BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Original Application No. 661/2018

IN THE MATTER OF:

1. **Mr. Praveen Kakar**
   aged about 52 years
   s/o Late Sh. Krishan Kakar,
   r/o C-2488, Phase I, SL, Gurgaon-122009

2. **Mr. J C Kalra**
   about 75 years,
   r/o C-2492, Phase I, Sushant Lok, Gurgaon-122009

3. **Mr. D K Pant**
   about 50 years,
   r/o C-2615, Phase I, Sushant Lok, Gurgaon-122009

...Applicant(s)

Versus

1. **Ministry of Environment, Forest and Climate Change**
   Union of India through Secretary,
   Paryavaran Bhawan, CGO Complex,
   Lodhi Road, New Delhi-110003

2. **State of Haryana**
   Through Chief Secretary,
   Government of Haryana,
   Haryana Secretariat, Chandigarh-122001

3. The Director General
   Town and Country Planning Deptt, Haryana
   H.Q., SCO 71-75, Sec.17C, Chandigarh-160017

4. The Commissioner
   Municipal Corporation of Gurgaon
   C-1, Sector 34, Infocity,
   Gurgaon-122001, Haryana

5. **The Collector/Deputy Commissioner**
   First Floor, Mini Secretariat,
   Near Rajiv Chowk,
   Gurgaon-122001, Haryana

6. **The SDM, North**
   Mini Secretariat,
   Gurgaon-122001, Haryana

7. The Chairman
   Central Ground Water Board

Bhujal Bhawan, NH-IV,
Faridabad-121001, Haryana

8. The State Level Environment Impact Assessment Authority
Bays No. 55-58, Parytan Bhawan,
Ist Floor, Sector 2, Panchkula-134109
Haryana

9. Haryana Urban Development Authority (HUDA)
HUDA Office Complex,
C-3, Sector 6,
Panchkula-134109, Haryana

10. Haryana State Pollution Control Board
C-11, Sector-6
Panchkula-134109, Haryana

11. Ansal Properties & Infrastructure Ltd
Through its Director,
Regd. Office: 115 Ansal Bhawan, K.G. Marg,
New Delhi-110001

...Respondent(s)

Counsel for Respondent(s):
Mr. Anil Grover, Senior AAG with Mr. Rahul Khurana, Advocate for State of Haryana & HSPCB
Mr. Amit Singh Chauhan, Advocate for CPCB
Ms. Nitika Choukse, Advocate for DHBVN

PRESENT:

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MS. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER

Reserved on: 01st April, 2022
Pronounced on: 4th July, 2022

SYNOPSIS

	Documents	Para no	Page no
1.	Brief facts	1-9	3-9
2.	Inspection report dated 16.11.2018 by CPCB	10-11	9-13
3.	Status report dated 05.04.2019 by CPCB	12-15	13-16
4.	Action taken report dated 21.06.2019 by CPCB, filed on 21.06.2019	16	17-18
5.	Affidavit/Reply dated 09.07.2019 by CGWA, filed on 10.07.2019	17-20	19-22
6.	CGWA letter dated 30.09.2019 to respondent 11	21	22
7.	Reply dated 04.10.2019 by respondent 11, filed on 07.10.2019	22-23	22-23
8.	Compliance Report by CPCB dated 14.10.2019 filed on 15.10.2019	24-25	23-24
9.	Report dated 06.12.2019 by SEIAA Haryana	26	24
10.	Action taken report dated 08.01.2020 by HSPCB	28	24-26
11.	Letter dated 10.01.2020 from Hydrologist, Ground Water Cell Gurugram filed by CGWA on 16.01.2020	29	27
12.	DC Gurgaon letter (Compliance report) dated 27.01.2020	30	27

13.	Tribunal's order dated 05.02.2020	31	27-28
14.	Report dated 16.03.2020 by Chief Secretary, Government of Haryana	32	28
15.	Report dated 30.09.2020 by Chief Secretary, Government of Haryana filed on 30.09.2020	33-34	29-31
16.	Action taken report dated 07.09.2021 by Chief Secretary, Haryana filed on 10.09.2021	35-36	31-34
17.	Compliance Report dated 03.02.2022 by Dakshin Haryana Bijli Vitran Nigam on 11.02.2022	38	34-35
18.	Reply/Status Report dated 30.03.2022 by TCPD Haryana filed on 30.03.2022	39	36-41
19.	Report dated 31.03.2022 by Chief Secretary, Haryana filed on 31.03.2022	40	41-46
20.	Written Submission dated 12.04.2022 by applicant, filed on 15.04.2022	43	47
21.	Joint Committee Report dated 13.06.2022 by CPCB filed on 14.06.2022	44	47-48
22.	Issues	45	48
23.	Issue I	46-67	49-67
24.	Issue II	68-327	68-254
	a) Statutory Provisions	81-133	77-141
	b) Ground Water, Role of CGWA and History of CGWA	143-316	146-250
	c) Status of ground water in Gurugram	319-323	251-253
25.	Issue III	328-332	255-257
26.	Issue IV	333-442	257-321
	a) Environment Compensation-Assessment/Methodology	381-442	290-321
27.	Operative Part	443-444	321-324

JUDGMENT

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

1. Original Application 661/2018 (hereinafter referred to as '**OA**') has been preferred under Section 14 and 15 (b) and (c) read with 18 (1) and (2) of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act, 2010**') by three applicants namely Praveen Kakar, J C Kalra and D K Pant, complaining that M/s. Ansal Properties and Infrastructure Ltd., registered office at 115, Ansal Bhawan, K G Marg, New Delhi i.e. respondent 11 (hereinafter referred to as '**APIL-PP**') has illegally encroached upon and sold a substantial part of land, comprising about 45% of the construction project, which was reserved/meant for parks, roads etc. in Sushant Lok, Phase I, Gurgaon in violation of environmental laws, causing degradation to environment, hence, appropriate directions be issued for restoration of environment and appropriate environmental compensation should also be imposed for causing damage to environment.

2. Facts in brief stated in OA are that respondent 11 has developed a construction project i.e. Sushant Lok, Phase I, Gurgaon (hereinafter referred to as '**Questioned Project'**) on a piece of land admeasuring more than 600 acres. The area of project has undergone alteration from time to time and substantially increased in 2011. A chart has been given in OA mentioning year of commencement of project, the area of project as per sanctioned layout plan and remarks about purpose of certain part of land in the said sanctioned layout plan, as under:

Year	***Sanctioned Layout Plan/Amended Layout Plan (Area in Acres)***	***Remarks***
1986	*550.000*	*Original Plan showing provision of parks, open space etc.*
1989	*453.450*	*Part of Green Area, Parks, Open Space wiped out*
1992	*500.000*	*Part of Green Area, Parks, Open Space further wiped out*
1993	*512.000*	*Part of Green Area, Parks, Open Space further wiped out*
1995	*580.000*	*Part of Green Area, Parks, Open Space further wiped out*
1997	*582.000*	*Part of Green Area, Parks, Open Space further wiped out*
1998	*595.260*	*Part of Green Area, Parks, Open Space further wiped out*
2001	*595.760*	*Part of Green Area, Parks, Open Space further wiped out*
2004	*601.640*	*Part of Green Area, Parks, Open Space further wiped out*
2007	*601.648*	*Part of Green Area, Parks, Open Space further wiped out*
2011	*602.648*	*Part of Green Area, Parks, Open Space further wiped out*

3. Copies of sanctioned layout plans as amended from time to time are collectively placed on record as annexure P-1 (pages 28 to 37). The project is situated at Sector 27, 28 and 43 in Gurgaon. The last sanctioned layout

plan on page 37 shows the date of sanction as 15.09.2010 giving details of area, plots and public amenities as under:

"Details of Plots

SR. NO.	*TYPE*	*SIZE (sq.mt.)*	*AREA (sq.mt.)*	*TOTAL NO. OF PLOTS*	*TOTAL AREA (sq.mt.)*
1.	*I*	*5.0x 10.25*	*51.25*	*1018*	*52172.5*
2.	*II*	*9. x20.0*	*180*	*1304*	*234720*
3.	*II(b)*	*9.0x16.0*	*144.0*	*23*	*3312*
4.	*II(c)*	*10.0x 20.0*	*200*	*38*	*7600*
5.	*II(d)*	*10.0x 22.0*	*220*	*6*	*1320*
6.	*III*	*10.0x 25.0*	*250*	*1422*	*355500*
7.	*III(a)*	*15.0x20.0*	*300.0*	*13*	*3900*
8.	*IV*	*12.5x29.0*	*350.0*	*598*	*209300*
9.	*IV(a)*	*12.25x24.3*	*300.125*	*56*	*16807.0*
10.	*V*	*14.0x30.0*	*420.0*	*347*	*145740*
11.	*V(a)*	*12.0x29.0*	*348.0*	*70*	*24360.0*
12.	*VI*	*17.0x40.0*	*680.0*	*113*	*76840.0*
13.	*VI(a)*	*17.0x36.25*	*616.25*	*16*	*9800.0*
14.	*VII*	*18.0x45.0*	*910.0*	*56*	*45360*
15.	*VII*	*18.0x45.0*	*610.0*	*56*	*45360*
16.	*VII*	*15.0x45.0*	*675.0*	*11*	*7425.0*

TOTAL NO.S 5091

DETAIL OF AREAS

	PARTICULARS	*AREA (IN ACRES)*
1.	*AREA ALREADY LICENSED PRODUCING LAND EXCHANGE WITH HUDA VIDE THEIR MEMO NO. 21254 DT. 25-10-2002*	*602.648*
2.	*LICENCE APPLIED AREA*	*1546*
3.	*TOTAL SCHEME AREA*	*604.194*
4.	*AREA UNDER GH (11.47 + 5.887 + 1)*	*18.357*
5.	*AREA UNDETERMINED*	*0.04*
6.	*NET PLANNED AREA*	*585.797*
7.	*AREA UNDER PLOTS*	*295.098*
8.	*AREA UNDER COMM.*	*21.704 (3.71%)*
9.	*-*	*-*
10.	*PERCENTAGE*	*54.08%*

	PUBLIC AMENTIES	*REQUIRED*	*PROPOSED*
1.	*CRECHE*	*3*	*3*
2.	*NURSERY SCHOOL*	*21*	*18 + 3*
3.	*PRIMARY SCHOOL*	*10*	*10*
4.	*HIGH SCHOOL*	*3*	*3*
5.	*DISPENSARY*	*3*	*3*
6.	*HEALTH CENTRE*	*2*	*2*
7.	*CLUB/COMMUNITY CENTRE*	*3*	*3*
8.	*POLICE POST*	*2*	*2*
9.	*RELIGIOUS BUILDING*	*3*	*3*
10.	*ELECTRIC SUB STATION*	*2*	*3*
11.	*MINI TELEPHONE EXCHANGE*	*0*	*1*
12.	*SUB PURI OFFICE*	*3*	*3*

4. The total number of plots in the chart mentioned above are 5091 while actual number comes to 5147.

5. The amendment of layout plan, infact, was an attempt to encroach upon the green area initially proposed and approved for the project and thus, in the amended sectioned plan, the said area was reduced. This attempt of developer i.e., respondent 11 was co-operated by Town and Country Planning Department, Haryana (hereinafter referred to as '**TCPD Haryana**'), permitting sanction of layout plans whereby green area was constantly reduced. The authorities as well as respondent 11 ignored the provisions made for providing 45% of land available for roads, open spaces, schools and other public amenities as contained in clause 4 (1) of Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter referred to as '**HDRUA Rules, 1976**') which reads as under:

> *"(1) In the layout plan of a colony other than an industrial colony, the* ***land reserved for roads, open spaces, schools, public and community buildings and other common uses shall not be less than forty five percent of the gross area of the land under the colony.***
>
> *Provided that the Director may reduce after recording reasons therefor, this percentage to a figure not below thirty five percent where in his opinion the planning requirements and the size of the colony so justifies."*

6. In a plot measuring about 600 acres, a simple computation of 45% area would come to 270 acres which a builder has to leave for the purposes of roads, open spaces etc. but in the case in hand, respondent 11 has not provided the said land as per the above provision. Applicants have applied for specific information by submitting application under Right to Information Act, 2005 but information has not been made available. There was a public park in Block-C, Sushant Lok, Phase I, Gurgaon but substantial land thereof has been reduced by APIL-PP by selling it for construction purposes to third parties and even remaining part is in the process of such sale transactions. For prohibiting APIL-PP from altering park land, some residents filed civil suits but nothing has caused any impact upon APIL-PP who is continuing in his efforts of reducing amenities

areas in the said project. On account of reduction of open space, parks etc., the environment in the area is getting degradable, particularly, on account of illegal construction obstructing flow of drainage, sewage and water outlets causing water logging etc. and disturbing ecological balance in the area in question. Respondent 4 i.e., Municipal Corporation of Gurgaon (hereinafter referred to as '**MCG**') has prepared a DPR in respect of Sushant Lok, Phase I, Gurgaon and prominent observations therein are:

> *"a) It is estimated that the solid waste generation for the township to be approximately 50 ton.*
> *b) It is estimated that 50% of the solid waste generated will be decompostable waste.*
> *c) There is* ***no existing system for proper collection and disposal of solid waste****.*
> *d) The* ***colony developed by the colonizer is not as per the approved plans.***
> *e) The* ***green belt and open spaces are being used as commercial centres.***
> *f)* ***There is no exit for sewerage from C Block because HUDA sewage lines from Gold souk to Ram Mandir near HUDA City Centre Metro Station is choked and damaged****.*
> ***g) There is back flow of sewerage into the houses during heavy rains.***
> ***h) At some points, the sewer lines are connected with the drainage system, which is a absolutely wrong.***
> *i) During Survey work it has been found that the storm water drains laid in these areas do not have proper gradient/ slope and disconnection at various points.*
> ***j)*** *The* ***Chakarpur sewage lines have been connected into storm water drain.***
> ***k)*** *The* ***open drains have been clogged with the sold waste which is a cause of health concern.***
> ***l) The existing rain harvesting system is poorly designed and is not in working condition."***

7. However, the aforesaid shortcomings were not heeded by APIL-PP who is encroaching upon the open area/green belt/park area and thereby causing damage to environment, disturbing environmental equally. No development is permissible at the cost of environment and every person has a Fundamental Right to live in a healthy environment. Some of the copies of representations/complaints/letters sent by applicants and other residents are filed as annexure P-6 and P-7 to OA I.

8. Applicants have prayed for action against respondent 11 for illegally grabing and selling major part of 45% area of the project meant for parks, roads etc. and also to impose environmental compensation, particularly, since project is without any Environmental Clearance (hereinafter referred to as '**EC'**) required under the provisions of Environment (Protection) Act, 1986 (hereinafter referred to as '**EP Act, 1986**') read with Environment Impact Assessment Notification dated 14.09.2006 (hereinafter referred to as '**EIA 2006**'). Applicants have also prayed for a direction to respondents 1 to 10 i.e., Statutory Regulators and Authorities to take appropriate action against respondent 11 so as to ensure that people residing in Sushant Lok, Phase I, Gurgaon live in free and unpolluted environment. Applicants have impleaded Statutory Authorities and Regulators as respondents 1 to 10, which are Ministry of Environment, Forest and Climate Change (hereinafter referred to as '**MoEF&CC**'); State of Haryana through Chief Secretary, Director General, TCPD Haryana; Commissioner, MCG; Collector/Deputy Commissioner, Gurgaon (hereinafter referred to as '**DC, Gurgaon**'; Sub-Divisional Magistrate, Gurgaon; Chairman, Central Ground Water Board, Faridabad (Haryana) (hereinafter referred to as '**CGWB**'); State Level Impact Assessment Authority, Haryana (hereinafter referred to as '**SEIAA Haryana**'); Haryana Urban Development Authority (hereinafter referred to as '**HUDA**') and Haryana State Pollution Control Board (hereinafter referred to as '**HSPCB**').

9. This OA was registered on 18.09.2018 and considered by Tribunal on 19.09.2018. Noticing the averments made in OA, Tribunal found it appropriate to obtain a factual report for which a joint Committee was constituted comprising Central Pollution Control Board (hereinafter referred to as '**CPCB**'), TCPD Haryana, Central Ground Water Authority

(hereinafter referred to as '**CGWA**'), SEIAA Haryana and Delhi School of Planning and Architecture.

Inspection Report dated 16.11.2018 by CPCB, filed on 16.11.2018

10. Pursuant to order dated 19.09.2018, joint Committee comprising Pankaj Agarwal, Scientist 'E', CPCB; R K Chauhan, Joint Director, SEIAA Haryana; Sanjay Kumar Nayak, Assistant Hydrologist, CGWA Delhi; Amit Madholia, Assistant Town Planner-Enforcement, TCPD Haryana and Dr. Minakshi Dhote, HOD-Landscape Architecture, Delhi School of Planning and Architecture, through CPCB submitted report dated 13.11.2018 vide letter dated 16.11.2018. Observations and findings of Committee and concluding remarks are as under:

> "***Observations & Findings of Meeting and Site Visit:-***
>
> ***Open, Green and Plotted Areas:-***
> *Sushant Lok, phase-1 is a residential township spread over 604.194 Acres across sectors 27,28,43,52 of Gurugram and has been developed by Ansal Properties & Infrastructure Pvt. Ltd, New Delhi under various licenses issued to the project proponent by Town and Country Planning Dept., Haryana from 1985 to 2011 under Section 3 of the Haryana Development & Regulation of Urban Areas Act, 1975 and Rules framed there under. Block-C as mentioned in Hon'ble NGT order is a part of aforesaid township.*
>
> *List of various Licenses is enclosed as* ***Annexure-II****. Copy of first license dated 01.06.1985* ***(Annexure II A)*** *and last two licenses dated 12.02.2007 (****Annexure II B)*** *& 13.04.2011* ***(Annexure-IIC)*** *are also enclosed.*
>
> *As per clause 4(1) of Haryana Development & Regulations of Urban Areas Rules, 1976 "****percentage of area under roads, open spaces etc in layout plans****,*
>
> *"In the layout plan of a colony, other than an industrial colony, the land reserved for roads, open spaces, schools, public and community buildings and other common uses shall not be less than 45% of the gross area of the land under the colony".*
>
> *It was observed that as per approved Revised Layout Plan bearing Drawing no. D.G., T.C.P.-2342 dated 24.12.2010* ***(Annexure-III)*** *of Sushant lok-1, total licensed area of Sushant lok-1 is 604.194 Acres and out of it 18.357 Acres is earmarked for Group Housing. The remaining licensed area i.e. 585.797 Acres is under net planned area. Area under plots 8 under commercial is 295.098 acres & 21.704 acres respectively making total saleable area 316.802 (295.098+21.704) which is 54.08% of net planned area.*

The committee visited the parks, green and plotted area in Block-C of Sushant Lok-I and some encroachment like hutment for security/labors, DG sets, kitchen garden were observed. ***(Photo-1)***

In earmarked green areas, green belt has not been developed by project proponent according to norms and standard practices*, natural shrubs have grown as against turfing and plantation.* ***(Photo-2)***

It was understood that area under open/green area, road and community site needs to be verified as per standard methods adopted by Town & Country Planning dept. which will lead to the conclusion whether 45% approved area under open/green area, road and community site is available or not.

Requirement of Environment Clearance:-

Project proponent has ***not obtained Environmental Clearance (****EC). The Committee observed that* ***last two licenses (Annexure-II B & II C) for development of area of 1 acre & 1.55 acre were granted on 12.2.2007 & 13.04.2011 respectively which falls after EIA notification date 14.09.2006,*** *cut-off date of requiring Environmental Clearance (EC) and execution of aforesaid licenses comes under expansion of project and* ***total area of licensed colony after expansion is 604.19 Acres which crosses the threshold limits (>50ha=123.5 Acres of area development projects****) and thus* ***project proponent was required to obtain EC****.*

Requirement of Consent To Establish & consent To Operate:-

Under the provisions of Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981, project proponent was required to obtain Consent to Establish (CTE) from respective State Pollution Control Board prior to commencement of construction activities at site and was required to obtain Consent to Operate (CTO) after establishment of licensed colony.

The committee was informed by project proponent that ***CTE & CTO have not been obtained.***

Use of Ground Water:-

Project proponent has applied for registration of 39 number of already existing tube wells in Sushant Lok-1 with Central Ground Water Authority (CGWA), New Delhi in year 2001 & 2002. Presently, out of these 39 tube wells, ***21 tube wells arc being used to supply water to residents of this colony. No objection certificate (NOC) from CGWA in this regard is not available with project proponent.***

The committee inspected ***two operating tube wells (TW 16 & TW 17) in Block-C and found that flowmeters fixed with these tube wells are not working (Photo-3)****. List of 39 tubewells and two tubewells' registration application is enclosed as* ***(Annexure - IV****).*

Sewage Treatment Plant:-

Sewage treatment plant ***(STP) is not installed*** *and sewage generated in the licensed colony is discharged through Haryana Urban Development Authority (HUDA) sewerage system to HUDA STP for treatment but committee observed that* ***sewage is meeting the***

***storm water drain as it is not getting passed through sewerage* system to STP. (Photo-4).**

Rain Water Harvesting System:-
11 nos. of Rain Water Harvesting Structures ***(Annexure-V)*** *for open spaces and Common area are constructed in Sushant Lok-1.*

Committee visited ***3 nos. of rain water harvesting structures in Block-C and found non-functional****. The basic purpose of ground water recharging is not being achieved by these structures* ***(Photo-5)***

As per the Haryana Building code, 2017, clause 8.1 (1) arrangement of roof Rain water Harvesting within the plot shall have to be made by plot owner, constructing the building on the plot where the area of the rooftop is 100 Sq Meters or more.

Committee observed that Rain Water Harvesting System for houses is not provided*.*

Maintenance of Licensed Colony:
Project proponent has executed tripartite agreement ***(Annexure-VI)*** *with Pro Facilities Pvt. Ltd. and Sushant Lok Residents Welfare Association for maintenance services in licensed colony.*

The committee observed that maintenance of roads, footpath, parks is not up to the mark and ***system of collection of solid waste is not effective****.* ***(Photo-6)***

Construction and Demolition Waste Management Rules, 2016:-
Construction and Demolition waste management rules, 2016 and its guidelines are ***not being followed*** *in the colony.* ***(Photo-7)***

Diesel Generator (DG) Sets:-
DG sets are operating without adequate stack height *in the licensed colony.* ***(Photo-8)***

Completion certificate:-
Part completion certificate *under rules 16 of Haryana Development and Regulation of Urban Areas Rules, 1976 have been* ***granted*** *to project proponent by Town and Country Planning Department, Haryana* ***from 1991 to 2003****.*
Copy of Part Completion Certificate dated 10.05.1991 is enclosed as ***(Annexure VII)***

CONCLUDING REMARKS:-
1. *Encroachment like hutment for security/labors, DG sets, kitchen gardens were observed. In earmarked green areas, green belt has not been developed according to norms and standard practices by project proponent, natural shrubs have grown as against turfing, plantation. However, committee recommend that area under open/green area, road and community site needs to be verified as per standard methods adopted by Town & Country Planning dept. which will lead to the conclusion whether 45% approved area under open/green area, road and community site is available or not.*
2. *Project proponent is required to obtain Environmental Clearance (EC) under provisions of EIA notification dated 14.09.2006, as last*

two licenses were Granted after 14.09.2006, cutoff date of requiring EC and total area crossed the threshold limit.

3. *Consent to Establish & Consent to Operate have also not been obtained. It is violation of Water (prevention and Control of Pollution) Act, 1974 & Air (prevention and Control of Pollution) Act, 1981 by project proponent.*
4. *Project proponent has applied for registration of 39 Tube wells with Central Ground Water Authority (CGWA) but No Objection Certificate (NOC) from CGWA for extraction of ground water is not available. Flowmeters fixed with tube wells need to be rectified to get the quantity of extracted water.*
5. *Rain water harvesting system for houses is not provided & rain water harvesting structures for open spaces & common area are non-functional. The basic purpose of ground water recharge is not being achieved by these structures.*
6. *Sewage is meeting the storm water drain as it is not getting passed through sewerage system to HUDA STP. Project proponent, Haryana Shehri Vikas Pradhikaran (HSVA) (former HUDA) and Gurugram Metropoliton Development Authority (GMDA) are required to resolve this issue jointly.*
7. *Maintenance of roads, footpath, parks is not up to the mark and system of collection of solid waste is not effective.*
8. *Construction and Demolition waste management rules, 2016 and its guidelines are not being followed in the colony.*
9. *DG sets are operating without adequate stack height.*
10. *Part completion certificates have been granted to project proponent by Town and Country Planning Department, Haryana."*

11. The above report was considered by Tribunal on 08.01.2019. Noticing serious violations of environmental norms and laws by APIL-PP, including execution of project without EC under EIA 2006 and Consent to Operate (hereinafter referred to as '**CTO**') under Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as '**Water Act, 1974**') and Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as '**Air Act, 1981**') and yet no remedial/ preventive/punitive action was taken by Statutory Regulators, Tribunal castigated role of Statutory Regulators and directed appropriate action by such Regulators. Relevant extract of the order dated 08.01.2019 comprising paras 4 to 7, is as under:

> *"4. The **above factual conclusion shows violation of environmental norms by the respondent no. 11- Ansal Properties and Infrastructure Ltd**. The project has been constructed without taking consent to operate under the Air (Prevention and Control of Pollution) Act and Water (Prevention and Control of Pollution) Act and without requisite Environmental Clearance. Rain water harvesting system has not been provided*

and ground water has been extracted without requisite NOC from CGWA. Sewage is meeting the storm water drain. Maintenance is not upto the mater, Construction and Demolition Waste Management Rules, 2016 have not complied with. DG sets are operating without stack height. Inspite of the above, part completion certificate have been granted by the Town and Country Planning Department, Haryana. It is also clear that despite serious violations, the Haryana State Pollution Control Board has failed to perform its duties in taking statutorily mandated coercive measures under Sections 31A Air Act and 33B of the Water Act or initiating prosecution. ***The CGWA, CPCB, State PCB have also failed to perform their duties. The Town and Country Planning Department appears to have colluded****.*

5. *In view of above, we direct CPCB to exercise its statutory power to determine and recover the damages and issue appropriate further directions for closure of the project and initiating prosecution in accordance with the procedure prescribed under Air Act and Water Act.*

6. *The CPCB will be at liberty to coordinate with the concerned Authorities including the CGWA and the State PCB. Action may include recovery of damages for loss to environment, closure of the project as well as prosecution under the relevant statutory provisions.*

7. *Action plan may be furnished to the Tribunal within three months by e-mail at ngt.filing@gmail.co."*

Status Report dated 05.04.2019 by CPCB

12. In compliance of the above order dated 08.01.2019, a status report dated 05.04.2019 was submitted by CPCB stating that Chairman, CPCB issued certain directions to respondent 11(APIL-PP) vide letter dated 28.02.2019 and also to Member Secretary, CGWA for determination and levy of environmental compensation for extraction of ground water illegally from 39 tubewells.

13. Report also referred to reply dated 13.03.2019 (page 128 of paper book), submitted to CPCB denying allegations made and directions issued by CPCB and NGT. It also challenged authority and power of NGT as also delegated to CPCB by environmental laws and NGT.

14. Report also said that the manner in which respondent 11 operated, was found highly unsatisfactory by HSPCB as communicated vide letter

dated 26.02.2019. Respondent 11 has apparently defaulted earlier and has no regard to environment as well Statutory Regulators who are responsible for protection of environment, made certain recommendations/submissions. The relevant extract of report dated 05.04.2019 reads as under:

> *"5. In view of the non-compliance observed, Order of NGT dated 08.01.2019 and in exercise of the power vested under Section 5 of the Environment (Protection) Act, 1986,* ***Chairman, CPCB has directed M/s Ansal Properties & Infrastructure Ltd (through its Chairman) vide letter dated 28.02.2019 to the following effects****:*
>
> *i. To stop all the construction/expansion activities in Sushant Lok, Phase 1, Gurugram with immediate effect.*
>
> *ii. M/s Ansal Properties & Infrastructure Ltd shall pay Environment Compensation of Rs 12.18 Crore (Rs. Twelve crore eighteen lacs only) to CPCB* ***on account of discharge of untreated sewage for 178 days (till 28.02.2019****) as per Environmental Compensation Policy framed in compliance of Hon'ble NGT order dated 31.08.2018 in OA no. 593/2017 within 15 days from the receipt of these directions.*
>
> ***iii.*** *M/s Ansal Properties & Infrastructure Environmental Ltd* ***shall pay another Environmental Compensation as determined by Central Ground Water Authority on account of extraction of ground water without permission and defunct rain water harvesting system in Shushant Lok, Phase-1, Gurugram.***
>
> *iv. The Environment Compensation amount mentioned in sl. no. 1 above shall be deposited in CPCB's Union bank of India A/C no. 532702010009078, IFSC code UBINO553271, Branch-IP Extension, Delhi.*
>
> *v. In case of delay in deposition of Environment Compensation, penal interest shall be charged as per rules.*
>
> *vi. Ansal Properties & Infrastructure Ltd shall submit action plan to CPCB regarding rectification of the shortcomings as highlighted above in the concluding remarks of report within 7 days from the receipt of these directions.*
>
> *vii. All the shortcomings as highlighted above in the concluding remarks of report shall be rectified within 30 days from the receipt of these directions.*
>
> *viii. Action taken report be submitted along with necessary documentary evidences immediately after completion of action taken.*

ix. *Ansal Properties & Infrastructure* ***Ltd shall apply & obtain all relevant NOCs, Consents and Environmental Clearance from concerned departments.***

Copy of the CPCB Directions is attached as Annexure ***II****.*

6. *CPCB has also directed vide its direction dated 28.02.2019 as referred above in 5 to* ***The Member Secretary, Central Ground Water Authority****, 18/11, Jamnagar House, Man Singh Road, New Delhi-110011 for determination and levying Environmental Compensation on account of extraction of ground water through 39 nos. of tube-wells without permission and defunct rain water harvesting system in Shushant lok, Phase-1, Gurugram. Action taken Report from CGWA is still awaited.*

7. ***In response to CPCB Directions dated 28.02.2019, M/S Ansal Properties & Infrastructure Ltd, Sushant lok-1, Gurugram vide its letter dated 13.03.2019 has communicated complete denial of directions issued by CPCB and NGT. Rather, the builder has questioned the 'Authority and Powers' delegated to CPCB by the Act of Law and NGT. The reply received is very casual, arrogant, open ended and without any action plan. Response by the Builder is as follows:***

   i. *Hon'ble Authority has wrongly and without having jurisdiction to issue directions of punitive nature in subject matter has issued the directions u/s 5 of the E(P) Act, 1986.*

   ii. *Authority has got no power or jurisdiction to issue directions for any arbitrary compensation which is punitive in nature.*

   iii. *State Environmental Impact Assessment Authority (SEIAA) shall assess the degree of violations in such project and the compensation if any shall be decided by SEIAA.*

   iv. ***Process of compliance has already been initiated with Haryana SPCB, CZWA and State EIAA.***

   v. ***Preparation of application for obtaining Environmental Clearance has been initiated.***

   Copy of the reply is attached as ***Annexure III****.*

8. *Scrutiny of the documents submitted by M/s Ansal Properties & Infrastructure Ltd, Sushant lok-1, Gurugram revealed that none of the Authority as claimed by the company is in the process of levying Environmental Compensation for the damages caused to the environment by the company. It is also observed that* ***Haryana SPCB is also completely dissatisfied with the acts of operation and reply by the company as evident by Haryana SPCB letter dated 26.02.2019.***

9. *The* ***reply of M/S Ansal Properties & Infrastructure Ltd, Sushant Lok-1, Gurugram does not mention about action plan in respect of the shortcomings pointed out by the joint inspection team. The reply is also silent on extraction of ground water without permission and defunct rain water harvesting system in Shushant Lok, Phase-1, Gurugram.***

10. *It is worth to mention here that the same Group of Company has also been found guilty of damaging the environment in another case also titled as Rajendra Kumar Goel Vs. MoEFCC & Ors. (OA No. 378/2016 before NGT) and accordingly Hon'ble NGT has imposed an Environmental Compensation of Rs. 10.00 Crores with directions for deposition of an additional performance guarantee of Rs. 5.00 crores vide Order dated 25.03.2019.*

11. *From the above, it is evident that M/s Ansal Properties & Infrastructure Ltd, Sushant lok-1, Gurugram, have defaulted earlier also and having no regard for the Environment as well as Authorities concerned for protection of environment.*

- *In view of the foregoing paras, it is humbly submitted that:*

1. ***M/s Ansal Properties & Infrastructure Ltd, Sushant lok-1, Gurugram, may be directed to submit the action plan for prevention & control of pollution from the premises and deposition of Environmental Compensation so that measures for restoration of normal environment**.*

2. *Haryana SEIAA, CGWA and Haryana SPCB may also be included as Respondents in the application under consideration.*

3. ***CGWA may be directed for determination and levying Environmental Compensation on account of extraction of ground water through 39 nos. of tube-wells without permission and defunct rain water harvesting system in Shushant lok, Phase-1, Gurugram and also prosecute the agency for violations under E(P) Act, 1986**."*

15. The compliance report, in fact, did not show any effective action on the part of Statutory Regulators. The above report was considered by Tribunal on 21.05.2019 and noticing that Statutory Regulators have not taken any appropriate action in the matter, Tribunal passed order, relevant extract whereof reads as under:

> *"Compliance report has been filed vide email dated 05.04.2019 indicating the steps taken.* ***There is however nothing to show the exercise of statutory power for prosecution**. The CPCB has suggested that the project proponent should furnish an action plan and CGWA should determine compensation for illegal extraction of ground water.* ***We are of the view that such powers can be exercised by the CPCB itself by giving directions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. A Pollution Board is entitled to disconnect the electricity and water supply and take measures for stopping illegal activities as condition for continuing consent to establish or to operate.***
>
> *Let such further steps be taken in accordance with law and further report furnished to the Tribunal within one month by email at ngt.filing@gmail.com."*

Action taken report dated 21.06.2019 by CPCB, filed on 21.06.2019:

16. An action taken report dated 21.06.2019 pursuant to order dated 21.05.2019, was submitted by CPCB. Action taken by various authorities is given in the form of a chart, as under:

"Accordingly, CPCB has initiated actions and details are as follows:

1. *In exercise of the powers vested under Section 5 of the Environment (Protection) Act, 1986 to the Chairman, CPCB, following directions have been issued on 21.06.2019 to the Project Proponent and concerned Authorities to ensure compliance of Environmental Regulations and Orders issued by Hon'ble NGT.*

1.	*The Chairman, Ansal Properties & Infrastructure Ltd.*	-	*a. To stop all the construction/expansion activities in Shushant Lok, Phase1, Gurugram with immediate effect.* *b.* ***To pay Environment Compensation of Rs. 14.6962 Crore (Rs. Fourteen Crore, Sixty Nine lacs, Sixty Two Thousand only) only to CPCB on account of discharge of untreated sewage for 281 days (till 17.06.2019)*** *to CPCB's Union bank of India A/c no. 532702010009078, IFSC code UBINO553271, Branch-IP Extension, Delhi as per Environmental Compensation Policy framed in compliance of Hon'ble NGT order dated 31.08.2018 in OA no. 593/2017 within 7 days from the receipt of these directions. In case of delay in deposition of Environment Compensation, penal interest shall be charged as per rules.* ***c. To pay another Environmental Compensation as determined by Central Ground Water Authority on account of extraction of ground water without permission and defunct rain water harvesting system in Shushant Lok, Plase-1, Gurugram.*** *d. To submit action plan to CPCB regarding rectification of the shortcomings as highlighted above in the concluding remarks of report within 7 days from the receipt of these directions and to rectify all the shortcomings as highlighted in the concluding remarks of report within 30 days from the receipt of these directions. Action taken report be*

			submitted along with necessary documentary evidences immediately after completion of action taken.
2.	*The Chairman, Haryana State Pollution Control Board*	-	*a.* ***NOCs, Consents and Authorisation granted to M/s Ansal Properties & Infrastructure Ltd, Gurugram be revoked immediately*** *and shall not be considered in future also till compliance of these directions are made.* *b.* ***Discharge of untreated sewage from the premises of the company into storm water drain be stopped****.*
3.	*The Member Secretary, Central Ground Water Authority*	-	***Environmental Compensation on account of extraction of ground water through 39 nos. of tube-wells without permission and defunct rain water harvesting system in Shushant Lok, Pluase-1, Gurugram, be determined and levied immediately.***
4.	*The Chairman, State Environment Impact Assessment Authority, Haryana*	-	***Environmental Clearance(s) granted to the Company, if any, be revoked immediately. No expansion case in future related to this site be considered till compliance of these directions are made.***
5.	*The City Magistrate, CTM Gurugram*	-	*a. Compliance of these directions issued to the Company and other State Government departments be ensured.* *b. Collection of Environmental Compensation imposed by CPCB be ensured.*
6.	*The Director Town and Country Planning Department, Haryana*	-	***a. No further expansion of the project be considered.*** ***b. No completion certificate be granted to the Company and any such certificate already granted be revoked immediately.***
7.	*The Chairman cum Managing Director, Dakshin Haryana Bijli Vitran Nigam*	-	***No electricity supply be provided for any further expansion of the project*** *by the company in Sushant Lok-1, Gurugram.*
8.	*The Chief Administrator, Haryana Shahari Vikas Pradhikaran*	-	***No Water supply to the company be sanctioned for any further expansion*** *of the project in Sushant lok-1, Gurugram.*

Affidavit/Reply dated 09.07.2019 by CGWA, filed on 10.07.2019:

17. A separate affidavit/reply dated 09.07.2019 was also filed by CGWA vide letter dated 10.07.2019 stating that pursuant to Tribunal's order dated 08.01.2019, CGWA requested/directed DC, Gurgram, vide letter dated 08.02.2019, to seal illegal borewells and also recover damages and initiate prosecution against respondent 11(APIL-PP) under Section 15 and 19 of EP Act, 1986. Matter relating to determination of compensation was already dealt with by Tribunal in ***OA 176/2015*** and other connected matters. It was also found that CPCB has determined compensation for entire Phase I of Sushant Lok though joint Committee has inspected only Block C in Sushant Lok, Phase I. CGWA had issued directions for registration of all existing borewell in entire district of Gurgaon. Pursuant thereto, respondent 11 got registered 39 tubewells on 27.03.2002 in the office of DC, Gurgaon. These wells were reportedly constructed during 1985 to 2000 though in some cases, year of construction was not categorically mentioned in the registration form. CGWA vide Public Notice dated 26.12.2000 declared Gurugram town and adjoining industrial area as "Notified Area" and imposed prohibition on construction and installation of new ground water structures without permission. Any scheme/project of ground water development and management require prior permission as per public notice dated 26.12.2000. CGWA further declared entire Gurgaon district as 'Notified Area' vide public notice dated 13.08.2011. Restrictions on construction and installation of new ground water structures and NOCs were required to be issued by DC, Gurgaon. The existing tubewells of Sushant Lok, Phase I were not covered under directions of CGWA. Considering directions of Tribunal dated 15.04.2015 in ***OA 204/2015***, CGWA issued guidelines on 16.11.2015 directing industries/projects to obtain NOC and pursuant thereto respondent 11 which had only part completion certificate, was bound to comply

Tribunal's direction dated 15.04.2015 given in ***OA 204/2015*** and CGWA's guidelines dated 16.11.2015. Respondent 11 submitted application dated 16.03.2019 (online application submitted on 13.03.2019) for grant of NOC to Regional Director, CGWB Chandigarh, which was received thereat on 20.03.2019. As per the application, water requirement was 7,056 m^3/day i.e., 25,75,440 m^3/year from the existing 21 operative tubewells. The break up reported by respondent 11 is that HUDA is supplying 2,500 m^3/day and respondent 11 is drawing 1,100 m^3/day of ground water. It was also reported that 3,456 m^3/day treated waste water is getting recycled from the project site. It was admitted by PP that ground water is brackish and require treatment after blending with fresh water supplied by HUDA. Committee has reported that PP constructed 11 Rain Water Harvesting (hereinafter referred to as '**RWH**') structures but three structures visited by Committee were found defunct at the time of inspection. Other NOC application submitted by PP to CGWB proposed to construct 11 large additional recharge structures for open/common area and 600 additional recharge structures for individual houses in Sushant Lok, Phase I. Giving background of various guidelines issued by CGWA, it was stated in the above affidavit/reply of CGWA that guidelines were issued in 2009, 2012, 2015 and of 2018 which was on hold by Tribunal's order dated 03.01.2019 in ***OA 176/2015***. Following Tribunal's order dated 03.01.2019 and 07.05.2019 in ***OA 176/2015***, MoEF&CC has to come out with a new set of guidelines. No such guidelines were filed by MoEF&CC by 04.07.2019, hence proceeding in ***OA 176/2015*** and other connected matters was deferred. Hence, there was no provision under which environmental compensation could be levied/determined. However, NGT is competent to take a decision on environmental compensation under Section 15 of NGT Act, 2010 which it may impose as it may deem fit.

18. Reply of CGWA also said that Committee investigated only C Block of Sushant Lok Phase I but compensation was determined for the entire Phase I. As per application of PP, dated 13.03.2019, ground water requirement for Phase I in Sushant Lok is 1,100 m^3/day (1,01,500 m^3/year) and estimated recharge given under recharge proposal of PP is 2,33,000 m^3/year from paved and road areas of Sushant Lok, Phase I. Excess estimated as per information given by PP is 1,68,500 m^3/year. CGWA has written letter to DC, Gurgaon on 08.02.2019 to take appropriate action as per Tribunal's order dated 08.01.2019. CGWA on its own, formerly recommended environmental compensation at the rate of Rs. 24/- which comes to around Rs. 40,44,000/- per annum and directed thereof as under:

> *"In view of above position and based on the information given by the project proponent (R/11) under his application for grant of NOC, the* ***CGWA could determine the environmental compensation @ R. 24/- per m3/year (i.e. @ Rs. 2/- per m^3/month × 12 months) on 1,68,500 m3/year of excess draft reported by project proponent w.e.f. 15.4.2015 or 16.11.2015, i.e. @Rs. 2 × 12 × 1,68,500=Rs. 40,44,000.00 per annum or as may be considered by this Hon'ble Tribunal.*** *The proposed Environment compensation is based on the rates prescribed for water conservation fee under Notification S.O. No. 6140(E)/12.12.2018 for infrastructure projects (other than dewatering project)."*

19. It is also pointed out that in ***OA 546/2016, Harinder Singh & Ors. vs. M/s. Prateek Buildtech (India) Pvt. Ltd.,*** vide order dated 30.11.2018, Tribunal determined environmental compensation of Rs. one Crore i.e., at the rate of Rs. 33/- (i.e., Rs. 3000/- per 10,000 liters). Therefore, it was also recommended that same criteria may also be followed in the present case. Similar directions were issued on 02.05.2019 in ***OA 186/2019, Jagriti Sansthan vs. State of Uttar Pradesh***. CGWA also recommended that for failure to construct RWH structures by 600 individual houses, a fine of Rs. one Lakh on each house, may be imposed.

20. Action taken report dated 21.06.2019 submitted by CPCB and CGWA affidavit/reply dated 09.07.2019 were considered by Tribunal on 13.09.2019. Tribunal directed that as per information given in the action taken report as also in the reply, follow up action be taken and environmental compensation as recommended by CGWA may be recovered as interim compensation after noticing the contents of action taken report, Tribunal issued directions in para 4 and 5 of order dated 13.09.2019 which read as under:

> *"4. Further steps need to be taken as follow up of above directions. We find from the affidavit filed by the CGWA on 09.07.2019 that compensation has been assessed for failure to recharge the ground water in terms of the conditions for ground water extraction at Rs. 40,44,000.00 per annum.* ***The said amount may be recovered as interim compensation.*** *The CGWA claims to have written letter dated 08.02.2019 to the Deputy Commissioner, Gurgaon to seal illegal wells.*
>
> *5. Let the compliance reports be filed by the CPCB, State PCB, SIEAA, Haryana, CGWA, Town and Country Planning Department, Haryana, Dakshin Haryana Bijli, Vitran Nigam, Haryana Shahari Vikas Pradhikaran and District Magistrate Gurgaon within one month by e-mail at judicial-ngt@gov.in."*

CGWA letter dated 30.09.2019 to respondent 11:

21. In compliance of the above order dated 13.09.2019, CGWA issued a letter dated 30.09.2019 to respondent 11, directing it to deposit Rs. 40,44,000/- towards extraction of ground water as an interim compensation.

Reply dated 04.10.2019 by respondent 11, filed on 07.10.2019:

22. Reply dated 04.10.2019 was submitted by PP which was placed before Tribunal along with letter dated 07.10.2019. PP said that the project was completed before 07.07.2004 and at that time, there was no provision to construct STP in residential projects. HUDA has provided a common STP for all sectors to treat sewerage and issued NOC to PP to connect colony sewer line to their master sewer line. Further, SEIAA has also taken

cognizance of the issues and matter pending thereat, therefore, no separate action is needed on part of either CPCB or any other department. With regard to payment of interim compensation, PP said that project was already handed over to RWA/MCG, therefore, PP is not liable to pay any compensation.

23. Documents appended to the reply of APIL-PP show that Phase I project was handed over to RWA vide Memorandum of Understanding dated 25.05.2015 (page 379) and further to MCG, it was proposed in 2016. However, APIL-PP claimed transfer to MCG in 2016 and said that after handing over of the project to MCG, the said body is responsible for operation, maintenance and extraction of ground water.

Compliance Report by CPCB dated 14.10.2019 filed on 15.10.2019:

24. A separate compliance report dated 14.10.2019 along with letter dated 15.10.2019 was submitted by CPCB. It is stated therein that pursuant to Tribunal's order dated 13.09.2019, a meeting was convened on 13.09.2019 with all concerned authorities and recommendations made in the said meeting are as under:

> *"(i)* ***M/s Ansal Properties & Infrastructure be asked to provide revised ATR and to deposit the Environmental Compensation of Rs. 16.729 Crore (Rupees Sixteen Crore, Seventy-Two Lakhs Ninety Thousand) only (till 13.09.2019) and to deposit the compensation assessed by the Central Ground Water Authority for failure to recharge the ground water in terms of the conditions for ground water extraction at Rs. 40,44,000.00/-per annum.***
>
> *(ii)* *As per submission of DTCP representative,* ***two licenses were issued after notification of EIA notifications, 2006 (after 14.09.2006) which led to expansion of the project and thus the project need Environmental Clearance from SEIAA-Haryana and CTE & CTO from HSPCB.***
>
> *(iii)* ***It was informed by DTCP that some colonies built by M/s Ansal Properties & Infrastructure, at Sushant Lok-1, Gurugram has been transferred to MCG vide letter dated 12.02.2019, while the matter is still subjudice. Also license for expansion of the project has been granted by DTCP, although the project did not have necessary EC. DTCP may provide an explanation as to how the property***

has transferred to MCG when the matter is subjudice and also how completion certificate has been granted.

(iv) ***In view of above, DTCP is directed not to grant license for expansion/completion certificate to any other project within its jurisdiction if any court matter is pending against the project/EC is not granted to the project****.*

(v) Similarly, explanation be called from HSPCB as to how Consents/Authorization have been issued to the project when it has not been granted EC and be further directed not to grant any Consent/Authorization to projects which did not have EC.

(vi) In view of above discussion, all the members agreed that the Municipal Corporation Gurugram (MCG) may be directed further to examine the matter and to take necessary action at their level also.

(vii) It is decided that all the Agencies will send their action taken report to CPCB in compliance of CPCB's directions dated 18.06.2019 at the earliest so that CPCB may file Report before Hon'ble NGT."

25. CGWA also issued another letter dated 21.10.2019 to PP which was replied by it vide letter dated 05.11.2019 denying any liability of payment of compensation.

Report dated 06.12.2019 by SEIAA Haryana

26. SEIAA also submitted a report dated 06.12.2019 that no EC was applied by PP and it is only in 2019 when application has been submitted for grant of EC.

27. Further, CGWA sent letter to DC, Gurgaon dated 27.12.2019 but the same was also replied by APIL-PP denying all the allegations, vide letter dated 28.12.2019.

Action taken report dated 08.01.2020 by HSPCB:

28. Thereafter, HSPCB submitted a report dated 08.01.2020. The facts stated in the said report after referring to order dated 13.09.2019 passed by Tribunal, read as under:

"The constituted committee by Hon'ble NGT observed that that last two licenses for development or area of 1 acre and 1.55 acre were

granted on 12.02.2007 (License No 62 of 2007 dated 12.02.2007) & 13.04.2011 (License No 32 of 2011 dated 13.04.2011) respectively which falls after EIA Notification dated 14.09.2006, cut-off date or requiring environmental clearance & execution of aforesaid licenses comes under expansion of project and total area of licensed colony after expansion is 604.19 Acres which crosses the threshold limits (>50ha=123.5 Acres for area development project) and thus Company was required to obtain EC. ***Out of two license one license (62 of 2007) is in the name of B.C.C. Properties (P) Ltd., 115 Ansal Bhawan, 16 Kausturba Gandhi Marg, New Delhi tor setting up of a Group Housing Colony at Village Sukhrali District Gurugram****.*

The questioned matter is regarding Sushant Lok, Phase – I which is a residential township spread over 604.194 acres in Sector - 27, 28, 43, 52 of Gurugram developed by the Company on various (112 Nos.) licenses (Annexure-3) (including license No. 151 of 2004 dated 02.12.2004 IVY Group Housing Complex- 5.88 Acres) issued to the Company by Town and Country Planning Dept., Haryana from 1985 to 2011 under Section 3 of the Haryana Development & Regulations of Urban areas Act, 1975 and Rules framed there under. ***As per revised approved layout plan dated 24.12.2010 of Sushant Lok -I, total licensed area is 604.194 acres, out of which 18.357 Acres is earmarked for Group Housing. The remaining licensed area i.e. 585.797 acres is under net planned area. Area under plots & under commercial is 295.098 acres & 21.704 acres respectively making total saleable area 316.802 (295.098+21.704) which is 54.08% of net planned area.***

The Company had applied for Environmental Clearance to the MoEF&CC on 30.03.2006 for the project IVY Group Housing Complex (License No. 151 of 2004 dated 02.12.2004 Total Plot area 23823.94 Sqm (5.88 Acres) and total Built up are 41433.94 Sqm) as the project was covered under EIA notification 1994 amended on 07.07.2004. The Company had applied No Objection Certificate (NOC) vide their letter dated 19.01.2006 & 17.07.2006 in connection with the requirement of environmental clearance from MoEF&CC, New Delhi *and had deposited public hearing fee to the Board for which public hearing was conducted by the Board on 08.03.2006 which was pre-requisite for deciding environmental clearance by MoEF&CC, New Delhi. The minutes of meeting of public hearing dated 08.03.2006 was sent to the Secretary, Ministry of Environment, Forests & Climate Change, Government of India, New Delhi for deciding environmental clearance of the said project. Board had granted NOC vide No. HSPCB/2006/TAC-A/997 dated 07.08.2006 (Anneuxre-4) from pollution angle in connection with the requirement of Environmental Clearance from MoEF&CC and NOC to establish will become operational once the environmental clearance is granted by MoEF&CC under intimation to the Secretary, Ministry of Environment, Forests & Climate Change, Government of India, New Delhi. The NOC was issued is wholly and solely for the purpose of meeting the requirement of Govt. of India and this NOC does not entitle the right to establish or right to operate the unit.* ***A complaint under section 15 of the Environment Protection Act was filed against the Company for the Group Housing Residential Complex (IVY), Sushant Lok, Gurugran (License No. 151 of 2004) for starting construction***

activity without obtaining prior mandatory environmental clearance as per notification dated 27.01.1994/07.07.2004/14.09.2006 in Special Environment Court vide complaint No. 48/08 (Annexure-5). The Hon'ble Court has convicted the Company for the said offence and disposed off through Mega Lok Adalat the case on 20.12.2008 by imposing fine of Rs. 1000/- and compensation of Rs. 1.00 lac for the said offence considering plea bargaining application moved u/s 265-B Cr. PC. The representative of the Company has made a statement before the Hon'ble Court on 20.12.2008 that the Company have obtained environmental clearance but Company have never obtained environment clearance for this project till date*. The order of the Special Environment Court in this regard is enclosed as Annexure -6.*

In view of above stated facts & incompliance of CPCB directions 18.06.2019, NGT order dated 08.01.2019, 13.09.2019 and CPCB letter dated 03.10.2019 and report of constituted committed 16.11.2018 & 05.04.2019, it is submitted that:

1. ***NOC, Consent to Operate*** *under Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981 & Authorization under Hazardous & Other Waste Management Rules, 2016* ***granted to M/s IVY Group Housing Complex, Sushant Lok-I, Gurugram [One of the project -(5.88 Acres area bearing license No. 151 of 2004 dated 02.12.2004) of the whole project under question - 604.19 acres] has been revoked by HSPCB vide No HSPCB/2019/798 dated 19.11.2019. (Annexure-7).***

2. ***DG sets which were operating without adequate stack height have been sealed by the Board****, copy of closure order and compliance of closure order is enclosed as (Annexure -8 & 9).*

3. ***Sanction for prosecution*** *against M/s Ansal Properties & Infrastructure Ltd. Ansal Bhawan, 16 K.G. Marg, New Delhi - 110001 and it's responsible persons* ***has been accorded by the Chairman, HSPCB,*** *Panchkula under Water of (Prevention & Control of Pollution) Act, 1974 & Air (Prevention& Control Pollution) Act, 1981* ***vide Endst. No. HSPCB/Consent/2019/618 dated 15.10.2019 (Annexure-10) and the prosecution case will be filed in due course or time before Special Environment Court, Faridabad.***

4. ***Gurugram Metropolitan Development Authority (GMDA), Gurugram vide letter No. File No. 225025/01/2019/Infra-II/2006 dated 15.10.2019 (Annexure-11) has intimated that they have stopped untreated sewage flowing from the premises of the company and other areas in Storm Water Drain (SWD) and connection under question has been disconnected and now, there is no sewage flowing on said location and the same has already verified by the concerned field officer of HSPCB & GMDA at site on 19.10.2019 (Annexure -12)."***

Letter dated 10.01.2020 from Hydrologist, Ground Water Cell Gurugram filed by CGWA on 16.01.2020

29. CGWA also filed a letter dated 16.01.2020 stating that an order was passed by Supreme Court in ***Civil Appeal Diary No. 25471/2019, M/s Ansal Buildwell Ltd. vs. Rajender Kumar Goel & Others*** dated 02.08.2019 is with respect of an order dated 25.03.2019 passed by Tribunal in ***OA 378/2016***, ***Rajendra Kumar Geol vs. MoEF&CC*** and 25.03.2019 in MA 721/2016 and 16.07.2019 in ***RA No. 41/2019*** which is not applicable to the proceedings in ***OA 661/2018***, hence DC Gurgaon should comply with the directions given by CGWA.

DC Gurgaon letter (Compliance report) dated 27.01.2020 (page/544):

30. DC, Gurgaon sent a letter dated 27.01.2020, informing Tribunal that compliance reports has already been submitted by SEIAA, HSPCB, MCG, CGWA and TCPD Haryana. Further, Tehsildar has been deputed for recovery of compensation imposed by CGWA.

Tribunal's order dated 05.02.2020

31. HSPCB report dated 08.01.2020 was considered by Tribunal on 05.02.2020 and after referring to earlier proceedings as also the contents of report dated 08.01.2020 submitted by HSPCB, this Tribunal in para 7 to 10 in the order, said as under:

> *"7. In view of above, reports of the CPCB and the SPCB,* ***it is patent that the project has been built up illegally without any EC and without any consent under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974. It is a matter of great surprise how the Town and Country Planning Department, Haryana granted license or a part completion certificate, ignoring serious violations.***
>
> *8. In view of the above serious violation of law,* ***including non-payment of assessed compensation of Rs. 16.729 crore (as per report of CPCB quoted above) for discharge of untreated sewage water,*** *apart from compensation for illegal extraction of ground water required to be paid at the rate of Rs. 40,44,000.00 per annum (as per report of CPCB quoted above),*

we require the Chief Secretary, Haryana to suggest the mechanism for enforcement of Rule of Law and also to prevent such illegalities in the State. The Chief Secretary may explore action against the collusion by the concerned officers of the State PCB, the Town and Country Planning Department or other State authorities for their failures mentioned above including the officers who agreed for insignificant compensation of one lac by way of plea bargaining in spite of conviction for serious offence. In this regard, action of black listing, attaching available assets of the defaulting builder may also be considered, apart from other coercive measures. *Such a report be furnished by e-mail at judicial-ngt@gov.in within one month.*

9. It will be open to the State of Haryana to bring to the notice of any Authority where proceedings involving the said party may be pending the above defaults. The ***Chief Secretary may also explore whether the matter needs to be entrusted to CBI.***

10. ***That apart, considering the seriousness of the breach of the environmental laws by the project proponent where even EC has not been obtained for such a mega project, the MoEF&CC besides taking action as provided in statute may also consider working out a mechanism for mitigation measures to offset the damages already caused to the environment and for taking precautionary measures for anticipated future damages****."*

Report dated 16.03.2020 by Chief Secretary, Government of Haryana (page/547)

32. Pursuant to order dated 05.02.2020, Chief Secretary, State of Haryana submitted report dated 16.03.2020 stating that a meeting was convened with TCPD Haryana and HSPCB to decide further course of action. HSPCB informed that it had already revoked consent and authorization granted to the concerned PP and initiated action against erroring officials for lapses indicated in the matter. TCPD Haryana was directed to identify lapses and persons accountable for the same and take action. It also directed to submit a proposal on the mechanism to prevent such illegalities in the State. Further direction was also issued to Commissioner Gurgaon, GMDA, TCPD Haryana, DHBVN and HSVP to submit interim reports.

Report dated 30.09.2020 by Chief Secretary, Government of Haryana filed on 30.09.2020 (page/549)

33. Further report dated 30.09.2020 was submitted by Chief Secretary, Government of Haryana and relevant extract thereof reads as under:

> *"In this regard, it is submitted that the matter has been reviewed at the level of undersigned through three meetings held on 13.02.2020, 17.07.2020 and on 11.08.2020, with the stakeholder Departments of Town and Country Planning, Environment and Climate Change and Power and authorities/agencies of SEIAA, HSPCB, GMDA, DHVBN and District Administration and reviewed the various actions undertaken by different agencies of the State, in compliance of the directions issued by Hon'ble Tribunal. HSPCB has revoked the consents issued to the Project, and sealed the DG sets, operating without adequate stack height.* ***Further, HSPCB has also filed prosecution before the Special Environment Court of Faridabad on 30.06.2020 against M/s Ansal Properties & Infrastructure Ltd****. The remaining State agencies have been directed to submit their reports to the Hon'ble Tribunal, in compliance of specific directions issued to them.*
>
> *With reference to the actions to be initiated against the possible collusion of HSPCB and TCP officials in the lapses, it is informed that HSPCB has initiated action against the lapses by instituting an enquiry under an independent enquiry Officer Sh. Sh. R.R Banswal, IAS (Retd.) on 20.05.2020 and same is under process. Similarly, TCP Department has also been directed to examine the details and take action against the erring officials.*
>
> *In continuation of the meetings held at Chief Secretary level, a follow up meeting was also held at the level of Additional Chief Secretary of Environment and Climate Change Department on 14.08.2020 to finalize the draft mechanism and to strengthen the existing structure of SEIAA/SEAC in the State. Accordingly, a draft mechanism is being proposed by SEIAA the salient features of which are as below.*
>
> - *The draft mechanism is proposing to include consolidated conditions relating to different Departments/agencies/ authorities, for appropriate monitoring through proper coordination among different Departments/agencies.*
> - *The proposed mechanism will assess and review the progress of various mitigation measures imposed in the EC issued for Category B projects under the EIA Notification by SEIAA through the Monitoring Cell, headed by DG, Environment and Climate Change Department, who is also the Member Secretary of SEIAA. The Monitoring Cell shall include Joint Director of Environment and Technical Executive Officers supported by three Technical Officers in the rank of Scientists/Engineers in the respective fields of expertise. Further, the Monitoring Cell will also have adequate administrative and field staff, including Sectoral Coordinators and Domain Area Experts, as determined by the Environment Department.*
> - *As far as imposition of conditions are concerned, it has been decided to take up the issue with HRERA and TCP Department*

for making provisions in its regulations for registrations of building construction and area development projects with detailed provisions for submission of arrangements and facilities to be provided to control environmental pollution and waste management including measures like greenbelts, conservation of water, ambient air quality monitoring facilities, waste recycling provisions, etc.

- *The TCP Department shall also include conditions, seeking NOC from Power Department before granting OC to the developers and TCP Department shall also earmark requisite land for sub-stations at the time of approving the layout plan for the projects. TCP Department has also been directed to explore and impose conditions, as indicated by Hon'ble Tribunal for regulating the environmental norms in the projects.*

This mechanism will be finalized by Department of Environment and Climate Change and will be adopted in the State after due approval of the competent authority, including MoEF & CC. We expect the same to be in place within next three months, i.e., by November 2020.

Therefore, as indicated in the above paras, the State is finalizing its mechanism for monitoring the conditions and environmental norms imposed by various authorities and agencies, which is likely to be in place soon. The above interim report may kindly be taken on record and an additional period of two months time may kindly be granted for filing of the final report as directed by the Hon'ble NGT vide its order dated 05.02.2020.

Further, the delay in submission of the report due to unavoidable administrative delays may kindly be condoned."

34. Chief Secretary's reports dated 16.03.2020 and 30.09.2020 were considered on 01.10.2020. Tribunal placed on record serious dis-satisfaction on lack of effective action against defaulters and said in para 4 and 5, as under:

"4. From the above, ***it is clear that no effective steps have been so far taken. Neither the guilty officers have been brought to book nor the violations of law have been remediated. Compensation assessed has not been recovered. Even simple step of black listing of the project proponent has not been taken****. We have noticed similar non compliance in several matters, including four other matters listed today being OA No. 506/2019, Mukund Dhote v. UOI, OA No. 764/2018, Kissan Udey Samiti v. State of Haryana & Ors., OA No. 688/2019, Aditya Jakhar v. State of Haryana and OA 155/2020, Dr. Manorama v. TDI.*

5. In view of the above, let necessary effective steps be now taken and further report filed by the Chief Secretary, Haryana 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.

A copy of the report may be simultaneously provided to the project proponent, for response, if any before the next date."

Action taken report dated 07.09.2021 by Chief Secretary, Haryana filed on 10.09.2021

35. A further report dated 07.09.2021 was submitted by Special Secretary Environment Change Department, Haryana and in respect to OA in question, report said as under:

*"**a. <u>In OA No 661/2018 (Praveen Kakkar & Ors V/s MoEF & CC and Ors).</u>***

- *The Haryana State Pollution Control Board (HSPCB) has revoked the NOC, Consent to operate issued under the provisions of Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981 and also revoked the authorization granted under Hazardous & Other Waste Management Rules, 2016 vide letter no. HSPCB/2019/798 dated 19.11.2019 to M/S IVY Group Housing Complex, Sushant Lok-I Gurugram (One of the projects with 5.88 acres area bearing license No 151 of 2004 dated 02.12.2004) of the whole project under question-604.19 acres.*
- *HSPCB has sealed the DG sets which were operating without adequate stack height.*
- *HSPCB has also filed prosecution case under Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981 against M/s Ansal Properties & Infrastructure Ltd. 115, Ansal Bhawan, 16 KG Marg, New Delhi - 110001 and other persons/ directors in the Special Environment Court, Faridabad on 30.06.2020.*
- *Gurugram Metropolitan Development Authority (GMDA), Gurugram vide letter No. File No. 225025/01/2019/Infra-11/2006 dated 15.10.2019 has intimated that they have **stopped untreated sewage flowing from the premises of the company and other areas in Storm Water Drain (SWD) and connection under question has been disconnected** and now there is no sewage flowing on said location and the same has already been verified by the committee of HSPCB & GMDA by conducting site visit on 19.10.2019.*
- *With reference to the actions to be initiated against the possible collusion of HSPCB and Town and Country Planning (TCP) officials in the lapses, HSPCB has initiated action by instituting an inquiry under an independent inquiry Officer Sh. R.R Banswal, IAS (Retd.) on 20.05.2020. In furtherance, 8 no. of hearings were conducted by inquiry officer. However, due to prevailing COVID-19 pandemic and health issues, he has requested Member Secretary, H.S.P.C.B. vide letter no. 834916/2021/Estt.Br. Dated 22/06/2021 to assign the instant enquiry to some other*

inquiry officer. Sh. Balwan Singh , IAS (Retd), 178-J Amaravali Enclave , Post Office Chandi Mandir, Panchkula has appointed as Inquiry Office vide letter no. HSPCB/Estt/2021/3097-3101 Dated 10.08. 2021. Copy of aforementioned letter dated 22.06.2021 is hereby annexed as Annexure R/3.

- *Deputy Commissioner, Gurugram directed the concerned Tehsildars to recover the compensation amount of Rs. 44.44 laces per annum imposed by CGWA and 16.729 crores imposed by CPCB on M/S Ansal Properties & Infrastructure Ltd. and the proceedings of the recovery were initiated and recovery certificates were issued for attaching the property but* ***the proceedings were stopped in compliance of Supreme Court orders in the matter of CA No. 3111/ 2020 M/S Ansal Properties and Infrastructure Ltd. vs. Praveen Kakkar & Ors. The relevant portion of the orders is given below****:*

  "Status quo as of today with regard to the possession of the property shall be maintained by the parties"."

36. This report was considered on 28.09.2021. Tribunal seriously deprecated lack of effective action on the part of Statutory Regulators and consistent inaction despite several orders passed by Tribunal, not only in the present matter, but some other matters also, observations whereof were made in the order dated 01.10.2020, pursuant whereto, composite report dated 07.09.2021 was submitted by Special Secretary. The observations and directions of Tribunal contained in paras 9 to 12 of order dated 28.09.2021 are as under:

> *"9. We have given due consideration to the report of the Chief Secretary, Haryana and find that the effectiveness of mechanism needs to be studied in the light of success in preventing and remedying violations. The Chief Secretary, while experimenting the mechanism evolved, may undertake study of extent of its success to consider what further changes are required in the mechanism after some time.* ***Violations have been reported in the last several years and it is yet to be seen whether the compliance level has improved****. We have separately considered violations in different cases mentioned in the report by separate orders in the said matters today. Violations found in the present case include absence of EC, Consent to Establish, Consent to Operate and consent for extraction of groundwater.* ***The compensation assessed is only on account of untreated sewage water discharge and illegal extraction of groundwater. No compensation has been assessed for establishing the project without prior EC. In view of law laid down in Goel Ganga Developers India Pvt. Ltd. v UOI , the scale of compensation has to be related to the cost of the project so as to operate as deterrent against the law violators. The scale of compensation, thus, needs to be revised.***

10. It does appear that so far effectiveness of monitoring is not reflected from the report either in the matter of preventing colluding officers who have enabled gross violations or from dissuading the violators or providing remedy to the victims. Only mention is appointment of an inquiry officer on 10.08.2021. Unless there is speedy effective action, ***mere appointment of an enquiry officer after three years of highlighting of rampant violations, in collusion with the State authorities is merely an eye wash. Similarly, with regard to effective recovery from M/s Ansal Properties and Infrastructure Ltd., only justification for not effecting recovery or taking punitive measures is order of status quo with regard to possession. There is no bar against effecting recovery of assessed compensation or blacklisting, in terms of observations of the Tribunal in Para 4 in the order dated 01.10.2020. This only shows lack of sensitiveness, commitment and will of the administration in enforcing rule of law****. We further find that as per order of the CPCB under Section 5 of the EP Act dated 21.06.2019, the State PCB was required to revoke the consents/authorizations given to M/s Ansal Properties and Infrastructure Ltd., the SEIAA, Haryana was required to revoke EC. The Director, Town and Country Planning Department was required not to allow any expansion or grant any completion and the Electricity Department was directed not to supply electricity for expansion of any project of the PP in Sushant Lok, Phase-1, apart from direction to the HSVP not to supply water for such expansion. Nothing is shown to have been done. Thus,* ***the policy needs to be reviewed. Least expected for ensuring compliance by Residential Complexes is to inventorise such projects and to ascertain their compliance status. Second step is to place such status in public domain with reference to check list of conditions requiring compliance, with technical accuracy, to ensure that no such projects come up without being compliant with norms. There have to means to encourage best practices for waste management, including decentralised waste processing facility in coordination with concerned local body for collection of residual waste. Other issues need focus are water harvesting, greenery, leaving open spaces, dual piping system for utilisation of treated water for reuse. One cannot ignore that haphazardly developed housing projects are potential for degradation of environment, affecting public health. Prior to occupation and handing over to RWA, audit of compliances by a proper and accountable mechanism needs to be ensured. Revamping of Town and Country Planning Department, SEIAA, SEAC and State PCB and their interse coordination is a must for meaningful and prompt action against violators. Ownership and oversight of mechanism has to be of officers of proven credibility and status.***

11. We note that notice has not been issued to the PP so far, as the Tribunal in the first instance sought action taken report from statutory authorities in exercise of their powers but in view of inadequacy of action, the Tribunal may have to consider further action after giving opportunity to the PP. ***Issue notice to the PP – M/s Ansal Properties and Infrastructure Ltd., 115 Ansal Bhawan, K.G. Marg, New Delhi-110001 by e-mail to show cause why further action be not taken for the violations, already noted. Response be filed***

within one month. *Haryana Sehari Vikas Pradhikaran (HSVP) and Town and Country Planning Department, Haryana may also explain how licenses have been granted for developing societies without ensuring requirement of providing basic infrastructure of waste management and other amenities required for clean environment and what action is being taken when violations are found. The said Departments may also file their action taken reports in the matter by e-mail in same manner as in above direction.*

12. We also direct the Chief Secretary, Haryana to coordinate further action in light of above observations by calling a joint meeting of the concerned State authorities within one month from today. Status report of steps so taken as on 31.01.2022 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. Likewise, CPCB may also file its additional status report in the matter in the light of above observations."

37. Pursuant to order dated 28.09.2021, notice was issued to APIL-PP i.e. respondent 11 by Registry's letter dated 05.10.2021.

Compliance Report dated 03.02.2022 by Dakshin Haryana Bijli Vitran Nigam on 11.02.2022

38. A compliance report dated 03.02.2022 has been filed on behalf of Dakshin Haryana Bijli Vitran Nigam and relevant extract thereof from para 7 to para 14 is reproduced as under:

"7. In furtherance to above, a report dated 05.04.2019 was filed by the CPCB in compliance with the order dated 08.01.2019 passed by the Hon'ble Tribunal. Further, in accordance with the order dated 21.05.2019 of this Hon'ble Tribunal, another action taken report dated 21.06.2019 was filled by CPCB stating that it had issued directions under section 5 of the Environmental (Protection) Act, 1986 to the Project Proponent as well as the concerned authorities to ensure compliance of Environmental Regulations and orders issued by this Hon'ble Tribunal. The direction qua the Applicant by the CPCB through its report dated 21.06.2019 is as follows:

"No electricity supply be provided for any further expansion of the project by the company in Sushant Lok-1, Gurugram."

8. The Hon'ble Tribunal vide its order dated 13.09,2019 had directed the Applicant to file the compliance report, to which, the Applicant has filed its compliance report dated 10.01.2020. In the said report, it is stated that no electricity supply has been provided to the Project Proponent for any further expansion of project in the Area. In the said report, the Applicant has further raised the issue of application(s) for new electricity connection(s) being received by the consumers who have purchased plots/flats in the Area. A copy

of the compliance report dated 10.01.2020 filed by the Applicant is annexed hereto and marked as Annexure-C1.

9. The Applicant has also issued a sale circular n. D-26/2021 dated 15.07.2021, vide which it was clarified that the Govt. of Haryana has approved the release of tubewell connections in dark zones/notified area. Copy of the Sales circular dated 15.07.2021 bearing no. D-26/2021 issued by the Applicant is annexed hereto and marked as Annexure C2.

RE: ELECTRICITY CONNECTIONS TO CONSUMERRS

10. The Area in question is a residential area and many individual consumers are purchasing the plots/flats in the Area, due to which there are several applications being received on behalf of consumers for grant of new electricity connection and/ or expansion of load from various consumers/plot owners/flat owners. ***The Project Proponent has developed the Area and further sold the plots to the consumers.***

11. The Applicant being a distribution licensee under the provisions of the Electricity Act, 2003 is bound by the various rules and regulations issued under the Electricity Act, 2003, including the Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2014 ("Regulations"), to grant electricity connections to the consumers. Since the directions which are passed by this Hon'ble Tribunal is in respect of the Project Proponent, therefore, ***the Applicant is not issuing any fresh electricity connection to the Project Proponent for the expansion in the Area.***

12. It is submitted that ***requisite electrical infrastructure as per ultimate load norms of the Applicant has not been provided by the Project Proponent in the Area****. There are other builders who failed to provide the adequate electrical infrastructure. The issue with respect of inadequacy was duly appraised to the Govt. of Haryana and a* ***scheme has been approved by the Management of the Applicant wherein the connections of electricity in future would only be released to the individual residents consumers only after depositing the development charges****.*

13. In this regards, the Applicant has also filed the Petition No. PRO 55 of 2021 before the Ld. Haryana Electricity Regulatory Commission ("HERC") against various builders, under section 43, 46 and 50 of the Electricity Act, 2003 read with Regulation 8 and 9 of the HERC Duty to Supply Electricity on Request, Power to Recover Expenditure incurred in providing Supply and Power to require Security) Regulations, 2016, and Regulation 16 of the HERC Electricity Supply Code Regulations, 2014, read with Section 142 and 146 of the Electricity Act, 2003, which is pending adjudication before the Ld. HERC.

14. In view thereof, the ***Applicant is bound to provide new connection(s) to the Consumers subject to the deposit of developmental charge****."*

Reply/Status Report dated 30.03.2022 by TCPD Haryana filed on 30.03.2022

39. TCPD Haryana has also filed status report dated 30.03.2022. The said report, in effect, is an explanation to the observations made as to how licenses were granted to societies without ensuring compliance of basic infrastructure of waste management and other amenities for protection of environment. Explanation given by TCPD Haryana in para 2 to 14 reads as under:

> 2. *It is relevant to submit before the Hon'ble Tribunal that all such services are part of External Development Works which are to be executed by HSVP being a nodal agency for execution of all such development works in the Urban Estates of Haryana.*
>
> 3. *That it is submitted that licences for development of residential/commercial/industrial colonies are granted by the Department of Town and Country Planning in accordance with the provisions of Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 (in short the Act of 1975) and rules framed thereunder. That the 'external development works' and 'internal development works' have been defined in Section 2(g) and 2(i) respectively of the Act of 1975 which are reproduced as under:*
>
> > *"(g) "**external development works**" shall include any or all infrastructure development works like water supply, sewerage, drains, necessary provisions of treatment and disposal of sewage, sullage and storm water, roads, electrical works, solid waste management and disposal, slaughterhouses, colleges, hospitals, stadium/sports complex, fire stations, grid sub-stations etc. and any other work which the Directory may specify to be executed in the periphery of or outside colony/area for the benefit of the colony/area;*
> >
> > *(i) "**internal development works**" mean— (i) metalling of roads and paving of footpaths;*
> > *(ii) turfing and plantation with trees of open spaces;*
> > *(iii) street lighting;*
> > *(iv) adequate and wholesome water supply;*
> > *(v) **sewers and drains both for storm and sullage water and necessary provision for their treatment and disposal; and***
> > *(vi) any other work that the Director may think necessary in the interest of proper development of a colony;"*
>
> 4. *That the provisions of Trunk Infrastructure network through External Development Works (EDW) is based on the proportionate payments received from end users as routed through colonizers. The proportionate cost of External development works to be executed by HSVP is recovered from the project proponents. It is relevant to highlight the following points:*

i. *The cost of provision of trunk water supply and sewer network along with STP is borne out of EDC funds received from colonisers upon grant of licence;*

ii. *Thus, on account of such statutory provisions, it is possible that, in several cases the establishment of colony takes place before the provision of trunk water supply and sewer network along with STP;*

iii. *The cost of city level infrastructure covered under EDC works which has been worked out amounting to Rs. 26,974 Crore. However, it is submitted that the total EDC amount collected for Gurugram is Rs. 18,393 Crore from 01.04.2000 to 31.12.2021 whereas the amount spent for providing city level infrastructure is Rs. 23,083.71 Crore which is more than the EDC collected from the colonizers. It is further submitted that an outstanding amount of EDC is Rs. 8,578.71 Crore which is to be collected from various colonizers.*

iv. *This mechanism ensures that the development of colonies by various colonisers and provisioning of EDC works by the nodal agencies, viz. HSVP, HSIIDC run parallel to each other for balanced urban development in accordance with the mechanism envisaged in the statute.*

5. *That at the time of grant of licence, a condition is imposed that the colonizer will make its own arrangements for laying down the infrastructure which is to be linked with the infrastructure as part of External Development Works to be provided by HSVP at a later stage. Further,* ***while issuing the part completion certificate/Occupation Certificate, a condition is also imposed that the services will be laid by the colonizer upto the alignment of the proposed external services of the town and connecting with the HSVP system will be done by the colonizer at its own cost with the prior approval of the competent authority****. It is also laid down that the colonizer will be solely responsible for making arrangement of water supply and disposal of sewerage and storm water of their colony as per requirement/guidelines of HSPCB/ Environment clearance till such time, the external services are provided by HSVP/State Government as per their scheme.*

6. *That further part completion certificates & occupation certificate for the residential plotted colonies & group housing colonies respectively completed in this area granted by the Department subject to the condition that the licencee shall apply for connection for disposal of sewerage, drainage and water supply from HSVP as and when the services are made available within 15 days from its availability and that the licencee shall maintain the internal services till the colony is handed over after granting final completion.* ***It was also stipulated that the licencee shall be fully responsible for supply of water, disposal of sewerage and storm water of the colony till these services are made available by HSVP/State Government as per their scheme.***

7. *That as per the report of Chief Engineer-I, HSVP dated 13.10.2011, the Master Water Supply Lines, Master Sewerage Line, Storm Water Drainage, Master Roads were constructed which are part of EDC services.* ***It is further submitted that the water connection (sector-27&28) in Sushant Lok-I was released by EE-HUDA Division-III vide letter no. 16502 dated 20.12.1999 and in sector-43 & 53 on 23.12.1999. The water connection for block-C was also released on 06.10.2004.***

It is further submitted that Sewerage connection was released on 01.06.2004 by HSVP. ***So, all the EDC services around the Sushant Lok-I colony exists before the year 2004.***

8. *That the Hon'ble NGT in para no. 1 of the order dated 05.02.2020 have observed that despite non-compliance of the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 by the colonizer, has granted the Completion Certificate to Ansal (API). In this regard, it is submitted that Rule 16 of Haryana Development and Regulations of Urban Areas Rules of 1976 provides for grant of Completion Certificate for the part or complete area of the colony once the internal development works have been executed as per the approved plans. The provisions of Rule 16 of Rules of 1976 is reproduced as under:*

> *"16. Completion certificate/Part Completion Certificate [Section 24].— 139[(1) After the colony has been laid out according to approved layout plans and development works have been executed according to the approved designs and specifications, the coloniser shall make an application to the Director in Form LC-VIII alongwith a demand draft on account of Infrastructure Augmentation Charges as per the rates prescribed in the Schedule-B of these rules if not paid earlier in accordance with the provision of Section 3(7) of the Act.]*
> *(2) After such [scrutiny], as may be necessary, the Director may issue a [completion certificate/part completion certificate] in form LC-IX or refuse to issue such certificate stating the reasons for such refusal:*
>
> *Provided that the colonizer shall be afforded an opportunity of being heard before such refusal."*

The ***first part Completion Certificate to the colonizer was granted by the Department on 10.05.1991 for an area measuring 388.89 acres i.e. more than 50% area of the colony.*** *The Part Completion Certificate was granted on the basis of the verification of laying down of internal development works and services as verified by CE, HUDA, Panchkula (now HSVP) vide their letter no. 769 dated 31.01.1991. The services forming part of internal development works are defined in section 2(i) of the Act no. 8 of 1975, which are reproduced a under:*

> *"(i) internal development works means-*
> *(i) metalling of roads and paving of footpaths;*
> *(ii) turfing and plantation with trees of open spaces;*

(iii) street lighting;
(iv) adequate and wholesome water supply;
(v) ***sewers and drains both for storm and sullage water and necessary provision for their treatment and disposal****; and*
(vi) any other work that the Director may think necessary in the interest of proper development of a colony;"

Thereafter, ***the subsequent Part Completion Certificates were granted by the Department on 10.11.2000, 15.01.2001, 23.02.2001, 26.06.2001, 10.07.2002 and 25.05.2003 respectively. All Part Completion Certificate were issued after taking the requisite verification reports from HSVP regarding laying down of the services as per the approved service plan estimates.***

The ***details of the part completion certificates*** *granted by the Department are as under:*

Date of applications received	***License no./Year***	***Area***	***Completion granted area***	***Date of grant of completion certificate***
02.03.1990, 24.07.1990, 30.04.1990, 24.04.1991	*7-12 OF 1985*	*101.25*	*388.89*	*7978-84/10-05-1991*
	20-22 OF 1985	*17.96*		
	33-34 OF 1985	*20.92*		
	36-40 OF 1985	*64.07*		
	51-54 OF 1985	*14.24*		
	1-3 OF 1986	*37.12*		
	11-12 OF 1986	*25.65*		
	15-17 OF 1986	*41.82*		
	18-20 OF 1986	*8.56*		
	31-33 OF 1986	*9.38*		
	40-41 OF 1986	*12.16*		
	7-9 OF 1987	*36.26*		
	20-23 OF 1987	*23.07*		
05-07-1996	*9-18 of 1993*	*10.31*	*10.313*	*16234/10.11.2000*
07-11-1993	*39-43 of 1989*	*41.003*	*41.003*	*916/15.01.2001*
14-01-1996	*6-11 of 1992*	*48.69*	*48.692*	*2715/23.02.2001*
17-11-2000	*88-101 of 1995*	*49.736*	*49.736*	*8838/26.06.2001*
26-09-2002	*1-9 of 1996*	*18.41*	*18.41*	*9802/10.07.2002*
31-10-2002	*14-24 of 1998*	*5.889*	*5.889*	*7443/20.05.2003*
31-10-2002	*1 of 2001*	*0.5*	*0.5*	
		Total	***563.433***	

Moreover, ***the Department has rejected the request dated 21.10.2014/ 24.03.2015 for issuance of final Completion Certificate of the above colony vide order dated 19.04.2018****.*

9. *Further, in compliance of Hon'ble NGT order dated 13.09.2019, Department has* ***not granted Completion Certificate to the colonizer i.e., Ansal (API).***

10. *That the Hon'ble NGT in para no. 5 (iii) of the orders dated 05.02.2020 directed that DTCP may provide an explanation as to how the property has transferred to MCG when the matter is sub-judice.*

In this regard, it is submitted that the matter is sub-judice since the year 2018 whereas the ***decision regarding transfer of the colonies known as Palam Vihar, Sushant Lok (Phase-I) & DLF (Phase-I–III), Gurugram to Municipal Corporation, Gurugram was taken by the Government in the year 2016 itself under the provision of section 23A of the Act no. 8 of 1975 and same was circulated vide DTCP order dated 08.02.2016 (Annexure-R/1). Further clarification to the said orders dated 08.02.2016 was issued on 12.02.2019 (Annexure-R/2).*** *No orders of Hon'ble NGT to the contrary or imposing any restriction on transfer of colony was applicable on such date.*

It is submitted that transferring the licence colonies to the local authority i.e. MCG is concerned, section 3 (3)(i)(iii) of the Act no. 8 of 1975 provides as under:

> *"(iii) the responsibility for the maintenance and upkeep of all roads, open spaces, public park and public health services for a period of five years from the date of issue of the completion certificate unless earlier relieved of this responsibility and thereupon to transfer all such roads, open spaces, public parks and public health services free of cost to the Government or the local authority, as the case may be;"*

It has been clarified in the para 3 of the order that the transfer of colony shall not be constituted as grant of completion certificate under provision of Act No. 8 of 1975 and colonizer shall continue to responsible for compliance of various terms and conditions of licence including but not limited to the following*:*

a. *Renewal of licenses*
b. *Construction of community sites as per provisions of Act 8 of 1975 as amended upto date.*
c. *Liability to obtain completion /part completion certificate.*
d. *Development of commercial pockets including approval of building plans and grant of occupation certificates.*
e. *Development of group housing component including approval of building plans and grant of occupation certificates.*
f. *Liability to deposit Infrastructure Augmentation Charges, if not deposited earlier.*
g. *Liability to pay the cost/ bank guarantee for deficit Electrical Infrastructure on account of load assessment and*

corresponding Infrastructure inadequacy assessment by Power Utilities.

h. *Clearance of outstanding dues on account of EDC/IDC including enhanced and interest thereupon, if any.*
i. *Revalidation of the bank guarantees including IDW.*
j. *Other statutory approval as required under Act/Rules as applicable on the licensed colony.*

11. *That the Hon'ble NGT in para no. 5 (iv) of the order dated 05.02.2020 directed DTCP not to grant licence for expansion as completion certificate to any other project within its jurisdiction if any court matter is pending against the project/EC is not granted. In this regard* ***as per the directions of Hon'ble NGT, Department has not granted any expansion and completion certificate in the colony after the said order****.*

12. *That the Hon'ble NGT in para no. 9 of the orders dated 28.09.2021 directed HSVP not to supply water for such expansion. In this regard, it is submitted that internal water supply of the sectors is being maintained by Municipal Corporation Gurugram and master connection issued by GMDA. GMDA has informed that no new water supply connection has been sanctioned in Sushant Lok-I and necessary directions have been issued to the field officers not to sanctioned any fresh/new water supply connection in future.*

13. *That the Hon'ble NGT in para no. 10 of the order dated 28.09.2021 directed that there is no bar against the effective recovery of assessed compensation or black listing in term of observation of Tribunal in para no. 4 of order dated 01.10.2020. In this regard, it is submitted as per the order of Hon'ble NGT,* ***Ansal Properties and Infrastructure Ltd. has been blacklisted vide order dated 28.03.2022. The copy of the said order is also enclosed as Annexure-R/3.***

14. *That however, the answering respondents undertake that they will comply with any direction which this Hon'ble Tribunal may issue for proper implementation of the project in question."*

Report dated 31.03.2022 by Chief Secretary, Haryana filed on 31.03.2022

40. Chief Secretary, Haryana has also filed its report dated 31.03.2022 and the relevant extract thereof from 5 to 18 reads as under:

"5. That in compliance of the directions of Hon'ble Tribunal, all the Departments/Agencies were directed to take necessary steps to ensure compliance of the directions and to report for apprising the Hon'ble Tribunal accordingly. Further, a meeting was held on 25 March 2022 with the Administrative Secretaries and Senior officers of all the stakeholder Departments / Agencies / District Administrations of Gurugram and Sonepat, wherein the compliance of different directions issued by the Hon'ble Tribunal was reviewed with reference to the policy initiatives for preventing recurrence of such violations of environmental norms, actions undertaken by them against the violators, remedial actions undertaken by the

Departments, recovery of Environmental Compensation and action against the erring officers.

6. That in compliance of the directions of Hon'ble NGT to ensure effective monitoring of prescribed environmental norms in case of projects requiring Environmental Clearance, the State has already proposed a mechanism as presented in its earlier report dated 07 September 2021, wherein it was proposed - with State Level and District Level Monitoring Committees at the first tier and a State Environment Monitoring Cell in the second tier and a provision for engaging Sectoral Coordinators and Domain Area Experts to help the State Level Monitoring Committee, if necessary. This matter was reviewed at the level of Chief Secretary, in compliance of the directions of Hon'ble Tribunal and constitution of a high powered Committee for Redressal of Environment Compliance of Projects requiring Environmental Clearances (CRECOMP) has been proposed in State of Haryana for periodic review of actions against the violators and to ensure the right of citizen to clean environment, reviewing compliance of directions issued by Hon'ble NGT in various related cases and the Committee shall consist of the following:

Sr. No.	***Designation***	***Remarks***
1.	*Chief Secretary to Govt. Haryana*	*Chairman*
2.	*Administrative Secretary, Environment & Climate Change Department*	*Member*
3.	*Administrative Secretary, Town and Country Planning Department*	*Member*
4.	*Administrative Secretary, Urban Local Bodies Department*	*Member*
5.	*Chairman, Haryana State Pollution Control Board*	*Member*
6.	*Chairman, State Environment Impact Assessment Authority, Haryana*	*Member*
7.	*Director, Environment & Climate Change Department*	*Member Convener*

And further that, as decided by the competent authority, the Monitoring Cell shall be constituted at the level of Haryana State Pollution Control Board for conducting the field inspections and monitoring of individual projects for compliance of various environmental norms prescribed by the authority, granting environmental clearances.

7. That the Government of Haryana is committed for conservation, regulation and management of ground water and water resources in the State. The ***Government vide notification dated 07 December 2020 enacted the Haryana Water Resources (Conservation, Regulation and Management) Authority Act, 2020, to regulate the extraction of ground water in the State****. The provisions of the Act provide for punishment/fine for illegal extraction of ground water under Section 25 and any violation of the direction of the Authority is punishable under Section 22. Further, under Section 19, the Government in consultation with the Haryana Water Resources Authority, vide Order No. 1IW-030001/19/2021 dated 06 December 2021, designated the following officers as enquiry/ enforcement/*

compliance officer, who shall function under the directions and general superintendents of the Authority:

(i) The officers such as Executive Engineers from Irrigation & Water Resources Department, District Town Planner from Town and Country Planning Department, Haryana and Regional Officers from Haryana State Pollution Control Board.

(ii) Under Section 22 of the Act power has been given to the Inquiry/Enforcement Officer to enter into any premises and inspect such premises to check the compliance of the provisions of the Act and directions of the Authority. Recently, the Haryana Water Resources Authority under Section 12 (3), after seeking approval from the Government notified the provisions for imposition for Environment Compensation on such project proponents who have been extracting ground water without permission of the Competent Authority. Before the Haryana Water Resources Authority, the Central Ground Water Authority has been regulating the ground water in the State.

*8. That, the HSPCB vide letter dated 10 February 2022 (**Annexure-R/1**) has submitted action taken report wherein it has been mentioned:*

(i) *With reference to OA No.661 of 2018,* ***NOCs and Consent to Operate issued to M/s IVY Group Housing Complex, Sushant Lok-I, Gurugram under various regulations have been revoked.***

(ii) ***DG sets operating without adequate stack height have been sealed.***

(iii) Prosecution has been initiated under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 against the Project Proponent and other responsible persons and the case has been filed in Special Environment Court, Faridabad and the action under Environment (Protection) Act, 1986 is also under process.

(iv) *With regard to directions of Hon'ble NGT to revoke the Environment Clearance granted to Project Proponent in O.A. No. 661/2018, it is humbly submitted for appraisal of Hon'ble Tribunal that State Environment Impact Assessment Authority has submitted that, '**No Environment Clearance has been issued by SEIAA for the site under reference' (Letter dated 09 November 2021 - Annexure R/2).***

9. *That the Town & Country Planning, Haryana has submitted that, DTCP has not granted any expansion and completion in the colonies. Further, the* ***Colony has been transferred to the Municipal Corporation Gurugram for maintenance purposes vide order dated 12 February 2019 (Letter dated 10 February 2022 -Annexure R/3).***

10. That the Central Ground Water Board, NWR, has submitted that M/S Ansal Properties and Infrastructure Ltd. has been directed multiple times to submit amount of compensation as directed by Hon'ble NGT vide order 13 September 2019. However, on repeated failure of Project Proponent to do so, Deputy Commissioner, Gurugram has been requested to take necessary action for recovery of

*environmental compensation of Rs. 40,44,000/- per annum from Project proponent. (Letter dated 11 February 2022 (**Annexure R/4**).*

11. *That the Municipal Corporation, Gurugram has submitted that,* ***20 Rain Water Harvesting Structures (RWHS) are functional and maintained by MCG in the concerned area. Further, planning for 20 more RWHS is under process and will be constructed by 30 June 2022.***

12. *That* ***the post taking over the charge of the parks of Sushant Lok-I in 2019, MCG has renovated 100 parks with grassing, plantation of hedges and garden features like installation of Canopy, open Gyms and children's playing equipments. Further, MCG has planted about 42,400 shrubs and 2600 trees in parks and other approved green areas of Sushant Lok-I.***

13. *That* ***the Decentralized micro STPs, having capacity of 50 KLD & 25 KLD, have been installed by MCG for reusing treated water. Tenders have been floated for covering all the parks of Sushant Lok-I under the tertiary treated water pipeline empanelment of agencies.***

*Similarly, 26 agencies has been empanelled for providing technical support for onsite composting of biodegradable waste (Lr dated 01 February 2022 -**Annexure R/5**).*

14. *That in compliance of the directions of Hon'ble NGT, GMDA has submitted that no new water supply connection has been sanctioned in Sushant Lok-1 and necessary directions have been issued to field officers not to sanction any fresh/new water supply connections to the company. Further,* ***no untreated sewage from Sushant Lok-I is flowing into the storm water drain. (Report dated 02 February 2022-Annexure R/6).***

15. That in compliance of order dated 28 September 2021, Haryana Shehri Vikas Pradhikaran, (vide letter dated 10 February 2022), Public Health Engineering Department (vide its letter dated 11 February 2022) and Dakshin Haryana Bijli Vitran Nigam (vide its letter dated 15 March 2022) have submitted their action taken reports, which have been annexed hereby as ***Annexure R/7(Colly), R/8 and R/9*** *respectively wherein following submissions have been made:*

(i) Out of 18 projects at Sonipat, 11 have obtained sewer connections. Further, ***out of 18 Kms. of requisite sewer lines, 14.225 Km sewer has been laid out and rest 3.890 Km is pending.*** *It is further humbly submitted that laying down of master sewer line is pending in compliance to the interim directions to maintain status quo, passed by Hon'ble Punjab & Haryana High Court vide order dated 12 January 2018 in CWP No. 523 of 2018 titled as Rajender Singh Vs. State of Haryana & ors.*

(ii) Dakshin Haryana Bijli Vitran Nigam has already filed its compliance report dated 10 January 2020 wherein it has been submitted that no electricity connection has been provided to the project proponent for any further expansion of the project.

(iii) *And in case of OA No. 764/2018 and 115/2020, it is informed that,* ***prosecution cases have already been filed by HSPCB against all the units for the violations identified in Special Environment Court, Kurukshetra as already submitted in compliance report dated 07 September 2022.***

(iv) ***TCP Department has informed vide its communication dated 28 March 2022 that no request for the grant of Occupation Certificate (OC) / Completion Certificate (CC) has been considered by the Department, till date. The applications received for grant of part CC and OC have been kept pending by the Department.***

(v) *TCP Department has also* ***lodged FIR against the Directors of the Company for occupation of the project without obtaining OC (Annexure R/10).***

*16. That, in compliance of the directions of Hon'ble Tribunal to initiate action against the erring officers, it is submitted that, Haryana State Pollution Control Board (HSPCB), as communicated by its report dated 10 February 2022 (****Annexure R/1****), an enquiry was got conducted to enquire into the irregularities committed in the case, which has already been concluded, and the* ***Board has issued final show cause notice to the officers concerned, and action will be completed as per the Service Rules accordingly****.*

17. That considering the seriousness of the corruption cases involving senior officers, the Government of Haryana has proposed to constitute a high powered vigilance committee headed by Chief Secretary with Administrative Secretaries of Home, Principal Secretary to Chief Minister, Director General of Police, Director General of State Vigilance Bureau and Additional Director General of Police (CID) as Members and Secretary of Vigilance Department as Member Secretary, with the objective of formulating policies to combat corruption and to periodically review the pending enquiries and corruption related pending issues with the Departments concerned.

18. *That in compliance of the directions of Hon'ble NGT with reference to recovery of environmental compensation imposed in OA No.661/2018 for various violations, it is informed that, the project proponent filed a Civil Appeal in Hon'ble Supreme Court (Civil Appeal Diary Nos 19879/2020) requesting therein to deter the concerned authorities from taking any adverse action against the project proponent for recovery of Environmental Compensation as imposed by Hon'ble NGT and the Hon'ble* ***Court has specifically issued directions to maintain the status quo in regards to the possession of property by the parties vide its order dated 14 October 2020 (Annexure R/11).***

And that ***in case of OA No. 764/2018 and OA No.155/2020, it is informed that three project proponents (i.e., M/s Parker Estate Development Pvt. Ltd., and M/s Pardesi Developer Pvt. Ltd.,) filed civil appeal before Hon'ble Supreme Court and Narang Construction and Finances Pvt. Ltd. has approached the Hon'ble High Court of Punjab and Haryana, wherein directions for depositing 50% of the interim Environmental***

Compensation have been passed. In compliance of the same, three of the Project Proponents i.e. M/s CMD Build tech Pvt.; M/s Parker Estate Development Pvt. Ltd. and M/s Narang Constructions & Financiers Pvt. Ltd. have deposited the amount and approached HSPCB for final decision, as directed by the Hon'ble Courts. M/s TDI Infrastructure Ltd. has also filed Civil Appeal No.3478/2020. The District Administration of Sonipat was directed to recover the environmental compensation from the remaining units under the provisions of Land Revenue Act, 1887, following the due procedure. The property of TDI Infrastructure Ltd. has been attached. M/s TDI Infrastructure Ltd. has now filed an IA No. 31938/2022 (Annexure R/12). The said IA is scheduled for 04 April 2022. Copy of order dated 10 March 2022 & 21 March 2022 is enclosed as (Annexure R/13).

In view of the submission made herein above, the actions taken by various Departments / Agencies of the State of Haryana may be taken on record."

41. On 01.04.2022, this OA was heard along with two other ***OA Nos. 764/2018, Kissan Udey Samiti vs. State of Haryana & Others*** and ***155/2020, Dr. (Mrs.) Manorama Sharma & Another vs. TDI infrastructure Limited & Others,*** since similar violations were observed in all these matters relating to construction projects and in action on the part of Statutory Regulators was also common. Therefore, all the matters were heard together and order was reserved but we are deciding this OA separately so as to have clarity of the facts and consideration of violations, inaction etc. of each PP separately. Hence, the separate judgment in this OA.

42. Though, neither applicants nor their counsel appeared at the time of final hearing of this matter but later they have filed a written submission. Learned Senior Counsel on behalf of CPCB and other Statutory Regulators pointed out that violations on the part of APIL-PP are apparent from record, therefore, appropriate action under relevant environmental laws is necessary to be taken against proponent. None has appeared on behalf of APIL-PP (respondent 11) despite notice. Statutory Regulators and local bodies referred and relied on their replies/reports etc.

in defense. While reserving the order, parties were allowed to file written submissions. Only applicant has filed written submission.

Written Submission dated 12.04.2022 by applicant, filed on 15.04.2022

43. Applicant has filed written submissions dated 12.04.2022 stating that ignoring the provisions of clause 4(1) of HDRUA Rules, 1976, illegal benefits were extended to APIL-PP by TCPD Haryana, to the tune to 700 Crores and gross violation on the part of PP is a writ large from joint Committee report dated 16.11.2018. Referring to Tribunal's orders dated 08.01.2019 and 05.02.2020, applicants have further contended that despite recommendations of joint Committee, area has not been measured by officials of TCPD Haryana, HSPCB and other concerned authorities and APIL-PP is still encroaching, grabbing and selling green area in Sushant Lok, Phase I, Gurgaon which includes a public park in C Block, Phase I, Sushant Lok, Gurgaon and huge damage has been caused to environment for which compensation must be determined appropriately which has not been done. Reiterating what the applicants have stated in OA, in para 10 and 11 of written submissions, they have said:

> *"10. That the damage caused by the Project Proponent to the environment is immense and irreparable, which cannot be compensated in terms of money.*
>
> *11. That it is respectfully submitted that without measuring the said 45% at site, the real magnitude to the illegal gains and the loss caused to the environment cannot be assessed."*

Joint Committee Report dated 13.06.2022 by CPCB filed on 14.06.2022

44. After reserving order, joint Committee through CPCB has submitted report dated 13.06.2022, giving details of proposed compensation against PP. We are refraining from taking into consideration the said report since it has been submitted after hearing was completed and order was reserved

and for that reason, party likely to be affected i.e. proponent has no opportunity to reply the said report.

ISSUES:

45. From the pleadings, various reports and the stand taken by official respondents including Statutory Regulators as also the written submissions filed by applicant and submissions advanced by the counsels appearing for Statutory Regulators, we find that the basic issue raised in this OA relates to development and execution of project in question without complying environmental laws and in utter disregard to environmental norms necessary to be observed for preservation, protection and remediation of environment. However, record also shows that the project has commenced in different stages commencing from 1986. Therefore, in view of the provisions of Sections 14 and 15 of NGT Act, 2010, we have also to consider the question of limitation as to whether OA as such is barred by limitation or what would be the period of which this Tribunal may take cognizance in the matter. In view of above, we find that following issues have arisen requiring adjudication of this Tribunal in this OA:

I. Whether application is barred by limitation?

II. Whether there is violation of environmental norms and laws as also the provisions of Water Act 1974, Air Act 1981 and EP Act 1986 on the part of respondent11 i.e., APIL-PP?

III. Whether Statutory Regulators and other authorities including local bodies have failed to enforce law, in particular, environmental laws in respect of project in question?

IV. What remedial action/order need to be passed in these matters?

ISSUE I - Relating to Limitation:

46. For considering the above rival submissions, it would be appropriate to have a glance over Sections 14 and 15 of NGT Act, 2010 which read as under:

> *"14 Tribunal to settle disputes. –*
>
> *(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.*
>
> *(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.*
>
> *(3)* ***No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:***
>
> *Provided that the* ***Tribunal may, if it is satisfied*** *that the applicant was prevented by sufficient cause from filing the application within the said period,* ***allow it to be filed within a further period not exceeding sixty days****."*
>
> *"15 Relief, compensation and restitution. –*
>
> *(1) The Tribunal may, by an order, provide,-*
>
> *(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);*
>
> *(b) for restitution of property damaged;*
>
> *(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.*
>
> *(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).*
>
> *(3)* ***No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose****:*
>
> *Provided that the* ***Tribunal may, if it is satisfied*** *that the applicant was prevented by sufficient cause from filing the application within the said period,* ***allow it to be filed within a further period not exceeding sixty days****.*

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority."

47. Limitation prescribed in Section 14(3) is in respect of the matters come within the purview of Section 14(1). It is said that an application for adjudication of dispute under Section 14(1) shall not be entertained by Tribunal unless it is made within a period of 6 months from the date on which, the cause of action for such dispute first arose. This period of limitation is different in the context of the subject *qua* limitation prescribed in Section 15(3), which provides the period of 5 years from the date on which cause for compensation or relief under clauses (a), (b) and (c) of sub-section (1) arose. Under Section 14(3) and 15(3), both, Tribunal has been conferred power to allow filing of applications beyond the period of limitation prescribed in the above provisions but not beyond 60 days.

48. We may also refer to Section 16 which confers appellate power upon Tribunal against certain orders or decisions or directions under specified statutes wherein also limitation of 30 days from the date on which order or decision or direction or determination is communicated to applicant, is prescribed, which is extendable by maximum 60 days under proviso to Section 16. This includes an appeal against an order granting EC.

49. Jurisdiction of Tribunal under Section 14 is over civil cases where a substantial question relating to environment, including enforcement of any legal right relating to environment, is involved, if such question arises out of the implementation of enactments specified in Schedule I of NGT Act 2010. Limitation under section 14(3) is with reference to cause of

action. The term 'cause of action' has been examined and explained in a catena of binding authorities of Apex Court. Commonly understood, 'cause of action' reflects the reasons for grievance which has been unsettled in so much so that a plaint is filed in a Court of law for their redressal. Since in a Court of law, the redressal of grievance is justified only in accordance with law, the cause of action must also raise legally supportable claim otherwise the action would fail.

50. In ***Cooke v Gill, (1873) 8 CP 107***, it is said, "*cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court.*" In India, repeatedly, it has been observed that 'cause of action' as understood in legal parlance is a bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed. Nature of Suit or even form of action is one thing and cause of action is another. Nature of Suit may be ascertained or determined by looking at the kind of relief asked for in the Suit but 'cause of action' is made up of a number of facts which are necessary to be pleaded and which if established would enable plaintiff to obtain from the Court, remedy against defendant. Cause of action encompasses both, legal provisions of what legal wrong plaintiff claims to have suffered and remedy which is the relief, a Court is asked to grant.

51. In ***Read vs. Brown, 1889 (22) Q.B.D. 128***, Lord Esher, M.R., observed that cause of action would mean, "*every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court.*" It does not comprise every piece of evidence which is necessary to prove each fact but every fact which is necessary to be proved. In ***Niranjan Agarwalla v. Union of India, AIR 1960 Cal 391***, Calcutta High Court observed that cause of action in its widest sense means the necessary conditions for the maintenance of the Suit and in its

restricted sense means the circumstances forming the infringement of right or the immediate occasion for the action.

52. In ***Navinchandra N. Majithia vs. State of Maharashtra (2007) 7 SCC 640***, Supreme Court observed that in legal parlance, 'cause of action' is an expression comprising a situation or state of facts that entitles a party to maintain an action in a Court or a Tribunal. In other words, one can say it is group of operative facts giving rise to one or more basis for suing or a factual situation that entitles one person to obtain remedy in court from another person. An apprehension cannot be a basis for a suit or exemption.

53. In ***Raj Kumar Jain & Others vs. Smt. Jagwati Devi and Others AIR 1980 All 225***, Allahabad High Court said that the date mentioned in the plaint as the date of accrual of cause of action is not conclusive. It is to be gathered from the whole claim.

54. Thus, it can be said that bundle of facts which when taken with the law applicable to them gives the plaintiff the right to relief against defendants, constitute cause of action. It must contain facts or acts done by the defendants to prove cause of action. While considering the cause of action, Court must read the pleadings as a whole to ascertain its true input. It would not be appropriate to cull out a sentence or a passage here and there and to read it out of context in isolation. It is the substance and not the form that has to be considered by the Court.

55. However, the expression 'cause of action' normally has been construed in the context of civil jurisprudence particularly, the code of civil procedure. We find that in the context of NGT Act 2010, it needs to be examined a little bit differently so as to give effective implementation to the objective of NGT Act 2010. The enactment of NGT Act 2010 is not in the

context of an ordinary adjudication of civil dispute but certain matters having constitutional provisions relating to environment, where generally individual rights are not in question unless somebody has suffered any personal loss, are adjudicated. The degradation of environment is a cause of concern to the entire community which has to be examined by this Tribunal. It has to ensure protection of environment and wherever any damage has caused, to take steps for its remediation and impose compensation upon the person who has caused such damage applying principle of 'Polluter's Pays'. The other principles applicable are also not recognized in civil jurisprudence but in the context of environmental laws, they are well applicable in the light of law laid down by Supreme Court in various authorities, and these are 'precautionary principle' and 'sustainable development'.

56. The objective, purpose and jurisdiction of Tribunal in the matter of environment has been considered by Supreme Court recently when an issue, whether Tribunal has power to take *suo-moto* cognizance of a matter where there is damage or degradation to environment, was raised.

57. In ***Municipal Corporation of Greater Mumbai vs. Ankita Sinha & Others, Civil Appeal Nos. 12122-12123 of 2018*** connected with other appeals, decided **vide judgment dated 07.10.2021**, a three judges' bench of Supreme Court examined the question "*whether NGT has power to exercise suo-moto jurisdiction*". It was argued that NGT did not have power to initiate suo-moto proceedings. The grounds raised in support of the above contention, as formulated by Supreme Court, founded on the arguments, were (i) NGT is a creature of the statute and just like other statutory Tribunals, NGT is also bound within statutory confines, (ii) NGT Act is applicable to "disputes" as necessarily referring to a lis between two

parties and (iii) lack of general power of judicial review shows legislative intent to curb *suo-moto* powers.

58. Dealing with above arguments and the grounds, Supreme Court examined the matter from various angles i.e. the backdrop of constitution of National Green Tribunal, preamble & statement of objects and reasons of NGT Act 2010, purposive interpretation, features of NGT Act 2010, non-adjudicatory roles of NGT, uniqueness of NGT vis-à-vis other Tribunals, need of NGT to exercise *suo-moto* powers, sui generis role of NGT, authority with self-activating capability, precautionary principle, environmental justice, environmental equity and environmental jurisprudence in India. We may summarize observations made by Supreme Court under the above-mentioned heads as under:

i) NGT was conceived as a complimentary specialized forum to deal with all environmental multidisciplinary issues, both as original and also as an appellate authority, which complex issues were hitherto dealt with by High Courts and Supreme Court.

ii) NGT was intended to be the competent forum for dealing with environmental issues instead of those being canvassed under the writ jurisdiction of the Courts.

iii) Creation of NGT would allow Supreme Court and High Courts to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialized forum.

iv) The power of judicial review was omitted to ensure avoidance of High Courts' interference with Tribunal's orders by way of a mid-way scrutiny by High Courts, before matters would travel to Supreme Court where NGT's orders can be challenged.

v) The mandate and jurisdiction of NGT is conceived to be of the widest amplitude and it is in the nature of a *sui generis* forum.

vi) Unlike Civil Courts which cannot travel beyond the relief sought by the parties, **NGT is conferred with power of moulding any relief**. The provisions show that NGT is vested with the widest power to grant appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.

vii) Myriad roles are to be discharged by NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons.

viii) Parliament intended to confer wide jurisdiction on NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by High Courts under Article 226 of the Constitution or by Supreme Court under Article 32 of the Constitution.

ix) The activities of NGT are not only geared towards the protection of environment but also to ensure that the developments do not cause serious and irreparable damage to ecology and the environment.

x) **Concept of *lis*, would obviously be beyond the usual understanding in civil cases** where there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment.

xi) **NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration**.

xii) In ***Bhopal Gas Peedith Mahila Udyog Sangathan vs. Union of India (2012) 8 SCC 326***, Court mandated transfer of all cases concerning the statutes mentioned in Schedule I of NGT Act to the

specialized forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered *suo-moto* by the Courts.

xiii) As long as the sphere of action is not breached, NGT's powers must be understood to be of the widest amplitude.

xiv) In ***Mantri Techzone (P) Ltd. vs. Forward Foundation, (2019) 18 SCC 494***, Court recognized that NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the context, Tribunal has special jurisdiction for enforcement of environmental rights.

xv) In ***Rajeev Suri vs. DDA, 2021 SCC Online SC 7***, Court said that in its own domain, as crystalized by the statute, the role of NGT is clearly discernible.

xvi) Referring to ***Andhra Pradesh Pollution Control Board v. Prof. M. V. Nayudu (Retd.) and Others (1999) 2 SCC 718***, Court said that **role of NGT was not simply adjudicatory** in the nature of a *lis* **but to perform equally vital roles which are preventative, ameliorative or remedial in nature**. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.

xvii) **Statutory Tribunals were categorized to fall under four subheads**; Administrative Tribunals under Article 323A; Tribunals under Article 323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights under Article 21. As already noted, the **duties of NGT brings it within the ambit of the fourth category,** creating a compelling proposition for wielding much broader powers as delineated by the statute.

xviii) Referring to ***State of Meghalaya vs. All Dimasa Students Union (2019)8SCC177***, Court said that reflecting on the expanded role of NGT unlike other Tribunals, this Court so appositely observed that the forum has a duty to do justice while exercising "*wide range of jurisdiction*" and "*wide range of powers*", given to it by the statute.

xix) NGT has been recognized as one of the most progressive Tribunals in the world.

xx) NGT being one of its own kind of forum, commends us to consider the concept of a sui generis role, for the institution.

xxi) Referring to ***DG NHAI vs. Aam Aadmi Lokmanch, 2020 SCC Online SC 572***, Court repelled the argument for a restricted jurisdiction for NGT, and observed in paragraph 76 that **powers conferred on NGT are both reflexive and preventive** and the role of NGT was recognized in paragraph 77 as "an expert regulatory body", which can issue general directions also albeit within the statutory framework.

xxii) **NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from High Courts and Supreme Court**.

xxiii) Given the multifarious role envisaged for NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take suo-motu cognizance of matters, for effective discharge of its mandate.

xxiv) Section 14(1) of NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an

application is necessary to trigger NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of NGT gets activated. On these material aspects, NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the **exercise of power by NGT is not circumscribed by receipt of application**.

xxv) **Section 14(1) exists as a standalone feature**, not constricted by the operational mechanism of the subsequent subsections. The sub-Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub-Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play.

xxvi) When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.

xxvii) The other pertinent provisions relating to, *inter-alia*, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for NGT to pass necessary orders. These crucial powers are expected to be exercised by NGT, would logically

suggest that the action/orders of NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

xxviii) To be effective in its domain, we need to ascribe to NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application.

xxix) It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as non-adversarial.

xxx) It would thus be appropriate to state that much of the principles, institutions and mechanisms in this sphere have been created, on account of this Court's initiative.

xxxi) Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse.

xxxii) **NGT is the institutionalization of the developments made by Supreme Court in the field of environment law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns**. Its functions, therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.

xxxiii) NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum

itself has correctly identified the need for collective stratagem for addressing environmental concerns.

xxxiv) NGT must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal.

59. To attract Section 14 however, the cause of action should essentially have nexus when the matters relating to environment and raise a substantial question of environment relating to implementation of the statues specified in Schedule I of NGT Act, 2010. The cause of action might arise during chain of events in establishment of a project but would not be construed as a cause of action under Section 14 unless it has a direct nexus to environment or gives right to a substantial environmental dispute. Further, cause of action has to be completed.

60. This Tribunal while considering Section 14 in ***O.A. No. 222/2014, The Forward Foundation & Others vs. State of Karnataka & Others,*** vide judgment dated 07.05.2015, in para 24, observed,

> *"24…… For a dispute to culminate into a cause of action, actionable under Section 14 of the NGT Act, 2010, it has to be a 'composite cause of action' meaning that, it must combine all the ingredients spelled out under Section 14(1) and (2) of the NGT Act, 2010. It must satisfy all the legal requirements i.e. there must be a dispute. There should be a substantial question relating to environment or enforcement of any legal right relating to environment and such question should arise out of the implementation of the enactments specified in Schedule I. Action before the Tribunal must be taken within the prescribed period of limitation triggering from the date when all such ingredients are satisfied along with other legal requirements. Accrual of 'cause of action' as afore-stated would have to be considered as to when it first arose."*

61. This Tribunal in ***Forward Foundation* (*supra*)** further considered the term 'continuing cause of action', 'recurring cause of action' or 'successive cause of action' and in para 25 to 32, said:

> *"25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and*

different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798.

26. *In the case of State of Bihar v. Deokaran Nenshi and Anr., (1972) 2 SCC 890, Hon'ble Supreme Court was dealing with the provisions of Section 66 and 79 of the Mines Act, 1952. These provisions prescribed for a penalty to be imposed upon guilty, but provided that no Court shall take cognizance of an offence under Act unless a complaint thereof has been made within six months from the date on which the offence is alleged to have been committed or within six months from the date on which the alleged commission of the offence came to the knowledge of the Inspector, whichever is later. The Explanation to the provision specifically provided that if the offence in question is a continuing offence, the period of limitation shall be computed with reference to every point of time during which the said offence continues. The Hon'ble Supreme Court held as under:*

> *"5.* ***A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all.*** *It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."*

27. ***Whenever a wrong or offence is committed and ingredients are satisfied and repeated, it evidently would be a case of 'continuing wrong or offence'****. For instance, using the factory without registration and licence was an offence committed every time the premises were used as a factory. The Hon'ble Supreme Court in the case of Maya Rani Punj v. Commissioner of Income Tax, Delhi, (1986) 1 SCC 445, was considering, if not filing return within prescribed time and without reasonable cause, was a continuing wrong or not, the Court held that continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continued. The penalty is imposable as long as the default continues and as long as the assesse does not comply with the requirements of law he continues to be guilty of the infraction and exposes himself to the penalty provided by law. Hon'ble High Court of Delhi in the case of Mahavir Spinning Mills Ltd. v. Hb Leasing And Finances Co. Ltd., 199 (2013) DLT 227, while explaining Section 22 of the Limitation Act took the view that* ***in the***

case of a continuing breach, or of a continuing tort, a fresh period of limitation begins to run at every moment of time during which the breach or the tort, as the case may be, continues*. Therefore, continuing the breach, act or wrong would culminate into the 'continuing cause of action' once all the ingredients are satisfied. Continuing cause of action thus, becomes relevant for even the determination of period of limitation with reference to the facts and circumstances of a given case. The very essence of continuous cause of action is continuing source of injury which renders the doer of the act responsible and liable for consequence in law.*

Thus, the expressions 'cause of action first arose', 'continuing cause of action' and 'recurring cause of action' are well accepted cannons of civil jurisprudence but they have to be understood and applied with reference to the facts and circumstances of a given case. It is not possible to lay down with absolute certainty or exactitude, their definitions or limitations. They would have to be construed with reference to the facts and circumstances of a given case. These are generic concepts of civil law which are to be applied with acceptable variations in law. In light of the above discussed position of law, we may revert to the facts of the case in hand.

28. *The settled position of law is that in law of limitation, it is only the injury alone that is relevant and not the consequences of the injury. If the wrongful act causes the injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. In other words distinction must be made between continuance of legal injury and the continuance of its injurious effects.* ***Where a wrongful act produces a state of affairs, every moment continuance of which is a new tort, a fresh cause of action for continuance lies****. Wherever a suit is based on multiple cause of action, period of limitation will began to run from the date when the right to sue first accrues and successive violation of the right may not give rise to a fresh cause of action. [Ref: Khatri Hotels Private Limited and Anr. v. Union of India (UOI) and Anr., (2011) 9 SCC 126, Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors, AIR 1959 SC 798, G.C. Sharma v. Municipal Corporation of Delhi, (1979) ILR 2 Delhi 771, Kuchibotha Kanakamma and Anr. v Tadepalli Ptanga Rao and Ors., AIR 1957 AP 419].*

29. *A cause of action which is complete in all respects gives the applicant a right to sue. An applicant has a right to bring an action upon a single cause of action while claiming different reliefs. Rule 14 of the National Green Tribunal (Practise and Procedure) Rules, 2011, shows the clear intent of the framers of the Rules that multiple reliefs can be claimed in an application provided they are consequential to one another and are based upon a single cause of action. Different causes of action, thus, may result in institution of different applications and therefore, there is exclusion of the concept of the 'joinder of causes of action' under the Rules of 2011. The* ***multiple cause of action again would be of two kinds. One, which arise simultaneously and other, which arise at a different or successive point of time****. In first kind, cause of action accrues at the time of completion of the wrong or injury. In latter, it may give rise to cause of action or if the statutes so provide when the 'cause of action first arose' even if the wrong was repeated.* ***Where the injury or wrong is complete at different times and may be of similar and different nature,***

then every subsequent wrong depending upon the facts of the case may gives rise to a fresh cause of action.

To this general rule, there could be exceptions. In particular such exceptions could be carved out by the legislature itself. In a statute, where framers of law use the phraseology like 'cause of action first arose' in contradistinction to 'cause of action' simplicitor. Accrual of right to sue means accrual of cause of action for suit. The expressions 'when right to sue first arose' or 'cause of action first arose' connotes date when right to sue first accrued, although cause of action may have arisen even on subsequent occasions. Such expressions are noticed in Articles 58 of the Limitation Act, 1963. We may illustrate this by giving an example with regard to the laws that we are dealing here. When an order granting or refusing Environmental Clearance is passed, right to bring an action accrues in favour of an aggrieved person. An aggrieved person may not challenge the order granting Environmental Clearance, however, if on subsequent event there is a breach or non-implementation of the terms and conditions of the Environmental Clearance order, it would give right to bring a fresh action and would be a complete and composite recurring cause of action providing a fresh period of limitation. It is also for the reason that the cause of action accruing from the breach of the conditions of the consent order is no way dependent upon the initial grant or refusal of the consent. Such an event would be a complete cause of action in itself giving rise to fresh right to sue. Thus, where the legislature specifically requires the action to be brought within the prescribed period of limitation computed from the date when the cause of action 'first arose', it would by necessary implication exclude the extension of limitation or fresh limitation being counted from every continuing wrong, so far, it relates to the same wrong or breach and necessarily not a recurring cause of action.

30. *Now, we would deal with the concept of recurring cause of action. The word 'recurring' means, something happening again and again and not that which occurs only once. Such reoccurrence could be frequent or periodical.* ***The recurring wrong could have new elements in addition to or in substitution of the first wrong or when 'cause of action first arose'.*** *It could even have the same features but its reoccurrence is complete and composite. The recurring cause of action would not stand excluded by the expression 'cause of action first arose'. In some situation, it could even be a complete, distinct cause of action hardly having nexus to the first breach or wrong, thus, not inviting the implicit consequences of the expression 'cause of action first arose'. The Supreme Court clarified the distinction between continuing and recurring cause of action with some finesse in the case of M. R. Gupta v. Union of India and others, (1995) 5 SCC 628, the Court held that:*

> *"The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that it the appellant's claim is found correct on merits. He would be entitled to be paid according to the properly fixed pay scale in the future and the*

question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Ors. v. Mattapalli, Raju and Ors. AIR (1950) F C1."

31. *The* ***Continuing cause of action would refer to the same act or transaction or series of such acts or transactions****. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It may have even be de hors the first cause of action or the first wrong by which the right to sue accrues****. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark.*** *Every rejection of a right in law could be termed as a recurring cause of action. [Ref: Ex. Sep. Roop Singh v. Union of India and Ors., 2006 (91) DRJ 324, M/s. Bengal Waterproof Limited v. M/s. Bombay Waterproof Manufacturing Company and Another, (1997) 1 SCC 99].*

32. *The principle that emerges from the above discussion is that the 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation.* ***A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue.*** *In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of*

composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action first arose' would not effect in computing the period of limitation. The concept of cause of action first arose must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. ***To put it simply, it would be act or series of acts which arise from the same event, may be at different stages****. This expression would not de bar a composite and complete cause of action that has arisen subsequently. To illustratively demonstrate, we may refer to the challenge to the grant of Environmental Clearance. When an appellant challenges the grant of Environmental Clearance, it cannot challenge its legality at one stage and its impacts at a subsequent stage. But,* ***if the order granting Environmental Clearance is amended at a subsequent stage, then the appellant can challenge the subsequent amendments at a later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the concept of cause of action first arose****."*

62. The issue of limitation, which directly relates with the jurisdiction of Tribunal, is also to be examined in the light of different spheres of legal consequences covered by three basic provisions i.e., Sections 14, 15 and 16. As we have already said, Section 14 confers power to decide all civil cases where substantial question relating to environment is involved having arising out of implementation of Scheduled enactments. Section 15 gives power to Tribunal to grant relief, compensation and restitution. The power of relief and compensation under Section 15(a) is confined to the matters where victim of pollution and environmental damage can be brought within the purview of enactments specified in Schedule I but Section 15(1)(b) and (1)(c) do not have any such restriction relating to enactments specified in Schedule 1. If there is a damage to environment, Tribunal has power to direct restitution of environment under Section 15(1)(c) and similar power for restitution of property damage is given under Section 15(1)(b).

63. In ***Mantri Techzone Pvt. Ltd. vs. Forward Foundation and Ors., (2019) 18 SCC 494***, Supreme Court in para 42 of the judgment, said, "*it is noteworthy that* ***Section 15(1)(b) and (c) have not been made relatable to Section I enactments of the Act***."

64. Having said so, Supreme Court further observed in ***Mantri Tech (supra)*** that Section 15(1)(c) is an entire island of power and jurisdiction read with Section 20 of NGT Act, 2010. Principles of sustainable development, precautionary principle and polluters pay propounded by Supreme Court by way of several judicial pronouncements have been embedded as a bedrock of environmental jurisprudence under NGT Act 2010. Wherever environment and ecology are being compromised and *jeo-paradised*, Tribunal can apply Section 20 for taking restorative measures in the interest of environment. Court also said,

> "***The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly.*** *An interpretation which furthers the interests of environment must be given a broader reading... The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns."*

65. Supreme Court, in ***Mantri Tech (supra)***, further said that Tribunal has a legal obligation to provide for preventive and restorative measures in the interest of environment. In para 45 of the judgment, Court said:

> *"45. Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that* ***jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently.*** *The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore,* ***the legislative intent is clear to keep Section 14 and 15 as self contained jurisdictions****."*

66. Considering the issues and questions raised in this OA, we find that the violations preceding 5 years from the date of filing of this OA can be examined by Tribunal and if violations are established, appropriate preventive and/or remedial order can also be passed. In the present case, though the project commenced long back but a revised layout plan comprising the entire project was sanctioned on 15.09.2010. Even thereafter, another license was granted on 13.04.2011 which was taken as part of the entire project. Part Completion Certificates were issued on 10.05.1991, 10.11.2000, 15.01.2001, 23.02.2001, 26.06.2001, 10.07.2002 and 20.05.2003 but no Completion Certificate for the complete project has ever been issued. Status report dated 30.03.2022 filed by TCPD Haryana shows that a final Completion Certificate was requested to be granted by APIL-PP on 21.10.2014/24.03.2015 but it was rejected by order dated 19.04.2018. It is thus evident that no Part Completion Certificate has been issued till date. The violation of discharge of sewage of untreated sewage directly in the storm water drain, withdrawal of ground water illegally without permission of CGWA has continued throughout and these constitutes continuous cause of action as also recurring cause of action in as much as every time when ground water was/is drawn or sewage was/is discharged directly in storm water drain and other violations are committed, an actionable violation is committed by proponent and, therefore, it cannot be said that OA in its entirety is barred by limitation. We are of the view that violations which are within the last five years from the date of filing of this OA including any violation being committed after filing OA can be considered in the light of the issues raised in this OA and appropriate order can be passed.

67. **Issue I is answered accordingly**.

ISSUE II:

68. The second issue has to be considered in the light of the Statutes i.e., EP Act 1986, Water Act 1974 and Air Act 1981 as also the provisions of Environment Impact Assessment Notification issued under EP Act, 1986.

Violation in regard to EIA 2006:

69. From the record and also facts noted above, it is evident that APIL-PP i.e. respondent 11 developed a residential township, named as 'Sushant Lok, Phase I' spread over 604.194 acres of land in Sectors 27, 28, 43 and 52 of Gurgaon. The project progressed in phases and area of development also expanded from time to time, in phases. It commenced when license dated 01.06.1985 was issued by TCPD Haryana under Haryana Development & Regulation of Urban Areas Act, 1975 (hereinafter referred to as '**HDRUA Act, 1975**') and rules framed thereunder. At that time, proponent who had applied for license was M/s. C. Lyall & Company (Construction) Pvt. Ltd. 115, Ansal Bhavan, 16 Kasturba Gandhi Marg, New Delhi which has proposed to set up a residential colony at village Sarhaul, Sukherali, Bulakhra and Kanhali Tehsil, District Gurgaon. Six licenses were issued on 31.05.1985 for total area of 98.45acres. Thereafter, more licenses were issued on various dates and up to 15.06.1987, a total 43 licenses were issued for a total area of 388.89 acres as detailed above:

1.	*7 of 1985/31.05.85*	*19.01*
2.	*8 of 1985/31.05.85*	*13.48*
3.	*9 of 1985/31.05.85*	*14.25*
4.	*10 of 1985/31.05.85*	*24.53*
5.	*11 of 1985/31.05.85*	*17.25*
6.	*12 of 1985/31.05.85*	*9.93*
7.	*20 of 1985/22.8.85*	*8.13*
8.	*21 of 1985/22.8.85*	*7.74*
9.	*22 of 1985/22.8.85*	*2.09*
10.	*33 of 1985/27.9.85*	*7.11*
11.	*34 of 1985/27.9.85*	*13.89*

12.	*36 of 1985/7.11.85*	*23.13*
13.	*37 of 1985/7.11.85*	*15.13*
14.	*38 of 1985/7.11.85*	*7.23*
15.	*39 of 1985/7.11.85*	*4.11*
16.	*40 of 1985/2.12.85*	*8.01*
17.	*51 of 1985/2.12.85*	*3.02*
18.	*52 of 1985/2.12.85*	*3.00*
19.	*53 of 1985/2.12.85*	*5.27*
20.	*54 of 1985/2.12.85*	*2.94*
21.	*1 of 1986/15.1.86*	*7.50*
22.	*2 of 1986/15.1.86*	*12.58*
23.	*3 of 1986/15.1.86*	*15.23*
24.	*11 of 1986/19.2.86*	*10.24*
25.	*12 of 1986/19.2.86*	*15.41*
26.	*15 of 1986/10.3.86*	*9.72*
27.	*16 of 1986/10.3.86*	*22.16*
28.	*17 of 1986/10.3.86*	*9.94*
29.	*18 of 1986/1.4.86*	*0.98*
30.	*19 of 1986/1.4.86*	*4.85*
31.	*20 of 1986/1.4.86*	*2.73*
32.	*31 of 1986/16.4.86*	-
33.	*32 of 1986/16.4.86*	*1.00*
34.	*33 of 1986/16.4.86*	*2.99*
35.	*40 of 1986/16.5.86*	*6.31*
36.	*41 of 1986/16.5.86*	-
37.	*7 of 1987/9.4.87*	*19.69*
38.	*8 of 1987/9.4.87*	*9.86*
39.	*9 of 1987/9.4.87*	*5.50*
40.	*20 of 1987/15.06.87*	*20.69*
41.	*21 of 1987/15.06.87*	*1.35*
42.	*22 of 1987/15.06.87*	*0.69*
43.	*23 of 1987/15.06.87*	*0.20*
	Total	*388.89*

70. These licenses were not given to single proponent but different proponents as under:

(i) M/s. C Lyall & Company

(ii) M/s. APIL

(iii) M/s. Ansal Housing Finance & Leasing Co. Ltd.

(iv) M/s. Suraj Construction & Estate Pvt. Ltd.

(v) M/s. Delhi Towers & Estates Pvt. Ltd.

(vi) Ms/. Green Park Builders Promoters Pvt. Ltd.

(vii) M/s. Housing & Estate (P) Ltd.

71. The promoters/proponents got colonies developed by APIL-PP named as '**Palam Vihar**' and '**Sushant Lok'** under the above 43 licenses and thereafter applied for part Completion Certificate to be issued by TDPD Haryana.In regard to project in question i.e., Sushant Lok, Phase 1, it is not disputed by any party that it was developed by APIL-PP.

72. Director, TCPD Chandigarh, Haryana issued a composite part Completion Certificate dated 10.05.1991 under Rule 16 of HDRUA Rules, 1976 in respect of residential colonies developed at Palam Vihar and Sushant Lok by above mentioned 7 proponents subject to the following conditions:

"1. That you shall abide by the direction of D.T.C.P. between now and till the time final completion certificate of the entire colony viz. Palam Vihar and Sushant Lok is granted with regard to carrying out of any leftover services/works which are deem appropriate by the DTCP Haryana.

2. *That you would be fully responsible to meet the demand of water as per the prescribed norms and provisions/maintenance of allied services. You shall further abide by the directions of D.T.C.P. to provide the requisite number of tube wells as per the schedule determined and specified by the D.T.C.P. You shall also furnish undertaking to this effect within one month from the date of issued of this letter.*
3. *The* ***storm water services will be laid by you upto the alignment of proposed work of HUDA for their connection and disposal arrangement****. All links and connection within the HUDA system will be done by you.* ***Similarly left-over sewer connection shall be connected with sewer and when these are laid by HUDA. Interim arrangement for disposal shall be made by you as may be necessary.***
4. *You will be fully responsible for laying of survives through thief un-licensed pockets/area for linking and connecting the services. If any, as per the directions of D.T.C.P.*
5. *In case some additional structures relating to public Health Services/internal development are required to be constructed as desired by DTCP/HUDA at later stage the same would be binding upon you.*
6. *You shall pay the E.D.C. for the area for which the completion certificate is being issued within 7 days from the date of demand, if after reconciliation of the account the amount of E.D.C. is found due with him and furnish an undertaking to this effect.*
7. *You should furnish an undertaking within seven days on stamp paper of Rs. 3/- that you shall submit the certificates as stipulated under clause 1 of the agreement executed by you at the time of grant of licenses within 90 days from the date of issue of completion certificate.*

8. *This partial completion certificate is further without prejudice to the final decision on the transfer/construction of community Building sites, wherein third party interest have been created. This is only without prejudice to the decision on this shopping/commercial sites.*
9. *That you should transfer all the remaining community sites on which third party interest has not been created within 15 days.*
10. *That you should alongwith the profitability submit the details of price of plots being sold by you which inter-alia included 15% profitability within 15 days.*
11. *That you shall abide by all the directions/instructions of DTOP and abide by the provisions of Act No. 8 of 1975 and Rules framed thereunder and shall continue to maintain services as provided thereunder."*

73. After 15.06.1987, there are some more licenses issued for the development of residential colonies in Sushant Lok Sector, 27, 28, 43 and 53. Brief details thereof are as under:

S. No	***License No. & date***	***No of Lic***	***Area (In Acres)***	***Type of Dev.***	***Name of Project***
1	*39-43 of 89 dt 2.12.89*	*5*	*41.003*	*Plotted*	
2	*6-11 of 92 dt 17.1.92*	*6*	*48.692*	*Plotted*	
3	*9-18 of 93 dt 8.7.93*	*10*	*10.312*	*Plotted*	
4	*88-101 of 95 dt 30.12.95*	*14*	*49.736*	*Plotted*	
5	*1-9 of 96 dt 10.1.96*	*9*	*18.41*	*Plotted*	
6	*49-51 of 97 dt 5.11.97*	*3*	*2.25*	*Plotted*	
7	*14-24 of 98 dt 20.3.98*	*11*	*5.889*	*Plotted*	
8	*111-117 of 98 dt 21.8.98*	*7*	*6.518*	*Plotted*	
9	*1 of 2001 dt 23.2.2001*	*1*	*0.5*	*Plotted*	
10	***151/2004 dt 2.12.2004***	*1*	*5.887*	*G.II*	*IVY*
11	***62/2007 dt 12.2.2007 (G.H.)***	*1*	*1.0*	*G.II*	*IVY*
12	***32/2011 dt 13.4.2011***	*1*	*1.546*	*Plotted*	

74. The licenses mentioned hereinabove were issued to different proponents, some are detailed as under:

(i) License no. 62 of 2007 dated 12.02.2007/14.02.2007 was issued to M/s. B.C.C. Properties (P) Ltd., 115, Ansal Bhawan, 16 Kasturba Gandhi Marg, New Delhi for setting up a Group Housing colony at village Sukhrali, District Gurgaon.

(ii) License no. 32 of 2011 dated 13.04.2011 was issued to M/s. Landmark Education Society C/o M/s. Ansal Properties and Infrastructure Ltd., 115 Ansal Bhawan, 16 KG Marg, New Delhi for development of residential plotted colony over an

additional area measuring 1.546 acres in revenue estate of village Wazirabad, Sector 43, Gurgaon.

75. The above licenses dated 12.02.2007 and 13.04.2011, copies thereof are on record as part of joint Committee report dated 16.11.2018 show that proponents were clearly directed to obtain approval/NOC from Competent Authority to fulfil the requirement of EIA Notification dated 14.09.2006, before starting development work at site.

76. In respect to the above licenses issued since 1987, part Completion Certificates were issued as under:

(i) For licenses no. 39 to 43 of 1989 dated 02.12.1989 granted for the total area of 41.003 acres, **Part Completion Certificate dated 15.01.2001** was issued by Director, TCPD Haryana for area measuring 30.503 acres to APIL and its associate companies on certain conditions which are same as were mentioned in part Completion Certificate dated 10.11.2000 and we have already reproduced above.

(ii) For licenses no. 6 to 11 of 1992 dated 16.01.1992 granted for a total area measuring 48.692 acres, **Part Completion Certificate dated 23.02.2001** was issued to APIL and its associate companies by Director, TCPD Haryana for area measuring 48.692 acres on certain conditions which are same as were mentioned in part Completion Certificate dated 10.11.2000.

(iii) For the project developed, pursuant to licenses no. 9 to 18 of 1993 dated 08.07.1993 by M/s. APIL and its associate companies, **Part Completion Certificate** was issued by Director, TCPD Haryana vide letter **dated 10.11.2000**. The above document is on record at page 163 and shows that licenses no.9-18 of 1993 were issued for developing area admeasuring 10.313 acres and part Completion

Certificate was issued for area admeasuring 9.343 acres. The said certificate was issued subject to certain conditions as under:

"(i) That you shall abide by the directions of Director, Town and Country Planning, Haryana till the time final completion certificate of the entire colony is granted. You shall also carry out all left over services/ works which are deemed appropriate by the Director, Town and Country Planning, Haryana.

(ii) That you will be fully responsible to meet upto the demand of water as per the prescribed norms and provisions and maintain the allied services. You shall further abide by the directions of DTCP to provide the requisite number of tubewells as per the schedule determined and specified by the DTCP and you shall furnish an undertaking to this effect within one month from the date of issue of this letter.

(iii) ***That the services will be laid by you upto the alignment of proposed external works of HUDA for their connections and disposal arrangements****. All the links and connections with the HUDA services will be done by you.*

(iv) That in case some additional structures are required by DTCP/HUDA at later stage, the same would be binding upon you.

(v) ***That you will be solely responsible for making disposal arrangement of sewerage and storm water drainage of your Colony till such time the HUDA services are made available****.*

(vi) That this partial completion certificate is without prejudice to the final decision on the transfer/lease/construction of community buildings.

(vii) That you shall make the pumping arrangements in case invert level of sewerage and storm water drainage system laid by-you are lower than the HUDA system.

(viii) That ***you will get these licenses renewed till such time final completion certificate of the colony is granted to you by the DTCP.***

(ix) An undertaking to the effect that you shall pay the due amount of external development charges/enhanced external development charges after the final reconciliation of EDC accounts.

(x) That you will submit the certificate to DTCP Haryana within 90 days of the full and final completion of the project from a Chartered Accountant that a minimum of 20% in case of EWS/LIG Plots and 25% plots of 'No Profit No Loss' category have been allotted as per conditions of bilateral agreement.

(xi) That you will submit the certificate within 90 days of full and final completion of the project that the overall net profit (after making provisions for the all taxes) has not exceeded 15% of the total project cost.

(xii) That the Bank guarantees furnished by you at the time of grant of said licenses on account of internal development works will be got revalidated till the final completion of the colony is granted.

(xiii) That the department will retain 25% bank guarantee of the total cost of construction of community buildings in the area and the same will only be released after the completion of construction of community buildings.

(xiv) That this part completion certificate is only in respect of the services mentioned herein and the ***final completion certificate in respect of the total area including the area mentioned in this certificate would be granted after all the obligations / liabilities cast upon you through the agreements and Act & Rules are discharged to the satisfaction of the Director, Town and Country Planning, Haryana****. In the event of failure of the license to do so, this partial completion certificate would be deemed to have been cancelled at any time. You shall also abide by all the directions/instructions of DTCP and provisions of Act No. 8 of 1975 and Rules framed thereunder. You shall continue to maintain the services as per the provisions of Act and Rules."*

(iv) For licenses no. 88 to 101 of 1995 dated 30.12.1995 granted for the total area of 49.736 acres, part Completion Certificate dated 26.06.2001 was issued by Director, TCPD Haryana for area measuring 49.736 acres to APIL and its associate companies on certain conditions which are same as were mentioned in part Completion Certificate dated 10.11.2000.

(v) For licenses no. 1 to 9 of 1996 dated 10.01.1996 granted for total area of 18.41 acres, part Completion Certificate dated 10.07.2002 was issued by Director, TCPD Haryana for area measuring 18.41 acres to APIL and its associate companies on certain conditions which are same as were mentioned in part Completion Certificate dated 10.11.2000.

(vi) For licenses no. 14 to 24 of 1998 dated 20.03.1998 granted for total area of 5.889 acres and license no. 1 of 2001 dated 23.02.2001 for area measuring 0.50 acres, part Completion Certificate dated 20.05.2003 was issued by Director, TCPD Haryana for area measuring 5.889 acres in respect of license no. 14 to 24 of 1998 and 0.50 acres in respect of license no. 1 of 2001 to APIL and its associate companies on certain conditions which are same as were mentioned in the part Completion Certificate dated 10.11.2000.

77. In all the above certificates, it was mentioned that development works comprise water supply, sewerage, storm water drainage, roads, horticulture and electrification etc. which was claimed to have been completed by proponent and verified by the report and certification to the services issued by Chief Engineer, HUDA.

78. APIL-PP submitted an application dated 22.04.2004 seeking permission of sewer connection at location 'A' of Sushant Lok-I with HUDA sewer between Sector 43 and 53 Gurgaon which was granted by Executive Engineer HUDA Division No. II, Gurgaon vide letter dated 01.06.2004 subject to following conditions:

> *"1. M/s. Ansal properties will deposit the EDC (External Dev. Charges) as fixed by HUDA. All works of providing and laying of sewer extra upto the HUDA main sewer (laid on 30M wide sector road between sector-43 & 53) will be carried out at his own cost.*
>
> *2. Sewer connection shall be released in the presence of the representative of the department (HUDA) only authorized by the Executive Engineer concerned.*
>
> *3. The* ***maintenance of internal sewer lines and connections etc. in all respect shall be the owner's responsibility and his own cost****.*
>
> *4. The rates shall be charges as fixed by the Chief Administrator HUDA from time to time and shall be binding upon M/s. Ansal properties ltd.*
>
> *5. Sewer connection shall be released in the presence of the representative of M/s Ansal Properties Ltd. and the monthly charges shall also be paid by the firm regularly.*
>
> *6. The connection shall be maintained strictly as per rules and regulations framed by HUDA.*
>
> *7. Sewer connection will be utilized and limited for water and sewer facilities to M/s. Ansal Properties Ltd. only.*
>
> *8. For any dispute in connection with the release of sewer connection/maintenance and disconnection etc. for the said sewer connection and matter shall be referred by any of the two parties to the concerned Superintending Engineer, HUDA Circle, Gurgaon and his decision in the matter shall be final and legally binding on both the parties.*

9. *The sewerage charges for the whole complex will be deposited by M/s. Ansal Properties Ltd. on the basis of rates fixed by HUDA from time to time.*

10. ***It will be ensured by the M/s. Ansal Properties Ltd. that sewerage effluent to be disposed of in HUDA sewer within the permissible limits as prescribed by the Haryana Pollution Water & Control Board****.*

11. *Rates of monthly charges will be 8/- per K.L or 70% of water consumed of actual reading checked by the SDE concerned.*

12. *Amount of Rs. 2,75,000/- has been deposited by the above said firm on account of security charges and sewer connection fee vide receipt no. 70/204 dt 31.5.04 in the office.*

13. *It will be ensured by the M/s Ansal Properties Ltd. that road cut involved (10 Mtr.) shall be made and restore own his cost and necessary permission for the road out shall be obtained from the Executive Engineer, HUDA division No. I, Gurgaon and necessary charges if any will be deposited to concerned office before connection*

14. *All payments will be deposited in the office of the Sub-Divisional Engineer, HUDA Sub division No. 6, Gurgaon."*

79. APIL-PP however, itself has admitted that the entire project namely Sushant Lok, Phase I at Sector 27, 28, 43 and 53, Gurgaon comprising land admeasuring 604.194 acres spread over 25 licenses belong to it as is evident from its reply dated 29.01.2019 at page 149 submitted to Regional Officer, HSPCB, Gurgaon. It is however, said that part of the project under 23 licenses was issued prior to enforcement of EIA 2006 and only two licenses were issued in 2007 and 2011 for the land admeasuring 2.546 acres only; out of total licensed area 604.194, 18.357 acres was earmarked for Group Housing and remaining area i.e., 585.797 acres was under net planned area; area under plots and commercial purposes is 295.098 acres and 21.704 acres i.e. total 316.802 acres which constitutes 54.08% of net planned area. It has taken the defense that existing colony was completed much before July 7, 2004, therefore, provisions of prior EC or EC were not applicable to the projects of APIL-PP.

80. The provisions of Environment Impact Assessment under EP Act 1986 initially were made in 1994 and replaced by a new set of provisions in 2006. In order to examine the extent of the application of the above provisions in respect of project in question, we may have a bird eye view of the scheme of enactment of the above statutory provisions as under:

Statutory Provisions:

81. The requirement of prior EC is with reference to the provisions made under EP Act 1986 that is Environment Impact Assessment Notification dated 27.01.1994 (hereinafter referred to as '**EIA 1994**') and EIA 2006.

EP Act, 1986:

82. Section 3(1) of EP Act, 1986 read with Section 2(v), confer power upon Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving quality of environment and preventing, controlling and abating environmental pollution. Sub-section (2) of Section (3) refers to certain specific subject matters in addition to general power conferred by sub-section 1.

83. Central Government has issued various orders and directions in exercise of powers under Section 3. In ***M.C. Mehta vs. Union of India, (2002)4SCC356***, it has been held that such directions are binding on all persons concerned.

84. EP Rules, 1986 have been framed in exercise of power under Sections 6 and 25 of EP Act, 1986. Rule 4 thereof, states that any direction issued under Section 5 shall be in writing. Rule 5 contemplates certain factors to be taken into consideration by Central Government while exercising power for prohibition/restriction on the location of industries and/or carrying on processes and operations in different areas and these factors are detailed in clause (i) to (x) of Section 5(1). Procedure for issuing

such directions imposing prohibition, restriction etc. is given in sub-section (2) of Section 5.

EIA 1994:

85. Process for making provisions, imposing restrictions and prohibition on expansion and modernization of any activity or a new project unless EC has been accorded, was initiated by the Government of India by publishing notification dated 28.01.1993 under Section 5(3)(a) of EP Rules 1986, inviting objections from the public within 60 days from the date of publication of the said notification in respect to the matters detailed therein.

86. After considering objections, MoEF, exercising powers under Section 3(1)(2)(v) of EP Act, 1986, read with Rule 5(3)(d) of EP Rules 1986, issued **notification dated 27.01.1994** on Environmental Impact Assessment of Development Projects (hereinafter referred to as '**EIA 1994**'). It provided that expansion and modernization of any activity (if pollution load is to exceed the existing one) or a new project, listed in Schedule I of the said notification, shall not be undertaken in any part of India unless it has been accorded EC by Central Government in accordance with the procedure specified in the said Notification.

87. Initially, in the Schedule I to EIA 1994, there were 30 projects/activities, which were required to obtain EC under EIA 1994.

88. In ***W.P. (C) No. 725/1994 with IA No. 20, 21, 1207, 1183, 1216 and 1251 in WP (C) No. 4677/1995***, Supreme Court considered a news item published in Hindustan Times titled "And Quit Flows the Maily Yamuna Vs. Central Pollution Control Board and Other" and vide order dated 12.12.2003, Supreme Court observed that building constructions cause damage to environment and, therefore, such construction projects

may be considered to be brought under EIA regime so that all such projects must take all the mitigating steps so as to safe environment of the area in which such a project was being constructed by the proponent. Consequently, MoEF issued **notification dated 07.07.2004**, making amendment in EIA 1994 and '**new construction projects' were placed at item 32 in the Schedule**. The amendment notification says that new construction projects which were undertaken without obtaining clearance required under EIA 1994 and where construction work has not come up to the plinth level, shall require clearance under EIA 1994 w.e.f. 07.07.2004.

89. In order to complete the evolution of EIA 1994, we may mention here that it was amended by several notifications i.e., dated 04.05.1994, 10.04.1997, 27.01.2000, 13.12.2000, 01.08.2001, 21.11.2001, 13.06.2002, 28.02.2003, 07.05.2003, 04.08.2003, 22.09.2003 and 07.07.2004.

90. Para 2 of EIA 1994 talks of requirements and procedure for seeking EC of projects and reads as under:

> *"2) Requirements and procedure for seeking environmental clearance of projects:*
>
> *I.(a)* ***Any person who desires to undertake any new project in any part of India or the expansion or modernization of any existing industry or project listed in the Schedule-I shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.***
>
> *The application shall be made in the proforma specified in Schedule-II of this notification and shall be accompanied by a project report which shall, inter alia, include an Environmental Impact Assessment Report, Environment Management Plan and details of public hearing as specified in Schedule-IV prepared in accordance with the guidelines issued by the Central Government in the Ministry of Environment and Forests from time to time. However, Public Hearing is not required in respect of*
>
> *(i) small scale industrial undertakings located in (a) notified/designated industrial areas/industrial estates or (b)*

areas earmarked for industries under the jurisdiction of industrial development authorities;

(ii) widening and strengthening of highways;

(iii) mining projects (major minerals) with lease area up to 25 hectares,

(iv) units located in Export Processing Zones, Special Economic Zones

(v) modernisation of existing irrigation projects.

(vi) offshore exploration activities, beyond 10 kilometres from the nearest habituated village boundary, gaothans and ecologically sensitive areas such as, mangroves (with a minimum area of 1000 sq.m), corals, coral reefs, national parks, sanctuaries, reserve forests and breeding and spawning grounds of fish and other marine life; .

Provided further, that for pipeline projects, Environmental Impact Assessment report will not be required:

Provided further, that for pipeline and highway projects, public hearing shall be conducted in each district through which the pipeline or highway passes through:

(b) Cases rejected due to submission of insufficient or inadequate data and Plans may be reviewed as and when submitted with complete data and Plans. Submission of incomplete data or plans for the second time would itself be a sufficient reason for the Impact assessment Agency to reject the case summarily.

II. In case of the following site specific projects:

(a) mining;

(b) pit-head thermal power stations;

(c) hydro-power, major irrigation projects and/or their combination including flood control;

(d) ports and harbours (excluding minor ports);

(e) prospecting and exploration of major minerals in areas above 500 hectares;

(f) greenfield airports, petrochemical complexes and refineries.

The project authorities will intimate the location of the project site to the Central Government in the Ministry of Environment and Forests while initiating any investigation and surveys. The Central Government in the Ministry of Environment and Forests will convey a decision regarding suitability or otherwise of the proposed site within a maximum period of thirty days. The said site clearance shall be granted for a sanctioned capacity and shall be valid for a period of five years for commencing the construction, operation or mining

III. (a) The reports submitted with the application shall be evaluated and assessed by the Impact Assessment Agency, and if deemed necessary it may consult a committee of Experts, having a composition as specified in Schedule-III of this Notification. The Impact Assessment Agency (IAA) would be the Union Ministry of Environment and Forests. The Committee of Experts mentioned above shall be constituted by the Impact Assessment Agency or such other body under the Central Government authorised by the Impact Assessment Agency in this regard.

(b) The said Committee of Experts shall have full right of entry and inspection of the site or, as the case may be, factory premises at any

time prior to, during or after the commencement of the operations relating to the project.

(c) The Impact Assessment Agency shall prepare a set of recommendations based on technical assessment of documents and data, furnished by the project authorities supplemented by data collected during visits to sites or factories, if undertaken and details of the public hearing.

The assessment shall be completed within a period of ninety days from receipt of the requisite documents and data from the project authorities and completion of public hearing and decision conveyed within thirty days thereafter.

The clearance granted shall be valid for a period of five years for commencement of the construction or operation of the project.

No construction work, preliminary or otherwise, relating to the setting up of the project may be undertaken till the environmental and site clearance is obtained.

IV. In order to enable the Impact Assessment Agency to monitor effectively the implementation of the recommendations and conditions subject to which the environmental clearance has been given, the project authorities concerned shall submit a half yearly report to the Impact Assessment Agency. Subject to the public interest, the Impact Assessment Agency shall make compliance reports publicly available.

V. If no comments from the Impact Assessment Agency are received within the time limit, the project would be deemed to have been approved as proposed by project authorities."

91. In Schedule I, which contains list of projects requiring EC from Central Government, Item 32 relates to 'new construction projects'. Para 3 provides the cases in which EIA 1994 provisions would not apply and reads as under:

"3. Nothing contained in this Notification shall apply to:

*(a) any item falling under entry Nos. 3 *18*20* 31*and 32* of the Schedule-I to be located or proposed to be located in the areas covered by the Notifications S.O. No. 102 (E) dated 1st February, 1989, S.O. 114 (E) dated 20th February, 1991; *S.O. No. 416 (E) dated 20th June, 1991* and S.O. No.319 (E) dated 7th May, 1992.*

*(b) any item falling under entry Nos.1,2,3,4,5,7,9,10,13, 14,16,17,19,*21*,25 and 27 of Schedule-I if the investment is less than Rs.100 crores for new projects and less than Rs. 50 crores for expansion/modernization projects;*

(c) any item reserved for Small Scale Industrial Sector with investment less than Rs. 1 crore.

(d) defence related road construction projects in border areas.

(e) any item falling under entry No. 8 of Schedule I, if that product is covered by the notification G.S.R. 1037(E) dated 5th December 1989.

(f) Modernisation projects in irrigation sector if additional command area is less than 10,000 hectares or project cost is less than Rs. 100 crores.:

(g) any construction project falling under entry 31 of Schedule-I including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1000 (one thousand) persons or below or with an investment of Rs.50,00,00,000/- (Rupees fifty crores) or below.

(h) any industrial estate falling under entry 32 of Schedule-I including industrial estates accommodating industrial units in an area of 50 hectares or below but excluding the industrial estates irrespective of area if their pollution potential is high.

Explanation-

(i) New construction projects which were undertaken without obtaining the clearance required under this notification and where construction work has not come up to the plinth level shall require clearance under this notification with effect from the 7th day of July, 2004.

(ii) In the case of new Industrial Estates which were undertaken without obtaining the clearance required under this notification, and where the construction work has not commenced or the expenditure does not exceed 25% of the total sanctioned cost, shall require clearance under this notification with effect from the 7th day of July, 2004.

(iii) Any project proponent intending to implement the proposed project under sub-paras (g) and (h) in a phased manner or in modules, shall be required to submit the details of the entire project covering all phases or modules for appraisal under this notification."

92. Para 4 says that if any information is found false etc., the decision or recommendation if any, would be rejected and if approval granted, would be revoked.

EIA 2006, Notification dated 14.09.2006

93. MoEF felt that EIA 1994 needs a complete overhauling. Consequently, in exercise of powers under Rule 5(3) of EP Rules, 1986, a

draft notification was published in the Gazette of India (Extraordinary) dated 15.09.2005, inviting objections and suggestions from all persons likely to be affected thereby, within a period of 60 days from the date on which copies of gazette containing draft notifications were made available to the public. The said draft notification contains provisions for imposing certain restrictions and prohibition on new projects or activities or on the expansion or modernization of existing projects or activities based on their potential environmental impacts as indicated in the schedule to the draft notification, being undertaken in any part of India, unless prior EC has been accorded.

94. Copies of draft notification were made available to the public on 15.09.2005. After considering objections and suggestions received in response to the above draft notification, by the Government of India, notification dated 14.09.2006 was issued in exercise of powers conferred by Section 3(1) and (2) (v) of EP Act, 1986 read with rule 5(3)(d) of EP Rules, 1986, in supersession of EIA 1994, except in respect of things done or omitted to be done before such supersession.

95. Preamble of notification dated 14.09.2006 says that Central Government hereby directs that on and from the date of publication of the notification, the required construction of any projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the notification dated 14.09.2006 entailing capacity addition with change in process and or technology, shall be undertaken in any part of India only after obtaining prior EC from Central Government or as the case may be, by State Level Environment Impact Assessment Authority, duly constituted by Central Government under section 3(3) of EP Act, 1986, in accordance with the procedure specified in the notification dated 14.09.2006. There were some typing mistakes in EIA 2006, as initially

published, hence a **corrigendum** was issued vide **notification dated 13.11.2006** and we have read EIA 2006, here at, as corrected by the said corrigendum.

96. Para 2 of EIA 2006 imposes condition of requirement of prior EC and reads as under:

> *"**2. Requirements of prior Environmental Clearance (EC):**- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under **Category 'A'** in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under **Category 'B'** in the said Schedule, **before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity**:*
>
> *(i) All new projects or activities listed in the Schedule to this notification;*
>
> *(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;*
>
> *(iii) Any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified range."*

97. Para 3 talks of constitution of State Level Environment Impact Assessment Authority (SEIAA).

98. Para 4 of EIA 2006 categorizes projects and activities and reads as under:

> *"**4. Categorization of projects and activities:***
>
> *(i) **All projects and activities are broadly categorized in to two categories - Category A and Category B**, based on the spatial extent of potential impacts and potential impacts on human health and natural and manmade resources.*
>
> *(ii) **All projects or activities included as Category 'A'** in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, **shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF)** on the recommendations of an Expert Appraisal Committee (EAC) to be*

constituted by the Central Government for the purposes of this notification;

(iii) ***All projects or activities included as Category 'B'*** *in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule,* ***will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA)****. The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. In the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be treated as a Category 'A' project;"*

99. Paras 5, 6 and 7 concerned with the procedure of grant of prior EC and read as under:

*"**5. Screening, Scoping and Appraisal Committees:***

The same Expert Appraisal Committees (EACs) at the Central Government and SEACs (hereinafter referred to as the (EAC) and (SEAC) at the State or the Union territory level shall screen, scope and appraise projects or activities in Category 'A' and Category 'B' respectively. ***EAC and SEAC's shall meet at least once every month.***

(a) The composition of the EAC shall be as given in Appendix VI. The SEAC at the State or the Union territory level shall be constituted by the Central Government in consultation with the concerned State Government or the Union territory Administration with identical composition;

(b) The Central Government may, with the prior concurrence of the concerned State Governments or the Union territory Administrations, constitutes one SEAC for more than one State or Union territory for reasons of administrative convenience and cost;

(c) The EAC and SEAC shall be reconstituted after every three years;

(d) The authorised members of the EAC and SEAC, concerned, may inspect any site(s) connected with the project or activity in respect of which the prior environmental clearance is sought, for the purposes of screening or scoping or appraisal, with prior notice of at least seven days to the applicant, who shall provide necessary facilities for the inspection;

(e) The ***EAC and SEACs shall function on the principle of collective responsibility****. The Chairperson shall endeavour to reach a consensus in each case, and if consensus cannot be reached, the view of the majority shall prevail.*

6. Application for Prior Environmental Clearance (EC):

An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, ***before commencing any construction activity, or preparation of land, at the site by the applicant****. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that,* ***in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report.***

7. Stages in the Prior Environmental Clearance (EC) Process for New Projects:

7(i) The environmental clearance process for new projects will comprise of a maximum of four stages, all of which may not apply to particular cases as set forth below in this notification. These four stages in sequential order are:

- *Stage (1) Screening (Only for Category 'B' projects and activities)*
- *Stage (2) Scoping*
- *Stage (3) Public Consultation*
- *Stage (4) Appraisal*

I. Stage (1) - Screening:

In case of Category 'B' *projects or activities,* ***this stage will entail the scrutiny of an application*** *seeking prior environmental clearance made in Form 1 by the concerned State level Expert Appraisal Committee (SEAC)* ***for determining whether or not the project or activity requires further environmental studies for preparation of an Environmental Impact Assessment (EIA) for its appraisal prior to the grant of environmental clearance depending up on the nature and location specificity of the project****. The projects requiring an Environmental Impact Assessment report shall be termed Category 'B1' and remaining projects shall be termed Category 'B2' and will not require an Environment Impact Assessment report.* ***For categorization of projects into B1 or B2 except item 8 (b), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time.***

II. Stage (2) - Scoping:

(i) "Scoping": refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects or activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, ***determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant 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****. The Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the Terms of Reference on the basis of the*

information furnished in the prescribed application Form1/Form 1A including Terms of Reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, Terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. ***All projects and activities listed as Category 'B' in Item 8 of the Schedule (Construction/Township/ Commercial Complexes/Housing) shall not require Scoping and will be appraised on the basis of Form 1/Form 1A and the conceptual plan.***

(ii) The ***Terms of Reference (TOR) shall be conveyed*** *to the applicant by the Expert Appraisal Committee or State Level Expert Appraisal Committee as concerned* ***within sixty days of the receipt of Form 1****. In the case of Category, A Hydroelectric projects Item 1(c) (i) of the Schedule the Terms of Reference shall be conveyed along with the clearance for preconstruction activities.* ***If the Terms of Reference are not finalized and conveyed to the applicant within sixty days of the receipt of Form 1, the Terms of Reference suggested by the applicant shall be deemed as the final Terms of Reference approved for the EIA studies****. The approved Terms of Reference shall be displayed on the website of the Ministry of Environment and Forests and the concerned State Level Environment Impact Assessment Authority.*

(iii) Applications for prior environmental clearance may be rejected by the regulatory authority concerned on the recommendation of the EAC or SEAC concerned at this stage itself. In case of such rejection, the decision together with reasons for the same shall be communicated to the applicant in writing within sixty days of the receipt of the application.

III. Stage (3) - Public Consultation:

(i) "Public Consultation" refers to the process by which the concerns of local affected persons and others who have plausible 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. ***All Category 'A' and Category B1 projects or activities shall undertake Public Consultation, except the following****:*

(a) modernization of irrigation projects (item 1(c) (ii) of the Schedule)

(b) all projects or activities located within industrial estates or parks (item 7(c) of the Schedule) approved by the concerned authorities, and which are not disallowed in such approvals.

(c) expansion of Roads and Highways (item 7 (f) of the Schedule) which do not involve any further acquisition of land.

(d) ***all Building/Construction projects/Area Development projects and Townships (item 8).***

e) ***all Category 'B2' projects and activities***.

f) *all projects or activities concerning national defence and security or involving other strategic considerations as determined by the Central Government.*

(ii) The Public Consultation shall ordinarily have two components comprising of:

(a) a public hearing at the site or in its close proximity-district wise, to be carried out in the manner prescribed in Appendix IV, for ascertaining concerns of local affected persons;

(b) obtain responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity.

(iii) the public hearing at, or in close proximity to, the site(s) in all cases shall be conducted by the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) concerned in the specified manner and forward the proceedings to the regulatory authority concerned within 45 (forty five) of a request to the effect from the applicant.

(iv) in case the State Pollution Control Board or the Union territory Pollution Control Committee concerned does not undertake and complete the public hearing within the specified period, and/or does not convey the proceedings of the public hearing within the prescribed period directly to the regulatory authority concerned as above, the regulatory authority shall engage another public agency or authority which is not subordinate to the regulatory authority, to complete the process within a further period of forty five days,.

(v) If the public agency or authority nominated under the sub paragraph (iii) above reports to the regulatory authority concerned that owing to the local situation, it is not possible to conduct the public hearing in a manner which will enable the views of the concerned local persons to be freely expressed, it shall report the facts in detail to the concerned regulatory authority, which may, after due consideration of the report and other reliable information that it may have, decide that the public consultation in the case need not include the public hearing.

(vi) For obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity, the concerned regulatory authority and the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) shall invite responses from such concerned persons by placing on their website the Summary EIA report prepared in the format given in Appendix IIIA by the applicant along with a copy of the application in the prescribed form, within seven days of the receipt of a written request for arranging the public hearing. Confidential information including non-disclosable or legally privileged information involving Intellectual Property Right, source specified in the application shall not be placed on the web site. The regulatory authority concerned may also use other appropriate media for ensuring wide publicity about the project or activity. The regulatory

authority shall, however, make available on a written request from any concerned person the Draft EIA report for inspection at a notified place during normal office hours till the date of the public hearing. All the responses received as part of this public consultation process shall be forwarded to the applicant through the quickest available means.

(vii) After completion of the public consultation, the applicant shall 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, shall be submitted by the applicant to the concerned regulatory authority for appraisal. The applicant may alternatively submit a supplementary report to draft EIA and EMP addressing all the concerns expressed during the public consultation.

IV. Stage (4) - Appraisal:

(i) 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, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance. This ***appraisal shall be made by Expert Appraisal Committee or State Level Expert Appraisal Committee concerned in a transparent manner*** *in a proceeding to which the applicant shall be invited for furnishing necessary clarifications in person or through an authorized representative. On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned* ***shall make categorical recommendations*** *to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same.*

(ii) ***The appraisal of all projects or activities which are not required to undergo public consultation, or submit an Environment Impact Assessment report, shall be carried out on the basis of the prescribed application Form 1 and Form 1A as applicable, any other relevant validated information available and the site visit wherever the same is considered as necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned****.*

(iii) The appraisal of an application shall be completed by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within sixty days of the receipt of the final Environment Impact Assessment report and other documents or the receipt of Form 1 and Form 1 A, where public consultation is not necessary and the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee shall be placed before the competent authority for a final decision within the next fifteen days. The prescribed procedure for appraisal is given in Appendix V;

7(ii). Prior Environmental Clearance (EC) process for Expansion or Modernization or Change of product mix in existing projects:

All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernization of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product –mix shall be made in Form I and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultations and the application shall be appraised accordingly for grant of environmental clearance."

100. Para 8 talks of the final stage of grant or rejection of prior EC and reads as under:

*"**8.** Grant or Rejection of Prior Environmental Clearance (EC):*

(i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.

(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be final and conveyed to the applicant by the regulatory authority concerned within the next thirty days.

(iii) In the event that the decision of the regulatory authority is not communicated to the applicant within the period specified in sub-paragraphs (i) or (ii) above, as applicable, the applicant may proceed as if the environment clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of

the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.

(iv) On expiry of the period specified for decision by the regulatory authority under paragraph (i) and (ii) above, as applicable, the decision of the regulatory authority, and the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be public documents.

(v) Clearances from other regulatory bodies or authorities shall not be required prior to receipt of applications for prior environmental clearance of projects or activities, or screening, or scoping, or appraisal, or decision by the regulatory authority concerned, unless any of these is sequentially dependent on such clearance either due to a requirement of law, or for necessary technical reasons.

(vi) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

101. Para 9 deals with the validity of EC, i.e., the tenure etc. and reads as under:

*"**9. Validity of Environmental Clearance (EC):***

*The "Validity of Environmental Clearance" is meant the period from which a prior environmental clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub paragraph (iv) of paragraph 7 above, to the start of production operations by the project or activity, or completion of all construction operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers. The prior environmental clearance granted for a project or activity shall be valid for a **period of ten years in the case of River Valley projects (item 1(c) of the Schedule)**, **project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects and five years in the case of all other projects and activities**. However, **in the case of Area Development projects and Townships [item 8(b)], the validity period shall be limited only to such activities as may be the responsibility of the applicant as a developer**. This period of validity may be extended by the regulatory authority concerned by a maximum period of five years provided an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form 1, and Supplementary Form 1A, for Construction projects or activities (item 8 of the Schedule). In this regard the regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee as the case may be."*

102. Para 10 talks of monitoring of post EC stages and says:

> "**10. *Post Environmental Clearance Monitoring:***
>
> *(i) It shall be mandatory for the project management to submit* ***half-yearly compliance reports*** *in respect of the stipulated prior environmental clearance terms and conditions in hard and soft copies to the regulatory authority concerned, on 1st June and 1st December of each calendar year.*
>
> *(ii)* ***All such compliance reports submitted by the project management shall be public documents****. Copies of the same shall be given to any person on application to the concerned regulatory authority. The* ***latest such compliance report shall also be displayed on the web site of the concerned regulatory authority****."*

103. A prior EC granted to a project or activity is transferable, subject to certain conditions. This aspect is dealt with in para 11 as under:

> "**11. *Transferability of Environmental Clearance (EC):***
>
> *A prior environmental clearance granted for a specific project or activity to an applicant may be transferred during its validity to another legal person entitled to undertake the project or activity on application by the transferor, or by the transferee with a written "no objection" by the transferor, to, and by the regulatory authority concerned, on the same terms and conditions under which the prior environmental clearance was initially granted, and for the same validity period. No reference to the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned is necessary in such cases."*

104. Para 12 is a transitional provision dealing with the pending cases under EIA 1994 and said:

> "***12. Operation of EIA Notification, 1994, till disposal of pending cases:***
>
> *From the date of final publication of this notification the Environment Impact Assessment (EIA) notification number S.O.60 (E) dated 27th January, 1994 is hereby superseded, except in supersession of the things done or omitted to be done before such supersession to the extent that in case of all or some types of applications made for prior environmental clearance and pending on the date of final publication of this notification, the Central Government may relax any one or all provisions of this notification except the list of the projects or activities requiring prior environmental clearance in Schedule, or continue operation of some or all provisions of the said notification, for a period not exceeding one year from the date of issue of this notification."*

105. EIA 2006 further contains **a Schedule** and **six Appendixes**. **Appendix I** is a format of Form-1 and **Appendix II** is a format of Form-1A which are referred in para 6 of EIA 2006. These are the formats of application to be submitted by a proponent for grant of prior EC. **Appendix III** contains a chart giving generic structure of environmental impact assessment document with reference to para 7 and **Appendix III A** provides contents of summary environmental impact assessment and it is also in reference to para 7 of EIA 2006. **Appendix III has 12 items** comprising EIA structure and the contents thereof are also separately detailed as under:

"GENERIC STRUCTURE OF ENVIRONMENTAL IMPACT ASSESSMENT DOCUMENT

S. NO.	***EIA STRUCTURE***	***CONTENTS***
1	*Introduction*	• *Purpose of the report* • *Identification of project & project proponent* • *Brief description of nature, size, location of the project and its importance to the country, region* • *Scope of the study – details of regulatory scoping carried out (As per Terms of Reference)*
2	*Project Description*	• *Condensed description of those aspects of the project (based on project feasibility study), likely to cause environmental effects. Details should be provided to give clear picture of the following:* • *Type of project* • *Need for the project* • *Location (maps showing general location, specific location, project boundary & project site layout)* • *Size or magnitude of operation (incl. Associated activities required by or for the project* • *Proposed schedule for approval and implementation* • *Technology and process description* • *Project description. Including drawings showing project layout, components of project etc. Schematic representations*

		of the feasibility drawings which give information important for EIA purpose • *Description of mitigation measures incorporated into the project to meet environmental standards, environmental operating conditions, or other EIA requirements (as required by the scope)* • *Assessment of New & untested technology for the risk of technological failure*
3	*Description of the Environment*	• *Study area, period, components & methodology* • *Establishment of baseline for valued environmental components, as identified in the scope* • *Base maps of all environmental components*
4	*Anticipated Environmental Impacts & Mitigation Measures*	• *Details of Investigated Environmental impacts due to project location, possible accidents, project design, project construction, regular operations, final decommissioning or rehabilitation of a completed project* • *Measures for minimizing and/or offsetting adverse impacts identified* • *Irreversible and Irretrievable commitments of environmental components* • *Assessment of significance of impacts (Criteria for determining significance, Assigning significance)* • *Mitigation measures*
5	*Analysis of Alternatives (Technology & Site)*	• *In case, the scoping exercise results in need for alternatives:* • *Description of each alternative* • *Summary of adverse impacts of each alternative* • *Mitigation measures proposed for each alternative and* • *Selection of alternative*
6	*Environmental Monitoring Program*	• *Technical aspects of monitoring the effectiveness of mitigation measures (incl. Measurement methodologies, frequency, location, data analysis, reporting schedules, emergency procedures, detailed budget & procurement schedules)*
7	*Additional Studies*	• *Public Consultation*

		• *Risk assessment* • *Social Impact Assessment. R&R Action Plans*
8	*Project Benefits*	• *Improvements in the physical infrastructure* • *Improvements in the social infrastructure* • *Employment potential –skilled; semi-skilled and unskilled* • *Other tangible benefits*
9	*Environmental Cost Benefit Analysis*	• *If recommended at the Scoping stage*
10	*EMP*	• *Description of the administrative aspects of ensuring that mitigative measures are implemented and their effectiveness monitored, after approval of the EIA*
11	*Summary & Conclusion (This will constitute the summary of the EIA Report)*	• *Overall justification for implementation of the project* • *Explanation of how, adverse effects have been mitigated*
12	*Disclosure of Consultants engaged*	• *The names of the Consultants engaged with their brief resume and nature of Consultancy rendered*

106. Summary of environmental impact assessment should contain details given in Appendix III A of EIA report, on seven aspects, as under:

"1. Project Description
2. Description of the Environment
3. Anticipated Environmental impacts and mitigation measures
4. Environmental Monitoring Programme
5. Additional Studies
6. Project Benefits
7. Environment Management Plan"

107. **Appendix IV,** also with reference of para 7, provides procedure for conduct of public hearing.

108. **Appendix V,** again with reference to para 7, provides procedure for appraisal of Environment Impact Assessment Report and other documents and talks of following steps:

"**PROCEDURE PRESCRIBED FOR APPRAISAL**

1. The applicant shall apply to the concerned regulatory authority through a simple communication ***enclosing the following documents where public consultations are mandatory****:*

- *Final Environment Impact Assessment Report [20(twenty) hard copies and 1 (one) soft copy)]*
- *A copy of the video tape or CD of the public hearing proceedings*
- *A copy of final layout plan (20 copies)*
- *A copy of the project feasibility report (1 copy)*

2. The Final EIA Report and the other relevant documents submitted by the applicant shall be scrutinized in office within 30 days from the date of its receipt by the concerned Regulatory Authority strictly with reference to the TOR and the inadequacies noted shall be communicated electronically or otherwise in a single set to the Members of the EAC/SEAC enclosing a copy each of the Final EIA Report including the public hearing proceedings and other public responses received along with a copy of Form -1 or Form 1A and scheduled date of the EAC/SEAC meeting for considering the proposal.

3. Where a public consultation is not mandatory, and therefore a formal EIA study is not required, the appraisal shall be made on the basis of the prescribed application Form 1 and a pre-feasibility report in the case of all projects and activities other than Item 8 of the Schedule. ***In the case of Item 8 of the Schedule, considering its unique project cycle, the EAC or SEAC concerned shall appraise all Category B projects or activities on the basis of Form 1, Form 1A and the conceptual plan and stipulate the conditions for environmental clearance. As and when the applicant submits the approved scheme/building plans complying with the stipulated environmental clearance conditions with all other necessary statutory approvals, the EAC/SEAC shall recommend the grant of environmental clearance to the competent authority."***

4. Every application shall be placed before the EAC/SEAC and its appraisal completed within 60 days of its receipt with requisite documents/details in the prescribed manner.

5. The applicant shall be informed at least 15 (fifteen) days prior to the scheduled date of the EAC/SEAC meeting for considering the project proposal.

6. *The minutes of the EAC/SEAC meeting shall be finalised within 5 working days of the meeting and displayed on the website of the concerned regulatory authority. In case the project or activity is recommended for grant of EC, then the minutes shall clearly list out the specific environmental safeguards and conditions. In case the recommendations are for rejection, the reasons for the same shall also be explicitly stated."*

109. **Appendix VI** with reference to paragraph 5 of EIA 2006 gives composition of sector/project specific Expert Appraisal Committee for category A projects and the State/UT Level Expert Appraisal Committees for category B projects to be constituted by Central Government. Schedule

gives the list of projects or activities which would require prior EC and covers the following projects/activities:

"***1. Mining, extraction of natural resources and power generation (for a specified production capacity)***

1(a) Mining of minerals
1(b) Offshore and onshore oil and gas exploration, development & production
1(c) River Valley projects
1(d) Thermal Power Plants
1(e) Nuclear power projects and processing of nuclear fuel

2. Primary processing

2(a) Coal washeries
2(b) Mineral benefication

3. Materials Production

3(a) Metallurgical industries (ferrous & non-ferrous)
3(b) Cement plants

4. Materials Processing

4(a) Petroleum refining industry
4(b) Coke oven plants
4(c) Asbestos milling and asbestos based products
4(d) Chlor-alkali industry
4(e) Soda ash industry
4(f) Leather/skin/hide processing industry

5. Manufacturing/Fabrication

5(a) Chemical fertilizers
5(b) Pesticides industry and pesticide specific intermediates (excluding formulations)
5(c) Petro-chemical complexes (industries based on processing of petroleum fractions & natural gas and/or reforming to aromatics)
5(d) Manmade fibres manufacturing
5(e) Petrochemical based processing (processes other than cracking & reformation and not covered under the complexes)
5(f) Synthetic organic chemicals industry (dyes & dye intermediates; bulk drugs and intermediates excluding drug formulations; synthetic rubbers; basic organic chemicals, other synthetic organic chemicals and chemical intermediates)
5(g) Distilleries
5(h) Integrated paint industry
5(i) Pulp & paper industry excluding manufacturing of paper from waste paper and manufacture of paper from ready pulp without bleaching
5(j) Sugar industry
5(k) Induction/arc furnaces/cupola furnaces 5TPH or more

6. Service Sectors

6(a) Oil & gas transportation pipeline (crude and refinery/petrochemical products), passing through national

parks/sanctuaries/coral reefs/ecologically sensitive areas including LNG Terminal.

6(b) Isolated storage & handling of hazardous chemicals (As per threshold planning quantity indicated in column 3 of schedule 2 & 3 of MSIHC Rules 1989 amended 2000)

7. Physical Infrastructure including Environmental Services

7(a) Air ports

7(b) All ship breaking yards including ship breaking units

7(c) Industrial estate/parks/complexes/areas, export processing Zones (EPZs), Special Economic Zones (SEZs), Biotech Parks, Leather Complexes.

7(d) Common hazardous waste treatment, storage and disposal facilities (TSDFs)

7(e) Forts, Harbours

7(f) Highways

7(g) Aerial ropeways

7(h) Common Effluent Treatment Plants (CETPs)

7(i) Common Municipal Solid Waste Management Facility (CMSWMF)"

110. For the purpose of present case, we are concerned with item 8 which deals with building construction projects/area development projects and townships and it has two categories which we reproduce as under:

"

(1)	***(2)***	***(3)***	***(4)***	***(5)***
8		***Building Construction projects/Area Development projects and Townships***		
8(a)	*Building and Construction projects*		*≥20000 sq.mtrs and <1,50,000 sq. mtrs. of built-up area#*	*#(built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)*
8(b)	*Townships and Area Development projects*		*Covering an area ≥ 50 ha and or built up Area ≥1,50,000 sq. mtrs ++*	*++**All projects under Item 8(b) shall be appraised as Category B1***

"

111. At the end of the schedule there is a note containing certain conditions as General Condition (GC) and Specific Condition (SC) but **column (5) shows that these conditions have not been made applicable to the projects/activities covered under items 8(a) and 8(b)**. However, to make study of EIA Notification, 2006, complete, we may reproduce these conditions as under:

*"**Note:***

General Condition (GC):

Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as identified by the

Central Pollution Control Board from time to time, (iii) Notified Eco-sensitive areas, (iv) inter-State boundaries and international boundaries:

Specific Condition (SC):

If any Industrial Estate/Complex/Export processing Zones/ Special Economic Zones/Biotech Parks/Leather Complex with homogeneous type of industries such as Items 4(d), 4(f), 5(e), 5(f), or those Industrial estates with pre–defined set of activities (not necessarily homogeneous, obtains prior environmental clearance, individual industries including proposed industrial housing within such estates/complexes will not be required to take prior environmental clearance, so long as the Terms and Conditions for the industrial estate/complex are complied with (Such estates/complexes must have a clearly identified management with the legal responsibility of ensuring adherence to the Terms and Conditions of prior environmental clearance, who may be held responsible for violation of the same throughout the life of the complex/estate)."

112. EIA 2006 as initially notified, qualified projects/activities covered under item 8(a) and 8(b) as category 'B' projects. The projects/activities under item 8(b) were clearly categorized as B1. The application for prior EC, if submitted for a project/activity under item 8 of Schedule of EIA 2006, para 6 of EIA 2006 requires that in addition to form 1 and supplementary form 1A, the proponent shall also submit a copy of conceptual plan instead of pre-feasibility report. Para 7(I) Stage (1) - Screening says that in category B projects/activities, environment Impact Assessment Report shall be prepared only for the projects/activities come under category B1 and category B2 projects will not require EIA report. Para 7(II) Stage (2) – Scoping (i) further says that scoping shall not be required for the projects/activities listed in category B in item 8 of the schedule of EIA 2006. In such cases, appraisal shall be on the basis of form 1/form 1A and conceptual plan. Para 7(III) Stage (3) – Public Consultation (i) also provides that public consultation shall not be required in respect to projects/activities under item 8 of the Schedule. Thus, in respect of the projects/activities under item 8 of the Schedule I to EIA 2006, a modified/simpler procedure was prescribed for consideration of application for grant of prior EC.

113. EIA 2006 has been amended up to July 2021 by more than 55 **amendment** notifications but all are not relating to project/activities referable to item 8 of the Schedule of EIA 2006 and since we are concerned only to project/activities fall under item 8 of the Schedule of EIA 2006, we would be referring hereunder only such amendments which are relatable to item 8 of the Schedule or procedure of appraisal of the project/activities under item 8.

A. Notification dated 01.12.2009 published in Gazette of India extraordinary of the same date.

a) In **para 3** of EIA 2006 **sub-para (7) was substituted** as under:

> *"*(7) *All decisions of the SEIAA shall be taken in a meeting and shall ordinarily be unanimous:*
> *Provided that, in case a decision is taken by majority, the details of views, for and against it, shall be clearly recorded in the minutes and a copy thereof sent to MoEF."*

b) In **para 4, sub-para (iii) certain words and letters were changed** and the amended provision reads as under:

> *"4(iii) All projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfil the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification.* ***In the absence of a duly constituted SEIAA and SEAC, a Category 'B' project shall be considered at the Central Level as a Category 'B' project****."*

c) In **para 7(i) (III) relating to Stage (3) after sub-clause (c), the following was inserted**:

> *"*(cc) *maintenance dredging provided the dredged material shall be disposed within port limits."*

d) In **para 7(i) (III) relating to Stage (3) sub-clause (d) was substituted** as under:

*"(d) All Building or Construction projects or Area Development projects (which do not contain any category 'A' projects and activities) and Townships (**item 8(a) and 8(b)** in the Schedule to the notification)."*

e) In **para 10 clause (i) was renumbered as (ii) and before such renumbered (ii), a sub-para (i)(a) and (b) was inserted** as under:

*"(i) (a) In respect of Category 'A' projects, it shall be mandatory for the project proponent to make public the environmental clearance granted for their project along with the environmental conditions and safeguards at their cost by prominently advertising it at least in two local newspapers of the district or State where the project is located and in addition, this shall also be displayed in the project proponent's website permanently. (b) **In respect of Category 'B' projects, irrespective of its clearance by MoEF/SEIAA, the project proponent shall prominently advertise in the newspapers indicating that the project has been accorded environment clearance and the details of MoEF website where it is displayed**. (c) The Ministry of Environment and Forests and the State/Union Territory Level Environmental Impact Assessment Authorities (SEIAAs), as the case may be, shall also place the environmental clearance in the public domain on Government portal. (d) The copies of the environmental clearance shall be submitted by the project proponents to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt.";*

*(b) **existing sub-para (ii) shall be renumbered as sub-para (iii)**."*

f) In the Schedule, **General Condition was substituted** as under:

*"**General Condition (GC):***
Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected areas notified under the Wild Life (Protection) Act, 1972; (ii) Critically polluted areas as identified by the Central Pollution Control Board from time to time; (iii) Eco-sensitive areas as notified under section 3 of the Environment (Protection) Act, 1986, such as, Mahabaleshwar Panchgani, Matheran, Pachmarhi, Dahanu, Doon Valley, and (iv) inter-State boundaries and international boundaries:

Provided that the requirement regarding distance of 10 km of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective States or U.T.s sharing the common boundary in case the activity does not fall within 10 kilometres of the areas mentioned at item (i), (ii) and (iii) above."

g) Amendment was also made in **Appendix I whereby in Form-1 item (I) relating to Basic Information, was substituted by a**

new format and in **Appendix IV the procedure for conduct of public hearing was completely substituted.**

h) In **Appendix V, para 3** was substituted as under:

"3. Where a public consultation is not mandatory, the appraisal shall be made on the basis of the prescribed application Form 1 and EIA report, in the case of all projects and activities other than Item 8 of the Schedule. ***In the case of Item 8 of the Schedule, considering its unique project cycle, the EAC or SEAC concerned shall appraise all Category B projects or activities on the basis of Form 1, Form 1A and the conceptual plan and make recommendations on the project regarding grant of environmental clearance or otherwise and also stipulate the conditions for environmental clearance."***

B. Notification dated 04.04.2011 published in Gazette of India extraordinary dated 06.04.2011:

a) Para **6 was amended by substituting certain words** and amended para 6 reads as under:

"6. Application for Prior Environmental Clearance (EC):

An application seeking prior environmental clearance in all cases shall be made by the project proponent *in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report."*

b) In **para 7, sub-para II, Stage (2), clause (i) was amended by substituting certain words** as under:

(i) "Scoping": refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects or activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant 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. The Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the Terms of Reference on the basis of the information furnished

in the prescribed application Form1/Form 1A including Terns of Reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, Terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. All projects and ***activities listed as Category 'B' in item 8(a) of the schedule (building and construction projects)*** *shall not require Scoping and will be appraised on the basis of Form 1/ Form 1A and the conceptual plan."*

c) In the **schedule, item 8(a) column (5) the existing entry was substituted** by the following:

*"The built up area for the purpose of this Notification is defined as "the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects.****"***

d) **In Appendix V, para 3 was also substituted** as under:

"3. Where a public consultation is not mandatory, the appraisal shall be made on the basis of prescribed application Form-1 and EIA report, in the case of all projects and activities other than item 8 of the schedule. ***In the case of item 8 of the schedule, considering its unique project cycle, the EAC or SEAC concerned shall appraise projects or activities on the basis of Form-1, Form-1A, conceptual plan and the EIA report [required only for projects listed under 8(b)] and make recommendations on the project regarding grant of environmental clearance or otherwise and also stipulate the conditions for environmental clearance****."*

C. Notification dated 22.08.2013 published in Gazette of India Extraordinary of the same date:

a) In **para 7 sub-paragraph II, item (i) of EIA 2006 was substituted** as under:

"(i) ***"Scoping" refers to the process*** *by which the Expert Appraisal Committee in the case of Category 'A' projects activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion or modernization or change in product mix of existing projects or activities,* ***determine detailed and comprehensive Terms of Reference (TOR) addressing all relevant 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 and the Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the terms of reference on the basis of the*

information furnished in the prescribed application Form 1 or Form 1A including terms of reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned:

Provided that the ***following shall not require Scoping****-*

(i) ***all projects and activities listed as Category 'B' in item 8 of the Schedule (Construction or Township or Commercial Complexes or Housing****);*

(ii) all Highway expansion projects covered under entry (ii) of column (3) and column (4) under sub-item (f) of item 7 of the Schedule:

Provided further that-

A. ***the projects and activities referred to in clause (i) shall be apprised on the basis of Form I or Form IA and the conceptual plan****;*

B. The projects referred to in clause (ii) shall prepare EIA and EMP report on the basis of model TOR specified by Ministry of Environment and Forests;"

D. Notification dated 26.02.2014 published in Gazette of India Extraordinary of the same date:

a) Here in paragraph 7(II) item (i) which was already substituted vide the notification dated 22.08.2013, was again substituted as under:

"***(i) all projects or activities listed under Category, 'B' against item 8(a) of the Schedule****;"*

E. Notification dated 22.12.2014 published in Gazette of India Extraordinary of the same date:

a) **Item 8 in the Schedule** as existing in entirety **was substituted** as under:

(1)	*(2)*	*(3)*	*(4)*	*(5)*
"8		***Building or Construction projects or Area Development projects and Townships***		
8(a)	*Building and Construction projects*		*>20,000 sq. mtrs and <1,50,000 sq. mtrs of built up area*	*The term "built up area" for the purpose of this notification the built up or covered area on all floors put together, including its basement and other service areas, which are proposed in the building or construction projects.*

				Note 1.- *The projects or activities shall not include industrial shed, school, college, hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled materials such as fly ash bricks.* ***Note 2.- "General Conditions" shall not apply.***
8	*Townships and Area Development Projects*		*Covering an area >50 ha and or built up area >1,50,000 sq. mrts*	*A project of Township and Area Development Projects covered under this item shall require an Environment Assessment report and be appraised as Category 'B1' Project.* ***Note.- "General Conditions" shall not apply.***

b) Substantial amendment came to be made in EIA 2006 in the Schedule item 8 by the above notification whereby the term "built up area" was explained as built up or covered area on all floors put up together, including its basement and other service areas, which are proposed in the buildings or construction projects. However, it was clarified by note one that projects/activities shall not include industrial shed, school, college, hostel for educational institution but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled material such as fly ash bricks. Inapplicability of "general conditions" was maintained in respect of item 8 of the Schedule of EIA 2006.

F. Notification dated 29.04.2015 published in Gazette of India Extraordinary on 30.04.2015:

a) Hereby **existing paragraph 9 was renumbered as sub-paragraph (i) with certain amendments of the words therein** and the amended sub-paragraph (i) reads as under:

*"**(i) Validity of Environmental Clearance (EC):***

*The **"Validity of Environmental Clearance" is meant the period** from which a prior environmental clearance is granted*

by the regulatory authority, or may be presumed by the applicant to have been granted under sub paragraph (iv) of paragraph 7 above, to the start of production operations by the project or activity, ***or completion of all construction operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers.*** *The prior environmental clearance granted for a project or activity shall be valid for a period of ten years in the case of River Valley projects (item 1(c) of the Schedule), project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects* ***and seven years in the case of all other projects and activities.***

(Emphasis added)

b) Further, **sub-paragraph (ii) was inserted** as under:

"(ii) ***In the case of Area Development projects and Townships [item 8 (b), the validity period shall be limited only to such activities as may be the responsibility of the applicant as a developer:***

Provided that this period of validity may be extended by the regulatory authority concerned by a maximum period of seven years if an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form I, and Supplementary Form IA, for Construction projects or activities (item 8 of the Schedule):

Provided further that the ***regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee, as the case may be, for grant of such extension.***

(iii) Where the application for extension under sub-paragraph (ii) has been filed-

(a) within ***one month after the validity period of EC****, such cases shall be referred to concerned Expert Appraisal Committee (EAC) or State Level Expert Appraisal committee (SEAC) and based on their recommendations, the delay shall be condoned at the level of the Joint Secretary in the Ministry of Environment, Forest and Climate Change or Member Secretary, SEIAA, as the case may be;*

(b) ***more than one month after the validity period of EC*** *but less than three months after such validity period, then, based on the recommendations of the EAC or the SEAC, the delay shall be condoned with the approval of the Minister in charge of Environment Forest and Climate Change or Chairman, as the case may be:"*

G. Notification dated 09.12.2016 published in Gazette of India Extraordinary of the same date:

a) Hereby **after paragraph 13 of EIA 2006, paragraph 14 was inserted** as under**:**

"14. Integration of environmental condition in building bye-laws.-

(1) The ***integrated environmental conditions with the building permission being granted by the local authorities and the construction of buildings as per the size shall adhere to the objectives and monitorable environmental conditions as given at Appendix-XIV.***

(2) The States adopting the objectives and monitorable environmental conditions referred to in subparagraph (1), in the building bye-laws and relevant State laws and incorporating these conditions in the approvals given for building construction making it legally enforceable shall not require a separate environmental clearance from the Ministry of Environment, Forest and Climate Change for individual buildings.

(3) The States may forward the proposed changes in their bye-laws and rules to the Ministry of Environment, Forest and Climate Change, who in turn will examine the said draft bye-laws and rules and convey the concurrence to the State Governments.

(4) ***When the State Governments notifies the bye-laws and rules concurred by the Ministry of Environment, Forest and Climate Change, the Central Government may issue an order stating that no separate environmental clearance is required*** *for buildings to be constructed in the States or local authority areas.*

(5) The local authorities like Development Authorities, Municipal Corporations, may certify the compliance of the environmental conditions prior to issuance of Completion Certificate, as applicable as per the requirements stipulated for such buildings based on the recommendation of the Environmental Cell constituted in the local authority.

(6) The State Governments where bye-laws or rules are not framed may continue to follow the existing procedure of appraisal for individual projects and grant of Environmental Clearance for buildings and constructions as per the provisions laid down in this notification.

(7) For the purpose of certification regarding incorporation of environmental conditions in buildings, the Ministry of Environment, Forest and Climate Change may empanel through competent agencies, the Qualified Building Environment Auditors (QBEAs) to assess and certify the building projects, as per the requirements of this notification

and the procedure for accreditation of Qualified Building Auditors and their role as given at ***Appendix-XV.***

(8) In order to implement the integration of environmental condition in building bye-laws, the State Governments or Local Authorities may constitute the Environment Cell (herein after called as Cell), for compliance and monitoring and to ensure environmental planning within their jurisdiction.

(9) The Cell shall monitor the implementation of the bye-laws and rules framed for Integration of environmental conditions for construction of building and the Cell may also allow the third part auditing process for oversight, if any.

(10)The Cell shall function under the administrative control of the Local Authorities.

(11)The composition and functions of the Cell are given at Appendix-XVI.

(12) The Local Authorities while integrating the environmental concerns in the building bye-laws, as per their size of the project, shall follow the procedure, as given below:

BUILDINGS CATEGORY '1' (5,000 to < 20,000 Square meters)

A Self declaration Form to comply with the environmental conditions (Appendix XIV) along with Form 1A and certification by the Qualified Building Environment Auditor to be submitted online by the project proponent besides application for building permission to the local authority along with the specified fee in separate accounts. Thereafter, the local authority may issue the building permission incorporating the environmental conditions in it and allow the project to start based on the self declaration and certification along with the application. After completion of the construction of the building, the project proponent may update Form 1A online based on audit done by the Qualified Building Environment Auditor and shall furnish the revised compliance undertaking to the local authority. ***Any non-compliance issues in buildings less than 20,000 square meters shall be dealt at the level of local body and the State through existing mechanism.***

OTHER BUILDINGS CATEGORIES (≥ 20,000 Square meters)

The project proponent may submit online application in Form 1 A alongwith specified fee for environmental appraisal and additional fee for building permission. The fee for environmental appraisal will be deposited in a separate account. The Environment Cell will process the application and present it in the meeting of the Committee headed by the authority competent to give building permission in that local authority. The Committee will appraise the project and stipulate the environmental conditions to be integrated in the building permission. After recommendations of the Committee, the

building permission and environmental clearance will be issued in an integrated format by the local authority.

The project proponent shall submit Performance Data and Certificate of Continued Compliance of the project for the environmental conditions parameters applicable after completion of construction from Qualified Building Environment Auditors every five years to the Environment Cell with special focus on the following parameters:-

(a) Energy Use (including all energy sources).

(b) Energy generated on site from onsite Renewable energy sources.

(c) Water use and waste water generated, treated and reused on site.

(d) Waste Segregated and Treated on site.

(e) Tree plantation and maintenance.

After completion of the project, the Cell shall randomly check the projects compliance status including the five years audit report. The State Governments may enact the suitable law for imposing penalties for non-compliances of the environmental conditions and parameters. The Cell shall recommend financial penalty, as applicable under relevant State laws for non-compliance of conditions or parameters to the local authority. On the basis of the recommendation of the Cell, the local authority may impose the penalty under relevant State laws. The cases of false declaration or certification shall be reported to the accreditation body and to the local body for blacklisting of Qualified Building Environment Auditors and financial penalty on the owner and Qualified Building Environment Auditors.

No Consent to Establish and Operate under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 will be required from the State Pollution Control Boards for residential buildings up to 1,50,000 square meters.","

b) Further in the **schedule item 8 entries were substituted** as under:

(1)	*(2)*	*(3)*	*(4)*	*(5)*
"8		*Building/Construction projects/Area Development projects and Townships*		
8(a)	*Building and Construction projects*		*≥ 20,000 sq. mtrs and < 1,50,000 sq. mtrs of built up area*	*The term "built up area" for the purpose of this notification is the built up or covered area on all floors put together including its basement and other service areas, which are proposed in the buildings and construction projects.* *Note 1. The projects or activities shall not include industrial shed, universities, college, hostel for educational institutions, but such buildings shall ensure sustainable environmental management,*

				solid and liquid and implement environmental conditions given at Appendix-XIV. *Note 2.-General Condition shall not apply.* *Note 3.-The exemptions granted at Note 1 will be available only for industrial shed after integration of environmental norms with building permissions at the level of local authority.*
8 (b)	*Townships and Area Development projects*	***≥ 3,00,000 sq. mtrs of built up area or Covering an area ≥ 150 ha***	***≥1,50,000 sq. mtrs and < 3,00,000 sq. mtrs built up area or covering an area ≥ 50 ha and < 150 ha***	*Note.- General Condition shall not apply".*

c) This notification also **inserted three Appendixes i.e. XIV, XV and XVI** and we find the same to be relevant since all relates to environmental conditions for building and construction.

APPENDIX –XIV

ENVIRONMENTAL CONDITIONS FOR BUILDINGS AND CONSTRUCTIONS

(CATEGORY '1': 5,000 to less than 20,000 Square meters)

MEDIUM	***S.N.***	***ENVIRONMENTAL CONDITIONS***
Topography and Natural Drainage	*1*	***The natural drain system should be maintained for ensuring unrestricted flow of water***. ***No construction shall be allowed to obstruct the natural drainage through the site***. *No construction is allowed on wetland and water bodies. Check dams, bioswales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water.*
Water Conservation, Rain Water Harvesting, and Ground Water Recharge	*2*	*Use of water efficient appliances shall be promoted. The local bye-law provisions on rain water harvesting should be followed.* *If local bye-law provision is not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Bye-Laws, 2016.* *A rain water harvesting plan needs to be designed where the recharge bores (minimum one recharge bore per 5,000 square meters of built up area) is recommended. Storage and reuse of the rain water harvested should be promoted. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse.* ***The ground water shall not be withdrawn without approval from the Competent Authority***.

		All recharge should be limited to shallow aquifer.
	2(a)	***At least 20% of the open spaces as required by the local building bye-laws shall be pervious**. Use of Grass pavers, paver blocks with at least 50% opening, landscape etc. would be considered as pervious surface.*
Waste Management	*3*	*Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste.* *Sewage: In areas where there is no municipal sewage network, onsite treatment systems should be installed. Natural treatment systems which integrate with the landscape shall be promoted. As far as possible treated effluent should be reused. The excess treated effluent shall be discharged following the CPCB norms.* *Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development, Central Public Health and Environmental Engineering Organisation (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013.* *The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.*
Energy	*4*	*Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have notified their own ECBC, shall comply with the State ECBC.* *Outdoor and common area lighting shall be Light Emitting Diode (LED).* *Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1% of the demand load or as per the state level/ local building bye-laws requirement, whichever is higher.* *Solar water heating shall be provided to meet 20% of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.* *Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design.* *Wall, window, and roof u-values shall be as per ECBC specifications.*
Air Quality and Noise	*5*	*Dust, smoke & other air pollution prevention measures shall be provided for the building as well*

		as the site. These measures shall include screens for the building under construction, continuous dust/ wind breaking walls all around the site (at least 3 meter height). Plastic/ tarpaulin sheet covers shall be provided for vehicles bringing in sand, cement, murram and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site. *Sand, murram, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution.* *Wet jet shall be provided for grinding and stone cutting. Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust.* *All construction and demolition debris shall be stored at the site (and not dumped on the roads or open spaces outside) before they are properly disposed. All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Rules 2016. All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask.* *For indoor air quality the ventilation provisions as per National Building Code of India shall be made.*
	5 (a)	*The location of the DG set and exhaust pipe height shall be as per the provisions of the CPCB norms.*
Green Cover	*6*	***A minimum of 1 tree for every 80 square meters of land should be planted and maintained**. The existing trees will be counted for this purpose. Preference should be given to planting native species.*
	6 (a)	*Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees for every 1 tree that is cut) shall be done and maintained.*

(Category '2': 20,000 to less than 50,000 Square meters)

MEDIUM	***S.N.***	***ENVIRONMENTAL CONDITIONS***
Topography and Natural Drainage	*1*	***The natural drain system should be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site**. No construction is allowed on wetland and water bodies. Check dams, bio-swales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water.* *Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.*
Water Conservation,	*2*	*A complete plan for rain water harvesting, water efficiency and conservation should be prepared.*

Rain Water Harvesting, and Ground Water Recharge		*Use of water efficient appliances should be promoted with low flow fixtures or sensors.* *The local bye-law provisions on rain water harvesting should be followed. If local bye-law provision is not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Byelaws, 2016.* *A rain water harvesting plan needs to be designed where the recharge bores of minimum one recharge bore per 5,000 square meters of built up area and storage capacity of minimum one day of total fresh water requirement shall be provided. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority.* *All recharge should be limited to shallow aquifer.*
	2(a)	*At least 20% of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks with at least 50% opening, landscape etc. would be considered as pervious surface.*
Waste Management	*3*	*Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste.* *Sewage: Onsite sewage treatment of capacity of treating 100% waste water to be installed. Treated waste water shall be reused on site for landscape, flushing, cooling tower, and other end-uses. Excess treated water shall be discharged as per CPCB norms. Natural treatment systems shall be promoted.* *Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development, Central Public Health and Environmental Engineering Organisation (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013.* *The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.*
	3 (a)	*All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.*
	3(b)	*Organic waste compost/Vermiculture pit with a minimum capacity of 0.3 kg/person/day must be installed.*
Energy	*4*	*Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have*

		notified their own ECBC, shall comply with the State ECBC. *Outdoor and common area lighting shall be LED.* *Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design.* *Wall, window, and roof u-values shall be as per ECBC specifications.*
	4 (a)	*Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1% of the demand load or as per the state level/ local building bye-laws requirement, whichever is higher.*
	4 (b)	*Solar water heating shall be provided to meet 20% of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.*
	4 (c)	*Use of environment friendly materials in bricks, blocks and other construction materials, shall be required for at least 20% of the construction material quantity. These include flyash bricks, hollow bricks, AACs, Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials.* *Fly ash should be used as building material in the construction as per the provisions of the Fly Ash Notification of September, 1999 as amended from time to time.*
Air Quality and Noise	*5*	*Dust, smoke & other air pollution prevention measures shall be provided for the building as well as the site. These measures shall include screens for the building under construction, continuous dust/ wind breaking walls all around the site (at least 3 meter height). Plastic/ tarpaulin sheet covers shall be provided for vehicles bringing in sand, cement, murram and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site.* *Sand, murram, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution.* *Wet jet shall be provided for grinding and stone cutting. Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust.* *All construction and demolition debris shall be stored at the site (and not dumped on the roads or open spaces outside) before they are properly*

		disposed. All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Rules 2016. *All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask.* *For indoor air quality the ventilation provisions as per National Building Code of India.*
	5 (a)	*The location of the DG set and exhaust pipe height shall be as per the provisions of the CPCB norms.*
Green Cover	*6*	*A minimum of 1 tree for every 80 sq.mt. of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species.*
	6 (a)	*Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees for every 1 tree that is cut) shall be done and maintained.*
Top Soil preservation and reuse	*7*	***Topsoil should be stripped to a depth of 20 cm from the areas proposed for buildings, roads, paved areas, and external services**.* *It should be stockpiled appropriately in designated areas and reapplied during plantation of the proposed vegetation on site*
Transport	*8*	*A comprehensive mobility plan, as per MoUD best practices guidelines (URDPFI), shall be prepared to include motorized, non-motorized, public, and private networks. Road should be designed with due consideration for environment, and safety of users. The road system can be designed with these basic criteria.* *1. Hierarchy of roads with proper segregation of vehicular and pedestrian traffic.* *2. Traffic calming measures.* *3. Proper design of entry and exit points.* *4. Parking norms as per local regulation.*

(Category '3': 50000 to 150000 m²)

MEDIUM	***S.N.***	***ENVIRONMENTAL CONDITIONS***
Topography and Natural Drainage	*1*	***The natural drain system should be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site**. No construction is allowed on wetland and water bodies. Check dams, bio-swales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water.* *Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.*

Water conservation- Rain Water Harvesting, and Ground Water Recharge	*2*	*A complete plan for rain water harvesting, water efficiency and conservation should be prepared.* *The local bye-law provisions on rain water harvesting should be followed. If local bye-law provisions are not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Byelaws, 2016.* *A rain water harvesting plan needs to be designed where the recharge bores of minimum one recharge bore per 5,000 square meters of built up area and storage capacity of minimum one day of total fresh water requirement shall be provided. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority.* *All recharge should be limited to shallow aquifer.*
	2(a)	*At least 20% of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks with at least 50% opening, landscape etc. would be considered as pervious surface.*
	2(b)	*Use of water efficient appliances should be promoted. Low flow fixtures or sensors be used to promote water conservation.*
	2(c)	*Separation of grey and black water should be done by the use of dual plumbing system. In case of single stack system separate recirculation lines for flushing by giving dual plumbing system be done.*
Solid Waste Management	*3*	*Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste.* *The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.*
	3(a)	*All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.*
	3(b)	*Organic waste composter/Vermiculture pit with a minimum capacity of 0.3 kg/person/day must be installed.*
Sewage Treatment Plant		*Onsite sewage treatment of capacity of treating 100% waste water to be installed. Treated waste water shall be reused on site for landscape, flushing, cooling tower, and other end-uses. Excess treated water shall be discharged as per CPCB norms. Natural treatment systems shall be promoted.* *Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and*

		disposed as per the Ministry of Urban Development, Central Public Health and Environmental Engineering Organisation (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013.
Energy	*5*	*Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have notified their own ECBC, shall comply with the State ECBC.* *Outdoor and common area lighting shall be LED.* *Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design.* *Wall, window, and roof u-values shall be as per ECBC specifications.*
	5 (a)	*Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1% of the demand load or as per the state level/local building bye-laws requirement, whichever is higher.*
	5 (b)	*Solar water heating shall be provided to meet 20% of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.*
	5 (c)	*Use of environment friendly materials in bricks, blocks and other construction materials, shall be required for at least 20% of the construction material quantity. These include flyash bricks, hollow bricks, AACs, Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials.* *Fly ash should be used as building material in the construction as per the provisions of the Fly Ash Notification of September, 1999 as amended from time to time.*
Air Quality and Noise	*6*	*Dust, smoke & other air pollution prevention measures shall be provided for the building as well as the site. These measures shall include screens for the building under construction, continuous dust/ wind breaking walls all around the site (at least 3 meter height). Plastic/tarpaulin sheet covers shall be provided for vehicles bringing in sand, cement, murram and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site. Wheel washing for the vehicles used be done.*

		Sand, murram, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution. *Wet jet shall be provided for grinding and stone cutting. Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust.* *All construction and demolition debris shall be stored at the site (and not dumped on the roads or open spaces outside) before they are properly disposed. All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Rules 2016.* *All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask.* *For indoor air quality the ventilation provisions as per National Building Code of India.*
	6 (a)	*The location of the DG set and exhaust pipe height shall be as per the provisions of the CPCB norms.*
Green Cover	*7*	*A minimum of 1 tree for every 80 sq.mt. of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species.*
	7(a)	*Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees for every 1 tree that is cut) shall be done and maintained.*
Top Soil Preservation and Reuse	*8*	*Topsoil should be stripped to a depth of 20 cm from the areas proposed for buildings, roads, paved areas, and external services. It should be stockpiled appropriately in designated areas and reapplied during plantation of the proposed vegetation on site.*
Transport	*9*	*A comprehensive mobility plan, as per MoUD best practices guidelines (URDPFI), shall be prepared to include motorized, non-motorized, public, and private networks.* *Road should be designed with due consideration for environment, and safety of users. The road system can be designed with these basic criteria.* *1. Hierarchy of roads with proper segregation of vehicular and pedestrian traffic.* *2. Traffic calming measures.* *3. Proper design of entry and exit points.* *4. Parking norms as per local regulation.*
Environment Management Plan	*10*	*An environmental management plan (EMP) shall be prepared and implemented to ensure compliance with the environmental conditions specified in item number 1 to 9 above. A dedicated Environment Monitoring Cell with defined functions and*

		responsibility shall be put in place to implement the EMP. The environmental cell shall ensure that the environment infrastructure like Sewage Treatment Plant, Landscaping, Rain Water Harvesting, Energy efficiency and conservation, water efficiency and conservation, solid waste management, renewable energy etc. are kept operational and meet the required standards. The environmental cell shall also keep the record of environment monitoring and those related to the environment infrastructure.

APPENDIX-XV

Accreditation of Environmental Auditors (Qualified Building Auditors)

The Ministry of Environment, Forest and Climate Change (MoEFCC), through qualified agencies shall accredit the Qualified Building Environment Auditors (QBEAs). The Qualified Building Environment Auditors could be a firm/organization or an individual expert, who fulfils the requirements. The Ministry will implement this process of accreditation through Quality Council of India (QCI), National Productivity Council or any other organization identified by the Government. The organizations like Indian Green Building Council, Bureau of Energy Efficiency etc. can also be associated in the process of accreditation, training, and renewal. The environmental consultants accredited by the QCI for building sector will be qualified as QBEAs. The QBEAs will meet the following criteria. The accrediting agency can improvise on these criteria.

Qualifications of the Auditor:

a. Education: Architect (Degree or Diploma), Town Planners (Degree), Civil Engineer/Mechanical Engineer (Degree or Diploma), PG in Environmental Science or any other qualification as per the scheme of the accreditation.

Training:

b. Mandatory training to be given by the accreditation body or their approved training providers. This will be as per the scheme of the accreditation.

Experience:

c. At least 3 years of work experience in the related field or building sector Environment Impact Assessment consultants accredited by QCI or any other experience criteria as per the scheme of the accreditation.

Infrastructure and equipment:

d. As per the scheme of the accreditation

Renewal:

e. The accreditation will be valid for 5 years and will be renewed as per the process developed under the accreditation scheme.

Accountability/Complaint redressal mechanism: Any complaints regarding the quality of the work of QBEAs shall be made to the accreditation body. The accreditation body shall evaluate the complaint and take appropriate action including black listing or cancellation of the accreditation with wide public notice. This will be in addition to the action at the level of local authority for penalty and blacklisting. The Ministry can also take such action in case of specific complaint or feedback.

APPENDIX-XVI

Environmental Cell at the level of Local Authority:

An Environmental Cell shall be setup at the local authority level to support compliance and monitoring of environmental conditions in buildings. The Cell shall also provide assistance in environmental planning and capacity building within their jurisdiction. The responsibility of this cell would be monitoring the implementation of this notification and providing an oversight to the Third-Party Auditing process. The cell will operate under the local authority.

Constitution of the cell:

The cell will comprise of at least 3 dedicated experts in following fields:

a. Waste management (solid and liquid)
b. Water conservation and management
c. Resource efficiency including Building materials
d. Energy Efficiency and renewable energy
e. Environmental planning including air quality management.
f. Transport planning and management.

The Cell shall induct at least two outside experts as per the requirements and background of dedicated experts. Existing environmental cells at the level of local authority can be co-opted and trained for this Cell.

Financial Support:

An additional fee may be charged along with processing fee for building permission for integrating environmental conditions and it's monitoring. The local authority can fix and revise this additional fee from time to time. The amount of this fee shall be deposited in a separate bank account, and used for meeting the requirement of salary / emoluments of experts and running the system of online application, verifications and the Environmental Cell.

Functions of the Cell:

1. The cell shall be responsible for assessing and appraising the environmental concerns of the area under their jurisdiction where building activities are proposed. The Cell can evolve and propose additional environmental conditions as per requirements. These conditions may be area specific and shall be notified in advance from time to time. These additional conditions shall be approved following a due consultation process. These environmental conditions will be integrated in building permissions by the sanctioning authority.

2. Develop and maintain an online system for application and payment of fees. The Cell shall maintain an online database of all applications received, projects approved, the compliance audit report, random inspections made. The Cell shall maintain a portal for public disclosure of project details including self certification and compliance audit reports filed by the Qualified Building Environment Auditors for public scrutiny of compliance of environmental conditions by the project.

3. Monitoring the work of Environmental Audit process carried by the Qualified Building Auditors.

4. The Cell shall review the applications; finalize the additional environmental conditions if required within 30 days of the submission of the application to the local authority.

5. The Cell shall adopt risk based random selection of projects for verifying on site for certification of QBA, compliance of environmental conditions and five yearly audit report.

6. The Cell shall recommend to the local authority for financial penalty for non-compliance of environmental conditions by the project proponent.

7. The Cell shall recommend to the accrediting body and the local authority against any Qualified Building Environment Auditor, if any lapse is found in their work."

d) This **amendment notification sought to decentralize regulation of building projects**, by authorizing urban local bodies to grant approval for building permission by providing integrated environmental conditions examined by environmental cell constituted in the said local bodies and this was required to be processed after making requisite changing/amendments in the by-laws and the relevant rules to be notified by State Governments after having concurrence from MoEF&CC and where such by-laws and rules are amended and, thereafter, on the recommendation of the environmental cell, constituted under urban local bodies, building permissions are granted. It was provided that Central Government may issue an order exempting requirement of separate EC for such projects. Different provisions were provided for the buildings having size of the projects between 5,000 m^2 < 20,000 m^2; more than 20,000 m^2

but lesser than 50,000 m^2 and more than 50,000 m^2 but upto 1,50,000 m^2.

e) This amendment notification was challenged before Tribunal in ***OA 677/2016, Society for Protection of Environment & Biodiversity vs. Union of India***; ***OA 01/2017, Pushp Jain vs. Union of India***; ***OA 7/2017, Ajay Kumar Singh vs. MoEF&CC***; ***OA 55/2017, Mahendra Pandey vs. UoI*** and ***OA 67/2017, R. Shreedhar vs. UoI along with MA Nos. 148/2017, 03/2017, 445/2017, 879/2017*** and ***620/2017***. The above OAs were disposed of by Principal Bench of Tribunal vide judgment dated 08.12.2017 and striking out provisions of clause 14(8) as amended by the above notification, Tribunal directed MoEF&CC to re-examine the notification dated 09.12.2016 and take appropriate steps to delete, amend and rectify the clauses in the light of the observations made in the judgment. In the meantime, since bye-laws were also amended by Delhi Development Authority (hereinafter referred to as '**DDA**') by notification dated 22.03.2016, Tribunal held that the said notification also shall not be given effect to unless the amendment notification dated 09.12.2016 is re-considered and amended as per the directions continued in the judgment. Tribunal also restrained MoEF&CC from giving effect to amendment dated 09.12.2016 till the above judgment is complied with. However, Tribunal also said that as per the earlier existing provisions of EIA 2006, the applications for grant of prior EC may be considered.

f) This Tribunal gave a categorical and clear message to MoEF&CC that laudable social cause of providing houses to poor, does not get defeated by business, economic profitability with reference to ease of doing business while particularly protecting environment.

g) The above judgment was challenged in Supreme Court in ***Civil Appeal No. 2522/2018, Union of India vs. Society for Protection of Environment & Biodiversity*** which is pending.

H. Notification dated 14.11.2018 published in Gazette of India Extraordinary of the same date:

a) By this notification, **certain conditions were imposed upon Municipalities, Development Authorities, District Panchayats by delegating them power to ensure compliance of environmental conditions as specified in the Appendix** in respect of building and construction projects with built up area ≥20,000 sq. mtrs. to 50,000 sq. mtrs. and industrial sheds, educational institutions, hospitals and hostels for educational institution ≥20,000 sqm upto 1,50,000 sqm along with building permission and **to ensure that the conditions specified in Appendix are complied with, before granting the occupation certificate/completion certificate**. The Appendix given in this notification is as under:

"APPENDIX
Environmental Conditions for Buildings and Constructions

(Category: Building or Construction projects or Area Development projects and Townships> 20,000 to <50,000 Square meters as well as for industrial sheds, educational institutions, hospitals and hostels for educational institutions from 20,000 sq.m to<1,50,000 sq.m)

S.N	***MEDIUM***	***ENVIRONMENTAL CONDITIONS***
(1)	***(2)***	***(3)***
1	*Topography and Natural Drainage*	*The natural drain system shall be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site. No construction is allowed on wetland and water bodies. Check dams, bio-swales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water.* *Buildings shall be designed to follow the natural topography as much as possible.*

		Minimum cutting and filling should be done.
2	*Water Conservation, Rain Water Harvesting and Ground Water Recharge*	*A complete plan for rain water harvesting, water efficiency and conservation should be prepared and implemented.* *Use of water efficient appliances should be promoted with low flow fixtures or sensors.* *The local bye-law provisions on rain water harvesting should be followed. If local bye-law provision is not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Bye-laws, 2016.* *A rain water harvesting plan needs to be designed where the recharge bores of minimum one recharge bore per 5,000 square meters of built-up area and storage capacity of minimum one day of total fresh water requirement shall be provided. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority.* *All recharge should be limited to shallow aquifer.*
2(a)		*At least 20 per cent of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks, landscape etc. with at least 50 per cent opening in paving which would be considered as pervious surface.*
3	*Waste Management*	*Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste.* *Sewage: Onsite sewage treatment of capacity of treating 100 per cent waste water to be installed. Treated waste water shall be reused on site for landscape, flushing, cooling tower, and other end-uses. Excess treated water shall be discharged as per statutory norms notified by Ministry of Environment, Forest and Climate Change. Natural treatment systems shall be promoted.* *Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the*

		Ministry of Urban Development, Central Public Health and Environmental Engineering Organisation (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013. *The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.*
3 (a)		*All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.*
3(b)		*Organic waste compost/Vermiculture pit with a minimum capacity of 0.3 kg per person per day must be installed.*
4	*Energy*	*Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have notified their own ECBC, shall comply with the State ECBC.* *Outdoor and common area lighting shall be Light Emitting Diode (LED).* *Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design.* *Wall, window, and roof u-values shall be as per ECBC specifications.*
4 (a)		*Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1 per cent of the demand load or as per the state level/ local building bye-laws requirement, whichever is higher.*
4(b)		*Solar water heating shall be provided to meet 20 per cent of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.*

4(c)		*Use of environment friendly materials in bricks, blocks and other construction materials, shall be required for at least 20 per cent of the construction material quantity. These include flyash bricks, hollow bricks, Autoclaved Aerated Concrete (AAC), Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials.* *Fly ash should be used as building material in the construction as per the provisions of the Fly Ash Notification S.O. 763(E) dated 14th September, 1999 as amended from time to time.*
5	*Air Quality and Noise*	*Roads leading to or at construction sites must be paved and blacktopped (i.e. metallic roads).* *No excavation of soil shall be carried out without adequate dust mitigation measures in place.* *No loose soil or sand or Construction & Demolition Waste or any other construction material that causes dust shall be left uncovered.* *Wind-breaker of appropriate height i.e. 1/3rd of the building height and maximum up to 10 meters shall be provided.* *Water sprinkling system shall be put in place.* *Dust mitigation measures shall be displayed prominently at the construction site for easy public viewing.* *Grinding and cutting of building materials in open area shall be prohibited.* *Construction material and waste should be stored only within earmarked area and road side storage of construction material and waste shall be prohibited.* *No uncovered vehicles carrying construction material and waste shall be permitted.* *Construction and Demolition Waste processing and disposal site shall be identified and required dust mitigation measures be notified at the site.* *Dust, smoke and other air pollution prevention measures shall be provided for the building as well as the site.* *Wet jet shall be provided for grinding and stone cutting.*

		Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust. *All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Rules 2016.* *All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask.* *For indoor air quality the ventilation provisions as per National Building Code of India.*
5(a)		*The location of the Genset and exhaust pipe height shall be as per the provisions of the statutory norms notified by Ministry of Environment, Forest and Climate Change.* *The Genset installed for the project shall follow the emission limits, noise limits and general conditions notified by Ministry of Environment, Forest and Climate Change vide GSR 281(E) dated 7th March 2016 as amended from time to time.*
6	*Green Cover*	*A minimum of 1 tree for every 80 sq.mt. of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species.*
6 (a)		*Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees for every 1 tree that is cut) shall be done and maintained.*
7	*Top Soil Preservation and reuse*	*Topsoil should be stripped to a depth of 20 cm from the areas proposed for buildings, roads, paved areas, and external services.* *It should be stockpiled appropriately in designated areas and reapplied during plantation of the proposed vegetation on site.*
8	*Transport*	*The building plan shall be aligned with the approved comprehensive mobility plan (as per Ministry of Housing and Urban Affairs best practices guidelines (URDPFI)).*

I. Notification dated 15.11.2018 published in Gazette of India Extraordinary of the same date:

a) Paragraph **14 of EIA 2006 and entries in the item 8 in the schedule were substituted** as under:

*"14. **Local bodies such as Municipalities, Development Authorities and District Panchayats, shall stipulate environmental conditions while granting building permission**, for the Building or Construction projects with built-up area ≥ 20,000 sq. mtrs and < 50,000 sq. mtrs and industrial sheds, educational institutions, hospitals and hostels for educational institutions from built-up area ≥ 20,000 sqm to <1,50,000 sq.m as specified in Notification S.O. 5733(E) dated 14th November, 2018."*

(ii) in the Schedule, for item 8 and the entries relating thereto, the following item and entries shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)
"8	Building or Construction projects or Area Development projects and Townships as well as for industrial sheds, educational institutions, hospitals and hostels for educational institutions			
8(a)	Building and Construction projects		≥50,000 mtrs. sq. and <1,50,000 sq. mtrs. of built-up area	***Note-1**: The term "built-up area" for the purpose of this notification is the built-up or covered area on all the floors put together including its basement and other service areas, which are proposed in the buildings or construction projects.* ***Note 2**: The projects or activities shall not include industrial sheds, educational institutions, hospitals and hostels for educational institutions.* ***Note 3:** General Conditions shall not apply.*
8 (b)	Townships and Area Development projects as well as industrial sheds educational institutions, hospitals and hostels for educational institutions		≥1,50,000 sq. mtrs. of built-up area and or covering an area ≥ 50 ha.	***A project of Township and Area Development Projects covered under this item shall require an Environment Assessment Report and be appraised as Category 'B1' Project.*** ***Note:** - General Conditions shall not apply.*

b) Notifications dated 14.11.2018 and 15.11.2018 were issued in complete disregard of directions contained in the judgment dated 08.12.2017. MoEF&CC insisted to delegate power to local bodies ignoring that these local bodies have any expert in the matter and no study was conducted whether expert infrastructure is available to such bodies. It is also true that though appeal was filed in Supreme Court but the same was pending and judgment of Tribunal has its legal consequences so long it is not otherwise ordered by appellate Court i.e., Supreme Court.

c) The notifications dated 14.11.2018 and 15.11.2018 were challenged in Delhi High Court in various writ petitions wherein interim orders were passed. These writ petitions are 12571/2018, Social Action for Forest and Environment vs UoI and No. 12570/2018, Society for Protection of Environment & Biodiversity (SPENBIO) vs. UOI. The same issue was raised before this Tribunal also in ***OA 1017/2018, Shashikant Vithal Kamble vs UOI*** but referring to the matter pending in Delhi High Court, Tribunal had deferred the matter *sine-die* vide order dated 22.01.2019.

114. A perusal of EIA 2006 and its amendments made from time to time particularly, in respect of projects/activities covered by entry 8 in Schedule I of the said **notification** shows that the activities relating to building construction and development would require EC from Competent Authority, if the built up area is more than 20,000 m^2. Item 8(a) says that in respect of building and construction projects, if built up area is more than 20,000 m^2 and less than 1,50,000 m^2, the project would be treated as 'B2' category project. Item 8(b) covers another category of township and area development activities/projects where land is more than 50 ha or

built-up area is more than 1,50,000 m^2 and under this item, the category would be 'B1'. However, under item 8, the projects whether under item 8(a) or 8(b), the same would be **'B category'** projects. The difference in categorization of the projects is in respect to process of consideration of application for prior EC and appreciation by the concerned Environmental Assessment Committee.

Analysis of EIA 2006 by Courts:

115. Provisions of EIA 2006 and the process thereunder have been considered in detail, by Supreme Court in ***Hanuman Laxman Aroskar vs. Union of India, (2019)15SCC401.*** It was an appeal taken to Supreme Court, from a judgment/order dated 21.08.2018 passed by this Tribunal in ***Appeal No. 5/2018*** (earlier ***Appeal No. 61/2015/WZ***), ***Federation of Rainbow Warriors vs. Union of India & Ors.*** **and** ***Appeal No. 6/2018, Hanuman Laxman Aroskar vs. Union of India,*** wherein grant of EC for development of green field International Airport at Mopa, Goa, was challenged. Project was in category 'A' hence as per EIA 2006 'Prior EC' was to be granted by MoEF. EC was granted on 28.10.2015. It was challenged by M/s. Federation of Rainbow Warriors in ***Appeal No. 61/2015*** at Tribunal's Western Zonal Bench, Pune. Another Appeal No. 1/2016 was filed by Hanuman Laxman Aroskar at NGT, Western Zonal Bench, Pune. Both these appeals were transferred to Principal Bench at New Delhi and numbered as Appeal No. 5 and 6 of 2018 respectively. One of the issues raised before Supreme Court was; PP did not give complete information in Form I submitted to the Competent Authority for grant of EC; PP is duty bound to make a proper disclosure and highest level of transparency is required; and there was concealment of certain facts by leaving certain columns blank or by not giving required details. It was

contended that for these reasons, application for EC ought to have been rejected.

116. Supreme Court considered scheme of EIA 2006 in detail. Going into historical backdrop of EIA 2006, Court said that by Constitution (Forty-second Amendment) Act 1976 w.e.f. 03.01.1977, Article 48A was inserted to the Constitution which mandates that State shall endeavor to protect and improve environment and safeguard forests and wildlife of the country; Article 51A(g) of Constitution places a corresponding duty on every citizen to protect and improve natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures; following decisions taken at United Nations Conference on Human Environment held at Stockholm (Stockholm Conference) in June 1972, in which India also participated, Parliament enacted EP Act, 1986 to protect and improve environment and prevent hazards to human beings, other living creatures, plants and property; on 27.01.1994, MoEF&CC, in exercise of powers under Section 3(1) read with (2)(v) of EP Act, 1986 and Rule 5(3)(d) of EP Rules, 1986, issued notification, S.O. 60(E), 1974, imposing restrictions and prohibitions on the expansion and modernization of any activity or new project unless an EC was granted under the procedure stipulated in the notification; Notification contemplated that any person undertaking a new project or expanding and modernizing an existing project, would submit an application to the Secretary, MoEF; application to be made in accordance with Schedule, also provided that, it shall accompany project report including EIA Report, an Environment Management Plan (hereinafter referred to as '**EMP**') and other details as per the Guidelines issued by Government from time to time; Competent Impact Assessment Agency would then evaluate application and submit report; and if necessary, it is also empowered to

constitute a Committee of Experts which would have a right of entry into and inspection of the site during or after the commencement of the preparations relating to the project; concealment of any factual data or submitting false or misleading information would make the application liable for rejection and would lead to cancellation of any EC already granted on that basis; EIA 1994 was superseded by EIA 2006; real distinction between EIA 1994 and EIA 2006 is that in the later EC must be granted by Regulatory Authority prior to commencement of any construction work or preparation of land; EIA 2006 divides all projects in Category A and Category B projects; under EIA 1994, PP was required to submit application along with all reports including EIA report but under EIA 2006 prior to preparation of EIA report by PP, the authority concerned would formulate comprehensive Terms of Reference (hereinafter referred to as 'ToR') on the basis of information furnished by PP addressing all relevant environmental concerns; this would form the basis for preparation of EIA Report; a pre-feasibility Report is also required to submit with the application unless exempted in the Notification; under EIA 1994, final approval was granted by Impact Assessment Authority but under Notification of 2006, final regulatory approval is granted by MoEF&CC or SEIAA, as the case may be; but approval is to be based on recommendations of EAC functioning in MoEF&CC or State Expert Appraisal Committees (SEACs) which are constituted for that specific purpose; thus the salient objective which underlies EIA 2006 is protection, preservation and continued sustenance of environment when the execution of new projects or the expansion or modernization of existing projects is envisaged; it imposes certain restrictions and prohibitions based on the potential environmental impact of projects unless 'Prior EC' has been granted by the authority concerned.

117. Supreme Court said that **an application must be submitted prior to the commencement of any construction activity or preparation of the land at the site**. The process to obtain EC comprised broadly 4 stages i.e. (i) Screening, (ii) Scoping, (iii) Public Consultation and (iv) Appraisal. The step of screening is restricted to Category B projects. It entails an examination of whether the proposed project or activity requires further environmental studies for preparation of an EIA for its appraisal prior to grant of EC. The projects requiring an EIA are further categorized as Category B1 projects and remaining projects are categorized as Category B2 projects. Category B2 projects do not require an EIA. The categorization is in accordance with the guidelines issued by MoEF&CC in this regard from time to time. The stage of scoping requires formulation of comprehensive ToR so as to address all relevant environmental concerns for the preparation of EIA. Amongst other things, information furnished by applicant in Form 1 and Form 1A along with the proposed ToR forms the basis for preparation of ToR. Public consultation at the third stage is attracted in all Category A and Category B1 projects. Summary of EIA is prepared in the format given in Appendix IIIA on the basis of ToR furnished to the applicant. This stage involves the process by which concerns of local affected persons and others who have plausible stake in the environmental impact of the project or activity are ascertained with a view of taking into account all the material concerns in the project or activity design as appropriate. The stage of appraisal involves detailed scrutiny by EAC or SEAC of all documents submitted by applicant for the grant of EC. The appraisal is carried out in a transparent manner in a process to which PP is also invited for furnishing clarification in person or through an authorized representative. The scheme requires Regulatory Authority to examine documents strictly with reference to ToR and if there is any inadequacy to communicate to EAC or SEAC within 30 days of receipt of

the documents; recommendations made by EAC or SEAC are then required to be considered by MoEF&CC or concerned SEIAA who are supposed to communicate their decision to PP within 45 days of receipt of the recommendations. Ordinarily Regulatory Authorities are supposed to accept recommendations of EAC or SEAC. In case of disagreement, Regularity Authority is required to seek a reconsideration of recommendations by the concerned recommending body. Importance of provisions of EIA 2006 in reference to protection of environment has been stressed upon by Supreme Court in **para 56** of the report (**SCC**) as under:

> *"The 2006 notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. It serves as a balance between development and protection of the environment: there is no trade-off between the two.* ***The protection of the environment is an essential facet of development. It cannot be reduced to a technical formula****. The notification demonstrates an increasing awareness of the complexities of the environment and the* ***heightened scrutiny required to ensure its continued sustenance, for today and for generations to come****. It embodies a commitment to sustainable development. In laying down a detailed procedure for the grant of an EC, the 2006 notification attempts to bridge the perceived gap between the environment and development."*

118. Court also observed that under EIA 2006, process of obtaining an EC commences from the production of information stipulated in Form 1/Form 1A; crucial information regarding particulars of proposed project is **sought** to enable EAC or SEAC to prepare comprehensive ToR which applicant is required to address during the course of preparation of EIA. Relevant observations in **para 60 of judgment** are as under:

> *"60. Under the 2006 Notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1A.*
> *……..*
> *……..*
> *Some of the information sought is produced thus:*
>
> *60.1.* ***Construction, operation or decommissioning*** *of the project involving actions, which* ***will cause physical changes in the locality (topography, land use, changes in water bodies, etc.).***

60.2. ***Use of natural resources*** *for construction or operation of the project (such as land,* ***water****, materials or energy, especially any resources which are non- renewable or in short supply).*

60.3. Use, storage, transport, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about the actual or perceived risks to human health.

60.4 ***Production of solid wastes during construction, operation or decommissioning.***

60.5. Release of pollutants or any hazardous, toxic or noxious substances to air.

60.6. Generation of noise and vibration, and emissions of light and heat.

60.7. ***Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea****.*

60.8. Risk of accidents during construction or operation of the project, which could affect human health or the environment.

60.9. ***Environment sensitivity which includes****, amongst other things, the furnishing of the following details:*

60.9.1. ***Areas protected under*** *international and* ***national legislation.***

*60.9.2****. Ecologically sensitive areas***

60.9.33 ***Areas used by protected, important or sensitive species of flora or fauna."***

(Emphasis added)

119. The importance of correctness and transparency of the information and that any false statement or concealment of the same would be fatal, was **particularly** stressed by Court in **para 62 of judgment**, observing:

"62. The ***information provided in Form 1 serves as a base upon which the process stipulated under the 2006 notification rests.*** *An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable persons concerned to provide comments and representations at the public consultation stage. The* ***depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification.*** *For this reason,* ***any application made or EC granted on the basis of a defective Form 1 is liable to be***

rejected immediately. *Clause (vi) of paragraph 8 of the notification provides thus:*

> *"**Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis**. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."*
>
> (Emphasis added)

120. Supreme Court also referred and approved two judgments of this Tribunal in ***Save Mon Region Federation vs. Union of India, 2013 (1) All India NGT Reporter 1*** and ***Shreeranganathan K P vs. Union of India 2014 SCC online NGT 15*** wherein, on the basis of information furnished in Form 1, the deficiencies in EIA Report, process of appraisal etc., were considered in detail to find out whether EC was granted in accordance with law or not. Court distinguished an earlier judgment in ***Lafarge Umiam Mining Private Limited vs. Union of India 2011 (7) SCC 338*** observing that it was the case under EIA 1994 when provisions of EIA 2006 were not applicable. Court said that decision was based on facts of that case, summarized by Court in ***Hanuman Laxman Aroskar (supra)*** in **para 138 of judgment**. It was also held that, relevant material, if has been excluded for consideration or extraneous circumstances were brought in mind, there was a failure to observe binding norms under EIA 2006 and consequential serious flaw in the decision-making process, would amount to an illegal exercise and failure of statutory duty, so as to vitiate EC. In **para 157 of judgment**, importance of the correct and complete disclosure of information by PP in his application, Form 1 and Form 1A, and further consideration by Competent Authority has been discussed, as under:

> *"The 2006 Notification must hence be construed as a significant link in India's quest to pursue the SDGs. Many of those goals, besides*

being accepted by the international community of which India is a part, constitute a basic expression of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the aspirations of our own Constitution. ***The fundamental principle which emerges from our interpretation of the 2006 Notification is that in the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive.****"*

(Emphasis Added)

121. Further, in **para 158 of judgment**, in ***Hanuman Laxman Aroskar (supra)***, Court observed:

"Repeatedly, it has been urged on behalf of the State of Goa, MoEFCC and the concessionaire that the ***need for a new airport*** *is paramount with an increasing volume of passengers and* ***consequently the flaws in the EIA process should be disregarded.*** *The need for setting up a new airport is a matter of policy. The role of the decision-makers entrusted with authority over the EIA process is to ensure that every important facet of the environment is adequately studied and that the impact of the proposed activity is carefully assessed.* ***This assessment is integral to the project design because it is on that basis that a considered decision can be arrived at as to whether necessary steps to mitigate adverse consequences to the environment can be strengthened****."*

(Emphasis Added)

122. Supreme Court ultimately held that report of EIA based on incomplete information supplied by PP is vitiated. In **para 159**, it is said:

"In the present case, as our analysis has indicated, ***there has been a failure of due process commencing from the non-disclosure of vital information by the project proponent in Form 1. Disclosures in Form 1 are the underpinning for the preparation of the ToR. The EIA report, based on incomplete information has suffered from deficiencies which have been noticed in the earlier part*** *of this judgment* ***including the failure to acknowledge that within the study area contemplated by the Guidance manual, there is a presence of ESZs****."*

(Emphasis Added)

123. Manner in which application submitted for grant of EC has to be dealt with by SEIAA or MoEF, has been considered in ***Bengaluru***

Development Authority v. Sudhakar Hegde & Ors.; (2020) 15 SCC 63. Supreme Court had an appeal arising from NGT's judgment dated 08.02.2019, whereby EC granted to appellant (BDA) for development of an eight lane Peripheral Ring Road connecting Tumkur Road to Hosur Road, a length of 65 kilometers was quashed, on the ground that report was based on primary data collected more than three years prior to submission to SEIAA. Tribunal directed that PP will not proceed on the basis of EC, which was quashed. Three issues were raised before Supreme Court. For our purpose, relevant question is, "whether EIA 2006 was followed or not". In **para 87 of judgment**, Court said that

> *"appraisal by SEAC is structured and defined by EIA Notification, 2006. At this stage,* ***SEAC is required to conduct "a detailed scrutiny" of the application and other documents including EIA report submitted by applicant for grant of an EC.*** *Court also said that upon completion of appraisal processes, SEAC makes "categorical recommendations" to SEIAA either for grant of a 'Prior EC' on stipulated terms and conditions or rejection of the application. The* ***recommendations made by the SEAC*** *for the grant of EC,* ***are normally accepted by the SEIAA and must be based on "reasons"****."*
>
> (Emphasis Added)

124. Court further said that **reasons furnished by SEAC must be assessed with reference to the norm that it is required to submit reasons for its recommendations**. Court found that SEAC, in that case, analyzed the matter perfunctory and fails to disclose reasons upon which it made recommendation to SEIAA for grant of EC. It merely proceeds on the reply submitted by PP. In para 89 of judgment, Court said:

> *"****SEAC is under an obligation to record the specific reasons upon which it recommends the grant of an EC.*** *The requirement that the SEAC must record reasons, besides being mandatory under the 2006 Notification, is of significance for two reasons: (i) The SEAC makes a recommendation to the SEIAA in terms of the 2006 Notification. The regulatory authority has to consider the recommendation and convey its decision to the project proponent. The regulatory authority, as para 8(ii) of the 2006 Notification provides, shall normally accept the recommendations*

of the EAC. Thus, ***the role of the SEAC in the grant of the EC for a proposed project is crucial****; and (ii) The grant of an EC is subject to an appeal before the NGT under Section 16 of the NGT Act 2010. The* ***reasons furnished by the SEAC constitute the link upon which the SEIAA either grants or rejects the EC.*** *The reasons form the material which will be considered by the NGT when it considers a challenge to the grant of an EC".*

(Emphasis added)

125. Approving judgment of this Tribunal in ***Shreeranganathan K P vs. Union of India; (2014) SCC Online NGT 15***, Supreme Court said:

> *"****EAC had not conducted a proper appraisal given its failure to consider the available material and objections before it.*** *The EAC had thus failed to conduct a proper evaluation of the project prior to forwarding to the regulatory authority its recommendation".*
>
> (Emphasis added)

126. In para 92 of the judgment, Supreme Court said:

> *"****SEAC, as an expert body, must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment and scrutinize the document submitted to it****. The* ***SEAC is duty bound to analyze the EIA report****. ……. The SEAC is not required to accept either the EIA report or any clarification sent to it by the project proponent. In* ***the absence of cogent reasons by the SEAC for the recommendation of the grant of EC, the process by its very nature, together with the outcome, stands vitiated****."*
>
> (Emphasis added)

127. The above statutory provisions and binding authorities of Supreme Court make it very clear that the projects/activities which are covered by EIA 1994 or EIA 2006 are bound to obtain environmental clearance/prior environmental clearance and any violation thereof would result in rendering the entire project, wholly illegal.

128. In the present case, we find that EIA 1994 was amended by Notification dated 07.07.2004 bringing in construction projects within its purview and, therefore, even the license for development of 5.887 acres of land granted on 02.12.2004 was within the purview of EIA 1994. It has

also come on record that APIL-PP applied to MoEF&CC on 30.03.2006 for grant of EC for IVY Group Housing Project for which license dated 02.12.2004 was granted by TCPD. Obviously, this application was filed under the amended provisions of EIA 1994 which became applicable since 07.07.2004. APIL-PP disclosed total plot area as 23823.94 m^2 (5.88 acres) and built-up area as 41433.94 m^2. No EC was granted but APIL-PP proceeded with the execution of the project. Taking cognizance of this violation, a complaint under Section 15 of EP Act, 1986 was filed in Special Environment Court vide complaint No. 48/08 which was disposed on 20.12.2008 in a Mega Lok Adalat. This is evident from report dated 08.01.2020 filed by HSPCB that APIL-PP made a statement before Mega Lok Adalat that it had obtained EC and accordingly, fine of Rs. One thousand and compensation of Rs. One Lakh was imposed by Mega Lok Adalat considering plea bargaining application moved u/s 265-B Cr. PC. It is thus evident that even the license of 2004 and the construction made pursuant thereto was illegal and it was found so by Special Environment Court while deciding complaint no. 48/08 though on a false statement made by APIL-PP, Mega Lok Adalat while deciding the said complaint vide order dated 20.12.2008 imposed petty fine/compensation upon APIL-PP.

129. We have referred to this fact not to make this violation as one of the foundations of our order but only to show that APIL-PP has not only violated environmental laws earlier but was convicted also in the proceedings initiated under Section 15 of EP Act, 1986.

130. Now coming to the subsequent licenses dated 12.02.2007 and 13.04.2011, we find that APIL-PP in its objections filed before CPCB/Statutory Regulators claimed that the same were separate projects but sanctioned layout plan dated 15.09.2010 shows that subsequent licenses were part and parcel of earlier licenses and thus a composite

layout plan was sanctioned by TCPD Haryana. In view thereof, provisions of EIA 2006, in our view were attracted to the development carried out pursuant to licenses dated 12.02.2007 and 13.04.2011 but APIL-PP having proceeded to execute the said development without obtaining any EC, has clearly violated the provisions of EIA 2006.

131. It is also evident from record that Consent to Establish/Consent to Operate under provisions of Water Act 1974 and Air Act 1981 were also not obtained by PP. Therefore, there is clear violation thereof of the said statutes also.

132. The stand taken by APIL-PP before authorities that it had completed project in 2004 is neither substantiated nor proved from any document in as much as in respect of some of the licenses granted, only Part Completion Certificates were issued by TCPD Haryana and final Completion Certificate application was rejected on 19.04.2018. It is not the case of anyone that the said order was challenged by APIL-PP in any higher forum in appeal etc. Therefore, we can reasonably conclude that the said order dated 19.04.2018 rejecting application for grant of final Completion Certificate has attained finality. In the result, we have no hesitation in observing that the constructions and development made by APIL-PP were in utter violation of environmental laws including EIA 2006 read with EP Act 1986, Water Act 1974, Air Act 1981 and violation within limitation of Section 15 can be taken into consideration for the purpose of passing consequential punitive/remedial order by this Tribunal.

Revised approved Layout plan dated 15.09.2010:

133. Copy of this plan has been filed as annexure-III to the report submitted on 16.11.2018. Approval of layout plan was granted on 15.09.2010 but corrected by including license no. 32/2011 dated

13.04.2011 as mentioned in the said plan, evident from page 88. The revised plan shows that license was not treated as a separate project but a comprehensive expansion of already issued licenses. The details of areas in the approved plan mention that area already licensed is 602.64 acres and the new license was issued for 1.546 acres making total licensed area as 604.194 acres. In the entire area of 604.194 acres, area under group housing was 10.357 acres and net plan area was 585.295 acres. Public amenities to be provided included crèche, nursery school, primary school, secondary schools, dispensaries, health centers, club/community centers, police post, religious building, sub-post office, telephone exchange and electric service stations. Details of plots comprising 15 types based on sizes are also given in the approved plan and total number of plots are more than 5,000. **It is thus evident that license no. 32 of 2011 dated 13.04.2011 was expansion of already granted licenses and total area being more than 50 ha., project was within item 8(b) of schedule I to EIA 2006, hence prior EC was obligatory but the same was not obtained.**

Completion Certificates:

134. APIL-PP has taken a defense before Committees and CPCB that the project in question was completed prior to 07.07.2004, therefore, provisions of EIA 1994 as amended by notification dated 07.07.2004, as also EIA 2006 were not applicable to the project question. Since it has not appeared before us, we do not have advantage of its defense. However, we will proceed to consider merits of stand taken by APIL-PP before authorities.

135. The submission is misleading and remained unsubstantiated. We have already referred to the so-called Completion Certificates which are only part Completion Certificates dated 10.11.2000, 15.01.2001,

23.02.2001, 26.06.2001, 10.07.2002 and 20.05.2003. Nothing has been placed on record to show that a complete Completion Certificate was ever issued by Component Authority prior to 07.07.2004 or even thereafter. The defense taken by APIL-PP, therefore, has no basis and remained unsupported by any document. Be that as it may, 'development' included sewer system, roads, parks and green belts etc. It has come on record vide joint Committee's report dated 16.11.2018 that though APIL-PP claimed that sewage generated in the licensed colony is discharged through HUDA sewerage system through HUDA STP for treatment but as a matter of fact, sewage was meeting storm water drain and not getting passed through sewerage system to STP. This fact is fortified from photo 4 which is on page 105 of the paper book.

136. This fact is not disputed by APIL/PP as is evident from its reply dated 29.01.2019 (page 149 of paper book) and instead claim of APIL-PP is that the project was completed prior to 07.07.2004 and at that time, there was no requirement making it mandatory to provide STP in a residential project. Findings of Committee and reply given by APIL/PP in its letter dated 29.01.2019 read as under:

Sl No.	***Points raised in Show Cause Notice***	***Reply***
6	***Concluding Remarks:-*** *Project proponent is required to obtain Environmental Clearance under provisions of notification dated 14th September 2006, as last two licenses granted after 14.09.2006, cutoff date of requiring EC and total area crossed the threshold limit. Consent to Establish & Consent to Operate have also not been obtained. It is violation of Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 by project proponent. Sewage is meeting to the storm water drain as it is*	*The existing Colony was completed much before July 7, 2004 notification (and its amendment on 14th Sep. 2006), in which, MoEF included the residential project. Previously before the notification it was not necessary to get the EC for residential/plot development project.* *Licenses of 1.0 acre and 1.55 acre are separate licenses and do not fall under the purview of obtaining EC, since, it does not cross either the built-up area of 20000 Sq.*

	not getting passed through sewerage system of HUDA STP and not installed STP. DG sets are operating without adequate stack height.	*m. or 50 hectare. Hence, proponent did not proceed for obtaining EC.* ***Due to some unforeseen reasons, the CTE/CTO application could not be submitted**. Now, we intend to submit the application, which nay kindly be permitted pleas.* *Huda has provided us a NOC letter also to connect the colony sewer line to their master sewer line.*

137. The defense that two licenses of 1.0 acre and 1.55 acres were separate, we have already dealt with in the light of revised lay out plan demonstrating fallacy of this defense.

Violation regarding STP:

138. It is not disputed that APIL-PP has not obtained Consent to Establish/CTO before commencement or making the project operational. It is however, said that STPs were provided separately in all licensed Group Housing projects and APIL-PP has also **undertaken to provide separate STP of sufficient capacity** in respect of area of any separate license. However, with regard to discharge of sewerage, it is said that HUDA has issued NOC to connect colony sewer line to Master Sewer line of HUDA and, therefore, there is no violation.

139. The provisions of Water Act, 1974 and Air Act, 1981 were in operation when project commenced. Even NOC dated 01.06.2004 issued by HUDA communicating its consent provided a condition to connect sewer connection at location 'A' of Sushant Lok I with HUDA sewer line between Sector 43 and 53 Gurgaon. Condition no. 10 categorically stated that it shall be ensured by APIL-PP that sewerage effluent to be disposed of in HUDA sewer **within the permissible limits as prescribed by**

Haryana Pollution Water & Control Board. It clearly shows that only treated sewage could have been discharged in HUDA sewer line. In order to make sewage in conformity with permissible limits of the standards prescribed by Haryana Pollution Water & Control Board, untreated sewage water in the project area/area developed by APIL-PP has to be treated by installing STP. **Discharge of untreated sewage by not constructing STP in the project area of the requisite capacity, and more so, discharge of untreated sewage in storm water drain, is a serious violation of the provisions of Water Act, 1974**.

140. Further, stand taken by APIL-PP that it undertakes to provide separate STP of requisite capacity in all separate licenses area, is an assurance for future but in the past as well as in present time, violation of environmental laws and norms is admitted, hence consequential action including remedial action has to be taken and ordered against APIL-PP.

Encroachment on green belt/park and open space area:

141. Committee has very categorically recorded its findings that there is encroachment like hutment for security/labour, DG Sets, kitchen, garden etc. and further the area earmarked as green area/green belt has not been developed according to norms and standards. APIL-PP has replied on this aspect by relying on approved plan, stating that net planned area provided saleable area of 316.802 acres out of total licensed area of 604.194 acres which comes to 54.08% leaving more than 35% area for green belt, roads etc. Reply is clearly misleading in as much as approved plan was and may have been as per the relevant provisions complying with the requirement of remaining 45% area for roads, open spaces etc. but what area was actually left by APIL-PP was relevant to be replied by PP in this case, which it has not. Committee has found that there were encroachments and earmarked area for green belt etc. was not developed as per norms. APIL-

PP in its reply dated 29.01.2019 has not stated anywhere specifically that at least 45% of the total licensed area was left for the purposes as provided under clause 4(1) of HDRUA Rules, 1976. Here, we are more concerned with non-development of green area/green belt which was part of approved plan and Committee report shows that the same has not been developed as per the norms. The inference is inevitable that APIL-PP has not complied with the approved plan/scheme as per the norms, by observing and complying with those aspects which were relevant for protection and preservation of environmental i.e., maintenance of green belt.

142. Violation under this head has to be examined in the light of the relevant provisions made with regard to extraction of ground water and also the status of ground water in district Gurgaon, Haryana.

GROUND WATER

143. One of the allegations of violation of environmental norms relates to illegal extraction of ground water. Proponents claimed that they have not violated the said provisions particularly, same were not applicable to them at the relevant point of time while the applicants as also the Committee's reports and the facts on record are otherwise. This issue needs to be considered in the light of the evolution of the statutory provisions relating to ground water and it needs a brief retrospect of the said evolution of laws relating to extraction of ground water.

GROUND WATER – CONCEPT - PAST AND PRESENT

144. Before dealing with the issues on merits, it would be appropriate to have a glance on the concept of ground water since ancient times.

145. Water is one of the five elements which constitute human body. It is needed for very sustenance of civilization. Interest of society, in general, and common man's need of water for drinking purposes, domestic uses

etc., in particular cannot be doubted. In many areas, people find it difficult to get potable water, due to scarcity. Almost every second day we find crises of water, reported in media, in one or the other city. Simultaneously, there is commercial interest of individuals who contribute to the economy of the country and they require water for commercial purposes. The scarcity of water is well known. Search of solution of this problem is Global. Scarcity of water is being faced almost by all countries. Attempts have been made at different levels, including national and international, to take steps for making potable water available to the common man but simultaneously there cannot be a complete denial or prohibition for use of water in commercial and industrial activities which is the backbone of development and economy. A balance has to be made but when situation comes in a given case, to select any one of them, obviously saving of life will have to be preferred.

Life cannot be imagined without water (बिन पानी सब सून):

146. No one can dispute the importance of water. It is essential for life on earth. It is available on the planet in all the three phases namely solid, liquid and gas. Water ties together, major parts of earth climatic system, in the form of air, clouds, ocean, lakes, vegetation, snowpack and glaciers. Conversion and reconversion of one form of water to any other, is commonly known as water cycle which shows continuous movement of water within earth and atmosphere. In the form of liquid and solid, it is available on earth, on the surface and beneath the surface. Snowpack and glaciers are solid forms on the surface while in liquid form, it is available in the running condition as oceans, rivers, streams, waterfalls etc. and sometimes as water body or wetland in the form of lakes, ponds and other wetlands. Inside/beneath the surface, it percolates the sand and rocks and is available as ground water. Existence of ground water is necessary

and integral part of water cycle in as much as it contributes to the surface water which is involved in the process of conversion as vapour/cloud due to heat or in cold areas solidify as snow. In the areas where large quantity of water evaporates, and results in scarcity of water on the surface, it is ground water which helps to maintain surface water and also contributes to fill water in wells. Water influences intensity of climate variability and change. It is key part of extreme events like drought and floods. If surface water exceeds the limit of carrying capacity, it will flood the plains and if evaporation of surface water is very high and recharge is not as per the requirement, it may result in causing drought. Not only for human sustenance, but, for every activity or in other words, in every walk of life, mankind needs water.

147. Water has its role as an intimate part of the human existence, as an individual, or, in group or society, for personal life or social life, for household needs or commercial or industrial needs, etc. Everywhere water is required. It is fundamental and basic need of life cycle, whether it is animal kingdom or plant kingdom. It is, therefore, extremely important that water resources are protected, both, for human uses and eco-system.

148. Our forefathers at a very early stage, had recognized importance of water and educated people to respect nature, giving it spiritual and religious stature. Mountains, rivers, waterfalls, streams, ponds, wells, trees etc., all were treated as divine objects, and worshipped. The idea was that the people would be obliged not only morally but socially and religiously to protect nature including water sources, resources and, practice its reasonable utilization. Unfortunately, in the last few centuries, above learnings and teachings, handed down to us, by our learned, wise and farsighted esteemed forefathers/ancestors, have been ignored under a misconception of a materialistic kind of development. We have

compromised with water resources, exploited indiscreetly, misused gift of nature i.e., free availability of minerals, wood, clean air and water, in all possible manner. That is how rivers, streams, and water bodies are drying, ground water table is depleting, glaciers are melting and world is facing a severe crisis of water supplies. True, the developmental activities cannot be made solely responsible in as much as population explosion, our negligence towards environmental pollution, etc. are some other root causes which have also contributed to this problem.

149. Sometimes, it is said that scientifically, water is never lost but only changes form, therefore, alleged crisis is artificial and a hollow cry. But this is not true. When we consider in the context of need of water for human activities, it is true that earth water is always in movement and there is a natural water cycle known as hydrologic cycle. There is continuous movement of water on, above, and below the surface of the earth. But the cardinal fact is, if water, available on surface and under the surface, is used in an unplanned manner, irrespective of the quantum of water available at a particular place, there will be a scarcity and this will reflect not only on the hydrologic cycle but adversely affect water availability at other places also. If surface water for one or the other reason, goes down, recharge of ground water will also get reduced and it will create scarcity of ground water, reflect when it is sought to be extracted through wells and this will ultimately reflect upon the quantum of surface water also.

150. Water is important for the very sustenance, not only for Homo Sapiens but the entire animal kingdom. With water regime, civilizations have developed and disappeared. Interestingly, everybody knows that mankind cannot survive without fresh, healthy and sustained air, water and clean atmosphere, still ground level efforts for its protection are not

so serious. Globally, though every country talks seriously about environment and its protection, shows concern about its depletion, but in practice, their action is not true to the words spoken in global meetings. Developed countries find themselves free to damage environment in the manner they like but blame underdeveloped or developing countries and so is the reverse. The developing and underdeveloped countries lack resources to take care and leave climate at its fate, and making it free to its inhabitants to use and consume natural resources in whatever manner they like. Extensive exploitation of water, either unregulated or with superficial or shallow regulation becomes destiny of water.

151. So far as India is concerned, historically, environment has been given a very pious place and regard, since pre-*vedic* as well as *vedic* era. "Water", since pre-*vedic* era, has been recognized as a spiritual symbol. *Rigveda* identifies "water" as the first residence or ayana of nara, the Eternal Being. Therefore, water is said to be *pratishtha*, the underlying principle, or the very foundation of this universe. In Sataptha, it is said:

> "*Water may pour from the heaven or run along the channels dug out by men; or flow clear and pure having the Ocean as their goal…In the midst of the Waters is moving the Lord, surveying men's truth and men's lies. How sweet are the Waters, crystal clear and cleansing…From whom… all the Deities drink exhilarating strength, into whom the Universal Lord has entered..".*

152. Early *Vedic* texts also identify "water" as a manifestation of the feminine principle, commonly as *Sakti*. *Rigveda* said:

> *"I call the Waters, Goddesses, wherein our cattle quench their thirst; Oblations to the streams be given…".*

153. It is said that the primordial cosmic man or Purusa was born of the Water. Later Vedic texts identify that, "*Water is female..*" (Satapatha). Philosophically, *vedas* bestows a sacred character on water, identified therein, a medium to attain spiritual enlightenment. V*edas* identify water

as the very essence of spiritual sacrifice, or as stated in *Atharvaveda* "*the first door to attain the divine order*". The use of water in daily life as well as in ritualistic ceremony was referred to as spiritual sacrifice, a process of attaining eternity. *Rigveda* said:

> *"…Whatever sin is found in me, whatever wrong I may have done, if I have lied or falsely sworn, Waters remove it far from me…"*.

154. Besides, philosophical and spiritual status given to environment including water, in ancient vedic scriptures, even on the issue of hydrology, we find a lot of material in *vedic* literature showing that since ancient time science of water was well developed in ancient India. Certain concepts of modern hydrology, we find, scattered, in various verses of *Vedas, Puranas, Meghmala, Mayurchitraka, Vrhat Sanhita* and other ancient scriptures. Our forefathers in *Vedic* age, had developed the concept that water gets divided into minute particles due to the effect of sun rays and wind. In *Puranas*, at various places, it is alluded that water cannot be created or destroyed, and that, only its state is changed through various phases of hydrological cycle. Evaporation, condensation, cloud formation, precipitation and its measurements were well understood in ancient India as we find from the study of *Vedic* and *Puranic* scriptures. During the time of *Kautilya,* contrivances to measure rainfall were developed which had the same principle as that of modern hydrology, except that weight measures were adopted instead of modern linear measurement of rainfall.

155. Indians, in ancient times, had well developed concepts of groundwater occurrence, distribution and utilization. Ancient literature also reveals that hydrologic indicators such as physiographic features, termite mounds, soils, flora, fauna, rocks and minerals were used to detect presence of groundwater. In *Vrhat Sanhita,* chapter 54, we find a detailed description of variation in the height of water table with place, hot and cold

springs, ground water utilization by means of wells, construction methods of well and requisite equipments. Chapter 54 of *Vrhat Sanhita* is named as *'Dakargala'*. As early as 550 A.D., *Varamihira* presented a simple method for obtaining potable water from a contaminated source of water. Efficient water use, lining of canals, construction of dams, tanks, essential requirements for the construction of good tanks, bank protection methods, spillways and other minor aspects were given due consideration in ancient times in India.

156. "National Institute of Hydrology", (Ministry of Water Resources, River Development & Ganga Rejuvenation) (hereinafter referred to as '**MOWRRD&GR**'), Jal Vigyan Bhawan, Roorkee, in a work, published in December 2018, has recognized that knowledge of hydrology was permissive in ancient India starting from pre and dusk valley civilization days and has been discussed in depth in Vedas, Puranas, Arthashastra, Astadhyayi, Brihat Samhita, Ramayana, Mahabharata, Meghamala, Mayurchitraka, Jainist and Buddhist and many other ancient literature. In the aforesaid work of MOWRRD&GR, ground water is the subject of discussion in chapter 6. It is stated that in Rigveda, Samveda and Yajurveda, concept of hydrological cycle and water use through wells etc. was present which clearly imply use of ground water in chapter 54 of Vrhat Sanhita. Its author Varahamihira (AD 505-587) has dealt with ground water exploration and extraction with various surface features that are used as hydrologic indicators to look at sources from ground water at different depths in well**,** from 2.29 meters to 171.45 meters. In verses 54.1 and 54.61-62, chapter 54 of Vrhat Sanhita, two technical terms shira and shiravigyan have been used. The term shira implies arteries of water or streams. Shiravigyan exactly conveys the meaning of water table. Verse 54.2 says that the water which falls from

the sky, originally, has the same colour and same taste, but assumes different colour and taste after coming down on the surface of the earth and after percolation. In a very scientific manner, ground water and its explanation were dealt with, keeping in mind the preservation of water and its availability for all times to come, without getting it polluted or contaminated by any external means or operations.

157. The science of water in India is ancient but unfortunately forgotten in the last few centuries. Indian sub-continent, was invaded and ruled by people from other areas having different concepts, convictions and religious culture. The ancient scientific knowledge went in dormancy. The invaders treated inhabitants in a very crude manner, did not hesitate in destroying treasure of knowledge given in this sub-continent by great Saints and Rishis, and compelled common folk to believe that their cultural wealth was a myth. Huge collection of research and knowledge stored in educational institutes of repute were set on fire or damaged otherwise. Volumes of ancient knowledge treasure was also taken away by later invaders and rulers. The resultant subsequent unscientific, unmindful and irrational massive excavation, extraction and consumption, not only of surface water, but ground water, in the name of development of civilization, has created a situation where in some parts of country, even drinking water is not available or has become a serious scarcity.

158. Availability of water in all the areas is not uniform, whether it is surface water or ground water. Water covers about 71% of the earth surface. It comes to about 333 million cubic miles on the planet. In a U.S. Geological Survey's Water Science School, taking data source from Igor Shiklomanov's chapter "World freshwater resources" in Peter H.

Gleick (editor), 1992, availability of earth water has been shown in three parts:

i.) For total global water available, 96.5% is in oceans, 0.9% is other saline water and only 2.5% is fresh water.

ii.) For 2.5% fresh water available, further division is that 68.7% thereof is in the form of glaciers and ice caps, 30.1% is ground water and only 1.2% is surface or other fresh water.

iii.) For 1.2% surface/other fresh water available, again it is in different forms, i.e. 69.0% as ground ice and permafrost, 20.9% lakes, 3.8% soil moisture, 2.6% swamps and marshes, 0.49% rivers, 0.26% living things and 3% in atmosphere.

159. In other words, as a rough estimate, out of total water supply of about 333 million cubic miles (1386 million km^3), more than 97% is saline. Only a small percentage, i.e., 2.5% fresh water is available. There against also, substantial part, i.e., 68% is locked up in ice and glaciers. A very small amount is available as surface water for human uses, i.e. 1.2%, which comes around 22300 cubic miles (93100 km^3) which is about 0.007% of total water available on earth. These figures should not surprise us. Despite a very small fragment of water, available on surface, is consumable by human being, yet rivers are source of most of the water, the people use.

160. The quantum of ground water, comparing to the surface water, is definitely much more. However, comparing with global availability of water, it is a very small fraction thereof.

LAW ON USE OF GROUND WATER

161. In past, there was no control, regulation or supervision in respect of extraction of ground water. On the contrary, a recognition of owner's right

to use ground water, we find in Section 7 of Indian Easement Act, 1882 wherein Illustration (g) provides that land owners have the right to collect and dispose of all water under the land within their own limits. Availability of water *vis-a-vis* population and activities, was enough. Hence owners right on water was given recognition without any restriction or regulation. Habitation was village centric. It is 20th century urbanization which made drastic change in the life of common man creating various scarcities, most important whereof, is water including ground water.

162. In India, we had a persistent problem of acute and severe drought as also floods in various parts of the country, if not every year, then quite frequently. Some States are such which experience problem of flood and drought almost every year. A gigantic growth of infrastructure and industrial development in various forms also substantially consumed, not only surface water but also ground water. Almost at the end of 20th century, it was realized that a systematic water regime is the only option to protect human race, existence whereof was imperilled, and in furtherance thereof, Government of India, though reluctantly, attempted to create common awareness. It sought cooperation of all the States when it prepared Model Bill 1970 and circulated to all the States with request for adoption. It did not result into immediate positive response though subsequent amendments and re-circulations were made in 1992, 1996 and 2005. However, some Provincial Governments responded by making Provincial enactments for regulation of ground water. These enactments may have the objective of regulation of ground water so as to protect and preserve water table but in effect the provisions showed identification of areas where ground water level was depleted, declaration of such hard areas as notified area, and thereafter, bringing in, the concept of permission, from a Ground Water Authority, allowed very leniently,

without any scientific study, impact assessment, carrying capacity etc. It was like importing the idea of license-raj, in the field of consumption of water, in notified areas. The provisions necessary for recharge, restoration and replenishment and its effective monitoring to ensure that it is actually done, were lacking.

163. International community ultimately, more particularly in the last about fifty years, realized danger of scarcity of water, so much so, sometimes it is said that third world war will be fought for water. Consequently, some steps were sought to be taken to mitigate, restore and rejuvenate but positive effect is still a mirage.

164. In the context of environment, it has been held from time to time that a clean and healthy environment is part of Fundamental Right of life, conferred by Article 21 of Constitution. In ***Subhash Kumar vs State of Bihar (1991)1SCC598***, Supreme Court said:

> "*the right to live includes the right of enjoyment of pollution free water and air for full enjoyment of life."*

165. In ***Narmada Bachao Andolan vs Union of India (2000)10SCC664***, Court said*:*

> *" Article 21 of the Constitution of India provides for right to life and right to live with human dignity. The right to clean environment and further, pollution free water has been protected under the broad rubric of the right to life guaranteed under Article 21".*

166. Reference is also made to Article 48A, inserted in Part 4, (Directive Principle of State Policy) by 42nd amendment of Constitution, w.e.f. 03.01.1977, which reads as under:

> *"**48A. Protection and improvement of environment and safeguarding of forests and wild life:** The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."*

167. Further, Part 4A, comprises of Article 51A, was also inserted in the Constitution by 42nd amendment w.e.f. 03.01.1977 and reads as under:

> *"**51A. Fundamental duties:** It shall be the duty of every citizen of India-*
> *(a) to abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem;*
>
> *(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;*
>
> *(c) to uphold and protect the sovereignty, unity and integrity of India;*
>
> *(d) to defend the country and render national service when called upon to do so;*
>
> *(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;*
>
> *(f) to value and preserve the rich heritage of our composite culture;*
>
> ***(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;***
>
> *(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;*
>
> *(i) to safeguard public property and to abjure violence;*
>
> *(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement."*

168. Concern about pollution of rivers and streams, render water unsuitable for supporting aquatic and surface life, causing damage to irrigation/agriculture, untreated discharge of domestic and industrial effluents in rivers etc., were certain issues which drew attention of Government India resulting in constitution of a Committee in 1962 to prepare a draft enactment for Prevention of water pollution. The report submitted by Committee was forwarded to various State Governments. It was also considered by Central Council of local self-Government in September 1963. Council resolved that a comprehensive law dealing with the issue of water pollution and control, at Central and State level, may be

enacted by Central legislature. Since subject matter of legislation was relatable to entry 17 list 2 of Seventh Schedule of the Constitution, Parliament lacked legislative competence to make law on the subject (except as provided in Article 249 and 250 of the Constitution), i.e., unless legislatures of 2 or more States pass resolution in pursuance of subject. Consequently, Provincial legislatures of Gujarat, Jammu and Kashmir, Kerala, Haryana and Mysore passed such resolution. Thereafter, Bill of Water Act 1974 was prepared and passed by Parliament. It was also passed under 252(1) of the Constitution by Provincial legislatures of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal. Ultimately Water Act 1974 came into force on 23-03-1974.

169. At the first instance, it was made applicable to States which had passed resolution under Article 252 (1) adopting the said Act. Section 1 sub-section 3 said that it shall come into force at once in those States. Further it shall apply to the States which would adopt the said Act from the date of such adoption.

170. In the meantime, conference on human environment was held in Stockholm in June 1972 at the instance of United Nations in which India also participated.

171. In 1972 in Stockholm Convention, world leaders, showed global concern with respect of depleting environment and endeavoured to protect and preserve it by taking appropriate steps. Decisions were taken therein to take appropriate steps for preservation of natural resources. In furtherance to the said decision and in order to give effect to the International resolution passed at United Nations, Central Legislature enacted Air Act, 1981 which came into force on 16.05.1981.

172. Subsequently, it was realized that the existing laws focused on specific types of pollution or on specific categories of hazardous substance and major areas of environmental hazards are not covered. There were several aspects untouched and several gaps, needing a comprehensive statute, for protection and improvement of environment and matters connected therein. It resulted in enactment of EP Act 1986 which came into force on 19.11.1986.

173. In fact, Stockholm declaration caused amendment of Constitution and insertion of Article 48A in Fundamental duties chapter and also part of fundamental duties. The concept was that it is fundamental human right to live in an unpolluted environment and it is fundamental duty of every individual to maintain purity of environment. The issue of environment assumed such an importance that Supreme Court in ***M.C. Mehta vs. Union of India A.I.R.1992S.C.382***, directed University Grants Commission to prescribe a course on environment.

174. Since Statues for protection of environment were enacted to implement decision reached at Stockholm conference, the same are referable, to Article 253, to confer legislative competence upon Central Legislature, irrespective of subject in the list of legislation, under Schedule 7. Article 253 reads as under:

> *"253. Legislation for giving effect to international agreements: Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."*

175. An enactment referable to Article 253 is further referable to entry 13 List 1 of Schedule 7 of the Constitution, which says:

> *"13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat."*

176. Further, there was no specific penal legislation dealing with the matter of environment in India. In Indian Penal Code, 1860 (hereinafter referred to as "I.P.C."), Section 268, defined "Public Nuisance" and abatement of public nuisance was covered by Sections 133 to 144 I.P.C. Section 269 to 278 I.P.C. made provisions which means that a person guilty or violating any of the above provisions would be liable to prosecution and punishment.

177. University Grants Commission (India) in February 1997, launched its symposium on development of environmental studies in Indian universities. This symposium was organized in collaboration with some other organizations. The consensus arrived in this symposium was that ecology and environmental issues should form part of the courses of study at all levels. Government of India however treated environmental violations with more seriousness and in 2012, brought amendment in Prevention of Money Laundering Act, 2002 (hereinafter referred to as '**PMLA 2002**') by incorporating environmental laws i.e., Biological Diversity Act, 2002; Water Act 1974; Air Act 1981 and EP Act 1986 in Part A of the Schedule of PMLA 2002.

Provincial Enactments for Regulation of Ground Water:

178. Earlier the only available legislation was Indian Easement Act, 1882 which conferred certain rights upon the owner of a property to use water (groundwater) with ownership rights. There was no regulation governing abstraction of ground water. Government of India prepared a Model Bill in 1970 for ground water regulation and circulated to States for adoption. This version was revised in 1992, 1996 and 2005 but there was no substantial progress.

179. With the awareness of protection of environment, and international resolutions passed in United Nations, three enactments were made in India, Water Act, 1974, Air Act, 1981 and EP Act, 1986 but specifically, problem of exploitation of ground water was not dealt with. Lead was taken by some State Legislatures, and in brief, we refer to these Provincial enactments, to complete our stock of Statutory Provisions, available in India, to regulate ground water:

a. Andhra Pradesh Ground Water (Regulation for Drinking Water Purposes) Act, 1996
b. Assam Ground Water Control and Regulation Act, 2012.
c. Bihar Groundwater (Regulation and Control of Development and Management) Act, 2006
d. Goa Ground Water Regulation Act, 2002
e. Gujarat Irrigation and Drainage Act, 2013.
f. Haryana Water Resources (Conservation, Regulation and Management) Authority Act, 2020 published in the Gazette of Haryana dated 07.12.2020 (Extraordinary).
g. Himachal Pradesh Ground Water (Regulation and Control of Development and Management) Act, 2005.
h. In Jammu and Kashmir, it is Water Resources (Regulation and Control of Development and Management) Act, 2010.
i. Karnataka Ground water (Regulation and Control of Development and Management) Act, 2011
j. Kerala Ground Water (Control and Regulation) Act, 2002 (Act 19 of 2002
k. Lakshadweep Ground Water (Development and Control) Regulation, 2001
l. Madhya Pradesh Peya Jal Parirakshan Adhiniyam, 1986.

m. Maharashtra Groundwater (Development and Management) Act, 2009

n. National Capital Territory of Delhi

o. Pondicherry Ground Water (Control and Regulation) Act, 2002 (Act No. 2 of 2013)

p. Punjab Preservation of Subsoil Water Act, 2009.

q. Rajasthan Soil and Water Conservation Act, 1964.

r. Tamil Nadu Municipal Laws and the Chennai Metropolitan Area Groundwater (Regulation) Amendment Act, 2014 (Act No. 23 of 2014)

s. Union Territory of Chandigarh Water Supply Byelaws, 2011 (Amendment 2018).

t. Uttar Pradesh Ground Water (Management and Regulation) Act, 2019

u. Uttarakhand Ground Water (Regulation and Control of Development and Management) Act, 2016.

v. West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005 (Act XVIII of 2005)

History of CGWA, its origin and relevant provisions relating to its powers, duties etc.:

180. Issue relating to depletion of ground water, for the first time, caught attention of Supreme Court in ***M.C. Mehta vs. Union of India & Others. (1997)11SCC312***. On 20.03.1996, in daily newspaper "Indian Express", published on 18.03.1996, a news item was published under the caption of "Falling Groundwater Level Threatens City". Court took judicial notice on 20.03.1996 and required CGWB and Delhi Pollution Control Committee to respond. On 03.04.1996, Court issued notices to Municipal Corporation of Delhi and Delhi Waterworks and Sewerage Disposal Undertaking. One scientist Dr. P.C. Chaturvedi, (Director), CGWB filed affidavit stating that

since 1962 and onwards, water levels in country are declining. During the years 1971 to 1983, fall in water level was 4 meters to 8 meters in National Capital Territory. There was a further fall of water level from 4 meters to more than 8 meters during 1983 to 1985. One of the reasons stated in the affidavit for decline of water level was, enhanced pumpage. Consequently, Supreme Court issued notice to Government of India through Secretary, Ministry of Water Resources and Government of National Capital Territory, Delhi. The factual position regarding fall of water levels in the country was admitted in the affidavits filed by various authorities before Supreme Court. Thereafter, vide order dated 04.09.1996, Supreme Court requested Director, NEERI to examine the matter at institute level, by experts in the field, and submit report. NEERI was also required to submit suggestions and recommendations for checking further decline of underground water level. Consequently, NEERI submitted report dated 23.09.1996 with the title "**Water Resources Management in India, Present Status and Solution Paradigm**". An affidavit dated 24.10.1996 was filed on behalf of Ministry of Water Resources, by Additional Secretary, making comments on NEERI report, indicating an overall declining water level picture in the country, and also, schemes and activities undertaken by Government of India through various departments to monitor ground water. It was pointed out that in order to arrest depleting trend and to avoid indiscriminate withdrawal of ground water, Government of India had circulated a Model Bill to States/Union Territories, in 1970, to help them to bring out suitable legislation on the lines of Model Bill to regulate and control development of ground water in the respective areas. It was stated in the affidavit that in more than 120 blocks i.e. 231 blocks, in 6 Mandals, and 12 Talukas, level of ground water is over exploited. Noticing all these facts, Supreme Court, accepted one of the suggestions of NEERI, regarding constitution of an Authority under Section 3(3) of EP Act 1986, and passed

order on 05.12.1996, over ruling objection taken by Ministry of Water Recourses, Government of India that water being a State subject, it would not be possible to constitute an Authority under Section 3(3) of EP Act 1986, and held that **EP Act, 1986 is made by Parliament under Entry 13 List I Schedule 7 read with Article 253 of the Constitution of India and shall have an over-riding effect**. There was already an Organization namely CGWB having its Office across the country, hence Supreme Court directed that Central Government may consider to issue a Notification constituting the "Board" itself as an "Authority" under Section 3(3) of EP Act, 1986. It also observed that the said Authority would have all statutory powers under Section 3(3) of EP Act 1986 and would be in a position to have effective control all over India. **Supreme Court also said that any institution/department constituted by State Government can independently function in its own field with the cooperation and under the guidance of the organization set up by CGWB.**

181. As a result, thereof, we find Notification dated 14.01.1997 issued by Ministry of Environment and Forest (hereinafter referred to as '**MoEF**'), in exercise of power conferred by Section 3(3) of EP Act 1986 constituting CGWB as an Authority i.e. CGWA, for the purpose of regulation and control of ground water management and development, from the date of publication of the said Notification in the official Gazette. It was published in the Gazette of India on the same date.

182. As per para 1 of Notification of 1997, CGWA would constitute of the following:

(i) Chairman, CGWB-Chairperson

(ii) Member (Exploratory Drilling and Materials Management), CGWB-Member

(iii) Member (Sustainable Management and Liaison), CGWB-Member

(iv) Member (Survey, Assessment and Monitoring), CGWB-Member

(v) An officer not below the rank of the Joint Secretary to the Government of India to be appointed by the Central Government-Member

183. Para 2 of the said Notification dated 14.01.1997, provided powers and functions of CGWA, and said:

> *"2. The Authority shall exercise the following powers and perform the following functions, namely: -*
>
> *(i) exercise of powers under section 5 of the Environment (Protection) Act,1986 for issuing directions and taking such measures in respect of all the matters referred to in sub-section (2) of section 3 of the said Act;*
>
> *(ii) to resort to the penal provisions contained in sections 15 to 21 of the said Act;*
>
> *(iii)* ***to regulate indiscriminate boring and withdrawal of ground water in the country and to issue necessary regulatory directions with a view to preserve and protect the ground water****."*

184. The jurisdiction of the said Authority was declared to be whole of India, vide para 3.

185. Supreme Court in ***M.C. Mehta vs. Union of India & Others. (1997) (supra)*** also said that the Authority i.e., CGWA can resort to penal provisions contained in Section 15 to 21 of EP Act 1986. It also observed that main object for constitution of said Authority being the urgent need for regulating indiscriminate boring and withdrawal of underground water in the country, the said Authority so constituted, shall apply its mind to this urgent aspect of the matter and issue necessary regulatory directions with a view to preserve and protect underground water.

186. Initially, constitution of CGWA was for one year as provided in para 1 of Notification dated 14.01.1997. It was amended by Notification dated 13.01.1998, published in the Gazette of India (Extraordinary) of the same date and in place of one year, it was made five years.

187. Another amendment was brought in Notification dated 14.01.1997 by Notification dated 05.01.1999, published in the Gazette of India (Extraordinary) dated 08.01.1999 and thereby, CGWA was made six persons Authority by adding Regional Director or an officer of equivalent rank, CGWB as Member Secretary.

188. The constitution of CGWA and its functions underwent a major amendment vide Notification dated 06.11.2000, published in Gazette of India (Extraordinary) dated 16.11.2000. Thereby, in para 1, period of CGWA was deleted, hence CGWA became an Authority without any limitation of period. Further, composition of CGWA was also changed by making it a ten members Committee including Chairman, with a further provision authorizing it to have some special invitees, as and when required. The new composition of CGWA was as follows:

(i) Chairman, CGWB-Chairman

(ii) Member (Survey, Assessment and Monitoring), CGWB-Member

(iii) Member (Exploration Drilling and Materials Management), CGWB-Member

(iv) Member (Sustainable Management and Liaison), CGWB-Member

(v) Member (Training and Technology Transfer), CGWB-Member

(vi) Joint Secretary (Administration), Ministry of Water Resources-Member

(vii) Joint Secretary and Financial Adviser, Ministry of Water Resources-Member

(viii) Joint Secretary, MoEF-Member

(ix) Chief Engineer, Irrigation Management Organisation (Water, Planning and Projects), Central Water Commission-Member

(x) Director/General Manager (Exploration), Oil and Natural Gas Corporation Ltd.-Member

189. The aforesaid Notification further authorized CGWA to invite, from time to time, following, as special invitees, as and when required:

(i) Joint Secretary (Soil and Water Conservation), Department of Agriculture and Co-operation

(ii) Joint Secretary (Water Supply), Ministry of Urban Development

(iii) Joint Secretary (Department of Drinking Water Supply), Ministry of Rural Development

(iv) Director, National Institute of Hydrology, Roorkee

(v) Director, National Geo-physical Research Institute, Hyderabad.

190. The powers and functions of CGWA described by Notification dated 14.01.1997 were also amended and for clause (iii), the following clause (iii) and (iv) were substituted:

> *"(iii)* ***to regulate and control, management and development of ground water in the country and to issue necessary regulatory directions for this purpose****;*
>
> *(iv) exercise of powers under Section 4 of the Environment (Protection) Act, 1986, for appointment of officers."*

191. CGWA was conferred with powers to issue directions under Section 5 and also to exercise powers on the matters referred to in Section 3(2) of EP Act 1986. Thus, it would be appropriate to have a bird eye-view of Section 3(3), 3(2) and 5 of EP Act 1986. Section 3(2) and (3) read as under:

> *"**3(2)** In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:*
>
> *(i) co-ordination of actions by the State Governments, officers and other authorities-*
> *(a) under this Act, or the rules made thereunder, or*
> *(b) under any other law for the time being in force which is relatable to the objects of this Act;*
> *(ii) planning and execution of a nationwide programme for the prevention, control and abatement of environmental pollution;*
> *(iii) laying down standards for the quality of environment in its various aspects;*
> *(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:*

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

*"**3(3)** The Central Government may, if it considers it necessary or expedient so to do for the purpose of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures."*

192. Section 5 confers power to give directions which was also conferred upon CGWA by Central Government in its notification under Section 3(3). Section 5 reads as under:

"5. POWER TO GIVE DIRECTIONS:

Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may1 , in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

Explanation*-For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-*

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) stoppage or regulation of the supply of electricity or water or any other service."

193. Perusal of above, shows that Section 5 has been given an overriding effect over any other law but directions issued under Section 5 have to be within the compass of EP Act 1986 and cannot travel beyond. Further sub-section 2 of Section 3 has to be read with sub-section 1 which shows that power to take such measure as deemed necessary and expedient, was conferred with the clear objective that it should be for the purpose of protecting and improving quality of environment and preventing, controlling and abating environmental pollution. Further the aforesaid power is also subject to the provisions of EP Act 1986.

194. Section 24 of EP Act 1986 also made a declaration that subject to sub-section 2, provisions of EP Act 1986 and the rules or orders made therein, shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than EP Act, 1986.

195. Therefore, not only provisions of EP Act 1986 but even rules or orders issued under EP Act 1986 shall prevail over any other enactment except EP Act 1986. In other words, if, there is anything otherwise provided in EP Act 1986, then the rules/orders etc. will have to be read consistent therewith and as per legislative or statutory hierarchy, the one which is superior in hierarchy, shall prevail.

196. The steps, taken by Central Government or the Authority constituted under Section 3(3) with power to issue directions under Section 5 or to take such measures as are necessary under sub-section 2 of Section 3, are the orders in respect whereof, Section 24 sub-section 1 provides that the same shall prevail over any other enactment having any inconsistent provision. The only exception is with regard to the offences and punishment, subject to the provisions of sub-section 2 of Section 24, which provides, where any Act or omission constitutes any offence punishable under EP Act 1986 and also under any other Act, then the offender found guilty of such offence, shall be liable to be punished under the other Act and not EP Act 1986.

197. Section 25 of EP Act 1986 confers power upon Central Government to frame rules and Section 26 provides procedure which obviously would not include or cover the direction or orders or steps taken by virtue to Section 3(2) or Section 5 of EP Act 1986.

198. Hence directions issued under Section 5 or orders issued on the matters referable to Section 3(2), in our opinion, are statutory orders. We have already discussed that EP Act 1986 is referable, to Entry 13 List I Schedule VII of the Constitution read with Article 253, having been enacted pursuant to the International Conference and resolutions and to give effect thereto, it shall prevail over Provincial legislation. All Provincial enactments, relating to ground water, therefore, would have to subserve the Guidelines issued by CGWA since these guidelines are referable, to Section 5 read with Section 3(2) of EP Act 1986. These guidelines are not mere executive orders but statutory orders and, in any case, having been issued in exercise of powers under EP Act 1986, as stated above, shall prevail over Provincial enactments/legislations. To the extent, subject is

covered by EP Act 1986 and the orders issued by CGWA, Provincial legislature would lack power to make law, and if made, shall sub serve.

199. The limitation upon CGWA is that the guidelines, not only, are subject to the provisions of EP Act 1986 but should also conform the mandate that it should be for the purpose of protecting and improving quality of environmental and preventing, controlling and abating environmental pollution.

200. Supreme Court in its order dated 10.12.1996 in ***M.C. Mehta vs. Union of India & Others (1997) (supra)***, made it very clear, in para 12 of the judgment, that the main object for constitution of CGWB, as an Authority, is the urgent need for regulating indiscriminate boring and withdrawal of ground water in the country. Court further said that it has no doubt that the Authority, i.e., CGWA shall apply its mind to this urgent aspect of the matter and issue necessary regulatory directions with a view to preserve and protect ground water. Court reiterated its above directions by stating *"This aspect may be taken up by the Authority on an urgent basis"*.

201. Supreme Court also took notice of the fact that there are some legislations in the States to regulate water resources development but by and large, ground water was being exploited all over the country, without any effective regulatory regime. It is in this regard, Court directed that an Authority under EP Act 1986 be constituted with powers necessary to deal with situation created by indiscreet abstraction of ground water causing depletion of ground water levels, dwindling surface water resources, deterioration of surface and ground water quality and haphazard land use.

202. In the same case, i.e., ***M.C. Mehta vs. Union of India & Others. (1997) (supra),*** in earlier order dated 05.12.1996, Court had also rejected contention advanced on behalf of Government of India, Ministry of Water Resources that under the constitution, water is State subject and, therefore, Central Government or Parliament has no role. Court said that:

> *"We are prima facie of the view that the Act being an Act made by Parliament under Entry 13 List I read with Article 253 of the Constitution of India, it has an overriding effect."*

203. In ***S. Jagannath vs. Union of India & Others.***, ***1997 (2) SCC 87***, Supreme Court in its judgment dated 11.12.1996, was confronted with the situation where provincial legislations on coastal aquaculture regulating industries, set up in coastal areas, contained provisions which were not in consonance with Central enactment i.e., EP Act 1986 and notification issued by Government of India under Section 3(3) of the said Act, i.e. Coastal Regulation Zone (CRZ). Supreme Court held:

> *"...**we are of the view that the Act being a Central legislation has the overriding effect**. The Act, (the Environment Protection Act, 1986) has been enacted under Entry 13 of list I Schedule VII of the Constitution of India. The said entry is as under:*
>
> *"Participation in international conferences, assessment and other bodies and implementing of decisions made thereat."*
>
> *The preamble to the Act clearly states that it was enacted to implement the decisions taken at the United Nations' Conference on the Human Environment held at Stockholm in June, 1972. Parliament has enacted the **Act under Entry 13 of List I Schedule VII read with Article 253 of the Constitution of India. The CRZ notification having been issued under the Act shall have overriding effect and shall prevail over the law made by the legislatures of the States."***
>
> (Emphasis added)

204. In ***Mantri Techzone Pvt. Ltd. vs. Forward Foundation & Others (2019)18SCC494***, it was reiterated when a similar question with respect to Provincial legislation vis-a-vis law on environment was raised. Supreme Court said:

> ***"A Central legislation enacted under Entry 13 of Schedule VII List I of the Constitution of India will have the overriding effect***

> ***over State Legislations****. The corollary is that the* ***Tribunal*** *while providing for restoration of environment in an area****, can specify 'Buffer Zones around specific lakes and water bodies in contradiction with zoning regulations under these statutes or RMP".*** (Para 47)
>
> (Emphasis added)

205. Recently, in ***Civil Appeal No. 6932 of 2015, The Director General (Road Development) National Highways Authority of India vs. Aam Aadmi Lokmanch & Others.***, the above view taken in ***Mantri Technoze Pvt. Ltd. vs. Forward Foundation*** **(*Supra*)** has been referred and followed.

206. Therefore, it is now established that irrespective of the legislative list contained in Schedule 7, whenever matter relates to environment is to be seen, if governed by the laws enacted on environment by Parliament, referable to entry 13 List 1 of 7th Schedule, the same shall prevail. In other words, when a subject is covered by a legislation referable to list 1 of Seventh Schedule of the Constitution, to the extent matter is covered by such Central legislation, Provincial legislature would cease to have any legislative competence to that extent, irrespective of entry in list 2. Provincial legislature can make law only on the aspects not covered by Parliamentary enactment.

207. Thus, we are clearly of the view that on the subject of regulation of ground water, provisions of EP Act 1986, the orders issued by Central Government under Section 3(3), and by CGWA under section 5 and/or section 3(2) of EP ACT 1986 shall hold field and on this subject Provincial legislation cannot be brought in to impede, obstruct or deny or deprive CGWA, in its function for protection, perseveration and sustenance of ground water in the country.

208. Though CGWA was constituted in January 1997, we do not find much activity on its part initially for about two years. Only in 1999, CGWA issued "Guidelines for granting NOC for withdrawal of ground water by industries/projects w.e.f. 01.01.1999" (hereinafter referred to as '**Guidelines 1999**'). It permits all industries seeking NOC for ground water abstraction, to submit application in the prescribed proforma, in the Office of Regional Director, CGWB of the concerned State or Member Secretary, CGWA, New Delhi. Proponent was to submit a referral letter from Statutory Organizations like State Pollution Control Boards, MoEF, Bureau of Indian Standards, etc. for processing of its case. Proponent was also required to submit detailed designs for Rain Water Harvesting which was mandatory for areas falling in critical blocks. For evaluation of proposal, Guidelines 1999 provided, in respect of over-exploited, critical and semi-critical blocks, as under:

> *"**Over-Exploited Blocks**- It was decided **that clearance to industries in Critical/Over-Critical areas needs to be considered on case to case basis and in case of severely over-exploited areas which are devoid of any deeper potential aquifers clearances for industrial use of ground water may be denied as per the policy. (21st meeting held on 24.5.2006).***
> ***Critical Blocks**-granting permits to industries for ground water extraction be considered subject to implementation of Rain Water Harvesting/Ground Water Recharge matching the proposed draft. (23rd meeting held on 28.8.2007).*
>
> ***Semi-critical Blocks**-granting permits to industries be considered subject to implementation of Rain Water Harvesting/Ground Water Recharge. (23rd meeting held on 28.8.2007)."*

209. Thereafter, a new set of Guidelines was issued, with effect from 20.10.2009, i.e., "Guidelines for evaluation of proposals/requests for ground water abstraction for drinking and domestic purposes in Notified areas and Industry/Infrastructure project proposals in non-notified areas" (hereinafter referred to as '**Guidelines 2009**'). It recognized high intensive development of ground water in certain areas, i.e. irrigation, drinking, domestic and industrial uses in the country, resulting in over-exploitation,

leading to long term decline in ground water levels. In certain situations, quality of ground water was found deteriorated. As per the study available up to 2004, out of 5723 assessed units (Blocks, Mandals, Talukas and Districts), 839 were over-exploited, 226 critical, and 550 semi-critical. However, details of Guidelines 2009 show, since CGWA had notified only 43 areas for the purpose of regulation of ground water development, hence it confined its regulatory action only to "notified areas". Guidelines also said that NOC can be accorded for construction of tube wells/replacement of existing defunct well for drinking and domestic purpose to Government department entrusted with the water supply; other Government organizations if Water Supplying Department is not providing water in the area; schools/institutions/universities; hospitals; Embassies and State Bhawans. Pre-conditions for grant of NOC for abstraction of ground water to above categories were also given in said Guidelines.

210. Chapter A, para 1, of **Guidelines 2009**, gives details of the purpose for which NOC could be accorded, and pre-conditions for grant of NOC mentioned therein, are as under:

> *"I) NOC can be accorded for construction of tube wells/replacement of existing defunct well for drinking and domestic purpose to:*
> *a. Government department entrusted with the water supply*
> *b. Other Government organizations if Water Supplying Department is not providing water in the area*
> *c. Schools/Institutions/Universities*
> *d. Hospitals*
> *e. Embassies*
> *f. State Bhawans*
> *g. For Individuals for individual households."*

211. **Guidelines 2009** further laid down pre-conditions for grant of NOC for abstraction of ground water to categories under serial no. (i) to (vi) in notified areas, as under:

> *"Pre-conditions for grant of NOC for abstraction of ground water to categories under Sl. No. (i) to (vi) are:*

1. *Maximum diameter of the tube well should be restricted to 100 mm only and capacity of the pump should not exceed 1HP except in case of Government water supply agencies. In case of Govt. water supply agencies, tubewell size/dia. can be more depending on the ground water availability and requirement.*

2. *Concurrent with the construction of tube well,* ***the owner of the tube well shall undertake installation of the rain water harvesting structure in the premises*** *within 45 days of issuance of NOC and will confirm to the Authority for verification.*

3. *The water from the tube well be used for drinking and domestic purposes only.*

4. *All details of the drilling like rock formations encountered, the depth and diameter of the constructed tube well, type of pipes used, yield of bore well/tube well and ground water quality etc. have to be furnished to the nodal agency authorized by district administration head within 15 days of the completion of the construction.*

5. ***This permission is valid for a period of two months from the date of issue of NOC*** *except in case of Government water supplying agencies/departments."*

212. In respect of Sl. No. (vii) i.e. For Individuals for individual households, in notified areas, **Guidelines 2009** imposed conditions as under:

"*1. Only one tube-well is allowed for construction in the premises to meet the drinking and domestic purposes. No tube-well/bore-well will be constructed, if any working tube-well already exists. In case the existing well has become non-functional and is to be replaced, it should be converted into recharge well, if possible or properly sealed and no water be pumped from it.*

2. *The persons(s) intending to construct new tube-well will intimate the Authorized office/Advisory Committee, 10 days in advance along with the name and address of the drilling agency, which will undertake construction of tube-well. Authorities/Nodal Agency can ask the user to supply additional information.*

3. *The maximum diameter of the tube-well should be restricted to 100mm only and the capacity of the pump should not exceed 1HP.*

4. ***Concurrent with the construction of tube-well, the owner of the tube-well shall undertake installation of the rainwater harvesting system in the premises.***

5. ***The water from the tube-well/bore-well will be used exclusively for drinking and domestic purposes only.***

6. *All details of the drilling like rock formations encountered, the depth and diameter of the constructed tube well, type of pipes used in tube-well, yield of bore well/ tube well and ground water quality etc. shall be kept for record and are to be provided at the time of inspection.*

7. *Any violation of the above conditions will attract legal action under section 15 of the Environment (Protection) Act, 1986."*

213. Chapter A, para II of **Guidelines 2009** said that permission will not be accorded for construction of tube well for agriculture, industrial, commercial, horticulture and construction purposes in "notified areas".

214. Chapter B of **Guidelines 2009**, laid down Guidelines for evaluation of proposals/requests for abstraction of ground water for industrial/infrastructure projects, in **non-notified areas**. Para B-1, mentioned 12 criteria on which the proposals shall be evaluated i.e. (i) purpose of ground water use, (ii) area of ground water against its availability, (iii) availability of shallow aquifer, (iv) availability of deeper aquifer, (v) Criteria for recycling and reuse of effluents, (vi) adoption of water conservation measures, (vii) installation of water meters, (viii) examining the scope of rain water harvesting and ground water recharging potential, (ix) land use, (x) ground water draft, (xi) saline ground water aquifers and (xii) mining areas.

215. It was stated further that project proposals for various purposes would be evaluated for consideration of ground water abstraction, under different hydrological conditions, including water conservation measures in safe, semi-critical, critical and over-exploited areas. A chart was given for evaluation of proposals to abstract ground water for industries, as under:

"Evaluation of Proposals to Abstract Ground Water for Industries

Category	***Stage of Development***	***Recycle/Reuse***	***Other Water Conservation Practices***	***Withdrawal permitted (%age of proposed recharge)***
Safe	*<70*	*Mandatory recycling and reuse of water*	*Water audit measures to be adopted*	*To be brought under the purview if quantity of abstraction exceeds 1000 m3 /day in hard rock areas and 2000 m3 /day in alluvial areas. RWH to be adopted.*
Semi-critical	*70-100*	*Efficient utilization of recycled water and reuse of water should be mandatory.*	*Water audit measures to be adopted*	*Withdrawal may be permitted subject to undertaking of recharge measures. Since the area is less stressed,* ***at least 50% recharge be made mandatory.***
Critical	*90-100*	*Efficient utilization of recycled water and reuse of water should be mandatory.*	*Water audit measures to be adopted*	*Withdrawal may be permitted subject to undertaking of recharge measures.* ***The quantum of recharge should be equal to or more than the proposed withdrawal.***
Over-exploited	*>100*	*Efficient utilization of recycled water and reuse of water should be mandatory.*	*Water audit measures to be adopted*	***Withdrawa****l may be permitted* ***up to 60% of proposed recharge.*** *Also* ***withdrawal should not exceed a maximum limit of 1500 m3 /day for each unit.***

”

216. Chapter B, Para B-2 of **Guidelines 2009**, laid down certain conditions for abstraction of ground water for infrastructure projects in non- notified areas, as under:

“B-2 ABSTRACTION OF GROUND WATER FOR INFRASTRUCTURE PROJECTS

- *Run-off from the entire project area is to be utilized for artificial recharge to ground water.*

- *In case of residential township and colony, the quantum of water for usage other than drinking/ domestic shall not exceed 25% of the total requirement.*
- *The concerned State Government, while sanctioning any infrastructure project is to look into the ground water availability aspect also.*
- *Proponents are to submit a status report on water supply available from water supplying agencies stating the quantum of water that would be provided by the agency."*

217. In para B-3, conditions for abstraction of ground water for industrial projects in non - notified areas was laid down as under:

*"**B-3 ABSTRACTION OF GROUND WATER FOR INDUSTRIAL PROJECTS***

a) Areas having Deeper Aquifers:

***In all Over-exploited and Critical areas having deeper potential aquifers,** withdrawal may be permitted irrespective of the stage of development subject to:*

(a) Withdrawal of water from deeper aquifers only,
(b) Implementing recharge measures to recharge shallow/deeper aquifers to the extent possible within the lease/industry area
(c) Recommendation of concerned Regional Directorate on feasibility of exploitation of deeper aquifers.

b) Water table intersection by mining industries and dewatering of mine pit water

Abstraction of ground water by mining industry intersecting water table can be permitted and dewatering of mine pit water be permitted subject to the following conditions:

- *The mine water is to be put to gainful use. This may include water supply to adjacent areas and local water supply agencies, utilization for dust suppression by the industry, utilization by the mining industry for different processes, utilization for artificial recharge to ground water etc.*
- *Piezometers for monitoring the ground water level are to be mandatorily installed within the mine lease area and in peripheral areas. The record of water level data be maintained and to be provided whenever demanded by the regulating agency.*

c) Abstraction of saline ground water by Industries

Due care to be taken in respect of disposal of the effluents by the units so as to protect the water bodies and the sub-surface shallow aquifers from pollution. Proposals pertaining to the cases must have a detailed report elucidating the mechanism of handling the effluent water and its various uses. All precautions must be taken for protection of environment. Large scale recharge mechanism is mandatory in such cases to improve the ground water quality in the region."

218. Certain exemption of industries from obtaining NOC was provided in para-B-3 (IV) as under:

> ***"IV Exemption of Industries from obtaining NOC from CGWA.***
> *(i) Industries requiring ground water upto 25 m^3/day located in over exploited areas; upto 50 m^3/day for critical areas; and upto 100 m^3/day in semi-critical areas are exempted from obtaining NOC for ground water abstraction from CGWA.*
> - *The responsibility of verifying the actual requirement and withdrawal is vested with the State Pollution Control Boards.*
> - *It should also be mandatory for such industries to undertake Rain Water Harvesting to the extent possible and enforcement of the same is vested with the State Pollution Control Boards.*
>
> *(ii) Industries located in Safe category areas, are required to obtain NOC from CGWA if ground water abstraction by the industry exceeds 1000 m^3 /day for hard rock areas and 2000m3/day for alluvial areas. Such cases will be examined as in 'B'.*
> ***(The above will not include industries which are using water as a raw material like packaged drinking water industries, distilleries and breweries)"***

219. For the purpose of monitoring of implementation of **Guidelines 2009**, CGWA made State Pollution Control Boards, responsible. Further, a Committee was constituted at District level for evaluation of industry/infrastructure project proposals seeking ground water clearances, comprising of:

(i) District Collector - Chairman

(ii) Hydrogeologist, CGWB of concerned District - Member

(iii) Representative from Industry - Member

(iv) Representative from Pollution Control Boards - Member

(v) Additional member to be adopted if required.

220. The aforesaid Guidelines show that all substantially highly affected areas, facing scarcity of ground water, already placed in the category of over-exploited and critical, were not managed/regulated on a mere pretext that CGWA has notified only 43 areas and, therefore, CGWA without any reason, in an unwarranted and unauthorized manner, defied directions of

Supreme Court issued in ***M.C. Mehta vs. Union of India & Others (1997) (supra)***, by restricting its activity of regulation to only 43 "notified areas" for protection of ground water. This approach of CGWA was not consistent with the directions given by Supreme Court in ***M.C. Mehta vs. Union of India & Others (1997) (supra)***. Further, unfortunately, CGWA assumed role of mere licensing Authority, permitting abstraction of ground water by industrial and other establishments, and failed to withstand the expectations and objective with which it was constituted. It restricted its statutory duties on its own, ignoring mandate of Supreme Court requiring it to take immediate steps to protect depletion of ground water where its level had gone down to alarming level, unconcerned to whether it is notified or not, in the entire country.

221. Vide instruction no. 26-1/CGWA/D1/09/744 dated 08.10.2009, CGWA issued directions to Heads of Central Road Research Institute, National Highway Authority of India, Central Public Works Department, State Public Works Department, Indian Railways, Sports Authority of India, Board of Cricket Control of India, Airport Authority of India, Ministry of Civil Aviation, Ministry of Sports and Youth Affairs to take up rain water harvesting/adopt artificial recharge of ground water to augment ground water resources and to save it from further depletion. In furtherance of above, CGWA said:

> *"1. The Director, Central Road Research Institute, Chairman, National Highway Authority of India, Director General, Central Public Works Department; Heads of the State Public Works Department whether called as Secretary, Principal Secretary or by any other name; Chairman, Railway Board; Head of Sports Authority of India; Chairman, Airport Authority of India; Director General, Ministry of Civil Aviation; Heads of Ministry of Youth Affairs and Sports,* ***shall ensure taking up rain water harvesting/adoption of artificial recharge to ground water in the country by their respective organizations/Departments, within a period of 365 days from the date of receipt of this direction, to augment ground water resources and to save it from further depletion****.*

2. The above authorities shall obtain site-specific designs and other technical guidance from the Regional Director/Office-in-Charge of Central Ground Water Board or the Ground Water Department of the State/Union Territory.

3. The Regional Director/Officer-in-charge of Central Ground Water Board or the Ground Water Department of the State/UT, upon request from the above authorities shall extend all necessary technical assistance/design input.

4. The authorities mentioned in the directions No. 1, shall intimate the action taken report in this connection, to Central Ground Water Authority within a period of 90 days of completion of rainwater harvesting/recharge structure."

222. Another direction was issued vide instruction no. 26-1/ CGWA/D1/09/743/783 dated 08.10.2009, directing all residential group housing societies/institutions/schools/hotels/industrial establishments falling in the over-exploited and critical areas as specified in the Schedule, to adopt roof top Rain Water Harvesting systems in their premises. They were directed to complete the systems, by May 2010.

223. CGWA issued a new set of Guidelines namely "Criteria for Evaluation of Proposals/Requests for Ground Water Abstraction" (hereinafter referred to as '**Guidelines 2012**') which came into force on 15.11.2012.

224. **Guidelines 2012** laid down different parameters for notified areas and non-notified areas. Chapter A with the title 'Notified Areas' said that permission to abstract ground water through any energized means will not be accorded for any purpose other than drinking water. In para II, it provided that NOC can be accorded for construction of ground water abstraction structures/replacement of existing defunct well for drinking purpose only to:

"a. Government department/Agency/Undertaking entrusted with the water supply
b. Other Government organizations/State Government Guest Houses/Registered Housing societies

c. *Schools/educational & State/Central Government recognized research Institutions/ Universities*
d. *Hospitals."*

225. It further stated that NOC for items (b) to (d) will be considered only if Water Supplying Department is not providing adequate water in the area/ premises. Further it laid down pre-conditions for grant of NOC for abstraction of ground water to categories (a) to (d) as under:

"1. Maximum diameter of the groundwater abstraction structures should be restricted to 150 mm (6 inches) only and capacity of the pump should not exceed 1 HP. In case of Government water supply agencies, housing societies, tube well size/dia. & HP of prime mover can be more depending on the ground water availability and requirement.
2. Concurrent with the construction of groundwater abstraction structures, the ***organization shall undertake artificial recharge to groundwater through rain water harvesting structure in the premises*** *within 45 days of issuance of NOC and will confirm to the Authorised Officer for verification.*
3. ***Water meter installation in the abstraction structure is mandatory*** *and confirmation of water meter installation shall be given to the Authorised Officer under intimation to the concerned Regional office of CGWB immediately after construction****. The daily water meter reading should be maintained and quarterly report should be submitted to Authorised Officer.***
4. The water from the groundwater abstraction structures will be used for drinking and domestic purposes only.
5. All details of the drilling like rock formations encountered, the depth and diameter of the constructed groundwater abstraction structures, type of pipes used, yield of bore well/ tube well (Fracture zones encountered/zones tapped) and ground water quality etc. have to be furnished to the nodal agency authorized by district administration head within 15 days of the completion of the construction.
6. The permission for construction of groundwater abstraction structure would be valid for a period of six months from the date of issue of NOC.
7. The NOC issued would be non-transferable."

226. Another category, "Individual Household" also could be accorded NOC for drinking purposes. Conditions for the same, provided in Guidelines 2012, read as under:

"e. For Individual households:

1. Permission to be granted only for such cases where public water supply system does not exist. The permission shall

be valid only till such time there is no public water supply provided. In that case, the abstraction structure shall be exclusively utilized for artificial recharge to groundwater or sealed.

2. *A certificate from the water supply agency regarding non-availability of government water supply to the area/individual is to be submitted by the applicant.*
3. *The premises should have only one Groundwater abstraction structure (either existing or new) to meet the drinking and domestic requirements. No tube-well/bore-well will be constructed, if any working tube-well already exists. In case the existing well has become non-functional and is to be replaced, it should be converted into recharge well, if possible or properly sealed and no water be pumped from it.* ***An undertaking as per Annexure-II is to be submitted by individual****.*
4. *The person(s) intending to construct new tube-well will seek permission from the Authorized officer/Advisory Committee, at least 30 days in advance along with the name and address of the drilling agency, which will undertake construction of tube-well. Authorities/Nodal Agency can ask the user to supply additional information.*
5. *The maximum diameter of the tube-well should be restricted to 110 mm (4 ½ inches) only and the capacity of the pump should not exceed 1HP. In case of deep water level the capacity/dia. of the structure will be decided by the Authority based on the site specific recommendations.*
6. ***Concurrent with the construction of groundwater abstraction structure, the owner of the tube-well shall undertake artificial recharge to groundwater through rainwater harvesting in the premises****.*
7. *The water from the tube-well/bore-well will be used exclusively for drinking and domestic purposes only within the premises.*
8. *All details of the drilling like rock formations encountered, the depth and diameter of the constructed tube-well, (Fracture zones encountered/zones tapped) type of pipes used in tube well, yield of bore well/tube well and ground water quality etc., shall be kept for record and are to be provided at the time of inspection.*
9. *Any violation of the above conditions will attract legal action under section 15 of the Environment (Protection) Act, 1986.*

In case the notified area is de-notified subsequently, the conditions pertaining to "non-notified areas" shall be followed."

227. **Guidelines 2012** said, if a notified area is subsequently de-notified, conditions pertaining to non-notified areas shall be followed.

228. Chapter B of **Guidelines 2012** dealt with "non-notified areas". It is stated that NOC for ground water withdrawal will be considered for

industries/infrastructure projects which are either **new or under expansion** as per the criteria given in Para I to VI, which reads as under:

*"**B. NON-NOTIFIED AREAS***
*NOC for Ground Water withdrawal will be considered for Industries/Infrastructure projects **which are either NEW or under EXPANSION** as per the criteria given below:*

I. Industries

Category*	***Recycle/Reuse*** *(for various purposes except recharge to ground water)*	***Withdrawal permitted*** *(% of proposed recharge)*
Safe	*Mandatory recycling and reuse of water*	*NOC is required for groundwater withdrawal if quantity of groundwater abstraction exceeds 100 m^3/day. AR to groundwater to be adopted. However, **Industries under B-VI have no exemption from obtaining NOC**.*
Semi-critical	*Major and Medium industries shall recycle and reuse at least 50% of the waste water*	*Withdrawal may be permitted subject to undertaking of recharge** measures. The **withdrawal should not exceed 200% of the recharged quantity.***
Critical	*Major and Medium industries should fully recycle and reuse the waste water*	*Withdrawal may be permitted subject to undertaking of recharge** measures. The **withdrawal should not exceed 100% of the recharged quantity.***
*Over-exploited **(except industries falling under category mentioned in B(VI)***	*Full utilization of recycled water and reuse of water should be mandatory*	*Withdrawal may be permitted subject to undertaking of recharge** measures. The **withdrawal should not exceed 50% of the recharged quantity.***

**The present guidelines will follow the assessment of Ground Water Resource Estimation (GWRE) 2009 till it is revised.*
***The **recharge should be implemented within the premises and/or preferably in the same water shed/assessment unit**. Detailed Project Proposal (DPR) shall be included along with the application for NOC.*

II. Infrastructure Projects
(SEZ, Group Housing projects, Residential townships, Hospitals, Educational Institutions, Roads, Bridges, Technology parks, Malls, Multiplex, etc.)
a. Run-off from the entire project area is to be utilized for artificial recharge to ground water unless risk of contamination exists or

area is water logged. The runoff from the entire premises shall be utilized for harvesting/storage also, apart from recharge.

b. *The quantum of ground water for usage other than drinking/domestic shall not exceed 25% of total ground water abstraction in case of Housing projects/Residential Townships.*
c. *Proponents are to submit a status report stating the quantum of water required and the quantity that would be provided by the Government Water Supplying agency. This should be supported by a letter from the agency.*

III. Areas Having Specific Depth Zones Notified:

a. *In areas where specific depth zones are notified, permission to withdraw groundwater can be considered based on the site specific recommendations of Regional Directorate of CGWB from the depth zones, which are not coming under the notification.*

IV. Mining and Dewatering Projects

Abstraction of ground water by mining industries intersecting water table for dewatering of mine pit water, and dewatering ground water for basement construction of buildings, etc., may be permitted subject to the following conditions in addition to those already specified under Para B-I.

a. *The dewatered quantum of water is to be put to gainful use. This may include water supply and provide to water supply agencies, agriculture, dust suppression by the industry, utilization by the mining industry, utilization for artificial recharge to groundwater, etc.*
b. *Piezometers for monitoring the ground water level are to be mandatorily installed within the premises and in peripheral areas. The record of water level data be maintained and to be provided periodically or whenever demanded by the regulating agency.*
c. *Wherever the mines/dewatering project is situated in the coastal area special care should be taken to prevent sea water ingress. This should be supported by a technical evaluation report.*
d. *In case of mining projects detailed and continuous study on the groundwater regime, including groundwater modeling should be carried out and the results should be submitted to the Regional Directorate of CGWB periodically.*

V. Abstraction of Saline Ground Water by Industries/ infrastructure Projects

Industries/infrastructure projects desirous of utilizing saline ground water would be permitted to extract saline groundwater. However, due care to be taken in respect of disposal of the effluents by the units so as to protect the water bodies and the aquifers from pollution. Proposals pertaining to such cases must have a detailed project report elucidating the mechanism of handling the effluent water and its various uses. All precautions must be taken for protection of environment especially fresh water aquifers in and around the area. Large scale recharge mechanism should be adopted wherever feasible in such cases to improve the ground water conditions in the region.

VI. Industries Using Groundwater as Raw Material and other Water Intensive Industries

Industries using ***water as raw material/water intensive industries like packaged drinking water, mineral water industries, distilleries, breweries, soft drink manufacturing industries, textiles, paper & pulp, etc. shall <u>not be granted NOC</u> for groundwater withdrawal from OE areas****. In Safe, Semi-Critical & Critical areas NOC for ground water withdrawal is mandatory for these industries as per Section B-1. However, ground water withdrawal will be limited as follows:*

Category	***Ground water withdrawal limit***
Safe	*Withdrawal limited to 200% of ground water recharge*
Semi-critical	*Withdrawal limited to 100% of ground water recharge*
Critical	*Withdrawal limited to 50% of ground water recharge*
Over-exploited	***No permission for industries under this category***

"

229. Some further conditions are provided in clause D as under:

*"****D. OTHER CONDITIONS (Applicable for all cases):***

a. *Sale and supply of raw/unprocessed/untreated ground water by unauthorized agencies for commercial use is not permitted.*
b. ***Non-compliance of conditions mentioned in the NOC may be taken as sufficient reason for cancellation of NOC accorded/ non-renewal of NOC.***
c. ***Wherever State Government Authorities are in existence to manage and control ground water regimes, the Groundwater Regulation would be done by them.*** *The State Ground Water Authority (SGWA) shall send a quarterly progress report to CGWA for records.*
d. *In case of any delay in executing the project for bona fide reasons within the set time, for which NOC has been granted, the firm shall apply to CGWA for extension. CGWA may consider extension based on its merits.*
e. *No application for NOC shall be entertained without proper referral letters from the statutory authority (Central and State Govt. Dept and Agencies).*
f. *The referral letter shall contain verification on the quantum of water for the industry/project with detailed break up of groundwater consumption, recycle & reuse of the waste water, so that the wastage of the precious resource can be avoided. In case this is not given by the referral authority, applicant should obtain a letter from the Industries Dept/Project Sanctioning Authority on the same line.*
g. *The CRZA rules and regulation shall be applicable wherever in vogue.*
h. *No permission required for withdrawal of ground water from any area if withdrawal is done through non-energized means.*
i. *Mandatory clause on RWH may be relaxed in case of water logged/ shallow water level (<5 m bgl during pre-monsoon) areas.*

j. ***Relaxation in the quantity of ground water withdrawal in over-exploited areas, and/or quantity of recharge being affected by the firm can be permitted by CGWA if it feels it absolutely necessary in national interest.***

k. The artificial recharge proposals are required to be vetted by any competent authority of State/Centre.

l. ***Treated water shall not be used for recharge to ground water, since it may contain heavy metals & other toxic elements. The treated waters shall be fully used by the proponent or any other agency, who can utilize it without contaminating the underlying aquifer / water bodies****.*

m. NOC issued is non-transferable."

230. Thus **Guidelines 2012** show that study of State wise resources as on 31.03.2009 was available, showing that out of 5842 assessment units (Blocks, Mandals, Talukas, districts), 802 were over-exploited, 169 critical, 523 semi-critical, 4277 safe and 71 saline. Annual replenishable ground water resources was estimated as 431 billion cubic meters (hereinafter referred to as 'bcm'), net ground availability was 396 bcm and overall stage of ground water development of the country was 61%.

231. **Guidelines 2012** further stated that CGWA has notified 82 areas for the purpose of regulation of ground water development. District Administrative Head i.e. Divisional Commissioner or District Magistrate in case of Administrative Block or Taluka or Head of Municipality in case of municipal area of notified area, was appointed Authorized Officer by CGWA under Section 4 of EP Act, 1986. All issues pertaining to grant of NOC for ground water withdrawal, checking violations, sealing of ground water abstraction structure, launching of prosecution against offenders, attending to complaints etc. were to be addressed by Authorized Officers. In "notified area", Guidelines said, that permission to abstract ground water through any energized means will not be accorded for any purpose other than drinking water. In notified area, NOC was open for sanction for drinking purposes only and that too to the limited categories of Government departments entrusted with water supply, other Government

organizations and educational institutions-private or Governmental including research institutions/universities and also hospitals where water supply is not available from Government or semi-governments water supply departments. In non-notified areas, directions for grant of NOC for withdrawal of ground water to new and under expansions industries and infrastructure projects with certain conditions, were mentioned in **Guidelines 2012**.

232. Here again we find that CGWA, in respect of over-exploited and critical areas, assumed jurisdiction in a restricted manner by confining it to 82 areas which it had notified, though it is evident from Guidelines, that as per Ground Water Resource Estimates of 2009, 802 areas were identified as over-exploited and 169 as critical and 523 semi-critical. This restricted regulation assumed by CGWA was clearly in defiance of dictates of Supreme Court in ***M.C. Mehta vs. Union of India & Others. (1997) (supra)***.

233. At this stage, we find that ***OA No. 59/2012, Vikrant Kumar Tongad vs. Union of India & Others*** was filed before Tribunal, raising grievance that there is under regulated, large scale dewatering of areas particularly in NOIDA and Greater NOIDA, by various construction companies, excessive use of ground water and non-compliance of notifications and guidelines issued under EP Act 1986 which is causing depletion of ground water level in district Gautam Buddha Nagar, (State of Uttar Pradesh). Applicant, Vikrant Kumar Tongad requested Tribunal to direct authorities concerned to, make proper assessment of depletion in ground water level in district Gautam Buddha Nagar, stop dewatering activity in violation of guidelines, regulate ground water extraction for commercial, industrial, residential and other purposes, stop illegal water packaging units, make assessment of their impact on ground water,

implement regulations related to ground water harvesting and take penal action against defaulting industries, infrastructure units and establishments etc. State of UP contested the matter by filing reply dated 06.02.2013 wherein it admitted depletion of ground water level in NOIDA and Greater NOIDA, at certain places, but pleaded its compulsion on the ground of fulfilment of daily requirement of urban and rural populace. It also brought before Tribunal the efforts taken by State of UP for conservation of ground water resources by taking steps as under:

a. An Executive Committee under Chairmanship of Chief Secretary, Government of UP was constituted in 2004 to review rain water harvesting and ground water recharge programmes in State of UP;

b. Roof top rain water harvesting systems was made mandatory for individual plots having size of 300 square meters or more, made compulsory for existing as well as new Government and Semi-Government buildings;

c. Housing schemes/plans of 20 acres or more at the layout level, 5% of total areas was to be kept aside for pond/water bodies while maximum depth of ponds is to be kept 3 meters;

d. Pucca construction in parks would be allowed only up to 5% of total area and as far as possible, pavements would be made of permeable or semi-permeable/perforated material;

e. For new schemes, geological and hydrological surveys need be carried out so that ground water recharging system can be adopted as per local conditions;

f. For monitoring of ground water level and assessment of ground water quality in all industrial units, installation of piezometers (ground water monitoring system) was made compulsory;

g. Steps were taken for spreading awareness amongst general public;

h. Ground Water Department of State was assigned job of regular monitoring of ground water level, in both, urban and rural areas and also to conduct block wise ground water resource estimation.

i. Central Government had not framed any norms for ground water resource assessment in urban areas but the State Government of U.P. issued various Government orders dated 12.04.2001, 08.09.2004, 19.11.2004, 02.12.2004, 28.09.2004, 25.04.2006, 01.07.2008, 19.06.2009 and 05.08.2010 wherein, besides other thing, more emphasis was laid on rain water harvesting.

234. A separate reply was filed by CGWA, dated 12.02.2013, wherein it referred to Guidelines 2012 and reiterated that State wise assessment of ground water resources was last assessed, as on 31.03.2009 which revealed 802 units in the category of over-exploited but there against only 162 units were notified and therein extraction of ground water was made impermissible for any purpose other than drinking water. In respect of Gautam Buddha Nagar, it pointed out that it had four blocks-Bisrakh, Dadri, Dankaur and Jewar. As per estimation on 31.03.2004, all the four blocks were in the category of safe but as per the estimation on 31.03.2009 Bisrakh and Dankaur entered the category of "semi-critical" and Block Jewar shifted to the category of "over-exploited". Only Dadri could maintain its category of "safe" though ground water development had gone from 25.98% (as on 31.03.2004) to 73.03% (as on 31.03.2009).

235. CGWA, however, did not give any reason, why despite identification of large number of units as over-exploited only fraction thereof were notified. Boldly it continued to ignore and defy mandate of Supreme Court, given in ***M.C. Mehta vs. Union of India & Others (1997) (supra)***.

236. From the record, we find that application filed by Vikrant Kumar Tongad was admitted on 21.11.2012 and an interim order was also passed on 11.01.2013 granting injunction against abstraction of ground water by builders in NOIDA and Greater NOIDA.

237. When the above matter was pending, CGWA issued an **additional Guideline/criteria** which **came into force on 05.04.2013**, permitting abstraction of saline ground water in notified areas subject to certain conditions mentioned therein.

238. At this stage, one more application i.e., ***OA No. 108/2013, Legal Aid National Green Tribunal Bar Association vs. NCT of Delhi & Others*** was filed under Section 18(1) read with 14, 15 and 17 of NGT Act, 2010 which raised grievance concerning illegal abstraction of ground water in State of Delhi resulting into abnormal fall in ground water level. It refers to a notification dated 12.07.2010 published in Delhi Gazette dated 9th-15th July, 2010 issued by Lieutenant Governor of National Capital Territory of Delhi, in exercise of powers under Section 5 of EP Act 1986 stating that no person etc. shall draw ground water through bore well or tube well (new or existing), without permission, for domestic, commercial, agriculture and/or industrial uses. Applicant therein sought relief from this Tribunal directing authorities concerned to implement relevant provisions for effective management and regulation of ground water and rain water harvesting. This application was taken up on 23.04.2013 and notices were issued to the respondents. Tribunal required respondents to specifically place on record how many bore wells/tube wells were working in Delhi and how many of them were authorized or unauthorized. In the reply filed by Delhi Jal Board and other authorities, it was stated that there were 106 tube wells operating with permission and 205 were functioning unauthorizedly and illegally. Tribunal found that the persons operating

tube wells, illegally, were not paying any charges to the authorities and it had become an incentive for illegal and unauthorized use of ground water leading to depletion of underground water and the common problem of water scarcity to the people of Delhi. Consequently, a Committee was constituted to collect complete data of legal and illegal tube wells working in NCT of Delhi, take potential action against illegally operating tube wells/bore wells, recommend measures to be taken to prevent fall of level of ground water in Delhi and also to suggest methods and means for encouraging rain water harvesting and efforts for recharging level of ground water in Delhi.

239. A similar grievance/complaint was made in ***OA No. 179/2013, Raj Hans Bansal vs. Ministry of Water Resources & Others*** in respect of NCT of Delhi. Notices were issued in this matter to the respondents on 23.08.2013 and subsequently, it was clubbed with ***OA No. 108/2013 (supra)*** vide order dated 19.11.2013.

240. During pendency of above matters, **Guidelines 2012** underwent a minor amendment by **CGWA Notification dated 06.08.2014** stating that Guidelines/Criteria thenceforth will follow report on ground water resources estimation as on March 2011 for evaluation of project proposal of industries/infrastructures/mining, seeking ground water extraction.

241. Neither the above Guidelines resulted in any improvement to pathetic condition of constant depletion of ground water nor CGWA made any serious attempt for betterment of the situation. The water level continued to deplete.

242. Complaints about ineffective, inadequate and improper regulatory measures adopted and/or omissions on the part of CGWA, and indiscriminate extraction of ground water continuously, across the

country, were brought before Tribunal in several other matters. One of such matters is ***OA No. 176/2015 (supra)*** wherein grievance raised was that large number of hotels in State of UP were drawing ground water for commercial purposes without having any permission/sanction from CGWA and authorities including UPPCB, CPCB; and that CGWA is not taking any action against them though their action of withdrawal of ground water illegally is causing harm to environment, ground water level and global warming. This application was entertained and notices were issued to the respondents on 26.05.2015. It was found that 3 hotels namely Hotel Holiday Regency, Moradabad, Hotel Clark Awadh, Lucknow and Hotel Country Inn, Sahibabad were extracting ground water without permission while Hotel Sunshine Park, Ghaziabad claimed that it was having a separate water connection from Ghaziabad Nagar Nigam. Hotel Raddisson Blu, Kaushambi informed that it has both sources of water i.e. ground water and water supply from Nagar Nigam. Extraction of ground water was not with the permission of CGWA though after filing of OA, some hotels moved application and subsequently got permission from CGWA.

243. CGWA, in response, relied on **Guidelines 2012** and took the stand that it is regulating only notified areas where abstraction of ground water is permissible only for drinking water but in non-notified areas the permission can be granted subject to conditions mentioned in Guidelines 2012.

244. Thereupon, CGWA issued another set of Guidelines (a draft at that stage) namely "Guidelines/Criteria for evaluation of proposals/request for ground water abstraction", (hereinafter referred to as "**Guidelines 2015**"), giving effect from 16.11.2015, claiming that the same have been framed as per Tribunal's direction for further betterment of ground water regulatory processes. CGWA invited objections/suggestions/comments till

15.01.2016. These Guidelines show that latest assessment of State wise ground water resources was available to CGWB as on 31.03.2011. According to which, out of 6607 assessment units (Blocks, Mandals, Talukas, districts), 1071 were over-exploited, 217 critical, 697 semi-critical, 4580 safe and 92 saline. Annual replenishable ground water resource was estimated as 433 bcm and net ground water availability as 398 bcm. Overall stage of ground water development of country was 62%. Guidelines 2015 also show that till that time, CGWA had notified only 162 areas for the purpose of regulation of ground water development. Guidelines 2015 sought to supersede all earlier Guidelines w.e.f. 16.11.2015. In respect of notified areas, it provided that permission to abstract ground water through any energized means will not be accorded for any purpose other than drinking water. However, in respect of non-notified areas, CGWA followed very flexible stand which it had earlier also, but with certain conditions. It provided that NOC for ground water withdrawal will be considered for industries/infrastructure/mining projects, as per categorization of the areas i.e., safe, semi-critical, critical and over-exploited. It also said that industries using water as raw material/water intensive industries shall not be granted NOC for ground water withdrawal in over-exploited area.

245. The ineffectiveness and casual approach of CGWA was brought to the notice of Tribunal, with further complaint that ground water level in entire country is continuously depleting and going down, in ***OA No. 176/2015 (supra).*** It was also pointed out that by order dated 15.04.2015 in ***OA No. 204/2014, Krishan Kant Singh vs. M/s. Deoria Paper Ltd.***, Tribunal directed that it shall be obligatory upon CGWA to ensure that any person operating tube well or any means to abstract ground water should obtain its permission and operate the same subject to law in force, whether

it is existing unit or still to be established, and in compliance thereof, **Guidelines 2015** were published, inviting objections.

246. The matter of ***Vikrant Kumar Tongad (supra)*** came up for consideration on 26.07.2018. During the course of arguments, it was brought to the notice of Tribunal that water is depleting in certain areas regularly as per study of CGWA and, therefore, a Rational Policy has to be adopted so as to make water available to cope up the need of society, and simultaneously, preserving water for further generation by preventing wastage of preventable use based on the principle of "sustainable development". It was also noticed that problem of depletion of ground water was not limited to Delhi or NCR but needs be considered for entire country and effective enforcement of regulatory measures PAN India, particularly, in respect of semi-critical, critical and over-exploited areas. Draft Guidelines 2015 were also referred. Tribunal did not find effective regulatory measures either on the part of CGWA or concerned Ministry, hence, directed an expert from Ministry of Water Resources to remain present on next date with latest updates. Para 15 to 18 of order dated 26.07.2018 in ***Vikrant Kumar Tongad (supra)*** read as under:

> *"15. Certain Affidavits have been filed with regard to the inference about the extent of extraction of ground water. In its compliance report dated 31.05.2018 the Senior Town Planners, Department of Country Town and Planning, State of Haryana has suggested a formula for tentative calculation of water consumption for constructions which broadly is 0.75 kilo litre per sqm to 1 kilo litre per sqm. Actual requirement was found to be 2 kilo litre per sqm. for the building upto 20 stories if the number of storeys is more, the use of water per sqm. was more. On that basis it is suggested as follows:*

Sr. No.	***Building/Tower***	***Factors for Water consumption (In Litres per sqm. of build up area)***
1.	*Buildings upto 5 stories*	*750 litres per sqm.*
2.	*Buildings 5 to 10 stories*	*1000 litres per sqm.*
3.	*Buildings 10 to 20 stories*	*1500 litres per sqm.*
4.	*Buildings above 20 stories*	*2000 litres per sqm.*

16. When the matter taken up for hearing today, learned counsel for the parties submitted that the concern for ground water depletion is not limited to Delhi or NCR. This Tribunal may, instead of going ***into the issue limited to NCR region, consider various aspects of the said issue comprehensively including the existing mechanism for regulation of ground water extraction as well as recharge of ground water****.*

*17. On the one hand there is the need for the water which is the basic necessity, on the other compulsion of restricting its use in view of the fact that the availability of water is inadequate and level of water is depleting atleast in certain areas as per the study of Central Ground Water Authority. The Policy has to be rational, meeting the basic need of everyone and at the same time preserving the water for the future generation by preventing wastage or preventable use based on the principle of Sustainable Development****. Incidental to such policy is the issue of punitive measures and recovery of damages for those who have extracted ground water in the past who go on doing unauthorised/illegal extraction, leading to alarming depletion in the ground water.*** *Further question will be steps to be taken to tap all relevant sources specially the rain water harvesting, persevering the water bodies etc.*

18. Our attention has been drawn in this regard to the guidelines for the criteria for evaluation of proposal for extraction of ground water w.e.f. 16.11.2015. These guidelines provide for notified and non-notified areas depending upon the availability of water and criteria adopted for permitting extraction and the area where there is water scarcity. Learned counsel for the Applicant submits that further guidelines have been prepared though the same may be at the draft stage.

For this purpose, we may direct an Expert from Ministry of Water of Resources to remain present on the next date with the latest updates."

(Emphasis added)

247. In ***OA No. 176/2015 (supra)***, Tribunal on 28.08.2018, taking note of complaints of inaction of CGWA, and ineffective regulation of extraction of ground water in critical areas, observed:

"we are disappointed at the apathy shown by the CGWA. ***On the one hand the CGHWA has classified over-exploited, critical and semi-critical areas for regulation, on the other it has refused to regulate such areas on a specious plea that it is only concerned with the notified area.*** *Being the Central Authority for the whole country under the binding mandate of the order of the Hon'ble Supreme Court, such apathy can hardly be appreciated and such pleas is against the concept of rule of law."*

(Emphasis added)

248. Consequently, vide order dated 28.08.2018, Tribunal directed Ministry of Water Resources, in consultation with MoEF and Ministry of

Agriculture, to forthwith review existing mechanism so as to ensure effective steps for conserving ground water, at least in areas which are over-exploited, critical and semi-critical. Tribunal further said, the **policy framework should include monitoring mechanism with provision for coercive measures required**, consistent with the directions of Supreme Court in ***M.C. Mehta vs. Union of India & Others (1997) (supra)***; policy must also **provide for recovery of damages for illegal drawl of ground water**; and **damages should include penalty as well as environmental compensation.**

249. On 29.08.2018, matter of ***Vikrant Kumar Tongad (supra)*** came up before Tribunal when it expressed its displeasure, for non-finalization of Guidelines, despite order of Supreme Court passed as long back as in 1996 in ***M.C. Mehta vs. Union of India & Others (1997) (supra)*** pursuant whereto, CGWA was constituted by Government of India vide Notification dated 14.01.1997. Referring to all its earlier orders passed in ***Vikrant Kumar Tongad (supra)*** and also in some other cases which came up before Tribunal later, namely ***OA No. 176/2015 (supra)*** and ***OA No. 484/2015, Shailesh Singh vs. Hotel the Oberoi Amarvilas & Other*** (order dated 28.08.2018), it was observed that CGWA has failed to perform its duty of coming out with clear rational policy for conserving ground water despite Supreme Court orders in ***M.C. Mehta vs. Union of India & Others (1997) (supra)***. Tribunal also referred to its orders in ***OA No. 108/2013 (supra)***, ***OA No. 179/2013 (supra)*** and ***Appeal No. 67/2015, Apex Chambers of Commerce and Industries of N.C.T. of Delhi & Others vs. Govt. of NCT Delhi & Others*** which pertained to Delhi Jal Board, wherein stand of Board was that for commercial packaging or supply, permission to abstract ground water would not be granted. Hence Tribunal by order dated 10.07.2018 prohibited such abstraction.

250. In another matter taken up on the same date i.e., 29.08.2018 i.e., ***OA No. 411/2018, M/s. A-One Mineral Water Industry vs. Central Ground Water Authority & Others***, Tribunal deprecated and disapproved approach and working of CGWA including its Chairman and Administrator and required Secretary, MoEF&CC to look into the matter and report before Tribunal.

251. Several matters namely ***OA No. 59/2012 (supra), OA No. 108/2013 (supra)***, ***OA No. 179/2013 (supra)***, ***OA No. 176/2015 (supra)***, ***OA No. 484/2015 (supra)***, ***OA No. 327/2018, Shailesh Singh Vs Panchsheel Buildtech Pvt. Ltd. & Others.***, ***OA No. 115/2017, Shailesh Singh Vs. Central Ground Water Board & Others***, ***OA No. 411/2118 (supra)*** and ***Appeal No. 67/2015 (supra)*** came up on 22.10.2018 when no progress was shown by the authorities before Tribunal, despite categorical orders passed earlier. Deprecating, Tribunal observed that the authorities are comfortably sleeping over the matter, and in spite of pendency, no concrete steps were shown to have been taken by them. The matter was adjourned to 12.11.2018 directing Secretary, Water Resources, Govt. of India to remain personally present to show cause why action for defiance and non-compliance of Tribunal's order be not taken.

252. All these matters led by ***OA No. 59/2012 (supra)*** came up before Tribunal on 12.11.2018. In its order, Tribunal noticed that even in over-exploited, critical and semi-critical area, with or without permission underground water continued to be extracted on a specious plea that though critical, the area was not notified and thus, not regulated. Before Tribunal, CGWA sought to disown its responsibility stating that water is a subject matter of 'State' and, therefore, Central bodies have limited role. Similar defence taken before Supreme Court, by Government of India, was

already negated in ***M.C. Mehta vs. Union of Inia & Others (1997) (supra),*** still CGWA repeated the same. This was deprecated by Tribunal. Various observations made by Tribunal, demonstrating failure of CGWA in functioning as per directions and observation of Supreme Court in ***M.C. Mehta vs. Union of India & Others (1997) (supra)***, in paras 3 to 8, read as under:

> *"3. As a result of the survey of the geographical areas in the country, over exploited, critical and semi critical areas have been declared. The CGWA had issued 2012 guidelines and* ***thereafter prepared draft guidelines on 16.11.2015 which are pending finalization for the last three years.*** *The Tribunal noticed that* ***even in over exploited, critical and semi critical areas, with or without permission, underground water continues to be extracted on*** *a specious plea that though critical the area was not declared notified and is, thus, not regulated. The CGWA has also sought to disown its responsibility by saying that the matter was State subject.*
>
> *4. The Tribunal has passed several order prohibiting extraction of underground water for commercial purposes with or without permission.* ***Mechanical condition of requiring recharge of the underground water, which does not actually happen, and on that basis permitting drawal of underground water for commercial purposes has been held to be unjustified****.*
>
> *5. The* ***underground water has been found to be extracted for building construction, for bottling plants, for swimming pools, threatening availability of the underground in over exploited, critical and semi critical areas specially in absence of adequate steps for rain water harvesting for recharge of the underground water****.*
>
> *6. The* ***plea that industries are allowed to draw underground water against charges is ridiculous and beyond comprehension in*** *over exploited, critical and semi critical areas. It is against the precautionary principle, sustainable development as well as inter generational equity principle. One may understand the drawal of underground for drinking purposes where no other source for such purpose exists but for no other purpose, much less the industrial purpose such drawal of underground water can be allowed with or without payment in such areas. The Tribunal has also noted that* ***drawal of ground water in the catchment areas of rivers may affect e-flow of the rivers which in turn affect aquatic life and the river water quality.***
>
> *7. We do appreciate the difficulties of the agriculturists but the option of providing alternative of use of treated sewage water etc. or switching over to less water consuming crops needs to be considered. Equally significant is the need for checking contamination of underground water by who are discharging untreated effluents in the earth or in the water bodies. Comprehensive planning and execution*

thereof on the subject with utmost priority is necessary and absence thereof has led to emergency situation in certain areas.

8. In several orders, we have noted the apathy of the Authorities in the last six years in neglecting the subject in breach of the trust reposed in such Authorities. It was this concern that led to our earlier observations and direction to require the presence of Secretary, Department of Water Resources in person. We have no information about steps taken in compliance of earlier directions, including action for illegal activities of the CGWA except a statement that the said Authority is ill equipped. If so, we do not know why? We note that presence of the said Secretary today and also affidavit filed before this Tribunal on 16.10.2018 to the effect that policy framework has been evolved and re-framing of policy guidelines are "under consideration" for reference to the Ministry of Law."

(Emphasis added)

253. Thereafter, CGWA came up with a new set of Guidelines, vide Notification S.O. 6140(E) dated 12.12.2018, published in Gazette of India (Extraordinary), of the same date, titled as "Guidelines to regulate and control ground water extraction in India". It was given effect from 01.06.2019 (hereinafter referred as '**Guidelines 2018**').

254. Para 2 thereof stated that these Guidelines shall supersede all earlier guidelines issued by CGWA and will have PAN India applicability.

255. Para 2.1 referred those categories of users who were exempted from obtaining NOC for ground water abstraction and read as under:

*"**2.1. Exemptions***

1. The following categories of users shall be exempted from obtaining NOC for ground water abstraction:

i. *All users drawing/proposing to draw ground water through non-energized means (bucket & rope, hand pump, mhote etc.)*
ii. *Individual households drawing/proposing to draw ground water from a single dug well/bore well/tube well through delivery pipe of up to 1" diameter*
iii. *Agricultural users*
iv. *Armed Forces Establishments during operational deployment or during mobilization in forward locations.*

The following categories of users shall be granted exemption from the requirement of NOC for ground water withdrawal, subject to submission of particulars as per the proforma (Annexure III) to CGWA.

i. *Strategic and operational infrastructure projects for Armed Forces*
ii. *Defence Establishments and Paramilitary Forces Establishments*
iii. *Government water supply agencies in safe and semi critical areas*

The agencies mentioned under Sl. Nos. i, ii and iii shall install digital water flow meters to monitor monthly ground water abstraction, construct observation wells (piezometers) equipped with Digital Water Level Recorders (DWLR) for regular monitoring of ground water levels if the proposed ground water extraction is > 10 m^3/day. Data sharing mechanism will be the same as in Section 2.3.1.VII. They will also monitor ground water quality from the abstraction structures once in a year during the month of April/ May. Guidelines for construction of piezometer are given in Annexure IV. The ground water samples collected shall be analysed at an NABL accredited laboratory. The data on ground water abstraction, ground water levels and ground water quality shall be submitted to the concerned Regional Office of Central Ground Water Board on the web portal."

256. Para 2.2 deals with drinking and domestic use and said as under:

*"**2.2. Drinking & Domestic use***
Request for NOC shall be considered only in cases where the water supply department/agency concerned is unable to supply adequate amount of water in the area. For granting NOC for ground water withdrawal for drinking & domestic purposes, two broad categories identified are as follows:
a) Individual households/connections
b) Infrastructure projects/industries/mining projects/water supply agencies/others"

257. Para 2.2.1 deals with the conditions and procedure for grant of NOC to individual household. Para 2.2.2 deals with infrastructure projects/industries/mining projects/public water supply agencies/ others requiring water only for drinking & domestic use. These paras 2.2.1 and 2.2.2 read as under:

*"**2.2.1. Individual households:***
Individual houses drawing/ proposing to draw ground water through more than one functional bore well/tube well/dug well or drawing ground water through delivery pipe of more than 1" diameter from a single ground water abstraction structure shall be required to seek NOC for ground water withdrawal under this category. NOC for ground water extraction shall be granted subject to the following conditions:

i. *Application for NOC shall be accompanied by the proof of ownership of household(s).*
ii. *NOC for new wells shall be granted only in such cases where public water supply system does not exist/water supply is inadequate.*
iii. *Applicant shall submit an affidavit on non-judicial stamp paper of Rs. 10/- confirming non/inadequate availability of public water supply.*
iv. *The NOC shall be valid for a period of 5 years from the date of issue or till such time public water supply is provided to the household, whichever is earlier. The applicant shall apply for renewal of NOC at least 90 days prior to expiry of its validity.*
v. *The user shall install digital water flow meter on the tube well/ bore well /dug well and submit the data through the web-portal*
vi. *The user shall submit ground water abstraction data through the web-portal.*
vii. *If the existing well becomes defunct within the validity period of NOC, the user can construct a replacement well under intimation to the Regional Director of CGWB. The defunct well shall be properly sealed as per guidelines given in Annexure V.*
viii. *The owner shall implement roof top rain water harvesting as per the prevalent building bye laws. However, no recharge shall be undertaken in areas prone to water logging (water levels within 5 metres below ground level).*
ix. *The owner shall pay Water Conservation Fee based on quantum of ground water extraction as applicable (Refer Sub-section 2.6).*
x. *The NOC shall become void in case of change in land use of the property/ water use. It will then become mandatory for the owner to apply for fresh NOC.*

2.2.2. Infrastructure projects/ industries/ mining projects/ public water supply agencies/other requiring water only for drinking & domestic use.

An indicative list of infrastructure projects to be considered under this category is given in Annexure VI. ***NOC for ground water withdrawal for drinking and domestic purpose only*** *for infrastructure projects/ industry/ mining projects/water supply agencies/others will be granted based on the following conditions:*

I. *Application for NOC shall be accompanied by the following documents:*
   i) *Approval in the form of Terms of Reference / Consent to Establish/Consent to Operate / License issued by the statutory bodies viz. Ministry of Environment, Forests& Climate Change (MoEF & CC) / State Level Expert Appraisal Committee (SEAC)/State Level Environment Impact Assessment Authority (SLEIAA) / State Pollution Control Board (SPCB) / Urban/ Rural Development Authority / Department of Industries or any other authority mandated by Central/State Government.*
   ii) *Details of water requirement computed as per National Building Code, 2016 (Annexure VII), taking into account recycling/ reuse of treated water for flushing etc. (in case of new buildings).*
   iii) *Affidavit on non-judicial stamp paper of Rs. 10/- by the applicant, confirming non/ inadequate availability of public*

water supply in case of users requiring ground water up to 10 m^3/day for drinking/ domestic use.

iv) *Certificate of non-availability of water from government water supply agency in case of infrastructure project/industry/mine requiring ground water in excess of 10 m^3/day for drinking/ domestic use.*

v) *Water quality data of bore well/tube well/dug well in respect of existing projects from NABL accredited laboratory.*

II. *Use of recycled/ treated waste water for purposes like flushing, green belt etc. shall be mandatory for new projects requiring >12.5 m^3/d of ground water.*

III. *NOC for new /existing wells shall be granted only in such cases where the required amount of water is not available from the public water supply system.*

IV. *If the existing well becomes defunct within the validity period of NOC, the user can construct a replacement well under intimation to CGWA on web portal. The defunct well shall be properly sealed (Refer Annexure V).*

V. *The proponent shall mandatorily install roof top rain water harvesting system in the project area, wherever the ground water level is deeper than 5 metres below ground level.*

VI. *The proponent shall pay Water Conservation Fee based on quantum of ground water extraction as applicable (Refer Sub-section 2.6).*

VII. *Installation of digital water flow meter (conforming to BIS standard) in the abstraction structure(s) shall be mandatory and intimation regarding the same shall be communicated to the CGWA within 30 days of grant of NOC through the web-portal. Monthly water meter reading shall be digitally recorded and reports of ground water abstraction shall be submitted through the web portal to CGWA.*

VIII. *Construction of purpose-built observation wells (piezometers) for monthly ground water level monitoring shall be mandatory for proponents drawing/ proposing to draw 10m^3/day or more of ground water. Detailed guidelines for construction of piezometers are given in Annexure IV. Depth and zone of aquifer tapped in the piezometer should be commensurate with that of the pumping well.*

IX. *Installation of Digital Water Level Recorders (DWLR) in the observation well shall be mandatory for projects requiring ground water from 50 to less than 500 m^3/day in safe and semi critical assessment units and 20 to less than 200 m^3/day in critical and overexploited assessment units. The list of safe, semi critical, critical, overexploited and saline assessment units is available at www.noc-cgwb.gov.in.*

X. ***For projects requiring ground water extraction of 500 m^3/day or more in safe and semi critical assessment units and 200 m^3/day or more in critical and overexploited***

assessment units, installation of DWLR with telemetry in the observation well shall be mandatory*. The data server shall be maintained by the supplier of the instrument and access will be provided to CGWA through the web portal. It shall be the responsibility of the applicant to provide user ID and password to the above agency.*

XI. Monthly water level data shall be submitted to CGWA through the web portal.

XII. All proponents shall monitor quality of ground water from the abstraction structure(s). Water samples from borewells/ tube wells / dug wells shall be collected during April/May every year and analyzed from NABL accredited laboratories for basic parameters (cations and anions), heavy metals, pesticides/ organic compounds etc. Water quality data shall be made available to CGWA through the web portal.

XIII. The ***NOC shall be valid for a period of 5 years from the date of issue or till such time public water supply is provided to the project area, whichever is earlier.***

XIV. The proponent/ authorized representative of the occupants of the infrastructure project shall apply for renewal of NOC at least 90 days prior to expiry of its validity."

258. The indicative list of "Infrastructure projects" governed by para 2.2.2, as mentioned in annexure VI to the **Guidelines 2018**, referred to: residential apartment, Residential township, Office building, School College, University, Industrial Area (Drinking use), SEZ (Drinking use), Metro Station, Railway Station, Bus Depot, Airport, Seaport, Highway infrastructure, Fire station, Warehouse, Business Plaza, Malls & Multiplex, Hospitals, Nursing Homes, Water Park/Theme Park/Amusement Park, Resort, Hotel/Restaurant/Food Plaza, Holiday home/Guest house, Banquet Hall/Marriage Gardens, IT Complex, Logistics & Cargo, Clubs and Trade Centre.

259. Para 2.3 deals with industrial/mining/infrastructure projects and separate conditions are provided for industries, mining projects and infrastructure projects and the conditions are as under:

*"**2.3 Industrial/ Mining/ Infrastructure projects***
All industries/ mining/ infrastructure projects, ***whether existing/ new/ under expansion*** *and drawing/ proposing to draw ground*

water through energized means shall need to obtain NOC for ground water withdrawal from the Central Ground Water Authority.

2.3.1 Industries

NOC to industries shall be granted only for such cases where government agencies are not able to supply the desired quantity of water. The applications for NOC shall be considered as per the criteria given below.

I. Application for NOC shall be accompanied by the following documents:

i) Approval in the form of Terms of Reference/ Consent to Establish/ License issued by statutory bodies viz. Ministry of Environment, Forests & Climate Change (MoEF&CC) or State Pollution Control Board (SPCB) or State Level Expert Appraisal Committee (SEAC) or State Level Environment Impact Assessment Authority (SLEIAA) or Bureau of Indian Standards (BIS) or Food Safety and Standards Authority of India (FSSAI) or Department of Industries or any other authority mandated by Central or State Government.

ii) A valid Consent to Operate issued by the Industry Department/ Pollution Control Board/ copy of application submitted for renewal of Consent to Operate.

iii) Certificate regarding non/partial availability of fresh water/treated waste water supply from the concerned government agency in cases where requirement of ground water is more than 10 m^3/day.

iv) An affidavit on nonjudicial stamp paper of Rs. 10/- regarding non availability of water supply from government agencies in cases where ground water requirement is up to 10 m^3/day.

v) Water quality data of bore well/tube well/dug well in respect of existing industries from NABL accredited laboratory.

II. ***Hydrogeological report*** *prepared by NABET accredited consultant shall be mandatory for users drawing/ proposing to draw ground water to the tune of 2000 m^3/day or more in safe assessment units,* ***1500 m^3/day or more in semi critical and critical assessment units and 1000 m^3/day or more in over-exploited assessment units.*** *Pro-forma for hydrogeological report is given in Annexure VIII. Installation of* ***digital water flow meter*** *(conforming to BIS standard) in the abstraction structure(s)* ***shall be mandatory*** *and intimation of the same shall be communicated to the CGWA through the web portal within 30 days of grant of NOC.*

III. ***Monthly water flow meter readings shall be recorded and reports of ground water extraction shall be submitted to CGWA through the web portal.***

IV. Industries shall minimize the use of fresh ground water through recycling and reuse of waste water.

V. All industries abstracting ground water to the tune of 500 m^3/day or more in safe and semi critical and ***200 m^3/day or more in critical and over-exploited assessment units shall be required to undertake water audit*** *(Annexure IX) through CII/ FICCI/ NPC certified auditors and submit report within three months of completion*

of the same to CGWA through the web portal. ***The first audit shall be done within a year of grant of NOC.*** *Subsequent audits shall be conducted once in 3 years for Safe/Semi critical assessment units and once in 2 years in critical/over-exploited assessment units.*

VI. Construction of observation well(s) ***(piezometers) within the premises, for monthly ground water level monitoring, shall be mandatory for industries drawing/ proposing to draw more than 10 m^3/day of ground water.*** *Depth and aquifer zone tapped in the piezometer shall be commensurate with that of pumping well/ wells. The number of observation wells (piezometers) shall be specified in the No Objection Certificate. Detailed guidelines for construction of piezometers are given in Annexure IV. Monthly water level data shall be submitted to the CGWA through the web portal.*

VII. Industries drawing/proposing to draw ground water from 50 to less than 500 m^3/day in safe and semi critical assessment units and those drawing/proposing to draw ***20 to less than 200 m^3/day of ground water in critical and over-exploited assessment units shall install digital water level recorder (DWLR) in the observation well for continuous monitoring of ground water levels****. Depth to water levels shall be monitored at 12 hour intervals and the DWLR data shall be retrieved and submitted to CGWA through the web portal.*

VIII. Industries drawing/proposing to draw ground water to the tune of 500 m^3/day or more in safe and semi critical areas and ***200 m^3/day or more in critical and over-exploited areas would be required to install DWLR with telemetry in the observation well for continuous monitoring of ground water levels.*** *The server will be maintained by the supplier of the instrument and access shall be provided to CGWA. It shall be the responsibility of the proponent to provide User ID and password to the CGWA.*
IX. All industries shall monitor quality of ground water from the abstraction structure(s). Water samples from bore wells/tube wells/dug wells shall be collected during April/May every year and analysed from NABL accredited laboratories for basic parameters (cations and anions), heavy metals, pesticides/organic compounds etc. Water quality data shall be made available to CGWA through the web portal.

X. All industries except those falling in red and orange categories as per CPCB (list available on http://envfor.nic.in/sites/default/files/Latest_118_Final_Directions.pdf) shall implement roof top rain water harvesting within six months of grant of NOC. Recharge of harvested water shall not be permitted in areas prone to water logging (water level within 5 m.bgl).

XI. Industries shall deposit ***Water Conservation Fee*** *(WCF) based on quantum of extraction as applicable (see Subsection 2.6). Industries which are not able to implement roof top rain water harvesting due to likely threat of pollution or any other valid reason shall be required to pay additional water conservation fee to compensate for the quantum of water that could have been recharged by the unit.*

XII. ***NOC shall be valid for a period of 3 years in safe and semi critical areas and 2 years in critical and overexploited areas.***

XIII. The applicant shall apply for renewal of NOC at least 90 days prior to expiry of its validity.

XIV. Industries which are likely to cause ground water pollution e.g. Tanning, Slaughter Houses, Dye, Chemical/Petrochemical, Coal washeries, other hazardous units etc. (as per CPCB list) need to undertake necessary measures to ensure prevention of ground water pollution (Annexure X).

*XV****. Recharge/ injection of treated/untreated waste water within/ outside the plant premises is strictly prohibited****.*

XVI. Existing industries, which have already obtained NOC and have implemented recharge measures as specified in the NOC, shall be exempted from paying WCF. However, if the industry is going for expansion, WCF will have to be paid for the additional quantum of ground water withdrawal as per applicable rates.

XVII. Existing industries, which have obtained NOC and adopted pond/ ponds but have not been able to implement the specified volume of recharge due to various reasons, shall have an option to de-adopt pond/ ponds and pay WCF within six months of the effectiveness of these guidelines. ***If at the time of renewal it is observed that the industry has not been able to comply with the recharge condition specified in the NOC, the industry shall have to pay WCF in addition to the penalty as specified in the Environment (Protection) Act, 1986.***

XVIII. Wherever feasible, requirement of water for greenbelt (horticulture) shall be met from recycled/treated waste water.

XIX. If an existing well becomes defunct within the validity period of NOC, the proponent shall construct a replacement well under intimation to the CGWA through the web portal. The defunct well shall be properly sealed (Annexure V).

XX. In case of change of ownership, new owner of the industry will have to apply for necessary changes in the NOC with documentary proof within 45 days of taking over possession of the premises.

2.3.2 Mining projects

All existing as well as new mining projects need to obtain NOC for mine dewatering and/or ground water withdrawal through wells, if any, from Central Ground Water Authority. NOC for abstraction of ground water shall be granted subject to the following conditions:

I. Application for NOC shall be accompanied by the following documents:

i) Approval from statutory bodies viz. Ministry of Environment, Forests & Climate Change (MoEF & CC) or State Pollution Control Board (SPCB) or State Level Expert Appraisal Committee (SEAC) or State Level Environment Impact Assessment Authority (SLEIAA).

ii) Certified mine lease map.

iii) Document showing ownership/ lease of land.
iv) Mining plan approved by the concerned Govt. agency/ department.
v) Comprehensive report prepared by NABET accredited consultant on ground water conditions in both core and buffer zones of the mine, depth wise and year wise mine seepage calculations, impact assessment of mining and dewatering, details of recycling, reuse and recharge, reduction of pumping with use of technology for mining and water management to minimize and mitigate the adverse impact on ground water, based on local conditions. Format for report is given in Annexure VIII.

II. The water available from de-watering operations shall be put to gainful use such as water supply, irrigation, dust suppression, mining process etc.

III. Installation of digital water flow meter (conforming to BIS standard) in the abstraction structure(s) shall be mandatory and intimation of the same shall be communicated to the CGWA through the web portal.

IV. Water flow meter reading shall be digitally recorded and submitted to the CGWA through the web portal.

V. The proponent shall have to pay WCF based on quantum of ground water extraction as applicable (see Subsection 2.6).

VI. Construction of observation well(s) (piezometers) within the premises along the periphery, for monthly ground water level monitoring, shall be mandatory for mines drawing/ proposing to draw more than 10 m^3/day of ground water. Depth and aquifer zone tapped in the piezometer shall be commensurate with that of pumping well/ wells. The number of observation wells (piezometers) shall be specified in the No Objection Certificate. Detailed guidelines for construction of piezometers are given in Annexure IV. Monthly water level data shall be submitted to the CGWA through the web portal.

VII. Proponents drawing/proposing to draw ground water from 50 to less than 500 m^3/day in safe and semi critical assessment units and those drawing/proposing to draw 20 to less than 200 m^3/day of ground water in critical and over-exploited assessment units shall install digital water level recorder (DWLR) in the observation well(s) for continuous monitoring of ground water levels. Depth to water levels shall be monitored at 12 hour intervals and the DWLR data shall be retrieved and submitted to the CGWA through the web portal.

VIII Proponents drawing/proposing to extract ground water to the tune of 500m^3/day or more in safe and semi critical areas and 200 m^3/day or more in critical and over-exploited areas would be required to install DWLR with telemetry in the observation well for continuous monitoring of ground water levels. The server will be maintained by the supplier of the instrument and access shall be provided to CGWA. It shall be the responsibility of the proponent to provide User ID and password to CGWA.

IX. In addition, the proponent shall monitor ground water levels by establishing key wells in the core and buffer zones as specified in the NOC.

X. All mining units shall monitor quality of ground water from the abstraction structure(s). Water samples from bore wells/ tube wells / dug wells shall be collected during April/May every year and analyzed from NABL accredited laboratories for basic parameters (cations and anions), heavy metals, pesticides/ organic compounds etc. Water quality data shall be made available to the CGWA through the web portal.

XI. The NOC shall be valid for a period of 2 years from the date of issue of NOC.

XII. The proponent shall apply for renewal of NOC at least 90 days prior to expiry of its validity.

2.3.3 Infrastructure projects requiring dewatering or use of ground water for construction

New infrastructure projects/residential buildings may require dewatering during construction activity and/or use ground water for construction. In both cases, applicants shall seek NOC from CGWA before commencement of work. The NOC will be granted subject to the following conditions:

I. Application for NOC shall be accompanied by the following documents:

i) Approval letter from statutory bodies viz. Ministry of Environment, Forests & Climate Change (MoEF & CC) or State Pollution Control Board (SPCB) or State Level Expert Appraisal Committee (SEAC) or State Level Environment Impact Assessment Authority (SLEIAA) or Urban/Rural/Area Development Authority.

ii) In cases where dewatering of more than 100 m^3/day is required, hydrogeological report prepared by NABET accredited consultant on the ground water situation in the area giving detailed plan of pumping, proposed usage of pumped water and comprehensive impact assessment of the same on the ground water regime. The report should highlight environmental risks and proposed management strategies to overcome any significant environmental issues.

iii) An affidavit on nonjudicial stamp paper of Rs. 10/- regarding non availability of water from any other source for construction in safe and semi critical areas.

iv) Certificate from the government agency regarding non availability of treated sewage water for construction within 10 km radius of the site in critical and over-exploited areas.

II. The proponent shall be required to adopt roof top rain water harvesting in the project premises after completion of building construction. Recharge measures shall not be implemented in areas prone to water logging (water level within 5 metres below ground level).

III. The proponent will have to pay WCF based on quantum of ground water extraction as applicable (see Sub-section 2.6).

IV. Proponent shall be required to carry out regular monitoring as mentioned below:

Parameter to be monitored	*Frequency*	*Submission to the CGWA*
Dewatering discharge rate (using a digital water flow meter)	*Continuous*	*Through the web-portal*
Water levels in the surrounding area by constructing observation wells (piezometers) in consultation with the concerned Regional Office of CGWB	*Fortnightly*	*Through the web-portal*

Monitoring records and results should be retained by the proponent for up to two years, for inspection or reporting as required by CGWA.

V. NOC shall be valid for the specific period as per the detailed proposal submitted by the project proponent."

260. Para 2.4 deals with agriculture sector and said that it shall be exempted from obtaining NOC for ground water withdrawal but placed responsibility upon concerned State Governments to undertake sustainability of ground water source. Para 2.5 deals with the abstraction of saline/contaminated ground water. It is said that abstraction of saline/contaminated ground water for use by industries/ dewatering by infrastructure/mining projects including those located in over-exploited areas would be encouraged. The list of such assessment units having saline ground water at all depths as per the latest assessment of dynamic ground water resources will be made available by the Authority in the web-based application system. Packaged drinking water units shall be encouraged to be set up in quality affected areas. All precautions must be taken for protection of environment, especially fresh water aquifers in and around the area. Other conditions for granting NOC would be the same as mentioned in Para 2.3 for industries and infrastructure projects, respectively. Some additional conditions were provided which we are

omitting being non-relevant at this stage. Para 2.6 is a provision for Water Conservation Fee (hereinafter referred to as '**WCF**'), made in compliance of Tribunal's order dated 13.07.2017 in ***OA No. 200/2014*** dealing with Ganga matter, wherein it was observed that all users must be required to pay for ground water extraction. The rates of WCF were claimed to have been determined by CGWA after considering factors namely, i) **Cost of implementation of rainwater harvesting/artificial recharge structures** by industries/infrastructure units/mines which have been mandated to implement the same as per NOCs granted earlier; and ii) **charges** being levied by various State Governments **for use of surface water by industries**.

261. On 18.12.2018, leading cases ***OA 176/2015 (supra)*** and ***OA 59/2012 (supra)*** came up before Tribunal along with **OA *108/2013 (supra)***, ***OA 179/2013 (supra)***, ***OA 484/2015 (supra)***, ***OA 327/2018 (supra)***, ***OA 115/2017 (supra)***, ***OA No. 411/2118 (supra)***, ***OA 613/2017***, ***Mohd. Javed Asghar vs. M/s Upper Ganges Sugar and Industries Ltd. (Distillery Unit) & Others*** and ***OA 614/2017, Mohd. Javed Asghar vs. State of U.P. & Others*** and ***Appeal 67/2015 (supra)***. After hearing, order was uploaded on 03.01.2019. Entire historical background and also litigation going on in Tribunal, in respect of massive abstraction of ground water and failure of statutory body like CGWA in effective regulation, consistent depletion of ground water level worsening the condition, was noticed and then Tribunal also examined Guidelines 2018. Deprecating the same, in para 22 to 27 of order dated 03.01.2019, Tribunal said:

> *"20. It is clear from the above that, rather than laying down stricter norms for extraction of ground water for commercial purposes and putting in place a robust institutional mechanism for surveillance and monitoring,* ***extraction of ground water has been liberalized adding to the crisis unmindful of the ground situation and likely impact it will have on environment****. No data has been furnished to justify the policy reversal by way of uncontrolled liberalized drawal of groundwater in OCS areas.*

21. The provisions of the impugned notification show that ***drawal of ground water has been****, for all practical purposes,* ***made unregulated in all areas, including the OCS areas****.*
22. The ***so called regulation is illusory****. The so called conditions are incapable of meaningful monitoring, as shown by past experience also*

23. The ***water conservation fee virtually gives licence to harness ground water to any extent*** *even in OCS areas.*

24. There is ***no institutional mechanism to monitor removal*** *and replenishment of ground water.*

25. Delegation provision is virtual abdication of authority.

26. There is no check on injection of pollutants in the ground water in the impugned notification. There is no provision with regard to check on water quality and its remediation, if there is contamination.

27. We are satisfied that the ***Notification dated 12.12.2018*** *tested on the Precautionary Principle, Sustainable Development as well as Inter-generational Equity Principles* ***is unsustainable in law*** *and instead of conservation of ground water which is necessary for providing access to drinking water in OCS areas, as well also other needs of environment, including sustenance of rivers and other water bodies, it will result in fast depletion of ground water and damage to water bodies and will be destructive of the fundamental right to life under Article 21 of the Constitution of India."*

(Emphasis added)

262. Consequently, Tribunal directed not to implement said Notification. Its direction in para 28, reads as under:

"28. Accordingly, the impugned ***Notification may not be given effect to in view of serious shortcomings as pointed above so*** *that an appropriate mechanism can be introduced consistent with the needs of environment."*

(Emphasis added)

263. Tribunal directed MoEF&CC to constitute an Expert Committee by including representatives from IIT Delhi, IIT Roorkee, IIM Ahmedabad, CPCB, NITI Ayog and any other concerned agency or department to examine the issue of appropriate **policy for conservation** of ground water with a robust institutional mechanism for **surveillance and monitoring**, with a view to enhance access to ground water for drinking purposes in

OCS (over exploited, critical and semi-critical) areas by way of **appropriate replenishment practices which can be properly accounted and measured for, as well as to sustain floodplains of rivers in terms of e-flow and other water bodies**. Giving this direction in para 29 of the judgment, Tribunal directed MoEF&CC and also Ministry of Water Resources to finalize the issue of subject, inter-se, with regard to ground water reserve and its quality. Committee was to be constituted in two weeks and report was directed to given by Committee in two months. **Committee was also required to indicate projection of its impact study in the light of projected data for next 50 years (in phased manner with action plan for each decade).** Thereafter, the concerned Ministry was to issue fresh guidelines and submit report to Tribunal on or before 30.04.2019. In para 32, Tribunal directed CPCB to constitute a mechanism to deal with individual cases of violations of norms, as existed prior to Notification of 12.12.2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law. Tribunal further said that all the matters related to illegal extraction of ground water by individuals are disposed of with these directions.

264. Thus, vide order dated 03.01.2019, all individual matters relating to extraction of ground water illegally, stood disposed of. However, when the matters were next listed on 07.05.2019, Tribunal found that MoEF&CC has failed to perform its duty, and directions, issued by Tribunal vide order dated 03.01.2019, were not complied. In fact, Committee required to be constituted within two weeks, was actually constituted only on 29.03.2019. Tribunal deprecated it and said:

> "***We do not appreciate such attitude of Government departments*** *when under a statutory enactment, violation of orders of this Tribunal is a criminal offence. The Committee has not acted promptly and no significant progress has been brought to our notice.*

Lack of sensitivity of serious issues of environment such as fast depleting ground water is a matter of concern."

265. Having said so, Tribunal directed Committee to submit report positively by 30.06.2019, failing which Joint Secretary concerned of MoEF&CC was directed to remain present to explain as to why action be not taken for violation of Tribunal's orders. Further, report dated 30.04.2019 submitted by CPCB vide e-mail, was also considered wherein it had taken the stand that assessment of environmental compensation for illegal extraction of ground water has been done. This report was not accepted by Tribunal, giving following reasons:

> *"i.* ***The OCS areas which need regulation for conservation of ground water cannot be further treated separately as notified or non-notified.*** *Conservation of ground water in the said areas is of equal necessity. Depletion of ground water in the said areas affects the sub-terranean flow and results in contamination of ground water and also poses a potential danger for drying up of important natural resource in violation of established principle of 'Intergenerational Equity'.*
> *ii. The* ***compensation to be recovered for illegal extraction has to be deterrent*** *specially when it is for commercial or industrial purpose and* ***linked to the quantum of ground water extracted and the period for which such extraction takes place.***
> *iii.* ***Scenario analysis with robust scientific logic is required for all the classes considered in comparable terms*** *which has not been done in the present report."*

266. CPCB was directed to submit fresh report on or before 30.06.2019.

267. Referring to ground water development on the basis of Guidelines 2015 for existing industries, infrastructure in the said mining projects, Tribunal said that it did not find any safeguards suggested to address the concern, earlier expressed against depleting ground water. It further held:

> *"**The mandate of CGWA is not exploitation of ground water in depleted areas but to conserve it.** Any policy which results in **further depletion obviously cannot be permitted in OCS areas. CGWA is free to lay down and follow stringent norms to ensure that there is no depletion of ground water in OCS areas and depleted water level is improved and replenished.** Any policy*

has to be in that direction and not in reverse direction as is unfortunately being attempted by CGWA, as noticed in earlier orders."

268. Tribunal also observed that MoEF&CC must come up with an appropriate policy. Strangely, MoEF&CC took the plea that CGWA has not cooperated, which has caused delay. This stand was denied by CGWA. In this situation, Tribunal observed that the fact remains that failure is on the part of both. Entrusted with the responsibility of protecting ground water, CGWA and all other Authorities must cooperate and collaborate in the exercise to come out with a policy which must result in checking further depletion of ground water and enhance replenishment. Tribunal directed concerned Secretaries to monitor compliance of directions, having regard to the importance of the issue.

269. Mistakenly, Registry failed to notice that individual matters were already disposed of vide order dated 03.01.2019, and thus, should not have listed on 07.05.2019, except the matter relating to status of compliance of directions of Supreme Court in NGT, to check depletion of ground water level in the country. This mistake occurred on 23.08.2019 also.

270. In the meantime, pursuant to order dated 03.01.2019 and 07.05.2019, MoEF&CC filed affidavit on 18.07.2019. Report of CPCB dated 26.06.2019 was also filed. Both these were taken into consideration on 23.08.2019 and order of Tribunal was uploaded on 11.09.2019.

271. The listing of disposed matter was noticed by Tribunal in the order dated 11.09.2019, hence, it was clarified that all the above matters be treated to be disposed of and shall be dealt with by concerned Regulatory Authority in accordance with law. The relevant extract of order dated 11.09.2019 passed in **OA 59/2012 (MA 34/2016 & MA 190/2016)**

(supra), **OA 108/2013 (supra)**, **OA 179/2013 (supra)**, **Appeal No. 67/2015 with MA 107/2019 (supra)**, **OA 176/2015 (supra)**, **OA No. 484/2015 (supra)**, **OA 327/2018 (supra)**, **OA 115/2017 (supra)**, **OA 411/2018 (supra)**, **OA 613/2017 (supra)** and **OA 614/2017 (supra)**, reads as under:

> *"These matters involve the issue of conservation of ground water.*
>
> *Vide order dated 03.01.2019 in O.A. No. 176/2015, this Tribunal directed as follows:*
>
> > *"32. The CPCB may constitute a mechanism to deal with individual cases of violations of norms, as existed prior to Notification of 12.12.2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law.* ***All the matters relating to illegal extraction of ground water by individuals are disposed of with these directions****."*
>
> ***In view of above, the above matters having been disposed of were wrongly listed on 07.05.2019 and on 23.08.2019. The same be treated and disposed of and may be dealt with by the concerned regulatory authorities in accordance with law.*** *The report of CPCB dated 26.06.2019 may be following on the subject of assessment of recovery of compensation for illegal drawl of ground water apart from prosecution and stoppage of illegal drawl of ground water in accordance with law."*

272. A separate order in ***OA 176/2015 (supra) (MA 133/2015)*** was uploaded on the issue of conservation of ground water. Considering the said issue, Tribunal found that the report was deficient on the issue of prevention or depletion of ground water and the same was not addressed at all. No effective enforcement mechanism of conditions, subject to which ground water extraction may be allowed in OCS areas, was provided. Mere condition of recharge without clear strategy of enforcement was not found appropriate and adequate safeguard, for permitting extraction of ground water. The report left many issues for being considered. Some aspects of the report were considered in paras 20 and 21 of the order dated 11.09.2019 passed in ***OA 176/2015 (supra)***, which read as under:

*"20. The **report of CPCB dated 26.06.2019 deals with methodology for assessing environmental compensation (EC**), Formula for Environmental Compensation for illegal extraction of ground water, Environmental Compensation Rate (ECRGw) which has been further dealt with in different categories, i.e. ECRGw for Drinking & Domestic use for household purposes and those for institutional activity, commercial complexes, townships etc., ECRGw for Packaged Drinking Water Units, ECRGw for Mining, Infrastructure and Dewatering Projects, ECRGw for Industrial Units, Deterrent factors to compensate losses and environmental damage (for packaging drinking water units, mining, industrial and commercial purposes) and Deterrent Factor . Formula for Environmental Compensation for illegal extraction of ground water is as follows:*

> ***"5. Formula for Environmental Compensation for illegal extraction of ground water***
>
> *The committee recommended that the formula considering water consumption, no. of days, rates for imposing Environmental Compensation based on the purpose for illegal abstraction of ground water as well as the deterrent factor detailed below:*
>
> ***ECGw= Water consumption per day x Environmental Compensation rate for illegal extraction of ground water (ECR_Gw) x No. of Days x Deterrent Factor***
>
> *Where, water consumption is in m^3/day and ECRGw in Rs/m^3"*

All other details can be seen from the report which is available on the website of CPCB. The report also gives recommendations as follows:

21. The committee has given following recommendations:

1. *In case of **fixation of liability**, **it always lies with current owner of the premises** where illegal extraction of groundwater is taking place.*

2. ***Violation duration** may be assumed as **at least one year** in case where no evidence for period of installation of **borewell could be established.***

3. *For illegal industrial ground water abstraction, where metering system is not available, water consumption may be estimated as per consent conditions imposed by SPCB/PCC.*

4. ***Water intensive industries should only be permitted in safe, semi-critical and critical area, and should not be allowed to establish new industries in overexploited area**.*

5. ***Water in over-exploited area should be permitted only for drinking purposes** and industries established in this area without prior consent or NOC from CGWA or another concerned*

department must be closed down with immediate effect. No expansion in existing industrial activity should be permitted, irrespective of additional water demand arises or not.

6. ***Present categorization of area (Over-exploited, Critical and Semi-Critical), as per CGWA shall be considered for calculation of EC, regardless of the area category when the period of violation started.***

7. *In case of* ***all existing cases having more than 5000 KLD ground water demand, permission may be given only after examining scientific assessment of water availability and assessing intergenerational equity by CGWA.***

8. *The industrial units should be directed to adopt State of the Art technologies, use of surface water, treated waste water and reduce specific water consumption, thereby ground water demand is reduced by 10% over three years' period.* ***The industries also be encouraged to create facilities for storage of excess storm water and adequate measures such as groundwater recharge as well as restoration of lakes /ponds in the vicinity of the industry.***

9. *In addition,* ***all repeated violations will attract EC at 1.25 times the previous EC.***

10. *Authorities assigned for levy EC and taking penal action are listed below:*

S. No.	*Actions*	*Authority*
1.	*To seal illegal borewell/tube-well to stop extraction of water and further closure of project*	*District Magistrate*
2.	*To levy ECGw as per prescribed method*	*District Magistrate/ CGWA*
3.	*To levy EC on industries involved in illegal abstraction of Groundwater ,* *as per the method prescribed in report of CPCB- "EC for industrial units"*	*CPCB/SPCB/PCC*
4.	*Prosecution of Violator*	*CGWA under Environment (Protection) Act,1986 (or)*
		SPCB/PCC under Water (Prevention

		and Control of Pollution), Act, 1974

273. Tribunal then constituted another Committee comprising of Joint Secretary, MoEF&CC, concerned Joint Secretary, MoWR, CGWB, National Institute of Hydrology, Roorkee, National Remote Sensing Center, Hyderabad and CPCB to go into the following questions:

> *"(a) Steps required to be taken for preventing depletion of ground water.*
> *(b) Robust monitoring mechanism to ensure that no ground water is unauthorizedly extracted, including review of manning and functioning of CGWA.*
> *(c) Robust mechanism to monitor conditions laid down for grant of permission for extraction of ground water.*
> *(d) Recommendations in the report of the CPCB dated 26.06.2019 referred to above."*

274. Tribunal, however, accepted report of CPCB with regard to compensation as an interim arrangement and directed that the same may be acted upon by Regulatory Authorities and compensation be recovered from violators, for the period of violation, which may be assessed on case to case basis. Further, **Tribunal said that report of CPCB that water intensive industries can be allowed even in semi-critical and critical area without any further safeguards, may not be acted upon, till further orders**.

275. The association of Industrial Manufactures, Ghaziabad filed ***I.A. No. 640/2019*** in ***OA No. 176/2015 (supra)***, seeking review of order dated 11.09.2019 on the ground that order has caused prejudice to them, hence needs reconsideration. This I.A. was considered on 10.10.2019 and rejecting the same, in para 6, Tribunal said:

> *"6.* ***Since the OCS areas have been found to be seriously affected by over-drawl of ground water, regulation of such drawl for commercial purposes cannot be dispensed with for any industry even in industrial area****. Availability of water for drinking is a first priority. The 'Precautionary' principle, 'Sustainable*

Development' principle and the Inter-generational equity are part of life and ***in absence of replenishment of ground water, unregulated drawl thereof cannot be held to be right of any commercial entity****. Shortage of availability of water for commercial purposes cannot be remedied by drawl of groundwater in over exploited, critically exploited and semi-critical exploited (OCS) areas. Water is certainly a scarce resource and the industry has to put up with such scarcity.* ***It is for the industry and the concerned authorities to find out alternative ways and means for sustenance of the industries instead of permitting indiscriminate drawl of groundwater in such areas till situation improves****.* ***Alternative means may be shifting to areas where water is not scarce or to processes where water is not required****. As already noted, groundwater is depleting in such areas and measures are required to check such depletion. If industries continue to draw ground water without NOC from CGWA as per current guidelines and orders of this Tribunal in OCS areas, the industries will have to face legal consequence of such illegal action."*

276. As per directions contained in order dated 11.09.2019, report submitted on 16.03.2020 was placed before Tribunal along with ***OA No. 176/2015 (supra)*** on 13.07.2020. It was brought to the notice of Tribunal that illegal extraction of ground water is neither being effectively checked nor there is any recovery of compensation from defaulters. In an article, published in "**Times of India**", dated 06.06.2017, it was stated that four crore litres of water was being illegally extracted in Gurgaon daily. Similar complaints of huge quantity of ground water extraction by tanker mafias were reported in NCT of Delhi which require constant action by Regulatory Authorities and robust mechanism for effective review. A news item was published in daily newspaper "**Tribune**", on 15.07.2020, under the title "Decline in water table caused crack in Mahendragarh Field: Experts". Drying of main rivers including Ganga due to depletion of ground water, water bodies running dry at alarming rate and extraction of ground water resulting in fall of water table beyond the level of replenishment, various studies and articles published in different magazines of repute etc. were considered by Tribunal in its order uploaded on 20.07.2020. In respect of State of Uttar Pradesh, in particular, district Gautam Buddha Nagar, Tribunal considered complaint of fast depletion of ground water due to

large scale extraction by various commercial entities, including hotels in Ghaziabad, Moradabad and Agra etc. Giving reference of earlier orders passed from time to time, including order dated 03.01.2019, Tribunal observed that preparation of Guidelines, without studying "Impact Assessment" would be against the principle of "sustainable development". The principal vulnerable features, on account whereof Guidelines 2018 were criticized and Regulatory Authorities were directed not to give effect to it, were noted in para 15 of judgment dated 20.07.2020, as under:

> *"15.* ***In its order of 03.01.2019, the Tribunal disapproved the notification, holding that ultimately, it is the result of all the measures, shown by the data on the ground, which has to be the basis of any policy and not just laying down of measures.*** *It was observed that the notification granted exemptions in OCS areas* ***without having regard to the impact on groundwater, or a roadmap for controlling the falling ground level.*** *Doing so without impact assessment was against sustainable development.*
>
> *Some further vulnerable features of the notification were noted as follows:*
>
> *i. Exemption of individual households to draw ground water from single dug well/ bore well/ tube well through delivery pipe of upto 1" diameter and certain other categories, even if there is an existing supply of drinking water.*
> *Beyond the said exemption, ground water withdrawal can be permitted on the basis of NOC where water supply is not adequate subject to certain conditions.*
>
> *ii. Infrastructural projects including water supply agencies could be allowed to get NOC and the said industries are in Annexure-VI."*

277. Tribunal said that Guidelines had to show an application of mind as to how the Policy adopted by Regulatory Authorities would prevent extraction of water beyond desired level in OCS areas. Tribunal also noted its order dated 07.05.2019, considering CPCB report dated 30.04.2019, with regard to compensation regime, which was found unsatisfactory and CPCB was directed to give a fresh report observing that compensation to be recovered for illegal extraction has to be deterrent, especially when it is for commercial or industrial purpose, and should be linked to the quantum of ground water extraction and period for which such extraction takes

place. It was also observed that scenario analysis with robust scientific logic is required for all the classes considered in comparable terms. Tribunal considered affidavit dated 16.03.2020, filed by CGWA for Ministry of Jal Shakti, and pointed out that **Committee report annexed to the affidavit continues to be entirely unsatisfactory**. The observations made in para 24 of the judgment dated 20.07.2020, are:

> *"24. The matter is being taken up in continuation of order dated 11.09.2019. We have heard Shri Vikramjit Banerjee, learned ASG appearing for MoJS and CGWA, We have considered the CGWA affidavit dated 16.3.2020 filed for MoJS which annexes the report of the Committee purporting to be in compliance of Tribunal order dated 11.9.2019.* ***The situation continues to be entirely unsatisfactory. Several issues in the report are same which were rejected in the order dated 3.1.2019****. The MoJS appears to be avoiding its Constitutional obligation of complying with the judgement of the Hon'ble Supreme Court and repeated directions of this Tribunal. Surprisingly and regretfully, a wholly untenable prayer is made that the Tribunal should review its earlier orders, which have attained finality, never having been challenged. It is thus clear that there is no intent or effort to comply with the said orders.* ***The report is not in compliance of this Tribunal's orders but rather, largely violates the spirit of the said mandate.*** *We proceed to record the reasons."*

278. Several issues in the report were same as already rejected by Tribunal vide order dated 03.01.2019. Ministry of Jal Shakti was found avoiding its Constitutional obligation of complying with the judgment of Supreme Court and repeated directions of Tribunal. Observing that report was not in compliance of Tribunal's earlier orders, rather violates their spirit, Tribunal gave its reasons, in para 25 to 30, as under:

> *"25. The CGWA affidavit states that* ***the restriction on extraction of groundwater in OCS areas is likely to have adverse impact on industrial production, employment opportunities and GDP of some States****. It seeks vacation of the Tribunal order dated 03.01.2019, so as to issue NOCs for groundwater extraction as per proposed guidelines or as per 2015 guidelines.*
>
> *26.* ***As mentioned earlier, the report practically reiterates the regime earlier brought out on 12.12.2018, which was rejected by the Tribunal on 3.1.2019*** *being against sustainable development and mandate of law laid down by the Hon'ble Supreme Court. We do not find it necessary to reproduce the report in extenso but refer to and comment upon the main aspects thereof.*

a. *The report states at the outset, contrary to the Hon'ble Supreme Court judgment:*

> *"Water being a State subject,* ***initiatives on water management including conservation and water harvesting in the Country is primarily States' responsibility****. Further, to supplement the efforts of the State Governments, Government of India provides technical and financial assistance to encourage sustainable development and efficient management of water resources through various schemes and programmes."*
>
> *However, as against the above stand, the report also mentions that the CGWA is vested with the regulation, control, management and development of groundwater in the country. It has issued guidelines (including the 2015 and the 2018 guidelines), and enumerated its various initiatives and policy decisions.*

b. *For the same reasons for which notification dated12.12.2018 was found unacceptable, the proposed recommendations,* ***liberalizing groundwater extraction across the board to certain categories without any impact assessment and effective checks, are against law****.*

c. *Exemptions for infrastructure projects, MSMEs or other industries or commercial purposes except drinking water, where supply is not otherwise available in water stressed areas, will be against* ***sustainable development and public trust doctrine unless individual impact assessment is conducted and permitting such extraction found viable.***

d. *There has to be listing of priorities within available limited resources and unlimited demands and impact assessment of such activity and policy of permitting extraction has to be based on* ***carrying capacity in the form of the water levels****.*

e. *No* ***road map has been provided how the new regime will check and neutralize falling ground water levels. There is neither a claim that in the last 24 years of regulation by the CGWA, ground water levels have improved, nor any projection for future improved.*** *Data compiled by Niti Ayog in its report published in 2018 'composite water index' is clear evidence of over exploitation at several locations. Moreover, CGWA itself has conducted survey and identified 1868 out of 6585 assessment units as OCS areas. Its failure is in not having effective regulatory regime. There is no adequate implementation of conditions for drawal of ground water for commercial purposes. Such failure is shown by falling levels and news of* ***mafias engaged in illegal drawal of ground water in OCS areas without effective check****. Further liberalization will defeat the purpose of having CGWA and be contrary to the mandate of public trust doctrine. Effective steps for protecting ground water in OCS areas against* ***singularly commercial considerations*** *are critical.*

f. *The report observes:*

> *"During the discussions, it was observed that ground water is a replenishable resource and the aquifer zones from which ground*

water is extracted gets replenished every year from rainfall and other sources. ***Therefore, there is a need to extract groundwater by various users including industries/agriculture needs in safe, semi-critical and critical areas as space is to be created in the aquifers for replenishment of water through rainfall/other sources.*** *It is pertinent to mention here that in case we do not allow extraction of ground-water in these areas the precious rainfall may be lost through runoff as the void in aquifers may not be available for recharge purposes through rainfall****.***

In safe, semi-critical and critical areas, annual ground water withdrawal is less than the annual ground water recharge and in over-exploited areas, it exceeds annual recharge. In view of this„ the Committee was of the view that it may not be appropriate to club semi-critical and critical with over-exploited assessment units, provided necessary measures to compensate the ground water withdrawal are ensured and at no point groundwater extraction exceeds 100% of recharge. ***Hence, the committee was of the opinion that two broad categories of assessment units namely i) over-exploited and ii) critical, semi-critical & safe be considered for framing the guidelines. Stricter regulatory regime was suggested for over-exploited assessment units to avoid further deterioration.****"*

We find the statement that withdrawal to the extent of replenishment ***must be done*** *to avoid wastage of rain water is contradicted by* ***continually falling levels of ground water in OCS areas****. There is no question of wastage of rain water where water level is falling. In such areas, the withdrawal has to be reduced not only to the extent of replenishment but to enhance the ground water to safe and sustainable levels. Replenishment and raising of water level are both important in OCS areas. Falling groundwater levels dry up water bodies and reduce the flow of the rivers. CPCB website acknowledges* ***351 river stretches as polluted for reasons including non-availability of flow which prevents adequate dilution capacity. This affects the aquatic life, wildlife and food-chain and the entire eco-system****.*

g. *The report states, under the heading '****action being taken for preventing depletion of groundwater and recharge':***

"The focus of this report is therefore to create a balanced approach, ***with emphasis on demand side management and practical regulation that does not impede development****. Committee was also apprised about the fact that Water being a State subject, initiatives on* ***water management including conservation of ground water is primarily States' responsibility****. However, Central government supplements the efforts of states Government through technical and financial assistance."*

There is clear contradiction in mentioning need for balanced approach on the one hand and ***emphasis on the demand side.*** *Such approach is against the mandate of 'Sustainable Development', including Precautionary principle, intra and inter-generational equity and 'public trust' doctrine****.***

h. *The report's recommendation under the heading* ***'Industry, Infrastructure and Mining projects'*** *that extraction of groundwater by existing industries need not be checked as it may obstruct growth, is an argument against the principle of 'Sustainable Development'.* ***There is no absolute right even of existing industries to continue to draw ground water without regard to depleting groundwater levels as held even in 2015****. Such extraction cannot be at the cost of environment and ignoring intra and intergenerational, precautionary and sustainable development principles.* ***Development and growth must be undertaken but not without ignoring the sustainable groundwater level.***

i. *Recommendation for robust monitoring mechanism by restructuring CGWA, strengthening manpower having network upto District Level etc. may be looked into by the concerned authorities and action taken for implementation so as to ensure that there is effective regulatory mechanism as per the mandate of law. Our observations are same with regard to robust mechanism to monitor conditions laid down for grant of permission for extraction of groundwater.*

j. *Recommendation in para 13.0, on quantum of compensation and action required against violators, are contrary to CPCB recommendations for closing down industries in over exploited areas for extracting groundwater illegally, and cannot be accepted. The present proposal is against stringent action against violators committing criminal offence which cannot be appreciated. To regulate and control groundwater extraction in India, the overriding principle of carrying capacity has to apply to every category of commercial use of groundwater, including industrial use, mining projects, infrastructure projects. Compensation for unlawful groundwater extraction must be on the bases of* ***restitution and deterrence.***

k. *The water rates in para 6.0 of the report with regard to various categories including packaged water and beverages and mining infrastructure projects* ***in OCS have to be in the nature of deterrent because groundwater extraction for such purposes is not permissible beyond carrying capacity. The proposed rates do not meet such test.*** *Thus, unregulated drawal of water being a criminal offence under the law,* ***compensation may be recovered as per CPCB report dated 26.06.2019 until any further appropriate mechanism is prepared****. The 2015 CGWA guidelines and the MoEF report itself provides that groundwater extraction for commercial purposes was impermissible in OCS areas. Instead of moving in that direction, present proposal is in reverse direction which is not permissible.*

27. *In terms of the Tribunal's previous orders (dated 03.01.2019, Paras 29 and 31, and dated 11.09.2019, Para 24),* ***the core issues that are required to be considered are:***
    a. ***Has a robust institutional monitoring mechanism been evolved***
        i. ***To define 'assessment unit' - wise carrying capacity and accordingly set (a) target replenishment levels and (b) plan for permissible levels of extraction, of ground water levels in OCS areas;***

ii. ***to assign individual target replenishment levels as a condition for granting extraction permits, and to audit such replenishment by those who are extracting groundwater; as well as to audit and measure actual carrying capacity periodically;***

iii. ***to monitor real-time implementation of conditions for permitting extraction of ground water;***

iv. ***to withdraw permits for extraction of ground water failing target replenishment levels; as well as***

v. ***to sustain the flow of rivers in terms of e-flows and sustain other water bodies?***

b. ***Is there a provision for an impact study in light of projected data for the next 50 years (in phased manner with action plan decade-wise)?***

c. ***Has an effective and measurable plan been prepared for preventing depletion and unauthorized extraction of ground water backed by requisite mechanism in the form of manning and effective functioning of CGWA so as to ensure sustainable ground water management in terms of the Hon'ble Supreme Court mandate by which CGWA was created?***

d. ***Is the compensation regime against violators adequately deterrent?***

28. *The answer is 'no'. If implemented, t****he current report would nullify the mandate of the Hon'ble Supreme Court by seeking to deregulate ground water extraction, ignoring its impact on the e-flow of rivers, water bodies and overall sustainable management of scarce natural resources with emphasis on industrial development, without balancing development and environment. Irreversible damage cannot be allowed by extracting water beyond safe levels, without impact assessment.***

29. *We, thus, hold that as per mandate of sustainable development under Section 20 of NGT Act, 2010, which has been held to be part of right to life under Article 21 of the Constitution, the* ***regulatory authority must direct its policy towards preventing further depletion of and upgrading the groundwater levels based on impact assessment****. Extraction can neither be unregulated or allowed across the board without individual consideration. For this purpose, there is need to compile data by* ***mapping all the assessment units individually in terms of current and estimated water level, drawal and replenishment and preparing a management plan for all such units****. The* ***CGWA being a statutory regulator for the country has to exercise overriding power in the form of statutory regulatory orders****. It may have its own network and, to the extent found viable, utilize the network of existing Authorities like District Magistrates, Environment Departments, Departments of Irrigation and Public Health etc.* ***The ground water assessment has to be done annually and placed on the respective websites of the Districts or States****. Any extraction of groundwater has to be permitted keeping in mind*

availability of groundwater ensuring that there is no further depletion and ground water level remains at safe level.

30. *At this stage, **we may notice that the regulatory mechanism of the CGWA has not been adequate, as the report also notes**. CGWA does not appear to have requisite strength nor enforcement mechanism nor strategies. This may be one of the reasons for failure in effective monitoring, defeating the object of law. This has led to large number of petitions before this Tribunal pointing out that illegal groundwater extraction was rampant. The plans for **rain water harvesting and many other steps to a great extent remain largely only on paper**. Remedial measures need to be taken in view serious challenges in protection of groundwater level, to save rivers and water bodies and the entire chain of environment."*

279. Thereafter, following directions were issued in para 39:

"***Directions***

39. In the light of the above discussion, we direct as follows:

*b. MoJS may ensure requisite manning and effective functioning of CGWA so as to ensure **sustainable ground water management** in terms of the Hon'ble Supreme Court mandate by which CGWA was created.*

*c. **Let CGWA and MoJS comply with the directions of this Tribunal in orders dated 3.1.2019, 7.5.2019 and 11.9.2019, to have a meaningful regulatory regime and institutional mechanisms for ensuring prevention of depletion and unauthorized extraction of ground water and sustainable management of groundwater in OCS areas. Regard must be had to water availability and safe levels to which its drawal can be allowed, especially for commercial purposes, based on available and assessed data in each "Assessment unit"**. Procedures for assessment of individual applications and institutional mechanism may be clearly laid down.*

d. As per orders dated 3.1.2019, undertaking an impact study in light of projected data for the next 50 years (in phased manner with action plan decade-wise).

*e. There must be **no general permission for withdrawal of ground water, particularly to any commercial entity, without environment impact assessment of such activity on individual Assessment units in cumulative terms covering carrying capacity aspects by an expert committee.** Such permission should as per Water Management Plans to be prepared in terms of this order based on mapping of individual assessment units. Any permission should be for specified times and for specified quantity of water and not in perpetuity, and be necessarily subject to digital flow meters which cannot be accessed by proponents, with mandatory annual calibration by authorized agency at proponents' cost. **An annual review by independent and expert evaluation must audit and record ground water levels as well as compliance with the conditions of the permission.** Such audits must be published online for transparency and to track compliance and year-on-year change in ground water levels, and swift action*

taken against those who fail audit, including withdrawal of permission, blacklisting, initiation of prosecution and recovery of deterrent compensation as per CPCB regime. Records must be maintained online and for a sufficient and reasonable time.

f. As observed in para ***Error! Reference source not found.****(a) and* ***Error! Reference source not found.****(a) above,* ***all OCS assessment units must undergo water mapping. Water Management Plans need to be prepared for all OCS assessment units in the country based on the mapping data, starting with Over-exploited blocks. The Water Management Plans, data on water availability or scarcity and policy of CGWA must be uploaded on its website for transparency and public involvement. Such exercise may be done expeditiously, preferably within next three months.****"*

280. Interestingly, Ministry of Jal Shakti, after referring to earlier orders and order dated 20.07.2020, passed by Tribunal, issued a fresh notification dated **24.09.2020**, published in Gazette of India (Extraordinary) dated 24.09.2020, laying down Guidelines to regulate and control ground water extraction in India, in supersession of all earlier Guidelines issued by CGWA (hereinafter referred to as '**Guidelines 2020**'). These Guidelines have come into force from the date of publication in the Gazette i.e., 24.09.2020. It further says that Guidelines shall have PAN-India applicability.

281. Guidelines 2020 says that Ground water abstraction in States/ UTs (which are not regulating ground water abstraction) shall continue to be regulated by CGWA. Further, wherever States/UTs have come out with their own ground water abstraction Guidelines, which are inconsistent with the CGWA Guidelines, the provisions of CGWA Guidelines will prevail. However, in case, Guidelines followed by such States/UTs contain some more stringent provisions than CGWA Guidelines, such provisions may also be given effect to, by the States/UTs Authorities, in addition to those contained in the CGWA Guidelines. States may be at liberty to suggest additional conditions/criteria based on the local hydro-geological situations which shall be reviewed by CGWA/Ministry of Jal Shakti,

Government of India before acceptance. All new/existing industries, industries seeking expansion, infrastructure projects and mining projects abstracting ground water, unless specifically exempted under para 1.0 below, will be required to seek NOC from CGWA, or, the concerned State/UT Ground Water Authority, as the case may be. Guidelines 2020 said that water management plans shall be prepared by all State Ground Water Authorities/Organizations for all over-exploited, critical and semi-critical assessment units, starting with over-exploited units.

282. Para 1.0 of **Guidelines 2020** deals with exemptions from seeking NOC. It is more or less similar to the earlier exemption clause contained in the preceding Guidelines, with a solitary difference that this time industrial units in the category of Micro and Small Enterprises drawing less than 10 cum/day, are added in the category of exempted categories. It says:

> "***1.0 Exemptions from seeking No Objection Certificate:***
>
> *Following categories of consumers shall be exempted from seeking No Objection Certificate for ground water extraction:*
>
> *(i) Individual domestic consumers in both rural and urban areas for drinking water and domestic uses.*
> *(ii) Rural drinking water supply schemes.*
> *(iii) Armed Forces Establishments and Central Armed Police Forces establishments in both rural and urban areas.*
> *(iv) Agricultural activities.*
> *(v)* ***Micro and small Enterprises drawing ground water less than 10 cum/day***."

283. For Drinking & domestic use for Residential apartments/Group housing societies/Government water supply agencies in urban areas, procedure for NOC is provided in para 2.0. It says that for new and existing wells, where Government water supply agency is unable to supply requisite amount of water in the area, NOC shall be granted, subject to following specific conditions:

*"i) Installation of **Sewage Treatment Plants** shall be mandatory for all residential apartments/ Group Housing Societies where ground water requirement is more than 20 m^3/day. **The water from Sewage Treatment Plants shall be utilized for toilet flushing, car washing, gardening etc.***

ii) The No Objection Certificate shall be valid for a period of five years from the date of issue or till such time local Government water supply is provided to the project area, whichever is earlier. In case the project proponent receives water supply from the concerned local Government Water Supply Agency during the validity of the No Objection Certificate, intimation regarding availability of public water supply shall be sent by the project proponent to CGWA and No Objection Certificate will be cancelled by the Authority. In other cases, the project proponent will apply for renewal of No Objection Certificate, ninety days before the expiry of No Objection Certificate.

iii) Proponents shall be liable to pay ground water abstraction charges for the quantum of ground water proposed to be extracted, as per rates mentioned in Table 5.1."

284. Vide para 3.0, Agriculture sector was exempted from obtaining NOC for ground water extraction. For commercial use, para 4.0 of Guidelines, 2020, says that no new major industry shall be granted NOC in over-exploited assessment areas except as per the policy Guidelines.

285. Para 4.1 deals with the case of industrial use and says that in over-exploited assessment units, NOC shall not be granted for ground water abstraction to any new industry except those falling in the category of Micro, Small and Medium Enterprises (hereinafter referred to as '**MSME**'). However, an exception has been provided for grant of NOC for drinking/domestic use for work force, green belt use by these new industries. Expansion of existing industries involving increase in quantum of ground water abstraction in over-exploited assessment units shall not be permitted. NOC shall not be granted to new packaged water industries in over-exploited areas, even if they belong to MSME category. Thereafter, certain specific conditions have been mentioned for grant of NOC to industries, and the same are as under-

"i) No Objection Certificate shall be granted only in such cases where local government water supply agencies ***are not able to supply the desired quantity of water.***

ii) All industries shall be required to adopt latest water efficient technologies so as to reduce dependence on ground water resources.

iii) All ***industries abstracting ground water in excess of 100 m³/d*** *shall be required to* ***undertake annual water audit*** *through Confederation of Indian Industries (CII)/ Federation Indian Chamber of Commerce and Industry (FICCI)/ National Productivity Council (NPC) certified auditors and submit audit reports within three months of completion of the same to CGWA. All such industries shall be required to reduce their ground water use by at least 20% over the next three years through appropriate means.*

iv) Construction of observation well(s) (piezometer)(s) within the premises and installation of appropriate water level monitoring mechanism as mentioned in Section 15 shall be mandatory for industries drawing/ proposing to draw more than 10 m³/day of ground water and. ***Monitoring of water level shall be done by the project proponent. The piezometer (observation well) shall be constructed at a minimum distance of 15 m from the bore well/production well.*** *Depth and aquifer zone tapped in the piezometer shall be the same as that of the pumping well/wells. Detailed guidelines for design and construction of piezometers are given in Annexure II. Monthly water level data shall be submitted to the CGWA through the web portal.*

v) The proponent shall be required to adopt roof top rain water harvesting/recharge in the project premises. ***Industries which are likely to pollute ground water (chemical, pharmaceutical, dyes, pigments, paints, textiles, tannery, pesticides/insecticides, fertilizers, slaughter house, explosives etc.) shall store the harvested rain water in surface storage tanks for use in the industry.***

vi) Injection of treated/untreated waste water into aquifer system is strictly prohibited.

vii) Industries which are likely to cause ground water pollution e.g. Tanning, Slaughter Houses, Dye, Chemical/ Petrochemical, Coal washeries, other hazardous units etc. (as per CPCB list) need to undertake necessary well head protection measures to ensure prevention of ground water pollution (Annexure III).

viii) ***All industries drawing ground water in safe, semi-critical and critical assessment units shall be required to pay ground water abstraction charges*** *as applicable as per Tables 5.2 A and 5.3 A.*

ix) All ***existing industries drawing ground water in over-exploited assessment units shall be liable to pay ground water restoration charges*** *as applicable as per Tables 5.2 B and 5.3 B."*

286. The documents to be submitted along with application for grant of NOC, included an IAR, which was made mandatory, where abstraction of ground water proposed is in excess of 100 m^3/day in over-exploited, critical and semi-critical areas. The aforesaid report shall be on the ground water regime and also socio-economic impacts to be prepared by accredited consultants.

287. In respect of mining projects, Para 4.2 says that there is no restriction on grant of NOC even in over-exploited areas. It reads as under:

> *"All existing as well as new mining projects will be required to obtain No Objection Certificate for ground water abstraction**. Since mining projects are location specific, there will be no ban on grant of No Objection Certificate for abstraction of ground water for such projects in over-exploited assessment units."***

288. However, specific conditions attached for issue of NOC for mining projects are provided in para 4.2, as under:

> *"i) It shall be mandatory for all the mining industries to ensure that water available from de-watering operations is properly treated and should be gainfully utilized for supply for irrigation, dust suppression, mining process, recharge in downstream and for maintaining e-flows in the river system.*
> *ii) Construction of observation well(s) (piezometers) along the periphery in the premises, for monthly ground water level monitoring, shall be mandatory for mines drawing/ proposing to draw more than 10 m^3/day of ground water. Depth and aquifer zone tapped in the piezometer shall be commensurate with that of pumping well/ wells.*
> *iii) In addition, the proponent shall monitor ground water levels by establishing observation wells (piezometers) in the core and buffer zones as specified in the No Objection Certificate.*
> *iv) In case of coal and other base metal mining the project proponent shall use the advance dewatering technology (by construction of series of dewatering abstraction structures) to avoid contamination of surface water.*
>
> *v) In addition to this, all mining units shall also monitor the water quality of mine seepage and mine discharge through NABL accredited/ Govt. approved laboratories and the same shall be submitted at the time of self-compliance.*
> *vi) All mining projects drawing ground water in safe, semi-critical and critical assessment units shall be required to pay ground water abstraction charges as applicable as per Tables 5.4 A.*

vii) All mining projects drawing ground water in over-exploited assessment units shall be liable to pay ground water restoration charges as per Table 5.4 B."

289. The documents required to be submitted along with application for NOC in respect of a mining project, include, besides mining plan approved by the concerned Authorities and proposals for rain water harvesting/recharge within the premises, a comprehensive report, made mandatory vide clause(c), which reads as under:

"(c) Comprehensive report prepared by accredited consultant on ground water conditions in both core and buffer zones of the mine, depth wise and year wise mine seepage calculations, impact assessment of mining and dewatering on ground water regime and its socio-economic impact, details of recycling, reuse and recharge, reduction of pumping with use of technology for mining and water management to minimize and mitigate the adverse impact on ground water, based on local conditions. Format for report is given in Annexure V."

290. In Para 4.3 of **Guidelines 2020**, issue of NOC to infrastructure project has been dealt with. Here, it is said that since infrastructure projects are location specific, grant of NOC to such projects located in over-exploited assessment units shall not be banned. It reads as under:

*"**4.3 Infrastructure projects:***

***Since infrastructure projects are location specific, grant of No Objection Certificate to such projects located in over-exploited assessment units shall not be banned**. New infrastructure projects/residential buildings may require dewatering during construction activity and/or use ground water for construction. In both cases, applicants shall seek No Objection Certificate from CGWA before commencement of work. However, **in over-exploited assessment units, use of ground water for construction activity shall be permitted only if no treated sewage water is available within 10 km radius of the site**. New as well as existing Infrastructure projects shall also be required to seek No Objection Certificate for abstraction of ground water."*

291. However, it is also provided in para 4.3 that no NOC shall be granted for extraction of groundwater for water parks, theme parks and amusement parks in over-exploited assessment units. Thereafter, specific

conditions for grant of NOC for ground water abstraction in infrastructure projects are provided, in para 4.3 in clauses (i) to (v), as under:

> *"i) In case of infrastructure projects that require dewatering, proponent shall be required to carry out regular monitoring of dewatering discharge rate (using a digital water flow meter) and submit the data through the web portal to CGWA/SGWA as applicable. Monitoring records and results should be retained by the proponent for two years, for inspection or reporting as required by CGWA/SGWA.*
>
> *ii) Installation of Sewage Treatment Plants (STP) shall be mandatory for new projects, where ground water requirement is more than 20 m^3/day. The water from STP shall be utilized for toilet flushing, car washing, gardening etc.*
>
> *iii) For infrastructure dewatering/ construction activity, No Objection Certificate shall be valid for specific period as per the detailed proposal submitted by the project proponent.*
>
> *iv) All infrastructure projects drawing ground water in safe, semi-critical and critical assessment units shall be required to pay ground water abstraction charges as applicable as per Table 5.3 A.*
>
> *v) All infrastructure projects (new/existing) drawing ground water in over-exploited assessment units shall be liable to pay ground water restoration charges as per Table 5.3 B."*

292. For documents required to be submitted along with the application, clauses (a), (c) and (e) to (g) of Para 4.3, talk of the following documents:

> *"(a) In cases where dewatering is involved, submission of impact assessment report prepared by an accredited consultant on the ground water situation in the area giving detailed plan of pumping, proposed usage of pumped water and comprehensive impact assessment of the same on the ground water regime shall be mandatory. The report should highlight environmental risks and proposed management strategies to overcome any significant environmental issues such as ground water level decline, land subsidence etc.*
>
> *(c) Certificate from a government agency regarding non availability of treated sewage water for construction within 10 km radius of the site in critical and over-exploited areas.*
>
> *(e) Proposal for rain water harvesting/ recharge within the premises as per Model Building Bye Laws issued by Ministry of Housing & Urban Affairs.*
>
> *(f) Details of water requirement computed as per National Building Code, 2016 (Annexure I), taking into account recycling/ reuse of*

treated water for flushing etc. (in case of completed infrastructure projects for commercial use).

(g) Completion certificate from the concerned agency for infrastructure projects requiring water for commercial use."

293. More attention has been paid in **Guidelines 2020** on ground water abstraction charges. It is payable by all residential apartments/group housing societies/Government water supply agencies in urban areas and industries/mining/infrastructure projects. Ground water abstraction charges, based on quantum of ground water extraction and category of assessment units as per details given in Guidelines, are payable by all industries/mining/infrastructure projects drawing ground water in safe, semi-critical and critical assessment units. Ground water restoration charges, based on quantum of ground water abstraction, are payable by all existing mining/infrastructure projects and existing industries including MSME drawing ground water in over-exploited assessment units. Ground water restoration charges are also payable by new MSME, new infrastructure and new mining projects in over-exploited areas.

294. Para 6.0 deals with Bulk Water Supply and says that all private tankers, abstracting ground water, and use it for supply as bulk water suppliers, will now mandatorily seek NOC for ground water abstraction. Bulk water suppliers through tankers drawing ground water in safe, semi-critical and critical assessment units shall pay ground water abstraction charges as per Table-6.1A. Bulk water suppliers drawing ground water in over-exploited assessment units shall pay ground water restoration charges as per the Table-6.1B. All tankers will have to install GPS based system for their monitoring of movement/area of operation.

295. Para 7.0 deals with abstraction of saline ground water and here the provision is broadly similar as it was in earlier Guidelines.

296. A new provision with regard to protection of wetland areas is added vide para 8.0 and it reads as under:

> *"**8.0 Protection of Wetland Areas***
> *The wet land areas in the country are very crucial as they are direct reflection of the presence of ground water in such areas. The protection of the wetland areas is being separately handled by the Wetland Authorities.* ***Since ground water is very crucial for the survival of the wetland area, any excessive ground water development within the zone of wetland area would affect the volume of water in that wetland.***
>
> ***Projects falling within 500 m. from the periphery of demarcated wetland areas shall mandatorily submit a detailed proposal indicating that any ground water abstraction by the project proponent does not affect the protected wetland areas****. Furthermore, before seeking permission from CGWA, the projects shall take consent/approval from the appropriate Wetland Authorities to establish their projects in the area."*

297. Thereafter, in para 9.0 some general compliance conditions of NOC are mentioned which we are omitting at this stage.

298. In para 11.0, subject of renewal of NOC is dealt with. The term of renewal is specified in para 11.0 (v) as under:

> *"v.* ***No Objection Certificate will be renewed for the terms*** *specified for various uses as follows:*

Category	***Use***	***Term of renewal***
Critical, Semi-critical and safe	*Infrastructure projects for drinking & domestic use and urban Water Supply Agencies*	*5 years*
	Industries	***3 years***
	Mines	*2 years*
Over-exploited	*All users in 'Over-exploited areas'*	***2 years***

"

299. If there is delay in finalization of NOC, Para 11.0 (vi) contains provision for deemed grant of NOC and reads as under:

> *"vi. If the application for renewal is submitted in time and the CGWA/the respective State/UT Authority is unable to process the application in time,* ***No Objection Certificate shall be***

deemed to be extended till the date of renewal *of No Objection Certificate."*

300. However, if PP has delayed in applying for renewal, provision has been made that he will have to pay only environmental compensation for the period starting from the date of expiry of NOC till NOC is renewed by Competent Authority. However continued withdrawal/extraction of ground water by PP, despite expiry of NOC, will not be illegal. This is what is provided in para 11.0 (vii) which reads as under:

> *"vii.* ***If the proponent fails to apply for renewal within 3 months*** *from the date of expiry of No Objection Certificate, the proponent* ***shall be liable to pay Environmental Compensation*** *for the period starting from the date of expiry of No Objection Certificate till No Objection Certificate is renewed by the competent authority."*

301. **Guidelines 2020**, vide para 13.0 has appointed District Magistrate/District Collector/Sub Divisional Magistrates of each Revenue District/Sub division as Authorized Officers, delegating power to seal illegal wells, disconnect electricity supply to the energized well, launch prosecution against offenders etc., including grievance redressal related to ground water in their respective jurisdictions. It is also provided that to decentralize and strengthen monitoring and compliance mechanism as per the Guidelines, officials of concerned Departments of Revenue and industries of States/UTs shall be appointed as Authorized Officers in consultation with State/UT Governments. Copy of NOC issued by CGWA shall be forwarded to the respective District Magistrate/District Collector. It is provided in Para 13.0 that for any violation of directions of CGWA and non-fulfilment of the conditions laid down in NOC, Authorized Officers will file appropriate petition/original application etc. under Sections 15 to 21 of EP Act 1986, in appropriate Courts.

302. Para 14.0 direct all Project Proponents (drawing ground water more than $10m^3$/day) to have mandatorily constructed piezometers (observation wells) within their premises for monitoring of ground water levels.

303. Determination of environmental compensation and formula thereof is provided in para 15.0 of **Guidelines 2020**, and, it reads as under:

> *"**Extraction of ground water** for commercial use by industries, infrastructure units and mining projects **without a valid No Objection Certificate** from appropriate authority **shall be considered illegal** and such entities shall be **liable to pay Environmental Compensation** for the quantum of ground water so extracted. The norms prescribed by Central Pollution Control Board (CPCB) shall be utilized for calculating the Environmental compensation as mentioned below:*
> *ECGW = Ground water consumption per day x Environmental Compensation rate (ECRGW) x No. of days x Deterrence factor*
> *where ground water consumption is in m^3/day and ECRGW in Rs./Cum"*

304. Rates of environmental compensation are prescribed in para 15.1 which are different for different kinds of units in as much as table 15.1 provides rates of environmental compensation for packaged drinking water units; table 15.2 in respect of mining/infrastructure dewatering projects; and table 15.3 for industrial units. It is, however, provided in all the 3 tables mentioned above that minimum environmental compensation shall not be less than Rs. One lakh.

305. Para 15.2 lays down deterrent factors to compensate losses and environmental damage (packaged drinking water units and mining/infrastructure dewatering projects). Para 16.0, besides, and/or in addition of environmental compensation, provides penalty liable to be imposed on Proponents for non-compliance of NOC conditions issued by appropriate authority and rates of penalty are given in Table 16.1.

306. Para 17.0 provided other important conditions applicable to all and reads as under:

*"**17.0 Other important Conditions (Applicable to all):***

i. Sale of ground water by a person/agency not having valid no objection certificate from CGWA/State Ground Water Authority is not permitted.

ii. In infrastructure projects, paved/parking area must be covered with interlocking/perforated tiles or other suitable measures to ensure groundwater infiltration/harvesting.

iii. In case of Infrastructure projects, the firm/entity shall ensure implementation of dual water supply system in the projects. Compliance of the same shall be submitted through the web portal.

iv. Non-compliance of conditions mentioned in the No Objection Certificate may be taken as sufficient reason for cancellation of no objection certificate accorded/non-renewal of No Objection Certificate.

v. No application shall be entertained without supporting documents as specified in relevant sections.

vi. Abstraction structure(s) should be located inside the premises of project property.

vii. Self compliance of conditions laid down in the no objection certificate shall be reported by the users online in the web portal of Central Ground Water Authority/state Ground Water Authority.

viii. Processing fee prescribed, if any, from time to time shall be charged for various services.

Note:

1. *Guidelines are subject to modification from time to time.*

2. *In case of any discrepancy between Hindi and English versions of this document including the annexures, the English version shall prevail."*

307. Thus, the concerned Ministry namely Ministry of Jal Shakti (Department of Water Resources, river Development and Ganga Rejuvenation) issued **Guidelines 2020** in purported compliance of directions contained in Tribunal's orders dated 11.09.2019, 20.7.2020 and earlier orders referred in this judgment, but as a matter of fact, we find that Guidelines 2020 broadly do not satisfy directions as given repeatedly and persistently, reposing confidence in the Authorities who are responsible and accountable for preservation and protection of

environment, that they would understand their statutory obligations, sensitize themselves with the traumatic condition of environment, show patent endeavour for improvement, march with a conviction that not only present day people but coming generations also get a healthy environment with clean air, non-contaminated water, adequate for drinking and other daily uses, enough ground water necessary for agriculture and simultaneously for developmental activities; and perform with a real sense of devotion and determination. To our utter dismay, they have failed. We do not find much improvement in **Guidelines 2020**. Virtually, it is only a new cover provided to the old scheme with minor variations, alterations and modifications, here and there, but having no substantial consequences to the root cause and central issue, i.e. protection and preservation of ground water, prevention of, not only further depletion, but a serious and effective attempt for recharge and restoration.

308. So far as exemption for requirement of NOC is concerned, the category of consumers namely domestic, requiring water for drinking and domestic uses, whether in rural and urban areas, Establishments of Security Forces like Armed Forces and Central Armed Police Forces etc. and agricultural activities, we, at this stage, do not find any reason to make any comment but inclusion of some commercial and industrial activities i.e. micro and small industrial entrepreneurs category i.e. MSME, drawing ground water less than $10m^3$/day, even in the area where ground water level is critical or over exploited, is incomprehensible. The number of such units and impact of drawl of ground water, by such units, on the water level, it appears, has not been examined at all, in as much as the Tribunal passed order on 20.07.2020 and notification containing **Guidelines 2020** has been issued 24.09.2020 i.e. within less than two months.

309. Further, in respect of other commercial and industrial activities also, the alleged restrictions are only an eye wash. For commercial uses, it is provided that no NOC to new major industries shall be granted in over-exploited assessment areas except as per Policy Guidelines. In the context of commercial use, only for industrial use, it is provided that NOC shall not be granted for ground water extraction to a new industry, except those falling in the category of MSME. The existing units are not covered by it. More over in the new units, NOC for abstraction of ground water for drinking/domestic use for work force, green belt etc. shall be permitted. Expansion of existing units involving increase of ground water extraction in over-exploited assessment areas shall not be permitted. There is a twist when it says that NOC shall not be granted to new packaged water industries in over-exploited areas even if they belong to MSME category. In Guidelines 2015, no NOC was to be given to any water intensive industry, even if it is MSME, in over exploited assessment areas. Now it is restricted to packaged water industries. Apparently, a drastic relaxation has been given in respect of water intensive industries, for no reason, and that too in flagrant defiance of order of Tribunal.

310. The critical and semi-critical areas have been left untouched and there is no such restriction at all. The only reference to these areas in para 4.1 (viii) is that industries drawing ground water in safe, semi-critical and critical assessment areas shall be required to pay ground water extraction charges which will also be paid by existing industries. The charges are provided as per table 5.2 A and 5.3 A for safe, semi-critical and critical assessment units and tables 5.2 B and 5.3 B for over-exploited areas. The rates provided therein are:

"**Table 5.2 A: Rates of ground water abstraction charges for packaged drinking water units (Rs per m^3)**

S.No.	Category of area ↓ / Ground water use →	Quantum of ground water withdrawal				
		Up to 50m³/day	51 to <200 m³/day	200 to <1000 m³/day	1000 to <5000 m3/day	5000 m³/day and above
1.	Safe	1.00	3.00	5.00	8.00	10.00
2.	Semi-critical	2.00	5.00	10.00	15.00	20.00
3.	Critical	4.00	10.00	20.00	40.00	60.00

Table 5.3 A: Rates of Ground Water abstraction charges for other industries & infrastructure projects (Rs per m³)

S.No.	Category of area ↓ / Ground water use →	Quantum of ground water withdrawal			
		< 200 m³/day	200 to <1000 m³/day	1000 to <5000 m³/day	5000 m³/day and above
1.	Safe	1.00	2.00	3.00	5.00
2.	Semi-critical	2.00	3.00	5.00	8.00
3.	Critical	4.00	6.00	8.00	10.00

Table 5.2 B: Rates of ground water restoration charges for packaged drinking water units (Rs per m³)

S.No.	Category of area ↓ / Ground water use →	Quantum of ground water withdrawal				
		Up to 50 m³/day	51 to <200 m³/day	200 to <1000 m³/day	1000 to <5000 m3/day	5000 m³/day and above
1.	Over-exploited (existing industries only)	8.00	20.00	40.00	80.00	120.00

Table 5.3 B: Rates of ground water restoration charges for other industries & infrastructure projects (Rs per m³)

S.No.	Category of area ↓ / Ground water use →	Quantum of ground water withdrawal			
		< 200 m^3/day	200 to <1000 m^3/day	1000 to <5000 m^3/day	5000 m^3/day and above
1.	Over-exploited (existing industries / new Industries as per the present Guidelines)	6.00	10.00	16.00	20.00

311. Rates prescribed above are very nominal and virtually permits abstraction of ground water in stressed area almost free. Water charges prescribed by local bodies by supplying surface water are much more. Such nominal rates for abstraction of ground water would in fact encourage more abstraction for commercial purpose and frustrate the gigantic efforts being made by Supreme Court and this Tribunal to preserve and protect ground water particularly in stressed areas.

312. In respect of mining and infrastructure projects, it is specifically provided that NOC shall not be denied or banned for existing as well as new projects in over-exploited areas. Though some conditions are there for monitoring of quantity of ground water extraction in the said area, payment of abstraction charges or the restoration charges as the case may be, but effective steps capable of execution for recharge/restoration are clearly wanting.

313. Thus, the issue of constant depletion of water level, initially brought before Tribunal, in the context of NOIDA and Greater NOIDA which are part of district Gautam Buddha Nagar, but subsequently, extended to the entire country since this problem was/is being faced by people throughout the country, remained unexecuted. This Tribunal repeatedly required Statutory Regulators to take effective steps for prevention of depletion of water level and also for recharge/restoration/rejuvenation of water level;

enough power is conferred by Statute upon Statutory Regulator i.e. CGWA to take all permissible, possible and effective steps for the purpose, but it is not understandable why it has been/is reluctant to execute and enforce the said power, in the manner it was desired to protect and preserve ground water level across the country. It is admitted, as also demonstrated in earlier paragraphs, that when study of ground water level was made in different phases, extreme alarming level of ground water was noted in sufficiently large number of places but for regulation purposes a very small fragment thereof was selected by CGWA. In its own discretion, without specifying the criteria on which only a few areas were so selected, CGWA notified a very small numbers and made some provisions, that too, very superficial, for regulating the same. In respect of others, termed as non-notified area, very relaxed and concessional provisions were made, that too, like grant of a license i.e. NOC, in a very smooth and casual fashion, unmindful of the fact that its statutory duty was to take steps for protection and conservation of ground water level and not to grant easy access for abstraction, that too, to commercial institutions/ establishments/bodies, to extract ground water for commercial/industrial purposes without having any corresponding actual recharge/restoration of ground water, particularly, in the area where it had already depleted to a very low level and was classified as over-exploited, critical or semi critical. Tribunal did not appreciate this approach, expressed its displeasure and disapproval repeatedly, but, and despite that, CGWA, on the pretext of effective functioning of economy, issued revised Guidelines repeatedly and frequently but all failed, when tested at the anvil of conservation and protection of ground water level in stressed or highly stressed areas.

314. Major deficiencies, observed by Tribunal, in various guidelines issued by CGWA, are summarized here as under:

i. Policy to be followed by CGWA has to be rational, meeting basic need of everyone and at the same time preserving water for future generation by preventing wastage or preventable use based on the principle of "sustainable development".

ii. Policy must have punitive measures and recovery of damages from those who have extracted ground water in past and continue to do so unauthorizedly, i.e., illegal extraction, leading to alarming depletion of ground water.

iii. Steps to be taken to tap all relevant sources specially the rain water harvesting and preservation of water bodies;

iv. When CGWA has classified, over-exploited, critical and semi critical areas for regulation, it has no reason to refuse regulation of such areas on the plea that it would govern/regulate only notified area;

v. Being Central Authority, CGWA has to regulate ground water in the whole country under the mandate of Supreme Court, hence cannot show apathy on the pretext of notified area, ignoring other areas where ground water level is similarly stressed i.e., over-exploited, critical or semi-critical;

vi. Extraction of ground water in over-exploited, critical and semi-critical area with or without permission, only on the pretext of being non-notified, amounts to failure of Statutory duty on the part of CGWA;

vii. Mechanical imposition of condition of recharge of underground water without any mechanism for ensuring its compliance or to check, whether complied or not, at all, while continuing to permit drawl of ground water for commercial purposes, is unjustified;

viii. Abstraction of ground water for building construction, watering plants, swimming pools, threatening availability of ground water in

over-exploited, critical and semi- critical areas, specially, in absence of adequate steps for recharge of ground water, is unjustified;

ix. **Mere provision for realization of some amount/charges for drawl of ground water is ridiculous and illegal, in respect of extraction of ground water in over-exploited, critical and semi-critical area;**

x. CGWA has to observe in its functions, precautionary principle, sustainable development as well as inter-generational equity principle. Drawl of ground water for industrial purposes with or without payment, in OCS areas, should be banned.

xi. Checking of contamination of ground water by discharge of untreated effluents in water bodies need comprehensive planning and execution and on priority basis, it is necessary, failing whereof, has led to emergency situation in certain areas;

xii. Apathy of authorities in last several years, in neglecting subject in breach of trust, reposed in such authorities, has been noted by Tribunal still no information was given with regard to compliance of earlier orders including action for illegal activities of CGWA.

xiii. Instead of laying down strict norms for extraction of ground water for commercial purposes and putting in place a robust institutional mechanism for surveillance and monitoring, **extraction of ground water has been liberalized**, adding to the crisis, unmindful of ground situation and likely impact, it will have on environment.

xiv. No study or data has been furnished or collected to justify this approach.

xv. Drawl of ground water for all practical purposes made unregulated in all areas including OCS.

xvi. So called regulation is illusory.

xvii. **Water conservation fee in effect a license to harness ground water to any extent even in OCS areas**.

xviii. No institutional mechanism to monitor removal and replenishment of ground water;

xix. No check on injunction of pollutants in ground water;

xx. No provision to check water quality and remediation, if there is contamination;

xxi. Instead of conservation of ground water necessary for providing access to drinking water in OCS areas, Guidelines would result in fast depletion of ground water and damage to water bodies;

xxii. Mandate of CGWA is not exploitation of ground water in depleted area but to conserve it;

xxiii. OCS areas need regulation for conservation of ground water, cannot be treated separately as notified or non-notified;

xxiv. Compensation to be recovered for illegal abstraction, has to be deterrent, linked to the quantum of ground water extracted and period for which such extraction took place;

xxv. CGWA must lay down and follow stringent norms to ensure that there is no depletion of ground water in OCS areas and depleted water level is improved and replenished;

xxvi. The abstraction of ground water in over-exploited area should be permitted only for drinking purposes;

xxvii. For calculation of environmental compensation, present categorization of area (over-exploited, critical and semi-critical) shall be considered, irrespective of when violation started or committed;

xxviii. In case of demand of more than 5000 KLD in existing cases, permission be given only after examining scientific assessment of water availability and inter-generational equity. In case of repeated

violations, environmental compensation shall be computed at 1.25 times of the previous environmental compensation;

xxix. Since OCS areas have been found seriously affected by over-drawl of ground water, regulation of such drawl for commercial purposes cannot be dispensed with for any industry, even in industrial area;

xxx. In absence of replenishment of ground water, unregulated drawl cannot be permitted to any commercial entity;

xxxi. Shortage of availability of water for commercial purposes cannot be remedied by permitting drawl of ground water in OCS areas.

xxxii. Water is a scarce resource; hence, industry has to cope up with such scarcity and find out its own alternative ways to meet the requirement of water;

xxxiii. They cannot be permitted indiscriminate drawl of water in such areas till situation improves;

xxxiv. Liberalization of ground water extraction across the board, to certain categories, without any impact assessment and effective checks, are against law;

xxxv. No road map has been prepared by CGWA as to how revised Guidelines will check and neutralize falling ground water level particular, when it has continuously gone down. Liberalization of abstraction of ground water would defeat the purpose of Constitution of CGWA and is contrary to mandate of Public Trust doctrine;

xxxvi. Effective steps for protecting ground water in OCS areas against individual commercial considerations are must to serve general people.

315. In the backdrop of the aforesaid observations which we have culled out from various orders of Tribunal, referred above, ultimately, in the order

dated 20.07.2020, 4 issues were formulated in para 27 and in para 28, Tribunal said that the answer to the said issues is 'no'. Tribunal held that as per mandate of sustainable development under Section 20 of NGT Act 2010, Regulator must direct its policy towards preventing further depletion of, and upgrading, ground water levels, based on impact assessment. Extraction can neither be unregulated nor allowed across the board without individual consideration. The directions were consequently issued to prepare meaningful regulatory regime, institutional mechanism for ensuring prevention of depletion, unauthorized extraction of ground water and sustainable management in OCS areas.

316. Unfortunately, the concerned Ministry and Regulator have acted in haste and just in 2 months i.e., 24.09.2020, have published Guidelines 2020 wherein most of the infirmities, irregularities, and failures, pointed out on the part of CGWA, in earlier Guidelines, as such, are present. Though there are minor variations and alterations, but the same are wholly inconsequential, looking to the gravity of the situation, arising due to consistent depletion of ground water.

317. We have given a complete retrospect to the Statutory provisions as also Statutory Regulators to regulate ground water in the country so as to clearly understand the scheme of regulation of ground water in the country. In the present case, however, it is evident from record that no permission at any point of time was obtained by APIL-PP either from CGWA or from any other Competent Authority at any point of time for extraction of ground water and this violation has continued not only at the time when the present OA was filed but even earlier thereto and till date. Nothing has been placed on record that even provisions of Haryana Water Resources (Conservation, Regulation and Management) Authority Act, 2020 have been followed though we may add as caution that the provisions of the

said Act can be made applicable only subject to consistency thereof with the provisions made by CGWA with regard to extraction of ground water. Therefore, there is a blanket defiance, disregard and violation on the part of APIL-PP in respect of extraction of ground water and the extraction throughout is patently illegal.

Illegal extraction of ground water:

318. The report categorically said that since 2001 and 2002, there were 39 borewells/tubewells in the area in question. Obviously, at that time, project was in construction phase, if not in entirety, then substantial part thereof. PP claimed that it had applied for permission/NOC to CGWA but the fact remains that no permission was granted. Mere submission of application does not mean that permission has been granted. Even at the time of inspection, 21 tubewells were found in operation for supply of water to the residents of the area though area in question is within the supply of water by municipal authorities and, therefore, withdrawal of ground water in the area in question was illegal. No specific reply has come from APIL/PP on this aspect except that it had applied for permission and failure on the part of CGWA in granting permission cannot be a reason to penalize PP. Thus, it is proved that extraction of ground water was illegal.

Status of Ground Water in Gurugram:

319. At this stage, we may also place on record that ground water status in Gurugram is in stressed condition. In a study conducted by CGWB, it has been observed that Gurgaon district is situated on South eastern part of Haryana State covering an area of 1200 sq.km. In North, it is bordered by the Union Territory of Delhi, in east by Faridabad, in North West by Jhajjar and Rewari districts of Haryana and in West by Alwar district of Rajasthan State and south by Mewat district of Haryana. The district is divided in four Blocks, namely, Gurgaon, Pataudi, Farrukhanagar, and

Sohna. There is one sub–division, Gurgaon. Gurgaon town is headquarter of the district.

320. As per ground water Resources estimation of the district conducted in 2009, overall stage of ground water development in the block is in the order of 232% exceeding replenishable recharge. Therefore, **district was categorized as 'over-exploited'**. As on 31.03.2009, net annual ground water availability of the district was 23261 ham and existing gross ground water draft for all users was 53927 ham.

321. The quality of ground water for drinking and irrigation purposes was studied and it was found:

> "*The shallow ground water of the district is alkaline in nature (pH 7.25 to 8.13) and is moderately to highly saline (EC 805 to 3410µS/cm). Among cations, sodium is the dominant cation in 63% samples and in the remaining mixed cationic character is observed whereas among anions, mostly mixed anionic character dominates. However, bicarbonate is found to be the dominant anion in 25% samples. On comparing the concentration values of major ions with the recommended desirable and permissible concentration limits for drinking water (Bureau of Indian Standards), it is found that ground waters is mostly unsuitable for drinking purposes in 88% of wells mainly due to high nitrate and fluoride contents that exceed the maximum permissible limits of these parameters which are 45 mg/l and 1.5mg/l respectively.*
>
> *Salinity (EC), Sodium Adsorption Ratio (SAR) and Residual Sodium Carbonate (RSC) are generally the parameters for ascertaining the suitability of ground water for irrigational uses. These parameters range from 805 to 3410 µS/cm at 250C, 1.57 to 15.27 and –17.15 to 5.30 milli-equivalents respectively. Plot of USSL diagram used for the classification of irrigation waters indicated that ground water samples mostly fall under class C_3S_1 & C_3S_2 (56%). Such waters are likely to cause medium to high salinity hazards but they may not cause sodium hazards because of low SAR. The remaining 44% of water samples fall under C_3S_3, C_3S_4, C_4S_1, C_4S_2 C_4S_3 and C_4S_4 classes of irrigation water. Waters having C_4, C_3 and S_3 and S_4 may lead to both salinity and sodium hazards when used for irrigation under normal practices. Such waters, nevertheless, can be used for semi-salt tolerant to salt tolerant crops along with appropriate amount of gypsum on well drained soils".*

322. The above report also shows that Gurgaon block and adjoining industrial area was notified by CGWA on 26.12.2002 for ground water regulation. For registration purpose, Farukhnagar and Pataudi blocks

were notified on 13.03.2006 and 20.11.2006 respectively**. The entire Gurgaon block was notified by CGWA vide public notice no. 1/2006 dated 13.3.2006. Due to worsening of situation CGWA vide public notice no. 2/2011 dated 13.8.2011 notified entire Gurgaon district**.

323. Therefore, from 2011, the entire Gurgaon district is a notified area by CGWA and irrespective of the observations and discussions made above with regard to notified or non-notified area, so far as Gurgaon is concerned, Statutory Regulator i.e., CGWA has notified it in 2011 and no extraction of ground water without permission could have been carried out on and after 13.08.2011 in the entire district Gurgaon particularly for commercial purposes. Therefore, extraction of ground water in the case in hand, without permission/NOC/Clearance by Competent Statutory Regulators, was/is illegal.

324. Further defense of PP that it has handed over developed area to Sushant Lok Resident Welfare Association (hereinafter referred to as '**SLRWA**') in 2015 and further maintenance of builder's area has been transferred to MCG, hence it is not responsible/liable for any fault/violation found in the questioned area, is not acceptable. The memorandum of understanding entered between APIL-PP and SLRWA shows that maintenance of the area in question is under control of APIL-PP and service provider/agency for actual maintenance work is selected/appointed by APIL-PP. So far as the alleged transfer of the area to MCG is concerned, letter dated 12.07.2019 issued by Executive Engineer-V, MCG is on record (page 426) and it shows that decision was taken by the Government to take over 06 nos. of private builder's areas i.e., licensed colonies by MCG but actual hand over of the area to MCG has not accomplished. On the contrary, MCG required APIL-PP to make inventory of machinery and work force (manpower) engaged for

maintenance of water supply, sewage system, road, storm water drain and sanitation etc. and depute some representatives along with details to initiate handing over and taking over process as per the Government orders. No document has been placed on record to show that this handing over and taking over by MCG was completed on 12.07.2019 or any point of time thereafter.

Breach in respect to RWH system:

325. Committee has categorically observed that though 11 nos. of RWH structures for open spaces and common area were constructed in Sushant Lok-I but on verification, it was found that in Block-C where Committee visited, 3 nos. of RWH structures were not functional and therefore the basic purpose of ground water recharging was not being achieved. On this aspect, nothing has been said by APIL-PP.

Breach of various other rules and violations:

326. The reports referred to above also shows that Solid Waste Management Rules, 2016 and Construction and Demolition Management Rules, 2016 were violated and no arrangement was made for compliance thereof. Further, rain water harvesting systems for houses were not provided. Diesel Generator sets were operating without taking steps for prevention of air pollution etc. On all these aspects, we find nothing from record to show that the findings given in the reports mentioned above are not correct. We accordingly hold the proponent guilty of violating the environmental laws and statutes in respect to above violations.

327. **We accordingly answer Issue II in affirmance** by holding that multiple provisions of environmental laws and norms have been violated by APIL-PP in carrying out project in question and such violations are still continuing.

Issue III-regarding accountability of Statutory Regulators and Statutory Authorities including local bodies:

328. Facts of the case discussed above are self-speaking to demonstrate gross dereliction of duties in functioning of the responsible authorities or local bodies, other sanctioning authorities and Statutory Regulators responsible for enforcement of environmental laws. TCPD Haryana in a mechanical manner granted licenses without ensuring whether earlier conditions of licenses were complied with by APIL-PP and for years together licenses were issued. It felt sufficient to make a condition in orders that APIL-PP shall observe various provisions and obligations for example regarding sewer connection, treatment and management of domestic sewage, storm water services, water supply etc. However, it did not get the things verified from spot as to whether those conditions were actually followed and observed or not.

329. In Part Completion Certificates issued by TCPD Haryana, from time to time, it repeatedly said that APIL-PP shall be responsible solely for making disposal arrangement of sewerage/storm water drainage of the colony but did not bother to verify whether the same was being complied with and observed by APIL-PP, in fact on the spot. It also ignored provisions of EIA 1994 and EIA 2006 which contemplate EC/prior EC from Competent Authority before commencement of any activity of the project.

330. HSPCB was under an obligation to ensure compliance of environmental laws but we do not find any effective regulatory and monitoring action on its part. It has enough powers under the Statute to take several actions against APIL-PP but it failed to do so. Even when complaint was filed under Section 15 of EP Act 1986 before Special Environment Court and APIL-PP made a false statement that it had obtained EC and thereafter, matter was disposed with petty amount of fine and compensation, HSPCB did not contest the matter and informed the

Court that no such EC was actually obtained by APIL-PP and statement was false. The negligence and inaction on the part of officials of HSPCB, is highly condemnable and we observe that it crosses the limit of simple negligence and enters into the arena of criminal negligence. Violation of environmental laws by APIL-PP has degraded and damaged environment. Condition of air quality and ground water is very poor in entire District Gurugram. Pollution caused by APIL-PP has obviously contributed to it. It causes damage to the health of general public for no fault on their part. Polluters, in the case in hand, virtually given a clear march-over all illegal activities and no effective, preventive and remedial action has been taken. It also shows lack of concern on the part of official of HSPCB to the poor people who had suffered on account of illegal activities on the part of APIL-PP due to continued pollution caused by execution of its project in violation of environmental laws and contrary to environmental norms in a district where ground water level was in the category of over-exploited and the entire district was notified by CGWA for the purpose of regulation of ground water in 2011 and air quality was also very poor yet HSPCB failed to take any action in the matter. This is a very serious situation where Statutory Regulators and Statutory local bodies as also other authorities are not serious enough to discharge their statutory duties with utmost devotion. Tribunal castigated this failure in its various earlier orders referred above but till date even the highest authority in the State of Haryana (Chief Secretary) has failed to take any effective action against such defaulters, incompetent and inefficient officials who have miserably failed to enforce compliance of environmental laws and permitted continued violation by APIL-PP.

331. Even local bodies like MCG, HSVP have failed to ensure compliance of various laws and Statutory provisions on the part of APIL-PP. The

inferences is clear that if it is not an active collusion and co-operation by the authorities yet passive participation which has allowed APIL-PP to violate blatantly environmental laws and such activities were continuing when OA was filed and even thereafter. In fact, nothing was placed before us even on the date of hearing that such activities as such have been stopped in entirety. We, therefore, hold that Statutory Regulators, local bodies and other authorities are guilty of gross negligence which has caused blatant violation of environmental laws on the part of APIL-PP in proceeding with the project in question without having any care and regard for environmental laws.

332. **Issue III is answered accordingly.**

Issue IV

333. It is repeatedly held by Apex Court that the issue of environmental matters have to be considered in the light of the well recognized principles like Precautionary Principle, Polluters pay, Doctrine of Trust and Principle of Burden upon Violator. Article 21 has been read as to include Fundamental Right of people to live in healthy environment. Preservation of environment and keeping ecological balance unaffected is a task which not only governments but also every citizen must undertake. It is a social obligation and every citizen must remind to himself that it is his fundamental duty as enshrined under Article 51A(g) of the Constitution.

334. In ***Sachidananda Pandey vs. State of West Bengal & Others, AIR*1987SC1109**, dealing with the matter pertaining to environment, Court said that whenever a problem of ecology is brought before it, the Court is bound to bear in mind Article 48A and 51A(g) of the Constitution. When a court is called upon to give effect to the directive principles of fundamental duties, it cannot shirk its shoulders and say that priorities

are a matter of policy and so it is a matter for the policy making authorities. The least court must give is, to examine whether appropriate considerations are gone in mind and irrelevancies are excluded. In appropriate cases Court could go further but how much further would depend upon the circumstances of the case. Court may always give necessary directions.

335. In ***M.C. Mehta vs. Union of India,*** **AIR1987SC1086 (Sodium gas leak case)**, issue of gas leak in a chemical factory and its repercussions came to be considered. Court expanded the doctrine of liability by modifying 'strict liability' principle enshrined in *Rylands v. Fletcher* to 'absolute liability; and said, "*enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of persons working in the factory and residing in the surrounding areas, poses an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken-the* ***enterprise must be absolutely liable to compensate for such harm and it should be not answer to the enterprise to say that it has taken all reasonable care****....*".

336. Court also said that **larger and more prosperous enterprise, greater must be the amount of compensation** payable for the harm caused on account of the activity being carried on by the industry.

337. In **Vellore Citizens Welfare Forum vs Union Of India & Others (1996)5SCC647**, Court held "*In view of the Constitutional and Statutory Provisions---, "Precautionary" Principle and "Polluter Pays" Principle are part of the Environmental Laws of our country".*

338. In ***Virendra Gaur vs. State of Haryana, (1995)2SCC577***, Court said that Government had no power to sanction lease of land vested in municipality for being used as open space for public use. The word 'environment' is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance". It is duty of State and every individual to maintain hygienic environment. State in particular has duty to shed its extravagant unguided sovereign power and to forge in its policy to maintain ecological balance in hygienic environment. Court further said:

> "*Enjoyment of life and its attainment including their* ***right to life*** *with human dignity encompasses within its ambit,* ***the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed,*** *any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water pollution etc. should be regarded as amounting to violation of Article 21."*

339. Court also held that hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a human and healthy environment. Court further said

> *"Therefore, there is a constitutional imperative on the State Government and the Municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the manmade and the natural environment."*

340. In ***Indian Council for Enviro-Legal Action vs. Union of India, (1996)3SCC212***, Court said that once activity carried on is hazardous or inherently dangerous, a person carrying on such activity is liable to make good, the loss, caused to any other person, by his activity, irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on. It was held that **polluting industries are absolutely liable to compensate for the harm caused by them to the people in the affected area, to the soil and to the underground water.**

341. **Polluter Pays Principles** means absolute liability for harm to the environment, not only to compensate victims of pollution but also cost of restoring environmental degradation. Remediation of damaged environment is part of the process of 'sustainable development'. As such, **polluter is liable to pay cost to the individual sufferers as well as cost of reversing the damaged ecology**.

342. With respect to polluter pays principle, Court in ***Indian Council for Enviro-Legal Action vs. Union of India (supra),*** in para 65, said that **any principle evolved in this behalf should be simple, practical and suit to the conditions obtaining in the country**.

343. In ***Indian Council for Enviro-Legal Action (supra)***, issue of damage to mother earth by industries producing toxic chemicals was brought to the notice of the Court. It was found that water in wells and streams turned dark and dirty rendering it unfit for human consumption or even for cattle and for irrigation. Court issued various directions which included closure of industries.

344. Again issue of pollution from tanneries in rivers including river Ganga was considered by Supreme Court in ***Vellore Citizens' Welfare Forum (supra)***. Recognizing principle of 'sustainable development', Court held that it is a balancing concept between ecology and development and remediation of damage to the environment is part of the process of sustainable development; precautionary principle, polluter pays principle and new burden of proof have become part of environmental law of the country.

345. In ***M.C. Mehta vs. Kamal Nath & Others, (1998)1SCC388*** a two Judges Bench had an occasion to examine, "whether natural resources can be allowed to be used or processed by private ownership for

commercial purpose". The background facts giving rise to above issue are, that a news item was published in daily newspaper 'Indian Express', dated 25.02.1996, under the caption "Kamal Nath dares the mighty Beas to keep his dreams afloat". The news item reveals that after encroachment of 27.12 bighas of land which included substantial forest land, in 1990, a Club was built in Kullu-Manali valley by a private company 'Span Motels Private Limited', which owns a resort- Span Resorts. The land was later regularised and leased out to the company on 11.04.1994. At the time of regularisation, Mr. Kamal Nath was Minister of Environment and Forests. The swollen Beas changed its course, engulfed Span club and adjoining lawns, washing it away. Thereafter, management took steps and by using bulldozers and earth-movers, turned course of Beas by blocking flow of river just 500 meters and creating a new channel to divert River to atleast 1 km downstream. Supreme Court took *suo-moto* cognizance of the matter, and case was registered as W.P. No. 182/1996 under Article 32 of the Constitution. Notices were issued to the company as well as Mr. Kamal Nath. After considering the pleadings and other material, Supreme Court decided vide Judgment dated 13.12.1996 recording a finding that Motel had encroached upon an area of 22.2 bighas adjoining to the lease-hold area. Earlier, 40 bighas 3 biswas land, alongside Kullu- Manali Road on the bank of river Beas, was granted on lease to the above Motel for a period of 99 years with effect from 1.10.1972 to 1.10.2071. Besides above, the motel encroached upon 22.2 bighas of land further. It also built extensive stone, cemented and wire-mesh embankments all along the river bank. Various activities undertaken by motel show a serious act of environmental degradation on its part. Motel tried to defend construction raised by it on the ground that it was to protect lease land from floods. Court held that **motel interfered with natural flow of river by trying to block natural relief/spill channel of the river**. With regard to river, it

was observed that Beas is a young and dynamic river, runs through Kullu valley, between mountain ranges of Dhaulandhar in the right bank, and Chandrakheni, in the left. The river is fast flowing, carry large boulders, at the time of flood. When water velocity is not sufficient to carry boulders, those are deposited in the channel often blocking flow of water. Under such circumstances, the river stream changes its course by remaining within the valley but swinging from one bank to the other. The right bank of river Beas where motel is located, mostly comes under forest; the left bank consists of plateaus, having steep bank facing the river, where fruit orchards and cereal cultivation are predominant. The area is ecologically fragile and full of scenic beauty, should not have been permitted to be converted into private ownership, and for commercial gains. Having said so, Court refers to the right of public to nature and natural resources and said that public has a right to expect certain lands and natural areas to retain their natural characteristic. Court refers to the work of David B. Hunter (University of Michigan) and Professor Barbara Ward where it was stressed upon that major ecological tenet is that the world is finite. Earth can support only so many people and only so much human activity before limits are reached. Absolute finiteness of the environment when coupled with human dependency on the environment, leads to the unquestionable result that human activities will, at some point, be constrained. There is a commonly recognised link between laws and social value but to ecologists, a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened. Historically, we have changed environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven

malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important resources-for example, wetlands and riparian forests - can no longer be destroyed without enormous long-term effects on environmental and therefore social stability. Need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature. Court refers to the legal theory said to be developed in ancient Roman empire, i.e., 'Doctrine of Public Trust' founded on the idea that certain common properties such as rivers, sea- shore, forests and the air were held by Government in trusteeship for the free and unimpeded use of general public. English law as well as American Law on the subject was also referred to and then it is said in para 34 of the Judgment that our legal system includes Public Trust Doctrine as part of the Jurisprudence. State is the trustee of all natural resources which, by nature, are meant for public use and enjoyment. Public at large is beneficiary of the sea- shore, running waters, airs, forests and ecologically fragile lands. State as a trustee, is under a legal duty to protect natural resources. These resources meant for public use cannot be converted into private ownership. Executive, acting under **Doctrine of Public Trust**, cannot abdicate natural resources and convert them into private ownership or for commercial use.

346. Supreme Court while disposing of Writ Petition issued certain directions contained in para 39 of the judgment which included that the motel shall pay compensation by way of cost for restitution of environment and ecology of the area. Pollution caused by various constructions made by motel in river bed and banks of river Beas has to be removed and reversed. NEERI was directed to inspect the area and make an assessment of the cost, likely to be incurred for reversing damage caused to

environment and ecology. Further, motel is also required to show cause as to why it be not imposed pollution fine in addition to cost for restoration of ecology which it had to pay.

347. In ***T.N. Godavarman Thirumulpad vs. Union of India & Others, (1997)2SCC267***, various writ petitions were filed in Supreme Court involving question about conservation, preservation and protection of forest and ecology. Various orders were passed from time to time, reported in law journals. In ***T.N. Godavarman Thirumulpad vs. Union of India & Others, (2006)1SCC1***, (order dated 23.09.2005), Court considered the question, when forest land is used for non-forest purpose, what measures are required to be taken to compensate for loss of forest land and to compensate the effect on ecology. Court recognized that development of nation undoubtedly involves industrial development but it has to be consistent with protection of environment and not at the cost of degradation of environment. Any programme, policy or vision for overall development must evolve systematic approach so as to balance economic development and environmental protection. Then Court considered the question, "*whether permission to use forest land for non-forest purpose and consequential loss or benefits must cause in imposing liability of payment of 'Net Present Value' (hereinafter referred to as 'NPV') of such diverted land, so as to utilize the amount for getting back in the long run, benefits which are lost by such diversion*?" In this regard, what should be the guidelines for determination of NPV, how to compute it, can there be some exemptions etc., are the aspects, to be considered by MoEF. Referring to earlier orders, Court said that MoEF was directed to formulate a scheme providing for compensatory afforestation, whenever permission for diversion of forest land is granted under Forest (Conservation) Act, 1980 (hereinafter referred to as, the 'FC Act'). MoEF, consequently, submitted a

scheme with its affidavit dated 22.03.2002, which was examined by Central Empowered Committee (hereinafter referred to as '**CEC**') along with other relevant material and submitted a report/recommendation dated 09.08.2002. MoEF, in principle, accepted recommendations of CEC and it was noticed by Supreme Court in its order dated 29.10.2002. MoEF, by Notification dated 23.04.2004, by exercising powers under sub-section (3) of Section 3 of EP Act, 1986, constituted an authority, i.e., Compensatory Afforestation Fund management and Planning Authority (hereinafter referred to as 'CAMPA'. Court suggested that in the said constitution of CAMPA, MoEF should include an expert in the field of forest and another expert in the field of forest economy development. Some other modifications/amendments in the said Notification were also recommended. Then the question, how NPV be determined, was examined in detail. Court observed that there are different factors which may count for determination of biodiversity valuation and it is for the experts in the field to make suggestion for determination of relevant factors for such computation. Environment is not a State Government's property but a national asset. It is the obligation of all to conserve environment and for its utilization, it is necessary to have regard to the principles of "sustainable development" and "inter-generational equity". Further, Court said, NPV is a charge or a fee within Entry 47 read with Entry 20 of List III of the Constitution. It further said *"the Fund set up is a part "of economic and social planning" which comes within Entry 20 of List III and the charge which is levied for that purpose would come under Entry 47 of List III and, therefore, Article 110 is not attracted."* The NPV is not only for compensatory afforestation but for ecology. Compensatory afforestation is only a small portion, in the long range efforts, in the field of regeneration. Forest Management Planning involves a blend of ecological, economic and social systems with the economic and social sides of planning, often just

as complex as the ecological sides. Rejecting contention of State Government that amount of NPV shall be made over to State Government, Court held, natural resources are not the ownership of any one State or individual, the public at large is its beneficiary. In para 78, Court said

> *"The **damage to environment is a damage to the country's assets as a whole.** Ecology knows no boundaries. It can have impact on the climate. The principles and parameters for valuation of the damage have to be evolved also keeping in view the likely impact of activities on future generation.*

348. Examining various aspects of biodiversity and loss to ecology due to any destruction to biodiversity etc., Court recorded conclusions in para 98 of the judgment, as under:

> *"In view of the aforesaid discussion, our conclusions are:*
>
> *1. Except for government projects like hospitals, dispensaries and schools referred to in the body of the judgment, all other projects shall be required to pay NPV though final decision on this matter will be taken after receipt of Expert Committee Report.*
> *2. The payment to CAMPA under notification dated 23rd April, 2004 is constitutional and valid.*
> *3. The amounts are required to be used for achieving ecological plans and for protecting the environment and for the regeneration of forest and maintenance of ecological balance and eco-systems. The payment of NPV is for protection of environment and not in relation to any propriety rights.*
> *4. Fund has been created having regard to the principles of intergenerational justice and to undertake short term and long-term measures.*
> *5. The NPV has to be worked out on economic principles."*

349. Applying **doctrine of accountability** to the State and Statutory Regulators and its officers, in ***Pollution Control Board, Assam vs. Mahabir Coke Industry & Another, (2000)9SCC344***, Court held that they are accountable for wrong advice.

350. Liberal attitude of courts in the matter of quantum of punishment in criminal prosecution for offences relating to environmental pollution was criticised in ***UP Pollution Control Board vs. M/s Mohan Meakins Ltd. & Others, (2000)3SCC745***. It was held that courts cannot afford to

deal lightly with cases involving pollution of air and water. Courts must share parliamentary concern on the escalating pollution levels of environment. Those who discharge noxious polluting effluents into streams appeared to be totally unconcerned about the enormity of injury which they are inflicting on the public health at large, the irreparable impairment it causes on the aquatic organisms, to deleterious effect it has on the life and health of animals. **Court should not deal with the prosecution for pollution related offences in a casual or routine manner**.

351. In ***M.C. Mehta vs. Union of India, (2004)6SCC588 (Industries in residential area in Delhi matter)***, Court considered the question, "whether industrial activities in residential/non- conforming areas is permissible and what directions should be issued to end such illegal activities". Various orders were passed in 1995 and onwards resulting in closure, shifting etc., of industries, which, by an estimation were about 1,01,000, operating in Delhi in non-conforming zones but illegally permitted by Municipal Corporation of Delhi to operate in residential areas/ non- conforming areas. An application was filed on behalf of Delhi Government that closure of such a large number of industries functioning in residential/non-conforming areas may render about 7 lakh workers unemployed, causing hardship to 7 lakh families. The question considered by Court was, "*whether a Government can plead such a justification for violation of law and throw to the winds norms of environment, health and safety or is it possible to help the workers even without violating law if there is a genuine will to do so*". There was an attempt on the part of the concerned authority for regularization of certain areas having concentration of industries. Deprecating it, Court said, "***Regularization cannot be done if it results in violation of the Right to Life enshrined***

in Article 21 *of the Constitution. The question will have to be considered not only from the angle of those who have setup industrial units in violation of the master plan but also others who are residents and are using the premises as allowed by law."* Court also considered the changes proposed/made in the master plan and said, "*The changes in the master plan or its norms to accommodate illegal activities not only amount to getting reward for illegal activities but also resulted in punishing the law abiding citizen."* Commenting upon the authorities, Court said, "*lack of action and initiative by the authorities is the main reason for the industry merely continuing illegal activities.* ***There is total lack of enforcement of law by the authorities concerned."*** Rejecting an argument that industries were working with the consent of Government, Court said that **an illegality would not become legality on inaction or connivance of the Government authorities**. It further said "*There cannot be any doubt that non-conforming industrial activities could not have commenced or continued at such a large scale in the capital of the country if the Government and the concerned authorities had performed their functions and obligations under various statutes. But such a situation cannot be permitted to continue forever so as to reach a point of no return, where the chaotic situation in city has already reached.* ***The law- breakers, namely, the industries cannot be absolved of the illegalities only on the ground of inaction by the authorities."*** Court also rejected an argument on behalf of the industries that if they are ready to pay penalty, so long as the same is paid, they are entitled to continue with their activities. Court held "*merely by payment of penalty, continued misuse cannot be permitted.*" Court condemned authorities for inaction and said that growth of illegal manufacturing activity in residential areas has been without any check or hindrance from the authorities. The manner in which such large scale violations had commenced, and continued, leaves no manner of doubt that it was not

possible without the connivance of those who are required to ensure compliance and reasons are obvious. Such activities result in putting on extra load on the infrastructure. The entire planning has gone totally haywire. The law abiders are sufferers. All this has happened at the cost of health and decent living of the citizens of the city violating their constitutional rights enshrined under Article 21 of the Constitution of India. Further, it is necessary to bear in mind that the law makers repose confidence in the authorities that they will ensure implementation of the laws made by them. If the authorities breach that confidence and act in dereliction of their duties, then the plea that the observance of law will now have an adverse effect on the industry or the workers cannot be allowed. Court, in the light of the facts and pleadings, issued various directions including closure of all industries, came up in residential/non-conforming areas in Delhi on or after 01.08.1990. It also constituted a monitoring committee comprising of officials of Delhi Government, Delhi Police, local bodies and said that the said committee shall be responsible for stoppage of illegal commercial activities.

352. In ***Research Foundation for Science Technology and Natural Resource Policy vs. Union of India & Others, 2007(15)SCC193*** (order dated 11.09.2007 in IA 34 of 2006 In WP (C) No. 657 of 1995), Court considered the issue, "*whether permission for dismantling of ship "Blue Lady" at Alang, Gujarat should be granted or not*". The ship, a passenger liner, built in France in 1961, was a steam turbine driven vessel, registered as a Barge under the flag of Bahamas. The ship was beached on 15.08.2006/16.08.2006, off the Alang coast which is located on the west coast of Gujarat. Alang is the largest ship recycling yard and one of the choicest ship-scrapping destination for ship owners around the world. Observing that ship breaking is an industry, Court said that **when apply**

principle of 'sustainable development', one has to keep in mind concept of development on one hand and concepts like generation of revenue, employment and public interest on the other hand and here the principle of proportionality comes in. Court examined report of Technical Experts Committee and said that suggestions made by the said Committee, must be observed. It will satisfy the concept of "balance". Permitting Ship breaking, Court also observed that recycling is a key element of sustainable development.

353. In ***Fomento Resorts & Hotels & Another vs. Minguel Martins & Others, (2009)3SCC571*** **(order dated 20.01.2009)** in (*Civil Appeal No. 4154 of 2000*), a private company approached State Government for acquisition of land comprised in Survey nos. 788, 789, 803, 804, 806 and 807 of Village Taleigao, Dona Paula for construction of Beach Resort Hotel Complex by highlighting its benefits. Acted thereupon, acquisition proceedings were initiated. Acquisition proceeding were challenged but in the meantime hotel project was completed and commenced function. Goa Bench of Bombay High Court allowed writ petition and quashed acquisition notification by judgment dated 26.06.1984. The judgment was reversed in appeal by Supreme Court in ***Fomento Resorts and Hotels Ltd. vs. Gustavo Renato Da Cruz Pino, (1985)2SCC152*** and matter was remitted to High Court. Subsequently, parties compromised and writ petition was withdrawn from High Court. The hoteliers entered into an agreement with the Government. The hoteliers thereafter, applied for extension of hotel building and this issue was raised again in a writ petition filed in High Court which was allowed by observing that extension of hotel building was impermissible. The issue of acquisition was also raised. Supreme Court formulated it as issue one and answered in negative in para 35 of the judgment. Next question was, whether public access to

beach, available through survey no. 803 before acquisition, could have been restricted by hoteliers. Court refers to public trust doctrine and said that there is an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof. In para 54 of judgment, Court said,

> "*The **heart of the public trust doctrine is that it imposes limits and obligations upon government agencies** and their administrators on behalf of all the people and especially future generations. For example, **renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved.** The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets*".

354. Elaborating it, in para 55, Court said,

> "***Public Trust Doctrine is a tool for exerting long-established public rights over short-term public rights and private gain**. Today, every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long term and enjoyment by future generations. To say it another way, **a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people's rights** and the people's long term interest in that property or resource, including down-slope lands, waters and resources*".

355. Referring to ancient Indian heritage and culture which was in harmony with nature, Court said:

> "*The Indian society has, since time immemorial, been conscious of the necessity of protecting environment and ecology. The main moto of social life has been "to live in harmony with nature". Sages and Saints of India lived in forests. **Their preachings contained in Vedas, Upanishadas, Smritis etc. are ample evidence of the society's respect for plants, trees, earth, sky, air, water and every form of life**. It was regarded as a sacred duty of every one to protect them. In those days, people worshipped trees, rivers and sea which were treated as belonging to all living creatures. The children were educated by their parents and grandparents about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora fauna and every species of life*".

356. In ***Tirupur Dyeing Factory Owners Association vs. Noyyal River Ayacutdars Protection Association & Others, (2009)9SCC737***, Court said:

> "*in spite of stringent conditions, degradation of environment continues and reaches a stage of no return, the court may consider the closure of industrial activities in areas where there is such a risk. The authorities also have to take into consideration the macro effect of wide scale land and environmental degradation caused by absence of remedial measures.The right to information and community participation for protection of environment and human health is also a right which flows from Article 21.*

357. In ***News Item Published in Hindustan Times Titled "And Quiet Flows The Maily Yamuna", In Re, (2009)17SCC708*** (order dated 12.04.2005), Supreme Court continued to consider the issue of pollution of river Yamuna, deprecated authorities for their inaction/negligence and said,

> *"**It is for the Government to implement the laws**. It is no answer to say that the master plan, building bye-laws and other laws were observed in breach and the authorities were silent spectators. It seems that there was connivance of officers/officials concerned without which it is quite difficult for such large-scale unauthorized acts to take place".*

358. In para 13 of the order, Court referred to its earlier order dated 10.04.2001 wherein it has said:

> *"...right to life guaranteed under Article 21 of the Constitution would surely include the right to clean water, which is being deprived to millions of citizens of Delhi because of large-scale pollution of River Yamuna".*

359. Court recorded its concern in para 16 of the order, and said:

> *"This is a most unsatisfactory way of tackling the problem which, admittedly as per the Government's perception too, is alarming and emergent. How seriously the measures have been taken is evident from the fact that **despite the orders of this Court, there is no assistance or affidavit from the National Rover Conservation Authority. It seems evident that the Government and its functionaries and authorities have failed in their public duty** and obligations towards the citizens of Delhi. Despite all these years, they have not been able to provide clean water of Class 'C' category which had been directed years back".*

360. In ***Indian Council for Enviro-Legal Action vs. Union of India and Others (2011)8SCC161***, Court examined issue of environmental compensation as also compensation to the individual victims on account of industrial activities carried out by M/s. Hindustan Agro Chemicals Ltd., Rajasthan Multi Fertilisers, Phosphate India, Jyoti Chemicals and Silver Chemicals. It was an off-shoot of earlier proceedings initiated by same complainant namely; Indian Council for Enviro-Legal Action, where the matter was decide vide judgment dated 13.02.1996, reported in ***(1996)3SCC212***. W.P.(C) No. 967 of 1989 was filed complaining that certain chemical industries were indulged in industrial activities in utter violation of statutory conditions and environment norms; they are recklessly spreading hazardous industrial waste (iron sludge and gypsum sludge) all over the area and do not bother to ensure proper disposal; Toxic substances percolated into earth polluting soil, aquifers and subterranean water supply and also causing ailments and diseases to local villagers. During pendency of Writ Petition, Rajasthan State PCB directed closure of certain industries by issuing an order under Section 33 (A) of Water Act, 1974. This order was also challenged before Supreme Court in W.P.(C) No. 76 of 1994, wherein, an interim order was passed, permitting industry to continue to run with certain conditions. Another W.P.(C) No. 824 of 1993. filed by M/s. Hindustan Agro Chemicals also came up for disposal along with W.P.(C) Nos. 967 of 1989 and 76 of 1994 and decided by judgment dated 13.02.1996 reported in ***(1996)3SCC212 (supra)***. Court held that industries concerned were liable for pollution caused and industries had forfeited all claims for any lenient consideration. Court directed attachment of factories, plant, machinery and all other immovable assets of the said industries and Rajasthan State PCB was directed to seal all the factories and plants. Later, vide order dated 04.11.1997, Court determined cost of remedial measures at Rs. 37.385 crores on the basis of

assessment/reports of various authorities and by adjudicating the contentions raised. M/s. Hindustan Agro Chemical Ltd., however, avoided payment by keeping litigation alive for 1½ decade and, thereafter, in I.A. filed, Court, in para 197, laid down certain principles to be observed and followed, as under:

> *"197. The other aspect which has been dealt with in great details is to* ***neutralize any unjust enrichment and undeserved gain made by the litigants.*** *While adjudicating, the courts must keep the following principles in view:*
>
> *(1) It is the bounden duty and obligation of the court to neutralize any unjust enrichment and undeserved gain made by any party by invoking the jurisdiction of the court.*
>
> *(2) When a party applies and gets a stay or injunction from the court, it is always at the risk and responsibility of the party applying. An order of stay cannot be presumed to be conferment of additional right upon the litigating party.*
>
> *(3) Unscrupulous litigants be prevented from taking undue advantage by invoking jurisdiction of the Court.*
>
> *(4) A person in wrongful possession should not only be removed from that place as early as possible but be compelled to pay for wrongful use of that premises fine, penalty and costs. Any leniency would seriously affect the credibility of the judicial system.*
>
> *(5) No litigant can derive benefit from the mere pendency of a case in a court of law.*
>
> ***(6) A party cannot be allowed to take any benefit of his own wrongs.***
>
> *(7)* ***Litigation should not be permitted to turn into a fruitful industry*** *so that the unscrupulous litigants are encouraged to invoke the jurisdiction of the court.*
>
> *(8) The institution of litigation cannot be permitted to confer any advantage on a party by delayed action of courts."*

361. In ***Goel Ganga Developers India Private Limited vs. Union of India, (2018)18SCC257***, judgment dated 27.09.2016 passed by NGT in ***Tanaji Balasaheb Gambhire vs. Union of India, 2016 SCC Online NGT 4213*** was challenged. Tribunal held that the builder/proponent has violated conditions of EC and therefore, liable to pay environmental compensation of Rs. 100 Crores or 5% of the total cost of project, whichever is less for restoration and restitution of environment damage and degradation. In addition, it shall also pay Rs. 5 Crores for contravening mandatory provisions of environmental laws. Tribunal also imposed fine of Rs. 5 Lakhs upon Pune Municipal Corporation and cost of Rs. 1 lakh

each upon the said Corporation, Department of Environment, State of Maharashtra and SEIAA, Maharashtra. Two appeals were filed, one by the proponent and another by Pune Municipal Corporation. The factual background is that the Proponent purchased 79,900 sq. meters or 7.91 hectares of land comprised in six survey nos. 35, 36, 37, 38, 39 and 40 in Vad Gaon, Pune. All these survey numbers were amalgamated to become one plot. Proponent applied for sanction of layout and building proposal plan on 12.03.2017 on an area of 15141.70 sq. meters, originally depicted as plot no. 3. Sanctioned FSI was 515313.16 sq. meters. Thereafter, on 05.09.2007, revised layout plan was submitted for an area measuring 28233.23 sq. meters and sanctioned FSI was 39526.54 sq. meters. Proponent also applied for EC vide proposal dated 27.06.2007. He assured that he would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. 12 buildings were to have stilts with basements and 11 floors. Total built up area was indicated as 57658.42 sq. meters. EC was granted on 04.04.2008. Defining as to what is the meaning of the term "built up area", Court after referring to EIA Notification, 2006, said in para 16 as under:

> ***16.*** *From a bare perusal of the two hash tags (#) in Column 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines "built up area" to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as "built up area". There is no exception for non-FSI area."*

362. It also said that the concept of FSI or non FSI has no consonance or connection with the grant of EC. The same may be relevant for the purpose of Building Plans under Municipal Laws and Regulations but has no linkage or connectivity with the grant of EC. The authority while granting EC is not concerned whether area is to be constructed as FSI area or non FSI area. Both will have an equally deleterious impact on environment.

Construction implies usage of lot of material like sand, gravel, steel, glass, marble etc., all of which will impact environment. Merely because under Municipal Laws some of the constructions are excluded while calculating FSI, is no ground to exclude it while granting EC. Therefore, when EC is granted for a particular construction, it includes both FSI and non FSI area. Considering correctness of Notification dated 04.04.2011 and clarification dated 07.07.2017, Court said that such memorandums could not or should not have been issued. EIA, 2006 is a statutory Notification and such Notifications cannot be set at naught by a Joint Director by issuing any clarificatory letter. In para 22, Court said, "*we are of the view that since such decision has not been notified in the gazette the statutory notification dated 14-9-2006 and its subsequent clarification dated 4-4-2011 could not have been virtually set aside by this office memorandum"*. It was also held that OM dated 07.07.2017 is not clarificatory since EIA 2006 itself was very clear and considering question, whether Proponent has violated conditions of EC, Court found that construction raised was much more than what was approved and permitted in EC. Against the total built up area sanctioned in EC i.e. 57658.42 sq. meters, Proponent has constructed 100002.25 sq. meters which was patently illegal. Then, Court considered as to what order could have been or ought to have been passed. Considering the probability including justification for demolition, Court found that large number of flats and shops are already occupied by innocent people who have paid money. These people are from middle class having invested from their life's earning in the project. Since these persons are not parties, Supreme Court took the view that the demolition is not proper answer in the peculiar facts and circumstances of the case as that would put innocent people at loss. However, Court added in para 54 by observing that PP cannot be permitted to build any more flats than what was permitted but only to complete construction of 807 flats and 117

shops/offices and cultural center including the club house. Court stopped from constructing two buildings and directed to refund the money with 9% interest. In this regard, Court said in para 54,

> *"There is no equity in favour of these persons since the plan to raise this construction was submitted only after 2014 when the validity of the earlier EC had already ended. Therefore, though we uphold the order of the NGT dated 27-9-2016 that demolition is not the answer in the peculiar facts of the case, we also make it clear that the project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and club house."*

363. Court did not find any ground to award special damages to original applicant/complainant looking into his conduct. For the assessment of damages, Court observed that it cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles. No such principles have been accepted or established in that case. No assessment in actual terms can be made, though Court can impose damage or cost on principles which have been well-settled by law. Referring to some earlier matters, where Court awarded damages as 5% of the project cost and also looking to the fact that the case in hand was where severe violations were found and PP was in transient and unapologetic behavior, it imposes damages of 100 Crores or 10% of project cost whichever is more besides, Rs. 5 Crores as damages in addition to above for contravening mandatory provisions for environmental laws. In this regard, the observations of the Court are as under:-

> "***64.*** *Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free.* ***This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law****. However,* ***in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponen****t. He has maneuvered and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone upto 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats*

the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area etc.. Therefore, in the present case, we are clearly of the view that the project proponent should be and is ***directed to pay damages of Rs.100 crores or 10% of the project cost whichever is more****. We also make it clear that* ***while calculating the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. The cost of construction shall be calculated on the basis of the schedule of rates approved by the Public Works Department (PWD) of the State of Maharashtra for the year 2014. In case the PWD of Maharashtra has not approved any such rates then the Central Public Works Department rates for similar construction shall be applicable. We have fixed the base year as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014.*** *In addition thereto, if the project proponent has taken advantage of Transfer of Development Rights (for short "TDR") with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent* ***shall also pay a sum of Rs. 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws.*****"**

364. ***Goel Ganga Developers India Private Limited vs. Union of India & Others (2019)9SCC288*** is follow up of the judgment reported in ***(2018)18SCC257***. The original matter was decided in *Civil Appeal No.10854 of 2016*. Thereafter, I.A. No. 64665 of 2019 was filed and came to be decided by judgment dated 11.09.2019 reported in 2019. Proponent filed application stating that three Judges bench judgment in Noida Memorial Complex, in ***Okhla Bird Sanctuary, In Re: (2011) 1 SCC 744*** has not been considered in recording interpretation of 'built up area' in terms of Item 8 of EIA 2006. The contention advanced on behalf of Proponent was rejected by observing that the main dispute in **Noida Park (*supra*)** was whether project, a building and construction project or a township and area development project. Court answered holding that it is a township and area development project. While answering this Court felt some ambiguity in Item 8-A and 8-B of Schedule to EIA 2006, but there was no issue raised with regard to the fact about covered area being built up. Court observed that all parties were *ad-idem* in Noida Park case that

covered construction was built up area and Court also held so. In **Goel Ganga Developers judgment**, Court has held that all covered construction shall be deemed built up area and Municipal Laws regarding Floor Space Index (FSI) or Floor Area Ratio (FAR) have no relevance. Therefore, **Noida Park judgment** has no application as the issue did not arise herein.

365. In ***Mantri Techzone Private Limited vs. Forward Foundation & Others, (2019)18SCC494***, Supreme Court affirmed imposition of environmental compensation by Tribunal, considering cost of the project, where there was violation regarding EC/consent and proponent proceeded with construction activities violating provisions relating to EC/Consent. Tribunal determined environmental compensation at 5% and 3% of project cost of two builders. 5% of project cost was imposed where PP had raised illegal constructions while 3% was imposed where actual construction activity was not undertaken by PP and only preparatory steps were taken including excavation and deposition of huge earth by creating a hillock. Besides, Tribunal also directed for demolition and removal of debris from natural drain at the cost of PP.

366. Expansion of project without complying with regular procedure was disapproved by NGT vide judgment dated 11.02.2019 in ***Appeal No. 122/2018, Anil Tharthare vs. State of Maharashtra*** and this was subject matter of consideration before Supreme Court in ***Keystone Realators Pvt. Ltd vs. Anil V. Tharthare & Others (2020)2SCC66***. The project prponent i.e. Keystone Realators Pvt. Ltd. proposed residential project i.e. "Oriana Residential Project" at CTS No. 646, 646(Pt), Gandhinagar, Bandra (East), Mumbai. Commencement certificate was issued on 08.06.2010. The total construction area was 8720.32 sqm. The ambit of project was expanded and constructed area was increased to

32395.17 sqm. Under EIA 2006, EC was necessary if total construction area exceeded 20000 sqm. Proponent thus, applied for prior EC under EIA 2006. EC was granted on 02.05.2013 by SEIAA. EC was conditional since it required proponent to obtain a consent to establish from Maharashtra PCB under Water Act 1974 and Air Act 1981. Vide letter dated 24.09.2013, proponent informed Environment Department of Government of Maharashtra that construction area is being further increased by 8085.71 sqm as a result whereof total construction area of the project would stand enhanced to 40480.88 sqm. Proponent sought an amendment to EC dated 02.05.2013 by SEIAA to reflect increase in total construction area. On 13.03.2014, SEIAA allowed amendment to EC dated 02.05.2013 on the ground that there was only a "marginal increase in built up and construction area". This amended EC dated 13.03.2014 was challenged at Pune Bench of NGT. Proponent filed two applications before NGT Pune Bench challenging locus of the first respondent (applicant before Tribunal) and also the appeal on the ground of limitation. By order dated 04.05.2016, both applications were rejected whereby maintainability of proceedings on the ground of locus and limitation was challenged. Proponent filed Writ Petition before Bombay High Court, challenging order of Pune Bench of NGT which was allowed vide judgment dated 23.08.2016 holding that appeal was not maintainable at the behest of Anil Taharthare and also that the appeal was barred by limitation. By order dated 31.07.2018, passed on administrative side, dispute was transferred from Pune Bench to Principal Bench where it was heard and decided by order dated 11.02.2019. Supreme Court examined in detail the provisions of EIA 2006 and thereafter, formulated following issues

> *"Whether amended EC dated 13.03.2014 granted by SEIAA without following the procedure stipulated in para 7(ii) of EIA 2006 as valid."*

367. Interpreting paragraphs 2 and 7 of EIA 2006, Supreme Court in para 13, 14, 15 and 19 said as under:

> *"**13**. The central controversy between the parties to the present dispute is the manner in which Paras 2 and 7 of the EIA Notification should be interpreted. Clause (ii) of Para 2 of the EIA Notification stipulates that a project proponent shall require an EC prior to the start of construction in the case of an "expansion". Clause (ii) uses the phrase "expansion…beyond the limits specified for the sector concerned". The first respondent sought to lay emphasis on this construction to argue that any expansion beyond the lower limit stipulated in the Schedule would attract the requirement of a prior EC under Para 2. However, the above language in clause (ii) is further qualified by the phrase "that is, projects or activities which cross the threshold limits given in the Schedule after expansion or modernisation." A plain reading of the second half of clause (ii) would indicate that it applies to cases where a project was initially below the threshold limits stipulated in the Schedule but after the proposed expansion, would breach the threshold limits. Clause (ii) of Para 2 of the EIA Notification therefore would not appear to cover a case where a project had already crossed the lower threshold limit set out in the Schedule and the expansion does not cross the upper limit stipulated by the Schedule.*
>
> ***14.** However, clause (ii) of paragraph 2 must be read with Para 7(ii) of the EIA Notification. Para 7(ii) lays down the exact procedure to be followed by a project proponent in the case of an expansion. **Two crucial points must be noted with respect to Para 7(ii). First, it uses the phrase, "expansion with increase in production capacity beyond the capacity for which prior environment clearance has been granted". Second, the qualifying language referring to breaching the threshold limits "after expansion" is absent**. An "expansion" can occur even after the grant of an EC when the project first crossed the lower limit stipulated in the threshold and it is not necessary for the project to breach the upper limit after the expansion. Therefore, a close reading of Para 7(ii) would support the interpretation put forth by the first respondent – that even after obtaining an EC if the project is expanded beyond the limits for which the prior EC was obtained, a fresh application would need to be made even if the expansion is within the upper limit prescribed in the Schedule.*
>
> ***15**. The dangers effectively articulated by the learned counsel for the first respondent are real. If clause (ii) of Para 2 does not cover a case where the expansion is within the limits stipulated by the Schedule, a project proponent may incrementally keep increasing the size of the project area over time resulting in a significant increase in the project size without an assessment of the environmental impact resulting from the expansion. Such an outcome would defeat the entire scheme of the EIA Notification which is to ensure that any new or additional environmental impact is assessed and certified by the relevant regulatory authorities. In the present case, the lower limit of Entry 8(a) of the Schedule is a built-up area of 20,000 sq m and the upper limit is 1,50,000 sq m. It cannot be doubted that the environmental impact of a construction of 1,50,000 sq m is drastically more than construction of 20,000 sq m. If the appellant's argument is accepted*

in totality, a project proponent could potentially secure an EC for constructing 20,000 sq m and by "amendment" steadily increase the area of construction up to 1,50,000 sq m without submitting an updated Form 1 or any substantive review by the SEAC.

19. *In a case where the text of the provisions requires interpretation, this Court must adopt an interpretation which is in consonance with the object and purpose of the legislation or delegated legislation as a whole. The EIA Notification was adopted with the intention of restricting new projects and the expansion of new projects until their environmental impact could be evaluated and understood. It cannot be disputed that as the size of the project increases, so does the magnitude of the project's environmental impact. This Court cannot adopt an interpretation of the EIA Notification which would permit, incrementally or otherwise, project proponents to increase the construction area of a project without any oversight from the Expert Appraisal Committee or the SEAC, as applicable. It is true that there may exist certain situations where the expansion sought by a project proponent is truly marginal or the environmental impact of such expansion is non-existent. However, it is not for this Court to lay down a bright-line test as to what constitutes a "marginal" increase and what constitutes a material increase warranting a fresh Form 1 and scrutiny by the Expert Appraisal Committee. If the government in its wisdom were to prescribe that a one-time "marginal" increase (e.g. 5% or 10%) in project size, within the threshold limit stipulated in the Schedule, could be subject to a lower standard of scrutiny without diluting the urgent need for environmental protection, conceivably this Court may give effect to such a provision. This would be subject to any challenge on the ground of their being a violation of the precautionary principle. However, as the EIA Notification currently stands, an expansion within the limits prescribed by the Schedules would be subject to the procedure set out in Para 7(ii)."*

368. Having said as above, and holding that grant of amendment in EC was illegal, Court found that by the time order was passed, the construction had already completed. In that situation, what should be the proper order, was considered by Supreme Court in para 21 and it said as under:

*"**21.** We further note that as on the date of the impugned order construction at the project site had already been completed. A core tenet underlying the entire scheme of the EIA Notification is that construction should not be executed until ample scientific evidence has been compiled so as to understand the true environmental impact of a project. By completing the construction of the project, the appellant denied the third and fourth respondents the ability to evaluate the environmental impact and suggest methods to mitigate any environmental damage.* ***At this stage, only remedial measures may be taken.*** *The NGT has already directed the appellant to deposit rupees one crore and has set up an expert committee to evaluate the impact of the appellant's project and suggest remedial measures. In view of these circumstances, we*

uphold the directions of NGT and direct that the committee continue its evaluation of the appellant's project so as to bring its environmental impact as close as possible to that contemplated in the EC dated 2-5-2013 and also suggest the compensatory exaction to be imposed on the appellant."

369. In view of this, appeal field by proponent was ultimately dismissed.

370. ***Wonder Projects Development Private Limited & another vs. UoI & Others (2020)9SCC454*** was a matter arising from NGT order dated 03.02.2020 passed in ***H.P. Ranjana vs. UoI, Appeal No. 54/2018***. Proponent had undertaken project of construction of new high rise residential building in survey Nos. 61/2, 62 and 63/2 of Kasavanahalli Village, Varthur Hobli, Bengaluru East Taluk, District Bengaluru. Construction was proposed on a plot area of 50382.91 sqm with total built up area of 128193.9 sq.m. EC was granted by SEIAA Karnataka by order dated 10.01.2018. It was challenged by HP Ranajan on the ground that construction being undertaken in the buffer zone of Kaikondarahalli Lake, apart from being on the primary and secondary Rajkaluve and, therefore, the area being eco-fragile, EC could not have been granted. Bruhat Bengaluru Mahangara Palike ('**BBMP'**) supported the claim of HP Ranjana and said that the project was illegal. NGT constituted a joint Committee who submitted report dated 23.09.2019. Considering the said report and pleadings and Supreme Court judgment in ***Mantri Techzone Pvt. Ltd. vs. Forward Foundation & Ors. (2019)18SCC494,*** Tribunal held that EC could not have been granted so as to permit construction in buffer zone of the lake and drain by imposing conditions. This order was challenged on the ground that order was passed by NGT without giving opportunity to proponent. Supreme Court found that another matter was pending in which report was called for and report was filed in another matter which was considered, hence Tribunal was not justified in deciding matter on the basis of the said report and remanded the matter.

371. An order dated 21.04.2015 passed by Central Zonal Bench, Bhopal of NGT in ***OA 1/2013(CZ)*** issuing certain directions to State Government with regard to supply of fuel to vehicles not complying with the condition of display of pollution under control certificate etc. was challenged in ***State of Madhya Pradesh vs. Centre for Environment Protection Research and Development & Others (2020)9SCC781***. Following questions were formulated by Supreme Court:

> *"(i) Whether the learned Tribunal could have directed the appellant State Government to issue orders and/or instructions and/or directions to petrol pumps or retail outlets or dealers not to supply fuel to vehicles not having a valid PUC.*
> *(ii) Whether motor vehicles not complying with the requirement of displaying a valid PUC certificate can be debarred from being provided with fuel by any dealer/or petrol pump or outlet.*
> *(iii) Whether a tribunal constituted under the National Green Tribunal Act, 2010 could have passed orders directing the State Government to make a monetary deposit to secure compliance of an order, and that too in an application for review of an order, which did not contain any such direction."*

372. Concern with regard to environment was reiterated by Supreme Court observing that over the last several decades, there has been a growing concern worldwide, over pollution and the consequential decline in air quality; increase in pollution has led to loss of vegetative cover and ecological/biological diversity, excessive concentration of harmful chemicals in the ambient atmosphere, growing risks of environmental accidents and has posed a threat to life support systems. Referring to the provisions of Air Act 1981 and EP Act 1986, Motor Vehicles Act 1988 and earlier judgments in ***MC Mehta (Kanpur Tannery etc.) (1987)4SCC463,*** Supreme Court examined in detail the provision of NGT Act 2010. Then Court said,

> *"**43.** For exercise of power under Section 14 of the NGT Act, a substantial question of law should be involved including any legal right to environment and such question should arise out of implementation of the specified enactments.*
>
> ***44.** Violation of any specific statutory environmental obligation gives rise to a substantial question of law and not just statutory obligations under the enactments specified in Schedule I. However, the question*

must arise out of implementation of one or more of the enactments specified in Schedule I.

45. *The Motor Vehicles Act, 1988 may not be specified in Schedule I to the NGT Act. However, the statutory 1989 Rules framed under the said Act cast statutory environmental obligations on manufacturers, owners and others in control of motor vehicles, as also the State and other statutory authorities under the said Act. The enforcement of the statutory environmental obligations under the 1989 Rules, which is a substantial question relating to environment, arises out of implementation of the 1981 Act and the Environment (Protection) Act and, in particular, Section 20 of the 1981 Act which casts on the State Government the mandatory duty to give instructions to the authorities in charge of Registration of Motor Vehicles with a view to ensure compliance of the standards of emission of our pollutants and Section 7 of the Environmental (Protection) Act, which prohibits any person from carrying on any operation, which would include operation of a motor vehicle, from discharging or emitting any environmental pollutants in excess of prescribed standards or permitting such discharge or emission.*

46. *On a combined reading of Sections 3, 7, 10, 11 and 23 of the Environment (Protection) Act, with particular reference to Sections 3(1), 3(2)(i)(a) and (b), 3(2)(iii), (iv) and 3(2)(x) with Section 20 of the 1981 Act and Section 14, read with 2(1)(c), and 2(1)(m) of the NGT Act and Rules 115 and 116 of the 1989 Rules, the learned Tribunal had the power, authority and/or jurisdiction to direct the appellant State Government to strictly implement the requirement of vehicles to possess and/or display a valid PUC Certificate, and also to direct the appellant State Government and/or the other authorities concerned to take penal action in accordance with law, that is, Rules 115/116 of the 1989 Rules.*

47. *On a purposive reading of Section 20 with Section 17(1)(g) of the 1981 Act, the standards of emission prescribed by Rules 115 and 116 of the 1989 Rules attract Section 20 of the 1981 Act.*

48. *Under the 1989 Rules, it is mandatory for every motor vehicle to carry a valid pollution under control certificate issued by authorized agency after the expiry of period of one year from the date on which the Motor Vehicle was first registered.*
49. *On reading of Rule 115 of the 1989 Rules with Rule 116 the failure to produce a PUC certificate entails the penalty of suspension of the Certificate of Registration.*

50. *Non-production of pollution PUC certificate in contravention of Rule 115(7) & (2), as observed above, entails the penalty of suspension of registration."*

373. Having said so, Court said that penalties are prescribed in the statutes and once a penalty is prescribed, no other penalty is contemplated. Even though strong measures are needed for protection of

environment but blanket orders dehorse the statutory provisions are not justified. The observations made in para 54 to 64 are:

> *"**54.** It is well settled that when a statute or a statutory rules prescribed a penalty for any act or omission, no other penalty not contemplated in the statute or a statutory rules can be imposed. It is well settled that when statute requires a thing to be done in a particular manner, it is to be done only in that manner.*
>
> ***55.** There can be no doubt that strong measures must be taken to protect the environment and improve the air quality whenever there is contravention of statutory rules causing environmental pollution. Stringent action has to be taken, but in accordance with law.*
>
> ***56.** Stoppage of supply of fuel to vehicles not complying with the requirement to have and/or display a valid PUC certificate is not contemplated either in the 1989 Rules or in the NGT Act. Motor vehicles not complying with the requirement of possessing and/or displaying a valid PUC Certificate cannot be debarred from being supplied fuel.*
>
> ***57.** In passing blanket direction, directing the appellant State Government to ensure that no dealer and/or outlet and/or petrol pump should supply fuel to vehicles without PUC certificate, de hors the Central Motor Vehicles Rules, the learned Tribunal overlooked the fact that no vehicle can either be repaired to comply with pollution norms, nor tested for compliance with the political (sic pollution) norms upon repair, without fuel.*
>
> ***58.** This Court is, therefore, constrained to hold that the learned Tribunal had no power and/or authority and/or jurisdiction to pass orders directing the appellant State Government to issue orders, instructions or directions on dealers, outlets and petrol pumps not to supply fuel to vehicles without PUC certificate. The first two questions are answered accordingly.*
>
> ***59.** The orders passed by the learned Tribunal are binding on and enforceable against the appellant State. As observed above, the learned Tribunal had the power, authority and jurisdiction to direct the appellant State to strictly implement compliance with Rules 115 and 116. An order of the Tribunal under the NGT Act is enforceable in the manner provided in Section 25 of the NGT Act.*
>
> ***60.** There is no provision in the NGT Act for deposit of security to secure compliance of an order of the Tribunal. The penalty for failure to comply with an order of the Tribunal entails the penalty prescribed in Sections 26 and 28 of the NGT Act.*
>
> ***61.** Section 39 of the 1981 Act and Section 15 the Environment (Protection) Act pertain to penalty and/or punishment for contravention of the provisions of the 1981 Act, and/or the Environment (Protection) Act and the rules, orders and directions issued thereunder and Section 41 the 1981 Act and Section 17 the Environment (Protection) Act governs offences by Government Departments. None of the provisions provide for monetary deposit to secure compliance of an order.*

62. *The learned Tribunal had no power and/or authority and/or jurisdiction to direct the appellant State to deposit Rs 25 crores to secure compliance with its order. In any case such an order should not have been passed in review when the initial order did not contain any direction for security deposit. The third question is accordingly answered.*

63. *The appeals are thus allowed. The impugned judgments and orders of the learned Tribunal are set aside to the extent that the learned Tribunal has directed the appellant State to make a deposit of Rs 25 crores by way of security and also to the extent that the learned Tribunal has directed the appellant State to issue orders and/or instructions and/or directions on all dealers and/or outlets and/or petrol pumps not to supply fuel to vehicles which do not comply with the requirement of producing and/or displaying valid PUC certificates.*

64. *The appellant State shall, however, strictly implement compliance of Rules 115 and 116 of the Rules and penalize all those who contravene the said Rules in accordance with the provisions of the 1989 Rules. The Registration Certificate of vehicles which do not possess a valid PUC certificate shall be forthwith suspended and/or cancelled, and penal measures initiated against the owner and/or the person(s) in possession and/or control of the offending vehicle, in accordance with law."*

374. Judicial precedents, therefore, referred and discussed above, very clearly states that where environmental laws and norms are violated causing degradation to environment, the principle of polluters pay has to be applied and violator must be held responsible for payment of compensation considering the loss/damage caused to environment, cost likely to be incurred for remediation, deterrent factors etc. Further remedial action should also be directed considering the precautionary principle into consideration and sustainable development. In the case in hand, the broad violations, noted above on the part of APIL-PP, are:

(i) Violation of Statutory laws by not obtaining EC, consent to Establish, Consent to Operate and NOC for extraction of ground water;

(ii) Discharge of untreated sewage or partly treated sewage directly in storm water drain, running of DG sets without observing regulations necessary for protection of air pollution,

encroachment on the land meant for green belt etc. and non-maintenance of the said area as per norms;

(iii) Non-compliance of Construction and Demolition Waste Management Rules, 2016.

(iv) Non-compliance of Solid Waste Management Rules, 2016;

375. CGWA in its reply dated 09.07.2019 has referred to the application dated 13.03.2019 submitted by APIL-PP seeking permission/NOC to extract ground water from 21 tubewells out of 39 installed in Phase I Sushant Lok stating therein that total ground water requirement is 1100 m^3/day. However, annual requirement has been shown as 1,01,500 m^3/year which is clearly incorrect in as much as water extraction is obviously for the entire year and therefore, for 365 days water requirement would come to 401500 m^3/day (1100 m^3/day × 365 days). CGWA on the basis of the information submitted by APIL-PP has observed that there is excess withdrawal of 1,68,500 m^3/year and has recommended computation of environmental compensation at the rate of Rs. 24 m^3/year. It has proposed computation only for smaller period of 15.04.2015 to 16.11.2015 and computed environmental compensation to Rs. 40,44,000.

376. In the status report dated 05.04.2019 submitted by CPCB, environmental compensation for discharge of untreated sewage has been computed only for 178 days i.e. till 28.02.2019 at Rs. 12.18 Crores which comes to Rs. 6,84,269.66 per day. It is alleged that the above computation is as per environmental compensation policy made by CPCB pursuant to Tribunal's order dated 31.08.2018 in ***OA 593/2017***.

377. As per Action taken report dated 21.06.2019 submitted by CPCB, it has moderated the amount of environmental compensation to Rs. 14.6962 Crores for discharge of untreated sewage, computed for 281 days i.e. till

17.06.2019. It is also said that computation is as per environmental compensation policy framed pursuant to Tribunal's order dated 31.08.2018 in ***OA 593/2017***. Here the amount comes to Rs. 5,22,996.44 per day.

378. Action taken report dated 07.09.2021 submitted by Chief Secretary shows that amount of compensation was revised by CGWA to Rs. 16.729 Crores and recovery proceedings were initiated which is subject matter of Appeal before Supreme Court in ***CA No. 3111/ 2020 M/s Ansal Properties and Infrastructure Ltd. vs. Praveen Kakkar & Ors.,*** wherein interim order has been passed directing maintenance of status quo with regard to possession of property by the parties.

379. The above report of Chief Secretary also states that Gurugram Metropolitan Development Authority has informed vide letter dated 15.10.2019 that they have stopped untreated sewage flowing from premises of APIL-PP and other areas in storm water drain and connection has been disconnected but it is not stated as to how the said sewage, being generated in the premises regularly is being managed and treated. In absence of any other material, we are justified in drawing inference that authorities have allowed the proponent to discharge sewage by transporting through tankers on open land as alleged by applicants in the OA.

380. Normally, when a project has been undertaken illegally it results in an illegal construction and development, justifying a direction for restoration of the premises to its original position and also to take steps for remediation and restoration of damage caused to environment. However, since construction activities not only have undergone substantially but even third party rights have been created and allotment

of plots/apartments have been made to third parties who are residing thereat, therefore, we follow the doctrine of balancing equity in law, maintaining all requisite steps necessary for prevention of damage to environment, remediation to the damage already caused to environment and steps so that such violation may not recur. In this background, we find it appropriate to apply principle of polluters pay and proceed to assess environmental compensation against PP. The question naturally would arise about factors and fundamental which have to be applied for computation of environmental compensation. Here authorities have referred to the guidelines laid down by CPCB. We find now necessary to examine the methodology for assessment of environmental compensation, hereat:

Environmental Compensation-Assessment/Methodology:

381. The question of **assessment of environmental compensation** includes the principles/factors/aspects, necessary to be considered for computing/assessing/determining environmental compensation. Besides judicial precedents, we find little assistance from Statute. Section 15 of NGT Act, 2010 talks of relief of compensation and restitution. It confers wide powers on this Tribunal to grant relief by awarding compensation for the loss suffered by individual(s) and/or for damage caused to environment. Section 15 reads as under:

> *"**15. Relief, compensation and restitution**-(1) The Tribunal may, by an order, provide,-*
> *a) **relief and compensation** to the victims of pollution and **other environmental damage arising under the enactments** specified in the Schedule I (including accident occurring while handling any hazardous substance);*
> ***b)** for **restitution of property damaged;***
> *c) **for restitution of the environment** for such area or areas, as the Tribunal may think fit.*
>
> *(2)The relief and Compensation and restitution of property and environment referred to in clauses (a), (6) and (c) of sub-section of (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).*

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the' applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, ***having regard to the damage*** *to public* ***health, property and environment****, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.*

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may, be, compensation or relief received from, any other Court or authority.

382. Sub-section 1 enables Tribunal to make an order providing relief and compensation to (i) the victims of pollution, (ii) other environmental damage arising under the enactments specified in the Schedule I. Tribunal is also conferred power to pass an order providing relief for restitution of property damaged. Section 15(1)(c) enables Tribunal to pass an order providing relief for restitution of the environment for such area or areas, as Tribunal may think fit. Section 15 sub-section 4 says that Tribunal may divide compensation or relief payable under separate heads specified in Schedules II, having regard to the damage to public health, property and environment so as to provide compensation or relief, (i) to the claimants and (ii) for restitution of the damaged property or environment, as it may think fit.

383. Schedule II of NGT Act, 2010 gives a list of heads under which compensation or relief for damage may be granted. It has 14 heads in total out of which item (a) to (f), (l), (m) and (n) relates to loss, damage etc. sustained to the person or individual or their property. Item (i) to (k) relates to harm, damage, destruction etc. of environment or environmental system

including soil, air, water, land, and eco-system. Items (i) to (k) of Schedule II of NGT Act, 2010 are as under:

> *"(i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;*
>
> *(j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;*
>
> *(k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;"*

384. Items (g) and (h) relate to expense and cost incurred by State in providing relief to affected person; and loss caused in connection with activity causing damage. The damage to environment covers a very wide variety of nature as is evident from definition of environment under section 2 (c) which is inclusive and says; 'environment includes water, air, and land and the interrelationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property'.

385. Section 20 of NGT Act, 2010 requires Tribunal to apply principles of sustainable development, the precautionary principle and the polluter pays principle.

386. Thus, broad principles of environmental laws are given but the methodology for assessing/determining compensation is not provided in the statute. Even Rules framed under NGT Act, 2010 are silent on this aspect. Issue of determination of EC is significant in the sense that it should be proportionate to or bears a reasonable nexus with the environmental damage and its remediation/restoration. Similarly in case of compensation to be determined for a victim, it needs to co-relate to injury caused or damage suffered by such person as also cost incurred for treatment/remediation.

387. Taking into consideration multifarious situations relating to violation of environmental laws *vis-a-vis* different proponents, nature of cases involving violation of environmental laws can be categorized as under:

a. Where Project/Activities are carried out without obtaining requisite statutory permissions/consents/clearances/NOC etc., affecting environment and ecology. For example, EC under EIA 2006; Consent under Water Act, 1974 and Air Act, 1981; Authorisation under Solid Waste Management Rules, 2016 and other Rules; and NOC for extraction and use of ground water, wherever applicable, and similar requirements under other statutes.
b. Where proponents have violated conditions imposed under statutory Permissions, Consents, Clearances, NOC etc. affecting environment and ecology.
c. Where Proponents have carried out their activities causing damage to environment and ecology by not following standards/norms regarding cleanliness/pollution of air, water etc.

388. The above categories are further sub-divided, i.e., where the polluters/violators are corporate bodies/organisations/associations and group of the people, in contradistinction, to individuals; and another category, the individuals themselves responsible for such pollution.

389. Further category among above classification is, where, besides pollution of environment, proponents/violators action also affect the community at large regarding its source of livelihood, health etc.

390. The next relevant aspect is, whether damage to environment is irreversible, permanent or is capable of wholly or partially restoration/remediation.

391. Determination/computation/assessment of environmental compensation must, not only conform the requirement of restoration/remediation but should also take care of damage caused to the environment, to the community, if any, and should also be preventive, deterrent and to some extent, must have an element of "being punitive". The idea is not only for restoration/remediation or to mitigate damage/loss to environment, but also to discourage people/proponents from indulging in the activities or carrying out their affairs in such a manner so as to cause damage/loss to environment.

392. To impose appropriate 'environmental compensation' for causing harm to environment, besides other relevant factors as pointed out, one has to understand the kind and nature of 'Harmness cost'. This includes risk assessment. The concept of risk assessment will include human-health risk assessment and ecological risk assessment. U.S. Environmental Protection Agency has provided a guideline to understand harm caused to environment as well as people. For the purpose of human-health risk assessment, it comprised of three broad steps, namely, planning and problem formulation; effects and exposure assessment and risk categorization. The first part involves participation of stakeholders and others to get input; in the second aspect health effect of hazardous substances as well as likelihood and level of exposure to the pollutant are examined and the third step involves integration of effects and exposure assessment to determine risk.

393. Similarly, ecological risk assessment is an approach to determine risk of environmental harm by human activities. Here also we can find answer following three major steps, i.e., problem codification; analysis of exposure and risk characterization. First part encompasses identification of risk and what needs to be protected. Second step insists upon crystallization of factors that are exposed, degree to exposure and whether exposure is likely or not to cause adverse ecological effects. Third step is comprised of two components, i.e., risk assessment and risk description.

394. In totality, problem is multi-fold and multi-angular. Solution is not straight but involves various shades and nuances and vary from case to case. Even Internationally, there is no thumb-rule to make assessment of damage and loss caused to environment due to activities carried out individually or collectively by the people, and for remediation/restoration. Different considerations are applicable and have been applied.

395. In India, where commercial activities were carried out without obtaining statutory permissions/consents/clearance/NOC, Courts have determined, in some matters, compensation by fixing certain percentage of cost of project. In some cases, volume of business transactions, turnover, magnitude of establishment of proponent have also been considered as guiding factors to determine environmental compensation.

396. Nature is extremely precious. It is difficult to price elements of nature like light, oxygen (air), water in different forms like rain, snow, vapour etc. When nature is exploited beyond its carrying capacity, results are harmful and dangerous. People do not understand the value of what nature has given free. Recently in Covid-19 wave II, scarcity of oxygen proved its worth. In dreadful second phase of the above pandemic, any amount offered, in some cases, could not save life for want of oxygen.

Further, damage to environment, sometimes do not reflect in individuals immediately and may take time but injury is there. In such cases, process of determination of compensation may be different.

397. In an article, '*the cost of pollution-Environmental Economics'* by Linas Cekanavicius, 2011, it has been suggested, where commercial activities have been carried out without consent etc., and pollution standards have been violated, Total Pollution Cost (hereinafter referred to as **'TPC'**) can be applied. It combines the cost of abatement of environment pollution and cost of pollution induced environmental damage. The formula comes to **TPC(z)=AC(z)+ED(z)**, where **z** denotes the pollution level. Further, clean-up cost/remediation cost of pollution estimated to be incurred by authorities can also be used to determine environmental compensation.

398. When there is collective violation, sometimes the issue arose about apportionment of cost. Where more than one violator is indulged, apportionment may not be equal since user's respective capacity to produce waste, contribution of different categories to overall costs etc. would be relevant. The element of economic benefit to company resulting from violation is also an important aspect to be considered, otherwise observations of Supreme Court that the amount of environmental compensation must be deterrent, will become obliterated. Article 14 of the Constitution says that unequal cannot be treated equally, and it has also to be taken care. Determination/assessment/computation of environmental compensation cannot be arbitrary. It must be founded on some objective and intelligible considerations and criteria. Simultaneously, Supreme Court also said that its calculations must be based on a principle which is simple and can be applied easily. In other words, it can be said that wherever Court finds it appropriate, expert's assessment can be sought but sometimes experts also go by their own

convictions and belief and fail to take into account judicial precedents which have advanced cause of environment by applying the principles of 'sustainable development', 'precautionary approach' and 'polluter pays', etc.

399. Clean-up cost or TPC, may be a relevant factor to evaluate damage, but in the diverse conditions as available in this Country, no single factor or formula may serve the purpose. Determination should be a quantitative estimation; the amount must be deterrent to polluter/violator and though there is some element of subjectivity but broadly assessment/computation must be founded on objective considerations. Appropriate compensation must be determined to cover not only the aspect of violation of law on the part of polluter/violator but also damage to the environment, its remediation/restoration, loss to the community at large and other relevant factors like deterrence, element of penalty etc.

400. Committee in its reports has made certain recommendations determining environmental compensation under certain heads. The computation by Committee is based on certain formulas it has suggested. We have to examine mechanism suggested by Committee and also the value provided to factors like constant quotient and value of "R" i.e., Rupee, to find out whether the same satisfy all aspects necessary to determine appropriate environmental compensation. Applying principle of absolute liability, Polluters Pay alongwith Precautionary Principle and sustainable development, it has to be seen whether PPs are liable to pay environment compensation as suggested by Committee and also to undergo other statutory sanctions provided in the statutes including criminal prosecution, or computation of compensation requires some other method.

401. **CPCB Guidelines**: CPCB has suggested in a report methodology for assessment of environmental compensation which may be levied or

imposed upon industrial establishments who are guilty of violation of environmental laws and have caused damage/degradation/loss to environment. It does not encompass individuals, statutory institutions and Government etc. Report is titled as "*Report of the CPCB In-house Committee on Methodology for Assessing Environmental compensation and Action Plan to Utilize the Fund*" which was finalized in the meeting held on 27.03.2019. It shortlisted the incidents requiring an occasion for determining environmental compensation. Six such incidents, shortlisted, are:

*"**Cases considered for levying Environmental Compensation (EC):***

a) Discharges in violation of consent conditions, mainly prescribed standards/consent limits.
b) Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.
c) Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.
d) Accidental discharges lasting for short durations resulting into damage to the environment.
e) Intentional discharges to the environment -- land, water and air resulting into acute injury or damage to the environment.
f) Injection of treated/partially treated/ untreated effluents to ground water."

402. For the instances at item (a), (b) and (c), report says that 'Pollution Index' (hereinafter referred to as '**PI**') would be used as a basis to levy environmental compensation. CPCB had already published Guidelines categorizing industries into Red, Orange, Green and White, based on the concept of **PI**. The **PI** is arrived after considering quantity and quality of emissions/effluents generated, types of hazardous waste generated and consumption of resources. **PI** of an industrial sector is a numerical number in the range of 0 to 100 and is represented as follows:

PI=f (Water Pollution Score, Air Pollution Score and HW Generation Score).

403. Since range of PI is 0 to 100, increase in value of PI denotes increasing degree of pollution hazard from industrial sector. Accordingly, report says, for determining environmental compensation in respect of cases covered by item (a), (b) and (c), it will apply following formula:

> *"EC = PI × N × R × S × LF*
> *Where,*
> *EC is Environmental Compensation in Rs.*
> *PI = **Pollution Index of industrial sector***
> *N = Number of days of violation took place*
> *R = A factor in Rupees (₹) for EC*
> *S = Factor for scale of operation*
> *LF = Location factor"*

404. The formula incorporates anticipated severity of environmental pollution in terms of PI, duration of violation in terms of number of days, scale of operation in terms of micro and small/medium/large industry and location in terms of proximity to the large habitations. A note is also given under the aforesaid formula and it reads as under:

> *"Note:*
>
> a. *The **industrial sectors** have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental Compensation for Red, Orange and Green categories of industries, respectively.*
> b. *N, number of days for which violation took place is the period between the day of violation observed/due date of direction's compliance and the day of compliance verified by CPCB/SPCB/PCC.*
> c. *R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of violation.*
> d. *S could be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units.*
> e. *LF, could be based on population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or up to 10 km distance from the municipal boundary of the city/town, following factors (LF) may be used:*

Table No. 1.1: Location Factor Values

S. No	***Population* (million)***	***Location Factor# (LF)***
1	*1 to <5*	*1.25*

2	*5 to <10*	*1.5*
3	*10 and above*	*2.0*

**Population of the city/town as per the latest Census of India*

#LF will be 1.0 in case unit is located >10km from municipal boundary

LF is presumed as 1 for city/town having population less than one million.

For notified Ecologically Sensitive areas, for beginning, LF may be assumed as 2.0. ***However, for critically Polluted Areas, LF may be explored in future.***

f. *In any case, minimum Environmental Compensation shall be ₹ 5000/day.*
g. *In order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2 times on 1st repetition, 4 times on 2nd repetition and 8 times on further repetitions.*
h. *If the operations of the industry are inevitable and violator continues its operations beyond 3 months then for deterrent compensation, EC may be increased by 2, 4 and 8 times for 2nd, 3rd and 4th quarter, respectively. Even if the operations are inevitable beyond 12 months, violator will not be allowed to operate.*
i. *Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.*

A sample calculation for Environmental Compensation (without deterrent factor) is given at Table No. 1.2. It can be noticed that for all instances, EC for Red, Orange, and Green category of industries varies from 3,750 to 60,000 ₹/day.

Table No. 1.2: A sample calculation for Environmental Compensation

Industrial Category	***Red***	***Orange***	***Green***
Pollution Index (PI)	*60-100*	*41-59*	*21-40*
Average PI	*80*	***50***	***30***
R-Factor	*250*		
S-Factor	*0.5-1.5*		
L-Factor	*1.00-2.00*		
Environmental Compensation (₹/day)	***10,000-60,000***	***6,250-37,500***	***5,000-22,500***

405. We find that **R** which is a factor in Rupees (₹) is taken to be 100 minimum and 500 maximum. It has suggested that R value be taken as average i.e. Rs. 250/-. On what basis this minimum and maximum has

been determined and why average is suggested, beyond any comprehension. We do not find any material in the above report which may throw light for taking value of R as above. Similarly, for determining value of S i.e. Factor for Scale of Operation from 0.5 to 1.5, we find no Guidelines as to on what basis, it has been determined and only on the size of the industry, divided in small, medium and large, the said factor has been prescribed. The note further says that minimum environmental compensation would be Rs. 5000/- per day .From table 1.2, we find that in the highest case i.e., large industry, depending on the level of PI, maximum environmental compensation would be Rs. 60,000/- per day and minimum Rs. 10,000/- per day. The above determination excludes the actual loss to the environment and cost of remediation including damage to *flora-fauna* and human beings. Moreover classification of industries for industrial policy, or for some licensing purpose, banking purpose etc. would be wholly irrelevant for environment. A small industry may be capable of causing much more pollution than medium or even large industry. For example pollution caused by a brick kiln using coal as fuel may be much more than many medium category industries.

406. In respect of items (d), (e) and (f), report says that for determining environmental compensation, one has to consider the matters in two parts, one for providing immediate relief and another long term relief, such as remediation. In such cases, detailed investigations are required from Expert Institutions or Organizations, based on which environmental compensation will be decided. Second part of report is with regard to utilization of environmental compensation fund. For this purpose, report says that CPCB will finalize a scheme for utilization of fund for protection of environment. Certain schemes identified by CPCB for utilization of the said fund are mentioned in para 1.4.1, as under:

"a. Industrial Inspections for compliance verification

a. *Installation of Continuous water quality monitoring stations/Continuous ambient air quality monitoring stations for strengthening of existing monitoring network*
b. *Preparation of Comprehensive Industry Documents on Industrial Sectors/clean technology*
c. *Investigations of environmental damages, preparation of DPRs*
d. *Remediation of contaminated sites*
e. *Infrastructure augmentation of Urban Local Bodies (ULBs)/capacity building of SPCBs/PCCs."*

407. All the above, except item (e), relate to establishment/infrastructure for monitoring/prevention of pollution which in fact is the statutory duty and function of officials of State PCB and CPCB. It appears that CPCB has attempted to utilize environment fund to meet expenses which is the responsibility of Government.

408. Chapter II of report deals with determination of environment compensation for violations of **Graded Response Action Plan** (GRAP) in NCR. Here a fixed amount of environmental compensation has been recommended in table 2.1, as under:

"Table No. 2.1: Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in Delhi-NCR.

Activity	***State Of Air Quality***	***Environmental Compensation***
Industrial Emissions	*Severe +/Emergency*	*Rs 1.0 Crore*
	Severe	*Rs 50 Lakh*
	Very Poor	*Rs 25 Lakh*
	Moderate to Poor	*Rs 10 Lakh*
Vapour Recovery System (VRS) at Outlets of Oil Companies		
i. Not installed	*Target Date*	*Rs 1.0 Crore*
ii. Non-functional	*Very poor to Severe +*	*Rs 50.0 Lakh*
	Moderate to Poor	*Rs 25.0 Lakh*
Construction sites (Offending plot more than 20,000 Sq.m.)	*Severe +/Emergency*	*Rs 1.0 Crore*
	Severe	*Rs 50 Lakh*

	Very Poor	*Rs 25 Lakh*
	Moderate to Poor	*Rs 10 Lakh*
Solid waste/ garbage dumping in Industrial Estates	*Very poor to Severe +*	*Rs 25.0 Lakh*
	Moderate to Poo	*Rs 10.0 Lakh*
Failure to water sprinkling on unpaved roads		
a) Hot-spots	*Very poor to Severe +*	*Rs 25.0 Lakh*
b) Other than Hot-spots	*Very poor to Severe +*	*Rs 10.0 Lakh*

"

409. Chapter III considers determination of environmental compensation where a proponent has discharged pollutants in water bodies or failed to prevent discharge of pollutants in water bodies and also failed to implement Waste Management Rules. Laying down Guidelines for determination of environmental compensation in this category, report has referred to Tribunal's order dated 06.12.2018 in ***OA No. 125/2017 and MA No. 1337/2018, Court on its own motion vs. State of Karnataka***, stating as under:

> *"Since failure of preventing the pollutants being discharged in water bodies (including lakes) and failure to implement solid and other waste management rules are too frequent and widespread, the* ***CPCB must lay down specific guidelines to deal with the same, throughout India, including the scale of compensation*** *to be recovered from different individuals/ authorities, in addition to or as alternative to prosecution.* ***The scale may have slabs, depending on extent of pollution caused, economic viability, etc. Deterrent effect for repeated wrongs may also be provided****."*

410. It is suggested that determination of environmental compensation in this category would have two components, (i) Cost saved/benefits achieved by the concerned individual/authority by not having proper waste/sewage managing system; and (ii) Cost to the environment (environmental externality) due to untreated/partially treated waste/sewage because insufficient capacity of waste/sewage management facility. It further says that Cost saved/benefits achieved would also

include interest on capital cost of waste/sewage management facility, daily operation and maintenance (O & M) cost associated with the facility. The determination of environmental compensation, therefore, is suggested, applying following formula:

> *"Therefore, generalized formula for Environmental Compensation may be described as:*
> ***EC= Capital Cost Factor × Marginal Average Capital Cost for Establishment of Waste or Sewage Management or Treatment Facility × (Waste or Sewage Management or Treatment Capacity Gap) + O&M Cost Factor × Marginal Average O&M Cost × (Waste or Sewage Management or Treatment Capacity Gap) × No. of Days for which facility was not available + Environmental Externality"***

411. Environmental externality has been placed in two categories (i) untreated/partially treated sewage discharge and (ii) improper municipal solid waste management and detailed in table 3.1 and 3.2, as under:

> ***"Table No. 3.1: Environmental externality for untreated/partially treated sewage discharge***

Sewage Treatment Capacity Gap (MLD)	***Marginal Cost of Environmental Externality (Rs. per MLD/day)***	***Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)***
Up to 200	*75*	*Min. 0.05, Max. 0.10*
201-500	*85*	*Min. 0.25, Max. 0.35*
501 and above	*90*	*Min. 0.60, Max. 0.80*

> ***Table No. 3.2: Environmental externality for improper municipal solid waste management***

Municipal Solid Waste Management Capacity Gap (TPD)	***Marginal Cost of Environmental Externality (Rs. per ton per day)***	***Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)***
Up to 200	*15*	*Min. 0.01, Max. 0.05*
201-500	*30*	*Min. 0.10, Max. 0.15*
501-1000	*35*	*Min. 0.25, Max. 0.3*
1001-2000	*40*	*Min. 0.50, Max. 0.60*
Above 2000	*Max. 0.80*	

"

412. CPCB has further recommend a fixed cap for minimum and maximum cost for capital and O & M component for environmental compensation in table 3.3 and 3.4, as under:

"Table No. 3.3: Minimum and Maximum EC to be levied for untreated/partially treated sewage discharge

Class of the City/Town	***Mega-City***	***Million-plus City***	***Class-I City/Town and others***
Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)	*Min. 2000 Max. 20000*	*Min. 1000 Max. 10000*	*Min. 100 Max. 1000*
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	*Min. 2 Max. 20*	*Min. 1 Max. 10*	*Min. 0.5 Max. 5*

Table No. 3.4: Minimum and Maximum EC to be levied for improper municipal solid waste management

Class of the City/Town	***Mega-City***	***Million-plus City***	***Class-I City/Town and others***
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	*Min. 1000 Max. 10000*	*Min. 500 Max. 5000*	*Min. 100 Max. 1000*
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	*Min. 1.0 Max. 10.0*	*Min. 0.5 Max. 5.0*	*Min. 0.1 Max. 1.0*

"

413. Para 3.3 deals with the method of determining environmental compensation for damage/untreated/partially treated sewage by concerned individual/authority. Under this head, CPCB has considered that for population above 1 lakh, requirement of water supply, would be minimum 150 to 200 lpcd and 85% whereof would result in sewage generation. It takes capital cost for 1 MLD STP ranges from 0.63 crores to 3 crores and O & M cost around Rs. 30,000 per month. Consequently, it suggested to assume capital cost for STPs as Rs. 1.75 crores/MLD

(marginal average cost). Expected cost for conveyance system is assumed as Rs. 5.55 crore/MLD and annual O& M as 10% of combined capital coast. Based on the above assumptions, Committee has recommended/suggested environmental compensation, to be levied on urban local bodies, by applying formula and here CPCB has suggested two formulas and any of them may be adopted.

> ***"EC= Capital Cost Factor × [Marginal Average Capital Cost for Treatment Facility × (Total* Generation-Installed Capacity) + Marginal Average *Capital Cost for Conveyance Facility* × (*Total Generation -Operational Capacity)] + O&M Cost Factor x Marginal Average O&M Cost × (Total Generation- Operational Capacity) × No. of Days for which facility was not available + Environmental Externality × No. of Days for which facility was not available***
>
> *Alternatively;*
>
> **EC (Lacs Rs.) = [17.5(Total Sewage Generation – Installed Treatment Capacity) + 55.5(Total Sewage Generation-Operational Capacity)] + 0.2(Sewage Generation-Operational Capacity) × N + Marginal Cost of Environmental Externality × (Total Sewage Generation-Operational Capacity) × N**
>
> *Where; N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority*
>
> *Quantity of Sewage is in MLD"*

414. Para 3.4 deals with the method of environmental compensation to be levied on concerned individual/authority for improper solid waste management, chargeable from urban local body based on the following formula:

> ***"EC = Capital Cost Factor x Marginal Average Cost for Waste Management × (Per day waste generation-Per day waste disposed as per the Rules) + O&M Cost Factor × Marginal Average O&M Cost × (Per day waste generation-Per day waste disposed as per the Rules) × Number of days violation took place + Environmental Externality × N***
> *Where;*
> *Waste Quantity in tons per day (TPD)*
>
> *N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority*

Simplifying;

EC (Lacs Rs.) = 2.4(Waste Generation - Waste Disposed as per the Rules) +0.02 (Waste Generation - Waste Disposed as per the Rules) × N + Marginal Cost of Environmental Externality × (Waste Generation-Waste Disposed as per the Rules) × N"

415. Here also certain assumed figures have been taken by CPCB. Report says that municipal solid waste generation is approximately 1.5 lakh MT/day in India as per MoHUA Report-2016. As per principles of Solid Waste Management Rules, 2016 and PWM Rules, 2016, total cost of municipal solid waste management in city/town includes cost for door to door collection, cost of segregation at source, cost for transportation in segregated manner, cost for processing of municipal solid waste and disposal through facility like composting bio-methanation, recycling, co-processing in cement kilns etc. It is estimated that total cost of processing and treatment of municipal solid waste for a city of population of 1 lakh and generating approximately 50 tons/day of municipal solid waste is Rs. 15.5 Crores which includes capital cost (one time) and Operational and Management cost for one year. Expenditure for subsequent years would be only 3.5 Crores/annum. For arriving per day waste generation, CPCB has referred to a survey conducted by Environment Protection Training Research Institute (EPTRI) which estimated that solid waste generated in small, medium and large cities and towns is about 0.1 kg (Class-III), 0.3-0.4 kg (Class-II) and 0.5 kg (Class-I) per capita per day respectively. The committee opined that 0.6 kg/day, 0.5 kg/day and 0.4 kg/day per capita waste generation may be assumed for mega-cities, million-plus UAs/towns and Class-I UA/Towns respectively for calculation of environmental compensation purposes.

416. Sample calculation of environmental compensation to be levied for improper management of municipal solid waste has been provided in table 3.6 which read as under:

"***Table No. 3.6: Sample calculation for EC to be levied for improper management of Municipal Solid Waste***

City	***Delhi***	***Agra***	***Gurugram***	***Ambala***
Population (2011)	*1,63,49,831*	*17,60,285*	*8,76,969*	*5,00,774*
Class	*Mega-City*	*Million-plus City*	*Class-I Town*	*Class-I Town*
Waste Generation (kg. per person per day)	*0.6*	*0.5*	*0.4*	*0.4*
Waste Generation (TPD)	*9809.90*	*880.14*	*350.79*	*200.31*
Waste Disposal as per Rules (TPD) *(assumed as 25% of waste generation for sample calculation)*	*2452.47*	*220.04*	*87.70*	*50.08*
Waste Management Capacity Gap (TPD)	*7357.42*	*660.11*	*263.09*	*150.23*
Calculated EC (capital cost component) in Lacs. Rs.	*17657.82*	*1584.26*	*631.42*	*360.56*
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	*Min. 1000 Max. 10000*	*Min. 500 Max. 5000*	*Min. 100 Max. 1000*	*Min. 100 Max. 1000*
Final EC (capital cost component) in Lacs. Rs.	*10000.00*	*1584.26*	*631.42*	*360.56*
Calculated EC (O&M Component) in Lacs. Rs./Day	*147.15*	*13.20*	*5.26*	*3.00*
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./Day)	*Min. 1.0 Max. 10.0*	*Min. 0.5 Max. 5.0*	*Min. 0.1 Max. 1.0*	*Min. 0.1 Max. 1.0*
Final EC (O&M Component) in Lacs. Rs./Day	*10.00*	*5.00*	*1.00*	*1.00*
Calculated Environmental Externality (Lacs Rs. Per Day)	*2.58*	*0.18*	*0.03*	*0.02*
Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. per day)	*Max. 0.80*	*Min. 0.25 Max. 0.35*	*Min. 0.01 Max. 0.05*	*Min. 0.01 Max. 0.05*
Final Environmental Externality (Lacs Rs. per day)	*0.80*	*0.25*	*0.03*	*0.02*

"

417. Chapter IV deals with determination/computation of environmental compensation in case of "illegal extraction of ground water" and for this purpose report has referred to Tribunal's order dated 03.01.2019 passed

in ***OA No. 327/2018, Shailesh Singh vs. Central Ground Water Board & Ors.*** The relevant extract of the order quoted in para 4.1 of the report is as under:

> *"CPCB may constitute a mechanism to deal with individual cases of violation of norms, as existed prior to Notification of 12/12/2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law."*

418. Here, broadly, determination of environmental compensation refers to two major aspects i.e. illegal extraction of water as one aspect and illegal use of ground water as second aspect. For determination of environmental compensation for illegal extraction of ground water, formula suggested by Committee is:

> ***"EC_{GW} =Water Consumption per Day x No. of Days x Environmental Compensation Rate for illegal extraction of ground water (ECR_{GW})***
>
> *Where water Consumption is in m^3/day and ECRGW in Rs./m^3*
>
> *Yield of the pump varies based on the capacity/power of pump, water head etc. For reference purpose, yield of the pump may be assumed as given in* ***Annexure-VI.***
>
> *Time duration will be the period from which pump is operated illegally.*
>
> *In case of illegal extraction of ground water, quantity of discharge as per the meter reading or as calculated with assumptions of yield and time may be used for calculation of EC_{GW}."*

419. Depending on the category of the area for the purpose of ground water i.e. safe, semi-critical, critical and over-exploited and also the purpose for which ground water is used, determination of environmental compensation for illegal use of ground water, has been suggested differently for different purpose/use i.e. for drinking and domestic use; for packaged drinking water units/for mining infrastructure and dewatering projects and for industrial units. Hence all these aspects are separately given in paragraph 4.6.1, 4.6.2, 4.6.3 and 4.6.4 as under:

> ***"4.6.1 ECRGW for Drinking and Domestic use:***

Drinking and Domestic use means uses of ground water in households, institutional activity, hospitals, commercial complexes, townships etc.

Sl. No	*Area Category*	*Water Consumption (m^3 / day)*			
		<2	*2 to <5*	*5 to <25*	*25 & above*
		Environmental Compensation Rate (ECR_{GW}) in Rs./m^3			
1	*Safe*	*4*	*6*	*8*	*10*
2	*Semi Critical*	*12*	*14*	*16*	*20*
3.	*Critical*	*22*	*24*	*26*	*30*
4	*Over-Exploited*	*32*	*34*	*36*	*40*
Minimum EC_{GW}=Rs 10,000/- (for households) and Rs. 50,000 (for institutional activity, commercial complexes, townships etc.)					

4.6.2 ECRGW for Packaged drinking water units:

Sl. No	*Area Category*	*Water Consumption (m^3 / day)*			
		<200	*200 to <1000*	*1000 to <5000*	*5000 & above*
		Environmental Compensation Rate (ECR_{GW}) in Rs./m^3			
1	*Safe*	*12*	*18*	*24*	*30*
2	*Semi Critical*	*24*	*36*	*48*	*60*
3.	*Critical*	*36*	*48*	*66*	*90*
4	*Over-Exploited*	*48*	*72*	*96*	*120*
Minimum ECGW=Rs 1,00,000/-					

4.6.3 ECRGW for Mining, Infrastructure and Dewatering Projects:

Sl. No	*Area Category*	*Water Consumption (m^3 / day)*			
		<200	*200 to <1000*	*1000 to <5000*	*5000 & above*
		Environmental Compensation Rate (ECR_{GW}) in Rs./m^3			
1	*Safe*	*15*	*21*	*30*	*40*
2	*Semi Critical*	*30*	*45*	*60*	*75*
3.	*Critical*	*45*	*60*	*85*	*115*
4	*Over-Exploited*	*60*	*90*	*120*	*150*
Minimum EC_{GW}=Rs 1,00,000/					

4.6.4 ECRGW for Industrial Units:

Sl. No	*Area Category*	*Water Consumption (m^3 / day)*			
		<200	*200 to <1000*	*1000 to <5000*	*5000 & above*
		Environmental Compensation Rate (ECR_{GW}) in Rs./m^3			
1	*Safe*	*20*	*30*	*40*	*50*
2	*Semi Critical*	*40*	*60*	*80*	*100*
3.	*Critical*	*60*	*80*	*110*	*150*
4	*Over-Exploited*	*80*	*120*	*160*	*200*
Minimum ECGW=Rs 1,00,000/-					

”

420. It is also recommended that minimum environmental compensation for illegal extraction of ground water would be Rs. 10,000/- if it is for domestic purposes, but in other matters, it would be Rs. 50,000/-.

421. These recommendations by CPCB have not been given in the form of a binding statutory provision. Even otherwise, we find that these are only broad suggestions, ignore several relevant aspects which have to be considered while determining environment compensation in a given case therefore, cannot be taken as readymade application to all situations for determining of environment compensation. Moreover, on some aspects there is no suggestion, but it is deferred.

422. We also find that some crucial relevant aspects requiring application of 'Polluters Pay', have not been considered in the above suggestions. CPCB has failed to consider that the purpose of determination/computation/assessment of environmental compensation and levy thereof, involve various factors like (i) cost of damage to environment, (ii) cost needed for restoration/remediation of damage caused to environment, (iii) element of deterrent/provincial, (iv) liability arising for violation of statuary mandatory law relating to environment namely requirement of consent, EC and NOC etc. It is not mere cost of item or subject but computation of something which situation has arisen by an act of PPs due to violation of environmental law causing damage to environment. The loss and its remedy involves complex of components.

423. Nature is precious. The elements of nature like air, water, light and soil in materialistic manner may not be priced appropriately and adequately. Most of the time, whenever price is determined, it may be extremely low or highly exorbitant meaning thereby disproportionate. Still, since some of the assets of nature are marketable, on that basis price may

be determined but when such elements are damaged or degraded, restoration thereof, in effect is priceless. Many a times, it may be almost impracticable and improbable to recover and remediate damaged environment to its position as it was. Moreover, its cost might be very high. It also cannot be doubted that once there is a pollution or damage to environment, it would affect adversely not only the environment but also inhabitants and all biological organisms. Damage is there, only degree may differ whether to the environment or to the inhabitants and other organisms. To find out simultaneously degree of damage and to ascertain the same in many cases may not be possible or practicable. For example, a polluted air causes respiratory diseases but the people do not get infected and starts reflection of the disease immediately but it takes some time. The time taken in reflection of injury on the person or body also differs from person to person depending upon his immunity and other health conditions. In some cases, damage to environment i.e., air pollution may be fatal to a person who already has respiratory problem. For some a minor inconvenience, minor injury to others, and some may not suffer to the extent of showing symptoms of any diseases at all. When we talk of environmental compensation for causing degradation to environment and for its restoration or remediation, it is not a formal or casual or symbolic amount which is required to be levied upon the violator. It is substantive and adequate amount which must be levied for restoration of environment. CPCB in determining values of fixed quotients and rupees etc., has been very lenient as if only symbolically violator is to be held liable and it must pay a petty amount.

424. Statutory Regulators must realize that the amount is needed for remediation and restoration of damaged environment; enough to be deterrent, to provide adequate compensation where inhabitants are

affected adversely and where violator has proceeded in violation of Environmental Laws relating to consents, clearances, permissions etc., to penalize him for such violation to prove to be a deterrent to him and others. Unfortunately, the above guidelines laid down by CPCB have not considered all these aspects and it appears that the same have been prepared in a very casual and formal manner.

425. In respect of computation of compensation for illegal extraction of ground water, CPCB has referred to Tribunal's order in ***Court on its own motion vs. State of Karnataka (supra)*** directing it to lay down guidelines to deal with the scale of compensation but has failed to consider that Tribunal has also observed that its scale may have slabs depending on extent of pollution caused, economic viability etc. and deterrent effect.

426. Statutory Regulators have also failed to consider that environmental compensation is not a kind of fee which may result in profiteering to violators and after adjusting a nominal amount of environmental compensation, a violator may find it profitable to continue with such violations. The objective of environmental compensation is that not only the loss and damage already caused, is made to recover and restore but also in future, the said violator may not repeat the kind of violation already committed and others also have a fear of not doing the same else similar liability may be enforced upon them. Unless amount of compensation is more than maximum permissible profit arising from violation, the purpose of environmental compensation would always stand defeated.

427. Loss caused to surroundings of the environment, may also include *flora-fauna* and human beings. It is in this backdrop that in various matters when the issues were considered by Courts and Tribunal and found necessary to impose environmental compensation upon

Proponent/Violator of environmental laws, they have followed different mechanisms. Sometimes, Committee's reports confirming violations have been referred but for quantum of compensation, directions have been issued in different ways. In some cases, CPCB guidelines have been applied while in many other, project cost has been made basis.

428. CPCB Guidelines have taken care of industries and municipal bodies. Its application in all cases irrespective of other relevant consideration may prove to be disastrous. Individuals, charitable, social or religious bodies, public sector and government establishments etc., may, in given circumstances justify a different approach. Further, there may be cases attracting aggravating factors or mitigating factors, for example in national emergency some activity got performed violating environmental norms or a proponent is resilient to any advice to adhere law to protect environment and so on. In fact, quantum of EC should have nexus with State's efforts for protection and preservation of environment and control of pollution. Compensation regime must be a deterrent to violators and incentivize eco-friendly proponents. No one should get profited by violating environmental laws and community should also not suffer for violation of environmental norms by defaulting proponents. There is no reason, if beside the aspects noticed above, the computation process also incorporate the elements of inflation, quality of life, and economic prosperity.

429. In the context of "violation of disposal of Bio-Medical Waste" and "Non-compliance of Bio-Medical Waste Management Rules, 2016" and determination of environmental compensation for such violations, Tribunal in ***OA No. 710/2017, Shailesh Singh vs. Sheela Hospital & Trauma Centre, Shahjahanpur & Others*** and other connected matters, vide order dated 15.07.2019, accepted report of CPCB, and said:

"10. The compensation regime suggested by the CPCB may be adopted. It will be open to the State PCBs/PCCs to adopt a higher scale of compensation, having regard to the problems faced in such States/UTs.

11. It is made clear that if even after two months the States/UTs are found to be non-compliant, the compensation will be liable to be recovered from the said States/UTs at the rate of Rs. 1 Crore per month till the non-compliance continues."

430. The above recommendations i.e. in para 10, Tribunal said "*compensation regime suggested by the CPCB may be adopted. It will be* ***open to the State PCBs/PCCs to adopt a higher scale of compensation, having regard to the problems faced in such States/UTs***". It further says that if State Governments and UTs still remain non-complying for two months, compensation will be recovered at the rate of Rs. 1 crore per month till non-compliance continues.

431. In respect of solid waste, sewage effluent, ground water extraction etc., Tribunal in ***OA No. 593/2017, Paryavaran Suraksha Samiti and another vs. Union of India and others***, vide order dated 28.08.2019 has said in para 16, that as regards environmental compensation regime fixed vide CPCB guidelines for industrial units, GRAP, solid waste, sewage and ground water is accepted as an interim measure. Tribunal further observed that recovery of compensation on 'Polluter Pays' principle is a part of enforcement strategy but not a substitute for compliance. It directed all States/UTs to enforce compensation regime latest w.e.f. 01.04.2020 and made it clear that it is not condoning any past violations. Tribunal directed to enforce recovery of compensation from 01.04.2020 from the defaulting local bodies failing which the concerned States/UTs themselves must pay the requisite amount of compensation.

432. In the matter of illegal mining causing damage to environment, methodology for determining environmental compensation was examined in ***OA No. 360/2015, National Green Tribunal Bar Association vs.***

Virender Singh (State of Gujarat) and other connected matters decided on 26.02.2021. Here a report was submitted by CPCB on 30.01.2020, placing on record recommendations made by Committee comprising:

i.) Dr Purnamita Dasgupta, Professor, IEG, Delhi,

ii.) Dr K.S. Kavi Kumar, Professor, MSE, Chennai,

iii.) Dr. Yogesh Dubey, Associate Professor, IIFM, Bhopal,

iv.) Shri Sundeep, Director, MoEF&CC, Delhi and

v.) Shri A. Sudhakar, Additional Director, CPCB, Delhi

433. Report was considered by Tribunal vide order dated 17.08.2020. Report said:

"8. The Committee considered two approaches:
(I) Approach 1: Direct Compensation based on the market value of extraction, adjusted for ecological damages.
(II) Approach 2: Computing a Simplified NPV for ecological damages.

9. In the first approach, the criteria adopted is:

- *Exceedance Factor (EF).*
- *Risk Factor (RF).*
- *Deterrence Factor (DF).*

10. Approach 1 is demonstrated by Table 1 as follows:

Table No. 01: Approach 1				
Permitted Quantity (in MT or m^3)	*Total Extraction (in MT or m^3)*	*Excess Extraction (in MT or m^3)*	*Exceedance in Extraction:*	*Compensation Charge (in Rs.)*
X	*Y*	*Z=Y-X*	*Z/X*	*D* (1+RF+DF) Where D=Z x Market Value of the material per MT-or-m^3*
				DF = 0.3 if Z/X = 0.11 to 0.40 DF = 0.6 if Z/X = 0.41 to 0.70 DF = 1 if Z/X >= 0.71
				RF = 0.25, 0.50. 0.75,

				1.00 (as per table 2)

11. Approach 2 is demonstrated by following formula:
"Total Benefits (B)=Market Value of illegal extraction: D(refer Table 1)

*Total Ecological Costs (C) = Market Value adjusted for risk factor: D * RF (refer Table 1)."*

12. Final recommendation is as follows:

"Thus, it is recommended that the annual net present value (NPV) of the amount arrived at after taking the difference between the costs and the benefits through the use of the above approach, maybe calculated for a period of 5 years at a discount rate of 5% for mining which is in a severe ecological damage risk zone. ***The rationale for levying this NPV is based on expert opinion that reversal and/or restoration of the ecological damages is usually not possible within a short period of time and rarely is it feasible to achieve 100% restoration, even if the sand deposition in the river basin is restored through flooding in subsequent years****. The negative externalities of the mining activity are therefore to be accounted for in this manner. Ideally, the worth of all such damages, including costs of those which can be restored should be charged.* ***However, till data on site-specific assessments becomes available, this approach may be adopted in the interim.*** *In situations where the risk categorization charged. However, till data on site-specific assessments becomes available, this approach may be adopted in the interim. In situations where the risk categorisation is unavailable or pending calculation, the following Discount Rates may be considered:*

Severity	*Mild*	*Moderate*	*Significant*	*Severe*
Risk Level	*1*	*2*	*3*	*4*
Risk Factor	*0.25*	*0.50*	*0.75*	*1.0*
Discount Rate	*8%*	*7%*	*6%*	*5%*

434. Here, in both the approaches, element of illegality committed by PP in carrying on mining was not considered at all. For example, if EC and/or consent is not obtained. Similarly, cost of remediation/restoration was also not taken into consideration.

435. In some cases, compensation has been awarded by Tribunal on lump sum basis without referring to any methodology. For example: (i) ***in Ajay Kumar Negi vs. Union of India, OA No. 183/2013***, Rs. 5 Crores was imposed. (ii) In ***Naim Shariff vs. M/s. Das Offshore Application No.***

15(T$_{HC}$) of 2016, Rs. 25 Crores was imposed (iii) ***Hazira Macchimar Samiti vs. Union of India***, Rs. 25 crores was imposed.

436. In ***Goa Foundation vs. Union of India & Others (2014)6SCC590***, Supreme Court relied on ***Samaj Parivartana Samudaya & Others vs. State of Karnataka & Others (2013)8SCC209*** and held that **ten per cent of the sale price** of iron ore during e-auction should be taken as compensation. To arrive at the above view, Court observed that this was an appropriate compensation given that mining could not completely stopped due to its contribution towards employment and revenue generation for the State. Further, Court directed to create a special purpose vehicle, i.e., "Goan Iron Ore Permanent Fund" for depositing above directed compensation and utilization of above fund for remediation of damage to environment.

437. In ***Goel Ganga Developers vs Union of India and Others, (2018)18SCC257***, Tribunal imposed 195 Crore compensation since project was executed without EC. Supreme Court made it **100 Crores or 10% of project cost whichever is higher**. Supreme Court also upheld Rs. 5 crores imposed by Tribunal vide order dated 27.09.2016. Thus, total amount exceeded even 10% of project cost.

438. In ***Mantri Techzone Private Limited vs. Forward Foundation & Others, (2019)18SCC494***, Supreme Court affirmed imposition of environmental compensation by Tribunal, considering cost of the project, where there was violation regarding EC/consent and proponent proceeded with construction activities violating provisions relating to EC/Consent. Tribunal determined environmental compensation at 5% and 3% of project cost of two builders. 5% of project cost was imposed where PP had raised illegal constructions while 3% was imposed where actual construction

activity was not undertaken by PP and only preparatory steps were taken including excavation and deposition of huge earth by creating a hillock. Besides, Tribunal also directed for demolition and removal of debris from natural drain at the cost of PP.

439. In ***Goa Foundation vs. Union of India & Others (supra),*** where illegal extraction of minerals was involved and in ***Goel Ganga Developers India vs. Union of India (supra),*** where a construction project was carried out without EC in violation of EIA 2006, Supreme Court permitted computation of environment compensation at 10% of the project cost. In fact, in ***Goel Ganga*** case, exemplary cost of Rs. 100 Crores were imposed, and Court said that developer would pay 100 Crores or 10% of project cost whichever is higher.

440. On the issue of assessment of compensation for damage to environment in the matter of illegal mining, recently Supreme Court in ***Bajri Lease LOI holders Welfare Society vs. State of Rajasthan and others, SLP (Civil) No. 10584 of 2019*** (order dated 11.11.2021) has said that compensation/penalty to be paid by those indulging in illegal sand mining cannot be restricted to be value of illegally mined minerals. The cost of restoration of environment as well as the cost of ecological services should be part of compensation. 'Polluter Pays' principle as interpreted by this Court means that absolute liability for harm to the environment extends not only to compensate victims of pollution but also cost of restoring environmental degradation. Remediation of damaged environment is part of the process of "sustainable development" and as such the polluter is liable to pay the cost the individual sufferers as well as the cost of reversing the damaged ecology.

441. Next question will be whether compensation should be determined at 10% of the project cost or should be higher or lower. We find that in ***Goel Ganga case (supra)***, project proponent was found guilty of multiple illegal acts including violation of the laws relating to EC, consent, etc., raised even otherwise illegal construction for the purpose of commercial project. Similarly, in ***Goa Foundation (supra),*** also illegal extraction was found by private proponents for commercial gains.

442. The activities/project in question is construction activity. In ***Goel Ganga Developers India Private Limited vs. Union of India, (2018)18SCC257***, Supreme Court observed that normal rule is that 5% of project cost should be environmental compensation which can be enhanced if there are some other relevant factors justifying such enhancement. In ***Goel Ganga (supra)*** as already said, Supreme Court imposed 10% of project cost or 100 Crores whichever is higher as environmental compensation. Rs. 5 crores were imposed for not obtaining EC. In the present case, the project cost of questioned project is not before us. The present estimated cost of the project obviously would be very high. The cost of land in the project in question, as is evident from the information placed on public domain, presently is very high. Therefore, considering all the aspects into consideration, we find it appropriate to follow rates proposed by CPCB and CGWA but the period and amount computed by the said authorities is not justified considering the fact that there is blatant violation for years together and no reason and justification we find for curtailing period of violation even to the extent of what is permissible in law. We, therefore, compute environmental compensation as under:

(i) **For discharge of untreated or partially treated sewage in storm water drain directly, not complying with the norms-**

This OA was registered on 18.09.2018 and five years period commenced from 19.09.2013. First report confirming violation is dated 16.11.2018 submitted by joint Committee through CPCB. Therefore, we compute compensation under this head for the period of 19.09.2013 to 16.11.2018. The rate on which compensation was determined by CPCB were different at two stages, (a) Rs. 684269.66 per day and (b) Rs. 522996.44 per day. We take up the lower rate and compute environmental compensation as under :

Rs. 522996.44 × 1884 days = **Rs. 985325292/-**

(ii) **For illegal extraction of ground water –** APIL-PP itself has said that the requirement of ground water is at rate of Rs. 1100 m^3/day. Taking this violation also again for the period as mentioned above in (i), the amount is computed as under :

Rs. 1100 m^3/day **×** 1884 days **×** Rs. 24 = **Rs. 49737600/-**

(iii) For violation of provisions relating to EC/consent to Establish and consent to operate= **Rs. 30 Crores**

(iv) Compensation for other violations like encroachment/non-maintenance of green belt, non-observance of Construction and Demolition Waste Management Rules, 2016 and Solid Waste Management Rules, 2016, violation in respect of rain water harvesting system etc., (we collectively assess) - **Rs. 20 Crores**.

443. We, accordingly, dispose of OA 661/2018 with following directions:

(i) Environmental compensation of Rs. 153,50,62,892/- shall be paid by respondent 11 i.e., APIL-PP and deposited with HSPCB within three months. This amount shall be utilized for rejuvenation/restoration of environment in the area

concerned on the recommendation of a joint Committee comprising CPCB, HSPCB, District Magistrate, and MCG who shall prepare a plan within three months and execute the same within further six months from the date of deposit of environmental compensation by respondent 11. CPCB shall be the nodal authority for this purpose. However, we make it clear that if there is any otherwise order by Supreme Court or High Court in regard to the present matter, the same shall operate and above direction would be subject to final decision by such Court.

(ii) TCPD Gurgaon (respondent 3) shall pay environmental compensation of Rs. 2 Crores and deposit the same with HSPCB within three months. The above amount shall also be utilized for rejuvenation/restoration of environment in the concerned area on the basis of recommendation of joint Committee referred in direction (i) above.

(iii) Respondent 11 shall not create any further third party rights in Sushant Lok, Phase I unless and until environmental laws and norms are complied with.

(iv) APIL-PP (respondent 11) shall not undertake any further activities of development in project in question unless the requisite clearance/NOC/permission under environmental laws from Competent Authorities are obtained and other provisions of environmental laws requisite to be observed before commencement of construction proceedings are complied with.

(v) SLRWA is directed to take necessary steps in consultation with HSPCB, MCG and HUDA for discharge of sewerage,

complying/maintaining the prescribed standards under Water Act 1974.

(vi) HSPCB, MCG and District Magistrate, Gurugram are directed to ensure that untreated sewage water generated in the premises of questioned project is not discharged on open lands by transporting the same by tankers.

(vii) HSPCB shall ensure that the diesel generators are not allowed to run in the questioned area unless the provisions of Air Act 1981 are complied with and all precautions to maintain standard of air are observed/taken.

(viii) All concerned Statutory Regulators, District Administration and local bodies shall ensure that no ground water is extracted in the questioned project through 39 borewells installed by APIL-PP or any other or lesser number of borewells installed in the said area without permission of Competent Authority.

(ix) HSPCB shall also take steps for criminal prosecution of respondent 11 and its authorities for violation of environmental laws.

(x) Since environmental laws are notified and included in schedule I of PMLA 2002 as discussed by Tribunal in ***OA No. 64/2016 (WZ), Akhil Bhartiya Mengela Samaj Parishad vs. Maharashtra Pollution Control Board & Ors***. and constitute an offence under the said Act, let a copy of this order be sent to Enforcement Directorate for appropriate action against violators under PMLA 2002.

444. A copy of this order shall be forwarded CPCB, CGWA, HSPCB, TCPD Haryana, Chief Secretary, Haryana, District Magistrate, Gurgaon, MCG

and Directorate of Enforcement headquarter at Delhi by e-mail for information, necessary action and compliance.

Adarsh Kumar Goel,
Chairperson

Sudhir Agarwal,
Judicial Member

Pushpa Sathyanarayana,
Judicial Member

Prof. A. Senthil Vel,
Expert Member

July 04, 2022
OA No. 661/2018
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