

Item No. 03

(Court No. 1)

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

(By Video Conferencing)

Execution Application No. 32/2016

IN

O.A. No. 295/2016

Amresh Singh

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 28.06.2021

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

Respondent: Ms. Akansha Das, Advocate for NHAI
Mr. Raj Kumar, Advocate for CPCB
Ms. Aanchal Mullick, Advocate for M/s Hindustan Construction Co. Ltd.
Mr. Aniruddh Singh, Advocate for M/s Gammon India Ltd.

ORDER

1. The issue for consideration is the remedial action against violation of environmental norms by National Highway Authority of India (NHAI) and its contractors - M/s Gammon India Limited (GIL), the Hindustan Construction Co. Ltd. (HCCL) and M/s Choudhary Power Project Pvt. Ltd. (CPPPL), sub-contractor of M/s GIL and M/s HCCL, in the course of four laning of National Highway from Udhampur to Banihal in Jammu and Kashmir.

2. The matter has been considered by this Tribunal during the last four years. For purposes of this order, we may refer to last six orders i.e. 24.08.2018, 12.02.2019, 11.07.2019, 09.01.2020, 20.03.2020 and 28.9.2020.

3. By the **first order**, the matter was considered in the light of reports of statutory/expert committees received to the effect that damage to environment was taking place by dumping of muck without precautions. While directing remedial action, this Tribunal constituted a Monitoring Committee (MC) headed by Justice J.R. Kotwal, former Judge of J&K High Court to give an independent report in the matter.

By the **second order**, the matter was considered in the light of preliminary report of the said MC to the effect that damage to the environment was continuing. The Tribunal accordingly directed the M/s GIL and M/s HCCL to pay interim compensation for damage to the extent of Rs. 1 crore each and performance guarantee of like amount for improving the situation within next three months. **The said order was affirmed by the Hon'ble Supreme Court on 08.07.2019 in Civil Appeal No. 5113-14/2019.**

By the **third order**, the Tribunal considered the report filed on 09.07.2019 based on inspection conducted on 02.05.2019 to the effect that damage to the environment was continuing. The Tribunal directed M/s GIL and M/s HCCL to furnish performance guarantee of Rs. 2 Crore each and NHA1 to furnish performance guarantee of Rs. 1 Crore to the satisfaction of CPCB for remedying the situation.

The **fourth order** also found that the violations were continuing and remedial action was directed to be taken.

Vide **fifth order** dated 20.03.2020, the Tribunal considered report dated 17.03.2020 by the MC based on site inspection on 29th – 31st January, 2020. The deficiencies were pointed out to M/s GIL by the State PCB by notice dated 20.10.2019. The MC gave suggestions and the

Tribunal directed that the suggestions to be acted upon by the project proponents, including measures for slope stabilization.

4. The matter was **last considered on 28.09.2020** in the light of further report dated 24.09.2020 of the monitoring Committee based on status reports dated 31.07.2020 and 17.09.2020 filed by the Divisional Officer of the State PCB with the Regional Director, State PCB, alongwith supporting material. It was found that damage to the environment was continuing as shown by the photographic and other evidence. The NHAI, on whose behalf the contractors were hired, failed to take any remedial action. Accordingly, the Tribunal directed the State PCB to proceed with coercive measures including assessment and recovery of compensation and initiating prosecution against the violators. The Monitoring Committee was requested to give a further report about status of compliance by 31.03.2021. For the sake of continuity, we reproduce the operative part of the earlier order as follows:

“ xxx.....xxx.....xxx

3. *We have taken up the matter today in continuation of earlier proceedings. Further report has been filed on 24.09.2020 based on status reports dated 31.07.2020 and 17.09.2020 filed by the Divisional Officer of the State PCB with the Regional Director, State PCB, alongwith supporting material. On consideration of the said inspection reports, the MC observed that there was failure in preparing and maintaining designated dumping sites as shown by the photographs. The debris excavated in the widening process has been found unscientifically dumped down the hill slopes into the seasonal nallas and rivulets. The dumping sites were overflowing and not properly maintained. NHAI failed to exercise supervisory control.*

4. *The relevant extracts from the inspection report dated 31.07.2020 submitted by the Divisional Officer of the State PCB are:*

“Sub: Status of muck dumping by:

1) *M/s Gammon Engineers & Contractors Pvt. Ltd. (GECPL) now subcontracted to M/s Choudhary Power Projects Pvt. Ltd (CPPL) from **Nashri to Ramban stretch** (km 130.00 to km 151.00) w.e.f. August, 2019 engaged in four laning of NH-44.*

2) M/s Hindustan Construction Company (HCC) Ltd now subcontracted to M/s Choudhary Power Projects Pvt. Ltd (CPPL) from **Ramban to Banihal stretch** (km 151.00 to km 187.00) w.e.f. 1st March, 2020 engaged in four laning of NH-44.

Sir,

With regard to the subject cited above and in continuation to this office letter Nos. PCB/DO/Rbn/2020/29 dated: 03-03-2020, PCB/DO/Rbn/2020/25 dated: 28-02-2020, SPCB/DO/Rbn/ 19/191 dated: 10-12-2019 and SPCB/DO/Rbn/19/138 dated: 17-08-2019 it is to inform that the various muck dumping sites (designated & non-designated) that were earlier operated by

M/s Gammon Engineers & Contractors Pvt. Ltd. (GECPL) and M/s Hindustan Construction Company (HCC) Ltd are now being taken over/used by M/s Choudhary Power Projects Private Ltd. (CPPPL) since August 2019 and March, 2020 respectively, were inspected on 28th and 29th July, 2020.

xxx.....xxx.....xxx

General observations:

All the sites have been put to use without proper preparation and gabion walls/structures constructed at foot of these sites are inadequate to meet the desired results/purpose. Further, most of the sites have attained their full capacity & are used without any consideration for attaining proper angle of repose. Further, dumping at these sites should not be allowed. **Those sites which have attained their full capacity need to be stabilised and rehabilitated by using engineering and botanical methods.**

That gabions/retaining structures in most of the portion along the Nallah are either not provided or are washed away or spilled over by excessive muck dumping. **That muck dumping in almost all sites was found done in an un-scientific manner and without proper compaction & terracing.** It is also observed that no proper methods are adopted to properly stabilise the slopes in terraces or in erecting retaining structures; besides there is no provision of drainage system in dumping area. No slope stabilization work has been done by way of plantation of suitable species and other green cover. At almost all sites muck dumping was found done without proper compaction and loose muck is going directly into Chenab River and other fresh water Nallahs/ water bodies.

Specific observations of dumping sites that were earlier operated by M/s GECPL & currently operated by M/s CPPPL:

The inspection was conducted on 29th July, 2020 and specific observations made area as under:-

S. No.	Name of the site	Chainage	Title of the land/ Designated / Non-designated	Specific observations
1.	Nashri (110 m)	130+690 to 130+800 (NB)	Forest-Designated	Site Closed but illegal dumping is going on. No retaining structure constructed and area is in sinking zone.
2.	Sarga Temple (100 m)	132+400 to 132+500 (NB)	Forest-Designated	Green cover has come up in some portion of this site. Muck Spill over/ Gabion damaged, need urgent repair. Nallah channelization work stopped midway.
3.	Dhalwas- Peerah- I (50 m)	134 +770 to 134+820 (NB)	Forest-Designated	Dumping in-progress and no protection provided.
4.	Dhalwas- Peerah- II (50 m)	135+300 to 135+350 (NB)	Forest-Designated	Dumping in-progress and no protection provided. Peerah Nallah getting choked due to muck dumping and needs to be channelized. Gabion damaged needs immediate repair.
5.	Sawani- I (40 m)	135+900 to 135+940 (NB)	NHAI Acquired	Site Closed but illegal dumping is still going on. No protection provided. The muck is thrown illegally which has choked
6.	Sawani – Peerah Near Dam View Hotel (50 m)	138+050 to 138+100 (SB)	Private Designated	Green cover has come up in some portion of this site. Muck spill over/ Gabion needs to be strengthened & raised.
7.	Near T-1, T-2 Kunfer Nallah	139+297 to 139+319 (SB)	Tunnel Site	Illegal dumping going on. Kunfer Nallah getting choked due to dumping of heavy boulders and needs to be channelized.
8.	Chanderkote (Near 84 BN CRPF Camp) 120m)	141+200 to 141+320 (NB)	Private Designated	The muck is directly going into Chenab river. Gabion needs to be provided.
9.	Chanderkote (Near 48 Bridge) (20 m)	143+360 to 143+380 (SB)	Non-Designated	Muck going directly into Chenab River. Gabion needs to be provided.
10.	Chanderkote (Near 48 Bridge)	143+400 to 143+420 (SB)	Non-Designated	Muck going directly into Chenab River. Gabion needs to be provided.
11.	Chanderkote (Near 48 Bridge)	143+720 to 143+740 (SB)	Non-Designated	Muck going directly into Chenab River. Gabion needs to be provided.

12.	Kanthi (Karol-I) Bridge 51 (Near Hotel Khana Khazana) (20 m)	144+950 to 144+970 (SB)	Private Designated	Green cover has come up in some portion of this site. Gabion needs to be raised.
13.	Ramban (Near Kundi Nallah Bridge 53) (New Identified site) (50 m)	145+850 to 145+900 (SB)	Non-Designated State land	Kundi Nallah Bridge 53 new identified dumping site Chainage:-km 145+850 to 145+900 (SB) 50m but in reality they are dumping 230 m in excess from km 145+620 to 145+850 (SB). Nallah choked due to muck dumping and needs to be channelized.
14	Kanthi- Karol (Near Amar Punjabi Dhaba) (New Identified site) (86 m)	146+094 to 146+180 (SB)	Non-Designated State land	This is a new identified dumping site of length 86 Meters but in reality dumping is being done 10m in excess i.e. from km 146+084 to km 146+094 (SB).
15.	Opp. Horticulture Office Gate (30 m)	146+200 to 146+230 (SB)	Non-Designated	Muck going directly into Chenab River. Gabion structure needs to be provided.
16.	Neera (Opp. PHE Water Filling Station) (New Identified site) (300 m)	147+225 to 147+525 (SB) 147+525 to 147+560 (SB)	State land Non-Designated	This is also a new identified dumping site of length 300 m but in reality dumping is being done 35m in excess from km 147+525 to km 147+560 (SB). Muck going into Chenab River. Gabion structure needs to be provided.
17.	Cafeteria Morh Ramban (Opp. Army Camp Maitra) (New Identified site) (850 m)	147+850 to 148+700 (SB)	State land	Muck is directly going into Chenab River. Gabions are not provided.

Specific observations of dumping sites that were earlier operated by M/s HCC & currently operated by M/s CPPPL:

S. No.	Name of the site / Village	Chainage (SB)	Specific Observations
1.	Seri-Chamba	150+330 to 150+900	Illegal dumping going on. Needs to be stopped immediately.

2.	Marog Near Tunnel (T-2)	155+000 to 155+100	Dumping is being done in an unscientific manner. Terracing/ Gabions need to be provided.
3.	Near Battery Chaishma	158+710 to 158+960	Nallah choked. Few Plants survived after previous year's plantation. Green cover has come up in some portion of this site. Also, site needs to be covered with soil. Gabion structures needs to be repaired.
4.	Anokhe Fall	159+100 to 159+400	Green cover has come up in some portion of this site. Gabions need to be provided.
5.	Digdole-I	161+200 to 161+580	Dumping is being done in an unscientific manner with no protection provided.
6.	Panthyal	165+750 to 165+910	Dumping is in progress, gabion structures need to be repaired. Panthyal nallah needs to be channelized with hume pipe and Tunnel water needs to routed through settling tank in order to prevent pollution of fresh water nallah.
7.	Near Ramsoo Bridge	167+780 km	Illegal dumping going on. Gabions need to be provided.
8.	Near Ramsoo Foot Bridge	168+450 km	Illegal dumping going on. Gabions need to be provided.
9.	Ramsoo & Gangroo-Ramsoo	168+680 to 169+100 and 169+600 to 169+750	Dumping of muck as well as landslide debris is done in an un-scientific manner.
10.	Near Kishtwari Pathar	173+530 to 173+900 km	Illegal Muck dumping going on/Bislari nallah is getting choked.
11.	Sherbibi	175+400 to 176+200	Green cover has come up in some portion of this site. Gabions need to be strengthened.
12.	Chamalwas	177+000 to 177+050	Green cover has come up in some portion of this site. Along Bislari nallah, gabions need to be strengthened.
13.	Chamalwas-I	177+400	Nallah is getting choked due to illegal dumping.
14.	Ratanwas-I & II	179+200 to 179+500 and 179+560 to 179+820	Along Bislari nallah, Huge dumping done and still in-progress. Gabions need to be strengthened
15.	Kharpora Banihal	181+690 to 181+740 Km	Illegal dumping going on. Gabion structure needs to be raised.

In addition to the status of work in respect of designated dumping sites as mentioned above, it is submitted that **the concerned agency (M/s Hindustan Construction Company) has not provided undersigned with details of**

non-designated dumping sites even on repeated requests till date.

The muck has been dumped at various dumping sites earlier by M/s HCC & M/s GECPL and now by M/s CPPPL in a casual manner without any consolidation & the practice is still being followed at all the sites inspected. At most of the dumping sites retaining structures are not provided and at few sites where gabion wall exist along river/nallahs, no proper care of HFL is taken and some are washed away or spilled over by excessive muck dumping. No proper engineering techniques/methods are adopted in muck dumping.

The dumping is also being done at designated sites which have attained their full capacity and also at non-designated sites from Ramban to Banihal (As indicated in tables above). The four laning project is of national importance for entire Union Territory of J&K, however, M/s CPPPL cannot be allowed to execute the work causally & callously and pollute Chenab River and other fresh water nallahs without any regard for environmental norms and Hon'ble NGT directions.

If M/s CPPPL is not restrained and checks are imposed it may cause irreparable damage both in terms of polluting the water bodies and destroying aquatic life, flora and fauna as well as causing flood downstream which may be disastrous for the inhabitants living around these areas. Besides, by this illegal muck dumping, river morphology is likely to be altered and it will also interfere with natural course/ flow of this river.

Further, Ramban Police arrested a site engineer and four operators of M/s CPPPL on 27th July, 2020 for violating district administration's orders and directly throwing waste material/muck into the river Chenab at Morh Gohri, Ramban. Police also seized two excavators, one loader and a JCB Machine. (Newspaper cutting dated 28th July, 2020 attached).

Besides the muck/debris being dumped into Chenab river basin in a rampant/haphazard manner is eventually bound to travel downstream with the flow of river ultimately it shall reach the site of Salal Hydro Electric Power Project (SHEPP) and **is bound to cause enormous silting behind the dam which shall have disastrous ramifications in terms of power generation of the state.** It would not be possible to remove the silt accumulated behind the (SHEPP) by any mechanical means easily as the quantities flowing into the lake of dam shall be enormous. This would put in jeopardy the entire hydro electric project of 690 MW that has been built at the cost of Rs. 928.89 crores in 1987 and approx. 6000 to 7000 Crores as per current price level.

Emphasis needs to be laid on the fact that in the context of repeated and rampant violations by M/s GECPL and now M/s CPPPL **a show cause notice was served by Member**

Secretary J&K PCB vide No.: PCB/NGT/27/2017/1392-94 Dated 25-11-2019 to Project Manager M/s Gammon Engineers & Contractors Pvt. Ltd (GECPL) wherein he was directed to explain the reason within 15 days from its issuance as to why environmental compensation on the basis of Polluters Pays' Principle (PPP) in terms of directions of the Hon'ble National Green Tribunal be not recovered from him and as to why he may not be prosecuted in terms of Section-17 of the Environment (Protection) Act,1986. (Copy Attached as Annexure-1).

In spite of their assurances to take corrective measures in this regard, no tangible steps were taken on the ground to rectify the violation.

It also needs to be brought into the notice of the Chairman, NGT National Highway (Udhampur to Banihal) Monitoring Committee that actual status of various dumping sites as it existed on 30th June, 2020 could be based on the quantity of muck dumped by construction companies till that date. Since these quantities are based on actual measurement at site, whose record is not available with J&K PCB. The matter was taken up with NHAI and M/s GECPL for providing these quantities so that violation could be quantified in terms of numbers.

The Project Director (NHAI) PIU-Ramban and Project Manager M/s GECPL also assured Member Secretary J&K PCB in his office Chamber in the month of May 2020 that our directions would be complied with and the quantum of earth work executed would be furnished by them to J&K PCB within 02 to 03 days positively. However, till date the same has not been provided in spite of raising the matter with them on more than one occasion. The relevant correspondence in this regard is attached as (Annexure- 2, 3 & 4) for record & reference.

Also, Irrigation and Flood Control Department has taken suo motto cognizance of the matter and directed the project authorities to stop forthwith illegal dumping of muck directly into the river which is proven to cause flooding of the downstream areas with disastrous effect (Copy Attached as Annexure-5).

Further, it is to submit that **District Magistrate, Ramban has also imposed restrictions under section 144 of Criminal Procedure Code (CrPC) against M/s GECPL directing not to dump the muck/materials in nallahs or other places except the identified muck dumping sites in District Ramban vide order No.DMR/711_-15 dated 30-11-2019 (Copy Attached as Annexure-6).**

Also, it is to submit that **Tehsildar, Executive Magistrate Ist Class Ramban has also issued Notice under section- 133 of Criminal Procedure Code (CrPC) against General Manager M/s GECPL directing not to dump the muck/materials in Kow bagh Ramban vide No. TR/00/2019-20/NH-44/1573-74 dated 24-01-2020 (Copy Attached as Annexure-7).**

In addition to above, District Magistrate Ramban has directed NHAI under Section-133 of CrPC vide order No. :

DMR/1071-73 dated 26-05-2020 to remove the extra muck dumped in River Chenab other than the muck dumping sites and also to take corrective measures within a period of 02 months from the date of issuance of this order. (Copy Attached as Annexure-8).

The substantial evidence of environmental violation committed by the construction companies as it existed on 28th and 29th July, 2020 at various dumping sites has been captured in photographs with labelling are attached for supporting the case.

Recommendation:

In view of the above stated facts, it is recommended that **Project Director NHAI- PIU Ramban, Project Manager M/s Gammon Engineers & Contractors Pvt. Ltd. (GECPL), Project Manager M/s Hindustan Construction Company (HCC) Ltd & Project Manager M/s Choudhary Power Projects Private Ltd. (CPPPL) may be prosecuted under Section-17 of Environment (Protection) Act, 1986 for non-compliance of conditions of Environmental Clearance obtained by them for execution of the project and for directly dumping muck in Chenab River & for causing damage to the environment in violation to Hon'ble NGT order dated 12-02-2019 and also levying environmental compensation on the basis of Polluters Pays' Principle (PPP) in terms of directions of the Hon'ble National Green Tribunal."**

5. Report dated 03.09.2020 with regard to another stretch has also been filed as follows:-

“Sub: Status of muck dumping by:

1. M/s Gammon Engineers & Contractors Pvt. Ltd. (GECPL) now subcontracted to M/s Choudhary Power Projects Pvt. Ltd (CPPL) from Nashri to Ramban stretch (km 130.00 to km 151.00) w.e.f. August, 2019 engaged in four laning of NH-44.
2. M/s Hindustan Construction Company (HCC) Ltd. now subcontracted to M/s Choudhary Power Projects Pvt. Ltd (CPPL) from Ramban to Banihal stretch (km 151.00 to km 187.00) w.e.f. March, 2020 engaged in four laning of NH-44.

Sir,

With regard to the subject cited above and in continuation to this office letter Nos. PCB/DO /Rbn/2020 /65 dated: 31.07-2020, PCB/DO/ Rbn/ 2020/29 dated: 03.03.2020, PCB/DO /Rbn/2020/251 dated: 28.02.2020 and SPCB/DO/Rbn/ 19/138 dated: 17-08-2019 it is to inform that the various muck dumping sites (designated & non-designated) that were earlier operated by M/s Gammon Engineers & Contractors Pvt. Ltd. (GECPL) and M/s Hindustan Construction Company (HCC) Ltd are now being taken over/used by M/s Choudhary Power Projects Private Ltd. (CPPPL) since August 2019 and March, 2020 respectively, were inspected on 1st and 2nd September, 2020 and observations are made as under:

The detail of various dumping sites (designated/Non-designated) that were earlier operated by M/s GECPL & currently operated by M/s CPPPL from (Nashri to Ramban) is given as under:-

S. No.	Name of Site/ village	Chainage in (NB/SB)	GPS Coordinates	Title of the land Designated and non designated	Area in hectare	Total Capacity (cu.m)	Quantity Dumped as on July 2019 (cu.m)	Capacity available as on July 2019 (cu.m.)	State
1.	Nashri	130+690 to 130+800 (NB)	33°8'13"N 75°17'59"E	Forest- Designated	1.00	95000	57000	38000	Closed but illegal dumping going on/ Land Sinking.
2.	Nashri (near Lucky Dhaba)	131+280 to 131+350 (NB)	33°8'29"N 75°18'13"E	Private Designated	0.61	60000	60000	0	Closed
3.	Sarga Temple	132+400 to 132+500 (NB)	33°9'03"N 75°18'22"E	Forest Designated	1.20	110000	95000	15000	In-use.
4.	Dhalwas	132+700 to 133+100 (NB)	33° 9'18"N 75°18'26"E	Non Designated	-	-	-	-	Land Slide debris dumped / Road sinked
5.	Dhalwas- I	133+350 to 133+400 (NB)	33°9'30"N 75°18'31"E	NHAI Acquired	0.98	72000	45000	27000	Closed
6.	Dhalwas- II Near School	133+420 to	33°9'33"N	NHAI Acquired	1.01	72000	21600	50400	Closed

		133+460 (NB)	75°18'32"E						
7.	Dhalwas- Peerah- I	134+770 To 134+820 (NB)	33°10'6"N 75°18'20"E	Forest Designated	5.07	520000	275000	245000	In-use
8.	Dhalwas- Peerah- II	135+300 to 135+350 (NB)	33°10'10"N 75°18'2"E	Forest Designated	7.55	780000	450000	330000	In-use
9.	Sawani- I	135+900 to 132+940 (NB)	33°10'14"N 75°17'52"E	NHAI Acquired	1.76	140000	140000	0	Closed but illegal dumping going on.
10.	Sawani- II	136+760 to 136+810 (NB)	33°10'28"N 75°18'11"E	NHAI Acquired	2.83	218648	210000	8648	Closed
11.	Sawani -III Peerah Near Dam View Hotel	138+050 to 138+100 (SB)	33°10'28"N 75°18'23"E	Private Designated	1.89	179645	120000	59645	In-use
12.	Near T-1, T- 2 Kunfer Nallah	139+297 To 139+319 (SB)	33° 10'52"N 75°17'57"E	Tunnel Site	-	-	-	-	Illegal dumping is going on / Nallah is getting choked.
13.	Chanderkot e (Near 84 Bn CRPF Camp)	141+200 To 141+320 (NB)	33°12'23"N 75°16'52"E	Private Designated	1.76	3750	3750	0	Closed but illegal dumping going on

14.	Near 48 Bridge Chanderkote	143+360 to 143+380 (SB) 20 m	33°12'25"N 75°16'47"E	Non Designated	-	-	-	-	<i>Illegal dumping going on</i>
15.	Near 48 Bridge Chanderkote	143+400 to 143+420 (SB) 20 m	33°12'27"N 75°16'45"E	Non Designated	-	-	-	-	<i>Illegal dumping going on</i>
16.	Near 48 Bridge Chanderkote	143+720 to km 143+740 (SB) 20 m	33°12'27"N 75°16'45"E	Non Designated	-	-	-	-	<i>Illegal dumping going on</i>
17.	Near Jaswal Bridge	144+500 to km 144+520 (SB)	33° 12'53"N 75° 16'20"E	Private Land	-	-	-	-	<i>Muck overflow. Gabion needs to be raised.</i>
18.	Kanthi (Karol-I) Bridge 51 (Near Hotel Khana Khazana)	144+950 to 144+970 (SB)	33° 13'5"N 75° 16'18"E	Private Designated	0.48	33500	33500	0	<i>Closed</i>
19.	Kanthi - Karol- II Near Kundi Nallah Bridge-53.	145+440 to 145+500 (SB)	33° 13'25"N 75° 16'1"E	Private Designated	0.78	78000	78000	0	<i>Closed</i>
20.	Kanthi	145+520 to 145+620 (SB)	33°13'27"N 75° 15'56"E	Private Designated	1.76	140000	135000	5000	<i>Closed</i>
21.	Kanthi -II	145+620 to	33° 13'12"N 75° 16'4"E	Non Designated	-	-	-	-	<i>Illegal dumping is going on.</i>

		145+850 (SB) (230 m)							
22.	Ramban Near Kundi Nallah Bridge 53 (New Identified site)	145+850 to 145+900 (SB) 50 m	33°13'27"N 75°16'0"E	State Land	-	-	-	-	In-use
23.	Kanthi- Karol (Near Amar Punjabi Dhaba) (New Identified site)	146+094 to 146+180 (SB) 86 m	33°13'14"N 75°15'51"E	State Land	-	-	-	-	In-use
24.	Opp. Horticulture Office Gate	146+200 to 146+230 (SB)	33°13'21"N 75°15'53"E	Non Designated	-	-	-	-	Illegal Dumping going on
25.	Neera (Opp. PHE Water Filling Station) (New Identified site)	147+225 to 147+525 (SB) 300 m	33°13'44"N 75°15'10"E	State Land	-	-	-	-	In-use
26.	Cafeteria Morh Ramban (Opp. Army Camp Maitra) (New Identified site)	147+850 to 148+700 (SB) 850 m	33°14'01"N 75°14'51"E	State Land	-	-	-	-	In-use
27.	Kowbagh, Ramban	149+650 to 149+750 (SB)	33°13'10"N 75°12'06"E	Forest Designated	1.55	140000	91000	49000	Closed

General observations:

All the sites have been put to use without proper preparation and gabion walls/structures constructed at foot of these sites are inadequate to meet the desired results/purpose. Further, most of the sites have attained their full capacity & are used without any consideration for attaining proper angle of repose. Further, dumping at these sites should not be allowed. Those sites which have attained their full capacity need to be stabilised and rehabilitated by using engineering and botanical methods.

That gabions/retaining structures in most of the portion along the Nallah are either not provided or are washed away or spilled over by excessive muck dumping. That muck dumping in almost all sites was found done in an un-scientific manner and without proper compaction & terracing. It is also observed that no proper methods are adopted to properly stabilise the slopes in terraces or in erecting retaining structures; besides there is no provision of drainage system in dumping area. No slope stabilization work has been done by way of plantation of suitable species and other green cover. At almost all sites muck dumping was found done without proper compaction and loose muck is going directly into Chenab River and other fresh water Nallahs/ water bodies.

**Specific observations of dumping sites that were earlier operated by M/s GECPL & currently operated by M/s CPPPL:
The inspection was conducted on 02nd September, 2020 and specific observations made area as under:-**

S. No.	Name of the site	Chainage in km	Title of the land/ Designated / Non- designated	Specific observations
1.	Nashri (110 m)	130+690 to 130+800 (NB)	Forest-Designated	Site Closed but illegal dumping is going on. No retaining structure constructed and area is in sinking zone.
2.	Sarga Temple (100 m)	132+400 to 132+500 (NB)	Forest-Designated	Green cover has come up in some portion of this site. Muck Spill over/Gabion damaged, needs urgent repair. Nallah channelization work stopped midway.
3.	Dhalwas- Peerah- I (50 m)	134 +770 to 134+820 (NB)	Forest-Designated	Dumping in-progress and no protection provided.
4.	Dhalwas- Peerah- II (50 m)	135+300 to 135+350 (NB)	Forest-Designated	Dumping in-progress and no protection provided. Peerah Nallah getting choked due to muck dumping and needs to be channelized .Gabion damaged needs immediate repair.
5.	Sawani- I (40 m)	135+900 to 135+940 (NB)	NHAI Acquired	Site Closed but illegal dumping is still going on. No protection provided. The muck is thrown illegally which has choked the Peerah Nallah.
6.	Sawani-Peerah Near Dam View Hotel (50 m)	138+050 to 138+100 (SB)	Private Designated	Green cover has come up in some portion of this site. Muck spill over/Gabion needs to be strengthened & raised.

7.	Near T-1, T-2 Kunfer Nallah	139+297 to 139+319 (SB)	Tunnel Site	Illegal dumping going on. Kunfer Nallah getting choked due to dumping of heavy boulders and needs to be channelized.
8.	Chanderkote (Near 84 BN CRPF Camp) (120m)	141+200 to 141+320 (NB)	Private Designated	The muck is directly going into Chenab river. Gabion needs to be provided.
9.	Chanderkote (Near 48 Bridge) (20 m)	143+360 to 143+380 (SB)	Non-Designated	Muck going directly into Chenab River. Gabion needs to be provided.
10.	Chanderkote (Near 48 Bridge) (20 m)	143+400 to 143+420 (SB)	Non-Designated	Muck going directly into Chenab River. Gabion needs to be provided.
11.	Chanderkote (Near 48 Bridge) (20 m)	143+720 to 143+740 (SB)	Non-Designated	Muck going directly into Chenab River. Gabion needs to be provided.
12.	Kanathi (Karol-I) Bridge 51 (Near Hotel Khana Khazana) (20 m)	144+950 to 144+970 (SB)	Private Designated	Green cover has come up in some portion of this site. Gabion needs to be raised.
13.	Ramban (Near Kundi Nallah Bridge 53) (New Identified site) (50 m)	145+620 to 145+850 (SB) 145+850 to 145+900 (SB)	Non-Designated State land	Kundi Nallah Bridge 53 new identified dumping site Chainage:-km 145+850 to 145+900 (SB) 50m but in reality they are dumping 230 m in excess from km 145+620 to 145+850 (SB). Nallah choked due to muck dumping and needs to be channelized.
14.	Kanathi- Karol (Near Amar Punjabi Dhaba) (New Identified site) (86 m)	146+084 to 146+094 (SB) 146+094 to 146+180 (SB)	Non-Designated State land	This is a new identified dumping site of length 86 Meters but in reality dumping is being done 10m in excess i.e. from km 146+084 to km 146+094 (SB).
15.	Opp. Horticulture Office Gate (30 m)	146+200 to 146+230 (SB)	Non-Designated	Muck going directly into Chenab River. Gabion structure needs to be provided.
16.	Neera (Opp. PHE Water Filling Station) (New Identified site) (300 m)	147+225 to 147+525 (SB) 147+525 to 147+560 (SB)	State land Non-Designated	This is also a new identified dumping site of length 300 m but in reality dumping is being done 35m in excess from km 147+525 to km 147+560 (SB). Muck going into Chenab River. Gabion structure needs to be provided.

17.	Cafeteria Morh Ramban (Opp. Army Camp Maitra) (New Identified site) (850 m)	147+850 to 148+700 (SB)	State land	Muck is directly going into Chenab River. Gabions are not provided.
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The detail of various dumping sites (designated/Non-designated) earlier operated by M/s HCC, currently operated by M/s CPPPL from (Ramban to Banihal) is given as under:-

S. No.	Name of the site / village	Chainage in K, (SB)	GPS Coordinates	Title of the land/ designated /non-designated	Area in Hectare	Total Capacity (cu.m)	Quantity Dumped as on April 2019 (cu.m)	Capacity available as on April 2019 (cu.m)	Status
1.	Seri-Chamba	150+330 to 150+900	33°14'58" N 75°13'33" E	Non Designated (Old BRO site)	-	-	-	-	Illegal dumping is going on
2.	Seri -Near Shiv Temple	151+350	33°15'25" N 75°12'16" E	Private land	-	-	-	-	Closed
3.	Seri	152+800	33°14'43" N 75°13'02" E	Private	2.16	64375	64375	0	Closed
4.	Marog-I	154+000 to 154+200	33°15'27" N 75°11'45" E	Forest	0.14	243200	243200	0	Closed
5.	Marog-II (Near Tunnel T-2)	155+000 to 155+100	33°15'47" N 75°11'29" E	Private	2.15	205200	205200	0	In-use
6.	Marog-III	155+760 to 155+870	33°15'17" N 75°17'06" E	Non Designated	-	-	-	-	Slide debris dumped
7.	Battery Chashma	158+710 to 158+960	33°16'48" N 75°10'48" E	Forest	0.18	45360	45360	0	Closed

8.	Anokhe Fall	159+100 159+400	to	33°16'59" N 75°10'43" E	Forest	0.30	343200	308880	34320	In-use
9.	Digdole	160+060 160+200	to	33°17'22" N 75°10'40" E	Non Designated	-	-	-	-	Slide debris dumped
10.	Digdole- I	161+200 161+580	to	33°17'45" N 75°10'38" E	Forest	4.70	878900	659175	219725	In-use
11.	Digdole- II	161+650 162+000	to	33°17'45" N 75°10'52" E	Forest	1.10	447700	447700	0	Closed
12.	Digdole- III	163+200 163+290	to	33°18'27" N 75°10'52" E	Forest	1.40	260923	169600	91323	In-use
13.	Panthyal	165+750 165+910	to	33°19'18" N 75°11'49" E	Forest	0.26	26000	15600	10400	In-use
14.	Mompassi	167+000 167+680	to	33°19'18" N 75°11'49" E	Forest	0.47	55543	55543	0	Closed
15.	Near Ramsu Bridge	167+780 km		33°25'33" N 75°11'40" E	Non Designated	-	-	-	-	Illegal dumping is going on
16.	Near Ramsu Foot Bridge	168+450 km		33°25'33" N 75°11'46" E	Non Designated	-	-	-	-	Illegal dumping is going on
17.	Ramsu	168+680 169+100	to	33°20'43" N 75°11'13" E	Private	2.31	58072	31843	23229	In-use
18.	Gangroo-Ramsu	169+600 169+750	to	33°20'45" N 75°10'56" E	Private					
19.	Hingni	170+950 171+250	to	33°21'15" N 75°10'19" E	State +Private+ Forest	1.30	35000	35000	0	Closed
20.	Near kishtwari Pathar	173+530 173+800	to	33°22'02" N 75°11'16" E	Non Designated	-	-	-	-	Illegal dumping going on

21.	Sherbibi	175+400 to 176+200	33°12'22" N 75°12'2" E	Private	9.40	528640	422912	105728	In use
22.	Sherbibi-I	176+900	33°23'2" N 75°12'4" E	Non Designated	-	-	-	-	Illegal dumping going on
23.	Chamalwas	177+000 to 177+050	33°23'20" N 75°12'7" E	Private	0.15	8400	8400	0	Closed
24.	Chamalwas-I	177+400	33° 23'11" N 75°12'2" E	Non Designated	-	-	-	-	Illegal dumping going on
25.	Rattanwas-I	179+200 to 179+500	34° 24'23" N 75°11'54" E	Private	2.3	67200	57120	10080	In-use
26.	Rattanwas- II	179+560 to 179+820	34° 24'28" N 75°12'4" E	Private					
27.	Rattanwas- III	181+580-181+650	33° 25'23" N 75°12'17" E	Private	0.93	48000	43200	4800	In-use
28.	Kharpora Banihal	181+690 to 181+740	33°25'29" N 75°12'17" E	Non Designated	-	-	-	-	Illegal dumping going on
29.	Banihal-I & II	-	33° 25'46" N 75°12'51" E	Private Land	2.5	9773	9773	0	Closed

Please note: Designated sites = 20 Nos. and Non-designated sites = 09 Nos.

Details of new identified dumping sites of M/s HCC are as under:-

S. No.	Name of the site/village	Chainage / (SB)/ Length	Title of the land
1.	Marog	156+200 to 156+560 (SB)/ 350m	Forest land
2.	Digdole	158+330 to 158+510 (SB)/ 180m	Forest land
3.	Near Khooni Nallah	164+500 to 164+650 (SB)/ 150m	Forest land

Specific observations of dumping sites that were earlier operated by M/s HCC & currently operated by M/s CPPPL:

S. No.	Name of the site / village	Chainage in Km (SB)	Specific Observations
1.	Seri-Chamba	150+330 to 150+900	Illegal dumping going on. Needs to be stopped immediately.
2.	Marog Near Tunnel (T-2)	155+000 to 155+100	Dumping is being done in an unscientific manner. Terracing/ Gabions need to be provided.
3.	Near Battery Chaishma	158+710 to 158+960	Nallah choked needs to be channelized. Hume pipe has been laid down but not connected yet. Few Plants survived after previous year's plantation. Green cover has come up in some portion of this site. Also, site needs to be covered with soil. Gabion structures needs to be repaired.
4.	Anokhe Fall	159+100 to 159+400	Green cover has come up in some portion of this site. Gabions need to be provided.
5.	Digdole-I	161+200 to 161+580	Dumping is being done in an un-scientific manner with no protection provided.
6.	Panthyal	165+750 to 165+910	Dumping is in progress, gabion structures need to be repaired. Panthyal nallah needs to be channelized with hume pipe and

			<i>Tunnel water needs to be routed through settling tank in order to prevent pollution of fresh water nallah.</i>
7.	Near Ramsu Bridge	167+780 km	<i>Illegal dumping going on. Gabions need to be provided.</i>
8.	Near Ramsu Foot Bridge	168+450 km	<i>Illegal dumping going on. Gabions need to be provided.</i>
9.	Ramsu & Gangroo-Ramsu	168+680 to 169+100 and 169+600 to 169+750	<i>Dumping of muck as well as landslide debris is done in an un-scientific manner.</i>
10.	Near Kishtwari Pathar	173+530 to 173+900 km	<i>Illegal Muck dumping going on/Bislari nallah is getting choked.</i>
11.	Sherbibi	175+400 to 176+200	<i>Green cover has come up in some portion of this site. Gabions need to be strengthened.</i>
12.	Chamalwas	177+000 to 177+050	<i>Green cover has come up in some portion of this site. Along Bislari nallah, gabions need to be strengthened.</i>
13.	Chamalwas-I	177+400	<i>Nallah is getting choked due to illegal dumping.</i>
14.	Ratanwas-I & II	179+200 to 179+500 and 179+560 to 179+820	<i>Along Bislari nallah, Huge dumping done and still in-progress. Gabions need to be strengthened.</i>
15.	Kharpora Banihal	181+690 to 181+740 Km	<i>Illegal dumping going on. Gabion structure needs to be raised.</i>

In addition to the status of work in respect of designated dumping sites as mentioned above, it is submitted that the concerned agency (M/s Hindustan Construction Company) has not provided undersigned with details of non-designated dumping sites even on repeated requests till date.

The muck has been dumped at various dumping sites earlier by M/s HCC & M/s GECPL and now by M/s CPPPL in a casual manner without any consolidation & the practice is still being followed at all the sites inspected. At most of the dumping sites retaining structures are not provided and at few sites where gabion wall exist along river/nallahs, no proper care of HFL is taken and some are washed away or spilled over by excessive muck dumping. No proper engineering techniques/methods are adopted in muck dumping.

*The dumping is also being done at designated sites which have attained their full capacity and also at non-designated sites from Ramban to Banihal (As indicated in tables above). **The four laning project is of national importance for entire Union Territory of J&K, however, M/s CPPPL cannot be allowed to execute the work causally & callously and pollute Chenab River and other fresh water nallahs without any regard for environmental norms and Hon'ble NGT directions.***

If M/s CPPPL is not restrained and checks are imposed it may cause irreparable damage both in terms of polluting the water bodies and destroying aquatic life, flora and fauna as well as causing flood downstream which may be disastrous for the inhabitants living around these areas. Besides, by this illegal muck dumping, river morphology is likely to be altered and it will also interfere with natural course/ flow of this river.

Further, Ramban Police arrested a site engineer and four operators of M/s CPPPL on 27th July, 2020 for violating district administration's orders and directly throwing waste material/muck into the river Chenab at Morh Gohri, Ramban. Police also seized two excavators, one loader and a JCB Machine. (Newspaper cutting dated 28th July, 2020 attached).

Besides the muck/debris being dumped into Chenab river basin in a rampant/haphazard manner is eventually bound to travel downstream with the flow of river ultimately it shall reach the site of Salal Hydro Electric Power Project (SHEPP) and is bound to cause enormous silting behind the dam which shall have disastrous ramifications in terms of power generation of the state. It would not be possible to remove the silt accumulated behind the (SHEPP) by any mechanical means easily as the quantities flowing into the lake of dam shall be enormous. This would put in jeopardy the entire hydro electric project of 690 MW that has been built at the cost of Rs. 928.89 crores in 1987 and approx. 6000 to 7000 Crores as per current price level.

Emphasis needs to be laid on the fact that in the context of repeated and rampant violations by M/s GECPL and now M/s CPPPL a show cause notice was served by Member Secretary J&K PCB vide No.: PCB/NGT/27/2017/1392-94 Dated 25-11-

2019 to Project Manager M/s Gammon Engineers & Contractors Pvt. Ltd (GECPL) wherein he was directed to explain the reason within 15 days from its issuance as to why environmental compensation on the basis of 'Polluters Pays' Principle (PPP) in terms of directions of the Hon'ble National Green Tribunal be not recovered from him and as to why he may not be prosecuted in terms of Section-17 of the Environment (Protection) Act, 1986. (Copy Attached as Annexure-1).
In spite of their assurances to take corrective measures in this regard, no tangible steps were taken on the ground to rectify the violation.

It also needs to be brought into the notice of the Chairman, NGT National Highway (Udhampur to Banihal) Monitoring Committee that actual status of various dumping sites as it existed on 01st September, 2020 could be based on the quantity of muck dumped by construction companies till that date. Since these quantities are based on actual measurement at site, whose record is not available with J&K PCB. The matter was taken up with NHAI and M/s GECPL for providing these quantities so that violation could be quantified in terms of numbers.

The Project Director (NHAI) PIU-Ramban and Project Manager M/s GECPL also assured Member Secretary J&K PCB in his office Chamber in the month of May 2020 that our directions would be complied with and the quantum of earth work executed would be furnished by them to J&K PCB within 02 to 03 days positively. However, till date the same has not been provided in spite of raising the matter with them on more than one occasion. The relevant correspondence in this regard is attached as (Annexure- 2, 3 & 4) for record & reference.

Also, Irrigation and Flood Control Department has taken suo motto cognizance of the matter and directed the project authorities to stop forthwith illegal dumping of muck directly into the river which is proven to cause flooding of the downstream areas with disastrous effect (Copy Attached as Annexure-5).

Further, it is to submit that District Magistrate, Ramban has also imposed restrictions under section- 144 of Criminal Procedure Code (CrPC) against M/s GECPL directing not to dump the muck/materials in nallahs or other places except the identified muck dumping sites in District Ramban vide order No. DMR/711-15 dated 30-11-2019 (Copy Attached as Annexure-6).

Also, it is to submit that Tehsildar, Executive Magistrate 1st Class Ramban has also issued Notice under section- 133 of Criminal Procedure Code (Cr. PC) against General Manager M/s GECPL directing not to dump the muck/materials in Kow bagh Ramban vide No. TR/00/2019-20/NH-44/1573-74 dated 24-01-2020 (Copy Attached as Annexure-7).

In addition to above, District Magistrate Ramban has directed NHAI under Section-133 of CrPC vide order No. : DMR/ 1071-73 dated 26-05-2020 to remove the extra muck dumped in River Chenab other than the muck dumping sites and also to take corrective measures within a period of 02 months from the date of issuance of this order. (Copy Attached as Annexure-8).

The substantial evidence of environmental violation committed by the construction companies as it existed on 01st and 02nd September, 2020 at various dumping sites has been captured in photographs with labelling are attached for supporting the case.

Recommendation:

In view of the above stated facts, it is recommended that Project Director NHAI- PIU Ramban, Project Manager M/s Gammon Engineers & Contractors Pvt. Ltd. (GECPL), Project Manager M/s Hindustan Construction Company (HCC) Ltd. & Project Manager M/s Choudhary Power Projects Private Ltd. (CPPPL) may be prosecuted under Section-17 of Environment (Protection) Act, 1986 for non-compliance of conditions of Environmental Clearance obtained by them for execution of the project and for directly dumping muck in Chenab River & for causing damage to the environment in violation to Hon'ble NGT order dated 12-02-2019 and also levying environmental compensation on the basis of 'Polluters Pays' Principle (PPP) in terms of directions of the Hon'ble National Green Tribunal."

6. *Learned counsel for the NHAI has not disputed the report of the MC but submitted that on its part the NHAI has instructed the contractors for taking remedial action.*

7. *On the other hand, learned counsel for the contractors HCCL and GIL have filed copies of the letters to the NHAI to the effect that the contractors have been taking all possible measures. The submission of the learned counsel for the HCCL is that no work was going on till 31.07.2020 due to lock down. There were rains and landslides from June, 2020 to August, 2020 and there was default on the part of the Government in not giving additional space. The area is prone to landslides and on short notice the road is to be cleared.*

8. *We are unable to accept the justification put forth by the NHAI and its contractors. The fact remains that work has been going on and even during lock down period the responsibility for the damage cannot be altogether ignored, particularly when the damage caused is because of the activities prior to lock down. The report of an independent MC, headed by a former Judge of the High Court, based on site inspection by officers of the statutory authority, backed by photographic and other evidence, including orders of Executive magistrate recording the violations, has found violation of environmental norms. We do not see any reason not to accept the report merely on account of self-serving and untenable denials of the contractors in question. **Even NHAI has not disputed the violation***

but has blamed the contractors. We are, thus, unable to accept the stand of the contractors.

9. In view of the above, we accept the recommendations of the MC that the NHAI and the contractors have to take remedial action. NHAI cannot be rest content by simply saying that it has asked the contractors to take remedial action. Responsibility of NHAI to maintain environmental norms remains. The contractors are agencies of the NHAI, for which the NHAI also remains responsible. There is no bar against the NHAI from substituting its contractors violating the law by the compliant ones.

10. The State PCB may accordingly proceed with coercive measures, including assessment and recovery of compensation for the damage and initiating prosecution against the violators of environmental norms, following the due process of law. The MC may monitor further action of the State PCB. A further report as on 31.03.2021 may be filed before the next date 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.”

5. Accordingly, the Monitoring Committee has filed its report dated 05.04.2021 to the effect that the State PCB has passed its order dated 24.03.2021 in compliance of directions in Para 10 of the order of this Tribunal dated 28.09.2020. However, the said order does not provide information about the compliance status. The order of the State PCB is that compensation of Rs. 2 crores has been assessed against the NHAI vide order dated 24.03.2021 as follows:

“Whereas, reports about illegal and unscientific dumping and disposal of muck in the course of four lanning of National Highway from Udhampur to Banihal by the National Highway Authority of India (NHIA) and its contractors viz. a) M/s Gammon India Ltd. (GIL) and b) the Hindustan Construction Company Ltd. (HCCL), were received from the field functionaries of the Board, reporting further that such **disposal has affected the environment adversely besides damaging the ecology of the area.**

Whereas, on the directions of Hon'ble NGT, two reports dt. 31/07/2020 and 17/09/2020 filed by the Divisional Officer Ramban with regard to above were submitted before the Hon'ble NGT, which was pleased to direct the Board for recovery of Environmental Compensation for damages and initiation of prosecution against violators of environmental norms, accordingly.

Whereas, the Board vide its communication dt. 15.12.2020 directed its Technical Advisory Committee (TAC) to verify the ground position further and assess the damage caused to the Environment by illegal and unscientific muck dumping by NHAI.

Whereas, the authorities of NHAI have also been directed through a number of letters/notices, latest in the series vide letter dt. 24/11/2020 addressed to Regional Director/Officer, NHAI Jammu, to provide the details of muck excavated and status of its dumping, which was finally, submitted by NHAI on 11-02-2021.

Whereas, as per the referred report of NHAI submitted by Project Director PIU Ramban, **muck disposal in atleast 05 sites is above 100% than the designed capacity and NHAI authorities have admitted dumping of 200% muck at these locations.**

Whereas, the report of the JKPCB Committee dt 03-02-2021 also shows that NHAI has failed to take adequate Engineering and Biological measures as per EMP, framed at the time of seeking the Environmental Clearance, with the result **the muck has destabilized at the slopes and eventually slipped into river channels at many sites and damaged the biological environment in utter and blatant violation of the conditions of the Environmental Clearance.**

Whereas, the designated sites have not been developed before-hand to retain the muck excavated during the four lanning / construction works and the executing agencies kept on dumping the waste, which has caused serious damage to the Environment and Hydrological conditions, causing blockade of water course of natural drainage and rivulets besides narrowing the water channels and seasonal nallahs.

Whereas, the damage caused to the bio-diversity, river course, aquatic life, natural plantation forest cover, stability of slopes, geological disturbance and erosion of soil on slopes, is irreversible and has resulted in serious environmental concerns.

Whereas, the matter has also been examined by the Technical Advisory Committee (TAC) of the Board which vide report dt 03-02-2021 has opined that the actual damage caused to the ecology and environment of the area by illegal and unscientific disposal of muck for levying of full and final Environmental Compensation on NHAI requires in-depth scientific study by the Expert Committee with representatives from Central Pollution Control Board and NHAI itself. **However, the interim data indicates the environmental damage has occurred and evaluated tentatively as far more than Rs.2,00,00,000/= (Rupees Two Crore only).**

Now, therefore. in exercise of powers vested in the Board under Section 33 (A), 31(A) and Section 5 of the Water (Prevention & Control of Pollution) Act 1974, the Air (Prevention & Control of

Pollution) Act, 1981 and Environment (Protection) Act, 1986 respectively, read with the directions of Hon'ble NGT dt. 28/09/2020 in OA No. 295/2016, the NHAI shall deposit a sum of Rs.2,00,00,000/= (Rupees Two Crore only) as Environmental Compensation, as an interim measure, pending final assessment of damage in terms of the ecological loss till full and final damage is assessed by the Expert Committee. This recovery of interim Environmental Compensation on Polluter Pays Principles shall be the part of enforcement strategy and not a substitute of the compliance to be done as recommended by the Expert Committee approved by Hon'ble NGT.

Accordingly, Regional Officer, National Highway Authority of India (NHAI), Jammu is hereby directed under Section 5 of the Environment (Protection) Act 1986 to deposit a sum Rs.2,00,00,000/- (Rupees Two Crore) in the Environmental Compensation Fund Account No. 0023040510000001 of the Board in J&K Bank Ltd. within 45 days without fail and on lapse of above said period, an interest @ 12% on the Environmental Compensation amount shall accrue, at the risk and responsibility of the National Highway Authority of India.”

6. We have duly considered the report of the monitoring Committee and the State PCB and heard learned Counsel. The report of the Monitoring Committee is that the State PCB as well as NHAI failed to give compliance status to the Committee. Though violations mentioned in the order of the PCB are undisputed as the said order has not been questioned, complete information about compliance status of the mandate of the Water Act and other provisions, including the consent conditions of EC/CTE/CTO has not been furnished. Remedial action requires ascertaining change in water quality in terms of increase in turbidity and effect on blockages of streams/ Nalla and the river Chenab due to muck disposal. Violations are criminal offence under the concerned environmental laws. To uphold rule of law, the guilty must be prosecuted, as directed but neither the violations have been remedied nor prosecution initiated which is a matter of regret. When the violations are continuing for long, the same can be considered deliberate calling for more stringent action. As earlier observed, violations are statutory offences *inter alia* under the provisions of the Water (Prevention and Control of Pollution) Act,

1974. When violations are by juristic persons, apart from the corporate body, liability is also of all Directors, Managers and other officers. Further, the interim compensation does not give the basis in terms of assessed monetary cost of restoration, deterrence element for continuous violations, having regard to financial capacity of the violator and cost of environmental services lost forever. While construction of roads is social necessity, it cannot be at the cost of environment. Principle of sustainable development cannot be avoided. If protection of environment cannot be ensured, the Project may have to be halted to prevent damage to the environment by unauthorized muck dumping destroying the overall environment.

7. In view of serious failure on the part of the State PCB to perform its statutory obligation of initiating prosecution against the violators as earlier directed, the Chairman PCB has to explain why action be not taken for non-compliance of law and orders of this Tribunal. Compliance must now be ensured within two months from today. Similarly, NHAI which is a Government Organization and a Statutory Authority has failed to perform its obligation of preventing violations by not taking action against its errant contractors which needs to be explained by the Managing Director of NHAI. Compliance may also be ensured now by the Managing Director of NHAI within two months positively.

8. In view of continuous violations, as shown from the report of the Monitoring Committee headed by a former Judge of the High Court, we direct the Managing Director of NHAI and Chairman, State PCB to remain present in person by way of video conferencing with their respective action taken reports on the next date. Needless to say, if the failure to take action continues, the Tribunal may have no other option except to take coercive

measures against Managing Director of NHAI as well as Chairman, State PCB personally.

List for further consideration on 06.10.2021.

A copy of this order be forwarded to Managing Director, NHAI and Chairman, State PCB by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

M. Sathyanarayanan, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

June 28, 2021
Execution Application No. 32/2016
In O.A. No. 295/2016
DV