

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

Original Application No. 1038/2018

**(IA No. 87/2020, IA No. 265/2020, IA No. 93/2022,
IA No. 100/2022, IA No. 101/2022, IA No. 161/2022,
IA No. 166/2022, IA No. 171/2022 & IA No. 178/2022)**

**In re: News item published in “The Asian Age”
Authored by Sanjay Kaw Titled
“CPCB to rank industrial units on pollution levels”**

WITH

Original Application No. 469/2022

South Gujarat Textile Processors Associations **...Applicant(s)**

Verses

Union of India & Ors. **...Respondent(s)**

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PRESENT:

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

**Reserved on: 15th July, 2022
Pronounced on: 29th August, 2022**

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JUDGMENT

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

1. Original Application 1038/2018 (hereinafter referred to as '**OA I**') was registered on *suo-moto* action initiated by Tribunal, pursuant to a newspaper report, pertaining to ranking of industrial clusters in respect of pollution and inaction on the part of Statutory Regulators in taking effective action for the remediation/preservation of environment in the said areas.

2. Original Application 469/2022 (hereinafter referred to as '**OA II**') is an outcome of the proceedings initiated in OA I and hence since both are integrally connected have been clubbed, heard together and are being decided by this common judgment.

3. **OA I Pleadings:** A news item was published in the daily newspaper "The Asian Age", dated 06.12.2018, authored by Sanjay Kaw, with the heading "**CPCB to rank industrial units on pollution levels**". The report

says that in 2009-2010, State Pollution Boards along with Central Pollution Control Board (hereinafter referred to as '**CPCB**') had conducted surveys to check pollution levels in 88 odd notified industrial clusters. Later, CPCB read these clusters under critical and serious category. As many as 88 industrial clusters in 16 States, having Comprehensive Environmental Pollution Index (hereinafter referred to as '**CEPI**') of 70 and above were identified as '**critical pollution areas**'. The clusters included Sonbhadra, Singrauli and Ghaziabad in Uttar Pradesh, Kobra in Madhya Pradesh, Angultalchuer in Odisha, Bhadrabhati in Karnataka, Chandrapur and Chambur in Maharashtra, Dhanbad in Jharkhand, Durgapur in West Bengal and Pali in Rajasthan. As many as 32 industrial clusters with CEPI score between 60 and 70 were categorized as '**seriously polluted areas**'. After the above ranking, State Pollution Control Boards (hereinafter referred to as '**SPCB**') formulated their action plans but as per the reports of experts despite action plans, there was hardly any improvement in pollution levels in these clusters as a result whereof Ministry of Environment, Forest and Climate Change (hereinafter referred to as '**MoEF&CC**') imposed a ban on opening new units and on expansion of existing industries in these areas. Later, on assurance of various State Governments for improvement in the stressed clusters, ban was lifted. CEPI score was revised by CPCB to make concept of CEPI simple to facilitate the citizens to evaluate CEPI score.

4. In a later evaluation, number of identified polluted clusters went upto 100 in the year 2017-2018.

5. Taking *suo-moto* cognizance of the said report, Tribunal got the above matter registered as **OA 1038/2018** and considered it on 13.12.2018. After referring to the report, Tribunal observed that CEPI is based on evaluation of environmental parameters including ambient air,

surface water and health related statistics. Based on such study, directions were issued by CPCB under Section 18(1) (b) of 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**’) for installation of Continuous Ambient Air Quality Monitoring Stations (hereinafter referred to as ‘**CAAQMS**’) and Real Time Water Quality Monitoring Stations (hereinafter referred to as ‘**RTWQMS**’) at various locations.

6. Revised CEPI (2016) is comprised of the following components:

“

Component A	Scale of Industrial Activity	20 marks
Component B	Status of Ambient Env. Quality (Air/ SW/ GW)	50 Marks
Component C	Health related statistics	10 Marks
Component D	Compliance status of industries	20 Marks

”

7. As per directions of CPCB, dated 26.04.2016, addressed to SPCBs, were required to take steps to ensure prevention, control and abatement of pollution in critically polluted industrial clusters by installing Environmental Quality Monitoring Systems for which purpose action plan in respect of monitoring mechanism was to be evolved, in the manner stated in the said order. 43 critically polluted areas and 32 severely polluted areas were identified based on CEPI criteria in year 2009, as follows:

“

S. N.	Name of States	Clusters with CEPI >70 (43 Critically polluted Areas)	Clusters with CEPI 60-70 (32 Severely polluted areas)
1	Andhra Pradesh	Vishakhapatnam (70.82)	Vijayawada (60.57)
2	Bihar	--	West Singhbhum (67.30)
3	Chhattisgarh	Korba (83.00)	Raipur (65.45)
4	Delhi	Najafgarh-Drain Basin (79.54) including Anand	--

”

		<i>Parbat, Naraina, Okhla, Wazirpur</i>	
5	<i>Gujarat</i>	<i>Ankleshwar (88.50), Vapi (88.09), Ahmedabad (75.28), Vatva (74.77), Bhavnagar (70.99), Junagarh (70.82)</i>	<i>Vadodara (66.91), Rajkot (66.76)</i>
6	<i>Haryana</i>	<i>Faridabad (77.07), Panipat (71.99)</i>	--
7	<i>Himachal Pradesh</i>	--	<i>Baddi (69.07), Kala Amb (68.77), Parwanoo (63.83)</i>
8	<i>Jharkhand</i>	<i>Dhanbad (78.63)</i>	<i>Jamshedpur (66.06), Saraikela (65.38), Ramgarh (65.11), Bada jamtara (64.47)</i>
9	<i>Karnataka</i>	<i>Mangalore (73.68), Bhadravati (72.33)</i>	<i>Raichur (68.07), Bidar (67.64), Pinia (65.11)</i>
10	<i>Kerala</i>	<i>Greater Kochin (75.08)</i>	--
11	<i>Madhya Pradesh</i>	<i>Indore (71.26)</i>	<i>Dewas (68.77), Nagda-ratlam (66.67), Pitampur (65.09)</i>
12	<i>Maharashtra</i>	<i>Chandrapur (83.88), Dombivalli (78.41), Aurangabad (77.44), Navi Mumbai (73.77), Tarapur (72.01)</i>	<i>Nashik (69.25), Chembur (69.19), Pimpri – Chinchwad (66.06)</i>
13	<i>Orissa</i>	<i>Angul Talchar (82.09), IB-Valley (74.00) Jharsugula (73.34)</i>	<i>Pardeep (69.26)</i>
14	<i>Punjab</i>	<i>Ludhiana (81.66), Mandi Govindgarh (75.08)</i>	<i>Batala (68.59), Jalandhar (64.98)</i>
15	<i>Rajasthan</i>	<i>Bhiwadi (82.91), Jodhpur (75.19), Pali (73.73)</i>	<i>Jaipur (66.82)</i>
16	<i>Tamil Nadu</i>	<i>Vellore-North Arcot (81.79), Cuddalore (77.45), Manali (76.32), Coimbatore(72.38)</i>	<i>Tirupur(68.38), Mettur (66.98)</i>
17	<i>Telangana</i>	<i>Patancheru-Bollaram (70.07)</i>	--
18	<i>Uttar Pradesh</i>	<i>Ghaziabad (87.37), Singrauli (81.73), Noida (78.90), Kanpur (78.09), Agra (76.48), Varanasi-Mirjapur (73.79)</i>	<i>Moradabad (64.71), Aligarh (63.83), Ferozabad (60.51)</i>
19	<i>Uttarakhand</i>	--	<i>Haridwar (61.01)</i>

20	West Bengal	Haldia (75.43), Howrah (74.84), Asansole (70.20)	Durgapur (68.26)
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8. Purpose of economic development in any region is to provide opportunities for improved living by removing poverty and unemployment. While industrial development invariably creates more jobs in any region, such development has to be sustainable and compliant with the norms of environment. In absence of this awakening or tendency for monitoring, industrialization has led to environmental degradation on account of industrial pollution. It is imperative to ensure that steps are taken to check such pollution to uphold statutory norms. Adequate and effective pollution control methods are necessary.

9. Dust, smoke, fume and toxic gas emissions occur as a result of highly polluting industries such as thermal power plants, coal mines, cement, sponge iron, steel and ferrow alloys, petroleum and chemicals unless right technology is used and precaution taken. Industry specific clusters have not only become hazardous but also cause irreparable damage to our ecology and environment, often breaching environment’s carrying capacity, adversely affecting public health.

10. Tribunal also referred to the judgment of Supreme Court in **Karnataka Industrial Areas Development Board vs. C. Kenchappa & Ors., (2006)6SCC383** and **Vellore Citizens Welfare Forum vs. Union of India, AIR 1996 SC 2715** observing that guiding rule for sustainable development is that humanity must take no more from nature than man can replenish and that people must adopt lifestyles and development paths that work within the nature’s limit. Precautionary principles was recognized in **Vellore Citizens Welfare Forum (supra)** and it was explained that environmental measures by State Government and Statutory authorities must anticipate, prevent and attack the causes of

environmental degradation. The said principles were applied by Tribunal by deciding matters in terms of Section 20 of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act, 2010**'). In the above backdrop, Tribunal found it expedient to issue directions to SPCBs/Pollution Control Committees of Union Territories etc. Relevant directions contained in para 9 to 13 of order dated 13.12.2018 are as under:

“9. In view of above, we direct the SPCBs/Committees to finalize the time bound action plans with regard to identified polluted industrial clusters in accordance with the revised norms laid down by the CPCB to restore environmental qualities within norms. Such action plan be finalized within three months from the date of receipt of copy of this order. In case of any left- out/ missed areas in addition to 100 areas also, SPCBs should undertake CEPI assessment and formulate action plans.

10. The action plan may thereafter be looked into by the CPCB and steps taken for implementation so as to ensure that all the industrial clusters comply with laid down parameters as per the Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981. The CPCB will be the Nodal agency. Meanwhile, CPCB will forward Assessment Report for 100 areas carried out during 2017-2018 to MoEF & CC before 28.02.2019 for appropriate action.

11. Needless to say that it will be open to the SPCBs/Committees and CPCB to take coercive measures including recovery of compensation for the damage to the environment on 'Polluter Pays' principle as well as also to direct taking of such precautionary measures as may be necessary on the basis of 'Precautionary principle'.

12. CPCB may serve copy of this order on all the SPCBs and the Committees who may furnish the same to the concerned Chief Secretaries. Ministry of Environment, Forest and Climate Change (MoEF&CC) may take necessary steps on its part based on CPCB Report for 100 areas mentioned above in accordance with law. The Report on the action taken by the CPCB and MoEF&CC in the matter may be furnished to this Tribunal by e-mail at ngt.filing@gmail.com before 31.05.2019. Copies of this order be sent by e-mail to CPCB and MoEF&CC for compliance.

13. The action plan to be prepared in the States may be done by the Committee constituted by the Chief Secretary within one month from today as several Departments may be involved in the exercise. The final preparation of the action plan including its execution may be overseen by the Chief Secretary of the concerned State, along with the other connected major environmental issues of the States, such as pollution of river stretches, non-attainment cities in terms of air quality and solid waste management, utilization of treated sewage, covered by order of this Tribunal dated 20.09.2018 in Original Application No. 673/2018, News Item Published in 'The Hindu' authored by Shri.

Jacob Koshy titled “More river stretches are now critically polluted: CPCB”, order dated 08.10.2018 in Original Application No. 681/2018, News Item Published In ‘The Times of India’ Authored by Shri. Vishwa Mohan Titled “NCAP with Multiple Timelines to Clear Air in 102 Cities to be released around August 15”, order dated 20.08.2018 in Original Application No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016 and order dated 27.11.2018 in Original Application No. 148/2016, Mahesh Chandra Saxena Vs. South Delhi Municipal Corporation & Ors. The Chief Secretary will take meetings on all these issues once in three months (quarterly) and will forward Report to NGT by e-mail.”

11. Pursuant to the order dated 13.12.2018, compliance/status reports were submitted by Uttar Pradesh Pollution Control Board (hereinafter referred to as ‘**UPPCB**’), Chandigarh Pollution Control Committee (hereinafter referred to as ‘**CPCC**’) and CPCB.

Compliance report dated 22.04.2019 submitted by UPPCB:

12. Point wise compliance report submitted by UPPCB stated as under:

“(i) In the State of Uttar Pradesh, 06 Industrial Clusters had been identified as Critically Polluted Areas (CPAs) Clusters and 03 Industrial as Seriously Polluted Areas (SPAs) in 2009 as detailed below:

Critically Polluted Areas (CPAs)					
Ghaziabad	Singrauli	Noida	Kanpur	Agra	Varanasi-Mirzapur
87.37	81.73	78.9	78.09	76.48	73.79
Seriously Polluted Areas (SPAs)					
Morababad	Aligarh		Firozabad		
64.71	63.83		60.51		

- (i) Action Plan for all 06 CPAs, already prepared in year 2009-10, and has been implemented. In Moradabad, the Comprehensive Action Plan for reducing Air Pollution has been implemented.*
- (ii) For monitoring the implementation of Action Plan, Monitoring Committee under the Chairmanship of District Magistrate has been constituted for all the 06 Critically Polluted Areas.*
- (iii) In the year 2016, Central Pollution Control Board revised the criteria for re-evaluation of the Comprehensive Environmental Pollution Index (CEPI).*
- (iv) Ministry of Environment, Forests & Climate Change (MoEF&CC), Government of India, vide letter dated 22-02-2019, has asked for information as required for the evaluation of revised CEPI Score. Information for calculation of revised CEPI Score for the State of Uttar Pradesh has been sent to Central Pollution Control Board.*

Copy of the letter dated 22.02.2019 issued by MoEF&CC, GoI is annexed herewith and marked as Annexure No.-1.

- (v) *After the release of revised CEPI Score by MoEF&CC, Govt. of India, the Action Plans for the CPAs & SPAs shall be finalized.”*

Status report dated 01.05.2019 submitted by CPCC, UT Chandigarh:

13. The report gives details of the cases related to Chandigarh pending in Tribunal which were 8 in numbers. Thereafter, Solid waste management status, plastic waste management status bio-waste management status, action plan for polluted river stretches, action plan for control of air pollution, action plan for control pollution of polluted industrial clusters etc. are given as under:

“III The status of Compliance of various NGT Orders applicable on U.T. Chandigarh is given below:

Hon’ble National Green Tribunal has issued many orders for implementation of various Acts/Rules, in which, following steps have been taken by Chandigarh Administration:

1. Status of compliance of SWM Rule, 2016, Plastic Waste Management Rules, 2016 and Bio-Medical Waste Management Rules, 2016 in their respective areas. (O.A. No. 606/2018)

SOLID WASTE MANAGEMENT IN CHANDIGARH

The Municipal Corporation, Chandigarh is collecting daily around 475 tonnes of municipal waste from all over Chandigarh and hand over the waste to the garbage processing plant set up by M/s Jai Prakash Associates at Dadu Majra where they process the municipal solid waste to produce:

- *Refuse Derived Fuel (RDF) (plant capacity - 500 MT/day*
- *Compost (plant capacity 300 MT/day)*

The inerts/rejects from the plant are dumped onto the sanitary landfill has been developed over an area of 8.28 acres.

State Level and Advisory Board (SLAB) has been constituted by Chandigarh Administration and its two meetings have already been conducted.

Draft Bye Laws have been notified by MCC.

As per the Hon’ble NGT order (O.A. No. 606/2018), State Level Committee (SLC) and District Level Special Task Force have been constituted. SLC will look after the compliance of solid waste management in Chandigarh and its 1st meeting was held on 14.02.2019. District Level Special Task Force will create awareness

about SWM Rules, 2016 by involving educational, religious and social organizations including local Eco-clubs.

As per Solid Waste Management Rules, 2016, the implementation of source segregation and its transportation to the processing facility was to be done by 8th April, 2018 but as per the Chandigarh Solid Waste Management Policy notified by Chandigarh Administration (**Annexure 'A', Page No. 15**), source segregation of waste and its transportation to the processing plant was to be completed by 31st December, 2018 and bio-remediation of legacy waste was to be completed by 31st December, 2018.

However, the scheme for Solid Waste management for Chandigarh was approved by the General House of the Corporation in its 265th meeting held on 20.12.2018. The Municipal Corporation will start the segregation at source by 1 June, 2019 and the whole city for collection of waste in segregated manner will be covered by September, 2019. Further Municipal Corporation has also carried out the following works for the management of Solid waste in Chandigarh.

- The Municipal Corporation has approved Hybrid model for collection of Solid Waste from the different areas of the cities which involves the empowerment of the unorganised waste collectors & their integration with the Municipal Corporation. All the rag pickers/ waste collectors have been identified & it has been decided that they will continue to collect the waste from the areas in which they are already working. They will purchase their own E-rickshaws & collect the waste in segregated manner.
- The unattended areas comprising of approximately 40,000 households & 13 villages recently transferred to M.C. will be catered by M.C. The Municipal Corporation has already placed the order for purchase of 99 garbage tippers of 3.2 cum capacity to collect & transport the garbage in segregated manner. These vehicles will be received by 15th May & D2D segregated collection will be started thereafter.
- To cater to the commercial areas of the city tender has been called for purchase of 100 garbage tippers having 5 cum capacity. The process of purchase will be completed by 30th June & the segregation of garbage in commercial areas will be started.
- A 5 TPD Bio methanation plant was installed in November 2016 to cater to the organic waste of fruit & vegetable market, producing electricity for the streets lights of the campus.
- On-site Composting of horticulture waste in 105 parks/gardens is being done in Chandigarh.
- A C&D plant is under construction in Industrial Area & will be started by April 2019. A facility for lifting of C&D waste by charging Rs. 1000/- per truck per trip has also been started.

- The bulk generators, 26 in number are handling the wet waste on site.
- Solid Waste Management Bye-laws have been notified by the Chandigarh Administration on 18.03.2019 (**Annexure 'B', Page no. 26**).
- The Municipal Corporation has hired agency for promotion of IEC activities for preparing IEC material for schools and for the general public to convey the messages for effective waste management. The Municipal Corporation Chandigarh has engaged Brand Ambassadors and Swachh Grahis for sustaining the campaigns for proper SWM.
- MC Chandigarh is already processing the wet waste which is being converting into compost by the JP plant having capacity of 300 TPD. The dry waste is being converted into RDF. Further a site of four acres Approx has been identified in Dadu Majra for the construction of automatic Material Recovery Facility.
- Smart City Chandigarh Ltd. is in the process of calling tender for the Bio-Remediation of legacy Waste. The tender will be allotted by July, 2019 & it is planned that the entire Legacy Waste will be remedied by December, 2020.
- Three locations have been identified for construction of transfer stations which will be constructed by March 2020.
- It is the endeavour of M.C.C to make the city Bin free for which the numbers of Bin at various locations are being reduced regularly.
- To make the citizens aware of the importance of segregation, approx. 2,50,000 Green & Blue bins have been distributed to every household free of cost.
- Home composting has been started in approx. 5,000 households.
- To make the City litter free, approx. 760 twin bins have been installed in public/commercial areas of the city.

PLASTIC WASTE MANAGEMENT IN CHANDIGARH

The quantity of Municipal Solid Waste generated is around 500 MT per day; there of as directed by CPCB, roughly 7% of MSW accounts to plastic waste i.e. 35 MT per day.

Municipal Corporation, Chandigarh through rag pickers/ cycle carts collects solid waste from door to door and sends it to Garbage Processing Plant (RDF) for processing for final disposal. In between, some of the plastic waste is sold to the recyclers for processing.

Chandigarh Administration has imposed complete ban on the use of plastic carry bag vide Notification No. ED/2008/684 dated 30.07.2008 and after implementation of Plastic Waste Management Rules, 2016, Chandigarh Pollution Control Committee has allowed compostable carry bags which are certified by CPCB and are complying with the norms of Plastic Waste Management & Handling Rules, 2016.

Further, it is mentioned that as per the orders of the Hon'ble National Green Tribunal in O.A. No. 442 of 2015 and vide notification of Chandigarh Administration, there is prohibition on use of plastic/ non- woven plastic carry bags, plastic plates, glasses and other allied items in the city of Chandigarh and any person who is found to be using, storing, purchasing, dealing with or distributing polythene/ plastic/ non-woven plastic carry bags is liable to pay environmental compensation at the rate of Rs. 5000/- per event.

During the year 2018 the Municipal Corporation Chandigarh has issued **364 Nos.** challans against the violators & **1844 kg** polythene /Plastic Seized.

The Municipal Corporation Chandigarh will construct Automatic Material Recovery Facility for which 4 acres land has been identified in Dadumajra Dumping ground. It is planned to construct the facility by March, 2020 after which the management of plastic waste will be done in the facility. The plastic will be converted into bricks for use in the industry or other uses, as per quality of plastic generated.

BIOMEDICAL WASTE MANAGEMENT IN CHANDIGARH

As per the Biomedical Waste Management Rules, 2016; Biomedical waste is defined as

“any waste, which is generated during the diagnosis, treatment or immunisation of human beings or animals or research activities pertaining thereto or in the production or testing of biological or in health camps, including the categories mentioned in Schedule I of BWWM Rules, 2016.”

Presently, there are 788 Health Care Facilities (HCFs) operational in Chandigarh. These HCFs include 583 small clinics/dispensaries, 13 veterinary institutions, 3 animal houses, 118 pathological laboratories, 4 blood banks, 4 research institutes and 14 ayush clinics/hospitals. The total bed strength is 4413 in Chandigarh (as per 2017 annual report).

The total biomedical waste generation is around 2503 kgs. per day including 2207 kgs from bedded facilities and 296 kgs/day from non bedded small health care facilities.

Presently, 2 incinerators are operational in Chandigarh. One is operated by Biomedical Waste Treatment and Disposal Facility (BWTF) having treatment capacity of 200 kgs/hour and other is at Government Multi Specialty Hospital (GMSH), Sector 16, Chandigarh with treatment capacity 100 kgs/hour of biomedical waste. All the biomedical waste of the private hospitals and the biomedical waste

of Post Graduate Institute of Medical Education and Research (PGIMER) and Govt. Medical College and Hospital (GMCH)-32 is being collected and treated by the Biomedical Waste Treatment and Disposal Facility i.e. M/s Alliance Envirocare Company Pvt. Ltd. located at Plot No. 182/9, Industrial Area, Phase-I, Chandigarh. The incinerator installed by the BWTF is as per the latest guidelines of CPCB/MoEF&CC.

The BWTF has deployed 8 nos. of vehicles for the collections of biomedical waste from all the health care facilities of Chandigarh and from the government dispensaries to GMSH for final disposal. All the vehicles are Global Positioning System (GPS) enabled and are approved by CPCC.

As per the BMW Rules, 2016;

Every occupier or operator handling bio-medical waste, irrespective of the quantity shall make an application in Form II to the prescribed authority i.e. State Pollution Control Board and Pollution Control Committee, as the case may be, for grant of authorisation and the prescribed authority shall grant the provisional authorisation in Form III and the validity of such authorisation for bedded health care facility and operator of a common facility shall be synchronised with the validity of the consents.

In view of above, CPCC has issued letters to all the health care facilities who have not taken authorisation under Biomedical Waste Management Rules, 2016 to take authorisation under the said rules. Units are now applying for the same. More than 600 HCFs have already applied with the CPCC.

CPCC had also initiated the process of implementation of bar code in Chandigarh for the better management of biomedical waste but in the meantime an amendment has come in the BMW Rules in which the time has been extended upto March 2019. After, March 2019, letters will be written to health care units to comply with the rules w.r.t. bar codes.

2. “The Hindu” authored by Shri Jacob Koshy Titled “More river stretches are now critically polluted: CPCB” (Original Application No. 673/2018).

Hon’ble NGT has directed to prepare Action Plan for polluted River Stretches as mentioned in the order.

In this regard it is submitted that there are no critically polluted river stretches in U.T., Chandigarh.

3. Stench Grips Mansa’s Sacred Ghaggar River (Suo-Motu Case) And Yogender Kumar Original Application No.138 of 2016 (TNHRC) (Case No. 559/19/11/14) And Original Application No. 139 of 2016 (TNHRC) (Case No. 600/19/11/14).

Hon'ble NGT has directed to constitute District/State Level Special Task Force and to prepare Action Plan to control pollution in River Ghaggar.

*District Level Special Task Force and State Level Special Task Force have been constituted. Action Plan has been prepared and submitted to Executing Committee (constituted by Hon'ble NGT) and CPCB. Regular meetings of State/District Level Special Task Force are being constituted to ensure compliance of Action Plan. **Action Plan is attached at Annexure 'C', Page no. 60.***

4. News Item Published in "The Times of India" Authored by Shri Vishwa Mohan Titled "NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15" dated 08.10.2018 (O.A. No. 681/2018).

Hon'ble NGT has directed to prepare Action Plan for control of Air Pollution and to be approved by the Air Quality Monitoring Committee.

As per the orders of Hon'ble National Green Tribunal (Air Quality Monitoring Committee (AQMC) has been constituted in Chandigarh comprised of the following members:

- 1. The Director Environment, Chandigarh.*
- 2. The Commissioner, Municipal Corporation, Chandigarh.*
- 3. The Director Industries, Chandigarh.*
- 4. The Director Transport, Chandigarh.*
- 5. The Chief Architect, Department of Urban Planning, U.T., Chandigarh.*
- 6. The Member Secretary, Chandigarh Pollution Control Committee, Chandigarh.*

AQMC held its meetings on 13.11.2018 and on 11.12.2018 and discussed the matter in detail. The time targets have been given to various departments for the execution of Actions proposed to control of air pollution in Chandigarh so that improvement can be seen in the air quality in near future.

*Action Plan has been prepared and approved by the AQMC and submitted to Central Pollution Control Board and the same has been approved by CPCB. **Action Plan is attached at Annexure 'D', Page no. 144.***

5. News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels" O.A. No. 1038/2018, dated 13.12.2018.

As per direction of Hon'ble NGT, Action Plan has to be prepared to control pollution of all the polluted Industrial Clusters and Chief Secretary has to convene periodically meeting w.r.t. status of Compliance of all the concerned NGT Orders.

In this regard, Chandigarh is neither having 17 category of highly polluting industry nor there is any grossly polluting industry. There are total 3336 no. of industries operational in Chandigarh which comprise of 192 Red, 575 Orange, 577 Green and 1625 are

White category industries includes 98 Nos. of very small scale electroplating unit, 48 nos. of wire drawing alongwith pickling units, 1 no. Slaughter house (abattoir) run by Municipal Corporation, Chandigarh, 11 nos. of microbreweries and 3 nos. of zinc processing units.

Orange category industries include majority of small scale Hotel and Restaurant which are 229 in nos. 10 nos. bottling plants, around 44 nos. of hospitals, 7 nos. of wire drawing unit without pickling, 91 nos. of automobile service stations.

It is submitted that there is no critically Polluted Industrial Cluster in U.T., Chandigarh.

Regarding meeting w.r.t. status of compliance of Hon'ble NGT order, meeting was held on 14.02.2019 (Minutes are placed at Annexure 'E', Page No. 163).

6. Sudarsan Das v. State of West Bengal & Ors. O.A. No. 173 of 2018, Order dated 04.09.2018.

This case is related to Mining and there is no mining zone in U.T., Chandigarh.

7. 'Polluter Pays' principle, 'Precautionary principle' and details of utilization of funds collected (Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors. O.A. No. 593/2017 dated 19.02.2019)

Hon'ble Supreme Court of India in this case directed that all the units where ETPs are not functional, electricity connection should be disconnected and no unit should be allowed to run without operational ETPs/STPs (if required) and later Hon'ble Supreme Court directed that same matter be monitored by Hon'ble NGT.

In this connection, it is informed that in Chandigarh no unit is allowed to run without operational ETP if waste water is generated in unit. Treated water is released into the sewage system which further goes to terminal sewage treatment plant, Chandigarh for further treatment.

Presently, 05 STPs are operational in U.T., Chandigarh and all the 05 STPs will be upgraded to achieve new standards under Smart City Project by Nov. 2021.

8. Mahesh Chandra Saxena Vs. South Delhi Municipal Corporation & Ors. O. A. No. 148/2016

Hon'ble NGT has directed to prepare Action Plan for utilisation of treated water of STPs and action plan thereof.

In case of Chandigarh already tertiary treated water is being supplied to various parks and gardens, golf courts etc."

Status report dated 30.05.2019 by CPCB

14. The report reads as under:

“1.0 Background

Hon’ble NGT has passed an order, dated 13/12/2018, in the matter of O.A. No. 1038/2018 based on the news item published in ‘The Asian Age’ dated 6/12/2018 authored by Sanjay Kaw titled ‘CPCB to rank industrial units on pollution levels’. In this context, the following directions have been issued by Hon’ble NGT to the SPCBs/PCCs, CPCB and MoEF&CC:

“...We direct the SPCBs/Committees to finalise the time bound action plans with regard to identified polluted industrial clusters in accordance with the revised norms laid down by the CPCB to restore environmental quality with in norms. Such action plan be finalised within three months from the date of receipt of copy of this order.

The action plan may thereafter be looked into by CPCB and steps taken for implementation so as to ensure that all the industrial clusters comply with laid down parameters as per the Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981.

The CPCB will be the Nodal agency. CPCB will forward Assessment Report for 100 areas carried out during 2017-2018 top MoEF&CC before 28/02/2019 for appropriate action.

CPCB may serve the copy of the said order to all the SPCBs and the Committees who may furnish the same to the concerned Chief Secretaries.

MoEF&CC may take necessary steps on its part based on CPCB report for 100 areas mentioned above in accordance with law. The report on the action taken by CPCB and MoEF&CC may be furnished to the Tribunal before 31/05/2019.”

2.0 Action taken by CPCB

In view of above directions, details about the action taken by CPCB are as follow:

- i. Copy of the said order dated 13/12/2018 was served to all SPCBs/PCCs vide CPCB letter of 20/12/2018, with a request to furnish the same to the concerned Chief Secretaries for necessary action and compliance.*
- ii. CPCB, with concurrence of MoEF&CC carried out the environmental quality monitoring in 100 industrial clusters/areas located in 21 states across the country for CEPI evaluation based on the revised CEPI-2016 by engaging the services of four approved laboratories for carrying out environmental quality monitoring.*
- iii. Thereafter, CPCB has undertaken the process of analysing the monitoring reports for identifying critical pollutants in the respective Polluted Industrial Areas (PIAs). As evaluation of CEPI scores needs additional information namely, industrial sources/pollution control facilities and health/hospital data of the industrial clusters, the concerned SPCBs/PCCs were*

requested to provide the information as per the formats. In this regard CPCB has followed up with all the concerned 21 SPCBs/PCCs, through letters/e-mails/phone/video conferencing, for obtaining the information. The information from this comprehensive exercise and consultative process were collected and analysed by CPCB. Thereafter, CEPI scores for all 100 PIAs were evaluated and submitted to MoEF&CC on 11/1/2019, though for few PIAs complete information was not available.

- iv. Subsequently, MoEF&CC requested the concerned Principal Secretaries on 22/2/2019 to provide requisite additional information immediately so as to complete the process of evaluating CEPI scores. Further, on the basis of additional information received from the concerned SPCBs/PCC, CPCB updated the CEPI scores and submitted the same to MoEF&CC on 10/4/2019 for consideration & appropriate action.*
- v. During a meeting conducted by MoEF&CC with CPCB on 15/4/2019, CPCB was requested to prepare a protocol to be followed by the SPCBs/PCCs for improvement of environmental quality in the identified critically/severely PIAs. Accordingly, CPCB prepared the protocol and proposed/submitted the same to MoEF&CC, vide CPCB letter dated 17/5/2019 for consideration & appropriate action.”*

Action taken report by CPCB

15. A separate action taken report was also filed by CPCB pursuant to Tribunal's order dated 13.12.2018 and the same stated as under:

- “2. CPCB, carried out the environmental quality monitoring in 100 industrial clusters/areas located in 21 states across the country for CEPI evaluation based on the revised CEPI-2016 by engaging the services of four approved laboratories for carrying out environmental quality monitoring. Thereafter, CPCB has undertaken the process of analysing the monitoring reports for identifying critical pollutants in the respective Polluted Industrial Areas (PIAs). As evaluation of CEPI scores needs additional information namely, industrial sources/pollution control facilities and health/hospital data of the industrial clusters, the concerned SPCBs/PCCs were requested to provide the information as per desired format. In this regard CPCB has followed up with all the concerned 21 SPCBs/PCCs, through letters/e-mails/phone/video conferencing, for obtaining the information. The information from this comprehensive exercise and consultative process were collected and analysed by CPCB. Thereafter, CEPI scores for all 100 PIAs were evaluated and submitted to MoEF&CC on 11/1/2019, though for few PIAs complete information was not available. (Copy of the report is enclosed as Annexure-II).*
- 3. Subsequently, MoEF&CC requested the Principal Secretaries of the concerned States on 22/2/2019 to provide requisite additional information immediately to CPCB so as to complete the process of evaluating CEPI scores (Annexure-III). Further, on the basis of*

additional information received from the concerned SPCBs/PCC, CPCB updated the CEPI scores and submitted the same to MoEF&CC on 10/4/2019 for consideration & appropriate action (Annexure-IV). Out of the 100 PIAs monitored across the country, 38 are in critically polluted areas (CEPI score ≥ 70) and 31 are in severely polluted areas (CEPI score ≥ 60 & < 70).

- 4. A meeting was conducted by MoEF&CC with CPCB on 15/4/2019 and CPCB was requested to prepare a protocol to be followed by the SPCBs/PCCs. Accordingly, CPCB prepared the protocol for improvement of environmental quality in the identified critically/severely PIAs as well as format for submission of action plan and submitted the same to MoEF&CC, vide CPCB letter dated 17/5/2019 for consideration & appropriate action (Annexure-V).*
- 5. In compliance of the order of Hon'ble NGT, Principal Bench, New Delhi, dated 13/12/2018, in OA No. 1038/2018, CPCB has submitted a report on the action taken to the Hon'ble NGT on 30/05/2019 (Annexure-VI).*
- 6. MoEF&CC, vide OM dated 4/6/2019 (copy enclosed at Annexure-VII) Communicated their observations and requested to revise the protocol & share with States/UTs. Accordingly, a revised protocol was forwarded to MoEF&CC with the request to take appropriate, action/decision on CEPI scores and to issue necessary direction/instructions to all the concerned action SPCBs/PCCs for submitting the action plans for the identified critically/severely, polluted industrial areas, vide CPCB letter 19/6/2019 (Annexure-VIII).*
- 7. MoEF&CC was again requested to take appropriate action/decision on CEPI scores of 100 PIAs and to issue necessary direction/instructions to all the concerned SPCBs/PCCs for submitting action plans for the identified critically/severely polluted industrial, vide CPCB letter dated 26/6/2019 (Annexure-IX)."*

16. Matter was again considered by Tribunal on 10.07.2019. Background facts giving rise to issue under consideration were recapitulated by Tribunal, observing that CPCB in exercise of its statutory functions under Air Act, 1981; Water Act, 1974 and Environment (Protection) Act, 1986 (hereinafter referred to as '**EP Act, 1986**'), carried out physical study of industrial clusters in the country with reference to CEPI which includes weightages on nature of pollutants, ambient pollutant concentrations, receptors (number of people affected) and additional high risk element. Based on the study jointly carried out by CPCB and SPCBs in 2009-10, 88 industrial clusters were notified as

Polluted Industrial Areas (hereinafter referred to as '**PIAs**'). These PIAs were ranked as **Critically Polluted Area** (hereinafter referred to as '**CPA**'), **Severely Polluted Area** (hereinafter referred to as '**SPA**') and **Other Polluted Areas** (hereinafter referred to as '**OPAs**'), depending upon CEPI scores of each of these industrial areas. Where CEPI score crossed 70, areas are designated as CPAs, where index was between 60-70, they are designated as SPAs and those below 60 as OPAs. As per CPCB's monitoring of industrial clusters based on CEPI-2009, 43 industrial clusters in 16 cities were identified as CPAs and 32 were identified as SPAs. CPAs and SPAs were to bring pollution levels within the norms by formulating and implementing an action plan with short term and long-term measures within one year or more. New units in the said areas were prohibited but such ban was later, lifted.

17. In 2016, criterion for determining CEPI was revised. CPCB revised its CEPI criteria and laid out components which included, scale of industrial activity, scale of exceedance of environmental quality (level of exposure), health related statistics and compliance status of industries.

18. On 26.04.2016, CPCB issued directions under Section 18 of Air Act, 1981 and Water Act, 1974 to SPCB of Andhra Pradesh, Telangana, Uttar Pradesh, Karnataka, Punjab, Jharkhand, Haryana, Gujarat, Govt. of NCT Delhi, Tamil Nadu, Maharashtra, Madhya Pradesh, Rajasthan, Chhattisgarh, West Bengal and Kerala requiring continuous environmental quality monitoring in all CPAs and SPAs, installation of CAAQMS, Continuous Water Quality Monitoring Stations (hereinafter referred to as '**CWQMS**') for CEPI score evaluation as per revised formulae and to formulate their action plans before 15.06.2016. The polluting sources were required to be notified in public domain on websites, environmental quality data was also to be placed in public domain, State

Governments were to notify the scaled maps of the industrial areas. The object of placing such data in public domain was to give warning for bringing the pollution levels within the prescribed limits. The polluted clusters were to be kept in mind for permitting setting up of further industries or expanding of the existing industries.

19. Based on CEPI-2016 criterion, CPCB carried out further monitoring in the year 2017-18 where it was found that number of identified polluted industrial clusters went up to 100. The said number includes 38 critically polluted, 31 severely polluted and remaining 31 as other polluted areas.

20. Ill effects of industrial pollution on environment and public health were acknowledged by Tribunal and it observed that it is necessary to strictly apply principles of ‘Sustainable Development’ and permit any activity to be carried out without degrading the environment. The statutory scheme under Air Act, 1981 and Water Act and EP Act, 1986 provides for standards for air and water quality which must be maintained and violation thereof is a criminal offence¹. Any violation must be visited with stopping of polluting activity, prosecution, and compensation for restoration of environment. Accordingly, in the order dated 13.12.2018, Tribunal observed:

“5. Purpose of economic development in any region is to provide opportunities for improved living by removing poverty and unemployment. While industrial development invariably creates more jobs in any region, such development has to be sustainable and compliant with the norms of environment. In absence of this awakening or tendency for monitoring, industrialization has led to environmental degradation on account of industrial pollution. It is imperative to ensure that steps are taken to check such pollution to uphold statutory norms. Adequate and effective pollution control methods are necessary.

6. Dust, smoke, fume and toxic gas emissions occur as a result of highly polluting industries such as thermal power plants, coal mines, cement, sponge iron, steel and ferrow alloys, petroleum and chemicals unless right technology is used and precaution

¹ Section 7 read with Section 15 of the EPA Act, Section 24 read with Section 41 and Section 45A of the Water Act, Section 21 and Section 22 read with Section 37 of the Air Act.

taken. Industry specific clusters have not only become hazardous but also cause irreparable damage to our ecology and environment, often breaching the environment's carrying capacity, adversely affecting public health.

7. In *Karnataka Industrial Areas Development Board vs. C. Kenchappa & Ors*², the Hon'ble Supreme Court observed, as guiding rules for Sustainable Development, that humanity must take no more from nature than man can replenish and that people must adopt lifestyles and development paths that work within the nature's limit. In *Vellore Citizens Welfare Forum Vs. Union of India*, the Hon'ble Supreme Court recognized the Precautionary Principle and explained that environmental measures by the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation.
8. This Tribunal has applied the same principles in deciding matters before it in terms of Section 20 of the National Green Tribunal Act 2010.
13. The action plan to be prepared in the States may be done by the Committee constituted by the Chief Secretary within one month from today as several Departments may be involved in the exercise. The final preparation of the action plan including its execution may be overseen by the Chief Secretary of the concerned State, along with the other connected major environmental issues of the States, such as pollution of river stretches, non-attainment cities in terms of air quality and solid waste management, utilization of treated sewage, covered by order of this Tribunal dated 20.09.2018 in Original Application No. 673/2018, News Item Published in 'The Hindu' authored by Shri. Jacob Koshy titled "More river stretches are now critically polluted: CPCB", order dated 08.10.2018 in Original Application No. 681/2018, News Item Published In 'The Times of India' Authored by Shri. Vishwa Mohan Titled "NCAP with Multiple Timelines to Clear Air in 102 Cities to be released around August 15", order dated 20.08.2018 in Original Application No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016 and order dated 27.11.2018 in Original Application No. 148/2016, Mahesh Chandra Saxena Vs. South Delhi Municipal Corporation & Ors. The Chief Secretary will take meetings on all these issues once in three months (quarterly) and will forward Report to NGT by e-mail."

21. We may also note that on 16.01.2019, while considering issue of compliance of Solid Waste Management Rules, 2016 (hereinafter referred to as '**SWM Rules, 2016**') and other Waste Management Rules in **OA 606/2018, In re: Compliance of Municipal Solid Waste Management Rules, 2016 and other environmental issues**, Tribunal required

² (2006) 6 SSC 383

presence of Chief Secretaries in person after monitoring the subjects mentioned in the said order which included polluted industrial clusters.

22. Accordingly, Chief Secretaries appeared before this Tribunal and filed their respective versions on the subject. They were asked to take necessary steps to enforce environmental norms and furnish periodical reports to this Tribunal. Directions included monitoring of important environmental issues including the issue of polluted industrial clusters by a Central Monitoring Committee with representatives from Central Government and Chief Secretaries of States, undertaking carrying capacity study of the areas where violation of environmental norms is established, training programme of the officers concerned with enforcement of environmental norms, preparation of annual environmental plan for the country giving status of gaps in compliance of environmental norms.³ Tribunal noted private studies which may need to be verified assessing the number of deaths and diseases from pollution⁴:

“38. Death attributable to pollution to be 2.51 million in 2015, highest in the world. Air pollution, the number of deaths in India from ambient air pollution was 1.09 million, while deaths from household air pollution from solid fuels were 0.97 million. In the case of water pollution, 0.5 million deaths were caused by unsafe water source, while unsafe sanitation caused 0.32 million deaths. Deaths from air pollution were a result of diseases such as heart disease, stroke, lung cancer, and chronic obstructive pulmonary disease (COPD). Pollution has been responsible for the most non-communicable disease deaths. India ranks a dismal 110 of 149 countries on the Sustainable Development Index. With rapid urbanization, the country is facing massive waste management challenge. Over 377 million urban people live in 7,935 towns and cities and generate 62 million tonnes of municipal solid waste per annum. Only 43 million tonnes (MT) of the waste is collected, 11.9 MT is treated and 31 MT is dumped in landfill sites. An alarming 80% of India’s surface water is polluted. Indian cities generate 10 billion gallons or 38 billion litres of municipal waste water every day, out of which only 29% of it is treated.

40. In case extent of convictions for the environment related offences do not correspond to the extent of crime, paradigm shift in policies and strategies for implementation of law may need to be considered. Similarly, the mechanism for recovery of compensation may need to

³ O.A 606/2018, order dated 17.05.2019, at para 27

⁴ *Ibid*

be revised on that pattern. Such review of policy cannot be left to the Local Bodies or the Pollution Control Boards but has to be at highest level in the State and further review at the national level. As noted in some of the studies, the ranking of the country in compliance of environmental norms needs to be brought to respectable higher position which may be possible only if there is change in policies and strategies for implementation of necessary norms at every level in right direction. The scale of compensation needs to be suitably revised so that the same is deterrent and adequate to meet the cost of reversing the pollution.”

23. Some of the States have also filed their reports in the present proceedings apart from reports of Chief Secretaries mentioned above. Further, a report has also been filed by CPCB. According to CPCB report, order dated 13.12.2018 stands served to all SPCBs and State PCCs. CPCB with the concurrence of MoEF&CC carried out environmental quality monitoring in 21 States across the country in respect of the said 100 industrial clusters based on the revised CEPI-2016, by engaging services of approved laboratories. The said reports were analysed. Further information was sought from SPCBs/State PCCs. Comprehensive exercise and consultative process was undertaken and CEPI scores of all 100 PIAs were submitted to MoEF&CC on 11.01.2019. MoEF&CC replied in the letter dated 25.02.2019 that there are some gaps in the information. Further information relating to such gaps were sought from States by MoEF&CC. Thereafter, updated CEPI scores for all 100 PIAs were submitted by CPCB to MoEF&CC on 10.04.2019. CPCB also prepared a protocol and submitted the same to MoEF&CC on 17.05.2019 for consideration and appropriate action.

24. During hearing on 10.07.2019, a copy of the letter dated 17.05.2019 was placed before Tribunal by counsel appearing for CPCB indicating latest CEPI scores for 100 polluted industrial areas clusters monitored during 2018-2019. Taking note thereof, Tribunal in para 8 quoted the contents of the said letter as also updated CEPI scores and 100 identified industrial clusters/areas as per revised CEPI Score-2016.

25. Tribunal considered the approach of preparation of action plans without any serious attempt of its execution and said that mere making of action plans would not obviate the requirement of enforcing law. Continued polluting activities are criminal offences under the law of land. Rule of law requires prohibiting such activities to⁵ safeguard environment and innocent victims⁶.

26. Once industrial clusters were notified as polluting, while action plans are to be prepared, polluting activity, which is a criminal offence, cannot be allowed to be continued. The essence of rule of law is that no activity which is against law is allowed to continue and person violating the law is punished according to law.⁷ Thus, merely requiring improvement does not obviate need for punishing law violators/polluters; stopping polluting activity and recovering compensation for damage already caused so as to recover cost of restoration⁸ is mandate of law. This, having not been done, Tribunal is under a duty to direct Statutory Regulators to perform their functions and take steps forthwith for stopping polluting activities, initiating prosecutions against polluters and assessing and recovering compensation from such identified polluters at least for five years which is the period specified under Section 15(3) of NGT Act, 2010.

⁵ Under Section 5 of the EPA Act, Section 31A of the Air Act and Section 33A of the Water Act, the power of Board to give directions includes the power to direct the closure, prohibition or regulation of any industry, operation or process; or the stoppage or regulation of the supply of electricity or water or any other service.

⁶ [https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(18\)30261-4/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(18)30261-4/fulltext) stating 1.24 million deaths in India in 2017, which were 12.5% of the total deaths, were attributable to air pollution, including 0.67 million from ambient particulate matter pollution and 0.48 million from household air pollution.

⁷ Goa Foundation Vs. Union of India and Ors., (2014) 6 SCC 590, at para 72-75, the Supreme Court noted the power that rests with the Pollution Control Board under Section 31 A of the Air Act and Section 33 A of the Water Act and directed that the authorities should take stringent actions in line with these power in cases of polluting industries.

⁸ Tirupur Dyeing Factory Owners Association Vs. Noyyal River Ayacutdars Protection Association & Ors., (2009) 9 SCC 737, in paras 26, 27, 33 & 34, the Supreme Court emphasis on developmental activities to be such that it does not compromises with the ability of the future generation to meet their needs and in this regard, authorities are to take into consideration the macro effect of wide-scale land and environmental degradation caused by absence of remedial measures.

27. We reiterate that economic development is not to be at the cost of health of public and in violation of law of land. Unless polluting industries tackle the problem they have created, their operations have to be stopped/suspended.⁹ Reference may be made to judgment in para 70 of **Indian Council for Enviro Legal Action & Ors. vs. Union of India & Ors, (1996)3SCC212:**

“Respondents 4 to 8 have earned the dubious distinction of being categorised as “rogue industries”. They have inflicted untold misery upon the poor, unsuspecting villagers, de-spoiling their land, their water sources and their environment – all in pursuance of their private profit. They have forfeited all claims of any consideration by this Court. Accordingly, we herewith order the closure of all plants and factories of Respondents 4 to 8 located in Bichhri village. The RPCB is directed to seal all factories/units/plants of the said respondents forthwith.”

28. We may note that this Tribunal had dealt with cases of industrial pollution and exercising its jurisdiction under Sections 14, 15 and 20 of the NGT Act, 2010 directed Regulatory Authorities to prohibit polluting activities, prosecute polluters and assess and recover compensation. In case of Morbi Industrial Cluster i.e., **OA 20/2017 (WZ), Babubhai Ramubhai Saini vs. Gujarat Pollution Control Board & Ors.** (order dated 06.03.2019), which ranks at 81 based on its CEPI score, (where air pollution is critical though overall index places it in OPA), Tribunal noted air quality as shown in inspection report furnished in the said case, to be as follows:

“Ambient Air Quality Status: As per National Green Tribunal committee report average ambient air quality (7 Stations) monitored PM10 = 552.66 µg/m³, PM2.5 = 289.61 µg /m³, SO2 = 152.81 µg /m³. Compared to that, Average ambient air quality monitored (4 Stations) in last 3 months (Aug- 18 to Nov-18) is PM10 = 199.1 µg /m³, PM2.5 = 60.6 µg/m³. Though not meeting with standards, this shows improvement in air quality of Morbi-Wankner Region.”

⁹ M.C Mehta (Badkhal and Surajkund Lakes Matters) vs. Union of India & Ors., (1997) 3 SCC 715 at para 10 & 11, where the Supreme Court prohibited any construction activities around the said lakes on account of precautionary principle to protect these lakes; Vellore Citizens Welfare Forum Vs. Union of India & Ors., (1996) 5 SCC 647 at para 9, where the Supreme Court discussed the rights guaranteed under Article 21 of the Constitution of India and directed that all tanneries which have not obtained the consents will be not reopened and that no new tanneries will be permitted to be open in the prohibited area.

29. Since industries in the said area, were operating in violation of Air Act, 1981 having adverse consequences on health and environment, applying Sustainable Development and Precautionary principles, Tribunal by order dated 06.03.2019 in **OA 20/2017 (WZ) (supra)** directed Gujarat SPCB to close all the coal gasifier industries and take steps for prosecution of such industries which violated law and recover compensation for damage to public health to be assessed by a Joint Committee of Gujarat State PCB, CPCB and NEERI, taking into account cost of restoration of environment and element of deterrence.

30. Tribunal also observed in order dated 06.03.2019 in **OA 20/2017 (WZ) (supra)** as under:

- “22. Purpose of economic development in any region is to provide opportunities for improved living by removing poverty and unemployment. While industrial development invariably creates more jobs in any region, such development has to be sustainable and compliant with the norms of environment. In absence of this awakening or tendency for monitoring, industrialization has led to environmental degradation on account of industrial pollution. It is imperative to ensure that steps are taken to check such pollution to uphold statutory norms. Adequate and effective pollution control methods are necessary.*
- 23. We may also note that as per data compiled by the CPCB Morbi Wankaner is one of the polluted industrial clusters. Vide order dated 13.12.2018 in Original Application No. 1038/2018, this Tribunal considered the subject matter of critically polluted industrial clusters and directed preparation of action plans by the respective States for remedying the situation.*
- 24. Even though, this area is polluted but not ‘critically polluted’, the same may not be covered by the said order, but the fact remains that there is high amount of pollution as shown by the latest report of the GPCB quoted above in para no. 13. PM10 is equal to 552.66 and PM2.5 is equal to 289.61. Stringent measures are, thus, required in the interest of protection of environment and public health.*
- 25. Accordingly, we allow the applications and direct the GPCB to close all coal gasifiers industries and units operating with the help of coal gasifiers without prejudice to such units switching over to non-coal gasifiers or PNG or technology consistent with the above report. The GPCB must initiate immediate steps for prosecution of the industries which have operated in violation of law and recover compensation for causing damage to the environment and public health. This amount may be assessed*

by a Committee with representatives of CPCB, GPCB and NEERI. The CPCB will be the nodal agency for coordination and compliance. The Committee may suggest restoration plan.”

31. Tribunal also considered case of pollution in Taloja industrial area i.e., **OA 125/2018, Arvind Pundalik Mhatre vs. Ministry of Environment and Forest & Climate Change & Ors.** which finds mention under the title ‘Navi Mumbai’ at rank 51 based on its CEPI score. High level of pollution was found on the basis of joint inspection conducted by CPCB and Maharashtra SPCB dated 02.01.2018, as Common Effluent Treatment Plant (hereinafter referred to as ‘**CETP**’) was not functioning properly. Maharashtra State PCB gave notice to 92 industries for closure. Apart from requiring CETP operators to deposit a sum of Rs. 10 Crores as compensation, steps were required to be taken to remedy pollution.

32. Vide order dated 09.04.2019 passed in **OA 125/2018 (supra)**, Tribunal held that only option was to permit only such industries to function which had standalone Effluent Treatment Plant (hereinafter referred to as ‘**ETP**’) and are fully compliant with the norms and to close the industries which were non-compliant. Tribunal directed as follows:

“13. In view of above undisputed position that pollution is still continuing, the only option is to shut down the industries which are source of pollution till remedial action is taken. Learned Counsel for the MIDC as well as MPCB are unable to provide any other solution. It is made clear that mere fact that MIDC has assigned the work to a contractor does not absolve MIDC of its responsibility of operating CETP as per norms.

14. Accordingly, we direct the MPCB to forthwith suspend the Consent to Operate to the industries in the area not meeting the norms and permit them to operate only after remedial steps are taken. Steps in this direction be taken within two weeks from today. Whether a particular industry is complying or not complying with the norms is the matter to be decided by the MPCB in accordance with law. Action taken report be furnished to the Committee and the Committee may take a final call in the matter, in case of any surviving issue.”

33. Taking cognizance of the untreated effluents being discharged by textile units in Tronica city, Loni area, Ghaziabad, Tribunal by order dated 25.05.2018 in **OA 317/2015, Rashid Ali Warsi vs. UPSIDC & Ors.**, directed closure of 53 units until the time CETP was made functional. Thereafter, vide order dated 13.11.2018, Tribunal allowed operation of only those units which were later found to be achieving the norms.

34. Tribunal vide order dated 14.05.2019 in **OA 200/2014, M.C. Mehta vs. Union of India & Ors.** dealt with the issues regarding continuous illegal discharge of untreated sewer and industrial effluents in Ganga and its tributaries and connecting drains, apart from dumping of solid waste, hazardous waste, plastic waste, muck and other wastes. Tribunal after noting that leather industries at Jajmau, Banthar and Unnao were discharging untreated effluents in the river Ganga, directed those activities of such industries must be straightaway closed till they comply with the norms.¹⁰

35. In view of water pollution caused by absence/dysfunctional CETPs/ETPs/STPs, Tribunal vide order dated 11.01.2019 in **OA 95/2018, Aryavart Foundation vs. M/s Vapi Green Enviro Ltd. & Ors.** (in para 55) directed all defaulting industries, other than green and white category, connected with CETP, to make deposits with CPCB towards interim environmental compensation, pending assessment of actual compensation and further action, on the following scale:

- a. Large Industries – Rs. 1 crore each
- b. Medium Industries – Rs. 50 Lakhs each
- c. Small Industries – Rs. 25 Lakhs each

36. In the above backdrop, Tribunal observed that in the case in hand, massive exercise was already done by CPCB, it is not necessary to require

¹⁰ Ibid at Para 16 & 17

any further verification about the existence of pollution in the said PIAs. Tribunal can direct that polluting activities cannot be allowed to continue till adequate measures are taken as Tribunal is bound to apply ‘Sustainable Development’¹¹, ‘Precautionary’¹² and ‘Polluter Pays’¹³ principle under Section 20 of NGT Act, 2010 to protect environment and victims. Statutory Regulatory bodies can be required to straight away identify the particular industrial units in said PIAs that are causing pollution, particularly those units which fall under ‘Red’ and ‘Orange’ category and take action against them by way of closing polluting activity, initiating prosecution and assessing and recovering compensation. Pending such assessment, interim compensation may be recovered on the scale adopted by this Tribunal in case of Vapi industrial area.

37. CPCB has compiled data of industrial clusters which are polluting in terms of air, water and other norms together. Under the law, even air pollution or water pollution or other pollution, are independent offences. Sustainable development and precautionary principle require any polluting activity to be prohibited and compensation recovered for damage caused from polluters. If there is air pollution, actionable under Air Act, 1981 even if there is no violation of Water Act, 1974 or EP Act, 1986, such pollution cannot be ignored. There has to be prosecution, stopping of polluting activity and recovery of compensation for restoration of

¹¹ M.C Mehta Vs. Union of India (1997) 2 SCC 353, where the Supreme Court of India held – The development of industry is essential for the economy of the country, but at the same time the environment and the ecosystems have to be protected. The pollution created as a consequence of development must be commensurate with the carrying capacity of our ecosystem.

¹² M.C Mehta vs. Union of India & Ors., (2009) 6 SCC 142, at para 23, 30 & 46, the Supreme Court addressed the issue of wide threat to forest ecology vis-à-vis the mining activities in the Aravalli hills and explained that it is important to evoke the precautionary principle to impose complete ban on mining in the Aravalli Range in state of Haryana.

¹³ Indian Council for Enviro Legal Action & Ors. Vs. Union of India & Ors., (1996) 3 SCC 212 Para 16, Vellore Citizens Welfare Forum Vs. Union of India & Ors. (1996) 5 SCC 647 Para 12-18 – holding that “Polluter Pay” principle is ‘accepted principle and part of environmental law of the country, even without specific statute. M.C Mehta Vs. Union of India & Ors., W.P (C) No. 13029/2015 order dated 24.10.2017 of the Supreme Court of India., O.A 95/2018, order dated 11.01.2019 & O.A No. 593/2017, order dated 03.08.2018: The Tribunal directed CPCB to take penal action against those accountable for failure in setting up CETPs/STPs/STPs and to recover compensation for damage to the environment.

environment. We have seen that even when norms of air, water and other pollution are being violated, prosecution, stopping of polluting activities and recovery of compensation is not taking place for which there is no justification. Likewise action to prohibit polluting activity, initiating prosecution and recovery of compensation is required not merely for the PIAs based on violation of norms under all the heads, but also for areas where air, water or other pollution is found individually. Thus, areas not covered by PIAs are also required to be governed by our directions for enforcing the law by way of stopping polluting activity and taking other steps. The fact that such pollution is taking place is evidenced by there being acknowledged pollution in the form of 351 polluted river stretches¹⁴ and 102 non-attainment cities¹⁵.

38. CPCB must compile data of polluted industrial areas not confined to more than one parameter as is now being done, but also with respect to polluted areas based on water, air or other pollution individually. Compiling data for categorizing areas as polluted areas based on water pollution alone, or air pollution or other pollution alone may be a step in the right direction. **Let this be now done in next three months, with assistance of State PCBs/PCCs or other experts.** In this regard, we may note that dealing with industrial water pollution, this Tribunal directed CPCB to compile its monitoring report with reference to 97 CETPs installed in different states as this was linked to 100 PIAs also.¹⁶

39. Needless to state that there is no right to carry on business in violation of pollution norms and right of Statutory Authorities is coupled

¹⁴ O.A. 673/2018, News Item Published in 'The Hindu' authored by Shri. Jacob Koshy titled "More river stretches are now critically polluted: CPCB", Order dated 20.09.2018

¹⁵ O.A. 681/2018, News Item Published In 'The Times of India' Authored by Shri. Vishwa Mohan Titled "NCAP with Multiple Timelines to Clear Air in 102 Cities to be released around August 15" order dated 08.10.2018

¹⁶ O.A No. 593/2017, order dated 19.02.2019, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors.

with duty. Such right does not carry any unlimited discretion of not taking action when pollution norms are violated.

40. In view of the material compiled by CPCB, with assistance of SPCBs/PCCs, in respect of polluted industrial areas, where action is not being taken by Statutory Authorities, Tribunal must exercise its jurisdiction of directing performance of statutory functions and duties by the State boards/committees, following similar direction by Apex Court¹⁷.

41. Having said so, Tribunal issued directions contained in para 28 to 34 as under:

“28. Accordingly, we direct the CPCB in coordination with all State PCBs/PCCs to take steps in exercise of statutory powers under the Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974, Environment (Protection) Act, 1986 or any other law to prohibit operation of polluting activities in the said CPAs and SPAs within three months and furnish a compliance report to this Tribunal. The Central Pollution Control Board, in coordination with the State Boards/PCBs may make assessment of compensation to be recovered from the said polluting units for the period of last 5 years, taking into account the cost of restoration and cost of damage to the public health and environment and the deterrence element. The scale of deterrence may be related to the period and the frequency of defaults. Such other factors as may be found relevant may also be taken into account. No further industrial activities or expansion be allowed with regard to ‘red’ and ‘orange’ category units till the said areas are brought within the prescribed parameters or till carrying capacity of area is assessed and new units or expansion is found viable having regard to the carrying capacity of the area and environmental norms. Pending assessment of compensation, interim compensation be recovered at the scale adopted by this Tribunal in the case of Vapi Industrial area as mentioned in para 22 above.

29. We further direct CPCB, with the assistance of SPCBs/PCCs or other experts, to compile information with regard to polluted industrial areas based on water pollution norms separately, air pollution norms separately and other pollution norm separately and notify such information on public domain within three months. On completing this exercise, action against identified individual polluters may be initiated on the same pattern on which direction

¹⁷ M.C Mehta (Calcutta Tanneries’ Matter) Vs. Union of India & Ors., (1997) 2 SCC 411, at para 17, the Supreme Court directed the Board to take action against defaulting tanneries which, including those which had not complied with the conditions under Water Act as mentioned in their consents. In M.C Mehta Vs. Union of India & Ors., (2004) 6 SCC 588, paras 37,48, 517 69, the Supreme Court passed direction on closure of industrial units which were illegally operating and were in violation of the Master Plan.

have been issued in para 28 and furnish a report to this Tribunal in this regard also, before the next date.

30. We direct the MoEF&CC to take steps for enforcement of action plan for improvement of the situation.

31. We may also mention that hearing individual industrial unit is not considered necessary for passing the above order as the CPCB/State PCBs must exercise their respective statutory powers by following the procedure prescribed under the statute even without intervention of this Tribunal. The Tribunal is only requiring such statutory bodies to perform their duties to uphold the law without going into an individual case¹⁸. Direction is with reference to data compiled, or to be compiled, by the said bodies only.

32. It is made clear that white and green or non-polluting industries which are not causing any pollution will not be affected by this order except that the parameters thereof may be monitored with a view to see that under the garb of label of white/green or otherwise, the polluting activity is not continued.

33. We direct that the CPCB will be at liberty to have an appropriate panel of Experts to augment its capacity, in case the available man-power is found to be inadequate to execute the above order and for this purpose utilise the environment funds available under the environmental compensation head. In this regard, reference may also be made to order dated 22.01.2019, of this Tribunal in O.A No. 101/2019, Central Pollution Control Board Vs. Assam State Pollution Control Board & Ors. which enables CPCB to utilise the environment fund for the purpose.

34. Let a compliance report be filed by the CPCB after three months but before the next date by email on judicial-ngt@gov.in.”

IA 479/2019 dated 09.08.2019:

42. IA was filed by CPCB seeking clarification of order dated 10.07.2019 stating that subsequent to Tribunal's order dated 10.07.2019, a few representations were received from industries association raising following pointed in brief:

“

- *Whether all the Red and Orange categories of industries operating in the critically and severely polluted industrial Clusters are required to stop their operations forthwith and will have to remain closed until CEPI scores in the industrial clusters Come within the prescribed limits.*
- *Pending assessment of compensation, interim compensation be recovered at the scale adopted by the Tribunal in the case of*

¹⁸ M.C Mehta Vs. Union of India & Ors., (2001) 3 SCC 756, at para 8, the Supreme Court repeated the stand that in re M.C Mehta Vs. Union of India (1998) 6 SCC 63, the Court had passed directions to all bus operators in Delhi to make a shift from diesel and other fuels to CNG, the Supreme Court's directions are all *in rem* and not *in personam*.

Vapi industrial area as mentioned in para 22, in the matter of Aryavart Foundation Vs M/s Vapi Green Enviro Ltd & Ors. (O.A. No. 95/2018), decided on 11/1/2019. Many industries that have already paid compensation are apprehensive that they will be compelled to pay the compensation once again in the light of current order.

- *An industry that has a valid EC & CTO shall be deemed to be complying with the environmental standards and can continue to operate, regardless of the category of the industry (red/orange/green/white), until SPCB/CPCB undertake a re-assessment within the next 03 months.*
- *Without any credible source apportionment studies, the entire contribution towards pollution may not be attributed solely to industrial activities.”*

43. CPCB further stated in para 4(iii) that CEPI involves overall assessment of environmental status of an area, which may be due to contribution from multiple pollution sources such as industrial, vehicular, generator sets, municipal and other solid wastes, sewage, etc. CEPI score in the current framework does not reflect contribution of individual sectors separately. Therefore, further assessment may be necessary to ascertain contribution from sources including industries for planning actions. Moreover, CEPI score is to be used as a warning tool to appreciate severity of pollution in studied area and then for formulating a detailed action plan to restore environmental quality. Therefore, as a next step SPCBs are required to work out contribution of different sources and take appropriate corrective measures.

44. It accordingly, requested Tribunal to give directions so as to be abided by CPCB.

Review Application 44/2019 dated 09.08.2019:

45. This application was filed by MoEF&CC seeking review of Tribunal's order dated 10.07.2019 on the following grounds:

“(i). CPCB has submitted the CEPI score and the Protocol to the Ministry for consideration. The Ministry has made certain suggestions in the protocol. The CEPI assessment report and protocol, both are under consideration of this Ministry. Hon'ble Tribunal may kindly grant some time to this Ministry to take a final view regarding CEPI assessment report and protocol for implementation of the action plan

for improvement in environmental conditions, by the States in the respective CPAs.

(ii). The current CEPI framework may need to be reviewed because CEPI calculations are based on the Comprehensive Environmental Pollution Assessment which involves overall assessment of an area and reflects contribution of various polluting activities including industrial and related activities. Therefore, even though industries may be in compliance with the environmental norms, other polluting activities such as movement of vehicles, unpaved roads, open burning of Municipal and industrial waste, untreated sewage etc., may be contributing significantly to environmental pollution. Therefore, overall pollution assessment, of an area may be critical even though industries may be complaint. Thus industries that are compliant and non-polluting will be shut down even though they are not adding to the pollution load of the area. Thus this frame work needs review.

(iii). There might be similar cases of expansion or setting up of new and compliant industries. A blanket ban will again not permit such compliant new project/ expansion projects. Thus in such cases as well CEPI framework would need a review.

(iv) Hence, while CEPI score is to be used as a warning tool to appreciate severity of pollution in an area, relative contribution of various sources will have to be considered while formulating an action plan to restore environmental quality and this will require Six months for formulation and about one year for implementation.”

46. Review applicant also sought six months’ time to arrive at the final view on CEPI policy frame work and requested for grant of six months’ time for consideration and one year for implementation. Till then, ban on expansion/setting up new industries was requested to be kept in abeyance.

Tribunal’s order dated 19.08.2019:

47. IA 479/2019 and Review Application 44/2019 were considered by Tribunal on 19.08.2019. After hearing, the order was reserved and uploaded on 23.08.2019. Disposing of the above applications, Tribunal said as under:

“7. Case of the MoEF&CC in seeking review is that the MoEF&CC is yet to take a final view in the matter of protocol to be followed by the States/UTs for implementation of the action plan for environmental improvement of CPAs after considering the report of the CPCB, as noted in para 10 of the order dated 10.07.2019. Current CEPI framework may need to be reviewed. CEPI score is to be used as a warning tool for formulating an action plan to restore environment quality. MoEF&CC will require six months for

policy framework and one year for implementation and till then ban on expansion/setting up new industries may be kept in abeyance.

- 8. Case of CPCB in seeking clarification is that certain SPCBs/PCCs are not clear whether even compliant 'red' and 'orange' industries are to stop their operations and whether non-industrial 'red' and 'orange' category projects of public utility are also to be prohibited. Further, the units which have sought consent to establish (CTE) by abating the pollution or where EC and CTE is already granted are to be covered by order of this Tribunal. Industrial Associations have represented that compliant industries should not be affected and those who have already paid compensation should not be required to pay compensation again. CEPI score does not reflect contribution of individual sectors such as industrial, vehicular, generator sets, municipal and other solid wastes etc. separately which exercise was required to be undertaken.*
- 9. We have given due consideration to the submissions. As regards the plea of MoEF&CC that CEPI policy framework will be finalized and implemented in six months and one year, we are of the view that the order of the Tribunal does not in any manner debar the MoEF&CC to take the proposed steps. However, pendency of such steps can be no justification for not enforcing the existing pollution norms and applying the 'Sustainable' 'Precautionary' and 'Polluter Pays' principles on the basis of data available.*
- 10. What the Tribunal has directed is inter alia to "identify the particular industrial units in the said PIAs that are causing pollution, particularly those units which fall under the 'red' and 'orange' category and take action against them by way of closing the polluting activity, initiating prosecution and assessing and recovering compensation". No ground whatsoever has been shown to review the said direction. Further direction of the Tribunal is that "No further industrial activities or expansion be allowed with regard to 'red' and 'orange' category units till the said areas are brought within the prescribed parameters or till carrying capacity of area is assessed and new units or expansion is found viable having regard to the carrying capacity of the area and environmental norms." Objection to this direction is that there may be 'red' or 'orange' category units which may not in any manner add to the pollution. If it is so, all that is required is to determine viability of such units on 'Precautionary' principle by an appropriate mechanism. Reasons for doing so are that the area as per data available is polluted and 'red' and 'orange' category have higher potential for pollution. There is no absolute bar to such units being set up if they are found to be viable. This clarification should take care of any possible apprehension that the order of the Tribunal will obstruct any legitimate industrial activity. The MoEF&CC can forthwith devise an appropriate mechanism to ensure that new legitimate activity or expansion can take place after due precautions are taken in the areas in question by 'red' and 'orange' category of units.*
- 11. Coming to the apprehension of the CPCB, it is clear from paras 28 and 32 of the order reproduced above that action has to be taken only against polluting activities. If any unit is compliant with the norms, such unit is not affected. There is no basis for apprehension*

that compensation may have to be paid twice. The provisions of Air Act, Water Act and EPA Act and the rules or other environment norms are to be enforced not only against the industrial units but also against every polluting activity whether the same has already been set up or is yet to be set up in terms of provisions of the law in question. This being the undisputed legal position, no further clarification remains necessary.”

Status report dated 01.11.2019 by CPCB:

48. Referring to Tribunal’s orders dated 10.07.2019 and 23.08.2019, CPCB submitted the above report and action taken as detailed in para 2.0 are stated as under:

“Actions taken for complying Hon’ble NGT orders in the matter of OA No. 1038/ 2018 are as follows:

- Since CEPI report including CEPI score, industrial areas covered under CPA & SPA, list of critical pollutants in CPA & SPA etc. is under consideration of MoEF&CC, CPCB requested MoEF&CC vide letter dated 9/9/2019 seeking approval to share the information with SPCBs (Annexure V).*
- To comply point no. (i) to (iii) of order dated 10/7/2019, CPCB requested all concerned SPCBs/PCCs vide letter dated 23/9/2019, to ensure that environmental surveillance mechanism is in place particularly in polluted industrial areas and steps taken against polluting activities not-complying with prescribed norms (Annexure-VI). Further, CPCB requested all concerned SPCBs/PCCs vide letter dated 25/10/2019, to provide the updated status on the action taken for compliance of Hon’ble NGT Order (Annexure-VII).*
- To comply point no. (iv) of the order dated 10/7/2019, CPCB compiled information with regard to polluted industrial areas based on water pollution norms separately, air pollution norms separately and ground water pollution norm separately and the list was submitted to MoEF&CC on 26/9/2019 for consideration and approval.*
- To comply point no. (iii) of the order dated 23/8/2019, CPCB has requested MoEF&CC vide letters dated 13/9/2019 and 3/10/2019 to devise an appropriate mechanism to ensure that new legitimate activity or expansion can take place after due precautions are taken in the areas in question by Red and Orange category of units and circulate to SPCBs/PCCs for implementation (Annexure-VIII & IX).*
- MoEF&CC vide letter dated 9/10/2019 asked CPCB to hold a consultation meeting with stakeholders to finalise mechanism. Accordingly, a meeting was organised with concerned stakeholders to consult draft mechanism prepared by MoEF&CC for environmental management of Critically Polluted Areas (CPAs) and Severely Polluted Areas (SPAs) and consideration of projects listed in Red & Orange categories in those areas. The minutes of*

the meeting along with mechanism evolved after consultation with stakeholders were sent to MoEF&CC vide letter dated 18/10/2019 for necessary action.

- MoEF&CC vide letter dated 24/10/2019 asked CPCB to share the mechanism with the State/UT Govts. and SPCB/PCCs for implementation (Annexure-X). Accordingly, CPCB vide letter dated 25/10/2019 communicated the mechanism to the concerned State/UT Govts. and SPCB/ PCCs for necessary action (Annexure-XI).*
- MoEF&CC also asked CPCB that report regarding CEPI and EPI assessment study may be put up to Ministry for further deliberation, which has been done (Annexure-XII).”*

49. Tribunal also received a letter dated 27.08.2019 from Apex Chamber of Commerce & Industry in Punjab requesting to re-look order dated 10.07.2019 and relevant extract of the said letter reads as under:

“We would like to bring to your kind notice that a blanket ban on environmental clearance in critically polluted area will adversely affect the economic development of that region.

In this context we would like draw your kind attention to para 11 of your above order where CEPI Score of Ludhiana (Punjab) is as under:

<i>AIR</i>	<i>WATER</i>	<i>LAND</i>	<i>CEPI SCORE</i>
<i>53.50</i>	<i>71.00</i>	<i>16.00</i>	<i>73.48</i>

According to above only water index comes under CPA with score of 71, whereas both air and land are within the limit.

Here is the catch that an industry (Red/ Orange Category) which does not at all add to water pollution and also does not consume water in large quantity (only recirculate water for industrial cooling purpose besides domestic use) is also banned. The air index score of 53.50 comes under OPA and industry which does not add to air pollution by installing approved Air Pollution Control Device is also not allowed to grow.

So we request your honor to re-look into the order whereby Ludhiana (Punjab) has been brought under CPA with a comprehensive environmental pollution index of 73.48. It should be divided into separate categories of CPA in respect of air and water so that industry with no water pollution and with proper air pollution control system is allowed to be developed.

Moreover this study done by CPCB is for the industrial clusters only but the above order is being applied for the industry which is being proposed outside city Municipal Corporation limits, far away from existing industrial clusters for which the CPCB study was done. So we hope that your honor would rationally look at our above submission so that neither the economic development is at the cost of

health of the public and in violation of law of the land nor the economic development is stalled with a blanket ban.”

Tribunal’s order dated 14.11.2019:

50. Report dated 01.11.2019 submitted by CPCB was considered on 14.11.2019. After referring to earlier proceedings in the action taken report of CPCB dated 01.11.2019, Tribunal observed in para 7 to para 11 as under:

- “7. Mechanism circulated by the CPCB by letter dated 24.10.2019 proposes environmental management of CPAs and SPAs and the mitigation measures proposed.*
- 8. As already noted, while every mitigation measures must be taken, this cannot be ground not to take any legal action for violation of law. The status report does not refer to compliance of directions for taking coercive measures for enforcement of the Air Act, the Water Act and the EPA Act by prohibiting operation of polluting activities and assessing and recovering compensation on ‘Polluter Pays’ principle, including interim compensation of which scale was specified in the said order.*
- 9. In view of the above, since the data compiled so far shows increasing trend of air, water and soil pollution, meaningful action must result in reversing such trend and the violators of law cannot be allowed to have a free run at the core of environment and public health. Inaction by the statutory authorities is also at the cost of Rule of Law which is the mandate of the Constitution and is necessary for meaningful enforcement of legitimate constitutional rights of citizens and basic duty of a welfare State under the Constitution.*
- 10. We may note the observation of the Hon’ble Supreme Court in the subject of accountability of authorities for failing to discharge their duties. In **M.C. Mehta v. UOI & Ors.**, W.P Civil No. 13029/1985 vide order dated 04.11.2019, the Hon’ble Supreme Court observed:*

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

.... Time has come when we have to fix the accountability for this kind of situation which has arisen and is destroying right to life itself in gross violation of Article 21 of the Constitution of India.

*.... **Everybody has to be answerable including the top state machinery percolating down to the level of gram***

panchayat. The very purpose of giving administration power up to the panchayat level is that there has to be proper administration and there is no room for such activities. The action is clearly tortuous one and is clearly punishable under statutory provisions, besides the violation of the Court's order."

In Techhi Tagi Tara vs. Rajendra Singh Bhandari and Ors., (2018) 11 SSC 734, it was observed:

"2..... There can be no doubt that the protection and preservation of the environment is extremely vital for all of us and unless this responsibility is taken very seriously, particularly by the State Governments and the SPCBs, we are inviting trouble that will have adverse consequences for future generations. Issues of sustainable development, public trust and intergenerational equity are not mere catch words, but are concepts of great importance in environmental jurisprudence.

4. One of the principal attributes of good governance is the establishment of viable institutions comprising professionally competent persons and the strengthening of such institutions so that the duties and responsibilities conferred on them are performed with dedication and sincerity in public interest. This is applicable not only to administrative bodies but more so to statutory authorities-more so, because statutory authorities are the creation of a law made by a competent legislature, representing the will of the people."

11. The Tribunal has thus no option except to reiterate that meaningful action has to be taken by the State PCBs/PCCs as already directed and action taken report furnished showing the number of identified polluters in polluted industrial areas mentioned above, the extent of closure of polluting activities, the extent of environmental compensation recovered, the cost of restoration of the damage to the environment of the said areas, otherwise there will be no meaningful environmental governance. This may be failure of rule of law and breach of trust reposed in statutory authorities rendering their existence useless and burden on the society. On default, the Tribunal will have no option except to proceed against the Chairmen and the Member Secretaries of the State PCBs/PCCs by way of coercive action under Section 25 of the National Green Tribunal Act, 2010 read with Section 51 CPC. Such action may include replacement of persons heading such PCBs/PCCs or direction for stopping their salaries till meaningful action for compliance of order of this Tribunal. The Tribunal may also consider deterrent compensation to be recovered from the State PCBs/PCCs. Such action taken reports strictly in terms of law and order of this Tribunal referred to above may be furnished by the State PCBs/PCCS on or before 31.01.2020 to the CPCB. The CPCB may prepare a tabulated analysis of the same and file a consolidated report before this Tribunal before February 15, 2020 by email at judicial-ngt@gov.in. The CPCB may also revise its mechanism for expansion and new activities by red and orange category of industries in critically/ severely polluted areas consistent with the spirit of the earlier orders of this Tribunal and principles of environmental law to bring down the pollution load and ensure that activities do not further add to such load."

51. The above order was directed to be communicated to CPCB, all State PCBs and PCCs. It was also directed CPCB to provide its assessment reports on the subject to concerned State PCBs/PCCs.

52. At this stage, certain appeals were filed under Section 22 of NGT Act, 2010 before Supreme Court assailing Tribunal's orders dated 10.07.2019, 23.08.2019 and 14.11.2019 passed in this OA. Brief details of such appeals are as under:

A. CA Nos. 2218-2219/2020 (CA Diary No(s). 8478/2020), Chamber of Small Industry Association vs. CPCB & Anr. with CA Nos. 2220-2221/2020 (CA Diary No(s). 8479/2020), Chamber of Marathwada Industries and Agriculture vs. CPCB & Anr. - In these appeals, Tribunal's orders dated 10.07.2019 and 14.11.2019 were challenged. Supreme Court passed following order on 18.03.2020:

*“Permission to file appeals is granted.
Delay condoned.
Applications for implement are allowed.
Applications seeking exemption from filing certified copy of the impugned order(s) are allowed.
Issue notice.
In the meantime, there shall be stay or operation of the impugned orders dated 10.07.2019 and 14.11.2019 passed by the National Green Tribunal, Principal Bench, New Delhi.”*

B. CA No. 2434/2020 (CA Diary No(s). 9164/2020), The Taloja Manufacturers Association vs. MoEF&CC & Ors. with CA No. 2462/2020 (CA Diary No(s). 9521/2020), The Taloja Manufacturers Association vs. MoEF&CC & Ors. - Herein order dated 14.11.2019 was challenged and interim order was passed by Supreme Court on 20.05.2020 in the same term as in CA Nos. 2218-2219/2020.

C. Civil Appeal Nos. 3319-3321/2020 (Civil Appeal Diary No(s). 19271/2020), Gujarat Chambers of Commerce and Industry vs.

CPCB & Anr. - Here also, interim order was passed on 22.09.2020 in the same terms as in CA Nos. 2218-2219/2020.

D. CA Nos. 1656-1658/2022 (Civil Appeal Diary No. 8571/2021), Western Coalfields Ltd. vs. Union of India and Anr.

53. In these appeals, proceedings before this Tribunal in OA were challenged on the ground that Tribunal cannot initiate *suo-moto* proceedings under NGT Act, 2010. This issue was decided finally by Supreme Court in ***Municipal Corporation of Greater Mumbai vs. Ankita Sinha & Other (2021) SCC OnLine SC 897*** and it was held that Tribunal is competent to take *suo-moto* cognizance in respect of environmental matters.

54. Consequently, above Appeals filed against orders passed in this OA were finally disposed of vide judgment dated 25.02.2022. Supreme Court held that basic challenge raised in these Appeals failed having already being settled in ***Municipal Corporation of Greater Mumbai (supra)*** but individual fact situation of the proponents needs to be examined by this Tribunal. Consequently, Court disposed of all the Appeals and the operative part of order, contained in para 11 to 14, is reproduced as under:

“11. In the circumstances, the basic challenge raised in these appeals must fail, and if at all, there is any individual fact situation which either needs to be projected or impressed upon, it must be left to such individual entity/agency to agitate concerned issues before the Tribunal.

12. We cannot, however, lose sight of the fact that for last two years the directions issued by the Tribunal have remained stayed. Each of the appellants had requested for blanket stay of the directions issued by the Tribunal and had not confined their prayer either to the individual appellants or to the respective Members of their associations. Even then, all the concerned must have an opportunity to present their viewpoint before the Tribunal. Consequently, we pass the following directions:

- a. *All the appellants shall be responsible for publishing advertisements in the national newspapers having wide circulation in Capitals of each of the States of the country.*
- b. *The advertisements must mention that in the pending matter before the Tribunal, any interested entity can, through the State level/appropriate Chamber of Commerce, present a viewpoint before the Tribunal.*
- c. *Such an advertisement must be issued within Two Weeks from today and within next Four Weeks, the Presentation on behalf of each of the Chambers of Commerce must be filed before the Tribunal.*
- d. *The Presentation must indicate which Units are compliant with the requirements of law and which of the Units are still lagging behind in compliance.*
- e. *The Tribunal may consider such Presentations on behalf of each Chambers of Commerce and may pass such orders as it may deem appropriate.*
- f. *It shall be open to the Tribunal to pass such orders or interim directions calling upon the non-compliant Units to deposit such sums inter alia for mitigating the environmental damage, as the Tribunal may deem appropriate.*
- g. *In order to facilitate the exercise, the interim order of stay granted by this Court on 18.03.2020 shall continue to operate for next Eight Weeks.*

All the contentions are left open to be agitated before the Tribunal.

13. Since Civil Appeal arising out of Diary No.8571 of 2021 has been preferred by Western Coalfields Ltd., an individual entity, Presentation can be made by the appellant itself. Rest of the directions in the earlier part of the Order apply to the appellant, mutatis mutandis.

14. With these observations, the civil appeals are disposed of, without any order as to costs.”

55. When the matter was pending before Supreme Court after Tribunal's order 14.11.2019, some reports were filed by different bodies which are as under:

A.) Consolidated Status Report dated 14.02.2020 filed by CPCB:

56. Referring to earlier orders and lastly the order dated 14.11.2019 as corrected on 19.11.2019, further action taken by CPCB, as stated in the report, is as under:

“2.9 In view of above directions, CPCB has taken following actions:

- i. CPCB, vide letter dated 19/11/2019 requested all the concerned SPCBs/PCCs to comply with the orders and to provide information on list of industries prohibited due to non-compliance and details of environmental compensation levied in prescribed format so as to submit to Hon’ble NGT (**Annexure-VI**).
- ii. CPCB vide letter dated 29.11.2019 has sent the CEPI calculation, monitoring data to the concerned SPCBs/PCC (**Annexure-VII**).
- iii. CPCB vide letter dated 30.12.2019 again requested all the concerned SPCBs to submit the Action Plans for improving environmental quality including the demarcated boundaries of CPAs/ SPAs (**Annexure-VIII**).
- iv. A meeting through video conference was conducted on 7.1.2020 with all the concerned SPCBs/PCC highlighting the directions of Hon’ble NGT and to expedite submission of the reports on or before 31.1.2020 (a copy of minutes of the said meeting is annexed as **Annexure-IX**).
- v. CPCB constituted a committee of Senior Scientists to revise the mechanism evolved by MoEF&CC for allowing new projects/expansion of Red and Orange category of industries in CPAs/ SPAs and the revised mechanism has been communicated to MoEF&CC for consideration and approval, vide letter dated 4.2.2020.
- vi. Among the 100 PIAs identified for CEPI evaluation, 38 PIAs are categorised as critically polluted areas (CPAs) and 31 PIAs are categorised as severely polluted areas (SPAs) located in 20 states/UTs.

18 SPCBs (namely Assam, Bihar, Odisha, Jharkhand, West Bengal, Maharashtra, Haryana, Himachal Pradesh, Punjab, Uttar Pradesh, Uttarakhand, Andhra Pradesh, Karnataka, Tamil Nadu, Telangana, Chhattisgarh, Madhya Pradesh and Rajasthan) **have provided the information on number of noncomplying industries /activities, closure directions issued, environmental compensation levied for non-compliance in last 5 years and environmental compensation recovered. 2 SPCBs (namely, Gujarat and Delhi) have not provided such information (as on 14th February, 2020) (Annexure-X).**
- vii. CPCB tabulated the information provided by SPCBs/PCC regarding details of non-complying industries /activities, closure directions issued, environmental compensation levied for non-compliance in last 5 years & environmental compensation recovered and same is provided at **Annexure-XI**.

As per the Data received from 18 SPCBs/PCCs, there are total 3892 Non-complying industries/activities, out of which 1536 non-complying industries/activities have been issued closure directions. The incidences of violation by construction activity, stubble burning etc. have also been included by few SPCBs in no. of non-complying industries/activities. Further 5302 no. of industries/activities have been reported non-

complying with environmental standards in last five years and environmental compensation of Rs. 59,285.675 lakhs have been imposed on them.

The information provided by 18 SPCBs/PCC is enclosed as Annexure XI-A to Annexure XI-R.”

57. Annexure XI A to XI R to the above report are the information supplied by 18 State PCBs and Pollution Control Committees which are:

- (i) Assam SPCB (annexure XI A, page 1194)
- (ii) Bihar SPCB (annexure XI B, page 1201)
- (iii) Jharkhand SPCB (annexure XI C, page 1207)
- (iv) Odisha SPCB (annexure XI D, page 1212)
- (v) West Bengal SPCB (annexure XI E, page 1215)
- (vi) Maharashtra SPCB (annexure XI F, page 1230)
- (vii) Haryana SPCB (annexure XI G, page 1271)
- (viii) Himachal Pradesh SPCB (annexure XI H, page 1284)
- (ix) Punjab SPCB (annexure XI I, page 1299)
- (x) Uttar Pradesh SPCB (annexure XI J, page 1349)
- (xi) Uttarakhand SPCB (annexure XI K, page 1451)
- (xii) Andhra Pradesh SPCB (annexure XI L, page 1454)
- (xiii) Karnataka SPCB (annexure XI M, page 1457)
- (xiv) Tamil Nadu SPCB (annexure XI N, page 1480)
- (xv) Telangana SPCB (annexure XI O, page 1525)
- (xvi) Chhattisgarh SPCB (annexure XI P, page 1534)
- (xvii) Rajasthan SPCB (annexure XI Q, page 1543)
- (xviii) Madhya Pradesh SPCB (annexure XI R, page 1557)

B.) Action taken report dated 10.07.2020 filed by Delhi PCC through Senior Environmental Engineer:

58. The report gives list of industries in Red and Orange category, running in critically/severely polluted industrial areas, in respect whereof, prohibition/closure orders for non-compliance, were issued; list of

industries, to whom directions for closure issued under Water Act, 1974 and Hazardous Waste Management Rules, 2016 and status of compensation recovered, in respect of industries running in critically/severely polluted industrial areas.

C.) Report dated 05.08.2020 filed by Oversight Committee headed by Justice SVS Rathore, Chairman (former Judge of Allahabad High Court)

59. Report relates to State of U.P. and refers to the condition of air pollution as also certain articles published under the head 'Introduction' and reads as under:

“INTRODUCTION

1. *The Hon'ble National Green Tribunal dealing with the matter of O.A. No. 1038/2018 vide order dated 14.11.2019 considered the issue of remedial **action against the polluting industries in the identified polluting industrial clusters.***
2. *The Hon'ble Tribunal, vide order dated 13.12.2018, treated the news item published in "The Asian Age" dated 06/12/2018 authored by Mr. Sanjay Kaw titled "CPCB to rank industrial units on pollution levels" as an application in view of a substantial question of environment.*
3. *Industrialization and economic development in any region provide opportunities to improve living by removing poverty and unemployment. Industrial development invariably creates more jobs in any region, but such industrial development must be sustainable and compliant with environmental norms. In the absence of proper monitoring, industrial development has led to environmental degradation on account of industrial pollution.*
4. *Dust, smoke, fume and toxic gas emissions occur as a result of highly polluting industries such as thermal power plants, coal mines, cement, sponge iron, steel and ferroalloys, petroleum and chemicals unless right technology is used and precaution taken. **Industry-specific clusters have not only become hazardous but also cause irreparable damage to our ecology and environment, often breaching the environment's carrying capacity, adversely affecting public health.***
5. *The news article published in The Weather Channel dated 20.12.2019 entitled "With 23 Lakh Premature Pollution-Related Deaths Every Year, India Remains Most-Affected: Global Study", highlighted that*
 - a) *23,26,771 premature pollution-related deaths occur in India every year which is highest in the world.*
 - b) *Half of all air pollution-related premature deaths in the world occur in India and China. Around 12.4 lakh deaths occur in India in a year.*

- c) Other than air pollution, around 7 lakh premature deaths are attributed to water pollution, 1.5 lakh to occupational pollution deaths and 2.3 lakh to the exposure to lead.
 - d) Apart from premature deaths, pollution also causes multiple health complications and permanent disabilities among the exposed populations. A parameter known as disability-adjusted life year (DALY), is used to indicate disease burden expressed as the number of years lost due to ill-health or disability as well as eventual mortality. About 27.5 crore DALYs are attributable to pollution across the globe, out of which air pollution is responsible for around nearly 15 crores DALYs. This figure is many times higher than the DALYs from other risks like conflicts and violence, high-sodium diet and alcohol use.
6. An article published in 'Down to Earth' dated 15.10.2020 entitled "Air pollution kills a child every 3 minutes in India" highlighted that
- a) As per the report of Global Burden of Disease 2017, one child dies every 3 minutes in India because of inhaling toxic pollutants in the air.
 - b) In 2017, 195546 children have died due to air pollution-related diseases, which means 535 deaths occurred daily on an average.
 - c) In the last 27 years, more than a crore of children died before the age of 6 due to deadly infection.
 - d) Uttar Pradesh recorded the second most number of children death due to air pollution after Rajasthan.
7. Another news item published in 'The Hindu' dated 03.04.2020 entitled "In India, air pollution is the third-highest cause of death among all health risks: report" highlighted that exposure to outdoor and indoor air pollution contributed to over 1.2 million deaths in India in 2017.
8. The report of Centre for Science and Environment published on 5th June 2019 entitled "Air pollution kills an average of 8.5 out of every 10,000 children in India before they turn five" highlighted that:
- a) **State of air:** Air pollution is responsible for 12.5% of all deaths occurring in India. Over 100000 children below the age of 5 die due to air pollution. While India was one of the first countries which pledged to phase out the non-electric vehicles, its national scheme to promote the sale of e-vehicles is yet to pick up. Against the target of 15-16 million e-vehicles by 2020, the country had only 0.28 million vehicles till May 2019.
 - b) **State of water:** Both surface and groundwater in the country are under stress. 86 water bodies are critically polluted. One of the reasons is the substantial increase (136%) in the number of grossly polluting industries between 2011 and 2018. The groundwater of the country is also reeling under overexploitation, which is running 94.5 % of all minor irrigation schemes in the country. There has been an unsustainable increase in the number of deep tubewells that has gone up by 80 percent between 2006-07 and 2013-14.
 - c) **State of land and agriculture:** India's farm sector is also under duress. The input costs for major crops are rising continuously and the average farmland size is shrinking.

d) **State of waste:** The burden of solid waste is becoming unmanageable. While India claims to process 96 percent of its biomedical waste, eight states and UTs have defaulting hospitals. The country has also recorded a 56 percent increase in the number of hazardous-waste generating industries between 2009 and 2016-17. At the same time, most of these industries are not properly maintaining their waste inventory, as mandated by the law.

9. The **Comprehensive Environmental Pollution Index (CEPI) was developed in 2009 by CPCB. It is an index to categorize the environment quality of industrial clusters.** It captures details regarding air, water and land. On the basis of this index, CPCB had notified 88 industrial clusters as Polluted Industrial Areas (PIAs) which depending on the score were ranked as Critical Polluted Areas (CPA), Severely Polluted Areas (SPAs), and Other Polluted Areas (OPAs).
- The index was revised in 2016. Under the revised definition, the categorization was based on emissions (air pollutants), effluents (water pollutants), hazardous waste generated and consumption of resources. Categorization was done as red (>60 score), orange (41-59 score), green (21-40 score) and white (upto 20 score). The number of clusters increased from 88 to 100. CEPI is a warning tool by State Govts to understand the severity of pollution existing in an area and to formulate appropriate action plans. **To identify the clusters of polluting industries CPCB has evaluated the CEPI in the year 2009-10. Based on the CEPI criterion, CPCB has identified 88 polluted industrial clusters (PICs) in 16 states in 2009-2010. In 2017-2018, the number of identified PICs in 21 states increased from 88 to 100.** The details of the CEPI score ranges and the number of industrial clusters falling in each category are as follows:

CEPI Score	Category	Number of Industrial clusters	
		2009-10	2017-18
70 and above	Critically Polluted Areas (CPAs)	43	38
60-70	Seriously Polluted Areas (SPAs)	32	31
Below 60	Other Polluted Areas (OPAs)	13	31
Total		88	100

10. Out of 100 PICs identified in year 2017-2018, 13 were reported in UP. The CEPI Scores for Industrial Areas/Clusters identified in 2018 are as follows:
- The table below shows the CEPI scores for industrial areas/ clusters in descending order. The overall CEPI is presented in the alpha-numeric form stating the score along with the status of Air, Water and Land environment in terms of subscript as critical/ severe/normal. A sub-index score of more than 60 shows a critical level of pollution in the respective environmental component,

whereas a score between 50–60 shows a severe level of pollution with reference to the respective environmental component.

S. No.	Name of Polluted Industrial Areas (PIAs)	Air	Water	Land	CEPI Score	# Status of Environment
1.	Mathura	86.00	81.00	45.00	91.10	Ac_Wc_Ln
2.	Kanpur	66.00	85.00	45.00	89.46	Ac_Wc_Ln
3.	Moradabad	76.00	71.50	68.75	87.80	Ac_Wc_Ln
4.	Varanasi-Mirzapur	67.50	80.00	39.63	85.35	Ac_Wc_Ln
5.	Bulandsahar-Khurja	79.50	76.00	36.75	85.23	Ac_Wc_Ln
6.	Firozabad	76.00	72.00	32.50	81.62	Ac_Wc_Ln
7.	Gajraula Area	71.00	70.00	45.00	80.14	Ac_Wc_Ln
8.	Agra	60.00	66.88	47.00	76.22	Ac_Wc_Ln
9.	Ghaziabad	57.50	66.00	32.25	72.30	As_Wc_Ln
10.	Noida	59.75	62.75	27.00	68.76	As_Wc_Ln
11.	Meerut	52.00	65.00	6.00	66.09	As_Wc_Ln
12.	Aligarh	56.25	61.88	11.88	64.42	As_Wc_Ln
13.	Singrauli (UP & MP)	45.00	57.25	27.75	62.59	As_Wc_Ln

60. Thereafter, under the head ‘Compliance status of UPPCB’, the report said as under:

“Compliance Status of UPPCB

UPPCB has submitted an action taken report dated 8.02.2020 indicating the identified number of polluters in PIAs, the extent of the closure of polluting activities, the extend of environmental compensation recovered and the prosecution cases filed in all such matters.

1. As per the action taken report submitted by UPPCB, there are 9 CPAs and 4 SPAs categorized based on an evaluation of the Comprehensive Environmental Pollution Index (CEPI) carried out by CPCB in the year 2018. Details of Polluted Industrial Areas (PIAs) in the State are as follows:

S. No	Name of polluted Industrial Areas (PIAs)	CEPI Score	Demarcation of boundaries/industrial clusters/potential impact zones
1	Agra	76.22	• Nunihai Industrial Estate, • Rambag Nagar, UPSIDC • Industrial Area and Runukata • Industrial Areas
2	Aligarh	64.42	• ITI Industrial Area, • UPSIDC Industrial Area sectors I and II and • Tala Nagri in Aligarh
3	Bulansahar-Khurja	85.23	• UPSIDC Industrial Area, Shikandarabad, Khurja
4	Firozabad	81.62	• Greater Industrial Estate, Firozabad • Greater Industrial Estate, Shikohabad

			- Mini Industrial Estate Tundla, Firozabad - Mini Industrial Estate, Usaini, Firozabad - UPSIDC Industrial Estate, Firozabad - Industrial Estate, Makkhanpur, Firozabad
5	Gajraula Area	80.14	UPSIDC Industrial Area, Gajraula
6	Ghaziabad	72.30	Sub-Cluster A - Mohan Nagar Industrial Area - Rajinder Nagar Industrial Area - Sahibabad Industrial Areas Sub-Cluster B - Pandav Nagar Industrial Area - Kavi Nagar Industrial Area - Bulandshahar Road Industrial Area - Amritnagar - Aryanagar Industrial area Sub-Cluster C - Meerut Road Industrial Area Sub-Cluster D - Loni Industrial Area - Loni Road Industrial Area - Roop Nagar Industrial Area Sub-Cluster E - Hapur Road Industrial Area - Dasna - Philkua Sub-Cluster F (Other Scattered Industrial Area) - Southside of GT road - Kavi Nagar - Tronica City - Anand Nagar - Jindal Nagar - Prakash Nagar - Rural Industrial Estate
7	Kanpur	89.46	Industrial areas: - Dada Nagar - Panki - Fazalganj - Vijay Nagar - Jajmau
8	Mathura	91.10	Mathura City Agra (6 Km ²)
9	Meerut	66.09	Meerut (25-30 Km ²)
10	Moradabad	87.80	Moradabad City (2.41 Km ²)
11	Noida	68.76	Terrestrial jurisdiction of: - Noida Phase-1 - Noida Phase-2 - Noida Phase-3 - Surajpur Industrial Area - Greater Noida Industrial Area

12	Singrauli (UP&MP)	62.59	• Village-Chhaparaula Sonbhadra (Uttar Pradesh): • Dala-Tola, Obra, Renukoot, Anpara, Renusagar, Kakri, Dudhichuwa, Bina, Khadia, Shakti Nagar, Rihand Nagar, Bijpur Singrauli (Madhya Pradesh): • Vindhya Nagar and Jayant, Nigahi, Dudhichua, Amlohri & Jhingurdah Township
13	Varanasi-Mirzapur	85.35	• Industrial Estate, Mirzapur • Chunar • Industrial Estate, Chandpur Varanasi • UPSIDC, Industrial Estate, Phoolpur • Industrial Area, Ramnagar, Chandauli • Industrial Area Karkhiyon

2. Status of Red and Orange category industries/other polluting activities in 13 CPAs and SPAs and within 5 Km from the boundary of CPA/SPA in the State are as follows:

- A total of 1649 IPAs/OPAs are reported in the **Red category in the State of Uttar Pradesh**. Out of which, 1392 small, 150 medium and 107 large scale IPAs/OPAs are operational. Out of 1649 IPAs/OPAs falling in the Red category, 484 IPAs/OPAs were non-compliant with the Environmental Standards. 273 IPAs/OPAs have been closed down and prosecutions have been filed against 117 IPAs/OPAs and 4 IPAs/OPAs have been convicted.
- 2789 IPAs/OPAs were reported in **Orange category**. Out of these operational IPAs/OPAs 2434 were Small, 321 were medium and 34 were Large scale. Under the orange category, 363 IPAs/OPAs were non-compliant with the Environmental Standards. 324 IPAs/OPAs have been closed down. Prosecutions have been filed against 16 IPAs/OPAs and No IPAs/OPAs have been convicted under the orange category.
- Out of 55 STPs, 14 STPs are not complying with the environmental standards. Out of 55 E-Waste facilities, 24 E-Waste facilities are non-compliant and 4 have been closed. Out of 10 MSW facilities/Dump Sites, 6 facilities are non-compliant. Out of 2989 HCFs, 40 HCFs are non-compliant. There have been 1878 cases of non-compliant construction activities and 106 cases of Garbage Burning reported. All the 4 CEPTs are non-compliant with the Environmental Standards.
- Out of 847 defaulter IPAs/OPAs (Red and Orange), 597 closure orders have been issued and 133 prosecutions have been launched. Other than defaulter IPAs (Red and Orange), 14 (4 E-waste facility and 10 garbage/stubble burning) closure orders have been issued and 32 (29 construction activity and 4 garbage/stubble burning) prosecutions have been initiated against other polluting activities. There appears to be a clear gap in compliance so far as Municipal Solid Waste facilities and

CETPs are concerned. The details of 2921 IPAs/OPAs non-complying with the Environmental Standards are as follows:

S No.	IPAs/OPAs	Numbers of IPAs/OPAs
1	Industries	847
2	Construction Activities	1878
3	Garbage Burning	106
4	CEPT/STP/E-Waste/MSW facilities/CBWTF/HCFs	90
	Total	2921

3. **Action taken against the defaulter industries:**
- As per the compliance report of UPPCB, there are 9539 IPAs/OPAs in the State. Out of 9539 IPAs/OPAs, 2921 IPAs/OPAs are not complying with the Environmental Standards. Prosecutions have been filed against 165. Closure directions have been issued against 611IPAs/OPAs. 4 IPAs/OPAs have been convicted due to non-compliance. The detail of the current status of prohibition/closure of non-complying activity in Red and Orange category Industries /other Polluting Activities (IPAs/OPAs) in 13 CPAs/SPA and within 5 Km from the boundary of CPA/SPA in the State of Uttar Pradesh are provided as **Annexure 1**. The summary of action taken by UPPCB against the defaulter industries is annexed as **Annexure 2**.
4. **Status of Environmental Compensation recovered as per Hon’ble NGT order in 13 CPAs/SPAs in the State are as follows:**
- Out of total 9539 industries/other polluting activities, 2921 were not complying with the environmental norms in 05 years. EC of Rs. 6422.59 lakh was imposed on defaulter industries/OPAs. Out of which, Rs. 826.81 lakh have been recovered so far. The details of EC imposed and recovered from erring industries are provided as Annexure 3.
 - Show cause notices have been issued for EC of total of Rs. 10825.26 lakh. The details of show cause notices issued against erring industries are provided as **Annexure 4**. The summary of EC is as follows:

B. status of Environmental Compensation recovered as per Hon’ble NGT order in 13 critically/severely polluted industrial area in the State of Uttar Pradesh.

(Format – B)

Industrial category	Scale of operation	Total no. industries / other polluting activities	No. of industries /other polluting activities complying with Environment al standards in 05 years	*Total amount of Environmental Compensation imposed (Rs. In lacs)	*Total amount of Environmental Compensation recovered (Rs. In lacs)	**Total amount of Environmental Compensation for which show cause notice issued (Rs. In lacs)

Red	Small	1392	409	470.82	182.24	406.16
	Medium	150	37	288.925	159.67	614.79
	Large	107	38	2527.98	187.78	1395.5
Orange	Small	2434	351	851.92	49.07	0
	Medium	321	9	98.29	15	0
	Large	34	3	70.67	25.52	534.96
Other polluting activities	CETP	4	4	1.37	0	2495.6
	STP	55	14	39.99	7	223.9
	TSDF	1	0	0	0	0
	E-waste facility	55	24	15.5	1.5	0
	MSW facility / dump sites	10	6	33.78	9.5	4723
	CBWTF	3	2	12.1	0	7.75
	HCFs	2989	40	131.5	5.83	252
	Construction activity	1878	1878	1350.49	176.15	0
	Other (garbage burning, stubble or any other activity not covered above)	106	106	530.25	7.55	171.6
Total		9539	2921	6422.59	826.81	10825.26

- Further, in non-attainment cities, Ambient Air Quality is being monitored through 17 CAAQMS in 9 CPAs/SPAs and 40 manual monitoring stations in 13 CPAs/SPAs. Presently, CAAQMS is not available in 4 CPAs/SPAs, namely, Mathura, Firozabad, Gajraula and Aligarh. The details of installation of CAAQMS for continuous monitoring of Ambient Air Quality in all CPAs/SPAs are as follows:

Name of the Town	Nos. of CAAQMS	CAAQMS					Tentative Timeline
		Existing Station	Required Station (gap)	Plan for installation of proposed CAAQMS			
Under NCAP	Under 50:50			Under CPSU/ Industry			
Mathura	1	0	1	0	1	0	March 2021
Kanpur	5	1	4	2	0	2	March 2021
Moradabad	3	1	2	0	0	1	June 2021
Varanasi-Mirzapur	5	1	4	3	0	1	March 2021
Bulandsha har- Khuza	2	1	1	0	0	1	June 2021
Firozabad	3	0	3	0	2	0	March 2021
Gajraula	1	0	1	0	0	1 (Ind.)	June 2021
Agra	5	1	4	2	2	0	March 2021
Ghaziabad	5	4	1	0	0	0	
Noida/ Gr. Noida	5	5	0	0	0	0	
Meerut	5	3	2	0	0	0	
Aligarh	3	0	3	0	0	1 (Ind.)	June 2021
Singrauli (UP)	1	1 (Industry)	0	0	0	1 (Ind.)	June 2021

Total	44	18	26	7	5	8	
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- As per the Compliance report, PM₁₀ has been reduced in the year 2019 as compared to the year 2018 in 7 CPAs/SPAs, namely, Varanasi, Kanpur, Firozabad, Agra, Ghaziabad, Noida and Singrauli. The level of PM10 in 7 CPAs/SPAs in year 2018 and 2019 are given below:

Sl. No.	Name of Cluster	Year 2018 (µg/m ³)	Year 2018 (µg/m ³)	Percentage Decrease (%)
		PM10	PM10	PM10
1	Ghaziabad	234.90	195.35	-16.84
2	Noida	239.80	205.41	-14.34
3	Agra	218.76	194.56	-11.06
4	Kanpur	216.99	207.90	-4.90
5	Firozabad	223.01	211.99	-4.94
6	Varanasi	200.73	185.15	-7.76
7	Singrauli	187.31	171.54	-8.42

- In 3 CPA namely Mathura, Moradabad and Gajraula, the level of PM10 has increased (<10%) in year 2019 as compared to year 2018. In Mathura and Khurja, the PM10 has increased by 15.2% and 11.35% respectively in year 2019 as compared to previous year. In Khurja, closure order has been issued by UPPCB against 14 brick kilns and sealed 5 illegal air polluting units. Till date, no coal-based industry is operating in Khurja. In 6 CPA/SPA namely Agra, Kanpur, Varanasi, Ghaziabad, Noida and Moradabad, annual average value of PM_{2.5} has reduced in year 2019. **However, records of PM_{2.5} level in ambient air of other CPAs/SPAs werenot submitted by UPPCB.**
- In the matter of polluted river stretches in the State of Uttar Pradesh, the river water quality has improved In 6 CPAs/SPAs, namely, Mathura, Kanpur, Varanasi, Gajraula, Ghaziabad and Meerut while quality has decreased in 4 CPAs/SPAs, viz. Moradabad, Agra, Noida and Singrauli.
- It is reported that in Moradabad, BOD value increased by up to 85%. The reason for the increase in BOD in Agra is that 4 STPs of total capacity of 166 MLD, are not meeting the prescribed norms. UPPCB has issued Show Cause Notices against Nagar Nigam Agra imposing EC of Rs. 52.87 lakhs.
- 3 STPs of total capacity of 24.25 MLD was found non-complying with norms and have been imposed with EC of Rs. 15.75 lakh.”

61. Short compliance status of UPPCB are pointed out in the report as under:

“Short Compliance status of UPPCB:

S.No.	Directions	Current Status	Compliance Status

1.	Status of Red and Orange category industries/other polluting activities in 13 CPAs and SPAs and within 5 Km from the boundary of CPA/SPA in the State	- A total of 1649 IPAs/OPAs are reported in the Red category in the State of Uttar Pradesh. Out of which, 1392 small, 150 medium and 107 large scale IPAs/OPAs are operational. Out of a total of 1649 IPAs/OPAs falling in the Red category, 484 IPAs/OPAs were non-compliant with the Environmental Standards. 2789 IPAs/OPAs were reported in the Orange category. Out of which, 2434 Small, 321 medium And 34 are Large scale IPAs/OPAs are operational. Under the orange category, 363 IPAs/OPAs were non-compliant with the Environmental Standards. - Out of 55 STPs, 14 STPs are not complying with the environmental standards. Out of 55 E-Waste facilities, 24 E-Waste facilities are non-compliant and 4 have been closed. - The details of 2921 IPAs/OPAs non-complying with the Environmental Standards are follows:<table><tr><td>SL No.</td><td>IPAs/OPAs</td><td>Number of IPAs/OPAs</td></tr><tr><td>1</td><td>Industries</td><td>847</td></tr><tr><td>2</td><td>Construction Activities</td><td>1878</td></tr><tr><td>3</td><td>Garbage Burning</td><td>106</td></tr><tr><td>4</td><td>CEPT/STP/E-Waste/MSW facilities/ CB WTF/HCFs</td><td>90</td></tr><tr><td></td><td>Total</td><td>2921</td></tr></table>	SL No.	IPAs/OPAs	Number of IPAs/OPAs	1	Industries	847	2	Construction Activities	1878	3	Garbage Burning	106	4	CEPT/STP/E-Waste/MSW facilities/ CB WTF/HCFs	90		Total	2921	Partially complied
SL No.	IPAs/OPAs	Number of IPAs/OPAs																			
1	Industries	847																			
2	Construction Activities	1878																			
3	Garbage Burning	106																			
4	CEPT/STP/E-Waste/MSW facilities/ CB WTF/HCFs	90																			
	Total	2921																			
2.	Action taken against the defaulter industries	As per the compliance report of UPPCB, there are 9539 IPAs/OPAs in the State. Out of 9539 IPAs/OPAs, 2921 IPAs/OPAs are not complying with the Environmental Standards. Prosecutions have been filed against 165. Closure directions have been	Partially complied																		

		issued against the 611 IPAs/OPAs. 4 IPAs/OPAs have been convicted due to noncompliance.	
3.	Status of Environmental Compensation imposed and recovered	Out of total 9539 industries/other polluting activities, 2921 are not complying with the environmental norms in 05 years. EC of Rs. 6422.59 lakh has been imposed on defaulter industries/OPAs. Out of which, Rs. 826.81 lakh has been recovered so far. Show cause notices have been issued for EC of total of Rs. 10825.26 lakh.	Partially complied
4.	Status of installation of CAAQMS in non-attainment cities	In non-attainment cities, Ambient Air Quality is being monitored through 17 CAAQMS in CPAs/SPAs and 40 manual monitoring stations in 13 CPAs/SPAs. Presently, CAAQMS is not available in 4 CPAs/SPAs, namely, Mathura, Firozabad, Gajraula and Aligarh.	Partially complied
5.	Status of polluted river stretches in the State of Uttar Pradesh	- The river water quality has improved In 6 CPAs/SPAs, namely, Mathura, Kanpur, Varanasi, Gajraula, Ghaziabad and Meerut while quality has decreased in 4 CPAs/SPAs, viz. Moradabad, Agra, Noida and Singrauli. 3 STPs of total capacity of 24.25 MLD found non-complying with norms and have been imposed with EC of Rs. 15.75 lakh.	Partially complied

62. Recommendations made by Oversight Committee in the above report are as under:

“Recommendations:

In the view of above, we recommend as follows:

1. CEPI regime has been continuing for the past 10 years. If with all the action plans and mitigation measures, these areas still remain in critically polluted category, then it certainly **reflects badly on the quality of enforcement**. It cannot solely be the responsibility of

Pollution Control Boards. There are more than 17 departments which need to take integrated measures to control pollution in these areas. Norms need to be backed by schemes, e.g. ground water shortage cannot be controlled only by restricting extraction of water. The State Government needs to bring surface water from outside and also augment the supply through water harvesting and water recycling schemes. Similarly, the areas where the problem of air pollution due to pet coke/coal burning is there, subsidy on CNG needs to be provided by the State. For Textile plants, where small boilers are using polluting fuels, there has to be a provision by the State Government for Centralized Steam Plants. CEPI so far has not been very effective. For increasing its effectiveness, there needs to be dual activities- augmenting resources through State Government schemes and increasing enforcement and accountability. A framework needs to be developed whereby clear cut annual targets and accountability of concerned authorities is fixed, only then such schemes would be successful. Chief Secretary UP be directed to prepare an interdepartmental action plan for pollution abatement in CEPI areas on the above lines and submit it to Hon NGT in next three months.

2. It was mentioned that new units in CEPI areas in red and orange category are being set up based on MoEF&CC guidelines and the UPPCB norms notified thereupon. The Committee feels that **no new units/no expansion of existing units should be allowed in any CEPI area without verifying the carrying capacity of that area through carrying capacity studies.**
3. The long term plans of these CEPI areas compulsorily must have a detailed water plan in which water harvesting plans and reuse of treated water plans are mandatory.
4. A very important component of entire scheme would be awareness and involvement of the stakeholders. In Sahibabad, there is a group of 18 industrial units who are practicing self-environment management and doing well as far as pollution abatement measures are concerned. Such kind of self-environment management groups need to be promoted. A massive campaign needs to be launched by the State Government for making all the industrialists aware of the environmental constraints and the proposed abatement measures.
5. The **UPPCB is facing problems as far as recovery of environmental compensation is concerned, especially from urban local bodies and public utilities. Closure of these public utilities is not a solution. Withdrawal of consent to operate may create a public order issue. In such cases, some mechanism has to be worked out for realization of recovery from public utilities.**
6. In all large red category industrial areas with air pollution problems, continuous emission monitoring system, effective fugitive emission control measures, transportation of materials by rail/conveyers belt, use of cleaner fuels, and increase in green belt cover may be attempted. In large red category areas with water pollution problems, continuous effluent monitoring systems, detailed water harvesting plan, ZLD discharge, and water reuse/recycling can be attempted.

7. State PCB may be directed to ensure that the action plan should be prepared for each CPA/SPA within two weeks.
8. Separate list of polluters to be notified in one weeks' time.
9. Carrying capacity studies to be finalised in 3 months' time.
10. As far as permission of expansion of industrial activities in CPAs/SPAs is concerned, UPPCB has not calculated the carrying capacity of CPAs/SPAs yet. **UPPCB may be directed to conduct Carrying Capacity study immediately and till viability is found, a notification be issued banning all such units in these areas.**

The Member Secretary, UPPCB is directed to send this report to the Registrar General, National Green Tribunal, Principal Bench, New Delhi for placing the same before the Hon'ble Tribunal with a copy to the Chief Secretary, Government of UP for necessary action. The report also be uploaded on the website of the committee."

D.) Consolidated Report dated 05.08.2020 submitted by CPCB:

63. After referring the various orders passed by Tribunal and action taken pursuant thereto, the said report refers to the order dated 14.11.2019 as corrected on 19.11.2019 and the action taken by CPCB stated in the report are as under:

"2.9 *In the view of above directions, CPCB has taken following actions:*

- i. *CPCB, vide letter dated 19/11/2019 (Annexure-I) requested all the concerned PCBs/PCCs to comply with the orders and to provide information on list of industries prohibited due to non-compliance and details of environmental compensation levied in prescribed format so as to submit to Hon'ble NGT.*
- ii. *CPCB vide letter dated 29.11.2019 (Annexure-II) has provided the CEPI calculation sheets and monitoring data to the concerned SPCBs/PCCs.*
- iii. *CPCB vide letter 30.12.2019 (Annexure-III) again requested all the concerned SPCBs to submit the Action Plans for improvement of environmental quality including the demarcated boundaries of CPAs/SPAs.*
- iv. *A meeting through video conferencing was conducted on 7.1.2020 with all the concerned SPCBs/PCC highlighting the directions of Hon'ble NGT and to expedite submissions of the reports on or before 31/1/2020. A copy of minutes of meeting is given at Annexure-IV.*

- v. CPCB revised the mechanism evolved by MoEF&CC for allowing new projects/expansion of Red and Orange category of industries in CPAs/SPAs and the same has been communicated to MoEF&CC for consideration and approval, vide letter dated 4/2/2020.
- vi. CPCB approved action plans for 30 CPAs/SPAs furnished by 10 SPCBs (namely Assam, Bihar, Maharashtra, Himachal Pradesh, Punjab, Uttarakhand, Andhra Pradesh, Tamil Nadu, Telangana and Karnataka) on 28/04/2020.

In the meantime, Chhattisgarh (on 11.03.2020) Gujarat (on 28.06.2020) and Madhya Pradesh (on 15/07/2020) have provided action plans of 10 CPAs/SPAs pertaining to their states to CPCB which are under consideration. The remaining 07 SPCBs/PCCs (namely. Delhi. Haryana. Jharkhand. Odisha, Rajasthan, Uttar Pradesh (except for Mathura) and West Bengal) were also reminded on 21/07/2020 for furnishing action plans (Annexure-V).

- vii. Among the 100 PIAs identified for CEPI evaluation. 38 PIAs are categorized as critically polluted areas (CPAs) and 31 PIAs are categorized as severely polluted areas (SPAs) located in 20 States/UTs.

All 20 SPCBs (namely Assam, Bihar, Odisha, Jharkhand, West Bengal, Gujarat, Maharashtra, Delhi, Haryana, Himachal Pradesh, Punjab, Uttar Pradesh, Uttarakhand, Andhra Pradesh, Karnataka, Tamil Nadu, Telangana, Chhattisgarh, Madhya Pradesh, Rajasthan) have provided the information on number of non-complying industries/activities, closure directions issued, environmental compensation levied for non-compliance in last 5 years and environmental compensation recovered.

- viii. CPCB tabulated the information provided by SPCBs/PCCs regarding details of non-complying industries/activities, closure directions issued, environmental compensation levied for non-compliance in last 5 years and environmental compensation (EC) recovered and same is provided at Annexure-VI.

As per the data received from 20 SPCBs/PCCs, there are total 5047 non-complying industries/activities, out of which 2357 non-complying industries/activities have been issued closure directions. The incidences of violation by construction activities, stubble burning etc., have also been included by few SPCBs in the non-complying industries/activities. Further 6457 no. of industries/activities have been reported non-complying with environmental standards in last 5 years and EC of Rs. 62,696.84 lakh have been imposed on them."

64. The said report also refers to the interim orders passed by Supreme Court in **Civil Appeal Nos. 2218-2219/2020** which we have already referred above.

E.) Report dated 11.01.2021 filed by Oversight Committee headed by Justice SVS Rathore, Chairman (former Judge of Allahabad High Court) in respect of State of UP:

65. The relevant extract of the report is reproduced as under:

“INTRODUCTION

- *The Hon’ble NGT dealing with the matter of O.A. No. 1038/2018 vide order dated 10.07.2019 considered the issue in regard to the remedial action against the polluting industries in the identified polluting industrial clusters. The Tribunal, vide order dated 13.12.2018, treated the news item published in “The Asian Age” dated 06.12.2018 authored by Mr. Sanjay Kaw titled “CPCB to rank industrial units on pollution levels” as an application in view of substantial question of environment which could be dealt with by the Tribunal under Sections 14, 15 and 20 of the National Green Tribunal Act, 2010.*
- *Purpose of economic development in any region is to provide opportunities for improved living by removing poverty and unemployment. While industrial development invariably creates more jobs in any region, such development has to be sustainable and compliant with the norms of environment. In absence of this awakening or tendency for monitoring, industrialization has led to environmental degradation on account of industrial pollution. It is imperative to ensure that steps are taken to check such pollution to uphold statutory norms. Adequate and effective pollution control methods are necessary.*
- *Dust, smoke, fume and toxic gas emissions occur as a result of highly polluting industries such as thermal power plants, coal mines, cement, sponge iron, steel and ferro-alloys, petroleum and chemicals unless right technology is used, and precaution taken. Industry specific clusters have not only become hazardous but also cause irreparable damage to our ecology and environment, often breaching the environment’s carrying capacity, adversely affecting public health.*
- *Ill effects of industrial pollution on the environment and public health are well acknowledged. This has made it necessary to strictly apply the principles of ‘Sustainable Development’ and permit any activity to be carried out without degrading the environment. The statutory scheme under the Air Act, the Water Act and the EPA Act provides for standards for air and water quality which must be maintained, and violation thereof is a criminal offence.*
- *The Comprehensive Environmental Pollution Index (CEPI) was developed in 2009 by CPCB. It is an index to categorise the environment quality of industrial clusters. It captures details regarding air, water and land. On the basis of this index, CPCB had notified 88 industrial clusters as Polluted Industrial Areas (PIAs) which depending on the score were ranked as Critically Polluted Areas (CPA), Severely Polluted Areas (SPAs), and Other Polluted Areas (OPAs).*

- The index was revised in 2016. Under the revised definition, the categorization was based on emissions (air pollutants), effluents (water pollutants), hazardous waste generated and consumption of resources. Categorization was done as red (>60 score), orange (41-59 score), green (21-40 score) and white (up to 20 score). The number of clusters increased from 88 to 100. CEPI is a warning tool by State Govts to understand the severity of pollution existing in an area and to formulate appropriate action plans.
- To identify the clusters of polluting industries CPCB has evaluated the CEPI in the year 2009-10. Based on the CEPI criterion, CPCB has identified 88 polluted industrial clusters (PICs) in 16 states in 2009-2010. In 2017-2018, the numbers of identified PICs in 21 states were increased from 88 to 100. The details of the CEPI score ranges and the number of industrial clusters falling in each category are as follows:

CEPI Score	Category	Number of Industrial clusters	
		2009-10	2017-18
70 and above	Critically Polluted Areas (CPAs)	43	38
60-70	Seriously Polluted Areas (SPAs)	32	31
Below 60	Other Polluted Areas (OPAs)	13	31
Total		88	100

- Out of 100 PICs identified in year 2017-2018, 13 were reported in UP. The CEPI Scores for Industrial Areas/ Clusters identified in 2018 are as follows:

Table below shows the CEPI scores for industrial areas/ clusters descending order

S. No.	Name of Polluted Industrial Areas (PIAs)	Air	Water	Land	CEPI Score	# Status of Environment
1.	Mathura	86.00	81.00	45.00	91.10	Ac_Wc_Ln
2.	Kanpur	66.00	85.00	45.00	89.46	Ac_Wc_Ln
3.	Moradabad	76.00	71.50	68.75	87.80	Ac_Wc_Ln
4.	Varanasi-Mirzapur	67.50	80.00	39.63	85.35	Ac_Wc_Ln
5.	Bulandsahar-Khurja	79.50	76.00	36.75	85.23	Ac_Wc_Ln
6.	Firozabad	76.00	72.00	32.50	81.62	Ac_Wc_Ln
7.	Gajraula Area	71.00	70.00	45.00	80.14	Ac_Wc_Ln
8.	Agra	60.00	66.88	47.00	76.22	Ac_Wc_Ln
9.	Ghaziabad	57.50	66.00	32.25	72.30	As_Wc_Ln
10.	Noida	59.75	62.75	27.00	68.76	As_Wc_Ln
11.	Meerut	52.00	65.00	6.00	66.09	As_Wc_Ln
12.	Aligarh	56.25	61.88	11.88	64.42	As_Wc_Ln
13.	Singrauli (UP & MP)	45.00	57.25	27.75	62.59	As_Wc_Ln

- It is presented in the alpha-numeric form stating the score along with the status of Air, Water and Land environment in terms of subscript as critical/ severe/ normal. A sub-index score of more than 60 shows a critical level of pollution in the respective environmental component, whereas a score between 50–60 shows a severe level of pollution with reference to the respective environmental component.
- Recently, a report published in Hindustan Times entitled, “India recorded highest air pollution exposure globally in 2019” stated that India recorded the highest annual average PM 2.5 concentration exposure in the world last year, according to the State of Global Air 2020 (SOGA 2020) report.
- A report published in ALJAZZERA entitled, “India has the world’s worst air pollution”. As per the report, seven of the world’s 10 worst polluted cities are in India with wider South Asia home to scores more blighted by dirty air.
- According to a report published in Lancet entitled, “18% of Total Deaths in India in 2019 is due to Air Pollution” mentioned that the death rate from outdoor particulate air pollution has increased from 115% from 1990 to 2019. Further the report stated that air pollution is a major cause of premature death and disease and is the largest environmental health threat globally. Studies from India have shown that short-term and long-term exposure are associated with disease burden and mortality.
- A news article published in The Times of India entitled, “Pollution India’s top risk factor for deaths, Air pollution kills 1.2L infants in India in 2019” stated that air pollution is now the fourth highest cause of death among all health risks, ranking just below high BP, tobacco use and poor diet. Further, the article mentioned about comprehensive analysis of air pollution’s global impact on the newborn, conducted by HEI, stating that outdoor and household particulate matter pollution contributed to the deaths of nearly 5,00,000 infants globally, including 1,16,000 infants in India, in their first month of life.

Innovative solutions to mitigate Air pollution:

- A study published in ACS News Service Weekly Press entitled, “Green plants reduce pollution on city streets up to eight times more than previously believed” concluded that judicious placement of grass, climbing ivy and other plants can reduce the concentration at street level of NO₂ by as much as 40 percent and PM by 60 percent, much more than previously believed.
- Plants and trees may be better and cheaper options than technology to mitigate air pollution says a report entitled, “How Plants Can Help You Tackle Air Pollution, Probably Better than Tech”. The report is based on the research article published in Environmental Science and Technology, which found that adding plants and trees to the landscape near factories and other pollution sources could reduce air pollution by an average of 27%.

- A news article published in *CIVIL ENGINEER* entitled, “Vertical gardens in Mexico City to combat pollution” stated that in an effort to deal with high levels of air pollution and improve the city’s landscape, Mexico City is developing a project called ‘Via Verde’. In this project, around 60,000 m² of vertical gardens will be installed on more than 1000 pillars of a busy motorway, covering a distance of 27 km.
- A report published in *BBC News* entitled, “Growth of city trees can cut air pollution” stated that the average reduction of particulate matter near a tree was between 7% and 24%.
- The concept of “Urban Treehouse in Italy designed to eliminate Noise and Air pollution by over 150 trees” describes about a building designed in such a way that it is surrounded by living plants, including 150 trees that actually absorbs close to 200,000 liters of carbon dioxide an hour.
- The World’s First “FOREST CITY”, Liuzhou Forest City, is being developed by China to combat air pollution. Liuzhou Forest City will integrate over a 100 species of plants that will grow on the rooftops of skyscrapers and on apartment balconies. The design will stretch along the Liujiang River in Southern China for approximately 175 hectares. The city is expected to absorb nearly 10,000 tons of CO₂ and will produce around 900 tons of oxygen annually.

IV. COMPLIANCE STATUS OF UPPCB

UPPCB submitted a compliance report dated 18.12.2020 mentioning the following:

Issue: Recovery of Environmental Compensation.

Action taken: EC of Rs. 6422.59 lakh has been imposed on defaulter industries/OPAs. Show-cause notices have been issued for EC of total of Rs. 10825.26 Lakh. Out of which EC of Rs. 826.81 has been realized.

- As per latest information further EC of Rs. 2,45,050,250 has been imposed against 408 defaulters out of which Rs. 2,08,97,200 has been realized, totaling recovery of EC to Rs. 10,35,78,200 so far.

Issue: Action Taken against erring industries/Non-Complying units which are located either in CPAs/SPAs or within 5 km from the boundary of CPA/SPA.

Action taken: A total of 408 non-compliant industries are located either in CPAs/SPAs or within 5 km from the boundary of CPA/SPA in the State of UP.

- Environmental compensation of Rs. 24,50,50,250 has been imposed on these units out of which Rs. 20897200 has been recovered.
- Closure orders have been issued against 189 units and show-cause notices have been issued against 135 units.
- Prosecution has been filed against 17 units.

Issue: Status of installation of CAAQMS in CPAs/SPA.

Action taken: Ambient Air Quality is being monitored through 18 CAAQMS in 9 CPAs/SPAs apart from 40 manual monitoring stations in 13 CPAs/SPAs.

- Presently, CAAQMS is not available in 4 CPAs/SPAs, namely, Mathura, Firozabad, Gajraula and Aligarh.
- As per norms there is a gap of 26 CAAQMS in 9 CPAs/SPAs, out of which 12 CAQMS are proposed to be installed by June 2021 under NCAP/50:50. Further 32 CAAQMS are installed in CPSU/industry.

Issue: Action taken against untapped drains.

Action taken: In Moradabad, U.P. Jal Nigam has tapped 5 drains out of 14 and 7 drains will be tapped up to December 2020. Rest 2 drains will be tapped up to January 2021.

- In Mathura, Nagar Nigam Mathura-Vrindavan is doing Bioremediation work with the help of M/s Zenex Infra. 40 MLD STP is being established in Masani and CETP upgradation work is also under progress.
- In Mirzapur and Chunar, 10 drains are tapped out of 41 drains. Bioremediation in rest 31 untapped drains done by U.P Jal Nigam/ Local Bodies during Kumbha.
- Tapping of drains has been proposed In Sikandrabad and Khurza also.

Issue: Latest Status of identification of units other than those covered by PIAs which are individually causing air, water and other pollution.

Action taken: As per the compliance report the latest status is as follows:

District	No. of Industries Against which Actions have been taken	Action
Ghaziabad	1141	Demolished/ Sealed/ Electricity disconnected
Moradabad	106	Closure order issued
Sonbhadra (Singrauli)	81	Closure orders against 64 units (43 brick kiln & 21 Stone Crusher) and show cause notices against 17 units (16 brick kiln & 1 Stone Crusher) have Been issued. Apart from above prosecution against 10 kiln has been lodged in special court.
Kanpur	19	Closed/ Demolished/ Sealed/ Electricity disconnected)
Meerut	34	Closed/ Demolished/ Sealed/ Electricity disconnected)

Total	354	
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Issue: Status of Action plan for each CPA/SPA

Action taken: Out of 13 CPAs/SPAs, action plan for 11 has been submitted. The action plan for 2 areas (i.e. Mathura and Aligarh) is under preparation.

Issue: Assessment of Carrying capacity of CPAs/SPAs.

Action taken: In Ghaziabad, detailed Source Apportionment study along with carrying capacity has been done by IIT Delhi.

- Rapid Study of Source Apportionment and Carrying Capacity has been awarded to IIT Kanpur in March 2020 which would be conducting carrying capacities in both for CEPI areas and NAC cities.
- IIT Kanpur will submit the report by December 2020 but no report has been received as of now.

V. SUMMARY OF COMPLIANCE STATUS BY UPPCB

S. No.	Issues/points of discussions	Compliance Status
1.	Submission of Action plan for 13 CEPI areas	Partially complied Out of 13 CPAs/SPAs, action plan for 11 has been submitted. The action plan for 2 areas (i.e. Mathura and Aligarh) is under preparation.
2.	Assessment of carrying capacity of 13 CEPI areas	Partially complied Rapid Study of Source Apportionment and Carrying Capacity has been awarded to IIT Kanpur in March 2020 which would be conducting carrying capacities in both for CEPI areas and NAC cities. IIT Kanpur will submit the report by December 2020 but no report has been received as of now.
3.	Status of identification of Polluting units which are individually causing air and water pollution	Partially complied As per the compliance status, a total of 354 such industries have been identified in 5 districts of UP.
4.	Status of Red and Orange category industries/other polluting activities in 13 CPAs and SPAs and within 5 km from the boundary of CPA/SPA in the State.	Complied • A total of 1649 units are in the Red category in the State of Uttar Pradesh. Out of 1649 industrial units falling in the Red category, 484 industrial units are non-compliant with the Environmental Standards.

		A total of 2789 units are in the Orange category. Out of which, 2434 small, 321 medium and 34 are large scale units are operational. Under the orange category 363 units are non-compliant with the Environmental Standards.
5.	Action taken against defaulter industries	Partially complied - A total of 408 non-compliant industries are located either in CPAs/ SPAs or within 5 km from the boundary of CPA/SPA in the State of UP. - Environmental compensation of Rs. 24,50,50,250 has been imposed on these units out of which Rs. 20897200 has been recovered. - Closure orders have been issued against 189 units and show-cause notices have been issued against 135 units. - Prosecution has been filed against 17 units.
6.	Status of Environmental Compensation imposed and recovered	Partially complied Environmental compensation of Rs. 24,50,50,250 has been imposed on these units out of which Rs. 20897200 has been recovered.
7.	Status of installation of CAAQMS in non-attainment cities	Partially complied - Presently, CAAQMS is not available in 4 CPAs/SPAs, namely, Mathura, Firozabad, Gajraula and Aligarh. - As per norms there is a gap of 26 CAAQMS in 9 CPAs/SPAs, out of which 12 CAAQMS are proposed to be installed by June 2021 under NCAP/50:50. Further 32 CAAQMS are installed in CPSU/industry
8.	Status of non-complying STPs	Not complied EC of Rs. 15.75 had been imposed on 3 non-complying STPs which has not been recovered yet.
9.	Action taken against untapped Drains.	Partially complied In Moradabad, U.P. Jal Nigam has tapped 5 drains out of 14 and 7 drains will be tapped up to December

		2020. Rest 2 drains will be tapped up to January 2021. • In Mathura, Nagar Nigam Mathura – Vrindavan is doing Bioremediation work with the help of M/s Zenex Infra. 40 MLD STP is being established in Masani and CETP upgradation work is also under progress. • In Mirzapur and Chunar, 10 drains are tapped out of 41 drains. Bioremediation in rest 31 untapped drains done by U.P Jal Nigam/ Local Bodies during Kumbha. • Tapping of drains has been proposed in Sikandrabad and Khurja also.
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VI. RECOMMENDATIONS

In view of the above, we recommend as follows:

1. *For all the industries located in red category with air pollution problem, effective fugitive emission control measures, transportation of materials by rail/conyers belt, increase in green belt cover, use of cleaner fuel and continuous emission monitoring system may be attempted. For all the industries located in red category with water pollution problem, detailed water harvesting plan, continuous effluent monitoring systems, ZLD discharge, and water reuse/recycling may be attempted.*
2. *As far as granting permission of expansion of industrial activities in CPAs/ SPAs is concerned, UPPCB may be directed to conduct the carrying capacity study of all 13 CPAs/SPAs immediately and until found to be viable, a notification may be issued to impose ban on all such units in these areas.*
3. *CEPI regime has been continuing for the past 10 years. If with all the action plans and mitigation measures, these areas still remain in critically polluted category then it certainly reflects badly on the quality of enforcement. It cannot solely be the responsibility of Pollution Control Boards. There are more than 17 departments which need to take integrated measures to control pollution in these areas. Norms need to be backed by schemes; e.g. ground water shortage cannot be controlled only by restricting extraction of water. The State Government needs to bring surface water from outside and also augment the supply through water harvesting and water recycling schemes. Similarly, the areas where the problem of air pollution due to pet coke/coal burning is there, subsidy on CNG needs to be provided by the State. For Textile plants, where small boilers are using polluting fuels, there has to be a provision by the State Government for Centralized Steam Plants. CEPI so far has not been very effective. For increasing its effectiveness, there needs to be duel activities-augmenting resources through State Government schemes and increasing enforcement and accountability. A framework needs to be developed whereby clear cut annual targets and accountability of*

concerned authorities is fixed, only then such schemes would be successful. Chief Secretary UP be directed to prepare an interdepartmental action plan for pollution abatement in CEPI areas on the above lines and submit it to Hon NGT in next three months.

4. It was mentioned that new units in CEPI areas in red and orange category are being set up based on MoEF&CC guidelines and the UPPCB norms notified thereupon. The Committee feels that no new units/no expansion of existing units should be allowed in any CEPI area without verifying the carrying capacity of that area through carrying capacity studies.
5. As far as environmental compensation is concerned, UPPCB is facing problems especially from urban local bodies and public utilities. Closure of these public utilities is not a solution. Withdrawal of consent to operate may create a public order issue. In such cases, some mechanism has to be worked out for realization of recovery from public utilities.
6. A detailed water plan may be in-scripted in these CEPI areas in which water harvesting schemes and planning for reuse of treated water must be compulsory.
7. A very significant element of entire scheme would be awareness and involvement of the stakeholders. In Sahibabad, there is a group of 18 industrial units who are practising self-environment management and doing well as far as pollution abatement measures are concerned. Such kind of self-environment management groups need to be promoted. A massive campaign needs to be launched by the State Government for making all the industrialists aware of the environmental constraints and the proposed abatement measures.

Proposed Recommendations:

1. Environmental compensation of Rs. 24,50,50,250 has been imposed on 408 noncompliant industries, out of which Rs. 2,08,97,200 has been recovered. The State PCB may be directed to take necessary actions and recover imposed EC as per the Rules.
2. As far as Comprehensive Environmental Pollution Index is concerned, a total of 43 industrial clusters have been identified by CPCB as “Critically Polluted” (having CEPI score greater than 60) in India. Such high number of polluting industrial clusters in the country reflects the poor implementation status of action plans and mitigation measures by the concerned authorities. The CPCB and SPCB may be directed to develop a framework for the authorities implementing the action plans with clear targets and fixation of accountability.
3. In order to prevent the pollution overload in all the industrial clusters, the State PCB may be directed to complete the source apportionment and carrying capacity studies without any further delay.

4. *As far as compliance status of STPs are concerned, UPPCB had imposed an EC of Rs. 15.75 on 3 non-compliant STPs. The SPCB may be directed to take necessary actions in this regard.*
5. *With regard to installation of CAAQMSs in the non-attainment cities, 4 CPAs/SPAs, i.e. Mathura, Gajraula, Aligarh and Firozabad, CAAQMSs has yet not been installed. Further, as per norms there is a gap of 26 CAAQMS in 9 CPAs/SPAs, out of which 12 CAAQMS are proposed to be installed by June 2021. The SPCB may be directed to expedite the process of installation and complete the work in time bound manner.*
6. *With regard to tapping of drains, in Moradabad, 05 drains are tapped out of 14, while in Mirzapur and Chunar, 10 drains are tapped out of 41 till date. UP Jal Nigam may be directed to expedite the process of tapping of untapped drains or as an interim measure ensure the Bioremediation of these untapped drains without any further delay.*
7. *There needs to be effective enforcement of Solid Waste Management Rules, Municipal Solid Waste Rules, Hazardous waste management Rules and Biomedical waste management Rules in CPAs/SPAs. As far as Municipal Solid Waste Facility/Dump Sites are concerned, 6 out of 10 facilities are not complying with environmental standards. There is a 'see and do' policy in the State. However, action so far taken either in terms of closure or in terms of prosecution, is not satisfactory. Out of the 3 Common Bio Medical Waste Treatment and Disposal Facilities in CPAs/SPAs, 2 are not complying with the environmental standards, but no action has so far been taken. UPPCB may be directed to take immediate action against errant CBWTFs as per the legal provisions. The erring officer must be held responsible for this negligence and disciplinary actions must be held against the erring officer.*
8. *In all the CPAs/SPAs, other than tech, ecofriendly approaches such as Urban Treehouse and Vertical Gardens may be undertaken to reduce the extent of air pollution. The SPCB/concerned authorities may be directed to implement such strategies based on Mexico and China model.*
9. *The committee also recommends that in future all the plans of high rise buildings be passed only where the provision of roof top greenery is included. It is also recommended that existing high-rise buildings be also directed to develop such roof top greenery on each tower of their project in a phased manner.*
10. *The State PCB may also be directed to collaborate with research institutes to explore the applications and usefulness of different plant species in reducing the air pollution in the affected areas.*
11. *Industries may be directed to plant such species in and around their premises that have efficiency reduce the toxic gases/pollutants released by them to reduce air pollution.*
12. *Researches/experiments may be promoted to study/explore the avenues of using plants in reducing the impacts of air pollution.*

13. *Researches may also be promoted to develop surfaces using plants, on the concept of moss wall, which is capable of absorbing particulate matter, black carbon and dust thereby acting as a sink for pollution.*

The Member Secretary, UPPCB is directed to send this report to the Registrar General, National Green Tribunal, Principal Bench, New Delhi for placing the same before the Hon'ble Tribunal with a copy to the Chief Secretary, Government of Uttar Pradesh for necessary action. The report also be uploaded on the website of the Committee."

66. After disposal of Appeals by Supreme Court pursuant to the directions issued therein, a number of IAs have been filed which we are referring hereunder.

67. **IA 87/2020:** This application has been filed on behalf of Gujarat Chamber of Commerce and Industry (hereinafter referred to as '**GCCI**') registered office at Shri Ambica Mills-Gujarat Chamber Building, Ashram Road, Ahmedabad, Gujarat. In para 41 of IA, applicant (GCCI) have prayed for grant of following reliefs at an appropriate stage:

- "a. To review the very concept and procedure of declaring CPAS and SPAs. Instead of identifying polluting industries/activities and issuing coercive actions, steps may be taken individually by concerned authorities and a tag of CPA or SPA may not be imposed on the Cluster as a whole as many of these clusters are law binding and fully Compliant industrial houses with a good reputation at stake.*
- b. As proper procedure was not followed in both measurement and CEPI assessment, the **CEPI score may be declared null and void and set aside.***
- c. This Hon'ble Tribunal may be pleased to reconsider the directions imposing moratorium contained in para 28 of the Order dated 10.07.2019 passed in the present proceedings till the disposal of the present application and oblige.*
- d. This Hon'ble Tribunal may be pleased to direct CPCB and MOEF& CC to follow provisions made in part D of CPCB directions dated 26.04.2016.*
- e. This Hon'ble Tribunal may be pleased to direct MoEF & CC to issue Directions to control air pollution caused by vehicular traffic and other non-industrial activities and its effective implementation by state governments and oblige.*

- f. *This Hon'ble Tribunal may be pleased to direct MoEF & CC/CPCB/state POCBs to follow the provisions of the CPCB directions for applications of revised CEPI Guidelines of 2016 dated 26.04.2016 and other relevant specifications.*
- g. *This Hon'ble Tribunal may be pleased to direct the CPCB to collect samples on basis of the selected parameters in consultation with respective SPCBs for arriving at index of air, water and land pollution considering local conditions and geographical conditions and calculate CEPI accordingly.*
- h. *This Hon'ble Tribunal may be pleased to direct CPCB to ensure that a counter sample be given to SPCBs, concerned Industries Associations/CETP operators for every sampling, and samples so collected should be analyzed by NABL accredited laboratories.*
- i. *This Hon'ble Tribunal may be pleased to direct MoEF & CC to modify four components for arriving at CEPI in the line of suggestions made in paragraph 32 of the present Application.*
- j. *This Hon'ble Tribunal may be pleased to pass any other and further order which is deemed just fair and proper in the facts and circumstances of the case."*

68. In para 3 to 8, applicant (GCCCI) has justified its *locus standi*; from para 9 to 13, applicant has referred to various orders passed by Tribunal in the present OA and in para 14 to 20, applicant has given, in brief, impact of orders on the functioning of industries and said as under:

- "14. The Applicant states that the CPCB, contrary to its own position as stated in the statutory directions being Revised Comprehensive Environmental Pollution Index ("CEPI") issued under Section 18(1)(b) of Water Act, 1974 and Air Act, 1981, has made submissions in relation to the Comprehensive Environmental Pollution Index (CEPI) and provided the CEPI scores of 10 industrial clusters within the State of Gujarat. **In terms of the CEPI score so determined, 6 industrial clusters have been reclassified as Critically Polluted Areas ("CPA"), 1 industrial cluster has been reclassified as Severally Polluted Areas ("SPA") and 3 industrial clusters have been reclassified as Other Polluted Areas (OPA).**
15. The Applicant states that the direct effect of the above revision in classification, is that **no expansion** is permissible in the industrial clusters which fall within the category of CPA and SPA. Furthermore, attaching a tag of CPA or SPA for a whole cluster **adversely affects the international reputation and exports of individual industries**, which are otherwise law abiding and fully compliant with the environmental norms.
16. The Applicant states that upon receipt of the representations from the Industries/Associations regarding the present proceedings, the applicant constituted an Expert Committee under the

Chairmanship of Shri B.R. Naidu, former Regional Director, Central Pollution Control Board, Zonal Office, Vadodara, to submit an advisory in the matter. The Applicant states that the Expert Committee has submitted its advisory. In terms thereof, the following issues have been highlighted by the Committee:

“After studying all the documents of CEPI 2018 calculations made by CPCB, including Laboratory results of all the Industrial Estates, we came to the conclusion that CPCB had made enormous Errors in the calculation like;

- 1. Not selecting criteria pollutants prior to CEPI monitoring as “preferable option” as per CEPI Directions u/s 18(1)(b) of the Water Act and Air Act, 2016.*
- 2. It is well established through various studies of CPCB itself that Air and Water pollutions have many other contributors than industries alone, the criteria pollutants were selected where the contribution of the industries might not have more than 30% for example PM 10, PM 2.5, Total Hardness, Total Dissolved Solids, BOD etc.*
- 3. The Calculation of Factor B for surface water in the cases of Vatva and Vadodra are faulty as CPCB included CETP outlet in calculation while as per CEPI guideline the CETP outlet shall not be considered as surface water body.*

Hence, considering the impact of high CEPI on the growth of industries, we strongly recommend GCCI to make the proper representation at MOEF & CC and if required go for intervention application at Hon’ble NGT and represent the case on behalf of Industries Associations.”

A copy of the letter dated 10.12.2019 addressed by the Applicant to Shri B.R. Naidu, former Regional Director, Central Pollution Control Board, Zonal Office, Vadodara is annexed hereto and marked ANNEXURE-A-8.

A copy of the report dated 01.01.2020 submitted by Naidu Committee to the Applicant is annexed herewith and marked as ANNEXURE- A-9.

- 17. The Applicant states that the applicant has since held meetings with the State Pollution Control Board to represent the views of its members concerning the revision of parameters of the CEPI and the consequent classification of the industrial clusters. The Applicant states that a joint meeting was also convened wherein the representatives of the Applicant made representations before the State Pollution Control Board as well as the representatives of the Central Pollution Control Board and Ministry of Environment and Forest.*

A copy of the correspondences addressed by the Applicant to the MoEF & CC, the Hon’ble Prime Minister of India, the Hon’ble Home Minister of India, the Hon’ble Environment Minister of India, the Hon’ble Chief Minister of Gujarat, the Chief Secretary of Gujarat

and the correspondences between the Applicant and the CPCB are annexed hereto and marked as ANNEXURE-A 10 (COLLY).

18. *The Applicant states that it is a matter of record that while making Submissions in relation to the CEPI score of the industrial clusters in the captioned proceedings before the Hon'ble Tribunal, the CPCB has applied the norms which are inconsistent with the norms hitherto existing and applied for determination of the CEPI Score. The applied norms have overlooked the directions framed and issued by the CPCB dated 26.04.2016. The said aspect is set out in the form of a table for the purpose of the ready reference of the Hon'ble Tribunal.*

A copy of the table demonstrating the applicable directions under Section 18(1)(b) of the Water Act and Air Act and the norms applied by the CPCB is annexed herewith and marked as ANNEXURE- A-11.

19. *It is submitted that in order to identify the impact of the Industrial Cluster on the pollution in the area, the Revised CEPI Directions u/s 18(1)(b) of the Water Act and Air Act of 2016 have provided that the environmental pollution is to be assessed in context of the identified polluting elements relatable to the industry in particular. The Revised CEPI Directions u/s 18(1)(b) of the Water Act and Air Act were issued on 26.04.2016.*

A Copy of the Revised CEPI Guidelines issued under the Directions u/s 18(1)(b) of the Water Act and Air Act dated 26.04.2016 are annexed herewith and marked as ANNEXURE-A-12.

20. *The Applicant states that in the process undertaken by the CPCB for arriving at the CEPI scores which are referred to in the submissions made before the Hon'ble Tribunal, the following process prescribed under the statutory directions under Section 18(1)(b) has not been undertaken by the concerned sampling agency:-*

“Part A: Environmental quality monitoring in all CPAS

1. That the SPCB/PCC shall undertake environmental quality monitoring in the critically polluted area falling under their jurisdiction through an outside third party agency (laboratory) recognised under Environment (Protection) Act, 1986 and accredited under NABL. The frequency of the monitoring shall be twice in a year i.e. Post-monsoon season and Pre-monsoon season).

2. That the SPCB/PCC shall ensure that the existing sampling locations where monitoring was undertaken in 2013 are retained and additional monitoring locations, if any required, can be included in the monitoring programme in consultation with concerned Zonal Offices of CPCB and (or) Head Office, CPCB.

3. That the SPCB/PCC shall ensure that the sampling stations are provided at strategic locations across the industrial clusters so as to obtain a truly representative environmental quality of the critically polluted area. Moreover, the concerned

SPCBs /PCC shall ensure that there is at least one Ambient Air Quality monitoring station each in the predominant upwind and downwind directions at each of the CPA.

4. That the SPCBs/PCC shall collect 3 samples with a gap of one or two days at each location during each round of monitoring in all the CPAs.

5. That at each of the CPA, 24 hourly ambient air quality monitoring shall be carried out for parameters as detailed in Annexure-2. Also, representative samples for Surface water quality and ground water quality shall be collected from prominent surface and ground water bodies located in and around the CPAs. List of water quality parameters is presented in Annexure-2”.

69. In para 21, reference of revised CEPI guidelines have been given as under:

“REVISED CEPI GUIDELINES OF 2016

21. The criteria for determination of CEPI was revised on 26th April 2016 by way of issuing directions u/s 18(1)(b) of the Water Act, 1974 and the Air Act, 1981 to undertake Environmental Quality Monitoring and for installation of Continuous Ambient Air Quality Monitoring Station and Real-Time Water Quality Monitoring Stations in critically polluted areas for CEPI score evaluation. This revision was carried out in order to give proper effect of all the components which actually cause pollution in any industrial area and are specific to that particular industry. The relevant extract of the revised CEPI Directions are reproduced hereunder:

Part D: Application of revised CEPI version 2016

13) That since ‘Revised CEPI 2016’ has been evolved, henceforth; all future CEPI score evaluation shall be made on the revised formula.

14) That all the polluting source identified in the area shall be notified and brought in the public domain through respective websites along with the details of their pollution control compliance status.

15) That the environmental quality data including CEPI Score of the industrial area as per revised concept shall also be placed in public domain through website and also to be published by the State Govt. periodically.

16) That the concerned State Govt. shall notify the area on a properly scaled map and also issue public advisories that such an area will be exclusively meant for industrialization as per the State land.

17) That the revised CEPI shall be used by the State Govt., SPCBs and other concerned to understand the severity of pollution existing in the area and formulate appropriate action plan. Further, sufficient time shall be given for effective implementation of the action plan before imposition of

moratorium. Thus, the revised concept shall be an early warning tool to ensure the successful implementation of Action Plan.

18) That the CEPI shall not be used by the Bankers/money lending institutions for financial decisions.

19) That any moratorium on expansion or setting up of new industries shall be imposed on a particular CPA only after a notice period of one year from the initial announcement of CEPI assessment. However, decisions on any directions already in force in a CPA shall be taken as per correct practice in vogue. High CEPI score shall also be used as early warning tool to require preparation of pollution management plans to reduce pollution levels before it reaches to critical levels.

20) That for any industry in a critically polluted area, the changes which make it less polluting shall be permitted. These changes may include expansion of production capacity/change of product/change of raw materials/change of manufacturing process or a combination of these changes and shall be examined and assed by respective SPCBs/PCC.

Salient features of revised CEPI criteria:

- *Environmental Pollution Index (EPI) is a rational number to quality of ambient characterize the environmental Air/Surface Water/Ground Water of an Area.*
- *Air EPI, Surface Water EPI and Ground Water EPI will be calculated separately on a scale of 0-100.*
- *Overall CEPI will be evaluated using the existing formula, i.e., $CEPI = i-max + [(100-i-max) \times (i2/100) \times (i3/100)]$ Where, i-max - maximum index (which may be either Air EPI or SW EPI or GW EPI); and i2, and i3 are indices for other media.*
- *Area for the purpose of CEPI study shall be notified by concerned SPCB as per the direction of CPCB.*
- *For each area, sampling protocol will be laid down by CPCB and the monitoring locations will be finalized by CPCB in consultation with concerned SPCBs.*
- *Guidelines for the use of CEPI will be notified by CPCB.*
- *Environmental quality monitoring shall be undertaken by concerned SPCBs on half-yearly basis and data will be placed in the public domain:*

Season	Period of monitoring	Target date of Report submission
Pre-monsoon	April-June	31 st July
Post-monsoon	Dec.-Feb.	31 st March

- *The monitoring data shall be analysed for the parameters exceeding the prescribed norms and time targeted remedial*

*action plans be formulated by concerned SPCBs for the same.
[...]*

Selection of criteria pollutants:

Option 1: 3 pollutants relevant with the Area depending on the nature of industrial activity (preferable option/method)

Option 2: upto 3 most critical pollutants depending on the Concentration and exceedance.”

70. According to GCCI, in determining CEPI score, CPCB has committed a substantive error, as under:

“22. The Applicant states that the CPCB has committed a grave and substantive error in taking into consideration the sampling locations while determining the CEPI score. The Revised Directions u/s 18(1)(b) of the Water Act and Air Act, 2016 expressly provide that while undertaking the CEPI calculation for surface water, the outlet of ETP/CETP shall not be considered for the purposes of applying Factor-B. However, as is evident in the report of Vatva Industrial Cluster, Narol Industrial Cluster, Vadodara Industrial Cluster and Vadodara: Nandesari CETP outlet and VECL - ECP outlet, the outlet of ETP/CETP has been considered for the purposes of applying Factor-B.

23. The applicant states that the criteria pollutants to be considered for the purpose of undertaking the assessment are always identified in advance and notified before undertaking the process of sampling. The Applicant states that in the instant case, after the sampling has been undertaken and the report has been generated, the criteria pollutants have been notified and on the basis of the same, the CEPI Score has been prepared. The purpose of notifying the criteria pollutants in advance is to avoid any error or ambiguity in the entire process. The said fact is amplified from the reports which reflect that irrelevant criteria pollutants have been taken into consideration.

24. The Applicant further states that while determining the criteria pollutants, the information provided by the State Pollution Control Board regarding the relevant criteria pollutants has been overlooked and without reference to the industrial sector, generic criteria pollutants appear to have been applied. The exercise so undertaking is against the letter and spirit of the Revised CEPI Directions u/s 18(1)(b) of the Water Act and Air Act. In fact, the GPCB has sent multiple representations to the CPCB for the inclusion of criteria pollutants while conducting the CEPI evaluation.

A copy of the letter from MS GPCB No. GPCB/P-1/CEPI-9/479219 dated 19.12.2018 to MS - CPCB for criteria pollutants to be considered for CEPI monitoring is annexed hereto and marked ANNEXURE-A-13.

A copy of the minutes of meeting dated 20.05.2016 recording the Consensus amongst CPCB, GPCB and Industries Association in relation to criteria pollutants and sampling locations is annexed hereto and marked ANNEXURE-A-14.

25. As per Paragraph 4 of the Order dated 10.07.2019 passed in the captioned proceedings, the procedure and implementation of the revised CEPI criteria has been described. It is observed that the Part-A of the Directions u/s 18(1)(b) as per the Revised CEPI Directions u/s 18(1)(b) of the Water Act and Air Act of 2016 provides that the frequency of the monitoring shall be twice in a year, i.e. post-monsoon season and pre-monsoon season for calculations of CEPI score. However, in the present case, the CEPI score is calculated based on single season monitoring and collecting samples for 2-3 days. Therefore, the calculated CEPI is not a representative figure and neither is it credible and therefore the other proposed actions based on this score are resultantly based on a faulty premise. The result of the studies carried out by CPCB for all the industrial clusters which are affecting the environment were to be placed in public domain and State Governments were to notify the scaled maps of the industrial areas and this would serve as warning to the respective industries area.

26. It has already been observed in the orders of this Hon'ble Tribunal that the CPCB had conducted study of various industrial clusters with respect to ascertaining comprehensive environmental pollution index (CEPI). Such exercise was earlier conducted in year 2009. Various industrial clusters then were classified as Critically Polluted Area (CPA), Severely Polluted Area (SPA) or Other Polluted Area (OPA) and following such classification, the clusters classified as CPA were placed under moratorium and prohibited the expansion of capacity of any individual industry or establishment of new industrial undertaking in CPA. Several steps have been taken for controlling pollution in the industrial clusters which were classified as CPA and review was carried out in year 2016 when such ban was lifted in several Cases.

27. It is also observed in the said order dated 10.07.2019 in the present proceedings at paragraph 5 that

“5. Based on the CEPI 2016 criterion, CPCB carried out further monitoring in the year 2017-18 where it was found that number of identified polluted industrial clusters went up to 100. The said number includes 38 critically polluted, 31 severely polluted and remaining 31 as other polluted areas”.

It is humbly submitted that it is not true that the number of identified clusters went upto 100 in the year 2017-18 after evaluation. In fact, 12 new areas were added to the existing 88 to make a round figure of 100 and then evaluated.

28. It is important to consider whether any improvement in the quality environment is noticed in CPCB study of 2017-18 after the first study in 2009. It may be seen that the study was conducted by IIT, Delhi during 2009 and assessment was done in 88 areas. Subsequently, a Second study of 2018 is carried out in 100 areas. The comparative results are produced hereunder:

	No of areas out of total 88 in 2009 study	Per cent of total area under study	No of areas out of 100 in 2018 study	Per cent of total area under study
CPA CEPI>70	43	48.9	38	38.0
SPA CEPI betn 60 AND 70	32	36.3	31	31.0
Other Polluted area	13	14.8	31	31.00

29. *It can thus be seen that there is positive impact of actions as there is reduction in both numbers and percentage of CPAs and SPAs from 2009 to 2018. In fact, the present Applicant supports and endorses a zero-tolerance policy on environmental pollution.*
30. *Moreover, the results obtained by CPCB in the aforesaid study are of tentative nature and these results required consultations with State PCBs and State Governments. However, they got published in the newspaper and thereafter the list was submitted by CPCB through a letter dated 17.05.2019 to the Hon’ble Tribunal. The Hon’ble Tribunal has, after considering the level of pollution indicated therein, decided to pass the order and have issued several directions. These directions are contained in para 28 of the order dated 10.07.2019, and reproduced below:*

“28. Accordingly, we direct the CPCB in coordination with all State PCBs/PCCs to take steps in exercise of statutory powers under the Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974, Environment (Protection) Act, 1986 or any other law to prohibit operation of polluting activities in the said CPAs and SPAs within three months and furnish a compliance report to this Tribunal. The Central Pollution Control Board, in coordination with the State Boards/PCBs may make assessment of compensation to be recovered from the said polluting units for the period of last 5 years, taking into account the cost of restoration and cost of damage to the public health and environment and the deterrence element. The scale of deterrence may be related to the period and the frequency of defaults. Such other factors as may be found relevant may also be taken into account. No further industrial activities or expansion be allowed with regard to ‘red’ and ‘orange’ category units till the said areas are brought within the prescribed parameters or till carrying capacity of area is assessed and new units or expansion is found viable having regard to the carrying capacity of the area and environmental norms. Pending assessment of compensation, interim compensation be recovered at the scale adopted by this Tribunal in the case of Vapi Industrial area as mentioned in para 22 above.”

71. *Thereafter, applicant has taken various grounds to show error in determining CEPI score, which in brief, are as under:*

- (i) Incorporation of tentative results of CPCB was done in haste. On 17.05.2019, CPCB submitted CEPI assessment report after getting information from SPCBs/PCC along with the draft protocol in order to implement the action plan. However, MoEF&CC are yet to take a final view of CEPI assessment reports drafted by CPCB. In support of the above grounds, following correspondence/proceedings have been referred to;
- (a) Minutes of the meeting dated 20.05.2016 by Gujarat SPCB and CPCB;
 - (b) Letter dated 20.08.2018 sent to Member Secretary, CPCB by Member Secretary, Gujarat SPCB;
 - (c) Letter dated 19.12.2018 sent to Member Secretary, CPCB by Member Secretary, Gujarat SPCB;
 - (d) Letter dated 20.07.2019 sent by Dr. Rajiv Kumar Gupta, IAS, Additional Chief Secretary, F&ED and Chairman, GPCB.
- (ii) MoEF&CC had found that there are several gaps in the study and, therefore, it can be concluded that it has not been finalized and decision based on incomplete assessment is not desired from Tribunal.
- (iii) Revised CEPI methodology of 2016 must be tested as to its applicability and relevance and then only it should be implemented. The only empirical exercise carried out by CPCB is not and should not be proper criteria for arriving at pollution index in particular cluster.
- (iv) Furthermore, it is pertinent to note and to be considered that there have been investments already made by the industry for Environment Management System ('EMS'), along with proposed investments made by all the industrial estates and its members on individual basis.

- (v) Even the directions u/s 18(1)(b) of the Water Act and Air Act issued by CPCB for application of Revised CEPI Directions u/s 18(1)(b) of Water Act and Air Act of 2016 have not been followed in letter and spirit for the following reasons,
- (a) The selection of criteria pollutants in advance did not (i) take place in the current study as per “preferable option” and neither were GPCB’s communications taken into account in this effect
 - (b) The frequency of monitoring should be twice in a year i.e. Post Monsoon season and pre-monsoon season but not followed and the exercise was done with a quick and rapid one season monitoring i.e. 2 or 3 days’ data out of 365 days in a year.
 - (c) The sampling locations are not truly representative as external influences such as traffic, domestic sewage from nearby villages, sea water intrusion etc. are not eliminated and therefore the assessment is done without “Truly Representative Environmental Quality of the Critical Polluted Area”.
 - (d) In many clusters, CAAQM as well as Continuous Emission Monitoring System (CEMS) are installed by investing Crores of Rupees as per various directions including the said direction dated 26.04.2016 of CPCB. However, real time data available throughout the year is not taken into account while making assessment of CEPI in 2018.
 - (e) The measurements were carried out by CPCB and/or SPCBs in various clusters. However, the industries associations or CETP operators in the respective areas were not briefed or consulted while carrying out the measurements. This is a violation of Section 11 of EP Act, 1986, read with Rule 6, 7 and 8 of the Environment (Protection) Rules, 1986 which is as under:

“Section 11: Power To Take Sample And Procedure To Be Followed In Connection Therewith.-

(1) The Central Government or any officer empowered by it in this behalf, shall have power to take, for the purpose of analysis, samples of air, water, soil or other substance from any factory, premises or other place in such manner as may be prescribed.

(2) The result of any analysis of a sample taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3) and (4) are complied with.

(3) Subject to the provisions of sub-section (4), the person taking the sample under sub-section (1) shall -

(a) serve on the occupier or his agent or person in charge of the place, a notice, then and there, in such form as may be prescribed, of his intention to have it so analysed;

(b) in the presence of the occupier or his agent or person, collect a sample for analysis;

(c) cause the sample to be placed in a container or containers which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent or person;

(d) send without delay, the container or the containers to the laboratory established or recognized by the Central Government under section 12.

(4) When a sample is taken for analysis under sub-section (1) and the person taking the sample serves on the Occupier or his agent or person, a notice under clause(a) of sub-section (3), then, -

(a) in a case where the occupier, his agent or person wilfully absents himself, the person taking the sample shall collect the sample for analysis to be placed in a container or containers which shall be marked and sealed and shall also be signed by the person taking the sample, and

(b) in a case where the occupier or his agent or person present at the time of taking the sample refuses to sign the marked and sealed container or containers of the sample as required under clause (c) of sub-section (3), the marked and sealed container or containers shall be signed by the person taking the samples, and the container or containers shall be sent without delay by the person taking the sample for analysis to the laboratory established or recognised under section 12 and such person shall inform the Government Analyst appointed or recognised under section 13 in writing, about the wilfull absence of the occupier or his agent or person, or, as the case may be, his refusal to sign the container or containers.

Rule 6: Procedure of taking samples

The Central Government or the officer empowered to take samples under section 11 shall collect the sample in sufficient quantity to be divided into two uniform parts and effectively seal and suitably mark the same and permit the person from whom the sample is taken to add his own seal or mark to all or any of the portions so sealed and marked. In case where the sample is made up in containers or small volumes and is likely to deteriorate or be otherwise damaged if exposed, the Central Government or the officer empowered shall take two of the said samples without opening the containers and suitably seal and mark the same. The Central Government or the officer empowered shall dispose of the samples so collected as follows:-

- a. One portion shall be handed over to the person from whom the sample is taken under acknowledgement; and*
- b. The other portion shall be sent forthwith to the environmental laboratory or analysis.*

Rule 7: Service of notice

The Central Government or the officer empowered shall serve on the occupier or his agent or person in charge of the place a notice then and there in Form I of his intention to have the sample analyzed.

Rule 8: Procedure for submission of samples for analysis, and the form of laboratory report thereon

- (1) Sample taken for analysis shall be sent by the Central Government or the officer empowered to the environmental laboratory by registered post or through special messenger along with Form I.*
- (2) Another copy of Form II together with specimen impression of seals of the officer empowered to take samples along with the seals/marks, if any, of the person from whom the sample is taken shall be sent separately in a sealed cover by registered post or through a special messenger to the environmental laboratory.*
- (3) The findings shall be recorded in Form III in triplicate and signed by the Government Analyst and sent to the officer from whom the sample is received for analysis.*
- (4) On receipt of the report of the findings of the Government Analyst, the officer shall send one copy of the report to the person from whom the sample was taken for analysis, the second copy shall be retained by him for his record and the third copy shall be kept by him to be produced in the Court before which proceedings, if any, are instituted.”*

- (f) It is, therefore, submitted that the procedure prescribed under the Statute has not been followed as envisaged and, therefore,*

assessment carried in 2018 may be declared as null and void and set aside.

- (g) As per operative portion of order of Tribunal dated 10.07.2019, following affects the industrial growth and existence of various industrial undertakings:

“28. No further industrial activities or expansion be allowed with regard to ‘red’ and ‘orange category units till the said areas are brought within prescribed parameters or till carrying capacity of the area is assessed and new units or expansion is found viable having regard to the carrying capacity of the area and environment norms. Pending assessment of compensation, interim compensation be recovered at the scale adapted by this tribunal in case of Vapi industrial area as mentioned in para 22.”

“22. In view of water pollution caused by absence/dysfunctional CETPs/ETPs/STPs, Tribunal has, in the case of Aryavart Foundation Vs. M/s. Vapi Green Enviro Ltd. & Ors. 18, directed all defaulting industries, other than green and white category, connected with CETP, to make deposits with the CPCB towards interim environmental compensation, pending assessment of actual Compensation ad further action, on the following Scale:

- 1. Large Industries - Rs. 1 crore each*
- 2. Medium Industries - Rs. 50 Lakhs each*
- 3. Small Industries - Rs. 25 Lakhs each”*

- (h) These directions need to be reconsidered on following grounds:

- (a) Directions u/s 18(1)(b) of the Water Act and Air Act issued by CPCB to Chairman of SPCBs and copy to MoEF&CC and Chief Secretaries of relevant states for application of revised CEPI version 2016 have not been followed by CPCB itself. Part-D of Directions describes the methodology for imposing moratorium on expansion and on setting up of new industries. Relevant extract from said directions is reproduced as under for ready reference:

*“Part D: Application of revised CEPI version 2016
13) That since ‘Revised CEPI 2016’ has boon evolved, henceforth; all future CEPI score valuation shall be made on the revised formula*

14) That all the polluting source identified in the area shall be notified and brought in the public domain through respective websites along with the details of their pollution control compliance status.

15) That the environmental quality data including CEPI Score of the industrial area as per revised Concept shall also be placed in public domain through website and also to be published by the State Govt. periodically.

16) That the concerned State Govt. shall notify the area on a properly scaled map and also issue public advisories that such an area will be exclusively meant for industrialization as per the State land.

17) That the revised CEPI shall be used by the State Govt., SPCBs and other concerned to understand the severity of pollution existing in the area and formulate appropriate action plan. Further, sufficient time shall be given for effective implementation of the action plan before imposition of moratorium. Thus, the revised concept shall be an early warning tool to ensure the successful implementation of Action Plan.

18) That the CEPI shall not be used by the Bankers money lending institutions for financial decisions.

19) That any moratorium on expansion or setting up of new industries shall be imposed on a particular CPA only after a notice period of one year from the initial announcement of CEPI assessment. However, decisions on any directions already in force in a CPA shall be taken as per correct practice in vogue, High CEPI Score shall also be used as early warning tool to require preparation of pollution management plans to reduce pollution levels before it reaches to critical levels.

20) That for any industry in a critically polluted area, the changes which make it less polluting shall be permitted. These changes may include expansion of production capacity/change of product/change of raw materials/change of manufacturing process or a combination of these changes and shall be examined and assessed by respective SPCBs/PCC.”

- (i) As per said Directions, CEPI is the weighted summation of four components namely A (Scale of Industrial Activity: 20%), B (Status of Ambient Environment Quality-Air, Surface Water and Ground Water: 50%), C (Health related statistics: 10%) and D (Compliance status of industries: 20%). Score for factor A and B is empirical and based on hard core observations. However,

factors C and D are subjective and further Score D has not been properly calculated. Moreover, there is inadequate relevant health data for assessing Factor C. Therefore, overall CEPI has risen considerably though the same is artificial and paints an unrepresentative and distorted picture.

- (j) The Industrial clusters were classified critically polluted (CPA) and severely polluted (SPA) during the earlier exercise of year 2009 and, thereafter, several steps were taken by CPA and SPA with help of their members and with help of respective State Governments. Investment of Crores of Rupees has been made in establishing and improving functioning of common facilities such as CETP, MEE, Spray drier, pre-processing of hazardous waste for co-processing in cement kilns etc.
- (k) Effective control has been exercised on the working of the errant industrial undertaking and continuous monitoring of their discharges has resulted in bringing down water pollution level in various industrial clusters.
- (l) It would be unfair to levy compensation based on the classification of the industrial undertakings done by the industrial investment department. The classification as to large scale, medium scale and small scale has been done based on the investment in fixed assets by respective units. These criteria are not just, fair and proper for imposing penalty on any unit. The penalty of compensation should be associated with the scale of pollution done by respective unit. This can be ascertained by quantity and quality of the output of the pollutant by respective unit. It may happen that large scale unit may be releasing much smaller quantity and better quality effluent compared to small scale unit. Quantity and quality of effluent released by any unit

will depend on the type of the product, Environment Management System (EMS) and the technology adopted by them. While imposing penalty or compensation, these criteria should be taken into consideration. Otherwise, there would be imbalance in the assessment.

(m) It is submitted that there is already a “Bank Guarantee policy” prevailing in GPCB which is being implemented since many years. There are well-defined criteria for taking and forfeiting the Bank Guarantee in case of noncompliance and also a policy for utilization of this fund for restoration. The policy for depositing large amount for environmental compensation is a duplication of the present Bank Guarantee policy and amounts to a double penalization for the same offence which is inequitable and wholly unjustified.

(n) Air pollution is not result of the industrial activities only. In any industrial cluster, air pollution is caused by many factors namely,

- i) the industries operating in that area;
- ii) construction activities and the background dust in that area that is quality of soil; and
- iii) vehicular traffic operating in that area, burning of MSW and agriculture waste etc.

(o) It has been argued that contribution to air pollution by vehicles operating in the area is on account of the industrial growth in that area. This is not necessarily true, for example, in case of Ankleshwar Industrial Area, stretch of 10 KM of busiest highway joining Northern India to Mumbai is passing through the industrial area. As is well known, trucks and trailers operating on highway are causing pollution by way of unburnt fuel as

engine maintenance and use of appropriate fuel and lubricants is not at all priority for them. Therefore, emission emitted by them is a major cause for air pollution in area. It can be similarly observed with the industrial township of Vapi that highway passes through industrial estate. Furthermore, even the highway joining Union Territory of Selvas and Daman passes through the Vapi Industrial Estate. The source apportionment studies conducted by Vatva CETP at 6 locations reveals that contribution from industries into ambient air is in the range of 15 to 40 % only depending upon the location.

- (p) Similarly, water monitored are contaminated with the domestic untreated sewage, cattle bathing, washing of clothes with detergent and other usages etc., in the nearby villages and not by industrial activities of an Industrial Cluster.
- (q) Moreover, appointment of third party laboratories to collect samples from far-off states leads to a violation of norms for timing and preservation of samples due to distance from the place of collection and place of analysis. For example, the clusters in Gujarat are monitored by a laboratory by Calcutta.
- (r) Needless to say that due to inaction by various Government authorities with respect to order of Tribunal dated 13.12.2018 and subsequent orders thereof, the industries are immensely suffering. In fact, in Gujarat, almost 75% Prominent Chemical Estates having adequate common environment infrastructure are covered under this order and after the order of Tribunal dated 10.07.2019. Therefore, SEAC has stopped acceptance of new Environmental Clearance applications and rejected/returned about 150 nos. of processing applications which were in the pipeline. Unfortunately, protocols for carrying capacity

consideration of new projects/expansion of existing projects is yet not finalized. Even, the issue of procedure for assessment of carrying capacity is very vigorous exercise and requires years of monitoring data. In fact, it is learnt that there are no specific criteria for assessment of carrying capacity world wide.

- (s) GPCB, Gandhinagar had Conducted a meeting with the representatives all CPAs and SPAs of Gujarat on 05.12.2019 and informed that GPCB is going to do post-monsoon CEPI evaluation and vide its letter dated 21.12.2019, further details regarding appointment of laboratories for the post-monsoon CEPI evaluation of 2019 are provided. Hence, fresh CEPI scores are to be imminently released, and thus, it is urged that the actions based on the previous CEPI scores of 2018 may put on hold.

72. In para 32, GCCI has also stated that this Tribunal may issue further directions as under:

- “a. There is no remedy prescribed in the legislation for review of any directions issued under the law and therefore this Hon’ble Tribunal may be pleased to hear grievances and submissions in respect of such directions.*
- b. Component A has 20% weightage. It comprises of multiplication of two parts. Factor A2 is scale of industrial activities. This component cannot be changed by any action plan or effort by state government or industries. This factor hence needs reconsideration.*
- c. Component B also needs relook. When continuous quality monitoring systems in respect of air and water quality are installed in all CPAs and SPAs, the average of data collected during entire year should be taken as parameter for arriving at component B. Three samples in entire year cannot reflect true and fair position of level of pollutants presence.*
- d. Collection of samples should not be a closely guarded secret. Moreover, two sets of samples should be collected in presence of representatives of respective industrial association and they should be sealed in presence of all. One sample should be kept with association and one with SPCB/ environmental laboratory for analysis. This will instill confidence in industries as to fairness.*

- e. *In case of air quality monitoring; another two sets of Ambient Air Monitoring Stations may be operated at same locations and time period. The samples so collected may be handed over to CPCB, GPCB as well as respective industries associations which may be further analyzed by NABL accredited laboratory.*
- f. *A re-checking mechanism should be allowed if industries association so desires and preserved samples be used for the same.*
- g. *Component C and D are very subjective. Some empirical basis should be developed for the following reasons,*
(i) Under Component: C,

Health related statistics used for the calculation of CEPI is based on hospital records of last five years. The rise in the number of patients is on a year to year basis but at the same time, growth in population in the region is not considered. Also, the patients coming to the hospitals are not only from the affected area but they may also be coming from far distances places as most of the hospitals are charitable. For this component, health related statistics regarding occupational health may be collected from Department of Industrial Safety and Health as this data is based on actual impact on occupational health. Thus, for considering the health statistics, it is difficult to identify the number of major hospitals in the area and their authenticity. The formula for this component may be restructured.

Industries associations of Vapi, Ankleshwar and Vatva are conducting a survey of the impact on human health on the residents of industrial areas due to industrial activities through WHO approved organization from time to time. The results reveal that there is no perceivable impact observed on the health of the people surrounding these industrial clusters. The results are submitted to CPCB and GPCB. But while calculating Factor C (Health Related Issues), the results of these reports are not considered.

(ii) Under Component: D, Adequacy of Common Environmental Infrastructure of the cluster is covered. Following points may be considered.

There are common environmental infrastructures like CETP, Secured Landfill site, Common Spray Dryer facility, Common MEE and which are installed with art of technology. All these Common Environmental Infrastructure facilities are granted Consolidated Consent and Authorization ("CC&A") by GPCB based on their adequacy only. As per the Directions of the Hon'ble Gujarat High Court, Schedule-I Environmental Auditors approved by GPCB are conducting Environment Audit of these facilities every six months and submitting audit reports to GPCB which also certifies that the facilities are adequate. Similarly, Small, Medium and Large scale units falling under 17 categories of the industries Environmental Audit is carried by either Schedule-1 or Schedule-II auditors as per EA Scheme. Thus, such facilities may be considered as adequate based on the Environmental Auditors' Certificate."

73. **IA 265/2020:** This IA has been filed by Mr. Amit Ojha, Resident of A-15, Sector XU-01, Greater Noida, UP praying that Office Memorandum (hereinafter referred to as '**OM**') dated 13.03.2020 issued by MoEF&CC to all State Environment Impact Assessment Authorities (hereinafter referred to as '**SEIAA**')/State Expert Appraisal Committees (hereinafter referred to as '**SEACs**') on the subject "Building and Construction projects and Activities proposed in Critically polluted Areas or Severely Polluted Areas at the respective SEIAAs/SEACs" be revisited. He has also prayed for a direction to CPCB and all State PCBs/PCCs to get all the projects or activity in category B1 appraised at the Central level till the finalization of action plan, if located within 5 km from the boundary of CPAs or SPAs as provided under mechanism evolved by MoEF&CC. Applicant has given his profession as an advocate, practicing in Delhi High Court as well as Districts Courts and is concerned about increasing environmental pollution. Reference is made to Environment Impact Assessment Notification dated 14.09.2006 (hereinafter referred to as '**EIA 2006**') and general conditions contained in the Schedule of the said notification. MoEF&CC has issued an OM dated 24.05.2011 stating that general conditions are not applicable to Item 8 of the Schedule of EIA 2006 and this is reiterated in OM dated 13.03.2020. It is said that a sub-ordinate legislation like EIA 2006 cannot be amended/alterd/modified or in any manner changed through an OM. Therefore, above referred OMs dated 24.05.2011 and 13.03.2020 are without any statutory support. Further, it is said that prior to March 2016, categorization of industrial sectors by CPCB was carried out primarily based on the size of industries. However, CPCB issued a new Guideline in March 2016 for categorization of industrial sectors into Red, Orange, Green and White, based on the consumption of resources and pollution due to discharge of emissions and effluents and its likely impact on health as primary criteria. In other words,

an industry categorized as 'Red category' has the highest consumption of resources and high impact on health due to discharge of emissions and effluents from the said industrial sector. CPCB has developed criteria of categorization of industrial sector based on the concept of Pollution Index (hereinafter referred to as '**PI**') which is a function of the emissions (air pollutants), (effluents, water pollutants); hazardous wastes generated and consumption of resources. PI of any industrial sector is a number from 0 to 100 and the increasing value of PI denotes increase in degree of pollution load from the industrial sector. Ranges of PI, for the purpose of categorization industrial sectors, as evolved by CPCB, are;

- Industrial sectors having PI score of 60 and above - Red Category
- Industrial sectors having PI score of 41 to 59 - Orange Category
- Industrial sectors having PI score of 21 to 40 - Green Category
- Industrial sectors having PI score Incl. and upto 20 - White Category.

74. Building and construction project with built-up area more than 20,000 m², causing waste water generation between 10 KLD to 100 KLD, has been kept in the Orange category of industrial sectors/projects by CPCB. Building and construction project with built-up area more than 20,000 m² having waste water generation more than 100 KLD, has been kept in the Red category of industrial sectors/projects. Red category building projects generating waste water of more than 100 KLD has PI score-75. A copy of letter dated 07.03.2016 issued by CPCB on the subject of "Modified Directions Under Section 18(1)(b) of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 Regarding Harmonization of Classification of Industrial Sectors under Red/Orange/Green/White Categories" has been placed as Annexure A-3 to IA.

75. The directions issued in the context of categorization of industries as Red, Orange and Green has been revised and after withdrawing the earlier directions issued in June 2012, following directions have been issued vide letter dated 07.05.2016:

- “1. That the SPCBs and PCCs shall adopt the Revised Criteria of categorization of industrial sectors as detailed in table nos. F1, F2, F3 and F4 and Revised Lists of Red, Orange, Green and White categories of industrial sectors, presented at table no. G2, G3, G4 and G5 respectively, in the ‘Final Report’ as attached herewith immediately.*
- 2. That all pending applications for consideration of ‘Consent to Establish’ and ‘Consent to Operate’ and future such applications shall be processed as per revised criteria.*
- 3. That the SPCBs and PCCs will provide the list of industries identified in each category existing in the State which have been considered for grant of consents. SPCBs/PCCs will forward the list of such industries before 31.05.2016 and the same will be uploaded on the websites of respective SPCB/PCC.*
- 4. That the ‘Revised Lists of Red, Orange, Green and White category of industrial sectors’ shall be used by the SPCBs and PCCs for Consent Management and inventorization of industries under Red, Orange, Green and White categories. **Siting of industries shall be only in conforming areas.** SPCBs PCCs shall evolve sector specific plans for control of pollution and industrial surveillance for verifying compliance.*
- 5. That the SPCBs and PCCs shall revise /prepare the inventory of Red, Orange, Green and White categories of industries operating in their jurisdiction based on the revised criteria specified in the. Final Report and submit the same to CPCB within 90 days i.e., before 30.05.2016 in hard copy as well as soft copy.*
- 6. That the listed category of industries or those identified later-on under different categories shall not be linked to sanction of loan/finance or bank proceedings.*
- 7. That any further addition of any new or left-over industrial sector and their categorization which is not listed in the revised list of Red, Orange, Green and White industrial sectors, shall be done at the level of concerned SPCB/PCC following revised criteria & guidelines as detailed in the attached document and no concurrence of CPCB shall normally be required. It is further clarified that while categorizing the industries, fractional numbers shall be rounded off to nearest integer.”*

76. Applicant has further said as under:

- (i) For a residential building construction project with built-up area of about 20,000 - 25,000 m² constitutes to about 150 to 175 residential units/flats/apartments wherein sewage discharge would be more than 100 KL/day and hence would fall within Red category as per

CPCB categorization with PI as 75. Therefore, all types of building construction projects with built-up area more than 20,000 m² which are categorized as Category 'B' project in the schedule of EIA 2006, are Red Category Industries.

- (ii) From the list of Red category of industrial sectors published by CPCB, it is observed that all industrial sectors, except building construction projects which are categorized as Category 'B' as per EIA 2006 with PI equal to or less than 75, 'General Conditions' are applicable to those industrial sectors and such industrial sectors of Category 'B' project if located within 5 kms boundary of CPAs/SPAs, application for EC are dealt at central Level. Therefore, there is no reason why building construction sector categorized as Category 'B' in EIA 2006 with PI 75, if located within 5 kms from the boundary of CPAs/SPAs are not dealt at Central level.
- (iii) MoEF&CC while issuing OM dated 13.03.2020, has neither given any scientific reason nor published any study material to state that building construction sector at Item 8 of the Schedule are not required to be appraised at Central level. Decision of MoEF&CC is without application of mind and only to please the real estate lobby.
- (iv) During the last few years, the only activity which was stopped in the National Capital Territory of Delhi during the time of 'severe' level of Air Quality Index was the Construction industry and, it shows that this sector contributes heavily to air pollution. Hence, it is proved beyond doubt that building and construction activity is a severely polluting activity and with high consumption of natural resources.
- (v) The projects when attracts 'General Conditions', application for EC of Category 'B' project will be dealt at Central level. The importance of being dealt at the Central Level are the following:

- At Central level, there are 7 sector specific EAC to appraise the application for the concerned Sector. The description of various sector specific EACs is given below:

(i)	EAC on Industry - 2 (for Chemical based projects)
(ii)	EAC on Industry - 2 (for Petro-Chemical based projects)
(iii)	EAC on Infra-2 (for Projects related to Airports; All Ship Breaking Yard including Ship Breaking Units; Common Hazardous Waste Treatment, Storage and Disposal Facilities; Bio Medical Waste Treatment Facilities; Ports, Harbors, Breakwater and Dredging; Aerial Ropeways; Common Effluent Treatment Plants (CETPs); Common Municipal Solid Waste Management Facility; Building and Construction and Townships and Area Development
(iv)	EAC on Non-coal Mining sector
(v)	EAC on Infra-1 & CRZ projects
(vi)	EAC on River Valley & Hydroelectric Projects
(vii)	EAC on Thermal Power and Coal Mining Projects

- (vi) Each sector specific EAC consists of expert members from the specific sector and thereby there is rigorous environmental scrutiny of the applications at Central level. This kind of sector specific EAC is absent at the State level which deals with Category 'B' projects.
- (vii) The basis in which the categorization of projects and activities into Category 'A' and Category 'B' in the Schedule as envisaged in Clause 4 of EIA 2006 is based on the spatial extent of potential impacts and potential impacts on human health and natural and manmade resources. As stated, the Categorization of industrial sectors into Red, Orange, Green & White is also based on the same criteria.
- (viii) The appraisal process by EAC of the project draws its powers under Section 3 (2) (v) of EP Act, 1986. EAC can prohibit or reject a proposal or can permit the proposal after imposing safeguards/conditions. Therefore, an industrial sector i.e. "Buildings & Constructions" which is in Red category due to its high degree of PI, proposal from this industrial sector, if located within 5

kms from the boundary of CPA/SPA, ought to undergo a rigorous environmental scrutiny by a sector specific EAC for the protection and improvement of environment. Such kind of rigorous environment scrutiny is not available at State level. Therefore, decision of MoEF&CC in dispensing building and construction sector project from applicability of 'General Conditions' and to appraise those projects with a lighter/lenient appraisal process is not in harmony with the spirit behind Section 3 of EP Act, 1986.

- (ix) CPAs/SPAs are those areas with high value of CEPI. Therefore, all those projects/activities with high value of PI located within 5 kms from the boundary of such areas need a rigorous environmental scrutiny and any compromise would lead to further deterioration of the environment.
- (x) MoEF&CC has attempted to nullify the entire exercise undertaken by this Tribunal vide orders dated 13.12.2018, 10.07.2019 and 14.11.2019 and issued OM dated 13.03.2020 to SEIAAs/SEACs wherein it has been informed that directions issued vide OM No. J-11013/5/2020-IA.II(I) dated 24th May, 2011, shall continue to be operative and, therefore, Building and Construction Projects (Item 8(a) of the Schedule of EIA 2006) and Townships and Area Development Projects (Item 8(b)) of the Schedule of EIA 2006) proposed within 5 kms from the boundary of CPAs/SPAs, would continue to be appraised at the respective SEIAA/SEAC. By issuance of OM dated 13.03.2020, MoEF&CC has diluted, rendered ineffective or made infructuous entire directions issued by the Tribunal vide orders dated 13.12.2018, 10.07.2019 and 14.11.2019.
- (xi) MoEF&CC as per the directions passed by Tribunal has evolved a mechanism for environmental management of CPAs and SPAs and

consideration of projects listed in Red and Orange categories in those areas.

- (xii) Newly evolved mechanism has categorically provided for consideration of proposals for grant of EC for new and expansion activities listed in Red and Orange categories in CPAs and SPAs. Mechanism provided is that “Any project or activity specified in Category ‘B1’ will be appraised at the Central level, if located in whole or in part within 5 kilo meters from the boundary of CPAs or SPAs. However, Category ‘B2’ projects shall be considered at State Level stipulating Environmental clearance conditions as applicable for the Category ‘B1’ projects/activities”, “Proposals located in CPAs and SPAs may be examined by the sectoral EAC during scoping/appraisal based on the CEPI scores of air/water/land environment as published by CPCB from time to time. In such proposals, appropriate mitigation measures for the environment possessing higher CEPI score may be made by EAC in the form of recommendations/decision”.
- (xiii) Tribunal vide order dated 14.11.2019 has also asked CPCB to revise its mechanism for expansion and new activities of Red and Orange category of industries in CPAs/SPAs consistent with the spirit of earlier orders of this Tribunal and principles of environmental law to bring down pollution load and ensure that activities do not further add to such load. But MoEF&CC, despite of having Construction and Building Activities falling in Red and Orange category of industries and at the same time having located in CPAs/SPAs, has given a relaxation that these projects shall continue to be appraised at the respective SEIAA/SEAC by way of issuing OM dated 13.03.2020. MoEF&CC instead of making a stricter mechanism as

asked by Tribunal vide order dated 14.11.2019, has in fact given relaxation which will ultimately increase the pollution load.

- (xiv) In the matter of ***SP Muthuraman vs. Union of India & Anr., 2015 ALL (I) NGT REPORTER (2) DELHI 170***, it has been observed that building construction activities in our country have been carried out without much attention to environmental issues and this has caused tremendous pressure on various finite natural resources. Green cover, water bodies and ground water resources have been forced to give way to the rapid construction activities. Modern buildings generally have high levels of energy consumption because of requirements of air-conditioning and lighting, in addition to water consumption. In this scenario, it is necessary to critically assess the utilization of natural resources in these activities. It is submitted that the construction sector is directly going to affect conservation of water, sewage treatment, municipal solid waste processing facilities, green cover, ground water resources and energy consumption. Construction industry consumes enormous resources and has a significant energy footprint; the construction sector emits 22% of India's total annual carbon-dioxide emission.
- (xv) OM dated 13.03.2020 is against directions passed by Tribunal regarding CPAs/SPAs for Red and Orange category of industries, therefore, it has to be quashed in order to bring down pollution load in CPAs and SPAs. While quashing an OM as being ultra vires the provisions of Act of 2006 and making it ineffective in the entire country, this Tribunal vide order dated 07.07.2015 passed in ***OA No. 213/2014*** titled as ***SP Muthuraman vs. Union of India***, held as under:

“88.It is also the contention that these instructions do not dilute the effect of law but make it more rigorous. Furthermore, it being a policy decision of the MoEF, the Tribunal

*should not interfere in it. We are also unable to appreciate as to how these Office Memoranda fill up the gaps in the Notification of 2006. **An instrument which provides for disobedience of law and indiscriminately condones the violations of the substantive law in force, it cannot be termed as an instrument made to fill up the gaps. It would be' an administrative order contrary to the statutory provisions.** In fact, issuance of such kind of orders received judicial causticism and was deprecated by the Supreme Court in the case of M C. Mehta (supra).*

89. The impugned Office Memoranda are not only in conflict with the Notification of 2006, but in fact run contra thereto. What is not only intended but in fact is prohibited to be done, is being permitted by the impugned Office Memoranda. They have been issued without reference to any power or source of law and are neither pronounced nor authenticated in the name of the prescribed executive authority. Besides this, we have already noticed in great detail the various infirmities and defects from which these Office Memoranda suffer in fact and in law. This being the position of law in relation to issuance of executive instructions in exercise of executive power or delegated legislation, these Office Memoranda having been issued in exercise of administrative power, in any case, cannot withstand the legal scrutiny and resultantly, would be liable to be quashed.”

- (xvi) Till today, almost all State PCBs/PCCs have not finalized any such action plan. In case, no such action plan gets finalized by the PCBs/PCCs, the purpose of passing directions by the Tribunal in the present OA to uphold the Rule of Law to prohibit polluting activities to protect the environment and public health, would become redundant. One of the examples that shows that the action plan is not yet prepared, is of State of Jharkhand who has issued Tenders for preparation of action plan only on 28.02.2020.
- (xvii) CPCB carried out physical study of industrial clusters in the country with reference to CEPI in 2009-10, 88 industrial clusters were notified as PIAs and out of them 43 industrial clusters in 16 cities were identified as CPA for having CEPI score more than 70 and 32 industrial clusters were identified as SPA for having CEPI score between 60-70.

- (xviii) In 2016, criterion for determining CEPI was revised and CPCB directed SPCB of some States to monitor environmental quality in all CPAs and SPAs by installation of CAAQMS and CWQMS for CEPI score evaluation and to formulate their action plans.
- (xix) As per direction of CPCB, State Governments were to notify the scaled maps of the industrial areas in addition to other directions. The purpose of such exercise of CPCB was to keep in mind the polluted clusters for permitting setting up of further industries or expanding of the existing industries in those polluted clusters.
- (xx) CPCB carried out further monitoring in the year 2017-18 based on revised CEPI criterion, found and identified 100 polluted industrial clusters, out of which 38 were CPAs, 31 were SPAs and remaining 31 were other polluted areas.
- (xxi) Tribunal vide order dated 13.12.2018 directed all SPCBs/PCCs to finalize time bound action plans within three months, to bring all polluted industrial clusters within the safe parameters. SPCBs and CPCB were given free hand to take coercive measures including recovery of compensation for damages to environment on 'Polluter Pays' principle and to adopt precautionary measures on 'Precautionary' principle. Action taken reports were to be furnished by CPCB and MoEF&CC to Tribunal before 31.05.2019. Action plans were to be prepared by Committees headed by Chief Secretaries in States.
- (xxii) Tribunal vide order dated 10.07.2019 has observed that continuing polluting activities are criminal offences under the law of land and Rule of Law requires prohibiting such activities to safeguard environment and innocent victims. Tribunal reiterated that economic development is not to be at the cost of health and in violation of the law of the land and unless polluting industries tackle

the problem they have created, their operation must be stopped/suspended.

(xxiii) Tribunal vide order 10.07.2019, directed CPCB, in co-ordination with all SPCBs/PCCs, to take steps in exercise of statutory powers under Air Act, 1981, Water Act, 1974, EP Act, 1986 or any other law to prohibit operation of polluting activities in the said CPAs and SPAs within three months and furnish a compliance report to Tribunal. It was also directed that CPCB in co-ordination with SPCBs/PCCs may make assessment of compensation to be recovered from the said polluting units for the period of last 5 years, considering the cost of restoration and cost of damage to public health and environment and deterrence element. It was also directed that no further industrial activities or expansion be allowed about Red and Orange category units till the said areas are brought within the prescribed parameters or till carrying capacity of area is assessed and new units or expansion is found viable having regard to the carrying capacity of the area and environmental norms. It was further directed that pending assessment of compensation; interim compensation be recovered at the scale adopted in the case of Vapi Industrial Area.

77. Since the exercise taken by MoEF&CC as demonstrated is illegal and to circumvent the orders passed by Tribunal and further Tribunal's order are not inter-connected, hence this IA with the prayers, as referred above, has been filed.

78. **IA 93/2022:** GCCI, registered office at Shri Ambica Mills-Gujarat Chamber Building, Ashram Road, Ahmedabad, Gujarat has filed this IA seeking its impleadment and further with the prayer that CEPI score

determined by CPCB should be re-visited in respect of the regions where applicant's members are situated.

79. **IA 178/2022:** This application has also been filed by GCCI. It has prayed for keeping CEPI score of 2018 and OM dated 05.07.2022 in abeyance and to place CEPI result of 2018-2019 pertaining to Industrial Estates of State of Gujarat before Tribunal.

80. **IA 100/2022:** This IA has been filed by Chamber of Small Industries Association, TSSIA House, Plot No. P 26, Road No. 16/T, Wagle Industrial Estate, Thane, Maharashtra, having PAN India membership (presently 330) comprising local, District level, Regional and State level Micro, Small and Medium Enterprises (hereinafter referred to as '**MSME**') and their Associations. Here also a request has been made that MoEF&CC as well as CPCB be directed to re-visit CEPI score and till then not to take any steps against member industries of the applicant without following due process of law. It is said that all industries are complying with applicable regulatory requirements in relation to environment; the industries in Tadali and Ghugus are not responsible for increase of CEPI Score of Chandrapur area but the major activities are attributable to coal mines/coal washreis/mega power plants, poor road conditions, vehicular traffic, coal depots and dumping yards which are required to be monitored for reduction in PI. Applicant has referred to CEPI ratings of CPCB and Maharashtra Pollution Control Board (hereinafter referred to as '**MPCB**') as under:

“a) CPCB's CEPI Ratings:

The CEPI score released by CPCB in the year 2009, 2013 and 2018 are observed in reducing trend which indicates the improvement in overall quality of Environment and strikes our efforts and contribution towards making CEPI action plan successful. CPCB's CEPI score is tabulated along with MPCB's CEPI scores in next paragraph.

b) MPCB's CEPI Ratings:

The MPCB’s CEPI score is observed less than 60 which indicates that Chandrapur Industrial area does not fall under Critically Polluted zone and the overall environmental Quality is good. MPCB has carried out the area wise environmental monitoring for CEPI Score in the area as TADALI, GHUGUS, MIDC CHANDRAPUR & BALLARPUR Area and the reports are uploaded on website by MPCB. The reports conclude that, the values are in limit with the cluster of Tadali and Ghugus.

c) Comparative CEPI ratings:
CEPI ratings released by both the governing regulatory bodies since 2009 to 2020 are tabulated below for comparison:

Year	MPCB Rating	CPCB Rating	Year	MPCB Rating	CPCB Rating
2009	--	83.88	2015		
2010	--		2016	58.62	
2012	50.36		Feb’ 2017	62.3	
2013	57.36	81.90	Jun’ 2017	50.77	
2014			Feb’2018	61.69	76.41
2015			Jun’2018	51.88	

d) CEPI scores released for Tadali Cluster during the period of Dec’ 2018 to Jul’ 2019:

Name of Area	AIR	Surface Water	Ground Water	CEPI	
TDALI Cluster	48.125	39.125	43.125	56.88	Well in Limit
Ghughus Cluster	58.125	28.125	27.125	61.32	Well in Limit

81. Applicant has explained its concern in respect of four Components referred by CPCB in assessing CEPI score, as under:

- (i) **Component A:** It comprises of multiplication of two parts. Factor A2 is the scale of industrial activities. This component cannot be changed by any action plan or effort by State Government or industries. This factor hence needs reconsideration.
- (ii) **Component B:**
 - a) When continuous quality monitoring systems in respect of air and water quality are installed in all CPAs and SPAs, the average of data collected during the entire year should be taken as parameter for arriving at component B. Three samples in the

entire year cannot reflect true and fair position of the level of pollutants presence.

- b) Collection of samples should not be a closely guarded secret. Moreover, two sets of samples should be collected in presence of representatives of respective industrial associations and they should be sealed in presence of all. One sample should be kept with association and one with SPCB/environmental laboratory for analysis. This will instill confidence in industries as to fairness.
- c) In case of air quality monitoring; another two sets of Ambient Air Monitoring Stations may be operated at the same locations and time period. The samples collected may be handed over to CPCB, MPCB as well as respective industry associations which may be further analyzed by NABL accredited laboratory.
- d) A re-checking mechanism should be allowed if industries association so desires and preserved samples be used for the same.

(iii) **Component C:**

- a) Health related statistics used for calculation of CEPI is based on hospital records of last five years. The rise in the number of patients is on a year to year basis but at the same time, growth in population in the region is not considered. Also, the patients coming to the hospitals are not only from the affected area but they may also be coming from far distant places as most of the hospitals are charitable. For this component, health related statistics regarding occupational health may be collected from Department of Industrial Safety and Health as this data is based on actual impact on occupational health. Thus, for considering the health statistics, it is difficult to identify the number of major

hospitals in the area and their authenticity. The formula for this component may be restructured.

- b) Applicant Association is conducting a survey of the impact on human health on the residents of industrial areas due to industrial activities through WHO approved organization from time to time. The results reveal that there is no perceivable impact observed on the health of the people surrounding these industrial clusters. The results are submitted to CPCB and MPCB. But while calculating Factor C (Health Related Issues), results of these reports are not considered.

(iv) **Component D:**

- a) Order of Tribunal is not being implemented in spirit by the concerned statutory authorities. They are misinterpreting and illegally enforcing the said order in an illogical and irrational manner causing serious detriment to the natural growth of the economy and in particular, the industries. The affected industries have not been impleaded and their interest are being compromised without giving any opportunity of hearing.
- b) The proceedings before Tribunal would impact expansion of existing industries and establishment of new industries in any industrial area in State of Maharashtra. Therefore, it is imperative that association of industries as well as operators of CETPs of the area are allowed to make representations.
- c) The whole process of CEPI calculation and procedure means compliance of the provisions of Water Act, 1974 and Air Act, 1981 which has not been followed.

82. **IA 101/2022:** This IA has been filed by **Chamber of Marathwada Industries and Agriculture**, Bajaj Bhavan Bhava, P-2, MIDC Station

Road, Aurangabad, Maharashtra. Here also the prayer made is similar as in IA 100/2022, grounds and facts to some extent are over-lapping, but some additional are as under:

- (i) CPCB, contrary to its own position, as stated in the statutory directions being Revised CEPI issued under Section 18(1)(b) of Water Act, 1974 and Air Act, 1981, has made submissions in relation to CEPI and provided CEPI scores of 10 industrial clusters within State of Maharashtra.
- (ii) While making submissions in relation to CEPI score of the industrial clusters in the captioned proceedings before Tribunal, CPCB has applied the norms which are inconsistent with the norms hitherto existing and applied for determination of CEPI score. The applied norms have overlooked the directions framed and issued by CPCB dated 26.04.2016.
- (iii) In order to identify the impact of the industrial cluster on pollution in the area, Revised CEPI directions under Section 18(1)(b) of Water Act and Air Act of 2016 have provided that environmental pollution is to be assessed in context of the identified polluting elements relatable to the industry in particular. Revised CEPI directions under Section 18(1)(b) of Water Act and Air Act were issued on 26.04.2016.
- (iv) In the process undertaken by CPCB for arriving at CEPI scores which are referred to in the submissions made before Tribunal, the following process prescribed under the statutory directions under Section 18(1)(b) has not been undertaken by the concerned sampling agency:

“Part A: Environmental quality monitoring in all CPAs

1. *That the SPCB/PCC shall undertake environmental quality monitoring in the critically polluted area falling under their jurisdiction through an outside third party agency (laboratory) recognized under Environment (Protection) Act, 1986 and accredited under NABL. The frequency of the monitoring shall be*

twice in a year i.e. Post-monsoon season and Pre-monsoon season).

- 2. That the SPCB/PCC shall ensure that the existing sampling locations where monitoring was undertaken in 2013 are retained and additional monitoring locations, if any required, can be included in the monitoring programme in consultation with concerned Zonal Offices of CPCB and (or) Head Office, CPCB.*
- 3. That the SPCB/PCC shall ensure that the sampling stations are provided at strategic locations across the industrial clusters so as to obtain a truly representative environmental quality of the critically polluted area. Moreover, the concerned SPCBs/PCC shall ensure that there is at least one Ambient Air Quality monitoring station each in the predominant upwind and downwind directions at each of the CPA.*
- 4. That the SPCBs/PCC shall collect 3 samples with a gap of one or two days at each location during each round of monitoring in all the CPAs.*
- 5. That at each of the CPA, 24 hourly ambient air quality monitoring shall be carried out for parameters as detailed in Annexure-2. Also, representative samples for surface water quality and ground water quality shall be collected from prominent surface and ground water bodies located in and around the CPAs. List of water quality parameters is presented in Annexure-2.”*

- (v) The criteria for determination of CEPI was revised on 26.04.2016 by way of issuing directions under Section 18(1)(b) of Water Act, 1974 and Air Act, 1981 to undertake environmental quality monitoring and for installation of CAAQMS and RTWQMS in CPAs for CEPI score evaluation. This revision was carried out in order to give proper effect of all the components which actually cause pollution in any industrial area and are specific to that particular industry. The relevant extract of the revised CEPI directions is reproduced hereunder:

Part D: Application of revised CEPI version 2016

- a) That since ‘Revised CEPI 2016’ has been evolved, henceforth; all future CEPI score evaluation shall be made on the revised formula.**
- b) That all the polluting source identified in the area shall be notified and brought in the public domain through respective websites along with the details of their pollution control compliance status.**
- c) That the environmental quality data including CEPI score of the industrial area as per revised concept shall also be placed in public*

domain through website and also to be published by the State Govt. periodically.

- d) That the concerned State Govt. shall notify the area on a properly scaled map and also issue public advisories that such an area will be exclusively meant for industrialization as per the State land.
- e) **That the revised CEPI shall be used by the State Govt., SPCBs and other concerned to understand the severity of pollution existing in the area and formulate appropriate action plan. Further, sufficient time shall be given for effective implementation of the action plan before imposition of moratorium. Thus, the revised concept shall be an early warning tool to ensure the successful implementation of Action Plan.**
- f) **That the CEPI shall not be used by the Bankers/money lending institutions for financial decisions.**
- g) **That any moratorium on expansion or setting up of new industries shall be imposed on a particular CPA only after a notice period of one year from the initial announcement of CEPI assessment. However, decisions on any directions already in force in a CPA shall be taken as per correct practice in vogue. High CEPI score shall also be used as early warning tool to require preparation of pollution management plans to reduce pollution levels before it reaches to critical levels.**
- h) That for any industry in a critically polluted area, the changes which make it less polluting shall be permitted. These changes may include expansion of production capacity/change of product/change of raw materials/change of manufacturing process or a combination of these changes and shall be examined and assed by respective SPCBs/PCC.

Salient features of revised CEPI criteria:

- Environmental Pollution Index (EPI) is a rational number to characterize the environmental quality of ambient Air/ Surface Water /Ground Water of an Area.
- Air EPI, Surface Water EPI and Ground Water EPI will be calculated separately on a scale of 0-100.
- Overall CEPI will be evaluated using the existing formula, i.e.,
$$CEPI = i\text{-max} + [(100 - i\text{-max}) \times (i_2/100) \times (i_3/100)]$$

Where, i-max – maximum index (which may be either Air EPI or SW EPI or GW EPI); and i₂, and i₃ are indices for other media.
- **Area for the purpose of CEPI study shall be notified by concerned SPCB as per the direction of CPCB.**
- **For each area, sampling protocol will be laid down by CPCB and the monitoring locations will be finalized by CPCB in consultation with concerned SPCBs.**
- **Guidelines for the use of CEPI will be notified by CPCB.**

- ***Environmental quality monitoring shall be undertaken by concerned SPCBs on half-yearly basis and data will be placed in the public domain.***

Season	Period of monitoring	Target date of Report submission
Pre-monsoon	April-June	31 st July
Post-monsoon	Dec.-Feb.	31 st March

- ***The monitoring data shall be analyzed for the parameters exceeding the prescribed norms and time targeted remedial action plans be formulated by concerned SPCBs for the same. [...]***

Selection of criteria pollutants:

Option 1: 3 pollutants relevant with the Area depending on the nature of industrial activity (preferable option/method)

Option 2: up to 3 most critical pollutants depending on the concentration and exceedance.”

- (vi) CPCB has committed a grave and substantive error in taking into consideration the sampling locations while determining CEPI score. Revised directions under Section 18(1)(b) of Water Act and Air Act, 2016 expressly provide that while undertaking CEPI calculation for surface water, the outlet of ETP/CETP shall not be considered for the purposes of applying Factor-B. However, as is evident in the report, outlet of ETP/CETP has been considered for the purposes of applying Factor-B.
- (vii) The criteria of pollutants, to be considered for the purpose of undertaking the assessment are always identified in advance and notified before undertaking the process of sampling. Applicant states that in the instant case, after the sampling has been undertaken and the report has been generated, the criteria pollutants have been notified and based on the same, CEPI score has been prepared. The purpose of notifying the criteria pollutants in advance is to avoid any error or ambiguity in the entire process. The said fact is amplified

from the reports which reflect those irrelevant criteria pollutants have been taken into consideration.

- (viii) While determining the criteria pollutants, the information provided by SPCB regarding the relevant criteria pollutants has been overlooked and without reference to the industrial sector, generic criteria pollutants appear to have been applied. The exercise so undertaking is against the letter and spirit of the Revised CEPI directions under Section 18(1)(b) of Water Act and Air Act.
- (ix) As per Paragraph 4 of order dated 10.07.2019 passed in the captioned proceedings, the procedure and implementation of the revised CEPI criteria has been described. It is observed that the Part-A of directions under Section 18(1)(b) as per the revised CEPI directions under Section 18(1)(b) of Water Act and Air Act of 2016 provides that frequency of the monitoring shall be twice in a year, i.e. post-monsoon season and pre-monsoon season for calculations of CEPI score. However, in the present case, CEPI score is calculated based on single season monitoring and collecting samples for 2-3 days. Therefore, calculated CEPI is not a representative figure and neither is credible, therefore, the other proposed actions based on this score are resultantly based on a faulty premise. The results of the studies carried out by CPCB for all the industrial clusters which are affecting environment were to be placed in public domain and State Governments were to notify the scaled maps of the industrial areas and this would serve as warning to the respective industries area.
- (x) CPCB had conducted study of various industrial clusters with respect to ascertaining CEPI. Such exercise was earlier conducted in year 2009. Various industrial clusters then were classified as CPA, SPA or OPA and following such classification, the clusters classified as CPA were placed under moratorium and prohibited the

expansion of capacity of any individual industry or establishment of new industrial undertaking in CPA. Several steps have been taken for controlling pollution in the industrial clusters which were classified as CPA and review was carried out in year 2016 when such ban was lifted in several cases.

- (xi) Improvement in the quality of environment is noticed in CPCB study of 2017-18 after the first study in 2009. It may be seen that the study was conducted by IIT, Delhi during 2009 and assessment was done in 88 areas. Subsequently, a second study of 2018 is carried out in 100 areas. The comparative results are produced hereunder:

	No of areas out of total 88 in 2009 study	Per cent of total area under study	No of areas out of 100 in 2018 study	Per cent of total area under study
CPA CEPI >70	43	48.9	38	38.0
SPA CEPI betn 60 AND 70	32	36.3	31	31.0
Other Polluted area	13	14.8	31	31.0

- (xii) There is a positive impact of actions as there is reduction in both numbers and percentage of CPAs and SPAs from 2009 to 2018. In fact, the **present applicant supports and endorses a zero-tolerance policy on environmental pollution.**
- (xiii) The results obtained by CPCB in the aforesaid study are of tentative nature and these results required consultations with State PCBs and State Governments. However, they got published in the newspaper and thereafter the list was submitted by CPCB through a letter dated 17.05.2019 to Tribunal. Tribunal has, after considering the level of pollution indicated therein, decided to pass the order and have issued several directions.
- (xiv) As a knee jerk reaction in pursuant of the said order, MPCB issued directions to the industries to deposit interim compensation without

providing any opportunity of being heard to the member industries of the Applicant association.

- (xv) There have been continuous improvements by undertaking various projects and making investments. The members have undertaken these initiatives under the guidance of MPCB. Copy of compliance report as prepared by applicant is annexed hereto and marked as ANNEXURE – A-11. MPCB in the month of July 2020 had prepared a detailed report of Aurangabad CEPI area.
- (xvi) 140 notices were issued to the members of applicant demanding them to deposit environmental damage compensation. The notices were directing the members to deposit Rs.1 crore for Large Scale Industry, Rs.50 lakhs for Medium Scale Industry and Rs.25 lakhs for small scale industry. The said notices were issued in complete breach of principles of natural justice. 94 notices were withdrawn by MPCB after observing that they were satisfied with the compliances shown by the respective industries.
- (xvii) Various grounds have been taken in para 34, which may be referred to as under:

“A. On 17.05.2019 the CPCB submitted the CEPI Assessment report after getting information from the SPCBs/PCC along with the draft protocol in order to implement the action plan. However, the MoEF & CC are yet to take a final view of the CEPI assessment reports drafted by CPCB.

B. The MoEF & CC had found that there are several gaps in the study and therefore it can be concluded that it has not been finalized and decision based on incomplete assessment is not desired from this Hon’ble Tribunal.

C. The revised CEPI methodology of 2016 has to be tested as to its applicability and relevance and then only it should be implemented. The only empirical exercise carried out by CPCB is not and should not be proper criteria for arriving at the pollution index in a particular cluster.

D. Furthermore, it is pertinent to note and to be taken into account that there have been investments already made by the industry for Environment Management System (“EMS”), along with proposed

investments made by all the industrial estates and its members on individual basis.

E. Even the directions u/s 18(1)(b) of the Water Act and Air Act issued by CPCB for application of Revised CEPI Directions u/s 18(1)(b) of the Water Act and Air Act of 2016 have not been followed in letter and spirit for the following reasons-

- (i) The selection of criteria pollutants in advance did not take place in the current study as per “preferable option” and neither were MPCB’s communications taken into account in this effect.
- (ii) The frequency of monitoring should be twice in a year i.e. Post – Monsoon season and pre-monsoon season but not followed and the exercise was done with a quick and rapid one season monitoring i.e. 2 or 3 days’ data out of 365 days in a year.
- (iii) The sampling locations are not truly representative as external influences such as traffic, domestic sewage from nearby villages, sea water intrusion etc. are not eliminated and therefore the assessment is done without “Truly Representative Environmental Quality of the Critical Polluted Area”.
- (iv) In many clusters, Continuous Ambient Air Quality Monitoring System, (CAAQM) as well as Continuous Emission Monitoring System (CEMS) are installed by investing crores of rupees as per various directions including the said direction dated 26.04.2016 of CPCB. However, the real time data available throughout the year is not taken into account while making the assessment of CEPI in 2018.
- (v) The measurements were carried out by CPCB and/or State PCBs in various clusters. However, the industries associations or CETP operators in the respective areas were not briefed or consulted while carrying out the measurements. This is a violation of Section 11 of the Environment (Protection) Act 1986, read with Rule 6, 7 and 8 of the Environment (Protection) Rules 1986 which are reproduced here for ready reference of this Hon’ble Tribunal:

“Section 11: Power To Take Sample And Procedure To Be Followed In Connection Therewith –

(1) The Central Government or any officer empowered by it in this behalf, shall have power to take, for the purpose of analysis, samples of air, water, soil or other substance from any factory, premises or other place in such manner as may be prescribed.

(2) The result of any analysis of a sample taken under subsection (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3) and (4) are complied with.

(3) Subject to the provisions of sub-section (4), the person taking the sample under sub-section (1) shall—

(a) serve on the occupier or his agent or person in charge of the place, a notice, then and there, in such form as may be prescribed, of his intention to have it so analysed;

(b) in the presence of the occupier or his agent or person, collect a sample for analysis;

(c) *cause the sample to be placed in a container or containers which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent or person;*

(d) *send without delay, the container or the containers to the laboratory established or recognized by the Central Government under section 12.*

(4) *When a sample is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent or person, a notice under clause(a) of subsection (3), then, --*

(a) *in a case where the occupier, his agent or person wilfully absents himself, the person taking the sample shall collect the sample for analysis to be placed in a container or containers which shall be marked and sealed and shall also be signed by the person taking the sample, and*

(b) *in a case where the occupier or his agent or person present at the time of taking the sample refuses to sign the marked and sealed container or containers of the sample as required under clause (c) of sub-section (3), the marked and sealed container or containers shall be signed by the person taking the samples, and the container or containers shall be sent without delay by the person taking the sample for analysis to the laboratory established or recognised under section 12 and such person shall inform the Government Analyst appointed or recognised under section 13 in writing, about the wilfull absence of the occupier or his agent or person, or, as the case may be, his refusal to sign the container or containers.*

Rule 6: Procedure of taking samples

The Central Government or the officer empowered to take samples under section 11 shall collect the sample in sufficient quantity to be divided into two uniform parts and effectively seal and suitably mark the same and permit the person from whom the sample is taken to add his own seal or mark to all or any of the portions so sealed and marked. In case where the sample is made up in containers or small volumes and is likely to deteriorate or be otherwise damaged if exposed, the Central Government or the officer empowered shall take two of the said samples without opening the containers and suitably seal and mark the same. The Central Government or the officer empowered shall dispose of the samples so collected as follows: -

a. *One portion shall be handed over to the person from whom the sample is taken under acknowledgement; and*

b. *The other portion shall be sent forthwith to the environmental laboratory or analysis.*

Rule 7: Service of notice

The Central Government or the officer empowered shall serve on the occupier or his agent or person in charge of the place a notice then and there in Form I of his intention to have the sample analyzed.

Rule 8: Procedure for submission of samples for analysis, and the form of laboratory report thereon

- (1) Sample taken for analysis shall be sent by the Central Government or the officer empowered to the environmental laboratory by registered post or through special messenger along with Form II.
 - (2) Another copy of Form II together with specimen impression of seals of the officer empowered to take samples along with the seals/marks, if any, of the person from whom the sample is taken shall be sent separately in a sealed cover by registered post or through a special messenger to the environmental laboratory.
 - (3) The findings shall be recorded in Form III in triplicate and signed by the Government Analyst and sent to the officer from whom the sample is received for analysis.
 - (4) On receipt of the report of the findings of the Government Analyst, the officer shall send one copy of the report to the person from whom the sample was taken for analysis, the second copy shall be retained by him for his record and the third copy shall be kept by him to be produced in the Court before which proceedings, if any, are instituted.
- F. It is therefore submitted that the Procedure prescribed under the Statute has not been followed as envisaged and therefore the assessment carried in 2018 may be declared as null and void and set aside.
- G. As per the operative portion of the order of the Hon'ble Tribunal dated 10.07.2019, the following affects the industrial growth and existence of various industrial undertakings
- “28. No further industrial activities or expansion be allowed with regard to ‘red’ and ‘orange’ category units till the said areas are brought within prescribed parameters or till carrying capacity of the area is assessed and new units or expansion is found viable having regard to the carrying capacity of the area and environment norms. Pending assessment of compensation, interim compensation be recovered at the scale adapted by this tribunal in case of Vapi industrial area as mentioned in para 22”
- “22. In view of water pollution caused by absence/dysfunctional CETPs/ETPs/STPs, the Tribunal has, in the case of Aryavart Foundation Vs. M/s Vapi Green Enviro Ltd. & Ors.18, directed all defaulting industries, other than green and white category, connected with CETP, to make deposits with the CPCB towards interim environmental compensation, pending assessment of actual compensation and further action, on the following scale:
1. Large Industries – Rs. 1 crore each
 2. Medium Industries – Rs. 50 Lakhs each
 3. Small Industries – Rs. 25 Lakhs each”
- H. These directions need to be reconsidered on following grounds:

a) Directions u/s 18(1)(b) of the Water Act and Air Act issued by CPCB to Chairman of SPCBs and copy to MoEF&CC and Chief Secretaries of relevant states for application of revised CEPI version 2016 have not been followed by CPCB itself. The Part-D of Directions describes the methodology for imposing moratorium on expansion and on setting up of new industries. Relevant extract from said directions is reproduced as under for ready reference:

“Part D: Application of revised CEPI version 2016

- i) That since ‘Revised CEPI 2016’ has been evolved, henceforth; all future CEPI score evaluation shall be made on the revised formula.
 - j) That all the polluting source identified in the area shall be notified and brought in the public domain through respective websites along with the details of their pollution control compliance status.
 - k) That the environmental quality data including CEPI score of the industrial area as per revised concept shall also be placed in public domain through website and also to be published by the State Govt. periodically.
 - l) That the concerned State Govt. shall notify the area on a properly scaled map and also issue public advisories that such an area will be exclusively meant for industrialization as per the State land.
 - m) **That the revised CEPI shall be used by the State Govt., SPCBs and other concerned to understand the severity of pollution existing in the area and formulate appropriate action plan. Further, sufficient time shall be given for effective implementation of the action plan before imposition of moratorium. Thus, the revised concept shall be an early warning tool to ensure the successful implementation of Action Plan.**
 - n) That the CEPI shall not be used by the Bankers/money lending institutions for financial decisions.
 - o) That any moratorium on expansion or setting up of new industries shall be imposed on a particular CPA only after a notice period of one year from the initial announcement of CEPI assessment. However, decisions on any directions already in force in a CPA shall be taken as per correct practice in vogue. High CEPI score shall also be used as early warning tool to require preparation of pollution management plans to reduce pollution levels before it reaches to critical levels.
 - p) That for any industry in a critically polluted area, the changes which make it less polluting shall be permitted. These changes may include expansion of production capacity/change of product/change of raw materials/change of manufacturing process or a combination of these changes and shall be examined and assed by respective SPCBs/PCC.”
- I. As per said Directions, CEPI is the weighted summation of four components namely A (Scale of Industrial Activity: 20%), B (Status of Ambient Environment Quality-Air, Surface Water and Ground Water: 50%), C (Health related statistics: 10%) and D (Compliance status of industries: 20%). Score for factor A and B is empirical and based on hard core observations. However, factors C and D are subjective and further Score D has not been properly calculated. Moreover, there is inadequate relevant health data for assessing Factor C. Therefore,

overall CEPI has risen considerably though the same is artificial and paints an unrepresentative and distorted picture.

- J. The Industrial clusters were classified critically polluted (CPA) and severely polluted (SPA) during the earlier exercise of Year 2009 and thereafter several steps were taken by CPA and SPA with help of their members and with help of respective state governments. Investment of crores of rupees has been made in establishing and improving functioning of Common facilities such as CETP, MEE, Spray drier, preprocessing of hazardous waste for co-processing in cement kilns etc.*
- K. Effective control has been exercised on the working of the errant industrial undertaking and continuous monitoring of their discharges has resulted in bringing down the water pollution level in various industrial clusters. This aspect has not been brought to the notice of Hon'ble Tribunal while the hearing in the present matter has taken place.*
- L. It would be unfair to levy compensation based on the classification of the industrial undertakings done by the industrial investment department. The classification as to large scale, medium scale and small scale has been done based on the investment in fixed assets by respective units. These criteria are not just, fair and proper for imposing a penalty on any unit. The penalty of compensation should be associated with the scale of pollution done by respective unit. This can be ascertained by the quantity and quality of the output of the pollutant by respective unit. It may happen that the large scale unit may be releasing much smaller quantity and better quality effluent compared to small scale unit. The quantity and quality of effluent released by any unit will depend on the type of the product, Environment Management System (EMS) and the technology adopted by them. While imposing penalty or compensation, these criteria should be taken into consideration. Otherwise imbalance in the assessment.*
- M. It is submitted that there is already a 'Bank Guarantee policy' prevailing in MPCB which is being implemented since many years. There are well-defined criteria for taking and forfeiting the Bank Guarantee in case of non-compliance and also a policy for utilization of this fund for restoration. The policy for depositing large amount for environmental compensation is a duplication of the present Bank Guarantee policy and amounts to a double penalization for the same offence which is inequitable and is wholly unjustified. Hence, the same is required to be reviewed.*
- N. The air pollution is not the result of industrial activities only. In any industrial cluster, air pollution is caused by many factors namely,
 - i) the industries operating in that area;*
 - ii) construction activities and the background dust in that area that is quality of soil; and*
 - iii) vehicular traffic operating in that area, burning of MSW and agriculture waste etc.**
- O. Similarly, the water monitored are contaminated with the domestic untreated sewage, cattle bathing, washing of clothes with detergent*

and other usages etc. in the nearby villages and not by industrial activities of an Industrial Cluster.

- P. Moreover, the appointment of third party laboratories to collect samples from far-off states leads to a violation of norms for timing and preservation of samples due to distance from the place of collection and place of analysis.
- Q. Needless to say that due to inaction by various Government authorities with respect to order of Hon'ble Tribunal dated 13.12.2018 and subsequent orders thereof, the industries are immensely suffering. In Maharashtra, almost 75% of Prominent manufacturers having adequate Common. Environment Infrastructure are covered under this order and after the order of Tribunal dated 10.07.2019. Therefore, SEAC has stopped acceptance of new Environmental Clearance applications and rejected/returned about 150 nos. of processing applications which were in the pipeline. Unfortunately, protocols for carrying capacity and mechanism for consideration of new projects/expansion of existing projects is yet not finalized. Even, the issue of procedure for assessment of carrying capacity is very vigorous exercise and requires years of monitoring data. In fact, it is learnt that there are no specific criteria for assessment of carrying capacity worldwide.
- R. The Maharashtra Pollution Control Board, Mumbai had conducted a meeting with the representatives of applicant association on 10th December 2019 and informed that MPCB is going to do the evaluation of the industries for submission of the compliance report and therefore instructed all the stakeholders to implement necessary compliance measures for improvement of situation so as to reduce CEPI Score and to comply with the directions of Hon'ble NGT. It may be noted that in the said minutes, majority of the work was to be undertaken by the MPCB. A Copy of the Minutes of Meeting dated 10.12.2019 are annexed herewith and marked as **ANNEXURE- A-14.**
- S. The CEPI score of 2009 and 2013 for Aurangabad District, we can see substantial decrease in the overall score from Average of 77.44 in 2009 to Average of 68.87 in 2013.
- T. The score of 2018 which was calculated as per CEPI -2016 formula the Average is 69.85, it very less in comparison to Average of 77.44 in 2009 and is marginally higher as compared to Average of 68.87 in 2013 due to change in formula and some other gaps evident in compilation with CEPI-2016 formula.
- U. As far as 2018 sampling was done for waste water only 12 waste water samples were taken to decide the quantum of pollution level of Aurangabad district out of 12 samples, 3 samples were deviated in BOD, 6 Samples deviated in TP and 6 samples deviated in TKN, If we review the parameters BOD, TP and TKN are parameters mostly related with sewage waste water. If we see holistically almost 100 MLD of sewage waste water is generated from city and that is major hydraulic load to prevent water pollution and this comes under the jurisdiction of Aurangabad Municipal Corporation, whereas industry contribute approximately 4 MLD of waste water and that too is treated at industry level and further at CETP and then discharged to Kham river, The CETP data is online monitored and data published

in MPCB website on weekly basis and they are well within limits which implies that industries waste water is treated scientifically and not contributing to water pollution, whereas the sewage waste water from city needs to cover under online monitoring and continuous monitoring for better operation and control and prevent of water pollution.

V. *Hence with above information it is evident that the all-industrial areas are compliant in waste water prevention of pollution, and the score contributory for increase in value is only due to sewage waste water from the city contributing to the factor of BOD, TP & TKN. Other point which we again want to bring to notice of court is that the waste water sampling source and sampling method needs to be reconsidered for arriving at real value. As only at few locations the water sampling was done and not justifying the overall score.*

- W. *CEPI 2016 formula and its Gaps:*
- a) *Though the scope of the revised index, in terms of quantification, has been increased, CEPI will not represent reality unless proper data collection along with continuous data flow is ensured.*
 - b) *New Revised CEPI 2016 Formula:*

Component	Weightage
Scale of industrial activity	20
Scale of exceedance of Environmental Quality (Level of exposure)	50
Health related statistics	10
Compliance status of industries	20
	100

83. **IA 161/2022:** This application has been filed by **South Gujarat Textile Processors Association**, 200 Vrajlal Mohanlal Dhamanwala Complex, Pandesara, GIDC Surat. It has been prayed that CEPI scores of 2018 showing discrepancies be directed to be kept in abeyance and concerned authorities be directed to undergo a fresh survey in conformity with MoEF&CC’s revised CEPI protocol which is to be finalized by Expert Committee constituted by MoEF&CC vide letter dated 25.09.2020.

84. **IA 171/2022:** This application has also been filed by South Gujarat Textile Processors Association, praying for directions to CPCB to produce following documents:

- (i) Copy of the initial CEPI guidelines and its revised versions;
- (ii) Copy of the report prepared it pursuant to the said CEPI guidelines;

- (iii) To produce and/or grant inspection of the documents/material relied upon/referred to in the finalization of the CEPI Report and
- (iv) To produce a copy of the proceedings of Committee constituted by it for revisiting CEPI Protocol and letter/orders/ directions issued by it to the said committee and received by it from the said Committee.

85. **IA 166/2022:** This application has been filed by **Ankleshwar Industries Association**, Plot no. 618/619, GIDC Estate. Ankleshwar. Applicant has sought intervention in the present application and modification/review of various orders passed by Tribunal. Broadly, it has founded its grievance on the following aspects:

- (i) Firstly, there is glaring procedural error in calculation of CEPI scores by concerned authorities.
- (ii) CPCB had conducted study of various industrial clusters with respect to ascertaining CEPI. Such exercise was earlier conducted in year 2009. Various industrial clusters then were classified in CPA, SPA or OPA and following such classification, the clusters classified as CPA were placed under moratorium and prohibited the expansion of capacity of any individual industry or establishment of new industrial undertaking in CPA. Several steps have been taken for controlling pollution in the industrial clusters which were classified as CPA and review was carried out in year 2016 when such ban was lifted in several cases.
- (iii) The criteria for determination of CEPI was revised on 26th April 2016 by way of issuing directions under Section 18(1)(b) of Water Act, 1974 and Air Act, 1981 to undertake Environmental Quality Monitoring and for installation of CAAQMS and RTWQMS in critically polluted areas for CEPI score evaluation. This revision was

carried out in order to give proper effect of all the components which cause pollution in any industrial area.

- (iv) Paragraph 4 of the impugned order dated 10.07.2019 describes the procedure and implementation of revised CEPI. It is observed that the Part A of the said directions stipulates frequency of monitoring twice a year, one in pre monsoon season and the other in post monsoon season for calculation of CEPI score. Result of the studies carried out by CPCB for all the industrial clusters which are affecting the environment by various type of pollution were to be placed in public domain and State Governments were to notify the scaled maps of the industrial areas and this would serve as warning to the respective industries area.
- (v) It is also observed in the said order at para 5 that “base on CEPI 2016 criterion CPCB carried out monitoring during 2017-18, where it was found that the number of identified polluted industrial cluster went up to 100 which includes 38 critically polluted, 31 severely polluted and remaining 31 as other polluted areas”. However, it is submitted that as observed in para 10 of the impugned order, said study by CPCB was under progress and CPCB had not finalized consultations with respective PCBs and appraised MoEF&CC and some gaps were observed by MoEF&CC. In fact, the number of clusters have not gone up but more clusters were added.
- (vi) It is important to consider whether any improvement in quality of environment is noticed in CPCB study of 2016 after first study in 2009. It may be seen that study was done by IIT, Delhi during 2009 and assessment was done in 88 areas. Second study of 2016 is carried out in 100 areas. Comparative results are as under:

	No of areas out of total 88 in 2009 study	Per cent of total area under study	No of areas out of 100 in 2016 study	Per cent of total area under study
CPA CEPI>70	43	48.9	38	38.0
SPA CEPI betn 60 and 70	32	36.3	31	31.0
Other Polluter area	13	14.8	31	31.00

- (vii) It can thus be seen that there is positive impact of actions. It is not our case that the impact is adequate. In fact, we support zero tolerance on environmental pollution.
- (viii) The results obtained by CPCB are of tentative nature and these results required consultations with SPCBs and state governments. However they got published in news paper and, thereafter, the list was submitted by CPCB through a letter dated 17.05.2019 to Tribunal.
- (ix) Incorporation of the tentative results of CPCB was done in haste. CPCB has erred on following grounds in providing these results to Tribunal.
- The consultation with the concerned SPCB for finalizing the results and parameters for respective clusters was in progress. In fact in case of industrial clusters situated in Gujarat, these results shall undergo substantial change. Parameters selected by CPCB is not in line with minutes of meeting of GPCB with zonal office CPCB dated 20.05.2016. Further, in letter addressed to Member Secretary, CPCB and Member Secretary, GPCB specifically mentioned that parameters should be considered based on the local conditions and geographical conditions for CEPI score calculation.
 - CPCB had thereafter not finalised the results and submitted to MoEF&CC for consideration. Assessment report prepared by

CPCB is not forwarded to MoEF&CC for appropriate actions as ordered by Hon'ble NGT in its order dated 13.12.2018.

- c) The studies were carried out by CPCB and/or SPCBs in various clusters. However, industries association and/or CETP operator in the respective areas were not informed while carrying out the study.
- d) MoEF&CC had found that there are several gaps in the study and therefore, it can be concluded that it has not been finalized and decision based on half cooked data is not desired from this Tribunal.
- e) Revised CEPI methodology of 2016 has to be tested as to its applicability and relevance and then only it should be implemented. Only empirical exercise carried out by CPCB is not and should not be a proper criterion for arriving at pollution index in particular cluster.
- f) Even the directions under Section 18(1)(b) of Water Act and Air Act issued by CPCB for application of revised CEPI version 2016 have not been followed in letter and spirit.

86. Directions contained in para 22 and 28 of orders dated 10.07.2019 are sought to be re-considered on the following grounds:

- (i) Directions under Section 18(1)(b) of Water Act and Air Act issued by CPCB to Chairman of SPCBs and copy to MoEF&CC and Chief Secretaries of relevant states for application of revised CEPI version 2016 have not been followed by CPCB itself. Part-D of Directions describes the methodology for imposing moratorium on expansion and on setting up of new industries. Relevant extract from said directions is reproduced as under for ready reference:

“Part D: Application of revised CEPI version 2016

- 13) *That since 'Revised CEPI 2016' has been evolved, henceforth; all future CEPI score evaluation shall be made on the revised formula.*
- 14) *That all the polluting source identified in the area shall be noticed and brought in the public domain through website and also brought in the public domain through respective websites along with the details of their pollution control compliance status.*
- 15) *That the environmental quality data including CEPI score of the industrial area as per revised concept shall also be placed in public domain through website and also to be published by the State Govt. periodically.*
- 16) *That the concerned State Govt. shall notify the area on a properly scaled map and also issue public advisories that such an area will be exclusively meant for industrialization as per the State land.*
- 17) *That the revised CEPI shall be used by the State Govt., SPCBs and other concerned to understand the severity of pollution existing in the area and formulate appropriate action plan. Further, sufficient time shall be given for effective implementation of the action plan before imposition of moratorium. Thus, the revised concept shall be an early warning tool to ensure the successful implementation of Action Plan.*
- 18) *That the CEPI shall not be used by the Bankers/ money lending institutions for financial decisions.*
- 19) *That any moratorium on expansion or setting up of new industries shall be imposed on a particular CPA only after a notice period of one year from the initial announcement of CEPI assessment. However, decisions on any directions already in force in a CPA shall be taken as per correct practice in vogue. High CEPI score shall also be used as early warning tool to require preparation of pollution management plans to reduce pollution levels before it reaches to critical levels.*
- 20) *That for any industry in a critically polluted area, the changes may include expansion of production capacity/change of product/change of raw materials/change of manufacturing process or a combination of these changes and shall be examined and assed by respective SPCBs/PCC."*

(ii) As per said Directions, CEPI is weighted summation of four components namely A (Scale of Industrial Activity: 20%), B (Status of Ambient Environment Quality-Air, Surface Water and Ground Water : 50%), C (Health related statistics : 10%) and D (Compliance status of industries :20%). Score for factor A and B is empirical and based on hard core observations. However, factors C and D are subjective. Especially score D has not been properly calculated. Therefore, overall CEPI has gone up considerably painting very gloom picture.

- (iii) There are common environmental infrastructures like CETP, Secured Landfill site, Common Spray Dryer facility, Common MEE and which are installed with art of technology. All these Common Environmental Infrastructures facilities are granted CC&A by GPCB based on their adequacy only. As per Directions of High Court, Schedule-I Environmental Auditors approved by GPCB are conducting Environment Audit of these facilities every six months and submitting audit reports to GPCB which also certifies that the facilities are adequate. Also, Environment Audit Scheme (hereinafter referred to as '**EAS**') is applicable to small, medium and large-scale units falling under 17 categories of the industries. (Schedule-II as decided under EAS). Thus, such facilities may be considered as adequate based on the Environmental Auditors' Certificate. Factor of adequacy of infrastructure envisaged in para-D should be considered adequate.
- (iv) Also, in case of small, medium and large scale industries, if such units are having CC&A, it may be considered as Adequate.
- (v) Industrial clusters were classified CPA and SPA during earlier exercise of year 2009 and thereafter, several steps were taken by CPA with help of their members and with help of respective State Governments. Investment of Crores of Rupees has been made in establishing and improving functioning of CETPs. The details of the investment in respect of the industrial area of applicant during and after moratorium is reproduced from the presentation prepared by GPCB in 18.01.2016.

Description	Present & Proposed Investment Amount in Rs. (Crore)	
	Present	Proposed
Up-gradation of EMS by Individual industries		
Up-gradation of Common Environmental Infrastructure by BEIL, ACTPCL, NCTL, AWML	340.22	-

Up-gradation of u/g drainage network by NAA/GIDC	274.64	142.95
Total	85.46	145.17
	700.32	288.12

(vi) Moreover, following investments have been made in CETP:

Sr. No.	Measures Description	Status as on 11-04-22	Project Cost (Rs.)
1	➤ Installation of 60 MLD additional guard pond will be installed to store effluent in case of emergency by Dec-2022. Implementing agency is EIL, New Delhi. We will put the penalty clause in EIL work order for timely completion of the Project.	➤ Work order has been issued to EIL for Pre-project study. ➤ Geo-technical survey completed by EIL. ➤ Draft tender is prepared by EIL.	@20 Crore
2	➤ To curb unauthorised discharge, installation of 100% over-ground pipelines in Ankleshwar estate by Dec-2022. Implementing agency is EIL, New Delhi. We will put the penalty clause in EIL work order for timely completion of the Project.	➤ EIL has done site visit and working on proposal for Pre study report and under review of EIL. ➤ NCT has given the design flow of 50 MLD. ➤ EIL is preparing for Pre-project activities and submit its offer.	100 Crore
3	➤ Installation of intermediate booster pumping station at 16 to 18 km to enhance the conveyance capacity of onshore pipeline by December 2022. Implementing agency is EIL, New Delhi. We will put the penalty clause in EIL work order for timely completion of the Project.	➤ Work order has been issued to EIL for Pre-project study. ➤ GEO-technical survey completed by EIL. ➤ Preparation of Tender is in progress. ➤ Draft-Tender will submit -20 th April 22. ➤ In parallel land purchase procedure is in progress.	@10 Crore

4	➤ To install 5 MT/hrs rotary/peddle sludge dryer looking to the actual generation of @ 50-60 MT per day and to take care of future requirements by December-2022. Implementing agency is EIL, New Delhi. We will put the penalty clause in EIL work order for timely completion of the Project. This dryer will dry the sludge moisture from 70% to 10%, this will help in TSS removal efficiency.	➤ Work order has been issued to EIL for Pre-project study. ➤ EIL will submit proposal to NCT-April 22 end. ➤ Interaction with vendors is being done for Solar based sludge dryer system.	@90 Crore
5	➤ To hire the reputed party to do the detail treatability study for COD, NH3-N and TSS stage-wise. Accordingly, stage-wise modification shall be done like additional aerators, specialize bio cultures, tertiary treatment etc. treatability study by January 2022 and augmentation based on study report by July 2022.	➤ Adequacy report from GCPC has been received. (Adequacy report is already uploaded on XGN 000.) ➤ Efficacy report by GCPB is in progress and will be completed by June-22.	

(vii) Status of Common Infrastructures to be set up by Ankleshwar Waste Management Association (AWMA), An SPV promoted by Ankleshwar Industries Association (AIA)

Sr. No.	Status as on date	Project Cost (Rs.)
1	Name of Project	101 Crore
2	Establishment of 10 MLD Common Effluent Treatment Plant for treatment of effluent generated from small scale industries of Ankleshwar Industrial Estate.	13 Crore

- As shown above, the estimated cost for upgradation of existing environmental infrastructure/new common environmental infrastructures is @ Rs. 334 Crore.
- (viii) Effective control has been exercised on the working of the errant industrial undertaking and continuous monitoring of their discharges has resulted in bringing down the water pollution level in various industrial clusters. This aspect has not been brought to the notice of Tribunal while hearing took place.
- (ix) It would be unfair to levy compensation based on the classification of the industrial undertakings done by the industrial investment department. The classification as to large scale, medium scale and small scale has been done based on the investment in fixed assets by respective units. These criteria are not just, fair and proper for imposing penalty on any unit. The penalty of compensation should be associated with the scale of pollution done by respective unit. This can be ascertained by the quantity and quality of the output of the pollutant by respective unit. It may happen that the large scale unit may be releasing much smaller quantity and better quality effluent compared to small scale unit. The quantity and quality of effluent released by any unit will depend on the type of the product, Environment Management System (EMS), quantity of the machineries and the technology adopted by them. While imposing penalty or compensation, these criteria should be taken into consideration. Otherwise it is likely to cause great injustice to many units and several units who are real violators of law would be punished with the very minimum compensation amount.
- (x) Air pollution is not result of the industrial activities only. In any industrial cluster, air pollution is caused by many factors namely i) the industries operating in that area ii) construction activities and

the amount of dust in that area that is quality of soil and iii) vehicular traffic operating in that area etc.

- (xi) It is argued that the contribution to air pollution by vehicles operating in the area is on account of the industrial growth in that area. This is not necessarily true in applicant's case, the stretch of 10 km of busiest highway joining Northern India to Mumbai is passing through the industrial area. As is well known, trucks and trailers operating on highway are causing pollution by way of unburnt fuel as the engine maintenance and use of appropriate fuel and lubricants is not at all priority for them. Therefore, emission liberated by them is a major cause for the air pollution in area. Some weightage must be given before taking any punitive action on any industrial undertaking or any industrial cluster.
- (xii) Method of collecting samples for 2 to 3 days twice in a year is not proper. It is necessary that instrumentation be installed in all industrial area for continuous monitoring of the data. This only can give true and correct picture of the environment in any particular industrial area.
- (xiii) Moreover, appointment of third-party laboratories for processing and third party agencies to collect samples lead to violation of norms for timing and preservation of samples due to distance from the place of collection and place of analysis.
- (xiv) It is learnt that results of CEPI 2018 are based on only one sample. As per procedure laid down, two samples, one pre-monsoon and second post-monsoon, are required to be collected. Therefore, CEPI 2018 is not reflecting true picture.
- (xv) There is no provision in Water Act, 1974 about appeal, review or revisions of the directions issued under provisions of Section 18(1)

of Water Act, 1974 by any person other than State Government or SPCB.

- (xvi) There is no provision for reevaluation of the results of the sample collected by CPCB for arriving at CEPI.

87. Components A to D are also deprecated and with regard to the particular industrial area of applicant, it is said that

- “a. Our Industrial Estate has more than 16 km² area of which 4.5 m² is used as residential colony and commercial area. It is most important to note that almost all the owners and executives of the industrial undertakings of this area are residing there. There is no bad effect on health of 50,000 people (comprising of families of the owners, executives and other employees of the industrial area) residing in this area. 2 colleges and 12 schools are operating in this area.*
- b. When GIDC industrial estate was announced in year 1975, there were hardly few thousand trees. Now there are more than 4,50,000 fully grown large trees which are providing green cover.*
- c. Massive efforts have been made by each member operating in Ankleshwar Industrial Area for bringing water effluents under control and as a result input to CETP is brought down to acceptable levels.*
- d. Moreover Ankleshwar Industrial Cluster (GIDC Ankleshwar, Panoli and Jhagadia) has laid down treated effluent conveyance pipe line for discharge into deep sea. This is first of its kind in this country. The salient features of deep sea disposal line is as below:*
- On-Shore 43.6 km, 800 mm, GRP Pipeline at 1 to 3 m depth.*
 - Off-Shore 9.37 km, 750 mm, Carbon Steel Pipeline into deep sea at 2 m depth.*
 - Diffuser 45 m long, 650 mm, having 8 pores of 200 mm.*
 - Depth of diffuser point located is 11 m below Mean Sea Level (MSL).*

The impact on marine ecology due to discharge of treated effluent into deep sea has been studied by three nationally reputed institutions namely CSMCRI, NEERI and NIO. They have concluded that there is no impact on marine ecology and the dilution available is more than that specified in the MoEF&CC notification regarding Deep Sea Discharge Norms for CETPs dated 01.01.2016.

- e. Moreover, in the Ankleshwar Estate, the concept of common boiler is already in place which is working very efficiently.*
- f. There are several privately operated common environmental infrastructures like common incinerator/common spray dryer and TSDF for disposal of hazardous waste. Such infrastructures are contributing significant air pollution. They are processing*

hazardous waste received from other industrial areas like Jhagadia, Dahej, Panoli, Surat, Vadodara, etc. in large quantity apart from Ankleshwar. This is major contributor to CEPI air index.

- g. In Ankleshwar Industrial Estate, there are common environmental infrastructures like CETP, Secured Landfill site, Common Spray Dryer facility, Common MEE and Final Effluent Treatment Plant (FETP) which are installed with art of technology. All these Common Environmental Infrastructures facilities are granted CC&A by GPCB based on their adequacy only. As per the Directions of the Hon'ble High Court, Schedule-I Environmental Auditors approved by GPCB are conducting Environment Audit of these facilities periodically and submitting audit reports to GPCB which also certifies that the facilities are adequate. In our case, the common environmental infrastructures, the score given for Component-D as 15 which is not justifiable.*
- h. Particularly for Ankleshwar Industrial area, most of the industrial undertakings are using natural gas as a fuel for their boilers/thermo packs, etc. which have very low air pollution potential. However on account of vehicular traffic, it is termed as CPA."*

88. Applicant has further said that

- (i) Across 2019-2020, GPCB carried out the study in co-ordination with the concerned Regional Office, GPCB, within time. GPCB in turn submitted its finding of the post monsoon 2019 study to CPCB Delhi vide its letter dated 16.01.2021.
- (ii) MoEF&CC has reviewed CEPI scores - 2018 of 100 PIAs in light of provisions of CEPI version 2016. Out of 100 PIAs, CEPI scores of 54 PIAs contained. "Some deficiencies and are not in agreement with CEPI version 2016". MoEF&CC requested CPCB to revisit CEPI scores of 54 PIAs vide its letter dated 30th June, 2020.
- (iii) Due to deficiencies in the current CEPI Protocol, MoEF&CC has constituted a Committee for revisiting CEPI Protocol and categorization of industries vide letter No.Q-16017/38/2018-CPA dated 17.09.2020 and Expert Committee is examining the issue.
- (iv) As required GPCB carried out post monsoon of 2019 study of PIAs in Gujarat which clearly shows drastic improvement in various industrial estates which has submitted to CPCB vide letter dated.

16.01.2021. This was possible as all the estates have initiated lot of improvement projects.

- (v) It is important to note that CEPI score for our estate has improved considerably. Following table highlights this aspect.

Year	CEPI
2009	88.50
2010	85.75
2013	80.93
2016	68.00
2018	80.21
2019	55.07

- (vi) It is further submitted that considerable improvement is visible in past two years and situation of pollution is brought under strict control.
- (vii) Moreover, GPCB and applicant association have laid down a road map for improvement of environment in Ankleshwar Industrial Area as under:

- a) Earlier Material of Construction (MOC) of underground effluent conveyance network was ceramic/cement concrete which is almost demolished and now, new effluent conveyance system with good quality MOC is laid and it is also proposed to upgrade the same for safe conveyance of primary treated effluent up to CETP.
- b) Study of CETP by NEERI and up-gradation of CETP is under progress.
- c) Augmentation of capacity of existing final effluent conveyance pipeline. Exploring possibility for laying new pipeline parallel to existing pipeline up to the Deep Sea.
- d) Following order dated 22.02.2017 of Supreme Court, applicant association has played very proactive role in persuading all concerned industrial undertakings operating in Ankleshwar

Industrial Area to set up Primary Effluent Treatment Plants. Also, initiative is taken to set up another CETP of 10 MLD by Ankleshwar Waste Management Association (An SPV promoted by applicant) in collaboration of Notified Area Authority. EC from SEIAA and Consent to Establish from GPCB are already granted to new CETP.

- e) Applicant has on its own volition and as a responsible association, proactively taken up project of setting up “Waste Exchange Cum Productivity Center” under auspices of AWML (An SPV promoted by AIA) for Implementation of Extended Producer’s Responsibility Principle. Land measuring 46,000 m² has already been acquired from GIDC.
- f) In first phase, the projects selected are:
 - Pre-processing facility for treatment of High CV waste along with Captive Decontamination facility for which Application for CTE is applied.
 - A common Boiler facility of capacity of 60 MT/Hr. steam generation is being set-up within the Estate.

89. **OA II Pleadings:** This application has been filed under Section 18(1) read with Sections 14, 15 and 17 of NGT Act, 2010, by South Gujarat Textile Association Processors through its CEO, Mr. Sunil Shah, raising grievance against publication of CEPI score of 2018. It is said that applicant is an association of industries located in Surat and is part of largest industrial area in District South Gujarat. There are 441 members of applicant’s association. Applicant association is also member of GCCI. The members of the association are victims of haphazard application of the policy to be implemented by Gujarat Pollution Control Board (hereinafter referred to as ‘**GPCB**’) and CPCB in publication of CEPI score

2018. Applicant association has already filed IA 93/2022 and 87/2020 in **OA 1038/2018** i.e. OA I wherein seeking impleadment, it has been prayed that CEPI score should be revisited in respect of regions where the members of GCCI are functioning. OA II, however, has been filed in order to bring on record certain additional information.

90. Surat is located in Southern Gujarat; at the mouth of Tapti River and used to be a large seaport. It is now a commercial and economic center in Gujarat. It has well-established diamond and textile industries, and is a shopping centre for apparels and accessories. There are industrial areas situated at Surat viz., Pandesara, Sachin, etc. Applicant is representing members located in these areas. Industries are growing at common centres/estates/parks as the resources, manpower, transportation and marketing are feasible. Generally, medium and small-scale industries are developed at such areas and form industrial clusters. So, such industrial areas have to be assessed for improving quality of environment. With this objective, CPCB developed CEPI to find out an index value to characterize quality of environment. In 2009, 88 prominent industrial clusters were identified in consultation with MoEF&CC for CEPI analysis. To assess environmental quality in the PIAs, monitoring is carried out by CPCB and CEPI is assessed based on recorded monitoring data. Evaluated CEPI reflects environmental quality of the industrial areas and serves as a yardstick to assess the progress achieved in the implementation of action plans. So far, five rounds of monitoring have been undertaken by CPCB (2009, 2011, 2013, 2016 and 2018) based on which CEPI assessment was done. CPCB has revised CEPI concept in concurrence with MoEF&CC and subsequently issued directions on 26.04.2016 to all SPCBs/PCCs having CPA for adoption of the revised CEPI concept.

91. It was also directed to undertake environmental quality monitoring in the CPAs falling under their jurisdiction through a third party agency (laboratory) recognized under EP Act, 1986. Environmental quality data including CEPI score of the industrial area, as per revised concept shall be placed in public domain by the concerned SPCBs/PCCs through website and to be published by the State Government periodically.

92. Referring to the order dated 14.11.2019 in OA I, applicant in OA II has said that status report did not refer to compliance of directions with respect to coercive actions, including but not limited to prohibition of further activity and recovery of compensation. Accordingly, the trend with respect to pollution levels was only worsening and that CPCB had already compiled the data, based on which further coercive measures/steps ought to be taken against the industries. On 21.12.2019, GPCB issued a letter to the applicant mentioning *inter-alia* that, considering CPCB's CEPI guidelines, there was a need to carry out post-monsoon monitoring of CPAs and SPAs in State of Gujarat, considering order dated 14.11.2019. GPCB stated that there were six CPAs and one SPA in Gujarat. It was further stated that a meeting had been held with stakeholders, including industry representatives and Office Bearers of the Chamber to determine the modalities for the monitoring.

93. Applicant herein has pointed out to GPCB that post-monsoon monitoring was done in 2019. Applicant has upgraded environmental infrastructure with a total investment to the tune of Rs. 185.7 Crores. Applicant has also undertaken the monitoring with the help of NABL laboratories and requested GPCB to participate in the said monitoring to point out that the monitoring that was carried by the GPCB is erroneous as it is being done at the same location; complete results of the same are awaited and the same will be relied upon at the time of hearing. Across

2019-2020, GPCB carried out the study in co-ordination with the concerned Regional Office, GPCB. GPCB submitted its finding of the post-monsoon 2019 study to CPCB Delhi vide letter dated. 16.01.2021 which is annexure A-1 to paper book.

94. Member Industries situated at Pandesara and Sachin have entered into agreement with Surat Municipal Corporation to use treated sewage for their industrial processes. GPCB while monitoring results of member industries is taking samples of the said discharge which is inclusive of the treated sewage of Municipal Corporation. Most of the member industries are chemical industries/dye industries. The parameters pointed out by GPCB in the sampling reports include certain aspects which are not a part of the manufacturing processes of the member industries. Calculation of CEPI scores itself is erroneous and hence needs a relook of the entire process. Aforesaid submissions are based on the sampling done by CPCB at Bhedwad Khadi, Gab-heni Khadi, Jiav Lake, Barmoli Pond. These points have three CETP discharges and CPCB has considered Ammoniacal Nitrogen, Total Phosphorous and BOD for calculation of scores. CPCB has further arrived at the CEPI score for water based on samples from Jiav Lake and Barmoli Pond which are nowhere connected with the discharge from the CETPs. In fact, these ponds are used by the locals and cattle for daily use. These ponds receive more sewage from the sewage treatment plants rather than industrial discharges. Thus, the entire selection of the parameters is wrong. CPCB has further reported higher values of TDS and TSS in the CEPI calculation for Surat. The part from where the said values are recorded is closer to the sea and there is intrusion of the sea water, which causes high TDS and TS. Thus, the calculation of CEPI score is obviously on the higher side and does not indicate that the parameter is

industry specific. It also does not indicate that the ground water pollution is due to the industrial wastewater.

95. Applicant has summarized its submissions as under:

“19. In nutshell, it can be summarized that:

- The procedural requirement as per directions of CPCB issued u/s 18(1) b of the Water Act and the Air Act dated 26th April 2016 is not followed and not brought to the notice of Hon’ble NGT.*
- The bases for calculation of CEPI for identified parameters are changed.*
- The draft report of CEPI Score 2018 appeared in the Asian Age before discussing/finalizing with the stakeholders as well as nodal ministry i.e., MoEF&CC.*
- It may be concluded that various orders were passed based on the draft CEPI Score 2018 only.”*

96. Referring to the order dated 06.08.2019 passed in **OA 681/2018, News item published in “The Times of India” Authored by Shri Vishwa Mohan titled “NCAP with multiple timelines to clean air in 102 cities to be released around August 15”**, it is said that Tribunal directed authorities to prepare an action plan for cities pertaining to air pollution.

97. Action plan was to contain components like identification of source and its apportionment considering sectors like vehicular pollution, industrial pollution, dust pollution, construction activities, garbage burning, agricultural pollution including pollution caused by crop burning, residential and indoor pollution. Industries have only been targeted and no study on the aforementioned aspects have been carried out. It is thus essential that a comprehensive study including the aforementioned factors may be carried out by the authorities and fresh evaluation be done.

98. It is said that there is error in calculation of CEPI score for Surat and it should have been 63 instead of 73.4. In order to supplement its submissions, applicant has filed annexure A-3 which is presentation of

CEPI score for Surat region (GIDC). Sachin Infra Environment Limited and Pandesara Infrastructure Limited, industrial proponents' members, pursuant to an advertisement published in GCCI inviting presentation from various regions in Gujarat on view point regarding CEPI score before Tribunal. Annexure-3 is a presentation submitted by Globe Enviro Care Limited, Sachin Infra Environment Limited and Pandesara Infrastructure Limited to President GCCI vide letter dated 16.04.2022.

99. OA has been filed to challenge CEPI score since GPCB is now proceeding to take action against the members of applicant association based on the said CEPI score causing loss to the industries run by such members. It is said that GPCB has also not given details of the parameters considered by them in calculating CEPI scores. GPCB addressed a letter to the Chairman, CPCB on 20.08.2018. It was pointed out that a meeting was held on 13.08.2018 at the CPCB, Delhi Office, regarding CEPI score and demarcation of CPAs. Vide said letter CPCB was informed about the representation made by GPCB during the meeting, stating that the CPCB's approach was erroneous and unreasonable. Further, it was reiterated that these objections had also been communicated to the Member Secretary, CPCB *vide* letter dated 20.08.2018. *Vide* letter dated 19.12.2018 GPCB had communicated correct parameters for CEPI calculation to CPCB. It was reiterated that both representations of GPCB had not been taken into consideration while arriving at CEPI scores for industrial clusters in Gujarat. Consequently, a request was made to Chairman, CPCB, to personally investigate the matter and make revision of CEPI scores in PIAs of Gujarat, in consultation with GPCB. CPCB and MoEF&CC have observed that there are inconsistencies in the evaluation of CEPI scores and hence decided to constitute a committee for further study of the methods to evaluate CEPI scores. The said Committee has been

constituted vide letter dated 25.09.2020. The Committee is yet to tender its report.

100. In the backdrop of the above facts, applicant has prayed as under:

- a) Pass an order constituting an independent high level expert committee to calculate the CEPI score based on the present circumstances on the ground level;*
- b) In view of the discrepancy in the CEPI score of 2018. the results therefore may be kept in abeyance and direct the concerned authorities to undertake a fresh survey in conformity with the MoEF's revised CEPI protocol which is to be finalized by the Expert Committee constituted by the MoEF vide letter dated 25.09.2020;*
- c) Pending hearing and final disposal of this Application the Respondent Nos.2 & 3 may be restrained from taking any coercive action against the members of the Applicant;*
- d) Pass such further and other reliefs as the nature and circumstances of the case may require."*

101. **ISSUES:** The entire issues in these matters have arisen after CPCB prepared Comprehensive Environmental Assessment of Industrial Clusters in 2009-2010 and took action for resolving environmental issues based on the degree of industrial pollution in such clusters. In fact, we do not find any objection on the part of industries, raised in 2009-2010, in the form of protest or objection in preparation of CEPI score and thereafter, preparing action plan in respect to the most polluted areas, or at any other point of time prior to the orders passed by this Tribunal taking *suo-moto* action in this matter. The exercise started in December 2009, revised in 2016 and in the meantime, revised CEPI scores were determined but at no point of time, we see any iota of protest/objection on the part of industries, individually or collectively, before any authority. It is only in 2018, when this Tribunal took note of CEPI score, identification of CPAs and SPAs, still no effective Regulatory action on the part of Statutory Regulators under the provisions of environmental laws, to awake these Regulator's from slumber, reminding them to take action as required in law, orders were

passed, only thereafter, the industries in general, through the associations mainly, have come forward to raise their voices against such assessment of industrial clusters on the basis of CEPI score.

102. The objections broadly raised have already been noticed above. The learned counsel for the parties particularly, industrial associations have raised their arguments against the method of assessment of CEPI score and have made their suggestions which are reflected in their objections. Considering the submissions advanced, we find that the following issues have arisen for adjudication, to answer the issue of CEPI score, taken note by Tribunal *suo-moto*:

- I. What is CEPI score and whether it was necessary for CPCB to have it and prepare action plan in respect of more infected/polluted industrial clusters?
- II. What is the objective of preparation of CEPI score and whether any Statutory procedure has been prescribed for such assessment/determination?
- III. Whether mere preparation of CEPI score causes any prejudice to the industries, individually or collectively, working in different industrial clusters including those which are classified as CPAs or SPAs or OPAs?
- IV. Whether method of assessment of CEPI score adopted by CPCB is illegal or arbitrary to justify setting aside of CEPI scores determined from time to time and/or any modification or additional factor need be taken into consideration for such assessment/determination of CEPI score?

103. **ARGUMENTS:** Since OA I was registered on *suo-moto* action, obviously no one has appeared in support of OA. Proceedings were initiated based on CEPI score determined by CPCB and inaction on the

part of Statutory Regulators in taking remedial action against polluters/violators, hence not much factual or legal material was required for the said proceedings. However, when the remedial action has been taken by the Regulators to some extent against polluting industries, various IAs have been filed and OA II is also result of such action. The parties who have filed these IAs are represented through Senior Counsel/Counsel assisted by various capable Advocates who have made their submissions with ability. Unfortunately, what has been stressed by the Learned Counsels is that the action has not been taken by Statutory Regulators in accordance with law and either there is violation of principle of natural justice in passing closure orders or compensation is being demanded exorbitantly without determining the same on judicially recognized valid principles or that closure orders have been issued in an arbitrary manner. However, neither details of such orders or action have been given nor such orders are challenged by availing remedy of Statutory Appeal which are available under Air Act, 1981, Water Act, 1974 and also NGT Act, 2010. Further, an attempt has been made to claim that CEPI score has been assessed without taking into confidence the concerned industries or associations, therefore, such determination is in violation of principle of natural justice and that relevant considerations have not been taken into account or that some aspects are not valid. When we questioned as to how mere determination of CEPI score has caused any detriment to any individual industry, no reply could be given. Further, nobody has disputed that by mere determination of CEPI score of identified industrial clusters/areas, no adverse action has been taken against any existing or running industrial unit. Even it could not be pointed out that the orders of this Tribunal passed on various dates give any blanket direction for taking action against industries only on the basis of CEPI score even if the industry in particular, is not causing any pollution or is functioning by

observing the prescribed environmental norms. Learned Senior Counsels at this stage said that objections/points raised by them in various IAs may be taken into consideration. We shall refer to these objections/issues raised in I.A.s while discussing the matter on merit, hereunder.

104. **Consideration of Issues on Merits:** All these issues are overlapping and can be considered collectively.

105. As obvious, the issues have arisen on account of high degree of pollution found/noticed, in some areas. Further, CEPI score for the time being is confined to pollution caused by industrial operations and particularly, in the area where group of industries are located which areas are called as “industrial clusters”.

106. To understand the issues, we should begin from the beginning. First aspect is, What is pollution and what are the kinds of pollution?

107. Pollution drew attention of Indian courts to take care Fundamental Right of clean environment found enshrined under Article 21 of the Constitution.

108. In ***Rural Litigation and Entitlement Kendra & Others vs. State of U.P. & Others, AIR1985SC652***, issue of indiscriminate limestone quarrying causing ecological disturbance was brought to the notice of Supreme Court. Issues involving environment and development opposing each other were sought to be canvassed. Court preferred primacy to environment through the concept of ‘sustainable development’ and further said that whosoever has caused harm to environment, has absolute liability, not only to compensate the victim of pollution, but also to bear cost for restoration of environmental degradation.

109. In ***Rural Litigation and Entitlement (supra)***, Court said that over thousands of years, man had been successful in exploiting ecological system for his sustenance but with the growth of population, demand for land has increased and forest growth is being cut down. Man has started encroaching upon nature and its assets. Scientific developments have made it possible and convenient for man to approach the places which were hitherto beyond his ken. Consequences of such interference with ecology and environment had now come to be realised. It is necessary that the Himalayas, and Forest growth on mountain range should be left uninterfered with so that there may be sufficient quantity of rain. With regard to **top soil**, Court said that “*the **top soil can be preserved without being eroded** and the natural setting of the area may remain intact tapping of (natural) resources have to be done with requisite attention and care, so that ecology and environment may not be affected in any serious way, (and) there may not be any depletion of water resources and long term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are **not intended to be exhausted in one generation**”.*

110. Court emphasised that preservation of environment and keeping ecological balance unaffected is a task which not only governments but also every citizen must undertake. It is a social obligation and every citizen must remind to himself that it is his fundamental duty as enshrined under Article 51A(g) of the Constitution.

111. In ***Sachidananda Pandey vs. State of West Bengal & Others, AIR1987SC1109***, 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.

112. In ***State of Bihar vs. Murad Ali Khan, Farukh Salauddin & Others*** AIR1989SC1, dealing with an appeal, concerning protection of wildlife in Kundurugutu Range Forest in Bihar, Court referred to a decree issued by Emperor Ashoka in third century BC, which said “*Twenty six years after my coronation, I declared that following animals were not to be killed; parrots, mynas, the arunas, ruddy- geese, wild geese, the nandimukha, cranes, bats, queen ants, terrapins, boneless fish, rhinoceroses... and all quadrupeds which are not useful or edible....forests must not be burned.*”

113. Having referred to the abovesaid, Court further observed that environmentalist conception of the ecological balance in nature is based on fundamental concept of nature as a series of complex biotic communities of which a man is an interdependent part. It should not be given to a part to trespass and diminish the whole. Larger single factor in depletion of wealth of animal life in nature has been civilized man operating directly through excessive commercial hunting or, more disastrously, or indirectly through invading or destroying natural habitats.

114. In ***Virendra Gaur vs. State of Haryana, (1995)2SCC577***, Court said 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.”*

115. 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.”

116. 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.**

117. In ***T.N. Godavarman Thirumulpad vs. Union of India & Others, (2006)1SCC1***, (order dated 23.09.2005), Court in para 78 of the judgment 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.”*

118. **Pollution** is the process of making land, air and water or other parts of environment, dirty and not safe or suitable to use. This can be done through introduction of a contaminant into a natural environment, but the contaminant does not mean to be tangible. In other words, pollution is introduction of substance (or energy) that causes adverse changes in environment and living entities. Pollution need not always be caused by chemical substances such as particulates (like smoke and dust) but forms of energy such as sound, heat or light can also cause pollution. Pollution, therefore, occurs when an amount of any substance or any form of energy is put into the environment at a rate faster than it can disperse or safely stored.

119. The term ‘pollution’ can refer to both artificial and natural materials that are created, consumed and discarded in an unsustainable manner. The components/constraints, which cause pollution are called ‘pollutants’. Things as simple as light, sound and temperature can be considered pollutant when introduced artificially into environment. Pollution even in miniscule amount impacts ecological balance. Pollutant can make their way up the food chain and eventually find way inside the human body.

120. There are 3 major kinds of pollution i.e., air pollution, water pollution and land pollution. Now a fourth one has also been added which is of equal importance and i.e., noise pollution.

121. **Air pollution** is the main cause of climate change. Human activities such as burning fossil fuel and mass deforestation lead to increase of

carbon dioxide in atmosphere which traps heat inside the atmosphere through a process called Green House. In fact, this impacts climate patterns and sea levels around the globe. To be more precise, we can say that the air we breathe has a very exact chemical composition. A substantial part thereof i.e., about 99% is made up of Nitrogen, Oxygen, Water vapor and inert gases. Air pollution occurs when things that are not normally there, are added to the air. A common type of air pollution happens when people release particles into air from burning fuels, mainly organic fuel. Another common type of air pollution is addition of dangerous gases like sulfur dioxide, carbon monoxide, nitrogen oxides and chemical vapors. This addition can be by human activities and there can be further chemical reaction once the above gases are introduced or added in the atmosphere. Air pollution also comes from construction activities etc. Air pollution refers to the release of the contaminants (chemicals), harmful gases, particulates, biological molecules etc. into atmosphere. These contaminants are quite detrimental and sometimes pose serious health issues also for the living creatures including mankind. We may say that generally adverse effect due to air pollution travels in the realm of increased risk of respiratory and cardiovascular problems; increased risk of skin diseases; increased risk of cancer; global warming; acid rain; Ozone depletion and hazards to wildlife etc.

122. **Water pollution;** release of substances into sub-surface ground water or into lakes, streams, rivers, estuaries at ocean to the point where the substances interfere with beneficial use of the water or with the natural functioning of ecosystems causes water pollution. In addition to release of substances, such as chemicals, trash, or microorganisms, water pollution may also include release of energy, in the form of radioactivity or heat, into water bodies. Water bodies can be polluted by a wide variety of

substances, including pathogenic microorganisms, putrescible organic waste, fertilizers and plant nutrients, toxic chemicals, sediments, heat, petroleum (oil) and radioactive substances. In other words, water pollution happens when chemicals or dangerous foreign substances are introduced to water including chemicals, sewage, pesticides and fertilizers from agricultural runoff, or metals like lead or mercury. As per recent study, by Environmental Protection Agency (EPA), 44% of assessed stream miles, 64% of lakes and 30% of bay and estuarine areas are not clean enough for fishing and swimming. In simple words, water pollution is said to occur when toxic pollutants and particulate metal are introduced into water bodies such as lakes, rivers, sea etc. These contaminants are generally introduced by human activities like improper sewage treatment and oil spills etc. However, even natural processes such as eutrophication can cause water pollution. Such significant causes of water pollution include dumping solid wastes in water bodies, disposing untreated industrial sewage into water bodies, human and animal wastes and agricultural runoff containing pesticides and fertilizers. Effects of water pollution are very pronounced in our environment. Furthermore, toxic chemicals can bio-accumulate in living beings, and these chemicals can travel their way up the food chain, ultimately reaching humans.

123. **Soil pollution/Land pollution** refers to the degradation of land due to the presence of chemicals or other man-made substances in the soil. These can drastically impact life, directly or indirectly. The xenobiotic substances alter the natural composition of soil and affect it negatively. Some of the common causes of soil pollution are improper industrial waste disposal, oil spills, acid rain which is caused by air pollution, mining activities, intensive farming, agrochemicals (like fertilizers and pesticides) and industrial accidents. Effect of soil pollution are multi-dimensional.

One of the most severe kinds of soil pollution is caused by radioactive waste. Other effects of soil pollution include loss of soil nutrients, which renders the soil unfit for agriculture, impacts the natural *flora and fauna* residing in the soil, degrades vegetation due to the increase of salinity of the soil and toxic dust (such as silica dust), can cause respiratory problems or even lung cancer. One of the commonest causes of soil/land pollution is household garbage and industrial waste.

124. Deposition of solid and waste material on land or underground in a manner that can contaminate soil and groundwater threaten public health and cause unsightly conditions and nuisances. Such waste material that causes land pollution are broadly classified as Municipal Solid Waste (MSW), Construction and Demolition Waste (C&D Waste) or debris, hazardous waste, bio medical waste, and e-waste. MSW includes nonhazardous garbage, rubbish, and trash from homes, institutions (for example schools), commercial establishments, and industrial facilities. Garbage contains moist and decomposable (bio-degradable) food wastes (for example meat and vegetable scraps); rubbish comprises mostly dry materials such as paper, glass, textiles, and plastic objects and trash includes bulky waste materials and objects that are not collected routinely for disposal (for example discarded mattresses, appliances, pieces of furniture etc.); C&D waste (or debris) includes wood and metal objects, wallboard, concrete rubble, asphalt, and other inert materials produced when structures are built, renovated, or demolished. Hazardous wastes include harmful and dangerous substances generated primarily as liquids but also as solids, sludges or gases by various chemical manufacturing companies, petroleum refineries, paper mills, smelters, machine shops, dry cleaners, automobile repair shops and many other industries or commercial facilities. Bio medical waste comes from medical and health

institutions and e-waste has its genesis in equipments like computers, mobiles, laptops etc., and e-vehicles, solar power generation units etc.

125. Permeability of soil formations underlying a waste disposal site is of great importance regarding land pollution. The greater is the permeability, the greater is the risks from land pollution. Soil consists of a mixture of unconsolidated mineral and rock fragments (gravel, sand, silt, and clay) formed from natural weathering processes. Gravel and sand formations are porous and permeable, allowing the free flow of water through the pores or spaces between the particles. Silt is much less permeable than sand or gravel, because of its small particle and pore sizes, while clay is virtually impermeable to the flow of water because of its plate like shape and molecular forces. Earlier solid waste used to be generally collected and placed on the top of the ground in uncontrolled open dumps. Besides other kind of intoxication, nuisances, unpleasant odors etc. dumps can contaminate groundwater as well as pollute nearby streams and lakes. A highly contaminated liquid called leachate is generated from decomposition of garbage and precipitation that infiltrates and percolates downward through the volume of waste material. When leachate reaches and mixes with ground water or seeps into nearby bodies of surface water, public health and environmental quality are jeopardized.

126. **Noise pollution** is generally man made. It refers to excessive amount of noise in the surrounding which disrupts natural balance. Generally, sound over 85 decibels is considered detriment. Also, duration an individual is exposed plays an impact on health of individual. Noise pollution has several contributors, which include industry-oriented noises such as heavy machines, mills, factories, etc., transportation noise from vehicles, aeroplanes, etc., construction noise, noise from social events and household noise. Noise pollution cannot be seen or smell by human being

but it affects environment. To the mankind, noise pollution affects health causing stressed related illness, high blood pressure, speech interference, hearing loss etc.

127. In India, regulation of various kinds of pollution started in phases in as much as in 1974, Water pollution was sought to be checked by enforcement of Water Act, 1974. Air pollution was sought to be regulated and monitored by enforcement of Air Act, 1981 and then EP Act, 1986 was enacted to provide a comprehensive scope for regulation of various kinds of environmental activities and pollution. Statutory Regulators were constituted initially under Water Act, 1974 mainly SPCBs and CPCB. After enactment of Air Act, 1981, the Regulatory powers were conferred upon the same Regulators under Air Act, 1981. Under EP Act, 1986, the already constituted Regulators continued to enjoy Regulatory powers but provisions were made empowering Central or State Governments to constitute other authorities for regulation and monitoring of environmental complications and issues.

128. **Status of environment in ancient India:** The relationship of mankind and environment was well-understood, recognized and propagated in ancient India by our fore-fathers. Projection and cleaning up of environment were the essence of *Vedic* culture in Hindu philosophy. Forest, trees, and wildlife protection held a place of special respect. Cutting of tress was prohibited and punishment was prescribed for such acts.

129. Precious Indian heritage in the form of *Vedas* is now universally accepted. *Vedas* have knowledge of all types and Fundamental *Vedic* views revolve around the concept of nature and life. *Vedas* contain several references on environment conservation, ecological balance, and weather

cycle. Vedas persists on safe-guarding the habitation, proper afforestation, and non-pollution. In fact, man is forbidden from exploiting nature. He is sought to live in harmony with nature and recognize that divinity prevails in all elements including plants and animals. Isha Upnishad mantra 1 said,

“ईशावास्यमिदं सर्वं यत्किञ्च जगत्यां जगत् ।
तेन त्यक्तेन भुञ्जीथा मा गृधः कस्य स्विद्धनम् ॥ १ ॥”

(God pervaded the entire universe. Enjoy all of nature as gifts from God, but with a spirit of renunciation! Do not be attached to them. Do not covet the wealth of others. Control greed.) (Isha Upnishad Mantra 1)

130. The above mantra shows the common principle endorsed therein is, living in harmony with nature and that was an integral part of Indian culture.

131. To give an obligatory kind of force to the above concept, concept of *Dharma* was introduced and various natural elements were identified with different deities. *Rig Veda* says “thousand and hundreds of years if you want to enjoy the fruits and happiness of life, then take up systematic planting of trees.” The term pollution did not exist at that time but they call, at that time, poisoning of environment. In ancient time, the wise man/sages believed that five great elements (space, air, fire, water and earth) constitute the environment and are all derived from “*prakriti*”, the primal energy and our human body is composed of these and related to these five elements and connects each of the elements to one of the five senses. *Rig Veda*, 6:48:17 says, “Do not harm the environment; do not harm the water and the flora; earth is my mother, I am her son; may the waters remain fresh, do not harm the waters”. “Do not cut trees, because they remove pollution.” *Yajur Veda*, 5:43 says, “Do not disturb the sky and do

not pollute the atmosphere". Similar references of worship in nature and reminders for protection and respect thereof, we find in other texts like *Upnishads* etc. *Vishnu Purana* contains the words, "*As the wide-spreading nargodha (Sanskrit for banyan) tree is compressed in a small seed, So, at the time of dissolution, the whole universe is comprehended in Thee as its germ; as the nargodha germinates from the seed, and becomes just a shoot and then rises into loftiness, so the created world proceeds from Thee and expands into magnitude*". *Varaha Purana* says, "*One who plants one peepal tree, one neem tree, ten flowering plants, two pomegranate trees, two orange trees and five mango trees, he does not go to hell.*" Similar hints we find in *Ramayana*, *Mahabharata* and in the great immortal work of Kalidasa. In *Ramayana*, Ravan when faced with calamity, said, "*I have not cut down any fig tree in the month of Vaisakh, why then does this calamity befall me?*" This is a good illustration to demonstrate how Hindus respected trees which constituted a large part of our environment. The work of Kalidasa contains "*The Himalaya is a great Devatatma, a great spiritual presence, stretching from the west to the eastern sea like a measuring rod to gauge the world's greatness*". *Mahabharata* says that basic elements of nature constitute the cosmic being - the mountains his bones, the earth his flesh, the sea his blood, the sky his abdomen, the air his breath and agni (fire) his energy".

132. The emphasis of Indian ancient Hindu scriptures is that human beings cannot separate themselves from natural surroundings and earth has the same relationship with man as the mother with her child. Planting and preservation of trees are made sacred in religious function. Kautilya's *Arthashastra*, an ancient Indian treatise on administration, economic policy, taxation, diplomacy, planning and other dimensions of statecraft etc. provides lot of knowledge about environment and its conservation. It

describes the maintenance of public sanitation and preservation of environment, forest and wildlife. Even in the affairs of the State, the Administration and the Ruler were directed to preserve and promote environmental welfare. In the *Arthashastra*, Kautilya suggests the need to develop *Abhayaranya* or *Abhayavana*, forest and animal sanctuaries, where trees and animals would both reside free from the fear of slaughter. Kautilya also prescribed the post of a forest superintendent and penalties for poaching and causing damage to forests, especially productive ones. *Arthashastra*'s directives on water indicate that it was regarded as a "Collective, Not a Private Commodity" and was considered extremely precious. Fines were also prescribed for several acts that adversely affected water bodies, for obstructing or diverting a water course and for damaging embankments etc.

133. Ancestors of this sub-continent, in ancient time, were the most outspoken defenders of nature's balance. Nature was sacred, to be respected and cared for. This wisdom has continued till recent times also. Dr. Abdul Kalam said, "*Ancient India was a knowledge society that contributed a great deal to civilization. We need to recover the status and become a knowledge power. Spirituality must be integrated with education. We should ignite our dormant inner energy and let it guide our lives. The radiance of such minds embarked on constructive endeavour will bring peace, prosperity, and bliss to the nation*".

134. Unfortunately, with Western concept of development Indian great knowledge and respect to environment lost its position and unmindful development particularly, so called industrial development without respecting nature showed its evil. More particularly, the same was realized during second World War. The power gained by Europeans in Indian sub-continent sought industrial development in terms of economic growth in

most crude manner. But impact of economic growth on environment attracted attention of the world in a few decades after second World War. Different theories were promulgated and propagated, sometimes to give supremacy to developed countries *vis-a-vis* the developing and under-developed countries. An attempt was made to put more blame on developing and under-developed countries on account of economic inferiority. In 1955, an approach by Simon Kuznets called as Environment Kuznets Curve (hereinafter referred to as '**EKC**') was sought to be enforced based on the idea that environmental quality first deteriorates with growth and then improves- that economic growth is both the cause and solution to environmental harm. For this theory, he was awarded Nobel Prize in 1971. The approach was later improved by some other researchers and castigated by some others.

135. 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 authorizing Central

legislature to pass law on the concerned 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.

136. 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.

137. 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.

138. In 1972 in Stockholm Convention, world leaders, showed global concern on depleting environment and endeavored 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.

139. 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 existed, 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. In fact, for regulation and protection of natural assets also some enactments were made i.e., Prevention of Cruelty to Animals Act, 1960, Wildlife Protection Act, 1972, Wild Life (Protection) Act, 1972 and Forest (Conservation) Act, 1980.

140. 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 **MC Mehta vs. Union of India, AIR1992SC382**, directed University Grants Commission to prescribe a course on environment.

141. 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 of violation of any of the above provisions would be liable to prosecution and punishment.

142. 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.

143. The above discussion shows global concern in respect of pollution and a serious attempt to contain it. In India, not only constitutional mandate was made available for protection and preservation of environment but various statutes were also enacted for achieving said proposes. Inclusion of offences under environmental laws in the Schedule shows the concern of the Government to deal the issue of environment with seriousness. Unfortunately, however, the desire result in respect of clean environment is still a mirage. In every aspect, regarding air pollution or water pollution or soil pollution or land pollution, the general condition is really precarious. The highest court of land was engaged in public interest litigation/ *suo-moto* proceedings dealing with the issue of pollution of rivers, air pollution, noise pollution etc. and despite several orders passed, real achievement in degree of pollution is very minimum. In some of the matters, proceedings were transferred by Supreme Court to this Tribunal for further monitoring. It is not that nothing has been done or every authority who has anything to do with preservation, protection and remediation of environment, has not done anything but whatever has been done, is almost negligible.

144. Central Statutory Regulators i.e., CPCB in the process of its discharge of statutory obligation of taking steps for identification of the most polluted areas so that immediate steps be taken for remediation thereat. It appears to have realised that human activities, that are part of the evolution of urbanization and industrial development, have led to

major pollution related issues. These include categorical impact of residential, industrial and other developmental projects such as power plants, mining etc., that affect the environment and human living conditions. Lack of planning and a basic understanding of the ecology affects its balance leading to pollution of water, air, soil and other natural resources.

145. To address the above, CPCB came forward with a lucid cum quantifiable method called CEPI score. The exercise of determination of CEPI score was undertaken and CEPI method was formulated in order to measure, understand and take action on polluters. CEPI bridges perceptive gap between experts, public and Government departments by simplifying complexity of environmental issues. It aims at categorising critically polluted industrial areas based on scientific criteria so as to ascertain various dimensions of pollution. This is a combined framework used to evaluate the impact caused by industrial clusters on the nearby environment as a numerical value. This was made applicable firstly in respect to areas where there is industrial cluster i.e., the area identified for development of industries by providing requisite infrastructure which are called sometimes Economic Zone, Industrial Estate etc.

146. CEPI score, therefore, is nothing but a methodology of quantifying and numerically marking the environmental status of a particular area. In this case, the areas were industrial clusters in the country.

147. Perhaps CPCB was encouraged from a similar exercise undertaken for determination of Environmental Performance Index (hereinafter referred to as '**EPI**') and Environmental Sustainability Index (hereinafter referred to as '**ESI**'). In fact, this kind of exercise of already known globally. Initially, a research work was conducted by Yale University (Yale Center

for Environmental Law and Policy) and Columbia University (Center for International Earth Science Information Network) in collaboration with World Economic Forum and the Joint Research Centre of European Commission. The work published in 1999 and 2005 was in respect of ESI. ESI was developed to evaluate environmental sustainability relative to the paths of other countries.

148. EPI was developed from Pilot EPI first published in 2002 and designed to supplement environmental targets set for a United Nations Millennium Development goals as ESI in partnership with Yale University (Yale Center for Environmental Law and Policy) and Columbia University (Center for International Earth Science Information Network). EPI is a method of quantifying and numerically marking the environmental performance of a State's policy.

149. There are some other indexes also. Global Green Economy Index (hereinafter referred to as '**GGEI**') came for the first time in 2010 and it is defined by four key dimensions; Climate Change, Sector Decarbonization, Markets, and ESG Investment and Environmental Head. GGEI provided an integrated measure of environmental, social and economic dynamics of national economies. GGEI utilizes EPI data for the environmental dimension of the index while also providing a performance assessment of efficiency sectors (for example transport, buildings, energy), investment, green innovation and national leadership around climate change.

150. CEPI score is a methodology evolved by Central Statutory Regulator i.e., CPCB. It is its own innovation in furtherance of precautionary principle and sustainable development for taking care of densely polluted areas where immediate attention is necessary for remediation, rejuvenation, and restoration of environment.

151. CPCB prepared CEPI intending to use it as an early warning tool which is handy to use. It would have helped in categorizing the industrial clusters/areas in terms of priority of planning needs for interventions. To start with, exercise was undertaken in 88 selected industrial clusters/areas and in this exercise, the participants were CPCB, SPCBs/PCCs as also IIT Delhi. The objective was that effective implementation of the remedial action plan will help in pollution abatement and to restore environmental quality of respective industrial clusters. The polluted industrial clusters/areas shall be further explored in order to define the spatial boundaries as well as the extent of ecological damages. The outcome shall be subjected to structured consultation with the stakeholders for determining comparative effectiveness of alternative plans and policies.

152. The document dated December 2009 was published by CPCB under the title "Comprehensive Environmental Assessment of Industrial Clusters". The document said that main objective of the study is to identify polluted industrial clusters/areas in order to take concerted action and to centrally monitor them at the national level to improve the current status of their environmental components such as air and water quality data, ecological damage, and visual environmental conditions.

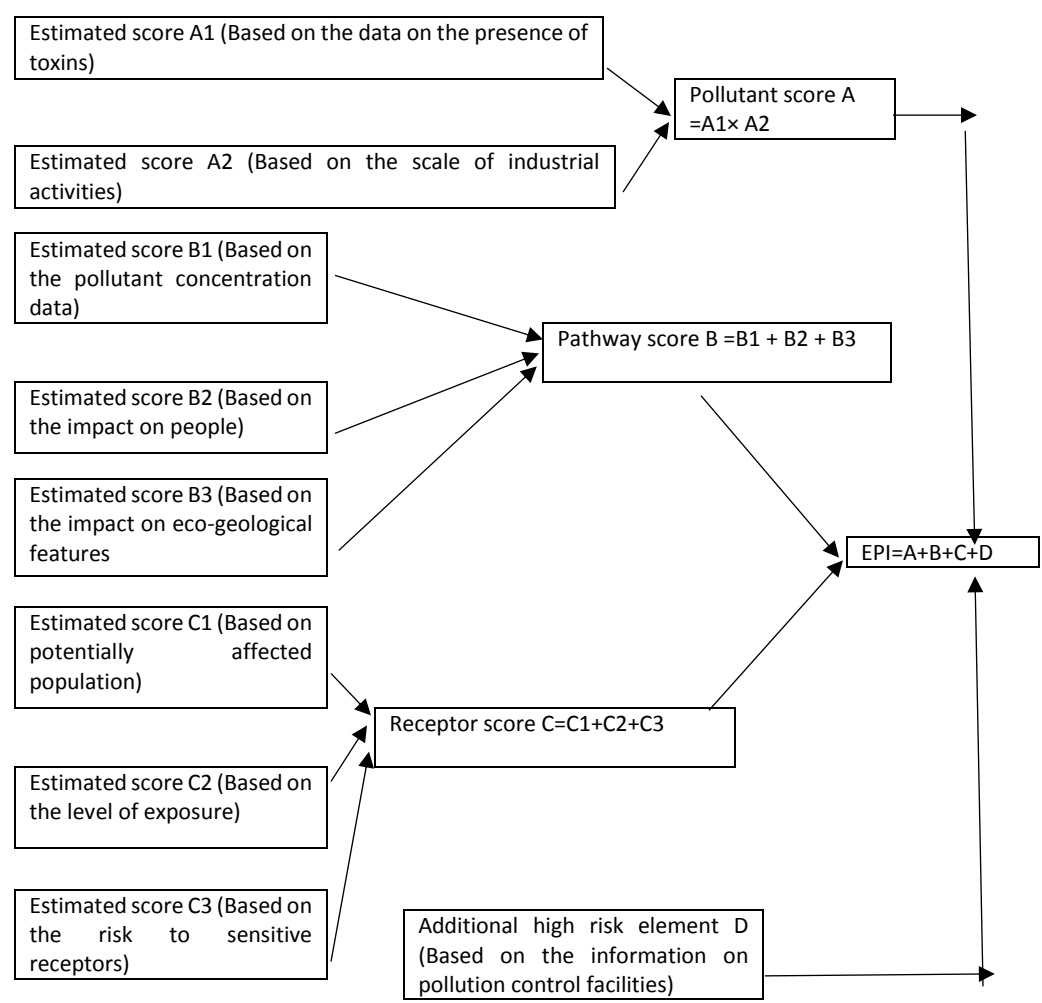
153. We notice at this stage, World Health Organisation, first published report of air pollution in 1957. The monitoring of air pollution in India started in 1967 by National Environment Engineering Research Institute Nagpur. It set up 3 station each in 10 major cities-one each in prominent industrial, residential and commercial area to measure air quality. At that time, the report said that rate of Sulphur production, Oxide of Nitrogen and suspended particulate matter were among the parameters that were monitored and measured.

154. In May 1989, in a meeting of Chairperson and Member Secretaries of CPCB and SPCBs/PCCs, 24 critically polluted areas were identified as under:

- (i) Angul Talcher (Orissa)
- (ii) Ankleshwar (Gujarat)
- (iii) Bhadravati (Karnataka)
- (iv) Chembur (Maharashtra)
- (v) Cochin Greater (Kerala)
- (vi) Dhanbad (Jharkhand)
- (vii) Digboi (Assam)
- (viii) Durgapur (West Bengal)
- (ix) Howrah (West Bengal)
- (x) Jodhpur (Rajasthan)
- (xi) Korba (Chhattisgarh)
- (xii) Manali (Tamil Nadu)
- (xiii) Mandi Gobind Garh (Punjab)
- (xiv) Nagda -Ratlam (Madhya Pradesh)
- (xv) Nazafgarh drain basin (including Anand Parvat, Naraina, Okhla, and Wazirpur), Delhi
- (xvi) Pali (Rajasthan)
- (xvii) Parwanoo (Himachal Pradesh)
- (xviii) Patancheru- -Bollaram (Andhra Pradesh)
- (xix) Singrauli (Uttar Pradesh)
- (xx) Tarapur (Maharashtra)
- (xxi) Vapi (Gujarat)
- (xxii) Vellore (North Arcot) (Tamil Nadu)
- (xxiii) Vishakhapatnam (Andhra Pradesh)

155. We are not going into further details as to how 24 CPAs were identified in 1989 since we are concerned with the matter of CEPI score in this case. Therefore, we proceed to consider in detail the scheme as came into force in 2009 and onwards.

156. CEPI frame work as per December 2009 document, was based on three factors-(i) Pollutant; (ii) Pathway and (iii) Receptor. All three factors have some sub factors shown as A1, A2 in respect of Pollutant; B1, B2 and B3 in respect of Pathway and C1, C2 and C3 in respect of Receptor. An additional element categorized as ‘D’ was also taken into consideration called as Additional High-Risk Element. The inter-relationship and frame work of CEPI based on different factors may be shown in the form of chart as under:



157. Details of different factors are as under:

A. Pollutant (up to 3 most critical pollutants to be taken)

- Factor number A1: presence of toxin
 - Group A - Toxins that are not assessed as acute or systemic = 1
 - Group B - Organics that are probable carcinogens (USEPA Class 2 and 3) or substances with some systemic toxicity, for example, VOC's, PAHs, PCBs, PM₁₀, and PM_{2.5} = 2
 - Group C - Known carcinogens or chemicals with significant systemic or organ system toxicity, for example, vinyl chloride, benzene, lead, radionuclide, hexachromium, cadmium and organophosphate = 4

Table 1 lists the penalty values for combination of most critical pollutants for Factor A1

Table 1 Penalty values for combination of most critical pollutants				
Factor A1				
S. No.	Pollutant 1	Pollutant 2	Pollutant 3	Penalty
1	C	C	C	2.0
2	C	C	B/A	1.75
3	C	B	B/A	1.5
4	B	B	B/A	1.0

- Factor number A2: scale of industrial activities
 - Large = 5 (if there are
 - ≥ 10 R₁₇ per 10 km² area or fraction or
 - ≥ 2 R₁₇ + 10 R₅₄ per 10 km² area or fraction or
 - ≥ 100 R₅₄ per 10 km² area or fraction)
 - Moderate = 2.5 (if there are 2 to 10 R₁₇ per 10 km² area or fraction or 10–100 R₅₄ 10 km² area or fraction)
 - Limited = 1 (else there is any industry within 10 km² area or fraction)

These two factors are taken as multiplicative and, therefore, the overall score for this element is as follows:

SCORE A = A1 × A2 (max score = 6 × 5 = 30)

B. PATHWAY

- Factor number B1: Ambient Pollutant Concentration

- Critical = 6 (when exceedence factor is more than 1.5)
- High = 3 (when exceedence factor is between 1 and 1.5)
- Moderate = 2 (when exceedence factor is between 0.5 and 1.0)
- Low = 1 (when exceedence factor is < 0.5)

Table 2 lists the penalty values for combination of most critical pollutants for Factor B1

Table 2 Penalty values for combination of most critical pollutants Factor B1				
S. No.	Pollutant 1	Pollutant 2	Pollutant 3	Penalty
1	Critical	Critical	Critical/high/moderate	2.0
2	Critical	High	High/moderate	1.75
3	High	High	High	1.5
4	High	High	Moderate	1.0

- Factor number B2: Evidence* of adverse impact on people.
 - No = 0 (when no reliable evidence is available)
 - Yes = 3 (when evidence of symptoms of exposure)
 - Yes = 6 (when evidence of fatality or disease(s) leading to fatality (such as cancer) due to exposure)
- Factor number B3: reliable evidence of adverse impact on eco-geological features.
 - No = 0 (when no reliable evidence is available)
 - Yes = 3 (when evidence of symptoms of exposure)
 - Yes = 6 (when evidence of loss of flora/fauna/significant damage to eco-geological features, [irreparable loss/damage])

Overall score for this element is as follows:

$$\text{SCORE B} = \text{B1} + \text{B2} + \text{B3} = (8 + 6 + 6) = 20$$

C. RECEPTOR

- Factor number C1: number of people potentially affected within 2 km boundary from the industrial pollution source.
 - <1000 = 1
 - 1000 to 10 000 = 1.5

- 10 000 to 100 000 = 3
 - > 100 000 = 5
- Factor number C2: level of exposure
- A surrogate number which will represent level of exposure (SNLF) is calculated using per cent violation of ambient pollutant concentration, which is calculated as follows.
- $$\text{SNLF} = (\text{Number of samples exceeded} / \text{total number of samples}) \times (\text{exceedence factor})$$
- Low = 1 (SNLF = 0)
 - Moderate = 1.5 (SNLF < 0.25)
 - High = 2 (SNLF 0.25 - 0.5)
 - Critical = 3 (SNLF ≥ 0.5)

Table 3 shows the penalty Values for Combination of most critical pollutants for Factor C2

Table 3 Penalty values for combination of most critical pollutants Factor C2				
S. No.	Pollutant 1	Pollutant 2	Pollutant 3	Penalty
1	Critical	Critical	Critical/high/moderate	2.0
2	Critical	High	High/moderate	1.75
3	High	High	High	1.5
4	High	High	Moderate	1.0

- Factor number C3: additional risk to sensitive receptors
- No = 0
 - Yes (if > 500 sensitive people/ a sensitive historical/ archaeological/ religious/ national parks/ sanctuary/ ecological habitat is within 2 km distance from source, additional risk) = 5
- SCORE C = (C1 × C2) + C3 (maximum score = (5 × 5) + 5 = 30)**

D. Additional High-Risk Element

- Factor number D - Additional High-Risk Element (inadequacy of pollution control measures for large scale, medium, and small-scale industries and also due to unorganized sector). It is cumulative of

ETPs, CETPs, air pollution control devises (APCDs) and unorganized waste disposal (maximum score = 20).

- If all the industries in the area have adequately designed/operated and maintained pollution control facilities and also common facilities such as CETP/FETP/CHWDF are having adequate capacity and have state-of-art technology = 0
- If all the large industries in the area have adequately designed/operated and maintained pollution control facilities but small and medium industries are defaulting. Common facilities such as CETP/FETP/CHWDF have adequate in capacity or operation/ maintenance = 5
- If all the industries in the area have adequately designed/operated and maintained pollution control facilities but the common facilities such as CETP/FETP/CHWDF have inadequate in capacity or operation/maintenance = 10
- If all the large industries in the area have adequately designed/ operated and maintained pollution control facilities but small and medium industries are defaulting. Common facilities such as CETP/FETP/CHWDF have inadequate in capacity or operation/ maintenance = 15
- Inadequate facilities of individual as well as common facilities, full penalty = 20

Table 4 Score for additional high-risk element: Factor D				
S. No.	Large-scale industries	Small/ medium-scale industries	Common facilities for pollution control	Score
1	Adequate	Adequate	Adequate	0
2	Adequate	Inadequate	Adequate	5
3	Adequate	Adequate	Inadequate	10
4	Adequate	Inadequate	Inadequate	15
5	Inadequate	Inadequate	Inadequate	20

- Inadequate Facilities $\geq 10\%$ units deficient in terms of design/operation and maintenance of pollution control in case of small and medium scale industries or $\geq 2\%$ units' deficiency in terms of design/ operation and maintenance of pollution control in case of Large scale industries or common facilities.

158. The status report (last two years) shall be used deciding the score for adequacy. On the above basis, the total score is calculated as:

$$\text{SCORE} = (\mathbf{A} + \mathbf{B} + \mathbf{C} + \mathbf{D}) = (\mathbf{30} + \mathbf{20} + \mathbf{30} + \mathbf{20}) = \mathbf{100}$$

159. Based on the above factors, 88 industrial clusters/areas were identified under different factors and over-all ranking as per CEPI was found as under:

S. No.	Industrial Cluster/Area	AIR CEPI
1	Agra (Uttar Pradesh)	59.00
2	Ahmedabad (Gujarat)	62.75
3	Aligarh (Uttar Pradesh)	53.00
4	Angul Talcher (Orissa)	64.00
5	Ankleshwar (Gujarat)	72.00
6	Asansole (West Bengal)	58.38
7	Aurangabad (Maharashtra)	64.75
8	Bada Jamtara (Jharkhand)	48.00
9	Baddi (Himachal Pradesh)	56.00
10	Batala (Punjab)	51.00
11	Bhadravati (Karnataka)	62.75
12	Bhavnagar (Gujarat)	54.50
13	Bhillai- Durg (Chhatisgarh)	44.00
14	Bhiwadi (Rajasthan)	71.00
15	Bidar (Karnataka)	58.75
16	Bulandsahar-Khurza (Uttar Pradesh)	42.00
17	Burnihat (Assam)	39.00
18	Chandrapur (Maharashtra)	70.75
19	Chembur (Maharashtra)	59.75
20	Coimbatore (Tamil Nadu)	62.25
21	Cochin, Greater (Kerala)	57.00
22	Cuddalore (Tamilnadu)	54.00
23	Dewas (Madhya Pradesh)	51.50
24	Dhanbad (Jharkhand)	64.50
25	Digboi (Assam)	32.00
26	Dombivalli (Maharashtra)	66.00
27	Durgapur (West Bengal)	49.50
28	Erode (Tamil Nadu)	47.38

29	<i>Faridabad (Haryana)</i>	63.50
30	<i>Ferozabad (Uttar Pradesh)</i>	49.00
31	<i>Ghaziabad (Uttar Pradesh)</i>	68.50
32	<i>Gwalior (Madhya Pradesh)</i>	45.88
33	<i>Hajipur (Bihar)</i>	43.50
34	<i>Haldia (West Bengal)</i>	53.75
35	<i>Haridwar (Uttarakhand)</i>	51.75
36	<i>Howrah (West Bengal)</i>	57.00
37	<i>Indore (Madhya Pradesh)</i>	59.00
38	<i>Ib Valley (Orissa)</i>	61.00
39	<i>Jaipur (Rajasthan)</i>	55.00
40	<i>Jalandhar (Punjab)</i>	52.00
41	<i>Jamshedpur (Jharkhand)</i>	55.75
42	<i>Jharsuguda (Orissa)</i>	61.00
43	<i>Jodhpur (Rajasthan)</i>	52.00
44	<i>Junagarh (Gujarat)</i>	53.25
45	<i>Kala Amb (Himachal Pradesh)</i>	56.75
46	<i>Kanpur (Uttar Pradesh)</i>	66.00
47	<i>Kathedan (Andhra Pradesh)</i>	44.50
48	<i>Korba (Chhatisgarh)</i>	67.00
49	<i>Kukatpalli (Andhra Pradesh)</i>	41.50
50	<i>Ludhiana (Punjab)</i>	68.00
51	<i>Manali (Tamilnadu)</i>	64.00
52	<i>Mandi Gobind Garh (Punjab)</i>	62.00
53	<i>Mangalore (Karnataka)</i>	61.75
54	<i>Mathura (Uttar Pradesh)</i>	48.00
55	<i>Meerut (Uttar Pradesh)</i>	50.00
56	<i>Mettur (Tamilnadu)</i>	46.00
57	<i>Moradabad (Uttar Pradesh)</i>	54.00
58	<i>Nagda -Ratlam (Madhya Pradesh)</i>	44.50
59	<i>Nashik (Maharashtra)</i>	55.00
60	<i>Navi Mumbai (Maharashtra)</i>	61.00
61	<i>Nazafgarh drain basin (including Anand Parvat, Naraina, Okhla and Wazirpur), Delhi</i>	52.13
62	<i>Noida (Uttar Pradesh)</i>	65.75
63	<i>Pali (Rajasthan)</i>	52.00
64	<i>Panipat (Haryana)</i>	55.75
65	<i>Paradeep (Orissa)</i>	54.00
66	<i>Parwanoo (Himachal Pradesh)</i>	53.00
67	<i>Patancheru- -Bollaram (Andhra Pradesh)</i>	50.00
68	<i>Pimpri-Chinchwad (Maharashtra)</i>	55.25
69	<i>Pinia (Karnataka)</i>	56.75
70	<i>Pitampur (Madhya Pradesh)</i>	47.75
71	<i>Raichur (Karnataka)</i>	59.75
72	<i>Raipur (Chhatisgarh)</i>	56.50
73	<i>Rajkot (Gujarat)</i>	45.50
74	<i>Ramgarh (Jharkhand)</i>	44.00
75	<i>Saraikele (Jharkhand)</i>	50.50
76	<i>Singhbhum, West (Bihar)</i>	55.50
77	<i>Singrauli (Uttar Pradesh)</i>	70.50
78	<i>Surat (Gujarat)</i>	46.00

79	<i>Tarapur (Maharashtra)</i>	60.75
80	<i>Tirupur (Tamil Nadu)</i>	56.75
81	<i>Udhamsingh Nagar (Uttarakhand)</i>	44.00
82	<i>Vadodara (Gujarat)</i>	57.00
83	<i>Vapi (Gujarat)</i>	74.00
84	<i>Varansi-Mirzapur (Uttar Pradesh)</i>	58.00
85	<i>Vatva (Gujarat)</i>	60.00
86	<i>Vellore (North Arcot) (Tamilnadu)</i>	69.25
87	<i>Vijaywada (Andhra Pradesh)</i>	52.00
88	<i>Vishakhapatnam (Andhra Pradesh)</i>	57.00

160. The reason for determining CEPI in respect of industrial clusters/areas was that industries growing at common centers/estates/parks as the resources, man power, transportation and marketing are accessible. Generally, medium and small-scale industries were developed at such areas and formed industrial clusters. Due to lack of awareness and ignorance of waste management technologies, environmental pollution was found in higher degree at the surrounding environment. Therefore, such industrial areas were assessed for improving quality of environment. Out of 88 industrial clusters identified, 43 in 17 States have secured CEPI score of 70 and above, hence classified as CPAs; 32 industrial clusters had CEPI score between 60 and below 70 and the same were categorized as SPAs. It was decided to keep monitoring through recognized environmental laboratories periodically and CEPI assessed was/is to be based on the recorded monitoring data. Two interim assessment CEPI scores were published in 2011 and 2013.

161. Thereafter, directions under Section 18(1)(b) of Water Act, 1974 and Air Act, 1981 were issued vide OM dated 26.04.2016 by CPCB to undertake environmental quality monitoring and for installation of CAAQMS and RTWQMS in CPAs to revise the concept of CEPI score assessment based on revised criteria. The document shows the components of revised CEPI 2016, as under:

“Revised CEPI is comprised of the following components:

Component A	Scale of Industrial Activity	20 marks
Component B	Status of Ambient Env. Quality (Air/SW/GW)	50 marks
Component C	Health related statistics	10 marks
Component D	Compliance status of industries	20 marks

- ✓ Air CEPI, Surface Water EPI and Ground Water EPI i.e. i1, i2 and i3, will be calculated separately on a scale of 0-100 by the formula – i1 or i2 or i3 = A+B+C+D.
- ✓ Overall CEPI will be evaluated using the existing formula, i.e., $CEPI = i\text{-max} + [(100 - i\text{-max}) \times (i2/100) \times (i3/100)]$
Where i-max – maximum index (which may be either Air EPI or SW EPI or GW EPI); and i2 and i3 are indices for other media.
Decision regarding selection of criteria pollutants shall be taken as advance and shall be the most relevant in the context of specific CPAs and should be communicated to CPCB.
- ✓ The concept can be applied to locations also other than industrial clusters.”

162. The directions issued vide OM 26.04.2016 are as under:

“Now, therefore, in exercise of the powers conferred under Section 18 (1) (b) of the Water (Prevention & Control of Pollution) Act, 1974, and 18 (1) (b) of the Air (Prevention & Control of Pollution) Act, 1981 and ensure prevention, control and abatement of pollution in critically polluted industrial clusters and keeping in view strengthening of the monitoring mechanism for effective compliance through self regulatory mechanism, following directions are hereby issued for compliance:

Part A: Environmental quality monitoring in all CPAs

1. That the SPCB/PCC shall undertake environmental quality monitoring in the critically polluted area falling under their jurisdiction through an outside third party agency (laboratory) recognised under Environment (Protection) Act, 1986 and accredited under NABL. The frequency of the monitoring shall be twice in a year i.e. Post-monsoon season and Pre-monsoon season).
2. That the SPCB/PCC shall ensure that the existing sampling locations where monitoring was undertaken in 2013 are retained and additional monitoring locations, if any required, can be included in the monitoring programme in consultation with concerned Zonal Offices of CPCB and (or) Head Office, CPCB.
3. That the SPCB/PCC shall ensure that the sampling stations are provided at strategic locations across the industrial clusters so as to obtain a truly representative environmental quality of the critically polluted area. Moreover, the concerned SPCBs/PCC shall ensure that there is at least one Ambient Air Quality monitoring station each in the predominant upwind and downwind directions at each of the CPA.

4. That the SPCBs/PCC shall collect 3 samples with a gap of one or two days at each location during each round of monitoring in all the CPAs.
5. That at each of the CPA, 24 hourly ambient air quality monitoring shall be carried out for parameters as detailed in Annexure-2. Also, representative samples for surface water quality and ground wafer quality shall be collected from prominent surface and ground water bodies located in and around the CPAs. List of water quality parameters is presented in Annexure-2.

Part B: Installation of Continuous Ambient Air Quality Monitoring Stations

6. That the SPCB/PCC shall coordinate with the Association(s) or any appropriate agency of the Industries of the concerned CPAs and direct them for installation of Continuous Ambient Air Quality Monitoring Stations (CAAQMS) at strategic locations of identified Critically Polluted Areas. For this purpose, 'Polluter Pays Principle' shall be applied and the data so acquired be displayed on the website of State Board for transparency in law-enforcement.
7. That in those Critically Polluted Areas, where no CAAQMS is so far installed, at-least 2 CAAQMS be installed to start with, one each in the windward and leeward direction within a year;
8. That the existing network of continuous ambient air quality monitoring stations (CAAQMS) in CPAs established by 17 Category of highly polluting industries, shall be redesigned if necessary, by shifting/relocating some stations to cover the entire city/area. This will reduce duplicity in monitoring and ensure optimum utilization of the available monitoring facilities and resources.
9. That the existing manual monitoring under NAMP, will be continued. In case, there is no NAMP station in the area, then manual monitoring will also be conducted atleast once in a month on 24 hourly basis.

Part C: Installation of Continuous Water Quality Monitoring Stations

10. That the SPCBs/PCC shall ensure installation of Real Time Water Quality Monitoring Stations at various locations of identified Critically Polluted Areas in conformity with the CPCB guidelines for water quality monitoring (MINARS/27/2007-08). The SPCBs/PCC shall adopt 'Polluter Pays Principle' for achieving these objects.
11. That in those Critically Polluted Areas, where no CWQMS are yet installed, at-least 2 CWQMS be installed to start with, one each in the upstream and downstream locations of the major receiving water body of the area within a year.
12. That the existing manual monitoring under MINAR (Monitoring of Indian National Aquatic Resources) programme will also be continued. In case, there is no MINAR station in the area, then manual monitoring will also be conducted atleast once in a month. Ground Water Quality Monitoring should be carried out at existing locations (i.e. bore-wells, tube wells, deep hand pumps etc.) and as per national monitoring protocol. Monitoring of heavy metals, VOCs and Pesticides should also be undertaken in addition to regular parameters of MINAR programme.

Part D : Application of revised CEPI version 2016

13. That since 'Revised CEPI 2016' has been evolved, henceforth, all future CEPI score evaluations shall be made on the basis of revised formula.
14. That all the polluting sources identified in the area shall be notified and brought in the public domain through respective websites alongwith the details of their pollution control compliance status.
15. That the environmental quality data including CEPI score of the industrial area as per revised concept shall also be placed in public domain through website and also to be published by the State Government periodically.
16. That the concerned State Government shall notify the area on a properly scaled map and also issue public advisories that such an area will be exclusively meant for industrialization as per the State land.
17. That the revised CEPI shall be used by the State Governments, SPCBs and others concerned to understand the severity of pollution existing in the area and formulate appropriate action plan. Further, sufficient time shall be given for effective implementation of the action plan before imposition of moratorium. Thus, the revised concept shall be an early warning tool to ensure the successful implementation of Action Plan.
18. That the CEPI shall not be used by the Bankers/Money Lending Institutions for financial decisions.
19. That any moratorium on expansion on setting up of new industries shall be imposed on a particular CPA only after a notice period of one year from the initial announcement of CEPI assessment. However decision on any directions already in force in a CPA shall be taken as per correct practice in vogue. High CEPI score shall also be used as early warning tool to require preparation of pollution management plans to reduce pollution levels before it reaches critical levels.
20. That for any industry in a critically polluted area, the changes which make it less polluting shall be permitted. These changes may include expansion of production capacity/change of product/change of raw materials/change of manufacturing process or a combination of these changes and shall be examined and assed by respective SPCBs/PCC.

Part E : Action Plan and Monitoring

21. That the SPCBs/PCC shall also continue the regular exercise of water and air quality monitoring work at different locations including those stations currently in operation under NAMP and MINAR.
22. That the SPCB/PCC shah take necessary measures to ensure regular maintenance and operation of the online systems with tamper proof mechanism including having facilities for online calibration;
23. That the SPCBs/PCC shall install the necessary software and hardware in their headquarter for centralized data collection, analysis and corrective action.
24. That the SPCBs/PCC shall take necessary measures to connect and upload the online air quality and water quality monitoring

- data on the Servers of respective SPCB/PCC and CPCB in a time bound manner but not later by June 30, 2016;
25. That the SPCBs/PCC shall upload on its websites the consent conditions of all industrial units alongwith their compliance status (updated half-yearly) with respect to prescribed norms.
26. That the action plan categorized into short, medium and long term basis shall be brought into public domain and the progress of implementation shall be reviewed by District and State level through Monitoring Committees.”

163. Revised CEPI Evaluation Methodology given in the said document dated 26.04.2016 is as under:

“Revised CEPI Evaluation Methodology

A: Source

• **Factor #A1 - Presence of Toxin**

- Group A – Pollutants/chemicals that are not assessed as acute or systemic = 1
- Group B – Organics/Pollutants/chemicals that are probable carcinogens (USEPA Class 2 and 3) or substances with some systemic toxicity. e.g. VOC’s, PAHs, PCBs, air pollutants such as PM10 and PM2.5 = 2
- Group C - Known carcinogens or chemicals with significant systemic or organ system toxicity. e.g. vinyl chloride, benzene, lead, radionuclide, hexa-chromium, cadmium, organophosphate pesticides = 3

Selection of criteria pollutants:

Option 1: 3 pollutants relevant with the Area depending on the nature of industrial activity (preferable option/method)

Option 2: upto 3 most critical pollutants depending on the concentration and exceedance

- Contribution of remaining two secondary pollutants will be based on the nature of the toxins as mentioned below:

Group of toxicity of each of the Secondary Pollutants	Contribution Value for each of the pollutant
Group A	0.25
Group B	0.50
Group C	1.00

Max. Contribution of secondary pollutants=2.00

Max. score of A1=3+2 = 5

• **Factor #A2 – Scale of industrial activities**

- Large = 4 (if there are
 - > 10 R17 per 10 sq km area or fraction OR
 - > 2 R17 + 10 R54 per 10 sq km area or fraction OR
 - > 100 R54 per 10 sq km area or fraction
- Moderate = 2.5 (if there are
 - 2 to 10 R17 per 10 sq km area or fraction OR

10-100 R54 per 10 sq km area or fraction
 – Limited = 1 (else there is any industry within 10 sq km area or fraction)

SCORE A = A1 × A2 (max score = 5 × 4 = 20)

B: Pathway
Factor B- Level of exposure

A surrogate number which will represent Level of Exposure (SNLF) is calculated using % violation of ambient pollutant concentration, which is calculated as

$SNLF = (No. \text{ of samples exceeded} / \text{total no. of samples}) \times (\text{Exceedance factor})$

Range of SNLF	Category	Value
0 (For EF<0.75)	Low	0
0 (For 0.75<EF>0.8)	Low	1.5
0 (For 0.80<EF>0.85)	Low	3
0 (For 0.85<EF>0.9)	Low	4.5
0 (For 0.90<EF>0.95)	Low	6
0 (For 0.95<EF<1)	Low	7.5
<0.05	Moderate	8.25
0.05 to <0.1	Moderate	9
0.1 to <0.15	Moderate	9.75
0.15 to <0.2	Moderate	10.50
0.2 to <0.25	Moderate	11.25
0.25 to <0.30	Moderate	12
0.30 to <0.35	Moderate	12.75
0.35 to <0.4	Moderate	13.5
0.4 to <0.45	Moderate	14.25
0.45 to <0.5	Moderate	15
0.5 to <0.55	High	15.75
0.55 to <0.6	High	16.50
0.6 to <0.65	High	17.25
0.65 to <0.70	High	18.0
0.7 to <0.75	High	18.75
0.75 to <0.80	High	19.5
0.80 to <0.85	High	20.20
0.85 to <0.90	High	21.0
0.9 to <0.95	High	21.75
0.95 to <1	High	22.5
1.0 and above	Critical	30

- Max. Contribution of primary pollutant=30
- Contribution of remaining two secondary pollutants will be based on their category of exceedance as mentioned below:

Range of SNLF	Category	Value
0 (For EF<0.75)	Low	0
0 (For 0.75<EF>0.8)	Low	0.5
0 (For 0.80<EF>0.85)	Low	1

0 (For 0.85<EF>0.9)	Low	1.5
0 (For 0.90<EF>0.95)	Low	2
0 (For 0.95<EF<1)	Low	2.5
<0.05	Moderate	2.75
0.05 to <0.1	Moderate	3
0.1 to <0.15	Moderate	3.25
0.15 to <0.2	Moderate	3.50
0.2 to <0.25	Moderate	3.75
0.25 to <0.30	Moderate	4.0
0.30 to <0.35	Moderate	4.25
0.35 to <0.4	Moderate	4.5
0.4 to <0.45	Moderate	4.75
0.45 to <0.5	Moderate	5
0.5 to <0.55	High	5.25
0.55 to <0.6	High	5.50
0.6 to <0.65	High	5.75
0.65 to <0.70	High	6.0
0.7 to <0.75	High	6.25
0.75 to <0.80	High	6.50
0.80 to <0.85	High	6.75
0.85 to <0.90	High	7
0.9 to <0.95	High	7.25
0.95 to <1	High	7.5
1.0 and above	Critical	10

Max. Contribution of secondary pollutants=20
Maximum value of B = 30 + 20 =50

C : Receptor

Component C (Impact on Human Health) 10	
Main - 10	
% increase in cases*	Marks
<5%	0
5-10%	5
>10%	10

- % increase is evaluated based on the total no. of cases recorded during two consecutive years.
- For Air Environment, total no. of cases related to Asthma, Bronchitis, Cancer, Acute respiratory infections etc. are to be considered.
- For surface water/ground water Environment, cases related to Gastroenteritis, Diarrhea, renal (kidney) malfunction, cancer etc. are to be considered.
- For the above evaluation, the previous 5 years records of 3-5 major hospitals of the area shall be considered.

D: Additional High Risk Element

Factor #D - Additional High Risk Element (Inadequacy of pollution control measures for large scale, medium and small scale industries and also due to unorganized sector). It is cumulative of ETPs, CETPs, Air Pollution Control Devises (APCDs) and unorganized waste disposal. Max. Score = 20

- If all the industries in the area have adequately designed/operated and maintained pollution control facilities and also common facilities such as CETP/ FETP/CHWDF are having adequate capacity and are having state of art technology = 0
- If all the large industries in the area have adequately designed/ operated and maintained pollution control facilities but small and medium industries are defaulting. Common facilities such as CETP/FETP/CHWDF are having adequate in capacity or operation/maintenance = 5
- If all the industries in the area have adequately designed/operated and maintained pollution control facilities but the common facilities such as CETP/FETP/CHWDF are having inadequate in capacity or operation/maintenance = 10
- If all the large industries in the area have adequately designed/operated and maintained pollution control facilities but small and medium industries are defaulting. Common facilities such as CETP/FETP/CHWDF are having inadequate in capacity or operation/maintenance = 15
- Inadequate Facilities of individual as well as common facilities, full penalty = 20

Table : Score for Additional High Risk Element: Factor D

S No.	Large Scale Industries	Small/Medium Scale Industries	Common Facilities for Pollution Control	Score
1.	Adequate	Adequate	Adequate	0
2.	Adequate	Inadequate	Adequate	5
3.	Adequate	Adequate	Inadequate	10
4.	Adequate	Inadequate	Inadequate	15
5.	Inadequate	Inadequate	Inadequate	20

Inadequate Facilities: ≥ 10% units deficient in terms of design/operation and maintenance of pollution control in case of small and medium scale industries
 OR
 ≥ 2% units deficiency in terms of design/operation and maintenance of pollution control in case of Large scale industries or common facilities

The status report (last two years) shall be used for the purpose of deciding the score for adequacy.

Evaluation of the Ambient Air Index/Surface Water Index/Ground Water Index

After calculating A, B, C and D; calculate the sub index score (Air/Surface Water/Ground Water) as:

Sub-Index Score = (A + B + C + D)

Sub index scores are to be calculated for each of the individual environmental components that is, Air Environment, Surface Water Environment, and Soil & Ground Water Environment separately.

Calculation of the Aggregated CEPI

The aggregated CEPI Score can be calculated as.

$$\text{CEPI} = i_m + \{(100 - i_m) \cdot (i_2/100) \cdot (i_3/100)\}$$

Where,

i_m : maximum sub index; and

i_2 , and i_3 are sub indices for other media

The revised CEPI concept from now will be termed as Revised CEPI Version 2016.”

164. The above document also contains note that all other information not revised, the criteria of the information contained in CEPI 2009 shall be referred. In the light of the above revised CEPI methodology, a list of 100 industrial clusters/areas was published in 2018 as under:

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

Sl. No.	Name of Polluted Industrial Areas (PIAs)	Air	Water	Land	* CEPI Score	# Status of Environment
1.	Tarapur (Maharashtra)	72.00	89.00	59.25	93.69	Ac_Wc_Ls
2.	Najafgarh-Drain basin including Anand Parbat, Naraina, Okhla, Wazirpur (Delhi)	85.25	86.00	55.75	92.65	Ac_Wc_Ls
3.	Mathura (Uttar Pradesh)	86.00	81.00	45.00	91.10	Ac_Wc_Ln
4.	Kanpur (Uttar Pradesh)	66.00	85.00	45.00	89.46	Ac_Wc_Ln
5.	Vadodara (Gujarat)	82.00	80.75	48.75	89.09	Ac_Wc_Ln
6.	Moradabad (Uttar Pradesh)	76.00	71.50	68.75	87.80	Ac_Wc_Lc
7.	Varanasi-Mirzapur (Uttar Pradesh)	67.50	80.00	39.63	85.35	Ac_Wc_Ln
8.	Bulandsahar-Khurza (Uttar Pradesh)	79.50	76.00	36.75	85.23	Ac_Wc_Ln
9.	Gurgaon (Haryana)	70.00	80.00	36.75	85.15	Ac_Wc_Ln
10.	Manali (Tamil Nadu)	59.75	72.25	71.75	84.15	As_Wc_Lc
11.	Panipat (Haryana)	66.00	72.75	60.00	83.54	Ac_Wc_Lc
12.	Firozabad (Uttar Pradesh)	76.00	72.00	32.50	81.62	Ac_Wc_Ln
13.	Udham Singh Nagar (Uttarakhand)	33.00	79.50	26.00	81.26	An_Wc_Ln
14.	Jodhpur (Rajasthan)	67.00	66.00	65.00	81.16	Ac_Wc_Lc

15.	<i>Pali (Rajasthan)</i>	66.00	65.00	65.50	80.48	<i>Ac_Wc_Lc</i>
16.	<i>Ankleshwar (Gujarat)</i>	72.00	57.50	51.00	80.21	<i>Ac_Ws_Ls</i>
17.	<i>Gajraula Area (Uttar Pradesh)</i>	71.00	70.00	45.00	80.14	<i>Ac_Wc_Ln</i>
18.	<i>Vapi (Gujarat)</i>	66.00	75.00	30.00	79.95	<i>Ac_Wc_Ln</i>
19.	<i>Siltara Industrial Area (Chhattisgarh)</i>	76.00	51.75	31.75	79.94	<i>Ac_Ws_Ln</i>
20.	<i>Bhiwadi (Rajasthan)</i>	66.50	71.00	44.75	79.63	<i>Ac_Wc_Ln</i>
21.	<i>Vellore -North Arcot (Tamil Nadu)</i>	49.00	75.00	35.75	79.38	<i>An_Wc_Ln</i>
22.	<i>Sanganer Industrial Area (Rajasthan)</i>	65.00	71.88	39.50	79.10	<i>Ac_Wc_Ln</i>
23.	<i>Byrnihat (Assam)</i>	67.00	70.50	39.50	78.31	<i>Ac_Wc_Ln</i>
24.	<i>Peenya (Karnataka)</i>	41.00	66.00	70.00	78.12	<i>An_Wc_Lc</i>
25.	<i>Jaipur (Rajasthan)</i>	61.88	71.88	31.75	77.40	<i>Ac_Wc_Ln</i>
26.	<i>Surat (Gujarat)</i>	46.00	68.25	56.00	76.43	<i>An_Wc_Ls</i>
27.	<i>Chandrapur (Maharashtra)</i>	75.00	23.75	23.75	76.41	<i>Ac_Wn_Ln</i>
28.	<i>Agra (Uttar Pradesh)</i>	60.00	66.88	47.00	76.22	<i>Ac_Wc_Ln</i>
29.	<i>Pattancheru Bollaram (Telangana)</i>	56.00	70.00	32.25	75.42	<i>As_Wc_Ln</i>
30.	<i>Jalandhar (Punjab)</i>	53.50	66.88	44.50	74.76	<i>As_Wc_Ln</i>
31.	<i>Ludhiana (Punjab)</i>	53.50	71.00	16.00	73.48	<i>As_Wc_Ln</i>
32.	<i>Tiruppur (Tamil Nadu)</i>	33.00	65.00	64.00	72.39	<i>An_Wc_Lc</i>
33.	<i>Ghaziabad (Uttar Pradesh)</i>	57.50	66.00	32.25	72.30	<i>As_Wc_Ln</i>
34.	<i>Mettur (Tamil Nadu)</i>	41.25	19.38	69.38	71.82	<i>An_Wn_Lc</i>
35.	<i>KIADB Industrial Area, Jigini, Anekal (Bengaluru)</i>	52.00	66.00	28.25	70.99	<i>As_Wc_Ln</i>
36.	<i>Vatva (Gujarat)</i>	57.00	66.00	25.50	70.94	<i>As_Wc_Ln</i>
37.	<i>Raipur (Chhattisgarh)</i>	67.00	45.75	25.00	70.77	<i>Ac_Wn_Ln</i>
38.	<i>Rajkot (Gujarat)</i>	51.75	61.50	45.75	70.62	<i>As_Wc_Ln</i>
39.	<i>Aurangabad (Maharashtra)</i>	45.00	65.38	28.75	69.85	<i>An_Wc_Ln</i>
40.	<i>Dombivali (Maharashtra)</i>	62.00	63.50	27.25	69.67	<i>Ac_Wc_Ln</i>
41.	<i>Nashik (Maharashtra)</i>	56.50	60.00	42.00	69.49	<i>As_Wc_Ln</i>
42.	<i>Batala (Punjab)</i>	63.00	62.75	25.50	68.92	<i>Ac_Wc_Ln</i>
43.	<i>Noida (Uttar Pradesh)</i>	59.75	62.75	27.00	68.76	<i>As_Wc_Ln</i>
44.	<i>Baddi (Himachal Pradesh)</i>	63.00	63.75	19.75	68.26	<i>Ac_Wc_Ln</i>
45.	<i>Vijayawada (Andhra Pradesh)</i>	60.50	49.25	38.75	68.04	<i>Ac_Wn_Ln</i>
46.	<i>Bandel (West Bengal)</i>	59.50	47.00	42.75	67.64	<i>As_Wn_Ln</i>
47.	<i>Ramgarh (Jharkhand)</i>	56.75	50.00	46.25	66.75	<i>As_Ws_Ln</i>
48.	<i>Kukatpally (Telangana)</i>	43.75	61.00	32.00	66.46	<i>An_Wc_Ln</i>
49.	<i>Ib-Valley (Orissa)</i>	48.75	59.00	36.75	66.35	<i>An_Ws_Ln</i>
50.	<i>Tuticorin (Tamil Nadu)</i>	29.75	46.00	61.00	66.34	<i>An_Wn_Lc</i>

51.	Navi Mumbai (Maharashtra)	56.00	63.00	16.00	66.32	As_Wc_Ln
52.	Meerut (Uttar Pradesh)	52.00	65.00	6.00	66.09	As_Wc_Ln
53.	Parwanoo (Himachal Pradesh)	19.00	61.88	53.75	65.77	An_Wc_Ls
54.	Kala Amb (Himachal Pradesh)	17.00	64.00	27.75	65.70	An_Wc_Ln
55.	Bidar (Karnataka)	31.00	60.00	45.50	65.64	An_Wc_Ln
56.	Durgapur (West Bengal)	62.50	43.50	18.75	65.56	Ac_Wn_Ln
57.	Aligarh (Uttar Pradesh)	56.25	61.88	11.88	64.42	As_Wc_Ln
58.	Hajipur (Bihar)	57.50	41.13	39.25	64.36	As_Wn_Ln
59.	Hazaribagh (Jharkhand)	61.00	20.00	41.00	64.20	Ac_Wn_Ln
60.	Coimbatore (Tamil Nadu)	47.25	53.75	45.25	63.64	An_Ws_Ln
61.	Singrauli (UP & MP)	45.00	57.25	27.75	62.59	An_Ws_Ln
62.	Cuddalore (Tamil Nadu)	25.00	58.25	41.25	62.56	An_Ws_Ln
63.	Faridabad(Haryana)	55.25	53.75	28.75	62.17	As_Ws_Ln
64.	Bhavnagar (Gujarat)	61.00	15.50	15.50	61.94	Ac_Wn_Ln
65.	Howrah (West Bengal)	60.50	20.00	16.00	61.76	Ac_Wn_Ln
66.	Paradeep (Orissa)	43.00	57.50	17.00	60.61	An_Ws_Ln
67.	Erode (Tamil Nadu)	34.13	47.00	52.75	60.33	An_Wn_Ls
68.	Saraikela (Jharkhand)	57.75	17.50	34.00	60.26	As_Wn_Ln
69.	Kattedan (Telangana)	42.25	50.75	45.25	60.17	An_Ws_Ln
70.	Dhanbad (Jharkhand)	43.00	57.50	12.50	59.78	An_Ws_Ln
71.	Indore (Madhya Pradesh)	18.50	56.88	20.75	58.53	An_Ws_Ln
72.	Bhadravati (Karnataka)	45.00	52.00	30.00	58.48	An_Ws_Ln
73.	Mandideep (Madhya Pradesh)	56.00	55.25	10.00	58.43	As_Ws_Ln
74.	Mangalore (Karnataka)	15.00	54.50	54.25	58.20	An_Ws_Ls
75.	Barajamda (Jharkhand)	51.88	25.63	46.75	57.64	As_Wn_Ln
76.	Korba (Chhattisgarh)	43.75	17.75	54.00	57.57	An_Wn_Ls
77.	Ahmedabad (Gujarat)	53.50	48.50	16.00	57.11	As_Wn_Ln
78.	Haridwar (Uttarakhand)	50.75	52.38	13.75	55.70	As_Ws_Ln
79.	Asansol (West Bengal)	54.00	16.25	13.75	55.03	As_Wn_Ln
80.	Chembur (Maharashtra)	52.25	50.75	10.00	54.67	As_Ws_Ln
81.	Morbi (Gujarat)	51.00	47.25	14.00	54.24	As_Wn_Ln
82.	Mandi Govindgarh (Punjab)	23.75	53.75	1.50	53.91	An_Ws_Ln
83.	Raichur (Karnataka)	32.75	47.88	32.50	53.42	An_Wn_Ln
84.	West Singhbhum	51.88	25.88	11.25	53.28	As_Wn_Ln

	<i>(Jharkhand)</i>					
85.	<i>Greater Kochin (Kerala)</i>	47.38	35.88	29.50	52.94	<i>An_Wn_Ln</i>
86.	<i>Pimpri-Chinchwad (Maharashtra)</i>	52.00	6.25	5.25	52.16	<i>As_Wn_Ln</i>
87.	<i>Gwalior (Madhya Pradesh)</i>	50.00	43.13	7.75	51.67	<i>As_Wn_Ln</i>
88.	<i>Junagarh (Gujarat)</i>	47.00	25.00	35.00	51.64	<i>An_Wn_Ln</i>
89.	<i>Jaipur (Orissa)</i>	43.50	26.25	41.25	49.62	<i>An_Wn_Ln</i>
90.	<i>Nagda –Ratlam (Madhya Pradesh)</i>	12.00	47.00	28.00	48.78	<i>An_Wn_Ln</i>
91.	<i>Jamshedpur (Jharkhand)</i>	46.00	19.25	20.25	48.10	<i>An_Wn_Ln</i>
92.	<i>Mahad (Maharashtra)</i>	41.00	35.75	29.00	47.12	<i>An_Wn_Ln</i>
93.	<i>Bhillai-Durg (Chhattisgarh)</i>	43.00	32.75	19.75	46.69	<i>An_Wn_Ln</i>
94.	<i>Angul Talchar (Orissa)</i>	44.75	13.25	23.00	46.43	<i>An_Wn_Ln</i>
95.	<i>Haldia (West Bengal)</i>	45.00	35.00	3.75	45.72	<i>An_Wn_Ln</i>
96.	<i>Vishakhapatam (Andhra Pradesh)</i>	27.25	12.75	42.75	44.74	<i>An_Wn_Ln</i>
97.	<i>Dewas (Madhya Pradesh)</i>	28.00	31.63	31.75	37.79	<i>An_Wn_Ln</i>
98.	<i>Jharsuguda (Orissa)</i>	36.00	21.50	8.75	37.20	<i>An_Wn_Ln</i>
99.	<i>Digboi (Assam)</i>	23.50	25.25	6.50	26.39	<i>An_Wn_Ln</i>
100.	<i>Pithampur (Madhya Pradesh)</i>	13.50	19.50	6.75	20.23	<i>An_Wn_Ln</i>

165. MoEF&CC and CPCB as well as SPCBs/PCCs issued various action plans for monitoring of the above identified industrial clusters. It included MoEF&CC and CPCB memorandum dated 13.01.2010, imposing moratorium upto 31.08.2010 on consideration of expansion and new projects for environment clearance to be located in 43 critically polluted areas/industrial clusters identified by CPCB vide document dated 2009. It was also envisaged that during period of moratorium, time bound action plans will be prepared by respective Statutory Regulators for improving environmental quality in these industrial clusters/areas. The action plans so prepared by Statutory Regulators were to be finalized by CPCB. The period of moratorium was extended beyond 31.08.2010 from time to time. Later, based on the action taken by stakeholders, the moratorium was lifted in some areas in phases, for example, vide OM's dated 26.10.2010,

15.02.2011, 31.03.2011, 23.05.2011 and 05.07.2011, Moratorium was lifted in the following industrial areas/clusters:

“(i) Tarapur (Maharashtra), (ii) Pattencherru-Bollaram (Andhra Pradesh), (iii) Coimbatore (Tamil Nadu), (iv) Vapi (Gujarat), (v) Mandi-Govindgarh (Punjab), (vi) Agra (Uttar Pradesh), (vii) Aurangabad (Maharashtra), (viii) Bhavnagar (Gujarat), (ix) Cuddalore (Tamil Nadu), (x) Dombivalli (Maharashtra), (xi) Ludhiana (Punjab), (xii) Navi Mumbai (Maharashtra), (xiii) Varanasi-Mirzapur (Uttar Pradesh), (xiv) Angul Talchar (Orissa), (xv) Faridabad (Haryana), (xvi) Ghaziabad (Uttar Pradesh), (xvii) Indore (Madhya Pradesh), (xviii) Junagadh (Gujarat), (xix) Noida (Uttar Pradesh), (xx) Panipat (Haryana), (xxi) Bhadravati (Karnataka), (xxii) Mangalore (Karnataka), (xxiii) Greater Kochi (Kerala), (xxiv) Singrauli (Madhya Pradesh Part and Uttar Pradesh Part), (xxv) Ib Valley (Orissa) and (xxvi) Jharsuguda (Orissa).”

166. In the remaining 17 identified industrial clusters, the category of CPA, moratorium was extended upto 31.03.2012 and thereafter extended until further order, vide OM dated 30.03.2012. In some areas where moratorium was lifted, it was re-imposed vide OM dated 17.09.2013 stating in para 3, 4 and 5 as under:

“3. The CPCB conducted monitoring in the Critically Polluted Areas (CPAs) during February-April, 2013 and re-assessed the CEPI score. The CPCB, vide its communication, dated July 24, 2013 have informed MoEF about the revised CEPI score based on the monitoring conducted during February-April, 2013.

4. The evaluation of the CEPI score in the 17 areas where moratorium is still in place indicates that the CEPI score in 10 areas namely Bhiwadi (Rajasthan), Dhanbad (Jharkhand), Manali (Tamilnadu), Ahmedabad (Gujarat), Korba (Chhattisgarh), Asansole (West Bengal), Haldia (West Bengal), Howrah (West Bengal), Vishakapatnam (Andhra Pradesh) and Kanpur (UP) is below 80 and has shown a decreasing trend as compared to the CEPI score assessed by CPCB in 2011. In rest of the seven areas namely Ankleshwar (Maharashtra), Chandrapur (Maharashtra), Pali (Rajasthan), Vatva (Gujarat), Vellore (Tamil Nadu), Najafgarh Drain Basin (UT Delhi) and Jodhpur (Rajasthan), the CEPI score is either above 80 or is above 70 and showing either increasing trend or no change as compared to values observed in 2011.

5. In view of the re-assessment of CEPI score and taking into consideration that action plans for improving environment quality take time to yield results, it has been decided to lift the moratorium on consideration of projects for environmental clearance in respect of projects to be located in the above mentioned 10 clusters/areas namely Bhiwadi (Rajasthan), Dhanbad (Jharkhand), Manali (Tamilnadu), Ahmedabad (Gujarat), Korba (Chhattisgarh), Asansole (West Bengal), Haldia (West Bengal), Howrah (West Bengal), Vishakapatnam (Andhra Pradesh) and Kanpur (U.P.) where CEPI

score is below 80 and has shown a decreasing trend as compared to the CEPI score of 2011, subject to the following conditions :

- i. The concerned SPCB to ensure that any new project/activity or any expansion or modernization of existing project or activity or any change in product mix is in line with the overall approved action plan of the concerned CPA.*
- ii. The implementation of action plan of every CPA to be reviewed by the concerned Chairman, SPCB on quarterly basis and report sent to CPCB by the 7th day of the month succeeding the end of quarter.*
- iii. Monitoring in CPAs be got done by SPCB through a third party on annual basis for computing CEPI. The monitoring be done during December-February and the report sent to CPCB by April. CPCB, in turn, to submit its report to MoEF.*
- iv. Monitoring in CPAs be got done by CPCB through a third party on biennial basis for computing CEPI and report submitted to MoEF for taking an appropriate view.*

If at any time it comes to the notice of CPCB that action plan -m any CPA is not being implemented properly or the CEPI index in CPA is showing an increasing trend, it will immediately bring the factual position to the notice of MoEF and MoEF would consider taking an appropriate view in the matter which may include re-imposition of moratorium.

167. It is interesting to notice at this stage that neither in 2009-2010 when CEPI score was assessed in respect of 88 identified industrial clusters/areas and directions for appropriate action were issued nor when the revised CEPI OM dated 26.04.2016 was issued and the revised list of 100 industrial clusters/areas was published in 2018, no serious objection was raised by associations/federations of industries, collectively or individually. At least, we have not been shown any legal action taken by the said associations before any appropriate forum. The scheme was implemented and in their own manner, Statutory Regulators sought to take action but as a matter of fact, no effective remedial action was taken against the industries which were causing pollution, adding/abating the concerned industrial clusters/areas, identified as CPA or SPA or with stressed degree of pollution. This failure on the part of Statutory Regulators, in taking effective remedial action and for enforcement of

environmental laws, drew attention of this Tribunal, resulting in *suo-moto* action in OA I, by initiating proceeding vide order dated 13.12.2018. All the orders passed by Tribunal shows that Statutory Regulators were reminded of their statutory duties and instructions were issued to enforce and implement those statutory obligations/duties against violators/polluters. There is not even a whisper in any of the orders which directs any action to be taken against non-violator/non-polluting industry. It is in these circumstances; we fail to understand as to what prompted the associations of industries who have filed various IAs referred to above either to challenge the methodology of CEPI score or list of the identified industrial clusters/areas based on scientific factors. It is not that Statutory Regulator, i.e., CPCB has adopted any adamant attitude in respect of determination of CEPI score but the revision of earlier scheme of 2009 in 2016 shows that it has consistently applied its mind to various aspects. Considering development, and its experience, it has made itself open to review/revise its scheme/methodology and revised criteria, therefore, has provided revised CEPI Score-2016.

168. The assessment of CEPI score in identification of industrial clusters/areas is not against any individual industry but based on the environmental conditions of those areas and, therefore, *per se*, cannot be said to be adverse or pre-judicial or detrimental to any individual industry. Admittedly, no industry has any legal or Constitutional Right to continue with its operation in such a manner so as to cause pollution of environment by discharging effluents in air, water and land, violating the norms prescribed under environmental laws. Any polluting industry has to stop its operation or to conduct its operation in such a manner so as to conform with the standards prescribed for discharge of effluents in Air Act, 1981, Water Act, 1974 and other relevant environmental laws.

169. The principle of ‘polluters pay’ has also to be applied to non-conforming/non-complying industrial units and appropriate action which includes closure and imposition of environmental compensation has to be taken by the concerned Statutory Regulators as it is the statutory responsibility and obligation conferred upon them, by the Legislature. Statutory Regulators cannot wriggle out of this obligation under any pretext or explanation. They cannot compromise with the environment at the behest of polluting industries.

170. 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*”.

171. Explaining “Precautionary” principle, Court said that it includes (i) environmental issues - by the State Government and statutory bodies – must anticipate, prevent and attempt causes of environmental degradation (ii) where there are threats of serious and irreversible damage, lack of full scientific certainty should not be used as a reason for proposing cost effective measures to prevent environmental degradation (iii) the ‘onus of proofs’ is on the actor or the developer/industrialist to show that the action is environmentally benign.

172. “Polluter Pays” principle was interpreted stating that absolute liability for harm to environment extends not only to compensate victim of pollution but also the cost of restoring environmental degradation. Environmental protection and prevention of pollution is primarily function of executive but unfortunately, they have failed.

173. In **Tarun Bharat Sangh, Alwar vs. Union of India, AIR1992SC514**, issue of mines licenses granted in Rajasthan for mining

limestone or dolomite stone in Sariska Tiger Park was considered. Court issued various directions for protection of the area. It also observed that a litigation relating to environment initiated by a common person, individually or collectively, should not be treated as usual adversarial litigation. The person(s) is concerned for environment, ecology and wildlife and it should be shared by government also.

174. 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 at least 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.

175. 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.

176. In ***M.C. Mehta vs. Union of India, (1997)3SCC715 (Badkal and Surajkund lakes matter)***, Court considered the issue of preservation of tourist spots near Delhi at Badkal and Surajkund lakes. Applying principle of 'sustainable development' and 'precautionary principle', Court banned construction activities within the radius of 1 km from the lakes. Court relied on the reports of experts from National Environmental Engineering Research Institute (NEERI) and Central Pollution Control Board (CPCB) stating that it is not advisable to permit large scale construction activities in close vicinity of lakes which would have an adverse impact on local ecology. It could affect water level under the ground and also disturb hydrology of the area.

177. 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.**

178. 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.

179. A major irrigation project relating to construction of dam on Narmada River came up for consideration in ***Narmada Bachao Andolan vs. Union of India, (2000)10SCC664***. The project involved construction of a network of over 3000 large and small dams. Explaining precautionary principle and burden of proof, it was held that the same would apply to polluting project or industry where extent of damage likely to be inflicted is not known. But where effect on ecology or environment on account of setting up of an industry is known, what has to be seen is whether environment is likely to suffer and if so what mitigative steps have to be taken to efface the same. Merely because there will be a change in the environment is no reason to presume that there will be ecological disaster. Once effect of project is known, then principle of sustainable development would come into play and that will ensure that mitigative steps are taken to preserve ecological balance. Sustainable development means what type

or extent of development can take place which can be sustained by nature/ecology with or without mitigation.

180. Where a project is likely to effect environment, a proper study of impact on environment ought to have been conducted and once such a study is conducted and project is found in public interest, necessary for development, the principle of sustainable development requires that the measures mitigating damage to the environment must be observed.

181. Precautionary principle, in the context of municipal laws means (i). Environmental measures, required to be taken by State Government and Statutory Authorities, and they must anticipate, prevent and attack the causes of environmental degradation; (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental depredation; (iii) The onus of proof is on the actor or the developer/industry, to show that his action is environmentally benign.

182. 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.

183. In ***N.D. Jayal vs. Union of India, (2004)9SCC362***, issue of safety and environmental aspects arising from Tehri Dam was considered by a 3 Judges Bench and the judgment has been rendered by majority. Looking to the retrospect of events, Court found that investigation for construction

of dam at Tehri for hydel power generation commenced in 1961; planning Commission in 1972 envisaged cost of Rs. 197.92 Crores; Government of UP granted administrative clearance to the project in 1976; in March 1980, the then Prime Minister directed authorities to undergo an in depth review of the entire project; Ministry of Science and Technology constituted an experts group which submitted an interim report in May 1980 and final report in August 1986; though 206 Crores were already spent, Expert Committee recommended abandonment of project; recommendation was accepted by MoEF in October 1986; in November 1986, erstwhile USSR offered an administrative, technical and financial assistance on a turnover base and it revived Tehri project as recipient of such aid and in November 1986, a protocol was signed with USSR for providing technical and financial assistance to the tune of 1000 M Rouble. Thereafter, events proceeded with pace. Government announced clearance of project in January 1987 and for execution of the project instead of irrigation department of Government of UP which had initiated, it was taken over by a joint venture company of Government of India and Government of UP called "Tehri Hydro Development Corporation" (THDC). In February 1990, Environment Appraisal Committee of MoEF recommended that project does not merit environmental clearance. However, on 19.01.1990, conditional clearance was given. At this stage, matter was brought to Court by filing Writ Petition under Article 32 of the Constitution. It was argued that once project was already decided to be abandoned, how clearance could be given subsequently and that serious consequences of implementation have not been taken note. Court referred to similar issue already considered in relation to Sardar Sarovar Project in ***Narmada Bachao vs. Union of India, (2000)10SCC664***. It was held that once a considered decision is taken, it is for the Government to decide how to do its job. When it has put a system in place for the execution of the project,

and such a system cannot be said to be arbitrary then the only role which Court has to play is to ensure that the system works in the manner in which it was envisaged. It further said “*decision that the questions whether to have an infrastructure project or not and what is the type of project to be undertaken and how it has be executed, are a part of policy making process and the courts are ill-equipped to adjudicate on the policy decision*”. Having said so, Court further said, “**courts have a duty to see that in the undertaking of a decision, no law is violated** and people’s fundamental rights as guaranteed under the Constitution are not transgressed upon except to the extent permissible under the Constitution”. Various specific aspects of safety and conditional clearance were examined on the basis of material which included safety aspect, and the aspects relating to conditional clearance comprising catchment area treatment, command area development etc. and lastly environmental conditions under head of catchment area, water quality maintenance, command area Bhagirathi Basin Management Authority, impact on human health, disaster management and rehabilitation, were considered and challenge was negated. Thereafter, for monitoring of observance of conditions of environment clearance, Court transferred the matter to Uttaranchal High Court for further consideration.

184. In **Re: Noise Pollution, (2005)5SCC733**, a two judges bench examined issue relating to noise pollution vis-a-vis right to life enshrined under Article 21 of the Constitution. A Public Interest Litigation was filed by one Anil K. Mittal, an engineer by profession, under Article 32, in Supreme Court, raising a serious and disturbing complaint that a minor girl, victim of rape, suffered since her cries for help went unheard due to blaring noise of music over loudspeaker in the neighbourhood. The girl, later in the evening, set herself ablaze and died of 100% burn injuries. It

was complained that most modern sound equipments are used in functions, parties and merry making celebrations etc., without giving any regard to the level of sound and also disturbance caused to the people, in the neighbourhood or vicinity. It was prayed that the existing laws restricting use of loud speakers and high-volume sound equipments be directed to be rigorously enforced. In another matter, validity of amendment made in Noise Pollution (Regulation and Control) Rules, 2000 (hereinafter referred to as 'NP Rules, 2000'), framed by Govt. of India, was challenged before Kerala High Court where petition was dismissed and thereagainst, an Appeal was filed before Supreme Court.

185. Writ Petition and Appeal came up before Supreme Court in 2003. Cognizance was taken and notices were issued to Govt. of India and CPCB. Court observed that Right to Life under Article 21 guaranteed a person, life with human dignity which includes all aspects of life which go to make a person's life meaningful, complete and worth living. No one has right to claim to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours or others. Even Article 19(1)(a) of Constitution does not give Fundamental Right to create noise by amplifying the sound. While one has a right to speech, others have a right to listen or decline to listen. Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears or mind of others.

186. Supreme Court examined various kinds of noise and source of noise pollution, particularly in the special context of fire-works. Commenting upon the hazardous effect caused by high sounding fire crackers, Court observed that it not only increases ambient noise level but also contributes significantly, an increase in air pollution. Then it also examined methodology adopted in other countries for control of noise pollution and

referred to the laws made in United Kingdom, United States of America, Japan, China, Australia and local laws made in Montgomery County, Maryland, USA, and statutory laws in India including NP Rules, 2000, Section 268 of I.P.C, Section 133 of Cr.P.C. and provisions in Factories Act, 1948, Motor Vehicles Act, 1988, Air Act, 1981, EP Act, 1986 and Law of Torts. It also referred to some judgments of High Courts namely Punjab, Calcutta, Andhra Pradesh and Madras to observe that Indian judicial opinion is uniform in recognizing Right to live in freedom from noise pollution as Fundamental Right protected by Article 21 of Constitution. Noise pollution beyond permissible limits is an in-road on that right. For observance and enforcement of right against noise pollution, Court said that an appropriate legislation is still wanting to cover the menace of noise pollution. Further, there is equal need of developing a mechanism and infrastructure for enforcement of prevalent laws. The matter was disposed of, issuing orders and directions, in general to all the States, requiring to make provisions for seizure and confiscation of equipments/instruments, creating noise beyond the permissible limits. The judgment did not deal with the correctness of Kerala High Court judgment dismissing Writ Petition wherein validity of Rules 5 (3) inserted by Amendment Notification dated 11.10.2002 in NP Rules, 2000 was challenged. This was brought to the notice of Supreme Court by filing an IA. Vide order dated 03.10.2005 (reported in **(2005)8SCC794**), Supreme Court re-opened Civil Appeal No. 3735/2005, examined correctness of High Court judgment and ultimately decided vide judgment dated 28.10.2005. Court found that power of exemption granted to the Government, permitting use of loudspeakers etc. during night hours (between 10 pm to 12 pm) or during any cultural or religious festive occasions for a limited duration, as such, cannot said to be unreasonable.

Court upheld the said amendment, confirmed High Court judgment and dismissed Appeal. This judgment is reported in **(2005)8SCC796**.

187. In **Research Foundation for Science vs. Union of India & Others, (2005)13SCC186**, considering further, in pending matters, namely, Writ Petition No. 457/1995; SLP(C) No. 16175/1997 and Civil Appeal No. 7660/1997, Supreme Court in its judgment dated 05.01.2005 considered the question, “*how hazardous waste oil imported and lying in 133 containers at Nhava Sheva Port is to be dealt with*”. The Monitoring Committee constituted by Court categorically found that what was imported is hazardous waste and it was imported illegally in the garb of importing lubricant oil. On behalf of the Importers, reliance was sought on the Basel Convention and standards mentioned therein but Court said that Basel Conventions are only guidelines and individual countries can provide different criteria in their national laws. National law laying stricter condition has to prevail. Imported hazardous material has, therefore, to be wasted and the manner it was to be done, left to be decided by the Government within the prescribed time. Court said:

“the liability of the importers to pay the amounts to be spent for destroying the goods in question cannot be doubted on applicability of precautionary principle and polluter pays principle. These principles are part of the environmental law of India. There is constitutional mandate to protect and improve the environment.” In para 28 of the judgment, Court categorically said, “*the national law has to apply and shelter cannot be taken under guidelines of Basel Convention*”.

188. On ‘polluter pays’ principle, Court said,

*“‘polluter pays’ principle basically means that the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. **This includes environmental cost as well as direct cost to the people or property, it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately tangible.** The principle also does not mean that the polluter can pollute and pay for it. The nature and extent of cost and*

the circumstances in which the principle will apply may differ from case to case.”

189. In ***M.C. Mehta vs. Union of India & Others, (unauthorised constructions and violation of laws in Delhi matter) (2006)3SCC399***, Supreme Court in its order dated 16.02.2006, dealing with the complaint that officers of State and Statutory Authorities are indulging in illegal activities and must be held accountable, observed:

“If the laws are not enforced and the orders of the courts to enforce and implement the laws are ignored, the result can only be total lawlessness. It is, therefore, necessary to also identify and take appropriate action against officers responsible for this state of affairs. Such blatant misuse of properties at large scale cannot take place without connivance of the concerned officers. It is also a source of corruption. Therefore, action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens. Those who own the properties that are misused have also implied responsibility towards the hardship, inconvenience, suffering caused to the residents of the locality and injuries to third parties. It is, therefore, not only the question of stopping the misuser but also making the owners at default accountable for the injuries caused to others. Similar would also be the accountability of errant officers as well since, prima facie, such large scale misuser, in violation of laws, cannot take place without the active connivance of the officers. It would be for the officers to show what effective steps were taken to stop the misuser.”

190. In ***Fomento Resorts & Hotels & Another vs. Minguel Martins & Others, (2009)3SCC571 (order dated 20.01.2009)*** in (Civil Appeal No. 4154 of 2000), 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”.

191. 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”.

192. 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”.*

193. Court reiterated that natural resources including forest, water bodies, rivers, seashore etc. are held by State as a trustee on behalf of people and specially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. State cannot transfer public trust properties to a private party. If such a transfer interferes with the right of the public, Court can invoke public trust doctrine and take affirmative action for protecting right of people to have access to light, air and water and also for protecting rivers, sea, tanks,

trees, forests and associated natural eco-systems. The questions, were answered observing that access road cannot be obstructed. Court also upheld the view taken by High Court that extension of hotel building was illegal and, therefore, it has to be demolished.

194. 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.

195. 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”.*

196. 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”.

197. 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 River 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”.*

198. In ***News Item Published in Hindustan Times Titled “And Quiet Flows The Maily Yamuna”, In Re, (2009)17SCC545*** (order dated 14.02.2006), Court noticed attempt of the authorities in placing alleged scheme for improvement of water quality, without any clarity, and in para 5 said:

*“We do not know what are the so-called innovative and convenient ways of which suggestion is given in the affidavit. The **authorities have to be clear in their perception** and palm of action lest the huge amounts incurred with a view to improve the water quality go down the drain. **After clearly laying down the plan of action in consultation with all concerned, there has to be meticulous implementation, then alone some progress can be made in improving the quality of water.**”*

199. In ***State (NCT of Delhi) vs. Sanjay, (2014)9SCC772***, (order dated 04.09.2014 in Criminal Appeals No. 499/2011 with Nos. 2105-12/2013), authority of Police and other law enforcement agencies for prosecution under Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as ‘MMDR Act, 1957’) was challenged and considered. Issue for consideration was ‘whether Section 21 and 22 of the aforesaid Act would operate as bar against prosecution of a person who has been charged with allegations which constitute offences under Section 379/114 and other provisions of IPC, 1860. In other words, ‘whether MMDR Act, 1957, explicitly or impliedly, excludes provisions of IPC when act of an accused is an offence under both statutes. The contention was that the offence, if any, committed under the provisions of MMDR Act, 1957 but no complaint had been made, then no cognizance can be taken

in IPC and since the offence is covered by MMDR Act, 1957, provisions of IPC cannot be resorted to. Considering the above question, Court said that mining activity also cause and destruct environment if conducted in absence of proper scientific methodology; **lack of proper scientific methodology for river sand mining have led to indiscriminate sand mining**; and weak governance and corruption have led to widespread illegal mining. Court referred to UNEP Global Environmental Alert Service report, stating in reference to India, that sand trading is a lucrative business, and there is evidence of illegal trading broadly under the influence of sand mafias; **mining of aggregates in rivers has led to severe damage to river, including pollution and changes in level of pH; removing sediment from river causes the river to cut its channel through the bed of the valley floor, or channel incision, both upstream and downstream of the extraction site; leads to coarsening of bed material and lateral channel instability; it can change the riverbed itself**; removal of more than 12 million tonnes of sand a year from the Vembanad Lake catchment in India has led to lowering of the riverbed by 7 to 15 centimeters a year; **Incision can also cause alluvial aquifer to drain to a lower level, resulting in a loss of aquifer storage; and can also increase flood frequency and intensity by reducing flood regulation capacity**. However, lowering the water table is most threatening to water supply exacerbating drought occurrence and severity as tributaries of major rivers dry up when sand mining reaches certain thresholds. Illegal sand mining also causes erosion. Damming and mining have reduced sediment delivery from rivers to many coastal areas, leading to accelerated beach erosion. Quoting above report of United Nations, impact of sand mining was further discussed in para 34 and 35 of the judgment, as under:

*“34. The report also dealt with the **astonishing impact of sand mining on the economy**. It states that the tourism may be affected through beach erosion. Fishing, both traditional and commercial, can be affected through destruction of benthic fauna. Agriculture could be affected through loss of agricultural land from river erosion and the lowering of the water table. The insurance sector is affected through exacerbation of the impact of extreme events such as floods, droughts and storm surges through decreased protection of beach fronts. The erosion of coastal areas and beaches affects houses and infrastructure. A decrease in bed load or channel shortening can cause downstream erosion including bank erosion and the undercutting or undermining of engineering structures such as bridges, side protection walls and structures for water supply.*

35. Sand is often removed from beaches to build hotels, roads and other tourism-related infrastructure. In some locations, continued construction is likely to lead to an unsustainable situation and destruction of the main natural attraction for visitors-beaches themselves. Mining from, within or near a riverbed has a direct impact on the stream’s physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, in stream roughness of the bed, flow velocity, discharge capacity, sediment transportation capacity, turbidity, temperature, etc. Alteration or modification of the above attributes may cause hazardous impact on ecological equilibrium of riverine regime. This may also cause adverse impact on in stream biota and riparian habitats. This disturbance may also cause changes in channel configuration and flow-paths.”

200. Relying on the Doctrine of Public Trust, applied in the context of environment, Court held that natural resources constitute public assets and State is trustee and custodian to protect it, even if proceedings have not been initiated under MMRD Act, 1957, if a person has extracted minerals unauthorizedly and illegally, it amounts to theft and, therefore, offence is covered under Sections 378 and 379 of IPC, wherein police can take cognizance and Magistrate on receipt of police report is empowered to proceed without waiting for a complaint to be filed by an officer authorized under MMRD Act, 1957. Court said that dishonest removal of sand gravel and other minerals from river which is property of the State, out of State’s possession without consent, constitutes an offence of theft. Hence, provisions of MMRS Act, 1957 will not debar police from taking action against persons committing theft of sand and minerals by exercising power under Cr.P.C. and submit a report before Magistrate for taking cognizance

against such persons. Court said “any case **where there is a theft of sand and gravel from the Government land, the police can register a case**, investigate the same and submit a final report under Section 173 of Cr.P.C before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) of Cr.P.C”. Further in para 73, Court said that “we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the river beds without consent, which is the property of the State, is a distinct offence under the IPC. Hence, for the commission of offence under Section 378 Cr.PC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorized officer for taking cognizance in respect of violation of various provisions of the MMRD Act.”

201. In **Lal Bahadur vs. State of UP & Others (2018)15SCC407**, change of master plan and converting green area into residential one was considered. The issue was, whether such conversion is conducive to protection of environment or not. In the master plan of 1995 of Lucknow, area in dispute was reserved as green belt. In master plan 2021, the same area, shown earlier as green belt, was converted as residential. This part of master plan 2021 was challenged before Lucknow bench of Allahabad High Court. Writ petition was dismissed. The matter came in appeal before Supreme Court. Court held in para 12 of judgment that change of area from green belt to residential is in violation of Article 21, 48A and 51A(g) of the Constitution. Reliance was placed on **Bangalore Medical Trust v B.S. Muddappa & Others (1991)4SCC54**, wherein Court had said that protection of environment, open spaces for recreation and fresh air, playground for children, promenade for the residents and other

conveniences or amenities are matters of great public concern and a vital interest to be taken care of in a development scheme. Public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other use. Court also relied on an American Supreme Court Judgment ***Agins vs. City of Tiburon, [447 us 255 (1980)]***, wherein Court said, ‘... it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant adverse impacts, such as pollution,destruction of scenic beauty, disturbance of the ecology and the environment, hazards related geology, fire and flood, and other demonstrated consequences of urban sprawl’.

202. In para 15, Court said that, “This Court had clearly laid down that **such spaces could not be changed from green belt to residential or commercial one.** It is not permissible to the State Government to change the parks and playgrounds contrary to legislative intent having constitutional mandate, as that would be an abuse of statutory powers vested in the authorities’. Court also observed, when master plan was prepared earlier and authorities found importance of such space, it was their bounden duty not to change its very purpose when they knew very well the importance of this place to be kept as open space. Court said,

*“The **importance of park is of universal recognition.** It was against public interest, protection of the environment and such spaces reduce the ill effects of urbanisation, it was **not permissible to change this area into urban area as the garden/ Greenbelt is essential for fresh air, thereby protecting against the resultant impacts of urbanization, such as pollution etc.** The provision of the Act of 1973 and other enactments relating to environment could not be permitted to become statutory mockery by changing the purpose in the master plan from green belts to residential one. Authorities are enjoined with duty maintain them as such as per doctrine of public trust.”*

203. In **Goel Ganga Developers India Private Limited vs. Union of India, (2018)18SCC257**, Court said in para 64 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 proponent. 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.**”***

204. **Arjun Gopal & Ors. vs. Union of India & Ors., (2019)13SCC523**

is a follow up of earlier decision with regard to firecrackers i.e. **(2017)14SCC488**. IA No. 6 and 8 of 2016 and others were filed by manufactures of firecrackers as well as some other parties. The arguments were raised that there was no sufficient study as to what extent burning of crackers is contributing towards air and noise pollution and whether it was so serious so as to warrant ban. Second argument was raised with

reference to the fact that bursting of crackers during Diwali is a religious factor and therefore, protected under Article 25. In Para 32, Court observed that *“it is an accepted fact that bursting of firecrackers during Diwali is not only the only reason for deterioration of air quality. There are other factors as well. It calls for necessity to tackle the other contributory factors for air pollution and making the air quality as “very poor” and even “poor”. Unregulated construction activity which generates lot of dust and crop burning in the neighbouring States are the two other major reasons, apart from certain other reasons, including vehicular pollution etc.”*. Dealing with Article 25 Court said, *“Article 25 is subject to Article 21 and if a particular religious practice is threatening the health and lives of people, such practice is not entitled to protection under Article 25”*. The issue of economic hardship and unemployment was considered and answered in Para 44 may observing as under:

“...First aspect is that the argument of economic hardship is pitched against right to health and life. When the Court is called upon to protect the right to life, economic effect of a particular measure for the protection of such right to health will have to give way to this fundamental right. Second factor, which is equally important, is that the economic loss to the State is pitched against the economic loss in the form of cost of treatment for treating the ailments with which people suffer as a result of burning of these crackers. Health hazards in the form of various diseases that are the direct result of burning of crackers have already been noted above. It leads to asthma, coughing, bronchitis, retarded nervous system breakdown and even cognitive impairment. Some of the diseases continue on a prolonged basis. Some of these which are caused because of high level of PM_{2.5} are even irreversible. In such cases, patients may have to continue to get the medical treatment for much longer period and even for life. Though there are no statistics as to what would be the cost for treating such diseases which are as a direct consequence of fireworks on these occasions like Diwali, it can safely be said that this may also be substantial. It may be more than the revenue which is generated from the manufacturers of the crackers. However, we say no more for want of precise statistical data in this behalf.”

205. In ***Hospitality Association of Mudumalai vs. In Defence of Environment and Animals and Others (2020)10SCC589***, Court said,

“Precautionary Principle makes it mandatory for the State Government to anticipate, prevent and attack the causes of environmental degradation”.

206. The above binding precedents show that in the matter of environment, there should be no compromise. Effective remedial action has to be taken by responsible authorities failing which it is the statutory obligation of Courts to take action and issue necessary directions which shall be binding and obligatory on part of authorities to be carried out.

207. Learned Counsels appearing for various industrial associations said that the concerned Statutory Regulators in different areas are acting illegally by raising arbitrarily demand of highly excessive environmental compensation and blindly issuing directions for closure of industries etc. When we questioned as to which are these industries and if such alleged illegal actions have been taken or illegal orders have been passed by Statutory Regulators, whether remedy of Appeal has been availed, and such orders which are also appealable before this Tribunal, whether any Appeal has been filed before Tribunal, no reply could be given by any of the counsel.

208. We repeatedly asked Learned Senior Counsels and other Counsels appearing for industry associations, who have filed IAs as mentioned above, to give us the list of those polluting industries, which are violating environmental norms and where against action has been taken by respective Statutory Regulators but such action, as per claim of Learned Counsels, is illegal and is not consistent with law, but no such information was given.

209. We also required them to give details of those industries where against any adverse action has been taken but no reply has been given either by giving names of such industries or details of such alleged action.

Vague and general allegations are of no consequences and cannot be entertained by us.

210. We also required Learned Counsels to explain as to how identification of industrial clusters/areas as CPA or SPA would individually affect the concerned industries which also could not be explained except that the area is brought to disrepute which may affect respective business of the industries. But even details of any such adverse impact on business have not been given in any IA. Despite our repeated request, nothing was supplied to us during hearing also.

211. We told Learned Counsels that we are not hesitant in taking action if any individual or collective action has been taken by respective Regulators which can be shown to have been taken illegally but nothing in this regard, could be demonstrated by placing relevant facts before us.

212. In our view, for assessment/determination of CEPI score with reference to a particular or any other relevant aspect, in our view the principles of natural justice are not attracted since the determination is not by itself for taking any adverse/coercive/pre-judicial action against any individual. The purpose is only to take general, preventive, remedial and precautionary steps in the concerned area for reducing damage to environment or to restore damage already caused. Therefore, the arguments raised that the opportunity ought to have been given to individual industries, in our view, is only misconceived. However, it cannot be doubted that if any action is taken against any individual industry or group of industries as a whole by issuing any direction of closure or cancellation of any permission or NOC or clearance or imposition of environmental compensation etc., in such case, the principle of natural justice would have to be complied with, notices have to be issued

and after giving opportunity of hearing, appropriate orders would be passed. But this has no application for determination of CEPI score in reference to any particular area or any other specifications.

213. Some suggestions have been made that monitoring and data review should have been more frequent and some factors may be taken into consideration or should have been ignored but all these individual suggestions in our view do not render the otherwise factors and methodology laid down by CPCB for assessment/determination of CEPI score. It is nobody's case that determination of CEPI score is *per se* illegal or that any aspect which has been considered should not have been considered at all. While adjudication an issue like the present one, we can examine the matter on overall consideration but micro or nano scrutiny as per suggestion of individuals, particularly when something has been done by an expert body on the subject, in our view, is not permissible on the part of Tribunal. Individual suggestions based on the understanding and appreciation of the facts of individual persons, more impressed with their own interest, may not render an otherwise well considered scheme prepared by an expert body, illegal. The mere fact that there are some subsequent changes/alterations/modifications, does not mean that earlier scheme was illegal so as to nullify but it shows that concerned expert body is open to make its policy more effective and better. Such subsequent changes/alteration/modification does not mean that policy as initially framed or subsequently modified *per se*, was bad. An amendment to a law does not mean that initial law was bad. Moreover, the determination of CEPI score is in the field of legislative function and, therefore, judicial review is permissible only on the same considerations as a sub-ordinate or delegated legislation can be examined.

214. What should be the periodical monitoring is also a matter to be considered by the experts. Once they have taken a decision of making it annual, biennial and triennial review, it will not be justified to direct such review on more frequent basis since practicality of every aspect has also to be considered. Monitoring regarding CEPI score requires collection of various data across the country and it is time consuming process. Therefore, making it weekly/fortnightly/monthly/six monthly review may render its functioning improbable which is not in the interest of purpose for which this exercise has been undertaken by CPCB.

215. Current environmental indicators assessed environmental quality but no single indicator measures the overall environmental performance of a country or a State or a region in an easy and detailed methodology. CEPI is a step towards clarity by combining six different indicators i.e., ecological footprint, environmental quality, environmental vulnerability, environmental sustainability, adjusted net savings, and pressure on nature data into one indicator. Judicial cognizance can be taken that in the last few decades, pursuit of higher growth and economic development has been a Central goal of Government policies. However, to achieve greater growth, natural resources are needed which have a negative impact on environment. Therefore, the achievement of sustainable development and continuous improvement of current quality of life at a lower intensity of resource utilization without jeopardizing future generations, has received more global attention than ever before, particularly, considering global warming, climate change, and other environmental problems which are getting increasingly serious. There have been various studies, focused on the contrast between the short run and long-term effects of economic growth. There is no unanimity among the experts/researchers. Despite recent development in environmental science, many people are

uninformed about the theory of environment and the confusion caused by the abundance of economic statistics in the media. This is more true in the context of this country since the biggest part of the population either lack information or ill-informed or less informed. Many people are unable to evaluate their country's current environmental performance and compare it to historical performance. There may be several factors for this problem, like:

- (i) The number of environmental statistics used by businesses and governments, their quality and potential differences in media coverage.
- (ii) Absence of historic background needed to portray and deliver the environmental movements.
- (iii) An absence of context regarding alternative statistics, for examples, all statistics area unit are not created equal, with some clearly being a lot of necessary and consequential than others.
- (iv) Results heavily affected with the nature of the proxies taken to do the analysis with environmental quality.
- (v) There is no single indicator of environment that consider both demand and supply side factors of environmental quality.

216. In short, we can say that environment performance is an important part of economic development. Right of policy makers to use environmental services to prevent environmental damage should be a priority. Environmental performance is a multidimensional concept that cannot be captured precisely by individual indicators but is determined by a much larger set of indicators than some of the indicators accounted for in the existing work. Nature of environmental performance is a complex and heterogeneous task. An inclusive ecosystem must promote the growth and development of the most vulnerable groups in society.

217. CEPI score is not an attempt to defeat or destroy economic development or industrial development but it is a progress or step forward towards achieving the principle of sustainable development and precautionary principle. Certain areas are identified which according to CPCB, as per the data collected by it, are seriously polluted requiring immediate remedial measures. This pollution is in the context of water, air and land/soil. The action taken by CPCB or State Regulators is to mitigate the degree of pollution, restore/rejuvenate damaged environment and bring clean environment for the benefit of all including industries. Punitive or preventive action is only in respect of such industrial units/individual industry which are failing to control their functioning by conforming to the prescribed standards/norms of pollution. As we have already said that no industry has any legal or otherwise right to carry on its operations by causing pollution. In these circumstances, neither CEPI score determined by CPCB nor its methodology can be said to be bad in law nor it is shown that as to which law is violated by CPCB in CEPI determination nor a micro/nano scrutiny as suggested by entrepreneurs associations, in our view, justify interference with the methodology prescribed by CPCB.

218. We have required Learned Counsels to point out from our orders, where any direction has been given to initiate a mass action against all industries irrespective of any intelligible differentia and/or valid classification. In fact, the distinction has categorically been made between polluting/non-compliant industries vis-a-vis non-polluting/compliant industries. Our orders very categorically say that Statutory Regulators must take effective remedial action including punitive one against polluters/violators and to this direction, no valid objection can be raised by anyone. In fact, none has been raised by the Learned Counsels

appearing before us. It is true that the matter was taken to Supreme Court against orders dated 13.12.2018, 10.07.2019 and 14.11.2019, but when questioned as to which part of the above orders is against those industries/entrepreneurs who are operating their units complying with the environmental norms, no Counsel could point out any such direction. It was accepted in general that specific directions are against non-compliant industries and that has to be since no industry can continue to operate its units by causing pollution and damaging environment.

219. If we go through the details of our orders, the very first order dated 13.12.2018 whereby *suo-moto* cognizance was taken by this Tribunal pursuant to identification of 88 industrial clusters with CEPI score in 2009-2010 and 100 such clusters in 2018. Tribunal noted in para 5 and 6 the purpose of economic development and also the causes of pollution by industries. It relied on Supreme Court decision in ***Karnataka Industrial Areas Development Board vs. C. Kenchappa & Ors (supra)*** and ***Vellore Citizens Welfare Forum Vs. Union of India (supra)***. Tribunal observed that humanity must take no more from nature than man can replenish and that people must adopt lifestyles and development paths that work within the nature's limit. It accordingly directed SPCBs/PCCs to take time bound action plan. The said directions contained in paras 9 to 13, we have already quoted above. We may summarise the directions as under:

- (i) Time bound action plan regarding identified polluted industrial clusters as per revised norms by CPCB who restore environmental qualities within norms, shall be prepared.
- (ii) It shall be ensured that all industrial clusters comply with laid down parameters as per Water Act, 1974 and Air Act, 1981.

- (iii) It will be open to SPCBs/PCCs/CPCB to take coercive measures including recovery of compensation for damage to environment on 'polluter pays' principle.

220. In the order dated 10.07.2019, Tribunal observed that ill effects of industrial pollution of environment and public health are well acknowledged. The standards prescribed under Air Act, 1981, Water Act, 1974 and EP Act, 1986 for air and water quality must be maintained and violation thereof is a criminal offence. Any violation must be visited with stopping of polluting activity, prosecution and compensation for restoration of environment. Tribunal also considered that mere making of action plan would not obviate the requirement of enforcing the law.

Continued polluting activities are criminal offences under the law of the land. Rule of law requires prohibiting such activities to safeguard environment and innocent victims. The order stressed upon the fact that violation of environmental norms by polluting activities of industries cannot be allowed and those who are violating such norms must be proceeded against. In this backdrop, order says:

- (i) Polluting activities cannot be allowed to continue till adequate measures are taken. (Para 23 of the order)
- (ii) Statutory regulatory bodies can be required to identify industrial units straight away in the said PIAs that are causing pollution, particularly, those units which fall under the Red and Orange category and take action against them by way of closing the polluting activity, initiating prosecution and assessing and recovering compensation. (Para 23 of the order)
- (iii) CPCB in co-ordination with all SPCBs/PCCs, to take steps in exercise of statutory powers to prohibit operation of polluting

activities in the CPAs and SPAs within three months. (Para 28 of the order)

- (iv) CPCB and SPCBs/PCCs would make assessment of compensation to be recovered from the said polluting units for the period of last 5 years taking into account the cost of restoration and cost of damage to public health and environment and deterrence element. (Para 28 of the order)

221. Vide order dated 23.08.2019, Tribunal clarified that pending framing of policy for implementation of action plan does not bar concerned authorities for not enforcing existing pollution norms and applying 'sustainable' 'precautionary' and 'polluter pays' principles on the basis of data available. With regard to confusion created in respect of Red and Orange category, Tribunal clarified in para 10 that if any Red and Orange category unit are viable by not causing pollution, there is no absolute bar in permitting setting of such industries. MoEF&CC can devise an appropriate mechanism to ensure that new legitimate activity or expansion can take place after due precautions are taken in the areas in question by red and orange category units.

222. In para 11, it was very categorically said that para 28 and 32 of order dated 10.07.2019 clearly shows that action has be taken only against polluting activates. **If any unit is complying with the norms, such unit is not affected.** This is what was reiterated in the order dated 14.11.2019. Action taken report was considered, steps taken for mitigating pollution were appreciated but then it was stated in para 8 that while every mitigation measures must be taken, this cannot be a ground not to take any legal action for violation of law. Tribunal castigated inaction of Statutory Regulators at the cost of rule of law. It also deprecates status reports submitted by authorities without giving details of compliance of

directions for taking coercive measures for enforcement of Air Act, 1981, Water Act, 1974 and EP Act, 1986 by prohibiting operation of polluting activities and assessing and recovering compensation on ‘polluter pays’ principle including interim compensation for which scale was specified in the earlier orders. Directions contained in para 11 of the order are also in respect of **identified polluters** in polluted industrial areas. This is clear from the following:

“Tribunal has thus no option except to reiterate that meaningful action has to be taken by the State PCBs/PCCs as already directed and action taken report furnished showing the number of identified polluters in polluted industrial areas mentioned above, the extent of closure of polluting activities, the extent of environmental compensation recovered, the cost of restoration of the damage to the environment of the said areas, otherwise there will be no meaningful environmental governance.”

223. Tribunal also clarified that there may not be any absolute bar for expansion of new projects in Red and Orange category provided it is ensured that all requisite measures shall be adopted so as not to violate environmental norms. It has to be ensured that activities do not further add to already existing norms. Thus, even the complaint that expansion of existing units or new projects has been completely barred, is also not correct provided such projects do not add to the pollution and confine their activities within the prescribed norms.

224. Orders dated 10.07.2019 and 14.11.2019 have reminded Statutory Regulators to discharge their statutory duties/obligations in more earnest and devoted manner showing concern for environment instead of polluting industries. Sustainable development does not mean only interest of industries or development of industries but it must take care of environment as well as development. The steps taken by CPCB, in issuing CEPI score methodology, is only a step towards precautionary principle and sustainable development.

225. In absence of any patent illegally or infirmity, violating any statutory environmental law, we find no reason to interfere with the scheme and methodology of CEPI score, particularly when, as already said, the scheme has been continuing for the last more than a decade and except when we issued orders reminding Statutory Regulators to discharge their statutory obligations in effective and responsible manner, some action has been taken, only then industries have come to challenge the methodology of CEPI score as also the list prepared by Statutory Regulators otherwise they had no grievance against the same. Even then, we have carefully considered so called grievances but sorry to say that except of general and vague allegations, no substantial objection has been raised justifying interference on our part. In these circumstances, having given our careful consideration to concerned IAs, however, we find no merit therein and these IAs are accordingly, rejected.

226. IA No. 166/2022, seeking intervention in OA I stands disposed of since the applicant of such IA has been heard and the arguments have been considered in this judgment.

227. IA No. 87/2020, IA No. 93/2022, IA No. 100/2022, IA No. 101/2022, IA No. 161/2022, IA No. 171/2022, IA No. 178/2022, for the reasons discussed above, are rejected/dismissed.

228. So far as OA II i.e., **OA 469/2022** is concerned, it is in fact a challenge to CEPI score methodology which neither falls within the jurisdiction prescribed under Section 14 and 15 of NGT Act, 2010 nor for the reasons already discussed above, we find merit in this OA and, therefore, **it has to be returned in negative and stands rejected.**

229. OA I i.e., **OA 1038/2018 is disposed of** by directing the concerned Statutory Regulators to comply with the directions issued by this Tribunal

vide orders dated 13.12.2018, 10.07.2019 and 14.11.2019 and take remedial but effective and responsible action against defaulters and violators who are causing pollution so that the highly stressed industrial clusters/areas may be relieved of high degree of pollution and situation may be brought to the normal one which will be for the benefit of everyone including the industries and public at large in general. Environmental compensation as per law should be assessed against the defaulting and polluting industries and amount so recovered shall be used for remediation, rejuvenation and restoration of already damaged environment in the area of respective industrial clusters.

230. **IA 198/2022 and IA 199/2022:** Before departing, we may also notice at this stage that after hearing concluded and order was reserved on 15.07.2022, two IAs i.e., 198/2022 and 199/2022 have been filed by M/s. Healthium Meditech Ltd. through its authorized signatory Peenya Industrial Area, Phase-IA, Bengaluru.

231. Vide IA 198/2022, applicant has sought permission to intervene in the OA I and vide IA 199/2022, it has challenged the Demand Notice dated 30.01.2020, issued by Karnataka SPCB and prayed that the same be set aside. The above Demand Notice showed that it is in reference to Tribunal's order dated 10.07.2019 mentioning that pending final assessment of compensation, interim compensation may be recovered at the scale adopted by Tribunal in the order passed in ***Aryavart Foundation vs. M/s. Vapi Green Enviro Ltd. & Ors., OA 95/2018***. The Demand Notice is only in furtherance of final process of determination of environmental compensation by Karnataka SPCB in exercise of its Statutory powers under Water Act, 1974, Air Act, 1981 and EP Act, 1986. When final compensation is determined, such order is also appealable. In these circumstances, we do not find that Demand Notice, in question, can be

allowed to be challenged, by means of IA in question, since applicant has statutory remedy.

232. Letter dated 25.08.2022 submitted by Mr. Samar Vijay Singh on behalf of applicant in IA No. 265/2020: This letter has been received with the request that IA No. 265/2020 be dismissed as withdrawn since applicant does not wish to pursue the same. We accept the request and dismiss IA No. 265/2020 as withdrawn.

ADARSH KUMAR GOEL
CHAIRPERSON

SUDHIR AGARWAL
JUDICIAL MEMBER

PROF. A. SENTHIL VEL
EXPERT MEMBER

August 29, 2022
Original Application No. 1038/2018 with
IAs and Original Application No. 469/2022
R