.*
>
> [….]
>
> *It may also be noted that the proposed unit is not an integrated cement plant. It is a grinding unit where,* ***clinker (brought from outside), fly ash and slag (waste materials from power plants and steel plants) are ground and converted to a useful green cement****. Clinkerization process makes the cement plants are d category industry due to pollution of particulate matter, SO2, NOx and Carbon Monoxide. In grinding units only particulate matter is emitted during grinding and that too much less than that in the clinkerization process.* [**Emphasis supplied**]"

110. It is submitted before this Tribunal that for an appropriate adjudication of the instant appeal it would be pertinent to explain the scheme envisaged under the EIA Notification. The said procedure for grant of EC is not only based on the EIA Notification but also the industry specific TGMs issued from time to time. An EC for a project is granted on the basis of the Category in which it falls. The process for Category A projects is conducted at the Central level, by an Expert Appraisal Committee ("EAC") which recommends whether or not an EC should be granted to the particular project by MoEF. The process for Category B projects is conducted at the State level, by a State Expert Appraisal Committee ("SEAC") which recommends whether or not an EC should be granted to the particular project by the State Environmental Impact Assessment Authority ("SEIAA"). A brief summary of the process envisaged under the EIA Notification is as follows:

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

111. It is next submitted that the Project Proponent herein duly followed the above procedure as applicable to the proposed unit, and consequently, the EC was granted to it on 23.08.2019.

112. It is further submitted that there are challenges to the EC dated 23.08.2019 in the instant appeal. The Appellant herein, being one of the largest industrial conglomerates of the country, owns the entirety of the land surrounding the site of the proposed unit. Furthermore, it is a matter of record that the Appellant had made repeated attempts to purchase Respondent No 1's land on which the proposed unit is being set up. When the same was not possible, the

instant Appeal was filed by the Appellant in order to prevent setting up of any industry in the area.

113. It is next submitted that the Appellant's conduct in the instant appeal further evidences the Appellant's mala fide motives. The Appellant has consistently been improving its case. In this respect, it is pertinent to submit that the original grounds of the said appeal were entirely premised on the wholly misleading basis that the Appellant's units next to the proposed unit were "defence installations" executing projects of national importance, and as such, were entitled to special protections. It was only later that the grounds were belatedly expanded to include unfounded assertions regarding the grant of EC to the proposed unit. Importantly, the Ministry of Defence (Respondent No 5 herein) in its Counter- Affidavit has categorically stated that the Appellant's stand that its units in the vicinity of the proposed unit are defence installations is wholly inaccurate and misleading, and that the present appeal was actually an adjudication of a private dispute between two private parties:

> *"7. As regards prohibited areas, Works of Defence Act 1903 (WODA 1903) is an act to provide for imposing restrictions upon use and enjoyment of land in vicinity of works of defence in order to ensure safety and security of the works. As per the act, work or work ofdefence means any establishment, installation, assets etc under Ministry of defence. The Land Wing in the Department of defence handles the notification of WODA 1903 around the defence installations of Army and that does not relate to Defence manufacturing facilities. The L&T facility is a defence manufacturing facility and Works of Defence Act 1903 (WODA 1903) does not relate to defence manufacturing facility.*
>
> *8. It is respectfully submitted that as it is a dispute between two private companies it is submitted that the case should be decided on merits.**(Emphasis supplied)**"*

114. It is next submitted that due consideration has been accorded to the amended grounds taken by the Appellant in the

present appeal. In view of the said grounds, this Hon'ble Tribunal was pleased to constitute the High-Powered Committee vide the order dated 21.01.2021. Notably, the Committee consists of technical domain experts including erstwhile officers from the MoEF, the Central Pollution Control Board, along with renowned environmental experts and scientists, such as scholars from the National Environmental Engineering Research Institute Nagpur, and the Indian Institute of Technology Mumbai. It is thus ex-facie evident from the Appellant's conduct that the instant Appeal has not been preferred by the Appellant on any genuine environmental concerns, but is in fact designed to further its own vested commercial motives. The Appellant is only seeking an adjudication of its own private commercial interests by way of the present appeal. In addition to the original objections raised (as detailed above), the Appellant also introduced certain new objections to the grant of the impugned EC at different stages in the instant Appeal by way of an afterthought, in order to prolong and protract the proceedings. The said objections can primarily be summarized as follows:

"i. *The Location of the Proposed Project.*
ii. *The purported lack of fitness of the Panchayat Road.*
iii. *The alleged inadequacy of land allotment.*
iv. *The usage of the Coastal Sea Route.*
v. *The purported impermissibility of the Proposed Project by SUDA.*
vi. *The alleged non-application of mind by relevant regulatory authorities.*
vii. *The alleged non-disclosure of environmental sensitivities in Form I."*

115. The Appellant has sought to rely on the Tribunal's Orders dated 10.07.2019 and 23.08.2019 to contend that the grant of EC to the proposed unit in Surat should not be permitted as it is in violation of the aforesaid orders. The Appellant misleadingly seeks to rely on

entry 26 in paragraph 11 of the Order dated 10.07.2019 which provides the CEPI scores for various industrial clusters:

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

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

116. It is further submitted that this contention is utterly misleading. The Appellant has erroneously sought to contend that the above table implies that industrial activity in the entirety of Surat must be stopped. As is evident from a bare perusal of the aforesaid orders, the Tribunal had directed the States to regulate industrial activities in the severely/critically polluted industrial clusters within the States by formulating action plans for environmental improvement in such areas.

117. It is next submitted that the Gujarat Pollution Control Board ("GPCB") accordingly identified certain polluted clusters pursuant to the directions of the Tribunal. The GPCB office order dated 11.11.2019 identified GIDC Sachin and GIDC Pandesara among others. These are the only two such identified clusters that constitute the CEPI Score of Surat, and which are remotely in the vicinity of the proposed unit. Industrial activity within these clusters was sought to be regulated by the GPCB – even within these clusters, no complete prohibition on industrial activities has been imposed. This regulation has been effected through the imposition of additional conditions in the identified polluted areas. It is extremely pertinent that even both of these clusters are, in fact, located at a considerable distance of 14 kms (after the buffer zone of 5 kms) from the site of the proposed unit.

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

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

119. It is submitted that Appellant has impugned the grant of the EC on the ground that the Panchayat Road near the proposed project is unsuitable for the said project to proceed.

120. It is next submitted that the Appellant has sought to contend that the Panchayat Road which is part of the transportation route of the proposed project is a kaccha road without adequate load bearing capacity for the vehicular traffic expected to be caused by the proposed project. This is patently false. At the very outset, it may be noted that the transportation route proposed consists of National/State highways, and only the last part of the route (about 1.2 kms) consists of a Panchayat Road, which is also a pakka metal tarred road.

121. It is further submitted that the Project Proponent has undertaken a detailed Traffic Study in order to address the concerns raised by the Appellant in respect of the Panchayat Road and the same has been submitted before the Expert Appraisal Committee. The said study undertakes a thorough impact assessment in addition to the assessment already conducted in the EIA Report for the proposed project. The High-Powered Committee has observed in this respect that the road has adequate load bearing capacity given the increase in traffic projected. The calculations relied upon by the Committee are reproduced as follows:

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

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

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

equivalent PCU for proposed project will be as follows:

No. of trucks required per day = 363 Equivalent PCU factor for 4-6Axle=4.5

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

Modified Traffic Scenario in case of 68 PCU and LOS

S.N	Road	Increased PCUs	Modified V (Volume in PCU per hr)	C (Capacity in PCU per hr)	Modified V/C Ratio	LOS (Level of Service)
1.	National Highway6	68*60%= 41	1421+41= 1462	3000	0.48	C
2.	State Highway168	68*40%= 27	743+27= 786	1250	0.62	D
3a.	Approach Road/ Panchayat Road*	68	190+68= 258	1250	0.21	B
3b.				900	0.28	B

”

122. It is next submitted that on the basis of the above, the High-Powered Committee also noted:-

> “xvi. It has been reported that the Panchayat Road is found to be having a carrying capacity of 1250 PCU per hour on which an average 190 PCUs travel per hour. 48 PCU per hour will be the net additional impact on the existing traffic due to the SIL project. SIL has submitted a traffic management plan and presented that the approach road (Panchayat Road) is “Pucca” (Metal tarred) and having a current width of more than 15 meters throughout the entire1.2 kms stretch from the Highway to the plant.
> **(Emphasis supplied)**”

123. It is next submitted that the increase in traffic contributed by the proposed project is well within the permissible capacity of the Panchayat Road. After a detailed analysis of the load bearing capacity of the said road and the impact of expected vehicular traffic, it is evident that the concerns sought to be raised by the Appellant are without any credible basis.

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

> **"xvii.** The Panchayat Road of 1.2 km only, for which the load bearing capacity was impugned by the L&T, was constructed by L&T Limited itself pursuant to directions of the Hon'ble High Court of Gujarat in Special Civil Appeal No 10850/2009 titled as "Sukhabhai Bhikhabhai Aahir & 29 others. Vs. Principal Secretary & 3 others". Furthermore, the Panchayat Road has been disclosed and sanctioned to be a 22- meter-long road under the sanctioned SUDA Development Plan. The Panchayat Road has been constructed pursuant to judicial directions and in accordance with applicable regulations and standards, is a 'Pacca' road and is in fact being used for movement of commercial vehicles such as the 34 tonner trucks proposed to be used by the SIL.
>
> xviii. The panchayat road under question is also being used by other industries existing in the area mentioned at paragraph 7(xvi) above for several years. It may be noted that this road is being used by heavy industries such as Larsen & Toubro.
> **(Emphasis supplied**)"

125. It is therefore submitted that the grounds sought to be raised by the Appellant are frivolous, and that the proposed unit will not cause any adverse impact on the Panchayat Road in question on account of increased traffic.

126. It is next submitted that the plea of the Appellant with respect to the width of the Panchayat Road is baseless as the said road is a proper metal tarred road having a sanctioned width of 22 meters. It is further submitted that it is important to take note of the width measurement undertaken in the Traffic Study Report. The said measurement has been done manually at 11 points. The total length of

the Panchayat Road is 1.62 km from NH-6 (earlier NH-53) to proposed unit.

127. A map of the points at which the width was recorded and the measurements so obtained are extracted herewith from the Traffic Study Report, which is shown in following table.

"

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

"

128. It is evident from the above that the Panchayat Road can easily support the movement of additional trucks required for the proposed unit.

129. It is submitted that as per the Appellant has claimed that the transport route along the Panchayat Road would necessarily require the Project Proponent to pass by the adjacent villages for vehicular movement, since the proposed unit is surrounded by the Appellant's units in a "horseshoe" formation.

130. It is next submitted that the village is anyway not located in a downwind direction from the proposed unit, and as such, is not

likely to be impacted by the emissions from the proposed unit. The High-Powered Committee took note of the same at Paragraph 8(ii):-

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

131. It is submitted that the Appellant has sought to raise unsubstantiated grounds regarding the adequacy of the land allotted for the proposed unit. It is submitted that the EIA Report clearly demarcates the land usage in the proposed unit:-

Table11.3 Bifurcation of Plot Area

"

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

"

132. The EIA Report, thus, demarcates 37.79% (i.e. 18350 sq. mts.) of the land area of the proposed unit to be an 'open space' of which, the Respondent No 1has since earmarked about 10% (4716 sq. mts.) as dedicated parking space for the proposed unit which can accommodate about 45-48 trucks.

133. The Committee has also noted that the space allocated for the proposed unit is sufficient in Paragraph 8(vii):

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

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

135. It is next submitted that the Appellant’s contentions with respect to the transportation route of the raw materials has never been raised at any of the numerous opportunities for raising its concerns that the Appellant has received. It was not even a ground in the amended appeal before this Tribunal. The first time this ground has been raised is in the proceedings before the High-Powered Committee. In line with the Appellant’s continuing conduct with respect to this dispute, this is yet another frivolous ground being raised belatedly so as to further its commercial interests.

136. It is further submitted that the said contention is entirely irrelevant to the present proceedings. The question of transportation of raw materials from the sea route is too remote to be assessed under the environmental impact assessment of the proposed unit or to impact the grant of the EC on this basis, which is always granted specific to the location of the proposed unit, and is concerned with the impact of the setting up of the said Project on the areas immediately surrounding this location. In any event, the EIA Report duly discloses the sea route to be used by the Project Proponent for transportation. As such, these facts have been duly presented before SEAC and were therefore a part of the appraisal done by the authority.

SUDA

137. It is submitted that the Appellant's averments in relation to the purported prohibition on the setting up of the proposed unit by the SUDA are misleading.

138. The impugned EC was granted prior to the sanction of SUDA Development Plan of 2035 and the Zoning classifications under the SUDA Development Control Regulations (which came into effect on 08.10.2020).

139. The General Development Control Regulations, 2017 were sanctioned for the entire State of Gujarat in 2017. However, these regulations merely prescribe how different zones are to be utilized. The classification of those zones in a particular area is undertaken pursuant to the Development Plan of that area, sanctioned by the appropriate authority - in this case, SUDA. The SUDA Development Plan of 2035 classifying the area into different zones, which the Appellant seeks to rely upon, along with the SUDA Development Control Regulations, came into effect on 08.10.2020 (after the grant of the EC on 23.08.2019 and during the pendency of the present Appeal). It is submitted that the said notification must not be retrospectively applied. This has been noted by the High-Powered Committee in paragraph 8(xi):

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

pollution of particulate matter, SO2, NOx and Carbon Monoxide. In grinding units only particulate matter is emitted during grinding and that too much less than that in the clinkerization process.

[Emphasis supplied]"

140. It is next submitted that the Project Proponent has already applied for requisite approval from SUDA in relation to the proposed unit, as was also recognized by the Committee at Paragraph 8(xii) of its Report:

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

141. It is further submitted that the Ld. Sr. Counsel present for SEIAA at the hearing on 05.10.2021 before this Tribunal had stated that cement plants such as the proposed unit are eligible to apply and receive permission from the authority in relation to setting up of an industrial unit. SUDA clearly has the discretion to permit industrial activity in the area, as even the regulations sought to be relied upon by the Appellant only prescribe that there are certain types of development which "may" not be permitted in a certain area. Thus, the discretion to permit or not permit a certain activity in the area would vest with SUDA.

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

143. Without prejudice to the above, it is further submitted that the zone classifications under the SUDA Regulations on which the Appellant and the Respondent No 6 have placed reliance upon, are not applicable to the Hazira Industrial Zone. This is ex-facie evident from the Surat Master Plan 2035 prepared by the SUDA which states as follows:

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

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

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

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

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

Non-application of mind

147. It is submitted that it is relevant to state, at this juncture, that the proposed unit has now gone through multiple layers of scrutiny and the Appellant's concerns have been addressed before multiple forums.

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

149. It is submitted that the Appellant went on to re-agitate its concerns by writing to the State Environmental Impact Assessing Authority ("SEIAA"). It is noteworthy that at the time, the Appellant's concerns were limited to the purported adverse impact of the proposed unit on its own units located in the vicinity of the said project. At the meeting held by SEAC on 16.04.2019 and pursuant to the written representations by the Appellant, additional details from the were sought from the Project Proponent, including a point-wise action plan

specifically in response to the Appellant's concerns. It is further pertinent to mention here that the Appellant was called for a meeting with the SEAC on 18.04.2019 to represent their issues/concerns.

150. It is submitted that these issues were specifically addressed by the Project Proponent as part of the additional information supplied by it to SEAC on 23.05.2019. (ii) Point-wise Reply given by Respondent No 1 to Appellant's queries before SEAC and (iii) APCM to control fugitive emission. A presentation in this regard was also made before the SEAC. The same was considered by the Respondent No 3 in detail, which is, inter alia, evident from the Minutes of the 514th meeting held by SEAC on 12.06.2019.

151. It is, thus, submitted that it was only after consideration of material by the Respondent No 3 that the decision to grant EC to the Respondent No 1 was taken. In this respect, the relevant test to weigh the factum of application of mind by an authority is the establishment of a reasonable link between the material placed before the decision-making body and the conclusions reached in the decision thereof. The mere fact that additional conditions were imposed, in line with the information supplied by the Respondent No 1, ex-facie shows due application of mind by the Respondent No 3.

152. It is, thus, submitted that it is evident from the record that all objections to the impugned EC and the responses of the Project Proponent have been considered in detail, and the said EC has only been granted after meticulous application of mind.

153. It is next submitted that the High-Powered Committee has also duly looked into the grant of EC to the proposed unit, and after applying its mind to the submissions of all relevant stakeholders,

arrived at the conclusion that the EC deserves to be upheld, subject to certain additional conditions.

Environmental sensitivities

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

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

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

"a. What is the nature of the information in question;

b. Whether the information was deliberately concealed;

c. Whether the ultimate impact of the non-disclosure of the said information has adequately been addressed in the

Terms of Reference and the EIA Report in respect of the Proposed Project.”

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

158. It is submitted that an examination of the Terms of Reference for the proposed unit as well as the EIA Report (prepared based on the final Terms of Reference issued by SEIAA) clearly reveal that there has been no dilution in the eventual environmental impact analysis in the present case, as was the case in Hanuman Laxman Aroskar. This is evident from the fact that relevant environmental sensitivities were duly taken into account in the Terms of Reference accorded to the Project Proponent by SEIAA. Term XIII(2) of the aforesaid called for taking into account all environmental sensitivities in the area by the Project Proponent.

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

160. It is submitted that in accordance with these Terms of Reference, the EIA Report of the Project Proponent duly discloses and takes into account all relevant eco-sensitivities near the proposed unit:

"

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

"

161. It is next submitted that in fact, a detailed study of the impact of the proposed unit on these factors was also conducted and disclosed in the EIA Report. This is further linked to the fact that the proposed unit is a standalone cement grinding unit. As elaborated in detail hereinabove, the primary impact of these units on the surrounding environment is through fugitive dust emissions, and the consequent effect on the ambient air quality and therefore on the surrounding area.

162. It is submitted that the impact assessment necessary for a standalone grinding unit is therefore primarily an analysis of the impact of the said unit on ambient air quality. The ambient air quality modeling study conducted shows that "no significant impact" is

anticipated on the ambient air quality of the area due to the proposed unit.

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

163. Eight monitoring stations were chosen for the ambient air study:

"

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

"

164. The low incremental concentration levels were also noted in the EIA Report:

Location	*Background Maximum Conc. (µg/m³)*	*Incremental Conc. (µg/m³)*	*Resultant Conc. (µg/m³)*
PM_{10} µg/m³ (Permissible Limit: 100 µg/m³)			
Project site	*82.4*	*0.00*	*82.40*
Sunvali	*86.4*	*0.77*	*87.17*
Mora	*79.1*	*0.05*	*79.15*
Damka	*84.5*	*0.01*	*84.51*
Rajgari	*84.2*	*0.13*	*84.33*
Kavas	*81.6*	*0.07*	*81.67*
Hazira	*82.5*	*0.21*	*82.71*
Dumas	*77.8*	*0.31*	*78.11*
SO_2 µg/m³ (Permissible Limit: 80 µg/m³)			
Project site	*14.9*	*0.00*	*14.90*
Sunvali	*14.3*	*0.53*	*14.83*
Mora	*13.7*	*0.03*	*13.73*
Damka	*14.9*	*0.00*	*14.90*
Rajgari	*15.3*	*0.09*	*15.39*
Kavas	*14.8*	*0.05*	*14.85*
Hazira	*15.9*	*0.17*	*16.07*
Dumas	*14.1*	*0.22*	*14.32*
NO_X µg/m³(PermissibleLimit:80µg/m³)			
Project site	*20.3*	*0.00*	*20.30*
Sunvali	*20.4*	*0.61*	*21.01*
Mora	*20.8*	*0.04*	*20.84*
Damka	*20.6*	*0.01*	*20.61*
Rajgari	*21.0*	*0.10*	*21.1*
Kavas	*20.6*	*0.06*	*20.66*
Hazira	*22.8*	*0.19*	*22.99*
Dumas	*19.2*	*0.25*	*19.45*

”

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

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

167. It is next submitted that on the question of wetlands, the High-Powered Committee's observations are extremely noteworthy which are as follows:-

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

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

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

170. It is further submitted that in the recent Rajeev Suri judgment the Hon'ble Supreme Court has also observed that appropriate recourse in the face of misinformation in Form I is provided for in Paragraph 8(vi) of the EIA Notification. In this context, the Court also noted that the

Petitioners needed to provide a basis to allege fraud, misrepresentation or concealment of information, and the culling out of a specific fraudulent mental intent would be a prerequisite to establishing fraudulent concealment in a court of law.

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

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

> **was actively concealed and absence of reasons coupled with cursory analysis of the application raised substantial concerns of non-application of mind.** The fact situation in that case was enough for shaking the judicial conscience and invocation of powers of review. **(Emphasis supplied)**"

172. The meaning of the words "deliberate", "deliberation", and "premeditated" as provided in Black's Law Dictionary (8th edition (South Asia)) are as follows:

> "**DELIBERATE**, adj. **1.**Intentional; **premeditated; fully-considered**. 2. Unimpulsive; slow in deciding
>
> [...]
>
> **DELIBERATION,** n. The act of carefully considering issues and options before making a decision or taking some action;
> [...]
> **PREMEDITATED,** adj. Done with willful deliberation and planning; consciously considered beforehand.
> **(Emphasis supplied)**"

173. It is submitted that as seen from the above, Black's Law Dictionary combines "deliberate" with "premeditated", and defines both as actions that are planned and which have been considered before being carried out. The implication behind "deliberate concealment" is therefore a degree of premeditation. This interpretation has also been favoured by the Allahabad High Court in a different context in "Hari Singh v Dambar Singh, 2009 SCC Online All 631', which runs as follows:-

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

174. In the present case, it is submitted that there is no logical basis behind the allegation resorted to by the Appellant that the Project Proponent deliberately concealed information. A perusal of the EIA

Report explicitly shows that all relevant information as detailed in the final ToRs has been duly disclosed by the Project Proponent. The said report was prepared by independent NABET accredited consultants engaged by the Project Proponent, as notified by the MoEF.

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

176. It is next submitted that though in a different context, the Calcutta High Court (in Arun Roy Chowdhury v Mr. Andrew W.K. Langstich, 2017 SCC OnLine Cal 10916) has also made a similar observation with respect to the materiality of undisclosed facts and the deliberateness (or lack thereof) of the said non-disclosure and it runs as under:-

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

177. It is submitted that the High-Powered Committee at Paragraph 8(viii) has taken note of the fact that there are some gaps in the Form I submitted by the Project Proponent. However, the Committee after

detailed re-appraisal and deliberation has not found that such gaps are fatal to the grant of the EC.

178. It is, therefore, submitted that in the present case, there has been no deliberate concealment of any material facts. In fact, the environmental impact assessment undertaken by the proposed unit sufficiently accounts for the eco-sensitivities in the surrounding region by virtue of the air quality assessment undertaken thereby. Given that the proposed unit is a standalone cement grinding unit, the assessment required is primarily an evaluation of the impact on the air quality of the surrounding area. In this regard, the data suggests that all emissions are well within permissible levels, and in fact the ground level concentration is maximum at 1.3 kms from the site of the proposed unit. It is thus abundantly clear that the proposed unit would not have any adverse impact on any eco-sensitivities in the area.

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

CONCLUSION

180. In the end, it is submitted that the Respondent No 1 has undertaken a detailed analysis of every environmental aspect prior to applying for the EC. The Impugned EC has been granted after due application of mind and contains satisfactory safeguards to mitigate all environmental concerns. It has now been scrutinized on multiple occasions before various forums, which have all concluded that the EC

deserves to be upheld. It is humbly submitted that the said EC is sound and provides for adequate environmental protections.

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

182. It is, therefore, submitted that the present Appeal deserves to be dismissed by this Tribunal with exemplary costs and the impugned EC deserves to be upheld.

Affidavit/ Reply on behalf of Gujarat State Environment Impact Assessment Authority, respondent no.3

183. It is submitted on behalf of respondent no.3 that the principle relief sought in the Appeal is;

> *"i. The Hon'ble Tribunal be pleased to cancel the Impugned Environmental Clearance dated August 23rd,2019."*

184. The appeal calls into question the legality and validity of Environment Clearance dated 23.08.2019 bearing the no. SEIAA/GUJ/EX/3(b)/1155/2018 granted to Respondent no.1- Sanghi Industries Ltd. for setting up a 2 million tonnes per annum stand-alone cement grinding unit at Survey No.125/1, 125/2, 126/1+2+3 of village Shivrampur, Taluka Choryasi, District Surat in the state of Gujarat.

185. It is next submitted that that the environment clearance granted by the answering respondent authority is just and proper, valid and in consonance with law. The clearance has been granted after due examination of record and deliberation of the material before the authority. All the relevant aspects have been considered by the authority prior to grant of clearance. The decision of the respondent authority does not suffer from any legal infirmity and does not warrant any interference by this Tribunal.

186. It is next submitted that that respondent no. 1 being desirous of setting up a standalone cement grinding unit on land belonging to it in Village Shivrannpur and such project being a Category B1 project requiring an Environmental Impact Assessment report submitted an application in the prescribed form on 21.12.2018 for grant of Terms of Reference. The application was accepted and examined by the respondent authority on 24.12.2018. Thereafter, it was sent to the State Level Expert Appraisal Committee for determining detailed and comprehensive Terms of Reference addressing all relevant environmental concerns for the preparation of an Environmental Impact Assessment report in respect of the proposed unit. A meeting of the Expert Appraisal Committee was held on 4.01.2019. The project proponent was called for presentation at the meeting. The respondent no. 1 along with its consultant-Eco Chem Sales & Services, attended the meeting and made presentation before the committee. The committee members discussed and deliberated on the proposed unit and activity, and recommended conditions in addition to the standard Terms of Reference. In particular, the project proponent was required to explore the possibility of getting surface water supply instead of depending on the ground water source for the proposed unit. The recommended conditions, which were conditions additional to the

standard terms, were examined and discussed by the respondent authority in its meeting held on 16.01.2019. Thereafter, Terms of Reference were issued to the project proponent- respondent no.1 on 29.01.2019.

187. It is further submitted that the project proponent submitted an Environmental Impact Assessment report to the Gujarat Pollution Control Board for conducting the public consultation process. A public hearing was held on 22.03.2019, as mandated by law. The public hearing proceedings have been produced along with the appeal. At the hearing, the concerns of local affected persons and others who have plausible stake in the environmental impacts of the proposed unit and/or activity were ascertained. Several issues were raised, orally and in writing, by the persons staying in the village as well as by other concerned persons. The appellant also participated in the public consultation and voiced its concerns on the environmental aspects of the project by attending the public hearing. The appellant raised concern about possible issue "due to the dust particle spreading out of the company or due to air pollution" on its gun manufacturing plant located near the proposed unit. Another concern voiced on behalf of the appellant was regarding transportation of fly ash and slag and use of fuel. No legal fault or procedural defect has been alleged in the present appeal to the conducting of the public consultation process by the competent authority. Also, there is no allegation of non-grant of reasonable opportunity to the appellant at the public hearing to submit its concern on the environmental aspects of the project.

188. It is further submitted that respondent no. 1, post the public consultation, submitted application in the prescribed form for seeking prior environmental clearance for the proposed unit along with the

requisite documents, including a report addressing all the concerns expressed during the public consultation apart from dealing with all the terms contained in the Terms of Reference. Said application was submitted on 03.04.2019.

189. It is next submitted that that the application and other documents like the final Environmental Impact Assessment report, outcome of the public consultations including public hearing proceedings, submitted by the project proponent to the regulatory authority were forwarded to the Expert Appraisal Committee for examination and scrutiny. The appraisal of the project was made by the State Level Expert Appraisal Committee in a transparent manner in a proceeding held on 16.04.2019 to which the applicant (project proponent) was invited for furnishing necessary clarification. The project was appraised on the basis of the information furnished in the Environmental Impact Assessment report and the various issues raised during the public hearing as well as details presented at the meeting. The project proponent had proposed to use lignite or coal or pet coke as fuel. The Committee noted that use of pet coke is not allowed in Gujarat for this industry. The Committee therefore informed the project proponent that it shall not permit use of lignite and pet coke as fuel. Other issues were also pointed out by the committee to the project proponent. It is pertinent to mention that the appellant submitted a letter dated 5.04.2019 to the respondent authority raising concerns in addition to points raised by it during the public hearing. It was submitted that the proposed unit will result in to substantial increase in Pollution, i.e., Air (Dust), Noise and Water, and that will impact our critical business operations. This letter, also sent by way of electronic mail, was also taken into consideration by the respondent authority. The members, after deliberation, felt that additional details on some

aspects must be furnished by the project proponent and accordingly unanimously decided to consider the proposal after submission of all such details as called for from the project proponent and mentioned in the minutes of the meeting.

190. It is next submitted that the appellant submitted another letter dated 22.04.2019 to the respondent authority raising additional concerns on the proposed unit of the private respondent and expected solution from the private respondent on each of the concern.

191. It is further submitted that the project proponent gave a written response on 23.05.2019 submitting detailed answer/solution to the issues and concerned raised by the appellant in its letter dated 5.04.2019 and 22.04.2019.

192. It is further submitted that the project proponent was thereafter called for presentation at the meeting of the Expert Appraisal Committee held on 12.06.2019. At the meeting, the project was again appraised on the basis of information and details furnished by the project proponent on the issues mentioned in the meeting held on 16.04.2019 and the written response submitted by the project proponent to the issues and concerned raised by the appellant in its written communications dated 5.04.2019 and 22.04.2019. The members noted the undertaking furnished by the project proponent for not using lignite and pet coke as fuel. The members also noted the documents for water sourcing by the project proponent. The members considered the action plan submitted by the project proponent showing the way it proposed to mitigate the fugitive emission as also address the other concerns raised by the appellant in its representations. The members, after discussion and due deliberation, found that the project if permitted with certain specific conditions would sufficiently mitigate

adverse environmental impact, if any, of the project and ensure sustainable development. The members, therefore, unanimously decided to recommend the project for grant of environment clearance.

193. It is next submitted that the answering respondent authority after receiving the recommendation considered the same along with the relevant material at its meeting held on 16.07.2019. Being satisfied with the recommendation made by the Expert Appraisal Committee on the basis of the material and consideration of relevant aspects, the respondent authority decided to grant environment clearance for the proposed unit. Accordingly, the clearance was issued on 23.08.2019. The environment clearance granted by the respondent authority is lawful and does not suffer from any legal vice or infirmity. It is denied that the environmental clearance has been issued by the respondent authority without properly considering the material on record and without due application of mind. The environment clearance for the project has been granted by the authority after due consideration of all the relevant aspects relating to environment and in accordance with law.

194. It is further submitted that the appeal challenging the environmental clearance issued by the regulatory authority does not appear to be bona fide. The real intent of the appellant in assailing the clearance for the project does not seem to be genuine concern for environment. The objections raised to test the legality and validity are frivolous, presumptive and devoid of any merit. They clearly suggest that the intent behind the challenge is not really to assess the legality of the decision taken by the respondent authority in giving clearance for the project but to frustrate the project. It is submitted that for achieving

the said hidden purpose reckless and baseless allegations have been made against the decision of the regulatory authority.

195. It is next submitted that the entire appeal is based on assumptions that the conditions prescribed in the environment clearance shall be breached by the project proponent, thereby causing environmental damage and commercial loss to the appellant. It is also submitted that challenge to the environment clearance on conjectures and surmises and likelihood of conditions prescribed therein being not complied with or adhered to or breached is wholly misconceived. The mere possibility of breach of condition at a future date by the project proponent would not render the decision of the authority in granting clearance for the project bad in law. The considerations for grant of clearance are very different and do not comprehend possibility of breach of condition by the project proponent as a factor, much less a relevant or vital factor, for determining the permissibility for granting clearance for the project. There are separate powers available with the authority to cancel the clearance in the event it is found that conditions of the clearance have not been complied with, adhered to or breached by the project proponent. The challenge to the decision of the authority of granting clearance to the project on the ground of apprehended violation of conditions of clearance is ill-founded and deserves to be rejected by the Tribunal.

196. It is next submitted that without prejudice to the legal untenability of apprehension of breach of condition as a ground for questioning the legality and validity of environment clearance granted by the authority, it is next submitted that the apprehension expressed by the appellant that the prescribed conditions, if breached, would cause damage to surrounding environment itself shows and establishes

that the authority has applied its mind to protection of environment and has prescribed all such conditions as are necessary for protection of environment. It is also submitted that the appellant has impliedly accepted the fact that conditions imposed by the authority are necessary for protection of the environment given the nature of activity proposed to be carried out in the project. This shows proper appreciation of the material on record and application of mind to such material by the regulatory authority.

197. It is submitted that the contention of the appellant that environment clearance issued by the answering respondent authority is violative of any order passed by this Tribunal is incorrect and denied. It is submitted by the appellant that the clearance granted to respondent no. 1 is in violation of order dated 10.07.2019 (modified by order dated 23.08.2019) passed in Original Application No. 1038 of 2018 by this Tribunal. It is further submitted that the contention of the appellant suffers from an incorrect reading of the order of this Tribunal and improper appreciation of the true and correct facts. It is next submitted that it needs no emphasis that any order of court or tribunal must be read in the context of the proceedings in which such order has been passed. The order cannot and should not be read in isolation and divorced of the facts and context of the proceedings. It is submitted that issue before the Tribunal in Original Application No 1038 of 2018 was phenomenal and hazardous increase in the level of pollution in the identified industrial zones I clusters in various cities across the country and the remedial action against the polluting industries in these identified polluting industrial clusters. As noted in the order, Central Pollution Control Board had undertaken a physical survey and study of various industrial zones / clusters across the country with reference to the Comprehensive Environment Pollution Index (`CEPI') in the year

2018. Two industrial clusters in Surat-GIDC Sachin and GIDC Pandesara, were studied by the Board, and were notified as critically polluted areas as the CEPI score for these two industrial areas was found to be in excess of 70, being 76.43. Considering the high level of pollution in these areas and other critically polluted areas this Tribunal had passed an order directing that "no further industrial activities or expansion be allowed with regard to `red' and 'orange' category units till the said areas are brought within the prescribed parameters or till carrying capacity of area is assessed and new units or expansion is found viable having regard to the carrying capacity of the area and environmental norms". The appellant, as per submission, has read Surat appearing in this report to mean the entire city of Surat and the restriction ordered by this Tribunal as operating for all areas, within and outside the identified polluting industrial clusters in the city of Surat. It is submitted that such expansive reading is neither justified not legally correct. A proper reading would be that the pollution index in the two identified polluting industrial zones / clusters - GIDC Sachin and GIDC Pandesara, which were surveyed by the Board was high, thereby classifying them as critically polluted area. The entire city of Surat was never studied by the Board. The restriction imposed by this Tribunal has to be read to apply to these two industrial clusters and not the entire city of Surat. This order 10.07.2019 has been subsequently modified and/or clarified by an order dated 23.08.2019 wherein this Tribunal has categorically clarified that there was no bar in continuous operation of 'red' and 'orange' category units in these polluted industrial clusters if they did "not in any manner add to the pollution" or setting up of new units "if they are found to be viable". Therefore, the submission of the appellant that by virtue of the restriction imposed by this Tribunal the respondent authority could not have considered the

application of the project proponent for grant of environment clearance as the proposed unit is situated in Surat and that the grant of clearance for the project offends the order of the Tribunal is wholly misplaced and deserves to be rejected by this Tribunal.

198. It is submitted that the project of respondent no. 1 is located at a distance of about 14-17 kilometers from both these critically polluted industrial clusters. The project is situated within the Hazira Industrial Zone, which zone has not been classified as critically polluted area. The Gujarat Pollution Control Board has now issued an order clarifying the areas which have been declared as critically polluted and where no clearances can be granted for setting up new projects or for expansion of existing projects. The present project site is approximately 14-17 kilometers away from these industrial estates.

199. It is further submitted that it is denied on behalf of respondent no.3 that regulatory authority has failed to consider and/or appreciate the concerns raised by the appellant, both during the public hearing and subsequently by their written communications dated 5.04.2019 and 22.04.2019. As reflected from the contemporaneous documentary record all the issues raised by the appellant have been duly noted, recorded and considered by the regulatory authority. It is also denied that there has been any violation of principles of natural justice. It is an undeniable fact that the appellant was granted ample opportunity of submitting its concerns and/or objections at various stages leading up to grant of environment clearance, and that the appellant has participated and been permitted to submit its objections / issues, orally as well as in writing, for consideration of the authority. In view of such factual position emanating from official record it is not conceivable as to

how the appellant claims to have been denied fair hearing and alleges violation of principles of natural justice.

200. It is submitted that the contention of appellant that the project for which clearance has been granted by the respondent authority will "directly impact the Appellants' HZMC Project which is executing key defence and nuclear projects of national importance" shows that the real opposition by the appellant is to the setting up of the unit as the same is likely to affect commercial production of the appellant and thereby prejudicially affect the appellant. The environmental concerns clearly appear to be a subterfuge for achieving the primary objecting of avoiding setting up of the plant by respondent no. 1.

201. It is next submitted that the contention of the appellant that there is inconsistency in the form and the Environment Impact Assessment Report submitted by the project proponent vis-à-vis the environment clearance granted by the authority on the aspect of use of fuel is absolutely misconceived and not tenable in law. It is a matter of record that the project proponent had proposed to use lignite, coal and pet coke as fuel. The regulatory authority, after due consideration of relevant factors including order of this Tribunal, did not permit the project proponent to use lignite and pet coke as fuel and insisted on the project proponent using only coal as fuel. It is not understandable as to how this can be said to be an inconsistency. The authority has every right to accept or reject the source of fuel proposed by the project proponent and in the event it rejects the proposed fuel and insists on a different source of fuel there is bound to a difference in the source of fuel mentioned in the application and the source of fuel permitted in the clearance.

202. It is next submitted that contention of the appellant that the authority has been misled into believing that there are no mangroves in the area is not factually correct. It is submitted that the Environmental Impact Assessment report submitted by the project proponent did disclose presence of mangroves. Even during presentation before the State Level Expert Appraisal Committee the project proponent had disclosed the location of the mangroves and the likely impact on such mangroves. The presence of mangroves existing at a reasonable distance from the project site and the absence of any noticeable adverse impact on them because of proposed activity has been duly considered by the regulatory authority. It is submitted that in the event the appellant is able to show on the basis of cogent and credible material that any information made available by the project proponent to the authority at any time during the course of consideration of its application for grant of environment clearance is false and contrary to official record the regulatory authority is willing to examine the same and take appropriate action in accordance with law.

203. It is further submitted that the contention of the appellant about non-disclosure of forest in vicinity of the project site is factually incorrect. It is submitted that the Environmental Impact Assessment report submitted by the project proponent duly discloses the location of forest area. The authority has noted the presence of forest area and considered the fact that there is no construction or other activity proposed in forest area or near the boundary of the forest area, there is no need for felling trees and that adverse impact on the forest will be minimalistic, if any, by virtue of the proposed activity with conditions for mitigating the air pollution. It is submitted that if the appellant is able to produce before the authority official record or other cogent and credible material of any mis-statement or wrong statement having been

made by the project proponent for obtaining the environment clearance the regulatory authority will take appropriate action in accordance with law.

204. It is further submitted that the contention of appellant that their manufacturing plant is a prohibited area under provisions of the Official Secrets Act, 1923 is a matter of record and not denied. At page 676 of the paper book the appellant has annexed a copy of notification issued by the Government of Gujarat in its Home Department dated 9.02.2016. By the said notification the Government has declared the manufacturing plant of the appellant, described in the schedule, to be the prohibited area for the purposes of the Official Secrets Act, 1923. The said notification does not bar or preclude, directly or indirectly, development of any area outside the boundaries of the place specified in the schedule. In fact, the said notification does not even preclude or prohibit free ingress or egress to the surrounding area. Furthermore, the Official Secrets Act, 1923 also does not contain any provision restricting development around any place which has been declared and notified as a prohibited place under the Act. The Act attaches limited restriction to the notified prohibited place. Therefore, merely because the plant of the appellant has been declared as a prohibited place under provisions of the Official Secrets Act, 1923 and for the purpose of the said Act there exists no legal bar or impediment in granting permission or clearance for developmental activities in areas surrounding such prohibited place.

205. It is further submitted that the contention of the appellant that the environment clearance granted by respondent authority is ultra vires the notification dated 9.02.2016 issued by the Government of Gujarat is incorrect and denied. It submitted that other than a bald and

absolutely baseless allegation no material has been produced before the respondent authority or even on the record of the present proceedings showing or suggesting a legal restriction, flowing from the notification of the State Government or even otherwise, on grant of environment clearance or even development permission for development of any area abutting, surrounding or around any area declared as a 'prohibited place' under the provisions of the Official Secrets Act, 1923.

206. It is next submitted that reliance placed by the appellant on the Security Manual for Defence Installation issued by the Ministry of Defence, Government of India to buttress its argument that no developmental activity is permissible in an area abutting, surrounding or around a defence installation is wholly misplaced. Firstly, it is submitted that the manufacturing plant of the appellant is not a defence establishment. The premise is not owned, operated or managed by the Ministry of Defence, Government of India. On the contrary, the project of the appellant is part of an initiative of Department of Industrial Policy of the Central Government whereunder private players like the appellant are given license to manufacture defence related equipment. Secondly, there is nothing contained in the entire manual showing or suggesting that no development permission or environment clearance can be granted for any activity or proposed unit on land abutting, surrounding or around the installation. The manual only prescribes guidelines for maintaining high standards of security to protect the classified information available within the notified prohibited premises.

207. It is next submitted that restriction on use or enjoyment of land in the vicinity of any work of defence or of any site intended to be used or to be acquired for any such work in order that such land may be kept

free from buildings and other obstructions is envisaged in law. The Works of Defence Act, 1903 confer such power on the Central Government to impose restrictions on development of surrounding areas. Admittedly, in the present case, no declaration under Section 3 of the said Act has been issued by the Central Government. Even in the present appeal no averment has been made by the appellant about issuance of such declaration by the Central Government which would be conclusive proof of the fact that it is necessary to, keep the land in vicinity of work of defence free from buildings and other obstructions. It is submitted that an unfair and unfortunate attempt is being made by the appellant to mislead the Tribunal by making legally reckless and baseless submissions. It is submitted that there being restriction on development of area surrounding the manufacturing plant of the appellant and consequently a bar on grant of environment clearance on the false premise that the manufacturing plant of the appellant is a defence installation or defence establishment or work of defence or a prohibited place under provisions of the Official Secrets Act is a submission bereft of factual or legal basis, and deserves to be rejected with exemplary costs by the Tribunal.

208. It is further submitted that the contention of appellant that cement grinding unit of the private respondent when operational will cause pollution and adversely affect the equipment and machinery fitted in the plant of the appellant as also the quality of manufactured products is presumptive, premature and without any justifiable basis. It is submitted that considering the issues and concerns raised by the appellant at the time of public consultation process and even subsequently the regulatory authority has imposed reasonable restrictions on the project proponent at various stages of the

development, construction, and operation of the plant. At the stage of construction, a condition has been prescribed that:-

> *"CONSTRUCTION PHASE:*
> *a)*
> *b) Project proponent shall ensure that surrounding environment shall not be affected due to construction activity. Construction materials shall be covered during transportation and regular water sprinkling shall be done in vulnerable areas for controlling fugitive emission.*
> *c)All required sanitary and hygienic measures shall be provided before starting the construction activities and to be maintained throughout the construction phase."*

Similarly at the stage of operation, the regulatory authority has prescribed the following conditions:

> *OPERATION PHASE:*
> *A.1. SPECIFIC CONDITION:*
> *..7. SIL shall provide boundary wall with adequate height for control of dusting and fugitive emissions.*
> *..9. SIL shall strictly adhere with assurance that there shall not be any degradation of the environment which adversely affects the green belt, Water, Health of employees, production quality and business of neighboring units.*
> *10. SIL shall commission Dust extraction system with capacity of li000 m3//Hr and fully enclosed system for unloading station within plant premises.*
> *11. SIL shall adopt closed transportation system for loading/unloading and bulk cement in closed cement tanker and latest advance closed conveying system shall be installed for raw material and finished product transportation within production plant and loading/unloading station.*
> *......21. PP shall ensure covered transportation and conveying of raw materials to prevent spillage and dust generation: Use closed bulkers for carrying fly ash...."*

These conditions suitably and sufficiently take care of the issues and concerns voiced by the appellant. It is submitted in the event of non-compliance of any of these conditions at any stage by the project proponent it would be open for the appellant to write to the respondent authorities and suitable action would be taken against the private respondent in accordance with law.

209. It is further submitted that the contention of the appellant about likely non-compliance of the condition imposed in the environment clearance about use of only coal as fuel and prohibition on use of lignite and pet coke as fuel has no relevance to the legality and validity of the environment clearance. Similarly, the contention of the appellant about non-compliance with other conditions of environment clearance by the project proponent also does not render the clearance bad in law. The issues about non-availability of sufficient land so as to keep open the area mentioned in the environment clearance and maintain it as a green belt or the issue about non-existence of an action plan to transport raw materials and other items within the number of permitted truck trips do not really touch upon the merits of the environment clearance granted by the authority. These issues are largely presumptive and essentially relate to compliance of the conditions prescribed in the environment clearance.

210. It is lastly submitted that the environment clearance granted by the regulatory authority does not suffer from any legal infirmity, as alleged or otherwise. The permission is just and proper, and otherwise in accordance with law.

Written submission on behalf of Gujarat State Environment Impact Assessment Authority, Respondent no.3

211. It is submitted on behalf of respondent no.3 that present appeal challenges legality and validity of the environment clearance dated 23.08.2019 bearing no. SEIAA/GUJ/EX/3(b)/1155/2018 granted to Respondent no. 1- Sanghi Industries Limited for setting up a 2 million tonnes per annum standalone cement grinding unit at Survey No. 125/1, 125/2, 126/1+2+3 of Village Shivrampur, Taluka Choryasi, District Surat in the State of Gujarat.

212. It is next submitted that Present appeal challenges legality and validity of the environment clearance dated 23.08.2019 bearing no. SEIAA/GUJ/EX/3(b)/1155/2018 granted by the answering respondent to Respondent no. 1- Sanghi Industries Limited for setting up a 2 million tonnes per annum standalone cement grinding unit at Survey No. 125/1, 125/2, 126/1+2+3 of Village Shivrampur, Taluka Choryasi, District Surat in the State of Gujarat considered by the authority.

213. It is further submitted that Focal point of challenge to the clearance during the initial hearings was that the authority has overlooked the fact that manufacturing plant of appellant is a defence installation, and therefore no developmental activity is permissible in an area abutting, surrounding or around a defence installation. Additionally, plant proposed to be set up by respondent no.1 is in a prohibited place. Authority had examined both these aspects and found that the plant of the appellant is not a defence installation and that the area where the plant is proposed to be set up by respondent is not a prohibited place. Now, Ministry of Defence, Government of India and the State of Gujarat have filed affidavits clarifying that the manufacturing plant of appellant is not a defence installation and that the area where the respondent intends to set up the manufacturing plant is not a prohibited place under provisions of the Official Secrets Act, 1923.

214. It is next submitted by the respondent no.3 that clearance was assailed on the ground of non-application of mind by the authority on the aspect of transportation of fly ash, clinker and coal from the barrage to the plant using the panchayat road for a distance of 1.5 kilometers.

215. It is further submitted that the authority has given thoughtful consideration to the aspect of air pollution likely to be caused from transportation of raw material and finished products, and the remedial

or mitigating measures proposed by the project proponent. The application of mind on this aspect is evidenced from the following documents:

> *"i) Meeting of State Level Expert Appraisal Committee held on 16.04.2019*
> *ii) Measures proposed by project proponent in presentation*
> *iii) Representation received from appellant by email dated 12.04.2019.*
> *iv) Project proponent was asked to submit "raw material & product transportation route, its impact on surrounding area and mitigation measures."*

216. It is next submitted that submission of additional information by respondent no.1 under letter dated 23.05.2019 are as under;

> *"* Minimal impact will be caused due to road surface transportation as total of 363 trips will be made daily for transporting raw material and cement.*
> ** Raw material and product transportation route map submitted by Respondent no.1 (showing usage of panchayat road.*
> ** All vehicles used for transporting raw material and final product would meet the emission norms prescribed under the Motor Vehicle Act, 1988 and Rules.*
> ** All raw material required for the proposed project will be in solid form, except fly ash. Fly ash will be transported in bouser only. Clinker and coal will be transported in trucks covered with tarpaulin.*
> ** Cement bags will be transported in trucks covered with tarpaulin and loose cement in bousers only.*
> ** Sweeping machine will be deployed for cleaning the road. Additionally, water will be sprinkled on the road. Within the premises, paved roads will be constructed and automated sweeping machines shall be installed for the road and land within the premises of the proposed unit.*
> ** All guidelines issued by GPCB for storage, handling and transportation of coal and clinker shall be followed.*
> ** National highway will be used for most part of road transportation, and there is no likelihood of any adverse effect on the carrying capacity of such road which otherwise has about 31126 (out of which 2036 are, trucks and 1080 are buses) moving daily.*
> ** As per the traffic management plan, speed limit of trucks will be limited to a maximum of 10 km/hr on village roads."*

217. It is further submitted that the contention of appellant that the authority has not considered the likelihood of environment being

adversely affected during transportation of raw material (coal, clinker and fly ash) is not correct. All relevant factors have been examined by the authority. The identical measures to mitigate the damage likely to be caused to the environment due to transportation of coal, clinker and fly ash have been prescribed and are being adhered to by other cement manufacturing industries.

218. It is lastly submitted that without prejudice, Authority is not averse to any additional measures being suggested or recommended for mitigating the pollution likely to be caused by transportation of raw materials. But mere prescription of additional measures would not render the entire clearance bad in law.

Reply in the form of affidavit on behalf of Respondent no. 4 i.e. State of Gujarat through home Department, dt. 21.08.2020.

219. In its reply, Respondent no. 4 has submitted as under:-

a) It is submitted that the present affidavit deals with the contention raised by the Appellant in ground G(b) and (c) of their petition whereby the appellant has alleged that the activities of Respondent No.1 herein would interfere with the activities of the Appellant and thereby violate the notification issued by the Government of Gujarat dated 09.02.2016 under the provisions of Official Secrets Act, 1923. In other words, it is the allegation of the Appellant that the activities of Respondent no. 1, i.e., its standalone cement grinding plant, would violate the 'prohibited area' as notified in the notification dated 09.02.2016 of the State of Gujarat.

b) It is submitted that as per the provision 3.1 of chapter - 3 of the Security Manual for Licensed Defence Industries published by Ministry of Defence, Government of India, all defense related installations automatically fall under category of "Prohibited Place"

under the Official Secrets Act, 1923. However State Government received a proposal from L & T Limited for declaration of L & T Hazira manufacturing complex (including captive jetties) as prohibited place on 10th March, 2015. A notification No. GG/15/ 2016/SB-I/OSA/102015/5407, declaring Revenue Survey No. 148/A, 230 + 241 of village Mora, Taluka Choriyasi, Dist. Surat as a prohibited area under the Official Secret Act, 1923 has been issued on 09th February, 2016.

c) With respect to the contention raised in the said petition, the Home Department, Government of Gujarat, had called for detail report from the Collector and District Magistrate, Surat, whereby they were requested to conduct site inspection and submit a report to the Home Department on the aspect as to whether the location on which the standalone cement grinding plant of the Respondent No.1 is situated, would be in the breach of notification of the Government of Gujarat dated 09.02.2016.

d) It is submitted that the Collector, vide its report dated 31.07.2020, has informed the Home Department that the standalone cement grinding plant of the Respondent no.1 is situated on Revenue Survey No. 125/ 1, 125/2 and 126/1+2+3 of village Shivrampur, Taluka Choriyasi, Dist. Surat, which is situated approximately 1.5 km away from the prohibited area as per the Notification of the Home Department dated 09.02.2016, which is situated at Revenue Survey No. 148/A, 230 + 241 of village Mora, Taluka Choriyasi, Dist. Surat. A copy of the report received from the office of the Collector and District Magistrate dated 31.07.2020 is annexed herewith and marked as **Annexure - Rl.**

e) It is submitted that as per the provision 3.1 of chapter - 3 of the Security Manual for Licensed Defence Industries published by Ministry of Defence, Government of India, all defense related installations automatically fall under category of "Prohibited Place" under the Official Secrets Act, 1923.

f) It is submitted that L & T Limited has submitted a proposal for the declaration of Larsen 86 Tourbo Limited, Hazira Manufacturing Complex located in Surat District, which is defence related manufacturing unit, as a prohibited area, which includes following survey No. Report with respect to the said proposal has been called from the Director General of Police (Inte.), Gujarat State and District Magistrate -Surat vide this department's vernacular letter dated 18.07.2020. **(Copy of the said letter is annexed herewith and marked as Annexure - R-2).** The said proposal is under consideration of the State Government.

Sl. No.	Taluka	Village	Revenue survey no.	Area (Hac.Sq.Meter)
1	Choryasi	Shivrampur	105/A	00-08-12
2	Choryasi	Shivrampur	102/1/1/B	00-11-35
3	Choryasi	Surat	498/1	15-98-52

Counter Affidavit/ reply on behalf of respondent no.5 Ministry of Defence.

220. It is submitted on behalf of Respondent No. 5 that on the basis of the recommendations issued by the Department of Defence Production, Ministry of Defence, the Department of Industries and Internal Trade in the Ministry of Commerce and Industry, Government of India has issued an industrial licence to M/S L&T for manufacture of defence items.

221. It is further submitted that the industrial licensees have to open the facility based on the security clearance provided for the address specifically mentioned in the license. The licensee company is also required to obtain all clearances and approvals from the concerned state/local/district authorities. As part of the licensing conditions, security guidelines issued by Ministry of Defence have to be adhered to by the licensee in letter and spirit.

222. It is next submitted that As regards the prohibited areas, Works of Defence Act 1903 (WODA 1903) is an act to provide for imposing restrictions upon use and enjoyment of land in the vicinity of works of defence in order to ensure safety and security of the works. As per the act, work or work of defence means any establishment, installation, assets etc. under Ministry of defence. The Land Wing in Department of defence handles the notification of WODA 1903 around the defence installations of Army and that does not relate to Defence manufacturing facilities. The L&T facility is defence manufacturing facility and Works of Defence Act 1903 (WODA 1903) does not relate to defence manufacturing facility.

223. In the end it is submitted that it is a dispute between two private companies and it should be decided on merits.

Written submission on behalf of Suvali Village Gram Panchayat respondent no.6

224. It is submitted on behalf of respondent no.6 that the principle relief sought in the Appeal is as follows;

> "i. The Hon'ble Tribunal be pleased to cancel the Impugned Environmental Clearance dated August 23, 2019."

The appeal thus calls into question the legality and validity of Environment Clearance dated 23.08.2019 bearing the no. SEIAA/GUJ/EX/3(b)/1155/2018 granted to Respondent no.1- Sanghi Industries Ltd. for setting up a 2 million tonnes per annum stand-alone cement grinding unit at Survey No.125/1, 125/2, 126/1+2+3 of village Shivrampur, Taluka Choryasi, District Surat in the state of Gujarat.

225. It is next submitted that it is extremely irrational on part of the Respondent No.1 to state that Respondent is not afflicted is based on a misleading statement that the proposed unit is located within the local jurisdiction of Shivrampur Gram Panchayat. It may be noted that the Respondent No.1 is making a desperate attempt to confuse and mislead the Tribunal on the boundaries and jurisdiction of the local panchayats to evade its answerability to the Tribunal.

226. It is further submitted that it may be noted that the Shivrampur village, cited by the Respondent No.1 is a new village de-merged from the Suvali village only in the year 2012, pursuant to an order of the Government of Gujarat. Till 2018, all the land records of Shivrampur Village were under the name of the Answering Respondent i.e. Suvali Village. Moreover, till date the land revenue for the land of Shivrampur village is also collected from the Suvali Village Gram Panchayat ('Gram Panchayat' in short). Therefore, it is incorrect on part of the Respondent No.1 to contend that the Suvali Village has no locus as the proposed project is being set up in Shivrampur village.

227. It is next submitted that the Respondent No. 1 has tried to incorrectly state that the proposed unit is at an aerial distance of 2.76 kms from the Suvali Village. It may be noted that the aerial distance of 2.76 kms as pointed out by the Respondent No.1 is highly misleading as the Respondent No.1 has very conveniently given the distance from the

Office of the Suvali Village, whereas the actual distance from the proposed unit site and the boundary of the village is much less.

228. It is further submitted that during the Public Hearing dated 20.03.2020, the Gram Panchayat raised issues with respect to the project which were answered by the representatives of the Respondent No.1 in unclear terms. Consequently, the Gram Panchayat held extensive discussions with its members and residents of the village. Eventually on 30th July, 2019 the Gram Panchayat held an official meeting and passed a resolution to approach the higher authorities in order to voice their concerns of the imminent threat faced by them in the form of pollution which will be caused by the proposed unit of Respondent No.1.

229. It is further submitted that apparently when it came to the knowledge of the Respondent No.1, that the Gram Panchayat had conducted a meeting and passed a resolution on 30.07.2019 deciding to oppose the setting up of the proposed unit of the Respondent No.1, using its influence, expedited the Environmental Clearance and the Respondent No.3 granted the Environmental Clearance to Respondent No.1 for setting up its cement grinding plant on 23.08.2019 itself.

230. It is next submitted that, after taking into consideration the views expressed by its members and in consensus of all the local villagers, the Gram Panchayat wrote to the Environment Department and the District Collector, Surat on 11.09.2019 to seek resolution of their grievance. However, possibly in light of the influence of the Respondent No.1 and its financial strength, the objections of the Answering Respondent were submerged and without addressing their grave concerns, the Environment Clearance was granted to the

Respondent No.1 to go ahead with the setting up of the cement grinding plant.

231. It may be noted that the Gram Panchayat, has elaborated various grounds for its reservation against the impugned Environment Clearance. The grounds are summarized herein in interest of brevity.

> *"i. Coal will be utilized as raw material by the company. This would inevitably lead to increased pollution in the area.*
> *ii. Particulates emanating from the facility will get mixed in the air, and the fertility (quality) of agricultural land of the village would be degraded. The villagers will have to bear the loss.*
> *iii. Along with air, the particulates emanating from the facility will also contaminate the water resources of Respondent village. As a result, it will severely pollute the quality of water, which would cause severe effect on life of the villagers and children.*
> *iv. Dust which will be produced by the Company will get mixed with air, resulting in air pollution. It will have severe effect on human life and other animal beings.*
> *v. The work of transportation of cement and the work of bringing of raw materials ordinarily will be done day and night. It will cause disturbance to the peace of village life and cause damage to health of people."*

232. It is submitted that the Impugned EC granted to the Respondent No.1 suffers from gross irregularities and inconsistencies. The information as provided by the Respondent No.1 for seeking Environmental Clearance was misleading, false and incorrect and the State Authorities did not care to verify or cross-check the same and issued the Impugned EC in blatant violation of the prescribed rules and regulations. A few of such inconsistencies and concealment of information done by the Respondent No.1 in order to mislead the environmental authorities to grant the Impugned EC are as follows:-

> *"i. Aerial distance between boundary of Surat city and Sanghi site is approx.8 Km. The office order of 11.11.2019 issued by GPCB identified and declared GIDC Pandesara & GIDC Sachin of Surat District as Severely Polluted Areas (SPA). Respondent No.1 claims that its cement plant is located at considerable distance of 14Km after buffer of 5 Km from the*

aforementioned SPA, however no basis in support of the distance, as to whose it is prescribed that 5 km is sufficient buffer has been placed on record.
ii. GIDC Pandesara & GIDC Sachin are also coming under Surat Municipal Corporation (SMC) boundary. Moreover various other area of Surat have recorded higher side of PM10. However for utmost convenience of the Respondent No.1, the CEPI score of Surat is not extended in the whole city.
iii. The Respondent No.1 has mentioned that there is no Vulnerable group near the plant site, despite being aware of a school situated at a distance of less than 1.5kms. That the Respondent No.1 conveniently concealed the same in order to mislead the authorities;
iv. The Respondent No.1 has also not shown anywhere in its EIA that how and where will it dispose the discarded containers;
v. There is zero allocation given to finished storage area, loading & unloading area, parking area for used trucks, canteen area etc.
*vi. EIA shows coal to be required 12TPH*21HR=252TPD. However, coal required as per slide 79 of presentation made by Respondent No.1 to SEIAC on 16/06/2019 is 6.9 TPH;*
vii. They have not shown hourly peak hour traffic of NHAI and location from where they have taken two days traffic;
viii. In draft EIA, Respondent No.1 had calculated 20 Ton truck capacity. In final EIA, Sanghi has shown 34 Ton truck capacity;
ix. Respondent No.1 has failed to factor in that the approach road is a Village Panchayat Road, which does not have a carrying capacity of 34 ton truck"

233. It is also highly pertinent to point out that the Respondent No.1, in order to conceal the relevant information and to secure the Environmental Clearance in dubious manner, knowingly conceded multiple regulations and their impact and measures taken by the Respondent No.1 to address the same. The same were left out not just in its EIA but also in its presentation made to SEAC on 12/06/2019. The said regulations are as provided herein below:-

"i. Coal handling guidelines of GPCB
ii. The Fly Ash Notification, September, 1999 and its amendments from time to time
iii. Construction and Demolition Waste Management Rules, 2016
iv. The Energy Conservation Act, 2001.
v. The Batteries (Management and Handling) Rules, 2001.
vi. Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996
vii. The Gas Cylinder Rules, 2004

viii. The Static and Mobile Pressure Vessels (unfired) Rules, 1981
ix. Plastic waste Management Rules, 2016.
x. Bio-Medical waste Management Rules, 2016"

234. It is next submitted that the answering Respondent would like to draw the attention of this Tribunal to a decision delivered by this Tribunal in the case of In Re: News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels". In the case, the Tribunal discussed its order dated 13.12.2018 in which it was observed that:

> *"**5**. Purpose of economic development in any region is to provide opportunities for improved living by removing poverty and unemployment. While industrial development invariably creates more jobs in any region, such development has to be sustainable and compliant with the norms of environment. In absence of this awakening or tendency for monitoring, industrialization has led to environmental degradation on account of industrial pollution.*
> *It is imperative to ensure that steps are taken to check such pollution to uphold statutory norms. Adequate and effective pollution control methods are necessary.*
> ***6.** Dust, smoke, fume and toxic gas emissions occur as a result of highly polluting industries such as thermal power plants, coal mines, cement, sponge iron, steel and ferro alloys, petroleum and chemicals unless right technology is used and precaution taken. Industry specific clusters have not only become hazardous but also cause irreparable damage to our ecology and environment, often breaching the environment's carrying capacity, adversely affecting public health.*
> ***7**. In Karnataka Industrial Areas Development Board vs. C. Kenchappa & Ors (2006) 6 SSC 383, the Hon'ble Supreme Court observed, as guiding rules for Sustainable Development, that humanity must take no more from nature than man can replenish and that people must adopt lifestyles and development paths that work within the nature's limit. In Vellore Citizens Welfare Forum Vs. Union of India, the Hon'ble Supreme Court recognized the Precautionary Principle and explained that environmental measures by the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation."*

235. It is next submitted that several important factors were not taken into consideration while making the decision related to the impugned Environmental Clearance. The Survey done by NAAQ also shows higher

sides of PM10 in different areas of Surat city. According to a website maintaining air quality statistics, the current emission rates of Hazira are hazardous. CO emissions were at 600.0 μg/m3, AQI 30 which is categorized as very poor. Carbon Monoxide is a gas which is lethal to humans if in excess. If the current rate of emission is severe, a new industrial unit like a cement plant which utilizes coal burning as fuel (leads CO emissions) would only add to the already severe air condition of the area.

236. It is next submitted that the cement grinding plant of Respondent No.1 is being set up in the Shivrampur village in violation of the Comprehensive General Development Control Regulations (CGDCR) as issued by the Urban Development and Urban Housing Department, Govt. of Gujarat, Gandhinagar. The CGDCR, which were sanctioned by the State Govt. on 12.10.2017 and they not only apply to the entire state of Gujarat but also govern the setting up of the industries in the State.

237. It is further submitted that the CGDCR specifically provides that the classification of different zones which shows land use zone i.e. residential zone, industrial zone etc. The said regulation provides for General Industrial Zone (point 16) and Obnoxious & Hazardous Industrial Zone (point 20). That the said regulation, thereafter, provide in detail the kind of industries to be developed in the aforementioned zones i.e. General Industrial Zone and Obnoxious & Hazardous Industrial Zone respectively. The same is as under:

> i. 7.2.9 - Industrial Zone 1,2,3,4: This zone is intended for the development of all types of light industries that include small scale factories, transport terminals, etc. except hazardous industries.

ii. 7.2.10- Industrial Zone 5, 6: This zone is intended for the development of obnoxious and hazardous industries.

Therefore, as is clear from the aforementioned provisions of the CGDCR Regulations, the development of obnoxious and hazardous industries is only permitted in Industrial Zone (IZ-5,6) and nowhere else.

238. It is next submitted that the present cement plant is being set up in Surat and any development in and around, within the limits of Surat is governed and regulated by the Surat Urban Development Authority (SUDA) regulations, which are prepared in compliance with the CGDCR-17 Regulations. The SUDA Regulations not only provide on what is permitted in the General Industrial Zone, it also clarifies that Obnoxious and Hazardous Industries are not permitted in the General Industrial Zone. Furthermore, the said regulations while defining the Obnoxious and Hazardous Industries also specify that manufacturing of cement falls under Obnoxious and Hazardous Industries.

239. It is further submitted that the cement manufacturing plant being setup by the Respondent No.1 is being set up in Shivrampur village and the said village falls under the General Industrial Zone and not the Obnoxious and Hazardous Industrial Zone. That the Survey No. 125/1, 125/2,126/1+2+3, that are of Shivrampur Village, Tal. Choryasi Dist.-Surat of Sanghi Industries limited is not Obnoxious & Hazardous Industrial Zone. Therefore, theimpugned Environmental Clearance which was granted in clear ignorance of the same is not only unlawful but also untenable in law and if the plant is allowed to come up, it would be hazardous for the local villagers of the Answering Respondent and the surrounding villages as well.

240. It is further submitted that it is the proposed unit of the Respondent No.1 is near a school which has a strength of around 1200 innocent and vulnerable children. There are several issues related to operation of cement industries which are well known. The Panchayat is concerned by the appraisal of the State Level Environment Impact Assessment Authority in this matter. The authority is oblivious to the fact that the concerned area is not an urban area. The people in the village choose to stay in the village to grow crops to earn their livelihood.

241. It is next submitted that the Respondent authority has failed to appreciate the fact that the area is not an urban area and the crops are still grown around in the area of Hazira. It has been discussed before how cement plants are critical in causing air and water pollution. Pollution is known to have adverse effect on crops being grown in the area. Moreover, it is submitted that the location of a plant known to cause air and water pollution cannot be near a school. The fact that the location of plant is near a school goes on to show how much efforts have been put in by the Respondent No. 3 State Level Environment Impact Assessment Authority in granting the Impugned Environmental Clearance to the Respondent No.1's proposed unit. The decision of the Respondent No. 3 authority and Respondent No.2 is arbitrary, utterly ill planned and has put the life and health of all the residents at risk.

242. It is submitted that in order to further substantiate the concern of the Respondent Village Panchayat, the case of ACC cement plant at Barmana in Bilaspur district may be noted. The Tribune India (newspaper) reported on 1.01.2019 how the said cement plant becomes a major source of air pollution in nearby Salappar, Kangu and Dehar panchayats. The Tribunal has also recognised the fact that industrial

pollution leads to pollution which cause various diseases. The plant was established back in 1984. The people of Salapar district claim there that they have been suffering from terminal diseases like cancer due to effects of the facility. Salapar district was left out of compensation and rehabilitation plan. It took about four decades for the ill-effects of such a plant to come to surface.

243. It is next submitted that the Panchayat firmly believes that it is the duty of all i.e. the Panchayat, the Tribunal and the Gujarat Pollution Control Board to protect the future generations from such ill effects. Even though the GPCB and Respondent No.3 authority has failed to examine the aforesaid concerns, this Panchayat seeks to discharge its duty towards the future generations. It is therefore stated that the objective behind the present intervention by the Panchayat and the appeal is in consonance with the moral objective of this Tribunal as enshrined in section 20 of the National Green Tribunal Act, i.e. sustainable development read with the Precautionary Principle.

244. It is further submitted that the environment of Hazira area is sensitive and under pressure. This Western Bench, Pune of this Tribunal in the decision delivered on 08.01.2016, in the case of Hazira Macchimar Samiti and Ors. vs. Union of India had a similar view. It was observed by the bench that there was indeed massive deforestation in the Hazira area. The relevant paragraph is produced as under:-

> *"9. This was, of course, subjected to re-location of M/s. Nikko's existing effluent pipeline and outfall, proposed reclamation to the tune of 225.30Ha at north side of Port limit and 84Ha at south side of the Port limit. The maps filed on record go to show that most of Mangroves area, is destructed. The creek situated in north-east corner is narrowed down due to reclamation of land, as a result of port/cargo activities and Port expansion activities. What we find from the record is that instead of expanding Port work in phase-out manner, expansion was already practically done almost without obtaining EC and CRZ*

clearance. It is evident from the affidavit of Deputy Conservator of Forest date 6.1.2015, that this area, which once had abundance of Mangroves stretches as per MoEF's own record, presently do not have any Mangrove vegetation, clearly indicating the environmental degradation and damage."

245. It is next submitted that Hazira is home to a number of eco-sensitive migratory birds and the Respondent No.1 has concealed the said information when it says 'None' to point 3 of part III of the Form-1 submitted by the Respondent No.1. Moreover, the EIA Report submitted by the Respondent No.1 also does not provide for any measure to be undertaken for addressing the concerns of migratory birds. The Respondent No.1, has made absolutely no mention of migratory birds in its EIA Report.

246. It is next submitted that the Respondent No.1 has also failed to disclose the wetlands in the area where the cement plant is being proposed to set up. That pursuant to the Wetland (Conservation and Management) Rules, 2010 which were subsequently modified in 2016, detailed procedure was laid out in order to set up an industry near a wetland. The said process was evaluated by the Supreme Court in Writ Petition(s)(Civil)No(s). 230/2001, M.K.Balakrishnan & Ors. vs Union of India & Ors.. The Respondent No.1 has failed to demonstrate in its EIA or the presentation that it has acted in compliance with the said procedure or has taken any step in order to conserve / protect the wetlands.

247. It is further submitted that the Tribunal held in the past that there has been massive deforestation in Hazira which has led to disturbing the ecological balance in the area. The Tribunal may take note of the situation and the actions of the Gujarat Pollution Control Board who are not only bound by law to know about this situation but are statutorily responsible to act according to the situation.

248. It is next submitted that the data of the Primary health Center of Suvali, which includes the data of Suvali, Rajgari, Junagam, Mora, Hajira, Damka, Bhatlai, Vansava villages establishes that large industries, which are located in area of Hazira, Mora, Suvali have led to the spread of cancer, TB, skin diseases and have seriously affected the health of the people. Currently the following diseases have occurred in these areas.

"

Sr No	Village	Cancer	TB	Skin Disease
1	Suvali	3	0	1
2	Rajgari	10	1	0
3	Junagam	11	0	0
4	Mora	2	0	8
5	Hajira	14	2	12
6	Damka	5	2	0
7	Bhatlai	1	0	0
8	Vansava	3	0	0

"

249. It is further submitted the above data shows the impact of already existing pollution in the area. These diseases are commonly caused by impure and polluted environment. The forest cover has been depleted and the air is not pure like it used to be in Respondent No 6 village, Respondent No. 6 has prayed to take action and intervene so as to ensure that the situation does not deteriorate even further in future by setting up of a plant which is going to depend upon cheap coal for its energy use and discharge large quantities of particulate matter.

250. It is next submitted that another grievance of the Respondent is regarding the conditions of the roads. As is reflected from the EIA report and the Impugned EC, a whopping 363 trucks would be deployed day and night to cater to the transportation needs of the project to bring in the raw material and take out the finished product. On top of that to cater to the water requirement of the Respondent No.1 an equal number

of water tankers will be deployed on the roads. It should be noted that the location in question is not a metropolitan city. It is a small village which does not have the infrastructure to support such traffic. The roads are not as wide as highways, they just there for basic transport of the village and nothing more. Moreover, the Respondent No.1 has failed to demarcate the required land for parking of these trucks and tankers. The impugned EC has been granted without addressing the said issues.

251. It is next submitted that the Respondent No. 1 seeks to establish a cement plant in the Hazira which would cause inconvenience to so many villagers. The plant itself and deployment of trucks night and day is bound to cause noise pollution. Noise pollution is known to cause frustration among people and deployment of trucks at night is bound to have adverse effect on the sleep of the villagers. Another important aspect of the situation at hand is the education of the children in the villages. The plant is located near the school and is bound to continue its activities during the school timings. The plant and movement of trucks is bound to have noise emissions which would become a huge problem for running the school. Thus, it is pertinent for the Tribunal to weigh the considerations presented by the Respondent No.6 in the interest of justice. In view of the aforementioned facts and circumstances the Impugned Environmental Clearance dated August 23, 2019 is arbitrary and has been granted in violation of the provisions of the Environmental Protection Act, the EIA Notification and Article 21 of the Constitution of India. The respondents should be directed not to initiate any action in respect of the same or implement the same in any manner whatsoever.

Rejoinder to reply of Respondent 1, 3, 4, and 5 filed by Appellant.

252. The present comprehensive rejoinder is being filed by the Appellant against the replies filed by the Respondent 1, 3, 4, and 5.

253. It is submitted that the rejoinder is confined to only those parts of the replies/counters filed by the respondents 1, 3, 4, and 5 which deserve a positive or an affirmative response from the Appellant in reply to the case set up in the Appeal and therefore, does not deal with each and every paragraph of the replies/counters, as that would lead to an unnecessarily lengthy rejoinder and absence of specific non-traverse in this rejoinder of any part of the replies should not constitute an admission but should be deemed to be a denial by the Appellant of that part of the replies.

254. It is next submitted that the Replies/Counters filed by the Respondents are ex-facie untenable, baseless, vexatious and not maintainable either in facts or in law. They are being filed and pursued with mala fide intentions and ulterior motives by suppressing vital and material facts and with an intention to wriggle out of the environmental regulations.

I. INCONSISTENCIES AMONG FORM 1, EIA REPORT AND ENVIRONMENTAL CLEARANCE AND SUBMISSION OF FALSE/ INAUTHENTIC INFORMATION IN FORM 1 BY RESPONDENT NO. 1

255. The Appellant has time and again reiterated and substantially validated the fact that the EIA report suffers from serious discrepancies and is based on concealed and misrepresented facts. It is relevant to note that there was a gross mismatch between the information submitted by the Respondent No.1 in Form-1 (as available online) and the EIA Report. Incorrect information has been submitted with respect to fuel, pollution index, sewage treatment plant, land allotment, trucks deployment etc. and the same has been captured in detail in the Appeal.

256. It is next submitted that the said report also fails to provide for land allotment for finished products storage loading and unloading area, product transfer area, parking area of used trucks, security office, canteen area and other amenities as are required by the Factories Act, 1948.

257. It is next submitted that following are the Discrepancies in the EIA Report:-

> *"• Mangroves & Forest data table 3.12, Page No. 27 of the EIA report, where as it has been concealed by the Respondent No. 1. As per the EIA Report of the Respondent No. 1, on Page No. 2, Chapter 1, no such data related to Mangroves is given under Table 1.1. Also, on Page No. 167, Chapter 11, no Forest/no Defence installation data is given under Table 11.1.*
>
> *• It is submitted that as per the EIA Manual sensitive receptor should be covered as isopleth and presence of mangrove should be considered as ecological. As per EIA, GLC is affected maximum upto 1.3KM. But, it will also affect beyond that and the baseline study is not done. There's no evidence to substantiate or assure that mangroves will not be affected at a distance more than 1.3 km.*
>
> *• The Respondent No.1 has misled Respondent No.2 and 3 by falsely and malafidely stating in its Environmental Impact Assessment (EIA) report submitted in March 2019, that there are no mangroves within the radius of 10 kms;*
>
> *• The facts stated by Respondent No. 1 in reply with respect to deployment of trucks are not valid as Impact of truck movement through modeling study is not carried out.*
>
> *• It is submitted that no permission of water pipeline can be given as it will severely impact the water requirements and will have grave impact on environment. Moreover, even otherwise, the route of water pipeline is not given. The Respondent No.1 is 18 kms away from the source of water. The Respondent No.1 has not provided sufficient details of procuring 278,000 litres water /day. The Respondent No.1 has no information of any approval being given from the irrigation department for providing water till date.*
>
> *• It is also relevant to point out that the enormous amount of coal being utilized every day for the cement manufacturing plant would produce humongous amount of fly-ash. It is submitted that fly ash generation will lead to increase in PM which eventually may lead to serious health hazards to people in close vicinity. The said concern has also been highlighted by the local villagers who have sought impleadment in the present appeal by way of an Intervention Application (IA 28 of 2020)."*

258. It is next submitted that the local villagers of the said gram panchayat have raised serious objections against the proposed unit. In a letter written to the Collector, Surat, the said villagers have made the following prayer:

> *"On coming up of this plant, it will have a great impact on the people and other living beings because of its pollution, and it will increase air pollution. It will cause a permanent problem of traffic of heavy vehicles on account of transportation of materials of this project. Moreover, about 1100 children are studying in Navchetan Vidhyalaya in our village near this plant, and that will also cause adverse effect on them. Hence, the people of our village has strong protest against this plant."*

259. It is next submitted that "the legal pursuit of the remedy, suit, appeal & second appeal are really but steps in a series of proceeding all connected by an intrinsic unity & are to be regarded as one legal proceeding". It is submitted that an Appeal is a continuation of a suit and the Appellate Court is the final authority regarding facts and controversy between the party.

260. The appellant submitted in its rejoinder that Rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order to secure ends of justice. Rule 24 gives wide power to the Tribunal to secure the ends of justice. Rule 24 vests special power to the Tribunal to pass orders and issue directions to secure the ends of justice. Use of words "may", "such orders", "gives such directions". "as may be necessary or expedient", "to give effect to its orders", "order to prevent abuse of its process", are words which enable the Tribunal to pass orders and the above words confer wide discretion.

261. The appellant submitted that it is pertinent to appreciate that any decision of the Tribunal regarding the impact on the environment by the proposed setting up of plant by Respondent would have the bearing on the health and well-being of the villagers. Hence the applicant Intervener is a necessary and proper party to be impleaded in the present proceedings.

262. Further, the appellant submitted that the Respondent No. 1 has submitted incorrect information with respect to the Draft EIA Report made available for public perusal. It is pertinent to appreciate that transparent nature of public hearings not only requires timely information dissemination, but also accuracy and authenticity of the information so provided. In *M P Patil v. Union of India (Appeal 12 of 2012)*, National Green Tribunal observed that while submitting a draft EIA report and for public consultation, the proponents should ensure that the information in the reports is authentic. The proponents are required to disclose all material issues like R&R policy, land to be acquired, quality of raw material, details of compensation, project affected persons, etc. to the public in their reports. This disclosure of adequate and authentic information is very significant on account of its likely impact on public opinion.

II. LAPSES IN THE PUBLIC HEARING PROCESS

263. A public hearing was scheduled on 22.03.2019 where the Appellant and other participants raised several detailed queries. While some queries were vaguely answered by the Respondent no. 1, some were totally evaded to be answered.

264. The contention of the Respondent no. 3 that no procedural defect or fault has been pointed out by the Appellant is totally misplaced and incorrect. Further, it is incorrect to say that reasonable opportunity was given to the Appellant in getting its concerns addressed.

265. During the public hearing scheduled on 22.03.2019, Respondent submitted various points which were evaded to be answered or insufficiently answered. Some of the questions are listed below: -

"

S.No.	***Concerned***	***Question***	***Response***
1.	*Shri Bhagubhai Manibhai Patel (Sarpanch – Shivrampur)*	*What action will be taken for deposition of dust in cement plant, on the road and surrounding area?* *At present 700-800 trailers are running on 20-30 feet road. There is only one approach road for L&T. Since 2 million tonnes materials will be brought in an year to this plant, there are no roads for the same. What does the Sanghi plan to do for that?*	*No satisfactory response* *Our require-ment is of 2 million Tons per annum and it will be transported once a month. So it will not create any effect.*
2.	*Avani Joshi, Environmental Engineer*	*As a fuel pet-coke, coal and lignite is mentioned, so out of that which fuel will be used more?*	*We will use mix fuel on Which there will be 10% pet-coke, 40% lignite and remaining will be imported coal.*

3.	*Written Representation by Hashmukh Vora*	*Disclose status of application madeto Kakrapur Canal Department for obtaining 278kld water?* *Disclose from where and in what way coal will be transported?* *Disclose the show-cause notices under Air and Water Act by GPCB to Sanghi existing plant at Kutch?*	*No satisfactory response*

”

266. The appellant submits that it may be noted that multiple letters dated 05.04.2019, 13.04.2019, and 22.04.2019 were sent to Respondent No. 1 and Respondent No. 3 after the conclusion of the public hearing to highlight the environmental concerns of the Appellant with respect to the grinding unit. However, none of these letters were responded to by Respondent No. 1 or Respondent no. 3. It is pertinent to mention that the Appellant is not raising any such grounds in this appeal which were never raised or were beyond the knowledge of Respondent no. 1 or Respondent no. 3. Even otherwise there is no bar in raising all issues relevant to environment in an appeal. It is vehemently denied that the Appellant has resorted to concealment of facts at any stage in these proceedings.

III. NO SATISFACTORY CONSIDERATION OF INFORMATION AFTER PUBLIC HEARING

267. The appellant submits that the Environmental Impact Assessment Notification of 2006 clearly points out the necessity of consideration of responses given to the concerns of the participants present in the public hearing by the authorities after the public hearing.

268. It is next submitted that the appraisal committee, as per the Environmental Impact Assessment Notification of 2006, is required to evaluate the project during the four stages for Prior Environmental Clearance. During the public consultation, the applicant is supposed to address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP. The final EIA report, so prepared, has to be submitted by the applicant to the concerned regulatory authority for appraisal.

269. It is next submitted that this is followed by the appraisal stage. Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, DPR, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance.

270. It is next submitted that it is important to point out that the step of public participation is not a mere mechanical process or a formality. It is imperative that there is meaningful participation of all the involved stakeholders and consideration of their points. In *Ossie Fernandes v. Ministry of Environment & Forests (Appeal 12 of 2011),* the National Green Tribunal issued certain supplemental guidelines for improving the procedure of public hearing. One of the guidelines specifies that EAC minutes should incorporate detailed reasons, in writing, for acceptance, or otherwise, against each issue arising out of the public hearing and brought before it. In the present case, in gross violation of the said direction, no detailed reasoning was given against any issue raised by the local villagers and the Appellant. Moreover, the letters to

them regarding the environmental concerns were not even responded by the Respondent No.1.

271. It is next submitted that procedurally, on completion of a public hearing, people must be informed about the final decision by a regulatory authority. To prevent it from being reduced to a mere ritual, it is mandatory that valid reasons be provided by authorities for acceptance/ rejection of public concerns. However in the present case, firstly evasive answers were given by the representatives of Respondent No.1 during the public hearing and thereafter, the letters pointing out the concerns, were blatantly ignored, both by the project proponent and the concerned statutory authorities.

272. It is next humbly submitted that Respondent No. 3 was well aware of the inconsistencies in the draft EIA Report as well as the fact that the Respondent No. 1 had paid no heed to the concerns expressed by participants during the public hearing. As Respondent No. 3 was hands in gloves with Respondent no. 3, without addressing these inconsistencies, the impugned environmental clearance was given.

273. It is next submitted that with respect to the Respondent No. 3, it is pertinent to highlight that the evaluation of the objections has been done to say the least, in a perfunctory fashion and fails to disclose the reasons upon which the recommendation for granting the impugned EC has been made. That the Respondent No. 3 has proceeded merely on the reply furnished by the Respondent No. 1 to the queries, which prima facie shows non-application of mind by the statutory authority designated for the said purpose.

274. The appellant stated that the Delhi High Court in *Utkarsh Mandal v. Union of India*, 2009 SCC OnLine Del 3836, stated:

> *"We therefore hold that in the context of the EIA Notification dated 14th September 2006 and the mandatory requirement of holding public hearings to invite objections it is the duty of the EAC, to whom the task of evaluating such objections has been delegated, to indicate in its decision the fact that such objections, and the response thereto of the project proponent, were considered and the reasons why any or all of such objections were accepted or negatived. The failure to give such reasons would render the decision vulnerable to attack on the ground of being vitiated due to non-application of mind to relevant materials and therefore arbitrary."*

275. It is submitted that the Appellant has placed sufficient material on record to prove that the proposed unit of Respondent No. 1 is prohibited under law to be set up under these circumstances. The EIA Report has failed to address the environmental norms relating to air, water and land that would be severely impacted by the establishment of the Respondent No.1 cement manufacturing unit. It is also to be noted that the relevant material and factors were not placed before the SEAC, Gujarat and the SEIAA along with Form-1, for meticulous environmental evaluation and audit. Further, both the SEAC, Gujarat and SEIAA without application of applicable laws and regulations on the environmental consequences and apparently recommended the grant of EC in a mechanical manner.

276. It is next submitted that by relying on the erroneous EIA report and public hearing proceedings, the SEAC Gujarat vide their letter dated 15.07.2019 had recommended to the SEIAA to grant the EC for the

Grinding Project on its meeting held on 12.06.2019 and the impugned EC was granted on 23.08.2019. Moreover, the final EIA report considering comments of SEAC has not been prepared along with impact identification and uploaded on the website. As per 'EIA Guidance Manual for Cement Industry' prepared for Ministry of Environment and Forests by IL & FS, the direct, indirect, and cumulative impact assessment should form an integral part of the EIA process at all levels and steps.

277. Further, it is submitted that recently, in *H.P. Ranjana v. Union of India*, M.A. No. 49/2020 in O.A. No. 602/2019, this Tribunal was dealing with a project where there was no proper appraisal by the Expert Appraisal Committee (EAC) as per Environment Impact Assessment (EIA) Notification. Further, the SIEAA in this case granted the clearance in violation of Wetlands Rules 2017 and Hon'ble Supreme Court's judgments. All relevant details were not mentioned by the EC Applicant in Form I and the same was accepted by the SIEAA without any due diligence and independent evaluation solely on the incomplete and incorrect information provided by the Applicant. The NGT, in light of such irregularities on part of SIEAA ordered an independent report by a joint committee constituted by NGT.

IV. RE: THE APPELLANT IS SEEKING ADJUDICATION OF COMMERCIAL INTERESTS WHICH FALL OUTSIDE THE JURISDICTION OF THIS HON'BLE TRIBUNAL AND THE APPEAL IS NOT BONAFIDE

278. It is submitted that the contention of the Respondent No. 3 that the appeal challenging the environmental clearance issued by the regulatory authority is not *bona-fide* is baseless. The contention that the appeal has been filed for vested commercial interests of the Appellant is completely baseless and ill-founded.

279. It is next submitted that non-consideration of vital issues has led to the invocation of the statutory remedy available to the Appellant under Section 16 of the NGT Act 2010. Vague aspersions, on the intention of public-spirited entities, does not constitute an adequate response to those interested in the protection of the environment.

280. It is pertinent to note that the dispute is of a larger environmental concern and the well-being of the local villagers of the Shivrampur and surrounding villages. The local villagers have even approached this Tribunal seeking intervention in the present appeal and have made a valid case of being affected directly by the proposed unit of the Respondent No1. Apart from the grave environmental danger and health hazard to the local villagers, the dispute is regarding the inconsistencies in the Form -1 and the fact that the impugned Environmental Clearance was given in violation of the statutory rules and regulations and on the basis of incorrect and deceiving information. The dispute is with respect to the lapses in the process of granting the impugned environment clearance and the factors responsible for the same. The dispute is regarding the deliberate concealment of vital information on part of the Respondent No.1 while applying for environmental clearance and the blatant obliviousness on part of Respondent 2, 3, 4 & 5 to such concealment apart from making no attempt whatsoever to examine the actual site and circumstances.

281. The appellant submitted that the Respondent No. 1's contention that the appeal has been preferred by the Appellant solely to agitate narrow commercial interests and the appeal has no basis in "Environmental Law" is totally baseless and lacks merit. It is humbly

submitted that the plea of the Appellant is against environmental clearance granted to the Respondent No. 1 on the basis of concealed and misrepresented facts. The proposed unit will cause emission which will critically affect the environment around it considering the location of the Grinding unit and modeling study of air emission.

282. It is further submitted that the contention of Respondent no. 1 that the Appellant itself operates various red and orange category units surrounding the land where the grinding plant of Respondent No. 1 is proposed to be set up is based on an incomplete understanding of the categorization of units into red, yellow, green, and white categories by the CPCB. Moreover, none of the Appellant's units are using coal/pet coke etc. as a fuel and instead use fuels such as electricity/PNG for manufacturing process which does not result in emission of any Particulate Matter (PM) affecting the quality of the products. The forging unit has a 220KVA receiving/switching station.

283. Further, Respondent no. 1 has contended that the Appellant had made attempts to buy the property, where the grinding plant is situated, for its operations. However, upon failing in the same, the Appellant has filed the appeal with vexatious motives. It is important to state that the understanding of Respondent no. 1 is based on wrong facts and is an attempt to mislead the Tribunal.

It is further submitted that the Appellant has already surrendered 220 Acres of government land for business expansion in the year 2010. At present, more than 50 Acres of land belonging to farmers/developers, adjoining the area wherein Respondent No. 1 has proposed to set up its unit is available. Hence, the allegation that the Appellant has commercial

interest in land purchased by the Respondent No. 1 is baseless. Moreover, it is pertinent to mention here that presently, the Appellant is not involved in any cement business as a manufacturer or in any other capacity at all.

284. It is next submitted that it is denied that the Appellant's case is not based on infringement of environmental rights. It is baseless to make that allegation in view of the fact that the appeal is entirely based on environmental concerns and has been filed to challenge the invalid environmental clearance given to Respondent no. 1.

285. Further, it is wrong to state that the Appellant is trying to stop industrial activity in the area. It is submitted that the Appellant has not objected to setting up of any other industry in nearby area. It is pertinent to note here that M/s. Mahesh oil refinery and Adani Willmar are about to start their commercial production quite near to Appellant's boundary which is less than 500 meters from Respondent No. 1's plot. This is sufficient to prove that the Appellant has no ulterior motive of preventing any industrial development in this zone.

V. RE: THE APPEAL HAS NOT BEEN FILED WITHIN THE LIMITATION PERIOD AND IT WAS AMENDED TO INCLUDE FRESH GROUNDS

286. It is next submitted that amending the appeal was well within the rights of the Appellant and the Appellant has sufficiently substantiated the validity and applicability of various laws and legislations and most importantly the order of this Tribunal dated 10.07.2019 in its 'amended appeal'. Thus, it is incorrect to state that the appeal was amended to include baseless allegations and pleadings.

287. It is next submitted that it is wrong to suggest that the Appellant sought to alter its case and circumvent the statutory period of limitation of thirty days. Further, it is totally disputed that the Appellant has raised fresh grounds which were not raised in the original appeal.

288. It is next submitted that the Impugned EC has been granted on 23. 08. 2019 and the Appellant filed the appeal within limitation and in time as prescribed under Section 16 of the Act. The matter was heard before this Tribunal on 26.09.2019 wherein liberty to file the amended appeal was granted to the Appellant. Pursuant to the said direction, the Appellant has filed its Amended Appeal within the limitation period.

289. Further, it is next submitted that the appeal was amended to clearly elaborate facts on which the appeal was based. It is disputed that new facts and grounds were added to the appeal. The amendment was intended to add better elaboration of the facts for the convenience of this Tribunal.

290. It is next submitted that moreover, now that the amendment of the appeal has been allowed by the Tribunal and the amended appeal has been taken on record, the contention with respect to limitation does not hold ground.

VI. RE: THE APPELLANT'S CHALLENGE IS PRE-EMPTORY AND NO CAUSE OF ACTION HAS ARISEN IN FAVOUR OF THE APPELLANT

291. Appellant further stated that it is incorrect to state that the entire appeal is based on assumptions that conditions prescribed in the clearance will be breached. The Appellant has not based its appeal on the presumption that there will be a breach of the conditions specified in the

environmental clearance but the inconsistencies in the EIA Report and the Environmental Clearance and non-application of mind while granting the Environmental Clearance.

292. It is next submitted that the Appellant has furnished sufficient evidences and substantiated its argument by proper facts which proves that the grinding unit of the Respondent No. 1 possess very viable acute threats to the environment. Further in reply, the submissions made in the Appeal are reiterated and are not repeated herein for the sake of brevity.

293. It is next submitted that as per 'EIA Guidance Manual for Cement Industry' prepared for Ministry of Environment and Forests by IL & FS, the direct, indirect, and cumulative impact assessment should form an integral part of the EIA process at all levels and steps. The said impacts have been overlooked by Respondent no. 3 and the analysis is based on the information furnished by the Respondent No. 1 alone.

VII. RE: THE RESPONDENT NO 1 IS ONE OF THE LEADING ESTABLISHMENTS IN THE CEMENT INDUSTRY HAVING AN IMPECCABLE REPUTATION OF EMPLOYING WORLD CLASS AND ENVIRONMENTAL FRIENDLY TECHNOLOGY

294. It is next submitted that it is the duty of the Appellant to put forth the track record of Respondent no. 1 before this Hon'ble Tribunal. It is pertinent for the tribunal to note that show-cause notices have been issued to the Respondent no. 1 by the CPCB multiple times due to its highly polluting operations. Respondent No. 1's grinding unit at Village Akari, District Kutch-370511, Gujarat has been issued multiple show cause notices by the CPCB for its polluting activities. Thus, the claim of

Respondent No. 1 that it uses environment friendly technology holds no ground.

295. Further, it is submitted that several grinding units of Respondent No. 1 in Gujarat have received public backlash. In 2015, the Gujarat High Court directed the Union Government to reconsider the permission given to Respondent no. 1 with respect to a captive jetty in the reserved forests of Kutch, Gujarat.

The judgment reveals the legal loopholes shrewdly exploited by Respondent No. 1 to get their Rs 1,000-crore project cleared. The judgment also reveals the way the government gave up the issue without even bothering to verify the details submitted by Respondent No. 1. The Respondent no. 1 had submitted doctored plans to the forest authorities to get the clearance.

296. It is denied that the Appellant has relied on the order dated 10.07.2019 in a selective manner without placing the true import of the said Order. It is humbly submitted the clarification order dated 23.08.2019 relied upon by the Respondent no. 1 is of no utility to them and an incorrect reliance has been placed on the order by the Respondent no. 1.

It is submitted that to understand the observations of the Tribunal in the clarificatory order, it is necessary to understand the clarification which was sought from the Tribunal which was the premise of the observation. As it is said, the ratio of a decision cannot be read in isolation from the facts of the case.

297. It is further submitted by the appellant that the clarification sought from the Tribunal was whether the units which have already been granted the EC are to be covered by the order of the Tribunal. However, it is pertinent to note that Respondent No. 1's unit was not given the environmental clearance till 23.08.2019. It is imperative to note here that in the 253rd Meeting of SEIAA on 16.07.2019, based on the recommendation of SEAC, it was decided to grant the impugned Environmental Clearance to the Respondent No.1. Thereby following this, in complete violation of the NGT order and ignorance of the objections raised and Letters addressed by the Appellant, the Respondent No.3 on 23.08.2019 issued Environment Clearance for the Grinding Unit Project to Respondent No.1. The clarifications on severely polluted industrial area were given by GPCB on 11.11.2019.

298. Further, it is submitted that the order dated 10.07.2019 gives clarification that two areas i.e. GIDC Pandesara and GIDC Sachin of Surat District are declared as SPA. The Respondent No. 1 is claiming that proposed unit is located at considerable distance of 14 Km after buffer 5 Km of that polluted area. It is submitted that there is no uniform criteria to measure such a considerable distance at first and the Respondent hence fails at this point. It is pertinent to mention here that earlier entire Surat including proposed site was declared as SPA by this Tribunal by the order dated 10.07.2019.

299. It is next submitted that the impugned EC was issued to Respondent No. 1 on 23.08.2019. Thereafter, on 11.11.2019, GPCB clarified about the areas of Surat which will be included under SPA.

Moreover, according to the earlier SPA criteria, EC should not be issued by Respondent no. 3 without a proper mechanism.

VIII. RE: THE APPELLANT'S ALLEGED THAT APPELLANT'S 'ARMOURED SYSTEM COMPLEX' IS NOT A DEFENCE INSTALLATION AND THERE IS NO PROHIBITION IN LAW IN SETTING UP OF THE PROPOSED UNIT

300. It is next submitted that on 08.09.2014, the Department of Defence Production under the Ministry of Defence categorised the Appellant's unit as a Category A establishment, as per the Security Manual for Defence Installation. It is relevant to note here that Category A includes the most highly classified and crucial defence installations. Thereby vide its letter dated 08.09.2014, the Ministry of Defence directed the Appellant to undertake security measures as prescribed in the Security Manual for Category A establishments.

301. It is next submitted that on18.06.2018, a Life time Arms License was issued to the Appellant to manufacture Artillery, Howitzer guns, vehicle mounted guns etc. including associated subsystems; tanks and armoured fighting vehicles; infantry combat vehicles and non-armoured combat vehicles; weapon launchers and launch system and air defence guns and systems. It is important to reiterate here that the Armoured System Complex is currently executing an order for K9 Vajra-T Tracked Self Propelled Howitzers for the Indian Armed Forces. It is also submitted that the critical equipment of this project shall be manufactured & maintained in Dust free environment. Dust exposure may affect the reliability & functionality of these equipments.

302. It is next submitted that on 09.02.2016, Respondent no. 4 vide a Gazette Notification as required under the Officials Secrets Act, 1923, defined the boundaries of prohibited area with respect to the HZMC, the defence manufacturing establishment. Respondent no. 4 in exercise of power conferred by sub-clause (d) of clause (8) of section 2 of the Official Secrets Act, 1923 declared the place of HZMC (longitudes , latitudes given in the notification) to be a prohibited place for the purposes of the said Act. Further, as per the Security Manual, the Appellant's plant is a Category-A establishment and requires the highest level of security. The approval granted to the cement grinding plant of the Respondent No.1 is ultra vires to such notification of the Government of Gujarat, in light of the fact that the Respondent No.1 has written in the Form-1 that no defence installation within 10km area range.

303. Further, it is pertinent to point out that the Respondent No.1 has procured the Environmental Clearance for its Cement Grinding Plant by concealing the fact that appellant premises is used in manufacturing defence equipments and is a licensed defence company.

304. It is next submitted that it is imperative to reiterate here that although the Appellant operates 'Red' and 'Orange' Category units at HZMC, none of these units are using coal/pet coke etc. as fuel throughout the process and have been using fuels such as electricity/PNG for manufacturing process which does not result in emission of any Particulate Matter (PM) affecting quality of the products. It is submitted that the Appellant has an establishment just 1 km away from the proposed unit, which manufactures ultra-critical and

sophisticated equipment comprising of Super Critical Turbine Generators, Nuclear Equipments and K9 Vajra self-propelled howitzer guns. The details have already been mentioned in the amended appeal and are not reiterated here for the sake of brevity. The Respondent has purchased the private land in between the huge project area of the Appellant and has acquired the impugned EC to establish the proposed unit right in the middle of the establishment of the Appellant. Moreover, there is no industry within 4 KM of the Appellant's project which can cause dust pollution resulting into harm to the Appellant's dust sensitive products. The details of the Appellant's units located around the 'Defence Establishment' are as follows:-

"

S.No.	Name of Industry	Aerial Distance from Appellant's Armour Unit - KM	Direction	Note
1	L&T Defence	-	-	-
2	L&T Heavy Engineering	1.81 km	-	None of these units are using coal/pet coke etc. as fuel throughout the process and have been using fuels such as electricity / PNG for manufacturing process which does not result in emission of any Particulate Matter (PM) affecting quality of the products.
3	L&T MHPS Turbine Generators Pvt. Ltd.	0.90 km		
4	L&T Special Steel and Heavy Forging	1.01 km		
5	L&T Piping	0.33km		
6	Reliance	3.25 km	NE	Petrochemical Complex

7	NTPC	4.70km	NE	Gas based thermal power plant hence there is no PM emission.
8	KRIBHCO	6.40km	ENE	Fertilizer manufacturing company
9	GAIL	6.00km	ENE	L P Gas Terminal and does not cause significant PM emission.
10	ONGC	8.70km	E	Oil & natural gas production company
11	CAIRN India	1.80km	N	Oil and gas exploration and production company and does not cause significant PM emission.
12	Adani Wilmar	1.30 km		Edible Oil manufacturing unit and does not cause significant PM emission.
13	Essar Steel	5.07 km	S	Primary Steel Manufacturing Company
14	Adani Port	7.20 km	S	Port and Harbour
15	Hazira LNG & Port	6.56 km	SSW	Port and Harbour
16	ABG Cement	4.7 km	ENE	Cement Grinding unit
17	Ultratech Cement	8.6 km	E	Cement Grinding unit
18	Ambuja Cement	9 km	E	Cement Grinding unit
19	Sanghi Industries Ltd.	1.25 km		

”

305. It is next submitted that the Appellant has already substantiated the fact that the Armoured System Complex is a ‘defence installation’ through various facts, notifications and directions issued by the concerned authority and would not reiterate the same for the sake of brevity. Hence, there has been no concealment, whatsoever, on the part of the Appellant and instead

it's the Respondent who has deliberately concealed many material facts which led to the erroneous EIA Report, which has been dealt in detail by the Appellant in the amended appeal.

306. It is next submitted that the Appellant has been executing some of the key defence and nuclear projects which are of primary national importance. It was issued the necessary industrial license for the same in 2007 and has been operating smoothly since then. It was only when the public hearing notice was published in the newspaper, that the Appellant became aware of the proposed unit of the Respondent No.1 which is only within 1 km radius of HZMC Project and is located in the midst of HZMC Project.

307. It is next submitted that the EIA Report has failed to address the environmental norms relating to air, water and land that would be severely impacted by the establishment of the Respondent No.1 cement manufacturing unit. It is also to be noted that the relevant material and factors were not placed before the SEAC, Gujarat and the SEIAA along with Form-1, for meticulous environmental evaluation and audit. Further, both the SEAC, Gujarat and SEIAA could not have applied their mind on the environmental consequences and apparently recommended the grant of EC in a mechanical manner. The said EC under the circumstances is void as it is without jurisdiction.

308. It is next submitted that the Appellant has time and again reiterated and substantially validated the fact that the EIA report suffers from serious discrepancies and is based on concealed facts and truth. It is relevant to note here that there was a gross mismatch between the information submitted by the Respondent No.1 in Form-1 (as available

online) and the EIA Report. It is pertinent to note here that the EIA Report had multiple errors and patent concealments of facts.

309. It is next submitted that by relying on the erroneous EIA report and public hearing proceedings, the SEAC Gujarat vide their letter dated 15.07.2019 had recommended to the SEIAA to grant the EC for the Grinding Project on its meeting held on 12.06.2019 and the impugned EC was granted on 23.08.2019. Moreover, the final EIA report considering comments of SEAC has not been prepared along with impact identification and uploaded on the website.

X. RE: THE APPELLANT CANNOT BE PERMITTED TO AGITATE FRESH GROUNDS DESPITE GRANT OF ADEQUATE OPPORTUNITY

310. It is next submitted that It is incorrect to state that the Appellant has challenged the grant of the Impugned EC on fresh grounds. It is denied that these grounds were not stated at the stage of public hearing or letters sent to Respondent no. 1 & 3 or the personal hearing. The case of the Appellant has been the same since the very beginning and the same was put forth by the Appellant in front of Respondent no. 1 and 3 sufficiently. It is humbly submitted that Respondent No. 1 has not been taken by surprise by the grounds in the Appeal and was well versed with them even before the Appeal was filed.

XI. REJOINDER TO REPLY OF RESPONDENT NO. 5 i.e. MINISTRY OF DEFENCE

311. It may be noted that the Ministry of Defence was impleaded in the present appeal on the direction of the Hon'ble Tribunal vide order dated 26.09.2020. That the sole purpose for impleading the Ministry of Defence was to provide clarity whether the defence manufacturing facility of the

Appellant would qualify to be a defence establishment / installation in terms as mentioned in 7th row of the (III) heading i.e. Environmental Sensitivity in Report 1 Form B i.e. Appendix 1.

312. It is next submitted that it may be noted that point 7 in the third heading of Form-B provides for the party seeking environmental clearance to inform if the proposed unit is within the aerial distance of 15 kms from any Defence Installation. That Sanghi Industries Limited i.e. the Respondent No.1 herein the present appeal has answered this particular point in negative, i.e. there is no Defence Installation within 15kms of aerial distance from the proposed unit.

313. It is next submitted that it is the case of the Appellant that its Armoured Systems Complex (ASC) is a Defence Installation for the purposes of Environmental Sensitivity as is mentioned in Report 1 Form B. In light of the above, it is to be considered whether the Appellants' Armoured Systems Complex (ASC) would qualify to be a Defence Installation for the purposes of Environmental Sensitivity as is mentioned in Report 1 Form B. The following points fall for consideration while examining whether the ASC qualifies for a Defence Installation:

> *"a. Appellant's ASC is Indian Licensed Defence company (ILDC) categorized under having Category A License as per Security Manual and Industrial Licence policy of Ministry of Defence.*
>
> *b. The Arms Licence no. DIL(A):09(2018) is issued on 18.06.2018 under Arms Act 1959 to Appellant's ASC for design, development and manufacturing of Firearms and Ammunitions.*
>
> *c. Appellant's ASC is manufacturing full-fledged defence product i.e. K9 VAJRA-T Gun. These guns are being delivered directly at Army Store. It is pertinent to note that direct delivery of finished products from the Appellant's ASC to Army Store is at par with ordinance factories under the aegis of the government.*
>
> *d. Apart from this, Appellant's ASC is also executing classified defence projects which cannot be disclosed because of national security.*

e. These defence projects require stringent quality standards during production for their required performance. This is monitored by Directorate General of Quality Assurance (DGQA) at defence production site."

314. It is next submitted that certain other points which also fall for consideration are as follows:

"a. Appellant's Armoured Systems Complex (ASC) was inaugurated by the Hon'ble Prime Minister Narendra Modi in presence of the then Defence Minister Mrs. Nirmala Sitharaman on 19.01.2019.

b. Hon'ble Defence Minister Shri Rajnath Singh flagged-off the 51st K9 VAJRA-T Self-propelled Tracked Howitzers Gun from Appellant's Armoured System Complex (ASC) on 16.01.2020.

c. Many senior defence officials visited from Appellant's Armoured System Complex (ASC) inter-alia Chief of Army, Directorate General of Quality Assurance (DGQA) etc."

315. It is next submitted that it may be noted that the Ministry of Defence i.e. Respondent No. 5 was impleaded in the present appeal on the direction of the Hon'ble Tribunal vide order dated 26.09.2020. That the sole purpose for impleading the Ministry of Defence i.e. Respondent No. 5 was to provide clarity whether the defence manufacturing facility of the Appellant would qualify to be a defence establishment / installation in terms as mentioned in 7th row of the (III) heading i.e. Environmental Sensitivity in Report 1 Form B i.e. Appendix 1).

316. It is next submitted that it may, however, be noted that for this specific case the Appellant's ASC can be treated as a Defence Installation. The Ministry of Defence i.e. Respondent No. 5 has miserably failed at providing the requisite clarity.

317. It is next submitted that the contention of Respondent no. 5 with respect to Works of Defence Act, 1923 is incorrect and a miserable attempt to mislead the Hon'ble Tribunal and thereby vehemently

denied. It may be noted as per provision 3.1 of chapter-3 of the Security Manual for Licensed Defence Industries published by Ministry of Defence, Government of India, all defence related installation automatically fall under category of "Prohibited Place" under the Official Secrets Act, 1923. The Ministry of Defence has vaguely tried to misrepresent the entire case to further complicate the issue in order to benefit the cement industry of Respondent No.1.

318. It is next submitted that the prohibition of area was done under the Official Secrets Act and not the Works of Defence Act, 1903. It is to be appreciated that while the Ministry of Defence admits that the Appellant is a defence manufacturing facility, it fails to appreciate that the applicable legislation will be the Official Secrets Act, 1923 and not the Works of Defence Act, 1903. It is also to be noted that defence manufacturing license, as admitted by the Ministry of Defence i.e. Respondent No. 5 as well, was given to the Appellant on the recommendation of the Department of Defence Production under the Ministry of Defence i.e. Respondent No. 5 by the Department of Industries and Internal Trade.

319. It is next submitted that in view of the aforementioned, the purpose of impleadment of the Ministry of Defence i.e. Respondent No. 5 and the failure at providing clarity vide the present affidavit / reply filed by the Ministry of Defence, has made the present reply filed by the Ministry of Defence as non-maintainable on grounds of lacking relevant particulars. The said reply therefore should be rejected and the Ministry of Defence should be directed to file a fresh reply / additional affidavit, clarifying in detail whether the Appellant's establishment is a Defence

Installation for the purposes of Environmental Sensitivity as is mentioned in Report 1 Form B or not.

320. It is next submitted that it may also be noted that the argument on the Works of Defence Act, 1903 is merely to mislead and confuse the Tribunal and an attempt to evade answering the direct question for consideration as had fell from the Tribunal.

321. It is next submitted that the Respondent No.1 has procured the Environmental Clearance for its Cement Grinding Plant by concealing the fact that Appellant premises in manufacturing defence equipments and is a licensed defence company. Moreover the Respondent No.1 also failed to disclose that the State Government has vide notification No.GG/ 15/ 2016 / SB-I / OSA / 102015 / 5407 dated 09.02.2016, declared the Revenue Survey No.148 /A. 230 + 241 as prohibited area under the Official Secrets Act, 1923. It is pertinent to point out that one complex of the Appellant has been declared prohibited area and the other complex will be declared a prohibited area shortly.

322. It is next submitted that all information provided by the State of Gujarat has been blatantly concealed by the Respondent No.1 at the time of securing the impugned environmental clearance. Moreover, it is pertinent to state that distance measured by the State Government is not from the boundary wall and hence not the exact distance. The actual distance is lesser than the one presented by the State Government. It may be noted that the actual distance is in fact 700-800 meters.

323. It is next submitted that it is pertinent to point out that once the notification under the Official Secrets Act, 1923, the area of Village Shivrampur and Suvali will also be prohibited under the Official Secrets Act, 1923. However, the said eventuality was neither presented by the Respondent No.1 while applying for the impugned environmental clearance, nor was it considered by the Respondent No.3 while granting the impugned environmental clearance.

324. It is next submitted that it is incorrect to state that the Appellant has challenged the grant of the Impugned EC on fresh grounds. It is denied that these grounds were not stated at the stage of public hearing or letters sent to Respondent no. 1 & 3 or the personal hearing. The case of the Appellant has been the same since the very beginning and the same was put forth by the Appellant in front of Respondent no. 1 and 3 sufficiently. It is humbly submitted that Respondent No. 1 has not been taken by surprise by the grounds in the Appeal and was well versed with them even before the Appeal was filed.

325. It is next submitted that Respondent no. 1 is trying to mislead this Tribunal just like it misled Respondent no. 3 by giving inauthentic information. It is reiterated that the grant of the EC is against the NGT Order dated 10.07.2019 (as modified by order dated 23.08.2019). It is further humbly submitted that relevant factors were not placed before Gujarat-SEAC and Respondent no. 3 in the Form 1 (available online), Draft EIA Report, and Final EIA Report. It is reiterated that the Impugned EC has been given to the Respondent no. 1 in a mechanical manner without application of mind.

326. It is lastly submitted that the Appellant craves opportunity to reiterate and rely on the grounds as provided under the Appeal filed before this Tribunal.

Reply / Objections to the Report of The Special Expert Committee prepared in terms of Order dated 21.01.2021

327. In reply to the report of the Special Expert Committee, it is submitted on behalf of the appellant that the present appeal has been filed by the Appellant seeking to challenge the Environment Clearance bearing no. SEIAA/GUPEC/3(b)/1155/2018 dated August 23rd, 2019 (Impugned EC) granted to the Respondent No.1 for its proposed unit of 2.0 Million Metric Tonne Per Annum (TPA) Standalone Grinding Unit with bulk and bag packing plant at Hazira Industrial Zone, Survey No.125/1, 125/2, 126/1+2+3. Village Shivrampur, Tal Choryasi, District-Gujarat, Surat (Grinding Unit Project).

328. It is next submitted that vide its Order dated 21.09.2019. the Tribunal after completion of the pleadings, heard all the interested parties at length and on 21.01.2021, the Tribunal passed an order wherein the Tribunal referred the issue of assessment and evaluation of the Environment Impact Assessment (EIA) report prepared by the Project Proponent to the EAC of the MoEF&CC dealing with the cement plants along-with the representatives of CPCB, NEERI and IIT Mumbai.

329. It is further submitted that vide its Order dated 21.01.2021, the Tribunal observed the Impugned EC to be unsustainable, relevant extract of the order reproduced hereinbelow for ready reference:

> *"21. As held in Hanuman Laxman Aroskar v. Union of India [(2019) 15 SCC 401 j, the object of EIA is to ensure that all concerns affecting the environment are duly taken care of.*

Thus, the impugned EC cannot be sustained until the environmental concerns are duly addressed. We are informed that the project has not yet commenced.
Even learned Counsel for the project proponent and the SEIAA fairly accepted this factual position."

330. It is submitted that in pursuance to the Order dated 21.01.2021 of NGT, meetings of the Expert Committee were convened by the Ministry of Environment, Forest and Climate Change (MoEF&CC) on 13.04.2021, 17.05.2021 & 12.07.2021 through Video-Conferencing (VC). The Expert Committee specially comprised for the purpose consisted of Expert Appraisal Committee of Industry 1 dealing with the Cement Sector, experts from Indian Institute of Technology, Mumbai and National Environmental Engineering Research Institute (NEERI), Nagpur along with the representative from Central Pollution Control Board (CPCB). The report was stated to be finalized in the meeting held on 12.07.2021 through video-conferencing. The meetings of the Special Committee were held under the Chairmanship of Dr. Chhavi Nath Pandey, Chairman of Expert Appraisal Committee of Industry 1 sector.

331. It is next submitted that Appellant herein, raises objections with respect to the conduct and the procedural propriety with the meetings and preparation of the report along with the failure on part of the Committee to deliver as per the scope defined by the Tribunal.

332. It is further submitted that the Appellant has examined the Report and it is clear that the Report has been prepared without any ground-level assessment or examination of any of the concerns as highlighted by the Appellant. It is submitted that the Committee's mandate was to evaluate the shortcomings in the EIA and the impact of such failure to disclose complete information, however the

Committee has instead went on to recommend the project adding its own stipulations / conditions.

333. It is next submitted that the report has multiple incorrect recordings and unsupported findings, inter-alia (i) The Panchayat Road is not 15mtr wide road as observed by the Committee rather its only 7.5mtr wide; (ii) The Committee failed to appreciate the Adverse impact on nearby villages due to proposed project; (iii) The Committee failed to appreciate that the Project Proponent has applied under the false / misleading category for seeking approval of SUDA; (iv) The Committee failed to appreciate that the Project Proponent did not disclose that the project site fell in the General Industrial Zone; (v) The Committee has erroneously assumed the Suvali Village does not fall on the transportation route and is not located in the downward direction from the plant; (vi) The Committee erroneously discarded environmental concerns raised by the Counsel for the Suvali Gram Panchayat because the Counsel did not have any authorization from the specific village panchayat; (vii) The Committee provided no basis for observing that the land area of 4.856ha would be sufficient for the proposed project after increase in the green belt by 15mtr; (viii) Despite noting in para 8(viii), that the Project Proponent failed to address several aspects in its Form 1, the committee has failed to analyse the impact of such deliberate concealment; (ix) The issue of failure on part of the Project Proponent to evaluate the impact on environment in light of the fact that wetlands and mangroves are present in close proximity has not been dealt with by the Expert Committee.

334. It is further submitted that the Report as submitted by the Committee does not carry signatures of any of the members of the committee, including the chairman. Further no minutes of the

meetings have been provided nor it is informed as to who all attended the meetings.

335. It is further submitted that in gross violation of the principles of natural justice of audi alteram partem, the Project Proponent has been unilaterally and without any intimation to the Appellant supplying submissions, written notes, reports and additional information to the Committee without even serving a copy to the Appellant. The parties involved in the matter i.e. the Appellant, Respondent No.1 and the Intervener were heard on 13.04.2021 and thereafter SIL submitted documents as late as July 2021 (Refer page no.293 to 297 of the Report). The Committee did not intimate the same to the Appellant nor did it even provide the opportunity to the Appellant to respond to the additional information supplied by the Project Proponent. The Committee instead made the Appellant to understand that all the parties were heard on 13.04.2021 and whatever additional information was to be sought was sought therein. However, as is now revealed post examination of the Committee Report, there was a unilateral exchange of emails from the Committee to the Project Proponent seeking notes and reports on various contested issues and the Appellant was given no intimation of the same.

336. It is next submitted that the Project Proponent relied on multiple reports, however, no copy of such reports was either filed before the NGT nor supplied to the Appellant. The Project Proponent has got evaluation done by its own experts and furnished those individual reports to the Committee. The Committee has also taken due note of such one-sided reports and given its finding on the basis of such reports.

337. It is next submitted that the said report is replete with errors and procedural improprieties and cannot be relied upon by the Tribunal as a substantive recommendation in terms of the Order dated 21.01.2021 of the Tribunal. Therefore, it is submitted that since the said report is highly unreliable, the matter can be decided in finality and the impugned EC may be quashed.

338. It is submitted that without prejudice to any of the aforesaid submissions / preliminary objections on procedure of the Committee, it is submitted that even on merit, the Committee fails to make good the directions which were issued by this Tribunal. The Appellant herein will deal with each and every issue / environmental concern raised by the Appellant in its Appeal and the Committee's finding / observation with respect to the same along with the Objections of the Appellant therein-under:-

*"**LOCATION OF THE CEMENT PLANT***

1.1 The Project Proponent/ SIL is setting up a project of 2.0 Million Metric Tonne Per Annum (TPA) Standalone Grinding Unit with bulk and bag packing plant at Hazira Industrial Zone, Survey No.125/1, 125/2, 126/1+2+3. Village Shivrampur, Tal Choryasi, District-Gujarat, Surat Thereinafter referred as "Cement Plant').

1.2 It is submitted that the NGT vide its order dated 10.07.2019 identified Surat as a Polluted Industrial Area (PIA) where the Comprehensive Environmental Pollution Index (CEPI) score was 76.43. It may be noted that cement plants falls under red category industry due to their high pollution levels based on the CEPI score.

Finding of the Committee

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

14.11.2019 passed by the National Green Tribunal, Principal Bench, New Delhi with respect to CEPI areas.
The Suvali village is located at a distance of 1.89 kms from the proposed SIL project site. It does not fall on the transportation route from highway to the SIL plant, nor located in downwind direction from the plant, hence is not likely to be affected by stack emissions from the plant.
ii. The learned counsel for Suvali panchayat also raised issues pertaining to concerns related to another village namely Shivarampur, but the learned counsel did not have any authorization from the village Panchayat to present their case.
iii. The proposed project of M/s. SIL involves setting up of stand-alone cement grinding unit of 2 MTPA capacity. The major source of pollution from this unit will be particulate matter and fugitive dust emissions from handling raw materials which can be mitigated by adopting adequate environmental safeguards.

Objections of the Appellant

1.4 It is submitted that the Committee rejects the arguments made by the Counsel for the Suvali Grain Panchayat on the pretext that the Ld. Sr. Counsel did not have any authorization from the Shivrampur village Panchayat to present case. It is pertinent to highlight that in cases concerning the environment, the issues raised are in rem and not in personam. Furthermore, as per Section 16 of the NGT Act, 2010, "any person aggrieved" can approach and invoke the appellate jurisdiction of the Hon'ble Tribunal. Further as per Section 19 of the Act, the Hon'ble Tribunal is not bound by the procedure laid down in the Civil Procedure Code, 1908 but shall be guided by principles of natural justice. Therefore, in case of environmental concerns the regulatory procedure provides sufficient space for accommodating all concerned and the Expert Committee could not have refused to entertain the submissions of the Counsel on the ground that he did not have authorization from the Shivrampur village panchayat.

1.5 It is submitted that the Committee in point (i) of Para 8 of its Report has rejected the submission of the Appellant that Surat falls under the category of critically polluted areas on an erroneous observation that Hon'ble Supreme Court vide its Order dated 22.09.2020 in Civil Appeal Diary Number 19271/2020 imposed a stay on the operation of the orders dated 10.07.2019, 23.08.2019 and 14.11.2019 passed by the NGT, Principal Bench, New Delhi.

1.6 It is submitted, that the Hon'ble Supreme Court had stayed a different aspect of the NGT Order that pertains to the setting up of the new industries, whereas the Appellant submission was restricted to highlight that Surat falls under the critically polluted areas and a cement plant in such an area would only aggravate the condition of the pollution in the area. The said submission remains unaffected by the Hon'ble Supreme Court Order dated 22.09.2020 and the said order has no bearing on the CEPI score of Surat. Therefore, it is highly

erroneous and arbitrary on part of the Committee to vaguely reject the submission.

1.7 It is further submitted that the Committee makes a vague observation that the Suvali Gram Panchayat does not fall on the route and that it is not located in the downward direction from the plant. It is pertinent to highlight that the Committee in its observations has reproduced the contents from the Notes submitted by the Project Proponent, no copy of which was served to the Appellant neither any opportunity was provided to rebut the same.

1.8 It is submitted that though the Committee records its finding with respect to the modus operandi of the Project Proponent and observes in point (viii) of para 8 that PP has not failed to disclose the vital information in its Form 1, however makes no operative direction pursuant to such observation. The said finding of the Committee is extracted hereinunder for ready reference:

> *"PP has not addressed several aspects in the Form I inter-alia pre-construction site investigation, construction work, quantum of resources, solid and liquid waste generation, existence of vulnerable group and eco sensitive areas such as mangroves, hospitals in the study area with direction and distance, mitigation measures, occupational diseases etc."*

However, despite making the aforesaid observation and finding qua the Project Proponent, the Committee has instead recommended the project.

1.9 It is submitted that the neighbouring industries and their relevant details are as under:

S. No.	***Name of Industry***	***Aerial Distance from Appellant's Armor Unit - KM***	***Direction***	***Note***
1	*L&T Defence (1983)*	*-*	*-*	
2	*L&T Heavy Engineering (1983)*	*1.81 km*	*-*	*none of Appellant's units is using coal/pet coke etc. as fuel anywhere in process, All units are using fuels like*

3	L&T MHPS Turbine Generators Pvt. Ltd.(1983)	0.90 km		electricity/PNG for manufact - uring process where there is no emission of Particulate Matter (PM) affecting quality of Appellant's products.
4	L&T Special Steel and Heavy Forging	1.01 km		
5	L&T Piping(1983)	0.33km		
6	Reliance(1991)	3.25 km	NE	Petrochemical Complex
7	NTPC(1992)	4.70km	NE	Gas based thermal power plant hence there is no PM emission.
8	KRIBHCO (1983)	6.40km	ENE	Fertilizer manufacturing
9	GAIL (1987)	6.00km	ENE	L P Gas Terminal and does not cause significant PM emission.
10	ONGC (1984)	8.70km	E	Oil & natural gas production company
11	CAIRN India (2002)	1.80km	N	Oil and gas exploration and production company and does not cause significant PM emission..
12	Adani Wilmar (2017)	1.30 km		Edible Oil manufacturing unit and does not cause significant PM emission.
13	Essar Steel (1989)	5.07 km	S	Primary Steel Manufacturing Company
14	Adani Port (2010)	7.20 km	S	Port and Harbour
15	Hazira LNG & Port	6.56 km	SSW	Port and Harbour
16	ABG Cement (2012 —	4.7 km	ENE	Cement Grinding unit
17	Ultratech Cement	8.6 km	E	Cement Grinding unit
18	Ambuja Cement (1989)	9 km	E	Cement Grinding unit

1.10 *It is further submitted that huge protests are going on with respect to the AMNS Project of Essar, a public hearing for which was conducted by GPCB on 21st Sep 2021 wherein people from the surrounding villagers stated that people are dying of Cancer in their respective villages on account of the increasing pollution in the area. It is pertinent to highlight that the AMNS plant is merely 2-3 Km away from cement plant site of the Project Proponent.*

II. Misrepresentation / concealment by project proponent of the environmental sensitivities (inter-alia mangrove, forest, wetlands migratory birds) in the pre-feasibility report, form-1, terms of reference, environment impact assessment report and impugned environmental clearance

2.1 *It is submitted that the Project Proponent in Para 8 of its Pre-Feasibility Report wherein it has laid out the Environmental Management Plan has deliberately failed to disclose the presence of Mangrove Forest, Wetland, migratory Birds in the project area. The Form-1 filed by Project Proponent was supported by and based on its Pre-feasibility Report and both were filed together with the relevant authorities. The Project Proponent in its Form-1 states "Proposed project will be established on the land of 12 acres already in possession of SIL acquired for the purpose. The proposed land was agriculture land and will be converted for industrial purpose."*

2.2 *It is next submitted that the Project Proponent in Form-1 categorically denied the presence of sensitive flora and fauna species within 15 kms of the proposed project location boundary.*

2.3 *That despite there being a specific requirement under the Terms of Reference, the Project Proponent had intentionally failed to provide the environment sensitive information. The Project Proponent deliberately did not mention presence of Mangroves, which are 2 km from the project site. Thus, as a consequence, environment impact evaluation of the same was not evaluated.*

2.4 *That the Project Proponent, even in the summary and conclusion of the EIA, concealed the environment sensitive information. The actual Forest Area is actually 1.7 sq. km and is at a distance of 3 kms, however, as per the Project Proponent, there is no forest within 10kms radius of the project site. That pursuant to the Wetland (Conservation and Management) Rules, 2010, which were subsequently modified in 2016, detailed procedure was laid out in order to set* up an industry near a wetland. The Project Proponent has failed to demonstrate in its EIA or the presentation that it has acted in compliance with the said procedure or has taken any steps in order to conserve / protect the wetlands, whereas 41.42% of the area surrounding the project site is wetland. It is further submitted

that the distance of the proposed cement plant is 3.62 from Arabian Sea and 0.89 from Tapi River, as stated by the Project Proponent himself in its Form-1. Reference may be made to judgment of the Hon'ble Supreme Court judgment in M.K. Balakrishnan vs Union of India [2018 (2) SCJ 2071 wherein the Hon'ble Court dealt in detail with the Wetlands (Conservation and Management) Rules 2017 and the principles of Rule 4 of Wetlands (Conservation and Management) Rules 2010.

2.5 *It is submitted that the Environmental Sensitivity and other details were not considered in the prefeasibility report. Form-1, which accompanies the PER, again does not disclose the Environmental Sensitivity of the area and particulars thereof. The ToR issued by SIEAC, however, mandated the PP to consider the environmental sensitivity as mentioned in para 4.5 above.*

2.6 *It is submitted that the EIA conveniently omits the presence and neglects to evaluate the adverse impact on mangroves, wetlands, forests and migratory birds. However, the presence thereof, in a cursory manner, is reflected in the tables possibly to avoid the charge of concealment. The proposed plant is in violation of the Wetlands (Conservation and Management) Rules 2010 and 2017.*

Findings in report by the Committee

viii. *PP has not addressed several aspects in the Form I inter-alia pre-construction site investigation, construction work, quantum of resources, solid and liquid waste generation, existence of vulnerable group and eco sensitive areas such as mangroves, hospitals in the study area with direction and distance, mitigation measures, occupational diseases etc.*

xx*.* *Mangroves exist at a distance of 1.4km from the project site on the other bank of Tapi river. As per the provisions of Coastal Regulation Zone (CRZ), 2019, Mangroves (in case mangrove area is more than 1000 square meters), a buffer of 50 meters along the mangroves is required to be provided. In the present case, the distance of 1.4km is much more than the required buffer zone of 50 meters.*

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

Objections of the Appellant

2.7 *It is submitted that the Appellant did not raise any issue on the construction activity within the activity within the CRZ. The issue raised was the environmental sensitivity of the area*

and what measure does the Pre-feasibility, Form -I, EIA mentions or the Project Proponent undertakes to address the same. It may be noted that the two issues are separate and the issues raised by the Appellant independent of that of the CRZ. The committee has impliedly held that the EIA evaluation of a project is to be limited only for wetlands that have been notified. The observation is contra to the mandate of Hon'ble SC in Balakrishnan and the Wetland rules and guidelines thereunder

2.8 *It is submitted that the most important concern raised by the Appellant vide this present Appeal was that there are Mangroves at an aerial distance of 1.4kms from the proposed Cement Plant of the Project Proponent. However, the said concern is vaguely dealt by the Committee by merely recording that the buffer zone for mangroves should be 50metres and since the distance in the present case is 1.4km, there is no impediment to the setting up of the proposed cement plant. It was fallacious on part of the committee to apply a 50 metre buffer zone as provided under the CRZ Notification for evaluating the Environment Impact Assessment under the EIA Notification*

2.9 *It is submitted that the Committee has not scrutinized / evaluated the concealment and misrepresentation of the information in the Form-1 and pre-feasibility report submitted by SIL and consequently the impact of concealment of such information on the preparation of the EIA.*

III. INADEQUATE LAND ALLOTMENT DONE BY THE PROJECT PROPONENT

3.1 *It is submitted that EIA Report as filed by the Project Proponent does not provide for finished products storage area, loading and unloading area, product transfer area, parking areas for the used trucks and other vehicles, canteen area, security office and other amenities. It may be noted that the land allocation as shown in the EIA Report of the Project Proponent allocates 0% land to any of the above facilities. The Factories Act, 1948, under various provisions clearly lays down the mandate to have such amenities in any industrial project/factory and allocating no land for the same, puts the Project Proponent in violation of the same. It is submitted that the storage and handling of 40,00,000 tons raw material / finished products is not feasible in a 12-acre plot of which 4 acres are to be kept for green belt, to provide storage of such huge quantities of raw material, finished product and parking space of 40 trucks of 34 tonnes each, with loading and unloading facilities, to squeezed in an area.*

Findings in report by the Committee

The Committee has simply stated in point (vii) of para 8 as the land area envisaged for the project is 4.856 ha and it is sufficient for the proposed project activity of M/s. SIL.

Objections of the Appellant

3.2 The Committee has suggested to M/s SIL to develop a green belt of 15 meters width around the boundary limits of its factory by planting native and high foliage trees with a tree density of 2500 trees per hectare. However, neither any independent evaluation was done as to the land availability for the carrying out the aforesaid direction.

IV INCORRECT INFORMATION ON TRANSPORTATION, TRUCKS, ROADS

4.1 *It is submitted that based on the incorrect numbers provided by the Project Proponent and the lack of environment impact evaluation of such huge numbers of truck plying on the kaccha road, the Impugned EC was issued which stated as under:*
"47. Number of Trips & out) shall not exceed 363 nos. per day for transport of cement and raw material during the operations of the grinding unit"

4.2 *The project site is linked to the main road i.e., the National Highway (NH 53) by a panchayat road, the distance of which is around 2.2 kms. It is submitted that the Panchayat road is a Kaccha Road and the same is clearly mentioned in the EIA prepared by the Project Proponent.*

4.3 *It is submitted that the Project Proponent has not evaluated the impact of hundreds of trucks deploying on a kaccha road and has instead completely ignored by stating that since the dust generated by manufacturing is primary source, they have taken measures for that. However, none for other sources of dust since they are secondary in nature, including the dust from the kaccha roads, have been considered by the Project Proponent.*

4.4 *It is submitted that the Panchayat Road which is merely 7.5 m in width would not be able to handle 363 trucks of 34 tonnes taking two trips i.e., 726 trips per day. A normal 34 tonner trucks measures 11 x 2.4 x 3.4m (approx.) The EIA fails to take into consideration as to where the 363 [34] tonner trucks, each measuring 11 x 2.4 x 3.4 (approx.), would be parked before unloading / loading of raw material / finished product. The layout plan with the EIA does not address the issue of parking. Larsen & Toubro apprehends that the trucks would eventually be parked on the Panchayat Kachha road and possibly even on the National Highway which would result in severely hampering of the normal movement of traffic and consequent pollution. The impugned EC on Point 47, however, stipulates that only 363 in and out trips can be undertaken. In other words, even as per the impugned EC, only half the number of trucks are permissible to be used for transport. The EIA does not consider nor factor in the extent of pollution that will be caused by the movement of 726 [34] tonner trucks.*

Findings in report by the Committee

xiii. The impact can be further reduced by utilizing the trucks bringing clinker for cement dispatch to the sea route. As per the present market condition, about 118 trips can be reutilized (same truck will be used for clinker in up and cement in down) which will negate approx. 20 PCU per hour (actual 22). Thus only 68-20 = 48 PCU per hour will be the net impact as per the previous scenario of traffic. PP has also made a provision for parking of trucks and trailers. The trucks and trailers would be covered with tarpaulins as mentioned in the EC granted by SEIAA.

xv. *In addition to the written submission referred at point xiv above, another study report of M/s. Multimedia Consultants has been made available to the Committee on 1/07/2021. As per the said report and considering 10 years design life, vehicle damage factor of 2.89 and growth rate of 5 %, the resulting traffic will be 2 MSA (Million Standard Axle) which is a miniscule increase to the existing traffic.*

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

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

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

Objections of the Appellant

4.5 *It is submitted that there is absolutely no application of mind done by the Expert Committee, nor any independent evaluation done to find if the roads are actually 15m wide. The Committee has simply reproduced extracts from the Notes submitted by the Project Proponent.*

4.6 *It is submitted that even if it assumed that the observation is fair and rational, if all the 15m space is consumed, there will remain no space at all for parking.*

4.7 *It is further submitted that the Order granting EC is a non-speaking order. It does not disclose any reasons for granting it nor does it states the reasons for not accepting the objections raised during the public hearing. The Appellant has relied upon Rajeev Suris- Central Vista case [2021 SCC Online SC 7, (para 710-714)J; Hanuman Laxman [2019 SCC 401 (paras 118, 123-129, 159-160)] and S.N. Mukharji v. Union of India [AIR 1990 SC 1984], which hold that administrative authorities and tribunals exercising quasi-judicial function can justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. Unless reasons are disclosed, it is not possible to know whether the authority had applied its mind or not. Also giving of reasons minimizes chances of arbitrariness.*

4.8 *It is further submitted that in point xv of the para 8 the Committee places reliance on some study report of M/s Multimedia Consultants submitted by the Project Proponent to render a finding that considering 10 years design life, vehicle damage factor of 2.89 and growth rate of 5 %, the resulting traffic will be 2 MSA (Million Standard Axle) which is a miniscule increase to the existing traffic. However, the copy of the said report has not been supplied to the Appellant. It is submitted that no independent evaluation has been done by the Committee and unilateral reliance on a report submitted by the Project Proponent is not only questionable but also untenable in law.*

4.9 *It is submitted that the committee has erroneously placed unilateral reliance without any enquiry or conducting an independent evaluation of its own, on the report of Panchayat Road and its load bearing capacity. The Committee has rendered its finding solely on the basis of what has been reported to it by the Project Proponent. It is submitted that the current width of the Panchayat Road is not 15 metres as observed by the Committee rather it is only 7.5 metres. Further, the Committee has ignored the fact that the Project Proponent itself refers to that road as Kachha Road in its EIA and is now submitting reports that it is a pucca road with the carrying capacity of 1250 PCU per hour on which an average 190 PCUs travel per hour.*

4.10 *The Committees observation in point (xvii) of para 8 are highly vague and misplaced. The alleged pucca road is not being used for movement of commercial vehicles such as 34 tonner trucks and is not in a condition to comply with the appliable standards or regulations. Moreover, it was absolutely incorrect on part of the Committee in point (xviii) to observe that the Panchayat Road is being used by other industries existing in the area such as Larsen & Toubro. It is submitted that Larsen & Toubro does not use the said road and the Committee's incorrect observation only highlights its speculation*

in preparing its report. Moreover, the Appellant has not been asked about the same.

V. COASTAL TRANSPORTATION

5.1 *It is pertinent to note that the Respondent has only made a cursory mention that it intends to use coastal mode of transportation for supplying raw material and taking finished product. However, no evaluation of the same has been done in the EIA.*

*"**2.6.3 - Sea / Coastal Transportation***

The clinker shall be transported from Sanghipuram (IU) to Surat GU mainly by sea. Clinker shall be extracted from the Clinker load out silos at IU, transported to the captive Jetty of SIL by trucks and loaded on to the barges by grab cranes. Barges shall transport the Clinker to the ship stationed at high seas. At Surat, the Clinker shall be unloaded from the ship at nearest port and transported to the Surat GU site by trucks."

The company has planned Coastal Shipping of Cement, accordingly cement terminals have been developed at various locations. This will reduce the load on rail/road network /transportation.

5.2 *It is submitted that neither the PER, nor the EIA or the impugned EC, has taken into consideration, the impact on the environment of transportation of raw material and finished product by Coastal mode of transportation.*

Findings in report by the Committee

No finding at all given by the Committee as to how will the impact on environment will be dealt with in such a scenario.

Objections of the Appellant

5.3 *It is to be noted that the Appellant highlighted the issue that the EIA deliberately fails to disclose the environmental impact which the coastal transportation would have incase the project is permitted to come up. The Committee has miserably failed to take any note and makes no mention of how the EIA fails to address the issue and what remedial measures will be taken by the Project Proponent in order to address the same.*

VI CATEGORISATION OF INDUSTRIAL ZONES AS PER SURAT DEVELOPMENT AUTHORITY (SUDA)

6.1 It is submitted that on 12.10.2017, the Government of Gujarat issued a notification laying down the Comprehensive General Development Control Regulations, 2017 (CGDCR). It may be noted that Section C of the CGDCR, 2017 in its heading 7, provides for General Planning and Development Regulations,

wherein para 7.1 provides Zone Classification wherein different zones and uses have been conceptualized in Table 7.1.1.

6.2 That Appendix C of the said Regulation gives "list of obnoxious and hazardous industries" wherein Cement is one of the obnoxious and hazardous industry. That on 08.10.2020, SUDA published the Sanctioned Development Plan, 2035 showing various categories including General Industrial Zone and Obnoxious / Hazardous Industrial Zone (Pink — General Industrial Zone and Dark Pink with Textures —Obnoxious / Hazardous Industrial Zone). It is important to note that the land where the Project Proponent intends to set-up the proposed cement project falls under the General Industrial Zone (shown in Pink colour in the map). Moreover, the concerned authorities at Surat Development Authority have, vide their Certificate dated 11.01.2021, confirmed and certified that the area of the proposed cement plant of the Project Proponent falls under General Industrial Zone and not Obnoxious and Hazardous Industrial Zone. The site for the cement plant of Project Proponent is falling at Revenue / Block Survey No.125 and 126.

6.3 It is submitted that after the notification of SUDA Development Regulations, in particular after the publication of the aforesaid map, it would be appropriate and in the interest of justice, if a red category cement plant (which process is infamous for dust pollution) is not permitted. However, even if it is assumed that the applicability of the master plan is prospective, it would be in the furtherance of the precautionary principle keeping in view the nature and extent of pollution that would be caused by a cement plant on the rapid expanding city of Surat, that such a plant is not permitted.

Findings in report by the Committee

xi. *As per the Surat Urban Development Authority (SUDA) notification dated 8/10/2020, the proposed cement grinding unit project site falls under the General Industrial Zone and red category industry is not allowed to be set up in the area. However, the EC to SIL was granted on 23/08/2019 which was prior to 8/10/2020 i.e. issuance of SUDA Notification. It may also be noted that the proposed unit is not an integrated cement plant. It is a grinding unit where, clinker (brought from outside), fly ash and slag (waste materials from power plants and steel plants) are ground and converted to a useful green cement. Clinkerization process makes the cement plants a red category industry due to pollution of particulate matter, S02, NOx and Carbon Monoxide. In grinding units only particulate matter is emitted during grinding and that too much less than that in the clinkerization process.*
xii. PP has submitted an application to SUDA on 7/09/2019 for obtaining requisite permission as per the prevailing regulatory norms. The application is reportedly under process by SUDA and the approval is yet to be accorded.

Objections of the Appellant

6.4 *It is submitted that the fact regarding application for SUDA dated 7.09.2019 was never placed before the Tribunal nor before the SEIAA. It is submitted that EC is merely a license and does not confer a right on a project opponent to carry out an activity which adds to environmental pollution. It is submitted that an activity leading to an environmental degradation / pollution is a pernicious activity and can be prohibited. The Appellant has placed reliance on case of Ivory Traders [AIR 1997 Delhi 267], reproduced hereinunder:*

> *"43. Undoubtedly the business which the petitioners in the instant case are pursuing is attended with danger to the community. Its evil effect is manifested by the depletion of the elephant population. The possession of an article made from ivory has been declared as a crime. There is no fundamental right to carry on business in crime. The legislature has stepped in to eliminate the killing of elephant. If the legislation in order to rectify the malady has made the possession of ivory or articles made therefrom an offence, it cannot be said that the legislation violates Article 19(i)(g) of the Constitution to carry on trade and business. Such a pernicious activity cannot be taken to be as business or trade in the sense in which it is used in Article 19(1)(2) of the Constitution."*

6.5 *It is submitted that even this Tribunal in OA 249 of 2020, Tribunal on its own motion vs MOEF, (fire crackers case) prohibited sale of firecrackers by the Lisensed retailers, wherein it held that since bursting of fire-crackers is a pollutive activity therefore it is irrespective if the petitioners obtained licenses to sell the same. The said license would not hold the ground in-case the activity in furtherance of execution of those license would cause pollution and environment degradation. Reliance is also placed on the 2004 case of* ***State of Punjab vs Devans Modern Brewries J(2004) 11 SCC 26J***

6.6 *It is further submitted that it was fallacious on part of the Committee to have observed that, "clinkerization process makes the cement plants a red category industry....". CPCB in the norms prescribed for categorization of red category industry make no such distinction between cement plant per se and cement plant plus clinker manufacturing. The main health and environmental hazard is from the minute cement particulates, which are emitted during cement grinding and get embedded in the lungs.*

6.7 *It is next submitted that the purported application dated 7.09.2019 stated to be filed by the Project Proponent before SUDA, the NIC Code mentioned in the application is 410 i.e. for Construction of Buildings. It is pertinent to highlight the fraudulent act of the Sanghi Cement Ltd. is evident from the aforesaid fact itself wherein the Project Proponent is seeking approval on false and misleading pretexts. The relevant extracts of the NIC Code are annexed herein as Annexure D wherein it is stated that cement manufacturing falls under code*

2394 and 410 is a code for building erecting complexes and buildings.

6.8 *It is therefore submitted that the Committee should have considered new norms of SUDA for evaluating the adverse impact of proposed project on the local villagers."*

339. It is further submitted that the Pre-feasibility Report along with EIA Report are the building blocks for the grant of Environmental Clearance. The said reports are to be prepared after extensive research and ground toothing. The said reports are expected to honestly and truthfully reflect the ground topography and take into account all other relevant consideration particularly in relation to environment. In the present case, the said research is lacking in the report as detailed above and the concerned authorities have neglected the same deliberately or otherwise. The Committee nor SEAIC, while considering the said reports, can substitute its wisdom without getting the correct research material and an honest ground toothing. Both Committee and SEIAC had merely called upon the Project Proponent to clarify its doubts, which clarification was obviously tailor-made in the interest of the Project Proponent without any material in support thereof.

340. The Committee instead of evaluating the factors and grounds where the EIA fell deficit, has instead undertaken the role of the Project Proponent and provided unsolicited suggestions and recommendation as to how the Cement Plant should be set up. It may be noted that the Tribunal acknowledged that the EIA failed to disclose the environmental sensitive information and thereby appointed the Committee to evaluate such failure and its impact on the environment. However, instead of providing the report on the aforesaid, the Committee finally decided the case by holding that the EC should be sustained subject to certain suggestions.

FINDINGS

341. We have heard the Ld. Sr. Counsels for the appellant and Respondent no. 1 and Ld. Counsels for other Respondents and gone through the record as well as written submissions filed by the Ld. Sr. Counsels for the appellant, Respondent no. 1, Respondent no. 3 as well as additional written submissions filed by appellant and Respondent no. 1 and given our thoughts to the matter.

342. The order of this Tribunal dated 22.01.2021 sums up the case and it runs as follows:-

ORDER

> *"1. This appeal has been preferred against order dated 23.08.2019 of the State Level Environment Impact Assessment Authority (SEIAA), Gujarat, granting Environmental Clearance (EC) to M/s. Sanghi Industries Limited for setting up of stand-alone Cement grinding unit at Survey No. 125/1 and 126/1+2+3, Village Shivrampur, Ta: Choryasi, Distt.: Surat in category 3(b) of Schedule annexed with Environment Impact Assessment (EIA) Notification dated 14.09.2006.*
>
> *2. The appellant is a company engaged in construction, manufacturing and other industrial/commercial activities. Its grievance is that the project in question will have hazardous impact on Hazira Manufacturing Complex where the appellant is manufacturing defence equipments. The said industrial area at Surat is 'polluted industrial area' classified as such based on data of air water and soil quality, called 'comprehensive environment pollution index' (CEPI). The unit is of 'red' category in terms of categorisation of industries based on level of contribution to pollution under the Environment (Protection) Rules. EC has been granted without consideration of crucial aspects such as air emissions, water availability, wildlife etc.*
>
> *3. The appeal was filed on 20.09.2019. Notice was issued on 26.09.2019. The appeal was allowed to be amended on 24.10.2019. IA No. 28/2020 has been filed by the interveners viz. the village Panchayat. IA No. 131/2019 has been filed by the appellant for production of documents relating to compliance status of main cement unit of the project proponent at Kutch in terms of environmental norms.*
>
> *4. By way of amendment, the appellant has brought on record proceedings of public hearing dated 22.03.2019 wherein, among others, questions with regard to generation of dust from the plant, capacity of the road and source of water*

were raised. According to the appellant, such concerns relating to increased air and water pollution have not been addressed. The appellant has also pointed out discrepancies in the EIA report. It is submitted that neither the EIA report explains potential of compliance with the environmental norms nor State Environment Assessment Committee (SEAC) and SEIAA have given any reasons from which possibility of such compliance can be inferred. The proceedings do now show application of mind on the environmental consequences and the EC has been granted in a mechanical manner.

5. There are mangroves in the area but the project proponent concealed the said information in application Form I. Similarly, there is reserve forest area which will be impacted which has not been mentioned. 2 Million Tonnes Per Annum (MTPA) cement is proposed to be grinded which will require raw material including clinker, gypsum, fly ash, slag which has to be transported, involving movement of huge number of trucks. We made a reference to Table 4.17 in the EIA report showing the truck/tanker capacity and the frequency of trucks per day. The said table is reproduced in para 15 of this order. Though EC mentions that only 363 trucks will be permitted for transporting 278,000 liters water per day (as per specific condition no. 47), at least 799 canters per day will be required. The land allotted is total 12 acres, out of which 33% is to be green area (as per specific condition no. 67 of the EC) Condition no. 67 of the specific conditions mentions that if land for green belt is not available, plantation can be in open land on road sides. The condition is as follows:

> *"67. The SIL shall develop green belt within the factory premises as per the CPCB guidelines, consisting of at least three rows of trees of local species on periphery. However, if the adequate land is not available within the premises, the SIL shall take up adequate plantation at suitable open land on road sides and other open areas in nearby locality or schools in consultation with the Gram Panchayat/GPCB and submit an action plan of plantation for next three years to the GPCB."*

6. There is no provision in the EIA for space for parking for the trucks and other vehicles. Shifting of green belt outside the factory complex will defeat the object of mitigation of pollution. The industrial area in question is polluted industrial area which has no capacity for any further polluting activities as held in the order of this Tribunal dated 10.07.2019 in OA No. 1038/2018, News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels".

7. The project proponent-Respondent No. 1 has filed reply by stating that it has state of art facilities to adhere to the environmental norms. The mangroves have been duly disclosed in the EIA report. The project is at a distance of 1.3 km from the mangroves. The Krishak Bharati Cooperative Ltd. (KRIBHCO) has agreed to supply water through irrigation

pipelines. The water requirement will be partly met by recycling.

8. Reply of the SEIAA, Gujarat is that EC has been granted based on EIA report furnished by the project proponent. Undertaking was given not to use lignite and pet coke which is not permissible fuel. The project was considered by the SEAC in the meeting held on 12.06.2019 in continuation of meeting held on 16.04.2019. The project proponent explained mitigation measures against the emissions on which the members of SEAC were satisfied and on their recommendation SEIAA granted EC on 16.7.2019. Relevant extract from the reply of SEIAA is:

> *" xxx xxx*
> *12. I say that the answering respondent authority after receiving the recommendation considered the same along with the relevant material at its meeting held on 16.07.2019. A true copy of the minutes of the meeting of the respondent authority held on 16.07.2019 is annexed herewith and marked as Annexure R4. Being satisfied with the recommendation made by the Expert Appraisal Committee on the basis of the material and consideration of relevant aspects, the respondent authority decided to grant environment clearance for the proposed project. Accordingly, the clearance was issued on 23.08.2019."*

9. Relevant extracts from the minutes of the meetings of SEAC dated 16.04.2019 and 12.06.2019 are:

"The 497th meeting of the State Level Expert Appraisal Committee (SEAC) was held on 16th April, 2019 at Gujarat Pollution Control Board, Sector 10-A, Gandhinagar.

xxx xxx xxx

In view of the above, Committee unanimously decided to consider the proposal the proposal after submission of the following details:

xxx xxx xxx

iii. Fugitive emission details with its mitigation measures.

Fugitive emission during raw material handling and feeding process and vehicle movements.

Mitigation measures – High efficiency pulse air jet type bag filters will be considered to arrest the air borne dust at all the locations where transfer of material are takes place; The automatic bagging machine with bag filters will be installed for packing plant; unloading of coal trucks will be carried out with proper care avoiding dropping of the materials from height. Sprinklers will be installed in Raw Material/ Fuel

Storage/Loading / Unloading areas. The sprinkling of water will be done along with internal roads in the plant in order to control the dust arising due to the movement of vehicular traffic; Proper maintenance of vehicles shall be carried out; All the workers inside the plant will be provided with disposable dust masks; thick greenbelt will be developed around the plant to arrest the fugitive emissions; and Periodic air quality monitoring shall be carried out as per CPCB/ SPCB norms etc.

xxx xxx xxx

After deliberation, SEAC unanimously decided to consider the proposal after submission of the following details:

1 to 4 ***xxx xxx xxx***

5. Sound APCM to control fugitive dust emission during raw material transportation, storage, handling, loading, unloading, transfer, fuel grinding etc."

xxx xxx xxx

"Minutes of the 514th meeting of the State Level Expert Appraisal Committee held on 12/06/2019 at Committee Room, Gujarat Pollution Control Board, Sector 10-A, Gandhinagar.

xxx xxx xxx

15	*SIA/GJ/IND2/30448/2018*	*M/s. Sanghi Industries LimitedSurveyNo.125/1,125/2 and126/1+2+3 Vill.: Shivrampur, Tal.: Choryasi, Distt.: Surat*	*Appraisal–Recommendation*

xxx xxx xxx

iii, Fugitive emission details with its mitigation measures:

xxx xxx xxx

On Road:

- *All internal roads used for transport of vehicles will be paved and maintained properly and repaired immediately when required.*
- *For prevention of road dust emission, speed will be restricted to 10 km/hr for heavy vehicles within the project premises.*

- *All preventive measures i.e. covering of trucks, paving and maintenance of internal roads will be adopted.*
- *Regular vacuum sweeping and water spraying will be done on the internal roads.*
- *Proper maintenance of vehicles will be carried out."*

10. The minutes of the meeting of SEIAA dated 16.07.2019 are:

"Minutes of the 253rd Meeting held on 16th July, 2019 at 09:00 A.M.

The 253rd meeting of the State Level Environment Impact Assessment Authority (SEIAA) was held under the Chairmanship of Shri C.L. Meena at Gujarat Pollution Control Board, Gandhinagar. Prof. G.H. Ban, Member of SEIAA and Shri S.M. Saiyad, Member Secretary of the State Level Environment Impact Assessment Authority (SEIAA) attended the meeting.

xxx xxx xxx

2) Sanghi Industries Limited, Dist. Surat

- *After detailed discussion, it was decided to grant environment clearance with all the conditions recommended by the SEAC."*

11. The stand of the Ministry of Defence is that L&T facility is only a defence manufacturing facility and not a defence establishment. Thus, Works of Defence Act, 1903, prohibiting activities within a particular distance therefrom, does not apply.

12. We have heard Shri Raj Panjwani, learned Senior Counsel for the appellant, Shri Pinaki Mishra, learned Senior Counsel for Respondent No.1 and Shri Maulik Nanavati, learned Counsel for SEIAA, Gujarat and perused the documents on record, with their assistance. We have also perused the written submissions filed by the parties in pursuance of order dated 06.01.2021 passed on conclusion of the hearing. In view of the fact that we are giving liberty to the parties to file written submissions before the CPCB for consideration of the Committee to which the matter is being referred, we do not find it necessary to make any comment on the said submissions, beyond the comment on the rival contentions already raised before the Tribunal.

13. Shri Panjwani has drawn our attention to Form I, the EIA and the minutes of the SEAC. He pointed out contradictions in the information in the EIA compared to the information furnished in Form-1, particularly with regard to the mangroves, forests and birds. From the EIA documents, it is pointed out that the project proponent is one of largest cement plants at Kutch while the present project is proposed as grinding unit at Hazira Industrial Zone, Village Shivrampur,

Taluka-Choryasi, District-Surat, Gujarat. The land procured for the purpose is 4.856 hectare for use as per following break-up:

"Table2.7LandBreakupofCementGrindingUnit

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

In the above break up, there is no provision for parking of large number of trucks to be used for about 800 trips per day for transporting material and other trucks for transporting water.

14. The main raw material i.e. clinker is to be transported from Kutch plant by sea/road as per statement in the EIA as follows:

"2.6.3 Transportation & Storage of Raw Material

The clinker shall be transported from Sanghipuram (IU) to Surat GU mainly by sea. Clinker shall be extracted from the Clinker load out silos at IU, transported to the captive Jetty of SIL by trucks and loaded on to the barges by grab cranes. Barges shall transport the Clinker to the ship stationed at high seas. ***At Surat, the Clinker shall be unloaded from the ship at nearest port and transported to the Surat GU site by trucks. The clinker received through self- tipping trucks shall be unloaded by into a box feeder and transported to clinker storage silo through conveyor and elevator. The clinker storage has been envisaged in RCC silos of capacity 50,000 Ton, adequate for about 10 day requirement of the plant. Clinker shall be extracted from the bottom of the clinker silos and fed to the clinker hoppers in the cement grinding section through a belt conveyors and elevator****."*

15. Under the heading 'air environment', the EIA mentions as follows:

"Table-4.17: Incoming & Outgoing Transportation

S.No.	Raw Material	Quantity TPA	Quantity TPD	Source	Mode of Transport	No. of vehicles(Truck/ day)
1.	Clinker	2000000	6061	Captive	Sea	184
2.	Additives like Gypsum Fly Ash, Slag			Purchase	Road	
	Fuel	60000	182	Purchase		
Total No. of Trucks/deployed/day will be- 184						
Outgoing product Transportation						
S. No.	**Product**	**Quantity TPA**	**Quantity TPD**	**Source**	**Mode of Transport**	**No. of vehicles(Truck/ day)**
1.	Cement	2000000	6061	Captive	Road/Sea	179
TOTAL NO. OF Trucks deployed/day will be-363						

Frequency of Vehicles

Total Capacity (Fuel, Clinker, Fly ash)	40,60,000TPA
No. of working days	330
Transportation of incoming and outgoing material	12303 Tons/day
Working hours per day	24hours(3shifts)
Truck/Tanker Capacity	34Tons
Frequency of trucks/day (92No.×4trips/day×2(up/down)	363×2
Frequency of trucks deployed/hr	16
Increase in PCU/hr	16×3=48

16. The mode of transportation mentioned in para 5.3 of the EIA is as follows:

"5.3 ALTERNATIVE FOR TECHNOLOGY AND OTHER PARAMETERS

Xxx xxx xxx

S. No	Site Particular	Alternative Option 1	Alternative Option 2	Remarks
1to6	*Xxx*	*xxx*	*Xxx*	*Xxx*
7.	*Road*	*Metallic Road*	*Kachcha Road*	*The road is well furnished. Most of the raw material and fuel will be transported through ship (sea route)*

17. *Under the hearing mitigation measures, table 2.13 is as follows:*

"Table 2.13: Aspects & Impacts Analysis

Activity	Environmental Attribute	Cause	Impact Characteristics			
			Nature	Duration	Reversibility	Intensity and Significance
Vehicles Movement and utilities operation	*Air quality*	*Exhaust Emissions i.e.NOX,SO2, Fugitive emission*	*Negative*	*Short Term*	*Reversible*	*Low, due to movement of vehicle only for loading and unloading of raw material. Provision of APC's.*
	Noise Levels	*Noise Generation*	*Negative*	*Short Term*	*Reversible*	*Low, due to Limited activity*
	Risk & Hazards	*Accidents, collision of transport vehicles*	*Negative*	*Short Term*	*Reversible*	*Medium due to loss of property and injury to manpower.*

18. Conclusions in the EI18. Conclusion in the EIA Report are:

"11.5 Conclusion

Based on the EIA study conducted in Post Monsoon of 2018 (Oct. to Dec. 2018) and as per terms of reference given by SEAC, the following highlights emerge:

- There will be minimal pollution potential on air, water and noise environment, which, with the implementation of the mitigation measures and EMP, can be reduced considerably.

- The proposed project activities will have positive beneficial effect on the local population, economic output and other related facilities viz. employment, development of business, transportation etc.

- Risk assessment including emergency response plan and DMP has been prepared to handle any sort of emergencies.

- Looking to the overall project justification, process, pollution potential and pollution prevention measures/technologies installed by proponent, environmental management activities of proponent; the proposed project would be environmentally acceptable, in compliance with environmental legislation and standards. Hence, looking to the overall project justification, process, pollution potential and pollution prevention, measures/technologies installed by proponent, environmental management activities of proponent, **it has been concluded that the proposed project would not have any considerable impacts on environment as well as socio- economic and ecological conditions of the project area. Hence proposed grinding unit at Shivrampur, Hazira is considered environmentally safe.**"

19. Learned Counsel for the appellants has then referred to documents filed with IA No. 8/2020 and documents filed on 18.11.2020 by the intervener – Suvali Gram Panchayat. In para 15 of the reply filed by Suvali Gram Panchayat, it is mentioned that the project is in violation of Comprehensive General Development Control Regulations (CGDCR) notified by the State Government on 12.10.2017 under the Gujarat Town Planning and Urban Development Act, 1976. The CGDCR classify different zones for the permissible activities also specify negative list of activities. According to the said regulations, there is prohibition of Obnoxious & Hazardous industries in general industrial zone.

20. On being called upon, the learned Counsel for the project proponent as well as learned Counsel for the SEIAA were unable to show any discussion in the minutes of the

SEAC or any material which may reflect application of mind to the assessment of impact of dust generation during the transportation and mitigation measures against the same. Beyond saying that provision has been made for covering the vehicles during transport and sprinkling of water, it has not shown as to how generation of dust and causing of noise pollution by movement of large number of heavy vehicles will be neutralized, given the carrying and load bearing capacity of the Panchayat road in question.

21. In view of above, we find that the precautionary principle, for which EIA is conducted, remains to be addressed. As held in Hanuman Laxman Aroskar v. Union of India1, the object of EIA is to ensure that all concerns affecting the environment are duly taken care of. Thus, the impugned EC cannot be sustained until the environmental concerns are duly addressed. We are informed that the project has not yet commenced. Even learned Counsel for the project proponent and the SEIAA fairly accepted this factual position.

22. Accordingly, we refer the issue of assessment of carrying and load bearing capacity of the Panchayat road in question and evaluation of EIA and EMP prepared by the project proponent to the EAC of the MoEF&CC dealing with the cement plants, along with the representatives of CPCB, NEERI and IIT Mumbai. The CPCB will be the nodal agency for coordination and compliance. Coordination with the EAC may be through the MoEF&CC. The Committee may assess how generation of dust and causing of noise pollution by movement of large number of heavy vehicles will be neutralized, given the carrying and load bearing capacity of the Panchayat road in question. The Expert Committee may furnish its report to this Tribunal within three months by e-mail at judicial- ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.

23. The appellant, the Suveli Gram Panchayat and the project proponent may file their respective written submissions to the CPCB within two weeks for consideration by the Committee.

A copy of this order be forwarded to the MoEF&CC, CPCB, NEERI and IIT Mumbai by e-mail for compliance.

List for further consideration on 14.07.2021."

343. In compliance of the above directions of this Tribunal, the Special Expert Committee after examining all the documents submitted by respondent no. 1 as well as written submissions received from CPCB, additional written submissions filed by appellant vide email dated 16.04.2021 and after hearing learned counsel Sh. Ayush Puri for intervener i.e. Suvali Gram Panchayat, Mr. Raj Panjwani, Ld. Senior

Advocate for appellant and Mr. Aniruddh Wadhwa, Ld. Sr. Counsel for respondent no. 1, filed its report with the following observations and recommendations:-

> ***"Observations by the Expert Committee on the presentations and written submissions of Suvali Panchayat, L&T and SIL:***
>
> ***i.*** *As per the available records, Surat with the Comprehensive Environment Pollution Index (CEPI) of 76.43 falls under the category of critically pollutedareas (Areas: Pandesara Cluster and Sachin cluster) The project site of M/s.SIL is located at a distance of 14 km from buffer zone of Pandesara Cluster and Sachin cluster. The Hon'ble Supreme Court vide its Order dated 22/09/2020 in Civil Appeal Diary number 19271/2020 imposed a stay on the operation of the impugned orders dated 10.07.2019, 23.08.2019 and 14.11.2019 passed by the National Green Tribunal, Principal Bench, New Delhi with respect to CEPI areas.*
>
> ***ii.*** *The Suvali village is located at a distance of 1.89 kms from the proposed SIL project site. It does not fall on the transportation route from highway to the SIL plant, nor located in downwind direction from the plant, hence is not likely to be affected by stack emissions from the plant.*
>
> ***iii.*** *Public hearing for the project under the provisions of the EIA Notification, 2006 was held on 22/03/2019. As per the proceedings, 117 participants attended the hearing.*
>
> ***iv.*** *As per the EC accorded on 23/08/2019, the issue of coal consumption has been taken into cognizance and as per condition no. 35, the imported coal consumption for the project is reported to be 182 MT/day. Further, as per condition no.13 of EC dated 23/08/2019, PP shall not use lignite and pet coke as a fuel.*
>
> ***v.*** *The learned counsel for Suvali panchayat also raised issues pertaining to concerns related to another village namely Shivarampur, but the learned counsel did not have any authorization from the village Panchayat to present their case.*
>
> ***vi.*** *The proposed project of M/s. SIL involves setting up of stand-alone cement grinding unit of 2 MTPA capacity. The major source of pollution from this unit will be particulate matter and fugitive dust emissions from handling raw materials which can be mitigated by adopting adequate environmental safeguards.*
>
> ***vii.*** *The land area envisaged for the project is 4.856 ha and it is sufficient for the proposed project activity of M/s. SIL.*
>
> ***viii.*** *PP has not addressed several aspects in the Form I inter-alia pre-construction site investigation, construction work, quantum of resources, solid and liquid waste generation, existence of vulnerable group and eco sensitive areas such as mangroves, hospitals in the study area with direction and distance, mitigation measures, occupational diseases etc.*
>
> ***ix.*** *As per the affidavit of the Ministry of Defence, the L&T complex does not qualify for a Defence Establishment.*
>
> ***x.*** *The concerns of L&T on SIL project were submitted to SEIAA on 5/4/2019 and 22/04/2019 which have been responded by the PP to SEIAA on 23/05/2019. Subsequently,*

on review of the submissions, the EC was accorded to the SIL on 23/08/2019 by SEIAA.

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

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

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

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

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

No. of trucks required per day = 363

Equivalent PCU factor for 4-6 Axle = 4.5

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

Modified Traffic Scenario in case of 68 PCU and LOS

S.No	Road	Increased PCUs	Modified V(Volume in PCU per hr)	C (Capacity in PCU per hr)	Modified V/C Ratio	LOS (Level of Service)
1.	National Highway 6	68*60%= 41	1421+41= 1462	3000	0.48	C
2.	State Highway 168	68*40%= 27	743+27= 786	1250	0.62	D
	Approach Road/Panchayat Road*	68	190+68= 258	1250	0.21	B
				900	0.28	B

* For considering modified PCU factor of 4.5, the LOS value of Approach road / Panchayat Road (Sr. No. 3.a) will change from A to B i.e. Excellent to Very Good.

In this scenario, the impact can be further reduced by utilizing the trucks bringing clinker for cement dispatch to the sea route. As per the present market condition, about 118 trips can be reutilized (same truck will be used for clinker in up and cement in down) which will negate approx. 20 PCU per hour (actual22). Thus only 68-20 = 48 PCU per hour will be the net impact as per the previous scenario of traffic.

PP has also made a provision for parking of trucks and trailers. The trucks and trailers would be covered with tarpaulins as mentioned in the EC granted by SEIAA.

xv. In addition to the written submission referred at point xiv above, another study report of M/s. Multimedia Consultants has been made available to the Committee on 1/07/2021. As per the said report (copy enclosed along with SIL written submission)and considering 10 years design life, vehicle damage factor of 2.89 and growth rate of 5 %, the resulting traffic will be 2 MSA (Million Standard Axle) which is a miniscule increase to the existing traffic.

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

xvii. The Panchayat Road of 1.2 km only, for which the load bearing capacity was impugned by the L&T, was constructed by L&T Limited itself pursuant to directions of the Hon'ble High Court of Gujarat in Special Civil Appeal No 10850/2009 titled as "Sukhabhai Bhikhabhai Aahir & 29 others. Vs. Principal Secretary & 3 others". Furthermore, the Panchayat Road has been disclosedand sanctioned to be a 22-meter-long road under the sanctioned SUDA Development Plan. The Panchayat Road has been constructed pursuant to judicial

directions and in accordance with applicable regulations and standards, is a `Pacca' road and is in fact being used for movement of commercial vehicles such as the 34 tonner trucks proposed to be used by the SIL.

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

xix. The water requirement for the project is 278 KLD and as per the condition no. 28 of the EC dated 23/08/2019 necessary permission from the concerned Competent Authority has to be obtained for the water withdrawal.

xx. Mangroves exist at a distance of 1.4km from the project site on the other bank of Tapi river. As per the provisions of Coastal Regulation Zone (CRZ), 2019, Mangroves (in case mangrove area is more than 1000 square meters), a buffer of 50 meters along the mangroves is required to be provided. In the present case, the distance of 1.4km is much more than the required buffer zone of 50 meters.

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

9. Recommendations

On the basis of observations, the Committee is of the considered view that the EC dated 23/08/2019 accorded by SEIAA can be sustained subject to the stipulation of the following additional conditions in order to further to safeguard the environment and address the concerns of appellants.

A. M/s. Sanghi Industries Limited

i. Particulate matter from the stacks shall not exceed 30 mg/Nm3.

ii. M/s. SIL shall develop a green belt of 15 meters width around the boundary limits of its factory by planting native and high foliage trees with a tree density of 2500 trees per hectare.

iii. Wheel Washing Facility at exit gate shall be provided and used.

iv. CCTV Monitoring of Plant and Gates shall be carried out to ensure that all materials are transported in covered trucks having valid Pollution Under Control (PUC) Certificate.

v. Coal will be stored in the covered shed and fly ash in silos.

vi. All unpaved areas which are not covered by the green belt shall be covered by suitable form of vegetation such as lawn and landscaping etc.

vii. M/s SIL shall use ultra-low NOx burner, flue gas recirculation and auto combustion control system.

viii. All the industries in this area are likely to augment their respective capacities in future. This may, in future, require periodical maintenance and strengthening of the village panchayat road presently being used by all the industries in this area. It is therefore suggested that the Surat Urban Development Authority which is presently maintaining the road may be directed to ensure the periodic maintenance and strengthening of the village panchayat road in question in future.
ix. The Stack height of coal combustion system shall be minimum 30 meters height.
x. Noise level at the boundary wall shall be monitored as per the prescribed Noise Pollution (Regulation and Control) Rules, 2000 and report in this regard shall be submitted to Regional Office of the Ministry as a part of six-monthly compliance report."

344. The appeal was, thereafter, listed on 14.07.2021 and 24.09.2021. Written Submissions were filed by Appellant and respondent no. 3 on 20.01.2021 and by Respondent no. 1 on 30.07.2020. Further written submissions were filed by Respondent no. 1 on 20.01.2021. After conclusion of final arguments, the Ld. Counsels for the parties were given liberty to file the written submissions. For ready reference, the details as to when and by whom the written submissions/additional written submissions were filed are given below:-

"

Written Submissions/Additional written Submissions.	Filed by	Date of filing
Written Submissions	Appellant	20.01.2021
Written Submissions	Respondent no.1	30.07.2020
Written submissions	Respondent no. 3	20.01.2021
Additional Written Submissions	Appellant	19.10.2021
Additional Written Submissions	Respondent no. 1	20.01.2021 & 18.10.2021

"

345. A number of issues have been raised by Ld. Sr. Counsel for the appellant as well as by the Intervener i.e. Suvali Village Gram Panchayat against grant of Environment Clearance (in short 'EC') dated 23.08.2019 to Respondent no. 1 i.e. Sanghi Industries Ltd. for running its proposed

unit of 2.0 Million Metric Tonne Per Annum (MTPA) Standalone Grinding Unit with bulk and bag packing plant.

346. Ld. Sr. Counsel for the appellant has argued that EC granted to Respondent no. 1 is without application of mind for the reason that the EIA report has failed to address the environmental norms relating to air, water and land. The relevant material and factors were not placed before SEAC, Gujarat and SEIAA along with form-1 for meticulous environment evaluation. As a result of this, both the SEAC-Gujarat and SEIAA could not apply their mind on the environmental consequences and, thus, granted the EC in a mechanical manner.

347. Ld. Sr. Counsel for the appellant has not only raised objections relating to grant of EC but also filed objections to the report of Special Expert Committee prepared in terms of the order of this Tribunal dated 22.01.2021. Let this tribunal now take up and decide the objections raised by the Ld. Sr. Counsel for the Appellant to the grant of EC as well as to the Recommendations of Expert Committee. The issues raised by Ld. Sr. counsel for the appellant and our findings on the same are as under:-

- **<u>Concealment of presence of Mangroves, Forest and Wetland near the industry to be established by Respondent no. 1.</u>**

348. Ld Sr. Counsel for the appellant has argued that Respondent no. 1 has misled Respondent no. 2 and 3 by falsely and malafidely stating in its EIA report submitted in March, 2019 that there are no mangroves within the radius of 10 KM. Further, the fact that there is forest within 6-8 KMs radius of the said unit has also been concealed by Respondent no. 1 while applying for the impugned EC. It is submitted that since there was concealment of the above facts and the EC has been granted without assessing the impact of running of proposed unit over the

mangroves and forest, the EC granted cannot be sustained in the eyes of law.

349. The Ld. Sr. Counsel for Respondent no. 1 on the other hand has submitted that Respondent no. 1 in its EIA Report has duly disclosed the presence of mangroves as well as forest and its area in Chapter III. It is further submitted that the factum of presence of mangrove is shown in figure 3.10 of EIA Report at Page no. 56. It is further submitted that similarly, the forest has also been shown in Figure no. 3.12 of EIA Report at Page no. 57. It is further submitted that since the proposed unit does not, in any manner, encroach upon, or fall within a forest area and, therefore, it does not require any forest clearance.

350. We have considered the rival submissions. It is difficult to accept the argument of Ld. Sr. Counsel for the appellant that mangroves and forest have not been mentioned in EIA report. The perusal of the report, in fact, reveals that that the project proponent has referred to mangroves and forest in the area and duly shown them in figure 3.10 and 3.12 of the EIA Report at Page no. 56 and 57 respectively. Moreover, it is an undisputed fact that mangroves are located at a distance of more than 1.3 KM from the proposed unit and therefore, the setting up of the unit will have, in fact, no impact upon them. The proposed unit also does not require any clearing/falling of the mangroves and it, therefore, does not adversely affect the same. So far as existence of forest is concerned, Respondent no. 1 has clearly shown the same in figure no. 3.12 of the EIA report. Moreover, it is not in dispute that proposed unit is not going to encroach upon any forest area or cutting the trees and therefore, no forest clearance is required from the Forest Department. There is nothing on record to suggest that emissions from the proposed unit are going to cause any damage to the forest as specific conditions have been

provided in EC for effective control of air pollution. Moreover, Respondent No 1 is setting up the proposed unit within a notified industrial area which is meant for setting up of industrial units. The proposed unit does not pose any threat to the eco-system as mangroves exist at a distance of more than 1.3 KM from the proposed unit and as per the provisions of Coastal Regulation Zone (CRZ), 2019, Mangroves (in case mangrove area is more than 1000 square meters), a buffer of 50 meters along the mangroves is required to be provided. Whereas, in the present case, the distance is much more than the required buffer zone of 50 meters.

351. Ld. Sr. Counsel for the appellant has next argued that Respondent no. 1 has not disclosed about the existence of any wetland in the vicinity of the proposed unit and has not assessed the adverse effect of pollution caused by the proposed unit on the flora and fauna.

352. We have carefully considered the above contention of Ld. Sr. counsel. Perusal of the record reveals that appellant has not provided any details of existence of any wetland in the vicinity of the proposed unit. Ld. Sr. Counsel for the Appellant has, however, relied upon the judgment of the Hon'ble Supreme Court in **Balakrishnan vs Union of India [2018 (2) SCJ 2071**. We have gone through the said judgment and are of the opinion that there is no quarrel with the proposition of law laid down therein. However, we find that the appellant itself has not given any details about the wetland in the vicinity of the proposed unit. In our opinion, even if there is any wetland in the vicinity of the proposed unit, there is nothing on record to suggest that the same is going to be effected by the emissions released by the proposed unit. Even the High Powered Committee has also noted this fact in paragraph 8(xxi) of its Report which runs as follows:-

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

353. Moreover, we do not find any deliberate concealment of any material information by the project proponent in EIA report. It is a settled law that the concealment if any, by the project proponent has to be a deliberate and fraudulent one. In a recent judgment of '**Rajeev Suri v DDA 2021 SCC OnLine SC 7',** the Hon'ble Supreme Court has observed that the petitioner is required to provide a basis to allege fraud, misrepresentation or concealment of information from the EAC. The Hon'ble Supreme Court in its decision has distinguished the '**Hanuman Laxman Aroskar** case reported in **(2019) 15 SC 401'** and has observed as follows in para 495:-

> *"**Once an expert committee has duly applied its mind to an application for EC, any challenge to its decision has to be based on concrete material which reveals total absence of mind.** Absent that material, due deference must be shown to the decisions of experts. **The facts of the case do not reveal any deliberate concealment of fact/information from the EAC or supply of any misinformation.** The petitioners' extensive reliance upon Hanuman Laxman Aroskar is misdirected and will not be of any avail in advancing their cause." (Emphasis supplied)*

354. The Hon'ble Supreme Court in 'Rajeev Suri' case (Supra), has observed that in Hanuman Laxman Aroskar case (Supra), the various details in form-1 were left blank. Information regarding trees was actively concealed and absence of reasons coupled with cursory analysis of the application raised substantial concerns of non-application of mind. The fact situation in that case was enough for shaking the judicial conscience and invocation of powers of review. Since in the present matter, we do not find any deliberate, pre-

meditated or fraudulent concealment by the project proponent and, therefore, reliance upon Hanuman Laxman Aroskar case (Supra) and **H.P.Rajanna vs. Union of India, 2021 SCC Online NGT 190** by the Ld. Sr. counsel for the appellant case is misplaced.

355. We are further of the opinion that the appellant has not placed any material on record to suggest as to how the said Unit will affect the flora and fauna of the area. Even, the Expert Committee in its report at point 21 has stated that no evidence or credible document has been made available by representative of Suvali Gram Panchayat as well as L&T in support of their contentions with respect to health concerns and degradation of agricultural land due to the proposed standalone cement grinding unit of M/s. SIL.

356. In view of the above, we are of the opinion that contention of the Ld. Sr. counsel for the appellant that proposed unit will adversely affect notified or un-notified wetlands, forest, mangroves, flora and fauna and the health of the persons residing nearby is without any reasonable basis and the same is, therefore, rejected.

357. A perusal of the EIA report clearly shows that all relevant information has been duly disclosed by the project proponent. Non-disclosure of immaterial information which is not crucial, in any manner, to the determination of the environmental impact assessment of the proposed unit, cannot be considered to be deliberate by its very nature since there is no logical rationale behind premeditated non-disclosure of such information. The said information also would not have changed the outcome of the grant of environmental clearance and, therefore, in our opinion, non-supply of not so relevant information is not fatal to the grant of the EC.

358. In our opinion, Respondent no. 1 has untaken a detailed analysis of every environmental aspect prior to applying for the EC. The Impugned EC has been granted after due application of mind and contains satisfactory safeguards to mitigate all environmental concerns. The same is clear from the ambient air quality modeling study which shows that no significant impact is anticipated on the ambient air quality of the area due to the proposed unit. The same has been mentioned in EIA report at page 104 and runs as under:-

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

359. In view of the above, we cannot accept the argument of Ld. Sr. Counsel for appellant that the proposed unit proponent has not conducted the air quality assessment and detailed analysis of every environmental aspect and concealed the material information or has given such information in EIA Report which is inconsistent and fraudulent and vitiates the EC granted to Respondent no.1.

- **<u>Whether Official Secrets Act, 1923 and Works of Defence Act, 1903 (WODA 1903) prohibits any construction or setting up of proposed unit near the establishment of the appellant.</u>**

360. Ld. Sr. Counsel for the appellant has submitted that since the manufacturing taking place in the Hazira Manufacturing Complex (in short 'HZMC') was highly sophisticated and complex, the Ministry of Defence issued certain directions and the Department of Defence Production working under the Ministry of Defence has categorized the

Appellant's unit as a Category ‘A’ establishment on 8th September 2014. On 18.06.2018, the Appellant was also given license to manufacture Artillery, Howitzer guns, vehicle mounted guns etc. and accordingly a Lifetime Arms License was issued to the Appellant. It is further submitted that Unit being run by the appellant is a defence establishment and, therefore, there are restrictions regarding running of Units like the proposed unit around the appellant’s industry and the respondent no.1, therefore, cannot be allowed to set up the proposed unit.

361. Ld. Sr. Counsel for the respondent no. 1, on the other hand has argued that Unit being run by appellant is not a defence establishment but only a defence manufacturing facility. Ld. Sr. Counsel for the respondent has submitted that the appellant itself in Form-1(s) filed for it for expansion of two of its units situated in the same Hazira Industrial Area, namely **(i)** L&T MHPS Boilers Pvt. Ltd. (Heavy Casting Unit) (Form-I, dated 05.02.2018); and **(ii)** L&T Special Steels and Heavy Forgings Pvt. Ltd. (Form-I, dated 28.01.2014), has stated that there is no 'Defence Installation' within a 15 KM radius. It is submitted the L&T's other units are in more proximity of the alleged Defence Unit then the Respondent No. 1, which makes it clear that the alleged 'armoured system complex' is not a Defence Installation. It is further submitted that the Ministry of Defence issued a notification dated 21.10.2016 bearing No. F. 11026/2011/D(Lands) for revising guidelines for issuance of 'No Objection Certificates' for building constructions around Defence Establishments/ Installations. Even in terms of the said Notification dated 21.10.2016 the alleged armoured system complex of the Appellant does not qualify as a 'Defence Installation' in as much as the list of Defence Establishments/Installations given thereunder are

Military bases and/ or areas established to station armed forces. As such, the armoured system complex of the Appellant cannot be deemed to be a Defence Installation in any manner.

362. This Tribunal has gone through the Notification bearing No. F.11026/2/2011/D(Lands), dated 21.10.2016, issued by Ministry of Defence, Govt. of India regarding grant of 'No objection Certificate' for construction of buildings wherein it is categorically notified in sub-para a) and b) of para 2 that no objection Certificate is required from Local Military Authority/Defence establishments if any construction or repair activity is done within 10 meters of Defence establishments /installations located at 193 stations as listed in part A of Annexure and 100 meters of defence establishments/installations located at 149 stations as listed in Part B of the Annexures. We have also gone through the list of defence installments /establishments listed in annexure A and B annexed to notification dated 21.10.2016 and find that the name of the appellant establishment does not figure anywhere in these annexures. Thus, it cannot be held on the basis of the above notification that appellant's unit is a defence installation and it is, therefore, only a defence manufacturing facility.

363. Ld. Sr. counsel for the appellant has next argued that the setting up of the proposed unit of the Respondent No 1 in proximity of its alleged 'armoured system complex' is also prohibited because of another notification dated 09.02.2016, declaring its Unit as a Prohibited place. The Ld. Sr. counsel has also relied upon the "Security Manual of the Licensed Defence Industries" in support of his above contention.

364. The Tribunal has considered the above contention of the Ld. Sr. counsel for the Appellant. The notification dated 09.02.2016 runs as under:-

“Government of Gujarat
Home Department
Sachivalaya, Gandhinagar.

Dated: - 09/02/2016

NOTIFICATION:-

No.GG.No.15/2016/SBl/OSA/102015/5407:- WHEREAS, the Government of official Gujarat is of the opinion that the information with, respect to, or the destruction or the obstruction of or interference with the place specified in the Schedule appended hereto would be useful to an enemy:

NOW THEREFORE, in exercise of the power conferred by sub-clause (d) of clause (8) of section 2 of the Official Secrets Act, 1923 (XiX of 1923) read with the Government of India, Ministry of Home Affairs, Notification No. 21/20/62/Poll (1) dated the 4th May, 1963, the Government of Gujarat hereby declares with effect on and from the date of publication of this notification, in the *official Gazette,* the said place, to be the prohibited place for the purposes of the said Act, and directs that copies of this notification in English and Gujarati be affixed at the said place:

Nothing contained in this notification-shall apply to:-

1. The members of the police force belonging to the State of Gujarat,
2. The members of the Army, Navy or Air Force of the Union,
3. Persons employed in the aforesaid places, and
4. The Salaried Magistrates.

The aforesaid categories of persons shall be exempted only for discharging their official duties.

SCHEDULE

Survey No. Name of the places and the description of Boundaries of the place

Sr. No	**Name of Installation**	**Address**	**Survey: No: and area**	**Boundaries of prohibited Area**
1	**2**	**3**	**4**	**5**
	Larsen & Toubro Limited, Hazira Manufacturing complex, Village Mora Ta: Choryasi, Dist- Surat. Larsen & Toubro Limited, Hazira- Surat	Larsen & Tourbo Limited, Hazira Manufacturing Complex . Village: Mora Ta: Choryasi, Dist-Surat. Larsen & Toubro Limited, Hazira-Surat..	Survey No. 148 A, 230, 241. Area (Hac-Are-Sq.Mrr. 80-94-00	**East:-** The Tapi River. **West:**- Surat-Hazira (NH-6) National Highway Road. **North:-** Reliance Industries Limited. **South:** Hazira Police

				Station and Essar Steel Plant.

By order and in the name of the governor of Gujarat

Sanjay Pandya
Under Secretary to government of Gujarat,
Home Department.
No. SBI/OSA/10215/5407
Government of Gujarat
Home Department (Spl.)
Sachivalaya Gandhinagar
Date: 09.02.2016.

Copy forwarded with compliances to:

1. The Secretary to the government of India, Ministry of Defence/home Affairs, New Delhi(By letter).
2. The Principal Secretary, Energy & Petrochemical Department, Sachivalaya, Gandhinagar.
3. The D.G. & I.G. Gujarat State, Gandhinagar.
4. The Addl. D.G.P.(Int.) Gujarat state, Gandhinagar.
5. The District Magistrate, Surat.
6. The Director of Information, Gujarat State, Dr. Jivraj Mehta Bhawan, Gandhinagar.
7. Shri Mandeep Chopra, Sr. DGM-Administrator, Larsen & Tourbo Limited, Post: Bhatha, Village: Mora, Ta. Choryasi, Dist. Surat-394510 with a request to affix this notification on the place in English and in the vernacular of the locality i.e. in Gujarati immediately on the notice Board at the entrance point of the aforesaid unit.
8. The Manager, Government Central Press, Gandhinagar with a request to publish above notification in the Gujarat Government Gazette and to Send 10 copies to this Department.
9. Legislative & Parliamentary Affairs Department, Translation Unit, Scahivalaya Gandhinagar. With a request to publish the above notification in Gujarati and arrange its publication in the Gujarat government Gazette and to send 10 copies to this Department.
10. Branch Select file.
11. Dy.S.O. Select file.

(Kishor P.Desai)
Section Officer,
Home Department (Spl.)"

365. In our opinion, the notification dated 09.02.2016 declaring its unit as a 'prohibited place' does not help the appellant for the reason that Official secret Act, 1923, on the basis of which the above notification has been issued, does not concern itself with prohibiting

legitimate industrial activity near the establishment of the appellant. The purpose of the Official Secrets Act, 1923 is to protect information within 'prohibited places' as notified under Section 2(8) by penalizing spying and unauthorized communication related to national secrets and protect security and interest of the State and as such has no bearing or effect on any environmental aspect concerning setting up of the proposed unit by the Respondent No 1. The said notification declares the appellant’s Unit as a prohibited place for the purpose of the said act only and has nothing to do with the setting up of any industrial unit near the defence manufacturing facility run by the appellant.

366. We have also perused the Security Manual for the Licensed Defence Industries ("Security Manual"). Perusal of the same shows that it also does not, in any manner, contain any prohibition on setting up of any industrial concerns/ units around appellant’s industry and does not regulate any such construction activities outside such unit. Moreover, there is no need at all to further go into the submission of the Ld. Sr. Counsel for the appellant since the Ministry of Defence in its reply/counter affidavit has categorically stated that the L&T facility is ‘defence manufacturing facility’ and not a ‘defence installation’. It has even stated that ‘Works of Defence Act 1903 (WODA 1903)’ also does not apply to the same. In these circumstances, the contention of Ld. Sr. counsel for the appellant that appellant’s unit is a defence establishment and no industry can be allowed to operate near the same cannot be accepted.

- **Whether the proposed Unit of the respondent no. 1 cannot be allowed to be setup in view of the Order of this Tribunal dated 10.07.2019 in O.A. No. 1038/2018 as it falls in Red Category and further in view of SUDA Development 2004 and Master Plan 2035.**

367. It is vehemently argued by Ld. Sr. Counsel for the appellant that this Tribunal vide its order dated 10.07.2019 in O.A. no. 1038/2018 identified Surat as a Polluted Industrial Area (PIA) where the Comprehensive Environmental Pollution Index (CEPI) score was 76.43. The cement plants fall under red category industry due to its high pollution levels based on the CEPI score. The Master Plan of Surat, keeping in view exponential growth of the Surat city has included the Hazira Industrial Area and imposed restrictions on the setting up of the establishment and industries and in particular 'red category' 'obnoxious and hazardous industries'. The city limit of Surat is presently only 10kms from the proposed unit site of the Respondent No.1.The precautionary principle as mandated in Section 20 of the NGT Act confers wide jurisdiction on the Hon'ble Tribunal to anticipate and impose restrictions in order to mitigate the impact of environmental degradation. After the notification of SUDA Development Regulations, it would be appropriate and in the interest of justice if a red category cement plant is not allowed to set up.

368. On the other hand, Ld. Sr. Counsel for the respondent no. 1 has submitted that respondent no. 1 is a standalone Cement Grinding Unit with a capacity of 2.0 million TPA and therefore, it falls in 'B' category in terms of Environmental Impact assessment notification, 2006. It is further submitted that grinding units do not involve the process of clinkerization, which is the foremost cause of pollution and emission in cement plants. In fact, standalone grindings units only cause fugitive dust emissions, arising out of the handling of raw materials. He has, therefore, submitted that there is no prohibition on setting up of such an industry in area in question. Ld. Sr. Counsel for the Respondent no. 1, has further submitted that the CEPI Score for Surat which has been

reproduced in the order dated 10.07.2019 only pertain to the industrial clusters of GIDC Sachin and GIDC Pandesara and do not relate to the Hazira Industrial Zone where the Respondent No. 1 seeks to set up the proposed unit and this is clear from Office Order dated 11.11.2019 passed by Respondent No 2.

369. Ld. Sr. Counsel for the respondent no. 1 has further submitted that Respondent no. 3 in his affidavit has also submitted that the appellant has read the Surat appearing in the report of CPCB to mean the entire city of Surat and the restriction ordered by this Tribunal as operating for all areas, within and outside the identified polluting industrial clusters in the city of Surat. It is submitted that such expansive reading is neither justified not legally correct. A proper reading would be that the pollution index in the two identified polluting industrial zones / clusters - GIDC Sachin and GIDC Pandesara, which were surveyed by the Board was high, thereby classifying them as critically polluted area. The entire city of Surat was never studied by the Board. The restriction imposed by this Tribunal has to be read to apply to these two industrial clusters and not the entire city of Surat. However, the order dated 10.07.2019 has been subsequently modified by an order dated 23.08.2019 wherein this Tribunal has categorically clarified that there was no bar to operate 'red' and 'orange' category units in these polluted industrial clusters “if they do not in any manner add to the pollution” or setting up of new units "if they are found to be viable". Therefore, the submission of the appellant that by virtue of the restriction imposed by this Tribunal, the respondent authority could not have considered the application of the project proponent for grant of environment clearance as the proposed unit is situated in Surat and that the grant of clearance for the project offends the order of the Tribunal is wholly misplaced and deserves to be rejected.

370. We have carefully considered the rival submissions. Perusal of record reveal that the operation of the orders 10.07.2019 (O.A. No. 1038/2018) and 23.08.2019 (Review Application No. 44/2019 in OA No. 1038/2018) have been stayed by the Hon'ble Supreme Court vide order dated 22.09.2020 in **Civil Appeal No. 19271 of 2020 in the matter of Gujarat Chambers of Commerce and Industry vs. Central Pollution Control Board & Anr**. Thus, the categorization of the industries after the physical survey and study by the CPCB of the various industries in the year 2018 has also been automatically stayed. We are, therefore, of the opinion that we need not go into the question whether the subsequent order dated 23.08.2019 had clarified that there was no bar in setting up of new units or expansion of existing units when such proposed plans and scheme of operation of such units was found to be viable at the time of appraisal and grant of EC in favour of such units.

371. It is next argued by Ld. Sr. Counsel for the appellant that there is restriction on development on account of SUDA Development Plans 2004 and 2035. The Development Plan 2035 and its corresponding GDCR 2016 was notified on 08.10.2020, prior to which the applicable Development Plan and Regulations was the Development Plan of 2004. The said provides that manufacturing of cement is an obnoxious and hazardous industry and therefore cannot be set up in General Industrial areas that are specifically demarcated for less polluting industries.

372. It is further submitted that the site for the cement plant of the Project Proponent is falling in Revenue/ Block Survey No.125 and 126 and in Aug 2013, the area of the proposed unit was converted from agriculture zone to General Industrial zone. It is further submitted that on 08.10.2020, SUDA published the Sanctioned Development Plan, 2035

showing various categories including General Industrial Zone and Obnoxious/Hazardous Industrial Zone. The land where the Respondent no.1 intends to set-up the proposed cement unit falls under the General Industrial Zone. Moreover, the Town Planner of Surat Urban Development Authority has vide its Zoning Certificate dated 11.01.2021 confirmed and certified that the area of the proposed unit plant of the Project Proponent falls under General Industrial Zone and not Obnoxious and Hazardous Industrial Zone. It is next submitted that the Impugned EC was granted on 23.08.2019 i.e. prior to the Notification of Development Plan 2035 and during the applicability of Development Plan 2004. That Appendix 'C' of the Development Plan 2004 provides the "list of obnoxious and hazardous industries" wherein Cement is one of the obnoxious and hazardous industry and, therefore, proposed unit cannot be allowed to be set up at the proposed site.

373. It is further submitted by Ld. Sr. Counsel that the table with the heading 'Zoning and Use Provisions' in Draft Development Plan-2035 (along with GDCR-2016) published on 10.05.2016 and notified on 08.10.2020 clearly points out that Obnoxious and Hazardous Industries are not permitted in the General Industrial Zone and for such Obnoxious industries, a separate zone has been notified called the "Obnoxious and Hazardous Industrial Zone". It is next submitted that since cement manufacturing is an obnoxious and hazardous industry, the proposed unit of Respondent no. 1 also cannot be permitted to be set up at the proposed location. Ld. Sr. Counsel for the appellant has, thus, submitted that the grant of the Impugned EC is bad in law in light of the restrictions imposed by the Development Plan of 2004 and the subsequent Draft Development Plan 2035.

374. On the other hand, Ld. Sr. Counsel for the respondent no. 1 has submitted that the impugned EC was granted prior to the sanction of SUDA Development Plan of 2035 and the Zoning Classification under SUDA plan 2035. The General Development Control Regulations, 2017 were sanctioned for the entire State of Gujarat in 2017. However, these regulations merely prescribe how different zones are to be utilized. The classification of those zones in a particular area is undertaken pursuant to the Development Plan of that area, sanctioned by the appropriate authority- in this case, SUDA. The SUDA Development Plan of 2035 classifying the area into different zones, which the Appellant seeks to rely upon, along with the SUDA Development Control Regulations, came into effect on 08.10.2020 (after the grant of the EC on 23.08.2019 and during the pendency of the present Appeal). It is, therefore, submitted that the said notification should not be applied retrospectively.

375. It is further submitted by Ld. Sr. Counsel for Respondent no. 1 that the Project Proponent has already applied for requisite approval from SUDA in relation to the proposed unit and the same was also observed by the Expert Committee in Paragraph 8(xii) of its Report:

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

376. In light of the above, it is submitted that contention of Ld. Sr. Counsel for the appellant cannot be accepted.

377. We have considered the rival submissions and are of the opinion that the impugned EC was granted prior to the sanction of SUDA Development Plan, 2035 and the Zoning classifications under the SUDA Development Control Regulations (which came into effect on 08.10.2020). This Tribunal is of the opinion that the said notification

cannot be retrospectively applied. This has also been noted by the High-Powered Committee in paragraph 8(xi):

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

[Emphasis supplied]

378. Ld. Sr. Counsel for the appellant has, however, submitted that even if it is assumed that the applicability of the master plan is prospective, it would be in the furtherance of the precautionary principle keeping in view the nature and extent of pollution that would be caused by a cement plant on the rapid expanding city of Surat, that such a plant is not permitted.

379. In this regard, Ld. Sr. Counsel has also submitted that EC is merely a license and does not confer a right on a project opponent to carry out an activity which adds to environmental pollution. It is submitted that an activity leading to an environmental degradation / pollution is a pernicious activity and can be prohibited. The Ld. Sr. counsel for the appellant has placed reliance on '**'Ivory Traders [AIR 1997 Delhi 267'** in this regard.

380. Ld. Sr. Counsel has next relied upon the order of this Tribunal in OA 249 of 2020, in the matter of "Tribunal on its own Motion vs MOEF", (fire crackers case) vide which sale of firecrackers was prohibited and it

was held that since bursting of fire-crackers is a pollutive activity, therefore, irrespective of the fact even if the petitioners have obtained licenses to sell the same, the said license would not hold the ground in-case the activity in furtherance of execution of those license would cause pollution and environment degradation. Reliance in this regard was also placed on **State of Punjab vs Devans Modern Brewries J(2004) 11 SCC 26J.**

381. Ld. Sr. Counsel for the appellant has further submitted that it was fallacious on part of the Committee to have observed that "clinkerization process makes the cement plants a red category industry" since CPCB in the norms prescribed for categorization of red category industry makes no such distinction between cement plant per se and cement plant plus clinker manufacturing. The main health and environmental hazard is from the minute cement particulates, which are emitted during cement grinding and get embedded in the lungs.

382. We have given our thoughts to the above contention of Ld. Sr. Counsel. It has been categorically held by the Expert Committee that the proposed unit of Respondent no. 1 is not an integrated cement plant. It is a grinding unit where, clinker (brought from outside), fly ash and slag (waste materials from power plants and steel plants) are grounded and converted to a useful green cement. Clinkerization process makes the cement plants a red category industry due to pollution of particulate matter, SO2, NOx and Carbon Monoxide. In grinding units only particulate matter is emitted during grinding and that too much less than that in the clinkerization process. We further find that sufficient conditions have been put in EC for controlling the air pollution to be caused by the proposed unit and there are sufficient powers available with the authority to cancel the clearance in the event

it is found that conditions of the clearance have not been complied with, adhered to or breached by the project proponent. We are, therefore, unable to accept the contention of Ld. Sr. Counsel for the Appellant that as a precautionary principal the proposed unit should not be allowed to operate.

- **Inordinate deployment of Truck and incorrect information regarding road and parking of trucks.**

383. On the issue of deployment of trucks, It is contended by appellant that for setting up/manufacturing of 2.0 million tonnes per annum (MTPA) cement industry, more than two million tonnes of raw material is required including clinker, gypsum, fly ash, slag etc. Whereas as per EIA Report, the required raw materials would be around 3.50 MTPA. It is further submitted that for running the said plant, if the water is sourced from water tankers then to cater the need of 2,78,000 liters of water per day, at-least 55 tankers (5000 liters capacity) would be required every day to supply water. It is submitted by Ld. Sr. counsel for the appellant that to materialize all the above, at-least 799 trucks are required to be deployed on daily basis. Whereas as per impugned EC only 363 trucks for trip in and trip out were permitted and Respondent no. 1 has failed to clarify that for transporting more than 4 million tonnes raw material and finished products in a year how the Respondent no. 1 will achieve the same with 363 trucks in a day.

384. Ld. Sr. Counsel for Respondent no. 1 on the other hand has submitted that the plea of the appellant that Respondent no. 1 requires more trucks than the Impugned EC permits is wrong and does not find any basis in the conditions stipulated in the Impugned EC. In any event

it is submitted that the Appellant is attempting to pre-empt violations with the assumption that the Respondent No 1 will not adhere to the Conditions of the Impugned EC. The said assumptions are without any basis and ought to be rejected. It is further submitted that the Impugned EC, which permits and restrict the limit of truck trips to 363 trips per day is on the basis of the EIA Report of the Respondent No 1. Moreover, the Appellant cannot be permitted to agitate issues solely premised on surmises and conjectures and without even giving an opportunity to the Respondent No 1 to comply with the terms and conditions of the EC.

385. We have considered the rival submissions. The EIA report categorically discloses the total number of 'per day' truck trip requirement of the Respondent No 1 to only be 363 trips per day (i.e. 91 trucks X 4 round trips/day). EIA Report clarifies that assuming the Respondent No 1 operates at 100% production capacity (which is not always the case), the deployment will not exceed 91 trucks at any given point of time. This was also clarified by the Respondent No 1 vide the letter dated 23.05.2019. Moreover, the Impugned EC at Condition no 47 (Specific Condition), has expressly imposed a maximum permissible 363 truck trips 'per day' upon the Respondent No1 and the Respondent No. 1 is duty bound to comply with the said direction, failing which the EC can be cancelled for violation of its conditions. In these circumstances, the Tribunal is of the opinion that the contention of Ld. Sr. Counsel is based on conjecture and surmises and the EC cannot be cancelled on the said ground.

386. Ld. Sr. counsel for the appellant has next argued that though it is correct that as per EC, the number of trucks shall not exceed 363 per day. He has, however, submitted that the EC has been granted without

taking into consideration condition of the road. The project site is linked to the main road i.e., the National Highway (NH 53) by a panchayat road, the distance of which is around 2.2kms. It is submitted that the Panchayat road is a Kaccha Road and the same is clearly mentioned in the EIA prepared by the Project Proponent. The Project Proponent has not evaluated the impact of hundreds of trucks deploying on a kaccha road and has instead completely ignored it by stating that since the dust generated by manufacturing is primary source, they have taken measures for that only and not for other sources of dust since these are secondary in nature, including the dust from the kaccha roads.

387. It is further argued by Ld. Sr. Counsel that Panchayat Road which is merely 7.5m in width would not be able to handle 363 trucks of 34 tonnes taking two trips i.e., 726 trips per day. A normal 34 tonner trucks measures 11 x 2.4 x 3.4m (approx.) The EIA has failed to take into consideration as to where the 363 [34] tonner trucks, each measuring 11 x 2.4 x 3.4 (approx.), would be parked before unloading / loading of raw material / finished product. The layout plan with the EIA does not address the issue of parking. Larsen & Toubro apprehends that the trucks would eventually be parked on the Panchayat Kachha road and possibly even on the National Highway which would result in severely hampering of the normal movement of traffic and consequent pollution.

388. We have considered the objection of the appellant. The Project Proponent in its EIA Report has categorically disclosed the total number of 'per day' truck trip requirement of the Respondent No 1 to be 363 only. It has further clarified that assuming that Respondent No 1 operates at 100% production capacity (which is not always the case), the deployment

will not exceed 91 trucks at any given point of time. This was also clarified by the Respondent No 1 vide the letter dated 23.05.2019. Perusal of the record reveals that Project Proponent has undertaken a detailed Traffic Study in order to address the concerns raised by the Appellant in respect of the Panchayat Road and the same has been submitted before the Expert Appraisal Committee. The said study undertakes a thorough impact assessment in addition to the assessment already conducted in the EIA Report for the proposed unit. The High-Powered Committee has observed in this respect that the road has adequate load bearing capacity given the increase in traffic projected. The calculations relied upon by the Committee are reproduced as follows:

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

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

xiv. *As per the written submission made by the project proponent on 15/04/2021, and as per new recommendations of IRC (https://thelibraryofcivilengineer.files.wordpress. Com /2015/09/irc-sp-41.pdf), the equivalent PCU factor for 4-6 Axle Truck/Trailer (fast moving) vehicle is 4.5. The modified equivalent PCU for proposed project will be as follows:*
No. of trucks required per day = 363 Equivalent PCU factor for 4-6 Axle=4.5

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

Modified Traffic Scenario in case of 68 PCU and LOS

S.No	Road	Increased PCUs	Modified V (Volume in PCU per hr.)	C (Capacity in PCU per hr)	Modified V/C Ratio	LOS (Level of Service)
1.	National Highway6	68*60%= 41	1421+41= 1462	3000	0.48	C
2.	State Highway168	68*40%= 27	743+27= 786	1250	0.62	D
3a.	Approach Road/Panchayat Road*	68	190+68= 258	1250	0.21	B
3b.				900	0.28	B

389. On the basis of the above, the High-Powered Committee has observed as under:-

> "xvi. It has been reported that the Panchayat Road is found to be having a carrying capacity of 1250 PCU per hour on which an average 190 PCUs travel per hour. 48 PCU per hour will be the net additional impact on the existing traffic due to the SIL project. SIL has submitted a traffic management plan and presented that the approach road (Panchayat Road) is "Pucca" (Metal tarred) and having a current width of more than 15 meters throughout the entire1.2 kms stretch from the Highway to the plant. "

390. The High Powered Committee has further observed in para no. 16 regarding the Panchayat road and its observations are as under:-

> *"**xvii.** The Panchayat Road of 1.2 km only, for which the load bearing capacity was impugned by the L&T, was constructed*

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

xviii. The panchayat road under question is also being used by other industries existing in the area for several years. It may be noted that this road is being used by heavy industries such as Larsen & Toubro."

391. In view of the above, we are of the opinion that the proposed unit will not cause any adverse impact on the Panchayat Road in question on account of increased traffic. We are further of the opinion that the said road is a proper metaled tarred road (as per Expert Committee Report) having a sanctioned width of 22 meters. The same is also clear from para no. 17 of EC report. (However, it may be noted that there is a typographical error in the said para, where the road is mentioned as 22 meter long whereas it should have been 22 meter wide). We are, therefore, of the opinion that Panchayat Road is wide enough to support the movement of additional trucks required for the proposed unit.

392. The Ld. Sr. Counsel for the appellant has next argued that the transport route along the Panchayat Road would necessarily require the Project Proponent to pass by the adjacent villages for vehicular movement, since the proposed unit is surrounded by the Appellant's units in a "horseshoe" formation and this will have adverse effect upon the health of villagers residing in Suvali Village because of air pollution.

393. We have considered the contention of the Ld. Sr. Counsel and are of the opinion that the Suvali Village is not likely to be impacted by the

emission from the proposed unit. The High Powered Committee in para 8(ii) has observed as under regarding the impact on Suvali Village:-

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

394. In view of the above, we are of the opinion that the objections raised by the appellant regarding incorrect information given by Respondent no. 1 about number of trucks required for transportation of material, condition of the approach road and its width as well as its effect on the Suvali Village are without any basis. The concern raised about the dust emissions because of plying of trucks on the approach road also cannot be accepted for the reason that the project proponent has categorically stated that it will control the dust and other emissions by sprinkling water on the road. The same is also clear from the additional information submitted by respondent no. 1 vide letter dated 23.05.2019 which runs as under:-

> 1. *"Minimal impact will be caused due to road surface transportation as total of 363 trips will be made daily for transporting raw material and cement.*
> 2. *Raw material and product transportation route map submitted by Respondent no.1 (page 1775-56 showing usage of panchayat road. (As submitted during oral arguments, width of the road is approximately 9.5 meters and the same road is being used by all other industries).*
> 3. *All vehicles used for transporting raw material and final product would meet the emission norms prescribed under the Motor Vehicle Act, 1988 and Rules.*
> 4. *All raw material required for the proposed project will be in solid form, except fly ash. Fly ash will be transported in bouser only. Clinker and coal will be transported in trucks covered with tarpaulin.*

5. *Cement bags will be transported in trucks covered with tarpaulin and loose cement in bousers only.*
6. *Sweeping machine will be deployed for cleaning the road. Additionally, water will be sprinkled on the road. Within the premises, paved roads will be constructed and automated sweeping machines shall be installed for the road and land within the premises of the proposed unit.*
7. *All guidelines issued by GPCB for storage, handling and transportation of coal and clinker shall be followed.*
8. *National highway will be used for most part of road transportation, and there is no likelihood of any adverse effect on the carrying capacity of such road which otherwise has about 31126 (out of which 2036 are, trucks and 1080 are buses) moving daily.*
9. *As per the traffic management plan, speed limit of trucks will be limited to a maximum of l0 km/hr on village roads."*

395. The above additional information provided by Respondent no. 1 vide letter dated 23.05.2019, thus, takes care of the contention of the appellant that the authority has not considered the likelihood of environment being adversely affected during transportation of raw material (coal, clinker and fly ash). All the relevant factors have, thus, been examined by the authority. In view of the above discussion, the issue raised by Ld. Sr. Counsel for the appellant is devoid of any substance and the same is, therefore, dismissed.

- **Issue regarding Parking of Trucks, provision for Green Belt and inadequate land.**

396. Ld. Sr. Counsel for the appellant has argued that space allotted for the proposed unit is insufficient. There is no adequate space for parking and green belt. The Ld. Sr. Counsel for Respondent no. 1 has refuted the above arguments and submitted that the Expert Committee in its paragraph no. 8(vii) has submitted that the space allotted for the proposed unit is sufficient. The observation runs as under:-

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

397. So far as green belt and parking area is concerned, the EIA Report demarcates 33.98% (i.e. 16,500 mts.) out of the total land area (about 48,563 sq. mts.) for greenbelt, and this condition has been imposed upon Respondent No 1. The Table 11.3 of the EIA Report also shows 37.79% (i.e. 18350 sq. mts.) of the land area of the proposed unit to be an 'open space' out of which, the Respondent No 1 has since earmarked about 4716 sq.mts. as dedicated parking space for the proposed unit which can accommodate about 45-48 trucks. These details regarding provisions made for parking space for about 45-48 trucks inside the proposed unit, was communicated by the Respondent No 1 to the SEAC vide the additional information supplied on 23.05.2019 and also by way of presentation before SEAC on 12.06.2019.

398. In our opinion, the above details provided in the EIA report takes care of the green belt and the space for the parking of the truck and, therefore, no directions are required to be passed by this Tribunal in this regard.

399. The Ld. Sr. Counsel for the appellant has, however, raised another objection that the Project Proponent has not provided for finished products storage area, loading and unloading area, product transfer area, and other vehicles, canteen area, security office and other amenities. The Factories Act, 1948, under various provisions clearly lays down the mandate to have such amenities in any industrial project/factory and allocating no land for the same, puts the Project Proponent in violation of the same.

400. We have given our thoughts to the contention of the Ld. Sr. Counsel and are of the opinion that the project proponent is duty bound to abide by the mandate of Factories Act, 1948 and in case he violates the same, the penalties are provided under the Factories Act. We are further of the opinion that Project proponent is duty bound to provide the space for finished product storage area, unloading area of product, product transfer area, canteen, place for security office and other amenities as per the Factories Act, 1948 as well. The non-mentioning of the same in EIA report in our opinion is not fatal to the grant of EC.

- **Lapses in the public hearing process.**

401. Ld. Sr. Counsel for the appellant has argued that there are lapses in public hearing which was scheduled on 22.03.2019. The appellant and other participants had raised several queries. While some queries were vaguely answered by the respondent no. 1, some were totally evaded. It is submitted that no satisfactory response was given regarding deposition of dust in cement plant on the road as well as on surrounding area. The Respondent no. 1 has also not disclosed the status of the application made to Kakdapur Canal Department for obtaining 278 KLD water. The show-cause notices under Air and Water Act issued by GPCB to Sanghi Plant at Kutch have not been disclosed. The Ld. Sr. Counsel for the appellant submits that multiple letters dated 05.04.2019, 13.04.2019, and 22.04.2019 were sent to Respondent No. 1 and Respondent No. 3 after the conclusion of the public hearing to highlight the environmental concerns of the Appellant with respect to the grinding unit. However, none of these letters were responded to by Respondent No. 1 or Respondent no. 3. Ld. Sr. Counsel has further submitted that public participation is not a mere mechanical process or a formality and it is so held in number of judgments. The objections raised

were never considered by the SEAC and EC was granted in a mechanical manner by the SEIAA.

402. In reply, the Ld. Sr. Counsel for Respondent no. 1 submitted that grievances raised during the public hearing were duly considered by Gujarat SEAC. The appellant had issued three representation dated 05.03.2019, 13.03.2019 and 22.03.2019 to Respondent no. 3. Respondent no. 1 had submitted detailed point wise replies to the issued raised by the appellant before the Gujarat SEAC on 23.05.2019. The Gujarat SEAC in its 514th Meeting held on 12.06.2019 considered the issues raised by appellant and the reply by Respondent no. 1 and after considering all the issues recommended for issuance of EC.

403. We have considered the rival submissions. Perusal of 514th Meeting of SEAC Gujarat, dated 12.06.2019 reveals that the GEAC had considered all the queries raised by the appellant. The relevant extract of the meeting which, answers all the queries runs as follows:-

- *"PP has submitted detailed reply on 23/05/2019 submitting the additional details sought with point-wise reply with respect to the representation of L&T Ltd., Hazira dated 05/04/2019 and 22/04/2019.*
- *PP was called for Presentation based on the reply on 12/06/2019.*
- *During the meeting, the project was appraised based on details furnished on 23/05/2019 by the project proponent against the additional details sought*
- *PP along with its expert consultant made technical presentation and explained in detail all the points which were raised on 16/04/2019.*
- *Committee noted that PP has readdressed ToR no-5 and 40 with details regarding applicable rules/Acts/Regulation to unit in tabular form and compliance of issues of woman and more participation of woman in public hearing.*
- *Committee asked regarding action plan on representation of L&T Ltd, Hazira made vide letter dated 05/04/2019 & 22/0412019 and reviewed all the points raised by L&T in their representations, PP informed that points raised by L & T Ltd, Hazira are already addressed in the EIA Report. PP also agreed regarding green belt development in periphery of the unit and closed transportation system for*

loading/unloading and bulk cement in closed cement tanker.

- *Committee asked for fugitive. emission from proposed project may affect production activity of Defence Unit of M/s L & T Ltd, Hazira and serious health hazards to people operating in closed vicinity, PP informed that Defence Unit of M/s L & T Ltd is approximately one kilometer aerial distance from proposed project in cross-wind direction and least chances for dusting spread over to M/s L & T Ltd. Moreover company adopted latest technology of covered and closed system in loading/unloading and transportation of raw material and finished products. Also PP informed that 33% green belt developed in and around periphery of proposed project. PP agreed with committee suggestions regarding adequate height boundary wall for control of dusting spread in nearby area and installation of advance sprinkling system for raw material like fly ash, gypsum and coal handling system.*
- *PP submitted detailed reply with clarification regarding L&T representation dated 05/04/2019 & 22/04/2019 and said that there is no chances for dusting with implementation of EMP and no adverse impact on potable water due to cement dusting from proposed project. CAAQMS will be installed in proposed project and its report will be submitted to GPCB regularly.*
- *PP submitted undertaking regarding not to use lignite and Petcoke as fuel.*
- *PP agreed with complying coal and fly ash guidelines of GPCB for proposed project. PP submitted assurance that there will not be any degradation of environment which adversely affects the green belt, Water, Health of employees, production quality and business of L & T and other neighbouring unit.*
- *PP submitted adequate proposal for raw material and product transportation route and impact of traffic movement on surrounding area and mitigation measures/EMP for proposed project like Dust extraction system with capacity of 11000 m3/Hr and fully enclosed system for unloading station.*
- *PP addressed and clarified details of sound APCM to control fugitive dust emission during raw-material transportation, storage, handling, loading, unloading, transfer, fuel grinding etc. along with details of vents I stacks with specific source and air pollution control system.*
- *Committee found that PP has addressed all the points raised in the ADS on 16/04/2019 satisfactorily and also assured to take all necessary mitigation measures to control air pollution at source"*

404. Perusal of the above Minutes of Meeting reveals that all the objections raised by the appellant as well as by Intervener i.e. Suvali Village Panchayat regarding the Cement dust, the use of fuel and

control of air pollution as well as other issues stand answered by Respondent no. 1. So far as supply of ground water is concerned, it is submitted by the Respondent no. 1 that it had made a request for withdrawal of water to the irrigation department. The request of the Respondent No 1 has also been accepted by Krishak Bharati Cooperative Ltd. ('KRIBHCO') and it has forwarded its approval to the usage of such irrigation pipelines by the Appellant to the Irrigation department vide letter dated 20.12.2019. The queries from where and how the coal will be procured, transported and show cause notices under Air and Water Act by GPCB to Sanghi Plant at Kutch are quite remote and irrelevant and, therefore, even if these are not answered, it does not affect the EC. Thus, the objection of Ld. Sr. Counsel regarding lapses in the public hearing is devoid of any substance and is therefore rejected.

- **Source of water.**

405. Ld. Sr. Counsel for the appellant has contended that as per EIA report published in March 2019, the total water requirement as stipulated by the Respondent No.1 is 278 KLD per day. However, Respondent No.1 has failed to cite any source from where such large volumes of water can be sourced. The Respondent No.1 in its EIA Report mentioned Local body and Irrigation Department as the sources of water but Respondent No. 1 has neither any approval from the Irrigation Department nor any contract with ESSAR for using their pipeline for channeling the water from Tapi River to the proposed unit and if the water is brought through water tankers then to cater the need of 278 KLD of water per day, at-least 55 tankers (5000 liters capacity) would be required every day to supply water.

406. On the other hand, Ld Sr. Counsel for the Respondent no. 1 has submitted that the fact that proposed unit requires 278 KLD of water per day is wrong. The requirement of the Respondent No 1 for the proposed unit is 200 KLD of fresh water, with the balance 78 KLD per day of water will be met through recycling. This is also adequately borne out from the EIA Report of the Respondent No 1. It is further submitted that respondent no. 1 has made a request for withdrawal of water to the irrigation department. The request of the Respondent No 1 has also been accepted by Krishak Bharati Cooperative Ltd. ('KRIBHCO') and it has forwarded its approval to the usage of such irrigation pipelines by the Appellant to the Irrigation department vide letter dated 20.12.2019. It is, thus, submitted that apprehension of the Appellant is, therefore, unfounded.

407. We have considered the rival submissions. Perusal of the record reveals that Respondent no. 1 has already made a request for withdrawal of water to the irrigation department. The request of the Respondent No 1 has also been accepted by Krishak Bharati Cooperative Ltd. ('KRIBHCO') and it has forwarded its approval to the usage of such irrigation pipelines by the Appellant to the Irrigation department vide letter dated 20.12.2019. Thus, water will be obtained by Respondent no.1 through irrigation pipelines and till the permission is received from the irrigation department, the water will be managed through private tankers as submitted by Respondent no. 1. In our opinion, the objection raised by the Ld. Sr. Counsel is without any basis and the same is, therefore, rejected.

- **Sewerage**

408. Ld. Sr. Counsel for the appellant has submitted that Environment Impact Assessment Report states that a Sewage Treatment Plant (STP)

of 15KLD capacity will be established. The Impugned Environment Clearance on the other hand directs for an STP of 78KLD capacity. The Respondent No.1 has not allocated any land for setting up a 78KLD capacity STP.

409. In reply, Ld. Sr. Counsel for the Respondent no. 1 submits that the plea of appellant is wrong. A bare perusal of EC (at Clause 31) shows that it requires the Respondent no. 1 to set up an STP of 15 KLD only which again is on the basis of the project capacity and this fact has been duly disclosed in the EIA Report.

410. We have considered the rival submissions. The Project capacity and the requirement of STP of 15 KLD capacity has been duly disclosed in the EIA Report and the EC also provides for a 15 KLD STP only. The Respondent no. 1 in its written submission has also categorically stated that an STP of 15 KLD is adequate for the needs of the staff in as much as there is no permanently stationed residential staff within the proposed unit, and the toilets, etc. are only meant for staff on shift. In view of the above, the objection raised by the Ld. Sr. counsel is rejected.

- **School nearby the proposed unit of respondent no. 1.**

411. Ld. Sr. Counsel for Appellant as well as Intervener-Suvali Village Panchayat has submitted that the proposed cement unit of Respondent No.1 is near a school which has a strength of around 1200 children and the proposed unit will, thus, have adverse effect upon the health of the students.

412. In our opinion, the above contention of Ld. Sr. Counsel for the Respondent no. 6 is without any substance for the reason that proposed unit will operational in an industrial cluster zone and there is no bar of operation of plant in an earmarked industrial cluster zone. Moreover,

the school is also at a considerable distance of 0.90 KM from the proposed unit and the same is clear from Form-1 filed by the Respondent no. 1. Therefore, the objection raised by Ld. Sr. Counsel for Respondent no. 6 cannot be accepted.

- **<u>Costal Transportation</u>**

413. Ld. Sr. Counsel for the appellant has submitted that the Respondent has only made a cursory mention that it intends to use coastal mode of transportation for supplying raw material and taking finished product. However, no evaluation of the same has been done in the EIA. The incomplete information given in EIA is as follows:-

> *"**2.6.3 - Sea / Coastal Transportation***
>
> *The clinker shall be transported from Sanghipuram (IU) to Surat GU mainly by sea. Clinker shall be extracted from the Clinker load out silos at IU, transported to the captive Jetty of SIL by trucks and loaded on to the barges by grab cranes. Barges shall transport the Clinker to the ship stationed at high seas. At Surat, the Clinker shall be unloaded from the ship at nearest port and transported to the Surat GU site by trucks.*
>
> *The company has planned Coastal Shipping of Cement, accordingly cement terminals have been developed at various locations. This will reduce the load on rail/ road network / transportation."*

414. He has submitted that evaluation of the above fact should have been given in the EIA.

415. We have considered the above contention of the Ld. Sr. counsel for the appellant and are of the opinion that the said contention is entirely irrelevant to the present proceedings. The question of transportation of raw materials from the sea route is too remote to be assessed under the environmental impact assessment of the proposed unit or its impact on the grant of the EC. The EC is always granted specific to the location of

the proposed unit, and is concerned with the impact of the setting up of the said Project on the areas immediately surrounding the location. The contention of the Ld. Sr. Counsel for the appellant is, therefore, rejected.

Conclusion:

416. In view of the above detailed discussions, we are of the opinion that Respondent no. 1 which is a standalone cement grinding unit has not deliberately or fraudulently suppressed or concealed any material information. The presence of mangroves and forest has been mentioned in Chapter III of EIA Report. It has also been held that appellant unit is not a defence installation and the Official Secret Act or WODA, 1903 do not prohibit any construction around the unit. The numbers of trucks which will be operating for carrying raw material were clearly specified in the EIA. The EC has also put specific conditions regarding control of fugitive dust, air pollution and Green Belt. The land allotted to Respondent no. 1 falls in Industrial Cluster and SUDA Master Plan 2035 will not apply since the EC was granted on 23.08.2019 and the SUDA Master plan 2035 was notified on 08.10.2020. It is clear from our discussions that approach road to the unit can bear the additional load/number of trucks. The Respondent no. 1 unit does not produce that much of emissions which are produced by a cement manufacture plant since it is a standalone Cement grinding industry only. Total water requirement for the project has been provided in EIA and it is submitted that requirement shall be met through Irrigation department/Private tankers. Necessary permission from concerned Authority in this regard is being obtained. The EIA has also contemplated an STP of 15 KLD capacity since no staff quarters are going to be constructed in the unit. In our opinion, the EC has,

therefore, taken care of each and every objection raised by the appellant. In these circumstances, the appeal filed by the appellant is dismissed.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

February 25, 2022
Appeal No. 36/2020
AK, AP, AG