

Item No. 02

**BEFORE THE NATIONAL GREEN TRIBUNAL  
CENTRAL ZONE BENCH, BHOPAL  
(Through Video Conferencing)**

**Original Application No. 19/2023(CZ)  
(I.A. No. 109/2024)**

Devidas Khatri

Applicant(s)

Vs

State of Rajasthan & Ors.

Respondent(s)

**Date of completion of hearing and reserving of order : 29.01.2024**

**Date of uploading of order on website : 20.02.2024**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

For Applicant (s): Mr. Rohit Kumar Tuteja, Adv.

For Respondent(s): Mr. Atmaram N.S. Nankarni, Sr. Adv,  
Mr. U.N. Tiwari, Adv.  
Mr. Shoeb Hasan Khan, Adv.  
(with Mr. Nishant Kesharwani, Adv.  
Ms. Diksha Chaturvedi, Adv.  
Mr. Akshat Tiwary, Adv.  
Mr. Rohit Sharma, Adv.  
(with Mr. Aditya Chhajed, Adv.)

**ORDER**

1. By means of filing this petition, the Applicant has challenged the Consent to Operate (CTO) granted to the Respondent no. 6 M/s. ACC Limited (Project Proponent) by the Rajasthan State Pollution Control Board (RSPCB) for its major mineral mine (limestone) over an extent of 1516.88 hectares comprising of 1107 hectares of revenue land and 408 hectares of forest land, being M.L. No. 01/92, near village Lakheri, Bundi district, Rajasthan, on the following ground :-

- i. Respondent has allowed illegal operation of mining lease without having environmental clearance and valid consent to operate.

- ii. Respondent had permitted illegal operation of mining in an around RNP causing serious irreparable damage to the flora and fauna
  - iii. The State PCB has adopted the policy of pick and choose in case of the industry of the respondent and granted the CTO whereas in other cases the same procedure has not been adopted.
  - iv. The respondent State PCB by taking a bank guarantee of Rs. 5 crore, in place of imposing the environmental compensation violated the EIA notification 2006 against the environmental rules.
2. The issue of illegal mining without any environmental clearance within 10 kilometers of National Park and Wildlife Sanctuary without requisite permission from competent authority/NBWL was taken up by this Tribunal on 13.03.2023 and a committee was constituted to submit the factual and action taken report. The members of the committee visited the site and submitted the report with point-wise details as follows :-

#### ***“I. STATUS FOUND DURING JOINT SITE VISIT***

*In compliance of the order dated 13.03.2023 passed by the Hon’ble National Green Tribunal, the committee jointly visited the mining lease — M. L. No. 01/92 of M/s ACC Limited (Lakheri Cement Works), Village Lakheri, Tehsil Indergarh, District Bundi (Rajasthan) on 21.04.2023. The committee was accompanied by representatives from M/s ACC Limited (Lakheri Cement Works).*

*Point wise details of factual status found as per observations of the Joint Committee and information collected from the Mines Department and at site are as under :-*

- i. *Environmental Clearance under the provisions of the Environmental Impact Assessment Notification, 1994 was granted to the project proponent for the mining lease having total area of 1516.88 Hectare and limestone production of 1.5 million TPA vide MoEF, Govt. of India order dated 26.12.2005.*
- ii. *A Notification was issued by the MoEF & CC on 06.04.2018 mentioning inter-alia —*

*“And whereas, in the view of the above, there would be two categories of cases related to mining projects under EIA Notification, 1994, namely:-*

- a) mining projects, which were granted environmental clearance under the EIA Notification, 1994, and also granted environmental clearance for expansion / modernisation / amendment under the EIA Notification, 2006; and*
- b) mining projects, which were granted environmental clearance under the EIA Notification, 1994, and but not obtained environmental clearance for expansion / modernisation / amendment under the EIA Notification, 2006.....*

*And whereas, all mining projects mentioned in clause (b) of fourth paragraph above are required to obtain environmental clearance under the EIA Notification, 2006, in pursuance of the aforesaid judgments of the Hon'ble Supreme Court;*

*And whereas, the Ministry of Environment, Forest and Climate Change deems it necessary for implementation of the aforesaid Judgments of the Hon'ble Supreme Court as well as for the protecting and improving the quality of environment and abating the environmental pollution, that all projects mentioned in clause*

*(b) of fourth paragraph above, be brought under the regulatory framework of the EIA Notification, 2006;*

*Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby directs, after having dispensed with the requirement of notice under clause (a) of sub-rule (3) of the rule 5 of the said rules in public interest, for implementation*

*of the aforesaid judgments of the Hon'ble Supreme Court, that the project proponent in all such cases involving validity of the environmental clearance and expansion of mining projects vis-d-vis the base production, shall make application within six months from the date of issue of this notification in Form-1 as given in Appendix-IT of the EIA Notification, 2006, for grant of environmental clearance under the provisions of the EIA Notification, 2006, and all such applications shall be*

*considered by the concerned Expert Appraisal Committee or the State Level Expert Appraisal Committee, as the case may be, who shall decide on the due diligence necessary including preparation of Environmental Impact Assessment Report and public consultation and the application shall be appraised accordingly for grant of environmental clearance..”*

- iii. Accordingly, the lessee applied for Environmental Clearance on 04.10.2018, i.e., within the specified period of six months from the date of issue of the aforesaid Notification.*
- iv. Terms of Reference (ToR) were issued to the lessee vide MoEF & CC letter dated 28.06.2022. At present, matter for revalidation of Environmental Clearance under the Environment Impact Assessment Notification, 2006 is under consideration at the level of MoEF & CC.*
- v. Conditional consent to operate has been granted by Rajasthan State Pollution Control Board with validity from 19.12.2022 to 31.12.2023.*
- vi. Under section 38W(1) of the Rajasthan Wildlife Protection Act, 1972 of the Govt. of Rajasthan, Ranthambore Tiger Reserve was notified vide Notification dated 06.07.2012 and 409.88 Hectare forest land owned by M/s ACC Limited was declared as buffer area of Ranthambore Tiger Reserve.*
- vii. Govt. of Rajasthan, vide order dated 26.05.2022 has denotified diverted forest land and attached mining area of total 436.35 Hectare from the buffer area of Ranthambore Tiger Reserve.*
- viii. Out of the total mining lease area of 1516.88 Hectare of M/s ACC Limited, 409.88 Hectare is diverted forest land while the remaining 1107 Hectare is revenue land.*
- ix. Mining activities were discontinued by the project proponent in the diverted forest land after buffer area of Ranthambore Tiger Reserve was notified. Till the date of inspection, no mining activities were being carried out in the forest land.*
- x. During inspection, it was observed that at present, the project proponent is carrying out mining activities at two sites, viz. P3 and Sakhoda, both of which are located in the non-forest area, but within the allotted lease area.*
- xi. Plantation was found carried out in the mining lease.*
- xii. As per report submitted by the Assistant Mining Engineer, Kota vide letter dated 25.04.2023, the lessee M/s ACC Limited is carrying out mining activities in the permitted area only and no illegal mining was found during inspection of the mining lease by the officials/*

*technicians of the Mines Department on 19.04.2023.*

## **II. SUBSTANTIAL ISSUE OF ENVIRONMENT**

*Adequate plantation has been carried out by the project proponent in the mining lease and in the factory premises.*

### **iii. CONCLUSION/ FINDINGS OF THE JOINT COMMITTEE ON 21.04.2023**

- a) During inspection, mining was found to be carried out within the mining lease area of M/s ACC Limited.*
- b) Mining was not being carried out in forest land.*
- c) Mining was being carried out in only that part of the mining lease which falls in non-forest land”*

3. It is to be noted that vide letter dated 28.06.2022, MoEF&CC Impact Assessment Division, Government of India considered the terms of reference for the project and issued the permission and recommendation as follows :-

#### **1. “Observation and Recommendation of the Committee:**

*The proposal was considered in the 52<sup>nd</sup> EAC meeting held during 14<sup>th</sup> - 15<sup>th</sup> June, 2022. After the detailed presentation given by the project proponent and the consultant, the Committee noted that the proposal was earlier considered for ToR on 15.11.2018 wherein the proposal was deferred due to few shortcomings and during 19-21 August, 2020 wherein the committee deferred the proposal as the forest area of 409.88 ha was falling under buffer zone of Ranthambore Tiger Reserve (RTR) for which NBWL had approved de-notification in its 45<sup>th</sup> standing committee meeting held on 04.09.2017. However, the de-notification was not published then. The proposal was again considered in during 11 -13<sup>th</sup> January, 2021 wherein the matter was examined in the Ministry and the Wildlife Division/NTCA. The ministry sent a letter to the Forest Department, Govt of Rajasthan requesting to furnish the action taken report on the recommendations of standing Committee of NBWL for further decision by the Ministry on the instant case.*

*Further, Rajasthan State Government has issued de-notification P1 (63)Van/2017 dated 26.05.2022 for identification of forest area of 436.35 ha including the 409.88 ha area land of M/s ACC Limited from buffer zone of Ranthambhore Tiger Reserve (RTR).*

*The project proponent during the meeting presented and same sent by email dated 14.06.2022 assuring that the khasra/plot no. of Rajasthan Govt. de-notification dated 26% May, 2022 of 436.35 Ha. area is completely matching with M/s ACC area i.e 409.88 Ha.*

*After detailed deliberations, the Committee recommended the proposal for Terms of Reference (ToR) under the provision of Notification S.O. 1530 (E) dated 06.04.2018*

*for Lakheri Limestone Mine of M/s ACC Limited in the mine lease area 1516.88 ha with production capacity of 1.5 MTPA and waste / topsoil 11.25 Lakhs CuM per annum (Maximum) with existing Wobbler and screening plant of 400 TPH located at Villages, Gendoli Kala, GendoliKhurdh, Pholai, Gutha, Mahuwa, Dangaheri, Budel, Kankra, Chamavali, Uttarana, Lakheri, Sakhoda, Nayagaon&Papadi, Tehsilndergarh, District Bundi, Rajasthan with subject to the certain Specific condition in addition to the general conditions of non-coal mining projects.*

*20. The Ministry of Environment, Forest and Climate Change has examined the proposal in accordance with the Environmental Impact Assessment Notification, 2006 and accepted the recommendation of 52 EAC meeting held during 14<sup>th</sup>-15<sup>th</sup> June, 2022 for Terms of Reference (ToR) under the provision of Notification S.O. 1530 (E) dated 06.04.2018 for Lakheri Limestone Mine of M/s ACC Limited in the mine lease area 1516.88 ha with production capacity of 1.5 MTPA and waste / topsoil 11.25 L CuM per annum (Maximum) with existing Wobbler and screening plant of 400 TP located at Villages Gendoli Kala, GendoliKhurdh, Pholai, Gutha, Mahuwa, Dangaheri Budel, Kankra, Chamavali, Uttarana, Lakheri, Sakhoda, Nayagaon & Papadi Tehsilndergarh, District Bundi, Rajasthan with the following specific conditions standard Terms of References for undertaking detailed EIA study.”*

4. The matter was taken up by this Tribunal and the committee was directed to submit the report, after submission of the report the applicant filed an

objection to the report with the facts that the CTO to the respondent no.6 granted without any environmental clearance and the committee has not shown the boundaries and distances of the National Parks, Wildlife Sanctuary, critical Tiger habitat and Tiger corridors in an around the mining lease of respondent no.6 which has impact of mining of flora and fauna of the area.

5. It is further submitted by the applicant that the forest department has not mentioned issue related to NBWL clearances.
6. The MoEF&CC considered the clarification on requirement of various environmental and forest clearances for project activity in eco-sensitive zone and other such area outside projected area and communicated to all states vide letter dated 17.05.2022 as follows :-

- 1) *“Taking cognizance of conservation need of ecologically rich area outside notified Pas and aforesaid Court Orders, Ministry has issued clarifications in reference to the subject matter in the past vide OM No. 22-43/2018-1A111 dated 08.08.2019 followed by OM No. 6-60/2020WL Part (I) dated 16.07.2020.*
- 2) *The matter has been further examined in detail in the Ministry with reference to various recent communications received seeking further clarifications w.r.t. applicability of EC, FC and WC in ESZ/ESA and other ecologically significant areas outside PAs.*
- 3) *Accordingly, in supersession of Ministry's previous OM No. 22-43/2018-1A.111 dated 08.08.2019 and OM No. 6-60/2020WL Part (I) dated 16.07.2020, the following procedure is prescribed w.r.t. applicability of EC. FC and WC in ESZ/ESA and other ecologically significant areas outside PA:*

| <b>Clearance Category</b> | <b>Project/Activity in Notified ESZ Around PA or in notified ESA</b> | <b>Project/Activity outside PA wherein ESZ is not notified or ESZ Notification is at draft stage</b> | <b>Project/Activity outside PA in area which is part of Tiger Reserve or linking one PA or Tiger Reserve to another PA or Tiger Reserve</b> |
|---------------------------|----------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| Environmental             | Project/ Activity                                                    | For                                                                                                  | For                                                                                                                                         |

|                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                 |
|------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Clearance (EC)</i>                                                                                                        | <i>shall be regulated and governed by the concerned ESZ / ESA Notification. Accordingly, activities prohibited under the ESZ/ESA Notification cannot be undertaken. Whereas, for regulated and other activities in ESZ/ESA Notification covered under the Schedule of EIA Notification, 2006: prior EC as per the prescribed procedure is mandatory.</i>                                                                                    | <i>Project/ Activity Covered under the Schedule of EIA Notification, 2006: prior EC as per the prescribed procedure is mandatory, anywhere outside the PA.</i>                                                                                                                                                  | <i>Project/ Activity covered under the Schedule of EIA Notification, 2006: prior EC as per the prescribed procedure is mandatory anywhere outside the PA.</i>                                                                                                                                                   |
| <i>Forest Clearance (FC)</i>                                                                                                 | <i>Projects shall be regulated and governed by the concerned ESZ / ESA Notification. Accordingly, activities prohibited under the ESZ Notification cannot be undertaken. Whereas, for regulated and other activities; Forest Clearance will be required, only if forest land is involved and proposed activity is for non-forestry use, as per provisions of Forest (Conservation) Act, 1980 and Rules and guidelines made there under.</i> | <i>Forest Clearance will be required anywhere outside the PA, only if forest land is involved and proposed activity is for non-forestry use, as per provisions of Forest (Conservation) Act, 1980 and Rules and guidelines made there under, irrespective of the notified limits/default limits of ESZ/ESA.</i> | <i>Forest Clearance will be required anywhere outside the PA, only if forest land is involved and proposed activity is for non-forestry use, as per provisions of Forest (Conservation) Act, 1980 and Rules and guidelines made there under, irrespective of the notified limits/default limits of ESZ/ESA.</i> |
| <i>Consideration by the National Board of Wildlife/ Standing Committee of the National Board for Wildlife (NBWL /SCNBWL)</i> | <i>Projects/ activities proposed to be located within notified ESZ/ESA shall be regulated and governed by the concerned ESZ Notification. Accordingly, activities prohibited</i>                                                                                                                                                                                                                                                            | <i>Project/ Activity covered under the Schedule of NBWL/SCNBWL EIA Notification, 2006 and located within 10 km of National Park or Sanctuary shall require consideration by</i>                                                                                                                                 | <i>Approval of Is mandatory if the project/ activity is proposed to be located in an area which forms part of a Tiger Reserve or area linking one PA or Tiger Reserve with another PA or Tiger</i>                                                                                                              |

|  |                                                                                                                                                                                                                                                                                      |                  |                                                                         |
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|  | under the ESZ Notification shall not be undertaken. Whereas, regulated and other activities proposed within notified ESZ around National Park or Sanctuary shall require consideration by the NBWL/SCNBWL, if such activity is covered under the Schedule of EIA Notification, 2006. | the NBWL/SCNBWL. | Reserve as per section 380(1)(g) of the Wild Life (Protection Act. 1972 |
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4) *In all such cases, the project proponent may submit the application simultaneously for grant of Terms of Reference under EIA Notification as well as for FC and consideration by the NBWL/SCNBWL.*

5) *In addition. mining operations shall be carried out in accordance with the Order of the Hon'ble Supreme court dated 4.08.2006 in the T.N. Godavarman Thirumulpad vs UOI matter in WP(C) No. 202 of 1995 and Order dated 21.04.2014 in the matter of Goa Foundation Vs. LO1 in WP(C) No. 435 of 2012.”*

7. Learned counsel for the Project Proponent/respondent no. 6 submitted that the order passed by the State PCB granting the CTO in favour of respondent is appealable order under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 8 of the Water (Prevention and Control of Pollution) Act, 1974 and in light of the efficacious alternative remedy of appeal before the appellate authority the present original application is not maintainable before this Tribunal.

8. It is further alleged that similar issues were raised by the applicant in the OA No. 431/2016 titled *Babulal Jajoo vs. Union of India and Ors.* and vide order dated 11.10.2017 the Tribunal considered the matter. During the course of hearing, the Hon'ble Principal Bench had directed personal presence of senior officers of the National Tiger Conservation Authority (NTCA) and the Forest department of State of Rajasthan. Mr. Vaibhav C. Mathur, Assistant Inspector General of Forest, NTCA and Mr. Yogendra

Dak, Secretary Forest, Government of Rajasthan appeared. In person before the Principal Bench on 27.01.2017 and made a categorical statement which is recorded as follow the project proponent's activity is found not be in the Forest Area. He makes further statement that on basis of the available material in their office the mining activity is in 1107 Hectare of the revenue land which is not part of the Tiger Reserve. Similar statement is made by Mr. Yogendra Dak an behalf of State of Rajasthan. Submission made on record.

9. The Principal Bench, after considering the entire material on record, disposed of the OA vide order dated 11.10.2017, the relevant part are as under:

*“The fundamental grievances in the present application is that Respondent No. 6 is carrying on illegal and unauthorised mining activity, particularly, in the Ranthambore - National Tiger Reserve which is in violation of the laws in force including the Environment (Protection) Act, 1986.*

*The Learned counsel appearing for the Respondent No. 6 submits that they are having Environmental Clearance, permission to operate and all other necessary permissions from the Government. They are not carrying on any mining activity in the forest or any mining activity is being carried on in the Ranthambore National Park.*

*The Learned counsel appearing for Ministry of Environment, Forest & Climate Change submits that total area under the mine given to Respondent No. 6 is 1516 hectare, out of which 1107 area falls in the revenue land and 208 hectare is a forest area in which mining has already been affected, but presently no mining activity is going on in that area. According to him 201 hectare of land which is proposed to be used for mining purpose, falls in the forest area. It is not disputed that 201 hectare of land falls in the sanctuary buffer zone. In light of the above, we pass the following directions:-*

- i. The Project Proponent - Respondent No. 6 will not carry out any mining activity in 208 hectare of land*

*which falls under forest land where presently the activity has been stopped. Further he will not carry out any mining in 201 hectare of area which is falling in the sanctuary or in its buffer zone.*

*ii. The Respondent No. 6 is free to carry on mining activity in 1107 hectare of land forming part of the revenue land, subject to compliance of all the laws in force.....”*

10. The Respondent ACC has submitted that it is not carrying on any mining operations in the forest area of the lease, and is therefore, fully complying with the above directions of this Tribunal. The Applicant has not produced any evidence or documents to prove the contrary. It is submitted that mere bald allegations can never be a substitute for proof. The Respondent ACC has been carrying on its operations in terms of the statutory clearances.
11. The mining lease at issue was originally granted on 01.12.1913 by the Bundi State for 101 sq. miles. for a period of 30 years and was renewed thereafter from time to time. Presently, the total lease area admeasures 1516.88 hectares out of which 1107 hectares fall in revenue land and the balance 409.88 hectares is forest land. On 07.04.1998, the mining lease received approval under the Forest (Conservation) Act, 1980 (the "FC Act") for the use of 108 hectares of forest land for non-forest purpose. On 26.12.2005, the Ministry of Environment, Forests and Climate Change(MoEF&CC) granted environment clearance for the project for the entire area of 1516.88 hectares. Thereafter, on 13.11.2006, the Respondent received approval under the FC Act for use of another 100 hectares for non-forest purpose.
12. The Government of Rajasthan notified the buffer-zone of the RTR. As recorded in the Babu Lal Jajoo order of the Principal Bench, the Respondent ACC had stopped all operations in the 208 hectares of forest area for which it had the forest clearance and that it did not carry out any

operations in the balance 201 ha. Of forest land that was part of the RTR buffer zone. Respondent no. 3 Forest Department, DCF, Ramgarh Tiger Reserve, Bundi, Rajasthan has filed the reply with the fact that the joint committee in which one of the member was of the forest department has examined the matter and submitted the report that no mining activity is carried out by the respondent no. 6 in the forest area within the allotted area which is non-forest area. It is further submitted that wildlife clearance was granted by the National Board of Wildlife with annexure-3 which has been annexed with this affidavit.

13. The State PCB has filed the reply with the fact that the respondent no. 6 i.e. M/s ACC Ltd. applied for grant of Consent to Operate vide application dated 23.11.2022, the State Board after considering material facts had taken policy decision regarding continued operation of such mines and the time involved in deciding the applications for environmental clearance by the competent authority (MoEF&CC/SEIAA), a view was taken to decide the cases which needs to migrate EC from the 1994 regime to 2006 regime and applied for Consent to Operate. Mining leases which fulfils following criteria may be considered for grant of conditional Consent to Operate:-

*1. Having valid EC as on 06.04.2018 under the EIA notification 1994 for the same material and production capacity*

*And*

*2. Had applied for fresh EC under the EIA notification 2006 in compliance with the notification with the notification dated 06.04.2018 (within six months from the date of issue of the notification)*

*And*

*3. Having valid terms of Reference (TOR) issued by the competent authority (MoEF&CC/SEIAA) or is at any advance stage of obtaining EC i.e. EIA/EMP report submitted, public consultation completed, presentation made before the appraisal committee etc.*

*This view was taken to issue consent to operate not exclusively for ACC Ltd. but all other cases fulfilling the above criteria. Further, it was decided to issue consent to operate for short duration (06 months to 01 year) after seeking firm commitment in the form of Bank Guarantee.*

*It is further submitted that the respondent no. 6 fulfils the above criteria, therefore, the answering respondent issued consent vide letter dated 19.12.2022 for a period of 01 year with specific condition, which read as follows That the lessee shall submit Environmental Clearance under the EIA Notification dated 14.09.2006 latest by 31.12.2023, failing which bank guarantee of 5,00,00,000/- (As BG no. 560GT02223500006, date 17.12.2022 valid upto 31.03.2024) shall be forfeited without any further notice. Condition no. 8 of the CTO letter dated 19.12.2022.”*

14. Contention of the Learned Counsel for the Respondent, Project Proponent is that the Mine was originally granted under a mining lease on 01.12.1913. The operations at the Mine were carried out after obtaining the necessary statutory approvals and permissions. The approval under the Forest (Conservation) Act, 1980 was obtained on 07.04.1998 and 13.11.2006 for 108 ha and 100 ha of forest land respectively. Environment clearance (EC) for the project was granted under the EIA Notification, 1994 on 26.12.2005. CTO was granted and renewed from time to time, including on 14.05.2015, 26.05.2016 and 30.09.2000. It is pertinent to mention that the Project Proponent has not been carrying out any operations in the forest area, which is also found by the Joint Committee constituted by this Tribunal in the instant OA. On 04.09.2017, the National Board for Wildlife (NBWL) approved the de-notification of certain areas from the buffer zone of RTR, including the area within the mining lease at issue.
15. On 06.04.2018, the Ministry of Environment, Forests and Climate Change (MoEF&CC) issued a notification directing that all project proponents who were operating under ECs issued under the EIA Notification 1994 should

get the same revalidated under the EIA Notification 2006 (the “MoEF&CC 2018 Notification”). It is pertinent to mention that MoEF&CC 2018 Notification did not direct project proponents holding an EC under EIA Notification 1994 to stop operations until the EC was revalidated under EIA Notification 2016. It is also important to mention that even the Supreme Court in its judgment in Common Cause v. Union of India, which is the basis for the MoEF&CC 2018 Notification, did not direct stopping of operations by project proponents who were operating under an EC issued under EIA Notification 1994. The Project Proponent applied to the MoEF&CC on 04.10.2018 for revalidation of the EC under EIA Notification 2006.

16. While the Project Proponent’s revalidation application was pending consideration of the MoEF&CC, both the MoEF&CC and the RSPCB continued to enforce the EC granted for the Mine on 26.12.2005. The Project Proponent regularly filed its compliance reports with the MoEF&CC and the RSPCB. The NBWL recommendation dated 04.09.2017 for denotification of the buffer zone remained pending with the State Government as a result of which the revalidation application could not be processed further by the MoEF&CC. This is clear from the Minutes of Meeting of the EAC. After a delay of nearly five years, the State Government issued a notification on 26.05.2022 denotifying certain areas from the buffer zone in terms of the NBWL recommendation dated 04.09.2017 and that the recommendation of NBWL has primacy in issues of declarations of buffer zones. Accordingly, a part of mining lease area that was earlier in the buffer zone stood denotified.
17. Immediately upon the denotification, the MoEF&CC issued the Terms of Reference (ToR) on 28.06.2022. After public hearing and consultations, the EAC recommended the approval of the revalidation application on 27.10.2023, and the revalidated EC has been issued on 29.12.2023. In view of the long pendency of the applications for revalidation of the EC,

the RSPCB had taken a considered view on issuing conditional CTO where a Project Proponent satisfied the following conditions:

- a) Has a valid EC under the EIA Notification 1994 as on 06.04.2018, viz., the date of the 2018 Notification of MoEF&CC;
- b) Has applied for fresh EC under the EIA Notification 2006 in compliance with the 2018 Notification of MoEF&CC; and
- c) Has valid ToR issued by the MoEF&CC / SEIAA.

Since the Project Proponent fulfilled these criteria, it was granted the impugned conditional CTO on 19.12.2022, which was valid only for a period of one year, viz., up to 31.12.2023.

18. Further submissions on the points as raised by the applicant are as follows:

**1) “The MoEF&CC and RSPCB applied and enforced the EC dated 26.12.2005 during the pendency of the revalidation application dated 04.10.2018.**

- i. *Contrary to the Applicant’s contention, the Mine was being operated under an EC issued by the MoEF&CC. The project proponent had validly received an EC on 26.12.2005, which was applied and enforced by the MoEF&CC and the RSPCB during the pendency of the revalidation application. The Project Proponent continued to fully comply with the terms and conditions of the EC. (MoEF&CC Certified Compliance Report dt.29.08.2022, ACC’s Addl. Reply dt. 29.07.2023, (ii) One of the Compliance Reports dated 30.05.2023 submitted to MoEF&CC, ACC’s Addl. Reply dt. 29.07.2023, (iii) Compliance Reports submitted to RSPCB, ACC’s Addl. Reply dt. 29.07.2023, (iv) Notices dated 16.11.2021 and 15.01.2023 issued by RSPCB, ACC’s Addl. Reply dt. 29.07.2023).*

- ii. *On the date of the Common Cause Order dated 02.08.2017 by the Hon'ble Apex Court, the Project Proponent was operating under a valid EC and has also applied for re-validation in accordance with the MoEF&CC 2018 Notification within 6 months. Projects already operating under a valid EC were not intended to be affected by the rigours of the Common Cause Order so long as they have sought re-validation within the stipulated time.*

**2) The Project Proponent has fully complied with the terms and conditions of the EC and has not caused any environment pollution. It has also not done any illegal mining.**

- i. *Neither the First Joint Committee constituted by this Tribunal nor the Second Joint Committee has found any violation of environment norms or illegal mining by the Project Proponent.*
- ii. *The certified compliance report issued by the MoEF&CC, and also the compliance reports submitted by the Project Proponent to the MoEF&CC and RSPCB, would show that the Project Proponent carried out its operations in compliance with the EC, the CTO, and other applicable permissions.*
- iii. *The Applicant's allegations that the Project Proponent was mining in the forest area has also been found to be false by the First Joint Committee where it is clearly noted that no operations were being carried out in the forest area of the lease.*
- iv. *It is submitted, therefore, that there is no merit in allegations and contentions urged in the OA.*

**3) The delay in the revalidation of the EC under the EIA Notification 2016 were for reasons beyond the control of the Project Proponent.**

- i. *In compliance with the 2018 Notification of the MoEF&CC, the*

*Project Proponent applied for revalidation of the EC on 04.10.2018. Accordingly, it did everything that it was required to do under the said notification.*

- ii. The revalidation application remained pending with the MoEF&CC from 04.10.2018 till 26.05.2022. Since a part of the area proposed to be denotified fell within the mining lease area, the EAC deferred consideration of the proposal on the ground that the formal notification of the State Government denotifying the area was awaited.*
- iii. Immediately after the State Government issued the denotification on 26.05.2022, the ToR was issued by the MoEF&CC on 28.06.2022. After the public hearing and necessary clarifications required by the MoEF&CC, the EAC approved the revalidation application on 27.10.2023 and the revalidated EC was issued on 29.12.2023.*
- iv. The Project Proponent respectfully submits, therefore, that the delay in revalidation of the EC were for reasons beyond its control. Therefore, it may not be visited with any adverse consequence on the account of delay in the revalidation of the EC.*
- v. The Project Proponent also respectfully submits that the Doctrine of Relation Back would apply and the EC would relate back and deemed to be in operation from the date of applicability of EIA Notification 2006 on the Project Proponent. The Project Proponent has not increased its capacity or pollution load, beyond the approved limits as were provided in the EC dated 26.12.2005 and hence there is no increase in pollution load also.*
- vi. Contrary to the Applicant's contention, the instant case is neither a case of no EC nor a case of an ex post facto approval of EC. Rather, it is a case where the Project Proponent was validly*

*granted the EC for the project, which EC was applied and enforced by the MoEF&CC and RSPCB during the period the revalidation application was pending with the MoEF&CC.*

- vii. The delay in the revalidation of the EC also led to the delay in the renewal of the CTO. The RSPCB, therefore, gave a conditional CTO since the Mine fulfilled the three-criterion fixed by it for grant of CTO. This was also confirmed by RSPCB in its affidavit before this Tribunal.*

**4) The Applicant's contention that operations at the Mine ought to have been stopped during the pendency of the revalidation application is without basis.**

- i. The contention is without any legal basis. First, neither the Supreme Court in Common Cause nor the MoEF&CC in the 2018 Notification required project proponents holding valid ECs under EIA Notification 1994 to stop operations until the EC was revalidated.*
- ii. Second, stopping of operations would have serious adverse consequence on the livelihood of direct and indirect employees, and also on the revenues to the State. The Project Proponent provides direct employment to 250 persons, indirect employment to 600 persons and there are around 1000 stakeholders. It contributes around Rs.203 crores in terms of revenues to the State. In the circumstances, the operations at the Mine ought not to be stopped on account of the technicality of pendency of the revalidation application, especially when the Mine was being operated under the EC of 26.12.2005.*
- iii. The continued operations of the Project Proponent during the pendency of the revalidation application is in the larger public interest of employment, revenues to the State and overall*

*economic development of the area through Project Proponent's contributions District Mineral Fund, and is supported by the ratio of the judgments passed by the Hon'ble Supreme Court in Pahwa Plastics Put. Ltd. v. Sandur Manganese and Iron Ores Ltd. & Ors., (2013) 8 SCC 337 (para.64) and Gajubha Jadeja Jesar v. Union of India, 2022 SCC OnLine 993. The Project Proponent respectfully submits that the above judgments pertained to matters of ex post facto approval of EC where the project proponents were operating without EC. However, the Respondent ACC stands on a better footing than the project proponents in the said two judgments since the Project Proponent's Mine at issue was operating under the EC of 26.12.2005, and therefore, this is not a case of "no EC" or an ex post facto approval of EC, but a case of revalidation of a validly existing EC."*

19. It is further submitted that the project was regularly monitored and inspected by the competent authority of MoEF&CC Integrated Regional Office, Jaipur and has submitted the compliance report vide report dated 29.08.2022 to the MoEF&CC as follows:-

|    |                                                                                                                        |                                                                                                                                                           |
|----|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <i>Project Type</i>                                                                                                    | <i>Mining</i>                                                                                                                                             |
| 2. | <i>Name of the Project</i>                                                                                             | <i>Environmental clearance for Expansion of Lakheri Limestone Mine of M/s The Associated Cement Companies Ltd. At villages Lakheri- Chamavali, Taluka</i> |
| 3. | <i>Clearance letter / O.M No. &amp; date</i>                                                                           | <i>Environmental clearance issued vide letter dated J-1105/14/2003-IA.II (M) dated 26.12.2005</i>                                                         |
| 4. | <i>Location</i><br><i>a) Tehsil</i><br><i>b) District (s)</i><br><i>c) State (s)</i><br><i>d) Latitudes/Longitudes</i> | <i>District – Bundi</i><br><i>State – Rajasthan</i><br><i>Location - 25°31'54.6" to 25°39'39" N 75°56'46.4" to 76°15'27.2" E</i>                          |

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                          |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5.  | <p><i>Address for correspondence</i></p> <p><b>a)</b> <i>Address of Concerned Project Chief Engineer (with Pin Code/ Tel No./ Telex/ Fax No./ E-mail address)</i></p> <p><b>b)</b> <i>Address of Executive Project Engineer/ Manager (with Pin Code/ Tel No./ Telex/ Fax No./ E-mail address)</i></p>                                                                                                                                                                                                                                                                                                                                                                                       | <p><i>ACC Limited, Lakheri Limestone Mines, PO- Lakheri, Dist.- Bundi, Rajasthan</i></p>                                                                                                                                                                                                                                                                 |
| 6.  | <p><i>Salient features</i></p> <p><b>a)</b> <i>of the project</i></p> <p><b>b)</b> <i>of the environmental management plans</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <p><i>Lime stone mining with opencast method. EMP – Management of soil Efficient dust suppression system Run of control from quarry Adequate noise control measures Adoption improved mine management techniques.</i></p>                                                                                                                                |
| 7.  | <i>Product/ Process/ Activity Details</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <i>Limestone Mining</i>                                                                                                                                                                                                                                                                                                                                  |
| 8.  | <i>Production Capacity</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <i>1.5 MTPA</i>                                                                                                                                                                                                                                                                                                                                          |
| 9.  | <i>Break-up of project affected population</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <p><i>Total lease area</i><br/> <i>1516.88 ha</i><br/> <i>409.88 ha is</i><br/> <i>forest land 1108</i></p>                                                                                                                                                                                                                                              |
| 10. | <p><i>Financial details: (as reported by the PP)</i></p> <p><b>a)</b> <i>Project cost as originally planned and subsequent revised estimates and the year of price reference</i></p> <p><b>b)</b> <i>Allocations made for environmental management plans with item wise and year wise break up</i></p> <p><b>c)</b> <i>Benefit cost ratio/ internal rate of return and the year of assessment</i></p> <p><b>d)</b> <i>Whether (c) includes the cost of 285 environmental management as shown in b) above</i></p> <p><b>e)</b> <i>Actual expenditure incurred on the project so far</i></p> <p><b>f)</b> <i>Actual expenditure incurred on the environmental management plans so far</i></p> | <p><i>Capital cost of the project – Rs 1125 lacs. Actual Incurred on Project(Without depreciation )-</i></p> <p><i>Land – Rs 3246.57 Lacs</i></p> <p><i>Building- Rs 861.00 Lacs</i></p> <p><i>Plant &amp; Machinery – Rs 2043.18 Lacs</i></p> <p><i>Miscellaneous – Rs 40.02 Lacs</i></p> <p><i>Recurring Expenditure on Environment (05 years)</i></p> |

|     |                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11. | <i>Forest land requirement:</i>                                                                                                                                                                                                                                                                                                                                          | <i>Out of total mining lease area of 1516.88 ha, 409.88 ha forest land is involved in mining lease area. Out of 409.88 ha Forest area, Forest Clearance for 108 ha is obtained on 07-04-1998. Out of the 409.88 ha of forest area, FC obtained on 13-11-2006 for another 100 ha. Application for FC for balance of 201.88 ha submitted in 2012. According to the current statutory requirement, the ACC paid the NPV for the entire forest area of 409.88 ha</i> |
| 12. | <i>The status of clear felling in non-forest areas</i>                                                                                                                                                                                                                                                                                                                   | <i>NA</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 13. | <i>Status of construction:</i><br><i>a) Date of commencement (actual and/or planned)</i><br><i>b) Date of completion (actual and/or planned)</i>                                                                                                                                                                                                                         | <i>No details submitted.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 14. | <i>Reasons for the delay, if the project is yet to start</i>                                                                                                                                                                                                                                                                                                             | <i>NA</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 15. | <i>Details of correspondence with project Authorities for obtaining act on plans/information on status of compliance to safeguards other than the routine letters for logistic support for site visits). (The first monitoring report may contain the details of all the letters issued so far, but the later reports may cover only the letter issued subsequently)</i> | <i>NA</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 1   | <i>Environment clearance is granted subjected to the final outcome of Hon' able Supreme Court of India in Contempt Petition( C) 412/2004 in I.A. No. 833 in W.P. ( C ) No. 202/1995</i>                                                                                                                                                                                  | <i>Agreed for compliance by the unit.</i>                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 2   | <i>O/B dumps should be stacked at earmarked dumpsites and covered by plantation for slope stabilization. Monitoring and management of rehabilitated areas should continue until the vegetation becomes self sustaining. Compliance status should be submitted to the Ministry of Environment&amp; Forest on yearly basis.</i>                                            | <i>Complied.</i><br><br><i>The overburden generated during the mining operation is being stacked at designated places within the mining lease area as per the approved Mining Plan. Some area of OB dump has been covered under vegetation with suitable native species. Regular 6 monthly compliance reports are being submitted by the unit.</i>                                                                                                               |

|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                             |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3 | Check dams and siltation ponds of appropriate size should be constructed to arrest silt & sediments flows from soil & mineral dumps. The water so collected should be utilized for watering the min area, roads, green belt development etc. The drains should be regularly desilted & maintained. Garland drains and sump capacity should be designed keeping 50% safety margin over and above the peak sudden rainfall and maximum discharge in the area adjoining the mine site. Sump capacity should also provide adequate retention period to allow proper setting of silt material. Sedimentation pits should be constructed at the corners of the garland drains. | Being Complied.<br><br>Basic provisions of garland drains and siltation ponds have been provided. drains No top soil is available as the deposit is at the foot hills. Silt accumulated due to rain water is being used for plantation purpose. Mine pits are having enough area to accommodate rain water. |
| 4 | Drills should be wet operated or with dust extractors and secondary blasting should be avoided.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Complied.<br><br>Wet drilling is practiced and rock breaker is used for secondary Breaking.                                                                                                                                                                                                                 |
| 5 | Blasting operation should be carried out only during day time. Controlled blasting should be practiced. The mitigative measures for control of ground vibrations and to arrest fly rocks and boulders should be implemented.                                                                                                                                                                                                                                                                                                                                                                                                                                             | Complied.<br><br>It has been appraised by the unit representative that blasting is done during day time and delay detonators are used for blasting to control fly rocks and vibration.                                                                                                                      |
| 6 | Water sprinkling arrangements to control the fugitive dust generation from the haulage road                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Being Complied.<br><br>Arrangements have been made for regular sprinkling of the water through tankers so as to control the fugitive emissions.                                                                                                                                                             |
| 7 | Crusher should be operated with high efficiency bag filters; water sprinkling system should be provided to check fugitive emissions from crushing operations, haulage roads, transfer points etc.                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Being Complied.<br><br>Crusher is situated at plant & dust collectors and water sprinkling system have been provided.                                                                                                                                                                                       |

|           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8         | A total of 193.92 ha. Of area shall be afforested which includes 133.44 ha. Of greenbelt and plantation over non mineralized undisturbed area, roads, peripheral areas along ML boundary and 60.48 ha. Of O.B. dumps plantation shall be developed with native species in consultation with local DFO/Agriculture department. Plantation should also be raised along the roads; OB and top soil dump sites, along ML boundary etc. Almost 2500 plant species/ha should be planted. | <p>Being Complied</p> <p>The unit has done decent efforts for plantation within the mining lease area. It was appraised that during the April 2021 to March 2022, 20000 nos. of saplings have been planted.</p> <p>Plantation records have been maintained by the unit. The PP was advised to submit a detailed report on proposed plantation planning, incorporating all the details of open area, green area and area under plantation in consultation with the local DFO along with next 6 monthly compliance reports.</p> |
| 9         | A progressive mine closure plan shall be implemented and a total area of 87.88 ha. Shall be reclaimed by plantation and the balance 181.28 ha. Shall be converted into a water reservoir. The higher benches of the void shall be terraced and plantation done to stabilize the slopes. Peripheral fencing shall be done all along the excavated area.                                                                                                                             | <p>Agreed for Compliance by PP.</p> <p>The unit representative assured to comply with the condition in accordance with mine closure plan.</p>                                                                                                                                                                                                                                                                                                                                                                                 |
| 10        | No mining shall be carried out below ground water.                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>Being Complied.</p> <p>As of now the unit has not intersected ground water table. Further, the PP has obtained CGWA NoC dewatering vide no CGWA/NOC/MIN/ORIG/2021/13631 on dated 03.11.2021.</p>                                                                                                                                                                                                                                                                                                                           |
| 11        | A final Mine closure Plan along with details of Corpus Fund should be submitted to the Ministry of Environment & Forests 5 years in advance of final mine closure for approval.                                                                                                                                                                                                                                                                                                    | Agreed for compliance by the unit.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 12        | Consent to operate should be obtained from State Pollution Control Board before expanding mining activities.                                                                                                                                                                                                                                                                                                                                                                       | <p>Complied.</p> <p>The project is already under consent mechanism and PP has submitted the copy of Renewal application for Consent to Operate submitted to the SPCB.</p>                                                                                                                                                                                                                                                                                                                                                     |
| <b>B.</b> | <b>General Conditions</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 1         | No change in mining technology and scope of working should be made without prior approval of the Ministry of Environment & Forests.                                                                                                                                                                                                                                                                                                                                                | Complied.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

|   |                                                                                                                                                                                                                     |                                                                                                                                                                                                                            |
|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2 | No change in calendar plan including excavation, quantum of mineral and waste should be made.                                                                                                                       | Being Complied.                                                                                                                                                                                                            |
| 3 | Data on ambient air quality (RPM & SPM) in the study area should be regularly monitored and data thereon submitted once in a year to the Ministry including its regional Office (CZ)                                | Complied.<br>PP has submitted the ambient air quality monitoring reports by an accredited laboratory.                                                                                                                      |
|   | at Lucknow and state Pollution Control Board/CPCB once in a six month.                                                                                                                                              |                                                                                                                                                                                                                            |
| 4 | Fugitive dust emissions from all the sources should be controlled regularly. Water spraying arrangement on haul roads, wagon loading, dump trucks (loading & unloading) should be provided and properly maintained. | Being Complied.<br>Arrangements have been made for regular sprinkling of the water so as to control the fugitive emissions. The unit has also submitted analysis report from the accredited laboratory regarding the same. |
| 5 | Adequate measures should be taken for control of noise levels in the work environment and to maintain with prescribed limits.                                                                                       | Complied.<br>Measures have been taken to reduce noise levels by regular maintenance of HEMM and unit, has submitted analysis report from the accredited laboratory regarding the same.                                     |
| 6 | Industrial waste water, if any should be properly collected, treated so as to conform to the standards prescribed under GSR 422(E) dated 19th May, 1993 and 31st December 1993 or as amended from time to time.     | Complied.<br>During the inspection, no effluent discharge outside the mining lease was observed.                                                                                                                           |
| 7 | Occupation health surveillance program of the workers should be undertaken periodically to observe any contractions due to exposure to dust and take corrective measures if needed.                                 | Being Complied.<br>Regular health checkups of the workmen are being done as per the provisions of various mine legislation and records pertaining to the same were available on site during the inspection.                |

|    |                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8  | <i>The funds earmarked for environment protection measures should be kept in separate account and should be diverted for other purpose. Year wise expenditure should be reported to this Ministry's Regional office located at Lucknow (CZ).</i>                                     | <i>Complied.</i><br><br><i>During the visit it has been appraised by the unit representative that during Jan 2021 to Dec 2021, the unit has spent approx. Rs 376.22 Lakh towards various environment management &amp; protection activities such as green belt development, Rain water harvesting measures development etc. Yearly expenditure details are being forwarded to MoEF&amp;CC Regional Office with six monthly compliance reports.</i> |
| 9  | <i>The regional office (CZ) of this Ministry located at Lucknow shall monitor compliance of the stipulated conditions. The project authorities should extend full cooperation to the office (s) of regional office by furnishing requisite data/information / monitoring reports</i> | <i>Agreed for compliance by the unit.</i>                                                                                                                                                                                                                                                                                                                                                                                                          |
| 10 | <i>A copy of clearance letter will be earmarked to concerned Panchayat /local NGO if any, from whom and suggestions/ representations has been received while processing the proposal.</i>                                                                                            | <i>Reported to be complied.</i>                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 11 | <i>State Pollution Control Board should display a copy of the clearance letter at the regional office, District Industry Centre and collector's</i>                                                                                                                                  | <i>Pertains to state pollution control board.</i>                                                                                                                                                                                                                                                                                                                                                                                                  |

### **Concluding Remarks :**

*The project under reference named as environmental clearance for expansion of Lakheri Limestone Mine of M/s the Associated Cement Companies Ltd. At villages Lakheri- Chamavali, Taluka Indargarh, District Bundi, Rajasthan. The project was inspected on 25.07.2022 for the purpose of issuing certified compliance report. Accordingly monitoring of the conditions of environment clearance was done as narrated above.”*

And periodic report of inspection has been filed before the competent authority after inspection in October, 2022 to March, 2023 to the MoEF&CC.

20. Learned counsel for the State PCB has further submitted (in compliance of the order dated 31.08.2023) that the respondent no. 6 i.e. M/s ACC Cement was having Environment Clearance as per the EIA Notification, 1994. Accordingly, the respondent no. 6 was having CTQ from the State Board having validity from 14.05.2015 to 30.04.2018. Further, the respondent applied for renewal of CTO on 08.12.2017. In the meantime, the MoEF136CC, New Delhi vide letter dated 06.04.2018 directed that incase where project proponent is having EC under EIA, 1994 shall obtain EC under EIA, 2006 by applying within six months. In compliance of MoEF&CC directions project proponent applied for revalidation of EC and same is pending before the MoEF&CC for consideration.
21. It is further submitted that the CTO application of respondent no. 6 was pending with the State Board for want of revalidation of Environment Clearance under EIA, 2006. However, the State Board had issued several notices to the project proponent from 2017 to 2022, which were replied by the project proponent, the details are as follows:-

|       |             |                                                                                                                                                       |
|-------|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| i.    | 04.01.2018  | <i>The answering respondent had issued deficiency letter dated 04.01.2018 to M/s ACC Ltd. in reference to their CTO application dated 08.12.2017.</i> |
| ii.   | 15.01.2018  | <i>The respondent company submitted reply dated 15.01.2018 to RSPCB letter dated 04.01.2018.</i>                                                      |
| iii.  | 27.02.2018  | <i>The answering respondent issued show cause notice for refusal of consent to operate.</i>                                                           |
| iv.   | 08.03.2018- | <i>The respondent company submitted reply dated 08.03.2018 to show cause notice issued by RSPCB.</i>                                                  |
| v.    | 19.07.2019  | <i>The answering respondent issue ddeficiency letter dated 19.07.2019 for the deficiencies observed in the CTO application.</i>                       |
| vi.   | 31.07.2019  | <i>The respondent company submitted reply dated 31.07.2019 to RSPCB deficiency letter.</i>                                                            |
| vii.  | 30.06.2020  | <i>The answering respondent issued letter. to M/s ACC Cement for submitting requisite documents within 15 days.</i>                                   |
| viii. | 10.07.2020  | <i>The respondent company submitted reply dated 10.07.2020 to the deficiency letter issued by RSPCB.</i>                                              |
| ix.   | 22.07.2021  | <i>The answering respondent issued show cause notice for intended refusal of consent to operate.</i>                                                  |
| x.    | 02.08.2021  | <i>The respondent company submitted reply dated 02.08.2021 to the show cause notice issued by RSPCB</i>                                               |

*The show cause notices and reply submitted by the respondent no.6 have already been placed before this Hon'ble Tribunal alongwith the reply submitted by the State Board.*

22. The State Board has not issued CTO to any mining lease which is not having valid Environment Clearance, except respondent no. 6. However, the State Board had decided that Looking into continued operation of such mines and the time involved in deciding the applications for environmental clearance by the competent authority (MoEF&CC/SEIAA), a view may be taken to decide the cases which need to migrate EC from the 1994 regime to 2006 regime applying, Consent to Operate. Mining leases which fulfils following criteria may be considered for grant of conditional Consent to Operate:-

*i. Having valid EC as on 06.04.2018 under the EIA notification 1994 for the same mineral and production*

*And*

*ii. Had applied for, fresh EC under the EIA notification 2006 in compliance with the notification dated 06.04.2018 (within six months from the date of issue of the notification),*

*And*

*iii. Having valid Terms of Reference (TOR) issued by the competent authority (MoEF&CC/SEIAA) or is at any advance stage of obtaining EC i.e. EIA/EMP report submitted, public consultation completed, presentation made before the appraisal committee etc.*

*The mining lease of respondent no. 6 fulfills the above criteria. Therefore, it was decided that the respondent no. 6 should also submit Bank Guarantee of Rs. 5.0 Crores as guarantee money to submit EC under EIA-2006 within one year.*

*1. That the State Board has not issued conditional CTO to any mining lease for a period of one year, except respondent no. 6.*

2. That the officials of State Board have carried out 02 inspections dated 08.11.2019 and 16.11.2021 from the period 2017 to 2022.

3. That the Mining Engineer, Kota vide letter dated 18.09.2023 has informed that respondent no. has excavated 6179982 tons of minerals from 39.72 hectares in the period 08.12.2017 to 31.08.2023 and has paid royalty of Rs. 50,87,84,480/- to the State Government.”

23. Learned counsel for the project proponent has submitted that there is no illegality in the continued operation of the mine during this year or in the grant of conditional CTO for one year since it is in terms of the judgement of the Hon'ble Supreme Court in Electrosteel Steels Ltd. vs. UoI & Ors., 2021 SCC OnLine SC 1247 and Pahwa Plastics Pvt. Ltd. vs. Dastak NGO & Ors., 2022 SCC OnLine SC 363. The Hon'ble Supreme Court of India has held in Electrosteel (para. 73) as follows:

*"The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down for the technical irregularity of shifting its site without prior environmental clearance, without opportunity to the establishment to regularize its operation by obtaining the requisite clearances and permissions, even though the establishment may not otherwise be violating pollution laws, or the pollution, if any, can conveniently and effectively be checked. The answer has to be in the negative." [Emphasis added]*

*Further, in Pahwa Plastics (supra), the Supreme Court has held that:*

*"The manufacturing units of the Appellants appoint about 8,000 employees and have a huge annual turnover. An establishment contributing to the economy of the country and providing livelihood ought not to be closed down only on the*

*ground of the technical irregularity of not obtaining prior Environmental Clearance irrespective of whether or not the unit actually causes pollution”*

24. As submitted in the ACC’s reply, the mine and the adjoining cement plant provides direct employment to 244 persons and indirect employment to 600 persons, substantially contributes to the economy and to revenues of the State and further that the Supreme Court in the matter of Sterlite (supra) has held that an appeal is a creature of statute and an Appellate Tribunal has to act strictly within the domain prescribed the statute. Therefore, an appeal would lie to the NGT only under Section 33-B(a) of the Water (Prevention and Control of Pollution) Act, 1974 read with Section 16(a) of the National Green Tribunal Act, 2010, from an order or decision of the appellate authority under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974. Similarly an appeal would lie to the NGT only under Section 31-B of the Air (Prevention and Control of Pollution) Act, 1981 read with Section 16(f) of the National Green Tribunal Act, 2010 from an order or decision of the appellate authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981. It is also pertinent to mention that the Assistant Mining Engineer, Kota, in his communication dated 25.04.2023 has clearly stated that the mines department inspected the mining lease area of the Applicant ACC and found that the Applicant ACC was mining within its lease area and there was no illegal mining. The Applicant ACC has been constrained to stop operations at the mine on 01.09.2023. The delay in the grant of revalidated EC and CTO is a technicality that has occurred on account of the delay on the part of the Government of Rajasthan in issuing the formal notification de-notifying the buffer zone of the RTR. In view of the settled legal position, the Respondent RSPCB ought not to be faulted in granting the impugned conditional CTO for a period of one year up to 31.12.2023 with the direction to produce the revalidated EC before that

date. Otherwise, a running industrial concern contributing to the economy of the country and providing livelihood directly and indirectly would have had to close its entire operations in the year 2018.

25. Considering the rival contention raised by the parties, this Tribunal vide order dated 13.03.2023, has further called the report from the joint committee consisting Collector, Boondi, Chief Wildlife Warden and State PCB on the facts and objections raised by the applicant and committee has re-examined the issues and submitted the report as follows :-

**A. “Environmental Clearance from MoEF&CC:”**

- i. *Environmental Clearance under the provisions of the Environmental Impact Assessment Notification, 1994 was granted to the project proponent for the mining lease having total area of 1516.88 Hectare and limestone production of 1.5 million TPA vide MoEF, Govt. of India vide order dated 26.12.2005. Copy of EC under EIA Notification, 1994.*
- ii. *The Hon’ble Supreme Court, vide judgment dated 02.08.2017 in Writ Petition (Civil) No. 114 of 2014 in the matter of Common Cause versus Union of India and Ors., inter-alia, directed that the validity of the environmental clearance granted for mining projects under the EIA Notification, 1994 shall be five years. This was reiterated by the Hon’ble Supreme Court vide judgment dated 07.02.2018 in Special Leave to Appeal (Civil) No. 32138 of 2015 in the matter of Goa Foundation versus M/s Sesa Sterlite Ltd., & Ors. While also holding that the EIA Notification, 2006 provides that the environmental clearance would be valid for the estimated project life subject to a maximum of 30 years. Accordingly, a Notification was issued by MoEF&CC on 06.04.2018, mentioning inter-alia that:*

*“And whereas, in the view of the above, there would be two categories of cases related to mining projects under EIA Notification, 1994, namely:*

*(a) mining projects, which were granted environmental clearance under the EIA Notification, 1994, and also granted environmental clearance for expansion / modernization / amendment under the EIA Notification,*

2006; and

*(b) mining projects, which were granted environmental clearance under the EIA Notification, 1994, and but not obtained environmental clearance for expansion / modernization / amendment under the EIA Notification, 2006.*

*And whereas, as per third paragraph above, the projects mentioned in clause (a) of fourth paragraph above do not suffer from the infirmity of validity of environmental clearance being five years;*

*And whereas, the projects mentioned in clause (a) of fourth paragraph above, do not suffer from the infirmity of expansion vis-à-vis the base production as these projects were already appraised and granted environmental clearance under the EIA Notification, 2006;*

*And whereas, all mining projects mentioned in clause (b) of fourth paragraph above are required to obtain environmental clearance under the EIA Notification, 2006, in pursuance of the aforesaid judgments of the Hon'ble Supreme Court;*

*And whereas, the Ministry of Environment, Forest and Climate Change deems it necessary for implementation of the aforesaid judgments of*

*the Hon'ble Supreme Court as well as for the protecting and improving the quality of environment and abating the environmental pollution, that all projects mentioned in clause (b) of fourth paragraph above, be brought under the regulatory framework of the EIA Notification, 2006;*

*Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby directs, after having dispensed with the requirement of notice under clause (a) of sub-rule(3) of the rule 5 of the said rules in public interest, for implementation of the aforesaid judgments of the Hon'ble Supreme Court, that the project proponent in all such cases*

*involving validity of the environmental clearance and expansion of mining projects vis-à-vis the base production, shall make application within six months from the date of issue of this notification in Form-1 as given in Appendix-II of the EIA Notification, 2006, for grant of environmental clearance under the provisions of the EIA Notification, 2006, and all such applications shall be considered by the concerned Expert Appraisal Committee or the State Level Expert Appraisal Committee, as the case may be, who shall decide on the due diligence necessary including preparation of Environmental Impact Assessment Report and public consultation and the application shall be appraised accordingly for grant of environmental clearance.” .*

- iii. *Accordingly, the lessee applied for Environmental Clearance on 04.10.2018, i.e., within the specified period of six months from the date of issue of the aforesaid Notification.*
- iv. *Terms of Reference (ToR) were issued to the lessee vide MoEF &CC letter dated 28.06.2022. The proposal of the unit was appraised in 38th EAC Meeting held on 15.11.2018, 20th EAC held during 19-21 August, 2020 and 26th EAC meeting held during 11 -13th January, 2021. Finally, their proposal was considered in the 52nd EAC meeting on 11-13 June 2022 and the MoEF&CC issued the ToR on 28<sup>th</sup> June 2022.*
- v. *At present, matter for issue of Environmental Clearance under the Environment Impact Assessment Notification, 2006 is under consideration at the level of MoEF & CC. It has been observed by the committee that, the PP has submitted the Final EIA report and proposal was considered by Expert Appraisal Committee on 3<sup>rd</sup> May 2023. During the appraisal some queries were raised which have been replied by M/s ACC Ltd. on 05.06.2023. Proposal was again appraised in EAC meeting on 24th August 2023 and again some queries were raised by the committee. It was informed by the representative that M/s ACC Ltd. will shortly be submitting the reply to the queries and are hopeful to get the EC in next EAC meeting.*

**B. NBWL Clearance, Forest Diversion and Mining on Forest Land:**

- i. *Total mining lease area is 1516.88 hectare comprising 1107 hectare non forest and 409.88 hectare forest. 409.88 Ha forest area was notified as buffer in RTR buffer by notification on 06.07.2012. Copy of notification is enclosed as **Annexure-7**.*
- ii. *On 12-13.08.2014, Standing Committee for National Board for Wildlife in its 31<sup>st</sup> meeting recommended wildlife clearance for 1107 ha of revenue/non forest area of mining lease.*
- iii. *Subsequently, a NOC was accorded by CWLW on 03.12.2014 regarding proposal of non-forest project within 10 km of National Park and Sanctuaries.*
- iv. *On 21.01.2015, Wild Life Clearance was recommended by NBWL in its 32<sup>nd</sup> meeting for forest area 409.88 Ha which was inadvertently missed out in 31<sup>st</sup> meeting. It was also stated by NBWL that this permission will be deemed once the recommendation of SBWL to exclude 409.88 Ha forest area from RTR Buffer will be implemented. Also, NBWL directed to SBWL to expedite the de-notification process.*
- v. *On 04.09.2017, in continuation with direction of wildlife clearance dated 21.01.2015, NBWL and NTCA approved de-notification of RTR to exclude forest mining area 409.88 Ha and also directed user agency to deposit Rs. 5.0 Cr for the same purpose. Copy of letter dated 22.09.2017 of CWLW. Representative of M/s ACC informed to have deposited Rs 5.0 Cr on 14.10.2017.*
- vi. *CWLW in its letter dated 10.02.2023, clearly mentioned that wildlife clearance is already granted by NBWL.*
- vii. *CF & Field Director Mukundra Hills Tiger Reserve vide letters dated 28.04.2023 and 23.05.2023 related with wild life clearance of ACC mining lease stated that M/s ACC Ltd. has Wild Life clearance.*
- viii. *DCF and Dy. Field Director of Ramgarh Vishdhari Tiger Reserve (RVTR), Bundi in his factual report addressed to CWLW, dated 04.07.2023 endorsed above mention facts and also stated that: –*

(1) *409.88 Ha area had been de-notified from RTR*

*buffer by Rajasthan Govt. order dated 26.05.2022.*

*(2) As per the records of State Forest Department, no Mining activity carried out during the last 5 years by M/s ACC Ltd. in*

*forest area of 409.88Ha.*

**C. Consent to Operate from RSPCB:**

- i. *The lessee was having CTO from State Board having validity from 14.05.2015 to 30.04.2018. Renewal of consent to operate application dated 08.12.2017 of mines was kept pending by the RSPCB in want of Environmental Clearance under EIA Notification, 2006. The same was refused by the RSPCB on 14.11.2022 after issuing several notices to the lessee vide letter dated 04.01.2018, 27.02.2018, 19.07.2019, 30.06.2020, 22.07.2021 and non-submission of Environmental Clearance under EIA notification, 2006.*
- ii. *Subsequently, lessee has again applied for consent to operate on 23.11.2022.*
- iii. *Looking into continued operation of such mining leases and time involved in deciding the applications of Environmental Clearance by the competent authority (MoEF& CC/ SEIAA), the State Board has taken a view to decide the cases which need to migrate from the 1994 regime to 2006 regime applying for Consent to Operate. Mining leases which fulfill the following criteria may be considered for grant of conditional Consent to Operate:*
  1. *Having valid EC as on 06.04.2018 under the EIA Notification, 1994 for the same mineral and same production capacity,*

*and*
  2. *Had applied for fresh EC under the EIA Notification, 2006 in compliance with the Notification dated 06.04.2018 (within six months from the date of issue of the Notification),*

*and*

3. *Having valid Terms of Reference (ToR) issued by the competent authority (MoEF& CC/ SEIAA) or is at any advanced stage of obtaining EC, i.e., EIA/ EMP report submitted, public consultation completed, presentation made before the appraisal committee, etc.*
- iv. *The mining lease of M/s ACC Limited fulfilled the above criteria.*

*Therefore, it was decided that the respondent company should submit a Bank Guarantee of Rs. 5 Cr as guarantee money to submit Environmental Clearance under the EIA Notification, 2006 within one year.*

- v. *Looking to the progress/advance stage of issue of Environmental Clearance (TOR issued) and after taking firm commitment in form of bank guarantee of Rs. 5 Cr, the State Board had issued conditional consent to operate for short period (one year only) on the same capacity and lease area for which the lessee was having EC under EIA notification, 1994 from 19.12.2022 to 31.12.2023 subject to the condition, inter alia, that:*

*“That the lessee shall submit Environmental Clearance under the EIA Notification dated 14.09.2006 latest by 31.12.2023, failing which Bank Guarantee of 5,00,00,000/- (As BG No.560GT02223500006, Date-*

*17.12.2022, valid up to 31.03.2024) shall be forfeited without any further notice.”.*

- vi. *It is evident that the State Board considered the Consent Application of the unit on the basis of advance stage of issue of Environmental Clearance (TOR issued), after taking firm commitment in form of bank guarantee of Rs. 5 Cr and Environment Clearance issued under the EIA Notification 1994.*

#### **D. Status of Mining:**

- i. *As per letter dated 18.09.2023 of Mining Engineer, Kota, M/s ACC Ltd. carried out mining in 39.72 hectare broken up area of the approved mining lease (ML No. 01/1992) between the period 08.12.2017 to 31.08.2023 and mined*

61,79,982 Ton of the mineral. Also, the lessee deposited an amount of Rs. 50,87,84,480/- to the State Government against royalty.

**E. Conclusions:**

- *The project proponent had applied for Environment Clearance under the provisions of EIA Notification 2006 within the specified time frame as prescribed vide the notification dated 06/04/2018 and the project proponent continued the mining activities in non-forest area of 1107 Ha, while the proposal was under consideration at the level of MoEF&CC, GoI. Later on, the PP had obtained The National Board for Wildlife (NBWL) Clearance after de-notification of the RTR buffer by Rajasthan Government. As per the mining department and state forest department, mining activity has been limited to the non-forest land only.*
- *The Project Proponent had also applied for Renewal of Consent to Operate along with requisite fee and the application was kept under consideration at the level of State Board in want of Environmental Clearance under the provisions of EIA Notification 2006. After issuing several notices to the lessee and non-submission of Environmental Clearance under EIA Notification, 2006 the State Board had refused the application on 14.11.2022. It is pertinent to mention here that no clear directions were issued by the State Board regarding operation of mine during this period and as soon as the pending application was refused, the mining operation were shut down by the project proponent. Furthermore, the notification dated 06.04.2018 is also not clear regarding the operations of mines for the intervening period (i.e. beyond the date of application and upto the issue of environmental clearance under EIA notification, 2006)."*

26. During the pendency of this application the MoEF&CC vide letter dated 29.12.2023 has granted the prior environmental clearance to the proposed mining on the basis of the EAC meeting dated 18.10.2023, the relevant paragraphs are quoted below :-

1. "The EAC, in its meeting held on 18/10/2023, based on information submitted viz: Form 1 (Part A, B and C), EIA/EMP report etc & clarifications provided by the project proponent and after detailed deliberations on all technical aspects and public hearing issues and compliance thereto furnished by the Project Proponent, recommended the proposal for grant of Environment Clearance under the provision of EIA Notification, 2006 and as amended thereof subject to stipulation of Specific and Standard EC conditions as detailed in the point below.

2. The MoEF&CC has examined the proposal in accordance with the provisions contained in the Environment Impact Assessment (EIA) Notification, 2006 & further amendments thereto and based on the recommendations of the EAC hereby accords Environment Clearance for the instant proposal to M/s. SANDEEP KUMAR under the provisions of EIA Notification, 2006 and as amended the subject to compliance of the Specific and Standard EC conditions.

27. The matter was discussed in detail in the EAC meeting the copy of which has been attached as Annexure-2 which is as follows:-

**“Subject:** - Lakheri Limestone Mine of M/s. ACC Ltd with Limestone Production Capacity of 1.5 Million TPA and 08 Waste: 1.96 Million TPA with Total Excavation: 3.46 MTPA along with existing wobbler & screening plant of 400 TPH in the mine lease area of 1,308.88 ha [Forest land having Stage-11 FC: 201.88 ha + Non-Forest land: 1107 ha] out of 1516.88 Ha, located at Villages Gendoli Kala, Gendoli Khurdh, Pholai, Gutha, Mahuwa, Dangaheri, Budel, Kankra, Chamavali, Uttarana, Lakheri, Sakhoda, Nayagaon & Papadi, Tehsil: Indergarh, District: Bundi, Rajasthan Revalidation of EC under MoEF&CC Notification S.O 1530(E) dated sth April, 2018 regarding.

Sir,

This has reference to the online proposal no. IA/RJ/MIN/426653/2023 for grant of Environmental Clearance of Lakheri Limestone Mine of M/s. ACC Ltd with Limestone Production

Capacity of 1.5 Million TPA and 08 Waste: 1.96 Million TPA with Total Excavation: 3.46 MTPA along with existing wobbler & screening plant of 400 TPH in the mine lease area of 1,308.88 ha [Forest land having Stage-It FC: 201.88 ha + Non-Forest land: 1107 ha] out of 1516.88 Ha, located at Villages Gendoli Kala, Gendoli Khurdh, Pholai, Gutha, Mahuwa, Dangaheri, Budel, Kankra, Chamavali, Uttarana, Lakheri, Sakhoda, Nayagaon & Papadi, Tehsil: Indergarh, District: Bundi, Rajasthan.

2. The details of the project as ascertained from the documents submitted by the Project Proponent and as revealed from the discussions held during the meeting are given as under:

i. The mine lease area is located between Latitude: 25°31 '54.6"N to 25°39'39" N and Longitude: 75°56'46.4"E to 76°15'27 .2"E. The mine lease area falls under the Survey of India Topo sheet No: 45 0/14 & 54 C/2and falls in Seismic Zone-11.

ii. The proposed project activity is listed at schedule no. 1 (a) Mining of Minerals and falls under Category "A" as the mining lease area is greater than 250ha and accordingly, appraised at the Central level.

iii. The instant proposal was earlier considered in the 14th EAC (Non-Coal Mining) meeting held during 3-4 May, 2023 wherein the EAC deferred the proposal. Then, the Project Proponent submitted the information on 05.06.2023 and 25.07.2023 in Parivesh portal. Accordingly, the proposal was reconsidered in the 19th EAC (Non Coal Mining) meeting held during 24-25 August, 2023 wherein the EAC deferred the proposal for want of requisite information. Then, the Project Proponent submitted the information on 30.09.2023 in Parivesh portal and accordingly the proposal was again reconsidered in the 21St EAC (Non-Coal Mining) meeting held during 18-20 October, 2023.

iv. Details of previous Environmental Clearance (EC):

a) The Project Proponent obtained Environmental Clearance (EC) vide EC Lr No. J- 11 015/14/2003-IA.II(M) dated 26.12.2005 for production capacity of 1.5 MTPA involving mine lease area of 1516.88 ha under the provisions of EIA Notification, 1994.

v. Details of Terms of Reference (ToR):

|             |         |     |  |        |
|-------------|---------|-----|--|--------|
| application | File No | EAC |  | accord |
|-------------|---------|-----|--|--------|

|            |                                                             |                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |            |
|------------|-------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 04.10.2018 | IA/RJ/MIN/<br>275163/2022<br>J-11015/167/<br>2018-IA.II (M) | 38 <sup>th</sup> EAC<br>(15.11.2018),<br>20 <sup>th</sup> EAC<br>meeting<br>Notification<br>(21.08.2020).<br>26 <sup>th</sup> EAC<br>(13.01.2021)<br><br>52 <sup>nd</sup> EAC<br>(14.06.2022) | Terms of<br>under the<br>provision of<br>8.0 dated<br>1530(E)<br>06.04.2018<br>for Lakheri<br>(Area with<br>1516.88 Ha)<br>Limestone<br>Production<br>Capacity of<br>1.5 Million<br>TPA and<br>waste/topso<br>il 11.25<br>Lakhs cum<br>per annum<br>with existing<br>wobbler &<br>screening<br>plant of 400<br>TPH at<br>Villages<br>Gendoli Kala<br>GendoliKhur<br>dh, Pholai,<br>Gutha,<br>Mahuwa,<br>Dangaheri,<br>Budel<br>Kankra,<br>Chamavali<br>Uttarana,<br>Lakheri,<br>Sakhoda,<br>Nayagaon &<br>Papadi,<br>Tehsil<br>Indergarh,<br>District:<br>Bundi,<br>Rajasthan. | 28.06.2022 |
|------------|-------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|

*Details of Mine Lease:*

- a) The mining lease was originally granted by the State Government in year 1913 and lease deed was executed on 01.12.1913 for a period of 30 years.
- b) First Renewal of mine lease was granted on 28.07.1943 for a period of 30 years wef. 01.08.1043 for mining of Limestone.
- c) Second renewal of mine lease was for a period 20 years w.e.f. 01.08.1973 and 01.08.1992, the lease was under deemed renewal upto 31.07.2013.

*d) As per Section BA (5) of MMDR (Amendment) 2015, Lease period of Mining le Ms been extended upto 31.03.2030 vide Department of Mines & Geology ME/Kota/CC/Major/4/72/349 dated 18.02.2015.*

*2. Observation and Recommendation of the EAC:*

*The EAC deliberated on the additional details submitted by the Project Proponent and the Consultant. The Project Proponent Consultant has informed the EAC that the recommendation of NBWL is for all three Wildlife sanctuaries/Tiger Reserve such as Chambal Gharial Sanctuary, Ramgarh Vishdhari Tiger Reserve and Ranthambhore Tiger Reserve. The EAC noted the comments of the Wildlife Division given on 22.09.2023 which are as follows:*

- i. The total mining lease area is 1516.88 ha out of which 1107 ha is a non-forest and 409.882 is a forest land. The matter was initially discussed in 31st Sgmeeting of SCBNWL held on 12.08.2014. During the meeting of SCNBWL recommended for 1107 ha forest area of the mining lease.*
- ii. NOC has been accorded by the Chief Wildlife Warden Rajasthan vide letter dated 3.12.2014, (however, on perusal of this letter it has been observed.*
- iii. In 32nd meeting of NBWL held on 21 .01 .2015, remaining 409.88 ha of forest area including 208 ha diverted forest area and 201 .88 ha non-diverted forest area of total mining lease wildlife clearance was granted by the NBWL.*
- iv. By the order of NBWL in its 451h meeting dated 04.09.2017 and NTCA meeting dated 04.09.2017, an area of 409.88 ha of forest land of ACC mining lease is denotified from RTR notified area by the Rajasthan Government order dated 26.05.2022.*
- v. Further, it was informed by the DCF, RVTR Bundi vide letter dated 4.07.2023 that an Inspection committee made by NGT in its inspection report stated that there is no mining activity carried out by ACC in forest area of 409.88 ha and mining activities was carried out in onty two pit viz P-3 and sakhoda which are located in the nonforest area, but within the allotted lease area. So before commencement of any mining activity in 409.88 ha forest area, the NoC from the State Government may be obtained.*

*The EAC also noted that comments obtained from National Tiger Conservation Authority (NTCA) dated 13.07.2023 and ESZ Division dated 18.07.2023. The Project Proponent presented the map showing the distance of the railway boundary and the railway line from the boundary of Sakhawada mine lease area which is 550 m and 570 m respectively. No mining activity will be carried out in 500m radius from the railway boundary. Vibration levels nearby the railway line are estimated as 0.055 mm/sec, 0.701 mm/sec and 0.071 mm/sec. Rock breaker will be used in the closest pit of mine lease near railway line to avoid the impacts due to fly rock. The Project Proponent also informed the EAC that the action plan for shifting the school has been revised from 3 years to 2 years.*

*Further, the Project Proponent has informed the EAC that the NGT vide order dated 31 .08.2023 constituted a joint committee consisting of the representative of MoEF&CC, CPCB and State Pollution Control Board to examine the matter w.r.t Consent to Operate and the joint committee submitted their report before the NGT. The Project Proponent has informed that they have filed an application to review the order dated 31.08.2023 and the NGT issued notice on the same. The next hearing is scheduled on 02.11.2023. The EAC was of the view that the instant matter regarding Consent to Operate before the NGT is sub-judice. An undertaking has been submitted in a nonjudicial stamp paper of Rs 50 bearing dated 19.07.2023 to comply with the conditions as recommended by the NBWL and the same has been submitted to the Dy. Conservator of Forest & Dy. Field Director, Ramgarah Vishdhari Tiger Reserve on 28.08.2023. The EAC was of the view that the Project Proponent needs to undertake a community based conservation program and the same shall be monitored and vetted by the Forest Dept.*

*The EAC asked about the status of the Forest Clearance. The Project Proponent has informed the EAC that the total mine lease area is 1516.88 ha area, out of which 1107 ha is non-forest land and 409.88 ha is a Forest land. Initially, the Forest Clearance has been obtained from the MoEF vide letter dated 03.04.1998 under section-2 of the Forest (Conservation) Act, 1980 for diversion of 108 ha of already broken forest land for mining of Limestone. Then, the Forest Clearance was granted by the MoEF vide letter dated 13.11 .2006*

under section 2 of the Forest (Conservation) Act, 1980 for diversion of 100 ha letter dated 18.12.2013 has conveyed the 'in-principle' approval for renewal of diversion of 208 ha of forest land for mining of Limestone. The Project Proponent also submitted that an application has been submitted on 18.07.2012 for diversion of remaining area of forest land of 201.88 ha. Further, the Project Proponent has informed the EAC that the MoEF&CC vide letter dated 27.12.2017 has stated that the State Govt. may allow mining activities in the non-forest area within the mining lease as per the existing provisions for mining around the National Park and Supreme Court order and the lease is executed after receiving the NPV for whole forest land within the lease. It is also mentioned in the same letter that the out of 409.88 ha of forest land in the lease, FC clearance under section 2(ii) was granted for 201.88 ha in 2012 by the Ministry. Since this is the latest letter from Forest Conservation Division of the Ministry with regard to Forest Clearance, the EAC opined to consider that Forest Clearance (Stage II) is only available for 201.88 ha. The State Govt. vide letter dated 15.02.2018 has granted the extension of general approval under section 2(iii) of FC Act, 1980 for 409.88 ha of forest land for existing captive lakehri mining lease after deposition of NPV of Rs 19.39 Crores. The EAC reiterated the Ministry's FC Division OM dated 31.05.2023 wherein it has been clarified that "in respect of existing mining leases having forest land in part or full and where the State Governments have considered the grant of GA as per the provisions of the para 7.3 (iv) of the Handbook of Forest (Conservation) Act, 1980, the existing mining operations will be restricted to the forest land already approved under section 2(ii) of the FC Act, 1980. In existing leases where approval under the FC Act, 1980 is available only for part of forest land, the nonavailability of approval under the section 2 (ii) of the Act in respect of remaining forest land will not be a deterrent to undertake mining in the already approved area provided the user agency has complied all conditions, as stipulated under para 7.3(iv) of the Handbook of Forest (Conservation) Act, 1980". Thus, the EAC opined that the mining activity shall be restricted to the forest land for which the Project Proponent is having Stage-11 FC and to non-forest land.

The EAC also noted that in response to the Project Proponent requisition letter dated 31.07.2023 to issue the formal letter for

*Wildlife Clearance, the Dy. Conservator of Forest & Dy. Field Director, Ramgarah Vishdhari Tiger Reserve vide letter dated 28.08.2023 has replied that the affidavit submitted by the user organization has been verified and forwarded for further necessary action. The EAC also observed the report of the joint committee wherein it is mentioned that the CWLW in its letter dated 10.02.2023 clearly mentioned that the Wildlife Clearance is already granted by NBWL. Then, the CF & Field Director Mukundra Hills Tiger Reserve vide letters dated 28.04.2023 and 23.05.2023 related with the wildlife clearance of ACC mining lease has stated that M/s ACC Ltd has Wildlife Clearance. Also, the Forest Dept vide letter dated 22.09.2023 has informed that as per the records of the State Forest Dept, no mining activity was carried out during last 5 years in forest area of 409.88 ha by M/s ACC Ltd. The EAC asked the Project Proponent to submit the annexures enclosed in the joint committee report and accordingly the Project Proponent has submitted all the annexures vide email dated 18.10.2023.*

*After detailed deliberations made by the Project Proponent and the Consultant, the EAC in its meeting held during 18-20 October, 2023 under the provisions of EIA Notification 2006 and its subsequent amendments recommended the proposal for grant of Environmental Clearance (EC) to M/s. ACC Ltd for mining of Limestone with Limestone Production Capacity of 1.5 Million TPA and OB Waste: 1.96 Million TPA with Total Excavation: 3.46 MTPA along with existing wobbler & screening plant of 400 TPH in the mine lease area of 1,308.88 ha (Forest land having Stage-II FC: 201.88 ha + Non-Forest land: 1107 ha) out of 1516.88 Ha, located at Villages Gendoli Kala, GendoliKhurdh, Pholai, Gutha, Mahuwa, Dangaheri, Budel, Kankra, Chamavali, Uttarana, Lakheri, Sakhoda, Nayagaon & Papadi, Tehsil: Indergarh, District: Bundi, Rajasthan subject to the specific conditions in addition to the standard EC conditions applicable for non-coal mining projects.”*

28. Learned Counsel for the project proponent has submitted that all these matters which has been raised by this application have been considered by the MoEF&CC and the EAC in its meeting and after consideration the EC has been granted by the MoEF&CC and all the orders previously passed by the MoEF&CC and the RSPCB is merged with the EC granted

by the Competent Authority. If anyone or the applicant is aggrieved by the EC granted by the MoEF&CC, remedy lies in filing the appeal. By means of this application the CTO granted by the RSPCB or the EC granted by the MoEF&CC cannot be challenged. The CTO granted by the RSPCB under challenge and the methods which have been reported by the Joint Committee in separate two reports have been duly discussed by the EAC in its meeting and nothing has been found to be in violation of environmental rules.

29. The proposal for grant of EC was under consideration before the competent authority and the delay was due to the state policy with regard to the notification and again de-notification of the area in which the CTO granted by the RSPCB under challenge has been duly considered by the MoEF&CC while passing the final order and in light of the EC granted by the authorities in December, 2023 the original order merged with this order. Further, when the alternate remedy to file the appeal before the appellate authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 28 of the Water (Prevention and Control of Pollution) Act, 1974, the present OA is not applicable in light of the *Tamil Nadu Pollution Control Board vs Sterlite Industries* (2019) 19 SCC 479.
30. On the basis of the record submitted by the parties concerned and the joint committee report and the report submitted by the forest department, the mining was conducted within the permissible limits and the lease allotted in the favor of the project proponent and no mining was done or found to be carried out within the forest zone.
31. In view of the EAC recommendation dated 18.10.2013 and EC dated 29.12.2023 granted by the MoEF&CC in favor of the project proponent, present application is not maintainable. If the applicant is aggrieved by the EC, dated 29.12.2023, alternate remedy to file the appeal is available.

32. In view of the facts and discussion, the present **Original Application No. 19/2023 alongwith I.A. No. 109/2023** is not maintainable and deserves to be dismissed and **dismissed** accordingly.

**Sheo Kumar Singh, JM**

**Dr. A. Senthil Vel, EM**

20<sup>th</sup> February, 2024  
O.A. No. 19/2023 (CZ)  
PN