Item Nos. 02 & 03 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(By Video Conferencing)

M.A. No. 46/2022
In
Original Application No. 05/2022

(With reports dated 31.05.2022 and 04.06.2022)

In re : News item published in The Indian Express dated 07.01.2022 titled "Gujarat: At least 06 dead, 20 sick after gas leak at industrial area in Surat"

WITH

Original Application No. 05/2022 (WZ)

Brackish Water Research Centre Applicant

Versus

Gujarat State Pollution Control Board & Ors. Respondent(s)

Date of hearing: 23.09.2022

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

Respondent: Ms. Manisha Lavkumar, Senior Advocate with Mr. Chintan Dave, Advocate for GPCB

ORDER

Introductory

1. The matter has been taken up for consideration of report of the joint Committee in pursuance of order of this Tribunal dated 18.01.2022,

registered as M.A. No. 46/2022. By the said order, the Tribunal dealt with O.A No. 05/2022 which was taken up suo motu in the light of media report[1] titled "*Gujarat: At least 06 dead, 20 sick after gas leak at industrial area in Surat*". The report mentioned that deaths and injuries took place in the fire incident due to gas leakage from a tanker outside Sachin Industrial area, Surat, leading to suffocation of the workers. The matter was considered in light of report of the CPCB dated 17.01.2022 showing that the incident was a result of unscientific handling, transportation and disposal of hazardous waste in violation of Hazardous and other Waste (Management and Transboundary Movement) Rules, 2016, Storage and Import of Hazardous Chemical Rules, 1989, Environment Protection Act, 1986 (hereinafter referred to as "EPA 1986"), Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as "Water Act"), the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as "Air Act").

2. The Tribunal noted the version in I.A. No. 08/2022 filed by Brackish Water Research Centre that liability for the incident in question was of **Hikal Limited**, a chemical manufacturer unit at Taloja MIDC Raigad, Maharashtra which sold the hazardous waste to **Sangam Enviro Pvt. Ltd, a Vadodara based company in Gujarat**. The sale was illegal as the buyer was neither "authorized user" nor "authorized disposal facility". Thus, both were to be held accountable for violations of statutory environmental norms.

3. Considering the above, the Tribunal constituted a joint Committee to ascertain the sequence of events, causes of failure and persons and authorities responsible therefor, extent of damage to life - human and

[1] Indian Express Daily, Dated 07.01.2022

non-human and the environment – including, water, soil, air; steps to be taken for compensation of victims and restitution of the environment, and estimated cost involved for restoration; remedial measures to prevent recurrence, other incidental or allied issues found relevant, including handling of acidic effluents flowing in the drain in question.

4. The composition of the Committee was as follows:-

Justice B.C. Patel, former Chief Justice, Delhi High Court and former Judge of the Gujarat High Court presently stationed at Ahmedabad - Chairman,

Representative of MoEF&CC – Member,

Representative of CPCB – Member,

Secretary, Industries, Gujarat - Member

Gujarat State PCB – Member

State Disaster Management Committee – Member

SSP, Surat - Member

Head of the Chemical Engineering Department of the IIT Gandhinagar – Member,

District Magistrate, Surat

Factual report of the Committee about the incident

5. In pursuance of above, the report of the joint Committee has been filed on 31.05.2022 followed by Additional report dated 04.06.2022. GPCB has filed an application seeking impleading of MPCB and M/s Hikal Limited, Taloja as parties, in view of the facts found.

6. Report of the joint Committee is that it carried out site inspection coordinated with the concerned authorities and found as follows:-

"VIII. SUMMARY OF THE REPORT

xxx……………………………………xxx…………………………………xxx

- *From the report received from the MPCB it is clear that* ***Hikal Ltd, supplied 5 tankers on different dates of the sodium hydro***

sulphide. The last tanker sent on 31st December, 2021, was detained by Sangam Enviro private limited and thereafter as detailed in the report, the Sangam transferred the chemical from the tanker number GJ-06- BT-6421 in a tanker number GJ-06-ZZ 6221. The part played by the persons in transferring the said hazardous waste is discussed in detail in the report. It will be noted that even police seized some video footage indicating the entry and departure of the tankers and entry of the persons on the vehicle.

- *In all on different 5 dates and through different vehicles/takers, sodium, hydro, sulphide was supplied to Sangam Enviro private limited. The invoice and other details are mentioning Annexure 22. The same is as under.*

S.No	***Bill to/Consignee/ Invoice date***	***Order No and date.***	***Customer PO No.***	***LR Date/Transporter. Vehicle No.***	***Quantity (KG) Amount***
1	*Sangam/ Sangam 12-Nov-21*	*1066 10-Nov21*	*As per mail from Abhay Sir 08-11-201*	*11-Nov-21 Nilkanth Logistic GJ-12-BY-1891*	*29030 @Rs. 0-01 Rs.342.55*
2	*Sangam/ Sangam 22-Nov-21*	*1066 10-Nov-21*	*Same as above*	*21-Nov-21 Shree Maruti Impex India GJ-06-BT-6431*	*29270 @Rs. 0.01 Rs.345.39*
3	*Sangam/ Sangam 23-Nov-21*	*1066 10-Nov-21*	*Same as above*	*21-Nov-2021 Shree Maruti Impex India. GJ-06-BT-6421*	*29050 @Rs. 0.01 Rs.342.79*
4	*Sangam/ Sangam 17-DEC-21*	*1066 10-Nov-21*	*Same as above*	*17-Dec-21 Shree Kailash Transport MH-04-HY-6377*	*25910 @Rs. 0.01 Rs. 305.74*
5	*Sangam/ Sangam 01-Jan-22*	*1066 10-Nov-21*	*Same as above*	*31-Dec-2021 Shree Maruti Impex India GJ-06-BT-6421*	*28290 @Rs. 0.01 Rs.333.82*

- *The* ***question is whether Hikal Ltd, supplied sodium hydrosulphide to a bona fide purchaser/end user ? Sangam private Limited, having no consent to engage itself in any manufacturing activities, attracting the provisions contained in the environmental laws, could not be the genuine user. This aspect was known to the company.***

- *Not only Hikal Ltd, supplied the chemical to the Sangam Enviro private limited, but one Chemi organic chemical also supplied to the Sangam Enviro private limited. The same is discussed in detail in the report as to how the same was disposed of illegally.*

- *It was the duty of the consignor/generator to follow the provisions contained in the Hazardous Rules 2016. Even under the guise of the byproduct, the Sodium Hydro Sulphide was required to be disposed of in accordance with the manner indicated by the Technical*

Committee. This aspect is discussed in detail. ***Hikal Ltd in its submission for change in product mix indicated that the hazardous waste, namely sodium hydrosulphide shall be disposed of by incineration or other legal method. However, the MPCB while issuing the consent appears to have overlooked the decision of the technical committee, indicating the mode of disposal in case of sale. The report of the Technical Committee is also discussed in detail.***

- *It is interesting to note that the* ***communication between the high officials of Hikal Ltd itself indicates that they wanted to dispose of the material, namely sodium hydrosulphide collected at the earliest, and the cost indicated by the company engaged in incineration at the rate of Rs. 71,000/- per ton was found very heavy. Therefore, a suggestion was made to contact Sangam Enviro Private limited. If the company was required to incinerate the generation of sodium hydrosulphide, it was required to pay more than Rs.1,50,00,000 (One crore Fifty lakhs only). This aspect is discussed in detail. It is very clear that to save the high cost, the Sodium Hydro Sulphide was given for disposal in violation of the provisions contained in the environmental laws.***

- *The MPCB was of the view that this was the by-product. However, it is interesting to note that the managing director of Hikal Ltd, Mr. Sameer Hiremath addressed the communication to the Member Secretary, MPCB, Mumbai through email on 10/01/2022, the copy of which forwarded by MPCB to the GPCB is annexed with the report Mark ANNEXURE 20-A, inter alia, conveying that sodium hydrosulphide was diluted solution 16%-18% and is a by-product generated at Taloja factory. To make products usable to the Cement, Craft Industry, Paper Manufacturing, Leather & Textile and Dye Industry, the dilute NaHS solution generated as a by-product needs to be processed and concentrated to 36%+. Hikal Ltd, sold the NaHS dilute solution of 16%-18% to Sangam for further process to make it usable as a product in the Cement and Textile industry. Hikal Ltd, paid made a show of sale to Sangam to further process the by-product to make it saleable to the Cement and Textile industry. This is as per the agreement signed between both the parties and alleged affidavit signed by Sangam. Hikal Ltd, sold NaHS diluted solution of 16-18% to Sangam in view of the alleged affidavit (Not sworn testimony as required under the law) by Sangam stating that NaHS solution would be used as a product in the textile and cement plant.*

- *Thus, considering the written documents,* ***it is very clear that sodium hydrosulphide was not given to use as such. Therefore, the provisions contained in the hazardous rules are required to be seen. On examination of the provisions, it is also clear that the by-product is a material that is not intended to be produced but gets produced in the production process of the intended product and is used as such. Thus, it is very clear that the by-product is to be used as it is without any process or making any changes in the product. In the instant case, the material generated during the final product is to be processed before its use. If it is required to be***

processed, then it cannot be said to be a by-product. In view of what is stated above it cannot be said to be a by-product as contended.

- *The committee has discussed the provisions contained in the hazardous rules in detail and has reproduced the relevant provisions. Even for the sake of argument it is considered as a by-product, the same was required to be used by the end user as such, without any process.*

- *Even the* ***guidelines issued by the CPCB, makes it clear that it cannot be used in the cement industry as sodium hydrosulphide is corrosive. The same cannot be used in the textile industry. No material has been placed by the CPCB or the GPC to indicate that the same can be used in the textile industry. In et al. claim made by Hikal Ltd can be said to be a fake without examining other aspects. No actual user/end user has been named. In the so called affidavit it is also stated by Sangam Enviro Pvt Ltd that the by-product is used as raw material in its industry. In fact it has no industry. No authorisation of the end user was annexed with the so called affidavit and Hikal Ltd did not consign NaHS in the name of the end user.***

- *The unit, namely,* ***Hikal Ltd did not follow the provisions contained in the hazardous rules for transportation. It did not bother to follow the provisions contained in the Motor Vehicle Rules. There was no submission of a report to the MPCB with regard to the GPS register indicating the movement of the tankers through which the NaHS was supplied. Neither the transporter nor the Sangam Enviro private limited, nor Hikal Ltd bothered about the provisions contained in the law and all were interested in making easy money.***

- *Effective tracking system is proposed for Hazardous Waste in PAN India level may be initiated by concerned authorities.*

- *Considering the provisions contained in the hazardous rules, the decision of the Supreme Court and the decision of the Hon'ble Tribunal, the committee has assessed the environmental compensation and recommended to recover from the Hikal Ltd and all other abetters in this incidence, to pay to the next of kin of the deceased and the victims and towards the Environment Damage as detailed below:*

    - ***M/s Hikal Ltd. Located at Taloja Maharashtra***

        - ***Amount of Rs 15,05,00,000/(Fifteen crore five lakhs only) towards Environmental Damage Compensation as detailed in para 123 of the report.***
        - ***Amount of Rs. 2,13,14,460/-(Two crore thirteen lakh fourteen thousand four hundred sixty only) towards Compensation to pay to the next of kin of the***

deceased and the victims as detailed in para 124 of the report.

- ***Amount of Rs. 2,92,680/-(Two lakh ninety thousand six hundred eighty only) towards wastewater lifted and treatment cost as detailed in para 125 of the report.***
- ***Amount of Rs. 24,00,000/-(Twenty-four lakh only) towards State of Gujarat which was paid as immediate relief to next of kin of the deceased as detailed in para 126 of the report.***

- *M/s Sahajanand Colour Yarn, M/s Real Chem and M/s Jai Bajrang Industry all located at GIDC Sachin Gujarat for each of them an Amount of Rs. 25,00,000/-(Twenty-five lakh only) to pay to interim EDC (the turnover figure not available hence the GPCB must consider 5% of turnover and recover the remaining amount) as detailed in para 21 of the report.*

- *M/s Sangam Enviro located at Bharuch/Vadodara an amount of Rs. 2,50,00,000/- (two crores fifty lakhs only) for 5 trips from M/s Hikal as detailed in para 128 of the report.*

- *The transporters involved in the incidence of 8 trips for disposal of 05 tankers of Hikal, the transporters have to pay total amount of Rs. 8,00,000/- (Eight lakh only) (considering Rs.100000/- per trip) as detailed in para 129 of the report.*

- *Shri Govind Bhai Shiyal who is responsible for disposing 2 tankers waste the amount is Rs. 5,00,000/-(Five lakhs only) (considering Rs. 2,50,000/- per tanker) as detailed in para 131 of the report.*

  *In addition to above, M/s Chemi organic, located at Jhaghadia, Gujarat an interim EDC of Rs.50,00,000/-(Fifty lakhs only) has been ordered by GPCB considering involvement in such illegal movements as detailed in the closure order of GPCB Annexure 28.***"***

7. Some further extracts from the report are as follows:-

"SANGAM ENVIRO PVT LTD.

23. An inspection report submitted by the MPCB reveals that Sangam has an office at Vadodara. From the invoices that were collected during the investigation it was noticed that the minutes were issued in the name of Sangam Enviro Private Limited at its Bharuch office. In view of this, it was decided to make a proper inquiry to find out the truth. On 08/01/2022. The officials of the GPCB visited the address indicated. To the surprise of the officers, it was found that the property wherein it was claimed that the office of Sangam is situated, one Mahavirsinh J Solanki was found residing *there is a tenant. The report is in detail and therefore the report is annexed here with Mark Annexure-3A. Officers of the GPCB also visited the site as indicated in the invoice. The premises, namely 424, Shilpi Square, Dahej bypass road, Bharuch were visited. It was a small office premises and was found locked for a long time. The enquiries made with the owner, who submitted the copy of an agreement with Sangam Enviro Private Ltd. This Firm also submitted its return to the office of the CGST. The report submitted by the Regional Officer, Bharuch is annexed here with Mark Annexure-3B.*

HIKAL LTD SUPPLIED TO SANGAM ON DIFFERENT DATES.

*24. The crime branch during the investigation found that Hikal Company Ltd, Taloja, Mumbai (hereinafter referred as **"Hikal Ltd"** on different dates and through different tanker numbers supplied Sodium Hydro Sulfide, the hazardous waste under the provisions and particularly Clause (17) of rule (3) of **the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016** (hereinafter referred as **'the Hazardous Rules"**) to M/S Sangam Enviro Pvt Ltd, (Hereinafter referred as **"Sangam"**) The details are as in the next para.*

25. (1) On12/11/2021 tanker No. GJ-12-BY-1891, to supply to Gopinath Dye Chem, at Ahmedabad (2) on 22/11/2021 tanker No. GJ-06-BT-6431, to supply to Shri Petrochemical, Rajkot. (3) on 23/11/2021 tanker No. GJ-06-BT-6421, to supply to Shri Petrochemical, Rajkot (4) on17/12/2021 tanker No.MH -04-HY-6377, to supply to Sangam Enviro Bharuch, and (5) on 01/01/2022 in tankerNo.GJ-06-BT-6421 to supply to Sangam Enviro Bharuch.

26. According to the report submitted by the crime branch, chemicals were brought through different tankers on different dates and were disposed of illegally.

ILLEGAL DISPOSAL OF CHEMICAL AT AMLA KHADI

*27. The Director of Sangam, approached **Chemie Organic Company, Jhagadia,** for supplying the chemical to OCL India Ltd, Odisha and got the chemical on 22/12/2021 in tanker No. GJ-06-TT-8555 however, during the investigation, it was revealed that the chemical was disposed of illegally in Amla Khadi, Ankleshwar. Furthermore, as per details received from the GST department by the GPCB some industries of Ankleshwar region were found engaged with Sangam Enviro Pvt. Ltd. Regarding illegal discharge of Hazardous waste/chemical through tanker No: GJ-06-TT-8555 into Amlakhadi, near Ankleshwar instead of being sent to M/s. OCL INDIA LTD. (Dalmia Cement Bharat Ltd.), Odisha from the unit. Copy of FIR is annexed herewith and Mark Annexure-4 Units were visited by Officers of the Regional office for verification and one of the* *industries Chemie Organic Industries was noticed committing violations.*

TANKER AT VATVA

28. During the investigation, the police found that Hikal Ltd, dispatched the chemical in tanker number GJ-12-BY-1891 to Sangam. The said chemical was transferred in the tanker number GJ-06-VV-8829 belonged to Jai Raj @ Jigar Dili Bhai Soni, parked on Vatva Ring Road, was seized by PSI Zali. The said tanker No. GJ-06-VV-8829 filled with chemical was seized.

ILLEGAL DISPOSAL OF CHEMICAL TWICE AT RAJKOT.

29. The Hikal Ltd, supplied two tankers (on 22/11/21 tanker No. GJ-06-BT-6431 and on 23/11/21 tanker No. GJ-06-BT-6421) of Sodium Hydro Sulfide to Sangam. Sangam disposed of the chemical ***Through Govind Bhai of Rajkot*** *illegally for which the Commissioner of Police, Surat has forwarded the report through GPCB Rajkot. The FIR registered in this case is annexed herewith Mark Annexure-6.*

30. During the investigation, the police was apprehending that the Managing Director of Hikal Ltd, Samir Jai Hiremath, aged 48, residing at 292, 29th floor, Jupiter Apartment, 41, Cuff Parade, Coolabah, Mumbai, Maharashtra, is likely to leave India, a look out circular has been published.

ACCOUNT OF HIKAL LTD PAYMENT TO SANGAM

31. CDR details have been obtained and the statement of the bank account of the Hikal Ltd have been obtained by the investigating agency. The statement of bank account showing the amount of Rs.23,33,398:00 credited in the account of Sangam by Hy Hikal Ltd is also obtained and the account has been frozen. The copy of the statement of account is annexed herewith Mark Annexure-7."

32to46….xxx……………………………..xxx………………………………xxx

MAHARASHTRA POLLUTION CONTROL BOARD AND CONSeNT TO HIKAL LTD.

47. Maharashtra Pollution Control Board (hereinafter referred as the MPCB) on 13/03/2019, issued a letter of consent, which was renewed even thereafter, on 10/11/2021 the copy of which is *annexed Mark Annexure-11. As per the consent, apart from other products, Fenamidone was the product permitted to manufacture, 100MTA. So far as by-products are concerned, consent was granted to manufacture recovered ammonia 900 MTA, Sodium Hydro Sulphide, 150 MTA, Spent HCL (Approx. 30%) 1462 MTA, and Spent H_2SO_4 (98%), 904 MTA. So far as hazardous waste is concerned, in paragraph 7 of the consent, it has been pointed out that in all 10 types of wastes were meant for treatment and disposal out of which the reference is required to be made for Spent Solvent, Potassium Bromide and Spent Caustic.*

48. It may be noted at this juncture for the sake of argument, that the Sodium Hydro Sulphide is not a hazardous waste and the consent was granted to consider it as a by-product. However, in the consent, percentage/strength of sodium Hydro sulphide is not indicated as it is indicated for other chemicals, such as Spent HCL (Approx. 30%) and Spent H2SO4 (98%). The generator is claiming the strength of the Sodium Hydro Sulphide between 16 to 18%. The consent specifically refers to the strength of other by products, however for Sodium hydro sulphide why the strength is not mentioned?

49. It is necessary to refer to the consent granted earlier and the efforts made to get the benefit of Product Mix. On 17th November, 2015. The MPCB granted consent to manufacture a maximum quantity 300 MTA of Fenamidone and other products. So far as hazardous waste is concerned, in paragraph No. 7 of the consent at item No. 13, what is indicated is HTP-213 waste residue is under category No. 29.1 of Schedule I with the permissible quantity of 25 MTA. What would be constituents of the residue is not indicated. Question is in the same process, whether sodium hydrosulphide was generated as a hazardous waste or not?

50. The Ministry of Environment and Forest, vide letter dated 28th August, 2007 considered the application of the Hikal Ltd for expansion of pesticide unit at Taloja. As far as Fenamidone is concerned, there was no question of an increase in the quantity of manufacturing and that remained at 300 MTA. In the letter there is not a whisper about sodium hydrosulphide.

51. It appears that the Institute of Chemical Technology submitted its report on analysis of possible pollution load with respect to the proposed change product. The expert stated that the proposed addition of new products may not result in any additional impact on the pollution load (West water and air emissions) from the plant as compared to the existing plant with the consented limits. For the 1st time while promoting the format for providing information on change to Product Mix, it was suggested that Fenamidone or MPDC-DME be produced 155 MTA, instead of permission to manufacture Fenamidone 300 MTA. There was suggestion of by-products and intermediates. Recovered ammonia with 1250 MTA was the existing capacity, but that proposed one was Recovered Ammonia/Sodium Hydro Sulfide/ Sodium Bromide/ Aluminium Chloride Solution to the extent of 1800 MTA, without indicating the allowable quantity to manufacture of each product. Similarly for other items, without specifying the quantity permissible to manufacture product wise, *total quantity allowable to manufacture is indicated. In paragraph No. 3, the production method is indicated for Fenamidone. However, there is nothing to indicate what would be the nature and quantity of hazardous waste or the by-product.*

52. In paragraph 9 of the report at item No. 13 HTP-213, namely Fenamidone, waste residue falling in category 29.1 is indicated. The generation of this hazardous waste would remain the same, namely 25 MTA. When consent was granted to manufacture 300 MTA, the hazardous waste indicated was 25 MTA, and when the quantity is reduced to 155 MTA, generation of hazardous waste is shown as 25 MTA. In the said list item No. 12 refers to chemical residue/Residue Pesticides at serial No. 29.1of the schedule I and the quantity of the hazardous Waste generated remains the same as before, i.e., 243.5 MTA. After proposed change in reduction of Fenamidone from 300 MTA to 155 MTA chemical residue/Residue Pesticides remains the same.

53. In paragraph No. 2. The expert has indicated 15 different raw materials with the quantity required, while manufacturing 300 MTA, and the reduced quantity of consumption for manufacture of 155 MTA is also indicated. Considering the reduction in consumption of raw material and the manufacturing of the final product, how would the quantity of hazardous waste remain the same? Why product wise generation of hazardous waste is not indicated?

54. There is consent renewal application, Mark Annexure-12 however, the same is undated. In paragraph 13 of the application, the product Fenamidone is sought to manufacture 300 MTA. Under product names and quantity, Recovered Ammonia 1250 MTA is shown. Sodium/Potassium Methyl/Sulphate Solution (100%) are allowed to manufacture totalling to 458 MTA without each product's quantity. Other products are indicated either individually or jointly and wherever more than one product is shown, the quantity of each product consented to manufacture is not shown. What is important is that even at this stage Sodium Hydro Sulfide is not shown. So far as the hazardous waste generation is concerned, 5.1 used/spent oil and 20.2 spent solvent, in the column of treatment as well as disposal are shown by sale. 29.1 process wastes/residue, the quantity indicated is 257.112 MTA, and in the column of the treatment and disposal is shown by incineration. 29.2 chemical sludge containing residue pesticides, the quantity of which is shown as 95.385 MTA to be disposed of by way of incineration. Similarly, Filters and Filter material which have organic liquid, the generation shown is 3.155 MTA and the disposal is shown by way of incineration.

55. There is an environmental statement where under the head of by- product information Recovered Ammonia 1197.260 MTA shown as actual quantity against consented quantity 1250 MTA. Against the hazardous waste 29.2 chemical sludge containing residue pesticide 101.62 MTA, shown in financial year. 16-17. There is reference to used/spent oil 6MTA and no other hazardous wastes are indicated. In the form V and environmental audit report for the financial year ending on 31st March, 2017 against the consent quantity 300 MTA of Fenamidone, the actual quantity is shown as

139.9 MTA. In the column of hazardous wastes spent solvent (20.2) shows generation of 185.68 MTA. The process waste/residue (29.1) shown to have generated 237.598 MTA. Chemical sludge containing residue pesticide shown to have generated 57 MTA. There is nothing to indicate that Sodium Hydro Sulfide was generated. Even in the name of by-products there is no reference to the same.

56. Institute of Chemical Technology on January 17, 2018 submitted analysis of possible pollution load with respect to proposed change in product mix in the same category for the chemical intermediates manufacturing unit of M/S Hikal Ltd, Taloja. The said report is annexed herewith Mark Annexure-13. The chart of existing material balance and proposed material balance (product mix change) is given. 5 existing products and 9 proposed products are given with a view to show that there will not be any impact on the environment. In the summary of Material Balance (Existing & Proposed), against existing production of Fenamidone of 300 MTA generation of 587 MTA of hazardous waste is shown, while in proposed product mix, change Fenamidone or MPDC-DME, hazardous waste generation would be 303 MTA. However, total generation of hazardous waste for the 5 products indicated is 4143 MTA, while for product mix chart, it would be 4119 MTA. Very marginal decrease in consumption of water and wastewater is shown. In the chart of HTP-213 (Fenamidone) Material Balance, 3 stages are shown. In the 2nd stage of HYTY preparation total input of different chemicals would be 12744 KG against which the output shown is HYTY Organic Mass 11491 KG and NaHS 1253 KG. In the proposed material balance (product mix change) in all, there will be 9 products, but there is nothing to show that Sodium Hydro Sulfide will be a product or the by-product in product mix change method.

57. On February 5, 2018 Hikal Ltd, addressed for proposed change in product mix in the same category with no increase in pollution load with no change in machinery and plant layout. It is specifically stated that the proposed change in product mix is in the same category. In all 8 products are indicated. The existing products are shown with proposed quantities to be manufactured, but in less quantity which is indicated. One item is not to be manufactured while 4 items are proposed to be manufactured with its quantity. In the table of proposed change in Product Mix at No.2 HTP-218 Fenamidone or MPDC-DME with chemical name, its CAS No. and product category Fungicides while at No. 6 MPDC-DME with chemical name different than shown at No 2 having different CAS No. and product category Intermediate for Herbicides, are mentioned. (MPDC-DME two different chemical names and two different product categories. Has MPDC-DME has two different name and two different product categories, which can be explained by the author of the letter? Sheet indicating the names of chemicals in the products is Annexed herewith Mark Annexure-13A

58. For the 1st time it has come out with the list of by-products and intermediates in place of existing by-products of Recovered Ammonia 1250 MTA. ***It proposed to manufacture Recovered Ammonia/Sodium Hydro Sulfide/Sodium Bromide/Potassium Bromide/ Aluminium Chloride Solution in all 1800 MTA. However, what will be the quantity of each product is not***

mentioned. It also indicated that for manufacturing 155 MTA of Fenamidone, there would be generation Hazardous Waste of 303 MTA. *The manufacturing process indicated and the process of manufacturing observed by the officers of MPCB, if compared one would find the difference. There is nothing to show that during the process Sodium Hydro Sulfide would be generated as a by-product but will be hazardous waste. Hazardous wastes are also indicated. Apart from the hazardous waste which are of 5 types indicated in the table were for disposal to authorised reprocess or/dealer. However, for process waste residues, waste category No. 29.1, one of which is chemical residue/residue pesticides 243.5 MTA. Process wastes or residues category No. 29.1* ***in particular HTP-213 waste residue generated is shown 25 MTA and even after change in product mix would remain the same i.e., 25, MTA.*** *Sludge containing residue of pesticide category No. 29.2 even after change in product mix would remain the same i.e., 30 MTA. For the hazardous waste referred above except for sale/processing disposal mode was incineration.*

59. On 08/05/2018, Hikal Ltd, submitted an application for revised proposal for change in product mix, and with reference to the Technical Committee dated 21st April, 2018. Thereafter, again on 20th May 2018, Hikal Ltd addressed the communication to the MPCB. Thereafter, on 9th June, 2018 (267 P) submitted the documents as per the recommendations of Technical Committee during its 2nd meeting, dated May 19, 2018. A chart was submitted with regard to hazardous waste data for existing and proposed hazardous waste. The product in question being Fenamidone, hazardous waste generated in the process of manufacturing Fenamidone and the hazardous waste not for sale, is pointed out here. CS2 in the category of hazardous waste at serial No. 29.1 of the list, the proposed hazardous waste 30.97MTA as against 92.92 MTA was shown to be incinerated for the purpose of disposal. In the same category, namely 29.1 the hazardous waste CS2 +Acetone against existing hazardous waste generated 275.40 MTA, 91.80 MTA will be generated, and will be disposed of by incineration. Hazardous waste covered by category ***No. 29.1, namely, NaHS generated as hazardous waste of 283.87 MTA, as against that proposed hazardous waste would be 94.62 MTA to be incinerated for disposal.*** *In the same category MCB residue, 178.85 MTA was generated while in the proposed product mix, the generation of 59.62 MTA to be incinerated for disposal. The copy of the sheet with letter dated 09/06/2018 is annexed here with Mark Annexure-15. Again, another table for hazardous waste in the category at serial No. 29.4 namely spent acetone against existing 468 MTA, the proposal was that it will be 156 MTA and shall be disposed of by incineration.* ***Yet in another table hazardous waste category 29.1, namely chemical residue/residue pesticides with constituents of NaHS generated during HYTY preparation as per existing plan, the waste generated is 243.56 MTA and in the proposed change that will be 81.19 MTA of NaHS which will be incinerated****. The said table titled as Hazardous wastes generation and its disposal (existing and proposed) is annexed herewith Mark Annexure-16. The same category wastes residue with constituent MCB during the preparation which was generating 25 MTA during the production as* *per existing plan, however, in the proposed system. It would be only 8.38 MTA which will be incinerated. In the same category, process residue with constituent NaHS as per existing system 40.79 MTA is generated, but in the proposed system, it will be 13.60 MTA, which will be incinerated. In the same category. There will be MCB residue having MCB constituent, the present system generates 153.89 MTA while in the proposed system. It will be only 51.30 MTA, which will have to be incinerated. In the same category Recovered MCB having constituent of MCB, is generated 40.22 MTA while in the proposed system, it will generate 13.41 MTA but which will have to be incinerated.*

60. It appears that in the 3rd meeting of Technical Committee was held for the year 2018-19 on 30/06/2018, the copy of which is annexed herewith and marked annexure-17 submission by MPCB. It was also pointed out that earlier presentation made by Hikal Ltd, was considered in the 2nd meeting and it was noted that Hazardous Waste generation after product mix will be for 4124.08 MTA (IT SHOULD BE 4186.28) as against existing-4187.65 MTA. Thus, whatever hazardous waste was generated is reduced very little. On further consideration of the material placed before the committee, it was held that following would be by-products and how the same shall be disposed of or sold: -

a. Recovered Ammonia-900 MTA,
b. Sodium Hydro Sulphide/Potassium bromide-458 MTA (existing consented quantity -458 MTA)
c. Potassium Chloride/Aluminium Chloride Solution-382 MTA (Existing consented quantity-382 MTA)
d. Spent HCL (Approx. 30%) 1462 MTA (Existing consented quantity-1462 MTA)
e. Spent H2SO4 (98%) 904 MTA (Existing consented quantity-904 MTA,
f. Spent Caustic-520 MTA (Existing consented quantity 520 MTA,
g. Recovered Solvents (Mono Chloro Acetone/ Toluene/Methanol/IPA/DMF/Mono Chloro Benzene/ Benzene) 500 MTA (Existing consented quantity-500 MTA),
h. Total by-product quantity will be 5126 MTA (Existing consented quantity-5476MTA,
i. PP shall follow provisions of Hazardous and Other Waste (M& TM) Rules, 2016 for selling of by-product.

61. The Ministry of Environment, Forest and Climate Change issued a notification on 23rd November, 2016.There's an office memorandum, dated 10th July, 2017 for constitution of export Technical Committee. The said notification is for the process for obtaining "No Increase in Pollution Load". Even for the sake of argument, the said notification is considered to be applicable, there is a serious violation of this notification. It is specifically stated that based on the deliberations and scrutiny, the Technical Committee will make its recommendations. It further states that based on the recommendations of the Technical Committee, The State Pollution Control Board shall take the decision with respect to the application *received from the project proponent for change in the consent to operate for the purpose of change in the product mix.*

62. As pointed out above, the project proponent itself submitted that NaHS, the hazardous waste is to be incinerated and the Technical Committee specifically recommended that in case of sale of any by-product indicated, the same shall be dealt with in accordance with the provisions contained in the Hazardous Rules. In view of this there is no escape that in the hazardous waste NaHS is one of the components and the same is to be incinerated. In case of sale, the hazardous Rules shall apply. There is flagrant violation of the provisions indicated hereinabove.

63. Reading the consent dated 13/03/2019 and 10/11/2021, it is very clear that though the committee indicated all the products referred from (a) to (g) aforesaid as by-products, however, in the consent, all these by-products are not shown as by-products. It was consented to manufacture Sodium Hydro Sulphide/ Potassium bromide-458 MTA, as by-products. The quantity of these two by-products is 458 MTA. However, what would be the permissible production of each product is not indicated in the report of the Technical Committee and in the consent. Sodium Hydro Sulphide is put in the category of by-product with permissible capacity to manufacture 150 MTA. While Potassium bromide is put in the category of hazardous waste. Even Spent Caustic is shown as a by-product, but is in the list of hazardous waste in the consent order.

64. When the technical committee referred hereinabove specifically indicated that PP shall follow provisions of Hazardous and Other Waste (M& TM) Rules, 2016 for selling of by-product, the same has not been followed while disposing of the Sodium Hydro Sulphide while selling it.

65. The provisions contained in rule (6) is also relevant to refer at this stage. It conveys that Every occupier of the facility who is engaged in handling, generation, collection, storage, packaging, transportation, use, treatment, processing, recycling, recovery, pre-processing, co-processing, utilisation, offering for sale, transfer or disposal of the hazardous and other wastes shall be required to make an application in Form 1 to the State Pollution Control Board and obtain an authorisation from the State Pollution Control Board. Such application for authorisation shall be accompanied with a copy of each of the following documents, referred to in the provision.

66. The provision contained in sub rule (1) of rule (8) for storage of hazardous and other wastes states that "The occupiers of facilities may store the hazardous and other wastes for a period not exceeding ninety days and shall maintain a record of sale, transfer, storage, recycling, recovery, pre-processing, co-processing and utilisation of such wastes and make these records available for inspection:

67. Sub-rule (1) of rule (9) for Utilisation of hazardous and other wastes states that ***"The utilisation of hazardous and other wastes as a resource*** *or* ***after pre-processing either for co-processing or for any other use****, including within the* *premises of the generator (if it is not part of process), shall be carried out only after obtaining authorisation from the State Pollution Control Board in respect of waste on the basis of standard operating procedures or guidelines provided by the Central Pollution Control Board."*

68. In view of the above it is clear that after following the procedure
hazardous wastes can be stored, utilised and sold disposed of. However, storage, utilisation, sale and transportation etc, must be according to strict law.

TRANSPORTATION OF HAZARDOUS AND OTHER WASTE

69. Rule 18 in Chapter V for transportation of hazardous and other wastes reads as under: -

(1) The transport of the hazardous and other waste shall be in accordance with the provisions of these rules and the rules made by the Central Government under the Motor Vehicles Act, 1988 and the guidelines issued by the Central Pollution Control Board from time to time in this regard.

(2) The occupier shall provide the transporter with the relevant information in Form 9, regarding the hazardous nature of the wastes and measures to be taken in case of an emergency and shall label the hazardous and other wastes containers as per Form 8.

(3) In case of transportation of hazardous and other waste for final disposal to a facility existing in a State other than the State where the waste is generated, the sender shall obtain 'No Objection Certificate' from the State Pollution Control Board of both the States.

(4) In case of transportation of hazardous and other waste for recycling or utilisation including co-processing, the sender shall intimate both the State Pollution Control Boards before handing over the waste to the transporter.

(5) In case of transit of hazardous and other waste for recycling, utilisation including co-processing or disposal through a State other than the States of origin and destination, ***the sender shall give prior intimation to the concerned State Pollution Control Board of the States of transit before handing over the wastes to the transporter.***

(6) In case of transportation of hazardous and other waste, the responsibility of safe transport shall be either of the sender or the receiver whosoever arranges the transport and has the necessary authorisation for transport from the concerned State Pollution Control Board. This responsibility should be clearly indicated in the manifest.

(7) The authorisation for transport shall be obtained either by the sender or the receiver on whose behalf the transport is being arranged."

70to91......xxx...........................xxx.................................xxx

HIKAL LTD RESPONSE SHOWS NOT A BY-PRODUCT & ILLEGAL DISPOSAL

*92. The managing director of Hikal Ltd, Mr Sameer Hiremath addressed the communication to the Member Secretary, MPCB, Mumbai through email on 10/01/2022, the copy of which forwarded by MPCB to the GPCB is annexed herewith Mark Annexure-20A, inter alia, conveying that NaHS diluted solution 16%-18% is **a by-product** generated at Taloja factory. To make products usable to the **Cement,** Craft Industry, Paper Manufacturing, Leather & **Textile** and Dye Industry, **the dilute NaHS solution generated as a by-product needs to be processed and concentrated to 36%+.** Hikal Ltd, sold the NaHS dilute solution of 16%-18% to Sangam for further process to make it usable as a product in **the Cement and Textile industry**. Hikal Ltd, paid processing and transportation fees to Sangam to further process the by-product and make it saleable to the Cement and Textile industry. This is as per the agreement signed between both the parties and alleged affidavit signed by Sangam. Hikal Ltd, sold NaHS diluted solution of 16-18% to Sangam in view of the alleged affidavit by Sangam stating that NaHS solution would be used as a product in the textile and cement plant against proper authorisation.*

93. It is also stated that Sangam is a MSME registered enterprise for collection, treatment, processing and sale of by-products. It was further stated that Hikal has abided by all the conditions of the consent issued by MPCB for the sale of NaHS solution. It is required to be referred that the Ministry of MICRO, SMALL AND MEDIUM ENTERPRISES a notification on 01/06/2020 under the provisions contained in the Micro, Small and Medium Enterprises Development Act, 2006 notified the criteria for classification of micro, small and medium enterprises as per the amount of investment in Plant and Machinery or Equipment. From the certificate issued it appears that Sangam Enviro Pvt. Ltd, having office at Village Dasharath, District Vadodara was registered with the authorities for Micro Services, though in the sheet manufacturing or collection and treatment of hazardous waste etc have been indicated. The managing Director and other highly paid officers of the company engaged in manufacturing pesticides are supposed to be aware that even other waste is required to be disposed of in accordance with law.

94. When Hikal Ltd submitted to consider certain products as by¬products, the technical committee was not satisfied in 1st and 2nd meeting, however, in the 3rd meeting, with regard to by¬products, the Technical Committee mandated that the provisions of the Hazardous Rules will have to be followed, meaning thereby *the said rules will apply. Under rule 6 of Hazardous Rules, there is a provision of authorisation for managing hazardous and other wastes which includes generation, transportation, processing, and even offering for sale etc. Reading the provisions contained in rule 8, it is also clear that the occupier of the facilities (subrule, 21 of rule 3) in case of sale, is required to maintain record. As indicated the hazardous wastes can be stored, utilised and sold in accordance with the provisions.*

95. One will have to refer to the meaning of the Actual user and authorisation as given in sub clauses (2) and (3) of rule (3). "actual user" means an occupier who procures and processes hazardous and other waste for reuse, recycling, recovery, pre- ***processing, utilisation including co-processing;*** *and* ***"authorisation" means permission for generation, handling, collection, reception, treatment, transport, storage, reuse, recycling, recovery, pre-processing, utilisation including co-processing and disposal of hazardous wastes granted under sub-rule (2) of rule 6;*** *There is nothing to show that the Sangam was the actual user as defined and there is nothing to show that any unit in need of NaHS authorised Sangam to collect the hazardous waste and transport the same to its unit for the purpose required. All the persons were and are aware about the Environmental Laws including the law relating to hazardous wastes.*

96. In absence of any consent to manufacture sodium hydrosulphide 16%-18% and all the by-products indicated would attract the provisions contained in the Hazardous Rules, in view of the decision taken by the Technical Committee. ***It is admitted by the managing director that the sodium hydrosulphide was required to be processed to make it saleable to the textile and cement industry.*** *He is not aware about the industry to be supplied with NaHS given to Sangam. The only presumption can be drawn is that it was given for disposal not in accordance with the law and not for any process to make it saleable to cement or textile industry. Explanation to MPCB and internal correspondence make it clear that NaHS was disposed of contrary to the provisions of law and the explanation that the same was given for processing to make it saleable without the name of the vendor cannot be considered at all. If it is a by-product, the same by product is to be used without any further process. On examination of the provisions, it is very clear that the* ***by-product is a material that is not intended to be produced but gets produced in the production process of the intended product <u>and is used as such</u>.*** *Thus, it is very clear that the by-product is to be used as it is without any process or making any changes in the product. In the instant case, the material generated during the final product is to be processed before its use. If it is required to be processed, then it cannot be said to be a by-product. In view of what is stated above it cannot be said to be a by-product as contended.*

97 to 101……xxx………………………xxx……………………………xxx

POLLUTER PAYS

102 to 122……xxx………………………xxx……………………………xxx

123. Considering all the aspects, percentage of the total turnover of Hikal Ltd, would be an appropriate method in awarding damages. The total turnover of Hikal Ltd is Rs.17204 million. However, this figure cannot be taken into consideration for calculating the compensation as the figure given is of all the units of Hikal Ltd. So far as the unit at Taloja is concerned, its turnover is Rs.3010 million as communicated by the MPCB and therefore, this figure will have to be taken into consideration for calculating the amount of compensation. If the 5% of the turnover of Taloja unit of Hikal Ltd, is taken into consideration the compensation of Rs.15.05 crore must be awarded. The Committee recommends that the aforesaid amount of Rs. 15.05 (fifteen crore and five lakhs) Crore be recovered from Hikal Ltd.

124. The persons who unfortunately became the victims and expired and the others those who were required to be treated in the hospital for a number of days (indicated against the name of the victim) and were not able to join the duties for a number of days as indicated in the list. The Committee has calculated the damages and recommends to be recovered from the Hikal Ltd, to pay to the next of kin of the deceased and the victims, the compensation of Rs. 2,13,14,460.00(two crores thirteen lakhs fourteen thousand four hundred sixty) as detailed in the statement Mark Annexure- 24.

125. The sum of Rs.2,92,680/- (Two lakhs Ninety-two thousand six hundred eighty) as billed by Globe Enviro Care Ltd. CETP, Surat, dated 17/01/2022 be paid to GPCB towards the cost of lifting of contamination Liquid waste about 73,170 litres to CETP through tankers. The copy of the said bill is annexed herewith and mark Annexure-25. The said waste has been treated in their CETP. This exercise was on account of illegal discharge and that cost in opinion of the Committee should be recovered from Hikal Ltd.

126. The State government granted the relief to the next of kin of the six deceased persons as immediate assistance. The same amount should be recovered from the polluter. The Committee recommends that in view of para 435 of the aforesaid decision of the Hon'ble Tribunal, the total amount of Rs. 24,00,000/- (Twenty-four lakhs only) paid by the State government to the next of kin be recovered from Hikal Ltd. The copy of the letter in this behalf is annexed herewith and Mark Annexure-26 copy of letter dated 24/03/2022 issued by the Collector.

127. In addition, as a source of presence of acidic waste in the natural drain of Sachin GIDC was detected as the same was illegally discharged by the three units. Three industries have been directed to pay an interim amount of Rs.25 Lakhs each as environmental compensation and order of closure has also been made. These units must be asked to pay the environmental compensation by the GPCB as at present the figures of Annual turnover is not available as the *units are closed around 3 months, the Committee is not in a position to fix the figure.*

128. Sangam Enviro Pvt Ltd, and its directors are equally liable to pay the environmental compensation in view of their active role in disposal of the hazardous waste which has been discussed in detail. For 5 trips for transporting contrary law and disposing the hazardous waste, the Committee is recommending to recover towards compensation the amount of Rs. 2.5 crore from the said Sangam enviro Pvt Ltd, and its directors.

129. The transporters having ignored the provisions of law which have been discussed in detail and assisted to dispose of the hazardous waste are also liable for their wrongs and the Committee recommends to recover the sum of Rs.1,00,000/- (One Lakh) per trip undertaken from each vehicle owner. The details of the evidence collected by the investigating agency in the summary form is attached herewith and Mark Annexure-27.

130. Chemie Organic Chemical was found breaching the norm/conditions etc. hence interim environmental damages have been ordered to be paid in the sum of Rs.50 Lakhs. The order of closer is Annexed herewith Mark Annexure-28.

131. At Rajkot during the enquiry it was revealed that the Sangam after receiving the chemical from Hikal Ltd, prepared bogus bills in the name of Shri Petrochemicals, Rajkot and send the tankers for disposal of the chemicals to Govind Bhai Shiyal who kept the tankers in his service station and thereafter disposed of the chemical illegally for which Sangam paid the amount of ₹92,000/-(Ninety two thousand) which has been credited in the bank account (Punjab National Bank, Jubilee chalk, Rajkot) of said Govind Bhai. The Rajkot police registered the first information report for the offenses committed at Rajkot by Govind Bhai. (Refer Annexure -6 Govind Bhai Shiyal disposed of the hazardous chemical illegally by taking money. The Committee recommends that the sum of Rs. Five lakhs to be recovered from the said Govind Bhai for causing damage to the environment.

132. In the present case, the MPCB has forwarded the details of selling NaHS to the persons who had no consent or purchase the material and used it in violation of the conditions. i.e., M/S Raina industries GIDC estate, Ankleshwar. In FY 19-20. The unit was found violating the conditions and particularly using NaHS which was a hazardous waste that was supplied by other units as detailed in the closure order which is annexed herewith mark Annexure-29. The inspection report of the MPCB Annexed herewith Mark Annexure- 30 also reveals that NaHS was supplied to the aforesaid unit.

133 to 134……xxx………………………xxx……………………………xxx

FOR THE REMEDIAL MEASURE TO PREVENT RECURRENCE.

135. The team visited the site and had occasion to visit the Gujarat State Transport (Regional Office Surat) where it was shown on the screen that all the buses in the region are under the radar in view of their own Ground Position System fitted in every vehicle run under the Regional Office, whether in the region or outside. In the State Control Office, the officer can watch not only the movement of the GSRTC Surat depot vehicles, but in the entire State and its buses outside the State. Where it is parked, whether it has deviated the route, whether it is running in time or not and so many other things could be recorded and watched by the person from the office itself. The District Collector conveyed that the Food Corporation of India has a similar system along with the App to watch the movement of the truck carrying the food grain, which has saved the time and loss of grains on account of theft enroute. We have the App known as 'Flightradar24'. Opening of this app will show the movement of the flights or the helicopters world over and the flights with some required details. Similar App is available for vessels on the sea. We are given to understand that the Gujarat State Pollution Control Board is likely to invite the experts to assist and provide the facilities. The system of GPS though in force has not given good results as the generator, in the instant case did not forward the report to the MPCB. Even a monthly report submitted after the damage caused may not be effective as the same may be received after the damage is caused which may be irreversible like the present one. When any hazardous waste or Hazardous Chemical as per the Motor Vehicle Rules is to be transported the system as indicated above must be in operation. This will have to be followed as under to get the advantages.

(I) The sender will be in a position to check whether the truck/tanker is moving as per the fixed route and that there is no halt at a place other than the scheduled.

(II) The end user or the receiver will be equally in a position to check whether the truck/tanker is moving as per the fixed route and that there is no halt at a place other than the prefixed.

(III) The officer not only of the PCB but the Police Department as well, of the concerned area/region will be able to record and check the movement of tanker/truck and on noticing the deviation of the route or unauthorised halt may take action immediately.

(IV) The State Pollution Control Board, will be able to check the movement as aforesaid. The other State Control Board can check the movement of truck/tanker as and when the truck/tanker enters the state.

(V) The proposed movement of the truck/tanker must be communicated to the concerned Pollution Control Board and the regional offices through which the truck/tanker will move, in advance and in any case before the chemical is loaded in

the truck/tanker with all the details of the tanker (Requisite details under the Motor Vehicle Act and the Rules), name of the driver/s, residential address with license Number, name of the chemical. Route and the stoppage along with the time required for the trip. If the GPS of the department is fitted with requisite material, there will be no chance practically for the vehicle to go out of the route and shall reach in time fixed.

(VI) If the tanker/truck containing hazardous chemicals deviates from the fixed route, provision of auto generated alert/ messages shall put the officers in action. Special focus for hazardous liquid transported in the tanker/truck is concerned, there must be a provision of auto alarm to all concerned, if such vehicle is found near any water body/lake/river/ drains/canals etc.

136. In addition, provision of auto ignition off of trucks/tankers in case of suspicion may also be provided.

ROLE OF POLLUTION CONTROL BOARDS.

137. It transpires that in view of the opinion expressed by the Technical Committee, MPCB considered hazardous waste, namely NaHS as a by-product. It appears that the conditions imposed by the Technical Committee, with regard to the applicability of the Hazardous Rules, had been overlooked at the time of issuing the consent. Even though the Technical Committee specifically mentioned that for the by-products, the Hazardous Rules shall apply, as pointed out earlier. The MPCB, while granting consent, did not take into consideration the decision of the Technical Committee. Even before the Technical Committee it was represented by the unit that NaHS will be incinerated.

138. What is the role to be played by the CPCB? It appears that the representative of the CPCB is always there in a committee constituted by MPCB as well as GPCB. The committee constituted for the purpose of examination of the said topic in the State of Maharashtra, the technical committee consisting the member from MPCB as well as CPCB accepted the proposal that NaHS is a by-product and is a hazardous waste in case of sale, while in the State of Gujarat it is a hazardous waste. If in one State the by¬product is considered as a hazardous waste, in view of the definition and in another State, the same by-product is not considered as a hazardous waste. The CPCB must issue the guidelines consistent with the Hazardous Rules and the guidelines should be such that the same are not violating any provisions of law or the rules made there under.

139. The Guidelines for identification of materials Generated from Industrial Processes as Wastes or By-products made in May 2019 by CPCB, need not be examined in the present case as there is no ***Environment Clearance after the Rules having been made*** *and the so-called by-product was not sold to the bonafide end user but* *was given for disposal in violation of the provisions as indicated. The by-product is required to be used by the end user as generated without any process with the so-called by-product. When the generator is supplying illegal disposal, there is no question of considering the provisions which cannot be applied. From the stage of bulk storage in the Company-Generator, the price of incineration, price for disposal, disposal otherwise then the mode prescribed by law, supply to a transporter and not to the end user and without any authorisation which have been discussed in detail, shows that beyond reasonable doubt the chemical Sodium Hydro Sulphide was given for illegal disposal.*

140. The Ministry of Environment and Forest by letter dated 28th August, 2007 issue later for expansion of pesticide unit to Hikal Ltd, at plot number. T-21, Taloja. Permitting to manufacture 1800 MTA as against existing permission of1704 MTA. There is no reference to any by-product. Thus, the unit was entitled to manufacture only the quantity indicated on was not allowed to increase the quantity of the product under any circumstances without any authority.

141. MTA as against the authorisation granted by the Ministry of Environment and Forest. That also allowed to manufacture by-product. 5476 MTA of by-product was allowed to manufacture. It may be noted that the sodium hydro sulphide was not the product shown as a by-product. Thus, the unit was allowed to manufacture in all 7381 MTA Saleable products.

142. Again, while issuing the consent on 10/11/21 total quantity of manufacturing the product was allowed to 1800 MTA. So far as by-products are concerned, the unit was allowed to manufacture 4298 MTA. Thus, the unit was allowed to manufacture in all 6098 MTA. When the government of India has granted to manufacture only 1800 MTA of the product, how the unit can manufacture more than that, without the previous permission, obtained from the government of India.

143. General conditions mentioned under head "B" (II) specifically states that "No further expansion or modification in the plant shall be carried out without prior approval of the Ministry of Environment and forests. In case of deviations or alterations in the project proposal from those submitted to this Ministry for clearance, a fresh reference shall be made by the Ministry to assess adequacy of the conditions imposed and to add additional environmental measures required, if any".

144. The further conditions are imposed that the rules and regulations with regard to handling and disposal of hazardous waste in accordance with the rules must be complied with strictly. It was made mandatory to get the authorisation for collection, storage, treatable and disposal of hazardous waste. The copy of permission for expansion of pesticide unit dated 28th August, 2007, issued by the government of India, Ministry of Environment and forests is annexed here with and Mark Annexure-31. There is nothing to indicate that any prior approval as indicated in the authorisation for expansion has been obtained to manufacture the quantity of the

> *product granted earlier. From the project proposal, which was granted specifically states any expansion or modifications or variations or alterations in the project proposal granted, cannot be changed without prior permission of the Ministry of Environment and Forest.*
>
> *145. Thus, prima facie, it appears that considering the environment clearance and conditions-imposed have been breached and therefore the Committee recommends that the matter requires further consideration in this behalf by MOEF&CC and CPCB.*"

8. Additional report of the joint Committee mentions the investigation steps with following conclusions:-

> "*24. Thus, the witnesses are conveying to have collected the chemical Sodium Hydro Sulphide from Hikal Ltd, and have narrated the manner in which the chemical was disposed of. They not only convey having taken chemicals from Hikal Ltd, but from others too. The witnesses support each other and the manner in which the chemical was brought and disposed of. The version of the two tankers having been at the same place and leaving the place as also how other two fled on a motorbike is corroborated from CCTV cameras and on examination of the clips the expert has opined which has referred and produced the certificate under the Evidence Act.. Thus, there is no doubt left in the version of witnesses. The manner in which chemical was transferred from one tanker to the other is also made clear by the witnesses. The tanker found at the place of incident and the tanker which was near DECENT Hotel is the same tanker which is clear from the evidence.*"

9. We have heard Ms. Manisha Luvkumar, Senior Advocate appearing for GPCB who submitted that further action needs to be taken by accepting the report, fixing liability of the violators – particularly Hikal Limited and Sangam Enviro Private Limited.

10. Though the Tribunal had permitted the PP to put in appearance, they have not chosen to do so. Still, in the interest of justice, we give one more opportunity to the said alleged violators to file their response, if any, within four weeks. We also direct the Maharashtra State PCB to file its response in the matter. GPCB may put the said alleged violators to notice

of these proceedings furnishing all relevant papers to Hikal Limited, Sangam Enviro Private Limited and Maharashtra State PCB by e-mail. Since there are transboundary issues, we also consider it necessary to issue Notice to the CPCB. GPCB may also put any other violators identified in the report including M/s Raina Industries, GIDC, Ankleshwar, Gujarat to notice of the proceedings to enable them to file their response, if any.

11. Our attention has been drawn to order of Bombay High Court dated 23.06.2022 in a *Writ Petition No. 6586 of 2022, Hikal Limited vs. State of Maharashtra & Ors.* filed by Hikal Limited against order of the Maharashtra State PCB dated 22.04.2022 stopping the manufacturing activities of the said unit for having illegally sold hazardous material to M/s Sangam Enviro Private Limited, Vadodra, Gujarat with the observation that the State PCB could not act on the basis of the report of the joint Committee which has yet to be accepted by this Tribunal. The operative part of the order is as follows:-

> *"14. In such view of the matter, we dispose of the writ petition with the following directions: -*
>
> > *(i) The impugned order dated April 22, 2022 stands set aside in view of the subsequent satisfaction reached by the Board that the petitioner has undertaken corrective measures to comply with the consent conditions.*
> >
> > *(ii) The Board is directed to grant permission to the petitioner to re-start manufacturing activities at its plant at Taloja, subject to such reasonable conditions that are required to be imposed with regard to manufacture of phenamidone in accordance with law.*
> >
> > *(iii) The Board shall be at liberty to communicate that granting permission to the petitioner to re-start manufacturing activities at its plant at Taloja would be subject to any order passed by the NGT in O.A. No.5 of 2022 based on consideration of the report of the Joint Committee.*
> >
> > *(iv) We make it abundantly clear that the NGT shall be at liberty to pass an appropriate order in accordance with law*

> *upon consideration of the report of the Joint Committee, without being influenced by this order by which the Board is being directed to permit re-start of manufacturing activities.*
>
> *(v) It is also made clear that the petitioner shall be bound to comply with the consent conditions and other conditions, if any, imposed on it in terms of this order as well as in the consent to operate/manufacture and if there be any breach of such conditions, the Board shall be at liberty to proceed against it in accordance with law.*
>
> *(vi) Let the permission in terms of this order be conveyed within a week from date."*

12. Learned Senior Counsel for GPCB submitted that since the Bombay High Court has not adjudicated on the issue of violation, the same may be gone into by this Tribunal. It is submitted that the joint Committee report be accepted and further directions issued in terms thereof. Before we accept the submissions, we give opportunity to the alleged violators and the MPCB to give their response within one month.

List for further consideration on 04.01.2023.

A copy of this order be forwarded to GPCB, Maharashtra State PCB, CPCB, Hikal Limited and Sangam Enviro Private Limited, by e-mail.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

September 23, 2022
M.A. No. 46/2022 In
Original Application No. 05/2022
SN