

Mr. Sanjay Bhimashankar Thobde vs Chairman And Directors Shree ... on 31 May, 2023

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

Original Application No. 18/2021(WZ)

IN THE MATTER OF:

1. Mr. Sanjay Bhimashankar Thobde
R/at 701, North Kasba, Balives,
Solapur- 413 007.

.....Applicant

Versus

1. The Chairman and Directors,
Shree Siddheshwar Sahakari Sakhar Karkhana Ltd.,
At Kumathe, Solapur
2. Maharashtra Pollution Control Board
Through its Regional Officer, Solapur,
4/B, Bali Block, Civil Lines,
Opposite Government Milk Scheme, Saat Rasta,
Solapur -413 003.
3. Solapur Municipal Corporation Solapanr
through its Municipal Commissioner,
Indrabhuvan Ambedkar Chowk,
Solapur - 413 001.
4. The District Collector,
Solapur, Collector Compound, First Floor,
Main Building, Siddheshwar Peth,
Solapur -413 001.
5. Airport Authority of India (AAI)
Rajiv Gandhi Bhawan, Safdarjung Airport
New Delhi-100 003.
6. State Environment Impact Assessment Authority (SEIAA)
Through its Secretary,
Office at: 601, 6th floor, NKM International House,
Behind LIC Yogakshema Building,
177 Babubhai Chinoy Marg, Nariman Point,
Mumbai- 400 020.

.....Respondent(s)

Counsel for Applicant:

Applicant in-person

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Counsel for Respondent(s):

Mr. Sujay Palshikar, Advocate and Mr. Gaurav Ugale, Advocate i/b
Mr. Shriram Kulkarni, Advocate for R-1/PP
Mr. Vilas Jadhav, Advocate for R-2/MPCB
Ms. Vanita Chaudhary, Advocate for R-3/SMC
Mr. Aniruddha Kulkarni, Advocate for R-6/SEIAA

PRESENT:

Hon'ble Mr. Justice Dinesh Kumar Singh (Judicial Member)
Hon'ble Dr. Vijay Kulkarni (Expert Member)

Reserved on : 11.04.2023
Pronounced on : 31.05.2023

JUDGMENT

1. This application has been filed with the prayers that Respondent No. 1/Chairman, Shree Siddheshwar Sakhar Karkhana Ltd. be directed to stop its functioning; Respondent No. 1 be directed to re-arrange its sugar factory's set up and relocate the chimney at permissible height; and environmental compensation be levied from the Respondent No. 1 for supporting its operation illegally without obtaining necessary permissions, NOC and Environmental Clearance from the Competent Authorities.

2. In brief the facts of this case are that Respondent No. 1/Chairman, Shree Siddheshwar Sahakari Sakhar Karkhana Ltd. is running its sugar factory at Kumthe, Solapur, where-in it has erected a chimney of 90 meters height without following due process of law and also it is not following norms of the MPCB, resulting in environmental degradation. The Respondent No. 1 is responsible to provide ports in the chimney and facility such as ladder, platform etc. for monitoring the air emission. The height of chimney is very important regarding the fugitive emissions, which are emerging from sugar dust emanating from sugar grader. The SO₂ emissions also happen from sulphar burner.

3. It is further mentioned in this application that the Respondent No. 1 has also not obtained any required NOCs from Respondent No 5/Airport Authority of India nor from the Respondent No. 3/Solapur Municipal Corporation and Respondent No. 4/District Collector, Solapur. The Consent to Establish was obtained on 28.01.2014 for expansion of unit, which is granted for a period up to 5 years or till the commissioning of the unit whichever is earlier, Clause 9 of which required that Respondent No. 1 should not take any effective steps for implementation of the project before obtaining Environmental Clearance. As per Para 2 of EIA notification dated 14/09/2006, the effective steps include starting of any construction work or preparation of land by the project

proponent. However, it is also made clear that fencing of the site is to be protected from getting encroached and construction of temporary sheds for the guards and acquisition of land shall not be treated as an effective steps.

4. It is further submitted in this application that Respondent No. 1 has not followed the above-mentioned Clause No. 9. Record reveals that the Consent to Establish dated 28.01.2014, which is annexed as Annexure- 'A' at page nos. 18-19 of the paper book, shows that the cane crushing capacity of Sugar Industry shall not exceed 5000 TCD.

5. It is further mentioned in this application that Respondent No. 1 is not following other norms also regarding consumption of their spent wash as prescribed by the MPCB and such spent wash is being directly released in the open area, resulting in contaminating the groundwater in the adjacent area, which proved to be toxic leading to health hazard for the farmers and also for their farming. In this background, the Respondent No. 1 could not have been permitted any expansion.

6. It is further submitted in this application that the issue of height of chimney remained in discussion since 2017, as the same came in the way of runway of airport of Solapur, which proved to be an obstruction for smooth, proper and safe landing of the aircrafts. Therefore, it is necessary to remove the chimney from the site or reduce its height to the permissible limits. Because of this not being done, the airport at Solapur was rendered non-functional from many years. The Collector, Solapur/Respondent No. 4 had ordered to remove the said Chimney and even Hon'ble High Court of Bombay had made oral observation in the year 2017 that there could not be any compromise.

7. It is further submitted in this application that vide letter dated 14.08.2019, in exercise of the power conferred under Rule 6 of the Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994 (here-in after to be referred in short as Rules of 1994), the Deputy Director General of AAI had directed the Respondent No. 1 to reduce the height of the said chimney to 498.4 meters AMSL within 60 days but the same could not be implemented. The Respondent No. 1, thereafter went to the Hon'ble High Court and also to the Hon'ble Supreme Court by filing Writ Petition and SLP respectively. But both the Hon'ble Courts disposed of the Writ Petition and Spl. Leave Petition directing the Respondent No. 1 to opt for remedy of appeal under the concerned Rules i.e. Rules of 1994. The Appeal filed by the Respondent No. 1, before the Director General, Civil Aviation against the impugned order dated 24th August, 2019 regarding reducing height of Chimney, has been dismissed by order dated 03rd December 2019 and directed the Respondent No. 1 to reduce the height of the chimney to 498.4 meters AMSI, within 60 days from the date of the order. In Writ Petition bearing WP(ST) No. 29268 of 2019, the Hon'ble High Court, on the request and assurance of the Respondent No. 1/Chairman of the Industry, granted time of four weeks to reduce the chimney and directed the Respondent No. 4/Solapur Municipal Corporation not to demolish the chimney for a period of four weeks.

8. It is further mentioned in this application that on 10.12.2020, a Public hearing was fixed for the expansion of the sugar co-generation unit, but the Respondent No. 1 had already started the expansion of its unit without obtaining Environmental Clearance (EC). Hence the above prayers have been made.

9. This matter was considered for the first time by the Predecessor Bench on 09.06.2021 and constituted a Joint Committee comprising of the CPCB, State PCB and District Magistrate, Solapur to furnish factual and action taken report, relevant portion of which is quoted here-in below:-

"4.0 Observations and findings i. During inspection, the both sugar unit & distillery unit of the industry was non-operational due to end of cane crushing season. As per the records of sugar report and excise report it is observed that the sugar unit was operated till 31/03/2021 and distillery unit was operated till 30/06/2021.

ii. The industry is having two separate consent to operate for sugar unit and distillery unit. The consent to operate for sugar unit for cane crushing of 2,500 TCD is valid till 31/07/2021. Similarly, the consent to operate for distillery unit for production of 20 KLPD rectified spirit is valid till 31/08/2021. iii. The industry has obtained consent to establish for sugar unit for enhancement of the existing cane crushing capacity from 2,500 to 7,500 TCD and electricity (co-generation) from 10 to 38 MW. Similarly, for distillery unit for enhancement in production capacity from 20 to 100 KLPD.

iv. The industry has applied for application to obtain Environment Clearance (EC) for the integrated sugar & distillery unit i.e. enhanced production capacity from 2,500 to 5,000 TCD Sugar unit, electricity (co-generation) from 10 to 38 MW and 20 to 100 KLPD Distillery unit. However, EC has not yet granted by the State Environment Impact Assessment Authority (SEIAA). v. Details of expanded production capacity of sugar unit: As per the records of MPCB and Regional Office of MoEF&CC, Nagpur vide dated 09/07/2021 it is observed that the industry without obtaining EC and consent to operate from MPCB; expanded their existing sugar unit (from 2,500 to 7,500 TCD). As per the records provided by the industry that around 30 nos. of different plant equipment/machineries of various capacities have been installed during cane crushing season 2017-18 thereby enhancing the existing cane crushing capacity from 2,500 to 7,500 TCD. The details of various plant machineries commissioned by the industry to produce the enhanced quantity of sugar are; cane milling plant, evaporators, pan evaporators, crystallizers, centrifugal machines & ancillary equipment. Also, installed new bagasse fired boiler of 200 TPH, with co-generation power unit of 38 MW capacity and associated infrastructure facility. The date of commissioning of new boiler of 200 TPH and installation of different plant equipment/machineries for enhancement in the production of sugar is during February, 2017 and actual date of enhancement of the existing cane crushing capacity from 2,500 to 7,500 TCD is from 07/11/2017. Whereas, it is observed that the industry has not yet initiated any works with regard to expansion of existing distillery unit from 20 to 100 KLPD.

vi. The industry has proposed to augment the existing ETP and CPU by the way of modifying and also commissioning new treatment units, tertiary treatment system in order to comply with the conditions of existing consent to operate and also as per amended ToR issued by MoEF&CC. However, as on date of inspection the

modification and commissioning of new treatment system have not yet completed. vii. The industry has submitted the details of enhanced production i.e. cane crushing done during November, 2017 to March, 2021. The details of month-wise cane crushing are given in the Table-5.

Table -5: Details of month-wise cane crushing Month Total no. of days of Cane crushed, MT Consented non-compliances quantity, MT November, 2017 24 87,145 75,000 December, 2017 31 1,73,290 January, 2018 31 1,84,465 February, 2018 28 1,66,730 March, 2018 31 1,34,124 November, 2018 30 1,38,010 December, 2018 31 2,08,690 January, 2019 31 2,11,025 February, 2019 28 87,526 December, 2019 31 81,020 January, 2020 31 1,25,485 February, 2020 29 1,28,690 March, 2020 31 22,532 November, 2020 30 1,46,750 December, 2020 31 2,49,940 January, 2021 31 2,16,165 February, 2021 28 1,45,035 March, 2021 31 17,485.43 viii. It is observed from the sugar cane crushing report of November, 2017 to March, 2021 submitted by the industry that the monthly sugar cane crushing is found to be exceeding the MPCB consented capacity of 75,000 MT except for the months viz. March, 2020 and March, 2021 respectively. The details of additional bagasse fired boiler commissioned by the industry for steam production for the integrated sugar & distillery unit and for electricity generation is as follows;

Particular	Details of boiler
	Boiler-1
Capacity, TPH	200
Fuel	Bagasse
Fuel consumption	80 TPH
Stack height, m	90
APCD	ESP

ix. The industry has provided various molasses storage tanks for storage, captive utilization and sale of molasses. The details of molasses storage tank are as below.

Type of molasses tank	Capacity, MT	Usage
M1 tank no. 1	6,000	Sale
M1 tank no. 2	5,000	Sale
M1 tank no. 3	5,000	Sale
M2 tank no. 1	5,000	Captive utilization

x. It is observed from the excise report submitted by the industry

(distillery unit) that though the industry has not yet initiated the expansion of distillery unit from 20 to 100 KLPD, the industry has produced rectified spirit more than the consented capacity. The details of month-wise production of rectified spirit are given in the Table-6.

Table- 6: Details of month-wise rectified spirit production Month Total no. of Rectified Consented days of non- spirit quantity, compliances produced, KL/Month
 KL/Month October, 2017 31 883.198 November, 2017 30 854.709 December, 2017 31 882.201 January, 2018 31 884.19 February, 2018 28 797.728 March, 2018 31 883.212 April, 2018 30 854.709 May, 2018 31 883.106 June, 2018 -- 341.976 September, 2018 -- 482.433 October, 2018 31 831.97 November, 2018 30 807.05 December, 2018 31 834.985 January, 2019 31 835.28 February, 2019 28 754.18 March, 2019 31 883.94 April, 2019 30 809.032 May, 2019 31 798.314 June, 2019 -- 154.512 November, 2019 30 690.271 December, 2019 31 791.535 January, 2020 31 793.534 February, 2020 29 741.402 March, 2020 31 792.534 May, 2020 -- 127.828 June, 2020 -- 204.525 September, 2020 -- 403.556 October, 2020 31 832.910 November, 2020 30 807.985 December, 2020 31 835.120 January, 2021 31 834.015 February, 2021 28 753.304 March, 2021 31 834.965 April, 2021 30 806.241 May, 2021 31 833.065 June, 2021 -- 269.037 xi. It is observed from the monthly sale report of September, 2017 to June, 2021 submitted by the industry to the Superintendent of State Excise Inspector that the monthly production of rectified spirit is found to be exceeding the MPCB consented capacity of 600 KL/month except for the months viz. September, 2017; June & September, 2018; June, 2019; May, June & September, 2020 and June, 2021 respectively.

xii. As per information provided by the industry that hybrix fermentation technology is being used for the production of rectified spirit and it results in the generation of spent wash @ 8 L/L of rectified spirit produced. The monthly spent wash generation during 2017-18 to 2020-21 is given in the Table-7. Table - 7: details of month-wise spent wash generation Month Spent wash generation, KL September, 2017 3190.912 October, 2017 7021.424 November, 2017 6837.672 December, 2017 6969.387 January, 2018 7073.52 February, 2018 6302.051 March, 2018 7065.696 April, 2018 6837.672 May, 2018 6976.537 June, 2018 2735.808 A: 61010.68 T September, 2018 o 3859.464 October, 2018 t 6572.563 a November, 2018 6416.047 l December, 2018 6679.88 January, 2019 6598.712 February, 2019 6033.44 March, 2019 6983.126 April, 2019 6472.256 May, 2019 6346.596 June, 2019 1229.915 B: 57192 T November, 2019 o 5522.168 December, 2019 t 6253.126 a January, 2020 6316.53 l February, 2020 5931.216 March, 2020 6340.272 May, 2020 1016.232 June, 2020 1636.2 C: 33015.74 T September, 2020 o 3188.092 October, 2020 t 6663.28 a November, 2020 6423.48 l December, 2020 6680.96 January, 2021 6588.718 February, 2021 5988.766 March, 2021 6679.72 April, 2021 6369.303 May, 2021 6664.52 June, 2021 2144.224 D: 57391.06 T o t xiii. The details of press mud, yeast asludge, boiler ash and spent wash consumed during 2017-18 to 2020-21 l for preparation of bio-compost is given in the Table-8.

Table-8: Details of materials consumed during 2017-18 to 2020-21 for preparation of bio-compost.

S. No.	Particulars consumed	Season 2017-18	Season 2018-19	Season 2019-20	Season 2020-21
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Press				
1. mud	17596.800	17869.790	11702.720	20128.500
Boiler				
2. ash	135.56	145.13	90.00	165.92
Yeast				
3. sludge	1145.072	1073.627	619.481	1077.167
Total, MT	18877.432	19088.547	12412.201	21371.587
Spent				
4. wash, KL	61010.679	57191.999	33015.744	57391.063

xiv. As per the information provided by the industry that all the spent wash generated have been consumed during 2017-18, 2018-19, 2019-20 and 2020-21 respectively. However, as per the information provided; the industry is generating spent wash @ 8 L/L of rectified spirit produced. It is fact on record that the industry had carried-out excess production during 2017-18 to 2020-21 and considering the spent wash generation trend @ 8 L/L of rectified spirit production, the spent wash generation also proportionately exceeds than the reported quantity during 2017-18 to 2020-21 i.e. 61,311.144 > 61,010.68 KL; 57,533.57 > 57,192 KL; 33,133.03 > 33,015.74 KL and 57,681.58 > 57,391.06 KL respectively. Further, it is fact on record and evident during committee inspection that there was total 06 unlined lagoons found filled with spent wash, having concentration of COD: 68,800 to 72,400 mg/L and BOD: 28,000 to 32,000 mg/L respectively (Kindly refer S. no. xxv, Table-10 & 11). Hence, it is concluded that the industry has generated more spent wash than the reported quantity, submitted to the committee and has disposed raw/partially treated spent wash in the unlined lagoons.

xv. Details of chronology of events related to obtaining the environment clearance of the project for modernization cum expansion of sugar unit (from 2,500 to 7,500 TCD), molasses-based distillery unit (from 20 to 100 KLPD) and installation of co-generation power unit of 38 MW capacity:

As per MoEF&CC Notification S. O. 1533 (E), dated 14/09/2006 the appraisal of projects under item 5 (g) distilleries; all molasses-based distilleries are considered and appraised under Category-A projects. Date of application to MoEF&CC i.e. submission of Form-I and pre-feasibility report on 26/09/2013 to obtain the ToR for preparation of EIA report and EMP report. ToR issued by MoEF&CC on 24/02/2014 to the industry for preparation of EIA report and EMP report.

Submission of EIA report by the industry on 02/10/2015 to MoEF&CC.

Deliberation of execution and compliance of time-bound action plan as per the outcome of committee meetings held during 2016 to 2018.

Violation observed during site inspection carried-out by MoEF&CC, Regional Office-Nagpur on 25/062018 w.r.t. commissioning of new plant machineries, enhanced quantity in crushing of sugar cane and production of sugar without obtaining environment clearance from MoEF&CC, New Delhi and consent to operate from MPCB.

Violation committee meeting held on 22-24/10/2018 regarding the consideration of the proposed project as per the provisions of MoEF&CC Notification dated 14/03/2017 and for recommendation of standard ToR along with specific ToR for preparation of EIA and EMP report.

Fresh ToR issued by MoEF&CC on 03/12/2018 to the industry for preparation of EIA and EMP report, along with specific conditions².

As per MoEF&CC Notification S. O. 1960 (E), dated 13/06/2019 the appraisal of projects under item 5 (g) distilleries; all molasses-based distillery < 100 KLPD are considered and appraised under Category-B projects. Hence, the said project was transferred from MoEF&CC to SEIAA, Govt. of Maharashtra for grant of EC.

Revised EIA and the public hearing were completed during December, 2020 and the same was submitted to SEIAA, Maharashtra on 22/04/2021.

As on date, the project is yet to be considered for appraisal and EC is yet to be granted by the SEIAA, Maharashtra. xvi. The chronology of events w.r.t. commissioning of 90 m stack attached to newly commissioned 200 TPH boiler and various proceedings and orders issued by Hon'ble Court are summarized in the Table-9.

Table-9: Chronology of events related to commissioning and status of orders for demolition of 90 m stack.

Date	Remarks/ Status
29.01.2013	Solapur Municipal Corporation has given Provisional /

Conditional/ NOC to M/s Shree Siddheshwar SSK for

10.08.2016 Expansion of sugar Factory, expansion for Co-generation plant - Installation of 200 TPH new boiler, since the said industry is located within the limits of corporation. 21.08.2013 G.R. issued by State Govt. of Maharashtra for Shifting of existing airport at Hotgi Road, Solapur to new place at village at Boramani near about 15 Km Solapur city 2016 Constriction of 90 meter stack, attached

with 200 TPH Boiler for Co-gen plant completed without obtaining EC i.e. during the expansion of existing sugar industry 17.02.2017 Air Port Authority of India has given NOC to Shree Siddheshwar SSK for installation 30.96-meter height. 15.03.2017 Letter / Order from General Administration dept of Govt.

Maharashtra to the District Collector regarding demolition of stack of 90 meter 06.04.2017 Collector Solapur has given demolition order to this sugar factory with a copy to Commissioner Solapur Municipal Corporation. Commissioner of Solapur Municipal Corporation was instructed by Collector to implement this order and dempish said stack of 90 meter height.

27.04.2017 Shree Siddheshwar SSK approached to the Hon'ble High Court at Mumbai. Shree Siddheshwar SSK filed the Writ Petition no. 5253/2017 on 27.04.2017 against demolition order.

10.11.2017 Hon'ble High Court Mumbai passed stay order. 06.08.2018 Hon'ble High Court Mumbai removed the stay order and suitable instruction given to the Govt. of Maharashtra. 12.11.2018 Shree Siddheshwar SSK Approached Hon'ble Supreme Court at Delhi. Shree Siddheshwar SSK filed the Special Leave Petition no. 30415/ 2018 against demolition order. 11.11.2019 Solapur Municipal Corporation has issued notice to Shree Siddheshwar SSK regarding demolition of Chimney / Stack of 90 Meter Height.

29.10.2020 Govt. of Maharashtra released fund of Rs. 40 Crore for development of New Air Port at Boramani, Near Solapur City. 21.12.2020 Shree Siddheshwar SSK filed WP (ST) No. 29268 of 2019 before the High court of Judicature at Bombay, Civil Appellate Jurisdiction challenging the impugned notice issued vide dated 11.11.2019 by Solapur Municipal Corporation to demolish the stack of 90 m.

11.02.2021 Letter issued by Urban development department of Govt.

Maharashtra to the Commissioner Solapur Municipal Corporation on 11.02.2021 stating as below:-

Govt. of Maharashtra has sectioned new airport for Solapur at village Boramani . In this regard, Urban Development Department of GOM, has asked opinion from Law and Judiciary department of GOM. Hence Solapur Municipal Corporation shall not stop the procedure for demolition of said 90 meter stack but before the actual demolition of stack, Solapur Municipal Corporation shall wait for the opinion form Law and Judiciary department of GOM.

Status as on Law and Judiciary department of GOM has not given any 27.10.2021 opinion for this issue. The said stack of 90 meter height is as it is.

xvii. Various installations of integrated sugar & distillery industry, unlined spent wash storage lagoon and sporadic dumping of yeast sludge is depicted in the Google image.

Image-1: Google image dated 30/01/2021, showing various installations of integrated sugar & distillery industry, unlined spent wash storage lagoon and sporadic dumping of yeast sludge.

S. no.	Location	Coordinates	
		Latitude	Longitude
1	ETP of distillery unit (Biodigester)	17° 36' 29.62" N	75° 56' 52.96" E
2	Unlined spent wash storage lagoon near biodigester, 0.59 Acre	17° 36' 33.08" N	75° 56' 52.52" E
3	Sporadic dumping of yeast biodigester, 6 Acre	17° 36' 37.19" N	75° 56' 51.69" E
4	Lined yeast sludge collection pit	17° 36' 40.46" N	75° 56' 48.91" E
5A	Molasses storage tanks, 02 nos. (Sale tanks)	17° 36' 38.61" N	75° 56' 47.41" E
5B	Molasses storage tanks, 02 nos. (Sale & Captive use tanks)	17° 36' 38.16" N	75° 56' 44.33" E
6	Distillery unit	17° 36' 41.53" N	75° 56' 47.69" E
7	Sugar unit	17° 36' 46.44" N	75° 56' 40.03" E
8	ETP of sugar unit	17° 36' 45.40" N	75° 56' 46.29" E
9	Spray pond of Sugar unit	17° 36' 51.52" N	75° 56' 43.75" E
10	Bagasse yard of Sugar unit	17° 36' 47.09" N	75° 56' 50.38" E

xviii. The industry has constructed lined storage tank of reported capacity

of 720 m³ capacity for storage of raw spent wash (as a feedstock to biodigester). In addition to the existing lined storage tank, industry has constructed an illegal and unlined pond of reported capacity of 1,000 m³ capacity, which is partially filled with raw spent wash. The industry has constructed 06 acre lined bio-compost yard for preparation of bio-compost.

xix. The industry has provided lined spent wash storage lagoon (30 days capacity) of reported capacity of 9,000 m³ for storage and utilization of bio-methanated spent wash in bio-composting.

xx. In addition to the existing lined spent wash storage lagoon, the industry has constructed illegal and unlined 06 nos. lagoons (05:

near the bio-compost yard. & 01: near biodigester). All these unlined lagoons were found filled with spent wash. The delineation of boundary showing the bio-compost yard along with locations of lined bio-compost area, lined spent wash storage lagoon, unlined spent wash storage lagoons and sporadic dumping of reportedly yeast sludge/biodigester sludge are given at Google image-2. xxi. The industry has haphazardly dumped reportedly yeast sludge/biodigester sludge near the yeast sludge collection pit, lined spent wash storage lagoon and also near the biodigester area. The delineation of boundary and locations marked for area calculation using Raster Calculator in Q-GIS for lined bio-compost area, lined spent wash storage lagoon, unlined spent wash storage lagoons and sporadic dumping of reportedly yeast sludge/biodigester sludge are given at Google image-3.

xxii. The coordinates of bio-compost yard, unlined lagoons and sporadic dumping of yeast/bio-digester sludge is given below.

Pin no. as per Google image-3	Location	Coordinates	
		Latitude	Longitude
1.	Bio-compost yard	17 36' 18.94" N	75 56' 44.44" E
	Unlined spent wash	°	°
		17	
2.	storage lagoon-1	36' 15.55" N	56' 47.74" E
		°	°
3.	storage lagoon-2	36' 12.75" N	56' 49.36" E
		°	°
4.	storage lagoon-3	36' 17.09" N	56' 49.76" E
		°	°
5.	storage lagoon-4	36' 19.25" N	56' 48.57" E
		°	°
6.	Yeast sludge/biodigester	17 36'sludge	
		23.46" N	75 56' 45.44" E
		°	°
	dumped near bio-compost yard		
7.	Lined 30-days spent wash	17 36' 26.08" N	75 56' 44.24" E
	storage lagoon	°	°
8.	storage lagoon-5	36' 26.96" N	56' 47.93" E
		°	°
9.	Yeast sludge/biodigester	17 36'sludge	
		25.64" N	75 56' 45.47" E
		°	°
	dumped near Lined 30-days spent wash storage		

lagoon
10 Yeast sludge/biodigester 17 36' 23.25" N 75 56' 43.68" E
sludge
dumped near bio-
compost yard

xxiii. The details of unlined lagoons constructed by the industry and its area as calculated using Raster Calculator in Q-GIS is given below.

Pin no. as per Google	Location	Area, Acres
image-3		
2	Unlined spent wash storage lagoon-1	2
3	Unlined spent wash storage lagoon-2	1
4	Unlined spent wash storage lagoon-3	2
5	Unlined spent wash storage lagoon-4	1
8	Unlined spent wash storage lagoon-5	1
Pin no. 2, as per Google	Unlined spent wash storage lagoon-6	0.59
image-1	Total	7.59

xxiv. The details of sporadic dumping of reportedly yeast sludge/biodigester sludge done by the industry near the bio- compost yard and its area as calculated using Raster Calculator in Q-GIS is given below.

Pin no. as per Google image-3	Location	Area, Acres
6	Yeast sludge dumped near bio-compost yard	0.050
9	Yeast sludge dumped near lined 30-days spent wash storage lagoon	
10	Yeast sludge dumped near bio-compost yard	
Google image-1	biodigester	
	Total	6.05

xxv. The committee collected grab spent wash samples from each of the

05 no. of unlined lagoons (equal portion of grab samples are mixed into one portion of representative sample) and also grab spent wash sample stored in another unlined lagoon, located adjacent to the lined spent wash storage lagoon. The spent wash

samples were submitted to regional laboratory of MPCB at Pune for analysis of criteria parameters viz. pH, TDS, Cond., Chloride, Sulphates, COD, BOD, TKN, Phosphate and Potassium. The analysis result of representative spent wash samples collected from 05 no. of unlined lagoons are depicted in the below Table-10. Similarly, analysis result of spent wash sample collected from unlined lagoon is depicted in the below Table-11.

Table-10: Analysis result of representative spent wash samples collected from 05 no. of unlined lagoons S. No Parameter Concentration 1 pH 7.84 2 Conductivity 53660 3 Biochemical Oxygen Demand 28000 4 (BOD) Chemical Oxygen Demand (COD) 68800 5 Total Dissolved Solids (TDS) 37500 6 Chloride 8697.3 7 Sulphate 1066.9 8 Total Kjeldahl Nitrogen (TKN) 9.52 9 Phosphate (Total) 31.2 Note: Concentration of all parameters are expressed in mg/L, except pH and conductivity is expressed in $\mu\text{S}/\text{cm}$.

Table-11: Analysis result of spent wash sample collected from unlined lagoon S. No Parameter Concentration 1 pH 7.98 2 Conductivity 61910 3 Biochemical Oxygen Demand 32000 (BOD) 4 Chemical Oxygen Demand (COD) 72400 5 Total Dissolved Solids (TDS) 42800 6 Chloride 9896.93 7 Sulphate 889.4 8 Total Kjeldahl Nitrogen (TKN) 10.64 9 Phosphate (Total) 29.3 Note: Concentration of all parameters are expressed in mg/L, except pH and conductivity is expressed in $\mu\text{S}/\text{cm}$ xxvi. The committee collected the representative soil amended sludge samples (grab samples) at the depth of 10 cm near lined sludge collection pit (near distillery), bio-digester area and soil sample at the depth of 10 cm near lined 30 days spent wash storage lagoon. The aforesaid samples were submitted to Punyaslok Ahilyadevi Holkar Solapur University, School of Earth Science at Solapur for analysis of criteria parameters viz. pH, Electrical conductivity, Organic matter, Phosphorous, Potassium, Nitrogen, Cation exchange capacity (CEC) and Sodium absorption ratio (SAR). The analysis results of aforesaid samples collected near lined sludge collection pit (near distillery), bio-digester area and lined 30 days spent wash storage lagoon are depicted in Table-12, 13 & 14 respectively. Table-12: Analysis results of soil amended sludge sample S. No Parameter Unit Concentration 1 pH at 25°C -- 7.75 2 EC at 25°C $\mu\text{S}/\text{cm}$ 1610 3 Organic Matter % 9.26 4 Phosphorus as (P) Kg/ha 173.4 6 Nitrogen Kg/ha 235.2 8 Sodium Absorption Ratio (SAR) -- 6.5 Table-13: Analysis results of soil amended sludge sample S. No Parameter Unit Concentration 1 pH at 25°C -- 7.71 2 EC at 25°C $\mu\text{S}/\text{cm}$ 1690 3 Organic Matter % 10.2 4 Phosphorus as (P) Kg/ha 196.8 6 Nitrogen Kg/ha 632.8 8 Sodium Absorption Ratio (SAR) -- 7.8 Table-14: Analysis results of soil sample S. No Parameter Unit Concentration 1 pH at 25°C -- 6.48 2 EC at 25°C $\mu\text{S}/\text{cm}$ 7487 3 Organic Matter % 3.37 4 Phosphorus as (P) Kg/ha 153.6 7 CEC (Cation Exchange Capacity) meq/100 g 18 8 Sodium Absorption Ratio (SAR) -- 6.2 Some of the photographs taken during the committee inspection is given at Annexure-V for kind reference 5.0 Approach for damages for contravening mandatory provisions of environmental laws In the matter of Civil Appeal No. 10854 of 2016; M/s Goel Ganga Developers India Pvt. Ltd. vs Union of India & Ors. the Hon'ble Supreme Court vide order dated 10/8/2018 upheld Rs. 05 crores on project proponent as levied by the Hon'ble NGT for contravening mandatory provision of Environment Laws and for not obtaining the consent from the Board. Vide para 57 of the said Hon'ble Supreme Court order, it has been directed that "(...) The project proponent shall also pay a sum of Rs. 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws."

"Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund" outlines a formula for imposing environmental compensation on industrial units for violation of directions issued by regulatory bodies listing the instances for taking cognizance of cases fit for violation and levy environmental compensation. The same has also been referred by the Hon'ble NGT in its order (para 14 to 16) dated 28/8/2019 in the matter of Original Application No. 593/2017 titled Paryavaran Suraksha Samiti & Anr. vs Union of India & Ors. The instances considered for levying Environmental Compensation (EC) in the said report are:

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

Though such listed instances may not be directly applicable in the current matter for arriving at the damages amount for contravening mandatory provisions of environmental laws (w.r.t. enhancement in the existing production capacity without obtaining CTO and EC in case of sugar unit. Also, carrying- out excess production beyond the consented capacity in case of distillery unit), an attempt is being made by this committee to assess the environmental compensation using the formula prescribed in the said CPCB report which may be taken as damages amount for contravening mandatory provisions of environmental laws. The formula takes into account of number of days violation took place, pollution index of unit, scale of operation, location factor based on population and an amount factor in Rupees. Environmental Compensation (EC) in Rupees as mentioned in the aforesaid CPCB report = $PI \times N \times R \times S \times LF$ Where, EC is Environmental Compensation in ` PI = Pollution Index of industrial sector N = Number of days of violation took place R = A factor in Rupees (`) for EC S = Factor for scale of operation LF = Location factor PI = Pollution Index of industrial sector The average pollution index of 80 was taken as Environmental Compensation for the unit (as the unit falls under red category of industry based on CPCB report on final document on revised classification of industrial sectors, February, 2016).

N = Number of days of violation took place for which violation took place is the period between the day of violation observed and the day of compliance verified by CPCB/SPCB.

R = A factor in Rupees (₹) which is a minimum of 100 to a maximum of 500. R is considered as ₹ 250, as the Environmental Compensation in case of violation. S = Factor for scale of operation.

For small S = 0.5, For medium S = 1 and larger unit S = 1.5. The scale of operation was considered as 1.5, as the unit is granted consent under larger category of scale of operation.

LF = Location factor, It is based on the population of the city/town and location of the industrial unit on the location of the industrial unit. If population is less than 1 million then LF of 1.0 shall be used. Since, the population of Solapur city is 9.51 lakhs (2011 census) LF of 1.0 is used.

Considering the period when the industry has installed additional plant equipment/machineries and enhanced the production capacity from existing 2,500 to 7,000 TCD during 2017-18 to 2020-21 (except for the months viz. March, 2020 and March, 2021) without obtaining mandatory consent to operate and environment clearance, the no. days of non-compliance is worked-out to be 538 days for the sugar unit. Also, since the industry has carried-out production of rectified spirit more than the consented capacity of 600 KL/month during 2017-18 to 2020-21, except (for the months of September, 2017; June & September, 2018; June, 2019; May, June & September, 2020 and June, 2021) the no. days of non-compliance is worked-out to be 881 days for distillery unit. Hence, the total no. of days non-compliances is worked-out to be 1,419 days (details as given at Section 4 of Table-5 & 6 of above) w.e.f. 2017 till the last date of production or date of filing of court case (whichever is earlier) against the industry by MPCB before the Chief Judicial Magistrate, Solapur-1 in R.C.C. no.822/2021, in the matter of MPCB through Nitin Shinde vs M/s Shree Siddeshwar SSK Ltd., Solapur.

Based on consideration of above, the environmental compensation calculation is depicted as below.

PI	N	R	S	LF	EC
80	1419	250	1.5	1	42,570,000

Based on above, the environmental compensation as damages for contravening provisions under the Water (Prevention and Control of Pollution) Act, 1974; the Air (Prevention and Control of Pollution) Act, 1981; the Hazardous & Other Waste (Management & Transboundary Movement) Rules, 2016 i.e. without obtaining CTO and prior EC requirement as per Environment Impact Assessment Notification, 2006 notified under the Environment (Protection) Act, 1986 is worked-out to be 42,570,000/- (Rupees Four Crore Twenty Five Lakhs and Seventy Thousand Only) 6.0 Conclusion i. The industry without obtaining EC from SEIAA, Maharashtra and consent to operate from MPCB; expanded their existing sugar unit (from 2,500 to 7,500 TCD) and enhanced their production i.e. cane crushing w.e.f. November, 2017 to March, 2021 more than the consented capacity of 75,000 MT except for the months viz. March, 2020 and March, 2021 respectively. Also, the industry without obtaining EC from SEIAA, Maharashtra and consent to operate from MPCB installed new bagasse

fired boiler of 200 TPH, with co-generation power unit of 38 MW capacity and associated infrastructure facility.

ii. Though the industry has enhanced the existing cane crushing capacity from 2,500 to 7,500 TCD, the existing ETP has not yet augmented by the way of installation of tertiary treatment system and condensate polishing unit, as per mandatory requirement stipulated in conditions of consent to operate issued under the Water Act, 1974 and also as per amended ToR issued by MoEF&CC.

iii. As per the monthly sale report of September, 2017 to June, 2021 submitted by the industry to the Superintendent of State Excise Inspector that the monthly production of rectified spirit is found to be exceeding the MPCB consented capacity of 600 KL/month except for the months viz. September, 2017; June & September, 2018; June, 2019; May, June & September, 2020 and June, 2021 respectively.

iv. The industry has undertaken expansion and modernization without obtaining environment clearance, such project is treated as case of violation. Accordingly, as per the Notification³, the expert appraisal committee has prescribed specific terms of reference for the said project for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants.

It is gathered that the project proponent (industry) has prepared an independent chapter in the revised environment impact assessment report, submitted to SEIAA, Maharashtra n 22/04/2021 and incorporated assessment of ecological damage, remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed, the total cost works out to be 3.39 crores. Further, submitted that the industry has executed and implemented 22% of environment management plan cost wr.t air pollution and water pollution control. Hence as per the submission made by the industry w.r.t. cost of remediation plan and natural and community resource augmentation plan corresponding to the ecological damage is 2.64 crores. As per the aforesaid notification referred above, the project proponent will be required to submit a bank guarantee equivalent to the amount assessed i.e. amount consisting of remediation plan and natural and community resource augmentation plan with the State Pollution Control Board, the quantification will be recommended by expert appraisal committee and finalized by regulatory authority. The bank guarantee shall be deposited prior to the grant of environmental clearance and will be released after successful implementation of the remediation plan and natural and community resource augmentation plan, and after the recommendation by regional office of the MoEF&CC, expert appraisal committee and approval of the regulatory authority.

v. The industry has violated the terms & conditions for compliance of water pollution control issued under the Water (P & CP) Act, 1974 w.r.t. improper handling, management and disposal of spent wash i.e. not handled spent wash in an environmentally sound manner. Constructed 06 nos. of illegal and unlined lagoons within their premises, all the aforesaid lagoons were found filled with spent wash having concentration of COD: 68,800 to 72,400 mg/L and BOD: 28,000 to 32,000

mg/L respectively. About 7.59 acres of land within the industry premises was found filled with raw/partially treated spent wash. vi. The industry has violated the terms & conditions for compliance of non-

hazardous waste issued under the H&OW (M & TM) Rules, 2016 w.r.t. improper handling, management and disposal of yeast/biodigester sludge i.e. not handled yeast/biodigester sludge in an environmentally sound manner. The yeast sludge/biodigester sludge was sporadically dumped near lined sludge collection pit, lined spent wash storage lagoon and also near the biodigester area, the soil amended sludge samples and soil sample collected from all the aforesaid areas were observed to be high in organic carbon, phosphorous, potassium and nitrogen respectively. About 6.05 acres of land within the industry premises was found sporadically dumped with yeast sludge/biodigester sludge. vii. MPCB has filed Regular Criminal Case against the industry u/s 15 & 16 of The Environment (Protection) Act, 1986 before the Chief Judicial Magistrate, Solapur-1 in R.C.C. no.822/2021, in the matter of MPCB through Nitin Shinde vs M/s Shree Siddeshwar SSK Ltd., Solapur. viii. The environmental compensation as damages for contravening provisions under the Water (Prevention and Control of Pollution) Act, 1974; the Air (Prevention and Control of Pollution) Act, 1981 and the Hazardous & Other Waste (Management & Transboundary Movement) Rules, 2016, i.e. without obtaining CTO and production in excess beyond the consented capacity and prior EC requirement as per Environment Impact Assessment Notification, 2006 notified under the Environment (Protection) Act, 1986 is worked-out to be ` 42,570,000/- (Rupees Four Crore Twenty Five Lakhs and Seventy Thousand Only).

7.0 Recommendations In view of the aforesaid violations of:

i. Enhancing the existing cane crushing capacity from 2,500 to 7,500 TCD without obtaining CTO required under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, Hazardous & Other Waste (Management & Transboundary Movement) Rules, 2016, production of rectified spirit in excess beyond the consented capacity and prior EC requirement as per Environment Impact Assessment Notification, 2006 notified under the Environment (Protection) Act, 1986;

The committee recommends that SEIAA, Maharashtra may proceed for estimating the cost for implementing the Environmental Management Plan (consisting remediation plan and natural and community resource augmentation plan) equivalent to the environmental damage cost and economic benefits derived as environmental compensation amount of ` 2.64 Crores, as submitted by the project proponent.

In addition to the above environmental compensation amount of ` 2.64 Crores, ` 5 crores for contravening mandatory provisions of Environment Laws in compliance with Civil Appeal No. 10854 of 2016; M/s Goel Ganga Developers India Pvt. Ltd. vs Union of India & Ors. OR ` 42,570,000/- (Rupees Four Crore Twenty-Five Lakhs and Seventy Thousand Only), as derived under para 5 of this report, as deemed fit by the Hon'ble NGT, may also be added in the said

environmental compensation or EMP cost for contravening the provisions under the Water (Prevention and Control of Pollution) Act, 1974; the Air (Prevention and Control of Pollution) Act, 1981; Hazardous & Other Waste (Management & Transboundary Movement) Rules, 2016 and prior EC requirement as per Environment Impact Assessment Notification, 2006 notified under the Environment (Protection) Act, 1986. ii. The industry should expediate augmentation of the existing ETP and CPU by the way of modifying and also commissioning new treatment units, tertiary treatment system in order to comply with the conditions of existing consent to operate and also as per amended ToR issued by MoEF&CC.

iii. The industry should install electro-magnetic flow meter for conveyance pipeline of spent wash to bio compost yard and PTZ camera at boundary of bio-compost yard to monitor the operations of bio-composting. iv. Spent wash samples collected from 06 unlined lagoons within the industry premises have concentration of COD: 68,800 to 72,400 mg/L and BOD: 28,000 to 32,000 mg/L respectively. About 7.59 acres of land within the industry premises was found filled with raw/partially treated spent wash. Surface soil amended sludge samples and soil samples taken from 10 cm depth of the yeast/biodigester sludge spread areas have higher percentage of organic content, higher concentration of nitrogen, phosphorous and potassium. About 6.05 acres of land within the industry premises was found sporadically dumped with yeast sludge/biodigester sludge.

No study has been conducted to assess impact on soil and ground water due to high concentration as (ii) above and remedial measures required thereof;

v. There is immediate need of carrying-out detailed studies and take time-

bound action plan to contain further impact, if any. The committee, therefore, recommends the following as immediate measures:

A detailed study shall be conducted through reputed institutes like College of Engineering, Pune/ Mahatma Phule Krishi Vidyapeeth, Pune/major Govt. Engineering Colleges to prepare Detailed Project Report (DPR) which may include:

(a) Delineation of impacted area due to disposal of spent wash and dumping of yeast/biodigester sludge;

(b) Detailed soil and ground water characteristics analysis/investigation with assessment of soil and ground water qualities in the aforesaid affected areas and depth levels to which the same are affected;

(c) Scrapping and reclaiming of all unlined spent wash storage lagoons (solar evaporation pits) and the areas where haphazardly dumped yeast/biodigester sludge should be remediated.

(d) In case remediation is required, details of required remediation treatment such as in-situ treatment (bio-remediation/phyto-

remediation/air purging/etc.) or off-site treatment (soil excavation and management of excavated soil) along with engineering details & time period and cost thereof with expected target quality/goals in terms of various parameters of concern."

10. Service affidavit has been filed, as per which service of notice upon all the Respondents is found to be sufficient.

11. From the side of Respondent No. 1, reply affidavit dated 06.09.2022 has been filed, where-in it is submitted that the industry was established in the year 1969. In the year 1972-73, the first crushing season was carried out. The issue pertaining to height of chimney is still pending in view of subsequent and recent decisions of the Hon'ble High Court in Writ Petition Nos. 9446 of 2021 and 7872 of 2021. The proposal of EC is still pending with SEAC (State Expert Appraisal Committee). The Answering Respondent has not caused any pollution and reports to that effect are already available with the MPCB. The MPCB had given show cause notice to the Answering Respondent, which was replied. The issue of sugar effluent is already taken care of by installing new system i.e. 2000 meter cubic capacity Effluent Treatment Plant. Thereafter, the MPCB had visited the site and concerned authority had recorded its satisfaction in its report.

12. It is further submitted in this affidavit that the chimney of 90 mtrs. was built as per the consent to establish conditions dated 28.01.2014, issued by the MPCB and accordingly advanced technology was used to establish the Boiler (200 TPH) and Electro Static Precipitator (ESP) was also established to keep pollution under control. In the year 1987, the airport came to be started near the factory. On 23.09.2008, the Cabinet decision was taken for acquisition of land situated at Mauje Boramani and Mauje Tandulwadi, District: Solapur for development of a new airport, since the existing airport at Mauje Hotgi, Dist. Solapur was in commercial area and not viable for development. The said airport was to function only till the new airport had started functioning. On 13.09.2012, the Airport Authority of India issued NOC to NTPC Ltd. for erection of a chimney to the height of 278.50 mtrs. above ground level, which was well within a radius of the airport and falls within the funnel of runway no. 33. The project of the Answering Respondent falls in the category 'A' as per the EIA Notification, 2006. Accordingly, the Answering Respondent applied to MoEF&CC for grant of EC for the expansion on 26.09.2013 and from the succeeding paragraphs of this affidavit, it is apparent that the same remained under consideration at various levels and could not be finalized for long.

13. Further, it is mentioned in this affidavit that the Answering Respondent has installed Effluent Treatment Plant (ETP) of 2000 M3 per day capacity on the recommendation of Vasantdada Sugar Institute, Pune, which is being used now and since the installation of the same, the ETP treated water is being released and stored in a leak proof tank. In the year 1993, the Answering Respondent established a 300 m3/per day capacity biogas system near the leak proof tank.

14. From the side of Respondent No. 2/MPCB, reply affidavit dated 07.09.2022 has been filed, where-in it is submitted that the Answering Respondent had granted renewal of Consent to Operate dated 16.05.2019 to the Respondent No. 1 of 20 KLPD distillery Unit (Molasses Base) under 'RED' Category, which was valid up to 31.08.2021 and was further renewed for a period up to 31.8.2022.

The Answering Respondent had also granted Renewal of Consent to operate dated 10.02.2021 to the sugar factory of Respondent No. 1 for 2500 TCD sugar and 10 MW Co- Generation Unit under "RED" category, which was valid from 10.02.2021 up to 31.7.2021. The Respondent No. 1 had started modernization-cum- expansion of their sugar unit from 2500 TCD to 7500 TCD and installed Co-Generation Power Plant of 38 MW without obtaining Consent to Operate and Environment Clearance. Therefore, the MPCB had filed a Criminal Case bearing No. 822/2021 under Section 15 of the Environment (Protection) Act, 1986 read-with EIA Notification, 2006 in the Court of Chief Judicial Magistrate-Solapur on 07.05.2021, which is pending.

15. It is further submitted in this affidavit that the MPCB had collected joint vigilance samples from the industry of Respondent No. 1 on 25.01.2022 & 10.02.2022, which reveals that parameters such as pH, SS, TDS, BOD & COD were exceeding the prescribed limits, pursuant to which Show Cause Notice was issued vide letter dated 20.06.2022 to the Respondent No. 1 for closure of the industry. The Answering Respondent had issued directions to the Respondent No. 1 on 27.10.2021 for not to carry out operations or activities, which does not have Environmental Clearance & valid consent. In compliance to the Order of this Tribunal dated 09.06.2021, a Joint Committee was constituted, which has submitted its report, relevant portion of which has already been cited by us above.

16. It is further submitted in this affidavit that the Answering Respondent had issued Closure directions vide letter dated 29.11.2021 to the Industry of Respondent No. 1 for operating Sugar and Co-Generation Plant with expansion without obtaining prior Environment Clearance and Consent. Being aggrieved by the said closure directions, the Respondent No. 1 filed Writ Petition bearing No. 8597/2021 before the Hon'ble High Court of Judicature at Bombay, which has been disposed of vide order dated 07.12.2021, where-by the closure direction has been set aside and the Answering Respondent has been directed to take an appropriate decision after considering the reply of Respondent No. 1. In pursuance to the same, personal hearing was extended to the Respondent No.1-Industry on 14.06.2022 and 28.06.2022, during which the Respondent No. 1 had assured that they would obtain Environment Clearance for the expansion and submit the same to the MPCB. Accordingly, it was decided to issue directions to the Respondent No. 1 vide letter dated 01.09.2022 not to resume production activity until obtaining Environmental clearance & Consent to Operate for expansion.

17. From the side of Respondent No. 5/AAI, reply affidavit dated 21.09.2022 has been filed, where-in it is submitted that they have been unnecessarily impleaded as one of the Respondents for the sake of harassment, therefore, they should be deleted from the array of the parties.

18. From the side of Respondent No. 1, rejoinder affidavit dated 28.09.2022 has been filed, where-in it is submitted that the authority (SEIAA, Maharashtra) has also asked the Respondent No. 1 to submit the remedial plan with self-assessed environmental damage, which accordingly has been submitted and the same is pending consideration with SEAC. There was no authority vested in Respondent No. 2/MPCB to order to the effect that the Answering Respondent should not resume production activities until EC and consent to operate were obtained as the said order is illegal and with regard to the criminal case, it is submitted that the same is still pending.

19. Vide affidavit dated 27.09.2022, the Respondent No. 1 has dealt with the Joint Committee Report, where-in it is submitted that the power as to whether the Answering Respondent can function with existing expansion of the unit was in violation or not, is vested with the Expert Appraisal Committee. Pursuant to the directions issued on 14.03.2017, the Respondent No. 1 informed the Central Government about the violation and only thereafter, the visit was made by the concerned officials and the Expert Appraisal Committee had permitted the State Government/SPCB to take action under Section 19 of Environment (Protection) Act, 1986 and further directed that consent to operate should not be granted. The Respondent No. 1 was asked to submit remedial plan, self-assessed damages and was further asked to take all precautions of environmental safeguard but SEAC had not yet taken decision under Notification, 2017 (appeared to be a violation window), whether the Respondent No. 1 should be allowed to operate with environmental safeguard or not, the decision in this regard is still pending.

20. The direction dated 01.09.2022, under Section 33(A) of the Water (Prevention & Control of Pollution) Act, 1974 and Section 31(A) of the Air (prevention & Control of Pollution) Act, 1981, is directly in conflict with the direction issued by the Central Government on 14.03.2017. The SEAC has not yet proposed the closure, hence the direction issued by MPCB should be taken to be conflict with the Notification of the Central Government. An advanced Effluent Treatment Plant of 7500 TCD capacity and 38 M.W. Co- generation Unit have been installed and commissioned w.e.f. 15.12.2021. The Joint Committee had made a visit on 29.07.2021, therefore, the MPCB ought to have informed the Committee about this newly setup ETP. The bio-gas is being used to treat the spent-wash, thereby the harmful water is converted into gas, which is used as fuel for boiler. The said biogas system is near a leak proof tank, which has the capacity of 720 M3. The sugar factory condensate water is re-used for boiler as feed water and then the excess condensate is cooled in cooling tower. Soon, they will be installing electro-magnetic flow meter and PTZ camera.

21. The Applicant has filed another affidavit dated 13.10.2022, where- in he has reiterated the same facts, which have been mentioned by it in its earlier affidavit.

22. The Respondent No. 1 has filed affidavit dated 15.11.2022, where- in it is submitted that the appeal has been disposed of by the Director General of Civil Aviation (DGCA), by which it set aside the final order dated 24.08.2019 and remanded the matter back to Deputy Director General (DDG) for hearing afresh. The DGCA, upon hearing the Respondent No. 1 and Airport Authority of India, and having a look on the reports of the DGCA Officers, observed that certain new issues have cropped up pending the appeal, which were not before the Lower Authority earlier for consideration, therefore, the issues will require further consideration, as the same was remanded back to Deputy Director General (DDG) for fresh consideration. The Answering Respondent had requested the Member Secretary, MPCB, Mumbai vide letter dated 28.09.2022 to consider their request for staying the order, issued by the Regional Officer, MPCB, Pune, to the effect that the Answering Respondent should not resume the production activity till obtaining EC and Consent to Operate but no reply has been received from their side. This has constrained the Answering Respondent to file Writ Petition No. 12607 of 2022 before the Hon'ble High Court, which, by its order dated 20.10.2022, has directed the SEAC to consider the representation made by the Petitioner to grant them a provisional EC till the final decision on EC application was taken, as expeditiously as possible.

23. From the side of Respondent No. 3/Solapur Municipal Corporation, reply affidavit dated 17.10.2022 has been filed, which was considered by us in our previous order dated 01.03.2023 and whatever was stated there- in, has been mentioned by us in that order in detail. But it is also recorded in that order that the said affidavit was found to be absolutely vague as it did not have the coherence. As regards the facts, which were narrated in earlier affidavit and were found to be clear, are as follows:-

"This order is being passed in continuation of the previous order dated 21.11.2022, since during the earlier hearing, reply affidavit has been filed by the Respondent No. 3/Solapur Municipal Corporation, where-in it is submitted that between the year 2012 and 2013, the Project Proponent took a decision to expand the sugar factory for increasing the crushing capacity from 5000 to 7500 TCD (Tonnes Curshing Per Day); expansion of the distillery from 20 kl per day to 50 kl per day, as well as for setting up of 38 Mega Watt Cogeneration Power Project. The Respondent No. 1/Project Proponent was required to install a boiler of 200 TPH, which is interconnected with 90 meter height RCC Chimney. Therefore, on 25.12.2012, the Respondent No. 1 applied for NOC from the Respondent No. 3/Solapur Municipal Corporation for the necessary expansion and to undertake chimney construction. 6. It is further submitted in the said affidavit that on 29.01.2013, the Answering Respondent issued "in-principle" NOC to Respondent No. 1 for the said expansion, as well as for the co-generation power project. Thereafter, the Respondent No. 1 constructed a co-generation plant and the said chimney having a height of 92 meters. The Answering Respondent issued a notice dated 24.02.2014 under Section 478 of the Bombay Provincial Municipal Corporation Act, 1949 calling upon the Respondent No. 1 to remove the said chimney within a period of 8 days. After receipt of the said notice, the Respondent No. 1 approached the Answering Respondent on 03.03.2014 and requested for 90 days' time to obtain NOC from the Airport Authority of India. In the year, 2016-17, the Government of India issued Notification for the "Regional Connectivity Scheme", pursuant to which vide communication dated 15.03.2017, the State of Maharashtra directed the Collector, Solapur to take necessary steps for removal of the chimney within three months as the same was causing obstruction in taking off the flights at Solapur Airport and to transfer the possession of the said land to the Airport Authority after removal of the encroachment. Thereafter, the Collector, Solapur vide letter dated 06.04.2017 had directed the Respondent No. 1 to remove the chimney within a period of one month but Respondent No. 1 failed to remove the same. Thereafter, a tender was floated on 26.05.2017 for removal of the said chimney and the Answering Respondent issued a work order to the tenderer to remove the said unauthorized chimney. When the Answering Respondent proceeded to demolish the said chimney, the Chairman and Executive Director of the Respondent No. 1 had given an undertaking dated 11.08.2017, mentioning there-in that they would make necessary alternate arrangements for constructing a new chimney within a period of three months but no arrangement was made. Thereafter, the Respondent No. 1 filed a Writ Petition No. 5253 of 2017 on 28.04.2017 challenging the communication dated 15.03.2017 and the notice dated 06.04.2017, where-in the Court has not granted any

stay to the said orders but permitted the Respondent No. 1 to approach the Airport Authority of India, New Delhi. On 28.07.2017, the Respondent No. 1 filed an appeal before the Appellate Committee of the Airport Authority of India, which was rejected, as has been orally informed by the Respondent No. 1 on 18.12.2017. Thereafter, one Siddheshwar Rashtriya Sakhar Kamgar Union had filed Writ Petition No. 12131 of 2017 before the Hon'ble High Court on 03.11.2017, as informed by the learned Counsel for the Answering Respondent, though it is not mentioned in the affidavit, seeking stay of the communication made by the Collector and State Government to pull down the chimney on the ground that the crushing season was around the corner. It is also orally apprised by the Answering Respondent that another Writ Petition No. 5253 of 2017 was filed by the same unit i.e. Siddheshwar Sahakari Sakhar Karkhana Ltd. through its Managing Director Santosh Jaykumar Kumbhar, which was dismissed on 06.08.2018, though it is wrongly recorded in the affidavit filed by the Answering Respondent that there was direction given not to take any coercive steps against the Respondent No. 1. On 18.02.2017, the Airport Authority of India heard Respondent No. 1's appeal for height clearance and NOC upto 553 meters AMSL and rejected the same as Solapur Airport was operational and observing that Top Elevation of 493.36 meters AMSL (Above Mean Sea Level) (30 m AGL), as authorized by the letter dated 10.04.2017, could not be further increased. Being dissatisfied with the above order, the Respondent No. 1 preferred Writ Petition No. 11873 of 2018 before the Hon'ble High Court, which was heard along-with other Petitions, mentioned in para 12 of the affidavit, which were listed on 03.08.2018 and finally dismissed by detailed Judgment dated 06.08.2018. The decision of the Hon'ble High Court was challenged before the Hon'ble Supreme Court in Special Leave to Appeal (C) No. 30415 of 2018, which was disposed of vide order dated 29.08.2019, which is annexed at page nos. 67-68 of the paper book, where-in following order has been passed:- "Upon hearing the counsel the court made the following order Counsel for the Union of India has placed before us a copy of order dated 24.08.2019 passed by the Deputy Director General, Civil Aviation, Government of India. The same is taken on record. In view of the aforesaid order passed by the competent authority, the order(s) which are subject matter of challenge in these special leave petition(s) in that sense have become redundant. The petitioner (s), if so advised, may opt for remedy of appeal(s) under the concerned Rules of the Aircraft (Demolition of Obstructions caused by Buildings and Trees etc.). Rules, 1994. We make it clear that all contentions available to both sides are left open including the question of jurisdiction of the Collector of the State to pass order in that regard: The special leave petitions and pending applications are accordingly disposed of." 7. At this stage, we find that the affidavit, which has been furnished by the Respondent No. 3 is absolutely vague as it does not have any coherence as regards facts and therefore, we highly condemn this act on the part of the learned Advocate or the person whosoever has prepared this affidavit and grant opportunity of two weeks to the learned Counsel for Respondent No. 3 to file reply affidavit giving correct facts"

24. Thereafter, we are taking the facts from the affidavit filed from the side of Respondent No. 3 on 11.03.2023, where-in it is submitted that Siddheshwar Rashtriya Sahakar Kamgar Union had filed SLP No. 30657/2018 before the Hon'ble Supreme Court on 20.11.2018, which was heard jointly with SLP No. 30415/2018 and they were disposed of vide order dated 29.08.2019 on the basis of the order dated 24.08.2019 passed by Dy. Director General Civil Aviation, Govt. of India. The Respondent No. 3/Solapur Municipal Corporation cancelled the NOC issued by it vide speaking order dated 15.01.2021. The Upper Secretary, Urban Development Department, State of Maharashtra vide letter dated 16.11.2021 informed the Respondent No. 3 that after considering the opinion of Law and Judiciary Department, the Municipal Corporation should take immediate action to demolish the Chimney. In pursuance of the said letter, the Answering Respondent issued notice dated 17.11.2021 to Respondent No. 1/ Sugar Factory informing that the process of tender for the demolition of co-generation work of Chimney has been completed and the work order has been issued. In view thereof, the Respondent No. 1/Sugar Factory was informed to demolish the Chimney on its own within a period of 7 days after receipt of the notice, else Respondent No. 3/Solapur Municipal Corporation would undertake the demolition of the said Chimney. However, it is mentioned that the Respondent No. 3/Corporation after following the tender process, appointed Biniyas Content Pvt. Ltd., vide letter dated 22.11.2021, for the demolition work of the co-generation Chimney of the Respondent 1/Sugar Factory, which work was to start on 24.11.2021. Despite the above, Respondent No. 1 did not demolish the Chimney and thereafter on 25.11.2021, the Respondent No. 3 wrote a letter to the Collector, Solapur informing that Respondent No. 1 had not demolished the Chimney. The Collector, Solapur held a meeting on 22.11.2021, which was attended by the Deputy Commissioner of Police- Solapur, Representative of Maharashtra Pollution Control board, Boiler Inspector, Solapur City and other Officers and it was decided to visit the site on 23.11.2021. Accordingly, the said visit was made and it was found that, unless and until, the functioning of the plant of the sugar factory and related machineries were not stopped, the work of demolition of the said Chimney could not be done. Therefore, a meeting of the District Disaster Management Committee was convened. At the same time, the Respondent No. 3 had also issued a similar letter to the concerned authorities including Deputy Director of Maharashtra Pollution Control Board, Solapur and others for convening the meeting dated 26.11.2021 for taking steps to demolish the Chimney. The Maharashtra Pollution Control Board, Regional Office, Pune passed an order dated 29.11.2021, in which they issued a closure direction under Section 33(A) of the Water (Prevention and Control of Pollution) Act, 1974, Section 31(A) of the Air (Prevention and Control of Pollution) Act, 1981 and Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016 to the Respondent No. 1 to close down the manufacturing activities within 96 hours, being a safe closure time period, with immediate compliance intimation to the Board and also directed the Respondent No. 1 not to resume manufacturing activities till further orders. Thereafter, the Respondent No. 1 filed a Writ Petition 7872/2021 before the Hon'ble High Court of Bombay on 22.11.2021, challenging the order dated 15.01.2021 passed by Respondent No. 3 for canceling the NOC issued by Respondent No. 3 and also notice dated 17.11.2021 directing Respondent No. 1 to demolish the said Chimney within a period of 7 days. The Hon'ble High Court jointly heard Writ Petition No. 7872/2021 with Writ Petition 9446/2021 and passed an order dated 31.05.2022 remanding the matter back for fresh consideration by the DGCA. Pursuant to that order, DGCA heard the matter and passed an order dated 19.09.2022. The DGCA set aside the previous order and remanded the matter back to Joint DDG to examine the whole issues and pass a final order afresh.

25. It is further submitted in this affidavit that this Tribunal had passed an interim order dated 21.11.2022 directing Respondent No. 1 to stop all operations of the Sugar Factory. Thereafter, the Respondent No. 1 filed Civil Appeal No. 9222/2022 before the Hon'ble Supreme Court on 03.01.2023 against the said order passed by this Tribunal, which has been partly stayed, relevant portion of the Order of Hon'ble Supreme Court dated 03.01.2023 is quoted here-in below:-

"Issue notice, returnable in the month of April, 2023. Notices would be given dasti as well and can be served all modes. In the meanwhile, we are inclined to partly stay the operation of the impugned order, that is, the direction given in paragraph 30 restraining the appellant from crushing of cane till the time environment clearance is granted, subject to the condition that the appellant will not exceed crushing @ 5000 TCD (Tons of Cane per Day). We have passed this order as the appellants have relied upon Serial No. 5(j) of the schedule to the notification S.O. 1533 (E) dated 14.09.2006 of the Ministry of Environment and Forests.

We give liberty to the respondents to apply for modification of this interim order, if required.

Proceedings before the National Green Tribunal, Western Zone Bench, Pune, shall continue uninfluenced by pendency of the present appeal."

26. The Applicant has filed affidavit dated 11.01.2023, where-in he has cited the order of Hon'ble Supreme Court dated 03.01.2023 and thereafter, it is submitted by him that a new problem has cropped up, that is of Kajali (fly ash), which is emanating from the sugar factory and spreading over an area of 10 Kms., for which several people have signed letters demanding for stoppage of the same. The factory administration is required to be ordered to stop utilizing the illegally expanded boiler of 200 TPH and 92 meters stack immediately and instead keep on their crushing with the old machinery, as they have crushed more than 5000 TCD in 2005-2006 seasons before expansion. Further, it is mentioned that it is evident from the SEIAA Meeting dated 27.11.2022 that the Respondent No. 1's factory has 6 boilers in operation, while as per the condition, they had to stick to 5 boilers only.

27. From the side of Respondent No. 6/SEIAA, reply affidavit dated 10.04.2023 has been filed, where-in it is submitted that as per the MoEF&CC Notification dated 13-06-2019, the Project Proponent was suggested to submit EIA/EMP report to SEIAA-Maharashtra. Accordingly, the Project Proponent submitted the same on 22.04.2021, as category-B project. SEAC-I considered the proposal in its Meeting held between 27th to 29th December, 2021 there-by the Project Proponent accepted that installation of 38 MW cogeneration power plant and increasing cane crushing expansion from 2500 TCD to 5000 TCD was in violation. The PP requested to consider their proposal for regularization of the violation along-with expansion of existing C-Molasses based distillery from 20 KLPD to 100 KLPD. It is further submitted that Criminal Case No. 822/2021 was initiated by MPCB in July 2021 against the Respondent No. 1, which is still pending.

28. In the last para of the said affidavit, it is stated that SEIAA observed that proposal moved by the Project Proponent is under violation window as it applied under the MoEF&CC Notification dated

07.07.2021 providing SoP for violation cases. The Respondent No. 6/SEIAA asked the Project Proponent to submit approved plan and compliance of condition imposed by SEAC-I regarding reduction in stack height. Thereafter, SEIAA decided to defer the proposal for compliance of above points.

29. On the basis of above pleadings, we are of the view that this matter was considered by us at length vide order dated 21.11.2022, where-in we had already expressed our opinion in para no. 30 of the said order that we are of the view that the Project Proponent should not be allowed to proceed with the crushing of cane, at all, till the EC has been taken.

30. This order had been challenged by the Respondent No. 1 before the Hon'ble Apex Court by filing Civil Appeal No. 9222/2022, order of which is annexed at page nos. 895-896 of the paper book, which has already been reproduced by us above, where-by it appears to have been directed by the Hon'ble Supreme Court that the Respondent No. 1 may continue with the crushing but will not exceed 5000 TCP (Tonnes Curshing Per Day). Further, the matter is still under consideration before the Hon'ble Supreme Court in this regard.

31. In view of above order, we cannot pass any order with respect to EC, as the same is under consideration before the Hon'ble Apex Court and if any grievance is left to the Applicant, he may approach the Hon'ble Supreme Court in this regard.

32. As regards the crushing limit, which has been confined to 5000 TCD, it is the responsibility of the MPCB to ensure that the same is complied with and not violated.

33. As regards the relief with respect to the stack height to be reduced, the matter is already pending with Joint DDG (Dy. Director General), which is evident from para 23 of the affidavit of Respondent No. 3 and the said affidavit also makes it clear that the matter has been moved to Hon'ble High Court as well as Hon'ble Supreme Court and on a number of occasions, the said stack was directed to be demolished but the same could not be done due to litigation happening in this regard, which has already been reproduced by us above.

34. Major environmental issue raised by the Applicant is location and position of stack/chimney poses risk to air traffic at airport of Solapur. Hence, it is necessary to either reduce height or re-locate chimney/stack. Neither Applicant nor PP or SEIAA has come out with any explanation on how stack height was arrived at. Surprisingly, there is no suggestion/discussion on technology options for reduction of chimney/stack height without compromising on adequate dispersion of pollutants coming of the chimney/stack. We expect expert bodies such as MPCB and SEIAA should have guided the PP in this aspect instead of merely sticking to 90 m stack height. It was also open to PP to consult expert organization to re-design/re-locate chimney instead of indulging into unwarranted litigation. But we are of the view that no order can be passed by us in this regard because the issue being pending before the Appropriate Authority under orders of the Higher Courts.

35. Hence, the sole consideration in the present case, which remains to be done at our end, is with respect to the amount of environmental compensation to be levied from the Respondent No. 1.

36. As per Joint Committee Report, PB 75, the industry is an integrated sugar and distillery unit. The first crushing season of the sugar unit was done in 1971 and the distillery unit was commissioned in 1988. The industry had obtained Consent for cane crushing 2500 TCD and distillery 600 KL/month. MPCB had issued CTE on 18.01.2014 which stipulated that cane crushing capacity shall not exceed 5000 TCD. For this expansion it was also specified that for proposed new boiler of capacity 200 TPH ESP shall be provided and stack height of 90 m shall be provided. Direction by MPCB to provide chimney of height 90 m seems to be root cause of present litigation.

37. As per EIA Notification 2006, EC is required for sugar industry only when crushing capacity is more than 5000 TCD under category 5(j). However, for reasons beyond comprehension, MPCB in the said CTE letter directed that "9. The applicant should not take any effective steps for implementation of the project before obtaining Environmental Clearance as per EIA Notification 2006 and amendments thereto." This direction has added to the controversy about violation of EIA Notification. We direct MPCB to have better internal review mechanism so that no industry suffers in future because of MPCB directions.

38. From records, it is clear that PP did not go for expansion from 2500 TCD to 5000 TCD and opted to expand from 2500 TCD to 7500 TCD. As per submissions of the Applicant and also accepted by PP, cane crushing capacity was enhanced by installing required plant and machinery from the year 2017. PP had not obtained EC and CTE/CTO for the said expansion. From Joint Committee Report (PB 85-86) it seems that the Industry was aware of EC requirements and applied to MoEF&CC on 26/09/2013 to obtain the ToR for preparation of EIA report and EMP report. ToR were issued by MoEF&CC on 24/02/2014 EIA report was submitted by the industry on 02/10/2015 to MoEF&CC. The proposal was appraised by EAC between 2016-2018. However, it is clear that without waiting for EC, the industry went ahead with expansion. This was brought on records based on site inspection carried-out by MoEF&CC, Regional Office-Nagpur on 25/06/2018. Hence, Violation committee of MoEF&CC considered the proposal for expansion in meeting held on 22-24/10/2018 as per the provisions of MoEF&CC Notification dated 14/03/2017 and for recommended standard ToR along with specific ToR for preparation of EIA and EMP report on 03/12/2018.

39. As per MoEF&CC Notification S. O. 1960 (E), dated 13/06/2019 the appraisal of projects under item 5 (g) distilleries; all molasses-based distillery < 100 KLPD were notified to be considered and appraised under Category-B projects and as a result the said proposal was transferred from MoEF&CC to SEIAA, Govt. of Maharashtra for grant of EC. Thereafter, revised EIA and the public hearing were completed during December, 2020 and final EIA was submitted to SEIAA, Maharashtra on 22/04/2021. The proposal is under consideration of SEAC/SEIAA.

40. As per minutes of 234th meeting of SEIAA at PB page 943-945, PP has submitted Environmental Management Plan (EMP) for minimizing impact of water/air pollution, waste management, energy conservation, rain water harvesting and tree plantation for both sugar and

distillery units with capital cost Rs. 29.38 cr and Rs. 39.01 cr respectively. MPCB needs to ensure that this plan is implemented and maintained both in terms letter and spirit. As PP has already carried out capacity expansion, MPCB shall carry out site inspection in next 2 weeks and submit adequacy report to SEIAA which shall be considered by SEIAA before granting EC.

41. As per minutes of 234th meeting of SEIAA at PB page 946-949, industry/EIA consultant has worked out ecological damage cost as Rs. 7.6 cr and proposed remediation plan with budget Rs. 10.34 cr. PP has also submitted Corporate Environment Responsibility (CER) plan with budget Rs. 2.78 cr.

42. SEAC has recommended the proposal to SEIAA directing that PP shall submit penalty of Rs. 3.681 Cr as per OM on SOP for violation cases issued by MoEF &CC dated 07-07-2021. (1% of project cost of Rs. 273.83 Cr or expansion activity and 0.25% of total turnover from 2016-17 to 2021-22 of Rs. 377.51 Cr.). SEAC has also recommended that deposition of BG of Rs. 10.34 Cr with MPCB towards implementation of Remediation Plan and Natural and Community Augmentation Plan. Industry will have to implement the said plan within 2 years from the date of grant of EC. Overall implementation of the plan should be overseen by an expert agency like IIT /NIT /TISS.

43. EDC recommended by JCR is Rs. 4.257 cr. based on CPCB methodology submitted to this Tribunal in Original Application No. 593/2017 titled Paryavaran Suraksha Samiti & Anr. vs Union of India & Ors. or Rs. 5 cr. based on the Hon'ble Supreme Court vide order dated 10/8/2018 in Civil Appeal No. 10854 of 2016; M/s Goel Ganga Developers India Pvt. Ltd. vs. Union of India & Ors. Amount of environmental damage compensation recommended by SEAC comprising penalty of Rs. 3.681 cr in addition to remediation cost of 10.34 cr works out as Rs. 14.02 cr. The industry is also required to spend Rs. 2.78 cr towards Corporate Environment Responsibility. Thus, as per SEAC, overall budget for environmental improvement in the project affected area will be Rs. 16.8 cr. This calculation is more rational provided the ex-post-facto EC is granted. But looking to the fact that the industry is operating since 2017 without valid EC, hence as a deterrent, we direct the industry to deposit a sum of Rs. 5 Crore with MPCB within a period of one month from the date of uploading of this Judgment in terms of the Judgment in Goel Ganga's case (supra), which should be utilized for improvement of environment in the local area.

44. In Electrosteel Steels Limited v. Union of India, 2021 SCC online SC 1247 Hon'ble Apex Court held:-

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

45. In *M/S Pahwa Plastics Pvt. Ltd. And Anr. V. Versus Dastak Ngo And Ors.* 2022 SCC SC 362, Hon'ble Apex Court held:-

"83. The Central Government is well within the scope of its powers under Section 3 of the 1986 Act to issue directions to control and/or prevent pollution including directions for prior Environmental Clearance before a project is commenced. Such prior Environmental Clearance is necessarily granted upon examining the impact of the project on the environment. Ex- Post facto Environmental Clearance should not ordinarily be granted, and certainly not for the asking. At the same time Ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of Notifications under the 1986 Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of a running steel plant.

84. The 1986 Act does not prohibit Ex post facto Environmental Clearance. Some relaxations and even grant of Ex post facto EC in accordance with law, in strict compliance with Rules, Regulations Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in over view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms."

46. In the present case, the industry is an integrated sugar and distillery unit. The first crushing season of the sugar unit was done in 1971 and the distillery unit was commissioned in 1988. The industry expanded their sugar unit from 2,500 to 7,500 TCD during cane crushing season 2017-

18. The industry installed new bagasse fired boiler of 200 TPH, with co- generation power unit of 38 MW capacity. The industry is in cooperative sector, has over 28,000 members, and crushes sugar cane grown in about 900 villages in 17,500 ha. The Industry was well aware of EC requirements and applied to MoEF&CC on 26/09/2013 to obtain the ToR for preparation of EIA report and EMP report. ToR were issued by MoEF&CC on 24/02/2014 EIA report was submitted by the industry on 02/10/2015 to MoEF&CC. The proposal was appraised by EAC between 2016-2018 and subsequently by SEAC/SEIAA Maharashtra. Till date, the proposal is pending for final recommendation because PP has not obtained NOC from Civil Aviation Ministry to install stack at the project site as directed by EAC, MoEF&CC in TOR dated 03-12-2018.

47. Hence, even though PP had not applied for EC in violation window as per MoEF&CC Notification dated 14/03/2017, we are of the opinion that this case can be considered as exceptional one for grant of post-facto EC for the reasons mentioned by us in para no. 18 above and also looking to the fact that as many as 28,000 sugar cane growers would be adversely impacted, in case the industries are closed.

48. From records it is evident that the proposal is pending for final recommendation because PP has not obtained NOC from Civil Aviation Ministry to install stack at the project site as directed by EAC,

MoEF&CC in TOR dated 03-12-2018.

49. In view of above we direct that SEIAA shall process EC after receipt of NOC from DGCA and direct industry to deposit BG for Rs. 10.34 cr and penalty (revised after considering turn over after FY 2021-22, 2022-23) with MPCB. Penalty amount shall be utilized for environmental improvement by MPCB in consultation with the District Collector. Report of utilization of penalty shall be posted on MPCB website.

50. With the above directions, we dispose of this application accordingly.

51. All connected applications also stand disposed of. No cost.

Dinesh Kumar Singh, JM Dr. Vijay Kulkarni, EM May 31, 2023 Original Application No. 18/2021(WZ) P.Kr.