

# Sayyed Mohammed Sabir Usman vs Member Secretary-Cpcb on 31 March, 2023

BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE  
(By Video Conferencing)

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Original Application No. 19/2020(WZ)

IN THE MATTER OF:

1. MR. SAYYED MOHAMMED SABIR USMAN  
Residing at Flat No. 612, C-Wing,  
Mount Kailash Apartment, Belasis Road,  
Mumbai Central, Mumbai-400 008.

.....Applicant

Versus

1. CENTRAL POLLUTION CONTROL BOARD  
Through Member Secretary,  
Parivesh Bhawan, CBD-cum-Office Complex,  
East Arjun Nagar, Delhi-110 032.
2. THE PRINCIPAL SECRETARY, ENVIRONMENT DEPT.  
Government of Maharashtra,  
Room No. 217, 2nd Floor, Annex Building,  
Mantralaya, Mumbai-400 032, Maharashtra
3. MAHARASHTRA POLLUTION CONTROL BOARD  
Through Member Secretary,  
Kalptaru Point, 3rd Floor, Near Sion Circle,  
Opp. Cine Planet Cinema, Sion (E),  
Mumbai-400 022, Maharashtra
4. MAHARASHTRA INDUSTRIAL DEVELOPMENT  
CORPORATION(MIDC)  
Through it CEO, "Udyog Sarathi"  
Marol Industrial. Area, Mahakali Caves Road,  
Andheri (East), Mumbai-400 093.
5. COLLECTOR OF PALGHAR  
Through Collector Palghar,  
2nd Floor, Parshwnath 9, Bidco Naka,  
District: Palghar, Maharashtra-401404
6. DISTRICT SUPERINTENDENT OF POLICE  
New Admin. Building, Bidako Road, Vishnu Nagar,  
District: Palghar, Maharashtra 401 404.
7. Mr. PUNDALIK K. MIRASHE  
Assistant Secretary (Technical),

Maharashtra Pollution Control Board,  
Kalptaru Point, 3rd Floor, Near Sion Circle,  
Opp. Cine Planet Cinema, Sion (E),  
Mumbai-400 022, Maharashtra

8. M/S. ANK PHARMA PVT. LTD.  
Plot No.M-2, MIDC Tarapur Industrial Area,  
Boisar (W), Palghar, District-Palghar

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.....Respondent(s)

Counsel for Applicant:

Mr. Nitin Lonkar, Advocate

Counsel for Respondent(s):

Mr. Aniruddha S. Kulkarni, Advocate for R-1/CPCB & R-2/Env't. Deptt.

Ms. Manasi Joshi, Advocate for R-3/MPCB

Ms. Shyanmali Gadre, Advocate for R-4/MIDC

Collector, Palghar, R-5, In-person

Mr. R. B. Mahabal, Advocate for R-7

Mr. Saurabh Kulkarni along-with Mr. Prashant Bhat, Advocates for R-8/PP

PRESENT:

Hon'ble Mr. Justice Dinesh Kumar Singh (Judicial Member)

Hon'ble Dr. Vijay Kulkarni (Expert Member)

Reserved on : 17.02.2023

Pronounced on : 31.03.2023

#### JUDGMENT

1. This Application has been filed with the prayer that the Respondent No. 8-M/s. Ank Pharma Pvt. Ltd./Project Proponent, which is engaged in manufacturing of various pharmaceutical products, should be directed to be permanently closed and that heavy compensation amount should be levied from it by way of environmental compensation and also special damages be realised from it on account of the deaths caused of the workers of the industry due to its activities.

2. In brief the facts of the case are that the Respondent No. 8/Project Proponent was granted the Consent to Establish on 24.03.2008 for the establishment of industry, subject to the compliances of the terms and conditions stipulated there-in. The Environmental Clearance was granted by the Respondent No. 2/Principal Secretary, Environment Department, Government of Maharashtra vide order dated 07.06.2011 on terms and conditions, which have been violated by it and the said violations have been narrated as follows:-

" a. PP has stored the raw material in excess of the permissible limit. b. PP has not installed the Effluent Treatment Plant (ETP) c. PP has not made any provision for

rain water harvesting. d. PP has not taken any air pollution control measures and no installed any such devices.

e. PP has not taken any noise pollution control measures and no installed any such devices.

f. PP has not developed green belt and not planted trees as promised in EC.

g. PP has carried out the construction without proper approval of MIDC. h. PP has not installed the sprinkling water system and wind shield systems.

i. PP has not made any arrangement for storm water line. j. PP has not made any monitoring of ground water and not conducted any test.

k. PP has not taken any safety measures and made any provisions for risk zone marking. There is no provision 86 installation for early leak detection and warning system.

l. PP has not made any provision for occupational health surveillance for workers.

m. PP has not made any fire hazardous protection arrangement and there is no compliance towards the hazardous waste handling and management.

n. PP has not taken any steps towards the minimization of waste. o. PP has not conducted any mock drills for emergency management. p. PP has not established separate environment management cell. q. PP has not made publication of EC in two local new paper, Also SEIAA and MPCB has not placed this EC on their website. r. PP has not submitted any half yearly compliance report. s. PP has not submitted any compliance report towards the conditions of EC t. PP has not submitted six monthly compliance report. u. PP has not filed any environmental statement. v. Therefore PP is liable to pay exemplary environment compensation for having deterrent effect."

3. The Respondent No. 8-M/s. Ank Pharma Pvt. Ltd. was granted first Consent to Operate on 02.01.2020, subject to the condition that it shall recycle 100% trade effluent to achieve Zero Liquid Discharge (ZLD) and would provide adequate Air Pollution Control System (APCS) to its various Reactors and Boilers. The extension of EC was also granted on 20.12.2018. The Respondent No. 7/Mr. Pundalik K. Mirashe, the then Assistant Secretary (Technical) in MPCB had granted Consent to Operate on 02.01.2020 to Respondent No. 8- M/s. Ank Pharma Pvt. Ltd. with the condition that trade effluent of 1.05 CMD should be 100% recycled to achieve ZLD. Yet the industry did not have recycling system and it had provided only primary and tertiary treatment facilities, as per the report submitted by Sub-

Regional Officer, MPCB, Tarapur dated 12.01.2020 to the Respondent No. 5/Collector of Palghar, on account of explosion occurred in the administrative premises and the said treatment facilities had

also collapsed and totally damaged. Therefore, it is evident that the Consent to Operate granted by the Respondent No. 7/Mr. Pundalik K. Mirashe under the garb of ZLD, was granted illegally, which led to this incident, resulting in death of eight persons and leading to injuries of seven employees.

4. It is further submitted that the CPCB had carried out physical study of the industrial clusters with respect to the Comprehensive Environment Pollution Index (CEPI), which included weightages on nature of pollutants, Ambient Pollutant Concentrations, Receptors (No. of Affected People and Additional High Risk Elements). The polluted industrial areas, which were categorized as Critically Polluted Areas, has crossed score of 70 (CPA), 'Severely Polluted Areas were identified, which had scored between 60-70 (SPA) and Other Polluted Areas were identified, having scores below 60 (OPAs) depending on CEPI score in each area.

5. This Tribunal in Original Application No. 1038 of 2018 had noted the latest CEPI Scores for 100 Polluted Industrial Areas/Clusters, monitored during 2018, in which, in Tarapur (Maharashtra), where the Respondent No. 8's industry is located, has been shown to have total CEPI Score 93.69 and on that count, this industry would fall in the category of critically polluted area.

6. This Tribunal had passed order dated 14.11.2019 in Original Application No. 1038 of 2018, which is to the following effect:-

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

7. In view of above, it was obligatory on the part of the CPCB to assess the compensation to be recovered from the polluting industries for the period of last five years after taking into consideration the cost of restoration etc. and not to allow any further new industrial expansion of 'Red' and 'Orange' Category Units till carrying capacity of that area was assessed and that the new units or expansion of earlier units were found to be viable, having regard to Carrying Capacity of the

Area and Environmental norms. The Respondent No. 1/CPCB and Respondent No. 6/District Superintendent of Police have not assessed the carrying capacity of MIDC Tarapur, but started giving new permissions for industrial expansion in the name of ZLD. The Field Officer along with SRO-I of Tarapur jurisdiction of MPCB had visited the blast site on 11.01.2020 and also on next day i.e. on 12.01.2020 and observed that a huge quantity of hazardous materials was stored in illegal manner in the premises of the industry of Respondent No. 8 and no record was maintained by the Project Proponent for the same and recorded following observations:-

- 1) Building found partly collapsed and damages due to blast of reactor.
- 2) Q5KL steel reactor found busted into pieces due to the blast having thickness at 22mm at shell dish, 16mm at shell with cooling jacket.
- 3) Pressure valve not found on the reactor, material traces/residues not found/notice in and around the premises.
- 4) Approx. 220 No. of 50KG capacity plastic drums filled with Mefenamic acid found stored in premises.
- 5) Container filled with Dimethyl formamide was found stored in premises
- 6) Ortho Chlorotolune, 2-3-xyldine, Trans-4-

aminocyclohexanol found filled in plastic container were noticed on spot.

- 7) Records of material inward outward and entry at persons are not maintained at entry gate.
- 8) We understood that some material were shifted from Plot no. M-2 to M/s. Alexo Chemicals, Plot. No. N-174 Tarapar, MIDC, hence visited M/s. Alexo Chemicals.
- 9) On discussion with plant operator Shri. Rupsingh Gond (Mobile No. - 9770831743) it is come to know that the earlier operator Shri. Mohan (Kaka) who had prepared in the incidence said that the material was Ortho-Chloro-Benzoic acid. This Ortho-Chloro-Benzoic acid is also imported from China and stored in storage on first floor of the building in huge quantity."

8. It is submitted in the pleadings that the company has already paid compensation to the tune of Rs. 31,53,773/- (Rupees Thirty-

One Lakhs Fifty-Three Thousand Seven Hundred and Seventy Three Only) to the relatives of deceased and a sum of Rs 23,16,253/- has been borne by the Company towards medical expense to the 7 injured persons, thus total Rs. 54,70,026/-(Rupees Fifty-Four Lakhs Seventy Thousand and Twenty-Six Only) has been given by way of compensation to the persons affected due to occurrence.

9. The Respondent No. 8/Project Proponent had not installed Continuous Regular Monitoring System for Continuous Ambient Air Quality Monitoring System (CAAQM), Online Monitoring System to the chimney of the boiler and Reactor vent, because of which Consent to Operate should not have been granted. At the time of explosion in the premises of the Respondent No. 8, there were 19 tonnes of Hazardous Chemicals stored without preparation of On-

site and Off-site Disaster Management Plan and that, about 38 tonnes of hazardous gases were emitted out of the industry, leading to environmental damage, pursuant to the said incident. In the form of exemplary environmental compensation, a sum of Rs. 100 Crores needs to be realized from the Respondent No. 8/Project Proponent to have deterrent effect, hence the above prayers have been made.

10. This matter was first considered by the Tribunal on 02.07.2020, where-by a Joint Committee was constituted comprising Collector, Palghar and Maharashtra Pollution Control Board (MPCB) to submit a factual and action taken report in the matter. Pursuant to that, action taken report was submitted by the Joint Committee, which is reproduced here-in below for the sake of convenience:-

" (i). M/s ANK Pharma Ltd has obtained an Environment Clearance from the Environment Department, Government of Maharashtra vide letter No.SEAC 2010/CR 654/TC.2 dtd.

07/06/2011 for new bulk drug unit (of total capacity 4.3 MT/Per month) and same was re-validated vide letter dtd.20/12/2018 for a period upto 05/06/2023.

(ii). Dy. Engineer, MIDC, Drainage Sub Division, Tarapur vide letter dated 13/01/2020 and 06/11/2020 specifically informed that there was no specific permission obtained for storage of chemicals in Administrative Building and both the premises should not be used for any hazardous manufacturing activities without restoration and a certificate of stability obtained from the Competent-Authority; (DISH).

(iii). The Dy. Labour Commissioner-Palghar vide letter dated 22/01/2020 communicated names of 08 no. of workers of the blast, expired in the accident and action taken by their department about compensation to the workers.

(iv). The Police Department-Boisar made available a copy of Panchanama about the blast incidence causing death of eight workers and damage to nearby property.

(v). After incidence of blast in M/s ANK Pharma Ltd. a Committee was constituted by the State Government under the Chairmanship of Hon'ble Divisional Commissioner. Konkan Division. The said Committee had already investigated the incidence of explosion occurred on 11/01/2020 and submitted its report vide letter dated 17/03/2020 to the State Government. In the Committee's report, it has been specifically reported that the factory was not registered under Building & Other Construction Workers' Act, 1986 even though it was under construction without obtaining the NOC from Fire Department & Occupancy Certificate from MIDC. It has been reported that the Occupier

was using premises as a factory. MIDC has not taken any further step to stop unauthorized construction of administrative building.

(vi). The Sub Regional Officer, MPCB, Tarapur has also caused visit and inspection on 12/01/2020 after accident and observed that the building near entry gate was collapsed due to blast in reactor, which was earlier used for administrative building. On the basis of non-compliances observed during the visit, directions of closure was issued to M/s ANK Pharma Ltd vide letter dated 13/01/2020. A copy of the directions of closure dated 13/01/2020 is enclosed and marked as an Annexure "C".

(vii). The Committee constituted by the Hon'ble NGT caused visit to the site in question on 29/10/2020 and after verification of the record, it has been observed that eight workers have been expired for which compensation under Workmen Compensation Act has been paid. MPCB had issued Directions of Closure on 13/01/2020. The Committee also suggested that whatever recommendations are made by Divisional Commissioner, Konkan Region in their report submitted to the State Government needs to be implemented. The Committee further recommends that without obtaining necessary statutory compliances, no permission to restart industrial unit shall be granted. At present, the above industry is closed."

11. Thereafter, this matter was considered on several dates by the Predecessor Bench and on 20.12.2021, a fact-finding Committee of eight members was constituted comprising MoEF&CC, CPCB, State PCB, District Magistrate: Palghar, Director- Industrial Safety, State Disaster Management Authority, SEIAA- Maharashtra and IIT Bombay with liberty granted to Joint Committee to take assistance of any other expert/institution, with the direction to submit a report with respect to factual aspect about sequence of events, cause of failure to prevent the accident, extent of damage to life/environment, amount of compensation required to be paid and other remedial measures, needed for helping this Tribunal to exercise its jurisdiction under Section 15 read with Section 20 of National Green Tribunal Act, 2010.

12. In pursuance to the said order, the fact-finding Committee has submitted its report, which is annexed at page nos. 286 to 514 of the paper book and relevant part of which is quoted here-in below:-

"07. DESCRIPTION & PROBABLE CAUSES OF THE ACCIDENT The Industry was engaged in the process of making drug intermediate like Ortho Chlorobenzoic Acid (OCBA) with raw materials- Ortho Chlorotoluene (99.5%) and Nitric Acid (58%), as reported on trial basis, but no permission had been obtained for its manufacture, and also the said product is not mentioned in the Consent and EC.

Ortho Chlorobenzoic Acid (OCBA) is used as a raw material for manufacturing of another drug intermediate like Mefenamic Acid. Mefenamic Acid is manufactured in M/s Alexo Chemicals, Plot no N-174, MIDC Tarapur which is sister concern Industry of M/s ANK Pharma Pvt Ltd, M-2 and run by the same occupier. One reactor was located at first floor whereas another reactor was located at second floor of the

factory Building 1. Manufacturing process was carried out in this building. The reaction of Ortho- chlorotoluene (99.5%) using nitric acid (58%) was going on 11/01/2020. The batch was charged by reactor Operator Shri. Mohan Ingale. First, water was taken into SS reactor and then 600 kg of HNO<sub>3</sub> (58%) was added to it. Then Ortho-chlorotoluene was charged into reactor. The stirring and heating was started since 4.00 pm as the reaction of Ortho-Chlorotoluene with nitric acid is highly exothermic.

This reaction might have become runaway due to one of the following reason -

- a) Steam heating is not stopped at predetermined temperature,
- b) Cold water circulation have not started,
- c) Failure of cooling water circulation pump,
- d) Failure of stirrer,
- e) Absence of cold-water circulation through cooling tower, for maintaining the reactor temperature at a pre-determined safe level As reaction became runaway, the temperature of reaction mass was continuously increasing leading to violent boiling and decomposition of the chemicals leading to sudden rise in pressure inside the reactor. This reactor was not provided with safety valve and rupture disc for emergency venting of large quantities of vapours inside the reactor which lead to sudden explosion of the reactor.

The massive explosion caused rupture of the reactor, breaking of columns and beams adjacent to reactor, breaking of RCC slab of part of first floor, brick walls and glasses were also shattered. Due to this explosion, SS reactor of thickness 22 mm got busted and fragmented in to three pieces vertically. Half of the portion was lying on the ground floor of the factory whereas half of the portion was thrown away at about 25-30 feet distance from production area and split in two pieces. The RCC structure, beams, columns, walls and slab of the first and ground floor got damaged and some portion collapsed. The accessories of the reactor and steam boiler got damaged and thrown away. Compound walls and building walls of nearby factory M/s Galaxy Surfactants Ltd, Plot no M-3 got damaged due to shock wave of the explosion. During operation of reactor, Shri Mohan Ingle, Operator was standing near the reactor, due to impact he died on the spot and Shri. Natwarlal Patel, Director of the industry was standing near ETP, also got hit by debris and broken window glasses due to which he got severe multiple injuries and was admitted for medical treatment at Wockhardt Hospital, Mira Road. Other injured persons were admitted to Thunga Hospital, Boisar and discharged from hospital after the treatment. The details of deceased and injured persons in the incident are provided as below in the Tables 4 & 5 respectively.

TABLE 4: DETAILS OF DECEASED PERSONS



Sr. No.	Name of person	Age (years)	Gender	Weather Employee or Civilians
1.	Shri Ilias Bashir Ansari	58	Male	Watchman
2.	Smt. Madhuri Vasistha Singh	49	Female	Helper
3.	Smt. Rajmatidevi Surendra Yadav	36	Female	Helper
4.	Shri Mohan Ingle	55	Male	Technician
5.	Shri Trinath Dasri	41	Male	Outsider/Technician-lift maintenance work
6.	Smt. Nishu Rahul Singh	24	Female	Family Member of Smt Madhuri Vasistha Singh
7.	Shri Golu Surendra Yadav	20	Male	Family Member of Smt Rajmatidevi Yadav
8.	Ms Khushi Yadav	13	Female	Family Member of Smt Rajmatidevi Yadav

TABLE 5: DETAILS OF INJURED PERSON

Sr. No.	Name of person	Age (years)	Gender	Weather Employee or Civilians
1.	Shri. Natwarlal Patel	58	Male	Director of the factory
2.	Shri. Mulayam Yadav	22	Male	Maintenance Worker
3.	Shri. Rakesh Kumar	55	Male	Helper
4.	Shri. Sachinkumar Yadav	20	Male	Helper
5.	Shri. Rohit Singh	19	Male	Family member
6.	Ms Prachi Rahul Singh	6	Female	Family Member of Smt Madhuridevi Singh (deceased)
7.	Ma.Rutika Rahul Singh	3	Female	Family Member of Smt Madhuri Vasistha Singh (deceased)

7.1 GENERAL MANUFACTURING PROCESS OF OCBA & DETAILS OF THE REACTOR General manufacturing process of the Ortho Chlorobenzoic Acid (OCBA) and the reactor used for the reaction, are provided as detailed below-

- a) The stainless steel (SS) reactor first cleaned by water.
- b) Proportionate quantity of water is added into SS reactor.
- c) 600 Kg of Nitric acid (58%) is added into reactor.
- d) Proportionate quantity of Ortho-chlorotoluene is added into SS reactor.
- e) This mixture is kept in reactor and steam heating is started through reactor limped coil with continuous stirring to reach at required temperature.
- f) Then limped coil of reactor is drained and cooling water circulation is started through limped coil and continued till next reaction is completed.
- g) Then batch is taken to centrifuge.
- h) Then batch is drained into trays and cools at room temperature.
- i) Finally, OCBA is obtained.

The details of the SS 10 KL reactor used to carry out the process are as follows:

- a) Reactor Type: Stainless Steel Reactor with limped coil and stirrer
- b) Reactor Capacity: 10 KL
- c) Material of construction: Stainless Steel(SS-316)
- d) Length of Reactor: 4960 mm
- e) Internal Diameter of Reactor: 1756 mm
- f) Outer diameter with jacket: 1800mm
- g) Thickness of reactor shell - 22 mm
- h) Reactor bottom outlet: 80 mm
- i) Stirrer Motor: 20 HP/1440 RPM, Make - Crompton, with gear box Make Bonfiglioli, Model AS 90

j) Top openings of Reactor: 18.11-inch manhole, 25 NB nozzle for temperature sensor, 40 NB nozzle for vent, 50 NB nozzle for HNO<sub>3</sub> charging, 150 NB nozzle for sample collection, 80 NB nozzle for Ortho Chlorotoluene addition.

k) Limped Coil: Material of construction -SS304, 50 NB 4 number of nozzles for steam In/Out and cooling water In/Out.

l) Design pressure of reactor - 18 Kg/Cm. Sq.

m) Working pressure of reactor- 15 Kg/Cm. Sq.

n) Design temperature of reactor - 180 deg. cent.

o) Working temperature of reactor - 150 deg. cent.

o8. ACTION TAKEN BY VARIOUS DEPARTMENTS & UNDER VARIOUS ACTS/RULE o8.1 ACTION TAKEN BY DIRECTORATE OF INDUSTRIAL SAFETY & HEALTH (DISH) UNDER FACTORIES ACT- 1948 AND MAHARASHTRA FACTORY RULES, 1963 Manufacturing Process of OCBA was being carrying out by using chemicals like Ortho-chlorotoluene (Flash Point- 42 Deg. C) which is highly inflammable in nature, and Nitric Acid (58%) which is corrosive and toxic in nature. Both are hazardous chemicals, hence the provisions of Factories Act, 1948 are applicable to this premises, as per Clause-1 of Schedule-II of Notification no FAC 2088/2048/(997) Lab-4 dated 22nd January, 1993 and the premises constitutes a "Factory" for the purpose of Factories Act 1948.

The factory was manufacturing Ortho-chlorobenzoic Acid which is a drug intermediate and used for manufacturing of bulk drug i.e. Mefanamic Acid. Hence this factory comes under Clause 11 of The First Schedule under Section 2(cb) of the Factories Act, 1948. Also hazardous chemicals such as Nitric Acid and Ortho-chlorotoluene are used in manufacturing of this drug intermediates which can cause material impairment to the health of person engaged in or connected therewith. Hence this is 'hazardous process' factory. Also, the manufacturing process was being carried out in SS reactor with limped coil by circulating steam formed in steam boiler. Chemical reaction inside the reactor was carried out under pressure more than atmospheric pressure. Also in steam boiler, water was getting heated and circulated at more than atmospheric pressure. Hence reactor and steam boiler both are pressure vessel, therefore provisions of Factories Act, 1948 are applicable to this premises, as per Clause-2(g) of Schedule-II of notification no. FAC 2088/2048/(997)Lab-4 dated 22nd January, 1993 and the premises constitutes a "Factory" for the purpose of Factories Act 1948.

DISH has observed following contravention to Factories Act, 1948 and rules specified in Maharashtra Factory Rules, 1963. The contraventions of Provision of Factory Act, 1948 and Maharashtra Factories Rule, 1963:-

i). Premises where accident took place is a factory and it is found that, the occupier has not obtained a license under the Factories Act 1948. Thus, the occupier was using the premises as a factory without a valid license under Factories Act 1948 from Chief

Inspector of Factories, the occupier has contravened the provisions of Rule 4 (4) of the Maharashtra Factories Rule, 1963.

ii). Occupier was using premises as factory without getting plans approved from the Chief Inspector/Deputy Chief Inspector, DISH in respect of the following namely, a) site on which the factory is situated b) building and extensions used for the purposes of manufacturing process, c) the layout of plant and machinery etc. The occupier has contravened the provisions of Rule 4 (1) (a), 4 (1) (b) and 4 (1) (c) of the Maharashtra Factories Rule, 1963.

iii). System of work to put off steam supply manually and starting cooling water into reactor jacket manually without provision of cooling tower for cooling of water and by not providing spring loaded safety valve and rupture disk on reactor or elsewhere in the system which will operate and vent the excess pressure generated in reactor as soon as pressure exceeds the safe working pressure, also there was no automatic cut off device provided on steam supply line to reactor so as to cut off steam supply to reactor in the event of reaching critical pressure and temperature of reactor, which was not safe. Therefore, the occupier has contravened the provisions of the Section 7-A (2) (a) of the Factories Act-1948.

iv). The reactor and steam boiler which are "pressure plants"

were being used in connection with the manufacturing process on the day of the accident and first time on

09.01.2020 without (a) a certificate specifying maximum safe working pressure and the test to which it was subjected to, is obtained from the maker (b) getting it thoroughly examined by a competent person in the premises where it is used. Provisions of Rule 65(6)(iii)(a) & (b) of the Maharashtra Factories Rules, 1963, are, therefore, contravened by the occupier.

v). As per Rule 73-R of the Maharashtra Factories Rules, the occupier of every factory carrying on 'hazardous process' shall furnish, in writing, to the Chief Inspector a copy of all the information furnished to the workers as per Rule 73-N(1), local authority, general public and the District Emergency Authority as per Rule 73-O. But it is found that the occupier of the M/s ANK Pharma Pvt. Ltd, Plot no M-2 has not furnished in writing, to the Chief Inspector a copy of all the information furnished to the workers, local authority, general public and the District Emergency Authority. Hence the occupier of the factory has contravened the provisions of Rule 73-R(1) of the Maharashtra Factories Rules, 1963.

In view of the above contraventions, DISH has issued Notice dated 31.01.2020 (Annexure-X) and filed two criminal cases (No. 2635/2020 & 2636/2020) with Chief Judicial Magistrate (CJM) Thane.

o8.2 ACTION TAKEN BY MAHARASHTRA POLLUTION CONTROL BOARD (MPCB) UNDER THE WATER (P & CP) ACT, 1974 & AIR (P & CP) ACT, 1981 MPCB conducted site visit dated 12.01.2020

(Annexure-VII) based on the information received regarding the blast. MPCB issued closure direction dated 13.01.2020 (Annexure-XI), for illegal installation of reactors, thermopack boiler, centrifuge, manufacturing products of sister concern industry i.e. M/s. Alexo Chemicals and negligence towards safety leading to a massive blast.

As per visit report of the MPCB (Annexure-VIII), lot of chemicals were also illegally stored in the building which is in the back side of the premises. This another building was having reactor, centrifuge, scrubber and boiler. About 200 barrels (55 kg each) filled with Mefanamic Acid, Container with Di-methyl Formamide and other chemicals Ortho-ChloroTolune, 2-3 Xylidine, Trans-4- aminocyclohexanol were found stored and the records of the these materials were not maintained. It is also mentioned that the product Ortho Chlorobenzoic Acid (OCBA) produced earlier was sent to its sister concern unit M/s Alexo Chemicals, N-174, MIDC Tarapur. This chemical is also imported from China. o8.3 ACTION BY POLICE DEPARTMENT Police Department has filed First Investigation Report (FIR) (NO. 0014 of 2020) dated 16.01.2020 against Shri Natwarlal Patel, Director of M/s. Ank Pharma Pvt. Ltd. under the provision of Indian Penal Code (IPC) Section 304(A), 286, 337 and 427. Further, information is not provided to the committee regarding action taken by the Police Department.

o8.4 MAHARASHTRA INDUSTRIAL DEVELOPMENT CORPORATION (MIDC) A. Regarding the permission for Building under Development Control Regulations to be regulated by MIDC-

The original Plot was allotted to M/s Asgar Ali Rokadiya and two others on dated 02/1/1982, and the same was handed over to M/s Tara Nitrate Pvt. Ltd. on 19/09/1984. The Building Completion Certificate (B.C.C) was given to 27/04/1987. This plot was again handed over to M/s ANK Pharma Pvt. Ltd on 24/11/2005. The revised building plan was approved by M/s ANK Pharma Pvt. Ltd on dated 30/10/2014 and B.C.C of same was given on 08/12/2014. Plans were not gotten approved and BCC was not obtained in respect of second and third floor construction of the building in which explosion took place. The stop order Notice was issued on dated 03/12/2019 as additional construction was being carrying out without permission.

After issuing BCC on 08/12/2014 MIDC officers has not inspected the premises even though factory has constructed additional three floors on existing ground plus one floor building measuring the area about 977.46 square meter.

They have given stop work order when the building was on the verge on completion i.e. on 03/12/2019. Also after giving stop work order they have not taken any further action for implementation of their order or any legal action as given in their notice.

MIDC has not taken any action to stop unauthorized construction of the factory. If it would have been stopped then this major mishap would have been avoided. Also even after this major explosion MIDC has not taken any legal action for unauthorized construction of this factory. Without obtaining the Occupancy Certificate from MIDC, the occupier of the factory was using premises as a factory. As per information provided by MIDC, when the stop work order was issued the work of construction was nearing completion. Unless the construction was completely illegal and

encroaching on area it shouldn't, MIDC, although empowered under the Maharashtra Regional and Town Planning Act, 1966 to demolish the illegal construction after notice, takes industry friendly approach as most of such units after being aware of the rule submit revised plans which are approved post facto. Furthermore, as per MIDC's own policy/circular No. C-68271, dt. 10/09/2013, many plot holders start the construction in anticipation that the building plans which are submitted will be approved postfacto. It is also noticed that, in most of the genuine cases where plans are submitted and pending approval or allottees are not aware of taking the B.C.C all over again for any construction after lease, the construction without prior approval of MIDC is generally within framework of MIDC DCR can be approved.

Industries who have applied for development permission and obtained permission for some area and made deviation during the course of construction or have exceeded the sanctioned built up area are required to be treated with some empathy, provided that such construction is within the framework of MIDC DCRs. With this view, the issues faced by industries was discussed in the MIDC Board Meeting on 28/08/2013 and it was decided to issue guidelines for recovering charges for compounding of offences as per section 143 of the MR & TP Act. Further, considering policy of ease of doing business MIDC has issued circular No C 55146 dated 13/07/2017 in which for issuing occupancy certificate only in case of high risk building MIDC inspection is necessary otherwise owner and certified architect will give self-declaration and based on their report occupancy certificate is issued.

Hence, as per policy of MIDC there is provision to regularise unauthorised construction if it is in the frame of DCR. In such cases although the industry often starts the construction without prior approval, Special Planning Authority (SPA-MIDC) has no alternative than to serve notice and then to regularise the structures by recovering compounding charges after receipt of such request from the plot holder.

MIDC has issued notices to the plot holder for demolition of unsafe structures vide No. D-95516, dt. 03/12/2019, No. A- 17021, dt. 13/01/2020, No. B-11586, dt.21/04/2020, No. B- 73548, dt. 24/07/2020.

Now, M/s. ANK Pharma Pvt. Ltd., Plot No. M-2 has carried structural audit for the structures on the plot from M/s. M.P. Prime Structures Pvt. Ltd. a licensed Structural Engineer & submitted report on dt. 31/01/2022. The Structural Engineer has suggested remedial measures & repairing of these structures.

Hence, as per the policy of MIDC, the plot holder can obtain the revised plan approval by paying necessary compounding charges, other statutory charges and regularise the structures within frame of DCR.

**B. Maharashtra Fire Prevention & Life Safety Measures Act, 2006.**

M/s ANK Pharma Pvt Ltd. is situated in M.I.D.C. area and comes under the Jurisdiction of Divisional Fire office, M.I.D.C, Andheri. Provisional NOC was granted by Divisional Fire officer,

Operation M.I.D.C. on dated 08/07/2008 vide letter No. MIDC /Fire/128/08. Revised Provisional NOC was granted by Divisional Fire officer, Operation M.I.D.C. on date 15/09/2012 vide letter No. MIDC/Fire/NOC/2012. Without obtaining the NOC from Fire Department, the occupier of the factory was using premises as a factory. 08.5 LABOR DEPARTMENT Factory was not registered under Building and Other Construction Workers Act, 1986 even though it was under

construction. As Labour department did not get the knowledge about construction of the factory from any other departments the factory remained unregistered

09. EXTENT OF DAMAGE TO LIFE, ENVIRONMENT & PROPERTY 09.1 DAMAGE TO LIFE Due to the incident, there is loss of 8 lives (4-Male & 4-Female) and total 7 persons (5-Male & 2-Female) have been injured. Some of the deceased and injured persons were not the employee / worker of the industry but the family members of the worker who were residing in the same building where blast has occurred. There is no loss of life other than persons reported in any reports.

09.2 DAMAGE TO ENVIRONMENT During the incident due to blast in the reactor, hazardous chemicals/ material got blown out in the form of emissions to the environment. There is no visible damage to the environment i.e. soil, water due to incident. The relevant air emission data is not available and therefore due to lack of information / data damage assessment could not be carried out.

#### 09.3 DAMAGE TO PROPERTY-

As reported in the Report of DISH dated 24.01.2020, following damage to properties of the nearby industries have been reported.

a) Plant and Machinery of M/s ANK Pharma Pvt. Ltd:- In this explosion some of the RCC columns, beams, slabs, security cabin, compound wall & walls of building 1 having area approximately 977.46 sq. meter are damaged. The machineries such as 1 SS reactor, accessories of baby boiler, centrifuge, water pipelines, ETP are damaged in the explosion. Some vehicles parked near main gate are also damaged due to the impact of debris.

b) M/s Galaxy surfactant Ltd, Plot No-M-3:- compound wall adjacent to M/s. ANK Pharma collapsed due to the explosion. Factory building walls facing plot M-2 side, glass windows of factory building and false ceilings also got damaged in this explosion causing an approximate loss of Rs 51 lakh.

c) M/s Vikas Chemicals Plot No L-39:- Glass windows, AC sheets roofing and FRP tank was damaged resulting in the release of spend acid of 4 Kl causing an approximate loss of Rs 20,000.

d) M/s Beekay Tex, Plot No- L-38:- Glass windows and material damage causing an approximate loss of Rs 2 lakh.

e) M/s Microtech Polytech Pvt Ltd, Plot No- L-60, 61:- Glass windows, AC sheets roofing etc. sustained damage resulting in an approximate loss of Rs 2 lakh.

## 10. COMPENSATION TOWARDS LOSS OF LIVES AND INJURIES AND DAMAGE TO ENVIRONMENT

### 10.1 COMPENSATION TOWARDS LOSS OF LIVES AND INJURIES:

Due to the incident, there is loss of 8 lives (4-Male & 4-Female) and total 7 persons (5-Male & 2-Female) have been injured. The information of deceased and injured persons provided by Deputy Labour Commissioner Palghar vide letter 02.06.2022 where details including name of person, age, salary etc., are provided as Annexure-XII.

#### 10.1.1 COMPENSATION PAID TO INJURED PERSONS:

Injured persons were admitted to Thunga Hospital, Boisar and discharged from hospital after the treatment. The information on nature of injury is provided vide DISH letter dated 13.04.2022 in Annexure-XIII.

Medical expenses have been provided by Industry - M/s Ank Pharma Pvt Ltd, and total Rs. 3,00,00/- (Rs three lakhs) have been spent towards medical expenses. The details of medical expenses made are provided in Industry Letter dated 07.04.2022 (Annexure-XIV). The industry paid Rs. 50,000/- to two injured person and Rs. 25,000 to one injured persons only out of seven injured persons (Annexure-XIV). Proper compensation to injured person by the State Government and Industry is not provided.

10.1.2 COMPENSATION TO BE PAID TO THE INJURED PERSONS The State Govt has not paid any compensation to the injured workers. As per Hon'ble NGT order dated 18.12.2020 (para 15 & 16) in OA No. 274 of 2020, which are reproduced here, and also in similar accident matters/orders of Hon'ble NGT-

"15. ".....6. ... we assess interim compensation for death to be 15 lacs each (considering multiplier of around 16 and loss of earning of about one lac a year, taking the minimum wage, apart from conventional sums), for grievous injury Rs. 5 lac per person, for other injuries of persons hospitalized Rs. 2.5 lac per person and for displacement at Rs. 25000/- per person."

16. Accordingly, the said scale needs to be applied to the present case. Final compensation may be suggested by the Committee, including for restoration of environment. The industrial unit may deposit appropriate .....

As mentioned above, Rs.5 lac in case of grievous injury and Rs. 2.5 lac in case of other injury to be paid to injured (grievous/ minor injury) persons.



Therefore, the injured (grievous and minor) needs to get Rs. 5,00,000/- & Rs. 2,50,000 as interim compensations respectively, and based on the nature of injury/disability certificate further compensation to be provided to them. 10.1.3 COMPENSATION/EX-GRATIA PAID TO DECEASED PERSON:

The Collector Office/District Magistrate Office, Palghar has released the payment of Rs. 5 Lakh per deceased person to kin of 8 deceased person under the Chief Minister Relief Fund as per letter dated 17.02.2022 from Collector Office, Palghar. The copy of letter dated 17.02.2022 is provided in Annexure-XV. The industry has deposited compensation amount to the Court for four deceased persons and given cash amount (different amount) to other four deceased persons including lift technician who came for lift maintenance work during the day of incident. The details are given in letter of Industry which is provided as Annexure-XIV. The amount paid by State Government and deposited to the Court /to deceased persons by the Industry is provided in Table-07 (page 36).

10.1.4 COMPENSATION ASSESSMENT BY THE COMMITTEE FOR THE DECEASED PERSONS Eight person lost their lives and seven person sustained injuries due to the unfortunate incident on 11.01.2020 due to blast not on account of their act of negligence or while discharging their duties came in contact with machinery or the chemicals, but due to negligent attitude of industry management with reference to use of reactor without safety measures, manufacturing of chemical/bulk intermediate product without permission/consent, construction of building without requisite permission etc. The committee referred Employee's Compensation Act, 1923 and Hon'ble Supreme Court Cases (Sarla Verma (supra), National Insurance Company Ltd. v. Pranay Sethi, (2017) 16 SCC 680 etc) for assessment of compensation in line with various accident matters dealt by Hon'ble NGT (orders & committee reports) as mentioned in para 10 of the order dated 20.12.2021 in this present matter (OA No. 19 of 2020).

As per of order of Hon'ble NGT in O.A. No. 85/2020 (Earlier O.A.No.22/2020 [WZ]) (Aryavart Foundation through its President v/s Yashashvi Rasayan Pvt. Ltd &Anr) reads as: "...32. In view of frequent accidents resulting in deaths and injuries, the Chief Secretaries of all the States/UTs may evolve a mechanism to ensure that the companies dealing with hazardous substance must forthwith pay compensation for deaths and injuries to the victims at least as per Workmen Compensation Act, 1923 wherever applicable or the 40 33 principle of restitution laid down in Sarla Verma (supra), National Insurance Company Ltd. v. Pranay Sethi, (2017) 16 SCC 680 to the victims either directly or through the District Magistrate.

A. COMPENSATION AS PER EMPLOYEE'S COMPENESATION ACT 1923 As per Employee's Compensation Act 1923 & amendments thereof, the compensation to the deceased persons have been calculated and are provided in the Table 6.

**TABLE 6 COMPENSATION AS PER EMPLOYEE'S COMPENSATION ACT 1923 & AMENDMENTS THEREOF** Factor as per Salary as Employee per Sr. Compensation Notification Compensation Name Age n Act- dated no. Amount 1923 03/01/2020 Schedule IV \* # Sh. Ilias

1. Bashir 58 124.7 15000 935250 Ansari Smt. Madhuri
2. 49 156.47 15000 1173525 Vasistha Singh Smt. Rajmatidevi
3. 36 194.64 15000 1459800 Surendra Yadav Sh. Mohan
4. Suryabhan 55 135.56 15000 1016700 Ingle
5. Sh. Trinath 41 181.37 15000 1360275 Dasri Note:

\*as per Employee's Compensation Act-1923, Schedule IV # as per Notification S.O.71 (E) dated 03/01/2020 The Central government has changed the amount of wages to be considered for calculation of compensation to workers under the Employee's Compensation Act 1923 vide notification S.O.71 (E) dated January 3, 2020. The amount of wages considered previously for the calculation of compensation was just Rs 8,000. Now, it will be Rs 15,000, according to the notification by the Ministry of Labour and Employment.

The computation of compensation under the Act is done as per provisions on Section 4 of the Act:

1. In case of accidents resulting in death: an amount equal to fifty per cent. of the monthly wages of the deceased multiplied by the relevant factor; or an amount of Rs 1,20,000, whichever is more;

**B. COMPENSATION AS PER HON'BLE SUPREME COURT CASES** The committee referred following Hon'ble Supreme Court Cases for assessment of compensation with different components, in line with various accident matters dealt by Hon'ble NGT (orders & committee reports) as mentioned in para 10 of the order dated 20.12.2021 in this matter.

Hon'ble Supreme Court of India, Sarla Verma & Ors vs Delhi Transport Corp.& Anr on 15 April, 2009, Author:

R.V.Raveendran, J Bench: R.V. Raveendran, J Lokeshwar Singh Panta J, CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO 3483 OF 2008(Arising out of SLP [C] No.8648 of 2007 Supreme Court of India Amrit Bhanu Shali & Ors vs National Insurance Co. Ltd. & Ors on 4 April, 2012 Author:

J. Bench: G.S. Singhvi, Sudhansu Jyoti Mukhopadhyaya REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL

NO. 3397 OF 2012 (ARISING OUT OF SLP(C) NO.27751 OF 2011) Hon'ble Supreme Court of India, National Insurance Co. Ltd vs Pranay Sethi on 31 October, 2017, Author: M. Dipak CJI, Bench-. CJI. (Dipak Misra ) J. (A.K. Sikri ) J. (A.M. Khanwilkar ) J. (Dr. D.Y. Chandrachud ) J. (Ashok Bhushan ) New Delhi; , CIVIL APPELALTE JURISDICTION SPECIAL LEAVE PETITION (CIVIL) NO. 25590 OF 2014 with other Civil Appeals & Special Leave Petitions Hon'ble Supreme Court of India, Sunita Tokas vs New Inda Insurance Co. Ltd. on 16 August, 2019 Author: Hon'Ble Ms. Malhotra,J Bench: Hon'Ble Ms. Malhotra J, Sanjiv Khanna, J, CIVIL APPELLATE JURISDICTION, CIVIL APPEAL NO. 6339 OF 2019(Arising out of SLP (Civil) No. 2859 of 2018) As per para 5 of Judgement in case- Hon'ble Supreme Court of India, Sunita Tokas vs New Inda Insurance Co. Ltd. on 16 August, 2019 Author: Hon'Ble Ms. Malhotra,J Bench:

Hon'Ble Ms. Malhotra J, Sanjiv Khanna, J, CIVIL APPELLATE JURISDICTION, CIVIL APPEAL NO. 6339 OF 2019(Arising out of SLP (Civil) No. 2859 of 2018) 5. In light of the aforesaid discussion, the compensation awarded to the Appellants is being enhanced as follows:

Income	:	12,000/ PM
Future Prospects	:	4,800/ (i.e. 40% of the income)
Deduction towards personal expenses	:	50%
Total income	:	8,400/ (i.e. 50% of 12,000 + 4,800)
Multiplier	:	18
Loss of future income	:	18,14,400/ (i.e. 8,400 x 12 x 18)
Loss of love and affection	:	Rs. 2,00,000/
Loss of estate and funeral expenses	:	Rs. 50,000/
Total		Rs. 20,64,400/

The factors considered for assessment of compensation in the present case is described as below.

i. Monthly salary/Income of the deceased person Permanent employee- as per the information provided by District Administration/Industry for Lab technician/helper

-monthly salary or total monthly wages as per information provided by Govt Labour Officer, Pune as per Govt of Maharashtra, whichever is higher.

ii. Addition to Income for Future prospects We referred following paragraphs of National Insurance Co. Ltd vs Pranay Sethi on 31 October, 2017 IN THE SUPREME COURT OF INDIA, CIVIL APPELALTE JURISDICTION SPECIAL LEAVE PETITION (CIVIL) NO. 25590 OF 2014 National Insurance Company Limited Petitioner(s) Versus Pranay Sethi and Ors. Respondent(s).

61. In view of the aforesaid analysis, we proceed to record our conclusions: -

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warranted where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

iii. Deduction for personal and living expense The committee has considered following criteria referring the judgement order of Sarla Verma & Ors Vs. Delhi Transport Corporation & Anr., Para 14, "Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4 th) where the number of dependent family members is 4 to 6, and one-fifth (1/5 th) where the number of dependent family members exceed six" and para15 "Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself.....".

iv. Multiplier Multiplier considered as per para 44 of Judgment in the case- Hon'ble Supreme Court of India, National Insurance Co. Ltd vs Pranay Sethi on 31 October, 2017, Author: M. Dipak CJI, Bench-. CJI. (Dipak Misra ) J. (A.K. Sikri ) J. (A.M. Khanwilkar ) J. (Dr. D.Y. Chandrachud) J. (Ashok Bhushan) New Delhi; CIVIL APPEALTE JURISDICTION SPECIAL LEAVE PETITION (CIVIL) NO. 25590 OF 2014 with other Civil Appeals & Special Leave Petitions.

44. As far as the multiplier is concerned, the claims tribunal and the Courts shall be guided by Step 2 that finds place in paragraph 19 of Sarla Verma read with paragraph 42 of the said judgment. For the sake of completeness, paragraph 42 is extracted below:-

42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M- 16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

v. Loss of love and affection and loss of Estate and Funeral Expenses-

The committee considered the para 5 of latest judgement in case Sunita Tokas vs New India Insurance Co. Ltd. on 16 August, 2019 out of four cases for the Loss of love & affection Rs.2,00,000/- & loss of Estate & funeral Expenses- Rs. 50,000/- COMPUTATION OF COMPENSATION-

(Income per month (considering the total monthly/daily wages applicable in the state of Maharashtra, or income per month whichever is higher) + Income for Future prospects - Deduction for personal and living expense) x 12 months = Yearly compensation x Multiplier = Loss of Future Income + loss of love & affection + Loss of estate & funeral expenses= Total Compensation Considering the above methodology and the information regarding deceased person- name, age, salary etc from Deputy Labour Commissioner, Palghar/Collector Office & Industry (Annexure-XII), the committee assessed compensation for the deceased persons which is provided as Annexure-XVI.

The committee has assessed the compensation for the deceased workers/employee engaged by the industry and outside industry including worker/technician- Shri Trinath Dasari who came for Lift maintenance on day of incident. The ex-gratia/compensation is paid to him by State Govt under CM Relief Fund and the industry has paid Rs. 25,000/- to him which is not adequate. Thus, compensation as per assessment of committee considering Employee's Compensation Act, Hon'ble SC cases and ex- gratia/compensation paid by State Govt and deposited in the Court/ paid by the industry) to the kin of each deceased person are tabulated in following Table-7. The committee recommended for the additional compensation to be paid to the kin of deceased person which is mentioned in the Table-7.

Table-7 COMPENSATION AS PER ASSESSMENT OF COMMITTEE CONSIDERING EMPLOYEE'S COMPENSATION ACT, HON'BLE SC CASES AND EX-GRATIA/COMPENSATION PAID BY STATE GOVT, DEPOSITED IN THE COURT & PAID BY INDUSTRY TO THE KIN OF EACH DECEASED PERSON Compensation Compensation Compensation Compensation Compensation as assessed by Additional deposited in paid by GoM /Ex - per committee wrt Compensation Sr. No Name Age Court/ paid by gratia Employee Hon'ble Supreme to under Chief the industry paid Compensation Court be paid Minister Relief Act- Orders/Judgment A Fund B C=A+B 1923 D E F=E-C Shri Mohan 15,16,700 9,59,700 1 55 10,16,700 5,00,000 10,16,700 24,76,400 Ingle Shri Ilias Bashir Ansari 11,97,073 82,527 2 58 6,97,073 5,00,000 9,35,250 12,79,600 Smt. Madhuri 13,00,000 4,71,000 3 49 8,00,000 5,00,000 11,73,525 17,71,000 Vasistha Singh Smt. 6,40,000 17,16,000 Rajmatidevi 4 36 1,40,000 5,00,000 14,59,800 23,56,000 Surendra Yadav Shri Trinath 5,25,000 13,96,040 5 41 25,000 5,00,000 13,60,275 19,21,040 Dasri Smt Nishu 8,00,000 6\* 24 3,00,000 5,00,000 - -

	Rahul Singh				
	Shri Golu				5,50,000
7#	Surendra	20	50,000	5,00,000	
	Yadav				
	Smt. Khushi Yadav				5,50,000
8#		13	50,000	5,00,000	

Note: \* family member of Smt. Madhuri Vasistha Singh # Family members of Smt. Rajmatidevi Surendra Yadav who were residing in the building where blast occurred.

10.2 COMPENSATION TOWARDS DAMAGE TO ENVIRONMENT During the incident due to blast, chemicals blow out and emissions spread to the environment. There was no fire due to blast in the reactor. However, the relevant air emission data is not available and therefore damage assessment could not be carried out due to lack of information/data. There appears to be no visible damage to the environment i.e. soil, water due to incident. However, Industry was engaged in the process of making drug intermediate like Ortho Chlorobenzoic Acid (OCBA) with raw materials- Ortho Chlorotoluene (99.5%) and Nitric Acid (58%), as reported on trial basis, but not having any permission, and also the said product is not mentioned in the Consent and EC. Also various contraventions of provisions under Factory Acts have been reported. Eight person lost their lives and seven person sustained injuries due to the unfortunate incident on 11.01.2020 due to blast not on account of their act of neglect or while discharging their duties came in contact with machinery or the chemicals but due to negligent attitude of industry management with reference to use of reactor without safety measures, manufacturing of chemical/bulk intermediate product without permission/consent, construction of building without requisite permission etc. The committee referred to various orders/judgments enumerated, in the judgment of Hon'ble NGT which is pronounced and uploaded on 24.01.2022 in the matter OA No. 64 of 2016 (Akhil Bhartiya Mangela Samaj Parishad & Anr Vs MPCB & Ors), for the environmental compensation/ damage towards the environment based on turnover of the defaulters, project cost and other methodologies adopted.

The relevant paras of the judgment are reproduced below-

194. The issue relating to damages/compensation and further remedial or restorative action for the degradation/loss/damage caused to environment is largely governed by judicial precedents of Apex Court which has acted as a champion for protection of environment in the last almost four decades having considered various activities causing degradation/damage to environment in multi-various manner. It would be appropriate to have a quick retrospect of such authorities which will be relevant and prove to be a useful guide as also binding precedent for answering questions relating to protection of environment, determination of environmental compensation, further direction necessary for remediation/restoration of environment and also to ensure that no further violation of environmental laws takes place. The committee found appropriate to use the Hon'ble SC order in the matter-CIVIL APPEAL NO. 10854 OF 2016 M/S. GOEL GANGA DEVELOPERS INDIA PVT. LTD. Versus UNION OF INDIA THROUGH SECRETARY MINISTRY OF ENVIRONMENT AND FORESTS & ORS. With CIVIL APPEAL NO. 10901 OF 2016 CIVIL APPEAL NO. 5157-5158 OF 2018, where damage imposed is 10% of the project cost.

As mentioned in the CTO issued by MPCB, the capital investment of the project is Rs. 2.17 Crore, and therefore 10 % of this project cost i.e. Rs 21.7 lakhs may be imposed as damage cost to the industry.

11.0 OBSERVATIONS OF COMMITTEE ON THE ISSUES TO BE CONSIDERED AS MENTIONED IN THE ORDER OF HON'BLE NGT DATED 20.12.2021 11.1 Compliance of MSIHC Rules, 1989/ Accidents (Emergency Planning, Preparedness, and Response) Rules, "Whether there is failure to comply the Manufacture, Storage & Import of Hazardous Chemical Rules, 1989 Accidents (Emergency Planning, Preparedness, and Response) Rules, 1996, under the EP Act, 1986 on the subject of safety norms in the course of manufacturing hazardous chemicals. The 1989 Rules inter alia require preparation of On-site and Off-site Emergency Plans, holding of mock drills, safety audits periodically and to maintain safety norms during operation.

The raw materials, in the reactor during the blast, were Ortho Chlorotoluene (99.5%) and Nitric Acid (58 %) for manufacturing of drug intermediate Ortho Chlorobenzoic Acid (OCBA). These raw material and products were not mentioned in the consent and also EC.

The raw material chemical -Ortho-chlorotoluene (Flash Point- 42 Deg. C) is highly inflammable in nature, and Nitric Acid (58%) which is corrosive and toxic in nature. Both are hazardous chemicals, hence the provisions of Factories Act, 1948 are applicable to this premises, as per Clause-1 of Schedule-II of Notification no FAC 2088/2048/(997) Lab-4 dated 22nd January, 1993 and the premises constitutes a "Factory" for the purpose of Factories Act 1948.

The industry was making production illegally, though reported as trial production, and using Nitric Acid which is mentioned part-II of Schedule-1 in MSIHC Rules and "industrial activity" where process (n) nitration was being carried out in an industrial installation referred to in Schedule 4 of this Rule. Ortho- chlorotoluene (Flash Point- 42 Deg. C) is highly inflammable in nature, and Nitric Acid (58%) which is corrosive and toxic in nature and meeting with properties of chemicals given in part-I in Schedule-1 of MSIHC Rules 1989. Therefore, the MISIHC Rules are applicable.

The products mentioned in the EC issued by SEIAA are Poridone- Iodine, Piroxicalm. Phenyl Propanol Amine-HCL, Nalidixin Acid, Cholorosoxazone, Phenyl Ephrine HCL and the raw materials for these products are mentioned (as per Consent Application available with MPCB) in the Table-o8.

TABLE- o8 RAW MATERIALS AND PRODUCTS USED DURING THE BLAST AND AS PER COSNSENT APPLICATION, CONSNET TO OPERATE AND ENVIRONMENTAL CLEARANCE Sr. No. of Chemical as per list of Quantity chemicals Part-II Sr. No. Particulars (MT/M) Schedule-1 of MSIHC Rules, 1989 RAW MATERIALS USED DURING BLAST A INCIDENT 1 Ortho-Chlorotoluene - Not Listed PRODUCTS FORMED DURING BLAST INCIDENT B 1 Ortho Chlorobenzoic Acid - Not Listed RAW MATERIALS AS PER CONSENT APPLICATION C /EC 1 Povidone 1.61 Not listed 3 4-Chlrooamino Phenol 0.7 Not listed 4 Urea 1.4 Not listed 6 Methanol 8.79 Not listed 8 Sodium Niitrite 0.215 Not listed 10 Raney Nickle 0.12 Not listed 11 Carbon 0.035 Not listed 13 Isopropyl Chloroacetate 0.52 Not listed 14 Dimethyl Sulphate 0.35 Not listed 15 Carbon 0.008 Not listed 16 Carbon 0.001 Not listed 17 Propiophenone 0.5 Not listed 18 2- Amino Pyridine 0.275 Not listed 19 Ethyl Methyl Malonic Eser 0.22 Not listed 20 6-Amino Picoline 0.3 Not listed 21 Diphenyl Oxide 0.3 Not listed 22 Tartariic Acid 0.275 Not listed 23 Sodium Saccharinie 0.7 Not listed 25 DMF 0.92 Not listed 26 2- Ethyl Bromide 0.125 Not listed 27 Liq Ammonia 0.2 Not listed Bromo Hydroxyl Penyl Ethanoate 29 0.274 Not listed 31 Carbon 0.014 Not listed 32 Palladium On Carbon 0.071 Not listed 33 Liq Ammonia 1.012 Not listed 35 Methanol- HCL 0.076 Not listed D Products as per Consent/EC 1 Povidone Iodine 2 Not listed 2 Piroxicalm 0.7 Not listed Phenyl Propanol 3 Amine - HCL 0.5 Not listed 4 Nalidixin Acid 0.3 Not listed 5 Chlorosoxazone 0.7 Not listed 6 Phenyl Ephrine-HCL 0.1 Not listed As per above Table-o8, it can be inferred that Iodine, Acetic acid, Isopropyl Alcohol, Sulphuric Acid, Toluene, Acetic Anahydride and Acetone are chemicals listed Part-II Schedule-1 of MSIHC Rules, 1989. However, these chemicals are not listed in Part-I Schedule- 3 of MSIHC Rules, 1989 and for Threshold quantity specified in the column 3 & 4 of schedule 3 MSIHC, Rule 1989. As per the Sub-rule 1 of Rule 6 of MSIHC Rules, 1989 "Rules 7 to 15 shall apply to - (a) an industrial activity in which there is involved a quantity of hazardous chemical listed in Column 2 of Schedule 3 which is equal to or more than the quantity specified in the entry for that chemical in Column 3 & 4 (Rules 10-12 only for Column 4); and (b) isolated storage in which there is involved a quantity of a hazardous chemical listed in Column 2 of Schedule 2 which is equal to or more than the quantity specified in the entry for that chemical in Column 3 [3 & 4 (rules 10-12 only for column

4).

Therefore Rules 7 to 15 of said MSIHC Rule are not applicable to the industry. The Rules 7 to 15 of the said Rules are:

7. Approval and notification of sites

8. Updating of the site notification following changes in the threshold quantity –

9. Transitional provisions



10. Safety Reports and Safety audit reports–

11. Updating of reports under rule 10

12. Requirement for further information to be sent to the authority

13. Preparation to on-site emergency plan by the occupier

14. Preparation of off-site emergency plan by the authority

15. Information to be given to persons liable to be affected by a major accident 11.2 ENVIRONMENTAL CLEARANCE (EC) FOR PROJECT/INDUSTRY "Whether the project in question is to be treated as Category 'A' requiring EC from the MoEF&CC. It falls under Entry 5(f) of the Schedule to the EIA Notification dated 14.09.2006. In view of general condition appended to the said schedule if the project is located in critically polluted areas, it becomes category A project.

In that case, operation of the unit without requisite EC from MoEF&CC, merely based on EC by SEIAA may amount to violation of law."

The Industry has obtained Environment Clearance (EC) from State Environmental Impact Assessment Authority (SEIAA) vide letter No. SEAC/2010/CR 654/TC.2 dated 07.06.2011 for new bulk drug unit (of total capacity 4.3 MT/month) and the same was re- validated vide letter dated 20.12.2018 for a period up to 05.06.2023.

SEIAA, Maharashtra granted Environmental Clearance (EC) for the establishment of Bulk Drug Unit with production capacity of 4.3 MT/month. The project category falls under 5 (f) of schedule of EIA Notification 2006. Category 5 (f) consists of Synthetic organic chemicals industry projects.

Project located outside the notified industrial area/ estate comes under Category A and project located in notified industrial area/ estate comes under Category B. Further, as per the General Condition mentioned under Schedule of EIA Notification 2006 "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: Critically Polluted areas as notified by the Central Pollution Control Board from time to time."

MoEF&CC vide Office Memorandum (OM) dated 13.01.2010 issued a list of critically polluted areas based on Comprehensive Environment Pollution Index (CEPI) score which included the Tarapur. As per the OM, moratorium was imposed for consideration of the projects in the critically polluted areas. However, vide OM dated 26.10.2020, the moratorium was lifted from Tarapur area. This OM further states that "The EACs/SEACs will take extra precaution during appraisal of project to be located in these areas and prescribe the requisite stringent safeguard measures, so that the environmental quality is not deteriorate further in these areas". This reveals that Category 'A' will be appraised by EACs and Category 'B' by SEACs. However, Ministry vide Office Memorandum dated

28.04.2011 (which was issued prior to the issuance of EC to the project) clarified that "projects to be located within 10 kms from the latest list of the critically polluted areas as identified by CPCB would attract the General Condition of EIA Notification 2006 and therefore such projects would need to be treated as Category 'A' projects. In view of the above, it is opined that the project supposed to have been appraised by EAC of MoEF&CC. However, the project was appraised at State Level by State Expert Appraisal Committee (SEAC) and SEIAA issued EC. SEIAA Maharashtra should have forwarded the Application to MoEF& CC for appraisal as Category A project.

**12.0 CONCLUSIONS**  
**12.1** Based on the Hon'ble NGT aforesaid order, the present report records the key aspects of a major chemical accident that occurred on 11th January 2020 evening in the form of a reactor explosion that took place at M/s. Ank Pharma Pvt. Ltd., Plot No. M-2, MIDC Tarapur Industrial Area, Boisar (W), Dist Palghar, which claimed the life of 8 persons, and another 7 sustained various degrees of injury. The immediate physical cause of the accident was reactor explosion due to uncontrolled reaction, which was precipitated by a combination of failure to adhere to basic engineering design requirements and standards as well as faulty operation. The root causes were identified to be human errors which issued out of a management failure to recognize the need for due diligence to be exercised in both engineering design and operation, which constitute a serious act of negligence.

**12.2** The Industry was engaged in the process of making drug intermediate like Ortho Chlorobenzoic Acid (OCBA) with raw materials- Ortho Chlorotoluene (99.5%) and Nitric Acid (58%), as reported on trial basis, but no necessary permissions/plan approvals had been obtained from DISH, MIDC and also the said product was not mentioned in the Consent and EC. There was illegal installation of reactors, thermopacks, centrifuge and the industry was manufacturing products of sister concern industry i.e. M/s. Alexo Chemicals.

**12.3** As noted above, 8 persons faced fatality and another 7 persons were injured due to the accident. The Collector Office, Palghar has released the payment of Rs. 5 Lakh per deceased person to kin of 8 deceased person under the Chief Minister Relief Fund in the month of February 2020. The industry has deposited compensation amount to the Court for four deceased persons and given cash amount (different amounts) to other four deceased persons including lift technician who come for lift maintenance work during the day of incident. The details of the above in given in Table-07.

**12.4** The committee assessed the compensation considering Employee's Compensation Act, Hon'ble SC cases for the deceased workers/employee engaged by the industry and outside industry including worker/technician- Shri Trinath Dasari who came for Lift maintenance on day of incident. It is to be noted that ex- gratia/compensation of Rs. 5 lakhs by State Govt under CM Relief Fund and Rs. 25,000/- by the industry paid for him which is not adequate.

Compensation as per assessment of committee considering Employee's Compensation Act, Hon'ble SC cases and ex- gratia/compensation paid by State Govt and deposited in Court/ paid by the industry to the kin of each deceased person are tabulated in Table-7. The assessed compensation is more than the total compensation paid by the State Govt and deposited in the Court/paid by the Industry and therefore, the committee recommended to consider to pay the additional

compensation to the kin of deceased person as shown in the Table-7.

12.5 The injured persons were admitted to Thunga Hospital Boisar and total Rs. 3,00,00/- (Rs three lakhs) have been spent towards medical expenses by the Industry. The industry paid Rs. 50,000/- to two injured persons and Rs. 25,000 to one injured person only out of seven injured persons. The State Govt has not paid any compensation to the injured workers/persons and industry also paid very meagre amount to the three injured persons out of seven. Therefore, refereeing Hon'ble NGT order dated 18.12.2020 (para 15 & 16) in OA No. 274 of 2020, and other accident related orders, the injured (grievous & minor) persons need to get Rs 5 lac and Rs 2.5 lac as interim compensations respectively, and based on the nature of injury/disability certificate further compensation may be provided to them by Industry through District Administration. 12.6 During the incident due to blast, chemicals in the reactor blow out and emissions spread to the environment. There was no fire due to blast in the reactor. However, the relevant air emission data is not available and therefore evaluation of damage to the air environment could not be carried out due to lack of information/data. There appears to be no visible damage to the environment i.e. soil, water due to incident. However, considering the non-compliance of provisions under Environmental Acts i.e. manufacturing of product which was not in the Consent & EC and operation without due government license/persimmons (DISH, MIDC, labour Department), the committee refereed various orders/judgments enumerated, in the judgment of Hon'ble NGT which is pronounced and uploaded on 24.01.2022 in the matter OA No. 64 of 2016 (Akhil Bhartiya Mangela Samaj Parishad & Anr Vs MPCB & Ors), for the environmental compensation / damage towards the environment based on turnover of the defaulters, project cost and other methodologies adopted.

The committee has found appropriate to use the Hon'ble SC order in the matter- CIVIL APPEAL NO. 10854 OF 2016 M/S. GOEL GANGA DEVELOPERS INDIA PVT. LTD. Versus UNION OF INDIA THROUGH SECRETARY MINISTRY OF ENVIRONMENT AND FORESTS & ORS. With CIVIL APPEAL NO. 10901 OF 2016 CIVIL APPEAL NO. 5157-5158 OF 2018, for imposing damage cost/compensation which is 10% of the project cost. Accordingly, Rs 21.7 lakhs (i.e. 10 % of this project cost-capital investment Rs. 2.17 Crore as per CTO issued by MPCB) may be imposed as damage cost to the industry.

12.7 There was damage to the building of the industry where blast occurred and also nearby properties as listed in para 9.3. The debris and other structure have been removed as observed during the visit.

12.8 Owing to various non-compliances observed and enlisted, as above in foregoing sections of the reports of different departments have initiated action taken/filed case against industry/owner for violations of various applicable provisions under Acts/Rules such as Factories Acts 1948, Water (P & CP) Act 1974 & Air (P & CP) Act 1981, HOW (M & TM) Rules 2016, Police FIR under IPC Section 304 A , 283, 337 & 427.

Based on the findings of the present investigation, a set of future remedial measures and select general recommendations for systemic improvement in respect of all other similar factories in the region have been formulated.

### 13. RECOMMENDATIONS:

Actions against the owner of the industry should be expedited by respective departments for the various non-compliances of provisions under the Rules/Acts as detailed in para 08.0. Damage cost of Rs 21.7 lakhs (Rs. Twenty-one lac seventy thousand only) may be imposed and recovered from the industry in view of non-compliance of provisions under Environmental Acts i.e. operation without consented product, without necessary permissions/Plan approvals from DISH, MIDC and also the said product was not mentioned in the Consent and EC, illegal installation of reactors, thermopack boiler and centrifuge.

It is recommended to consider to pay the additional compensation to the kin of deceased person as shown in the Table-7, as the assessed compensation by the Committee is more than the total compensation paid by the State Govt under CM Relief Fund and deposited in the Court/paid by the Industry.

It is recommended to consider to pay Rs 5 lac and Rs 2.5 lac as interim compensations to the injured (grievous & minor) persons respectively refereeing Hon'ble NGT order dated 18.12.2020 (para 15 & 16) in OA No. 274 of 2020, and other accident related orders. Further, based on the nature of injury/disability certificate, compensation may be provided to them by Industry through District Administration.

**14. SUGGESTED REMEDIAL MEASURES** This section outlines a set of plausible remedial measures and recommendation to avoid similar accidents in future in respect of the factory under consideration. They are enumerated as below- a. The industry need to restructure the design and operation of all manufacturing processes executed within the organization and ensure that they are fully compliant with requisite engineering and related industry standards. In addition, all required safety features must be integrated in the design of all manufacturing operations. Prior to re-start of the operation these adopted measures may be audited and certified by third-party consultants and competent authority. b. The industry also needs to employ persons with the required engineering background and skill to apprehend all associated technical and safety requirements of the manufacturing processes.

c. The minimum possible hazardous raw materials may be brought to the production area. There is also the need to ensure and after completion of the production process the product is transferred to a separate storage area so that there is no accumulation of hazardous materials in the production area.

d. Flameproof fittings shall be used where highly flammable liquids or other materials are used/handled/stored/processed.

e. MSDS of Chemicals used shall be displayed in work area in the language understood by the concerned workers. Compatibility of chemical storage shall be checked as per MSDS of the chemical.

f. In the event of any maintenance and / or repair activity which can affect the normal functioning of all/any equipment, all related equipment shall be shut down. Only when the maintenance activity is concluded satisfactorily and the necessary repair is undertaken should all other equipment be operated.

g. During all maintenance/repair and normal operation a competent person with the requisite experience must be present at site. The same or additional person also need be available to manage any abnormality or emergency arising during operation.

h. If there is any change in production process the necessary approval from all concerned departments shall be obtained. i. Periodic training of worker on normal and emergency management shall be conducted.

j. The workers/labor and family members should not live in the premises under any circumstances. Necessary checks and periodical inspection of industries may be carried out by Labour Department of State Govt.

k. Appropriate degree of co-ordination between the various concerned government agencies needs to be ensured so that all necessary compliances that need to be achieved by the industry in question are tracked and verified. The authorities need to be approached in appropriate order: District Administration, District Industries Centre, State Electricity Board, State Pollution Control Boards and Department of Industrial Safety and Health (DISH). On receiving any application from a prospective industry all agencies need to become informed simultaneously. An online portal may be developed to enable this information sharing. l. Provisions for fire prevention and fighting are more rigorous and hence updated in the Maharashtra Fire Prevention and Life Safety Measures Act, 2006 than provisions of Factories Act- 1948. Therefore, any manufacturing in a factory dealing with hazardous materials shall not be permitted unless final "No Objection" certificate is issued by respective authorities under said act.

m. Approvals for establishment of an industrial unit shall be granted in the appropriate sequence as deemed fit by State Govt with considerations/view from all concerned department and necessary provisions under Rules/Act so as to ensure all necessary compliances: Consent to Establishment / Provisional Fire NOC / Plan Approval from DISH / Approval of Layout Drawing by local Planning Authority (such as Industrial Development Corporation and Regional Development Authority) / Plan approval by FDA (In case of Pharmaceutical and Food processing units). Drawing approval by PESO (If applicable) can occur in parallel. For allowing production to commence Consent to Operate followed by final Fire NOC, PESO approvals, FDA approval if applicable and finally license by DISH must be secured. Also, intimation need be given to ESIC and PF authorities for enrolment of workers for social security facilities.

n. MPCB, DISH, MIDC and other concern/related departments are presently working with less manpower of sanctioned post. This situation renders regulatory enforcement difficult and inefficient by the relevant enforcement departments. It is suggested that the Government of Maharashtra takes the necessary steps to recruit the necessary number of officers and also ensure their empowerment."

13. From the side of Respondent No. 8-M/s. ANK Pharma Pvt.

Ltd./Project Proponent, a reply affidavit dated 17.08.2022 has been filed, where-in it is submitted that all the allegations made by the Applicant are false and frivolous. The learned Counsel for the Respondent No. 8 has argued that it is very unfortunate that such an occurrence happened. The industry is running closed since 13.01.2020 pursuant to the occurrence which happened on 11.01.2020. As per the Employees Compensation Act, compensation has already been paid. Much emphasis is laid upon Section 17 of the National Green Tribunal Act, 2010, which provides as follows:-

"17. Liability to pay relief or compensation in certain cases-

(1) Where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment specified in Schedule I, the person responsible shall be liable to pay such relief or compensation for such death, injury or damage, under all or any of the heads specified in Schedule II, as may be determined by the Tribunal.

(2) If the death, injury or damage caused by an accident or the adverse impact of an activity or operation or process under any enactment specified in Schedule I cannot be attributed to any single activity or operation or process but is the combined or resultant effect of several such activities, operations and processes, the Tribunal may, apportion the liability for relief or compensation amongst those responsible for such activities, operations and processes on an equitable basis. (3) The Tribunal shall, in case of an accident, apply the principle of no fault."

This clause makes provision relating to liability to pay relief or compensation in certain cases. It provides that the person responsible shall be liable to pay such relief or compensation for such death, injury or damage, under all or any of the heads specified in Schedule II to the Bill, as may be determined by the Tribunal in case where death or injury to any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment mentioned in Schedule I to the Bill. It further empowers the Tribunal that in cases where such death or injury or damage cannot be attributed to any single activity or operation or process but is the combined or resultant effect of several such activities, operation and processes, the Tribunal may, apportion the liability for compensation amongst those responsible for such activities, operations and processes on an equitable basis.

14. Having placed reliance upon above, it has been vehemently argued that it provides for compensation to such persons, who are other than the workmen employed in the industry and therefore, under this provision, no compensation can be awarded to the employees of the industry.

15. Our attention is drawn to page no. 311 of the paper book and it has been argued that the Committee has held that there is no visible damage to the environment i.e. soil and water due to

incident and that, relevant air emission data was not available, therefore, due to lack of information/data, damage assessment could not be carried out. Similarly regarding damage to the property, the details are given by the Committee under head 0.93 from sub-para (a) to (e) but it is argued that in respect of these damages to the property, no documentary evidence has been extended from the side of Committee, therefore, they should not be relied upon.

16. Thereafter, our attention is drawn to page no. 307 of the paper book and it is argued that the various Departments such as MPCB, Police Department, Maharashtra Industrial Development Corporation (MIDC), Maharashtra Fire Prevention & Life Safety Department and Labour Department have already taken action against the Project Proponent, which are mentioned by the Committee in its report from para 8.2 to 8.5, therefore, no additional action is required to be taken against the Project Proponent.

17. Thereafter, our attention is drawn to page nos. 323-324 of the paper book and it is argued that the Committee has assessed the environmental compensation, invoking the principle laid down in Goel Ganga's Case by charging 10% of the project cost, amounting to Rs. 21.7 lakhs, which cannot be held to be applicable in the present case because in the Goel Ganga's case, there was no EC and no Consent to Establish & Consent to Operate taken, while in the present case, all the permissions were by the Project Proponent, which are part of the reply affidavit of the Project Proponent, in which it is submitted that the Committee despite recording that there was no visible damage to environment, soil and water due to the incident, still has gone ahead to suggest for levying of environmental damage compensation as per the principle laid down in Goel Ganga's case, which is too exorbitant and illogical and not applicable in the case in hand.

18. Further, our attention is drawn to page no. 529 of the paper book, which is a part of the reply affidavit of the Respondent No. 8/Project Proponent, in which it is mentioned that it was wrong to say that the Project Proponent was manufacturing OCBA (a kind of chemical) as was noted by the 1st Committee. In fact, there was no manufacturing going on. The occurrence happened during the trial run being conducted to check the machinery. There was no deliberate act or any negligence committed on the part of the Answering Industry and lastly, it is urged that in case, this application is going to be allowed by this Tribunal then the compensation which has been paid to the dead or injured persons, should be directed to be adjusted against the said amount.

19. We are not reproducing remaining facts from the reply affidavit of Respondent No. 8 because most of the facts are already covered in the Joint Committee Report, which have already been reproduced above, in order to avoid repetition.

20. From the side of Respondent No. 3/MPCB, a reply affidavit dated 03.11.2021 has been filed, where-in it is submitted that the Consent to Operate was granted without any undue haste or by neglecting any provisions.

21. Most of the facts, which have been narrated in this affidavit, are already the same, which find mention in the Committee Report, hence they need not be repeated here.

22. From the side of Respondent No. 1/CPCB, a reply affidavit dated 01.09.2020 has been filed, where-in it is submitted that after due consideration of the submissions of MoEF&CC and CPCB, NGT had passed the order dated 23.08.2019, which is as follows:-

" i. Prohibiting the polluting activity, initiating prosecution and assessing & recovering compensation has to be taken only against the non-complying Red & Orange category industries. If any unit is complaint with the norms, such unit is not affected.

ii. There is no absolute bar for establishment/expansion of Red and Orange category industries in the CPAs/SPAs, being set up if they are found to be viable.

iii. The MoEF&CC can forthwith devise an appropriate mechanism to ensure that new legitimate activity or expansion can take place after due precautions are taken in the areas in question by Red and Orange category of units....".

In compliance with the above order, MoEF&CC devised a mechanism for environmental management of critically and severely polluted areas and also made consideration of the activities/projects in such areas. The CPCB shared the said mechanism with State/UT Governments and SPCBs/PCCs for implementation vide letter dated 25.10.2019.

23. After having drawn attention to this, it is argued by the learned Counsel for the Respondent No. 1/CPCB that it was wrong argument made on the part of the learned Counsel for the Applicant that the Tribunal vide its earlier order dated 14.11.2019 in Original Application No. 1038 of 2018 had restrained all kinds of industrial activities falling in red and orange category in critically polluted areas and that in fact those industries, which were complying with the directions, should have been allowed to continue their activities.

24. From the side of Respondent No. 7/Mr. Pundalik K. Mirashe, a reply affidavit dated 07.11.2021 has been filed, where-in it is submitted that none of the actions was taken on his part or on the part of the MPCB, including granting of Consent, which has resulted in causing any accident. In fact, the proceedings against him in-person have been brought about only to assassinate his character and to malign his image. The Consent to Operate that was granted by him, was in official capacity, in accordance with Rules and Regulations and therefore, there was no reason for the Applicant to make personal allegations. The details, as to what procedure was adopted in granting the Consent to Operate, has also been annexed as Annexure R-2 to the said reply, where-in it is indicated that process was initiated by the Sub-Regional Officer, Tarapur-I on 19.03.2019, which was next forwarded to the High Officer Dr. Arjun M. Jadhav, Forest Officer, Tarapur-I, who had submitted its report, which was laid before the next Officer Shri. M.S. Holkar (SRO-

Tarapur- I) on 28.05.2019, who proposed refusal of the Consent to Operate. Thereafter, the Answering Respondent had forwarded the matter to the next Officer namely, Shri R.K. Injulkar, Forest Officer (HQ) on 26.06.2019, who had proposed issuance of the Show cause notice to the Respondent No. 8/Project Proponent. Thereafter, the matter was again placed before the Answering



Respondent, who directed to put up legal action through module and thereafter on 04.07.2019, the matter was processed by Mr. R.K. Injulkar before whom a show cause notice was placed for signature. Thereafter, the matter was placed before the Answering Respondent on 04.07.2019 and he had passed order to the effect that "put up with SCN reply".

Thereafter, the matter was placed before Shri R.K. Injulkar on 02.01.2020, who considered the show cause notice and recommended Consent to Operate to be granted to the Respondent No. 8's industry on the assurance from the side of the industry that it would achieve ZLD and thereafter, the Consent to Operate was granted on 02.01.2020.

25. Having indicated this process, the learned Counsel for the Answering Respondent has argued that the whole process shows that there was no hurry made in granting of Consent to Operate, as at each stage, sufficient long time was consumed in processing the matter and that, it also shows that it was not the decision solely taken at the end of the Answering Respondent, as it involved consideration/obtaining report at the level of various Officers of the MPCB. Therefore, the allegation made during argument by the learned Counsel for the Applicant that the Answering Respondent had deliberately granted Consent to Operate illegally and because of that only, within 8 days of that, this un-towards incident happened is absolutely false.

26. As regards the argument of the learned Counsel for the Applicant, it is made along the same lines, which have been stated in the original application by the Applicant.

27. From the above pleadings as well as the arguments of the learned Counsel for the parties that we have heard, it is apparent that there is no dispute with regard to the unfortunate incident happening in the industry of Respondent No. 8 on 11.01.2020.

Project Proponent says that it happened because of trial run and not because of any intentional non-compliance on their part and that, adequate compensation has also been paid to the dependents of the employees/deceased as well as the injured, therefore, no further punishment should be given by further awarding any compensation to be levied from the Project Proponent.

28. As regards environmental damage, it is argued by him that the quantum, which has been arrived at by the Committee to the tune of Rs. 21.7 lakhs is based on the Goel Ganga's case @ 10% of the project cost, which is not applicable in the present case because in the Goel Ganga's case, the Project Proponent was not having any Consent to Establish and Consent to Operate nor EC but in the present case, all these consents and the permissions were with the Project Proponent, therefore, this application deserves to be dismissed.

29. From the side of the Applicant, the main thrust has been laid upon the involvement of Respondent No. 7/Mr. Pundalik K. Mirashe in the occurrence because he is said to have deliberately granted Consent to Operate, which has led to this occurrence and against the Project Proponent, it is alleged that it did not make compliances of the terms and conditions which were laid down in the EC, therefore, permanent closure should be ordered of the industry.

30. Based on these, we are of the view that following questions need to be answered by us:-

(i). Whether any order is required to be passed by this Tribunal directing permanent closure of the industry of the Respondent No. 8?

(ii). Whether any penal or otherwise action is required to be ordered against the Respondent No. 7, in view of the allegations made against him by the Applicant?

(iii). Whether the amount of compensation to the dependents of the diseased as well as to the injured persons needs to be paid in addition, as per the recommendation made by the Committee, which has calculated the additional amount to be awarded to them?

(iv). Whether the environmental compensation needs to be levied from the Project Proponent as suggested by the Committee?

(v). Any other order which may be required to be passed in the present case?

31. As regards Issue No. (i):- We have to decide whether an order directing permanent closure of the industry is required to be passed by us. In this regard, we may point out that the Respondent No. 8/industry is already closed with effect from 13.01.2020, pursuant to the incident which happened there, which is admitted by the Project Proponent as well as by the Applicant. A question had arisen as to whether such industry can be allowed to be made functional again, much emphasis was laid down by the learned Counsel for the Applicant upon the direction given by this Tribunal vide order dated 14.11.2019 in Original Application No. 1038 of 2018, which has been cited above also. We find that the said order does not direct permanent closure of any industry or industrial activity because it says that no further industrial activities or expansion would be allowed with regard to red and orange category units till the said areas are brought within the prescribed parameters or carrying capacity of the area, as assessed and that the new units or expansion is found to be viable having regard to the carrying capacity and the environmental norms. This direction is self-speaking and the learned Counsel for the Respondent No. 1 has also made clear as mentioned above that a clarification was also sought by it from the NGT and it was made clear that if any industry falling in the above-mentioned area and above categories, make all compliances then they can be allowed to operate. Therefore, in view of that, we cannot direct permanent closure of the industry of the Respondent No. 8 because it would be open for it/PP to be made functional subject to its complying all the directions, which may be issued in course of time by the various authorities to the said industry. It may also be emphasized that it would not be in the interest of justice and for the economy of the nation that the industry should be directed to be closed only because one or two incidents have happened, if sufficient care and protection is taken and all the norms are complied with, then certainly industries may go on to function in their respective fields. This issues is decided accordingly.

32. As regards Issue No. (ii):-As per this issue, we have to decide whether any penal or action is required to be ordered against the Respondent No. 7, who is being alleged to have taken wrong

decision by granting Consent to Operate to the Respondent No. 8. We are of the view that after having gone through the reply affidavit of Respondent No. 7 and having heard the argument of learned Counsel for the Respondent No. 7 that it is absolutely clear that the decision taken at his end, was in official capacity, based on various reports, which were obtained by him from the other Officers/officials of the same Department, therefore, it cannot be said to be a single handed decision taken at his end. We cannot presume that all set of Officers, who were involved in processing of the Consent to Operate and its finding being recorded, were colluding with the Project Proponent.

The allegation against the Respondent No. 7 appears to be motivated, therefore, we are of the view that no penal or other action needs to be ordered against the Respondent No. 7.

33. As regards Issue No. (iii):- As per this issue, we have to decide as to whether any additional compensation needs to be paid to the legal heirs of the deceased as well as injured persons as suggested by the Committee. In this regard, we find that the Project Proponent has already paid Rs. 31,53,773/- (Rupees Thirty-One Lakhs Fifty-

Three Thousand Seven Hundred and Seventy Three Only) to the dependents of the deceased employees under Workman Compensation Act and has also spent Rs 23,16,253/- towards attending to medical expenses of 8 deceased and seven injured persons but we find that the said amount is on the lower side and that in view of the Judgment of Hon'ble Apex Court, the Committee has calculated the additional compensation to be paid, which, in our opinion, is in accordance with law and therefore, the report of the Committee in respect of granting of additional compensation, which is given in the table below, needs to be approved and the proposed amount to be paid by the Project Proponent to the legal heirs of the deceased deserves to be paid.

Sr. No	Name	Age	Compensation	Compensation	Compe
			deposited in	paid by GoM	/E
			Court/ paid by	under Chief	gr
			the industry	Minister Relief	pa
			A	Fund B	C=A
1	Shri Mohan Ingle	55	10,16,700	5,00,000	15,1
2	Shri Ilias Bashir Ansari	58	6,97,073	5,00,000	11,9
3	Smt. Madhuri	49	8,00,000	5,00,000	13,0

Vasistha Singh

	Smt. Rajmatidevi			6,40,000		
4	Surendra Yadav	36	1,40,000	5,00,000	14,59,800	23,56,000
	Shri Trinath			5,25,000		
5	Dasri Smt Nishu	41	25,000	5,00,000	13,60,275	19,21,040
6*	Rahul Singh	24	3,00,000	5,00,000	-	9,34,000
	Shri Golu			5,50,000		
7#	Surendra Yadav	20	50,000	5,00,000	-	8,06,800
8#	Smt. Khushi Yadav	13	50,000	5,00,000		
				5,50,000	-	7,90,000

(Note:- The highlighted figures are filled up by us as per the calculation in para 35 below)

34. We find that the injured persons have not been paid any amount by the Project Proponent as per the Committee's report, which has suggested that a sum of Rs. 5 lakh be paid to the persons, who suffered grievous injury and Rs. 2.5 lakh to be paid to the persons, who suffered minor injuries. We are in agreement with this report and looking to the fact that the Respondent No. 8 has admitted to have paid Rs 23,16,253/- only to the injured persons towards medical treatment, it is absolutely clear that no compensation has been paid to them so far by the Project Proponent.

35. Further, we find that the legal heirs of the deceased persons at sr. nos. 6, 7 & 8 in the chart above at para no. 33 (also annexed at page no. 322 of the paper book) given by the Committee namely, Smt. Nishu Rahul Singh, Shri Golu Surendra Yadav and Smt. Khushi Yadav also required to be paid additional amount, which has been calculated 'nil'. Probably, it appears that they were not employees and not drawing salary from the industry in question because of which amount payable to them has not been calculated. The Committee has not calculated the additional compensation amount to be paid to their legal heirs but we are of the view that when in cases of other deceased, the Committee had calculated the compensation as per the Judgments of Hon'ble Supreme Court, in the case of these three deceased also, they ought to have calculated the additional compensation amount to be paid to their legal heirs.

Therefore, this exercise has been done at our end, based on the principle of law laid down by the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Ors.

(MANU/SC/1366/2017) as well as the principles laid down in the case of Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr.

(MANU/SC/0606/2009 : [(2009) 6 SCC 121]).

36. We have assumed that these three deceased would have earned minimum Rs. 200 per day, which would come to Rs. 6,000 rupees per month and on that basis, their annual income would stand Rs.

72,000/- per annum each. Out of that income, one-third would have to be deducted on account of the fact that, had they been alive, they would have spent one-third of that income on their own to meet their daily expenses. In the case of each of these three, the multiplier of 18, 16 and 15 has been applied as per the law laid down in Pranay Sethi's case (supra). If we multiply their annual income with 18, 16 & 15 respectively, their annual income would stand at Rs.12,96,000/- (Rs. Twelve Lakhs Ninty-Six Thousand only), Rs.

11,52,000 /- (Rs. Eleven Lakh Fifty Two Thousand only) and Rs.

10,80,000/- (Rs. Ten Lakh Eighty Thousand only) respectively. Out of that income, if one-third is deducted, that would stand at Rs.

8,64,000/- (Rs. Eight Lakh Sixty Four Thousand only), Rs. 7,36,800 /- (Rs. Seven Lakh Thirty Six Thousand Eight Hundred only) and Rs.

7,20,000/- (Rs. Seven Lakh Twenty Thousand only) respectively. We have added Rs. 70,000/- to the said income of each of them on account of principle of law laid down in Pranay Sethi's case (supra), where-in under the heads of loss of estate, loss of consortium and funeral expenses, amount of Rs. 15,000/-, Rs. 40,000/- and Rs.

15,000/- has been directed to be awarded respectively. Therefore, if we add amount of Rs. 70,000/- to the above computed amount, it would stand at Rs.9,34,000/-, Rs. 8,06,800/- and Rs. 7,90,000/-

respectively. Out of the said amount, the amount which has already been paid to them, as is indicated in the table at page no. 322 of the paper book, if the same is deducted, the additional amount that their dependents need to be paid, would stand at Rs. 1,34,000/-, Rs.

3,01,800/- and Rs. 2,40,000/- respectively. Therefore, we decide this issue accordingly.

37. As regards Issue No. (iv):- As regards this issue, we have to decide as to whether the environmental compensation needs to be awarded in the present case. It needs to be noted that on

11th January 2020 evening, a blast took place at M/s. Ank Pharma Pvt.

Ltd., Plot No. M-2, MIDC Tarapur Industrial Area, Boisar (W), Dist Palghar, resulting in the death of eight workers and injuries to seven workers. The Original Application (OA) was filed on 13.03.2020 and vide Tribunal order dated 02.07.2020 the Tribunal issued notice and appointed a fact-finding Committee comprising of Collector, Palghar and Maharashtra Pollution Control Board (MPCB). First meeting of the committee members was conducted through VC on 08.02.2022 followed by a site visit and physical meeting on 22.02.2022 at MIDC Tarapur. Thus, the said Committee visited the spot where blast happened after about two years. Hence, it is not surprising that the Committee could not evidence damage to environment which must have happened looking at the enormity of the blast in terms of death and injury. In this regard, we are of the view that since it is found in the Committee's Report that the Project Proponent had amassed/stored huge quantity of the hazardous chemicals and it was 'Strict Liability' in terms of the Rylands v Fletcher's Case and 'Absolute Liability' in terms of the M.C. Mehta v. Union of India's case [(1987) 1 SCC 395], we are of the view that it was the sole responsibility of the Project Proponent to ensure that the said hazardous chemicals should not have been stored within the premises and if it was allowed to be stored then absolute precaution/care should have been taken by them, which clearly appears to have not been taken, which caused the occurrence, resulting in death of 8 and causing injuries to seven of its employees.

We presume that this incident would have certainly led to loss of the environment, therefore, the principle, which has been applied by the Committee, as per the law laid down by the Hon'ble Supreme Court in Goel Ganga's Case is absolutely correct, in order to assess the amount of environmental compensation to the tune of Rs. 21.7 lakhs. We uphold the report of the Committee in this regard and over-rule the objection raised by the learned Counsel for the Project Proponent as we need to set an effective deterrent for similar irresponsible activities undertaken by PPs for their personal gains.

This amount needs to be paid by the Project Proponent to the State PCB. This issue is decided accordingly.

38. In view of above, we dispose of this application with the following directions:-

(i). The Project Proponent shall deposit the amount of personal compensation, which has been assessed by the Committee, as well as by us, given in the tabular form in para no. 33 above with the District Magistrate of District Palghar, within a period of one month from the date of Judgment and it shall be the responsibility of the District Magistrate to ensure that the legal heirs of the deceased persons are paid the amount as awarded by Committee/us, after proper identification of them, within next two months.

(ii). As regards the injuries caused to the seven injured persons, we direct that each of the injured persons, who have sustained grievous injuries, shall be paid Rs. 5 lakh and those who have suffered minor injuries, shall be paid Rs. 2.5 lakhs after proper

identification of them by Collector Palghar, within a period of two months from the date of depositing the said amount by Project Proponent with Collector, Palghar. The Project Proponent shall deposit the entire amount calculated at that rate with the Collector, Palghar within one month from the date of Judgment.

(iii). The amount of environmental compensation of Rs. 21.7 lakhs shall be deposited by the Project Proponent with the MPCB within a period of one month from the date of this Judgment and the said amount shall be utilized within next six months for improvement of the environment in the local area in consultation with District Collector. Report of the activities undertaken and improvement achieved shall be posted on MPCB website within next 3 months.

(iv). We further direct the Project Proponent that it shall take remedial measures, which have been suggested by the Committee in its report, which have been cited above in sub-para (a) to (n) at the earliest, in case, it desires to run its industry in future and apart from these remedial measures, if any other directions/conditions are imposed by the appropriate authorities, they shall have to be followed by the Project Proponent but we leave that to the discretion of the authorities concerned as to whether Project Proponent should be allowed to run the industry at any future point of time or not.

(v). We further direct that if any amount has already been paid by the Project Proponent under any other law regarding this occurrence, the same shall be adjusted.

(vi). Within two weeks of the expiry of the limits prescribed for making various compliances, the MPCB/District Collector, Palghar shall submit compliance report to the Registrar of this Tribunal.

Dinesh Kumar Singh, JM Dr. Vijay Kulkarni, EM March 31, 2023 Original Application No. 19/2020(WZ) P.kr.