

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH AT BHOPAL (MADHYA PRADESH)**

**(Through Video Conferencing)
ORIGINAL APPLICATION NO. 28/2023(CZ)**

IN THE MATTER OF:

- 1. RAJESH YADAV**
S/o Shri Prasad Yadav
Mukam Post, Bhadgaon,
Tehsil- Rahatgaon,
District- Harda
State of Madhya Pradesh

- 2. PREM NARAYAN KIRRAR**
S/o Late Shri Balkrishna Kirar
Mukam Post, Bhadgaon,
Tehsil- Rahatgaon,
District- Harda
State of Madhya Pradesh

- 3. SUKHRAM VIJAY**
S/o Shri Hira Lal
Mukam Post, Bhadgaon,
Tehsil- Rahatgaon,
District- Harda
State of Madhya Pradesh

...Applicant(s)

Versus

- 1. NATIONAL HIGHWAY AUTHORITY OF INDIA**
Regional Office Bhopal,
6, E-6, Arera Colony,
Bhopal, Madhya Pradesh- 462016

- 2. STATE OF MADHYA PRADESH**
Through District Collector,
Chipaner Road, Harda,
Madhya Pradesh-461331

- 3. PRAKASH ASPHALTINGS & TOLL-
HIGHWAYS (INDIA) LTD.PATH**
R/O 76, Mall Road Mhow Indore,
Madhya Pradesh-453441

4. MADHYA PRADESH POLLUTION CONTROL BOARD

Through Chairman,
Paryavaran Parisar,
E-5, Link Road No. 3, Ekant Park,
Arera Colony, Bhopal,
Madhya Pradesh-462016

5. DIRECTORATE OF GEOLOGY AND MINING

Through Principal Secretary
29-A, Khanij Bhavan, Arera Hills,
Bhopal, Madhya Pradesh-462002

6. M.P. STATE ENVIRONMENT

IMPACT ASSESSMENT AUTHORITY (MP SEIAA)

EPCO, Paryavaran Parisar,
E-5, Arera Colony, Bhopal,
Madhya Pradesh-462016

...Respondent(s)

COUNSELS FOR APPLICANT(S):

Mr. Ayush Gupta and Ms. Urvashi Mishra, Advocates

COUNSELS FOR RESPONDENT(S):

Ms. Parul Bhadauria, Advocate for MPPCB and MP SEIAA

Mr. Vivek Dalal, Advocate for R-3

Mr. Anurag Maheshwari, Advocate for R-3

Mr. Prashant M. Harne, Advocate for State of Madhya Pradesh

Mr. Abhay Saraf, RO, MPPCB, Mandideep

Mr. R P Kamlesh, Mining Officer, Harda

CORAM:

HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER

HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

Reserved on: August 24, 2023

Pronounced on: October 19, 2023

JUDGMENT

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

1. Rajesh Yadav, Prem Narayan Kirar and Sukhram Vijay, all three residents of Mukam, Post Bhadgaon, Tehsil-Rahatgaon, District-Harda, State of Madhya Pradesh have approached this Tribunal by filing this

Original Application (hereinafter referred to as '**OA**') under Sections 14, 15 and 18 of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act, 2010**') raising a complaint against M/s. Prakash Asphaltings and Toll Highways (India) Ltd. i.e., respondent 3 (hereinafter referred to as '**PP**' or '**respondent 3**' or '**Project Proponent**') alleging that it has violated environmental laws by illegally digging gravel soil/mud/morrum on the bank of River Ganjal and has also extracted other minerals without any authority or statutory permit obtained from Competent Authority. Illegal extraction of mineral including minor mineral on the part of respondent 3 has led to erosion of banks of River Ganjal, destruction of flora and fauna and made the River prone to flooding the local areas since natural mud walls of River have been damaged and destructed by respondent 3. Excavation of soil and mineral is also beyond permissible limit, holes have been done deeper than the permitted depth and other environmental laws and norms have been violated flagrantly.

FACTS IN BRIEF:

2. Facts in brief, stated in OA are that National Highway Authority of India (hereinafter referred to as '**NHAI**'), Regional Office, Bhopal floated a tender for construction of National Highway, Indore-Betul from Pindgaon to Temagaon of 30 kms length. Contract was awarded to respondent 3 who started work with illegal digging of banks of River Ganjal, destroying natural walls of river causing flooding in the nearby area; caused damage to flora and fauna and conducted mining operations illegally. News of illegal mining was published in various newspapers and copies of some newspaper, collectively, have been filed as **annexure P/3**. Illegal mining on the part of respondent 3 is also writ large from the fact that Additional Collector, District Harda by order dated 24.02.2023 imposed penalty of Rs.51,67,64,520/- upon respondent 3 for illegal extraction of

morrum/soil, of the quantity of 3,44,509.68 m³ in violation of Rule 18 of मध्यप्रदेश खनिज(अवैध खनन, परिवहन तथा भण्डारण का निवारण)नियम, 2022 (hereinafter referred to as '**MP Minerals Rules, 2022**'). It is said that illegal mining was conducted in 19 khasras of Village-Bhadgaon, Tehsil-Rahatgaon, District-Harda. The aforesaid penalty amount included Rs.25,83,82,260/- towards fine and Rs.25,83,82,260/- towards environmental damage under Rule 18 (1) and (2) of MP Minerals Rules, 2022. Copy of order dated 24.02.2023 has been placed on record as **annexure P/4 (page 28)**. Respondent 3 had also installed a stone crusher and the waste generated thereat was dumped in River Ganjal destroying flora and fauna of the river. Respondent 3 carried mining activities in the garb of alleged permits which are actually permission for transportation and not mining permits. Collectively, said transportation permissions dated 01.12.2021, 20.04.2022, 26.08.2022, 25.02.2022, 20.04.2022, 28.12.2021 and 26.08.2022 are filed as **annexure P/9**. Details of khasra numbers, quantity of the soil recommended for transportation and actually permitted as also the period of transportation are given in the form of chart as under:

Date of the order and page no.	Khasra no.	Area	Quantity of soil recommended for transportation	Quantity of soil permitted for transportation	Period
01.12.2021 (P/39)	259/26/2, 259/26/3, 259/26/4	Total area- 4.047 ha	42000+25000+ 15000+15000 m ³	15000 m ³	01.12.2021 to 01.02.2022
20.04.2022 (P/41)	259/26/2, 259/26/3, 259/26/4	Total area- 4.047 ha	50000 m ³	50000 m ³	20.04.2022 to 19.05.2022
26.08.2022 (P/43)	259/26/2, 259/26/3, 259/26/4	Total area- 4.047 ha	100000 m ³	100000 m ³	01.09.2022 to 30.11.2022
25.02.2022	183,	Total	50000 m ³	50000	25.02.2022

(P/45)	184/1, 184/2, 185/1, 186/1	area- 1.808 ha		m ³	to 24.03.2022
20.04.2022 (P/47)	183, 184/1, 184/2, 185/1, 186/1	Total area- 1.808 ha	80000 m ³	80000 m ³	20.04.2022 to 19.05.2022
28.12.2021 (P/49)	259/13/1, 259/13/2, 259/13/3, 259/40, 259/41	Total area- 4.451 ha	25000 m ³	25000 m ³	29.12.2021 to 28.01.2022
26.08.2022 (P/51)	259/13/1, 259/13/2, 259/13/3, 259/40, 259/41	Total area- 4.451 ha	100000 m ³	100000 m ³	01.09.2022 to 30.11.2022

3. It is thus alleged that respondent 3 has excavated soil and other minor minerals illegally and used in construction of road in utter violation of the provisions of Water (Prevention and Control) Act, 1974 (hereinafter referred to as '**Water Act, 1974**'), Air (Prevention and Control) Act, 1981 (hereinafter referred to as '**Air Act, 1981**') and Environment (Protection) Act, 1986 (hereinafter referred to as '**EP Act, 1986**') and also contrary to Green Highways Policy 2015; respondent 3 has violated Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rules, 2019 (hereinafter referred to as '**MPS (MTST) Rules 2019**') as also Sustainable Sand Mining Management Guidelines 2016 (hereinafter referred to as '**SSMG-2016**') destroying the river bank and river bed of River Ganjal, its flora and fauna, eco-system and river ecology.

TRIBUNAL'S ORDER DATED 21.04.2023:

4. The complaint was examined by Tribunal on 21.04.2023 and noticing that a substantial question relating to environment has been raised which requires adjudication by this Tribunal under Section 14/15 of NGT Act, 2010, notices were issued to the respondents and a Joint

Committee comprising Collector, Harda and representative of Madhya Pradesh Pollution Control Board (hereinafter referred to as '**MPPCB**') was constituted with a direction to submit a factual and action taken Report within 6 weeks.

JOINT COMMITTEE'S REPORT:

5. Pursuant to Tribunal's order dated 21.04.2023, District Magistrate nominated Additional District Magistrate, Sub-Divisional Officer, Revenue/Timarni, Sub-Divisional Officer, Forest, Timarni and District Mining Officer to conduct an inspection and submit Report to Collector. The said team carried out site inspection on 05.05.2022. Joint Committee constituted by Collector, Harda submitted Report that respondent 3 levelled the land and transported extra soil collected therefrom for construction of four lane road after taking Consent from land owners and District Mining Department. The said team did not find any tree on the inspected land and also no excavation of mineral was found in river bed area during inspection. It has also said that no impact on the flora and fauna was observed in River Ganjal.

6. Thereafter, Joint Committee constituted by this Tribunal comprising D.K. Singh, Joint Collector, Harda, representative of Collector Harda and Abhay Saraf, Regional Officer, MPPCB, Mandideep visited the site on 15.05.2023. The said inspection was conducted in the presence of Shri R.P. Kamlesh, District Mining Officer, Harda, Dr. Praveen Kothari, Junior Scientist, Regional Officer, MPPCB, Mandideep and Aditya Lange, AE(C), Regional Office, MPPCB, Mandideep.

7. The above Joint Committee in its Report found that transportation of soil permission was granted to PP on the basis of the applications submitted by farmers (land owners) of Bhadugaon; digging at the bank of

River Ganjal was carried out along with river stretch below the surface of bank of river making holes, deeper, more than approximately 10 to 12 feet, at khasra no. 261/1, 261/3, 261/4 and 261/5 which has led to erosion of bank of River Ganjal; Mining Department Harda permitted levelling of 16.386 hectares of farmer's land and transportation of soil used by PP in construction of road i.e., Indore-Betul National Highway No. 47. Details of the quantity of soil permitted by Mining Department to be transported, mentioned in Joint Committee's Report are as under :

S.N o.	Details	Quantity of soil (M³)
1	<i>Proposed quantity of soil as per DPR</i>	3087375.00
2	Quantity of soil utilized till now	2227403.00
3	<i>Quantity of fly ash utilized till now</i>	-709972.00
4	<i>Quantity of soil (approx.) to be used excavated from village - Bhadugaon</i>	1270000.00
5	<i>Quantity of soil (approx.) to be used till completion of the project</i>	150000.00

8. Digging of soil is upto the depth of 25 feet; stone crusher set up by respondent 3 on khasra no. 157/12 was not found operational at the time of inspection and application for Consent to Establish (hereinafter referred to as ‘**CTE**’) was rejected by MPPCB due to non-fulfillment of siting criteria and no digging was found in the adjoining area of River Ganjal near stone crusher plant; dust suppression system like water sprinklers/water spraying arrangements were not found during loading and transportation of soil and District Magistrate had issued a show cause notice dated 24.02.2023 for imposing penalty for illegal mining to which respondent 3 has submitted its reply and the matter is under consideration. The factual observations of Joint Committee as also action taken, stated in the Joint Committee's Report, are reproduced as under:

“Factual Observations:

1. GPS location of the bank of river Ganjal, District Harda has been recorded using a mobile-based GPS application. **The flow of river is west to east direction.** The google map of the site

and photographs taken during the inspection are enclosed as Annexure-02. The geographical coordinates of bank of river Ganjal Harda are 22.325468 N, 77.34.64272 E and marked on google map.

2. **District Mining Department, Harda issued permission to M/s Prakash Asphaltting & Toll Highways (India) Ltd for flatting and transportation of soil** on the basis of the application submitted by the farmers (land Owner) of Bhadugaon. The copies of applications, permission granted by Mining Department are enclosed as Annexure-03.
3. **Near the bank of river Ganjal, digging has been carried out along the river stretch below the surface of bank of the river and made dug holes deeper more than approx 10 to 12 feet at khasra no. 261/1,261/3,261/4 & 261/5. This has lead to erosion of the bank of river Ganjal.** Dugged area has mentioned in the google map which is enclosed as Annexure-04.
4. **The Mining Department Harda has permitted the total area of land 16.386 ha. of farmers for flatting the land and transport the soil. This soil is used by contractor in construction of Indore - Betul National highway No. 47 from Harda to Temagaon section in length of 30 kms four lane road.** As per the information provided by District Mining Department Harda & NHAI Harda the details are as follows:

S.No.	Details	Quantity of soil (M³)
1	Proposed quantity of soil as per DPR	3087375.00
2	Quantity of soil utilized till now	2227403.00
3	Quantity of fly ash utilized till now	-709972.00
4	Quantity of soil (approx.) to be used excavated from village - Bhadugaon	1270000.00
5	Quantity of soil (approx.) to be used till completion of the project	150000.00

The M/s Prakash Asphaltting & Toll Highways (India) Ltd. has taken the permission for transportation of the soil after excavations from Mining, Department Harda till date is 2892000.00 m³ quantity but **as of now quantity of excavated soil is 2262000.00 m³ soil in 11.927 ha. out of 16.386 ha.** The **depth of digging of soil is approx. 25.00 feet out of which approx. 10 to 12 feet after flatting of the land. This adjoining land is about 30 meter away from bank of river Ganjal and may be submerged during the flood in the river.** The copies of, information provided by District Mining Department Harda & NHAI Harda are enclosed as **Annexure-05.**

5. As per the information given by the District Mining Department Harda, some of the farmers had taken the permission for same cause at khasra no. 261/5 of area 0.714 Ha and khasra no. 261/3 of area 0.696 hac. in 2017-18. Copies of letters are enclosed as **Annexure-06**.
6. The **stone crusher which is set up by M/s Prakash Asphaltting & Toll Highways (India) Ltd. on khasra No 157/12 was found non-operational during the inspection and also application of Consent to Establishment for the same was rejected by pollution control board due to non fulfilment of sitting criteria** as per the Board guideline (residential area is less than 500 m distance from the site). The site was rejected on dated 26/10/2021. During the inspection no digging was found in adjoining area of river Ganjal near stone crusher plant.
7. As per the State level Environment Impact Assessment Authority Bhopal the road projects are exempted to obtain Environmental clearance for the excavation and utilization of normal soil. Also **NHAI** submitted the notification of MoEF New Delhi the **22nd** August 2013. As per the notification **“In respect of requirement of environmental clearance, the committee has recommended that expansion of National Highway projects up to 100 KM involving additional right of way or land acquisition up to 40mts on existing alignment and 60mts on re-alignment or bypasses may be exempted from the preview of the notification”**. Hence on the basis of the above EC is not required for this project. Copy of orders are enclosed as **Annexure-07**.
8. **Dust suppression system like water sprinklers/water spraying arrangements on haul roads to control fugitive emission was not found during the loading and transportation of soil.**

Action taken:

1. A show cause letter vide dated 24/02/2023 for imposing the penalty as well as environmental compensation for illegal mining of murrain/soil in Bhadugaon (And-herikheda). In this regard M/s Prakash Asphaltting & Toll Highways (India) Ltd has submitted their reply to District Administration Harda. The matter is under process. The matter was taken under cognisance by district administration even before the present petition was filed. Copy of letters are enclosed as **Annexure-08**.
2. District Administration Harda, has issued the direction vide letter dated 09/06/2023 to SDM Timarni and District Mining officer for constant vigil for any illegal mining activities and to

take strict action against the violators. Copy of letter is enclosed as **Annexure-09**.

3. District Administration Harda, has issued a letter to M/s Prakash Asphaltings & Toll Highways (India) Ltd. regarding revised permission for transportation of soil. Now validity of permission is up to 25/06/2023 in place of 02/07/2023, keeping in mind the upcoming monsoon season **Annexure-10:**
4. DFO (Territorial) Harda, vide letter No.589, dated 15/06/2023 has been asked to keep constant vigil in the area and take action wherever necessary. DFO has been asked to also submit quarterly reports regarding impact on flora and fauna, if any, to district administration to ensure regular monitoring **Annexure-11.”**

9. Joint Committee's Report is appended with letter dated 02.06.2023 (P/188) sent by Project Director, NHAI giving details of the requirements of use of land required for filling purposes during the construction of National Highway and the said details, as per the query made by RO, MP PCB are as under:

स क्र	प्रश्न	जवाब
1	निर्माणाधीन परियोजना, पिण्डगाव से टेमागांव 30 किलो मीटर से सड़क निर्माण हेतु डी पी आर अनुसार मिटटी भूमि भराव हेतु कितनी मात्रा में मिटटी प्रस्तावित की गयी है	निर्माणाधीन परियोजना, पिण्डगाव से टेमागांव 30 किलो मीटर में सड़क निर्माण हेतु डी पी आर अनुसार मिटटी भराव हेतु लगभग 30,87,375 घनमीटर मात्रा में मिटटी प्रस्तावित की गयी है
	व वर्तमान अवधि तक कितनी मात्रा का उपयोग किया जा चुका है	व वर्तमान अवधि में मिटटी लगभग 22,27,403 घनमीटर और फ्लाई ऐश लगभग 7,09,972 घनमीटर मात्रा का उपयोग किया जा चुका है
	तथा प्रोजेक्ट पूर्ण होने तक अभी कितनी मात्रा का और उपयोग होना संभावित है, की जानकारी प्रस्तुत करें।	तथा प्रोजेक्ट पूर्ण होने तक अभी लगभग 1,50,000 घनमीटर मात्रा का और उपयोग होना संभावित है।
2	उक्त परियोजना में भूमि भराव हेतु कितनी मात्रा फ्लाई ऐश तथा कितनी	निर्माणाधीन परियोजना भूमि भराव हेतु 7,09,972 घनमीटर

	मात्रा मिटटी का प्रावधान रखा गया है की जानकारी प्रस्तुत करें।	मात्रा फ्लाई ऐश का उपयोग किया जा चुका है
3	उक्त प्रोजेक्ट की डी पी आर की प्रति इस कार्यालय को उपलब्ध कराये।	उक्त परियोजना की डी पी आर इस पत्र के साथ संलग्न की गयी है।
4	सड़क निर्माण हेतु अनुबंधित ठेकेदार द्वारा इस परियोजना के अंतर्गत उपयोग में आने वाली मिटटी के उखनन व परिवहन हेतु क्या सम्बंधित विभागों से अनुमतिया प्राप्त की गई है, यदि हाँ जो क्रिया सभी की प्रतिया प्रस्तुत करे।	ठेकेदार द्वारा मिटटी के उखनन व परिवहन अनुलग्नक ए में संलग्न है।

English Translation by Tribunal:

Sl. No.	Question	Answer
1.	How much quantity of soil has been proposed for land filling according to DPR for under construction project of road construction of 30 km from Pindgaon to Temagaon?	Approx. 30,87,375 cubic meters soil has been proposed for land filling according to DPR for under construction project of road construction of 30 km from Pindgaon to Temagaon.
	And how much quantity has been used till the current period	Approx. 22,27,403 cubic meters of soil and approx. 7,09,972 cubic meters of fly ash have been used in the present.
	And provide the information about the quantity that is likely to be used till the completion of the project.	About 1,50,000 cubic meters more quantity is likely to be used till the completion of the project.
2.	Please provide information about quantity of fly ash and soil has been provisioned for land filling in the above said project.	7,09,972 cubic meters of fly ash has been used for the land filling of the under construction project.
3.	Provide the DPR copy of the above said project.	The DPR of the above said project is attached with this letter.
4.	Whether approvals from the concerned departments have been obtained for excavation	Approvals relating to excavation and transportation of soil by the

	<i>and transportation of soil to be used under this project by contractor for road construction? If yes, please submit copies.</i>	<i>‘Contractor’ are attached in Annexure A.</i>
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10. Joint Committee Report also says that with regard to requirement of EC reliance was placed by respondents 1 and 3, both, on the Government of India, MoEF&CC’s Notification dated 22.08.2023 stating that “Expansion of National Highways Greater than 100 km involving additional right of way or land acquisition greater than 40 meter on existing alignments and 60 m on alignment or by-passes is exempt from the requirement of EC”.

Reply filed by respondents 2 and 5:

11. Respondents 2 and 5 i.e., State of Madhya Pradesh through Collector, Harda and Director of Geology and Mining through Principal Secretary of State of Madhya Pradesh have filed collectively response dated 11.07.2023 stating that extraction or sourcing or boring of ordinary earth for linear projects such as roads, pipelines etc. are exempted from the requirement of EC as per MoEF&CC’s Notification dated 28.03.2020. Appendix IX quoted in para 2 of the response reads as under:

“APPENDIX-IX

EXEMPTION OF CERTAIN CASES FROM REQUIREMENT OF ENVIRONMENTAL CLEARANCE

The following cases shall not require Prior Environmental Clearance, namely:-

- 1. Extraction of ordinary clay or sand by manual mining, by the Kumhars (Potter) to prepare earthen pots, lamp, toys, etc. as per their customs.*
- 2. Extraction of ordinary clay or sand by manual mining, by earthen tile makers who prepare earthen tiles.*
- 3. Removal of sand deposits on agricultural field after flood by farmers.*

4. *Customary extraction of sand and ordinary earth from sources situated in Gram Panchayat for personal use or community work in village.*
5. *Community works, like, de-silting of village ponds or tanks, construction of village roads, ponds or bunds undertaken in Mahatma Gandhi National Rural Employment and Guarantee Schemes, other Government sponsored schemes and community efforts.*
6. ***Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.***
7. *Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.*
8. *Traditional occupational work of sand by Vanjara and Oads in Gujarat vide notification number GU/ 90(16)/ MCR-2189(68)/ 5-CHH, dated the 14th February, 1990 of the Government of Gujarat.*
9. *Manual extraction of lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional community.*
9. *Digging of wells for irrigation or drinking water purpose.*
10. *Digging of foundation for buildings, not requiring prior environmental clearance, as the case may be.*
11. *Excavation of ordinary earth or clay for plugging of any breach caused in canal, nallah, drain, water body, etc., to deal with any disaster or flood like situation upon orders of the District Collector or District Magistrate or any other Competent Authority.*
12. *Activities declared by the State Government under legislations or rules as non-mining activity.”*

Reply dated 07.08.2023 filed by respondent 6 i.e., Madhya Pradesh State Environment Impact Assessment Authority (hereinafter referred to as ‘SEIAA MP’):

12. It is said that respondent 6 is an authority constituted in exercise of powers under Section 3(3) of **EP Act, 1986** and pursuant to Government’s Notification dated 14.09.2006, to recommend and decide applications filed by PPs for obtaining ECs for their projects covered by Environment Impact Assessment Notification dated 14.09.2006 (hereinafter referred to as ‘**EIA 2006**’). The requirement of EC for National Highways projects falls in item 7(f) to the Schedule appended to EIA 2006, which, as initially enacted,

read as under:

“SCHEDULE

(See paragraph 2 and 7)

LIST OF PROJECTS OR ACTIVITIES REQUIRING PRIOR ENVIRONMENTAL CLEARANCE

Project or Activity		Category with threshold limit		Conditions if any
		A	B	
1		Mining, extraction of natural resources and power generation (for a specified production capacity)		
(1)	(2)	(3)	(4)	(5)
7(f)	Highways	i) New National High Ways; and ii) Expansion of National High ways greater than 30 KM, involving additional right of way greater than 20m involving land acquisition and passing through more than one State.	i) All State Highway Projects; and ii) State Highway expansion projects in hilly terrain (above 1,000 m AMSL) and or ecologically sensitive areas.”	General Condition shall apply. Note: Highways include expressways.”

13. The above entry was amended by substitution vide Notification dated 22.08.2013 published in Gazette of India (Extraordinary) of the same date and the amendment reads as under:

“(b) in the Schedule, against sub-item (f) of item 7, in column, (3), for the entry (ii), the following entry shall be substituted, namely:-

“(ii) Expansion of National Highways greater than 100 km involving additional right of way or land acquisition greater than 40m on existing alignments and 60m on re-alignments or by-passes.”

14. It is said that in view of EIA 2006 as amended vide Notification dated 22.08.2013, SEIAA MP had no authority to grant EC. Further, with regard to allegation of illegal mining, SEIAA MP is the Competent Authority to make any submission.

Reply dated 04.08.2023 filed by PP i.e., M/s. Prakash Asphaltings and Toll Highways (India) Ltd. (respondent 3):

15. It is said that respondent 3 is a company registered under Companies Act, engaged in the business of construction of roads, highways, buildings and bridges with a turn-over of around Rs.3200 Crores; NHAI vide agreement dated 30.09.2020 entered with M/s. Harda Pathways Pvt. Ltd., awarded contract of construction of four lane Harda to Timagav section from (Design Ch. 0+000/Existing Ch. 141+750) to (Design Ch. 30+000/Existing Ch. 180+500) section of NH047 (Old NH-59A) (Design Length 30.000km) in the State of MP; copy of agreement is annexed as **annexure R-3/1** to the reply which shows that agreement refers to first party as NHAI and second party as M/s. Harda Pvt. Ltd. but the letter of acceptance of Bid on page 315 is addressed to M/s. Prakash Asphaltings and Toll Highways (India) Ltd.; the project cost is Rs.555.0 Crores and project duration is 730 days; respondent 3 has completed 80% of the project work; it was granted permission under Rule 68(3) and (6) of MP Minor Rules, 2022 for transportation of soil used in the embankment of the subject project; copies of affidavits of farmers/owners of land, soil whereof was allowed to be transported are collectively filed as **annexures R-3/2**; the land of 31 out of 35 khasras where transportation permits were granted situated at about 500 meters away from the central lining of River Ganjal; it has carried out transportation of soil in khasra no. 261/1, 261/3, 261/4 and 261/5; in khasra no. 259/1, village Bhadugaon, Tehsil Rahatgaon, District Harda, respondent 3 was granted permission for excavation of soil since it was a Government land; it did not excavate below

the ground surface but carried out excavation in respect of soil mounds; the said khasra is also more than 500 meters away from central lining of River Ganjal; though permission for 3,00,000 m³ of soil mounds excavation was allowed but respondent 3 has excavated only 80,000 m³ and rest 2,20,000 m³ is still lying on the banks.

16. With respect to the show cause notice dated 24.02.2023 issued by Additional Collector, Harda, imposing fine of Rs.51,67,64,520/- under mining statutes for illegal mining, it is said that respondent 3 has filed reply dated 23.05.2023 (**annexure R-3/5 at page 390**) and the matter is pending since no order has been passed.

17. With regard to requirement of EC, respondent 3 has relied on the order dated 03.09.2021 issued by Additional Collector, Harda stating that as per SEIAA MP's letter dated 12.08.2021 and Government of India's Notification dated 28.03.2020, for extraction of ordinary soil for road and pipeline projects, no EC is required as the same is exempted; RMC Plant of respondent 3 is located at a distance of 15 km at village Bheragaon, Tehsil-Rahatgaon, Harda from village Bhadugaon, Tehsil-Rahatgaon, Harda and the allegation of fugitive emissions is incorrect.

Reply dated 04.08.2023 to the Committee's Reports dated 05.05.2023 and 15.05.2023 filed by respondent 3:

18. In respect of the Report dated 15.05.2023, it is said that some observations are incorrect in as much as respondent 3 has only carried out transportation of soil in terms of the permission granted by Competent Authority and the Consent given by owners of the land. With regard to holes, it is said that Committee has not found as to who has done it and no excavation was carried out by respondent 3. It has only transported soil under transportation permits and consent given by land owners. With regard to non-availability of water sprinklers or water sprinkling

arrangement, the findings of Joint Committee are denied. It is also said that Consent to Operate (hereinafter referred to as '**CTO**') under Section 25 of Water Act, 1974 and 21 of Air Act, 1981 for mining of soil at Survey no. 259/1 village Bhadugaon, area 0.911 hectare was granted by MPPCB by order dated 08.10.2021.

ARGUMENTS:

19. Learned Counsel appearing for applicant contended that respondent 3 has actually carried out mining activities on agricultural land and on the bank of River Ganjal without any statutory permit for mining under Mining Act and without any EC or Consent, caused huge holes, very deep, going to the extent of 25 feet, damaging flood plain zone and bank of River Ganjal and simultaneously causing damage to flora and fauna and river ecology, therefore, is liable for appropriate penal, remedial and other legal action under various statutes relating to environment besides payment of environmental compensation by application of principle of 'Polluter Pays'.

20. Learned counsel appearing for respondent 3 on the contrary, vehemently contended that it has not undergone any mining activities and has only transported ordinary soil, that too, with the consent and permission of land owners and under transportation permits obtained under Rule 68(3) and (6) of MP Minor Mineral Rules, 1996, hence, MP Minor Mineral Rules, 1996 cannot said to have violated. It is further said that the transported soil has been used in construction of road under the contract awarded by NHAI which was an exempted project for requirement of EC and hence there is no violation of any law relating to environment on the part of respondent 3.

21. No other Learned Counsel appearing for respondents has made any submissions.

ISSUES:

22. In the light of rival submissions as noticed above, in our view, following questions have arisen for adjudication by this Tribunal:

- (I) Whether the project in question, as such, is exempted from the requirement of EC under EIA 2006 as amended from time to time?
- (II) Whether use of ordinary soil at different khasra numbers lying at a distance from project under consideration can be said to be exempted from the requirement of EC under EIA 2006 as amended from time to time, in the facts of this case?
- (III) Whether respondent 3 had undergone the activity of excavation of soil at all or it has only transported soil from land to the project site for its use in construction of road?
- (IV) Whether excavation of soil on the part of respondent 3, if it has been done by him, and other activities as found by Joint Committee in the Report dated 15.05.2023, amounts to violation of environmental laws?
- (V) Whether applicant has carried out excavation activities at the bank of River Ganjal and the observations of Joint Committee are referable to respondent 3 or not?
- (VI) Whether respondent 3 is liable to be proceeded for punitive and other action under environmental laws and liable to pay environmental compensation on the principle of 'Polluter Pays'?
- (VII) What other directions are needed to be issued in this case?

ISSUE I:

23. This question needs to be considered in the light of specific provisions relating to requirement of EC under EIA 2006 and its

amendment, made from time to time.

24. Requirement of EC is provided under the Statutes made under EP Act, 1986 i.e., EIA 2006:

EP ACT, 1986:

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

26. Central Government has issued various orders and directions in exercise of powers under Section 3. In ***M.C. Mehta v. Union of India, (2002) 4 SCC 356***, it has been held that such directions are binding on all persons concerned.

27. Environment (Protection) Rules, 1986 (hereinafter referred to as '**EP Rules, 1986**') have been framed in exercise of power under Sections 6 and 25 of EP Act, 1986. Rule 4 thereof, states that any direction issued under Section 5 shall be in writing. Rule 5 contemplates certain factors to be taken into consideration by Central Government while exercising power for prohibition/ restriction on the location of industries and/or carrying on processes and operations in different areas and these factors are detailed in clause (i) to (x) of Section 5(1). Procedure for issuing such directions imposing prohibition, restriction etc. is given in sub-section (2) of Section 5.

EIA 1994:

28. Exercising powers under Section 3(1)(2)(v) of EP Act, 1986, read with

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

29. Process for making provisions, imposing restrictions and prohibition on expansion and modernization of any activity or a new project unless EC has been accorded, was initiated by the Government of India by publishing Notification dated 28.01.1993 under Section 5(3)(a) of EP Rules 1986, inviting objections from the public within 60 days from the date of publication of the said notification in respect to the matters detailed therein. After considering objections received, final Notification was issued on 27.01.1994.

30. In the Schedule I to EIADP 1994, initially there were 30 projects/activities, which were required to obtain EC under EIADP 1994.

31. Schedule I to EIADP 1994, item (21) talked of EC required for highway projects with certain exceptions and read as under:

“Highway Projects”

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

33. Para 2 of EIADP 1994 talked of requirements and procedure for seeking EC of projects and read as under:

“2. Requirements and procedure for seeking environmental clearance of projects:

I.(a) Any person who desires to undertake any new project in any part of India or the expansion or modernization of any existing industry or project listed in the Schedule-I shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.

The application shall be made in the proforma specified in Schedule-II of this notification and shall be accompanied by a project report which shall, inter alia, include an Environmental Impact Assessment Report, Environment Management Plan and details of public hearing as specified in Schedule-IV prepared in accordance with the guidelines issued by the Central Government in the Ministry of Environment and Forests from time to time. However, Public Hearing is not required in respect of

- (i) small scale industrial undertakings located in (a) notified/designated industrial areas/industrial estates or (b) areas earmarked for industries under the jurisdiction of industrial development authorities;*
- (ii) widening and strengthening of highways;*
- (iii) mining projects (major minerals) with lease area up to 25 hectares,*
- (iv) units located in Export Processing Zones, Special Economic Zones*
- (v) modernisation of existing irrigation projects.*
- (vi) offshore exploration activities, beyond 10 kilometres from the nearest habituated village boundary, gaothans and ecologically sensitive areas such as, mangroves (with a minimum area of 1000 sq.m), corals, coral reefs, national parks, sanctuaries, reserve forests and breeding and spawning grounds of fish and other marine life; .*

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

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

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

II. In case of the following site specific projects:

- (a) mining;
- (b) pit-head thermal power stations;
- (c) hydro-power, major irrigation projects and/or their combination including flood control;
- (d) ports and harbours (excluding minor ports);
- (e) prospecting and exploration of major minerals in areas above 500 hectares;
- (f) greenfield airports, petrochemical complexes and refineries.

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

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

- (b) The said Committee of Experts shall have full right of entry and inspection of the site or, as the case may be, factory premises at any time prior to, during or after the commencement of the operations relating to the project.
- (c) The Impact Assessment Agency shall prepare a set of recommendations based on technical assessment of documents and data, furnished by the project authorities supplemented by data collected during visits to sites or factories, if undertaken and details of the public hearing.

The assessment shall be completed within a period of ninety days from receipt of the requisite documents and data from the project

authorities and completion of public hearing and decision conveyed within thirty days thereafter.

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

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

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

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

34. Para 3 provided the cases in which EIADP 1994 provisions would not apply and reads as under:

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

- (a) *any item falling under entry Nos. 3 *18*20* 31*and 32* of the Schedule-I to be located or proposed to be located in the areas covered by the Notifications S.O. No. 102 (E) dated 1st February, 1989, S.O. 114 (E) dated 20th February, 1991; *S.O. No. 416 (E) dated 20th June, 1991* and S.O. No.319 (E) dated 7th May, 1992.*
- (b) **any item falling under entry Nos.1,2,3,4,5,7,9,10,13, 14,16,17,19, *21*,25 and 27 of Schedule-I if the investment is less than Rs.100 crores for new projects and less than Rs. 50 crores for expansion/modernization projects;**
- (c) *any item reserved for Small Scale Industrial Sector with investment less than Rs. 1 crore.*
- (d) **defence related road construction projects in border areas.**
- (e) *any item falling under entry No. 8 of Schedule I, if that product is covered by the notification G.S.R. 1037(E) dated 5th December 1989.*

- (f) *Modernisation projects in irrigation sector if additional command area is less than 10,000 hectares or project cost is less than Rs. 100 crores.:*
- (g) *any construction project falling under entry 31 of Schedule-I including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1000 (one thousand) persons or below or with an investment of Rs.50,00,00,000/- (Rupees fifty crores) or below.*
- (h) *any industrial estate falling under entry 32 of Schedule-I including industrial estates accommodating industrial units in an area of 50 hectares or below but excluding the industrial estates irrespective of area if their pollution potential is high.*

Explanation:-

- (i) *New construction projects which were undertaken without obtaining the clearance required under this notification and where construction work has not come up to the plinth level shall require clearance under this notification with effect from the 7th day of July, 2004.*
- (ii) *In the case of new Industrial Estates which were undertaken without obtaining the clearance required under this notification, and where the construction work has not commenced or the expenditure does not exceed 25% of the total sanctioned cost, shall require clearance under this notification with effect from the 7th day of July, 2004.*
- (iii) *Any project proponent intending to implement the proposed project under sub-paras (g) and (h) in a phased manner or in modules, shall be required to submit the details of the entire project covering all phases or modules for appraisal under this notification.”*

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

EIA NOTIFICATION 2006 DATED 14.09.2006:

36. MoEF felt that EIADP 1994 needed a complete overhauling. Consequently, in exercise of powers under Rule 5(3) of EP Rules, 1986, a

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

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

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

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

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

“2. Requirements of prior Environmental Clearance (EC):- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under **Category ‘A’** in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under **Category ‘B’** in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this notification;

(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified range.”

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

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

“4. Categorization of projects and activities:

(i) **All projects and activities are broadly categorized in to two categories - Category A and Category B**, based on the spatial extent of potential impacts and potential impacts on human health and natural and manmade resources.

(ii) **All projects or activities included as Category ‘A’** in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, **shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF)** on the recommendations of an Expert Appraisal Committee (EAC) to be constituted by the Central Government for the purposes of this notification;

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

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

“5. Screening, Scoping and Appraisal Committees:

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

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

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

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

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

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

6. Application for Prior Environmental Clearance (EC):

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

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

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

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

I. Stage (1) - Screening:

In case of Category 'B' projects or activities, this stage will entail the scrutiny of an application seeking prior environmental clearance made in Form 1 by the concerned State level Expert Appraisal Committee (SEAC) for determining whether or not the project or activity requires further environmental studies for preparation of an Environmental Impact Assessment (EIA) for its appraisal prior to the grant of environmental clearance

depending up on the nature and location specificity of the project. The projects requiring an Environmental Impact Assessment report shall be termed Category 'B1' and remaining projects shall be termed Category 'B2' and will not require an Environment Impact Assessment report. **For categorization of projects into B1 or B2 except item 8 (b), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time.**

II. Stage (2) - Scoping:

(i) "Scoping": refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects or activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, **determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought.** The Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the Terms of Reference on the basis of the information furnished in the prescribed application Form1/Form 1A including Terms of Reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, Terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. **All projects and activities listed as Category 'B' in Item 8 of the Schedule (Construction/Township/Commercial Complexes/Housing) shall not require Scoping and will be appraised on the basis of Form 1/Form 1A and the conceptual plan.**

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

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

III. Stage (3) - Public Consultation:

(i) “Public Consultation” refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate. **All Category ‘A’ and Category B1 projects or activities shall undertake Public Consultation, except the following:**

- (a) modernization of irrigation projects (item 1(c) (ii) of the Schedule)
- (b) all projects or activities located within industrial estates or parks (item 7(c) of the Schedule) approved by the concerned authorities, and which are not disallowed in such approvals.
- (c) expansion of Roads and Highways (item 7 (f) of the Schedule) which do not involve any further acquisition of land.
- (d) **all Building/Construction projects/Area Development projects and Townships (item 8).**
- e) **all Category ‘B2’ projects and activities.**
- f) all projects or activities concerning national defence and security or involving other strategic considerations as determined by the Central Government.

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

- (a) a public hearing at the site or in its close proximity-district wise, to be carried out in the manner prescribed in Appendix IV, for ascertaining concerns of local affected persons;
- (b) obtain responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity.

(iii) the public hearing at, or in close proximity to, the site(s) in all cases shall be conducted by the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) concerned

in the specified manner and forward the proceedings to the regulatory authority concerned within 45 (forty five) of a request to the effect from the applicant.

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

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

(vi) For obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity, the concerned regulatory authority and the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) shall invite responses from such concerned persons by placing on their website the Summary EIA report prepared in the format given in Appendix IIIA by the applicant along with a copy of the application in the prescribed form, within seven days of the receipt of a written request for arranging the public hearing. Confidential information including non-disclosable or legally privileged information involving Intellectual Property Right, source specified in the application shall not be placed on the web site. The regulatory authority concerned may also use other appropriate media for ensuring wide publicity about the project or activity. The regulatory authority shall, however, make available on a written request from any concerned person the Draft EIA report for inspection at a notified place during normal office hours till the date of the public hearing. All the responses received as part of this public consultation process shall be forwarded to the applicant through the quickest available means.

(vii) After completion of the public consultation, the applicant shall address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP. The final EIA report, so prepared, shall be submitted by the applicant to the concerned regulatory authority for appraisal. The applicant may alternatively submit a supplementary report to draft EIA and EMP addressing all the concerns expressed during the public consultation.

IV. Stage (4) - Appraisal:

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

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

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

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

All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernization of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this

notification through change in process and or technology or involving a change in the product –mix shall be made in Form I and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultations and the application shall be appraised accordingly for grant of environmental clearance.”

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

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

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

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

(iii) In the event that the decision of the regulatory authority is not communicated to the applicant within the period specified in sub-paragraphs (i) or (ii) above, as applicable, the applicant may

proceed as if the environment clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.

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

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

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

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

“9. Validity of Environmental Clearance (EC):

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

projects and Townships [item 8(b)], the validity period shall be limited only to such activities as may be the responsibility of the applicant as a developer. This period of validity may be extended by the regulatory authority concerned by a maximum period of five years provided an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form 1, and Supplementary Form 1A, for Construction projects or activities (item 8 of the Schedule). In this regard the regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee as the case may be.”

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

“10. Post Environmental Clearance Monitoring:

(i) It shall be mandatory for the project management to submit **half-yearly compliance reports** in respect of the stipulated prior environmental clearance terms and conditions in hard and soft copies to the regulatory authority concerned, on 1st June and 1st December of each calendar year.

(ii) **All such compliance reports submitted by the project management shall be public documents.** Copies of the same shall be given to any person on application to the concerned regulatory authority. The latest such compliance report shall also be displayed on the web site of the concerned regulatory authority.”

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

“11. Transferability of Environmental Clearance (EC):

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

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

“12. Operation of EIA Notification, 1994, till disposal of pending cases:

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

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

**“APPENDIX III
(See paragraph 7)**

**GENERIC STRUCTURE OF ENVIRONMENTAL IMPACT
ASSESSMENT DOCUMENT**

S. NO.	EIA STRUCTURE	CONTENTS
<i>1</i>	<i>Introduction</i>	<i>• Purpose of the report</i> <i>• Identification of project & project proponent</i> <i>• Brief description of nature, size, location of the project and its importance to the country, region</i>

		• <i>Scope of the study – details of regulatory scoping carried out (As per Terms of Reference)</i>
2	<i>Project Description</i>	• <i>Condensed description of those aspects of the project (based on project feasibility study), likely to cause environmental effects. Details should be provided to give clear picture of the following:</i> • <i>Type of project</i> • <i>Need for the project</i> • <i>Location (maps showing general location, specific location, project boundary & project site layout)</i> • <i>Size or magnitude of operation (incl. Associated activities required by or for the project)</i> • <i>Proposed schedule for approval and implementation</i> • <i>Technology and process description</i> • <i>Project description. Including drawings showing project layout, components of project etc. Schematic representations of the feasibility drawings which give information important for EIA purpose</i> • <i>Description of mitigation measures incorporated into the project to meet environmental standards, environmental operating conditions, or other EIA requirements (as required by the scope)</i> • <i>Assessment of New & untested technology for the risk of technological failure</i>
3	<i>Description of the Environment</i>	• <i>Study area, period, components & methodology</i> • <i>Establishment of baseline for valued environmental components, as identified in the scope</i>

		• <i>Base maps of all environmental components</i>
4	<i>Anticipated Environmental Impacts & Mitigation Measures</i>	• <i>Details of Investigated Environmental impacts due to project location, possible accidents, project design, project construction, regular operations, final decommissioning or rehabilitation of a completed project</i> • <i>Measures for minimizing and/or offsetting adverse impacts identified</i> • <i>Irreversible and Irretrievable commitments of environmental components</i> • <i>Assessment of significance of impacts (Criteria for determining significance, Assigning significance)</i> • <i>Mitigation measures</i>
5	<i>Analysis of Alternatives (Technology & Site)</i>	• <i>In case, the scoping exercise results in need for alternatives:</i> • <i>Description of each alternative</i> • <i>Summary of adverse impacts of each alternative</i> • <i>Mitigation measures proposed for each alternative and</i> • <i>Selection of alternative</i>
6	<i>Environmental Monitoring Program</i>	• <i>Technical aspects of monitoring the effectiveness of mitigation measures (incl. Measurement methodologies, frequency, location, data analysis, reporting schedules, emergency procedures, detailed budget & procurement schedules)</i>
7	<i>Additional Studies</i>	• <i>Public Consultation</i> • <i>Risk assessment</i> • <i>Social Impact Assessment. R&R Action Plans</i>
8	<i>Project Benefits</i>	• <i>Improvements in the physical infrastructure</i>

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

49. Summary of Environmental Impact Assessment should contain details given in Appendix III A of EIA report, on seven aspects, as under:

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

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

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

**“APPENDIX - V
(See paragraph 7)**

PROCEDURE PRESCRIBED FOR APPRAISAL

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

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

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

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

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

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

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

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

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

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

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

2. Primary processing

- 2(a) *Coal washeries*
- 2(b) *Mineral beneficiation*

3. Materials Production

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

4. Materials Processing

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

5. Manufacturing/Fabrication

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

6. Service Sectors

- 6(a) Oil & gas transportation pipeline (crude and refinery/petrochemical products), passing through national parks/sanctuaries/coral reefs/ecologically sensitive areas including LNG Terminal.
- 6(b) Isolated storage & handling of hazardous chemicals (As per threshold planning quantity indicated in column 3 of schedule 2 & 3 of MSIHC Rules 1989 amended 2000)

7. Physical Infrastructure including Environmental Services

- 7(a) Air ports
- 7(b) All ship breaking yards including ship breaking units
- 7(c) Industrial estate/parks/complexes/areas, export processing Zones (EPZs), Special Economic Zones (SEZs), Biotech Parks, Leather Complexes.
- 7(d) Common hazardous waste treatment, storage and disposal facilities (TSDFs)
- 7(e) Forts, Harbours
- 7(f) Highways**
- 7(g) Aerial ropeways
- 7(h) Common Effluent Treatment Plants (CETPs)
- 7(i) Common Municipal Solid Waste Management Facility (CMSWMF)”

54. For the purpose of present case, we are concerned with item 7(f) which deals with ‘Highways’ and reads as under:

7(f)	Highways	i) New National High Ways; and ii) Expansion of National High ways greater than 30 KM, involving additional right of way greater than 20m involving land acquisition and passing through more than one State.	i) New State High ways; and ii) Expansion of National/ State Highways greater than 30 km involving additional right of way greater than 20m involving land acquisition.	General Condition shall apply
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55. Column 5 of item 7(f) of Schedule to EIA 2006 states that ‘general condition shall apply’. At the end of Schedule, there is a note containing certain conditions as ‘General Condition’ (GC) and ‘Specific Condition’ (SC). General Condition and Specific Condition of the Schedule read as under:

“General Condition (GC):

Any project or activity specified in Category ‘B’ will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as identified by the Central Pollution Control Board from time to time, (iii) Notified Eco-sensitive areas, (iv) inter-State boundaries and international boundaries:

Specific Condition (SC):

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

56. EIA 2006 has been amended for number of times and upto 20.07.2022, there are more than 55 amendments in total. Since we are concerned with the Entry 7(f) of the Schedule to EIA 2006 and the provisions concerned with the said entry, we are referring hereinafter only such amendments which deal with Entry 7(f) or connected provisions, as under:

A. Notification dated 11.10.2007 published in Gazette of India (Extraordinary) of the same date:

a) In column 3 and 4 against item 7(f) in the Schedule of EIA 2006, following amendments were made:

“(iii) against item 7(f), -

(a) in column (3), for the entries, the following entries shall be substituted, namely: -

“i) **New National Highways**; and

ii) **Expansion of National Highways greater than 30 km involving additional right of way greater than 20m involving land acquisition.**”;

(b) in column (4), for the entries, the following entries shall be substituted, namely: -

“i) **New State Highways**; and

ii) **Expansion of State Highways greater than 30 km involving additional right of way greater than 20m**

involving land acquisition.”;

B. Notification dated 01.12.2009 published in Gazette of India (Extraordinary) of the same date.

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

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

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

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

“General Condition (GC):

Any project or activity specified in Category ‘B’ will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected areas notified under the Wild Life (Protection) Act, 1972; (ii) Critically polluted areas as identified by the Central Pollution Control Board from time to time; (iii) Eco-sensitive areas as notified under section 3 of the Environment (Protection) Act, 1986, such as,

Mahabaleshwar Panchgani, Matheran, Pachmarhi, Dahanu, Doon Valley, and (iv) inter-State boundaries and international boundaries:

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

c) In Entry 7(f), column (4) and (5) were also amended as under:

“(xv) against item 7(f),

(a) in column (4), for the entry, the following entry shall be substituted namely:-

“(i) All State Highway Projects; and

(ii) State Highway expansion projects in hilly terrain (above 1,000 m AMSL) and or ecologically sensitive areas.”;

(b) in column (5) for the existing entry, the following entry shall be substituted, namely:-

“General Condition shall apply.

Note:

Highways include expressways.”;

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

“General Condition (GC):

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

Provided that the requirement regarding distance of 10 km of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective States or U.T.s sharing the common boundary in case the

activity does not fall within 10 kilometres of the areas mentioned at item (i), (ii) and (iii) above.”

C. Notification dated 04.04.2011 published in Gazette of India (Extraordinary) dated 06.04.2011:

- a) In Entry 7(f) column (4), sub-entry (i) was amended as under:

“(ii) against item 7(f), -

in column (4), for the entry “(i) All State Highway Projects; and” the following entry shall be substituted, namely: -

“(i) All New State Highway Projects”.”

D. Notification dated 22.08.2013 published in Gazette of India (Extraordinary) of the same date:

- a) In para 7, sub-para II, for item (i) and also for sub-item 7(f), following amendments were made:

“2. In the said notification,-

- (a) in paragraph 7, in sub-paragraph II, for item (i), the following item shall be substituted, namely:*

*“(i) **“Scoping” refers to the process** by which the Expert Appraisal Committee in the case of Category ‘A’ projects activities, and State level Expert Appraisal Committee in the case of Category ‘B1’ projects or activities, including applications for expansion or modernization or change in product mix of existing projects or activities, **determine detailed and comprehensive Terms of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report** in respect of the project or activity for which prior environmental clearance is sought and the Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the terms of reference on the basis of the information furnished in the prescribed application Form 1 or Form 1A including terms of reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned:*

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

- (i) all projects and activities listed as Category 'B' in item 8 of the Schedule (Construction or Township or Commercial Complexes or Housing);
- (ii) **all Highway expansion projects covered under entry (ii) of column (3) and column (4) under sub-item (f) of item 7 of the Schedule:**

Provided further that-

- A. the projects and activities referred to in clause (i) shall be appraised on the basis of Form I or Form IA and the conceptual plan;
 - B. **The projects referred to in clause (ii) shall prepare EIA and EMP report on the basis of model TOR specified by Ministry of Environment and Forests;**
- (b) in the Schedule, against sub-item (f) of item 7, in column (3), for the entry (ii), the following entry shall be substituted, namely:-

“(ii) Expansion of National Highways greater than 100 km involving additional right of way or land acquisition greater than 40m on existing alignments and 60m on re-alignments or by-passes.”

E. Notification dated 25.06.2014 published in Gazette of India (Extraordinary) of the same date:

- a) The general conditions in the Schedule were substituted as under:

“II. After the Schedule, in the Note relating to General Condition (GC), the following General Condition shall be substituted, namely:-

General Condition (GC):

Any project or activity specified in category 'B' will be appraised at the Central level as Category 'A', if located in whole or in part within 5 km. from the boundary of: (i) Protected areas notified under the Wildlife (Protection) Act, 1972 (53 of 1972); (ii) Critically polluted areas as identified by the Central Pollution Control Board constituted under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) from time to time; (iii) Eco-sensitive areas as notified under sub-section (2) of section 3 of the Environment (Protection) Act, 1986, and (iv) inter-State boundaries and international boundaries; provided that for River Valley Projects

specified in item 1(c), Thermal Power Plants specified in item 1(d), Industrial estates/parks/complexes/areas, export processing zones (EPZs), Special Economic Zones (SEZs), biotech parks, leather complexes specified in item 7(c) and common hazardous waste treatment, storage and disposal facilities (TSDFs) specified in item 7(d), the appraisal shall be made at Central level even if located within 10km.

Provided further that the requirement regarding distance of 5 km or 10 km, as the case may be, of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective States or the Union Territories sharing the common boundary in case the activity does not fall within 5km or 10 km, as the case may be of the areas mentioned at item (i), (ii) and (iii) above.”

F. Notification dated 03.02.2015 published in Gazette of India (Extraordinary) dated 06.02.2015:

- a) In para 7(i) of EIA 2006, following amendment was made:

“In the said Environment Impact Assessment Notification, 2006 in paragraph 7 (i),-

- (a) in sub- paragraph II relating to Stage (2)- Scoping, in clause (1), in the first proviso, for item (ii), the following items shall be substituted, namely:-*

“(ii) all Highway projects in border States covered under entry (i) of column (3) and entry (i) of column (4) against item 7 (f) of the Schedule;

*(iii) **all Highway expansion projects covered under entry (ii) of column (3) and entry (ii) of column (4) against item 7 (f) of the Schedule;***

- (b) in sub-paragraph III relating to Stage (3)- Public Consultation, in clause (i), after sub-clause (1), the following sub-clause shall be inserted, namely:-*

“(g) all linear projects such as Highways, pipelines, etc., in border States.”

G. Notification dated 10.04.2015 published in Gazette of India (Extraordinary) of the same date:

- a) In para 7(i) in sub-heading II for clauses (i) and (ii), following amendments were made:

“In the said notification, in paragraph 7 in sub-paragraph (i), in sub-heading II, for clauses (i) and (ii), the following shall be substituted, namely:-

“(i) “Scoping” refers to the process to determine detailed and comprehensive Terms of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought. Standard TOR developed by the Ministry in consultation with the sector specific Expert Appraisal Committees shall be the deemed approved TOR for the projects or activities. The standard Terms of Reference are displayed on the website of the Ministry of Environment, Forest and Climate Change:

Provided that the Expert Appraisal Committee (EAC) or State Expert Appraisal Committee (SEAC) may finalise amendment, if found necessary for a project within thirty days of the acceptance of application in specified application Form I or Form IA. These standard TOR shall enable the Project Proponent to commence preparation of an Environment Impact Assessment Report after successful online submission and registration of the application:

Provided further that, the Expert Appraisal Committee (EAC) or State Expert Appraisal Committee (SEAC) may stipulate additional Terms of Reference, if found necessary, within thirty days of the acceptance of the application in the specified application Form I or Form IA and the Project Proponent shall carry out the EIA study based on the standard TORs as well as the additional TOR, if any, stipulated by EAC/SEAC:

Provided also that the following shall not require Scoping–

- (i) all projects and activities listed under Category ‘B’, against Item 8(a) of the Schedule;*
- (ii) all Highway projects in border States covered under entry (i) of column (3) and entry (i) of column (4) against item 7(f) of the Schedule;*
- (iii) all Highway expansion projects covered under entry (ii) of column (3) and entry (ii) of column (4) against item 7(f) of the Schedule;***

Provided also that –

(A) the project and activities referred to in clause (i) shall be appraised on the basis of Form I or Form IA and the conceptual plan;

(B) the projects referred to in clause (ii) shall prepare EIA and EMP report on the basis of standard TOR specified by the Ministry of Environment, Forest and Climate Change;

(ii) in Paragraph 7 in sub-paragraph (i), in sub-heading, clause (iii) shall be renumbered as clause (ii) thereof.”

H. Notification dated 28.03.2020 published in Gazette of India (Extraordinary) of the same date:

a) Appendix IX of EIA 2006 was substituted as under:

(iii) for Appendix-IX, the following Appendix shall be substituted, namely: -

“APPENDIX-IX

EXEMPTION OF CERTAIN CASES FROM REQUIREMENT OF ENVIRONMENTAL CLEARANCE

The following cases shall not require Prior Environmental Clearance, namely:-

- 1. Extraction of ordinary clay or sand by manual mining, by the Kumhars (Potter) to prepare earthen pots, lamp, toys, etc. as per their customs.*
- 2. Extraction of ordinary clay or sand by manual mining, by earthen tile makers who prepare earthen tiles.*
- 3. Removal of sand deposits on agricultural field after flood by farmers.*
- 4. Customary extraction of sand and ordinary earth from sources situated in Gram Panchayat for personal use or community work in village.*
- 5. Community works, like, de-silting of village ponds or tanks, construction of village roads, ponds or bunds undertaken in Mahatma Gandhi National Rural*

Employment and Guarantee Schemes, other Government sponsored schemes and community efforts.

- 6. *Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.***
7. *Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.*
8. *Traditional occupational work of sand by Vanjara and Oads in Gujarat vide notification number GU/90(16)/MCR-2189(68)/5-CHH, dated the 14th February, 1990 of the Government of Gujarat.*
9. *Manual extraction of lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional community.*
10. *Digging of wells for irrigation or drinking water purpose.*
11. *Digging of foundation for buildings, not requiring prior environmental clearance, as the case may be.*
12. *Excavation of ordinary earth or clay for plugging of any breach caused in canal, nallah, drain, water body, etc., to deal with any disaster or flood like situation upon orders of the District Collector or District Magistrate or any other Competent Authority.*
13. *Activities declared by the State Government under legislations or rules as non-mining activity.”*

57. Para 7(f) of EIA 2006 as amended from time to time and applicable as on date talks of requirement of EC for the following projects:

- (i) “New National Highways” (as per entry 7(f) amended vide Notification dated 11.10.2007).
- (ii) “Expansion of National Highways greater than 100 km involving additional right of way or land acquisition greater than 40m on existing alignment and 60m on re-alignment or by-passes” (as per entry 7(f) amended vide Notification dated 22.08.2013).
- (iii) “All New State Highway Projects” (as per entry 7(f) amended

vide Notification dated 04.04.2011.

- (iv) “State Highway expansion projects in hilly terrains (above 1,000 m AMSL) and or ecologically sensitive areas” (as per entry 7(f) as amended vide Notification dated 01.12.2009).

58. Highways include ‘expressways’ as clarified by inserting a Note in column (5) of item 7(f) of EIA 2006 as amended vide Notification dated 01.12.2009.

59. The term “Highways” is not defined either in EIA 2006 or EP Act, 1986 or any other Statute relating to environment.

60. The term “Highways” is used in Entry 23, List I, Seventh Schedule of Constitution of India which reads as under:

“23. Highways declared by or under law made by Parliament to be national highways.”

61. Highways, however, are not defined in the Constitution also. State Legislature is empowered to make laws in respect of roads, bridges etc. vide Entry 13, List II, Seventh Schedule of the Constitution. Entry 13 reads as under:

“13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.”

62. Dictionary meaning of ‘Highways’ is simple, that is, a main road, specially connecting major towns or cities (see **Oxford Dictionary of English**, 3rd Edition 2010 and **Collins English Dictionary**).

63. EIA 2006 recognizes two types of highways i.e., “National Highways” and “State Highways”.

64. National Highways are governed by National Highway Act, 1956

(hereinafter referred to as '**NH Act, 1956**') promulgated by the Parliament. It came into force on 15.04.1957.

65. Section 2(1) of NH Act, 1956 provides that each of the Highways specified in the Schedule is hereby declared to be a 'National Highway'. Thus, highways mentioned in the Schedule are declared to be "National Highways".

66. Section 4 of NH Act, 1956 says that all National Highways shall vest in the Union, and for the purposes of this Act, 'Highways' shall include-

"(i) all lands appurtenant thereto, whether demarcated or not;

(ii) all bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across such highways; and

(iii) all fences, trees, posts and boundary, furlong and mile stones of such highways or any land appurtenant to such highways."

67. "State Highways" are governed by different Statutes made by respective State Legislatures. In State of MP, initially, Madhya Pradesh Highway Act, 1936 was enacted which was published in Central Provinces Gazette dated 11.12.1936. The above Act was replaced by Madhya Pradesh Rajmarg Adhiniyam, 2004 (hereinafter referred to as '**MPR Act, 2004**'). The term "Highway" is defined in Section 2(i) of MPR Act 2004 and reads as under:

(i) "highway" means any thoroughfare or land declared to be a highway under Section 3 of this Act;"

68. The term "**thoroughfare**" is defined in Section 2(u) as under:

*(u) "**thoroughfare**" means a road, street, lane, bridle path or a foot-track, whether surfaced or unsurfaced, whether on land owned by the State Government or a local authority or on land belonging to a private person over which the public have or have acquired, a right of way by usage and includes-*

(i) the slope, berm, borrow-pits, footpaths, pavements and side drains of any such thoroughfare;

(ii) all bridges, culverts, causeways, carriage ways or other road structures, built on or across such thoroughfare; and

(iii) the trees, fences, posts and other highways accessories and materials and material stacks on the thoroughfare or on land attached to the thoroughfare;”

69. Section 3 of MPR Act, 2004 provides that State Government may, by Notification in the official Gazette, declare any “thoroughfare” or “land” to be a Highway and classify it as:

- (i) an Express Highway,
- (ii) State Highway,
- (iii) a major District road,
- (iv) other district road,
- (v) a village road.

70. When a new National Highway Project or expansion thereof, as provided in Item 7(f), Column (3) entry (ii) is to commence, EC is required for which Competent Authority to grant EC is MoEF&CC.

71. In respect to all new “State Highways” and its expansion as provided in Entry 7(f), Column (4) (i) and (ii), the Competent Authority to grant EC is State Level Environment Impact Assessment Authority i.e., SEIAA and in the present case, it would be SEIAA MP.

72. No material has been placed before us to show whether road in question constructed by respondent 3 was a new Highway or an expansion of National Highway. Reliance, however, has been placed on Item 7(f), Column (3) entry (ii) which talks of expansion of National Highway greater than 100 km involving additional right of way or land required greater than 40m on existing alignments and 60m on re-alignments of by-passes. It is claimed that expansion in question does not satisfy the above description,

hence, EC under EIA 2006 for the construction of National Highway in question is not required. Material on record shows that it is upgradation and road widening of NH-47 which was earlier NH-59. Under Schedule of NH Act, 1956, NH-47 is at serial no. 153 and reads as under:

<i>Serial No.</i>	<i>National Highway No.</i>	<i>Description of National Highways</i>
<i>1</i>	<i>2</i>	<i>3</i>
153	47	<i>The highway starting from its junction with NH-27 near Bamanbore connecting Limbdi, Ahmedabad, Godhra, Dahod in the State of Gujarat, Indore, Betul in Madhya Pradesh, Saoner and terminating at its junction with NH-44 near Nagpur in the State of Maharashtra. 8A, 59, 59A & 69 Gujarat 388.20 Madhya Pradesh 558.60 Maharashtra 59.00 271 154 147 The highway starting from its junction with NH-47</i>

73. Since description of the project in question is upgradation and expansion, hence it is short of new National Highway and description of expansion does not satisfy requirement of Item 7(f), Column 3, entry (ii), therefore, for the construction of National Highway in question, **we have no hesitation in holding that no EC was required.**

74. **Issue I is answered accordingly.**

ISSUES II, III and IV:

75. These issues, being over-lapping, can be answered together.

76. The real issue up for consideration in the present OA is not construction of part of NH-47 as described above, without EC, but the real question is about requirement of EC for excavation of soil/morrum from the private land of farmers by respondent 3.

77. Stand of respondent 3 is that no EC is required in view of exemption

granted by amended Appendix-IX substituted by Notification dated 28.03.2020 in EIA 2006. Thus, we have to consider, whether excavation of soil in the present case is exempted by clause 6 of Appendix-IX as amended vide Notification dated 28.03.2020 or not.

78. Respondent 3 claims that neither it has excavated soil nor undergone any mining activity but only transported the soil from concerned khasra numbers to the project site of National Highway-47 by obtaining Transport Permits under Rule 68(3) and 68(6) of MP Minor Mineral Rules, 1996. The correctness of the above stand taken by respondent 3 has to be examined from the documents, it has placed on record along with reply dated 04.08.2023.

79. The place of construction of National Highway is NH-47 Harda-Betul Khand, Package I i.e., Harda to Temagaon four lane road. The land wherefrom respondent 3 has collected minor mineral i.e., soil/morrum is situated at village Bhadugaon Tehsil Rahatgaon District Harda. The Google Map shows distance of village Bhadugaon to the National Highway Project in question as about 22 kms. Substantial distance between land where soil was available and the project site is not disputed since to travel this distance transportation permits were obtained by respondent 3.

80. Copies of various permissions letters/consent/affidavits executed by land owners have been placed on record. Since all the documents are similarly worded, we find it appropriate to refer the consent letter of Nandu S/o Kunji in respect of land at khasra no. 259/26/2 (area 1.349 hectares), 259/26/3 (area 1.349 hectares) and 259/26/4 (area 1.349 hectares). Consent letter says that the agricultural land, area 4.047 hectares, is uneven and has several soil mounds on account whereof, farmer owners were not able to cultivate the land effectively and get appropriate yield.

They wanted to get the land levelled but it would require big machines, like JCBs, Tractors, Poklanes etc. which will be very expensive and owner farmers do not have financial capacity to incur such huge expenses. Therefore, they permitted/granted consent to respondent 3 i.e., M/s Prakash Asphaltting & Toll Highways (India) Ltd. to level the land by using machines etc. at own expenses of respondent 3. The expenses shall not be borne by farmer owners. In consideration, farmer owners permitted respondent 3 to use excessive soil found at the agricultural land after leveling, to collect and use in its four lane National Highway Project. The relevant clauses of Consent Letter executed by Nandu S/o Kunji, filed as **annexure R-3/2 at page 319**, are reproduced as under:

1. यह है कि हमारे संयुक्त खाता के मालिकाना हक की जमीन ग्राम- भादूगांव पंचायत भादूगांव तहसील रहटगांव जिला हरदा (म0प्र0) में स्थित भूमि कुल संयुक्त रकबा 4.047 हेक्टेयर है।
2. हमारे मालिकाना हक की जमीन जो कि भूमि जिसका कुल संयुक्त रकबा 4.047 हेक्टेयर है। यह पूरी तरह से उबड़ खाबड़, ऊँची-नीची एवं टीले में तबदील है। जिसके चलते हम गरीब किसान इस जमीन पर सही तरीके से कृषि उपज किसानी नहीं कर पा रहे हैं जिसके कारण उचित पैदावार नहीं हो रही है।
3. उक्त जमीन जो टीलानुमा व उबड़-खाबड़ है। उसे हम समतलीकरण कराना चाहते हैं। जिसमे इस जमीन पर भरपुर कृषि उपज पैदावार हो सके।
4. उक्त जमीन को मेरे द्वारा समतलीकरण करने के लिये बहुत मशीनरी खर्च लगेगा जिसमें जे.सी.बी. ट्रैक्टर, पोकलेन आदि का खर्च होगा साथ ही कटिंग मिट्टी को एक जगह एकत्रित करना बहुत ही कठिन कार्य है। उपरोक्त समस्त कार्य के लिये बहुत धनराशि खर्च होगी जो कि हम गरीब किसानों के लिये संभव नहीं है। क्योंकि हमारी वर्तमान आर्थिक हालात बहुत खराब है। जैसे-तैसे जीविका चला रहे हैं।
5. जैसा कि प्रकाश एस्फाल्टिंग एण्ड टोल हाईवेज (इ०) लिमि० को भारतीय राष्ट्रीय राज्य मार्ग (एन.एच.ए.आई.) द्वारा हरदा से टेमागांव फोरलेन सडक निर्माण का ठेका दिया गया है इसलिये मैं अपनी उबड़ खाबड़ टीले वाली जमीन को समतलीकरण करने के लिये कम्पनी को यह कार्य दे रहा हूँ। समतलीकरण करने के दौरान जो अतिरिक्त मिट्टी टीलो से निकलेगी उसे कम्पनी को चार लेन सडक निर्माण कार्य हेतु उपयोग में ले सकती है। उस पर हम किसानों की किसी भी प्रकार कोई आपत्ति नहीं है।

6. यह है कि प्रकाश एस्फाल्टिंग एण्ड टोल हाईवेज (इ०) लिमि० के द्वारा केरी जमीन को समतलीकरण करने में जो भी मशीनरी खर्च एवं वाहनों का खर्च होगा सम्पूर्ण खर्च कंपनी वहन करेगी। मैं उसका किराया नहीं दूंगा साथ ही समतलीकरण के दौरान निकलने वाली मिट्टी का किसी भी प्रकार का मूल्य कंपनी से नहीं लूंगा। इसका मैं विश्वास दिलाता हूँ।
 7. हम सभी घर के संयुक्त खाताधारक सदस्य में हमारी जमीन का समतलीकरण कार्य के लिए घर के सभी सदस्यों की सहमति विचार विमर्श कर यह कार्य करवा रहे हैं। उपरोक्त समतलीकरण कार्य में घर के किसी भी सदस्य की कोई आपत्ति नहीं है एवं हमारी जमीन समतलीकरण के दौरान कर्मचारियों के साथ हम घर जैसा सहयोग करेंगे। हम कंपनी सदस्यों के साथ किसी भी प्रकार की लड़ाई-झगड़ा, वाद-विवाद आदि नहीं करेंगे।
 8. यह है कि प्रकाश एस्फाल्टिंग एण्ड टोल हाईवेज (इ०) लिमि० को श्रीमान कलेक्टर महोदय (खनिज शाखा) जिला हरदा में अस्थायी अनुज्ञा प्राप्त करने को पूर्ण अधिकार देता हूँ तथा इसके उपरांत भी मेरी कही आवश्यकता हुई तो मैं सदा तत्पर रहूँगा। कम्पनी के कार्य में मेरी वजह से रुकावट पैदा नहीं होगी। ”
1. *The total combined area of the jointly owned land is 4.047 hectares which is situated in village- Bhadugaon Panchayat Bhadugaon Tehsil Rahatgaon District Harda (M.P.).*
 2. *The total combined area of the jointly owned land is 4.047 hectares. It is completely rugged, undulating and transformed into mounds due to which poor farmers are not able to do agricultural production properly on this land. It results into no proper yield.*
 3. *The above said land is hilly and rough. We want to level the land though which bumper agricultural produce can be produced on this land.*
 4. *It is very costly to level the above said land with the help of machinery i.e. JCB, Tractor, Poklance etc. Collecting the cutting soil at one place is a very difficult task. A huge amount of money will be spent for this work which is not possible for poor farmers like us. Because our current economic situation is very bad and somehow we are living our lives.*
 5. *As Prakash Asphaltting and Toll Highways (E) Limited has been given the contract by the National Highways of India (NHAI) for the construction of Harda to Temagaon four lane road, therefore I am giving the leveling work of uneven hilly land to the company. The company can use the extra soil that comes out of the mounds during leveling for the construction of a four-lane road. The farmers have no objection for this work.*

6. *The company will bear the entire expense of machinery and vehicles for leveling the land by Prakash Asphaltting and Toll Highways (E) Limited. I will not pay the rent and will also not take any kind of price from the company for the soil released during leveling. I assure this.*
7. *We, the joint account holders of this land doing this work with the consent of all the household members. There is no objection from any of the member of the family for the above said purpose. We will cooperate with the employees during the leveling of our land. We will not do any kind of fight, debate etc. with the company members.*
8. *I give full authority to Prakash Asphaltting and Toll Highways (E) Ltd. to Collector (Mining Branch) District Harda to obtain temporary permission. I am always ready, if any help is required after this. I will not be the reason for hindrance in the work of the company.”*

(English Translation by Tribunal)

81. The other affidavits/Consent letters/Authorization letters are also in similar terms.

82. The above documents clearly show that excavation of soil/morrum/agricultural land was for the purpose of alleged levelling of the land and not for construction of any linear project like road etc. The principle object of permission granted by farmer owners is excavation of soil for the purpose of levelling of agricultural land at the expanse of respondent 3 and that exercise was to be undertaken by respondent 3 himself. Therefore, **defense of respondent 3 that it had not excavated any minor mineral i.e., soil/morrum/clay but only transported the same, is factually incorrect and contrary to the documents which respondent 3 itself has placed on record.**

83. Secondly, the principal object of excavation is alleged levelling of agricultural land and construction of any linear project such as roads, pipelines etc. is incidental. Permission granted by land owners that excavated minor mineral may be taken away by proponent and it may use

the same in its four lane National Highway Project without any payment of cost of mineral to the owners of agricultural land, would not be covered by entry 6 of Appendix-IX of EIA 2006, as amended by Notification dated 28.03.2020. Excavation of soil for construction of linear project is exempted but excavation of soil at some other place and use of such excavated soil as raw material by transporting to construction site is not exempted. **The defense of respondent 3 that excavation of soil/morrum/clay was exempted, is rejected.**

84. Next submission is that said excavation was for the purpose of linear projects such as roads, pipelines etc. but as we have already said that the purpose was different i.e., leveling of the land as mentioned in the Consent/Permission/Affidavits executed by farmer owners, hence excavation of soil/morrum, in the present case, is not protected by entry 6 of Appendix-IX of EIA 2006, as amended vide Notification dated 28.03.2020.

85. We also find from record that the mention of the term 'levelling of land' in the aforesaid documents, is a lame excuse to cover up mining activities of minor mineral in as much as the depth of digging of soil has been found by Joint Committee in its Report to be several feet as is evident from the following findings:

"The depth of digging of soil is approx. 25.00 ft. out of which approx. 10 to 12 ft after flattening of the land."

86. Huge quantity of soil, permission whereof for transportation was sought by respondent 3, also shows that the same could not be a result of minor mineral obtained after levelling of agricultural land but such huge quantity could have been produced only by effective mining activities of minor minerals in the respective land.

87. The land, whereat, mining activities were carried out, also had presence of stones in as much as a Stone Crusher was established by respondent 3 at khasra no. 157/12, in respect whereof, Consent to Establish (hereinafter referred to as '**CTE**') was rejected by MPPCB on 26.10.2021 due to non-fulfilment of siting criteria. The mere fact that stone crusher was not found operational at the time of inspection does not mean that it was not operated by respondent 3 since it has not placed any material to show that stone crusher was never operated by it though onus lay upon it to prove this fact, once it was established that such unit was installed by it, that too illegally, since no CTE was granted.

88. It is also evident that despite the fact that even CTE was not granted, respondent 3 had established Stone Crusher. The said stone crusher was also near River Ganjal. Besides, it was at a distance of less than 500 meters from the residential area. It shows that respondent 3 was engaged in active mining activities of minor mineral, total area whereof was 10.306 hectares (4.047+1.808+4.451) and had undertaken certain acts in violation of environmental laws and norms.

89. Further, in EIA 2006, for mining in an area of more than 5 hectares, prior EC is required. Supreme Court in **Deepak Kumar vs. State of Haryana & Others (2012) 4 SSC 629** had held that irrespective of the area for mining activities, EC shall be required. No exception or exemption has been contemplated or provided by Supreme Court in its judgment in **Deepak Kumar vs. State of Haryana (supra)**. Even the purpose of extraction of soil/morrum/clay in the case in the hand, as we have already said, is not for linear projects such as roads, pipelines etc. but the purpose was levelling of agricultural land and therefore, it is not covered by the exemption contemplated in Appendix-IX as amended by substitution vide Notification dated 28.03.2020 in EIA 2006.

90. We **therefore, answer issues II, III and IV against respondent 3** and hold that respondent 3 was engaged in the mining activities, and carried out mining activities without any EC though it was necessary under EIA 2006, as amended from time to time, and in the light of judgment of Supreme Court in ***Deepak Kumar vs. State of Haryana (supra)*** and that it had carried out mining and other activities in violation of environmental laws.

ISSUE V:

91. On this issue, we find that Joint Committee has not given its Report properly giving full facts. Neither it shows that any excavation or mining activities have been carried out by respondent 3 on the flood plain zone of River Ganjal nor the location of the distance of the land at which mining activities have been carried out by respondent 3 has been shown clearly as to whether the same lie within flood plain zone of River Ganjal or beyond it. On mere conjecture or the allegations of the applicant unless appropriate material brought on record, we find it inappropriate to record any finding either wise.

92. Hence, **we answer Issue V** by observing that there is nothing on record to show that respondent 3 has carried out any mining activity at the flood plain zone or bank of River Ganjal. In the absence of any material, we do not record any positive findings either in favour or against respondent 3.

ISSUES VI and VII:

93. In view of the issues I to IV answered above, it cannot be doubted that mining activities carried out by respondent 3 at the private land of owners farmers by excavation of soil/morrum without EC is illegal and in violation of EIA 2006 read with EP Act, 1986. That being so, it is liable to

pay environmental compensation in as much as excavation of soil from the agricultural field damages the top soil which is fertile and used for cultivation purposes. Damage of top soil is a serious thing. In **OA 175/2018, Jammula Chhoudaraiah vs. Union of India**, with respect to Top-soil, this Tribunal has observed as under:

*“500. So far as topsoil is concerned, it has got damaged or at least, has lost its character of being a topsoil and rendered unsuitable to serve its basic purpose. **Topsoil** is the upper, outermost layer of soil, usually top 5 to 10 inches (13 to 25 cm). Highest concentration of organic matter and microorganism is found in the top soil. It is said that most of Earth's biological soil activity occurs in the top soil. A composition of top soil includes mineral particles, organic matter, water, and air. Organic matter varies in quantity on different soils. Strength of soil structure decreases with the presence of organic matter, creating weak bearing capacities. Organic matter condenses and settles in different ways under different conditions. In the soil classification system, top soil is known as the [“O Horizon or A Horizon,”](#) i.e., it is the very top layer of the soil.*

503. In a State, where agriculture is major occupation and water availability and quality of soil is good, destruction of top soil is a matter of serious concern and constitutes a major environmental damage. As already said, top soil has the greatest organic matter content and microorganism. Organic matter is what is left after plant roots, stems and leaves decompose. Top soil is made up of carbon, nitrogen, microbes and larger creatures such as worms, beetles and other insects. Fertile top soil also has concentration of nutrients including potassium, phosphorus and iron. Normally and often, it is said that blacker the top soil is, the richer it is in nutrients and the stronger its earthy smell. Rich, nutritive top soil is able to hold onto more water. Greater nutrients and water availability allow in top soil to be more productive in terms of plant growth.

94. The act of respondent 3, therefore, has damaged environment and its remediation will cost huge expenses since restoration of Top-soil/soil is a difficult task and require lots of efforts, patience and techniques. In the circumstances, by application of principle of “Polluter Pays”, respondent 3 is liable to pay environmental compensation. The incidental question would be amount of environmental compensation or that a methodology for computation of environmental compensation in the case

in hand.

Principle for Computation of Environmental Compensation:

95. The question of **assessment of environmental compensation** includes the principles/factors/aspects, necessary to be considered for computing/assessing/determining environmental compensation. Besides judicial precedents, we find little assistance from Statute. Section 15 of NGT Act, 2010 talks of relief of compensation and restitution. It confers wide powers on this Tribunal to grant relief by awarding compensation for the loss suffered by individual(s) and/or for damage caused to environment. Section 15 reads as under:

“15. Relief, compensation and restitution-(1) *The Tribunal may, by an order, provide,-*

*a) **relief and compensation** to the victims of pollution and **other environmental damage arising under the enactments** specified in the Schedule I (including accident occurring while handling any hazardous substance);*

*b) **for restitution of property damaged;***

*c) **for restitution of the environment** for such area or areas, as the Tribunal may think fit.*

(2) The relief and Compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section of (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the' applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

*(4) The Tribunal may, **having regard to the damage** to public **health, property and environment**, divide the compensation or relief payable under separate heads specified in Schedule II so as to*

provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

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

96. Sub-section 1 of Section 15 enables Tribunal to make an order providing relief and compensation to (i) the victims of pollution, (ii) other environmental damage arising under the enactments specified in the Schedule I.

97. Tribunal is also conferred power to pass an order providing relief for restitution of property damaged. Section 15(1)(c) enables Tribunal to pass an order providing relief for restitution of the environment for such area or areas, as Tribunal may think fit. Section 15 sub-section 4 says that Tribunal may divide compensation or relief payable under separate heads specified in Schedules II, having regard to the damage to public health, property and environment so as to provide compensation or relief, (i) to the claimants and (ii) for restitution of the damaged property or environment, as it may think fit.

98. Schedule II of NGT Act, 2010 gives a list of heads under which compensation or relief for damage may be granted. It has 14 heads in total out of which items (a) to (f), (l), (m) and (n) relate to loss, damage etc. sustained to the person or individual or their property. Items (i) to (k) relate to harm, damage, destruction etc. of environment or environmental system including soil, air, water, land, and eco-system. Items (i) to (k) of Schedule II of NGT Act, 2010 are as under:

“(i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;

(j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;

(k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;”

99. Items (g) and (h) relate to expense and cost incurred by State in providing relief to affected person; and loss caused in connection with activity causing damage.

100. The damage to environment covers a very wide variety of nature as is evident from definition of environment under Section 2(c) which is inclusive and says; ‘environment includes water, air, and land and the interrelationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property’.

101. Section 20 of NGT Act, 2010 requires Tribunal to apply principles of ‘Sustainable Development’, ‘Precautionary Principle’ and ‘Polluter Pays Principle’.

102. In the present case, environmental compensation has to be computed by applying ‘Polluter Pays’ Principle. This Principle was recognized as part of environmental law in India in ***Indian Council for Enviro-Legal Action vs. Union of India, (1996) 3 SCC 212***. Certain industries producing assets were dumping their waste. Even untreated waste water was allowed to flow freely polluting atmosphere and sub-terrain supply of water which ultimately caused darkening and dirtiness of wells and the streams water rendering it unfit for human consumption. Certain environmentalists’ organizations broadly alleging severe damage to villager’s health, filed a Writ petition as PIL in 1989 before Supreme Court. By that time, some of the units were already closed. Referring to

Article 48-A in Directive Principles of State Policy and 51-A in the Fundamental duties of citizens, Supreme Court observed that said provisions say that State shall endeavor to protect and improve environment and to safeguard the forest and wildlife of the country. One of the fundamental duties of citizen says to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creature. **Proponent has established its commercial unit and operate contrary to law flouting norms provided by law, Statutory Regulator is bound to act and if it fails, a judicial forum can direct it to act in accordance with law.** Referring to Oleum Gas leak case, i.e., *M.C. Mehta vs. Union of India, (1987) 1 SCC 395*, Court observed in para 58 that the constitution bench held that **enterprise must be held strictly liable for causing such harm as a part of social cost of carrying on the hazardous or inherently dangerous activity.** Hazardous or inherently harmful activities for private profits can be tolerated only on the condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of carrying on of such hazardous or inherently dangerous activity, regardless of whether it is carried on carefully or not. Court also referred to its earlier decision in *Indian Council for Enviro Legal action vs. Union of India (1995) 3 SCC 77*, wherein PCB identified about 22 industries responsible for causing pollution by discharge of their effluent and a direction was issued by Court observing that they were responsible to compensate the farmers. It was the duty of State Government to ensure that this amount was recovered from the industries and paid to the farmers. In para 67 of the judgment, Court said that the **question of liability of respondent units to defray the costs of remedial measures can also be looked into from another angle which has now come to be accepted universally as a sound principle**, for

example, 'Polluter Pays' principle. On this aspect, Court further observed as under:

“67. ...The Polluter Pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The 'Polluter Pays' principle was promoted by the Organization for Economic Co-operation and Development (OECD) during the 1970s when there was great public interest in environmental issues. During this time there were demands on government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialized society. Since then, there has been considerable discussion of the nature of the polluter pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactory agreed.

Despite the difficulties inherent in defining the principle, the European Community accepted it as a fundamental part of its strategy on environmental matters, and it has been one of the underlying principles of the four Community Action Programmes on the Environment. The current Fourth Action Programme ([1987] OJC 328/ 1) makes it clear that **the cost of preventing and eliminating nuisances must in principle be borne by the polluter'**, and the polluter pays principle has now been incorporated into the European Community Treaty as part of the new Articles on the environment which were introduced by the Single European Act of 1986. Article 130-R(2) of the Treaty states that environmental considerations are to play a part in all the policies of the Community, and that action is to be based on three principles: the need for preventative action; the need for environmental damage to be rectified at source; and that the polluter should pay.”

103. Court further said that **according to the above principle of 'Polluter Pays', responsibility for repairing the damage is that of the offending industry.** Sections 3 and 5 of EP Act, 1986 empower Central Government to give directions and take measures for giving effect to this principle. Court further said:

“...In all the circumstances of the case, we think it appropriate that the task of determining the amount required for carrying out

the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment [Protection] Act, 1986. It is, of course, open to the Central Government to take the help and assistance of State Government, R.P.C.B. or such other agency or authority, as they think fit."

104. The above principle has been followed in **Vellore Citizen Welfare Forum vs. Union of India, 1996 (5) SCC 647**. In para 25, direction no. 2 reads as under:

2. The authority so constituted by the Central Government shall implement the "precautionary principle" and the "polluter pays" principle. The authority shall, with the help of expert opinion and after giving opportunity to the concerned polluters assess the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.

105. In **Bittu Sehgal and Another vs Union of India & Others (2001) 9 SCC 181**, referring the earlier judgments, Supreme Court has said that Precautionary Principle and 'Polluter Pays' principle have been accepted as part of the law of the land.

106. In **Research Foundation for Science vs. Union of India & Ors., (2005) 13 SCC 186**, in para 26 and 29, Court, on 'Polluter Pays' Principle, has said as under:

"26. The liability of the importers to pay the amounts to be spent for destroying the goods in question cannot be doubted on applicability of precautionary principle and polluter-pays principle. These principles are part of the environmental law of India. There is constitutional mandate to protect and improve the environment. In order to fulfill the constitutional mandate various legislations have been enacted with attempt to solve the problem of environmental degradation.

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

107. In **Karnataka Industrial Areas Development Board vs. C. Kenchappa & Others (2006) 6 SCC 371**, principle of ‘Polluter Pays’ has been explained in detail referring to the earlier judgments in **Indian Council for Enviro-Legal Action vs. Union of India (supra)** and **Vellore Citizen Welfare Forum (supra)**.

108. Thus, broad principles of environmental laws are given but the methodology for assessing/determining compensation is not provided in the statute. Even Rules framed under NGT Act, 2010 are silent on this aspect. Issue of determination of EC is significant in the sense that it should be proportionate to or bears a reasonable nexus with the environmental damage and its remediation/restoration. Similarly in case of compensation to be determined for a victim, it needs to co-relate to injury caused or damage suffered by such person as also cost incurred for treatment/remediation. Computation of environmental compensation may involve some degree of subjectivity but broadly it must be based on objective consideration as it saddles financial liability upon the violator.

109. Taking into consideration multifarious situations relating to violation of environmental laws *vis-a-vis* different proponents, nature of cases involving violation of environmental laws can be categorized as under:

- (i) Where Project/Activities are carried out without obtaining requisite statutory permissions/consents/clearances/NOC etc., affecting environment and ecology. For example, EC under EIA 2006; Consent under Water Act, 1974 and Air Act, 1981; Authorisation under Solid Waste Management Rules, 2016 and other Rules; NOC for extraction and use of ground water, wherever applicable, and similar requirements under other statutes.
- (ii) Where proponents have violated conditions imposed under statutory Permissions, Consents, Clearances, NOC etc. affecting environment and ecology.
- (iii) Where Proponents have carried out their activities causing damage to environment and ecology by not following standards/norms regarding cleanliness/pollution of air, water etc.

110. The above categories are further sub-divided, i.e., where the polluters/violators are corporate bodies/organizations/associations and group of the people, in contradistinction, to individuals; and another category, the individuals themselves responsible for such pollution.

111. Further category among above classification is, where, besides pollution of environment, proponents/violators action also affect the community at large regarding its source of livelihood, health etc.

112. The next relevant aspect is, whether damage to environment is irreversible, permanent or is capable of wholly or partial restoration/remediation/rejuvenation.

113. Determination/computation/assessment of environmental restoration/remediation/rejuvenation but should also take care of damage

caused to the environment, to the community, if any, and should also be preventive, deterrent and to some extent, must have an element of “being punitive”. The idea is not only for restoration/remediation or to mitigate damage/loss to environment, but also to discourage people/proponents from indulging in the activities or carrying out their affairs in such a manner so as to cause damage/loss to environment.

114. To impose appropriate ‘environmental compensation’ for causing harm to environment, besides other relevant factors as pointed out, one has to understand the kind and nature of ‘Harmness cost’. This includes risk assessment. The concept of risk assessment will include human-health risk assessment and ecological risk assessment. U.S. Environmental Protection Agency has provided a guideline to understand harm caused to environment as well as people. For the purpose of human-health risk assessment, it comprised of three broad steps, namely, planning and problem formulation; effects and exposure assessment and risk categorization. The first part involves participation of stakeholders and others to get input; in the second aspect health effect of hazardous substances as well as likelihood and level of exposure to the pollutant are examined and the third step involves integration of effects and exposure assessment to determine risk.

115. Similarly, ecological risk assessment is an approach to determine risk of environmental harm by human activities. Here also we can find answer following three major steps, i.e., problem codification; analysis of exposure and risk characterization. First part encompasses identification of risk and what needs to be protected. Second step insists upon crystallization of factors that are exposed, degree to exposure and whether comprised of two components, i.e., risk assessment and risk description.

116. In totality, problem is multi-fold and multi-angular. Solution is not straight but involves various shades and nuances and vary from case to case. Even Internationally, there is no thumb-rule to make assessment of damage and loss caused to environment due to activities carried out individually or collectively by the people, and for remediation/restoration. Different considerations are applicable and have been applied. As the term suggest, compensation means a return for loss or damage sustained. Therefore it must always be just and not based on a whim or caprisious.

117. In India, where commercial activities were carried out without obtaining statutory permissions/consents/clearance/NOC, Courts have determined, in some matters, compensation by fixing certain percentage of cost of project. In some cases, volume of business transactions, turnover, magnitude of establishment of proponent have also been considered as guiding factors to determine environmental compensation. In some cases, a lump sum amount has been imposed.

118. Nature is extremely precious. It is difficult to price elements of nature like light, Oxygen (air), water in different forms like rain, snow, vapour etc. When nature is exploited beyond its carrying capacity, results are harmful and dangerous. People do not understand the value of what nature has given free. Recently, in COVID-19 Wave-II, scarcity of Oxygen proved its worth. In dreadful second phase of the above pandemic, any amount offered, in some cases, could not save life for want of Oxygen. Further, damage to environment, sometimes do not reflect in individuals immediately and may take time but injury is there. In such cases, process of determination of compensation may be different.

119. In an article, '*the cost of pollution-Environmental Economics*' by Linas Cekanavicius, 2011, it has been suggested, where commercial activities

have been carried out without consent etc., and pollution standards have been violated, Total Pollution Cost (hereinafter referred to as '**TPC**') can be applied. It combines the cost of abatement of environment pollution and cost of pollution induced environmental damage. The formula comes to **TPC(z)=AC(z)+ED(z)**, where **z** denotes the pollution level. Further, clean-up cost/remediation cost of pollution estimated to be incurred by authorities can also be used to determine environmental compensation.

120. When there is collective violation, sometimes the issue arose about apportionment of cost. Where more than one violator is indulged, apportionment may not be equal since user's respective capacity to produce waste, contribution of different categories to overall costs etc. would be relevant. The element of economic benefit to company resulting from violation is also an important aspect to be considered, otherwise observations of Supreme Court that the amount of environmental compensation must be deterrent, will become obliterated. Article 14 of the Constitution says that unequal cannot be treated equally, and it has also to be taken care. Determination/assessment/computation of environmental compensation cannot be arbitrary. It must be founded on some objective and intelligible considerations and criteria. Simultaneously, Supreme Court also said that its calculations must be based on a principle which is simple and can be applied easily. In other words, it can be said that wherever Court finds it appropriate, expert's assessment can be sought but sometimes experts also go by their own convictions and belief and fail to take into account judicial precedents which have advanced cause of environment by applying the principles of 'sustainable development', 'precautionary approach' and 'polluter pays', etc.

121. Clean-up cost or TPC, may be a relevant factor to evaluate damage,

but in the diverse conditions as available in this Country, no single factor or formula may serve the purpose. Determination should be a quantitative estimation; the amount must be deterrent to polluter/violator and though there is some element of subjectivity but broadly assessment/computation must be founded on objective considerations. Appropriate compensation must be determined to cover not only the aspect of violation of law on the part of polluter/violator but also damage to the environment, its remediation/restoration, loss to the community at large and other relevant factors like deterrence, element of penalty etc.

122. **CPCB Guidelines:** This Tribunal, vide order dated 31.08.2018 passed in ***Paryavaran Suraksha Samiti and another vs Union of India and others OA 593/2017*** observed that “CPCB may also assess and recover compensation for damage to the environment and said fund may be kept in a separate account and utilized in terms of an action plan for protection of the environment”. CPCB, accordingly, published a report on 15.07.2019, suggesting methodology for assessment of environmental compensation which may be levied or imposed upon industrial establishments who are guilty of violation of environmental laws and have caused damage/degradation/loss to environment. It does not encompass individuals, statutory institutions and Government etc. Report is titled as “*Report of the CPCB In-house Committee on Methodology for Assessing Environmental compensation and Action Plan to Utilize the Fund*” which was finalized in the meeting held on 27.03.2019. It shortlisted the incidents requiring an occasion for determining environmental compensation. Six such incidents, shortlisted, are:

“Cases considered for levying Environmental Compensation (EC):

- a) *Discharges in violation of consent conditions, mainly prescribed standards/consent limits.*

- b) *Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.*
- c) *Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.*
- d) *Accidental discharges lasting for short durations resulting into damage to the environment.*
- e) *Intentional discharges to the environment -- land, water and air resulting into acute injury or damage to the environment.*
- f) *Injection of treated/partially treated/ untreated effluents to ground water.”*

123. For the instances at item (a), (b) and (c), report says that ‘Pollution Index’ (hereinafter referred to as ‘**PI**’) would be used as a basis to levy environmental compensation. CPCB had already published Guidelines categorizing industries into Red, Orange, Green and White, based on the concept of **PI**. The **PI** is arrived after considering quantity and quality of emissions/effluents generated, types of hazardous waste generated and consumption of resources. **PI** of an industrial sector is a numerical number in the range of 0 to 100 and is represented as follows:

PI=f (Water Pollution Score, Air Pollution Score and HW Generation Score).

124. Since range of PI is 0 to 100, increase in value of PI denotes increasing degree of pollution hazard from industrial sector. Accordingly, report says, for determining environmental compensation in respect of cases covered by item (a), (b) and (c), it will apply following formula:

$$EC = PI \times N \times R \times S \times LF$$

Where,

EC is Environmental Compensation in Rs.

*PI = **Pollution Index of industrial sector***

N = Number of days of violation took place

R = A factor in Rupees (₹) for EC

S = Factor for scale of operation
LF = Location factor”

125. The formula incorporates anticipated severity of environmental pollution in terms of PI, duration of violation in terms of number of days, scale of operation in terms of micro and small/medium/large industry and location in terms of proximity to the large habitations. A note is also given under the aforesaid formula and it reads as under:

“Note:

- a. The **industrial sectors** have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental Compensation for Red, Orange and Green categories of industries, respectively.*
- b. N, number of days for which violation took place is the period between the day of violation observed/due date of direction’s compliance and the day of compliance verified by CPCB/SPCB/PCC.*
- c. R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of violation.*
- d. S could be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units.*
- e. LF, could be based on population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or up to 10 km distance from the municipal boundary of the city/town, following factors (LF) may be used:*

Table No. 1.1: Location Factor Values

S. No	Population* (million)	Location Factor# (LF)
1	1 to <5	1.25
2	5 to <10	1.5
3	10 and above	2.0

**Population of the city/town as per the latest Census of India*
#LF will be 1.0 in case unit is located >10km from municipal boundary
LF is presumed as 1 for city/town having population less than one million.

For notified Ecologically Sensitive areas, for beginning, LF may be assumed as 2.0. **However, for critically Polluted Areas, LF may be explored in future.**

- f. In any case, minimum Environmental Compensation shall be ₹ 5000/day.
- g. In order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2 times on 1st repetition, 4 times on 2nd repetition and 8 times on further repetitions.
- h. If the operations of the industry are inevitable and violator continues its operations beyond 3 months then for deterrent compensation, EC may be increased by 2, 4 and 8 times for 2nd, 3rd and 4th quarter, respectively. Even if the operations are inevitable beyond 12 months, violator will not be allowed to operate.
- i. Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.

A sample calculation for Environmental Compensation (without deterrent factor) is given at Table No. 1.2. It can be noticed that for all instances, EC for Red, Orange, and Green category of industries varies from 3,750 to 60,000 ₹/day.

Table No. 1.2: A sample calculation for Environmental Compensation

Industrial Category	Red	Orange	Green
Pollution Index (PI)	60-100	41-59	21-40
Average PI	80	50	30
R-Factor	250		
S-Factor	0.5-1.5		
L-Factor	1.00-2.00		
Environmental Compensation (₹/day)	10,000-60,000	6,250-37,500	5,000-22,500

126. We find that **R** which is a factor in Rupees (₹) is taken to be 100 minimum and 500 maximum. It has suggested that R value be taken as average i.e. Rs.250/-. On what basis this minimum and maximum has been determined and why average is suggested, beyond any comprehension. We do not find any material in the above report which

may throw light for taking value of R as above. Similarly, for determining value of S i.e. Factor for Scale of Operation from 0.5 to 1.5, we find no Guidelines as to on what basis, it has been determined and only on the size of the industry, divided in small, medium and large, the said factor has been prescribed. The note further says that minimum environmental compensation would be Rs.5000/- per day. From table 1.2, we find that in the highest case i.e., large industry, depending on the level of PI, maximum environmental compensation would be Rs.60,000/- per day and minimum Rs.10,000/- per day. The above determination excludes the actual loss to the environment and cost of remediation including damage to *flora-fauna* and human beings. Moreover classification of industries for industrial policy, or for some licensing purpose, banking purpose etc. would be wholly irrelevant for environment. A small industry may be capable of causing much more pollution than medium or even large industry. For example pollution caused by a brick kiln using coal as fuel may be much more than many medium category industries.

127. In respect of items (d), (e) and (f), report says that for determining environmental compensation, one has to consider the matters in two parts, one for providing immediate relief and another long term relief, such as remediation. In such cases, detailed investigations are required from Expert Institutions or Organizations, based on which environmental compensation will be decided. Second part of report is with regard to utilization of environmental compensation fund. For this purpose, report says that CPCB will finalize a scheme for utilization of fund for protection of environment. Certain schemes identified by CPCB for utilization of the said fund are mentioned in para 1.4.1, as under:

“a. Industrial Inspections for compliance verification

- b. Installation of Continuous water quality monitoring stations/Continuous ambient air quality monitoring stations for strengthening of existing monitoring network
- c. Preparation of Comprehensive Industry Documents on Industrial Sectors/clean technology
- d. Investigations of environmental damages, preparation of DPRs
- e. Remediation of contaminated sites
- f. Infrastructure augmentation of Urban Local Bodies (ULBs)/capacity building of SPCBs/PCCs.”

128. All the above, except item (e), relate to establishment/infrastructure for monitoring/prevention of pollution which in fact is the statutory duty and function of officials of State PCB and CPCB. It appears that CPCB has attempted to utilize environment fund to meet expenses which is the responsibility of Government.

129. Chapter II of report deals with determination of environmental compensation for violations of **Graded Response Action Plan** (GRAP) in NCR. Here a fixed amount of environmental compensation has been recommended in table 2.1, as under:

“Table No. 2.1: Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in Delhi-NCR.

Activity	State Of Air Quality	Environmental Compensation
Industrial Emissions	Severe +/-Emergency	Rs 1.0 Crore
	Severe	Rs 50 Lakh
	Very Poor	Rs 25 Lakh
	Moderate to Poor	Rs 10 Lakh
Vapour Recovery System (VRS) at Outlets of Oil Companies		
i. Not installed	Target Date	Rs 1.0 Crore
ii. Non-functional	Very poor to Severe +	Rs 50.0 Lakh
	Moderate to Poor	Rs 25.0 Lakh
	Severe +/-Emergency	Rs 1.0 Crore

Construction sites (Offending plot more than 20,000 Sq.m.)	<i>Severe</i>	<i>Rs 50 Lakh</i>
	<i>Very Poor</i>	<i>Rs 25 Lakh</i>
	<i>Moderate to Poor</i>	<i>Rs 10 Lakh</i>
Solid waste/ garbage dumping in Industrial Estates	<i>Very poor to Severe +</i>	<i>Rs 25.0 Lakh</i>
	<i>Moderate to Poo</i>	<i>Rs 10.0 Lakh</i>
<i>Failure to water sprinkling on unpaved roads</i>		
<i>a) Hot-spots</i>	<i>Very poor to Severe +</i>	<i>Rs 25.0 Lakh</i>
<i>b) Other than Hot-spots</i>	<i>Very poor to Severe +</i>	<i>Rs 10.0 Lakh</i>

”

130. Chapter III considers determination of environmental compensation where a proponent has discharged pollutants in water bodies or failed to prevent discharge of pollutants in water bodies and also failed to implement Waste Management Rules. Laying down Guidelines for determination of environmental compensation in this category, report has referred to Tribunal’s order dated 06.12.2018 in **OA No. 125/2017 and MA No. 1337/2018, Court on its own motion vs. State of Karnataka**, stating, as under:

*“Since failure of preventing the pollutants being discharged in water bodies (including lakes) and failure to implement solid and other waste management rules are too frequent and widespread, the **CPCB must lay down specific guidelines to deal with the same, throughout India, including the scale of compensation to be recovered from different individuals/authorities, in addition to or as alternative to prosecution. The scale may have slabs, depending on extent of pollution caused, economic viability, etc. Deterrent effect for repeated wrongs may also be provided.**”*

131. It is suggested that determination of environmental compensation in this category would have two components, (i) Cost saved/benefits achieved by the concerned individual/authority by not having proper waste/sewage managing system; and (ii) Cost to the environment (environmental externality) due to untreated/partially treated

waste/sewage because insufficient capacity of waste/sewage management facility. It further says that Cost saved/benefits achieved would also include interest on capital cost of waste/sewage management facility, daily operation and maintenance (O & M) cost associated with the facility. The determination of environmental compensation, therefore, is suggested, applying following formula:

“Therefore, generalized formula for Environmental Compensation may be described as:

EC= Capital Cost Factor × Marginal Average Capital Cost for Establishment of Waste or Sewage Management or Treatment Facility × (Waste or Sewage Management or Treatment Capacity Gap) + O&M Cost Factor × Marginal Average O&M Cost × (Waste or Sewage Management or Treatment Capacity Gap) × No. of Days for which facility was not available + Environmental Externality”

132. Environmental externality has been placed in two categories (i) untreated/partially treated sewage discharge and (ii) improper municipal solid waste management and detailed in table 3.1 and 3.2, as under:

“Table No. 3.1: Environmental externality for untreated/partially treated sewage discharge

<i>Sewage Treatment Capacity Gap (MLD)</i>	<i>Marginal Cost of Environmental Externality (Rs. per MLD/day)</i>	<i>Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)</i>
<i>Up to 200</i>	<i>75</i>	<i>Min. 0.05, Max. 0.10</i>
<i>201-500</i>	<i>85</i>	<i>Min. 0.25, Max. 0.35</i>
<i>501 and above</i>	<i>90</i>	<i>Min. 0.60, Max. 0.80</i>

Table No. 3.2: Environmental externality for improper municipal solid waste management

<i>Municipal Solid Waste Management Capacity Gap (TPD)</i>	<i>Marginal Cost of Environmental Externality (Rs. per ton per day)</i>	<i>Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)</i>
<i>Up to 200</i>	<i>15</i>	<i>Min. 0.01, Max. 0.05</i>

201-500	30	Min. 0.10, Max. 0.15
501-1000	35	Min. 0.25, Max. 0.3
1001-2000	40	Min. 0.50, Max. 0.60
Above 2000	Max. 0.80	

”

133. CPCB has further recommend a fixed cap for minimum and maximum cost for capital and O & M component for environmental compensation in table 3.3 and 3.4, as under:

“Table No. 3.3: Minimum and Maximum EC to be levied for untreated/partially treated sewage discharge

Class of the City/Town	Mega-City	Million-plus City	Class-I City/Town and others
Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 2000 Max. 20000	Min. 1000 Max. 10000	Min. 100 Max. 1000
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 2 Max. 20	Min. 1 Max. 10	Min. 0.5 Max. 5

Table No. 3.4: Minimum and Maximum EC to be levied for improper municipal solid waste management

Class of the City/Town	Mega-City	Million-plus City	Class-I City/Town and others
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 1000 Max. 10000	Min. 500 Max. 5000	Min. 100 Max. 1000
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 1.0 Max. 10.0	Min. 0.5 Max. 5.0	Min. 0.1 Max. 1.0

”

134. Para 3.3 deals with the method of determining environmental compensation for damage/untreated/partially treated sewage by concerned individual/authority. Under this head, CPCB has considered that for population above 1 lakh, requirement of water supply, would be

minimum 150 to 200 lpcd and 85% whereof would result in sewage generation. It takes capital cost for 1 MLD STP ranges from Rs.0.63 Crores to Rs.3 Crores and O & M cost around Rs.30,000 per month. Consequently, it suggested to assume capital cost for STPs as Rs. 1.75 crores/MLD (marginal average cost). Expected cost for conveyance system is assumed as Rs. 5.55 Crore/MLD and annual O& M as 10% of combined capital coast. Based on the above assumptions, Committee has recommended/suggested environmental compensation, to be levied on urban local bodies, by applying formula and here CPCB has suggested two formulas and any of them may be adopted.

“EC= Capital Cost Factor × [Marginal Average Capital Cost for Treatment Facility × (Total Generation-Installed Capacity) + Marginal Average Capital Cost for Conveyance Facility × (Total Generation -Operational Capacity)] + O&M Cost Factor x Marginal Average O&M Cost × (Total Generation- Operational Capacity) × No. of Days for which facility was not available + Environmental Externality × No. of Days for which facility was not available

Alternatively;

EC (Lacs Rs.) = [17.5(Total Sewage Generation – Installed Treatment Capacity) + 55.5(Total Sewage Generation-Operational Capacity)] + 0.2(Sewage Generation-Operational Capacity) × N + Marginal Cost of Environmental Externality × (Total Sewage Generation-Operational Capacity) × N

Where; N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Quantity of Sewage is in MLD”

135. Para 3.4 deals with the method of environmental compensation to be levied on concerned individual/authority for improper solid waste management, chargeable from urban local body based on the following formula:

“EC = Capital Cost Factor x Marginal Average Cost for Waste Management × (Per day waste generation-Per day waste

disposed as per the Rules) + O&M Cost Factor × Marginal Average O&M Cost × (Per day waste generation-Per day waste disposed as per the Rules) × Number of days violation took place + Environmental Externality × N

Where;

Waste Quantity in tons per day (TPD)

N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Simplifying;

EC (Lacs Rs.) = 2.4(Waste Generation - Waste Disposed as per the Rules) +0.02 (Waste Generation - Waste Disposed as per the Rules) × N + Marginal Cost of Environmental Externality × (Waste Generation-Waste Disposed as per the Rules) × N ”

136. Here also certain assumed figures have been taken by CPCB. Report says that municipal solid waste generation is approximately 1.5 lakh MT/day in India as per MoHUA Report-2016. As per principles of Solid Waste Management Rules, 2016 and PWM Rules, 2016, total cost of municipal solid waste management in city/town includes cost for door to door collection, cost of segregation at source, cost for transportation in segregated manner, cost for processing of municipal solid waste and disposal through facility like composting bio-methanation, recycling, co-processing in cement kilns etc. It is estimated that total cost of processing and treatment of municipal solid waste for a city of population of 1 lakh and generating approximately 50 tons/day of municipal solid waste is Rs. 15.5 Crores which includes capital cost (one time) and Operational and Management cost for one year. Expenditure for subsequent years would be only Rs.3.5 Crores/annum. For arriving per day waste generation, CPCB has referred to a survey conducted by Environment Protection Training Research Institute (EPTRI) which estimated that solid waste generated in small, medium and large cities and towns is about 0.1 kg

(Class-III), 0.3-0.4 kg (Class-II) and 0.5 kg (Class-I) per capita per day respectively. The committee opined that 0.6 kg/day, 0.5 kg/day and 0.4 kg/day per capita waste generation may be assumed for mega-cities, million-plus UAs/towns and Class-I UA/Towns respectively for calculation of environmental compensation purposes.

137. Sample calculation of environmental compensation to be levied for improper management of municipal solid waste has been provided in table 3.6 which read as under:

“Table No. 3.6: Sample calculation for EC to be levied for improper management of Municipal Solid Waste

<i>City</i>	<i>Delhi</i>	<i>Agra</i>	<i>Gurugram</i>	<i>Ambala</i>
Population (2011)	1,63,49,831	17,60,285	8,76,969	5,00,774
Class	Mega-City	Million-plus City	Class-I Town	Class-I Town
Waste Generation (kg. per person per day)	0.6	0.5	0.4	0.4
Waste Generation (TPD)	9809.90	880.14	350.79	200.31
Waste Disposal as per Rules (TPD) <i>(assumed as 25% of waste generation for sample calculation)</i>	2452.47	220.04	87.70	50.08
Waste Management Capacity Gap (TPD)	7357.42	660.11	263.09	150.23
Calculated EC (capital cost component) in Lacs. Rs.	17657.82	1584.26	631.42	360.56
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 1000 Max. 10000	Min. 500 Max. 5000	Min. 100 Max. 1000	Min. 100 Max. 1000
Final EC (capital cost component) in Lacs. Rs.	10000.00	1584.26	631.42	360.56
Calculated EC (O&M Component) in Lacs. Rs./Day	147.15	13.20	5.26	3.00
Minimum and Maximum values of EC (O&M Cost Component)	Min. 1.0 Max. 10.0	Min. 0.5 Max. 5.0	Min. 0.1 Max. 1.0	Min. 0.1 Max. 1.0

recommended by the Committee (Lacs Rs./Day)				
Final EC (O&M Component) in Lacs. Rs./Day	10.00	5.00	1.00	1.00
Calculated Environmental Externality (Lacs Rs. Per Day)	2.58	0.18	0.03	0.02
Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. per day)	Max. 0.80	Min. 0.25 Max. 0.35	Min. 0.01 Max. 0.05	Min. 0.01 Max. 0.05
Final Environmental Externality (Lacs Rs. per day)	0.80	0.25	0.03	0.02

138. Chapter IV deals with determination/computation of environmental compensation in case of “illegal extraction of ground water” and for this purpose report has referred to Tribunal’s order dated 03.01.2019 passed in **OA No. 327/2018, Shailesh Singh vs. Central Ground Water Board & Ors.** The relevant extract of the order quoted in para 4.1 of the report is as under:

“CPCB may constitute a mechanism to deal with individual cases of violation of norms, as existed prior to Notification of 12/ 12/2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law.”

139. Here, broadly, determination of environmental compensation refers to two major aspects i.e., illegal extraction of water as one aspect and illegal use of ground water as second aspect. For determination of environmental compensation for illegal extraction of ground water, formula suggested by Committee is:

“EC_{GW} =Water Consumption per Day x No. of Days x Environmental Compensation Rate for illegal extraction of ground water (ECR_{GW})

Where water Consumption is in m³/day and ECRGW in Rs./m³

Yield of the pump varies based on the capacity/power of pump, water head etc. For reference purpose, yield of the pump may be assumed as given in **Annexure-VI**.

Time duration will be the period from which pump is operated illegally.

In case of illegal extraction of ground water, quantity of discharge as per the meter reading or as calculated with assumptions of yield and time may be used for calculation of EC_{GW}.”

140. Depending on the category of the area for the purpose of ground water i.e. safe, semi-critical, critical and over-exploited and also the purpose for which ground water is used, determination of environmental compensation for illegal use of ground water, has been suggested differently for different purpose/use i.e. for drinking and domestic use; for packaged drinking water units/for mining infrastructure and dewatering projects and for industrial units. Hence all these aspects are separately given in paragraph 4.6.1, 4.6.2, 4.6.3 and 4.6.4 as under:

“4.6.1 ECRGW for Drinking and Domestic use:

Drinking and Domestic use means uses of ground water in households, institutional activity, hospitals, commercial complexes, townships etc.

Sl. No	Area Category	Water Consumption (m ³ / day)			
		<2	2 to <5	5 to <25	25 & above
		Environmental Compensation Rate (EC _{GW}) in Rs./m ³			
1	Safe	4	6	8	10
2	Semi Critical	12	14	16	20
3.	Critical	22	24	26	30
4	Over-Exploited	32	34	36	40
Minimum EC_{GW}=Rs 10,000/- (for households) and Rs. 50,000 (for institutional activity, commercial complexes, townships etc.)					

4.6.2 ECRGW for Packaged drinking water units:

Sl. No	Area Category	Water Consumption (m ³ / day)			
		<200	200 to <1000	1000 to <5000	5000 & above

		Environmental Compensation Rate (ECR _{GW}) in Rs./ m ³			
1	Safe	12	18	24	30
2	Semi Critical	24	36	48	60
3.	Critical	36	48	66	90
4	Over-Exploited	48	72	96	120
Minimum ECGW=Rs 1,00,000/-					

4.6.3 ECRGW for Mining, Infrastructure and Dewatering Projects:

Sl. No	Area Category	Water Consumption (m ³ / day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR _{GW}) in Rs./ m ³			
1	Safe	15	21	30	40
2	Semi Critical	30	45	60	75
3.	Critical	45	60	85	115
4	Over-Exploited	60	90	120	150
Minimum EC _{GW} =Rs 1,00,000/					

4.6.4 ECRGW for Industrial Units:

Sl. No	Area Category	Water Consumption (m ³ / day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR _{GW}) in Rs./ m ³			
1	Safe	20	30	40	50
2	Semi Critical	40	60	80	100
3.	Critical	60	80	110	150
4	Over-Exploited	80	120	160	200
Minimum ECGW=Rs 1,00,000/-					

141. It is also recommended that minimum environmental compensation for illegal extraction of ground water would be Rs.10,000/- if it is for domestic purposes, but in other matters, it would be Rs.50,000/-.

142. These recommendations by CPCB have not been given in the form of a binding statutory provision. Even otherwise, we find that these are only broad suggestions, ignore several relevant aspects which have to be considered while determining environmental compensation in a given case, therefore, cannot be taken as readymade application to all situations for determining of environmental compensation. Moreover, on some

aspects there is no suggestion, but it is deferred.

143. We also find that some crucial relevant aspects requiring application of 'Polluter Pays', have not been considered in the above suggestions. CPCB has failed to consider that the purpose of determination/computation/assessment of environmental compensation and levy thereof, involve various factors like (i) cost of damage to environment, (ii) cost needed for restoration/remediation of damage caused to environment, (iii) element of deterrent/provincial, (iv) liability arising for violation of statutory mandatory law relating to environment namely requirement of consent, EC and NOC etc. It is not mere cost of item or subject but computation of something which situation has arisen by an act of PPs due to violation of environmental law causing damage to environment. The loss and its remedy involves complex of components.

144. The elements of nature like air, water, light and soil in materialistic manner may not be priced appropriately and adequately. Most of the time, whenever price is determined, it may be extremely low or highly exorbitant meaning thereby disproportionate. Still, since some of the assets of nature are marketable, on that basis price may be determined but when such elements are damaged or degraded, restoration thereof, in effect is priceless. Many a times, it may be almost impracticable and improbable to recover and remediate damaged environment to its position as it was. Moreover, its cost might be very high. It also cannot be doubted that once there is a pollution or damage to environment, it would affect adversely not only the environment but also inhabitants and all biological organisms. Damage is there, only degree may differ whether to the environment or to the inhabitants and other organisms. To find out simultaneously degree of damage and to ascertain the same in many cases may not be possible or practicable. For example, a polluted air causes

respiratory diseases but the people do not get infected and starts reflection of the disease immediately but it takes some time. The time taken in reflection of injury on the person or body also differs from person to person depending upon his immunity and other health conditions. In some cases, damage to environment i.e., air pollution may be fatal to a person who already has respiratory problem. For some a minor inconvenience, minor injury to others, and some may not suffer to the extent of showing symptoms of any diseases at all. When we talk of environmental compensation for causing degradation to environment and for its restoration or remediation, it is not a formal or casual or symbolic amount which is required to be levied upon the violator. It is substantive and adequate amount which must be levied for restoration of environment. CPCB in determining values of fixed quotients and rupees etc., has been very lenient as if only symbolically violator is to be held liable and it must pay a petty amount.

145. Statutory Regulators must realize that the amount is needed for remediation and restoration of damaged environment; enough to be deterrent, to provide adequate compensation where inhabitants are affected adversely and where violator has proceeded in violation of Environmental Laws relating to consents, clearances, permissions etc., to penalize him for such violation to prove to be a deterrent to him and others. Unfortunately, the above guidelines laid down by CPCB have not considered all these aspects and it appears that the same have been prepared in a very casual and formal manner.

146. In respect of computation of compensation for illegal extraction of ground water, CPCB has referred to Tribunal's order in ***Court on its own motion vs. State of Karnataka (supra)*** directing it to lay down guidelines to deal with the scale of compensation but has failed to consider that

Tribunal has also observed that its scale may have slabs depending on extent of pollution caused, economic viability etc. and deterrent effect.

147. Statutory Regulators have also failed to consider that environmental compensation is not a kind of fee which may result in profiteering to violators and after adjusting a nominal amount of environmental compensation, a violator may find it profitable to continue with such violations. The objective of environmental compensation is that not only the loss and damage already caused, is made to recover and restore but also in future, the said violator may not repeat the kind of violation already committed and others also have a fear of not doing the same else similar liability may be enforced upon them. Unless amount of compensation is more than maximum permissible profit arising from violation, the purpose of environmental compensation would always stand defeated.

148. Loss caused to surroundings of the environment, may also include *flora-fauna* and human beings. It is in this backdrop that in various matters when the issues were considered by Courts and Tribunal and found necessary to impose environmental compensation upon Proponent/Violator of environmental laws, they have followed different mechanisms. Sometimes, Committee's reports confirming violations have been referred but for quantum of compensation, directions have been issued in different ways. In some cases, CPCB guidelines have been applied while in many other, project cost has been made basis.

149. CPCB Guidelines have taken care of industries and municipal bodies. Its application in all cases irrespective of other relevant consideration may prove to be disastrous. Individuals, charitable, social or religious bodies, public sector and government establishments etc., may, in given circumstances justify a different approach. Further, there

may be cases attracting aggravating factors or mitigating factors, for example in national emergency some activity got performed violating environmental norms or a proponent is resilient to any advice to adhere law to protect environment and so on. In fact, quantum of EC should have nexus with State's efforts for protection and preservation of environment and control of pollution. Compensation regime must be a deterrent to violators and incentivize eco-friendly proponents. No one should get profited by violating environmental laws and community should also not suffer for violation of environmental norms by defaulting proponents. There is no reason, if beside the aspects noticed above, the computation process also incorporate the elements of inflation, quality of life, and economic prosperity.

150. In the context of "violation of disposal of Bio-Medical Waste" and "Non-compliance of Bio-Medical Waste Management Rules, 2016" and determination of environmental compensation for such violations, Tribunal in **OA No. 710/2017, Shailesh Singh vs. Sheela Hospital & Trauma Centre, Shahjahanpur & Others** and other connected matters, vide order dated 15.07.2019, accepted report of CPCB, and said:

"10. The compensation regime suggested by the CPCB may be adopted. It will be open to the State PCBs/PCCs to adopt a higher scale of compensation, having regard to the problems faced in such States/UTs.

11. It is made clear that if even after two months the States/UTs are found to be non-compliant, the compensation will be liable to be recovered from the said States/UTs at the rate of Rs. 1 Crore per month till the non-compliance continues."

151. The above recommendations i.e. in para 10, Tribunal said "compensation regime suggested by the CPCB may be adopted. It will be open to the State PCBs/PCCs to adopt a higher scale of compensation, having regard to the problems faced in such

States/UTs". It further says that if State Governments and UTs still remain non-complying for two months, compensation will be recovered at the rate of Rs. One Crore per month till non-compliance continues.

152. In respect of solid waste, sewage effluent, ground water extraction etc., Tribunal in **OA No. 593/2017, Paryavaran Suraksha Samiti and another vs. Union of India and others**, vide order dated 28.08.2019 has said in para 16, that as regards environmental compensation regime fixed vide CPCB guidelines for industrial units, GRAP, solid waste, sewage and ground water is accepted as an interim measure. Tribunal further observed that recovery of compensation on 'Polluter Pays' principle is a part of enforcement strategy but not a substitute for compliance. It directed all States/UTs to enforce compensation regime latest w.e.f. 01.04.2020 and made it clear that it is not condoning any past violations. Tribunal directed to enforce recovery of compensation from 01.04.2020 from the defaulting local bodies failing which the concerned States/UTs themselves must pay the requisite amount of compensation.

153. In the matter of illegal mining causing damage to environment, methodology for determining environmental compensation was examined in **OA No. 360/2015, National Green Tribunal Bar Association vs. Virender Singh (State of Gujarat)** and other connected matters decided on 26.02.2021. Here a report was submitted by CPCB on 30.01.2020, placing on record recommendations made by Committee comprising:

- i.) Dr Purnamita Dasgupta, Professor, IEG, Delhi,
- ii.) Dr K.S. Kavi Kumar, Professor, MSE, Chennai,
- iii.) Dr. Yogesh Dubey, Associate Professor, IIFM, Bhopal,
- iv.) Shri Sundeep, Director, MoEF&CC, Delhi and
- v.) Shri A. Sudhakar, Additional Director, CPCB, Delhi

154. Report was considered by Tribunal vide order dated 17.08.2020.

Report said:

- “8. The Committee considered two approaches:
- (I) Approach 1: Direct Compensation based on the market value of extraction, adjusted for ecological damages.**
- (II) Approach 2: Computing a Simplified NPV for ecological damages.**

9. In the first approach, the criteria adopted is:

- Exceedance Factor (EF).
- Risk Factor (RF).
- Deterrence Factor (DF).

10. Approach 1 is demonstrated by Table 1 as follows:

Table No. 01: Approach 1				
Permitted Quantity (in MT or m³)	Total Extraction (in MT or m³)	Excess Extraction (in MT or m³)	Exceedance in Extraction:	Compensation Charge (in Rs.)
X	Y	Z=Y-X	Z/X	D* (1+RF+DF) Where D=Z x Market Value of the material per MT-or-m³
				DF = 0.3 if Z/X = 0.11 to 0.40 DF = 0.6 if Z/X = 0.41 to 0.70 DF = 1 if Z/X >= 0.71
				RF = 0.25, 0.50, 0.75, 1.00 (as per table 2)

11. Approach 2 is demonstrated by following formula:
“Total Benefits (B)=Market Value of illegal extraction: D(refer Table 1)

Total Ecological Costs (C) = Market Value adjusted for risk factor: D * RF (refer Table 1).”

12. Final recommendation is as follows:

“Thus, it is recommended that the annual net present value (NPV) of the amount arrived at after taking the difference between the costs and the benefits through the use of the above approach, maybe

calculated for a period of 5 years at a discount rate of 5% for mining which is in a severe ecological damage risk zone. **The rationale for levying this NPV is based on expert opinion that reversal and/or restoration of the ecological damages is usually not possible within a short period of time and rarely is it feasible to achieve 100% restoration, even if the sand deposition in the river basin is restored through flooding in subsequent years.** The negative externalities of the mining activity are therefore to be accounted for in this manner. Ideally, the worth of all such damages, including costs of those which can be restored should be charged. **However, till data on site-specific assessments becomes available, this approach may be adopted in the interim.** In situations where the risk categorization charged. However, till data on site-specific assessments becomes available, this approach may be adopted in the interim. In situations where the risk categorisation is unavailable or pending calculation, the following Discount Rates may be considered:

Severity	Mild	Moderate	Significant	Severe
Risk Level	1	2	3	4
Risk Factor	0.25	0.50	0.75	1.0
Discount Rate	8%	7%	6%	5%

155. Here, in both the approaches, element of illegality committed by PP in carrying on mining was not considered at all. For example, if EC and/or consent is not obtained. Similarly, cost of remediation/restoration was also not taken into consideration.

156. In some cases, compensation has been awarded by Tribunal on lump sum basis without referring to any methodology. For example: (i) **in Ajay Kumar Negi vs Union of India, OA No. 183/2013**, Rs.5 Crores was imposed. (ii) In **Naim Shariff vs M/s Das Offshore Application no. 15(THC) of 2016**, Rs.25 Crores was imposed (iii) **Hazira Macchimar Samiti vs. Union of India**, Rs. 25 Crores was imposed.

157. In **Goa Foundation vs. Union of India & Others (2014) 6 SCC 590**, Supreme Court relied on **Samaj Parivartana Samudaya & Others vs. State of Karnataka & Others (2013) 8 SCC 209** and held that **ten per cent of the sale price** of iron ore during e-auction should be taken as

compensation. To arrive at the above view, Court observed that this was an appropriate compensation given that mining could not completely stopped due to its contribution towards employment and revenue generation for the State. Further, Court directed to create a special purpose vehicle, i.e., “Goan Iron Ore Permanent Fund” for depositing above directed compensation and utilization of above fund for remediation of damage to environment.

158. In ***Goel Ganga Developers vs Union of India and Others, (2018) 18 SCC 257***, Tribunal imposed Rs.195 Crores compensation since project was executed without EC. Supreme Court made it **Rs.100 Crores or 10% of project cost whichever is higher**. Supreme Court also upheld Rs. 5 Crores imposed by Tribunal vide order dated 27.09.2016. Thus, total amount exceeded even 10% of project cost.

159. In ***Mantri Techzone Private Limited vs. Forward Foundation & Others, (2019) 18 SCC 494***, Supreme Court affirmed imposition of environmental compensation by Tribunal, considering cost of the project, where there was violation regarding EC/consent and proponent proceeded with construction activities violating provisions relating to EC/Consent. Tribunal determined environmental compensation at 5% and 3% of project cost of two builders. 5% of project cost was imposed where PP had raised illegal constructions while 3% was imposed where actual construction activity was not undertaken by PP and only preparatory steps were taken including excavation and deposition of huge earth by creating a hillock. Besides, Tribunal also directed for demolition and removal of debris from natural drain at the cost of PP.

160. On the issue of assessment of compensation for damage to environment in the matter of illegal mining, recently Supreme Court in

Bajri Lease LOI holders Welfare Society vs. State of Rajasthan and others, SLP (Civil) No. 10584 of 2019 (order dated 11.11.2021) has said that compensation/penalty to be paid by those indulging in illegal sand mining cannot be restricted to be value of illegally mined minerals. The cost of restoration of environment as well as the cost of ecological services should be part of compensation. 'Polluter Pays' principle as interpreted by this Court means that absolute liability for harm to the environment extends not only to compensate victims of pollution but also cost of restoring environmental degradation. Remediation of damaged environment is part of the process of "sustainable development" and as such the polluter is liable to pay the cost the individual sufferers as well as the cost of reversing the damaged ecology.

161. Applying the above observations/principles of the case in hand, we find that the applicant has excavated huge quantity of soil though it claims that the quantity of soil/minor mineral transported by applicant is very small. We need not to go into question as to how much soil has been transported and used by applicant as raw material for construction of NH-47 in question but the fact is that it has excavated much more soil in the agricultural field, therefore, has damaged land by such illegal excavation to a large extent. Record shows that as per own admission of applicant, it had used quantity of soil to the extent of 22,27,403 m³ and had taken permission for transportation of soil after excavation to the extent of 28,92,000 m³.

162. Learned Counsel contended that mere permission of transportation for larger quantity does not mean that the said quantity of soil was actually excavated. Even if we confine computation to the soil used and lying in the fields for being used, the total comes to 22,27,403 m³ + 12,70,000 m³ i.e., 34,97,403 m³. This is evident from Joint Committee Report's para 4

and the respondent 3 has placed nothing on record to show the above findings to be incorrect or unreliable.

163. Our attention is drawn to the letter dated 02.06.2003 sent by Project Director NHAI giving details to requirement of use of land required to filling purposes during construction of National Highway showing that 22,27,403 m³ soil has been used but Learned Counsel for the respondent 3 could not explain 12,70,000 m³ of soil in respect whereof Joint Committee has mentioned that that is quantity of soil (approximately) to be used excavated from village Bhadugaon. The word “excavated” shows that this soil was also excavated but not actually used. For the purpose of computing the quantity of soil illegally excavated, this quantity has also to be taken into account. Therefore, quantity of total excavated soil comes to 34,97,403 m³.

164. In ***Jammula Chhoudaraiah vs. Union of India (supra)***, similar circumstances where excavation of soil and the irrigation project was carried out without EC, environmental compensation was computed at the rate of 1.5% of the project cost.

165. In ***Goa Foundation vs. Union of India, (2014) 6 SCC 738***, Supreme Court has observed that in case of illegal mining, 10% of the sale price of the mined mineral may be realized as environmental compensation.

166. Though sale price of minor mineral in question has not been disclosed by respondent 3 but taking a very considered view if we calculate at the rate of Rs.100 per cubic meter, 10% of the sale price would be Rs. 10 per cubic meter. **The total environmental compensation, therefore, would come to Rs. 3,49,74,030/-.**

167. **We accordingly answer issue VI** by holding that respondent 3 is liable to pay environmental compensation of Rs. 3,49,74,030/-.

168. With regard to Issue VII, we hereby give further directions in the operative part of this order.

169. We, accordingly, allow OA and issue following directions:

- (i) Respondent 3 shall pay **environmental compensation of Rs. 3,49,74,030/-** and deposit the same with MPPCB within 3 months.
- (ii) It shall also file an **undertaking before MPPCB** that in future it shall not undertake any such mining activities without EC wherever it is required under EIA 2006 and environmental laws shall be observed, complied and implemented by it in words and spirit.
- (iii) However, in case the amount of compensation is not paid and/or said undertaking is not furnished, **MPPCB**, besides taking steps for recovery of the aforesaid amount of compensation, shall also proceed to initiate criminal proceedings against respondent 3 for committing offence under Section 15 of EP Act, 1986 and would take appropriate steps accordingly.
- (iv) **MPPCB** shall also furnish information of commission of offence under EP Act, 1986 by respondent 3 to Enforcement Directorate since offence under EP Act, 1986 and conversion of money to validate it, is also an offence under Prevention of Money Laundering Act, 2002 (hereinafter referred to as '**PMLA 2002**' as amended from time to time), since EP Act, 1986 is

notified under the Schedule of the said Act. Requisite information shall be furnished to Enforcement Directorate for initiating appropriate proceedings under PMLA 2002 in accordance with law.

- (v) Amount of compensation, after it is deposited by respondent 3 or recovered by MPPCB, in accordance with law, shall be utilized for remediation, restoration/rejuvenation of environment in the area in question in accordance with Environmental Restoration Plan which shall be prepared within 2 months by a Joint Committee comprising MPPCB, CPCB and District Magistrate, Harda who shall utilize the said amount within 3 months after preparation of the Plan as directed above.

170. A Copy of this order be forwarded to NHAI, MPPCB, SEIAA MP, Directorate of Geology and Mining, District Magistrate, Harda and Enforcement Directorate by e-mail for compliance.

SUDHIR AGARWAL,
JUDICIAL MEMBER

DR. AFROZ AHMAD,
EXPERT MEMBER

October 19, 2023
Original Application No. 28/2023(CZ)
R